

?No realistic option? in cell phone tower dispute



(The west side of Bathurst Street was lined with signs this spring objecting to a Bell Canada tower looming over neighbourhoods on the west side of Aurora.)

By Brock Weir

Aurora is left with ?no realistic option? over the controversial Bell Canada tower just over the border in King Township, according to legal experts.

Council released the legal opinion last week of outside legal counsel hired to investigate the possibility of undertaking a judicial review over the tower, which looms over an Aurora neighbourhood from the west side of Bathurst Street.

After lengthy debates at the Council table throughout the spring, including cursory discussions with Bell Canada, investigations over a legal injunction, and an overhaul of how notifications and approvals over communications towers are handled by the Town, Council took one last shot at doing something about it by seeking legal advice on June 25 on the feasibility of a judicial review.

?A judicial review to cease Bell's use and operation of the cell phone tower is extremely unlikely to succeed, and the expenditure of Town funds on such a fruitless endeavour is not recommended,? said Town Solicitor Warren Mar in his report to Council. ?Unfortunately, it appears that the Town is left with no realistic legal options regarding the removal of the cell phone tower or stopping its use by Bell Canada.?

In his report, Mr. Mar cites the legal opinion retained from Bruce Engell of WeirFoulds.

?Mr. Engell verbally noted that proceeding with a judicial review in this matter (while extremely unlikely to succeed in having the cell phone tower removed) would cost in the neighbourhood of \$50,000 to \$100,000 ? and likely to be much closer to the higher cost since any lawyer who takes on the case will have to do more work, and bring in a wide variety of evidence to even begin building the case.

?[He also noted] the Town would be exposed to a cost award should its judicial review application be dismissed.?

In his letter to Mr. Mar dated August 8, Mr. Engell said the only issue with a judicial review is whether the ultimate authority in this case acted properly within its power. In his review of the case, he said procedural irregularities in this instance were ?relatively minor? and unlikely to have much weight in the outcome and a lack of ?substantive violations of the protocol.?

In his opinion, the Town received notice Bell was putting a cell tower up on the land, ?as did some residents, whereas some of the residents appear to have not received notice at all.?

The watershed moment, however, happened when the switch was flipped and the cell tower was put into operation.

Both King Township and Industry Canada have decision-making power with respect to the consultation process, Mr. Engell concluded. Accordingly, both are potential 'decision makers' whose role in the public consultation process may be subject to judicial review.

If it is the specific procedural failings of the process that the Town (or the ratepayers) wish to pursue, it would seem the appropriate respondent is King Township, which had the delegated authority to oversee Bell in this case.

We do not see that the Town can raise any substantive concerns with the locating of the cell phone tower, as there is no evidence of visual or health impact rising to the level that would be seriously considered by a judge on judicial review. Meanwhile, the procedural irregularities do not appear to rise to the level of seriousness which is required by the courts on judicial review...Given how challenging mounting even a credible case would be, the Town would incur significant legal expenses to bring one. It would also be exposed to costs awarded against it if the court dismissed the application.

With the King tower fully operational, Aurora residents can now turn their attention to another cell phone tower proposed for Bayview Avenue and Wellington Street East, slated for just behind the Longo's supermarket.

A public meeting on the proposal is scheduled for Tuesday, September 3 from 5 p.m. to 7 p.m. in the Magna Room at the Aurora Public Library. The meeting will be facilitated by the Altus Group on behalf of Bell Canada.

The proposal comprises of a 29.9 metre flagpole style tower with an equipment shelter and perimeter fencing, just meters between the grocery store and the residential development stemming from John West Way.

To make written submissions to the consultant on the plan or to obtain further information, one can contact Alexandra Schaffhauser by citing file number 2011-(ex)04-13 at comments.agi@altusgroup.com, over the phone at 416-204-5141, by fax at 416-641-9507, or by writing:

Alexandra Schaffhauser
Bell Mobility c/o Altus Group
33 Yonge Street, Suite 500
Toronto, ON M5E 1G4