M E M O / N O T E D E S E R V I C E

To / Destinataire	Chair and Members of Planning Committee	File/N° de fichier: L06 02 12 OFFI / ACS2013-PAI-PGM-0207
From / Expéditeur	Tim Marc, Senior Legal Counsel, Corporate Development and Environmental Law	
Subject / Objet	Designation and Acquisition of Environmental Lands	Date: 22 November 2013

PURPOSE

During consideration on 8 October 2013 by Planning Committee of the report on the acquisition of environmental lands and again during submissions on the draft comprehensive official plan amendment on 8 November 2013, questions were raised by a presenter with respect to the applicability of the principle in the *Township of Nepean* case. At the 8 November 2013 Planning Committee meeting, Legal Services staff were directed to provide a written response to Committee. In summary, the issued raised is whether a municipality must be prepared to acquire lands where the land is designated as Urban Natural Area or Natural Environment Area in the City's Official Plan.

BACKGROUND

The *Nepean* principle is set forth in the case of Re *Nepean Restricted Area By-law 73-76*, a 1978 decision of the Ontario Municipal Board. In that case, the Ontario Municipal Board stated:

> This Board has always maintained that if lands in private ownership are to be zoned for conservation or recreational purposes for the benefit of the public as a whole, then the appropriate authority must be prepared to acquire the lands within a reasonable time otherwise the zoning will not be approved. We do not wish or intend to depart from that general principle and we hope the solution suggested will allow the township to achieve its goals and at the same time be fair to the land-owner.

The principle in the case above does permit a municipality to designate or zone a land for conservation purposes for the benefit of the public as a whole. But where a municipality does so, the case sets forth that there is a corresponding obligation on the part of the municipality to be prepared to acquire the lands in a reasonable time frame.

This case predated the Provincial Policy Statements containing provisions for the protection of environmental lands. As a result, the City in 2002 in the Trillium Woods case concerning significant woodlots in north Kanata advanced the position that the City, based upon the Provincial Policy Statement, should be able to designate such lands as Natural Environment Area

but should not be required to purchase such lands. The Board declined to accede to the City's submissions and continued to apply the principle in the *Nepean* case above.

In a presentation at Planning Committee on 8 October 2013, reference was made to two cases as having resulted in a revision to policy such that it was no longer necessary that the municipality be required to acquire land designated Urban Natural Area or Natural Environment Area: *Re Rodriguez Holding Corp v. Vaughan (City)*, a 2006 decision of the Ontario Superior Court of Justice and *Trinison Management Corporation v. Oakville (Town)*, a 2008 decision of the Ontario Municipal Board.

DISCUSSION

In the *Rodriguez* case the Plaintiff argued that its lands should be considered to be deemed to be expropriated. The Plaintiff's lands had been designated for Woodlot preservation in the Vaughan Official Plan, effective 1995. This designation was premised upon Vaughan establishing a development charge by-law for the acquisition of such parcels which Vaughan did in 1998, establishing a purchase price of $150,000 acre. The Plaintiff acquired the lands in 2001.

The Court did decline to hold that the lands were deemed to be expropriated. However, as noted above this was in a context where the municipality had a pre-existing policy at the time the lands were acquired by the Plaintiff. It is also worth noting that the result of the *Nepean* principle has not been that the lands are deemed to be expropriated. Rather, it is, as in the Trillium case, that if the municipality is not prepared to acquire the lands, the Board will permit them to be redesignated.

In the *Oakville* case, the issue was the designation of the site for a future school. The site in question was not the original site selected by the municipality but the Board was satisfied that further review had justified the current choice. The Board then stated the following in its decision:

> The Board accepts that the Church and the McGowans have plans for their properties, which do not include a secondary school. While they may hope to benefit from the increase in land value attendant upon an urban core land use designation, or while they may wish to use the land for purposes not permitted by that designation, that is not determinative in this case. If the HDSB [Halton District School Board] wants to acquire the lands for a school they will have to pay fair market value at the time they acquire the lands. If the Church and the McGowans refuse to sell their land they will be subject to the HDSB's statutory power to expropriate. The Board does not have the jurisdiction to interfere with or comment on this statutory right.

Thus it was also apparent that the land owner would receive fair market value when the lands were acquired for school purposes.

CONCLUSION

Having reviewed the above decision, it remains the opinion of Legal Services that the City must be prepared to acquire, within a reasonable time, lands that are designated Urban Natural Area or Natural Environment Area.

Original signed by

Tim Marc
Solicitor

cc: Mayor
Members of Council
Senior Advisor, Communications and Operations, Office of the Mayor
Deputy City Manager, Planning and Infrastructure
General Manager, Planning and Growth Management
City Clerk and Solicitor
Manager, Policy Development and Urban Design