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Outlets waging legal war

By Cynthia Gamble, Staff writer

Not everyone is thrilled with the plan for an outlet mall at Trafalgar Road and Hwy. 401.

At Monday's special council meeting, the Town released a letter from a law firm representing RioCan Acquisitions Inc., a company working with Tanger Factory Outlet Centres Inc. to build a 350,000 sq. ft. outlet of Canadian and U.S. retailers in Halton Hills on Steeles Ave. at the James Snow Parkway— a stone's throw from the Calloway Real Estate Investment Trust (REIT) Halton Inc. project on Trafalgar Rd.

In his letter, Joel D. Farber, of Fogler Rubinoff, argued that the Town approving the H (holding provision) removal, "point(s) to the inescapable conclusion that the Town is proceeding in bad faith, and in the absence of the public process mandated by its own planning documents."

He contends the Calloway REIT proposal is proceeding despite a requirement in the Town's Official Plan requiring a site specific rezoning. RioCan, on the other hand, must go through a zoning application for its development.

Farber said RioCan is asking for all Town documentation on the Calloway decisions, and is also filing a Municipal Freedom of Information request.

But Town lawyer Jeff Wilker, of Thomson Rogers, told council before the vote Monday that "in my legal opinion, you have the discretion to proceed with respect to the removal of the H."

He said Calloway has satisfied the three matters related to site plan approval and there is no legal impediment to removing the H.

Council directed the Farber letter to the solicitor to prepare a Town response.

In another legal opinion by Ken Rosenberg of Paliare Roland Barristers, hired by Calloway, and released by the Town, it stated RioCan in July indicated it would file a zoning application to restrict the amount of retail on the Calloway site. It did so last week on Jan. 25.

The Calloway site— a Smart Centre— received Town, Region and other agencies' site plan approval Jan. 26, with the mayor approving, executing and registering on title Calloway's site plan agreement Jan. 27. Rosenberg said, as per previous legal

precedents, the RioCan filing will not affect the Town's chief building officer from issuing building permits.

Joshua Kaufman, director, Smart Centres, would not speak to RioCan's motives but said he was pleased with the Town's decision and added "we've done everything by the book and we're ready to proceed."

However, Calloway fired the first salvo in the battle of the outlets by appealing a minor variance sought by RioCan for its property to the Ontario Municipal Board. In the late spring (2011) the Town's Committee of Adjustment had approved the variance, but Calloway appealed. RioCan attempted to have that appeal dismissed by the Ontario Municipal Board in November but lost and a full OMB hearing will now be scheduled.

Hearing Officer R. Rossi ruled, "the Calloway appeals raise legitimate planning issues that are worthy of a full hearing and ... were not made only to delay RioCan's proposal or to stifle competition."

Halton Hills Mayor Rick Bonnette said RioCan has indicated to the Town they intend to proceed with their Tanger Outlet Mall, but have not proceeded yet with the rezoning or their site plan.

"We believe they are awaiting an OMB hearing and decision on the appeal by Calloway on RioCan's minor variance," he said.