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Orica appeals, seeks interim zoning order

By WES KELLER Freelance Reporter

Orica Canada Inc. has launched an Ontario Municipal Board (OMB) appeal of East Luther Grand Valley's decision not to renew temporary zoning for its explosives storage near Luther Marsh, and is seeking an injunction to allow continued use of the site pending the outcome of the appeal.

It filed its OMB petition under Section 89 of the Ontario Municipal Board Act last week. Then, as the Board hadn't scheduled a hearing prior to the termination of zoning this Friday, June 12, Orica sought an interlocutory injunction in Superior Court.

The Court hearing is at Kitchener today. Should that fail, Orica's federal licence to operate the facility would expire tomorrow along with the temporary zoning. In either event, there could subsequently be a lengthy OMB hearing as Orica would require an Official Plan Amendment and permanent rezoning of a portion of the now-agricultural tract it occupies more or less adjacent to the East Luther dump that Grand River Conservation Authority ordered closed several years ago.

(The Orica site is, however, outside the area controlled by GRCA, with the exception of its entrance off Sideroad 21- 22. Company officials said recently they would move the entrance outside GRCA control to facilitate the road's widening.)

In a phone interview Wednesday, Orica spokesman Neal Mednick said the company tried to appear in the court at Orangeville when the OMB was unable to schedule an early hearing, but the local court "couldn't accommodate it." He said Kitchener seemed fairly close by.

He wouldn't venture to guess what Orica would do if it did not obtain the injunction.

"I don't know what would happen. (But the facility) has been in operation for 15 years without incident." He said extending the zoning a short while longer "surely isn't going to hurt."

He said township council "had not considered the science," and its decision not to renew the zoning was "based on emotion and not on science."

ELGV Mayor John Oosterhof declined to comment, but said he's leaving it in the hands of township lawyer Jeff Wilker of Thomson Rogers.

In a news release announcing its appeal, Orica describes itself as "a supplier of commercial explosives to the mining, construction and quarry industries and operates 32 facilities throughout Canada."

Application for the interim order was originally under OMB Act Section 89, which states, "The Board may, if the special circumstances of any case, in its opinion, so require, make an interim order without notice authorizing, requiring or forbidding anything to be done that the Board would be empowered on application, notice and hearing to authorize, require or forbid, but no such order shall be made for any longer time than the Board may consider necessary to enable the matter to be heard and determined. (R.S.O. 1990, c. O.28, s. 89.)"

In an interview at The Citizen Saturday, company officials said they had worked with township council to resolve issues all along, but that new items kept popping up.

Orica Canada vicepresident expressed regret that his company had "been forced to file this appeal."

Both he and the plant manager indicated their feeling that Orica is being treated differently from a succession of explosives companies that had used the same site over the past 15 years "without incident."

They said the township had allowed them to embark on a \$2-5-million construction program but approving a building permit under temporary zoning with assurances that permanent zoning could be granted at the end of two years.

Apart from last Saturday's interview and outside council meetings, ELGV Deputy Mayor John Ince said no such assurances had been or would have been given. "We told them they were doing so at their own risk," he said, and pointed to the Official Plan, which states in part: "Notwithstanding the policies contained in the Official Plan, Council may authorize the temporary use of land in accordance with Section 39 of the Planning Act, which may not comply with the land use designation as established by the Official Plan provided that: (among other things) i) The proposed use shall be of a temporary nature and shall not entail any major construction or investment on the part of the owner, so that the owner will not experience undue hardship in reverting to the original use or a use permitted in the land use."

Township council has been faced with a groundswell of opposition to Orica in the third year of its present term. There is some speculation that it has abrogated its zoning responsibilities in favour of having a disinterested third party make a ruling.

That's not necessarily a coward's way out. It might be the strongest weapon the council has to enforce expeditious resolution of all issues or, failing that, to disapprove the necessary zoning for the site.

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