



Planning Advisory Committee Report

To: To the Chair and Members of the Planning Advisory Committee
From: Ruchika Angrish, Senior Planner
Date: November 7, 2017
Report: PA-17-56
Subject: Representation Report - Ontario Municipal Board Hearing
OPA-F12/RA and ZBA24/12/RA (Olszowka Pit)
Purpose: **Recommendation Report** on the Ontario Municipal Board Hearing

Recommendation

Instruct the County Solicitor to engage in a search for a planning consultant that supports Council's denial; in the event that the search is successful, the County Solicitor will attend the OMB hearing and defend Council's position with land-use planning evidence; in the event that the search is unsuccessful, the County Solicitor will report back to Council.

Background

The subject lands are located on 468 and 473 Bishopsgate Road, County of Brant. The entire site has an approximate area of 203 hectares (504 acres) and is divided by Bishopsgate Road (County Road #16). The west part of the subject property has frontage along Golf Links Road on the north and Fifth Concession Road on the south.

Applications for Official Plan Amendment (OPA-F12/RA) and Zoning By-Law Amendment (ZBA24/12/RA) were submitted in 2012 proposed to license/develop the subject properties for resource development land uses (i.e. gravel pit with extraction above and below the water table) and accessory uses.

The applications were presented to the Planning Advisory Committee on October 3, 2017 with a staff recommendation to approve the applications. The Committee recommended that Council deny these applications.

Before the Committee Recommendation was considered by Council, the applicants appealed the applications to Ontario Municipal Board based on non-decision by Council within 180 days (OPA) and 120 days (ZBA).

Report

The Municipal Policy for Representation at OMB Hearings (DVS-1999-01) affords Committee and Council several options when considering the level of involvement the County wishes to take at any hearing. The Policy is attached to this report.

Policy 2b addresses the scenario where the applicant appeals Council's denial of a Planning Act application. The policy directs that Council shall send a member of the planning staff to attend the OMB hearing.

This Policy is premised on planning staff's support for the denial. In this case, however, planning staff recommended approval. In these circumstances, planning staff are not in a position to provide land-use planning opinion evidence in support of Council's denial position.

The Options in this scenario are:

1. Advise the OMB that the County will not attend the OMB hearing to defend its position
2. Instruct the County Solicitor to attend the OMB hearing to defend the Council position and not call any land-use planning evidence to support the denial
3. Instruct the County Solicitor to engage in a search for a planning consultant that supports Council's denial; in the event that the search is successful, the County Solicitor will attend the OMB hearing and defend Council's position with land-use planning evidence; in the event that the search is unsuccessful, the County Solicitor will report back to Council.

Financial Consideration

Options 1 noted above carries no financial considerations. While it may seem unusual for the municipality not to attend an OMB hearing to defend its position, the municipality is not an automatic Party to an appeal. So, if the County decides not to be a Party, then there are no financial consequences.

Option 2 exposes the County to a costs award against it. The County chooses to be a Party in this option. Parties are expected to call sustainable evidence in support of the Party's position. In this case, that means land use planning evidence. Attendance without land use planning evidence (i.e. only relying on evidence adduced in the cross-examination of other witnesses) could result in a costs award against the County.

Option 3 involves the expenses of the County Solicitor and an outside land use planner for the hearing. Without knowing the nature of the case that the planner supports (as part of a denial), it is difficult to estimate these costs.

Staff Recommendation

Staff recommends Option 3. This Option supports Council's denial position. At the same time, in the event that the County Solicitor's search for an acceptable planning witness is not successful, the matter will be brought back to Council for further decision-making.

Respectfully submitted,



RUCHIKA ANGRISH, MCIP, RPP
SENIOR PLANNER

Attachments

1. Municipal Policy for Staff, Legal and Consultant Representation at Ontario Municipal Board Hearings

Copy to

1. Rob Trotter, Director of Planning
2. Heather Boyd, Clerk/Manager of Council Committee Services
3. Jennifer Mayhew, Planning Administrative Assistant
4. Mark Pomponi, General Manager of Development Services
5. Nancy Smith, Solicitor

File # OPA-F12 and ZBA24-12-RA