

THE CORPORATION OF THE TOWN OF GEORGINA

SPECIAL COUNCIL ADDENDUM

Tuesday, September 9, 2014
7:00 PM

12.2 CONSIDERATION OF REPORTS ON THE CONSENT AGENDA REQUIRING SEPARATE DISCUSSION

12.2.4 Report from the Chief Administrative Officer Pages 1-11

12.2.4.1 Notice of Application, Marvin Blanchard, 1124123 Ontario Limited and Baldwin 33 Inc.

Report No. CAO-2014-0011

Recommendation(s):

1. That Council receive Report No. CAO-2014-0011 prepared by the Office of the Chief Administrative Officer dated September 9, 2014 respecting Notice of Application – Marvin Blanchard, 1124123 Ontario Limited and Baldwin 33 Inc.
2. That further Council consideration of the Baldwin 33 Inc. site alteration application be deferred, subject to further developments in the litigation commenced by Marvin Blanchard, 1124123 Ontario Limited and Baldwin 33 Inc.

THE CORPORATION OF THE TOWN OF GEORGINA

REPORT NO. CAO-2014-0011

**FOR THE CONSIDERATION OF
COUNCIL**

SEPTEMBER 9, 2014

**SUBJECT: NOTICE OF APPLICATION – MARVIN BLANCHARD, 1124123
ONTARIO LIMITED AND BALDWIN 33, INC.**

1. RECOMMENDATION:

- 1. That Council receive Report No. CAO-2014-0011 prepared by the Office of the Chief Administrative Officer dated September 9, 2014 respecting Notice of Application – Marvin Blanchard, 1124123 Ontario Limited and Baldwin 33 Inc.**
- 2. That further Council consideration of the Baldwin 33 Inc. site alteration application be deferred, subject to further developments in the litigation commenced by Marvin Blanchard, 1124123 Ontario Limited and Baldwin 33 Inc.**

2. PURPOSE:

To advise Council of the Notice of Application served by Marvin Blanchard, 1124123 Ontario Limited and Baldwin 33 Inc. and to obtain Council's direction on deferral of the Baldwin 33 Inc. site alteration application.

3. BACKGROUND:

Baldwin 33 Inc. applied to the Town of Georgina, under By-law 2011-0044 for the site alteration of lands at property located at 6003 Smith Blvd, in the Town of Georgina.

The application was the subject of Public Meetings held on October 15, 2013 and April 9, 2014.

At the April 9, 2014 meeting, Council passed the following resolution:

Moved by Councillor Szollosy, Seconded by Councillor Davison

RESOLUTION NO. C-2014-0238

- 1. That Council receive Report No. OED-2014-0010 prepared by the Operations and Engineering Department dated April 9, 2014 respecting the large scale site alteration permit application made by Baldwin 33 Incorporated, as owner.**

2. That the site alteration permit application made by Baldwin 33 Incorporated be referred to the Chief Administrative Officer to prepare a report to coordinate response to all issues raised at this meeting, to include; (i) necessity for a peer review of the data, (ii) wetland review, (iii) interpretation of written comments from the Lake Simcoe Region Conservation Authority, (iv) any information in relation to fill operations in the Town of Georgina, and (v) potential moratorium on the site alteration by-law pending a review, as well as any corresponding applications, noting that if this report clarifies the issues with this application, a moratorium may not apply to this application, and that said report be made available to the public for a minimum of two weeks prior to its consideration by Council at a Council meeting.

Carried.

On August 21, 2014 Council passed the following resolution:

Moved by Councillor Hackenbrook, Seconded by Regional Councillor Wheeler

RESOLUTION NO. C-2014-0485

That Council received and considered legal advice from the Town Solicitor dated July 30, 2014 and July 30, 2014 concerning a site alteration matter and that staff be directed to further investigate and report on "Normal Farm Practice" and its applicability to the Baldwin 33 Site Alteration application.

On August 29, 2014 the Town received the attached Notice of Application (see Attachment 1)

4. ANALYSIS:

Given that the Chief Administrative Officer has been tasked to report back on the Baldwin 33 Inc. site alteration application, and given the recent Notice of Application, the Chief Administrative Officer has consulted with Town Counsel. It is the recommendation of Town Counsel and the Chief Administrative Officer that given that the matter is now before the courts, it would be appropriate to await further developments in the litigation process prior to the Chief Administrative Officer further reporting and prior to further Council consideration of the application.

5. FINANCIAL AND BUDGETARY IMPACT:

N/A

6. PUBLIC CONSULTATION AND NOTICE REQUIREMENTS:

N/A

7. CONCLUSION:

N/A

Approved by:



Winanne Grant, B.A., AMCT, CEMC
Chief Administrative Officer

Attachment 1 – Notice of Application, Marvin Blanchard, 1124123 Ontario Limited and Baldwin 33, Inc.

11-2-14
 Court File No.

**ONTARIO
 SUPERIOR COURT OF JUSTICE**

BETWEEN:

**MARVIN BLANCHARD, 1124123 ONTARIO LIMITED
 and BALDWIN 33, INC.**

Applicants

- and -

**THE CORPORATION OF THE TOWN OF GEORGINA,
 THE MINISTRY OF NATURAL RESOURCES AND FORESTRY and
 THE ONTARIO AGGREGATE RESOURCES CORPORATION**

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following pages.

THIS APPLICATION will come on for a hearing on September 12, 2014 at 9:30 a.m. at Newmarket.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least 4 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: August 28, 2014

Issued by: *James J. Smith*
Local Registrar

Address of Court Office:
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Newmarket, ON,
L3Y 6B1

TO: RITCHIE KETCHESON HART & BIGGART LLP
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Lawyers for the Respondent.
The Corporation of the Town of Georgina

AND THE MINISTRY OF NATURAL RESOURCES AND FORESTRY
TO: Ministry of Natural Resources and Forestry
Aurora District Office
50 Bloomington Road
Aurora, ON L4G 0L8

AND THE ONTARIO AGGREGATE RESOURCES CORPORATION
TO: 1001 Champlain Avenue
Suite 103
Burlington, ON L7L 5Z4

APPLICATION

1. The applicants make application for:
 - (a) a Declaration that the Applicants may import clean fill onto property known as 6017 Smith Blvd, Georgina (Lot 3 Concession III) ("**Smith Blvd**"). a former aggregate extraction site, for the purpose of rehabilitation of the site to its former use;
 - (b) an Order directing the Respondents to permit and facilitate such rehabilitation and importation of clean fill effective immediately;
 - (c) an Order that the Respondent The Ontario Aggregate Resources Corporation ("**TOARC**") not take any steps to rehabilitate Smith Blvd pending final determination of this Application, the consent of the Applicants or a further Order of this Court;
 - (d) a Declaration that sections 2(a) and 2(i) of the Respondent Town's By-law No. 2011-0044 (REG 1) entitled "Georgina Site Alteration By-law", as amended, ("**By-law**") as they relate to the rehabilitation of Smith Blvd are invalid and of no force or effect as being inconsistent in purpose and effect with superior provincial law;
 - (e) an Order quashing a certain work order issued by the Respondent Town under authority of the By-law on June 18, 2014 in relation to the importation of fill into Smith Blvd ("**Work Order**");
 - (f) an Order that the Respondent Town forthwith issue to the Applicants a certain site alteration permit (permit application #SA2012-04; the "**Permit**") with respect to an adjacent property being 6003 Smith Boulevard, Georgina, Ontario ("**Baldwin Property**") or show cause forthwith why such cannot be immediately issued;
 - (g) in addition or in the alternative, an Order that the Respondent Town forthwith produce to the Applicants all documents and material relating to the application for the Permit prepared, used, generated or relied on at or for the Respondent

Town Council meeting held on April 9, 2014, including any subsequent related meetings whether *in camera* or otherwise, with the Court remaining seized of the matter pending production of such material and further Order of this Court:

- (h) an Order striking out some or all of paragraphs 18, 19, 25, 27, 29, 32, 33 and 34 from the affidavit of Michael Baskerville sworn August 15, 2014;
- (i) an Order that the Respondent Town provide by sworn affidavit of its Clerk or Chief Administrative Officer the undertaking as to damages ordinarily given in connection with injunctive or like relief;
- (j) an Order directing a trial of an issue in respect of damages suffered by the Applicants as a result of the acts and omissions of the Respondents;
- (k) an Order settling the terms of the order of Mr. Justice Mullins made on August 19, 2014 in the related matter with costs on a substantial indemnity basis;
- (l) such further or other relief whether interim or final as may be reasonably necessary to give full effect and implement the relief obtained; and
- (m) their costs of this Application and of the Respondent's Application and motion being heard together with this Application, all on a substantial indemnity basis.

2. The grounds for the application are:

- (a) with respect to the By-Law and the Work Order:
 - (i) the Applicants ceased extraction activities at Smith Blvd in 2008;
 - (ii) the aggregate extraction licence relating to Smith Blvd was revoked in 2013;
 - (iii) the Applicants wish to and are required by the *Aggregate Resources Act* to rehabilitate Smith Blvd to its former use;

- (iv) there is insufficient native material on Smith Blvd left today with which to rehabilitate Smith Blvd thus making it necessary for the Applicants to import fill for this purpose;
- (v) the Respondent Town has passed the By-law which among other things restricted the importation of any fill for any purpose onto Smith Blvd without a permit, effectively purporting to regulate aggregate related activities which fall under the exclusive jurisdiction of the *Aggregate Resources Act*;
- (vi) the Respondent Town further has amended the By-law to effectively remove its own ability to issue the kind of municipal permit that the Respondent Town claims the Applicants require in order to rehabilitate Smith Blvd;
- (vii) the Respondent Town has refused to issue the Applicants a permit under the By-law allowing for the importation of fill for the purpose of rehabilitating Smith Blvd and issued the Work Order against some of the Applicants requiring removal of any fill already brought onto the site and prohibiting the further importation of any fill;
- (viii) the Respondent Ministry as well as MOARC as provincial authorities have specifically ordered the Applicants to rehabilitate Smith Blvd or face sanction;
- (ix) the Respondent Ministry, however, insists that no importation of fill can be carried out as part the legally required rehabilitation of Smith Blvd without having regard to the lack of native material on site with which to carry out such rehabilitation and without proper or any legal basis; and
- (x) the net effect of the acts and omissions of the Respondent Town and of the Respondent Ministry to date have been to prevent the Applicants from rehabilitating Smith Blvd and complying with Provincial law;

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- (xi) none of the Respondents have to date provided any direction or advice to the Applicants as to how to rehabilitate Smith Blvd without importing the required fill in the circumstances:
- (b) with respect to the Permit:
- (i) the Applicants have twice submitted application for the Baldwin Property Permit seeking to import clean fill. Their applications were accepted by the Respondent Town but since unduly delayed;
 - (ii) on or about April 9, 2014, the Respondent Town's Staff recommended approval of the Permit and that the Respondent Town enter into an agreement with the Applicant owner of the Baldwin property (Baldwin 33 Inc.) setting out the required terms and conditions with respect to the Permit;
 - (iii) to date there has been no approval of the Permit and no such agreement proposed to the Applicants;
 - (iv) the Applicants have not been advised of the outcome of their Permit application nor of the reasons for the delay; and
 - (v) there are good reasons to believe the Respondent Town is improperly withholding approval of the Permit;
- (c) with respect to the affidavit to be struck in part:
- (i) paragraphs 18, 19, 25, 27, 29, 32, 33 and 34 of the said affidavit fail to comply with Rule 39.01(5) of the *Rules of Civil Procedure* in that they: a) contain statements of information and belief with respect to contentious facts; b) fail to state the source of the deponent's information; c) fail to state the fact of the deponent's belief; d) contain opinions and not facts; e) constitute argument and not facts; and/or f) constitute hearsay;

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- (d) Rules 14.05, 38 and 39.01 of the *Rules of Civil Procedure*;
 - (e) Sections 97, 101 and 106 of the *Courts of Justice Act*; and
 - (f) Sections 239(2), 239.1 and 273 of the *Municipal Act, 2001*.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the Respondent Town's Application and Motion Record in the related Application;
 - (b) the Affidavit of Marvin Blanchard sworn August 28, 2014 and exhibits thereto:
and
 - (c) such further and other material as this Court may permit.

LA
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August 27, 2014

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Lawyers for the Applicants

Court File No.

MARVIN BLANCHARD et al.
Applicants

and

THE CORPORATION OF THE TOWN OF GEORGINA et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**
Proceeding Commenced at Newmarket

NOTICE OF APPLICATION

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