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(Winnipeg Centre)
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v. The City of Winnipeg et al.
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COURT OF QUEEN'S BENCH OF MANITOBA

B E T W E E N:

6165347 MANITOBA INC. and 7138793 MANITOBA LTD.,	)	Counsel:
applicants,	)	DAVE HILL
- and -	)	for the applicants
THE CITY OF WINNIPEG and CITY CENTRE COMMUNITY COMMITTEE,	)	VIVIAN LI SARAH RENTZ
	)	for the respondents
respondents.	)	
	)	JUDGMENT DELIVERED:
	)	August 6, 2019

GRAMMOND J.

INTRODUCTION

[1] This decision relates to a contempt motion filed by the applicants, regarding an order signed on October 12, 2018 (the "Order"), granting a *mandamus* application.

BACKGROUND INFORMATION

[2] The applicants own a parcel of land in Winnipeg (the "Land") which they are seeking to redevelop. On September 19, 2018, I issued reasons for decision (***6165347 Manitoba Inc. et al. v. The City of Winnipeg et al***., 2018 MBQB 153) granting the applicants' request to require the respondent City Centre Community Committee (the "Committee") to hear, on November 13, 2018, two applications filed by the applicants: a secondary plan application in file no. SP1/2018 (the "Secondary Plan Application") and a rezoning application in DASZ file no. 12/2018 (the "Zoning Application"), (collectively the "Applications").

[3] On November 13, 2018, the Committee convened. The applicants allege that the Committee did not hold a public meeting regarding the Secondary Plan Application. Rather, it endorsed the City's recommendations that a by-law was required and that City Council should not give first reading to the proposed by-law.

[4] The applicants seek a finding of contempt as against the respondents on the following bases:

a) the Secondary Plan Application was considered pursuant to a statutory (by-law) approach, not a non-statutory (policy) approach;

b) the Zoning Application was rejected on the basis that a secondary plan was required; and

c) the Committee did not have before it all of the documents submitted by the applicants in support of the Applications.

[5] The respondents submitted that the Applications were heard and decided in accordance with the Order, pursuant to the Committee's legislative function.

RELEVANT LEGAL PRINCIPLES

[6] Court of Queen's Bench Rule 60.10 provides, among other things, that a judge may grant a contempt order to enforce an order requiring a person to do an act, and in doing so may make such order as is just.

[7] Pursuant to the common law, contempt is a discretionary remedy to be used "cautiously and with great restraint" (***Carey v. Laiken***, 2015 SCC 17, at para. 36). It is an enforcement power of last rather than first resort.

[8] As set out in ***Carey***, the applicable test on a contempt motion is:

> [33] … the order alleged to have been breached 'must state clearly and unequivocally what should and should not be done' …
>
> [34] … the party alleged to have breached the order must have had actual knowledge of it …
>
> [35] … the party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels …

[9] In this case, the respondents conceded that the second branch of the test has been met.

[10] The Court in ***Carey*** also stated:

> [37] … where an alleged contemnor acted in good faith in taking reasonable steps to comply with the order, the judge entertaining a contempt motion generally retains some discretion to decline to make a finding of contempt.

[11] Contempt must be established on a high standard of proof. In ***Chiang (Trustee of) v. Chiang***, 2009 ONCA 3, the Court stated:

> [11] In civil contempt, the court's emphasis is less about punishment and more about coercion -- attempting to obtain compliance with the court's order. Still, civil contempt bears the imprint of the criminal law. Civil contempt must be made out to the criminal standard of proof beyond a reasonable doubt.

[12] In ***Sweda Farms Ltd. et al. v. Ontario Egg Producers et al***, 2011 ONSC 3650, stated:

> [26] Any reasonable doubt must be resolved in favour of the alleged contemnor. A reasonable doubt is not to be an imaginary or frivolous doubt, nor may it be based on sympathy or prejudice. It must be based on reason and common sense, logically derived from the evidence or absence of evidence. But the court recognizes that it is virtually impossible to prove anything to an absolute certainty and the moving party is not required to do so.

ISSUES

[13] The two issues to be determined on this motion are:

a) Whether the Order was clear and unequivocal?; and

b) Whether the Order was breached by an intentional act or omission?

ISSUE 1: WAS THE ORDER CLEAR AND UNEQUIVOCAL?

[14] The Court in ***Carey*** stated that:

> [33] … [The] requirement of clarity ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.
>
> [citations omitted]

[15] It is helpful to consider what document(s) constitute the "order" for the purposes of this analysis. In ***Gurtins v. Goyert,*** 2008 BCCA 196, the Court stated:

> [15] … it is of paramount importance that persons who are subject to court orders be able to readily determine their obligations and responsibilities. They do this by having regard to what is on the face of the formal order setting out what they are required to do, or refrain from doing.
>
> [citations omitted]
>
> [16] A concise and most helpful summary of the principles applicable to the interpretation of an order in contempt proceedings is found in *R. (Mark Dean Harris) v. The Official Solicitor to the Supreme Court*, [2001] EWHC Admin 798 (Q.B.D.), wherein Mr. Justice Munby stated (at para. 68):
>
> (i) No order will be enforced by committal unless it is expressed in clear, certain and unambiguous language. So far as this is possible, the person affected should know with complete precision what it is that he is required to do or to abstain from doing.
>
> …
>
> (iii) An order should not require the person to whom it is addressed to cross-refer to other material in order to ascertain his precise obligation. Looking only at the order the party enjoined must be able to find out from the four walls of it exactly what it is that he must not do.
>
> (iv) It follows from this that, as Jenkins J said in *Redwing Ltd v Redwing Forest Products Ltd* (1947) 177 LT 387 at p 390,
>
> a Defendant cannot be committed for contempt on the ground that upon one of two possible constructions of an undertaking being given he has broken that undertaking. For the purpose of relief of this character I think the undertaking must be clear and the breach must be clear beyond all question.
>
> [emphasis added in original]

[16] I note also the following comments in ***Fettes v. Culligan Canada Ltd.***, 2010 SKCA 151:

> [20] In *Baumung*, [*Baumung v. 8 & 10 Cattle Co-operative Ltd.,* 2005 SKCA 108] the Court referred to numerous authorities to illustrate the statement that 'in order to ground a contempt finding, a court order must be clear or, to put the

> point in another way, that an ambiguity in an order should be resolved to the benefit of the alleged contemnor' (at para. 27).

[17] In ***Sweda***, the Court stated:

> [21] The order 'must state clearly and unequivocally what should and should not be done.' It must be directive and not simply permissive… the alleged contemnor… must obey the order in letter and spirit with every diligence. A person who is subject to an order should not be permitted to 'finesse' it or to 'hide behind a restrictive and literal interpretation to circumvent the order and make a mockery of it and of the administration of justice.'
>
> [emphasis added]

Statutory v. Non-Statutory

[18] Throughout the *mandamus* hearing process, the parties drew a distinction between a public "meeting" and a public "hearing" relative to the Secondary Plan Application. The applicants argued that the Secondary Plan Application should proceed pursuant to a non-statutory (policy) approach, which would include a public meeting. The respondents argued that the Secondary Plan Application should proceed pursuant to a statutory (by-law) approach, which would require a first reading by City Council, followed by a public hearing.

[19] My reasons for decision reflect:

> [21] … I have concluded that there is no statutory or other requirement that a secondary plan must be implemented by by-law. Accordingly, the Secondary Plan Application can proceed pursuant to a policy adopted by Council.

[20] After issuance of my reasons for decision, I received a written inquiry from counsel for the respondents as follows:

> [I]s the Committee being ordered to conduct a public hearing on November 13 with respect to the secondary plan, which would require that Council give first reading to the secondary plan by-law prior to that date, or is it sufficient for the secondary plan to be considered by way of a policy approach, which would not require a public hearing on November 13?

[21] My answer to the inquiry was as follows:

> Council can comply with my decision by proceeding with the secondary plan application pursuant to a non-statutory (policy) approach, involving a public assembly or meeting. Council is not required to give first reading prior to November 13, 2018.

[22] The respondents posed no other questions and sought no other clarifications with respect to my reasons for decision.

[23] Pursuant to the authorities referenced above, I must consider whether the language of the Order was clear and unequivocal. My reasons for decision and the subsequent exchange of correspondence with counsel do not form part of the Order. Having said that, those documents provide context for the language of the Order

[24] In addition, on October 9 and 10, 2018, I received written correspondence from counsel advising that they were unable to agree as to wording of the Order.

[25] The applicants proposed the following language:

> 2. THIS COURT FURTHER ORDERS THAT the respondent City Centre Community Committee hear Applications SP1/2018 and DASZ File No. 12/2018 at its meeting on November 13, 2018.

[26] The respondents proposed the following language:

> 1. THIS COURT HEREBY ORDERS that the Respondent City Centre Community Committee consider Development Application SP 1/2018 and conduct a public hearing in respect of Development Application No. DASZ 12/2018 at its meeting on November 13, 2018.

[27] On October 10, 2018, I advised counsel that the following language would be included in the Order:

> 2. THIS COURT FURTHER ORDERS THAT the respondent City Centre Community Committee conduct a public <u>meeting</u> regarding Application SP1/2018 and conduct a public <u>hearing</u> regarding DASZ File No. 12/2018 at its meeting on November 13, 2018.
>
> [emphasis added]

[28] This language, which was included in the Order, is more specific than that proposed by either party. The applicants' proposed wording reflected that the Committee would "hear" the Applications, which mirrors both the notice of application and my reasons for decision. The respondents' proposed wording reflected that the Committee would "consider" the Secondary Plan Application and "hear" the Zoning Application. I note this evolution because not only is the language of paragraph 2 of the Order clear and unequivocal, it was the collective work product of counsel and the Court. Although no other document needs to be reviewed to understand the meaning of paragraph 2, the exchange of information that preceded its issuance underscores the specificity of the language used.

[29] Neither the word "meeting" nor the word "hearing" are defined in the Order, but a Committee "meeting" with respect to the Secondary Plan Application could take place only pursuant to the non-statutory (policy) approach. Conversely, a Committee "hearing" with respect to the Secondary Plan Application could take place only pursuant to the statutory (by-law) approach, after first reading by City Council. Accordingly, the Order is clear that the respondents were ordered to follow the non-statutory (policy) approach, and not the statutory (by-law) approach, with respect to the Secondary Plan Application.

[30] Moreover, it is apparent that at least one City employee understood the meaning of paragraph 2 of the Order, and acknowledged that the Secondary Plan Application was to proceed by way of the non-statutory (policy) approach. I am referring to Mr. Michael Robinson, who authored an administrative report in consultation with

others, relative to the Zoning Application (the "Zoning Report"). The respondents did not file evidence sworn by Mr. Robinson in response to the contempt motion, but the affidavit of his colleague Mr. James Platt reflects:

> 18. … I spoke to Michael Robinson who advised that in consideration of the Judgment and the Order, he specifically used the term 'secondary plan' as opposed to 'secondary plan by-law' throughout the DASZ Report.

[31] For all of these reasons, I reject the submissions of the respondents that the wording of the Order was overly broad or unclear, or that there was more than one potential interpretation of paragraph 2 of the Order.

Conclusion

[32] The language of paragraph 2 of the Order was clear and unequivocal. The Secondary Plan Application was to proceed at a public meeting pursuant to a non-statutory (policy) approach.

Zoning Application

[33] The Order is silent as to whether an approved secondary plan must be in place for the Zoning Application to proceed. This is so because I did not decide that question in the context of the *mandamus* application. Accordingly, the Order cannot be said to be either clear or unequivocal on this point and a finding of contempt cannot be made on this basis.

[34] Having said that, I will comment on two points related to this issue.

[35] First, my reasons for decision provide:

> [22] I will also comment upon the approval process for the Zoning Application, which is set out in both the *Charter* and the Development Procedures By-Law No. 160/2011. Pursuant to Section 275(2) of the *Charter*, the Zoning Application must conform with Plan Winnipeg or a secondary plan. There is no requirement

> that a secondary plan by-law be enacted prior to a zoning application being accepted.

[36] In addition, there was a direction by the City's Municipal Council in 2009 that the City Public Service "be directed to prepare a developer led secondary plan for the… [Land]".

[37] In other words, it was and is my understanding, and I thought the parties' understanding also, that a secondary plan would accompany the Zoning Application. The Applications were filed together and at all times the applicants have sought to pursue them concurrently.

[38] Second, as I read the minutes of the November 13, 2018 Committee meeting, the Zoning Application was not rejected because no secondary plan was in place. Rather, the reasons cited by the Committee were:

a) a lack of collaboration and consultation with the neighbourhood;

b) the Committee did not have some "good information" that was submitted (namely the October 29 Delivery, as defined below);

c) changes to the concept plan regarding density; and

d) the parking requirement.

[39] I acknowledge, however, that the Zoning Report reflected a recommendation that "an approved Secondary Plan is needed prior to this application proceeding", and that the Committee's decision reflected the general statement that it "concurred in the recommendation … that the … [Zoning Application] be rejected. It is certainly possible that the lack of an approved secondary plan was an ancillary reason for the

Committee's acceptance of the City's recommendations, which would have been consistent with the parties' expectations.

Conclusion

[40] The Order is not clear and unequivocal as to whether an approved secondary plan must be in place for the Zoning Application to proceed, so no finding of contempt can be made on that basis.

Material Available to Committee

[41] The Order provided:

> 3. THIS COURT FURTHER ORDERS THAT the City through its administration is required to take all steps necessary to have the required material in relation to the Applications available to the said Committee for its consideration on November 13, 2018.

[42] On October 29, 2018, the applicants delivered a letter and enclosures (the "October 29 Delivery") to each of three City employees, including Mr. Ludwig Lee. The October 29 Delivery included a proposed "minor" amendment to the applicants' development, in response to comments made by the City on October 19, 2018 to the applicants' engineering consultants.

[43] On November 1, 2018, the applicants delivered other materials (the "November 1 Delivery") to both the City Clerk's office and the City's Chief Administrative Officer.

[44] On November 2, 2018, counsel for the City advised the applicants that the October 29 Delivery "was not received in time to be incorporated into the Administration Report for this matter. However, you are welcome to present this information directly to the Community Committee at the public hearing on November 13, 2018".

[45] On November 7, 2018, the City Clerk's office distributed the November 1 Delivery to the offices of the Committee members.

[46] I note that the phrase "required material in relation to the Applications" is neither defined nor particularized in the Order. In addition, the Order does not reflect either a schedule or a deadline for further materials to be submitted by the applicants or distributed to the Committee. This is so despite discussion at the hearing of the *mandamus* application on September 10, 2018 regarding specific additional information to be submitted by the applicants in short order.

[47] The respondents submitted that the October 29 Delivery was a "late submission", because the public notice relative to the Applications was issued on October 25, 2018, and on the same date the Applications were made available for public inspection. In addition, the respondents contended that the October 29 Delivery could not be incorporated into the Zoning Report, because the group that reviewed and commented upon the Zoning Application had met on September 26, 2018, and could not be reconvened sufficiently in advance of the November 13, 2018 Committee meeting. The respondents argued also that since the October 29 Delivery was not contemplated when the Order was finalized, it was unclear what the City should do with it. The respondents stated for all of these reasons that the October 29 Delivery obscured the meaning of paragraph 3 of the Order, as contemplated in ***Carey***.

[48] The applicants submitted that the contents of the October 29 Delivery resolved certain issues to the City's satisfaction. They also argued that it is difficult to understand how the applicants' submissions in response to the City's comments,

including a proposed amendment to the development, could not be characterized as "required material in relation to the Applications". I agree with the latter point.

[49] Having said that, any ambiguity in the language of paragraph 3 of the Order must be resolved in favour of the City. It is apparent that after the Order was granted, discussions and exchanges continued as between the parties, and it is not clear to me from the record what, if any, additional filings were discussed or contemplated. Regardless, the Order should have reflected more detail as to:

a) what was included in the phrase "required material in relation to the Applications";

b) what additional materials would be forthcoming; and

c) what timetable would apply to the exchange of information.

[50] Since the Order reflected no timetable, I cannot determine whether the October 29 Delivery was a "late submission".

[51] For all of these reasons, the language of paragraph 3 of the Order does not reflect clearly and unequivocally what is included in "required material in relation to the Applications", and a finding of contempt cannot be made on this basis.

[52] I will make some additional comments, however, that may assist the parties going forward. In my view, the real issue does not relate to whether the applicants' submissions could be responded to in the administrative reports. The issue is why the City refused to distribute the October 29 Delivery to the Committee, and instead suggested to the applicants that they present the documents to the Committee at the

meeting, which would provide the least effective opportunity for review by the Committee members.

[53] The City has provided no explanation for its refusal to distribute the October 29 Delivery, except that it was not filed with the City Clerk's office. I am also mindful of the City's acknowledgement that "it is standard practice for all unsolicited materials related to an active [Zoning] application to be forwarded to the Zoning Development Officer responsible for the application, which in this instance was Ludwig Lee". I note both that Mr. Lee was a recipient of the October 29 Delivery, and that according to the applicants, the content of the October 29 Delivery would have addressed some of the concerns raised in the Zoning Report.

[54] I am troubled by the City's approach, particularly given the issuance of the Order, and the applicants' warning that the Committee would not be informed fully without the October 29 Delivery. I would have anticipated that the City would act vigilantly and with caution, particularly give the applicants' previous allegations of bad faith against it. Instead, it seems to have chosen to be uncooperative with respect to distribution of the October 29 Delivery.

Conclusion

[55] The Order is not clear and unequivocal relative to what material was required to be available to the Committee for its November 13, 2018 meeting, so no finding of contempt can be made on that basis.

ISSUE 2: WAS THE ORDER BREACHED BY AN INTENTIONAL ACT OR OMISSION?

[56] The Court in ***Carey*** stated:

> 38 It is well settled in Canadian common law that all that is required to establish civil contempt is proof beyond a reasonable doubt of an intentional act or omission that is in fact in breach of a clear order of which the alleged contemnor has notice… to require a contemnor to have intended to disobey the order would put the test 'too high' and result in 'mistakes of law [becoming] a defence to an allegation of civil contempt …'.

Statutory v. Non-Statutory

[57] The City prepared an Administrative Report relative to the Secondary Plan Application (the "Secondary Plan Report"), which was submitted to the Committee on November 5, 2018.

[58] The Secondary Plan Report was prepared by Mr. James Platt, in consultation with many others, and contained the following statements:

a) "The proponent submitted a development application on January 12, 2018 for adoption of the proposed Parker Lands Secondary Plan (the 'Plan'). The Plan is inadequate as a secondary plan by-law for the following key reasons";

b) "If the recommendations of this report are concurred in, the … Committee will not conduct a Public Hearing on the proposed by-law"; and

c) "The applicant has submitted a proposal for Council to adopt a secondary plan by-law…"

[emphasis added]

[59] The Secondary Plan Report contained the following recommendations, among others:

a) "That any land use plan related to the Parker Lands… resulting from a planning process… be adopted as a secondary plan by-law"; and

b) "That Council not give first reading to the proposed secondary plan by-law (draft bylaw attached to this report as Schedules 'A' and 'B') for the reasons outlined in this report".

[emphasis added]

[60] On November 7, 2018, counsel for the applicants advised counsel for the respondents that the Secondary Plan Report was "essentially identical" to the report prepared in July 2018, which also recommended that the Secondary Plan Application be considered as a by-law. Counsel for the applicants stated that "[s]uch a recommendation is directly contrary to the Order of Madam Justice Grammond dated October 12, 2018." He called upon the Committee to "immediately rectify the situation by following exactly the Order of Madam Justice Grammond as clarified." Counsel for the respondents acknowledged this warning, but advised that the respondents disagreed with the position taken.

[61] The foregoing excerpts of the Secondary Plan Report are troubling, because they reflect that the Secondary Plan Application was proceeding pursuant to the statutory (by-law) approach, which is not what the Order provided. With respect, it is difficult to understand how the respondents concluded that proceeding in the fashion set out in the Secondary Plan Report would accord with the Order.

[62] In addition, the respondents have provided no explanation for the inclusion of these statements in the Report. Clearly, Mr. Platt was aware of the view of Mr. Robinson, as set out in the Zoning Report, that the Secondary Plan Application was to proceed by way of non-statutory (policy) approach.

[63] The City submitted that the Order did not require it to make any specific recommendations to the Committee, and that is correct, but as I have already found, the Order provided clearly and unequivocally that the Committee was to hold a meeting with respect to the Secondary Plan Application, pursuant to the non-statutory (policy) approach. The City's recommendations relative to the statutory (by-law) approach started the process on the wrong track, and set up the Committee to fail to comply with the Order by proceeding under that approach. I accept that the Committee could have rejected the City's recommendations, and identified a distinction between the non-statutory (policy) and the statutory (by-law) approaches, but it did not do so. The unanimous decision of the Committee to concur in the recommendations set out in the Secondary Plan Report compounded the City's failure to comply with the Order in its recommendations. Thereafter, and but for this proceeding, the Applications would have advanced to the Standing Policy Committee, the Executive Policy Committee, and to City Council, the final decision maker, on the statutory (by-law) approach, contrary to the Order.

[64] The City submitted that if it had proceeded with the statutory (by-law) approach, a first reading would have preceded the November 13, 2018 meeting, which was dispensed with in this case. In addition, the respondents noted that the Secondary Plan

Application was treated as a regular agenda item at the Committee meeting. I accept that the first reading was dispensed with, but that was done following my specific direction to counsel to do so. Even in the face of that direction, the City referred repeatedly to the Secondary Plan Application as a by-law application. Whether the Secondary Plan Application was treated as a regular agenda item or not, the contents of the Secondary Plan Report reflect clearly how the City intended to proceed.

[65] I recognize that had the non-statutory (policy) approach been pursued as ordered, the substantive outcome of the November 13, 2018 meeting may have been no different. The respondents submitted that neither my reasons for decision nor the Order required them to take to "take a particular position on the Applications", and that is correct.

[66] It was very clear throughout the *mandamus* application process that the applicants did not ask the Court to order a particular substantive outcome of the Applications. In other words, the *mandamus* application was a judicial review of the process by which the Applications would be decided from a procedural standpoint, both in terms of the timing and the steps to be followed. I was not asked to direct the public service to provide particular recommendations with respect to the Applications, and I did not do so.

[67] To the contrary, it was stated plainly in open Court that I was not being asked to direct the respondents to address the merits of the Applications in any particular way. Rather, I was being asked to order that the Applications move forward. I gave no

directions with respect to the content of the Secondary Plan Report *per se*, but I did direct the process to be followed. Unfortunately, that direction was not complied with.

[68] I am convinced beyond a reasonable doubt that the City intended to proceed with the Secondary Plan Application pursuant to the statutory (by-law) approach. The Secondary Plan Report ignored the non-statutory (policy) approach, and the City held to its position even after warnings from the applicants' counsel. The respondents neither complied with the letter and spirit of the Order nor exercised every diligence in their approach to the Secondary Plan Application. They cannot now "finesse" their actions or hide behind a restrictive interpretation of the Order.

[69] I have considered the decision in ***Kuchma v. Rural Municipality of Tache***, [1945] S.C.R. 234, at para. 5, and in particular the notion that a municipal council "is in the best position of all parties to determine what is or is not in the public interest and have refused to interfere with its decision unless good and sufficient reason be established."

[70] That principle may apply in many cases, but ***Kuchma*** did not involve an allegation of contempt. As I have already stated, the issue in this case does not relate to the substantive outcome of the Applications. It is about process, and ***Kuchma*** does not exempt any municipal authority from complying with orders of the Court.

[71] I have also considered the fact that the respondents are government bodies. The applicants relied upon ***Re Axelrod et al. and City of Toronto*** (1984), 48 O.R. (2d) 586, where a finding of contempt was made against a municipality relative to its refusal to issue a demolition permit. A similar decision was made in ***W.J. Holdings***

Limited v. City of Toronto, 2011 ONSC 6315. I am satisfied, on the strength of those decisions, and in the absence of any submissions to the contrary, that a finding of contempt can be made against the respondents irrespective of their status as government bodies.

[72] Last, I have considered my residual discretion to decline to make a finding of contempt, but I do not accept that the respondents, on the whole, acted in good faith or that they took reasonable steps to comply with the Order. Accordingly, I will not exercise my discretion to avoid a finding of contempt.

Conclusion

[73] The respondents' intentional acts breached the Order and they are in contempt of the Order.

REMEDY

[74] As provided in ***Carey***, the applicants proposed a two-step process with respect to their motion: the liability phase and, if liability is established, the penalty phase, to be addressed at a later date. The respondents did not oppose this approach.

[75] The applicants requested interim relief if a finding of contempt was made, namely that the November 13, 2018 decisions of the Committee be set aside, that it be prohibited from conducting any further business until the contempt is purged, and that it be ordered to purge the contempt within 30 days.

[76] Given the finding of contempt, I agree that the decisions should be set aside, and I so order. Given that the Applications are to proceed concurrently, the respondents' failure to comply with the Order relative to the Secondary Plan Application

may have impacted the Committee's decision relative to the Zoning Application, so I am satisfied that both decisions should be set aside.

[77] I will not prohibit, however, the Committee from conducting business until the contempt is purged. I do not have evidence as to the volume and scope of the Committee's business, which I would require before I would consider making an order with such potentially far-reaching consequences. I make this conclusion in large part because the respondents are government bodies, and there could be many third parties affected if the Committee's business came to a halt.

[78] Given the specialized nature of the work of the Committee, I will not fix a time frame within which the contempt must be purged. I expect that the Secondary Plan Report will be revised to accord with the Order prior to the Applications returning to the Committee, and I encourage the parties to discuss a reasonable schedule on which that process will unfold. If my assistance is needed, counsel can set time before me to discuss next steps and a timetable. An appearance will be required relative to the penalty phase of the motion in any event, which counsel should take steps to schedule.

CONCLUSION

[79] The respondents are in contempt of the Order.

[80] The decisions of the Committee made on November 13, 2018 are set aside.

[81] If the parties cannot agree on costs, counsel may set time to make submissions.

CGrammond

Digitally signed by CGrammond
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Date: 2019.08.06 13:17:58 -05'00'

J.