



February 17, 2016

On September 15, 2015 an Environmental Compliance Approval (ECA) was issued by the Ministry of Environment and Climate Change (MOECC) for a septage spreading field, technically referred to as a waste disposal site, within the Township of Algonquin Highlands.

The issuance of the ECA on was done without any prior consultation with the municipality and without the opportunity for the township to provide any form of comment. Unfortunately, MOECC does not require consultation with either the public or the municipality on any aspect of its approval process relating to the issuance of an ECA for a septage spreading field.

Septage spreading is currently permitted in, and by, the Province of Ontario in accordance with the provisions of the *Environmental Protection Act* and its regulations and other sites exist in Haliburton County.

Of particular concern to the municipality is the fact that the land on which the septage spreading field is situated is not zoned to permit the use of a waste disposal site in accordance with the Township's Comprehensive Zoning By-law. Although it is the MOECC's expectation that a property owner will comply with municipal zoning, as clearly stated in its own documents, the issuance of the ECA by the ministry did not need to take into account the zoning of those lands, nor was it a concern to MOECC since the guiding mandate of the MOECC is the *Environmental Protection Act*, not the *Planning Act*.

In order to determine its position in this matter, the municipality has undertaken a thorough review of the issue from both a legal and planning perspective on how best to approach this situation.

A re-zoning application pursuant to the *Planning Act* would allow for public input as well as the ability of the municipality to approve or otherwise deny the application. However, despite requests by the municipality for the proponent to undertake a re-zoning of the subject lands to have the septage spreading field designated a permitted use, the proponent has refused or otherwise neglected to do so.

The proponent has chosen to rely upon the provincial approval and issuance of the ECA which complies with the provisions of the *Environmental Protection Act* and provides a much higher standard of



environmental protection than a re-zoning would or could under the *Planning Act*. Essentially, the provincial approval provides the “trump card” in this particular issue.

The options available to the municipality were thoroughly discussed with respect to dealing with this complex matter. Council has been advised that because of the provincially-provided ECA, a court application by the municipality for an injunction to restrain the septage spreading operation stands an extremely high likelihood of failure, thereby exposing the municipality not only to substantial legal costs but also a possible damage claim; and ultimately, the current use would continue.

The fact that the MOECC can issue an Environmental Compliance Approval for a septage spreading field without the need to consult or seek approval of the host municipality is difficult to comprehend, let alone accept.

However, as a result of MOECC already having approved this operation and granting an ECA, both legal and planning counsel have advised the municipality overwhelmingly that to pursue the issue would be exceptionally difficult, extremely costly and highly likely to fail, with the ultimate outcome highly anticipated to be the continuance of the current use.

After much deliberation over several months, and in consideration of the above factors, Council has chosen to heed the advice received and not proceed with an application for a court injunction. This means the current land use will continue without the apparent proper zoning in place, but it will operate under the provincial ECA and the *Environmental Protection Act*.

This was not an easy decision, and all members of Council continue to struggle with the absurdity of a process wherein provincial approvals can be granted without public input or consultation, and where the only apparent resolution involves costly and risky legal action.

Ultimately however, the activity is permitted by legislation and the province has paramount jurisdiction of this activity under the *Environmental Protection Act*. An extraordinary number of restrictions have been applied to the operation of this site in accordance with the ECA issued. As such, Algonquin Highlands fully expects the MOECC to be vigilant in monitoring this site and to respond to any issues raised by the public swiftly, appropriately and effectively.



The provincial approval sets this particular issue apart from typical zoning or building infraction issues and this decision in no way undermines or limits the usual bylaw and zoning enforcement practices of the municipality.

Despite this discouraging news, there are some encouraging outcomes which have arisen from this process namely:

- A meeting with MOECC officials has been arranged at an upcoming annual municipal conference to express the municipality's extraordinary disappointment and dismay in the current approval process for septage spreading operations; and requesting the Ministry to eliminate the disconnect in the application process which removes any power from local decision makers specifically with regard to zoning compliance prior to the issuance of an ECA;
- The Ministry has confirmed that pressure exacted by citizens and the municipality has resulted in a review of the Province's Hauled Sewage Program to be initiated this year;
- The Rural Ontario Municipality Association (ROMA) has been asked to review the situation and it's anticipated that this organization will support the elimination of the gap as well as the program review;
- The Township of Algonquin Highlands has committed to a review of its sewage facilities and in 2016 budget deliberations set up a Reserve for future Septic Programs; and
- The Township looks forward to continued collaboration with the community where appropriate to do so.

In conclusion, it remains preposterous to Council that a disconnect in provincial legislation can render municipal decision makers powerless and create the confusion and angst that has occurred.

Council for the Township of Algonquin Highlands thanks the public for their ongoing patience and continuing support in dealing with this exasperating issue.

As always, citizens are welcome to contact their Council representatives any time in dealing with this or any other matter of concern.

-30-