

AIRD & BERLIS LLP

Barristers and Solicitors
Josephine A. Matera
Direct: 416.865.3061
E-mail: jmater@airdberlis.com

May 15, 2012

Our File No. 109865

BY EMAIL

PRIVILEGED AND CONFIDENTIAL

Mayor Virginia Hackson and Members of Council
Town of East Gwillimbury
19000 Leslie Street
Sharon, ON L0G 1V0

Dear Mayor Hackson and Members of Council:

Re: Taste of Tuscany Reserve

We have been retained to conduct a review and report to Council with regard to the following resolution of Council, passed on April 2, 2012:

WHEREAS the Council of the Town of East Gwillimbury commits to the principles of public trust, transparency and accountability and respects the rights of fundraising donors;

BE IT RESOLVED THAT Council hereby requests that the Town's external auditor or other independent third party conduct a review as to whether the disbursements related to the Taste of Tuscany Gala Fund met the established purpose of the fund, as communicated to the donors, and report back to Council during a future public session; and

THAT this information be conveyed to any donor who has requested information related to this matter; and

THAT Council continues to have a desire to implement a permanent event facility in the Civic Centre precinct and will be undertaking a visioning session in the future.

We have conducted a review of the materials provided to us by Town staff, have engaged staff in discussions and have carried out legal research as has been necessary to provide our advice to you. The facts set out below are summarized from our review of materials and discussion with staff.

Background – Tree Cutting Incident

In October of 2007, former Mayor Jamie Young, Councillor Marlene Johnston, and a crew of Town staff engaged in the removal of brush and trees between the Civic Centre and the adjacent Sharon Temple property, initially intended to take place on Town lands only. The operation was initiated and to some significant extent, directed, by the Mayor and Councillor Johnston, without express Council approval. In the course of carrying out this task, a number of trees were removed from the Sharon Temple property itself, without express authorization from the Temple Board or the Ontario Heritage Trust for the extent of tree removal that ultimately occurred. As a result of these activities, and in order to protect the Town and taxpayer interests, Council authorized the retainer of the law firm of Weir Foulds to conduct, in consultation with staff, a full fact-finding inquiry and to subsequently report back to Council with the findings of fact, conclusions of law, and

recommendations for action to be taken (collectively the "Investigation"). Weir Foulds delivered its Investigation Report to Council on December 10, 2007.¹ The full text of the Investigation Report is a public document, having been placed on the Town's website for a 30 day period in 2008, at the direction of Council. The Investigation Report should be referred to for a full review of the tree cutting incident.

As a result of the tree cutting incident, Mayor Young and Councillor Johnston required and obtained their own personal legal advice.

Discussions also took place between the Town and the Sharon Temple, and a Partnership Accord dated August 19, 2008 was entered into between the Town and the Sharon Temple Museum Society Board (the "Partnership Accord") providing for both operating and capital grants in the amount of \$75,000.00 each, over the years 2008, 2009 and 2010.

Taste of Tuscany Gala Fund – Stated Purposes

The best evidence we have to date of the purpose of the Gala Fund is to be found in the invitations distributed through the office of then Mayor Jamie Young. These invitations display the Town's name and logo and cheques are requested to be made payable to the Town of East Gwillimbury. The Gala was held in 2006, 2007, 2008 and 2009.

In 2006 the invitation indicated that the purpose of the Gala related to fundraising for a "new cultural events facility". In 2007 the invitation indicates that the funds were being raised for the "Civic Square". The 2008 invitation states that the event is being held to "raise funds for various community projects within the Town of East Gwillimbury and capital works on the Sharon Temple". The 2009 invitation states that the purpose of the event is to "raise funds for the East Gwillimbury Civic Square and the historic Sharon Temple". Thus, while over the course of the life of the Gala, its stated purposes were slightly modified, it is clear that **the Gala was intended to raise funds for various capital community projects within the Town, including for the Civic Square and for the Sharon Temple. A summary of the above is contained in Chart 1 below.**

Chart 1

Year	Stated Purpose	Purpose Represented By
2006	New cultural events facility	Mayor Young by invitation
2007	East Gwillimbury Civic Square	Mayor Young by invitation
2008	Various community projects and capital works on the Sharon Temple	Mayor Young by invitation
	New cultural events facility and charities	Development community member solicited support at request of Mayor
	Funding community building projects, including Civic Square development and a proposed cultural events centre	Resolution of Council CWC2008-311
2009	Civic Square and the historic Sharon Temple	Mayor Young by invitation

¹ Facts in this paragraph are summarized from the Investigation Report.

Town staff have also received inquiries from several donors to the Gala Fund as to the status of the Fund and expenditures from it. They have advised that through the invitations and discussions with Mayor Young at the time, they understood that the Gala Fund was to be used for Civic Square capital projects and charitable purposes.

Gala Funds – Accuracy of Town's Financial Statements

In accordance with Council's resolution set out above, Grant Thornton was also retained by the Town to determine if the revenues and expenses associated with the Gala Fund were accurately reported in the Town's financial statements. We understand from Grant Thornton that this is the case, i.e. the event revenues, expenses, net proceeds, expenditures, net annual balance and cumulative balance have been accurately reported and there are no revenues or expenditures which are not accounted for in the Town's financial statements. The only question is whether certain of the expenditures from the Gala Fund have been made in accordance with its stated purpose.

Use of Gala Funds

We understand from staff, as verified by Grant Thornton, that the net proceeds of the Gala Fund events from 2006-2009 total \$258,762 and that \$240,463 has been expended. For purposes of this report, expenditures have been summarized into five categories. The expenditures related to the Gala Fund reserve are listed in Chart 2 below.

Chart 2

Expenditure	Amount	Consistent with Stated Purpose of Gala Fund
Civic Square architectural design	\$29,685	Yes
Town legal fees for Investigation	\$47,619	No
Personal Legal Fees	\$11,038	No
Portable stage	\$77,121	Yes
Sharon Temple capital improvements	\$75,000	Yes
Total Expenditures	\$240,463	

Although Council directed that all the above noted costs totaling \$240,463 be disbursed from the Gala Fund, it is our view that the items noted as "No" in the last column do not fall within the stated purposes of the Fund. The monies in the Gala Fund reserve were not raised from general taxation or any other of the usual methods a municipality may employ to generate revenues (which revenues, in the normal course of events, may be moved between reserves). Rather the Gala Fund monies were generated through fund raising efforts specifically aimed at obtaining private donations for named categories of capital projects. It is therefore not appropriate that these monies be used for anything other than the stated purposes of the Gala Fund. At best, the monies could be used for other substantially similar purposes: if for instance the Sharon Temple were to refuse, or not need, any of the funds for capital works, or the Civic Square works were completed and money remained in the reserve, the monies could be put entirely to other Town community capital projects.

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It is our view that the monies expended from the Gala Fund reserve to pay the Town's costs of the Investigation and the Personal Legal Fees arise solely from the tree cutting incident. While this incident may have been associated with an intention to beautify the Civic Square and the Sharon Temple property, the Investigation and Personal Legal Fees do not relate in any way to the stated purpose of the Gala Fund and should not have been paid from the Gala Fund reserve. **The total costs associated with these two items is \$58,657. The Gala Fund reserve should be reimbursed in this amount.**

The architectural design work done for the Civic Square and the purchase of the portable stage are clearly within the stated purposes of the Gala Fund. With respect to the \$75,000 paid to the Sharon Temple, these funds were provided pursuant to the capital funding provisions of the Partnership Accord and as such, they appear to have been appropriately paid from the Gala Fund reserve.

Conclusion

In our review of the information provided to us by Town staff, it is clear that the Council direction to pay the costs of the Investigation and the Personal Legal Fees from the Gala Fund stemmed from an honest and well-intentioned view that the costs associated with the tree cutting incident should not be borne by the taxpayers of the Town. **Nonetheless, given the stated purposes of the Gala Fund, it is not appropriate to pay these costs from the Gala Fund reserve and the reserve should be reimbursed in the amount of \$58,657.**

Yours truly,

AIRD & BERLIS LLP



per:

Josephine A. Matera

JAM/mk

cc Thomas R. Webster, CAO
Mark S. Valcic, General Manager, Corporate and Financial Services/Treasurer
Don Sinclair, General Manager, Legal and Council Support Services

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