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URGENT

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File: 67419.28

Ms. Kristen Walli
Board Secretary
Ontario Energy Board
Suite 2700
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: Ontario Energy Board File No. EB-2012-0181 - Application for Service Area Amendment

Our client, Thomasfield Homes Development Inc. ("Thomasfield Homes"), has asked us to write to you about the timing of the Board's decision on this Application. Although submissions on the merits of the Application are now closed, we are writing solely to urge the Board to make its decision in this matter within a week.

Thomasfield Homes, through no fault of its own, is caught in the middle of a dispute between two distribution companies. It is the proverbial "jam in the sandwich". This dispute has already resulted in long, and hugely costly delays in Thomasfield Homes' construction project. As but one example, Thomasfield Homes bears the responsibility for compensating the municipality for interest paid on borrowing for certain municipal sewage facilities. Those interest costs amount to \$500 per day, but there is no revenue being earned to pay these costs as no homes have been, or can be sold now.

The homes are under construction, with construction having reached the stage that ceramic tiling for floors will shortly be installed. This is done with tile grout, which is porous and subject to staining. To avoid staining, installers use a sponge with a white scrubby side to it and use lots of water to clean off excess grout, changing it frequently, and then use a sealer. Manufacturers recommend sealing grout after it has cured for 2-4 days, but this is a chemical reaction, not merely drying, and therefore, varies with the temperature. The house must be heated overnight to ensure that the temperature does not fall below the level at which curing stops, or is unduly delayed, and excess water is unable to evaporate.

As well, the homes are also ready for wood finishes to be applied on railings and other wooden surfaces. Again, to ensure that these finishes are applied properly, and cure properly, electrical heaters or home furnaces must be used overnight to keep the finishes, and the surfaces to which they are applied, at an appropriate temperature. Without electricity, electrical heaters, furnaces and other necessary machinery cannot operate.

Finally, to start to sell the homes on schedule, a matter of great concern to bankers, Thomasfield Homes has to open four different model homes later this month. It is imperative that the model homes be electrified, so that prospective customers can see them as they would appear if they were typical homes in the development. Connecting the wiring to provide this electricity will be time consuming, and will require lead time, yet neither of the two electricity distributors will have any reason to begin doing so until they know whether they will be the distributors for these homes.

This proceeding has already been a long process. There comes a point when the process itself becomes pathological, regardless of the decision. In a practical sense, the process itself becomes the decision. We have now reached that point.

The situation our client is now in was well described by the English economist John Maynard Keynes, who reminded us that "In the long run we are all dead." (A Tract on Monetary Reform (1923) Ch. 3). That applies to businesses as well as individuals.

Lest it be thought that following the OEB's normal process with its normal timetable is indispensable, while the impact on the participants is of lesser importance, we would do well to recall the warning of law professor Grant Gilmore. He wrote: "The worse the society, the more law there will be. In Hell there will be nothing but law and due process will be meticulously observed." (The Ages of American Law (1977), p. 110-111; reported in George W. Liebmann, The Common Law Tradition: A Collective Portrait of Five Legal Scholars (2006), p. 177)

We would greatly appreciate a decision from the OEB within the next seven days. We thank you for your consideration.

Yours truly,



Andrew J. Roman

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