

LPAT Decision on NGFA Appeal against MLE in OPA No. 129

Case No.: PL161206

Issue Date by Hugh S. Wilkens: December 19, 2019

BACKGROUND:

- OPA 129 is an updated Town OP that applies to all of the lands in the Town outside of the 4 Secondary Plan Areas;
- OPA 129 carried forward the existing development approvals for MLE from the previous Town OP;
- York Region approved OPA 129 with certain modifications in November 2016. None of these modifications related to the MLE lands.
- The NGFA appealed OPA 129 to the LPAT in relation to the MLE lands. Specifically, it appealed the MLE “Urban Residential Area” land use designation/depiction on the various schedules/appendices, all of the Subsection 7.2- Urban Residential Area site-specific land use and development policies pertaining to MLE, as well as certain servicing policies and a few other policies related to MLE.

INITIAL OBSERVATIONS:

1. In the first part of the Decision where it sets out the issues of the Appeal, there is no reference to NGFA’s appeal of the MLE site-specific land use/development policies in Subsection 7.2 of the new OP- it only mentions the Urban Residential land use

- designation absent of the policies that are tied to it. (Turn to pages 2 and 3- par. [2] and [7]).
2. The Decision repeatedly recognizes the existing MLE development approvals - one can see this on page 5, par. [15], page 8, par. [21], page 15, par. [39], page 19, par. [51], page 21, par. [56] and page 26, par. [71].
 3. Par. [15], pages 5 and 6, appears to summarize the basis or rationale behind the Decision. The LPAT states the change in designation *“would prohibit further development and site alteration beyond those existing approvals”* (turn to par. [15] and read it).
 4. Par. [39], page 15 addresses what the LPAT deems to be the focus of the Parties submissions, which is the applicability of the PPS prohibition policies pertaining to development or site alteration in significant wetlands and woodlands in relation to existing development approvals (read par. [39], page 15). These PPS policies do not apply to the existing MLE approvals.
 5. The only time the Decision addresses the more than 13 pages of existing site-specific MLE development policies is in par. [42], page 16 where it states that these policies *“should be maintained and are consistent with the PPS provided that the designation of the environmentally sensitive portions of the subject lands and buffer areas are designated”Environmental protection Area”.*
 6. As stated in the Order on page 27, Par. [75[]], the appeal is allowed in part.

The majority of the MLE is to be re-designated EPA (the LPAT directs that the wetlands and woodlands features as shown in

YROP, plus the area comprising the VPZ under the Region's Plan (30 m), plus the area comprising the adjacent lands under the PPS (120m) are all be designated EPA- explain the implication of this- very little to no Urban Residential Area designation remains on MLE lands.)

However, all of the site-specific MLE development policies related to the previous land use designation are to remain in tact in the OP, along with all of the other MLE policies related to servicing, etc.

The net effect of this Decision is that the new EPA land use designation on MLE and the existing MLE site-specific land use/development policies of Subsection 7.2 are no longer connected with each other. This technically results in the MLE lands now being subject to the EPA designation and its associated policies in the new OP, and the existing MLE zoning not being in conformity with the EPA designation and policies.

Under Section 26 (9) of the Planning Act, upon updating an OP to conform to the PPS/Provincial Plans, a municipality shall within three years amend its ZB to conform with the OP.

Apprise Council of the rights of the Parties to seek a review by the LPAT Chair and/or to seek an appeal to the Divisional Court.

- Section 37 of the Local Planning Appeal Tribunal Act allows a party to file a Notice of Motion for Leave to Appeal to the Divisional Court on a question of law. In order to pursue a motion for leave to appeal, a party must serve a Notice of Motion for Leave to Appeal upon all other parties within fifteen (15) days of the date of the issued decision. The subject decision was issued on

December 19, 2019, so a Notice of Motion for Leave to Appeal, if one is to be sought, must be served on or before Friday January 3, 2020. The Town's law firm has advised that it not been served with a Notice of Motion for Leave to Appeal.

- Another option available to a Party that is of the view that there are errors in the decision is to seek a Request for a Review of the decision by the Chair of the LPAT. This Review Request may be filed within thirty (30) days of the date of the issuance of the decision. The review request, unlike a Notice of Motion for Leave to Appeal, can raise both alleged errors of fact and/or errors of law in the request. In the present case, a Review Request must be filed on or before Monday January 20, 2020 (the 30th day actually falls on Saturday January 18, but since the 30th day falls on a weekend, the time to file is extended to the next Monday).
- Unlike a Notice of Motion for Leave to Appeal, a Review Request filed under section 35 of the Local Planning Appeal Tribunal Act, does not have to be served on any of the other parties. The Review Request only needs to be filed with the Tribunal. The general practice however is for counsel to advise opposing counsel that a Review Request has been filed. A response needs to be filed to a Review Request only if the Tribunal Chair seeks a response. Often times, a Review Request is dismissed by the Tribunal after it has conducted its own review and without input from responding parties.

- Decisions arising from Review Requests generally take at least six (6) weeks to issue if the Tribunal Chair simply dismisses the request. However, if the Chair decides that she wishes to have a motion argued to deal with the Review Request, or wishes to receive written argument from the parties, a Review Request can take several months to reach its conclusion.

In closing, it would be prudent to wait to see if there is any request made for a Review of the decision to the LPAT Chair prior to determining next steps on this matter.