

From: [Laura Thompson](#)
To: [Laura Thompson](#)
Cc: [Ted Emond](#); [David Campbell](#)
Subject: Correspondence re GIPOA Discovery Process
Date: August-28-20 7:46:28 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)
[image004.jpg](#)
[20200827 - Crawford re enforcement of GIPOA dock.pdf](#)

Good Morning,

The City of Orillia recently received a copy of the correspondence (included below) which was issued by the Grape Island Property Owners' Association (GIPOA) to GIPOA members. The City has been asked to confirm if the statements contained within this correspondence are accurate. I have provided the City's response to these statements below for clarity. The City's responses have been highlighted in yellow.

Additionally, the City has received a number of inquiries regarding the GIPOA restricting access to the garbage pick-up location to Grape Island residents who are no longer GIPOA members. Please be advised that the City is exploring possible solutions and will be bringing forward a report at a later date on this matter.

To ensure that all communications remain clear and accurate, please also find attached correspondence which was sent to GIPOA yesterday, advising that because GIPOA has restricted dock access to some residents of Grape Island, this dock is not in compliance with Policy 1.6.1.1. and must be removed immediately. The City has offered to hold enforcement action in abeyance (delay enforcement actions) for a period of approximately 7 weeks (until October 14, 2020), provided the GIPOA lifts restrictions and allows all property owners' of Grape Island to utilize the dock which is located on the municipally owned water lot. In order for the City to hold enforcement action in abeyance, the City would require written Board confirmation that these restrictions are lifted, by noon on Monday, August 31, 2020.

The City continues to provide open and transparent information through the [Forest Avenue South road allowance and water lot webpage](#), and by answering inquiries the City receives in regards to this matter.

Should you have any further questions, I encourage you to contact me at the number below.

Thank you,



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On Aug 25, 2020, at 8:40 PM, Grape Island Property Owners Association <grapeisland@gmail.com> wrote:

Dear Members:

We regret to inform you the Discovery Process will not be taking place on August 26 & 27 as scheduled. We received notification from the City's lawyer indicating that the City is unable to deliver it's non-privileged documents (known as 'productions') in time for Discovery, which were then 2 business days away. Mr. Wood gave no explanation for the delay in getting the documents other than they were being "organized".

- It should be noted that the GIPOA took no steps to move this litigation forward for a period of roughly eight months, from October 2019, when the pleadings closed, to June 2020.
- The City received correspondence on July 7, 2020 that the GIPOA wished to proceed with discoveries, and the City has worked diligently since that time to review its archives, gather relevant documents and schedule examination dates.
- The City (through the City's solicitor) sought a postponement due to the volume of material being compiled for the discovery process. This matter extends back to 1956 and as such the City has an extensive amount of records which reference key words such as "Forest Avenue", "water lot", "Grape Island", etc. As of Friday, August 21, the City had compiled a draft Affidavit of Documents which included more than 1,150 pages of material. Through a subsequent search of the City's archival system, several hundred additional documents were found. The City's solicitor advised that rather than inundating GIPOA with thousands of irrelevant pages of material, the City was working to refine the documents to those which are relevant to the litigation, and asked for additional time to prepare this. This saves the City and GIPOA both time and money associated with examinations for discovery. GIPOA's solicitor confirmed with the City's solicitor that it was his preference that only relevant material be provided. The City's solicitor and GIPOA's solicitor agreed on a date of delivery of August 28, 2020, and the City is on track to meet this agreed upon timeline.

In the circumstances, Mr. Du Vernet had little choice but to move the Examination days. It appears that the City is trying to delay discovery and is conducting itself in bad faith. The City appears to be completely disregarding its obligations as a litigant. The documents/productions would have been available in order for Mr Wood (City's legal counsel) to prepare the City's Statement of Defense.

- The City has continuously sought opportunities to resolve the encroachment

issues on the municipal water lot through the appointment of a Working Group, the collection of feedback and insight through various surveys, and the development of a dedicated webpage at www.orillia.ca/forestave for the sharing of information and FAQ.

- The City is eager to see these encroachment matters resolved as soon as possible.

Mr. Du Vernet advised Mr. Wood that he was not prepared to leave the next Examination days unscheduled. Mr. Wood after some reluctance and only when pressed said he was available in the first week of October. Mr. Du Vernet formed the impression that Mr. Wood was hoping to avoid conducting Examinations at all. Mr. Du Vernet will continue to press for a Discovery date in September.

- When the City sought a postponement, GIPOA's solicitor advised that he was available on October 1 and October 2. The City immediately agreed to meet during those dates.
- Since the phone call between solicitors last Friday, Mr. DuVernet has advised that he is now available in September. The City is happy to accommodate an earlier date, and is available to meet on dates Mr. DuVernet has put forward (September 10, 11, 18) or we could be available even earlier (September 8 or 9).

Mr. Du Vernet does not believe that the City's documents are not ready. He believes instead that the City is trying to buy some time. As it has come to light through discussion with Mr. Wood the City staff is preparing a report to present to council in September regarding GIPOA issues.

- As the City advised all residents of Grape Island, the City is preparing a staff report which will outline options for long term solutions to encroachments on the municipal water lot.
- While there is an overlap between the matters to be discussed in the report, and the matters addressed within the litigation, it should be noted that this report is not directly related to the litigation. For example, this report is not meant to constitute a legal settlement, nor does the report address GIPOA's claim for proprietary estoppel and their claim for approximately \$3.1 million in damages.
- Staff are hopeful that this report may address many of the other concerns raised over the past years, and GIPOA may therefore wish to withdraw their claim.
- As such, GIPOA may wish to save the costs on the discovery process until the report is viewed. However, the City is prepared to proceed with examinations for discovery in advance of this report if this is the desire of GIPOA.

GIPOA has not been approached or has not seen any report pertaining to our current litigation position. We have asked Mr. Du Vernet to request a copy of this said report.

- As noted above, this report is related to matters at the Forest Avenue water lot, but this report is not drafted in relation to GIPOA's Statement of Claim. Consultation regarding the long term solution to encroachments on the

municipally owned water lot have taken place over the past several years, and include;

- Ongoing discussion with, and correspondence from, property owners on Grape Island and along Victoria Crescent.
- Working Group discussions with representatives of Grape Island and Victoria Point.
- A survey of all area residents undertaken in the summer of 2019.
- A survey of all Grape Island residents undertaken in the May 2020.
- A survey of all Grape Island residents undertaken in the August 2020.
- Staff and Ward Councillor attendance at various meetings, one-on-one discussions and phone calls related to this matter.
- A webpage has been developed to ensure clear and consistent provision of information. This also includes a mailing list and contact information for key City representatives should residents have inquiries and/or wish to share their feedback on this matter.

Mr. Du Vernet stated that in his 35 years of practice he has never had a Defendant fail to disclose its documents/productions in a timely manner. Even self-represented litigants have appreciated and fulfilled this obligation, and they lack the extensive resources of Mr. Wood's firm.

- As noted above, the City was prepared to provide all documents referencing Grape Island related key words to GIPOA's solicitor on Friday, August 21, 2020.
- Both solicitors agreed that it would be more appropriate for the City to refine these documents to include relevant documents only, and a new timeline of Friday, August 28 was agreed upon.

We will continue to update you as new information comes.

Please do not hesitate to contact any Board member for further discussion or to answer any questions. Also please feel free to direct you questions or comments to: GrapelIsland@gmail.com

Sincerely,
GIPOA Board of Directors