

Real head-scratcher at OMB - DAVE DALE's Soapboxing

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Helen and Jack Norman were paying close attention to the Ontario Municipal Board hearing this week.

Laurentian Heights Ltd. president John Wallace was crossing swords with city staff over the 150-lot development on the escarpment. It was good theatre if you had time to kill.

The relationship soured these past four years, mostly because trust took a holiday.

I'll get to the 11.5 hectares (34 acres) of open space that's supposed to be dedicated as city parkland, and why Wallace wants to remove the condition of his subdivision plan approval, in a bit.

The Normans were in attendance to see his lawyer, Ira Kagan, in action while they get a sense of how the city operates during an OMB hearing. Their application to develop lots on Four Mile Lake property was given the bum's rush out of council recently and they may be taking the issue to the OMB as well.

Kagan has the chops to make city staff do a little extra work to defend their decisions and actions. He comes across as organized and talented and has one of those silver tongues.

OMB hearings are similar to court proceedings, and the chairman appointed to the Laurentian Heights application kept things from getting out of hand while still allowing as much evidence as possible.

But Joe Wong might leave North Bay scratching his head after five days in the Gateway to the North.

The hearing wrapped up Friday with the city asking him to give council 90 days to deal with the situation — or not — before he comes to a decision. Laurentian Heights and Wong agreed.

That the issue was put back in council hands, in itself, shows how dysfunctional the relationship between Laurentian Heights and city staff has become — Wallace was so frustrated he went straight to the OMB without bothering to give newly elected officials a chance to fail him. Staff didn't take it to council either for some unclear reason.

Wallace told me he figured it would be a waste of time going in front of council, and it's hard not to side with him on this perspective. I'm sure the Normans are nodding their heads in agreement right now.

But seriously, the OMB hearing this week costs tens of thousands of dollars in public salaries, fees for lawyers and consultants, plus the time invested by concerned residents and other participants.

And as Phillip Penna rightly pointed out during his presentation reflecting public concern, this situation was ripe for mediation, not litigation.

I guess the next three months will prove or disprove the need for an OMB hearing. Wallace will probably say it was the only way to move forward.

Here's the issue in a nutshell and you decide.

Laurentian Heights from the beginning offered to dedicate more than six times the amount of acreage as city parkland than required by the Planning Act. The maximum is 5% of the development and the Wallace family was promising about 38%.

In negotiation terms, it's like dishing out the icing before you cut the cake. No doubt it sweetened the pot.

Most of the open space in question, however, is steep slope only a Californian millionaire would think was nice for a house. It's not like Lake Nipissing is lapping at the shoreline below — at least not anymore. The best unobstructed view on the escarpment, ironically, is from the tower at the North Bay-Mattawa Conservation Authority. If you take the tour, they'll tell you the escarpment was once a lot closer to being the eastern shore of Lake Nipissing as it flowed into Trout Lake and down the Mattawa River toward the St. Lawrence some 10,000 or more years ago. That's why Graniteville has such a low water table.

The conservation authority was among the participants at the OMB hearing and basically said the land Wallace promised to the public should indeed go to the public so it can be connected to other large tracts protected and made accessible by the agency.

The last OMB decision about the Laurentian Heights subdivision was issued June 28, 2000. It upheld the rezoning application and draft subdivision approval of 1997, denying protests by concerned residents that development was proceeding without enough scientific study to ensure runoff, erosion and rock stability was addressed. There were fears piecemeal studies wouldn't look at big-picture problems.

Here's an excerpt of the decision:

"The board finds that the city and the applicant have arrived at a reasonable balance between open space protection and function of the escarpment feature and the property development rights presently existing. This includes the enforcement of the site plan control by the city and the application of the objectives of the architectural design statement by the applicant as set out in Exhibit No. 8, Tab 50. More than one third of the total subdivision area, 13.5 hectares, will now be in public ownership as open space."

Somehow, that last sentence — specially the word "now" — was lost.

City lawyer Michael Burke said the first subdivision agreement in 2002 noted the open space would become parkland as subsequent subdivision phases were hammered out.

And five years later, it was addressed in the Kenrita Drive Phase 1 agreement. City staff slipped up here, I think. It states that pieces of Block 156 will be dedicated as parkland as the abutting lots on the southside of Kenrita are registered for development. Too specific, as it turns out. Laurentian Heights started developing a different street and they thought that meant no more designation until they feel like it.

Then Wallace slipped up. He assumed his right to viewsapes meant he could cut down trees on city property, despite there being an agreement stating only the city and its contractors will be maintaining views.

And that's when they hit a crossroad on what defines a horizon, with Wallace and staff losing trust in each other and all bets were off. The city demanded all the parkland at once, Wallace felt it was extortion, and here we are — scratching our heads after five days of hearings and months of work for already overworked city staff, lawyers and laymen.

Too bad they didn't ask me to write the clauses. From the first time pen hit a paper, I would have said the property dedication to parkland would roll out on a percentage basis, three lots registered, one acre dedicated, etc.

And the viewscape issue would have been even easier — if we can see more than 50% of your house during full foliate in July while standing on top of city hall — add 20% to your property tax bill. If we can't see your house at all, 20% off. Betcha the trees would be growing tall and thick by now.

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