

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SUDBURY BUSINESS IMPROVEMENT AREA and TOM FORTIN
Applicants

-and-

CITY OF GREATER SUDBURY
Respondent

-and-

GATEWAY CASINOS & ENTERTAINMENT LIMITED
Intervenor

FACTUM OF THE APPLICANT

DATE: February 13, 2020

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FACTUM OF THE APPLICANT

PART I – OVERVIEW

1. This is an Application by Tom Fortin ("**Fortin**"), pursuant to s. 273 of the *Municipal Act*, 2001, S.O. 2001, c.25, to quash by-laws ("**Subject By-laws**") adopted by the City of Greater Sudbury ("**City**") permitting the development of a new Regional Entertainment District ("**RED**") on the Kingsway, outside of the Downtown, with the development to be known as the Kingsway Entertainment District or "**KED**". The KED is to consist of a casino, to be developed and operated by the Intervenor Gateway Casinos & Entertainment Limited ("**Gateway**"), a community arena/event centre ("**Event Centre**"), to be built by the City, a hotel/convention centre, and other proposed amenities to be built by others.

2. Following its creation by amalgamation in 2001, the City suffered troubling economic and financial issues. To effectively solve them, on the advice of its retained expert advisors, the City encouraged local business and residential leaders and other agencies, such as the BIA, to work with the City and their experts to develop a series of long-term economic and planning strategies during the period from 2002-2017. The involvement of the public was identified as key to obtaining not only valued input and transparency but also to assure City Council that the public supported the ultimate capital expenditures that would be required. One of the key and consistent recommendations was the need to rejuvenate the economic performance of the Downtown. The replacement of the Downtown Event Centre in the Downtown was identified as a critical component, along with a new hotel/convention/performing arts centre, library/art gallery (collectively referred to as the “**Large Projects**”), and a parking garage.
3. This entire process was highly successful, with Council approving all recommendations and, in 2016, directing that each Large Project be implemented. In accordance with same, PwC produced two reports, in February and June 2017, recommending that the new Event Centre be built Downtown in accordance with the previous adopted Strategies (as defined hereinafter) and the City’s Official Plan, with the recommendations being supported by City Staff.
4. However, prior to the June 27, 2017 Council meeting held to discuss the second PwC report, the prospect of a new casino partnered with the Event Centre, entertainment facilities similar to a performing arts centre, and a hotel/convention centre (all of which had been proposed for the Downtown) was announced for a site outside the

Downtown. At this meeting, Council resolved to locate the Event Center at this site as part of a new RED, known as the KED, without seeking public input or consideration of the impact of this new development upon the City. From this point forward, including at the statutory public meetings (“**SPM**”) required under the *Planning Act*, R.S.O. 1990 c. P. 13, and the Council meetings adopting the Subject By-laws, Council took the position that the June 27, 2017 decision was final and would not be reconsidered, not only for the location of the Event Center but also for the location of the casino and the establishment of the RED at the KED, all without prior Notice to the public.

5. This began a period of threats and intimidation from certain Council Members, misleading staff comments/reports, concealed documents, and the structuring of public meetings all intended to discourage meaningful input from the public and to expedite the approval process.

6. In a nutshell, the Grounds of this Application are as follows:

Bad Faith

- a. Council allowed certain Members of Council to undertake and maintain a constant print and social media campaign together with verbal threats to discourage any public opposition to the relocation of the Event Centre, the location for the casino, and the establishment of a new RED at the KED;
- b. City Staff misled opposing Council Members and the public on relevant issues and misled the Ontario Lottery and Gaming Corporation (“**OLG**”) as to how it had obtained public input as to whether or not the public wanted a new casino in the City in order to comply with O. Reg. 81/12; and

- c. Council withheld highly relevant documents from the public to discourage opposition.

Statutory Non-Compliance/Procedural Unfairness

- a. Council violated its own public consultation planning processes, established since 2002, by (i) denying the public meaningful input into the location of the Event Centre and the establishment of a new RED outside of the Downtown at the KED; and then (ii) linking the location of the Event Centre to a new casino all without a comprehensive study as to the long-term planning and economic impacts on the Downtown and the City as a whole and impacts on the other Large Projects approved for the Downtown.

Disqualifying Bias

- a. Having consistently taken the position that their decision on June 27, 2017 was final and could not be reconsidered, which effectively also became their final decision for the approval and location for the casino and the RED, Council and/or Staff structured the public meetings required under the *Planning Act* to prevent meaningful input on the impact of these decisions. Together with the other illegal actions described above, this demonstrated that Council was incapable of being persuaded on opposing views and rendered the public meetings a “sham”.

PART II – THE FACTS

7. The “**Subject By-laws**” are those by-laws defined as By-laws in the Amended Notice of Application.

- **Amended Notice of Application, Application Record (“AR”) Tab 1 p. 4-5**

A. The Parties

8. Dario Zulich is the principal of 1915695 Ontario Inc. (collectively, “**Zulich**”), which owns the site on which the KED is to be built. The KED site is located in an undeveloped industrial area beside an operating landfill site.

- **Faludi Affidavit, AR, Tab 3, V. 4, para. 72, Ex. U p. 1119 (PwC Report, Landfill)**

9. Gateway was chosen by OLG in 2017, prior to the June 27, 2017 Council meeting, as the successful bidder to operate casinos in various municipalities, including the City.

10. Fortin is an electrical engineer and successful businessman involved in the manufacturing of electronic products for the internet industry. He has long been committed to improving the economy of the City by using his own experience, resources and finances to assist local businesses in the electronic manufacturing industry and to recruit and train graduate engineers at his own facilities to encourage them to start manufacturing businesses in the City. This has been a highly successful program for which he has received many awards, the most recent being the Community Builders Award for Economic Development which he received on March 21, 2018, the week prior to the SPM’s described herein.

- **Fortin Affidavit, AR, Tab 2, paras 3-12 p. 14-17 & Ex. 2 (Initiatives), Ex. 3 (Awards)**

11. Fortin followed the efforts by the City to improve its financial affairs and was aware that the rejuvenation of the Downtown was key to the recruitment of skilled workers with different cultural backgrounds to the City and supported the identified initiatives including the Event Centre.

- **Fortin Affidavit, AR, Tab 2, para. 10-12 (mentoring) Ex. 2 (Initiatives)**

12. The Province announced its “Modernization Plan” in 2012 to locate full-fledged casinos, including not just slots but gaming tables with associated entertainment, in locations closer to the built-up areas of larger cities. Fortin, because of his passionate

interest in improving the economy and growing employment in the City, became seriously concerned and began to educate himself, other local business leaders, and the general public on the economic and social issues related to gambling.

- Fortin Affidavit, AR, Tab 2, para 13-31 p. 17-24 (start of casino opposition), para. 59 p. 32 (Lack of public input into Event Centre/Casino), para. 61 p. 33 (First mention of Event Centre/Casino), para. 69-70 (Website, contacting businesses re: casino and Event Centre), para. 115-116 p. 51 (Faludi Report)
- MacIntyre Affidavit, AR, V. 6, paras. 18-20 p. 1330 Ex. C (Modernization)

B. Planning History, the Long-Term Economic and Planning Strategies, and the City's Previous Approach to Public Involvement

13. When, in 2001, the City was created, Hemson Consulting Ltd. ("**Hemson**") was retained to provide direction for the City's economic recovery. Hemson reported a projected 10-year Operating Budget shortfall of \$106M. To address such, it recommended that the City's independent Greater Sudbury Development Corporation ("**GSDC**") embark on a long-term community-based strategic planning process to guide the City in its decision-making. Hemson highlighted the need for widespread public involvement to ensure that local businesses, residents, and City agencies such as the BIA worked with City Council and Staff. This was not only for GSDC to obtain valuable input, but also to ensure that the public supported the ultimate recommendations arising from the process and consistently continued to do so over the long term going forward.

- Faludi Affidavit, AR, V. 4, para. 46-47, V. 5 Ex. D (Hemson), Ex. E (2003 Strategic Plan) p. 988

14. Between 2002 and 2017, the City approved numerous long-term economic and planning strategies ("**Strategies**") relating to the Downtown, all of which acknowledged the importance of the new Event Centre to the Downtown and to the other recommended Large Projects for the Downtown such a new hotel/convention/performing arts centre and parking garage. In April 2016, Council

passed resolution CC-2016-149 to proceed with each of these Large Projects, leading to a Business Assessment and Site Evaluation report by PwC and a staff report recommending the new Event Centre be constructed in the Downtown.

- Faludi Affidavit, AR. V. 4, para. 48-54 p. 823-824 Ex. E (2003 Strategic Plan), para. 55-60 p. 825-826 Ex. G (Ground Up), para. 61-63 p. 826-829 Ex. I (DTMP), para. 68-70 p. 831 Ex. M (2015 Strategic Plan)
- Fleming Affidavit re Production Response, dated February 12, 2020, Ex. J (CC2016-149)

15. By 2016, Staff became aware that casino proponents were suggesting that the new Event Center be located beside the proposed casino. This caused concern for City Economic Development Staff, who advised in their April 2016 report:

“Future proposals for a new casino in Sudbury will likely include conference and performance facilities as ancillary to the casino. Potential bidders for a new casino have also indicated an interest in partnering in the development of a new sports & entertainment facility, if located in the immediate vicinity of the casino. If this is (sic) occurs, the business case, costing model and municipal involvement may vary greatly. **Moreover, the business case for the proposed Synergy Centre also changes drastically if a new casino includes conference and performance facilities.**”

- Faludi Affidavit, AR, Tab 3, V. 5, Ex. Q (April 6 Report), p. 1056 (quote)

16. Similarly, the Coldwater Banker Richard Ellis (“**CBRE**”) report, dated June 15, 2018, advising on the business case for the new performing arts center, contained the same caution. The PwC report released prior to the June 27 Council meeting also cautioned that, if the Event Centre was relocated with the casino to the KED, such may have negative economic impacts of the Downtown. Notwithstanding these warnings, the City never commissioned a review of same.

- Faludi Affidavit, Reply Record (“**RRA**”) Ex. A p. 56 (**CBRE Report, Quote**), Ex. B (**Library Report**), Ex. C (**Synergy Report**)
- Faludi Affidavit, AR, Tab 3, V. 5, Ex. U, p. 1125 (**June PwC report**)

17. On June 13, 2017, the local media announced that Zulich and Gateway had executed a Letter of Intent whereby Gateway would build a new casino at the KED. On June 13, 2017, Zulich released a video on social media announcing that he intended to build a

new Entertainment District, including a new Event Centre, casino, and hotel/convention centre, at the KED.

- **Fortin Affidavit, AR, Tab 2, V. 1, para. 53 p. 030, V. 1 attached as Ex. 23 (Article re KED), para. 56 p. 031 V. 2 Ex. 25-26 (Video)**

18. On June 8, 2017, Zulich executed an Option Agreement and a comprehensive Servicing and Cost Sharing Agreement which had been negotiated with City Staff for the development of all these identified uses on his land at the KED. This Option Agreement contained a recital acknowledging Zulich's intent to locate the Event Centre, the casino, and these other large projects in a new RED at the KED. This document was never made public by the City until many months later when a Councillor forced it to release same, as noted in paras. 24 & 39 hereafter. On June 13, 2017, Zulich released a video on social media advertising the KED.

- **Fortin Affidavit, AR, Tab 2, V. 1, para. 45-51 Ex. 22 (Option Agreement) p. 202 (Intent recital), Ex. 24 (Signoretti letter), para. 56 p. 31 Ex. 25 (Ad video), Ex. 26 (Video views)**
- **Faludi Affidavit, AR, Tab 3, V. 4, para. 93-103 p. 838-843 (Intervening Events)**

19. The June PwC report was released to the public on June 19, 2017, wherein it referenced that Zulich was promoting an Event Centre located beside a new casino, hotel/convention centre and other facilities at the KED. It also noted the basic terms of an Option Agreement that Staff had negotiated with Zulich, discussed hereafter in para 38. It also considered the 2015 Corporate Strategic Plan and the DTMP in support of their recommendation for the Downtown location. The accompanying Staff Report, dated June 15, 2017, similarly recommended that the new Event Centre be located in the Downtown based on the previous Strategies, in particular the DTMP and s. 4.2.1.1 in the City Official Plan; under the heading "Relationship To Strategic Plan/Healthy Assessment", which stated:

The new Event Centre project aligns with the Corporate Strategic Plan in both the Quality of Life and Place, Priority B: “Maintain great public spaces and facilities to provide opportunities for everyone to enjoy.” And Growth and Economic Development, Priority D: “Invest in large projects to stimulate growth and increase conferences, sports and events tourism, and celebrate cultural diversity.” This facility will be a premier entertainment and recreational complex available to all residents. As one of the identified “large projects” and a priority identified in the Downtown Master Plan this project further represents a key Growth and Economic Development driver.

- **Forrester Affidavit, Responding Record (“RR”), Tab B, para. 13 p. 970 (PwC Report Release), Ex. 9 (June 15 Report) p. 1142-1143 (DT Recommended), p. 1171 (Report considerations)**
- **Faludi Affidavit, AR, Tab 3, V. 5, Ex. U, p. 1131-1133 (DT Recommended)**

20. On June 19, 2017, City Staff provided Notice on its website of a public Council meeting, scheduled for June 27, 2017, to consider the recommendation in the PwC report to locate the new Event Centre Downtown. The Notice stated that the purpose for the meeting was to “discuss the Large Projects initiative during two meetings held on the last week of June...” and that “Site Selection for the Arena/Event Centre will be discussed at the regularly scheduled City Council meeting on Tuesday, June 27.” It is important to note that there is no mention of the possible approval of a casino nor the approval to establish a new RED at the KED

- **Faludi Affidavit, AR, Tab 3, V. 5, Ex. V (Notice)**

21. In anticipation of Council’s recommendation, the BIA advised the City, prior to the release of the final PwC report, that they would increase their tax levy over 25 years, to a total of \$2.2 million, to assist the City in subsidizing the operating costs of the new Downtown Event Centre.

- **MacIntyre Affidavit, AR, Tab 6, V. 6, para. 29 p. 1337, Ex. I (BIA Levy)**

C. June 27, 2017 Council Meeting

22. On June 22, 2017, after viewing the Zulich advertisement video and reading the second June 2017 PwC report, noting the reference to the casino being located at the KED beside the Event Centre, Fortin sent an email to the Mayor and all Councillors wherein he advised that the location of the Event Centre should be dealt with

separately and not tied to any consideration of the casino. Councillor McIntosh responded with agreement to this approach, stating “[Fortin] and I are on the same page regarding the casino.”

- **Fortin Affidavit, AR, Tab 2, V. 1, para. 57 p. 32, Ex. 27 (Fortin email), Ex. 28 (McIntosh email)**

23. The June 27, 2017 meeting was streamed live and an overflow crowd attended, obviously intending to fully participate and to address Council on this highly important issue. However, at the commencement of the meeting, Mayor Bigger announced that the public would not be permitted to address Council and that all they could do was listen to Council’s debate. The Mayor also advised, for the first time that the Event Centre would not be provided free of charge and that the site “would require investment” from the City. In the same meeting, Council resolved to approve a \$100M budget for such.

- **Fortin Affidavit, AR, Tab 2, V. 1 para. 62-63 p. 034, Ex. 30 (Mayor statement) Ex. 31 (June 27 Minutes), para. 67 p. 35 (Budget approval)**
- **Faludi Affidavit, AR, Tab 3, V. 5, Ex. Y (2018 Budget)**

24. At this meeting, Mayor Bigger first proposed a resolution that the Event Centre be located in the Downtown which failed on a **6-6 tied vote**. His second resolution proposed that the Event Centre be located at the KED subject to “prudent” guarantees that all additional facilities identified in the video and the Option Agreement also be built. That resolution also failed. The third resolution, proposed by Councillor Reynolds and seconded by Councillor Kirwan, that the Event Centre locate at the KED without any guarantees, was approved by 10 Councillors including the Mayor, with only Councillors Signoretti and Cormier objecting. It is reasonable to assume that, since PwC knew the details of the Zulich Option Agreement, that at least those Members of Council that were in support had reviewed the Option Agreement (it would be

subsequently revealed that Councillor Signoretti, who had opposed the KED, was only able to obtain a copy much later via a Municipal FOI request, as referenced below para. 39). Otherwise, why would any Member of Council not want such guarantees? It is also reasonable to assume Councillor McIntosh, at some point after her email exchange with Fortin, became aware of these fundamental terms, otherwise, why would she reverse the position she had taken with Fortin a few hours earlier and suddenly agree to locate the Event Centre at the KED with the casino? From this point on, the same 8 of 12 Councillors always voted in favour of the said Planning Applications as shown on the chart at para 58 hereafter.

- Fortin Affidavit, AR, Tab 2, V. 1 para. 64-66 p. 34-35 Ex. 31 (Minutes)

D. Facts Supporting Allegations of Bad Faith, Disqualifying Bias, Statutory Non-Compliance/Procedural Unfairness

1. *Bad Faith, Disqualifying Bias: Before and After the Passing of the Subject By-laws, Municipal Councillors Successfully Used Threats and Intimidation to Silence Objections to the Project*

25. After the June 27, 2017 Council meeting, Fortin realized he needed to restart his education campaign highlighting the negative economic impacts which a casino and the relocation of the Event Centre to the KED with the other large projects would have on local businesses and the Downtown. This campaign had been prematurely paused following certain assurances by the City and certain Councillors, as hereinafter described at para. 55. The BIA and Fortin also joined forces, jointly retaining legal counsel and a municipal planner. They also retained Rowan Faludi, a land use planner and an economist with a special expertise in the gaming industry, to review the economic impacts of Council's decision. Fortin assumed a leadership role to better educate the public on the negative impacts of a casino and to highlight concerns with the Event Center now being located outside the Downtown and close to local

businesses. He also enlisted local business leaders to canvass other local businesses, resulting in more than 200 executing separate forms expressing their opposition to a casino. However, of this total, only 56 would allow their names to be made public out of fear of retribution by the City and residents boycotting their businesses.

- Fortin Affidavit, AR, Tab 2, para. 6 p. (DT importance) para 69-71 p. 37-38, para. 93, para. 105 p. 48 (concern for local businesses and boycott), Ex. 52 (Fortin Interview)
- Faludi Affidavit, AR, Tab 3, para. 13-14 p. 804 (Impact of event centre removal on DT), para. 120 p. 853 (Objection to event centre removal), para. 2, p. 799 (Purpose of retainer) para. 13 p. 804 (Report outline)
- MacIntyre Affidavit, AR, Tab 6, para. 46 p. 1340 (Alliance with Fortin)

26. As soon as Council became aware of this alliance, Councillor Kirwan (“**Kirwan**”) became the leader and voice of Council promoting the KED and commenced a highly public, intimidating, and divisive smear campaign not only against Fortin and the BIA but also local businesses and residents who voiced opposition.

- Fortin Affidavit, AR, Tab 2, V. 1, para. 72-73 p. 38 Ex. 37, para. 75, para. 79 p. 40 Ex. 42, para. 94 p. 45 Ex. 53, para. 107 p. 47 Ex. 57, para. 108 p. 47 Ex. 58, para. 106 p. 48 Ex. 59, para. 112 p. 50 Ex. 63, para. 113 p. 51 Ex. 64, para. 120 p. 53 Ex. 69, para. 129 p. 57 Ex. 76, para. 156 p. 66 Ex. 89 (Scrap BIA), para. 162 p. 68 Ex. 93 (Kirwan Fb & Articles)
- MacIntyre Affidavit, AR, Tab 6, V. 6, para. 34 (Fortin alliance), para. 45-50 p. 1340-1341, Ex. J & K (Kirwan comments)

27. These threats also resulted in businesses in the Downtown being boycotted and some local businesses losing established business relationships with the City and one business with Gateway. Previous to these threats, 56 local businesses had been prepared to **publicly** support a business delegation by Fortin to Council on the negative economic and social impacts of a casino on those businesses in close proximity to the casino. However, subsequent to the threats, as Fortin feared the City’s retribution against the 56 businesses, he decided to cancel the delegation on behalf of these businesses.

- Fortin Affidavit, AR, Tab 2, para. 71 p. 037, para 78 p. 039 Ex. 41 (boycott, Brystons), Ex. 53 (Fb), Ex. 58 (“wrath”), Ex. 57, Ex. 59, Ex. 63 (comments) para. 88 p. 43 (cancelling presentation)
- Goegan Affidavit, AR, Tab 4 (Cancel)
- MacIntyre Affidavit, AR. Tab 6, para. 45, 48, 50 Ex. K (Councillor target article)

28. When Council became aware that Fortin, the BIA, and others were going to file appeals with LPAT, the threats and intimidation tactics increased with the clear intent to have Fortin, the BIA, and others withdraw their appeals.

- Fortin Affidavit, AR, Tab 2, para. 72-73 p. 38 Ex. 37, para. 75, para. 79 p. 40 Ex. 42, para. 94 p. 45 Ex. 53, para. 107 p. 47 Ex. 57, para. 108 p. 47 Ex. 58, para. 106 p. 48 Ex. 59, para. 112 p. 50 Ex. 63, para. 113 p. 51 Ex. 64, para. 120 p. 53 Ex. 69, para. 129 p. 57 Ex. 76, para. 156 p. 66 Ex. 89 (Scrap BIA), para. 162 p. 68 Ex. 93 (Kirwan Fb & Articles)
- MacIntyre Affidavit, AR, Tab 6, para. 45 p. 1340 Ex. J, para. 60 p. 1345 Ex. M (Kirwan comments), para. 72 p. 1349 Ex. R (Leduc resolution to dissolve)

29. These tactics continued when Council became aware of the filing of this Application to quash during the LPAT process, with the City CAO delivering the message that Council had the majority votes to dissolve the BIA and to remove its Chair Jeff MacIntyre (“**MacIntyre**”) as well as ruin his future career in public service, if the BIA did not cease its LPAT appeal and withdraw as a party in this Application. As a result, the BIA withdrew as an Applicant and MacIntyre chose not to stand for re-appointment as Chair of the BIA. The threats included Councillor Leduc attending at Fortin’s office, without invitation, and threatening him to withdraw his opposition.

- Fortin Affidavit, AR, Tab 2, V. * para. 155-156 p. 65 (Leduc threats) Ex. 89 (Op-ed)
- MacIntyre Affidavit, AR, Tab 6, para. 54-65 p. 1343-1346 (Disbandment) [para. 55 re CAO, para. 65 re withdrew], Ex. R (Leduc resolution to dissolve)

30. At no time did the Mayor Bigger or any Member of Council step in to prevent these threats. MacIntyre met with Mayor Bigger and his chief of staff Melissa Zanette at several occasions to discuss the negative impact Kirwan’s actions were having on encouraging public participation in the planning process, but on each occasion they advised there was nothing they could do, indicating that Staff and Council were

intimidated as well by Kirwan, to the point that the Mayor emailed Premier Ford tasking him to intervene in the LPAT appeal processes.

- **MacIntyre Affidavit, AR, Tab 6, para. 53 p. 1342-1343 (Mayor meeting)**
- **Fortin Affidavit, AR, Tab 2, para. 147-148 p. 64 Ex. 85 (Premier emails)**

31. Between January 24 and September 3, 2019, different people filed complaints with the Integrity Commissioner in respect of Kirwan's threats and intimidation tactics pursuant to (i) Section 223.3 of the *Municipal Act*, (ii) sections 12 and 15 City's Code of Conduct, and (iii) the prior Code of Ethics under the headings "Relationships to Council Members and/or Administration" and "Fair Treatment". The Commissioner found that Kirwan had "repeatedly abused and harassed members of the public" during the KED 2017-18 planning approval process contrary the City's Code of Ethics. He expressed concern that Kirwan "[did] not intend to change his aggressive behaviour and remain[ed] unable to politely accept contrary points of view" and showed no remorse during his interview with the Commissioner and that he refused to apologize to the public. A motion was put forward to reprimand Kirwan. No Council member stepped forward to advise Kirwan that he could not vote on the resolution. The vote was 10 to 1 with Kirwan the sole "nay" and Councillor Leduc (who participated in delivering threats) abstaining. However, the effect of this confirmation was too late to have any substantive effect nor did it cause any member of Council to suggest that it reconsider its previous approvals of the Planning Applications.

- **Fortin Affidavit, AR, Tab 2, para. 158-163 p. 067-068, Ex. 91 (Commissioner's Report) p. 668 (quote), Ex. 92 ("Punch back")**
- **MacIntyre Affidavit, AR, Tab 6, para. 69-71 Ex. L (Code of Conduct and Ethics), para. 64 p. 1346 Ex. N (LeDuc motion to prohibit BIA), para. 68 p. 1347 Ex. Q (LeDuc and BIA), para. 72 p. 1348 (LeDuc and BIA motion)**

2. *Bad Faith, Disqualifying Bias: Staff Misled the Public Through Reports and Comments and Thereby Silenced and Minimized Relevant Submissions Regarding the Planning Applications*

32. When Planning Staff prepared their Staff reports, dated December 18, 2017, no mention was made of the aforesaid long-term economic strategies and the fact that the DTMP recommended the new Event Centre be located in the Downtown, which recommendation had been approved by Council and ordered to be implemented in the 10 Year Implementation Plan for the DTMP and the 2015 Corporate Strategic Plan. When questioned as to why those recommendations had not been referenced and recommended in the Staff Report, Jason Ferrigan ("**Ferrigan**") advised, at the April 10, 2018 Council meeting, that because those recommendations and policies had not been approved in their Official Plan, such could not be considered and were of no relevance. This is contrary to the position taken in the Staff report dated June 15, 2017 discussed above in para 19 wherein they recommended the Event Centre for the Downtown.

- Fortin Affidavit, AR, Tab 2, para. 65 p. 035 Ex. 32 (Kirwan and override), para. 136 p. 060 Ex. 80 (McIntosh), para. 132-134 p. 059-060 (Apr. 10 Signoretti & Ferrigan), Ex. 78
- Faludi Affidavit, AR, Tab 3, para. 14-15 p. 805-806 (Dragicevic), para. 20 p. 808 (Planning Act and OP), para. 30-45 p. 817-821 (OP review), para. 118 p. 850 (Ferrigan & no ref), para. 121, para. 133-134 (Financial plan not needed), Ex. K (10 Year), Ex. M (2015 Strategic Plan)

33. This is also to be compared with Staff's recommendation to proceed with the other Large Projects, noted above in paras 2, 3, 14, & 19, which were prepared at the same time as their reports on the KED, wherein Staff relied on these very same reports to recommend these projects.

- Faludi Affidavit, RRA, Tab 2, para. 12-20 p. 029-032 (Large Projects), Ex. A (CBRE Report), Ex. B (Library/Art Gallery Report), Ex. C (Synergy Report)
- Wood Affidavit, RR, Tab A, V. 2, Ex. 29 (Report) & Ex. 31 (Resolution)

34. Staff were also aware that the Official Plan, which had been adopted in 2006, was long out of date and had not been updated within a 5-year period as required by s.

26(1) of the *Planning Act*. Staff delayed Council's approval of the required update contained in OPA 88, which included references to the 2015 Economic Strategy and the DTMP and the requirement that the Event Centre be located in the Downtown, until two months after Council's adoption of the Subject By-laws herein.

- Faludi Affidavit, AR, Tab 3, V. 4, para. 31-41 p. 817-820 (OP Discussion), para. 119 p. 851 Ex AA (OPA 88)
- Faludi Affidavit RRA, Tab 2, para. 36-53 p. 37-44 (OP Review & OPA88)
- Ferrigan Affidavit, RR, Tab 3, para. 33-38 p. 1283-1284 (OP Review) Ex. 32 (MMAH Decision), Ex. 34 (By-law adoption OPA 88), Ex. 35 (Report on OP Phase 1)

35. As well, Staff would have been aware that s. 4.2.2 of the Growth Plan for Northern Ontario ("**GPNO**"), issued in 2011 pursuant to the *Places To Grow Act*, 2005, S.O. 2005, c.13, stressed the importance of these community-based economic and planning strategies and encouraged every municipality to "align their Official Plan with their long-term planning strategies" and that such approved community plans had to be incorporated in the City's Official Plan and until that occurred such plans **superseded the existing Official Plan.**

- Faludi Affidavit, AR, Tab 3, V. 4, para. 30 p. 816 (GPNO)

36. Staff would also be aware that s. 3(5)(a) and 3(6)(a) of the *Planning Act* and s. 1.7.1 (c) of the Provincial Policy Statement required that their recommendation to Council and Council's decision had to "maintain and where possible, enhance the vitality and viability of downtowns" which would require an analysis of the impact of these KED applications on the Downtown. This never occurred.

37. When questioned by Councillors why there was no reference to the public health issues related to gambling and the casino being located next to the Event Centre, at the April 10, 2018 Council meeting, Ferrigan advised that "those economic and social implications [of the casino] were discussed in 2012 and previous Council did make a decision to move ahead with expanded gaming in the community". This was not

correct and, as noted hereafter in paras 53 & 57, there was no reference to these issues in those reports.

- Fortin Affidavit, Tab 2, V. 3, Ex. 70 (March 26, 2018 Minutes), V. 1 para. 133-134 p. 59, Ex. 78 (Ferrigan video)
- Faludi Affidavit, Tab 3, V. 5, Ex. B (Faludi Report)
- Forrester Affidavit, Ex. 9 (June 15 Report) p. 1141

3. *Bad Faith, Disqualifying Bias: The Municipality Withheld Relevant Documents and Information Which Would Have Drastically Affected Public Perception and Representations in Respect of the Project*

38. As noted above, the public was not informed that Council (i) authorized City Staff to negotiate an Option Agreement with the landowner of each possible site identified for the new Event Centre and (ii) required each landowner to execute same so that Council could simply accept same once the June 27, 2017 decision was made as to the approved location. The City authorized execution of these agreements through By-law 2017-149 on August 22, 2017. Unlike the other agreements, the Zulich Agreement was the only one linked to a prospective casino and the establishment of a new RED, as well as containing a comprehensive Servicing, Contribution, and Road Transfer Agreement. As mentioned above, the Agreement also contained a recital confirming Zulich's intent to locate the Event Centre at the site of the new casino as part of the establishment of a new RED. The deal Staff had negotiated with Zulich would appear to any Member of Council to be "too good to be true" (as it turned out to be) whereat Zulich would sell the lands to the City for the Event Centre for \$10.00 and in return Zulich would front-end all the costs for the very expensive blasting, grading, servicing and road building for the entire site, with the contribution by the City capped at \$1M. As well, Zulich covenanted to use reasonable efforts to build all the facilities described in the Zulich advertisement video within 3 years of the City exercising the Option, failing which Zulich, without cost to the City, would pay \$100K per year in

perpetuity or until the covenant had been complied with. We note that this advertisement video contained false advertising regarding the soccer facility. The Zulich Agreement was subsequently amended twice, on December 21, 2017 and on December 31, 2018. It was then consolidated in an agreement dated January 14, 2019 and titled the Comprehensive Cost Contribution/Land Transfer Agreement. This new agreement completely erased the City's \$1M capped cost and increased the percentage of costs that the City was responsible for to at least \$13M.

- Fortin Affidavit, AR, Tab 2, V. 1, para. 45-52 p. 030 Ex. 22 (Option Agreement), Ex. 25 (Video), Ex. 29 (Ltr Fabio Belli)
- Faludi Affidavit, AR, Tab 3, V. 5, Ex. X (By-law 2017-149)
- Shelsted Affidavit, RR, Tab 4, V. 7, Ex. 2 (CCA January 8)
- Fleming Affidavit re Production, Ex. E (Other Option Agreements), Ex. H (Comprehensive Cost Contribution)

39. These documents were never released to the public by the City and had to be obtained, in part, pursuant to Municipal Freedom of Information (“FOI”) requests by others and pursuant to production requests during this Application to Quash. It appears that some but not all Council members had been provided with such because **Councillor Signoretti, who consistently opposed the KED, had to obtain a copy of the initial June 8, 2017 Option Agreement through a FOI request**, was not permitted to keep a copy of the final January 14, 2019 Agreement, and was only permitted to read a copy of same at City Hall. The first time a copy of this document was made available was pursuant to a Production request in this proceeding.

- Fortin Affidavit, AR, Tab 2, V. 1, para. 51-52 p. 030 Ex. 23 (Signoretti letter) (attached as Ex. 24)

4. Disqualifying Bias: Sudbury Was a Committed “Ally” and “Partner” of Zulich and Gateway in Commencing and Processing its Own Application

40. The City filed its own rezoning application for the Event Centre at the KED on December 1, 2017, for which the City was also the approval authority. Zulich filed its Official Plan and zoning by-law amendment applications for the casino and additional

parking uses on November 21, 2017. These Planning Applications were considered at what the City refers to as a “pre-hearing meeting” on January 22, 2018 and at the SPMs on March 26 and 28, 2018, following which the subject by-laws were adopted at a Council Meeting on April 10, 2018 and further amended, as necessary, on April 24, 2018.

- **Ferrigan Affidavit, Responding Record (RR), para. 4-9 p. 1275-1276, Ex. 2, 3, 4 (Applications)**
- **Faludi Affidavit, AR, Tab 3, V. 4, para. 111 p. 847 (Planning Applications)**

41. However, prior to these Planning Applications even being filed:

- a. At the same June 27, 2017 Council meeting, Council resolved to approve a \$100M capital budget to build the new Event Centre. This resolution was implemented by Staff when preparing the City’s budget in December 2017 and approved by Council on December 12, 2017, whereat the \$100M was specifically allocated for the Event Centre at the KED;
 - **Fortin Affidavit, AR, Tab 2, V. 2, Ex. 31 (June 27 Minutes)**
 - **Faludi Affidavit, AR, Tab 3, V. 5, Ex. Y (2018 Budget)**
- b. The August 9, 2017 Staff Report advised there was no time to seek an RFP from competing architects to prepare a “Site Design Strategy” for the entire KED including the Event Centre. They therefore recommended that Council award the project to Gateway’s architect, and that the City pay 1/3rd of the total cost of \$387,000, with the balance equally shared by Gateway and Zulich. Council passed a resolution on August 22, 2017 authorizing Staff to so proceed and execute the contract; and
 - **Fortin Affidavit, AR, Tab 2, Ex. 34 (Aug. 9 Report), Ex. 33 (Aug. 22 Minutes)**
 - **Faludi Affidavit, AR, Tab 3, Ex. X (BL 2017-149)**
- c. On August 22, 2017, Council passed a by-law giving sweeping powers to Staff to do all that they deemed necessary to conclude or amend the said June Option Agreement and to enter into any other agreements or make any decisions Staff deemed necessary to advance “the approvals and development of the entertainment district.”
 - **Forrester Affidavit, RR, Tab. 2, V. 4 Ex. 16 (BL 2017-257)**

42. From August 22, 2017 onwards, elected officials and City Staff immediately began describing the City's relationship with Gateway and Zulich as a "strategic alliance" or "Partnership" as follows:

a. By Kirwan posting on his website on November 14, 2017 referring to the relationship as a "strategic alliance";

) Fortin Affidavit, AR, Tab 2, V. 1, para. 79 p. 040, Vol. 2 Ex. 42 (Kirwan Quote)

b. By the City Staff report for the November 22, 2017 Council meeting highlighting that the City had formed a "**PARTNERSHIP**" with Zulich and Gateway; and

) Fortin Affidavit, AR, Tab 2, V.1, para. 87 p. 043, Ex. 48 (Report)

c. By Councillor Jakubo posting on his website on November 27, 2017 that "it is a real business and development partnership which has evolved and blossomed over the last few months".

) Fortin Affidavit, AR, Tab 2, V. 1, para. 81 p. 041, V.2 Ex. 44 (Jakubo Quote)

43. During the month of January 2018, the City launched a social media campaign which were clear advertisements intended to garner support for the KED.

▪ Fortin Affidavit, AR, Tab 2 V.1, para. 92 p. 044, V.2, Ex. 51 (Advertisements)

5. *Disqualifying Bias, Procedural Unfairness: Sudbury Attempted to Drastically Limit the Public's Representations at the Public Meeting and Admitted It Would Not Consider Specific Relevant Matters*

44. On November 22, 2017, during a Council meeting, Councillor Reynolds stated unequivocally that the debate on the issue of whether or not the public desired expanded gambling in the municipality at all (the "**Fundamental Question**") and the location of the project was concluded:

On June 27, 2017, this Council made a decision to build this project for our City at the Kingsway location... I am going to stand very firm on my decision... the either/or debate is finished... I want to make it clear and this is my main statement that as it pertains to the casino I want to remind everyone that the location and development of the casino is not an issue for Council debate, it is an agreement between the Province and Gateway who won the bid and who have chosen their preferred location. We are not debating the Casino issue.

- **Fortin Affidavit, AR, Tab 2, V. 1, para. 83 p. 41 Ex. 46 (Reynolds comment)**

45. On **January 22, 2018**, the Planning Committee held what they refer to as a “pre-hearing meeting” whereat the public were invited to attend. The first part of the meeting was devoted solely to the Event Centre approvals and the second part to the “Casino” approvals. Prior to the commencement of the meeting, Councillor McIntosh, the Chair of the Committee, advised those attending that “[they] were only looking for comments on the rezoning for the Event Centre at this time”, barring members of the public throughout from commenting on the linking of the Event Centre to the Casino and the establishment of a new RED at the KED and suggesting a precedent for forthcoming meetings.

- **Fortin Affidavit, AR, para. 108-109 p. 049-050, Ex. 60 & 61 (MacIntyre Comments), Ex. 62 (Minutes), para. 109 p. 49 (Member of public cut off)**
- **Faludi Affidavit, AR, Tab 3, para. 113-116 p. 848-850**

46. On March 12, 2018, Mr. Petch forwarded Mr. Faludi’s economic impact report to the City prior to the release of the City Staff report in order for Staff to consider same. Mr. Faludi’s report outlined his serious concerns of the negative economic impact on the Downtown and the City as a whole if the Event Centre was moved to the KED, as well as locating the Event Centre beside the Casino and in close proximity to nearby vulnerable residents. On March 22, 2018, Mr. Petch forwarded his own comments and a further report from Mr. Faludi commenting on the release of the City Staff report. Mr. Petch and Mr. Faludi both attended the March 28, 2018 Planning Committee and made submissions. The Committee did not ask Mr. Faludi or Mr. Petch any questions and at no time did City staff contact Mr. Faludi to discuss his concerns. Mr. Faludi felt that Council had already made up their minds.

- **Fortin Affidavit, AR, Tab 2, V. 1 para. 115-118 p. 51-52 (Faludi report)**
- **Faludi Affidavit, AR, Tab 3, V. p. 13-18 p. 804-808 (Faludi and RD Report, presentation to Committee)**

47. On **March 26 and March 28, 2018**, the same Planning Committee held the SPM's as required by the *Planning Act* to obtain and consider the views of the public. The topic for the March 26 meeting was confined to the casino and, for the March 28 meeting, to the Event Centre. At the March 28, 2018 meeting, Chair McIntosh provided the same instruction that **the decision of the location of the Event Centre was not open for discussion because it had been decided at the June 27, 2017 Council Meeting**, and that comments at this meeting were to be confined to the Event Centre and could not include comments on the Casino or the establishment of the KED.

- Fortin Affidavit, AR, Ex. 70, Ex. 75 (Minutes)
- Faludi Affidavit, AR, Tab 3, para. 17 p. 807 (Confined comment)

48. At the close of the March 26, 2018 Meeting Councillor McIntosh, Chair of the Planning Committee, advised "I want to say that I do agree with most of what you said, however, we are not making a decision this evening whether or not the City should have a casino". She then voted in support of all the Planning Applications.

- Fortin Affidavit, AR, Tab 2, para. 126 p. 055 Ex. 73 (Quote)

49. After Committee meeting on March 28, 2018, Councillor Kirwan posted on his website the following comments on Mr. Petch's submission and Mr. Faludi's economic impact study: "Their efforts may have meant something back on June 27, 2017, but not now. The Decision was made and there is no reason to change the course."

- Fortin Affidavit, Tab 2, V. 1, para. 129 p. 57, Ex. 76 (Kirwan comment)

50. On **April 10, 2018** Council held a public Council meeting to consider the adoption of the Subject By-laws. At this meeting, Councillors and the City Solicitor took the position that the location of the Event Center was made on June 27, 2018 and was no longer open to discussion, with the City Solicitor stating that the decision before Council was "strictly and purely a decision on the land use questions." At this time, the

Mayor and 11 members of Council voted in support of the by-law permitting the casino, with only Councillors Signoretti and Montpellier in opposition. The Mayor and 8 members of Council voted in support of the Event Centre, with Councillors Signoretti, Montpellier, McIntosh, and Cormier in opposition.

- Fortin Affidavit, Tab 2, V. 1, para. 130-142 p. 057-62 (Apr. 10), para. 138 p. 61 (quote) Ex. 82 (video)

6. *Disqualifying Bias: Sudbury, Unlike Other Municipalities, Complied With Neither the Letter Nor the Spirit of Provincial Regulation Requiring Extensive and Meaningful Public Participation In The Process of Approving Expanded Gambling*

51. The former City of Sudbury had a long history of rejecting provincial plans for a casino for the City. In 1994, the City, like other municipalities, was strongly opposed to the idea of a casino with tables, slots, and entertainment in the City but did not object to slots located in a former municipality at the Sudbury Downs, because it was an isolated rural area north of the City and therefore less vulnerable to problem gambling.

- McIntyre Affidavit, AR, V. 6, Tab 6, para 17 p. 1329 (Gaming in Sudbury)
- McIntyre Affidavit, RRA, Tab 1, para. 1-11 p. 5 to 8 (Downs location)

52. The 2012 Modernization Plan was premised on the province's desire to increase revenues, and thereby gambling losses, by locating full-scale casinos in the built-up areas of the municipality closer to potential customers from the business and residential areas. The province would continue to be the regulator and the private sector, using its own capital, would be the developer and operator, sharing revenues with the province, with a small portion going to the municipality.

- McIntyre Affidavit, AR, V.6, Tab 6, para 17- 18 (Modernization Plan) Ex. C (Modernization Plan), Ex. F (Sudbury and Modernization Response)
- Faludi Affidavit, ibid, V. 5, Ex. B (Faludi report)

53. O. Reg. 81/12 governed the 2012 Modernization Plan, replacing O. Reg. 347/00. Both regulations required the municipality to obtain the views of the public whether or not they wanted a new casino in the municipality. O.Reg 347/00 required a plebiscite

requiring 51% of the electorate to answer this Fundamental Question positively, failing which the idea of a casino was dead and could not be considered further. O.Reg. 81/12 did not require the plebiscite but required a separate public process solely to obtain the views of the public on this Fundamental Question, prior to considering any particular site. This Regulation came into effect on June 1, 2012. An example of this process occurred in the City of London in the same time frame as O. Reg. 81/12 was being processed in Sudbury. London went to significant steps to obtain the views of the public on the following question:

“Do you support or oppose the idea of allowing additional slots and introducing live table games in London?”

- Fortin Affidavit, AR, Tab 2, para. 17-22 (Mayor), para. 21 & 26 (Kilgour), Ex. 10 (Article re casino and amenities), para. 25 (Whitehouse texts) Ex. 14 (Whitehouse texts),
- MacIntyre Affidavit, AR, Tab 6, para. 19 p. 1330 (O. Reg. 81/12), para. 24-25, Ex. E (Aug. 2, 2012 Report), Ex. F p. 1404 (Aug. 14, 2012 Presentation and Premier statement)
- Fleming Affidavit, AR, V. 6, Tab 5, paras 5-7, 10- 11, 14-15 and Ex A (p. 1191), Ex. B, Ex. G (p. 1222), Ex. K (OLG email), Ex. O (Survey Report)

54. The same August 2, 2012 Report and August 14, 2012 resolution confirmed that Council wanted one of these “Large Projects” to be provided by the developer in return for their support of a casino on a site. The public statements by the former Mayor and other Councillors confirmed that the intent of this resolution was that such Large Projects would be provided free of charge or “at minimal cost” to the City to offset the negative impacts of accepting a casino in the City. The former Mayor’s Chief of Staff and author of the resolution similarly confirmed this to be the intent of the resolution. This idea was quickly put to rest with the current Mayor’s opening statement at the beginning of the said June 27, 2017 meeting, leaving the public no opportunity to respond to same.

- Fortin Affidavit, AR, Tab 2, para. 18-22 Ex. 9 (resolution) Ex. 10, Ex. 11 (articles) Ex. 12 (speech), para. 25 p. 22 Ex. 14 (Whitehouse)

- MacIntyre Affidavit, AR, Tab 6, para. 26, para 28 (Mayor disc.), para. 33 p. 1333-1335, Ex. E (Aug. 2 Report), Ex. F (Aug. 14 Presentation), Ex. G (Aug. 14 Minutes)

55. Fortin, the BIA and the public had received assurances from former Mayor Matichuk (“**former Mayor**”), Councillor Kilgour, and Ian Wood, the then-Director of Economic Development for the City, that the public would have an opportunity to make submissions to Council on this Fundamental Question before Council considered any particular site. They were also assured by a press release from the Premier affirming that the public would be fully involved. Based on these assurances, Fortin suspended his campaign awaiting the opportunity for such a process and Council meeting to occur (para. 25 above). However this process never did occur in Sudbury.

- Fortin Affidavit, AR, Tab 2, para. 17-22 (Mayor), para. 21 & 26 (Kilgour), Ex. 10 (Article re casino and amenities), para. 25 (Whitehouse texts) Ex. 14 (Whitehouse texts),
- MacIntyre Affidavit, AR, Tab 6, para. 19 p. 1330 (O. Reg. 81/12), para. 24-25, Ex. E (Aug. 2, 2012 Report), Ex. F p. 1404 (Aug. 14, 2012 Presentation and Premier statement) Ex. E (Staff report dated August 2, 2013)

56. Instead, City Staff and Council took the position, when asked about compliance with O. Reg. 81/12, that they were relying on (i) the May 15, 2012 Council meeting, which would have been subject to O.Reg. 347/00 (knowing full well that a plebiscite had never been held), (ii) the Staff Report dated August 2, 2012, (iii) a Council resolution passed on August 12, 2012, and (iv) the results of a survey and Open House conducted shortly thereafter. However, all of these events related solely to seeking the public’s views on the four areas of the City which areas the casino proponents, who were seeking OLG approvals to obtain the rights to build a casino in the City, had identified as potential sites for the new casino and which Council indicated they supported.

- Wood Affidavit, RR, Tab 1, para. 19-20 p. 7, Ex. 8-10 (Open House) Ex. 11-12 (survey)
- MacIntyre Affidavit AR, Tab 6, para. 22-26 p. 1332-1333 Ex. E (Aug 2 Report), para. 27 p. 1333 Ex. G (Aug.14 Min), para. 30-33 p. 1334-1335 Ex. H (Open House),
- Fortin Affidavit, AR, Tab 2, para. 16-18 p. 019-020 Ex. 7 Ex. 9(Feb. 26)

57. Similarly, when the same Fundamental Question was addressed in the December 18, 2017 Staff Reports supporting the approval of the Planning Applications, staff advised that the social and economic issues related to expanded gambling were fully addressed by Council with the public in the May 15 and August 14, 2012 Council meetings, when clearly such had never occurred.

- Ferrigan Affidavit, RR, Tab C, V. 5, Ex. 10, Ex. 11 (Reports)
- Fortin Affidavit, AR, Tab 2, para. 118 Ex. 67 (outside of scope) para. 122-124, Ex. 71 (March 26 Ferrigan),

E. Impact of Illegal Actions: During Critical Votes, the Alteration of Even a Single Councillor's Vote Would Have Drastically Altered the Approval of the Project

58. The chart below describes the votes by City Councillors at the June 27, 2017 Council Meeting leading to the April 10, 2018 Council meeting whereat the subject by-laws were all adopted. You will note 10 of the 12 Members, including the Mayor, that supported the Event Centre relocating to the KED at the June 27, 2017 Council meeting never changed their vote either at the SPM or the April Council meetings adopting the Subject By-laws, notwithstanding the ongoing public smear campaign. Similarly, you will also note the same majority consistently vote in favour of the casino.

Yea	Nay	Yea	Nay
June 27, 2017: Option 1: Downtown Location		June 27, 2017: Option 2: Kingsway Location with Guarantees	
Councillor Signoretti Councillor Lapierre Councillor Sizer Councillor McIntosh Councillor Cormier Mayor Bigger	Councillor Vagnini Councillor Dutrisac Councillor Kirwan Councillor Jakubo Councillor Reynolds Councillor Landry- Altmann	Councillor Signoretti Councillor Lapierre Councillor McIntosh Councillor Cormier Mayor Bigger	Councillor Vagnini Councillor Dutrisac Councillor Kirwan Councillor Jakubo Councillor Sizer Councillor Reynolds Councillor Landry- Altmann (abstain)
June 27, 2017: Option 3: Kingsway Location			
Councillor Vagnini Councillor Dutrisac Councillor Kirwan Councillor Lapierre Councillor Jakubo Councillor Sizer Councillor McIntosh	Councillor Signoretti Councillor Cormier		

Councillor Reynolds Councillor Landry- Altmann Mayor Bigger			
March 26, 2018: Official Plan Amendment to permit a casino		March 26, 2018: Zoning by-law amendment to permit a casino in industrial area	
Councillor Lapierre Councillor Jakubo Chair McIntosh Councillor Landry- Altmann		Councillor Lapierre Councillor Jakubo Chair McIntosh Councillor Landry- Altmann	
March 28, 2018: Zoning by-law amendment to permit a recreation and community centre in the form of a public arena			
Councillor Lapierre Councillor Jakubo Chair McIntosh Councillor Landry- Altmann			
April 10, 2018: Adoption of Subject By-law to amend the Official Plan and rezone the property to permit a casino		April 10, 2018: Adoption of Subject By-law to rezoning to permit an Event Centre	
Councillor Vagnini Councillor Dutrisac Councillor Kirwan Councillor Lapierre Councillor Jakubo Councillor Sizer Councillor McIntosh Councillor Cormier Councillor Reynolds Councillor Landry- Altmann Mayor Bigger	Councillor Signoretti Councillor Montpellier	Councillor Vagnini Councillor Dutrisac Councillor Kirwan Councillor Lapierre Councillor Jakubo Councillor Sizer Councillor Reynolds Councillor Landry- Altmann Mayor Bigger	Councillor Signoretti Councillor Montpellier Councillor McIntosh Councillor Cormier

- Fortin Affidavit, AR, Tab 2, V. 2, Ex. 31 (June 27 Minutes), V. 3 Ex. 70 (March 26 Minutes), Ex. 75 (March 28 Minutes)

F. LPAT Jurisdiction and Hearing

59. During the LPAT proceedings, the City brought a Motion challenging LPAT's jurisdiction to issue an Order granting the Fortin/BIA/Hales appeals on the same grounds relied on in this Application.

60. On July 10, 2019, LPAT issued its Decision granting the City its Motion but deferred the commencement of its hearing on land use grounds until May 5, 2020 to allow for this Court's Decision on this Application.

- Ferrigan Affidavit, RR, Tab 3, V. 6, Ex. 31 (LPAT Decisions January 4 & July 10)

61. The July 10 Decision highlights, in paras 110 & 112, that the proclamation of Bill 139 on December 12, 2017, which severely restricted the public's right to appeal Council's approval of the said Official Plan and zoning by-law amendments, imposed an even higher burden on the City for transparency and procedural fairness before making the final decisions.

G. Lack of Contradiction by Respondent of Statements by Applicant

62. This case is unique when compared to other reported cases in that, rather than a single supportable ground for illegality, the badges of bad faith and indications of procedural unfairness which can be demonstrated are legion, in key cases uncontradicted, and established through a surfeit of evidence presented in the Application Record. In respect of uncontradicted assertions, the City failed to challenge, cross-examine, or contradict the Applicant on the following points:

- a. Councillor Kirwan and other Councillors threatened Fortin, the BIA, and other opponents of KED and that the threatening actions taken by Kirwan against opponents of the KED caused great concern to downtown business owners (referred to above at paras. 25-31);
- b. Members of the public abandoned their involvement in the public process as a result of the Councillor's threats to supportive businesses (above at paras. 25-30);
- c. As a result of the conduct and threats of the City's elected official(s), the perception was that the mind of Council was fixed, irrespective of the public's involvement, particularly when Councillors described the relationship with

- Gateway and Zulich as a partnership prior to the SPMs (above at para. 26, 40, & 40-44);
- d. The words of the City's elected official(s) essentially indicated that the City was bound to ignore Mr. Fortin's concerns (paras. 44, 45-50, & 58);
 - e. Staff member Ian Wood's summary of public input to Council was misleading (paras. 55-57 and at para. 130-131 p. 58 of the Fortin Affidavit);
 - f. Kirwan was acting as the leader of Council on the Event Centre debate and neither the Mayor nor other Members of Council took steps to stop the abusive behaviour. In fact the Mayor went along and attempted to have the Premier intervene in the LPAT appeals. (as above at para. 25-30)

H. In Conclusion

63. As a matter of law, how different would this entire process have been if Council had directed City Staff, prior to the June 27, 2017 Council meeting, (1) to retain either CBRE or PwC to comprehensively study and prepare a report to determine the economic and planning impacts on the Downtown and on the City as a whole of establishing a new RED at the KED with a new casino and the new Event Centre together with a new hotel/convention/performing arts centre; (2) to release the report to the public with widespread Notice at least 2 weeks prior to the scheduled public Council meeting; and (3) to ensure all this occurred prior to Council making any decision on the location of the new Event Centre and the establishment of a new RED and any decision on the location of a casino, all of which would have complied with the public planning process established since 2002.

- **Faludi Affidavit, AR, Ex. V (Notice of June 27, 2017 Meeting)**
- **Forrester Affidavit, RR, Ex. 2 (1st PwC Report and Staff Report)**

PART III- ISSUES AND THE LAW

I. Issues

- a. **Bad Faith:** Did Sudbury City Council act in bad faith in adopting the Subject By-laws or in the antecedent procedural steps, in particular the holding of the public meeting on January 22, 2018, the Statutory Public Meetings, and the Council meeting adopting the Subject By-laws?
- b. **Disqualifying Bias:** Was Sudbury City Council subject to disqualifying bias in the public planning process leading to the adoption of the Subject By-laws?
- c. **Procedural Non-Compliance/Unfairness:** Did Sudbury City Council fail to comply with procedural steps or permit procedural unfairness to invalidate the adoption of the Subject By-laws?
- d. **Remedy:** Should this court quash the Subject By-laws due to illegality?

J. Standard of Review

64. Illegality on a s. 273 application is a complex question on which municipalities do not possess any greater institutional expertise than the courts and, therefore, with respect to the standard of review, "[t]he test on jurisdiction and questions of law is "correctness".

- *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342, 2000 SCC 13 (S.C.C.), at para. 29.

K. Statutory Public Meetings

65. Amendments to zoning by-laws and Official Plans are governed by sections 34 and 17 of the *Planning Act*, respectively. Both sections require a municipality, before passing an amending by-law, to hold at least one statutory public meeting for the "purpose of giving the public an opportunity to make representations" in respect of the proposed by-law or plan. In other words, SPMs are statutory *preconditions* to the legislative authority of municipalities who wish to pass by-laws under s. 17, s.

22, or s. 34. Pursuant to s. 239(1) and (5), all meetings of council are to be open to the public and not close during the taking of a vote.

- ***Planning Act*, R.S.O. 1990, c.P.13, s. 17(15)(d), 22(1)(b) and 34(12)(b)**
- ***Municipal Act*, 2001 S.O. 2001, c. 25, s. 239(1) and (5)**

66. In conducting SPMs, municipalities are required by section 61 of the *Planning Act* to ensure that the opportunity provided to make representations is a “fair opportunity”. Procedural fairness obligations apply to all procedural steps antecedent to the actual passing of a by-law. A failure to provide the disclosure necessary to allow for a “fair opportunity” to make representations would be a violation of procedural fairness, just the same as if council explicitly forbade or restricted the opportunity to make representations during the meeting itself.

- ***Spence v York (City)* 1985 CarswellOnt 670 (O.S.C.), para. 23**

67. In *Spence v. York*, the City of York council held a statutory public meeting on a developer’s application and then took the matter into council. Council was on the verge of moving to defer the matter when the developer’s solicitor interjected, suggesting the developer would withdraw the application if council voted to defer it. The mayor quickly proposed a substantial amendment to the by-laws and council approved them as amended, with no debate or further notice to the public.

68. In essence, the problem arising out of York Council’s conduct was that, in seeking to avoid the risk of losing a valuable project, it did not allow the public an opportunity to make representations on matters relevant to that project:

21 ... The words “shall be afforded an opportunity to make representation” mean “shall be afforded a fair opportunity to make representation” in my opinion. This is not a matter of natural justice in the abstract; rather it is a matter of statutory construction of plain words. By taking into consideration and acting upon a new matter, namely the threat of the developer to withdraw without affording other interested members of the public, including the applicants, an opportunity to be heard thereafter, and respond, council failed to afford members of the public a fair opportunity to make representation, thus they did not afford them an opportunity to make representation. The unfairness of the procedure of council

was not merely that it permitted a non-member of council to intrude into its debate, and indeed to be persuasive in its debate, but rather that it failed to give an opportunity, to the applicants and others at the meeting, to answer the new matter raised by the intruder.

- **Spence, para. 21**

69. But merely complying technically with procedural requirements, in this case allowing the public to attend a meeting labeled a “statutory public meeting”, is insufficient to pass muster. In holding such a meeting, and meeting other procedural fairness requirements, municipalities “must bring themselves within both the spirit and the letter” of the legislation mandating the framework of procedural safeguards.

- ***Barrick Gold Corp. v Ontario (Minister of Municipal Affairs & Housing)* 2000 CarswellOnt 4358 (OCA) para 64**

70. In *Barrick Gold*, for example, the *Municipal Act* required only a “double majority” from two major municipalities, Black River-Matheson and Iroquois, to restructure in a manner that would annex 13 unincorporated townships. Critically, the views of the electorates of the unincorporated townships were not technically required. So the Townships of Black River-Matheson and Iroquois Falls complied technically with the act and obtained their “double majority”. Various cottagers in the unincorporated townships opposed. The Townships took the position, similar to Sudbury in the case-at-bar, that they had complied with the *letter* of the applicable legislation. The court found that mere technical compliance with the *Act* was insufficient, and that a by-law which offends the policy underlying the operative statute is *ultra vires* and therefore illegal.

- ***Barrick Gold*, para. 64**

71. Similarly, in *Pitt Polder*, the BC Court of Appeal found that a right to “make representations” was more than simply the “opportunity to express approval or disapproval of the proposed by-laws”. In that case, Pitt Meadows adopted zoning

by-laws and the applicant challenged on the basis, inter alia, of insufficient documentary disclosure:

45 A public hearing on land use and zoning bylaws serves at least two important functions: it provides an opportunity for those whose interests might be affected by such a decision to make their views known to the decision-maker and it gives the decision-maker the benefit of public examination and discussion of the issues surrounding the adoption or rejection of the proposed bylaw.

46 Procedures aimed at ensuring a minimum standard of rationality in the decision-making process are more likely to enhance the quality of the decision and the public's acceptance of it than decisions based on undisclosed information, or on incomplete or ill-considered facts.

47 As well, participatory procedures such as public hearings on land use or zoning bylaws tend to dispel perceptions of arbitrariness, bias or other impropriety on the part of local government in the decision-making process and tend to enhance public acceptance of such decisions. Put another way, the perception, if not the fact, of arbitrariness or bias is more likely to arise if the duty to ensure procedural fairness is not observed.

- ***Pitt Polder Preservation Society v Pitt Meadows (District)* 2000 BCCA 415, 2000 CarswellBC 1349, para. 45-47**

72. The court found that the meeting was required to provide council with a “meaningful” examination and discussion of issues material to Council’s decision, and for that purpose it was essential for them to be given access to relevant documents and a reasonable opportunity to prepare presentations. Additionally, it was not simply the fact of arbitrariness or bias that could render a result illegal, but also allowing the “*perception*” of it.

- ***Pitt Polder*, para. 63**

73. The Applicant submits that mere technical compliance with the statutory public meetings requirements of the *Planning Act* should be treated much the same way as the technical compliance in *Barrick Gold* and *Pitt Polder*. If the actions of Sudbury City Council antecedent to the passage of the by-law offended the purposes underlying the requirements to hold SPMs, in other words, the requirement to give the public a fair and meaningful opportunity to make representations and avoid the

reality and perception of arbitrariness and bias, then the by-laws must be quashed for illegality.

L. Jurisdiction of this Court and Illegality

74. This application is made pursuant to section 273 of the *Municipal Act*, 2001 which provides that, upon the application of any person, the Superior Court “may quash a by-law in whole or in part for illegality”. The standing of the Applicant in this matter has not been contested.

- *Municipal Act*, 2001 S.O. 2001, c. 25, s. 273

75. In considering whether a municipality has acted illegally in the enactment of a by-law, Courts must be vigilant in ensuring that municipalities have kept within the limited scope of their authority. The Supreme Court of Canada has repeatedly emphasized the underlying principle that, “as statutory bodies, municipalities ‘may exercise only those, powers expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation’” [emphasis added]. Therefore, where there is a failure to comply with a mandatory procedural requirement, council is without authority and the by-law is void.

- *114957 Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241 2001 SCC 40 at para. 18, 20

76. When an absence of jurisdiction is found, a court will quash the by-law. Otherwise, a number of factors may inform the court’s exercise of discretion including the nature of the by-law in question, the seriousness of the illegality committed, and its consequences.

- *RSJ Holdings Inc. v London (City)* 2007 SCC 29, 2007 CarswellOnt 3919, para. 29

77. Traditionally, the bases for illegality have been organized into categories including:

- e. **Bad Faith:** If council passed the by-law without a rational appreciation of the intent and purpose of the relevant Act or for an improper purpose;
- f. **Disqualifying Bias:** If council prejudged the matter to the extent that disqualifying/disabling bias could be established;
- g. **Statutory Non-Compliance/Procedural Unfairness:** If a municipality otherwise failed to comply with the letter or spirit of a statutory pre-requisite to jurisdiction, such as failing to hold a statutory meeting or to fairly hear representations made.

78. There is a degree of overlap between the above different bases for quashing by-laws. For example, bad faith includes “unfair” conduct and conduct lacking “impartiality”. Prejudgment has been found to be a form of statutory non-compliance and a municipality’s failure to comply with statutory preconditions is considered a badge of bad faith.

- *Clublink v Town of Oakville* 2018 ONSC 7395, 2018 CarswellOnt 20877, (Sup Ct J), para. 40
- *Langille v Toronto (City)* 2007 CarswellOnt 2822 (Sup Ct J) para. 47
- *Markham v. Sandwich South (Township)*, O.J. No. 2183 (OCA), para. 22
- **Note:** In the case at bar, after June 27, 2017, the events constituting bad faith and procedural violations were all directed towards a single goal, the expedited approval of the project without interference. As a result of this overarching purpose and an overlap in the legal principles, discussion of these events is included/referenced in multiple sections below. As an example, the failure to consider relevant matters is referenced both in bad faith and in procedural unfairness, as it serves as both a badge of bad faith and also an example of procedural unfairness.

M. -Bad Faith-

79. “Bad faith by a municipality connotes a lack of candour, frankness and impartiality. It includes arbitrary or unfair conduct and the exercise of power to serve private purposes at the expense of the public interest.”

- ***Equity Waste Management of Canada Corp. v Halton Hills (Town)* 1997 CarswellOnt 3270 (OCA) para. 61**

80. With respect to the “private purpose” branch of the test, a court need not find that “private purposes” achieve councillors’ own self-interest. It is sufficient that a municipality has not discharged “its public duties in accordance with the intent and purpose of the *Municipal Act*”. In other words, either acting without a “rational appreciation of [the] intent and purpose [of the relevant Act]” or for an “improper purpose” will mean a municipality has acted in bad faith.

- ***Wpd. Sumac Ridge Wind Inc. v Kawartha Lakes (City)* 2014 ONSC 4164 (Div. Ct), para. 56**
- ***Municipal Act, 2001 S.O. 2001, c. 25, s. 239 (1) and (5)***

81. The facts set in the “Facts” section above demonstrate that the overarching goal of the City was neither to achieve a process of “candour, frankness, or impartiality”, nor to ensure it acted in accordance with the “intent and purpose” of the *Planning Act* or *Municipal Act*. The purpose of the City was simply to obtain the approval of the project, speedily and without interference.

- ***Municipal Act, 2001, S.O. 2001, c. 25, s. 2***
- ***Planning Act R.S.O. 1990, c.P.13, s. 1.1***

82. When obstacles threatened to slow down or halt the project proceeding to approval, the City ignored or moved speedily to minimize those interferences. As an example, when (i) PwC warned Council of negative impacts, (ii) CBRE warned Council that its report on the Downtown could not be relied upon if a hotel/convention centre was approved, and (iii) staff also warned of negative impacts, the City ignored this advice rather than commission the required studies and continued to move the approval process forward. Failing to appropriately study a matter has been found to be a badge of bad faith, as has moving to approve with ordinate speed.

- **Paras. 15-16 above**

- *Luxor Entertainment Corp. v North York (City)* 1996 CarswellOnt 336 (Div. Ct.) para. 46
- *H.G. Winton Ltd. v North York (Borough)* 1978 CarswellOnt 491 (Div Ct.) para. 6
- *839891 Ontario Inc. v St. Catherines (City)* 1992 CarswellOnt 478 (Ct J Gen Div) paras. 20, 22

83. As a further example, when the public raised concerns about social and economic issues, staff moved speedily to assure them, falsely, that those concerns had been previously dealt with and would not be reconsidered. Misleading the public cannot represent the standard of “candour and frankness” required from good faith municipal conduct.

- **Paras. 37 & 56-57 above**

84. When, on the other hand, the public sought to consider alternate locations, the City clearly, and multiple times, advised them that the decision on alternate locations had already been made on June 27, 2017. On this, the critical issue of the location of the project, the City had made its decision and was not “impartial” when the time came to consider it.

- **Paras. 44, 47, & 49-50**

85. The badges of Council’s bad faith, however, did not stop at misleading and public and impartiality, but extended to actually *threatening* the public. The threats of City Councillors caused opponents of the KED project to fear for their businesses and themselves personally and many of them reduced or eliminated their opposition for that very reason. As a single example (though many more are present in the materials), following the June 27, 2017 meeting, threats by members of Council towards businesses caused the Applicant to suspend his delegation on behalf of 56 businesses opposing the casino and, eventually, resulted in him retaining legal counsel and experts. If the bar for bad faith and procedural unfairness permits

Council to threaten the public into not attending meetings, then the bar, effectively, does not exist.

- **Paras. 25-31, 49**

86. In fact, while the opponents of the KED project had their livelihoods explicitly threatened, the project itself, as a Large Project with a substantial impact on the City's economy and in particular the Downtown merchants, would potentially have had a great impact itself on the livelihoods of all residents. When livelihoods are at issue, more investigations are required and procedural fairness obligations increase.

- ***Langille v Toronto (City)* 2007 CarswellOnt 2822 (Sup Ct J), para. 55**
- **Paras. 3, 14-16, 19-20, 27 above**
- **Faludi Affidavit, AR, Tab 3, V. 5, Ex. B (Faludi Report)**

87. One of those obligations is the obligation to engage the public. The lack of doing so can constitute a badge of bad faith. In the case-at-bar, the City withheld crucial documents from the public, failed to notify it of the impact of those documents and, by doing so, kept "stakeholders in the dark."

- ***H.G. Winton* para. 9**
- **Paras. 38-41 above.**

88. Finally, while the unreasonableness of a by-law is not bad faith in and of itself, it can certainly be given in evidence to establish a want of good faith. This takes on particular importance when the by-law represents a violation of policy "established prior to the making of the by-law." This can be explained in the context of a city which is early in the process of developing a land use planning policy, before such precedent is widely established, but such is not the case-at-bar. In the case-at-bar, the project directly violates 15-years of adopted policy developed carefully with substantial and ongoing public input.

- *Xentel DM Inc. v Windsor (City)* 2004 CarswellOnt 3608 (Sup Ct J), para. 27
- Paras. 13-18 above

89. In finding bad faith, the courts consider the “cumulative effect” of what is known as the “badges” of bad faith, viewed “collectively” rather than individually.

- *Luxor*, para 100-102

N. -Statutory Non-Compliance & Procedural Unfairness-

90. Statutory non-compliance and procedural unfairness can render a by-law illegal in and of themselves and they also serve as badges of bad faith. If a City does not comply with the legal requirements for the passing of a by-law, the by-law is illegal and should be quashed.

- *The Law of Canadian Municipal Corporations*, 2d ed., vol 2 (Toronto: Thomson Carswell, 2003) at 1022
- *Costello v. Calgary (City)*, 1 S.C.R. 14, para. 12

91. Per *Barrick Gold*, simple technical compliance with a by-law is insufficient, compliance must also meet the spirit and purpose of the by-law. So the fact that a City holds a statutory meeting is insufficient if said meeting does not meet the spirit of the relevant Act.

- *Barrick Gold* para. 64

92. As an example, take the documents withheld by the City from the public. Those documents would have demonstrated the substantial difference between the originally advertised “minimal/no cost” nature of the project and the financial commitments *actually* entered into by the City and thus were crucial documents for the public to have in order to be able to make “informed, thoughtful, and rational presentations”. The City withholding these documents rendered the meeting procedurally unfair.

- *Pitt Polder*, paras. 52-54
- Paras. 38-41 above

93. In this matter, many of the circumstances which lead to a conclusion of bad faith also lead to the conclusion of statutory non-compliance or procedural unfairness. Of these, the most important example is the City's refusal to consider matters related to the project location, social issues, or economic issues, and the fact that they discouraged and mislead others from making representations on those issues, in addition to the threatening them outright if they opposed the KED. Whether or not the speakers were discouraged or allowed to talk about their concerns, however, does not end the matter, as Council also did not take relevant considerations into account when *deliberating*, and that, on its own, rendered each public meeting a sham.

- **Paras. 25-31, 37, 44-45, 47, 50**
- ***Robertson v Edmonton (City)* 1990 CarswellAlta 33 (QB), para. 66**

94. The insufficiency of the public meetings is even more clear when considered in light of the fact that the City fostered expectations of a more fulsome process. In this particular case, members of Council and City Staff led the public to believe the public would have a chance to opine on salient issues when, in fact, the public was not given that chance. When the public education campaign in opposition to the casino was ramping up, the former Mayor and Councillor David Kilgour promised the Applicant that the public would have a chance to answer the Fundamental Question, and say "no" to same. These representations led directly to the Applicant's suspension of a large public education campaign at the time. Those false representations lead to "legitimate expectations" which, in law, lead to a higher level of procedural fairness owed.

- ***Danbrook v Georgina (Town)* 2014 ONSC 3746, 2014 CarswellOnt 9366, (Div Ct) 58-60, 71-72**
- ***Keefe v Edmonton (City)* 2002 ABQB 1098, 2002 CarswellAlta 1683, para 34,**

- *Centre hospitalier Mont-Sinaï c Québec (Ministre de la Santé & des Services sociaux)* 2001 SCC 41, 2001 CarswellQue 1272 para 16
- Paras. 25, 54-57 above

95. Legitimate expectations, of course, were also engendered by the fact that the other “Large Projects” of the City of Sudbury, excluding the KED project, obtained substantive background studies and engaged in meaningful public consultation, by the fact that the BIA raised its levy specifically to subsidize the operating costs of a new **Downtown** Event Centre, and by other incidents set out herein and in the materials.

- Paras. 2-3, 14-16, and 21 above.
- Faludi Affidavit, AR, Tab 3, V. 5, Ex. D, Ex. E, Ex. G, Ex. I, Ex. M
- Faludi Affidavit, RRA, Tab 2, Ex. A, B, C

96. For the above reasons, the Applicant submits that the City failed to comply with the statutory prerequisites to its legislative authority, acted in a procedurally unfair manner, and for that reason the by-laws are illegal and should be quashed.

O. -Disqualifying Bias / Prejudgment-

97. The Supreme Court of Canada case of *Old St. Boniface* has been widely cited and is accepted as the landmark case which established the governing test for determining whether bias will render a by-law illegal.

- *Old St. Boniface Residents Assn. Inc. v Winnipeg (City)* 1990 CarswellMan 235, (SCC).

98. The rules of natural justice are variable standards and their content depends on the circumstances of each case. Under democratic processes, elected representatives are expected to form views as to matters of public policy affecting the municipality. Some degree of prejudgment is inherent in the role of a councillor. However, it is well-established law that objectors or supporters of a proposal must “be heard by members of council who are capable of being persuaded.” For disqualifying bias to

be proven, there must be “some indication” that the position taken is “incapable of change.”

- ***Old St. Boniface Residents Assn. Inc., para. 94***

99. The facts demonstrating Council’s disqualifying bias overlap with those showing bad faith and procedural non-compliance/unfairness.

100. The most important example of Council being “incapable of change” is Council’s prejudgment of the location issue at the June 27, 2017 Council meeting 9 months prior to the adoption of the by-laws and well prior to the SPM. Council did not dispute that it prejudged that issue and, in fact, advised the public of same on several occasions. By definition, this was a position “incapable of change” and the very definition of disqualifying bias.

- **Paras. 44, 47, 50, & 58**

101. Though the above establishes that Council’s position was incapable of change, these were not the only incidents indicating prejudgment. It must also be mentioned that that Councillors stated they were in a “partnership” with Gateway, giving the public the impression that there existed a committed business relationship between Gateway and the City that could not be changed. The differences between the Option Agreements accentuates this. Of the two option agreements requiring a servicing clause, only the KED option agreement actually was negotiated to contain one, despite the fact that the negotiated agreements were to be signed as-is by Council. Finally, during the Council meeting where the Subject By-laws were passed, it seemed that Council had been led to believe that “formal agreements” had bound the City, to the point that clarification was asked for on this point. This was an effective admission that, during the SPM certainly, Councillors had not

known they were free to make their own decisions. In fact, this point was reinforced by comment from other Councillors during other City meetings.

- **Paras. 38-44 above**
- **Fortin Affidavit, AR, Tab 2, V. 1, paras. 137-140 p. 61-62**

102. Even after the passing of the Subject By-laws, the position of Council on this issue was intransigent, to the point that Council seemed to be attempting to create facts on the ground and circumvent the processes of LPAT. Moreover, the previously mentioned threats continued after the adoption of the Subject By-laws and after the filing of the LPAT proceeding and this Application. It seems likely then, that during the period leading up to the SPM and the Council meetings, when the by-laws were being passed, the position of Council was pre-determined and “incapable of change.”

- **Paras. 28-31, 49-50 above**

103. The Applicant submits that, from (i) the Applicant’s evidence, much of it not cross-examined, contradicted, or challenged, and (ii) the City’s own admissions, it is clear that City Council prejudged matters relevant to the Subject By-laws and its position on the Subject By-laws itself.

- **Para. 64 above.**

P. The Remedy

104. The evidence of bad faith, procedural non-compliance/unfairness, and prejudice in this matter is unusually varied and conclusive. Due to the nature of the illegality, it is impossible to know how the approvals would have proceeded had there been no illegality.

105. The Applicant submits that the matter of the KED is a substantive matter that could affect the entire City of Sudbury drastically on a going forward basis. The only fair

remedy for illegal by-laws in such a serious case is to quash them, and the court should order same.

PART IV– ORDER REQUESTED

106. The Applicant requests an order quashing the Subject By-laws and awarding costs to the Applicant.

107. The Applicant requests an order quashing the Subject By-laws and awarding costs to the Applicant.

SCHEDULE A – LIST OF AUTHORITIES

1. *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241 2001 SCC 40
2. *839891 Ontario Inc. v St. Catherines (City)* 1992 CarswellOnt 478 (Ct J Gen Div)
3. *Barrick Gold Corp. v Ontario (Minister of Municipal Affairs & Housing)* 2000 CarswellOnt 4358 (OCA)
4. *Centre hospitalier Mont-Sinaï c Québec (Ministre de la Santé & des Services sociaux)* 2001 SCC 41, 2001 CarswellQue 1272
5. *Chernipeski v Lacombe (Town)* 1996 CarswellAlta 927 (QB)
6. *Clublink v Town of Oakville* 2018 ONSC 7395, 2018 CarswellOnt 20877, (Sup Ct J)
7. *Danbrook v Georgina (Town)* 2014 ONSC 3746, 2014 CarswellOnt 9366, (Div Ct)
8. *Equity Waste Management of Canada Corp. v Halton Hills (Town)* 1997 CarswellOnt 3270 (OCA)
9. *Grosvenor v East Luther Grand Valley (Township)* 2007 ONCA 55, 2007 CarswellOnt 337
10. *H.G. Winton Ltd. v North York (Borough)* 1978 CarswellOnt 491 (Div. Ct.)
11. *Keefe v Edmonton (City)* 2002 ABQB 1098, 2002 CarswellAlta 1683
12. *Langille v Toronto (City)* 2007 CarswellOnt 2822 (Sup Ct J)
13. *Luxor Entertainment Corp. v North York (City)* 1996 CarswellOnt 336 (Div. Ct.)
14. *Markham v. Sandwich South (Township)*, O.J. No. 2183 (OCA)
15. *Nanaimo (City) v Rascal Trucking Ltd.* [2000] 1 S.C.R. 2000 SCC 13 (S.C.C.)
16. *Old St. Boniface Residents Assn. Inc. v Winnipeg (City)* 1990 CarswellMan 235, (SCC)

17. *Pedwell v Pelham (Town)* 2003 CarswellOnt 1701 (OCA)
18. *Pitt Polder Preservation Society v Pitt Meadows (District)* 2000 BCCA 415, 2000 CarswellBC 1349
19. *Robertson v Edmonton (City)* 1990 CarswellAlta 33 (QB)
20. *RSJ Holdings Inc. v London (City)* 2007 SCC 29, 2007 CarswellOnt 3919
21. *Wpd. Sumac Ridge Wind Inc. v Kawartha Lakes (City)* 2014 ONSC 4164 (Div. Ct.)
22. *Xentel DM Inc. v Windsor (City)* 2004 CarswellOnt 3608 (Sup Ct J)

SCHEDULE B – TEXT OF RELEVANT STATUTES/ PROVINCIAL PLANS AND POLICY STATEMENTS (PPS)

1. Section 2, *Municipal Act, 2001* S.O. 2001, c. 25

Purposes

2 Municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for the purpose of providing good government with respect to those matters. 2006, c. 32, Sched. A, s. 2.

2. Section 239(1), *Municipal Act, 2001* S.O. 2001, c. 25

Meetings open to public

S.239 (1) Except as provided in this section, all meetings shall be open to the public. 2001, c. 25, s. 239 (1).

3. Section 239(5), *Municipal Act, 2001* S.O. 2001, c. 25

Open meeting

S.239(5) Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote. 2001, c. 25, s. 239 (5).

4. Section 273(1), *Municipal Act, 2001* S.O. 2001, c. 25

Application to quash by-law

S.273 (1) Upon the application of any person, the Superior Court of Justice may quash a by-law of a municipality in whole or in part for illegality. 2001, c. 25, s. 273 (1).

5. Section 1.1, *Planning Act* R.S.O. 1990, c.P.13

Purposes

1.1 The purposes of this Act are,

- (a) to promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this Act;
- (b) to provide for a land use planning system led by provincial policy;
- (c) to integrate matters of provincial interest in provincial and municipal planning decisions;
- (d) to provide for planning processes that are fair by making them open, accessible, timely and efficient;
- (e) to encourage co-operation and co-ordination among various interests;
- (f) to recognize the decision-making authority and accountability of municipal councils in planning. 1994, c. 23, s. 4.

6. Section 3(5)(a), *Planning Act* R.S.O. 1990, c.P.13

Policy statements and provincial plans

S.3(5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Tribunal, in respect of the exercise of any authority that affects a planning matter,

(a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and

7. Section 17(15)(d), *Planning Act* R.S.O. 1990, c.P.13

Consultation and public meeting

S.17(15) In the course of the preparation of a plan, the council shall ensure that,

...

(d) at least one public meeting is held for the purpose of giving the public an opportunity to make representations in respect of the current proposed plan. 2006, c. 23, s. 9 (2).

8. Section 22(1)(b), *Planning Act* R.S.O. 1990, c.P.13:

Request for amendment

S.22 (1) If a person or public body requests a council to amend its official plan, the council shall,

(b) hold a public meeting under subsection 17 (15) or comply with the alternative measures set out in the official plan. 1996, c. 4, s. 13; 2004, c. 18, s. 4 (1); 2006, c. 23, s. 11 (1).

9. Section 26, *Planning Act* R.S.O. 1990, c.P.13:

Updating official plan

S.26 (1) If an official plan is in effect in a municipality, the council of the municipality that adopted the official plan shall, in accordance with subsection (1.1), revise the official plan as required to ensure that it,

(a) conforms with provincial plans or does not conflict with them, as the case may be;

(b) has regard to the matters of provincial interest listed in section 2; and

(c) is consistent with policy statements issued under subsection 3 (1).

2015, c. 26, s. 24 (1).

Same

(1.1) The council shall revise the plan no less frequently than,

(a) 10 years after it comes into effect as a new official plan; and

(b) every five years thereafter, unless the plan has been replaced by another new official plan. 2015, c. 26, s. 24 (1).

Same

(1.2) For the purposes of establishing the 10-year and five-year periods mentioned in subsection (1.1), a plan is considered to have come into effect even if there are outstanding appeals relating to those parts of the plan that propose to specifically designate land uses. 2015, c. 26, s. 24 (1).

10. Section 34(12)(a)(ii), *Planning Act* R.S.O. 1990, c.P.13:

Information and public meeting; open house in certain circumstances

S.34(12) Before passing a by-law under this section, except a by-law passed pursuant to an order of the Tribunal made under subsection (26),

(a) the council shall ensure that,

(ii) at least one public meeting is held for the purpose of giving the public an opportunity to make representations in respect of the proposed by-law; and

11. Section 4.1 of Growth Plan for Northern Ontario, 2001

4.1 Preamble

How communities are planned and designed has far-reaching impacts. Well-planned and thoughtfully designed communities will attract investment and support economic development, attract and retain skilled workers, strengthen cultural identity and heritage, and maintain a clean and healthy environment. **The policies in this section of this Plan support community planning in Northern Ontario that balances the equally important priorities of human, economic and environmental health.**

Northern Ontario includes 144 municipalities, 106 First Nations, Métis communities, and more than 150 unincorporated communities. These communities are diverse, ranging from remote settlements of just a few hundred people, to large cities. Each of these communities will need to find its role and place in the evolving Northern Ontario economy. All of them will play an important role in implementing this Plan and achieving a healthy, prosperous future for the North.

This begins at the local level with establishing a clear vision for each community's future, and mapping out the path to achieve this vision. **Official plans, community economic plans and participation in community planning efforts are effective tools and approaches to ensure citizens' and businesses' views are reflected in their communities' future economy and long-term sustainability.** Support for the realization of these visions is provided through a range of existing planning and fiscal tools under the Planning Act, as well as other legislation.

Of particular importance are the communities, both large and small, that function as the *economic and service hubs* of the North. These communities act as regional service centres for surrounding communities. They are critical gateways between the North and other economic regions in Ontario and beyond. They are also points of convergence for major infrastructure, including transportation, energy, *information and communications technology*, and *community infrastructure*. The prosperity of all northerners, and all northern communities, depends on the strength of these hubs. They will become the catalysts for the economic development of Northern Ontario.

More than half of northerners live in the cities of Greater Sudbury, North Bay, Sault Ste. Marie, Timmins and Thunder Bay. These cities are economic hubs that benefit all of Northern Ontario, and in some cases have a large bilingual population. They possess the critical mass of skilled people, as well as regional assets such as colleges and universities, innovation centres, media centres,

commerce and cultural facilities that can anchor many of the North's *existing and emerging priority economic sectors*. They are optimal locations for infrastructure investments that help to expand on this potential, and that serve citizens across the North. These cities also have great potential to leverage investments and growth to develop vibrant, mixed-use core areas with a range of employment and housing opportunities, higher density development, and public transit.

Building a vibrant, resilient northern economy requires strong, individual communities. It also requires collaboration among these communities to develop a regional approach to economic development. Collaborative regional economic planning recognizes the interconnectedness and distinct contributions of urban, rural and Aboriginal communities. It complements economic development strategies for Northern Ontario as a whole by tailoring pan-northern directions to local circumstances and opportunities.

12. Section 4.2.1 of the Growth Plan for Northern Ontario

S.4.2.1 All municipalities should, either **individually**, or collaboratively with neighbouring municipalities and Aboriginal communities, **prepare long-term community strategies**. These strategies should support the goals and objectives of this Plan, identify local opportunities to implement the policies of this Plan, and be designed to achieve the following:

- a. economic, social and environmental sustainability
- b. accommodation of the diverse needs of all residents, now and in the future
- c. optimized use of existing infrastructure
- d. a high quality of place
- e. a vibrant, welcoming and inclusive community identity that builds on unique local features
- f. local implementation of regional economic plans, where such plans have been completed.**

13. Section 4.2.2 of the Growth Plan for Northern Ontario

S.4.2.2 Municipalities and planning boards are encouraged to:

- a. align their official plan policies with their long-term community strategies developed in accordance with Policy 4.2.1**
- b. employ the use of available tools to support and facilitate land-use planning that implements their long-term community strategies.

14. Pt. III, How to read the Provincial Policy Statement, Provincial Policy Statement 2014

Part III: How to read the Provincial Policy Statement

The provincial policy-led planning system recognizes and addresses the complex inter-relationships among environmental, economic and social factors in land use planning. The Provincial Policy Statement supports a comprehensive, integrated and long-term approach to planning, and recognizes linkages among policy areas.

Read the entire Provincial Policy Statement

The Provincial Policy Statement is more than a set of individual policies. It is to be read in its entirety and the relevant policies are to be applied to each situation. When more than one policy is relevant, a decision-maker should consider all of the relevant policies to understand how they work together. The language of each policy, including the Implementation and Interpretation policies, will assist decision-makers in understanding how the policies are to be implemented.

15. Part. IV, Vision for Ontario's land use planning system, 2014 Provincial Policy Statement

Part IV: Vision for Ontario's land use planning system

The long-term prosperity and social well-being of Ontario depends upon planning for strong, sustainable and resilient communities for people of all ages, a clean and healthy environment, and a strong and competitive economy.

Ontario is a vast province with diverse urban, rural and northern communities which may face different challenges related to diversity in population, economic activity, pace of growth and physical and natural conditions. Some areas face challenges related to maintaining population and diversifying their economy, while other areas face challenges related to accommodating and managing the development and population growth which is occurring, while protecting important resources and the quality of the natural environment.

Ontario's rich cultural diversity is one of its distinctive and defining features. The Provincial Policy Statement reflects Ontario's diversity, which includes the histories and cultures of Aboriginal peoples, and is based on good land use planning principles that apply in communities across Ontario. The Province recognizes the importance of consulting with Aboriginal communities on planning matters that may affect their rights and interests.

The Provincial Policy Statement focuses growth and development within urban and rural settlement areas while supporting the viability of rural areas. It recognizes that the wise management of land use change may involve directing, promoting or sustaining development. Land use must be carefully managed to accommodate appropriate development to meet the full range of current and future needs, while achieving efficient development patterns and avoiding significant or sensitive resources and areas which may pose a risk to public health and safety.

Efficient development patterns optimize the use of land, resources and public investment in infrastructure and public service facilities. These land use patterns promote a mix of housing, including affordable housing, employment, recreation, parks and open spaces, and transportation choices that increase the use of active transportation and transit before other modes of travel. **They also support the financial well-being of the Province and municipalities over the long term, and minimize the undesirable effects of development, including impacts on**

air, water and other resources. Strong, liveable and healthy communities promote and enhance human health and social well-being, are economically and environmentally sound, and are resilient to climate change.

The Province's natural heritage resources, water resources, including the Great Lakes, agricultural resources, mineral resources, and cultural heritage and archaeological resources provide important environmental, economic and social benefits. The wise use and management of these resources over the long term is a key provincial interest. The Province must ensure that its resources are managed in a sustainable way to conserve biodiversity, protect essential ecological processes and public health and safety, provide for the production of food and fibre, minimize environmental and social impacts, and meet its long-term needs.

It is equally important to protect the overall health and safety of the population. The Provincial Policy Statement directs development away from areas of natural and human-made hazards. This preventative approach supports provincial and municipal financial well-being over the long term, protects public health and safety, and minimizes cost, risk and social disruption.

Taking action to conserve land and resources avoids the need for costly remedial measures to correct problems and supports economic and environmental principles.

Strong communities, a clean and healthy environment and a strong economy are inextricably linked. Long-term prosperity, human and environmental health and social well-being should take precedence over short-term considerations.

The fundamental principles set out in the Provincial Policy Statement apply throughout Ontario. To support our collective well-being, now and in the future, all land use must be well managed.

16. Part V: Policies 1.0 Building strong healthy communities

1.0 Building strong healthy communities

Ontario is a vast province with urban, rural, and northern communities with diversity in population, economic activities, pace of growth, service levels and physical and natural conditions. Ontario's long-term prosperity, environmental health and social well-being depend on wisely managing change and promoting efficient land use and development patterns. Efficient land use and development patterns support sustainability by promoting strong, liveable, healthy and resilient communities, protecting the environment and public health and safety, and facilitating economic growth.

1.7 Long-term economic prosperity

1.7.1 Long-term economic prosperity should be supported by:

a. promoting opportunities for economic development and community investment-readiness;

...

c. maintaining and, where possible, **enhancing the vitality and viability of downtowns and mainstreets;**

SCHEDULE C – TEXT OF SUBJECT BY-LAWS

1. By-law 2018-60P adopted April 10, 2018 approving Official Plan Amendment No. 92 to allow for the development of a casino;
2. Zoning By-Law 2018-61Z adopted on April 10, 2018 as amended by By-law 2018-70Z adopted on April 24, 2018 to permit a casino;
3. Zoning By-law 2018-63Z adopted April 10, 2018 as amended by By-law 2018-72Z adopted on April 24, 2018 to permit and Event Centre;
4. Zoning By-law 2018-62Z adopted on April 10, 2018 as amended by By-law 2018-71Z adopted on April 24, 2018 to permit a parking lot.

By-law 2018-60P**A By-law of the City of Greater Sudbury to
Adopt Official Plan Amendment No. 92 to
the Official Plan for the City of Greater Sudbury**

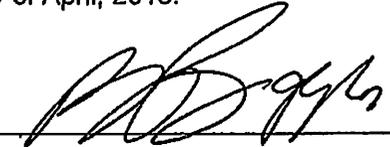
Whereas the Official Plan for the City of Greater Sudbury was adopted by City Council on June 14, 2006 by By-law 2006-200 and partly approved by the Ontario Municipal Board on December 17, 2007, January 22, 2008 and April 10, 2008;

And Whereas the Council of the City of Greater Sudbury deems it desirable to adopt Amendment No. 92 to the Official Plan for the City of Greater Sudbury pursuant to subsection 17(22) of the *Planning Act*, as amended;

Now therefore the Council of the City of Greater Sudbury hereby enacts as follows:

- 1: Amendment No. 92 to the Official Plan for the City of Greater Sudbury attached hereto as Schedule "A" is hereby adopted.

Read and Passed in Open Council this 10th day of April, 2018.



Mayor



Clerk

Schedule "A"
to By-law 2018-60P of the City of Greater Sudbury

AMENDMENT NUMBER 92
TO THE CITY OF GREATER SUDBURY OFFICIAL PLAN

Components of the Amendment: Part A, the Preamble, does not constitute part of this Amendment.

Part B, the Amendment, which consists of the following map entitled Schedule "A", constitutes Amendment 92 to the City of Greater Sudbury Official Plan.

PART A - THE PREAMBLE

Purpose of the Amendment: The proposed amendment is a site specific amendment to provide an exception to 4.5.1.1. to permit a place of amusement in the form of a casino in the General Industrial area.

Location: Parts 3, 4, 8 & 9, Plan 53R-20983, Lots 9 & 10, Concession 4, Township of Neelon (Kingsway, Sudbury)

Basis: Applications for Official Plan Amendment (File #701-6/17-9) and Zoning By-law Amendment (File # 751-6/17-24) have been submitted for consideration by Planning Committee and Council in order to permit a place of amusement in the form of a casino in the General Industrial area. Planning Committee Recommendations #2018-43 and #2018-44, which were ratified by Council on April 10, 2018 recommended approval of the applications, which included amending the Official Plan for the City of Greater Sudbury in order to add a policy permitting the proposed development of the subject lands.

PART B - THE AMENDMENT

1) By adding to Part 22, Site Specific Policies the following Section:

22.100 Notwithstanding anything to the contrary those lands described as Parts 3, 4, 8 & 9, Plan 53R-20983, Lots 9 & 10, Concession 4, Township of Neelon (Kingsway, Sudbury) a place of amusement in the form of a casino shall be permitted.

2) Schedule 2c Site Specific Policies of the Official Plan for the City of Greater Sudbury is hereby amended by adding a site specific policy 22.100 on Parts 3, 4, 8 & 9, Plan 53R-20983, Lots 9 & 10, Concession 4, Township of Neelon (Kingsway, Sudbury) as shown on Schedule "A" attached to this amendment.

Part of Schedule 2c: Site Specific Policies
City of Greater Sudbury Official Plan

22.100
OPA 92

22.9

OMB Order

Kingsway

Raymond Street

Eugene Street

Levesque Street

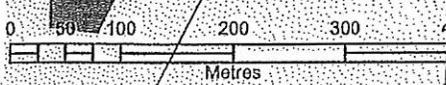
Donald Street

Darby Street

Rheal Street



 Municipal Boundary	Open Space
 Community Boundary	 Parks & Open Space
 Lake	Employment Area
Transportation Network	 Mixed Use Commercial
 Road Network	 Institutional
 Private Road	Industrial
Land Use	 General Industrial
 Living Area	 Heavy Industrial
 Living Area I	



Schedule 'A' to
OPA # 92

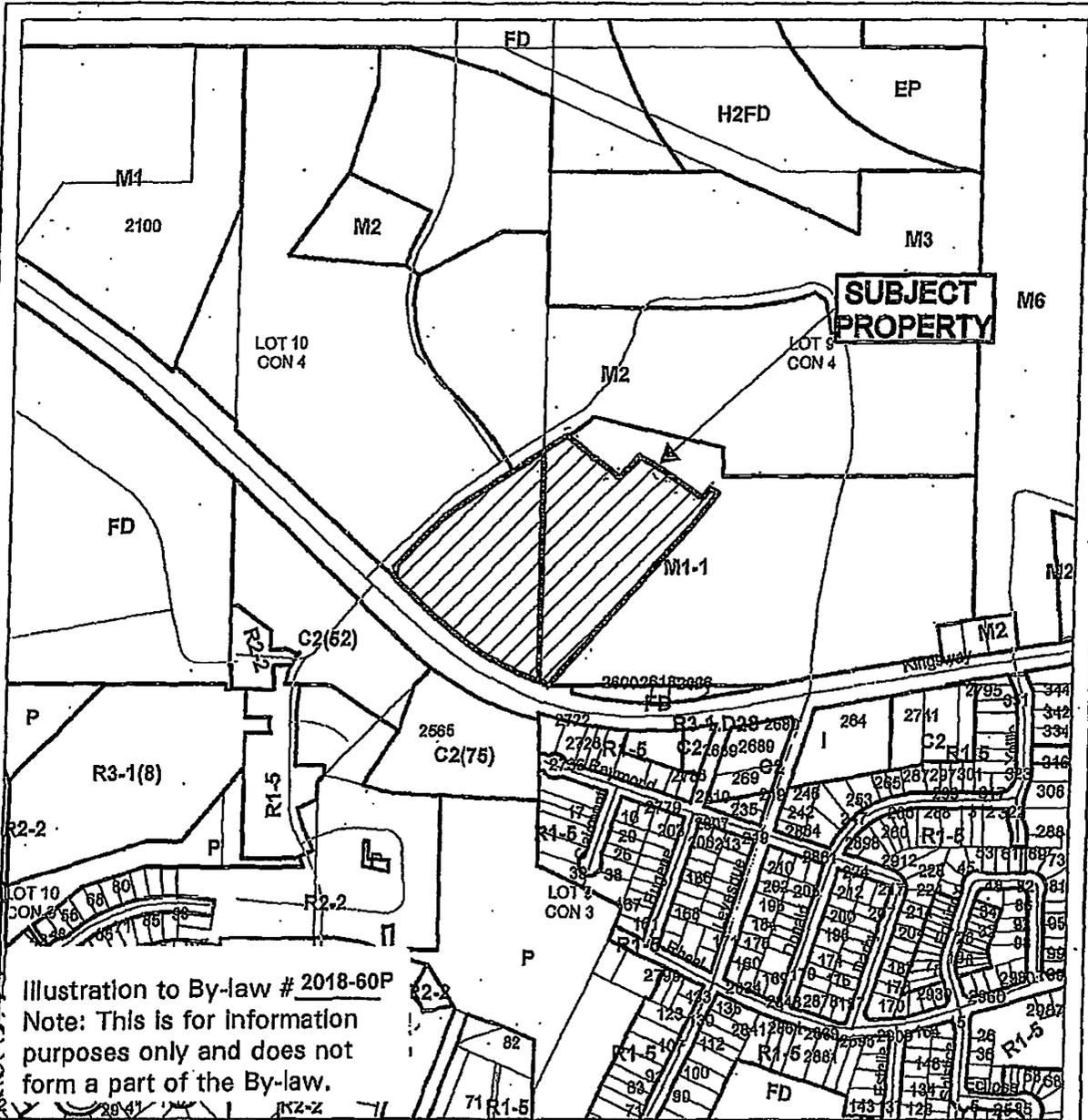
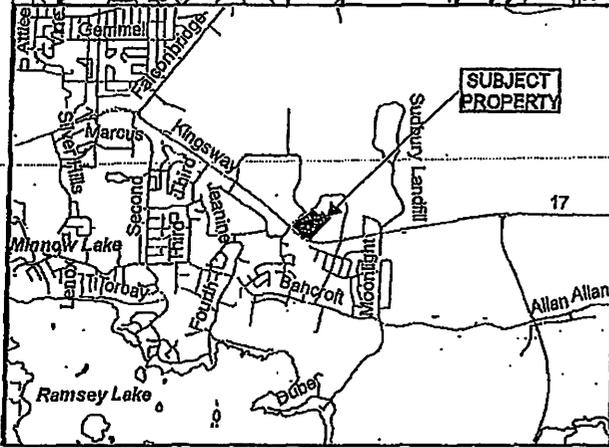


Illustration to By-law # 2018-60P
 Note: This is for information purposes only and does not form a part of the By-law.



Growth and Infrastructure Department

N

Subject Property being part of PINs 73561-0282 & 73561-0264, Part 6 & part of Part 11, Plan 53R-19391
 Lots 9 & 10, Con 4, Twp of Neelon,
 Kingsway, Sudbury, City of Greater Sudbury

NTS 751-6/17-24 & 701-6/17-9
 Sketch 1 Date: 2017 11 23

By-law 2018-61Z

**A By-law of the City of Greater Sudbury to Amend By-law 2010-100Z
being the Comprehensive Zoning By-law for the City of Greater Sudbury**

Whereas Council of the City of Greater Sudbury deems it desirable to amend By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury;

Now therefore Council of the City of Greater Sudbury hereby enacts as follows:

1.-(1) That By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury, Schedule "A" attached thereto, be and the same is hereby amended by:

(2) Property Description: Parts 3, 4, 8 & 9, Plan 53R-20983
Lots 9 & 10, Concession 4
Township of Neelon (Kingsway, Sudbury), City of Greater Sudbury

2. That the following paragraph be added to Part 11, Section 3, Subsection (2):

(p) **M1-1(16) (CASINO)**
**Neelon Township Maps Lot 9, Con 3; Lot 9, Con 4; Lot 10,
Con 3; Lot 10, Con 4**

Notwithstanding any other provision hereof to the contrary, within any area designated M1-1(16) on the *Zone Maps*, all provisions of this By-law applicable to M1-1 Zones shall apply subject to the following modifications:

- (i) In addition to the *uses* permitted in the M1-1 zone, a *place of amusement* in the form of a casino shall be permitted;
- (ii) An *outdoor* plaza shall be permitted as an *outdoor accessory use* to a *place of amusement*, and no parking shall be required for the *outdoor* plaza;
- (iii) A maximum *building height* of 55 m shall be permitted;
- (iv) The *street line* of the street intersecting with the Kingsway shall be deemed to be the *front lot line*;
- (v) A 0 metre *interior side yard* shall be permitted.

3. The applicant, a person or public body who, before the by-law was passed, made oral submissions at a public meeting or written submissions to the council, or the Minister may appeal the passage of this By-law to the Local Planning Appeal Tribunal by filing with the City Clerk:

- (a) a Notice of Appeal;

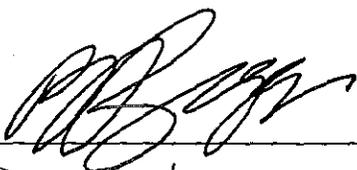
- (b) an explanation of how the by-law is inconsistent with a policy statement issued under subsection 3(1) of the *Planning Act*, fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan; and
- (c) the fee prescribed under the *Local Planning Appeal Tribunal Act, 2017* within 20 days of the giving of notice of passage of the By-law by the City Clerk.

If these materials and fees have not been filed with the City Clerk within this period, this By-law shall be deemed to have come into force on the day it was passed.

If these materials have been received within that time, this By-law shall not come into force until all appeals have been withdrawn or finally disposed of and except for those parts repealed or amended, and in such case it shall be deemed to have come into force on the day it was passed.

4. This By-law is in conformity with the City of Greater Sudbury Official Plan as amended by Official Plan Amendment 92.

Read and Passed in Open Council this 10th day of April, 2018



Mayor



Clerk

By-law 2018-70Z

A By-law of the City of Greater Sudbury to Amend By-law 2018-61Z being a By-law to Amend the Comprehensive Zoning By-law for the City of Greater Sudbury

Whereas Council of the City of Greater Sudbury deems it desirable to amend By-law 2018-61Z being a By-law to amend the Comprehensive Zoning By-law for the City of Greater Sudbury, in order to correct a clerical error in the nature of an omission from 2018-61Z;

Now therefore Council of the City of Greater Sudbury hereby enacts as follows:

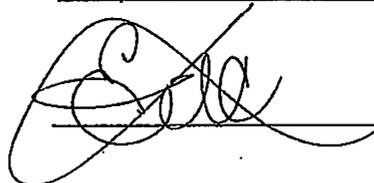
1. That By-law 2018-61Z being a By-law of the City of Greater Sudbury to Amend By-law 2010-100Z being the Comprehensive Zoning By-law for the City of Greater Sudbury is hereby amended by adding the following words to subsection 1(1) immediately after the words "is hereby amended by" and before the colon at the end of subsection 1(1):

"changing the zoning classification of the following lands from "M1-1", Business Industrial to "M1-1(16)", Business Industrial Special".

2. This By-law comes into effect upon passage.

Read and Passed in Open Council this 24th day of April, 2018


 _____ Mayor


 _____ Clerk

By-law 2018-62Z

**A By-law of the City of Greater Sudbury to Amend By-law 2010-100Z
being the Comprehensive Zoning By-law for the City of Greater Sudbury**

Whereas Council of the City of Greater Sudbury deems it desirable to amend By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury;

Now therefore Council of the City of Greater Sudbury hereby enacts as follows:

1.-(1) That By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury, Schedule "A" attached thereto, be and the same is hereby amended by:

- (2) Property Description: Parts 3, 5 & 15, Plan 53R-19391,
Part 7, Plan 53R-20983
Lots 9 & 10, Concession 4
Township of Neelon, City of Greater Sudbury

2. That the following paragraph be added to Part 11, Section 3, Subsection (3):

- (o) **M2(15) (PARKING LOT)**
Neelon Township Maps Lot 9, Con 4; Lot 10, Con 4

Notwithstanding any other provision hereof to the contrary, within any area designated M2(15) on the *Zone Maps*, all provisions of this By-law applicable to M1-1 Zones shall apply subject to the following modifications:

- (i) In addition to the *uses* permitted in the M2 zone, a *parking lot* shall be permitted.

3.-(1) That By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury and Schedule "A" attached thereto, be and the same is hereby amended by changing the zoning classification of the following lands from "M3", Heavy Industrial to "M3(15)", Heavy Industrial Special.

- (2) Property Description: Parts 2 & 14, Plan 53R-19391,
Parts 6 & 13 Plan 53R-20983,
Lots 9 & 10, Concession 4,
Township of Neelon, City of Greater Sudbury

4. That the following paragraph be added to Part 11, Section 3, Subsection (4):

- (o) **M3(15) (PARKING LOT)**
Neelon Township Maps Lot 9, Con 4; Lot 10, Con 4

Notwithstanding any other provision hereof to the contrary, within any area designated M3(15) on the *Zone Maps*, all provisions of this By-law applicable to M1-1 Zones shall apply subject to the following modifications:

(i) In addition to the *uses* permitted in the M3 zone, a *parking lot* shall be permitted.

5. The applicant, a person or public body who, before the by-law was passed, made oral submissions at a public meeting or written submissions to the council, or the Minister may appeal the passage of this By-law to the Local Planning Appeal Tribunal by filing with the City Clerk:

- (a) a Notice of Appeal;
- (b) an explanation of how the by-law is inconsistent with a policy statement issued under subsection 3(1) of the *Planning Act*, fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan; and
- (c) the fee prescribed under the *Local Planning Appeal Tribunal Act, 2017* within 20 days of the giving of notice of passage of the By-law by the City Clerk.

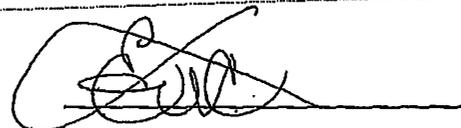
If these materials and fees have not been filed with the City Clerk within this period, this By-law shall be deemed to have come into force on the day it was passed.

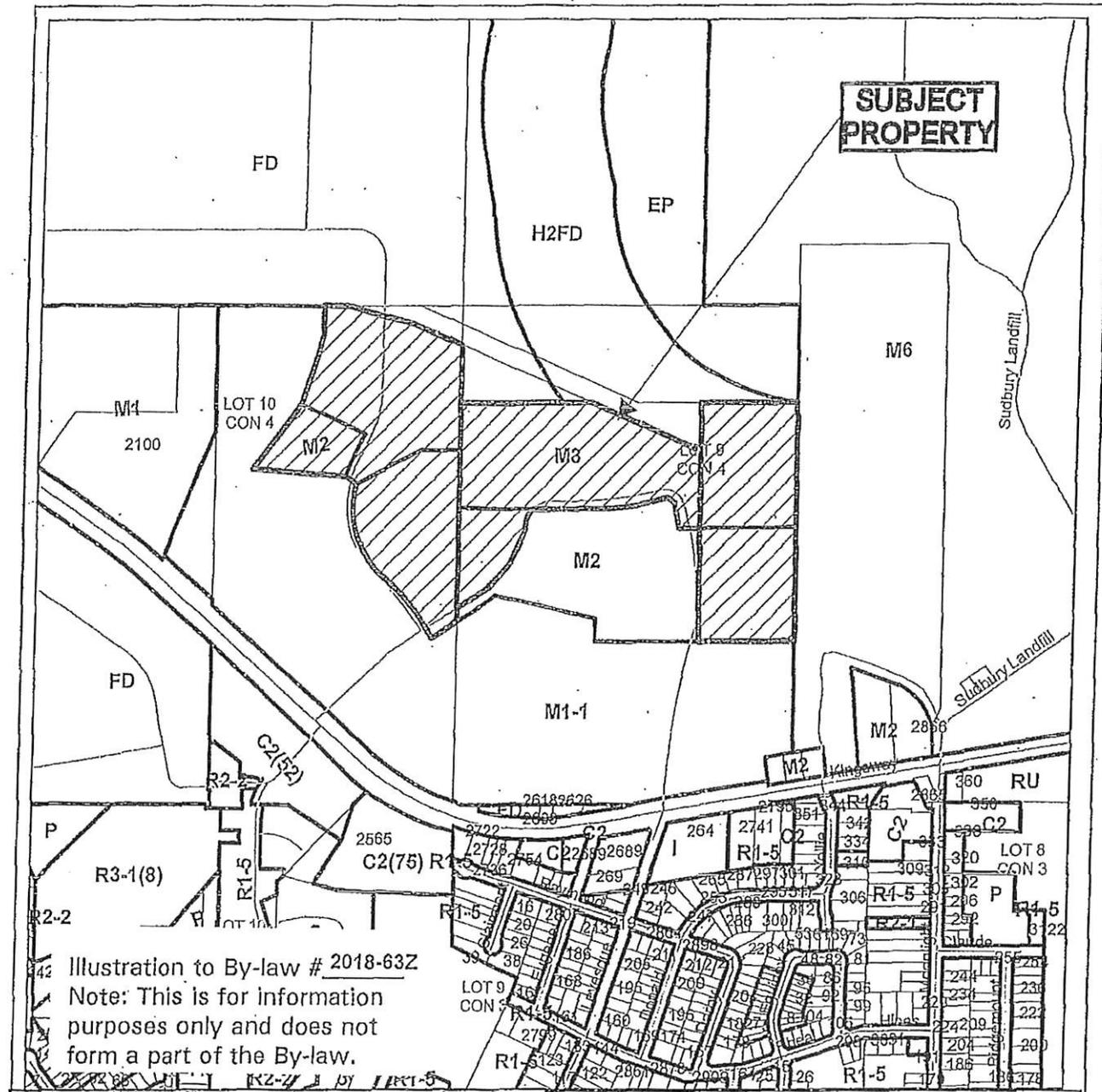
If these materials have been received within that time, this By-law shall not come into force until all appeals have been withdrawn or finally disposed of and except for those parts repealed or amended, and in such case it shall be deemed to have come into force on the day it was passed.

6. This By-law is in conformity with the City of Greater Sudbury Official Plan as amended.

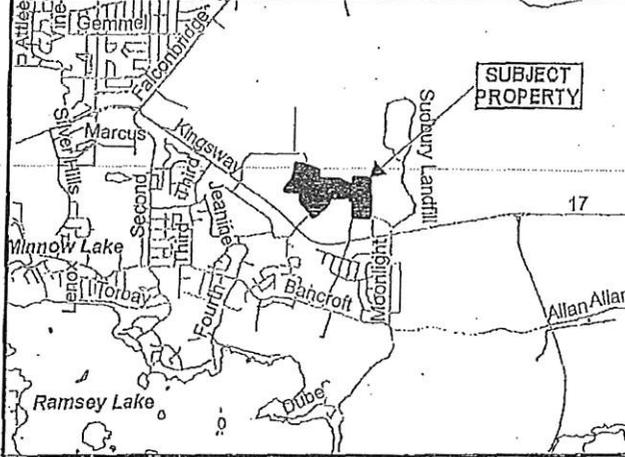
Read and Passed in Open Council this 10th day of April, 2018


Mayor


Clerk



42 Illustration to By-law # 2018-63Z
 Note: This is for information purposes only and does not form a part of the By-law.



Growth and Infrastructure Department



Subject Property being part of PINs-73561-0261, 73561-0264 & 73561-0282, Parts 2, 3, 5; 8, 14, 15, part of Part 10, Plan 53R-19391, Lots 9 & 10, Con 4, Twp of Neelon, Kingsway, Sudbury, CGS

NTS
 Sketch 1

751-6/17-26
 Date: 2017 11 29

By-law 2018-71Z**A By-law of the City of Greater Sudbury to Amend By-law 2018-62Z being a By-law to Amend the Comprehensive Zoning By-law for the City of Greater Sudbury**

Whereas Council of the City of Greater Sudbury deems it desirable to amend By-law 2018-62Z being a By-law to amend the Comprehensive Zoning By-law for the City of Greater Sudbury in order to correct a clerical error in the nature of an omission from 2018-62Z;

Now therefore Council of the City of Greater Sudbury hereby enacts as follows:

1. That By-law 2018-62Z being a By-law of the City of Greater Sudbury to Amend By-law 2010-100Z being the Comprehensive Zoning By-law for the City of Greater Sudbury is hereby amended by adding the following words to subsection 1(1) immediately after the phrase "is hereby amended by" and immediately before the colon at the end of subsection 1(1):

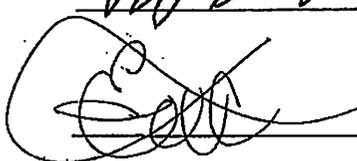
"changing the zoning classification of the following lands from "M2", Light Industrial to "M2(15)", Light Industrial Special".

2. This By-law comes into effect upon passage.

Read and Passed in Open Council this 24th day of April, 2018



Mayor



Clerk

By-law 2018-63Z

**A By-law of the City of Greater Sudbury to Amend By-law 2010-100Z
being the Comprehensive Zoning By-law for the City of Greater Sudbury**

Whereas Council of the City of Greater Sudbury deems it desirable to amend By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury;

Now therefore Council of the City of Greater Sudbury hereby enacts as follows:

- 1.-(1) That By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury, Schedule "A" attached thereto, be and the same is hereby amended by:
 - (2) Property Description: Part 10, Plan 53R-20983, Lot 9, Concession 4, Township of Neelon (Kingsway, Sudbury), City of Greater Sudbury
2. That the following paragraph be added to Part 11, Section 3, Subsection (2):
 - (g) **M1-1(17) (PUBLIC ARENA)**
Neelon Township Maps Lot 9, Con 3; Lot 9, Con 4;
Lot 10, Con 3; Lot 10, Con 4

Notwithstanding any other provision hereof to the contrary, within any area designated M1-1 (17) on the *Zone Maps*, all provisions of this By-law applicable to M1-1 Zones shall apply subject to the following modifications:

- (i) In addition to the *uses* permitted in the M1-1 zone, a *recreation and community centre* shall be permitted;
 - (ii) An *outdoor* plaza shall be permitted as an *outdoor accessory use* to a *recreation and community centre*, and no parking shall be required for the *outdoor* plaza;
 - (iii) That a maximum *building height* of 35 m shall be permitted;
 - (iv) That a 0 metre *interior side yard* shall be permitted.
3. The applicant, a person or public body who, before the by-law was passed, made oral submissions at a public meeting or written submissions to the council, or the Minister may appeal the passage of this By-law to the Local Planning Appeal Tribunal by filing with the City Clerk:
 - (a) a Notice of Appeal;
 - (b) an explanation of how the by-law is inconsistent with a policy statement issued under subsection 3(1) of the *Planning Act*, fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan; and

- (c) the fee prescribed under the *Local Planning Appeal Tribunal Act, 2017* within 20 days of the giving of notice of passage of the By-law by the City Clerk.

If these materials and fees have not been filed with the City Clerk within this period, this By-law shall be deemed to have come into force on the day it was passed.

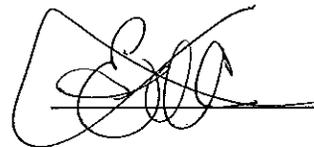
If these materials have been received within that time, this By-law shall not come into force until all appeals have been withdrawn or finally disposed of and except for those parts repealed or amended, and in such case it shall be deemed to have come into force on the day it was passed.

4. This By-law is in conformity with the City of Greater Sudbury Official Plan as amended.

Read and Passed in Open Council this 10th day of April, 2018



Mayor



Clerk

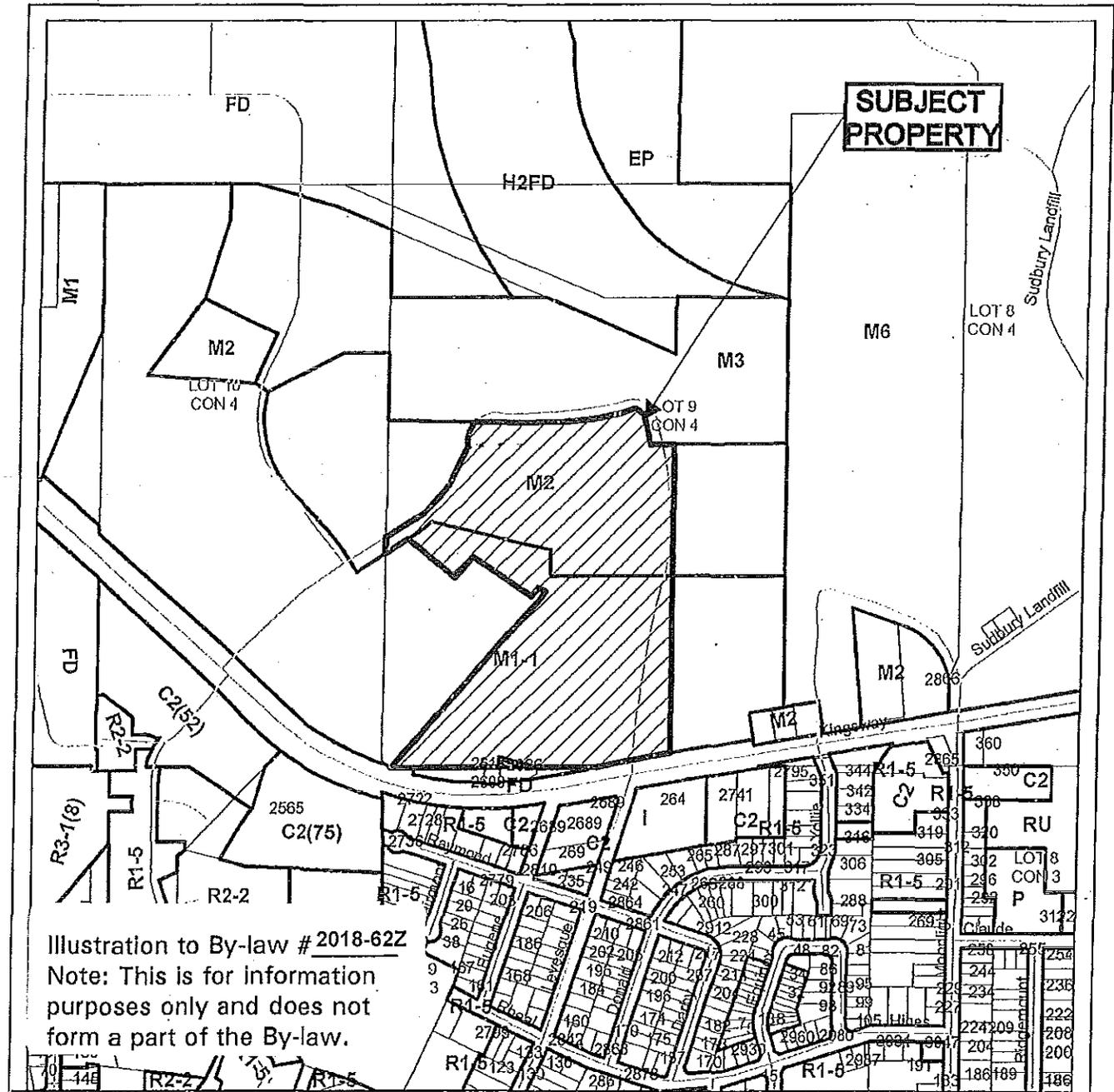
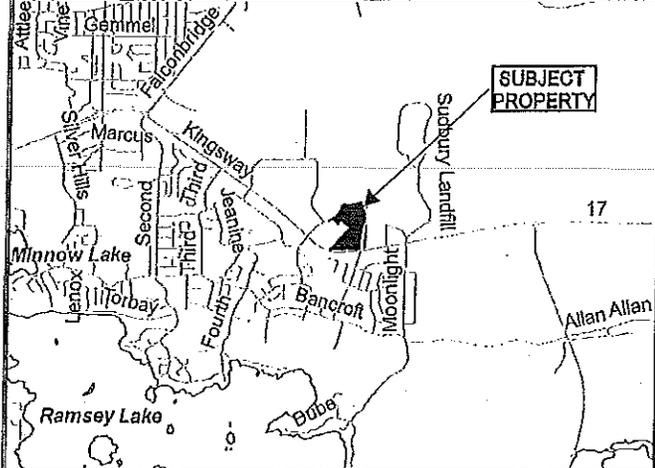


Illustration to By-law # 2018-62Z
 Note: This is for information purposes only and does not form a part of the By-law.



**Growth and Infrastructure
 Department**

N


Subject Property being part of PIN 73561-0282,
 Parts 12 & 13, and part of Parts 10 & 11,
 Plan 53R-19391, Lot 9, Con 3 & 4,
 Twp of Neelon, Kingsway, Sudbury,
 City of Greater Sudbury

NTS
 Sketch 1

751-6/17-27
 Date: 2017 11 30

By-law 2018-72Z**A By-law of the City of Greater Sudbury to Amend By-law 2018-63Z being a By-law to Amend the Comprehensive Zoning By-law for the City of Greater Sudbury**

Whereas Council of the City of Greater Sudbury deems it desirable to amend By-law 2018-63Z being a By-law to amend the Comprehensive Zoning By-law for the City of Greater Sudbury to correct a clerical error in the nature of an omission from By-Law 2018-63Z;

Now therefore Council of the City of Greater Sudbury hereby enacts as follows:

1. That By-law 2018-63Z being a By-law of the City of Greater Sudbury to Amend By-law 2010-100Z being the Comprehensive Zoning By-law for the City of Greater Sudbury is hereby amended by adding the following words to subsection 1(1), immediately after the phrase "is hereby amended by" and immediately before the colon at the end of subsection 1(1):

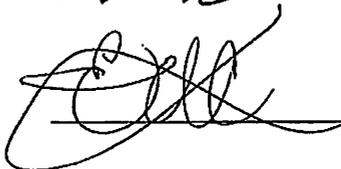
"changing the zoning classification of the following lands from "M1-1", Business Industrial and "M2", Light Industrial to "M1-1(17)", Business Industrial Special".

2. This By-law comes into effect upon passage.

Read and Passed in Open Council this 24th day of April, 2018



Mayor



Clerk

**SUDBURY BUSINESS IMPROVEMENT AREA and TOM
FORTIN**
Applicants

v.

THE CITY OF GREATER SUDBURY
Respondent

Court File No. CV-19-8313-00

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at **Sudbury**

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