



To: **Committee of the Whole**

Agenda Section: Corporate Services
Division: Engineering, Planning and Environment
Department: Planning

Item Number: CCW - 2019-330

Meeting Date: September 24, 2019

Subject: Update on County of Simcoe Official Plan Amendment No. 2 (ERRC)

Recommendation

That Item CCW 2019-330, dated September 24, 2019, regarding the appeal of County of Simcoe Official Plan Amendment No. 2 for the development of the Environmental Resource Recovery Centre (ERRC), be received.

Executive Summary

The purpose of this Item is to provide an overview of the status of the on-going land use approvals process, additional studies being undertaken and next steps in the development of the Environmental Resource Recovery Centre (ERRC).

Background/Analysis/Options

The following provides a summary of the proposal:

Location: 2976 Horseshoe Valley Road West (County Road 22), Township of Springwater

Applicant: County of Simcoe

Proposal: To develop an ERRC that includes an Organics Processing Facility for the long-term processing of source-separated organics, a Materials Management Facility for the transfer of garbage, recyclables and source-separated organics, a potential future Materials Recovery Facility, and ancillary uses.

County File: SC-OPA-1602 (OPA No. 2)

Ministry File: 43-OP-169096

LPAT File No.: PL190022

Related Files: Township of Springwater Official Plan Amendment (OP-2016-005) and Zoning By-law Amendment (ZB-2016-021)

Status of the Appeals to the County Official Plan Amendment No. 2

In early January, three appeals were filed against the Ministry of Municipal Affairs and Housing's (Ministry) approval of County of Simcoe Official Plan Amendment No. 2 for the ERRC. The appeals were submitted to the Local Planning Appeal Tribunal (LPAT) and deemed valid on February 19, 2019.

These appeals were filed under the LPAT system as it was implemented in 2017. As the appeals were proceeding under this new LPAT system, in which appeals are almost entirely done on a written record, very detailed appeal records from the appellants were required outlining how the decision was inconsistent or did not conform to Provincial planning policies. The appeal records were received in late March.

The County and Ministry were then required to file a similarly detailed response. The Ministry and County submitted a joint responding appeal record on May 1, 2019. County legal, planning, and solid waste management staff worked diligently in preparing the substantial responding appeal record containing multiple affidavits and exhibits in support of the County and Ministry's position. The responding materials contained hundreds of pages.

Unfortunately, the day following the filing of these materials the Province announced that the LPAT hearing system was being changed. It was largely to return to the "live" hearing system that existed under the former Ontario Municipal Board (OMB). The transition provisions contain language that indicate that any appeal not assigned an actual hearing date would be held under the proposed new rules.

Following the receipt of the responding appeal record, and still within the current LPAT rules, a case management conference (CMC) was scheduled. A CMC under the existing rules is a mandatory pre-hearing procedure that provides the LPAT with the opportunity to identify parties and participant requests, identify or narrow the issues, identify facts that may be agreed upon, and provide directions for disclosure of information. LPAT will also address opportunities for settlement, including the possible use of mediation or other dispute resolution processes.

A CMC was held on August 7, 2019, at the Township of Springwater's Administration Centre. A second CMC has been scheduled for November 6, 2019. Since no hearing date was scheduled at this CMC, according to the published transition rules, the appeals will proceed under the proposed new rules, which call for a full "live" hearing.

It is anticipated that following the second CMC, a multiple week hearing will be scheduled in 2020 to be conducted under the new rules.

Status of the Appeal of the Applications to Township of Springwater

No decision has been made by the Township of Springwater on the related applications for an official plan amendment and zoning by-law amendment for the ERRC. The applications were filed with the Township in November 2016.

In order to consolidate the local applications with the appeal to the County amendment, the County submitted an appeal on March 26, 2019, based on the failure of the Township to make a decision. The consolidation of applications for the same project has been a common practice to save time and costs for both proponents and appellants by avoiding litigating identical issues multiple times in front of the LPAT.

The County's appeal was deemed invalid by the LPAT's screening process on April 24, 2019. The County challenged the decision with a written motion and supporting affidavits in late May however, the motion was dismissed on July 11, 2019.

The "invalidity" decision on the County's appeal was based on a technicality that requires the County to demonstrate that the local applications fail to conform to the upper-tier official plan. While approved, OPA No. 2 has been appealed so technically it is not in force and effect. As long as OPA No. 2 is under appeal, the underlying designation on those lands applies, and therefore there is no "non-conformity". The LPAT review panel recognized the "Catch 22" situation in which the County finds itself.

The new LPAT rules, together with changes in the *Planning Act*, recently came into effect on September 3, 2019, as specified by proclamation. Under the new rules, the County will appeal the Township's non-decision of the County applications, and will request consolidation of the appeals with OPA No. 2. With the new rules in place the "Catch 22" situation does not apply thereby allowing the County of Simcoe to appeal the non-decision.

Growth Plan Transitional Regulation

On August 29, 2019, O. Reg. 305/19 amended O. Reg. 311/06 under the *Places to Grow Act, 2005* to address transitional matters to implement A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019. The Ministry posted the decision on September 6, 2019, regarding the proposed modifications. O. Reg. 311/06 was modified in response to a number of specific planning matters including County Official Plan Amendment No. 2. The transitional matter for OPA No. 2 relates to an exemption of policies in subsections 4.2.2, 4.2.3, and 4.2.4 of the Growth Plan. This is helpful for the County as it eliminates one issue from the potential hearing and confirms the position previously taken by the Ministry and County.

Project Status – Additional Studies and Next Steps

While the outstanding appeals are addressed, additional studies are being undertaken by the County's consultants.

A Compensation Planting Plan (CPP) was approved on October 29, 2018, to the satisfaction of the Nottawasaga Valley Conversation Authority (NVCA) and the Ministry of the Environment, Conservation and Parks (MECP). Environmental mitigation measures were required on a 2:1 ratio to offset any impacts, therefore 11 ha of land were required to be reforested or restored.

Two sites were chosen for the planting, the Simcoe County Forest Museum Tract (6.9 ha) and Orrock Creek North Tract (8.9 ha). The County's Forestry Department initiated the Plan starting in the fall of 2018. Activities included the removal of non-native/invasive plant species (completed Nov 2018), the planting of 21,725 trees (completed April 2019) and the sowing of seed of 76 species of native plants (completed May 2019), exceeding the requirements under the Plan. The transplanting of 4 clumps of false sunflower from the ERRC site were also required and completed in August 2019. Site monitoring visits commenced with tree planting (April 2019) and will continue as needed.

The Environmental Management Plan (EMP) and Wildlife Management Plan (WMP) are underway with draft terms of reference and an agency consultation meeting scheduled for early fall. These plans will incorporate the core principles of environmental and wildlife protection during the planning and execution of the proposed construction activities to ensure the County meets the requirements and commitments set out in the Amended Environmental Impact Study (GHD, 2018).

Fire Prevention Plan and Emergency Response Plan terms of reference have been discussed with and approved by the Township of Springwater. RJ Bartlett Engineering Ltd., a specialized fire protection engineering firm, continues to work alongside GHD on various aspects of fire protection – from design considerations to a fire safety plan related to future operations at the ERRC complex.

GHD continues to monitor groundwater conditions onsite and are preparing for the advancement of additional studies and reports required for Environmental Compliance Approval (ECA), including the stormwater management plan, hydrogeological assessment and wastewater design report.

Financial and Resource Implications

There are legal and consulting costs pertaining to this file which have been allocated in the 2019 Operating Budget for both departments.

To date, approximately \$1.4M has been spent on development of the ERRC project (to July 2019). A breakdown of these costs and received funding from the Continuous Improvement Fund (for the MMF) is as follows:

Siting process and consultation	\$280,000
Site specific technical studies and consultation	\$911,000
OPF procurement and business case	\$220,000
MMF functional design and costing	\$20,000
Compensation planting	\$40,000
Received CIF funding	(\$95,000)

Relationship to Corporate Strategic Plan

In regard to long-term processing of organics, the Solid Waste Management Strategy (Strategy) recommended development of a centralized composting facility within the County. Public input indicated support for in-County processing as well as for the addition of pet waste and diapers to the program. This item also supports the Strategy recommendation to develop transfer capacity infrastructure to manage garbage and recyclables generated within the County.

Reference Documents

CCW Item 2018-320 – Request for Adoption – County of Simcoe Official Plan Amendment No. 2

CCW Item 2019-052 – Environmental Resource Recovery Centre – Project Update

CCW Item 2019-058 – Notice of Appeal – County OPA No. 2

Attachments

Schedule 1 – Compensation Planting Plan

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Approvals:	Date
David Parks, Director of Planning, Development and Tourism	September 4, 2019
Rob McCullough, Director of Solid Waste Management	September 4, 2019
Debbie Korolnek, General Manager, Environment, Planning and Environment	September 4, 2019
Trevor Wilcox, General Manager, Corporate Performance	September 11, 2019
Mark Aitken, Chief Administrative Officer	September 16, 2019