Court File No. CV-19-1462

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

GRAPE ISLAND PROPERTY OWNERS ASSOCIATION INC.

Plaintiff

and

CORPORATION OF THE CITY OF ORILLIA

Defendant

STATEMENT OF DEFENCE

1. Save as expressly admitted herein, the defendant (the "**City**") denies the allegations in the plaintiff's statement of claim and puts the plaintiff to the strict proof thereof.

2. The City admits the facts alleged in paragraphs 3, 13, 16 and 49 of the plaintiff's statement of claim.

3. With respect to paragraphs 18, 27, 31, 32, 34 and 35 of the plaintiff's statement of claim, the City has insufficient knowledge to admit or deny the plaintiff's allegations.

4. With respect to paragraph 2 of the plaintiff's statement of claim, the City admits the allegation in the first sentence, but believes that the plaintiff was incorporated in 1954 and not in 1953, and has insufficient knowledge to admit or deny the allegation in the third sentence of the paragraph.

5. With respect to paragraph 6 of the plaintiff's statement of claim:

(a) the reference to #CD18-11 appears to be a reference to a Clerk's Department Staff Report submitted to the April 16, 2018 Council Committee meeting, which report does not affect the plaintiff's rights; and

(b) the City admits that its elected Council has enacted By-law No. 2018-20 (hereinafter the "**Temporary Use By-law**") which temporarily zones a portion of the City-owned waterlot in front of Forest Avenue South to allow only one seasonal dock for purposes of accessing Grape Island, and also imposes certain length and width limits, and setback requirements on that seasonal dock use, and in this regard

(i) the City states that the Temporary Use By-law allows for a longer dock and less restrictive setbacks than would be permitted under the City's current zoning, and

(ii) the City thus denies the plaintiff's apparent allegation in paragraph 6 that the City temporary use by-law severely restricts the plaintiff's activities at the waterlot; and

(iii) the City states that GIPOA initially appealed the Temporary Use By-law but then withdrew its appeal in recognition of the fact that the Temporary Use By-law was actually less restrictive than the existing zoning for the waterlot.

6. With respect to paragraph 7 of the plaintiff's statement of claim, the City enacted the Temporary Use By-law and the City thus denies that it has denied the plaintiff a right to continue docking activities on the City-owned waterlot;

7. With respect to paragraph 8 of the plaintiff's statement of claim, the City admits that it refused to meet with the plaintiff but states that it did so only when the plaintiff advised that

it would be bringing a lawyer to the meeting, and the City had not retained a lawyer to attend that meeting. The City also states that it nonetheless remained committed to consulting with stakeholders on both the mainland and Grape Island in order to reach a long-term resolution to the ongoing land use issues at the waterlot, and continued to consult with these stakeholders through the implementation of an online survey which was sent to all property owners on Grape Island.

8. With respect to paragraph 14 of the plaintiff's statement of claim, the City states that the distance between the end of Forest Avenue South and the nearest point on Grape Island is approximately 200 meters, or 660 feet.

9. With respect to paragraph 15 of the plaintiff's statement of claim, the City admits the plaintiff's allegation in the first sentence but has no knowledge of the existence of a land bridge as alleged in the second sentence.

10. With respect to paragraph 17 of the plaintiff's statement of claim, the City states that it was not the approval authority for Plan Number 948 and has no knowledge as to (a) the content of the development application submitted in connection with Plan Number 948, or (b) any "designated" access point to Grape Island.

11. With respect to paragraph 19 of the plaintiff's statement of claim, the City admits that the Forest Avenue South road allowance is 66 feet wide but has insufficient knowledge to admit or deny the remainder of the plaintiff's allegations.

12. With respect to paragraph 20 of the plaintiff's statement of claim:

(a) the City denies the first sentence and states in response that Grape Island properties and residents benefit from a wide variety of municipal services, just as their neighbours on the mainland do, including, most particularly, year-round maintenance of municipal roads throughout the city, waste management through a communal bin located in the plaintiff's parking lot, fire protection services, and access to the City's parks and recreation facilities,

(b) the City further states that this level of service is consistent with the level of municipal services received by nearby properties on the mainland, many of which lack municipal water and sewer services, and

(c) the City admits that it collects realty taxes on Grape Island properties and enforces City by-laws on Grape Island, but states that it also does so on the mainland.

13. With respect to paragraph 21 and 22 of the plaintiff's statement of claim:

(a) the City admits that it purchased the waterlot at the end of Forest Avenue South, and that the lot extends 100 feet into Lake Simcoe at the high water mark, but

(b) the City denies that it purchased the waterlot in order to "fulfill the original plan of subdivision" or to "ensure unfettered access to and from Grape Island", or "for the sole purpose of ensuring water access from the end of Forest Avenue South to Grape Island", as alleged by the plaintiff in those paragraphs, and

(c) the City states again that the City purchased the waterlot for the benefit of the general public and the City put the waterlot into public use for tpoliochat purpose.

14. With respect to both paragraphs 22 and 23 of the plaintiff's statement of claim, the City denies the plaintiff's allegation that a dock on the City's waterlot at the end of Forest Avenue South was or is the only reasonable means of ensuring water access to Grape Island, and in response to these allegations the City states that:

    (a) there are other City-owned boat launch facilities as well as several private marinas in the vicinity of Grape Island,

    (b) the plaintiff and its members willingly assumed the risks identified in these paragraphs when they acquired land on Grape Island, and the prices they paid for their properties would have reflected those risks;

    (c) the plaintiff and its members failed to mitigate their own risks by acquiring private property rights to maintain a dock or docks elsewhere.

15. With respect to paragraphs 24 and 25 of the plaintiff's statement of claim, the City denies the inferences advanced by the plaintiff in those paragraphs, but admits that the City's elected Council in December 1951 resolved that it would be desirable for the City to acquire a waterlot in front of Forest Avenue upon which a dock could be constructed "to serve the public requiring such a convenience."

16. With respect to paragraph 26 of the plaintiff's statement of claim:

    (a) the City admits that sometime in 1951 or early 1952 the City's elected Council asked the federal government to construct a dock on the waterlot in front of Forest Avenue, and that negotiations of that nature continued to mid-1956,

(b) the City denies that it made that request of the federal government in recognition of any need for Grape Islanders to have "guaranteed water access" to Grape Island from that location,

(c) the City admits that its elected Council resolved in July 1956 to permit the property owners of Grape Island to erect each year one temporary dock on the City's waterlot, which was to be removed on or about September 1st each year, and the City states in this regard that Council did not grant exclusive or perpetual use of the waterlot to the residents of Grape Island; and

(d) the City has insufficient knowledge to admit or deny the remainder of the plaintiff's allegations in that paragraph.

17. With respect to paragraph 28 and 29 of the plaintiff's statement of claim, the City has insufficient knowledge to admit or deny the plaintiff's allegations that the City re-graded the end of Forest Avenue and installed a cement wall along the shoreline, but states that, if the City undertook such works, it did so for the purpose of benefitting the general public, which uses the City's waterlot for a variety of purposes.

18. With respect to paragraph 30 of the plaintiff's statement of claim:

(a) the City denies that Policy 1.6.1.1 was a by-law and denies the final sentence of paragraph 30,

(b) the City admits that Policy 1.6.1.1 is consistent with Council's 1956 resolution in that it permitted the property owners of Grape Island to erect one temporary dock on the

City's waterlot each year, to be removed by September 1, but otherwise did not grant exclusive or guaranteed use of the waterlot to the residents of Grape Island, and

(c) the City has insufficient knowledge to admit or deny the remainder of the plaintiff's allegations in that paragraph.

19. With respect to paragraph 33 of the plaintiff's statement of claim,

(a) the City denies that the plaintiff alone used the two docks referenced in the paragraph and states that, if there were two docks, the public including the residents of Grape Island used the two docks notwithstanding that the plaintiff posted a "no trespassing" sign on Forest Avenue South without the City's knowledge or consent;

(b) the City denies that it never objected to the presence of two docks at that location and states that the City in fact objected in 2016 upon discovering the illegal use of two docks by the plaintiff or its members.

20. With respect to paragraph 36 of the plaintiff's statement of claim:

(a) the City has insufficient knowledge to admit or deny the plaintiff's allegations that the plaintiff is the owner of the two docks at issue in these proceedings;

(b) the City denies that the two docks were highly visible from Forest Avenue South and states that, to the contrary, the docks are visible from the foot of the road allowance but not visible from the remainder of the road and, to the best of the City's knowledge, the docks have been removed seasonally from the waterlot;

(c) the City states that:

(i) the police referenced in paragraph 36 are Ontario Provincial Police, not City police,

(ii) Simcoe County provides ambulance services, not the City,

(iii) Ontario Power Distribution Corporation is a municipal corporation and not a manager of City-owned waterlots,

(iv) the City's Building Department does not manage City-owned waterlots,

(v) the City's Economic Development Department currently manages the City's real estate, and

(vi) City staff inspected the City's waterlot in 2010 and 2017 and on those occasions observed only one dock on the site other than the City's concrete pier.

21. With respect to paragraph 37 of the plaintiff's statement of claim:

(a) the City has insufficient knowledge to admit or deny the plaintiff's allegations that it is an intensive user of the two docks in question, and

(b) the City denies that the plaintiff is the exclusive user of the docks, and

(c) the City is aware of intensive use of the docks by members of the public because the public's intensive use has caused the owners of neighbouring properties to complain to the City about the nuisance effects of such use.

22. With respect to paragraph 38 of the plaintiff's statement of claim:

(a) the City has insufficient knowledge to admit or deny the plaintiff's allegations that it has used the two docks for the purposes described in that paragraph, but

(b) the City is aware that members of the public have used the two docks for the purposes set out in that paragraph, and

(c) the City states that the public's use of the two docks as described in paragraph 38 has caused the owners of neighbouring properties to complain to the City about the nuisance effects of such use.

23. With respect to paragraph 39 of the plaintiff's statement of claim:

(a) the City has insufficient knowledge to admit or deny the plaintiff's allegations that "absolutely everything destined for Grape Island has to come from the mainland", and

(b) the City admits that the City's waterlot at the foot of Forest Avenue South is situated a relatively short distance from Grape Island, but the City denies that using the City's waterlot is the only reasonable means of accessing Grape Island by boat or barge; and

(c) the City states that, in 2019, at least 30 of the households on Grape Island maintained a slip at a mainland marina while they were resident on Grape Island.

24. With respect to paragraphs 40 and 41 of the plaintiff's statement of claim:

(a) the City has insufficient knowledge to admit or deny the plaintiff's allegations, but

(b) the City states that, if the plaintiff and its members have relied at any time on a belief that they had an "enduring" or permanent right to construct and use two docks on City-owned property at the foot of Forest Avenue South, that belief was not reasonable

because the City's Policy 1.6.1.1 permits the use of only one dock at that location, on a seasonal basis, and for the other reasons set out in this statement of defence.

25. With respect to paragraph 42 of the plaintiff's statement of claim:

(a) the City admits that it has been aware over time that property owners on Grape Island were investing in their properties, just as property owners on the mainland invested in their properties during this same period,

(b) the City admits that it derives realty tax revenues from real property on Grape Island, just as it derives realty tax revenues from properties on the mainland, and the City states in response to this allegation that the realty tax assessment of all Grape Island properties represents approximately 1/3 of 1% of the City's total realty tax assessment;

(c) the City admits that dozens of buildings have been constructed on Grape Island and that such buildings could house hundreds of people, but the City states that:

(i) few of the buildings on Grape Island are occupied year-round, and

(ii) the great majority of the buildings on Grape Island have traditionally been occupied only during the summer months.

26. With respect to paragraph 43 of the plaintiff's statement of claim:

(a) the City admits that the City's Temporary Use By-law permits the use of only one dock on the waterlot in issue, on a seasonal basis, but the City states that:

(i) those limits are consistent with the limit established in Policy 1.6.1.1, and the City states further that the plaintiff never had a right to construct two docks on the City's waterlot; and that

(ii) the Temporary Use By-law does not have the other effects alleged in paragraph 43 of the plaintiff's statement of claim;

(b) Council has enacted By-law Number 2018-34, which is enshrined as Chapter 538 of the City's *Municipal Code*, and the City further admits that Chapter 538 of the City's *Municipal Code* regulates boat and barge use at docks located on City-owned waterlots, including the waterlot at issue in these proceedings; and

(c) the City has real estate policies that allow private parties to occupy City-owned lands under certain conditions, including the payment of rent, but the City has not yet imposed rent or fee obligations upon the plaintiff in connection with its uses of the City's waterlot.

27. With respect to paragraph 44 through 48 of the plaintiff's statement of claim, the City denies:

(a) that the plaintiff has the right at law to assert property rights or claim damages in these proceedings on behalf of property owners that are not party to the proceedings;

(b) that the plaintiff or its members or any other property owner on Grape Island ever had an unfettered right to use two docks, or any dock, on a City-owned waterlot;

(c) that the City or its agents or employees ever represented to the plaintiff or its members that the City would grant the plaintiff an unfettered right to construct and use two docks, or any dock, on the City's waterlot;

(d) that the plaintiff or its members or any other property owner on Grape Island ever had a reasonable belief that they would have an unfettered right to use two docks, or any dock, on a City-owned waterlot, in perpetuity because such a belief would be unreasonable in light of the City's Policy 1.6.1.1 and for the other reasons set out in this statement of defence.

The City's Waterlot is Immune to Possessory Claims

28. The City states that, as a matter of common law and judicial policy, municipal land that is used for public benefit, is immune to claims of possessory title and prescriptive rights. The plaintiff's claim of permanent possessory rights over the City's waterlot by way of proprietary estoppel must by extension fail.

The City's By-laws are immune to judicial review

29. The plaintiffs' claims are in essence an effort to quash the effect of two City by-laws which the plaintiff alleges are a derogation from the property and use rights acquired by the plaintiff.

30. A municipal by-law passed in good faith is immune to judicial review even if the by-law is unreasonable. The City's Temporary Use By-law and By-law Number 2018-34 are not unreasonable.

31. The City's By-law Number 2018-34 was passed under the *Municipal Act, 2001* and the plaintiff's claims in these proceedings are a collateral attack on that by-law, when the plaintiff should have proceeded under section 273 of the *Municipal Act, 2001*.

32. The City's Temporary Use By-law was enacted pursuant to sections 34 and 39 of the *Planning Act* (Ontario). The plaintiff initially appealed that by-law as it is entitled to do under the *Planning Act*, but withdrew that appeal. The plaintiff thus abandoned its rights to challenge the Temporary Use By-law and its claims in these proceedings thus constitute a collateral attack on that by-law and an abuse of process.

33. The City has broad authority under the *Municipal Act, 2001* and the *Planning Act* to regulate land use, including the use of its own property, to prevent nuisances, and to promote the economic and social well-being of the residents of the City of Orillia.

34. The City has statutory authority to regulate the use of City road allowances and assets, including by limiting access to the Forest Avenue South road allowance for particular uses.

35. The City has statutory authority to regulate business activity within the City of Orillia, including commercial barging activity on the City's road allowances waterlots.

36. When exercising its jurisdiction to enact by-laws of this nature, Council must consider and balance the interests of the public as a whole.

37. The City's Temporary Use By-law and By-law Number 2018-34 were enacted for the legitimate public purpose of regulating the use of the City's waterlot for the benefit of the general public, including the property owners of Grape Island.

The policy basis for the City's By-laws

38. In addition, in late 2015 or early 2016, residents of Grape Island complained that the owner of a property adjacent to the City's waterlot had installed a dock and boatlift that encroached on the City's waterlot.

39. Later in 2015 or 2016 the City received a complaint from mainland property owners that the uses being made of the City's waterlot by the plaintiff and others were becoming a nuisance. The complaint detailed specific concerns including:

    (a) overnight mooring of boats along the dock, which caused noise,

    (b) commercial uses of the Forest Avenue South road allowance and the waterlot by a commercial barging service, and associated noise and disruption, and

    (c) littering and urination on the Forest Avenue South road allowance and the waterlot.

40. In addition, at other points in time, the City observed, or was advised, that the plaintiff or its members had posted "no trespassing private docks" signs on the Forest Avenue South road allowance, and thus asserted that the City's waterlot was private property, for the exclusive use of the plaintiff and its members. Council never granted the property owners of Grape Island an exclusive right to use the dock they constructed on the City's waterlot.

41. As a result of these concerns, the City inspected the waterlot on August 29, 2016 and observed that two docks were in use by the plaintiff or its members. The City quickly advised representatives of the plaintiff that (a) the plaintiff did not have the City's consent to maintain a second dock on the waterlot, and (b) the plaintiff would be required to obtain

formal approval for its continued use of the waterlot through the licensing provisions of the City's Real Property Policy 1.7.1.1.

42. In addition, at its August 29, 2016 inspection, the City confirmed that a property owner adjacent to the City's waterlot had encroached on the waterlot with a dock and boatlift.

43. As a practical matter, the City's waterlot cannot accommodate three private docks, and the 30 meters of clearance between docks that the plaintiff asserts is required to facilitate commercial barging operations at the plaintiff's docks, plus the City's concrete pier and the many public uses of the waterlot.

44. The discovery of the plaintiff's encroachment with a second dock, combined with the neighbour's encroachment, and the nuisance effects of the various uses of the plaintiff's docks, caused the City to conclude that a policy response was warranted.

45. The City began developing its policy response in the autumn of 2016. As part of that process the City met frequently with representatives of the plaintiff as well as the owners of property adjacent to the City waterlot that had encroached on the waterlot.

46. In June 2017, the representatives of the plaintiff and the neighbouring property owner submitted to City staff a joint proposal to resolve the contentious land use issues at the City's waterlot.

47. Within the proposal document the plaintiff's representatives acknowledged that (a) the City owns the waterlot and the Forest Avenue South road allowance, (b) City by-laws and policies govern the use of those City-owned properties, and (c) Council may in the future change the then-applicable City by-laws and policies.

48. City staff included this proposal in a report to Council, so that Council could consider the proposal at its meeting scheduled for July 17, 2017.

49. At that point the representatives of the plaintiff advised the City that the proposed resolution no longer had the support of their Grape Island constituency. The plaintiff's representatives requested that the staff report be pulled from Council's agenda.

50. City staff nonetheless continued to meet with representatives from both the plaintiff and the owners of mainland properties in Victoria Point, adjacent to the waterlot. However, in December 2017, it was determined that a consensus could not be reached and the City advised the plaintiff and Victoria Point representatives that they should submit independent proposals to the City to address their respective encroachments.

51. Notwithstanding that direction, in January 2018, Council approved the creation of the Forest Avenue South Working Group (the "**Working Group**") in another effort to reach an amicable resolution of the waterlot issues. The Working Group included three representatives of the Grape Island property owners, three representatives of the neighboring Victoria Point properties, as well as City staff and City Councillors.

52. Because the timing of any such resolution was uncertain at best, Council then enacted the Temporary Use By-law, and By-law Number 2018-34, which became Chapter 538 of the City's *Municipal Code*.

53. Council adopted these by-laws in an effort to (a) balance the competing interests of the users of the City's waterlot, including the general public, and (b) limit the nuisances created by the users of the waterlot.

54. The Working Group worked for more than a year to develop a solution to the waterlot issues that would accommodate the competing interests of the Working Group's stakeholders.

55. The City was also concerned about the interests of snowmobile users, because they use the Forest Avenue South road allowance to access Lake Simcoe and thus require thick ice at that location. Year-round use of docks on the City's waterlot would interfere with snowmobile uses and the City took that fact into consideration.

56. When the Grape Island representatives indicated that they wanted to bring a lawyer to the next Working Group meeting, the City determined that the Working Group was no longer an appropriate forum for negotiation.

57. Council dissolved the Working Group but in its place Council directed City staff to poll the residents of Grape Island directly as to their views on the uses of the City's waterlot. The City did so and made all Working Group stakeholders aware that the results of the survey would be reported to Council in September 2019.

58. The City states that Council enacted the Temporary Use By-law and By-law Number 2018-34 in good faith following careful study and consultation.

59. Since the enactment of those by-laws, the City has undertaken additional intensive consultation with the property owners of Grape Island and is in a position to bring forward options for a permanent replacement for the Temporary Use By-law, which expires on March 5, 2020 but can also be extended.

60. Because the City's By-laws were enacted in good faith and are immune to challenge, the By-law's effect on the plaintiff's uses of the City's waterlot will continue regardless of the

outcome of these proceedings, i,e, the plaintiff's rights will remain subject to the City's by-laws, and the plaintiff's claims are thus hollow.

The plaintiff's claims for proprietary estoppel must fail

61. In the alternative, if the claims for rights on the basis of proprietary estoppel are available to the plaintiff, the City states that the plaintiff's claims must fail because, *inter alia*, the plaintiff's reliance on the City to guarantee unfettered access to Grape Island was not reasonable.

The City granted a limited license to Grape Island property owners

62. In 1951 the City's elected Council stated that it wished to acquire a waterlot in front of Forest Avenue "which can be used to construct thereon dock facilities to serve the public requiring such a convenience."

63. In 1956 the City's elected Council resolved to allow "the property owners of Grape Island" to install one temporary dock on the City's waterlot, for seasonal use, to be removed by September 1 of each year. The City's Policy 1.6.1.1 grants the same limited right to "the property owners of Grape Island."

64. Council has never authorized the plaintiff to erect any dock on the City's waterlot.

65. In fact and in law, the City's Policy 1.6.1.1 is a non-exclusive license that confers certain limited rights to the property owners of Grape Island, subject always to:

(a) the unfettered discretion of the City's elected Council to terminate the license and/or unilaterally amend its terms; and

(b) implied terms prohibiting uses of the City's waterlot that would (i) constitute a nuisance to the City or property owners in the vicinity of the waterlot, (ii) constitute a commercial use of the City's waterlot, or (iii) otherwise interfere with the use of the City's waterlot by the City and the general public, and (the "**License**").

The City made no representation re guaranteed unfettered rights

66. Contrary to the plaintiff's statement of claim, the City never subsequently represented to the plaintiff, or to any Grape Island property owner, expressly or otherwise:

(a) that the City would permit the property owners of Grape Island to construct more than one dock on the City's waterlot,

(b) that any dock on the City's waterlot could be made permanent,

(c) that the plaintiff, or any Grape Island property owner, would have exclusive use of any dock on the City's waterlot,

(d) that the property owners of Grape Island would have unfettered access to the City's waterlot, or would be permitted to intensify their use of the City's waterlot without limits,

(e) that the City would never revoke its consent for the property owners of Grape Island to construct a temporary dock on the City's waterlot,

(f) that the City was permitting the construction of a dock on its waterfront for any purpose other than serving "the public requiring such a convenience."

67. The City denies the plaintiff's many allegations that the City had actual knowledge and then acquiesced to the alleged fact that the plaintiff had installed two docks on the City's waterlot, for the following reasons, among others:

(a) the City's waterlot is not readily visible from Forest Avenue South, except at the south end of the road allowance, near the water,

(b) the City staff that manage City property, including its by-law enforcement officers, operate on a complaint response basis. If there are no complaints, the City does not

routinely inspect property within the City for zoning compliance or similar land use issues,

(c) the dock or docks on the waterlot are installed only seasonally,

(d) other property owners had encroached on the City's waterlot with docks, and

(e) the City inspected the waterlot in 2010 and 2017 and did not observe that the plaintiff had installed two docks on the waterlot.

The plaintiff's reliance was not reasonable

68. In the alternative, if City staff had actual knowledge that the plaintiff operated two docks on the City's waterlot, and acquiesced to that fact, which the City denies, then the plaintiff knew or should have known that such acquiescence by staff could not constitute consent by the City to the plaintiff's use of two docks on the City's waterlot, because only Council has authority to grant additional rights over the City's waterlot,.

69. Further, the plaintiff knew or should have known that the indoor management rule does not apply to municipalities. The plaintiff and its members knew or should have known that, if any City staff acquiesced to the plaintiff's use of two docks on the City's waterlot, which the City denies, such staff lacked authority to consent to such use, and, moreover, could not guarantee the continuance of such consent.

70. In the alternative, if any representative of the City ever made a representation to the plaintiff or its members that the City guaranteed the plaintiff's continued unfettered use of the City's waterlot, which the City denies, the plaintiff and its members knew or should have known

not to rely on such a representation, because only the City's elected Council can grant rights for private parties to use City-owned lands, and, prior to 2018, Council had made no new decision respecting the waterlot since 1956.

71. Similarly, if a City representative ever expressly or by acquiescence guaranteed the plaintiff's continued unfettered use of the City's waterlot, which the City denies, the plaintiff and its members were aware or should have been aware of the common law prohibition against fettering Council's legislative discretion, which means that, even if the City did purport to guarantee that the plaintiff would have unfettered access to two docks on City property, in perpetuity, such a promise would be unenforceable at law.

72. Further, Lake Simcoe is a navigable waterway in Canada and the use of boats and barges on Lake Simcoe is therefore regulated by the federal government. For that reason the plaintiff and its members knew or should have known that the City could never guarantee that the plaintiff would have unfettered rights to operate boats and barges on Lake Simcoe, and it was not reasonable for the plaintiff to rely on the City to guarantee an unfettered right to use boats and barges to reach Grape Island from the City's waterlot.

73. In the further alternative, if the City had knowledge of the plaintiff's use of two docks on the City's waterfront, and acquiesced or consented to that use, and the plaintiff thereby acquired rights to continue that use, all of which the City denies, then the City states that:

    (a) the scope of the plaintiff's acquired rights is no greater than the limited License rights that the City granted to the plaintiff with Policy 1.6.1.1.1.; and

(b) the City has valid grounds upon which to terminate or unilaterally amend the terms of any license rights the plaintiffs may have been granted or otherwise acquired to use the City's waterlot, based on;

(i) the nuisance effects arising from the intensified uses of the City's waterlot by the plaintiff and the residents of Grape Island, and the City's liability arising therefrom, and

(ii) the competing uses of the City's waterlot by the plaintiff, the residents of Grape Island, the residents of Victoria Point, the commercial users of the plaintiff's docks and the general public.

74. For the foregoing reasons, the plaintiff and its members at all material times knew or should have known that, if they desired permanent property rights that would enable the unfettered use of two docks on Lake Simcoe, they could have and should have purchased land in the open market to achieve that goal.

75. The City pleads and relies on:

(a) Sections 5, 8 and 8(4) in particular, 9, 10, 11, 23.1, 23.2, 23.3, 35, 128, 129, 150, 151, 272 and 273 of the *Municipal Act, 2001*, SO 2001, c 25.

(b) Sections 34 and 39 of the *Planning Act*, RSO 1990, c P.13.

76. For the foregoing reasons, the City states that each of the plaintiff's claims should be dismissed, with costs on a substantial indemnity basis.

Date: September 20, 2019

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PROCEEDING COMMENCED IN
BARRIE

STATEMENT OF DEFENCE

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