



Kagan | Shastri
DeMelo | Winer | Park
LAWYERS | LLP

Paul M. DeMelo
(416) 368-2100 ext. 228
pdemelo@ksllp.ca

File No. 23429

December 1, 2023

By Email: clerkspublic@markham.ca & cconrad@markham.ca

City of Markham
Attn: Clerks Office & Catherine Conrad
101 Town Centre Boulevard

Dear Ms. Conrad:

Re: City of Markham Fee Review

Please be advised that we represent the Building Industry and Land Development Association (“BILD”) in connection the above noted matter. As part of BILD’s mandate and direction from its members, they are committed to working with their municipal partners to build the communities where we live and work. BILD seeks to make sure that this is done in a manner that ensures the development industry pays for its share of growth related expenses, including the costs of reviewing development applications in accordance with the applicable legislation.

We are in receipt of the Hemson report dated November 27, 2023 (the “Hemson Report”) that proposes a new fee structure of certain planning application related matters. As Council should be aware, BILD and its members have for a number of years asked for this type of review to proceed as they believed that the fees which the City has been charging in connection with planning applications has been at a rate far in excess of what the legislation would otherwise permit. For several years this review was not undertaken although repeatedly promised with the result now being confirmation of the industry's concerns.

As the Hemson Report was only provided to us late on the afternoon of November 29th, we have not had a full opportunity to review the recommendations and findings contained therein with our client and their consultants and as such reserve the right to provide further comments. We would note however that even based on a preliminary review, the report clearly confirms that the industry has been paying fees in excess of what is permitted under the legislation for a number of years.

As Council is aware the legislation permits the City to charge fees on the basis of a cost recovery model. This means that the fees charged for planning applications are intended to offset the costs associated with the review of these applications and not operate as an additional revenue source for the City. Rather than operating on the basis of a revenue neutral position as directed by the legislation, the Hemson Report concludes that the City has amassed a reserve fund of approximately \$50 Million dollars by not having a fee structure in place that accords with the legislation. This reserve fund by your consultant’s own estimation represents an amount sufficient to completely cover the time and expenses that the City estimates it would incur in reviewing all

Yorkville Office:
188 Avenue Road,
Toronto, ON., M5R 2J1
P. 416.368.2100 | F. 416.368.8206 | ksllp.ca

Downtown Office:
250 Yonge Street, Ste 2302
P.O. Box 65,
Toronto, ON., M5B 2L7
P. 416.368.2100 | F. 416.368.8206 | ksllp.ca

new applications for at least the next three years without imposing any new charges. It is important to note that this conclusion is not based on any numbers presented by BILD but rather from the Hemson Report itself without our client even having an opportunity to fully review those findings to determine if they are appropriate.

The Hemson Report also indicates that this review has been in its own words, “highly consultative”. While we appreciate that the City and staff have engaged BILD in this process after years of requesting same, we would note that we have been requesting detailed information from the City since late October and before that our client has been requesting information directly. This information is necessary in order for us to review the findings and conclusions in the Hemson Report and for a truly consultative process to unfold. The information requested has been promised to us on several occasions and each time has been delayed. The reason given each time for the delay has been that the report is being finalized and while we appreciate that the City may not have been prepared to share with our client a copy of the report until it was completed, the requested information was never provided in advance. The Hemson Report was finally released less than three business days before the matter is to be considered by the Development Services Committee on December 4th. This short time frame does not provide for any reasonable opportunity for a meaningful review and consultation with the industry that is being asked to pay these fees.

Given the very late release of the Hemson Report and the fact that some of the information that has been requested by BILD has not yet been provided, we are taking this opportunity to advise the City that we will be providing a fulsome set of comments on the Hemson Report’s findings and recommendations in the hope that they will be considered by the City so the fee structure that does flow from this exercise will be in accordance with the legislation and ensure that the industry and Markham residents are not paying excessive fees.

Until BILD and all interested parties have had that opportunity to ensure that the process is in fact consultative and meaningful, we request that the Committee defer acceptance of the Hemson Report and its proposed fee structure until *after* BILD, our office, and various parties within the building industry have been given the opportunity to provide meaningful comments and review those with City staff. Once those comments have been provided and considered by City staff, the City will at that time have before it a more complete assessment of the proposed fee structure. To that end our client remains committed to working with City staff to ensure that this process is as the Hemson Report indicates a highly consultative process and one that we hope leads to a resolution of what has been a longstanding concern for the development industry within the City.

[Signature follows]

Yours truly,

KAGAN SHASTRI DeMELO WINER PARK LLP

A handwritten signature in black ink, appearing to read "Paul DeMelo", enclosed within a large, loopy oval flourish.

Paul DeMelo

CC:

Client

Daryl Keleher of Keleher Planning & Economic Consulting Inc.