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Council flip-flops on HCA review

In an about-face, Clarington Council rescinded the motion it passed two weeks ago, demanding clarity from the Region on certain aspects of the host community agreement (HCA).

At the January 17th meeting of Clarington Council, a motion presented by Councillors Joe Neal and Corinna Traill, asking the Region to clarify a number of clauses in the HCA by February 14th, was adopted by the majority of council. Mayor Adrian Foster and Councillor Mary Novak did not vote in favour of the motion.

At Monday night's Council meeting, Councillor Willie Woo presented a motion to rescind the Neal /Traill motion of two weeks ago, and with only Neal and Traill voting in opposition, it passed with the necessary two-thirds majority.

Councillor Traill then presented another motion similar to the motion passed on January 17th, still asking for the same clarifications with an extended deadline to February 28. Pertaining to the two clauses dealing with the rezoning requirement and Clarington's agreement not to oppose the development of the EFW, Traill's new motion sought to enter into mediation with the Region rather than seek a judicial review.

Councillor Mary Novak moved to delete the second part of Traill's motion, the portion that directed staff to enter into the mediation process with the Region, to determine three points, including whether Clarington can oppose the EFW. Novak's amendment carried with the support of all councillors except Neal and Traill.

Following the meeting, Traill said, "The deleted portion of the motion was the only chance Clarington had to potentially, in the future, oppose the EFW."

In his annual address to council on Monday night, Regional Chair Roger Anderson warned councillors that if they went to court over some of the clauses in the HCA, they would lose.

"We will never concede to going through rezoning," Anderson stated. "We have the right to build public buildings without your permission." While the Region doesn't need Clarington's permission to build the EFW, Anderson said the Region was asking Clarington for that permission "Because that is the type of partner we are."

The motion passed on January 17th was not included in the agenda for the Regional Council meeting held on January 26th. Clarington did receive a letter on January 21 from a senior solicitor from Durham Region, stating that the Region will not discuss terms of the HCA while under threat of litigation, and that if the EFW project was terminated due to delays caused by Clarington, the municipality would be liable for \$46-million in project costs incurred to date.

At last week's General Purpose and Administration Committee meeting, Councillor Neal failed in his attempt to get council's support for a second legal opinion on the Region's letter -- that of an expert in the field of contract law.

Neal did get confirmation from municipal solicitor, Andy Allison, on Monday night that the judicial review asked for in this original motion, specified under Rule 14 of the Rules of Civil Procedure, did not mean that Clarington was suing the Region; it was simply asking the court for an opinion.

When asked by the Times following last week's meeting why she did not support Neal's request for another legal opinion, Ward 4 Councillor Wendy Partner said it is her opinion that Councillor Neal is willing to risk everything on the faint hope of killing the EFW. "It is time we looked at the best deal we can work out with the Region, insuring that public health and safety is our number one priority," Partner stated, "And that Clarington's needs are met."

Wards 3 & 4 Regional Councillor Willie Woo said Clarington should have entered into discussion with the Region regarding the HCA without threatening to litigate.

According to Chair Anderson, the HCA -- the incentive package the Region signed with the municipality, to host their garbage incinerator, is similar to other HCA's Clarington has signed for other facilities such as the Darlington Nuclear Power Plant. "It is very focused, and as far as I'm concerned, they are binding," Anderson stated.

"We are not always going to agree," Anderson told councillors on Monday night, "I understand that, the Mayor understands that and Councillor Traill will understand that."