

# Metroland Publications: York Region

## Vaughan launches multi-million suit against city hall design firm

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It appears the honeymoon is over between the City of Vaughan and the world-renowned architect it commissioned to design the new city hall, The Citizen has learned. Vaughan politicians may have praised the building at its grand opening in September, but already by that time it had launched a multi-million lawsuit months before in May 2011 against architectural firm Kuwabara Payne McKenna Blumberg (KPMB) over what the city alleges are deficiencies.

According to documents filed in a Toronto court, the city is suing KPMB for \$3.2 million. An additional claim of \$3.2 million is filed against Stantec Consulting, the engineering consultants who worked with KPMB on the project.

But the city's legal move was one that was kept under tight wraps. An audit of the building last June made no mention of a \$6.4-million suit having been filed. This is the only lawsuit initiated by the city related to this project, city spokesperson Madeline Zito said Friday afternoon. Award-winning architect Bruce Kuwabara was the lead architect on the city hall project and faced questions last summer from politicians when the project was found to be \$15.6 million over budget. A June 2011 audit on the \$122.6-million building, conducted by American firm Commercial Cost Control Inc., revealed several problems, including that those at city hall charged with overseeing the project should have known there would be overruns as early as March 2009. Politicians were made aware of the significant over-runs in January 2011. Numerous construction-type changes that were made during the five-year-long building process were cited as reasons for the over-runs. Vaughan politicians ordered an audit in May 2011 to determine how and why the project was over budget. The audit was completed on June 28, 2011 and made no reference to the court action already started. According to court documents, the city is suing KPMB for breach of contract and negligence in connection with work on the design and construction supervision of the first phase of new city hall. None of the allegations have been proven in court. The city's nine-page statement of claim cites numerous alleged deficiencies, including mechanical rooms built too small to house mechanical equipment, and missing pull stations and smoke detectors in the building design that were necessary for it to be in compliance with the fire code, among others. "... a number of issues have come to light that demonstrate erroneous and negligent work by both KPMB and their sub-consultant, Stantec, in their design and integration of the works (with the intent that they could be built efficiently and economically by the city's contractor, Maystar)," reads the claim. Another

problem highlighted in the claim relates to the building itself. According to the statement of claim filed by city lawyer Les O'Connor, a senior litigation lawyer at WeirFoulds, because the original phase one was to include part of a plaza with other buildings to be built at the same time, the city hall building was higher than the rest of the site, which required a ramp be built to ensure the building was accessible. In its statement of defence filed this month, KPMB denies the city's allegations and states they upheld their contractual obligations. "The new city hall project was subject to a number of delays caused by owner-initiated changes, unforeseen conditions such as the high volume of underground water, weather ... and the owner's failure to adopt and execute proper owner-construction practice, including the appointment of a competent and accountable project manager," KPMB's statement of claim reads. Community Services Commissioner Marlon Kallideen oversaw the project, the city's largest to date. KPMB denies the mechanical rooms were too small and say the rooms could accommodate the necessary equipment. As for the city's allegation there were not enough smoke detectors and pull alarms as required by code, KPMB alleges missing pull stations and smoke detectors "were caused by virtue of the interpretation by municipal authorities of code requirements as opposed to actual code requirements." Stantec Consulting Ltd. is being represented separately by the firm Forbes Chochla. As for the errors alleged that led to the need to install a ramp for accessibility, KPMB alleges it was the city who is responsible for that. "... Had the owner proceeded as planned with all phases, such work would have been unnecessary," KPMB's claim states. KPMB has also asked that if the claim against them is dismissed by a judge, that the firm be awarded costs.

Some Vaughan politicians in dark about lawsuit At least two of Vaughan's nine politicians were not completely aware of the details of the lawsuit. Regional Councillor and Deputy Mayor Gino Rosati said he knew there was the possibility the city could pursue costs, but was not aware the lawsuit was filed in court last May. "It hasn't come to council, but we have given staff the general direction to look at these issues. If there is cause for that, I would support the city recovering whatever costs are recoverable," Mr. Rosati said. "I wasn't aware. I might have missed it." Politicians were careful in discussing the lawsuit as it is before the court. Regional Councillor Michael Di Biase said he was aware the statement of claim was filed and said if someone else is at fault for the issues, expenses need to be recovered.

"We discussed this at length in closed session. We know that a lot of taxpayer money has been paid for

this building and it's gone over budget. We know also the question was asked who is at fault here? If someone is at fault and there's expenses, how else do you recoup those expenses?" Mr. Di Biase said. Mayor Maurizio Bevilacqua said the claim is being pursued to protect taxpayers. "The city made the claim to protect the interests of the city and taxpayers and the issue relates to the mechanical design work which is the responsibility of the architect. We are working hard to resolve this issue," Mr. Bevilacqua said. Regional Councillor Deb Schulte said there was a recognition the city would pursue avenues available to them to recover costs. "It's a court case to get some of the money back, it's a good story," Ms Schulte said, adding she wasn't aware of the details, but that council had given direction to city staff to recover what costs they could. But Ms Schulte wasn't aware the lawsuit had already been filed at the same time last summer as the audit was ordered on the city hall project. "I thought we would get an update once we knew how things were progressing," Ms Schulte said. "I'm expecting an apology to come out with a full accounting of how much money we got from reserves, how much we got from debenture ..."

Meanwhile, no money allotted to build the civic-square facet of the project and that to finish anything else on the site might require a loan.

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