

**Legal Opinion Summary – Power of the Township of Springwater Council to
Reconsider the Midhurst Secondary Plan Approval**

The Midhurst Landowners Group obtained a legal opinion from George Rust-D'Eye, an expert in municipal law, with respect to the powers of the Council of the Township of Springwater to reconsider a prior Council resolution. Mr. Rust-D'Eye's opinion was issued on May 26, 2014 and addressed a September 17, 2013 Council resolution which confirmed that Council would not reconsider any previous decision relating to the approval of the Midhurst Secondary Plan ("MSP"). Mr. Rust-D'Eye's opinion, in summary, provided:

The Township adopted the MSP, also referred to as Official Plan Amendment 38, in November 2008 following a long, detailed and consultative process. On September 17, 2013, Township Council adopted a resolution that it would not reconsider any decision relating to the approval of the MSP.

A Notice of Motion, dated April 22, 2014, proposed a reconsideration of the September, 2013 Council resolution. If approved, the motion would represent an egregious attempt to "end run" around the planning process, particularly given how recently Council adopted the MSP, in addition to Council's rejection of a request to reconsider the MSP approval less than one year prior to the April, 2014 motion. Any decision to consider rescinding the MSP must follow the process for a proposed Official Plan amendment under the *Planning Act*. The proposed reconsideration is not authorized by the *Planning Act*, and is out of order for the following reasons:

- There is no suggestion of any grounds for reconsideration, such as a change in circumstances, since the adoption of the MSP. There is also no indication that the information considered by Council during its last "reconsideration" of the MSP in September 2013 is no longer valid.
- A determination to reconsider the MSP approval would render Council vulnerable to allegations of bad faith and the resulting liability associated with this finding. Courts have concluded that "bad faith" simply requires a municipal council to have acted unreasonably and arbitrarily and without the degree of fairness, openness and impartiality required of municipal government. Stakeholders are entitled to rely on the municipality to act in good faith during the MSP planning approval process and to deal with development applications fairly.
- An allegation of bad faith in the course of decision-making is among the most serious of claims, potentially implying wrongdoing and possibly forming the basis for findings of liability against the municipality and members of its Council. In the absence of any proper planning reason for reconsideration of the MSP or any valid reason why Council should re-open a sound planning decision made following a lengthy and comprehensive consultative process, the municipality may find itself liable for many millions of dollars in damages.