

Town not seeking judicial review of pit approval

By Bill Rea

The Province may have approved the site plan agreement for Brock Aggregates Inc. to expand the operation at the Tottenham Pit, but the matter is not going away.

Local residents opposed to the expansion have announced they will seek a judicial review of the ruling, and they are angry that the Town is not seeking such a review itself.

'We'll take it back to the community that you're not going to help us,' Cheryl Connors of Protect Caledon Inc. angrily called out last Tuesday when Town councillors took the vote on the matter.

Councillors did vote to call on Brock Aggregates to come up with terms of reference for a public liaison committee, and appointed Councillor Nick deBoer to sit on it

The Town will also be seeking a meeting with the Minister of Natural Resources and Forestry to make the local concerns clear.

This came after a lengthy closed session, in which councillors consulted with lawyers.

Town staff reported last week that the Ministry of Natural Resources and Forestry (MNRF) approved the Aggregate Resources Act (ARA) site plan amendment for the property, located in the northeast corner of Caledon (near Highway 9 and Mount Wolfe Road), in June. The pit was originally licensed in 2000, and the company submitted the application to expand the operation in 2009, according to the staff report.

The Town, as a commenting agency, raised some concerns at the time, including ones involving matters regarding notification of such applications. There were also concerns raised over the possible impacts on private wells, as well as issues regarding rehabilitation of the site.

Mike McGarrell, representing Protect Caledon Inc., told councillors he only learned the application had been approved when he received a call from the Ombudsman's Office.

'Why did it take the Ombudsman's Office to alert us this had been approved?' he demanded. 'We're not getting straight information. We're being misled.'

McGarrell added a judicial review seems the only recourse for the opponents of the plan. Residents in the area are concerned for their water, as well as possible implications involving things like dust and noise.

Connors said there are a number of legal reasons why the application should not have been approved. She cited the fact the property is in a natural linkage area of the Oak Ridges Moraine Conservation Plan, and aggregate operations are required to remain at least 1.5 metres above the water table. She added MNRF is required to have regard for the Moraine Plan.

McGarrell said he was not impressed with the staff report either.

'It's absolutely on the side of aggregate,' he remarked, adding the Town has not helped the residents at all in this issue. McGarrell said the late former councillor Richard Whitehead had done all he could to help the residents. He thought it ironic that the approval came through seven weeks to the day after Mr. Whitehead died.

'I find it too much of a coincidence,' he commented.

McGarrell said this was a great opportunity for council to show it cares and push back against the Province.

Mary Hall, director of development approval and planning policy for the Town, told Councillor Annette Groves legislation requires MNRF to have regard to the Moraine Plan, not necessarily to conform with it.

'They had no regard, I guess,' Groves replied, adding she would have hoped the staff report showed more support for the residents.

'It's not a NIMBY thing, but it is quality of life.'

Councillor Barb Shaughnessy was not pleased with the provisions for having 'regard.'

'That's a scapegoat word,' she said, apologizing to the residents. 'The system we have in place doesn't work.'

Connors told Councillor Doug Beffort they are confident their bid for a judicial review can be successful. She said a top environmental lawyer has said, 'This is a slam-dunk case.'

She also reminded councillors people in the area do not have an alternate source of water. When homes in the area lost their power during the ice storm of a couple of years ago, they went about a week without water.

Beffort recalled council passed a motion a while ago stating that until there had been a full study looking into matters of dust, council wouldn't approve any more gravel pits.

'We made a decision, and yet we seem to be side-stepping that decision,' he observed.

'We did not support the application,' Hall replied, adding the Town asked for conditions to be applied, and some of them have been included.

Connors also commented that MNR did not approve the application, but a district manager with the Ministry did. "The Minister has no knowledge about this," she said.

She also said it looks like this pit will continue for many more years. It will create dust that will impact the local air quality. She said dust can be mitigated on site, usually through the use of chemicals on stock piles, but that material can get into the aquifer. She also said there can be other health effects, such as heart attack, stroke, birth defects, etc. She pointed out that children are more at risk because they spend so much more time outside.

"This is serious stuff," she declared. "This is our health."

Connors also expressed concerns about the traffic situation in the area. She said three people have died in the last three months in accidents on Highway 9. She also told Groves they have not been supplied information on the amount of truck traffic the pit would generate. Groves said that would have been helpful.

Connors also commented that she has been involved with the aggregate industry for about four years, and has found it's a very powerful lobby, with little legislation to control it.

"There is very little legislation that protects communities," she said

After the closed session, Shaughnessy put forth a motion, seconded by Councillor Gord McClure, for the Town to start a judicial review of its own.

"We need to abide by the Oak Ridges Moraine," she declared, pointing out they need a fair resolution to this matter, which has caused a lot of aggravation. "There's not final use, and that's something we require. Unless we start pushing and shoving back, I didn't think it's ever going to change."

Mayor Allan Thompson said he understood where Shaughnessy was coming from, but suggested a political route be tried first; namely a meeting with the minister, involving representatives of Protect Caledon. He was afraid that going the other way could raise false hopes.

Groves was not in favour of that, however. She cited a motion that council passed in December 2011, referring to the application and stating the Ministry regarded it as "major," that there had been strong indications that operation had previously interfered with the water table and that there is not alternative water supply. The motion asked that the application be denied, and if it wasn't, then that the application be considered a new one and not an amendment to the site plan.

"Basically, it fell on deaf ears," Groves commented.

DeBoer favoured the meeting with the Minister, and finding out why the Town's issues were not looked at.

Shaughnessy was concerned that the decision to go for a judicial review might be time sensitive, but lawyer Christopher Williams of Aird and Berlis said there's no time limit. He did say if it's delayed too long, there could be questions as to why.

Connors said her lawyer had indicated a long delay could look obstructive. Setting up a meeting with the Minister could take months, she added, pointing out that kind of delay could be deemed prejudicial to the applicants.

"This is not our decision," Councillor Jennifer Innis observed. "We've been opposed to this from the very beginning."

She added it's important the Minister be made aware of the Town's concerns, also pointing out if they try for the judicial review, they won't get the meeting with the Minister.

Groves countered by asking what such a meeting would accomplish.

"Things are falling on deaf ears at the Province of Ontario," she charged.

"We're going ahead with a judicial review, and we're going to win," Connors said outside the Council Chambers after the vote, charging council was not defending the Town's Official Plan, zoning or the Moraine. "So who do they represent? Do they represent the interests of the aggregate industry, or do they represent the residents?"