



November 13, 2015

Are Cost Awards Killing the Ontario Municipal Board?

Community Organization hit with \$110,000 Cost Award - One of the Largest Ever

NORTH DUMFRIES - Ontario Municipal Board ("OMB") Vice-Chair Jyoti Zuidema has awarded one of the largest costs awards in the province's history, against the citizens' group the Concerned Residents Association of North Dumfries ("CRAND"). CRAND and environmentalists are calling the award a Strategic Lawsuit Against Public Participation ("SLAPP"), after the Vice-Chair was previously accused of bias by CRAND.

After taking what is believed to be a record-breaking and inexcusable seventeen months to deliberate the motion for costs put forward by Preston Sand & Gravel Co. Ltd., CRAND is calling for an investigation, and for the suspension of OMB Vice-Chair Jyoti Zuidema.

CRAND has been ordered to pay \$110,000 to the aggregate corporation even though the OMB hearing lasted only three days. Contrary to the OMB Rules, Zuidema does not address the reasons for making such a high award – she simply cut the award requested in half.

"This decision is outrageous, unprecedented and a real gift to developers! This will scare a lot of citizens away from the OMB," explained CRAND's Executive Director, Temara Brown, on the OMB Vice-Chair, Jyoti Zuidema's decision. "Zuidema's reasoning in the decision is wrong on many facts of the case, is at times petty and all but ignores the Board's Rules on Costs."

CRAND spent over \$150,000 to prepare its case, hiring two different lawyers, and intended to call a planner, toxicologist and air quality scientist to present expert testimony.

In a bizarre decision contrary to OMB practice, Vice-Chair Zuidema threw out CRAND's key witness, even though she knew the toxicologist quit the case at the last minute due to a "conflict of interest". No one ever suggested CRAND was at fault. Zuidema's decision ultimately prevented the organization from being able to call any of its painstakingly-compiled expert case.

As a result, CRAND challenged the OMB adjudicator for bias, alleging she unfairly favoured the financial interests of the gravel corporation.

"Her decisions appear to have been focussed on preventing CRAND from putting forward our extensive evidence on the risks to public health and safety, and in punishing us for challenging her conduct," stated Brown.

Had she not been prohibited from testifying, CRAND's toxicologist would have stated that this gravel pit presented substantial risks to human health, and should be stopped.

According to CRAND, the rationale behind the OMB's decision to award costs is not grounded in the motion materials presented by either party. Instead, new allegations have been added in by Zuidema, many of them petty.

The OMB decision challenges Ms. Brown for "acting disrespectfully" for responding to text messages at one point during the hearing. This was not an issue raised in the motion materials filed by Preston Sand & Gravel.

Brown explained she was quickly responding to an urgent family crisis. "I was telling my mother not to worry about leaving me alone in the hearing; that she should focus on taking care of my brother, a transplant recipient who was being rushed to the ER with the sudden onset of heart trouble," said Brown. "Zuidema knew we feared for my brother's life, yet, conveniently, she left that reasonable justification out of her decision. Can a person stoop lower than that?"

"The new Chair of the OMB needs to investigate this curious case of a Vice-Chair holding a decision on costs for seventeen months – it's an unconscionable delay that would create anxiety for anybody", said David Donnelly, former counsel to CRAND.

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