

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

HUMMEL PROPERTIES INC.

Plaintiff

and

THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE

Defendant

STATEMENT OF CLAIM

Notice of Application Issued November 22, 2019

**Filed pursuant to paragraph 8 of the order of the
Court of Appeal for Ontario dated October 28, 2022**

1. The Plaintiff, Hummel Properties Inc. (“**Hummel**”), claims against the Defendant, the Corporation of the Town of Niagara-on-the-Lake (“**Town**”):
 - (a) A declaration that the Town’s process leading to the adoption of By-law 5105-18 contravened the Town of Niagara-on-the-Lake Procedural By-law 5125-18, thereby rendering that process, including the Council meeting of December 5, 2018, illegal;
 - (b) A declaration that the Town breached the open meeting requirement of s. 239(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 (“***Municipal Act***”) by engaging in closed discussions regarding By-law 5105-18 leading up to and at the Council meeting of December 5, 2018, thereby rendering that process and the meeting illegal;
 - (c) A declaration that the Defendant acted in bad faith in adopting By-law 5105-15 and By-law 5105A-19;
 - (d) Damages in the amount of \$3,860,000.00;
 - (e) Punitive damages in the amount of \$100,000.00;

- (f) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (g) Costs of this action on a substantial indemnity basis, together with the applicable HST thereon; and
- (h) Such further and other relief as counsel may advise and this Honourable Court may deem just.

The Parties

2. Hummel is a corporation incorporated pursuant to the laws of Ontario with its head office located in St. Davids, Ontario. Hummel is in the business of land development and, at all material times, was the owner of lands within Niagara-on-the-Lake, Ontario, including lands known municipally as 2203 Niagara Stone Road, Niagara-on-the-Lake, Ontario (“**Hummel Lands**”). Hummel had proposed to develop the Hummel Lands through the construction of six townhouse condominium dwelling units and, as of August 2018, had consulted with Town Staff with respect to the necessary development applications to pursue this proposal.
3. The Town is a municipal corporation incorporated pursuant to the laws of Ontario and the provisions of the *Municipal Act, 2001*, S.O. 2001, c. 25 (“***Municipal Act***”).

The 2018 Municipal Election and Pre-Inauguration Activities of Council-Elect

4. On or about October 22, 2018, the Town held a municipal election. As a result of the election, then-Councillor Betty Disero (“**Disero**”) was elected as Lord Mayor, and eight other individuals were elected as Councillors (collectively, “**Council**”), including Stuart

McCormack (“**McCormack**”). These nine individuals were elected to serve for a four-year term commencing on December 1, 2018 and terminating on November 14, 2022.

5. On November 22, 2018, prior to inauguration, while Disero was still a Councillor, Disero directed Town Planning Staff to prepare a draft interim control by-law prohibiting development in the Old Town area of the Town (“**Draft ICBL**”). Disero indicated that she was specifically concerned with prohibiting the subdivision of land within the Old Town. On Disero’s direction, Town Planning Staff proceeded to prepare the Draft ICBL.
6. Disero further directed that the Draft ICBL should be dated December 5, 2018 and asked Town Planning Staff to circulate the Draft ICBL to her, McCormack, and the Town’s Chief Administrative Officer (“**CAO**”) upon its completion.
7. On November 23, 2018, the CAO, acting on the direction of Disero and/or McCormack, directed the Town Clerk to create an agenda for a special meeting of Council, to be held on December 5, 2018 at 9:00 AM (“**Special Meeting**”). The CAO, acting on the direction of Disero and/or McCormack, further directed the Town Clerk that the Draft ICBL and the Special Meeting were “very confidential”.
8. On November 30, 2018, McCormack, then a Councillor-Elect and a private citizen, drafted a resolution for the Draft ICBL, which he circulated to Town Planning Staff, as follows:

“That Council direct Planning Staff to undertake a study of the Zoning and land use policies as they relate to all Residential Zones within the Old Town Community Zoning District in order to determine whether those Zoning policies and provisions should be amended to address land use planning compatibility issues that have been identified since the Official Plan and Zoning By-law Amendment were adopted by Council.”

9. On November 30, 2018, Town Planning Staff circulated the Draft ICBL to Disero and McCormack. The Draft ICBL referenced a resolution that would be passed on December 5, 2018, as follows:

“That Council initiate a comprehensive review of the Town’s Official Plan policies, which will determine the provision of appropriate development policies as required by the *Planning Act*.”

The Special Meeting and the Passing of the Initial Interim Control By-law

10. On December 3, 2018, the newly elected Council’s first regular meeting was held pursuant to the provisions of the *Municipal Act* and Procedural By-law 5125-19 (“**Procedural By-law**”), commencing at 7:00 PM, at which the newly elected Council was inaugurated (“**Inaugural Meeting**”).
11. At the Inaugural Meeting, the nine newly elected Members of Council took the prescribed declaration of office, thereby declaring, *inter alia*, that they will truly, faithfully, and impartially exercise their office to the best of their knowledge and ability. Pursuant to the provisions of the *Municipal Act*, following each Member of Council taking the prescribed declaration of office, Council was permitted to conduct business. Council was prohibited, under the provisions of the *Municipal Act*, from conducting business prior to taking the prescribed declaration of office.
12. Approximately five hundred members of the public were present at the Inaugural Meeting, as were five members of the media, and members of Town Staff. The Inaugural Meeting concluded at 7:40 PM, at which time Council adjourned to the next regular meeting to be held December 17, 2018, deliberately concealing from the public and the media the fact that the Special Meeting would be commencing in thirty-seven hours. The minutes of the Inaugural

Meeting indicate that “if a special meeting is required, it will be held at the call of the Lord Mayor.”

13. There was no mention, at the Inaugural Meeting or in the minutes of the Inaugural Meeting, of Disero and McCormack’s scheme to hold the Special Meeting on December 5, 2018 where they intended to implement interim control. Further, there was no mention, at the Inaugural Meeting or in the minutes of the Inaugural Meeting, of Council having any intent to immediately pursue interim control within the Town.
14. On December 4, 2018, an agenda for the Special Meeting was posted on the Town’s website. The agenda indicated that a special meeting of Council would commence at 8:30 AM on December 5, 2018 and that resolutions concerning “planning related studies” and a “private tree protection by-law” would be adopted during the meeting.
15. At 8:30 AM on December 5, 2018, only thirty-seven hours after the Inaugural Meeting, less than twenty-four hours after the agenda for the Special Meeting was posted on the Town’s website, and notwithstanding that Council ended the Inaugural Meeting by advising over five hundred members of the public and the media that they were adjourning to December 17, 2018, Council held the Special Meeting.
16. The Town failed to comply with the requirements of its Procedural By-law in calling the Special Meeting, including the requirement that notice of the Special Meeting had to be provided no later than the Thursday prior to the Special Meeting, except in the case of an emergency.

17. The only individuals in attendance at the Special Meeting were the newly-inaugurated Council, ten members of Town Staff, and the Town's lawyer. There were no members of the public present at the Special Meeting.
18. At the Special Meeting, Council spent time *in camera*, and then rose from its *in camera* session and enacted By-law 5105-18, being an interim control by-law ("**Initial ICBL**").
19. The preamble to the Initial ICBL provides that on December 5, 2018, Council passed the following resolution:
- "That Council initiate a comprehensive review of the Town's Official Plan policies, which will determine the provision of appropriate development policies as required by the *Planning Act*."
20. Notwithstanding the resolution cited in the preamble to the Initial ICBL, the resolution passed by Council at the Special Meeting directs an entirely different study or review than the one contemplated in the preamble to the Initial ICBL ("**2018 Resolution**"). Specifically, the 2018 Resolution makes reference to interim control "prohibiting land use" in certain areas for certain purposes, whereas the preamble to the Initial ICBL purports to prohibit the subdivision of lands and lot creation.
21. The Initial ICBL was enacted for a one-year period, commencing December 5, 2018, and applied to the Old Town urban area of the Town, including a portion of the Hummel Lands. Pursuant to the Initial ICBL, the subdivision of land was prohibited within the Old Town, including all applications for subdivision, consent, condominium, official plan amendment, and zoning by-law amendment that would facilitate subdivision, consent, or condominium or that would otherwise facilitate the development of townhouse or apartment residential development.

22. On December 7, 2018, Town Planning Staff circulated notice of the passing of the Initial ICBL to stakeholders within the Town, including Hummel.
23. On December 11, 2018, Normand Arsenault (“**Arsenault**”), a Member of Council, raised with Disero that two other interim control by-laws had been passed in 2018 and covered the Old Town. This was of concern to Arsenault because the *Planning Act*, R.S.O. 1990, c. P.13 (“**Planning Act**”) only permits one interim control by-law to govern lands at a time, following which, a further interim control by-law cannot be passed for the same lands for a period of three years. The concern, as it was laid out by Arsenault to Disero, explicitly raised whether the Initial ICBL complied with the *Planning Act*. Disero failed and/or refused to investigate Arsenault’s concern.

The Extension of the Initial ICBL

24. After the enactment of the Initial ICBL, Disero made assurances on several occasions, beginning on December 5, 2018, that the Initial ICBL would only be in place for a few months and would be lifted in an expedient fashion.
25. On December 16, 2018, at the culmination of a four-year review of its Official Plan policies, the Town issued the Final Draft Official Plan. In August 2019, Council then amended the Final Draft Official Plan without consulting the public. The Final Draft Plan was adopted by the Town on October 22, 2019 and submitted to the Regional Municipality of Niagara (“**Region**”) for approval.
26. Notwithstanding that the Official Plan had been passed by Council and submitted to the Region for review and approval, and contrary to the assurances given by Disero concerning Council’s

intent to lift the Initial ICBL in an expedient fashion, on November 11, 2019, the Initial ICBL was extended for an additional one-year period, to November 11, 2020, by way of By-law 5105A-19 (“**Extended ICBL**”).

The Repeal of the Extended ICBL

27. In April 2020, Council approved an exemption process for the Extended ICBL. There was no planning justification for the exemption criteria.

28. In June 2020, Council repealed the Initial ICBL and the Extended ICBL.

The Impact of the Initial ICBL and the Extended ICBL on the Hummel Lands

29. On or about August 16, 2018, prior to the election, representatives of Hummel attended a pre-consultation meeting with Town Staff, as well as representatives from other agencies, to discuss Hummel’s plans for the development of the Hummel Lands (“**Pre-Consultation Meeting**”).

30. At the Pre-Consultation Meeting, the Town directed Hummel to undertake several studies to facilitate the necessary approvals for the development of the Hummel Lands, including:

- (a) A planning impact analysis;
- (b) A streetscape plan;
- (c) A site plan;
- (d) A landscape plan;
- (e) Architectural evaluations;
- (f) A draft plan of condominium;
- (g) A draft zoning by-law amendment;

- (h) An archaeological assessment;
- (i) An environmental impact study;
- (j) An arborist report;
- (k) A noise vibration and emissions study;
- (l) A servicing brief;
- (m) A slope stability report;
- (n) A storm water management report;
- (o) A lot grading and drainage plan; and
- (p) A traffic sight line study.

31. In order to proceed with the proposed development of the Hummel Lands, Hummel was required to undertake these studies and then prepare and submit the formal application for development to the Town. Specifically, following the Pre-Consultation Meeting, between mid-August 2018 and December 2018 Hummel promptly moved forward with the following background studies:

- (a) Environmental Impact Study Addendum, completed by Beacon Environmental in December 2018;
- (b) Noise Study, completed by Valcoustics in November 2018;
- (c) Servicing Brief, completed in draft form before being put on hold in November 2018;
- (d) Traffic Study, completed by Paradigm Transportation Solutions in October 2018; and
- (e) Planning Report, completed in draft form before being put on hold in November 2018.

32. As a result of the Town's passing of the Initial ICBL in December 2018, Hummel was required to put its development plans for the Hummel Lands on hold, after already completing

significant work at the Town's direction between the Pre-Consultation Meeting on August 16, 2018 and the passing of the Initial ICBL on December 5, 2018.

33. Following the Town's passing of the Initial ICBL, Hummel retained ACK Architects to explore alternative designs to intensify the proposed development for the Hummel Lands in an effort to mitigate its damages. Further, Hummel retained 2M Architects to explore townhouse designs for the Hummel Lands to determine whether it was financially viable to continue with the proposed townhouse development.

34. During the time that the Initial ICBL and Extended ICBL were in effect, Hummel retained Upper Canada Consultants to explore servicing options for the Hummel Lands to further determine the available capacity and potential density that the Hummel Lands could support.

35. Following the Town's repeal of the Extended ICBL, Hummel was required to review the background studies that had been completed between mid-August 2018 and December 2018 to determine whether further work on these studies would be required. As a result of the passage of time and changes in the policies and laws which apply to the development of the Hummel Lands, these background studies need to be updated.

Hummel's Application to Quash the Initial ICBL and the Extended ICBL

36. On November 22, 2019, Hummel caused a Notice of Application bearing Court File No. CV-19-00059309-000 ("**2019 Application**") to be issued seeking, *inter alia*, an order quashing the Initial ICBL and Extended ICBL for illegality, pursuant to s. 273(1) of the *Municipal Act*. The 2019 Application further alleged that the process leading to the adoption of the Initial ICBL was illegal and that the Town acted in bad faith in passing the Initial ICBL, and sought an order

directing a trial on Hummel's damages flowing from the Town's negligent misrepresentations and misfeasance in public office.

The Court of Appeal's Findings on the 2019 Application

37. With respect to the 2019 Application, the Court of Appeal for Ontario found:

- (a) The Initial ICBL and the Extended ICBL were illegal because they did not relate to "land use" as required by s. 38 of the *Planning Act*; and
- (b) The Initial ICBL and the Extended ICBL were illegal under s. 38(7) of the *Planning Act* because another interim control by-law affecting the Hummel Lands was in force at the time the Initial ICBL and the Extended ICBL were passed.

38. The Court of Appeal further directed that the 2019 Application return to the Superior Court of Justice by way of fresh pleadings:

- (a) For a trial on Hummel's damages arising from its claims of negligent misrepresentation and misfeasance in public office; and
- (b) For the parties to litigate afresh Hummel's allegations that the process leading to the adoption of the Initial ICBL was illegal and that the Initial ICBL was enacted in bad faith.

The Process Leading to the Adoption of the Initial ICBL was Illegal

39. The process leading to the adoption of the Initial ICBL was illegal, the particulars of which include:

- (a) The Special Meeting was not open to the public when the *Municipal Act* required it to be;
- (b) Notice of the Special Meeting was not provided in accordance with the requirements under the Procedural By-law;

- (c) The Town posted an agenda in advance of the Special Meeting that did not adequately explain or disclose the purpose of the Special Meeting or that an interim control by-law may be enacted;
- (d) The Town, including Members of Council, and specifically Disero and McCormack, engaged in discussions with respect to the Initial ICBL outside of the Special Meeting and in a manner that was not in public; and
- (e) Such further and other instances of illegality, the full particulars of which will be provided prior to trial.

The Town's Bad Faith

40. In passing the Initial ICBL and the Extended ICBL, the Town, through Members of Council-Elect, Members of Council, and/or Town Staff, acted in bad faith, the particulars of which include:

- (a) Prior to inauguration, Members of Council-Elect, including Disero and/or McCormack, engaged in a scheme to swiftly implement interim control within the Old Town that was deliberately secretive, conducted outside of the public realm, and served the private interests of Members of Council-Elect;
- (b) It planned and held the Special Meeting when it knew, or ought to have known, that it had not complied with the notice provisions under the Procedural By-law and further, that its failure to comply with the notice provisions under the Procedural By-law would mislead the public with respect to when Council would be conducting its business;
- (c) It deliberately failed to make any mention of the Special Meeting or plans concerning interim control at the Inaugural Meeting in order to mislead the public and eliminate the

possibility that members of the public or the media would attend the Special Meeting to oppose the Initial ICBL;

- (d) It held the Special Meeting on a weekday morning to further reduce the possibility that members of the public or the media would attend to oppose the Initial ICBL;
- (e) It, and specifically Disero and/or McCormack, engaged in communications, decisions, and directions regarding the Initial ICBL before Council-Elect's term had commenced and without any authority to do so;
- (f) It, and specifically Disero and/or McCormack, engaged in communications, decisions, and directions regarding the Initial ICBL without regard for the requirement that municipal government decision-making be open and transparent or the enhanced transparency requirements imposed on municipalities when pursuing interim control;
- (g) It proceeded with interim control without any staff recommendation or other publicly available report indicating that interim control in the Old Town was necessary and justifiable;
- (h) Its dominant motivation in passing the Initial ICBL and the Extended ICBL was to injure another developer through impeding that developer's ability to develop its lands within the Old Town;
- (i) Its decision to pass the Initial ICBL and Extended ICBL was born of grudges against another developer;
- (j) It knew, or should have known, that the Initial ICBL and the Extended ICBL were likely to injure all developers with development interests in the Old Town area, including Hummel;
- (k) Disero and McCormack acted in concert to have Council pass the Initial ICBL;

- (l) In passing the Initial ICBL, Council voted *en bloc* at the instigation of Disero and/or McCormack;
- (m) It, and specifically Disero, failed to investigate the concern raised by Arseneault to Disero on December 11, 2018 that the Initial ICBL was enacted contrary to the cooling-off period mandated by the *Planning Act*;
- (n) At the time the Initial ICBL was passed, the Town had already reviewed its Official Plan policies to determine the provision of appropriate development policies as required by the *Planning Act*;
- (o) At the time the Extended ICBL was passed, the Official Plan had been passed by Council and submitted to the Region for review and approval. As a result, additional time was not required to permit completion of all phases of the review and approval of the final Official Plan as it had already been passed by Council;
- (p) At the time the Initial ICBL was passed, the Town knew of Hummel's proposed development for the Hummel Lands and that if the Initial ICBL was passed, Hummel would be prevented from proceeding with the proposed development;
- (q) At the time the Initial ICBL was passed, the Town knew that Hummel had undertaken studies, imposed by the Town at the Pre-Consultation Meeting in August 2018, and that the passing of the Initial ICBL would render those studies futile;
- (r) It, and specifically Disero, created a false expectation following the passing of the Initial ICBL that it would be short-lived and lifted in an expedient fashion, so as to discourage stakeholders from immediately challenging it, when it knew, or ought to have known, that the Extended ICBL would ultimately be passed;
- (s) It proceeded with interim control without a *bona fide* planning rationale;

- (t) The Initial ICBL did not authorize a *bona fide* study;
- (u) The Initial ICBL was not passed for legitimate land-use planning grounds;
- (v) The Extended ICBL did not authorize the continuation of a *bona fide* study;
- (w) The Extended ICBL was not passed for legitimate land-use planning grounds;
- (x) In enacting the Extended ICBL, the Town knew, or ought to have known, that the justification it cited was false;
- (y) The Initial ICBL and the Extended ICBL were enacted for an improper purpose;
- (z) The Town knew, or ought to have known, that the Initial ICBL was passed contrary to the limitations of the *Planning Act* and specifically, the limitation that where an interim control by-law ceases to be in effect, the council of a municipality may not for a period of three years pass a further interim control by-law that applies to any lands which the original interim control by-law applied; and
- (aa) Such further and other actions which constitute bad faith, the full particulars of which will be provided prior to trial.

41. The Town is vicariously liable for the above noted actions of Council, Members of Council-Elect, and Town Staff, and specifically, those actions of Disero and McCormack.

The Town's Misrepresentations

42. Through enacting the Initial ICBL and the Extended ICBL, the Town, through Council-Elect, Council, and/or Town Staff, made the following representations:

- (a) It, and specifically Disero, provided assurances on several occasions, commencing on December 5, 2019, that the Initial ICBL would be short lived and lifted in an expedient fashion;

- (b) Immediately after passing the Initial ICBL, it, and specifically Disero, made representations that the purpose of the Initial ICBL was to provide a “pause in the Old Town for a few months until we decide where the heritage boundaries should go and the type of housing we want in the Old Town. This will not impact commercial or industrial in the Old Town. People can still get permits to renovate or put on extensions, etc.” when it knew, or ought to have known, that the Initial ICBL implemented a complete prohibition against lot creation within the Old Town across all zones; and
- (c) Contrary to the assurances given regarding the intent to lift the Initial ICBL in an expedient fashion, it enacted the Extended ICBL on November 11, 2019 for an additional year.

43. These representations were made with the intent that Hummel, and others, would rely upon the truth of such representations and forgo commencing any legal challenge to the Initial ICBL. When making such representations, the Town, including Disero and/or McCormack, knew, or should have known, that such representations were false and that Hummel, and others, would be relying upon the truth of the representations in determining whether or not to bring a legal challenge to the Initial ICBL. The Town, including Disero and/or McCormack, made the representations with the intent that Hummel and others would rely on them. Accordingly, the Town acted intentionally, or in the alternative, negligently, in making such representations and Hummel has suffered damages as a result of relying upon such representations.

44. The Town is vicariously liable for the above noted misrepresentations of Council, Members of Council-Elect, and Town Staff, and specifically, those actions of Disero and McCormack.

The Town's Misfeasance in Public Office

45. In pursuing the Initial ICBL and the Extended ICBL, the Town and its Members of Council and Council-Elect, including Disero and McCormack, in their capacities as public officers, for whom the Town is vicariously liable, engaged in conduct that was deliberate and unlawful with knowledge that the conduct was contrary to and *ultra vires* the statutory obligations and authority placed upon the Town under the *Municipal Act* and the *Planning Act*, and with knowledge that the illegal passing of the Initial ICBL and the Extended ICBL was likely to harm Hummel, the particulars of which include:

- (a) Disero, acting in her capacity as Lord Mayor-Elect, directed Town Planning Staff to prepare the Draft ICBL prior to her inauguration and without any authority to do so;
- (b) Disero and/or McCormack, acting in their capacities as Lord Mayor-Elect and Councillor-Elect, directed the Town Clerk to create the agenda for the Special Meeting, prior to inauguration and without any authority to do so;
- (c) Disero and/or McCormack specifically directed Town Staff to conceal the fact that a Special Meeting had been called in an effort to limit public awareness;
- (d) The Town, and specifically Disero and/or McCormack, were aware of the notice requirements for the Special Meeting as set out in the Procedural By-law, yet failed and/or refused to comply with such requirements;
- (e) The Town, and specifically Disero, ended the Inaugural Meeting by deliberately concealing the fact of the Special Meeting from the public and media;
- (f) The Town posted an agenda for the Special Meeting on its website that failed to disclose that interim control would be discussed at the Special Meeting, despite knowing for over

ten days at that time that the purpose of the Special Meeting was to consider the Draft ICBL;

- (g) The Town, at the instigation of Disero and/or McCormack, discussed the Initial ICBL *in camera* at the Special Meeting despite knowing that the requirements for a closed session as provided by the *Municipal Act* were not satisfied;
- (h) The Town, including Disero, failed to repeal the Initial ICBL in response to the concern raised by Arsenault on December 11, 2018 that the Initial ICBL contravened the cooling-off period mandated by the *Planning Act*. Instead, the Town permitted the Initial ICBL to remain in force for a year and subsequently enacted the Extended ICBL, despite knowing of the contravention of the *Planning Act* as raised by Arsenault;
- (i) Through the Initial ICBL, the Town prohibited the subdivision of land within the Old Town, despite knowing that the *Planning Act* did not permit the use of interim control to prohibit the subdivision of land;
- (j) The Town knew, or should have known, that the Initial ICBL and Extended ICBL would affect the entire development community with interests in the Old Town, including Hummel;
- (k) The Town, and specifically Disero and/or McCormack, directed the pursuit of interim control in the Old Town for collateral political purposes, including in order to target a specific developer and impede that developer's ability to proceed with the subdivision of its lands;
- (l) The Town, and specifically Disero and McCormack, acted in bad faith and without regard to the obligations placed upon them under the *Municipal Act*, the *Planning Act*, and the Procedural By-law;

- (m) The Town, including Disero and McCormack, knew that by prohibiting development in the Old Town under the Initial ICBL and the Extended ICBL, Hummel's development plans for the Hummel Lands would be negatively impacted thereby causing Hummel to suffer damages;
- (n) In the alternative, the Town, including Disero and McCormack, was recklessly indifferent to the possibility that the prohibition on development in the Old Town under the Initial ICBL and the Extended ICBL were likely to cause damage to Hummel; and
- (o) Such further and other actions that constitute misfeasance in public office, the full particulars of which will be provided prior to trial.

Hummel's Damages

- 46. As a result of the Town's bad faith, misrepresentations, and misfeasance in public office, Hummel's ability to proceed with the development of the Hummel Lands has been impeded.
- 47. Specifically, but for the Town's actions in passing the Initial ICBL in December 2018 and the Extended ICBL in November 2019, Hummel would have been in a position to commence construction on the Hummel Lands by late 2019 or early 2020. At that time, prior to the onset of the COVID-19 pandemic, construction costs were significantly lower than they are in the present day, following the surge in construction costs that was tied to the COVID-19 pandemic. Had Hummel been able to commence construction in late 2019 or early 2020, it would have avoided these increased construction costs and as a result, been able to complete the development of the Hummel Lands at a significantly reduced cost as compared to the present cost.

48. Further, had Hummel been permitted to commence construction by late 2019 or early 2020, construction would have been completed and Hummel would have been in a position to sell the dwelling units by early 2021 into 2022, when the local real estate market was at its peak. Following the first quarter of 2022, the real estate market experienced a significant correction. As a result, Hummel will be in the position of selling the dwelling units at prices which are lower than the dwelling units could have been sold for had construction been completed by 2021, as intended prior to the Town's passing of the Initial ICBL.

49. The Town's actions have caused, and continue to cause, Hummel to incur delays, additional costs, and additional expenses with respect to such developments in the sum of \$3,860,000.00, particularized as follows:

- (a) \$2,500,000.00, being the increase in the cost to carry out the construction of the proposed six townhouse dwelling units between Fall 2019, when the construction on the Hummel Lands was scheduled to commence, and 2022, when construction could proceed following the repeal of the Extended ICBL and the completion of the prerequisites to the development of the Hummel Lands as imposed by the Town;
- (b) \$400,000.00, attributable to increased carrying costs; and
- (c) \$960,000.00, being the decrease in sale price of the units attributable to the depression of the real estate market within Niagara-on-the-Lake following March 2022.

50. Further, the Town's actions as set out above constitute a wanton, willful, and reckless disregard of Hummel's rights and the Town's obligations at law. As a result, Hummel claims punitive damages.

51. Hummel pleads and relies upon the provisions of the following statutes and by-laws:

- (a) *Municipal Act, 2001*, S.O. 2001, c. 25;
- (b) *Planning Act*, R.S.O. 1990, c. P.13;
- (c) The Corporation of the Town of Niagara-on-the-Lake By-law No. 5125-19, being the Procedural By-law of the Corporation of the Town of Niagara-on-the-Lake; and
- (d) Such further and other statutes and by-laws as counsel may advise and this Honourable Court may permit.

52. Hummel proposes that this trial of this action be heard at St. Catharines.

Date: April 3, 2023

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Plaintiff

and

NIAGARA-ON-THE-LAKE (TOWN)
Defendant

Court File No.: CV-19-00059309-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
ST. CATHARINES

STATEMENT OF CLAIM
(Notice of Application Issued November 22,
2019)

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