PB-04-18
505-08
Delegation correspondence

April 17, 2018

To: The City of Burlington
Attention: Mayor of City of Burlington: Rick Goldring

Cc: City of Burlington Members of Council: Craven, MeedWard,Taylor, Dennison, Sharman, Lancaster
City Manager of Burlington: James Ridge, Marylou Tanner,Deputy
City of Burlington Acting Director of Planning, Building: Bill Janssen
Director of Planning Halton Region: Jim Harnum, Lisa De Angelis
Minister of Municipal Affairs: Bill Mauro
Ministry of Municipal Affairs: David Crombie, Greenbelt Council
Minister of Natural Resources and Forestry: Nathalie Desrosiers

From: Donald Johnson
1761 Old Waterdown Rd
Burlington, ON L7P 0T2

Re: Notice to City of Burlington: 2018 OP review and update

With respect to the properties at 1761 Old Waterdown Road, owned by the Johnson Family, 398 and 444 Mountain Brow Road owned by the Shih Family and 176 Rennick Road, owned by the Estate of Sylvia Walker: this is to advise you that these properties are owned "Fee Simple subject to the reservations in their Crown Grants''.

The ownership is clearly identified as such in the deeds and the land titles for the respective properties.

Fee simple in Wikipedia is defined as: "An estate in fee simple denotes the maximum ownership in land that can be legally granted, it is the greatest possible aggregate of rights, powers, privileges and immunities in the land".

Reservations in the Crown Grants for the lands in discussion, limit government interference in matters relating to the property. Under law, prior to Confederation, if the Crown did not place a reservation in the original grant to allow the Crown to conduct or perform specific activities, then the Crown has no right associated with that property to legislate or interfere with the rights of the property owner: I identify the 1994 case of the Attorney General of Ontario v. Rowntree Beach Association, "The Queen in right of Ontario has no right, title or interest in and to the lands described…", "as in patented land or estates that have been vested in the patentee his/her heirs or assigns". In the simple language of Elizabeth Marshall, OLA, "if you don't own it you cannot plan for it"

The Johnson Family has certified true copies of the two Crown Patents relating to their property, one issued in 1796 to Alexander Macdonel under the Great Seal of Upper Canada and King George the 3rd and the other portion in 1827 to John Davis under the Great Seal of Upper Canada and King George the 4th. The Johnson Family also has a certified true copy of the Crown Grant for the land at 176 Rennick Road. The Shih Family has a certified true copy of the Crown Grant of 1797 under the Great Seal of Upper Canada and King George the 3rd for their property. The original Crown Grants recognized as land patents are held in Peterborough by the Ministry of Natural Resources and Forests.

Under the Succession Act these documents are now deemed to be signed by Queen of Canada Elizabeth the 2nd.

The Johnson Family and Shih Family are in possession of certified true, title search documentation certifying that ownership of these lands has not ever reverted to the Crown since issuance of the patents and that no additional reservations have ever been placed on the properties for the benefit of the Crown or any other party. In addition, surveys of the properties clearly identify the lands in question are the lands identified in the grants.

The reservations for the benefit of the Crown at time of issuance respective to white pine have been revoked:

Public Lands Act, R.S.O.1990, c.P.43

58.(3) A reservation of all timber and trees of any class or kind of tree contained in letters patent dated on or before the 1st day of April 1869 and granting public lands disposed of under this or any other Act is void. R.S.O, c.P.43, s. 58(3)

In addition, the reservations of mines and minerals for the benefit of the Crown at time of issuance have also been revoked:

Public Lands Act, R.S.O.1990, c.P.43

61.(1) In the case of land patented before the 6th day of May, 1913, the mines and minerals therein shall be deemed to have passed to the patentee by the letters patent, and every reservation thereof contained in the letters patent or by statute is void. R.S.O.1990, c, P.43, s. 61(1)

The Crown's removal of tree and mineral reservations means the Crown has relinquished any and all rights it once had on these properties.

These letters patent give the assignees sole and absolute authority over the identified lands. These are legal binding contracts signed by the Crown, giving authority over these lands to the land owner and these authorities are not subject to title interest of the federal, province or any other governmental body.

The land patents give the ownership of all trees, woods, minerals, on, or in the ground and even the ownership of the space and air above the ground. Said ownership extends to ownership authority of any plant, animal, fish, insect that are on, in or above the property.

The Constitution Act, 1867, is very clear in identifying authority granted to federal and provincial governments. Nowhere in the Act did the Federal or Provincial Government of Ontario acquire authority over private property and indeed the Act is clear that the Federal and Provincial governments only have authority over public lands belonging to the Province (section 117). The Act is clear and I reference section 109 "in that any authority the Province has is subject to the trusts existing in respect thereof, and to any interest other than that of the Province in the same".

The land patents held by the Johnson, Shih and Walker Estate are documented "trusts existing in respect and are interests other than that of the province in the same"

In Canada our government is a constitutional monarchy. The highest authority and level of permission is that of the Crown over federal, provincial, regional, municipal governments. No government level has authority to overturn the Crown and indeed each and every elected member of the federal, provincial and municipal government takes an oath of allegiance to uphold the Crown as a condition of being a member of the respective government. To refuse to respect an instrument of the Crown means you have broken your oath and placed yourself above the Crown. Breaking your oath is grounds for your removal from office.

There are numerous Supreme Court of Canada rulings validating that Crown Grants and Land Patents give the property owner authority over the demands of Government which interfere with the holders' grant rights. These

rulings extend from just after Confederation right to last year in Lynch versus City of St. Johns. Indeed in last year's case the Supreme court ruled the appeal court got it right and that the Natural Heritage designation placed on the Lynch property preventing development was an act of expropriation of Crown Grant rights and ordered the City of St. Johns to pay the Lynch Family for the value of the 12 lots for which the city had refused them severance.

The City of Burlington and the Region of Halton are in a bad legal position. The province has implemented a "Greenbelt" plan across broad swaths of the municipality. Our understanding is the plan is alleged to be to control development, preserve and protect natural habitat, trees, water, stop global warming (now climate change), protect and promote farming and a host of other good feeling sound bites.

Members of council and members of staff have liaised with the province over the period before the Greenbelt came into legislation, and have also liaised in the time leading up to the latest revisions and new expanded mapping of February 9th, 2018. The City and Region are claiming that they are just following the provincial legislation and enacting it into their plans as mandated by the province; however, it is the belief of many land owners that the City and Region have been an influencing factor at the Province and possibly even a willing participant in expanding the Greenbelt natural heritage mapping in Burlington and Halton.

Unfortunately for the City, the Region and the Province, the Province, despite its claims of authority and indeed its legislative actions, has no foundation in law to place the Greenbelt plan restrictions on privately owned lands where there is a Crown Grant or land patent. Indeed the Crown issued patents clearly state that the province has no authority because the Crown already gave all authority respective to the land to the property owner with only specific reservations placed on these which the Crown had right to enforce. Any interference with the owner's land patent by any level of government, or government authorized expropriating authority, attempting to remove any right the owner has, is an act of expropriation as defined in the Expropriation Act of Ontario and that Act is superior to any other Act in the province when it comes to defining expropriation.

Accordingly, we are advising the City of Burlington that any and all planning activity for the Johnson and Shih lands is under the direct authority of the Johnson and Shih families. That any and all trees, minerals, aggregates, water, vegetation, wildlife on, in and above these lands is controlled by the powers given the Johnson and Shih families by the Crown.

Any action by the city to abrogate the authority of the Johnson and Shih Families respective to planning activities for these properties is considered an act of nuisance or expropriation.

In municipal planning the assumption is that citizens give their 'implied consent' to actions of the City if they do not appeal any bylaw or planning within a prescribed period of time. This letter directly advises you that respective to the lands owned by the Johnson and Shih Family, effective immediately, we are objecting to and removing any authority the City and Region may have had in regard to using implied consent planning on the properties so identified.

Also, we hereby notify you that if the City wants to identify planning OP uses or any zoning on these lands, that it is doing so after being advised by us that the City has no authority to publically identify any use restrictions it may want without the written approval of the respective land owners. We also advise that should any member of City or any employee of the City attempt to exert decision making authority over the Crown given rights that the Johnson and Shih families have in their land patents, that said City actions will be looked at as an act of interference and indeed may be interpreted as an act of value expropriation.

We would suggest the City check the Municipal Act of Ontario which does not give the municipality power over private property, as the Province has no authority or right to delegate what it does not have. Within the Municipal Act, authority that the municipality has over private land ownership is severely limited in the Act and indeed requires in almost all cases that the city must expropriate privately owned land to exercise its authority. It is clear that the city bylaws are without effect when they are in conflict with an Act, regulation or instrument (section 14 (1) and 14 (2). The Supreme Court recognizes Crown Grants and Land Patents as Instruments and the Registry Act defines Crown Grants as Instruments.

With respect to the City's Official Plan for these lands, the Johnson and Shih family have entered into an agreement with the Region to comply with development density in line with NAIR approved density on their lands, with agreement not to intensify density if development occurs before January 2019. The Region recognized and acknowledged the letter from the Ministry of Municipal and Urban Affairs and that the policy of the Greenbelt allows for development. In the environmental studies completed, there were approx. 50 acres identified for development based on current tree drip lines and valley tops. A further 20 to 30 acres will be anticipated upon completion of tree clearing and leveling activities which the land patent gives us rights to do at our discretion. To be clear, it is anticipated that over 100+ acres of trees and ravines will remain in their current natural state.

In the event we decide to conduct shale extraction activities prior to development, then the development pod area could expand to double the current identified level.

In the event we have not entered into a new agreement with the Region re plans for development by January 2019, as good citizens we will conduct our planning, utilizing development densities as defined for urban areas in accordance to the current Places to Grow Provincial policies.

We understand that the City staff and many Councillors will find this letter to defy what you believe your authorities are. Without prejudice, we might suggest you seek advice from a knowledgeable constitutional lawyer and then we will be pleased to meet with you to show that we are in the right, and the documentation of our Crown Grants and Land Patents, and answer any questions you may have.

These lands under the old Flamborough planning were identified to be developed in accordance to/with developments in Tyandaga when the City of Burlington annexed Aldershot. These lands have been tied up in red tape going back to the early 1970's based on concerted efforts of municipal / provincial staff and politicians to control and remove their development use, without paying for the "land value downgrading" said actions cause.

We, the owners, have been sitting on an estimated 4 million cubic yards of Queenston shale suitable to produce brick. Supreme Court of Canada rulings state our Crown Grants are already Crown issued permits allowing us to mine the property without need for any additional permits. Said mining activity has not been our primary aim; however, with my past 9 seasons of open pit mining experience in the Yukon said activities could be ramped up very quickly if we so desire.

We, as property owners, have been good stewards of our lands and good community members trying to work with the city for over 50 years to come up with mutually satisfying plans for these lands. We are willing to discuss as equals the future of the east sector of north Aldershot.

The Johnson family is on record going back to the late 1960's that these lands are destined for development and that the Municipality, Region or Province has no authority from us to take any action to remove these lands from development purposes or to place restrictions on development types. The OMB post Nair identified the

eastern sector development density to allow for potentially 390 units on the lands identified at that time. Those development areas on the Johnson lands were expanded post NAIR, based on the NAIR report and called for environmental studies to define the development areas. The subsequent studies conducted by the region, almost doubled the development area Hemson had identified on the Johnson lands. As such, the numbers identified for potential development would go up as a result of additional development area being identified.

This letter confirms my position re the City Official Plan for any issues that may affect the identified lands owned by the Shih or Johnson family. We reserve the right to contest any plans made by the City and to defend our legal rights in any venue we see fit should it be that we cannot come to an agreement.

Don Johnson

NOTE: This Letter of Notice, dated April 17, 2018 from Donald Johnson is to be included with the submission , dated April 20, 2018 from Ann Funnell and Roger Funnell
for 04/24/2018 Planning and Development Committee Public Meeting and public record