

County vote on power line deferred

A decision by county council on whether or not to accept \$1.4-million payment for a power line easement on the rail corridor was deferred following a revelation that commencement of an expropriation proceeding had been postponed,

As well, there was an impassioned plea by Melancthon resident Scott Funston and a presentation CORE (Conserve Our Rural Environment) chair Jane Pepino, both of which urged the council not to sign off on the easement agreement.

The council had learned at 4 p.m. Thursday, Feb. 13, of the postponement of commencement to March 10 from Feb. 18 at 4 p.m. It had previously prepared a bylaw for finalization of an easement agreement. Now it has until Feb. 28 to file disclosures. It will hold a special meeting prior to March 10 to deal finally with the issues.

As if further to complicate matters, the council Thursday heard opposing legal opinions about its bargaining position from two lawyers who would probably both qualify as experts on the issues facing the council.

CORE president Jane Pepino, who presented on behalf of her group, is a partner in Bay Street law firm Aird & Berlis. The county's legal representation on the corridor easement was by lawyers Derek McCallum and Scott Stoll, coincidentally of Aird & Berlis.

The firm, however, does have something like 140 lawyers. And Ms. Pepino, responding to a pointed question from Councillor Warren Maycock, affirmed that the law firm does "have walls" (presumably segregating the activities of its members).

Ms. Pepino said neither she nor her law firm had been engaged as solicitors for CORE, and that her representation of CORE was purely personal. (In fact, Davis LLP represented CORE at the Environmental Review Tribunal.)

She did, however, appear to be critical of legal advice obtained from its solicitors with respect to options the county might have had in its negotiations with DWPI. Following a presentation by the county solicitor, she clarified this by saying the county's instructions to its lawyer has been "too narrow."

Mr. Maycock disagreed with the "too narrow" description. He said he was disappointed that the county's lawyers had spoken only of the legal process in their presentation to the meeting, and had not covered all the work the county had done in the public interest. "We've done a lot," he said.

In fact, the council had intervened in DWPI's application for leave to construct the power line, to no avail. The Energy Board (OEB) granted the leave on July 5, 2013, and dismissed, among other things, the county's request that the entire line be buried; the duration of a lease be 23 rather than 45, years; and that DWPI be responsible to fencing. It did, however, rule that DWPI would have to comply with all regulations.

Mr. Stoll advised in a July 7 letter to the county his opinion that DWPI would move to expropriate if an agreement could not be negotiated. Thereafter, the county continued to negotiate but the negotiations fell apart when DWPI refused to bury the entire line. Those negotiations were held in camera but representatives of DWPI said publicly they were willing to pay "generous" compensation, but burial of the entire line would be economically not feasible.

On Thursday, after hearing from Ms. Pepino and the county solicitors as well as from resident Scott Funston, Orangeville Mayor Rob Adams said he was confused by the conflicting legal opinions and not prepared to vote.

Apart from her legal opinion that the county might have had more clout on specifics of an agreement with DWPI, Ms. Pepino had broken down the \$1.4-million into amounts per annum and amounts per units of area as well as amounts per turbine to show that compensation would appear to be inadequate.

Amaranth Mayor Don MacIver picked up on that theme, saying when the costs to the county of fencing are considered the

?miniscule? compensation appears even more miniscule. (Appendix F of the agreement would require DWPI to fence certain sections. It couldn't be immediately determined what, if any, added fencing might be required.)

Mr. Funston, who has issues with DWPI's setbacks from his residence, told the meeting his belief that someone is certain to become sick and die from the effects of the overhead portion of the 230kv power line.

?How much is one life worth in Dufferin?? he asked. He related his setback arguments with DWPI, in which distances cited had varied, and said a survey he had done by DWPI's own surveyor shows one turbine is less than the minimum 550 metres from his home.

This issue had been taken up in a recent story in this newspaper. DWPI's position is that its survey is from the turbine's centre to the centre of the residential part of the Funston house, not including the attached garage, whereas Mr. Funston's includes the garage.

Farming issues arose Thursday. One farmer asked how he could be guaranteed access to his land that is separated by the rail corridor while construction is happening.

Warden Bill Hill could only advise that everyone would be notified under the agreement at each stage of construction. Apparently, anyone who sustains losses as a result of construction would be entitled to compensation, although that might have to be awarded by the Ontario Municipal Board ? which would also be the vehicle for resolution of compensatory disagreements should expropriation occur.

Mr. Funston's position was that the county should fight to the death on expropriation. ?If they win, at least it would slow them down,? he said.

He ended his presentation with advice from his one-time hockey coach, ?It's not how many fights you win or lose, but how many you show up for.?

By Wes Keller