

Town readies court fight over Mavrinac "park"

By Brock Weir

The dispute between the Town of Aurora and Minto Communities over land on Mavrinac Boulevard could be headed to the courts.

The Town filed a Statement of Claim against the development company this week seeking a decision from the court that Aurora indeed has a "valid and enforceable right" to purchase the disputed property and to convey the land to the Town. Failing that, Aurora seeks \$4 million in damages a breach of the subdivision agreement which Aurora signed with Minto in April 2007.

The subdivision agreement in question outlines the future use of the six acre parcel of land. Previously earmarked for a future use by the York Catholic District School Board (YCDSB), it states that in the event the land was not used by the Board, the Town of Aurora would have the first right of refusal to purchase the land.

Located in the subdivision on the northeast corner of Bayview Avenue and Wellington Street East, the YCDSB subsequently released all holds on the land, opting to expand elsewhere.

The issue was brought into the forefront by neighbours in the surrounding area last fall. The residents were promised, they claimed, the land was either to become a school or a park.

Many said they bought their respective lots on the assumption it would be either a school or an open space, and paid a premium for it. In a series of Council sessions, the neighbours strongly urged the Town to exercise the right of first refusal, purchase the land, and turn it into a park.

Council ultimately voted to pursue this course of action, with an eye of reserving the land for "municipal purposes."

In their statement of claim, the Town argues Minto and the YCDSB came to an agreement, securing the land for the board at a price of \$2,024,700 and under the subdivision agreement this is the price they should be able to acquire the land.

"By letter dated October 28, 2013, Minto gave notice to the Town that YCDSB had released Minto from its obligations to convey [the land] to YCDSB," reads the Statement of Claim. "In connection with that notice, in or about October 2013, Minto provided the Town with a copy of the [agreement of purchase and sale] with the YCDSB."

The right of first refusal as outlined in the Subdivision Agreement, it continues, was not included in Minto's agreement with the YCDSB and would, therefore, constitute a breach of the subdivision agreement.

"On December 10, 2013, the Town wrote to Minto exercising its Right and paying the deposit," the statement continues, noting a \$5,000 deposit on the land as per the agreement. "On December 20, 2013, Minto's counsel wrote to the Town denying the existence of the right.

"The Town states that it has a valid and enforceable right, which gives it an equitable interest in [the land]. [The land] is inherently valuable and unique to the Town. It presents an opportunity for the Town to develop a park and related facilities in this built-up residential area."

John Mascarin, lawyer for Minto, told The Auroran he was seeking word from the company to comment on the matter, but no comment had been received at press time.

Appearing before Council last fall, however, Mr. Mascarin argued that contrary to the opinions of the Town and neighbours in the community, the belief a right of first refusal stands on the land is a "misunderstanding."

?I believe that all the facts have not been presented to the public, nor to Council,? he said, declining a request from Councillor Evelyn Buck to elaborate on his statement. ?Our client has been provided with an opinion and we have advised the Town does not have an entitlement to purchase the land at all, much less to purchase the land at a particular value.

?There are a number of complicated contractual factors with respect to the subdivision, the conditions of approval, the agreement with the school board, the final clearance of conditions, the granting of approval by the Town of Aurora, and the registration of the subdivision. My view is there is no right of first refusal in any of the documents.?

Councillors last discussed the Mavrinac Boulevard lands in public in December. At the time, Town Solicitor Warren Mar advised against a motion from Councillor John Gallo calling for all non-confidential information on the land issue discussed behind closed doors to be out in public.

Mr. Mar advised them to keep their cards close to their chest given what could transpire in the future.

?There were items that may have been discussed that were simply covered by closed session confidentiality,? said Mr. Mar. ?I would suggest to Council now, based on events, could now be covered by certain levels of solicitor-client privilege. They have transitioned themselves into that based on circumstances I have discussed with Council in closed session. I can foresee a time when I think it will be appropriate to release that information, [but] I can't say when that would be.?