

Procedural arguments highlight LPAT hearing

By Mark Pavilons

The Township will continue to work with the proponents of the Bushland Heights subdivision, following a settlement agreement recently.

The agreement came prior to last week's Local Planning Appeals Tribunal LPAT hearing on the matter. The tribunal continued this week, with hopes of wrapping up the proceedings by Thursday.

It was an admittedly unique and unusual approach. Procedural arguments and a demand that citizens' group KRA be heard as a full party, dominated the proceedings.

Last Friday morning David Donnelly, environmental lawyer representing KRA, asked to adjourn the hearing so he could work through last-minute additions to the conditions of the settlement.

This drew both support and opposition from parties' legal counsel.

Tom Halinski, municipal and land use planning lawyer for the Township, said he had no problem going over the issues with Donnelly.

Steven Ferri, representing Bushland Heights, the majority of conditions were presented to counsellors last week, and roughly 15 additional ones were submitted by York Region. But, none of these are related to hydrogeology. He's never heard a request for an adjournment, simply to prepare evidence and witness testimony. He said this may set a precedent.

Chair Ballagh said she wants to be flexible and 'creative' in providing a fair and efficient hearing.

Bushland's witness provided details of the preliminary plans, noting the number of lots has been dropped from 88 to 83 and there are roughly 8.7 units per hectare.

The development, he contended, is compatible with the surrounding community and conforms to all provincial mandates and policies, including the Oak Ridges Moraine Conservation Plan. The proposal has been designed, he said, to protect environmental and heritage features.

Most of the morning sessions last Thursday and Friday were spent debating how the hearing should proceed, in light of a recent settlement. Hearing chair Ballagh proposed moving forward in a non-adversarial 'settlement hearing,' not a formal appeal hearing, since most of the issues have been addressed, reviewed or agreed upon.

This didn't sit well with Donnelly. He believed that moving forward circumvented KRA's party status, and therefore they wouldn't be given a chance to fully express their concerns or question witnesses.

Ballagh invoked two seldom-used sections of the governing legislation which gives LPAT the authority to, in effect, change the rules in the name of efficiency, while still protecting the public interest.

Section 8.3 would see KRA reduced to a non-appellant party.

Donnelly saw these sections as 'absurd,' likely setting a dangerous precedent. He didn't think LPAT should be switching gears at this point, noting KRA has followed all the rules throughout this lengthy process, waiting to express their concerns as a full party in the proceedings.

He found the interpretations of sections 8.3 and 12.01 highly prejudicial and said continuing in the manner suggested by hearing chair went beyond LPAT's power.

'Nothing is more profound to KRA and the residents of King than to present their evidence,' Donnelly said.

KRA representatives Mary Muter and Ian Hilley, commenting on the proceedings, noted this has put 'democracy on the line.'

Many residents flocked to the hearing to support KRA.

The settlement was reached the previous week, the night before the hearing began, without any consultation with KRA.

Making KRA a non-appellant party meant that KRA could not call any of its experts to give evidence. Residents and taxpayers who identified themselves as 'participants,' local people with an interest in the proposed development, were 'stripped of their former right to appear before the LPAT and would be limited to providing the chairs with written comments.'

'The community was neutered and prevented from using its time-honored rights at public hearings. The chairs took away the ability of the public to present evidence and participate in the LPAT' undermining the democratic process. Residents and taxpayers have had the right to engage and challenge development proposals for lands in their neighbourhoods for eons,' read a statement from

KRA.

As of Tuesday (press time), the LPAT continued and despite following a "bizarre and unpredictable process, KRA is making a significant effort to have its concerns heard."

KRA's main contentions to the proposed subdivision is its impact on adjacent aquifers.

Donnelly wanted the hearing stopped so his side could regroup.

Chair Ballagh said she recognizes the rules are relatively new (LPAT only being created this past spring), but she "wants to get it right" and hoped to expedite the process to save time and money.

Donnelly's argument about fundamental democratic rights drew support from counsel for both King Township and TRCA.

Counsel, on behalf of TRCA, said the "novelty" of the new rules could impact procedural fairness. Halinsky pointed out that even though the Township supports the settlement agreement, KRA should be allowed to present its case as a full party.

Bushland lawyer Ferri didn't agree, noting LPAT has the right to adopt procedures that provide the best outcome and they can entertain alternative procedures and use the new rules.

KRA had previously argued before council that the proposed developments (Bushland and Mansions of King) provide plans to build homes on land which is part of one of the most significant headwaters in Ontario. The properties are characterized by rolling and folding landscapes which slope toward the steep East Humber river valley and the terminal section of the largest provincially Significant Wetland in southern Ontario - the breeding grounds for many species of frogs and turtles. These lands provide an important wildlife corridor for deer, wild turkeys and coyotes. There are many natural heritage features including woodlands and vernal pools which provide habitat for many species.