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VIA EMAIL - registry-greffe@scc-csc.ca
AND VIA THE SUPREME COURT OF CANADA ELECTRONIC FILING PORTAL

September 25, 2023

Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario K1A 0J1

Attention: James E. Kayinamura, Registry Officer

Dear Sir:

Re: Upper Canada Land Titles and Patent Research Initiative v Regional Municipality of Niagara (a.k.a. Niagara Region)
Supreme Court of Canada Court File No. 40865

Please be advised that we act as counsel for the Regional Municipality of Niagara (“the Region” or “the respondent”), the respondent in the above noted application for leave to appeal. This correspondence is the Region’s response to the application for leave to appeal, submitted in this form pursuant to Rule 27(3) of the *Rules of the Supreme Court of Canada*, SOR/2002-156.

Introduction and Background

Upper Canada Land Titles and Patent Research Initiative (“the applicant”) applied under section 273 of the *Municipal Act, 2001*, S.O. 2001, c. 25. to quash the Region’s By-Law No. 2020-79, entitled “A By-Law to Prohibit or Regulate the Destruction or Injuring of Trees in Woodlands in the Regional Municipality of Niagara” (“the Woodlands By-Law”). The application was dismissed at first instance by the Superior Court of Ontario, with costs. The applicant’s appeal to the Ontario Court of Appeal was dismissed with costs.

The respondent Region is an “upper-tier municipality” as defined under section 1 of the *Municipal Act*. Section 135 of the *Municipal Act* explicitly empowers upper-tier municipalities to pass by-laws to “prohibit or regulate the destruction or injuring of trees in woodlands designated in the by-law.” 2006, c. 32, Sched. A, s.71 (1). The respondent Region specifically cited the powers delegated to it as an upper-tier municipality under section 135 when the Woodlands By-Law was approved by the respondent Region’s Council on October 22, 2020.

The Issues Raised on this Leave to Appeal

The respondent's respectful position is that all of the issues or questions raised by the applicant have been previously addressed by this Court and that the applicant has failed to establish that, in the facts and circumstances of this particular case, the questions and issues raised by the applicant are of sufficient public importance or significance to warrant the further consideration of this Court.

The Applicant's Burden

This Court has already developed a body of jurisprudence that addresses the evidentiary burden an applicant must meet in order to succeed in an application to quash a municipal by-law. (*Nanaimo (City) v. Rascal Trucking Ltd.*, 2000 SCC 13). This Court has consistently articulated a deferential standard with respect to the exercise of municipal power: "Barring a clear demonstration that a municipal decision was beyond its powers, courts should not so hold." *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231 (S.C.C.), at para. 63. It is uncontested that the respondent was delegated the power under section 135 of the *Municipal Act* to enact the Woodlands By-Law. The respondent's respectful position is that this matter does not warrant the attention of this Court given the clear delegation of regulatory power to the Region and the ratio of the existing jurisprudence.

The Regulation of Land Use

Generally, the central issue raised by the applicant on this leave for appeal concerns the regulation of land use and the proposition that the original transfer of ownership or title through the means of a Crown Patent can (or should) insulate land from local regulation of use. The statutory or common law basis for each of the grounds raised by the applicant vary but the respondent's respectful submission is that each constitutes a transparent attempt to challenge the regulation of land use by the province (or the delegation of that power by the province to local municipalities). This Court recently addressed the regulation of the use of land in *Annapolis Group Inc. v. Halifax Regional Municipality*, 2022 SCC 36. That case concerned expropriation, the maximum form of local land use regulation. In *Annapolis Group*, this Court endorsed the view of Cromwell J.A., as he was then, in *Mariner Real Estate Ltd. v. Nova Scotia (Attorney General)*, 1999 NSCA 98, where his Honour observed that "[i]n this country, extensive and restrictive land use regulation is the norm." (at para. 108) The norm as endorsed by this Court in *Annapolis Group* applies regardless of the original administrative process that may have been historically used to convey title from or by the Crown to a private landowner.

In the facts and circumstances of this case, and given the body of this Court's existing jurisprudence, the respondent submits that the application for leave to appeal should be dismissed with costs.

Respectfully submitted,

DUXBURY LAW
PROFESSIONAL CORPORATION
Per:

