

March 21, 2016

ONTARIO MUNICIPAL BOARD ADMITS IT WAS “OVERLY PUNITIVE” AGAINST COMMUNITY ENVIRONMENTAL ORGANIZATION

NORTH DUMFRIES – The Ontario Municipal Board (OMB) has partially reversed its decision ordering the non-profit Concerned Residents of North Dumfries (CRAND) to pay a substantial cost award. The OMB agreed with CRAND that the initial decision was erroneous on particular facts of the case, finding this resulted in a cost award against the community environmental organization that was “overly punitive” by \$60,000.

CRAND's original appeal was in opposition to a decision to permit a gravel pit license applied for by Preston Sand & Gravel Co. Ltd. in North Dumfries Township. Following the OMB Vice Chair Jyoti Zuidema's dismissal of the appeal in 2014, Preston served the not-for-profit and eight individual members with a motion seeking over \$220,000 in costs.

After a record-breaking seventeen-month wait for a decision on the cost motion, the OMB Vice Chair dismissed claims against the individual members, ordering CRAND to pay \$110,000, last November. This figure is believed to be one of the largest cost award ordered in the OMB's history.

CRAND filed a request for the OMB to review the cost decision, something the OMB only agrees to do in the rare occasion when they agree there may have been an error in law. The request argued that the OMB acted outside of its jurisdiction, showed clear bias against CRAND, violated the rules of natural justice, and made errors of fact and law.

The OMB rejected CRAND's request for a complete review without providing much explanation for their decision. However, the OMB simultaneously applied its discretion to reduce the cost award figure from \$110,000 to \$50,000, recognizing that it was “overly punitive” to punish CRAND for motions it was not responsible for moving.

“What concerns me is how discretionary the OMB is in their punishing of public participation,” explained Temara Brown, CRAND's Executive Director. “There is no accountability. This hearing was carried out without any objective record of events: no transcripts, no audio or video recordings, nothing. The OMB regards the Vice Chair's notes as the factual record of events and has continually refused to correct errors despite eye-witness affidavit evidence.”

Scientific experts would have testified that this gravel pit presented substantial risks to public health. The OMB prohibited these experts from giving evidence in a shocking decision that resulted from procedural issues.

Consultants retained by the gravel pit proponents stated there were no such health risks. The OMB dismissed CRAND's appeal in 2014 based on the testimony of these industry consultants.

Observers to the hearing joined CRAND in calling the OMB member, Vice Chair Jyoti Zuidema's conduct into question. The OMB ignored the many complaints and refused to intervene. CRAND challenged the Vice Chair for bias during the hearing. The Vice Chair dismissed the accusations against her conduct and continued presiding over the hearing, with no additional oversight provided by the OMB.

The OMB further permitted the Vice Chair the authority to decide on whether to award costs against CRAND. The Vice Chair then awarded what was believed to be one of the largest cost award in the OMB's history.

"The OMB has continually failed to give regard to the outcry over this Board member's conduct," said Brown. "This partial review of the cost award against CRAND is a win in the sense that the OMB Executive Chair found some bias by their Vice Chair, but is still disappointing. Once again, the Board has ignored evidence demonstrating that this 'overly punitive' behaviour was constant throughout our experience with the Vice Chair."

The OMB has not acknowledged or responded to observers to the hearing who have continued to file complaints about the conduct of the OMB Vice-Chair since 2014.

In their response to the request to review the decision to award costs against CRAND, the OMB explains it "strives for finality in its decisions."

"It is a shame they do not strive for justice," said Brown.

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