

ISSUE DATE:

May 06, 2009



PL061100
PL070625

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellant: Kraft Canada Inc.
Subject: Proposed Official Plan
Amendment No. 49
Municipality: City of Mississauga
OMB Case No.: PL061100
OMB File No.: O060211

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Kraft Canada Inc.
Subject: By-law No. 0225-2007
Municipality: City of Mississauga
OMB Case No.: PL070625
OMB File No.: R070164

APPEARANCES:

Parties

Kraft Canada Inc.

Counsel

M. Bull

DECISION DELIVERED BY D. R. GRANGER AND ORDER OF THE BOARD

This is a request for costs made by written submission by Kraft Canada Inc. The submission has been marked as Exhibit No. 44.

No other submissions have been requested in this matter.

The request relates to a hearing of the appeals by Kraft Canada Inc. (Kraft) from a decision of the City of Mississauga (City) to approve an amendment to the City Official Plan (OPA 49) and against By-law 0225-2007 (By-law) as they relate to its property at 27 Reid Drive (subject property) that includes its existing wheat milling operation known as the Mississauga Mill (Mill) and is located within the Streetsville Planning District.

Kraft was for the most part successful in its appeals as set out by this panel of the Board in its Decision/Partial Order issued February 12, 2009.

The grounds for the cost request by Kraft are set out as:

1. It was unreasonable for the City to effectively downzone Kraft's property at 27 Reid Drive without justification and then force Kraft to a hearing in circumstances where the City did not present evidence to support its action.
2. The Council of the City acted in bad faith in refusing to confirm executed Minutes of Settlement for political purposes and without regard to the planning merits.
3. The City acted clearly unreasonably, vexatiously, and in bad faith during the course of the hearing, by maligning and disrespecting Kraft, and specifically the Manager of Mississauga Mill.

Having carefully considered the comprehensive and helpful submissions by Kraft, the Board finds that this is not a case that warrants an awarding of costs.

The reasons follow.

In considering an award of costs against a Party, the Board relies on its discretionary authority to fix costs in any case pursuant to Section 97 of the *Ontario Municipal Board Act* as guided by its established Rules of Practice and Procedure, and in particular Rule 103 Circumstances in Which Costs Order May be Made.

The Board finds nothing in these circumstances warranting an awarding of costs.

The City attended the hearing represented by experienced counsel and supported by qualified expert witnesses.

The hearing proceeded as scheduled and in fact concluded well within the allotted hearing time. There were no allegations of improper conduct resulting from the extensive pre-hearing process that preceded the commencement of the hearing.

While the Board was informed of a potential settlement between the Parties prior to the commencement of the hearing, it was not presented to the Board, it was not the result of any Board conducted mediation and therefore the Board will not consider the

matter of the private settlement negotiation as a matter relevant to conduct before the Board in this case.

At all times through the course of the hearing, the Board found the Parties, participants and expert witnesses to have conducted themselves with courtesy and reason. All expert witnesses for both Parties were properly qualified to present evidence and opinion as they did. That in the end the Board found one Party's evidence to be lacking over that of another is not unusual. It is trite to say that Board decisions, being decisions of an administrative tribunal, are not intended to equate costs to the result of a hearing as in the courts.

The Board found no maligning of witnesses through the course of the hearing. Cross-examination can at times raise levels of anxiety when motives for actions taken are questioned but it is the nature of cross-examination to get to the best evidence. In this case the Board found that all witnesses held up well with credibility reasonably intact.

In this case, the appeals resulted from the City proposing changes to its Official Plan for the Streetsville Planning District and implementing Comprehensive Zoning By-law. The City met its statutory obligations in approving the Official Plan amendment and enacting the new Zoning By-law. These statutory approval processes have not been challenged. The issues of Kraft were made known to the City through the required planning approval process, including statutory public meetings, and changes were recommended and/or made by City staff and Council to the policies and standards related to the Kraft property. Final decisions regarding the planning instruments were made by the body elected in the community to do so. That body is not obligated to always agree with the advice given, as is its right in a democratic society. This is a normal part of the planning approval process in Ontario. More consultation, more involvement of the community and more communication and understanding between interests is always better. However, the Board is not in the position of being able to determine the right amount other than the statutory minimums.

The Board does find in this case that the process has come to a conclusion supportive of Kraft's ongoing position and in that respect its interest has been served by the planning approval process, albeit at a cost.

In the context of the planning approval process in Ontario generally and the approval processing of the planning instruments before this panel of the Board specifically, the Board finds nothing in the conduct of any Party to this hearing that would cause a reasonable person, having looked at all of the circumstances of the case to exclaim, “that’s not right; that’s not fair; that person ought to be obligated to another in some way for that kind of conduct.”

The request by Kraft Canada Inc. for costs is denied.

“D. R. Granger”

D. R. GRANGER
VICE CHAIR