

From: Johanna Shapira [<mailto:JShapira@woodbull.ca>]  
Sent: May-13-15 12:52 AM  
To: Jody Johnson  
Subject: Puslinch Site Alteration - Reid

Hi Jody

Thanks again for the chat earlier today. As promised, here is a high level summary of the concerns we have identified to date in our review of the new staff report and attachments (which we thank Staff for providing in advance):

(1) True nature of the use. Although representations have been made that this fill operation is intended to increase farming efficiencies, the amount of the fill and resulting slopes suggest it might be a commercial fill operation. On this topic, I refer you again to the Uxbridge case, where the issue of volume of fill was addressed (albeit in a different legal framework context). I'd note that there the Court found that the operation was a commercial fill operation, and it was in fact less fill/acre than what is proposed here. There is was 300,000 m<sup>3</sup> for 108 acres for a ratio of 2,778 m<sup>3</sup>/acre. Here it is 65,900 m<sup>3</sup> for approx 7 acres for a ratio of 9,414m<sup>3</sup>/acre. This issue is relevant because I'd expect if it were a commercial fill operation, it would give rise to additional concerns for the Township, including the need for this operation, its compatibility with the neighbours, and the possibility that an approval (particularly without a more fulsome analysis of need and compatibility) might lead to a negative precedent for commercial fill operations in the Township.

(2) Amount of Fill. Irrespective of the nature of the use, the amount of fill being proposed is significant, and has the potential to negatively impact the neighbours. This issue is raised by the Alton, Southward and Morris letters/reports. Respectfully, the Township consultants do not appear to address the issue of whether the fill amount is (a) necessary to achieve the stated purpose of improving farming efficiencies, or (b) compatible with the neighbouring community. The notable exception is Greg Schiefle who says in his email of May 4, 2015 that "With respect to [Southward's] concern about the quality of fill being applied for the purpose of improving agricultural productivity, I agree that this objective could be achieved with less soil than is proposed." But there does not appear to have been a discussion on compatibility. On that point, I note Ms. Pepping's comment in her letter of October 25, 2013 that the site entrance experiences significant change of grade and therefore a review of sightline might be warranted. I also refer you to page 2 of Mr. Southward's report where he calculated the maximum depth of the fill to be over 19 feet.

(3) Fill Similar to Native Soils. Section 2 of the Site Alteration By-law requires that the fill be the same quality as the native soils. This suggests that (a) testing of existing soils must be taken, and (b) testing of fill be done to ensure similarity with native soils. It appears to me that this principle is widely accepted by all of the consultants:

- (a) LVM report dated November 2013;
- (b) subsequent emails from Mr. Helmer of LVM dated June 18, 2014 and April 1, 2014;
- (c) Greg Schiefle's email of April 21, 2015, para 1 and 3 under "Rob Alton..." heading;
- (d) Conservation Halton Memo dated January 10, 2014;
- (e) Conservation Halton Memo date January 8, 2014; and
- (f) email from Conservation Halton to Mr Reid dated March 31, 2014; Yet, the Control Plan includes only a reference to Table 1 fill. There is no reference to the native soil standard.

(4) Quality of Fill to Date. There is some evidence that the quality of fill that has been dumped on site to date contains inappropriate debris. I refer you to the photos in Mr Southward's report. Greg Schiefle rightly says in his email dated April 21, 2015 that if these types of unacceptable materials have been dumped on site, they need to be removed. Is it the Township's intention to look into this?

(5) Agreement. There are some inconsistencies in the Agreement as between the Control Plan (incorporated by virtue of Schedule "B") and the Schedule "C" requirements, particularly in relation to Screening Procedures. For eg, Schedule "C" contemplates two visual inspections, one prior to dumping. The Control Plan only appears to require one, after dumping. Also, I note that the Schedule "D" securities are not referenced in the body of the Agreement. Also, I wonder under what authority the Agreement will be registered on title? And has there been any discussion about whether the Township could enforce the Control Plan on the Conservation Halton side through the Agreement? Otherwise, it is not clear that the Control Plan is enforceable on those lands.

We think these issues are significant, and if not addressed before the Agreement is approved (and the CBO issues the Permit) could not only lead to a negative precedent for the Township, but environmental and enforceability problems down the road. As I mentioned to you, my client would certainly like to work co-operatively with the Township on this.

I'll call you tomorrow.

Regards, Johanna

Johanna Shapira

Wood Bull LLP  
65 Queen Street West  
Suite 1400  
Toronto, Ontario  
M5H 2M5

Direct: 416-203-5631  
Facsimile: 416-203-8324

This email may contain confidential and/or privileged information for the sole use of the intended recipient. Any review or distribution by others is strictly prohibited. If you are not the intended recipient and/or have received this email in error, please contact the sender and delete all copies. Thank you for your cooperation.