

**At Supreme Court appeal**

**Burlington site boosted as best option by land owners**

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Region for a landfill. As well, the company has a private landfill application for the property in the works.

By attempting to punch holes in the arguments made by hearing officers who chose Milton, Ms Cronk was protecting two positions.

One, her clients would be happy to have the Milton choice reversed by the three judges.

Two, and perhaps failing that, she wants to rebuild the credibility of the Burlington site, so the private landfill application can proceed with some chance of success. That credibility had been all but destroyed by Dr. Kingham and Mr. Lancaster, who indicated in their decision that Burlington was not even a close second choice.

Joining Ms Cronk's coalition against the Milton site are the Town of Milton and a ratepayer's group called the Milton Area Citizen's Coalition. Opposing them are the West Burlington Citizen's group, the City of Burlington and Halton Region.

**Expert opinion rejected**

At issue, Ms Cronk said, is whether Dr. Kingham and Mr. Lancaster should be permitted to "reject uncontroverted expert opinion" and draw conclusions "contrary to the submissions received."

The two hearing officers essentially chose their own method of evaluating evidence without disclosing it to the parties concerned, Ms Cronk said.

The question left hanging, she contended, is whether the hearing board can "formulate

and rely on its own criteria without disclosing those criteria" to those arguing before it.

The constant theme ran through all Ms Cronk's arguments, that the hearing board had committed a "jurisdictional error" by

subscribing to its own counsel rather than objectively analysing presentations made by experts.

In approving the Milton site and dismissing Burlington, "the joint board rejected unanimous uncontroverted expert evidence to the contrary and substituted its own opinion for that of experts on highly technical matters."

Neither Dr. Kingham, a chemist, nor Mr. Lancaster, the vice-chairman of the Ontario Municipal Board, "had any expertise in dealing with sanitary landfill," Ms Cronk said.

**Claims of speculation**

Hammering away at what she apparently saw as them wandering off on a tangent, she stressed that landfill approvals must be "grounded in evidence before the board." Such approvals "cannot be matters of speculation."

"This board was required to base its findings on the evidence before it," Ms Cronk argued.

"It cannot substitute its own opinion."

Although Halton is now arguing in favor of the Milton choice because the Region desperately needs a landfill, any landfill, Ms Cronk reminded the Supreme Court judges that Halton had initially endorsed both sites, with indeed a slight preference for Burlington.



Throughout the hearing it was the Region's position and that of its expert witnesses "that the Burlington site was 'suitable' for landfill," Ms Cronk said.

"What in fact was before the joint board was unanimity," among experts that the Burlington site was feasible, Ms Cronk said.

During the hearing Ministry of the Environment officials indicated the Burlington site did not need a liner to protect against leaching of toxic liquids but pushed for such a liner at the Milton site, Ms Cronk said. And all experts called to testify "agreed that with a liner the (Burlington) site was safe."

**Containing polluted water**

Questions remain concerning control methods for contaminated water that could leak from the Milton site, Ms Cronk said. The safety of the Milton dump will be based largely on the effectiveness of an engineered containment system, which she likened to

a bath tub. "What happens if the design fails?"

In Burlington, two former landfill sites about the National Sewer Pipe lands and the groundwater quality is already poor. If contaminants leached out of the proposed Burlington site the impact on groundwater would be "negligible," according to expert testimony, Ms Cronk said.

Underground water flow expert (hydrogeologist) Stan Feenstra testified that there is a "reasonable possibility" of cracking in the layer of land which would form a barrier between the garbage and the groundwater at Milton's site, Ms Cronk said.

**Denial of justice**

Experts warn that excavations to hollow out a landfill pit could aggravate the tendency for cracking in the supposedly protective soil layer in Milton, Ms Cronk said.

At issue is the "importance of the rejection of this evidence," which was "not in the public interest," she added.

"Failure to consider evidence is a denial of natural justice."

The Supreme Court appeal is expected to continue through Thursday. There is no set timetable for a decision by the judges. It could come almost immediately, or they could retire for weeks, perhaps longer, to digest testimony.

The only appeal route open following a decision at this level is to the Supreme Court of Canada. Milton Mayor Gord Krantz has already stated that he does not favor such an action, and the town has not budgeted for that costly and probably lengthy procedure.

**Plan calls for 200-bed facility apart from old Manor**

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suggested in the consultants' report. The detailed architectural drawings, which the same consultants have been retained to provide, are slated to be completed by the fall followed by a tender call in the winter.

Completion date, said Bonnie Ewart, the region's social services commissioner, is tentatively set for "spring of 1993."

The Region has been pondering what to do with Centennial Manor for a number of years. In operation for more than three decades, it does not conform with today's building standards, and the consultants say that the institutional setting is contrary to today's goal of providing a residential rather than a hospital atmosphere.

"It's simply outmoded," said consultant John Fourquier, of Mekinda, Snyder and Weis Inc.

In studying the best option to provide a modern senior's home, the consultants were also asked to comment on appropriate uses for the remainder of the 20-acre property.

They suggested that the Martin House could be adapted to about 60 senior citizens apartment units, and that parts of the Pettit House, including the administration area, the chapel and the auditorium, be retained and made available for community uses.

The consultants were given the go ahead to proceed with a more detailed proposal for this plan.

**Down from 350 beds**

Ms Ewart, in an interview after the meeting, said the region came up with its first redevelopment scheme for the manor in 1987. The \$35 million, 350 bed proposal, she said, would basically have "rebuilt what we had."

However, she said the Ministry of Community and Social Services, at the same time,

was changing its concept of senior care and frowning upon facilities with more than 200 beds (Centennial Manor is presently approved for 370 beds).

"They (the ministry) wouldn't even look at it," she said. "We had to go back to the drawing board."

The region came back with an acceptable compromise of a 200-bed Manor for Milton, and a plan to "decentralize" the remaining beds (170) to Burlington and Oakville.

In the 1990 regional budget, 28.7 million dollars has been set aside over the next six years to completely fund the manor project (\$21.1 million), and partially fund (\$7.6 million) decentralization of the 170 beds.

The decentralization project that's furthest along, said Ms Ewart, is a \$5 million, 50-bed regional facility in Burlington that is being undertaken in partnership with the Burlington Rotary Club.

The service club is building its own seniors apartment.

**Redevelopment too costly**

As part of the mandate to come up with a plan to replace the aging Manor, the region's consultants were required to "examine in depth various redevelopment options."

They were specifically asked to assess the condition of the two existing buildings — Martin House and Pettit House — to determine whether a combination of renovation, reconstruction and addition would be feasible for the 200-bed facility.

In choosing the best option, consultant Mel Mekinda told committee that two issues were paramount — the issue of the medical model

versus the social model, and the issue of new construction versus re-construction.

The present Centennial Manor, like all such facilities built in the '50s and '60s, he said, is based on the medical model where the client is viewed as a patient.

The philosophy now, he said, has shifted to a social model where the client is viewed more as a resident.

In choosing new construction over re-construction, the consultants listed several advantages:

- The cost of renovating either Pettit House or Martin House would be 80-90 per cent of a new building.

- The facility could be rebuilt in a 5 or 6-acre corner of the lot rather than the centre where the manor is now situated, leaving considerably more land for other uses.

- To achieve a social model in either of the existing buildings would be very difficult. "New construction would allow for a much more efficient building design as it would not be constrained by the existing 'footprint' of either of the buildings."

- New construction would result in the least disruption to existing residents. "Research has demonstrated that major reconstruction of residences for seniors has led to the unfortunate rise in mortality rates, seemingly caused by dislocation, confusion and unhappiness of a very fragile group of people."

**Two eliminated**

With the two options eliminated of locating the home in either the Pettit or Martin House, the consultants considered three "new construction" options — locating it in the north

east corner, the north west corner or the south west corner.

The latter choice was ultimately recommended for several reasons:

- By siting the new facility in front of the Martin House, a campus-like sense of community, "almost a 'town square' image, could be created." The two buildings could even be interconnected with a covered walkway.

- A roadway, public or private, could effectively cut through the property between Hwy. 25 and Childs' Drive to service all segments of the land.

Consultant Mel Mekinda added that the site has a good presence on Hwy. 25, has good "interaction" with E.C. Drury, and is an "efficient and compact development site."

**Some disadvantages**

Disadvantages, he said, are that it is remote from the shopping areas, does not blend in well with adjacent residential areas on Childs' Drive, and is susceptible to noise from Hwy. 25.

Before the final detailed drawings for the new manor can be completed, however, there is still one hurdle to overcome.

Although the ministry initially approved a 200-bed manor, it later changed its position in favor of a 150-bed facility, with the additional 50 beds to be phased in at a later date.

The consultants, however, recommended against phasing which said they said is costlier in the long run and more disruptive to patients.

"The total cost to build 200 beds in two phases is expected to be 125 per cent to 150 per cent of the cost of doing all 200 at once," said the staff report.

"I just hope the ministry is on board for the (additional) 50 beds," said Mr. Clements.



Bonnie Ewart

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