I am counsel to Mr. Tony Simeone and Dutch Mill Country Market. I have been retained to assist in relation to the City’s refusal to process the Dutch Mill application for an Official Plan Amendment and Zoning By-law Amendment. I request delegation status at the September 21, 2010 Committee Meeting to speak to this matter.

The facts are straightforward. Dutch Mill applied for the Planning Act approvals it thinks it needs to expand its operation (former Flamborough Official Plan Amendment and Zoning By-law amendment). City staff think it needs additional approvals (former Regional Official Plan Amendment). City staff will not process Dutch Mill’s applications until it submits a Regional Official Plan Amendment.

The law is, respectfully, straightforward as well. The Planning Act is clear that Council may require applicants for a zoning by-law amendment to:

Provide the prescribed information and material to council (Section 34(10.1)).

The prescribed information in Ontario Regulation 545/06 is factual and does not include other Planning Act applications.
In addition, Council may require:

Any other information or material that council considers it may need, but only if the official plan contains provision relating to requirements under this subsection (Section 34(10.2)).

I expect that staff rely on this section to support their request for a Regional Official Plan Amendment. In my opinion, this position is not tenable in law.

The statutory language focuses on "information and material", not other Planning Act applications. This makes sense. The clear intent of the section is to ensure that Council has sufficient "information and material" on the application applied for to perform is statutory decision-making as required under the Planning Act. There is nothing in this language that gives a municipality, through its staff or council, the power to require a Planning Act application that a property owner does not think it needs.

If, in processing the zoning by-law amendment, Council decides that a Regional Official Plan Amendment is required, Council would deny the zoning by-law amendment as, given that view, it would not conform. That is a question to be answered as part of the decision-making on the application, not as a threshold question that effectively bars processing.

In my respectful opinion, Dutch Mills’ applications should be deemed complete and processed. As part of that process, I expect that you will benefit from staff’s view of non-conformity with the Regional Official Plan as well as Mr. Fothergill’s view of conformity. You will only then be in a position to perform your duty under the Planning Act and decide the application.

Yours truly,

[Signature]

Nancy Smith
ns/ls