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Date: Tue, Jul 28, 2020 at 9:10 AM  
Subject: Zone 1 Water Issue  
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Hello team

I just received this notification from Jay Feelhy, our lawyer. As you can see this would require a very significant effort to pursue our case. We need to get together to discuss. I suggest tomorrow via zoom (Linda can you set this up). I will talk to Jay re costs to date as they total all we have raised so far.

JT

John:

As requested, I am taking this opportunity to provide my analysis of the process that can be undertaken to challenge the municipal position and the costs that would be associated with doing so. In terms of process, it appears clear that the Municipality is determined to impose costs on the Zone 1 water users on the basis that Zone 1 is a private system. As a result, the Municipality is taking the position that it is appropriate to impose a connection fee or, in the alternative, that the fee being imposed is a justifiable user fee. As discussed, treating the system as being a private one is clearly inappropriate. While the Municipality does not own the well and treatment facility, the distribution system was clearly put in place by Medonte for Zone 1, utilizing the *Local Improvement Act*. In addition, the Water Rights Agreements clearly confirm that the Municipality has priority for water at the source. As a result, there is a very strong case to be made that Zone 1 is a municipal system and a connection fee based on it being private is entirely inappropriate. Alternatively, the imposition of a fee does not appear to have any basis. While a Municipality is entitled to charge fees, there needs to be a connection between the fee charge and the service delivered. There has been no justification for the amount of the fee in terms of the maintenance or improvement of the system. Part of the justification appears to be based upon the fact that Zone 1 can be hooked into the stand pipe. However, the allocation of cost appears to be disproportionate as the cost being assigned to Zone 1 is for a capacity that is far in excess of the need of the current Zone 1 system.

I have been advised that the current proposal by the Municipality is to pass a By-Law that will give Zone 1 homeowners an option. Depending on the option selected, a homeowner in Zone 1 can pay a fee of \$7,300.00 over 25 years and be hooked into the Municipal Zone 2 system or continue with the existing Zone 1 system and in the future, join in at the same fee rate, although specific terms have not yet been finalized. There is no rationale for the rate amounts being established and it would appear that the underlying logic continues to be that Zone 1 is a private system.

In order to attack the apparent inequity of the Municipal position, the appropriate process would be to initiate a Court Application seeking the following:

1. A Declaration that Zone 1 is a Municipal system;
2. An Order that the By-Law as passed by the Township be declared illegal and set aside; and
3. Costs for the Court process.

There may be other relief requested when there has been an opportunity to consider the process in more detail. However, it is my opinion that you would need to bring the Application against both of the Municipality and the Ministry of Environment, Conservation and Parks. The MECP is a necessary party as they have designated the system as being private and the Municipality continues to rely on that, at least in part, for its position. Some consideration may need to be given to including the private owner of the Zone 1 source portion of the system. By initiating an Application, the hope would be that there would be the possibility of settlement discussion and resolution based on the historical documentation which you have assembled.

In terms of costs, a Court challenge of the Municipality will be complex and time-consuming. It is also expected that the Municipality, given its long term position, will take a strong position in opposition. If the litigation process is to be engaged, it will be necessary for me to have the assistance of my partner, Colleen Butler. Our hourly rate will be reduced to \$350.00 per hour each. To date, it has taken me approximately 35 hours to go through the documentation, communicate with the Municipality and have extensive discussions with you to get an understanding of both how the system works and how the Municipality has treated the issue. I am prepared to discount the initial time spent by 40% in order to assist, if the matter is to go forward. Going forward, it is my expectation that the initiation of the claim and the response from the Municipality would take approximately \$15,000.00 to \$20,000.00. Thereafter, there would be examinations and document productions which could consume another \$15,000.00 to \$20,000.00. After that, there would be a hearing before a Superior Court Justice which could take another \$25,000.00 to \$30,000.00. There may also be the need to obtain an expert report somewhere along the line regarding the system. However, I am not able to identify anything particular at this time. In the end result, if this matter were to be initiated and go to a full hearing, the total costs could be in the order of \$75,000.00 to \$100,000.00.

If there is success, costs would be likely awarded which would reduce the costs by approximately 60%. However, there is no set way to predict the outcome of costs in a Court case. For the purpose of funding this matter, I would suggest the target be between \$75,000.00 and \$100,000.00.

The other procedural issue that will need to be addressed is the manner in which the Court Application is initiated. As there are 454 household units in Zone 1, it would not be possible to have every individual as an Applicant. An alternative is to use the *Class Proceedings Procedure* but it is complicated and expensive for a proceeding of this nature. The other alternative is to look at incorporating a Zone 1 Water Ratepayers Association and seek a Court

Order to have it represent all of the homeowners in Zone 1 other than those who might wish to opt-out. There are some procedural issues related to this approach, but I am hopeful that it would be the best vehicle to allow us to proceed.

I trust this will give you sufficient information to continue your efforts in the community, including fundraising. Should you wish any further details or clarification, please advise.

Yours truly,  
Jay

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