

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: December 19, 2019

CASE NO(S): PL161206

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: North Gwillimbury Forest Alliance
Appellant: The Governing Council of the Salvation Army of
Canada
Subject: Proposed Official Plan Amendment No. OPA 129
(OPA 129)
Municipality: Town of Georgina
OMB Case No.: PL161206
OMB File No.: PL161206
OMB Case Name: North Gwillimbury Forest Alliance v. Georgina
(Town)

Heard: May 28-31, 2018 in Georgina, Ontario

APPEARANCES:

Parties

Counsel

North Gwillimbury Forest Alliance

Leo Longo

Maple Lake Estates Inc.

David Bronskill

Town of Georgina

Bruce Ketcheson

Regional Municipality of York

Barbara Montgomery

DECISION DELIVERED BY HUGH S. WILKINS AND ORDER OF THE TRIBUNAL

[1] The Town of Georgina (“Town”) initiated its five-year official plan review and conformity exercise in 2012. This process resulted in the Town’s adoption of Official Plan Amendment No. 129 (“OPA No. 129”). The Regional Municipality of York (“Region”) approved OPA No. 129 with certain modifications in November 2016.

[2] The North Gwillimbury Forest Alliance (“Appellant”) appealed OPA No. 129 to the Local Planning Appeal Tribunal (“Tribunal”). It appeals the continuation of an Urban Residential designation on lands in the northwest corner of the Town on the south side of Lake Drive North. These lands consist of Blocks 1 and 2 of Plan 65M-2903 (“subject lands”). The subject lands are owned by Maple Lake Estates Inc. (“Maple Lake”). The Appellant argues that almost all of the subject lands consist of either provincially significant wetlands or provincially significant woodlands and continuation of the Urban Residential designation under OPA No. 129 would be contrary to provincial policy.

[3] The subject lands are 200.45 hectares (“ha”) in size. They were designated in the Town’s Official Plan as “Urban Residential” in the 1980s to facilitate the development of an adult-lifestyle trailer park and golf course. It is intended to be a “self-contained recreational residential retirement community”. The subject lands were zoned Residential and Open Space (and a small part Rural). A plan of subdivision was registered for the proposed development in 1992.

[4] The approvals for the proposed development were granted prior to the enactment of the Provincial Policy Statement, 2014 (“PPS”), Growth Plan for the Greater Golden Horseshoe, 2017 (“Growth Plan”), Greenbelt Plan, or the Region’s Official Plan. The proposed development has not been built.

[5] Since the time of the Urban Residential designation in the 1980s, the subject lands have been evaluated and determined by the Ministry of Natural Resources and Forestry (“MNRF”) to be roughly 90 percent provincially significant wetlands and provincially significant woodlands.

[6] The subject lands are in a settlement area under the PPS, Greenbelt Plan and the Growth Plan and are designated under the Greenbelt Plan and the Region's Official Plan as "Towns/Villages".

ISSUES

[7] The issues in this appeal are whether the carrying forward of the Urban Residential designation of the subject lands in OPA No. 129 has regard to matters of provincial interest, is consistent with the PPS and conforms with the Greenbelt Plan, Growth Plan, and the Region's Official Plan.

EVIDENCE, ANALYSIS AND FINDINGS

[8] The Tribunal heard opinion evidence from three witnesses:

- Anthony Usher (on behalf of the Appellant);
- Keith MacKinnon (on behalf of Maple Lake); and
- James Dymont (on behalf of the Town).

Each was qualified by the Tribunal to provide opinion evidence in the area of land use planning.

[9] The Appellant raised five main issues to be adjudicated on the appeal. Each will be addressed below.

Issue 1 – Should the Town's Official Plan permit, or should it prohibit, development on the provincially significant wetlands and significant woodlands that occupy the subject lands? Which course of action would be more consistent with good planning principles and practice and more in the public interest?

[10] OPA No. 129, Schedule B1 on key natural heritage features identifies the subject lands as "woodlands", "wetlands" and "woodlands and wetlands" and Schedule B2 on key hydrologic features identifies much of the subject lands as "wetlands". Based on

Mr. Usher's evidence, 90% of the subject lands are in areas that have been evaluated by the MNRF as provincially significant wetlands and/or constitute significant woodlands. Map 4 (key hydrologic features) of the Region's Official Plan identifies 58% of the subject lands as provincially significant wetlands and Map 5 (woodlands) identifies 89% of the subject lands as woodlands. Mr. Usher opined that good planning must take account of changes in policy over time. He stated that the policy environment in the 1980s was distinct from today's policy environment. He said there was no PPS, no provincial policy on wetlands, and no provincially significant wetland or natural heritage feature designations in the 1980s. Also, there was no Greenbelt Plan, Growth Plan, or Regional Official Plan. He said that the approvals for the proposed development would not be granted today. He said the subject lands are not in an existing community or area targeted for future growth and the proposed development will not result in a complete community as defined in the Growth Plan. He opined that good planning must take account of changes in policy over time.

[11] Mr. MacKinnon stated that the subject lands are zoned for residential and open space uses and a subdivision agreement has been executed and registered against the property. He said the existing development rights must be properly recognized. He stated that it is in public interest to retain existing development approvals.

[12] Mr. Dymont stated that OPA No. 129, Schedules B1 and B2, and their associated policies in OPA No. 129 state that any new developments requiring amendments to the Official Plan must reflect the Greenbelt Plan, Growth Plan and Lake Simcoe Protection Plan and protect the relevant features, functions, attributes and linkages identified in the schedules. He opined that OPA No. 129 cannot remove the existing approved development rights on the subject lands and those lands cannot be designated in any manner that does not reflect the existing development rights there. However, he stated that the significant natural heritage features on the subject lands ideally should be protected to the greatest extent possible.

Findings

[13] The Town has expressed concerns in the past over the need to protect the subject lands. In a report of the Town's Director of Planning and Building to Council, dated May 5, 2015 (Exhibit 2C, Tab 53), it states at page 21-22:

Based on the Planning Act and the PPS, 2014, it is clearly a matter of provincial, regional and local interest, that the [subject lands] not be developed, but rather that the lands be protected as a natural area. However, it must be recognized that notwithstanding what the PPS, 2014 directs, the Greenbelt Plan currently permits the development of [the subject lands]. It is also important to note that under the provisions of the PPS, 2014 and the Greenbelt Plan legislation, the Greenbelt Plan prevails over the PPS, 2014 to the extent of any conflict.

In view of the above, it is staff's opinion that ... the preferred option is the one that provides the greatest chance (or least amount of downside risk) of being successful in protecting the [subject lands] from any development, and preserving it as natural area in perpetuity.

Furthermore, good planning would dictate that all of the existing [Maple Lake] approvals in the Greenbelt Plan, the Region's Official Plan and the Town's Official Plan and Zoning By-law, must be changed to the appropriate protective land use designations, policies and zoning.

[14] It is not contested that should Maple Lake seek any further official plan amendments for the subject lands, those amendments must conform to the applicable provincial plans. The existing policies in the Town's Official Plan and zoning requirements allow for a residential development and golf course on the subject lands. A subdivision plan has been approved and registered on the subject lands along with a subdivision agreement. Maple Lake and the Town argue that with those development approvals in place, OPA No. 129 cannot prohibit or remove the development rights already approved for these lands.

[15] Guidance on determining good planning principles and the public interest are set out in the PPS, provincial plans, and applicable official plans; in this case, the Growth Plan, Greenbelt Plan, Lake Simcoe Protection Plan, and Region's Official Plan. As analyzed in the sections below, the Tribunal finds that it is good planning and in the public interest to protect provincially significant wetlands and woodlands, but also to recognize valid existing development approvals. The issue before the Tribunal in this

case is not whether the proposed development should proceed, but whether the Urban Residential designation of the subject lands in OPA No. 129 is consistent with the PPS and conforms with provincial plans and the Region's Official Plan. The Tribunal finds that the course of action that is most consistent with good planning principles and practice and in the public interest, as further detailed below, is for a designation for the subject lands that aims to protect the wetland and woodland features there. However, the Tribunal finds that such a designation should not prevent Maple Lake from implementing its existing development approvals for the subject lands; but it would prohibit further development and site alteration beyond those existing approvals.

Issue 2 – Would approval of (i) an “Urban Residential Area” designation of the subject lands as proposed in OPA No. 129, or (ii) an “Environmental Protection Area” designation have more appropriate regard to the applicable matters of provincial interest?

[16] Under s. 2 of the *Planning Act*, in carrying out its responsibilities under the *Planning Act*, the Tribunal shall have regard to matters of provincial interest including:

- the protection of ecological systems, including natural areas, features and functions;
- the conservation and management of natural resources and the mineral resource base;
- the adequate provision of a full range of housing, including affordable housing;
- the appropriate location of growth and development; and
- the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians.

[17] Mr. Usher stated that the proposed development would not protect ecological systems, conserve and manage natural resources, address energy and water supply use and conservation, result in a complete community, provide an adequate range of housing, provide employment opportunities, or be an appropriate location for growth and development. He opined that the Urban Residential designation, therefore, does not have regard for matters of provincial interest.

[18] Mr. MacKinnon said the subject lands' Urban Residential designation is appropriate given the existing approvals that are in place and the registration of a plan of subdivision and subdivision agreement. He said the Greenbelt Plan, the Town's Official Plan and the Region's Official Plan recognize the existing approvals. He opined that OPA No. 129 has appropriate regard to the provincial interests listed in s. 2 of the *Planning Act*.

[19] Mr. Dymont said that having regard to provincial interests, an official plan must protect the natural features and functions identified in the official plan for protection, which in this case does not include the subject lands. He said conservation and management of natural resources, conservation of resources, and the supply, efficient use and conservation of energy and water, among other interests, can be addressed in a plan of subdivision. He said OPA No. 129 ensures the protection of ecological systems through its policy 7.2.22, which requires that any amendment to the Town's Official Plan's special provisions for the subject lands in policy 7.2 must conform with the applicable provincial plans and consider the natural heritage features on the subject lands. It submits that on lands where development is already approved, the designation of land in the Official Plan has no impact on the protection of natural features on those lands.

Findings

[20] The Tribunal finds that regardless of whether there are existing development approvals for the lands in question, the Tribunal still must have regard to the protection of ecological systems, including natural areas, features and functions, when carrying out its responsibilities under the *Planning Act*. The Tribunal must have regard for the protection of the ecological systems on the subject lands, including the significant wetlands and woodlands located there. It must also have regard for the conservation and management of natural resources, including water and forest issues, the appropriate location of growth and development, the promotion of development that is designed to be sustainable, and the adequate provision of a full range of housing. The

Tribunal finds that it must have regard to these and the other matters of provincial interest set out in s. 2 of the *Planning Act* and apply them in a principled manner.

[21] In the present case, the uncontested evidence before the Tribunal is that the subject lands contain significant wetlands and woodlands raising ecological protection and natural resource conservation issues. However, the subject lands have been designated for development. Having regard to the applicable matters of provincial interest identified above, the Tribunal finds that a designation that protects the area's natural features, conserves its resources, and is sustainable is appropriate, which in this case is an Environmental Protection Area designation. There was no evidence produced before the Tribunal that the subject lands are the appropriate location of growth and development or an appropriate location for the provision of a range of housing types. As noted above, an Environmental Protection Area designation, however, would not affect development rights under valid existing development approvals regarding the subject lands.

Issue 3 – Would approval of (i) an “Urban Residential Area” designation, or (ii) an “Environmental Protection Area” designation be:

- (a) consistent with the PPS;**
- (b) conform with the Growth Plan;**
- (c) conform with the Greenbelt Plan; and**
- (d) conform with the Region's Official Plan.**

[22] Each of these sub-issues will be analyzed separately below.

Consistency with the PPS

[23] The Appellant argues that OPA No. 129 is not consistent with PPS policies 1.1.3 (preamble), 2.1.1 to 2.1.5, 2.1.8, or 4. Mr. Usher stated that sufficient land has already been made available to accommodate an appropriate amount of residential development in the area of the subject lands to meet projected needs.

[24] Mr. Usher stated that the preamble to PPS policy 1.1.3 requires that areas such as the subject lands and the resources they contain must be used wisely and that the significant wetlands and woodlands on the subject lands must be protected. He stated that the PPS defines natural heritage features and areas to include provincially significant wetlands and significant woodlands, which are important for their environmental and social values as a legacy of the natural landscapes of an area. PPS policies 2.1.1 to 2.1.5 and 2.1.8 state:

2.1.1 Natural features and areas shall be protected for the long term.

2.1.2 The diversity and connectivity of natural features in an area, and the long-term *ecological function* and biodiversity of *natural heritage systems*, should be maintained, restored or, where possible, improved, recognizing linkages between and among *natural heritage features and areas*, *surface water features* and *ground water features*.

2.1.3 *Natural heritage systems* shall be identified in Ecoregions 6E & 7E, recognizing that *natural heritage systems* will vary in size and form in *settlement areas*, *rural areas*, and *prime agricultural areas*.

2.1.4 *Development* and *site alteration* shall not be permitted in:

- a. *significant wetlands* in Ecoregions 5E, 6E and 7E; and
- b. *significant coastal wetlands*.

2.1.5 *Development* and *site alteration* shall not be permitted in:

- a. *significant wetlands* in the Canadian Shield north of Ecoregions 5E, 6E and 7E;
- b. *significant woodlands* in Ecoregions 6E and 7E (excluding islands in Lake Huron and the St. Marys River); [...]

unless it has been demonstrated that there will be no *negative impacts* on the natural features or their *ecological functions*.

[...]

2.1.8 *Development* and *site alteration* shall not be permitted on *adjacent lands* to the *natural heritage features and areas* identified in policies 2.1.4, 2.1.5, and 2.1.6 unless the *ecological function* of the *adjacent lands* has been evaluated and it has been demonstrated that there will be no *negative impacts* on the natural features or on their *ecological functions*.

[25] Mr. Usher stated that 92% of the subject lands are undevelopable under the current provincial plans and policies as they are either provincially significant wetlands or woodlands. He stated that PPS policy 2.1.1 requires that natural features shall be protected for the long term and policy 2.1.2 encourages restoration, maintenance, and, if possible, improvement of natural features. He said the proposed development would destroy large portions of the significant wetlands and woodlands on the subject lands and would likely affect the connectivity and functions of the remaining parts of the lands. He stated that OPA No. 129 is inconsistent with PPS policy 2.1.3 requiring the identification of natural heritage systems and policies 2.1.4, 2.1.5 and 2.1.8, which prohibit “development” and “site alteration” in significant wetlands, woodlands and adjacent lands, except where no negative impacts are demonstrated.

[26] Policy 4 provides directions on PPS implementation. Policies 4.1, 4.2, 4.4, 4.7, 4.9 and 4.12 states:

4.1 This Provincial Policy Statement applies to all decisions in respect of the exercise of any authority that affects a planning matter made on or after April 30, 2014.

4.2 In accordance with section 3 of the *Planning Act*, a decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter, “shall be consistent with” this Provincial Policy Statement.

[...]

4.4 This Provincial Policy Statement shall be read in its entirety and all relevant policies are to be applied to each situation.

[...]

4.7 The official plan is the most important vehicle for implementation of this Provincial Policy Statement. Comprehensive, integrated and long-term planning is best achieved through official plans.

Official plans shall identify provincial interests and set out appropriate land use designations and policies. To determine the significance of some natural heritage features and other resources, evaluation may be required.

Official plans should also coordinate cross-boundary matters to complement the actions of other planning authorities and promote

mutually beneficial solutions. Official plans shall provide clear, reasonable and attainable policies to protect provincial interests and direct development to suitable areas.

In order to protect provincial interests, planning authorities shall keep their official plans up-to-date with this Provincial Policy Statement. The policies of this Provincial Policy Statement continue to apply after adoption and approval of an official plan.

[...]

4.9 The policies of this Provincial Policy Statement represent minimum standards. This Provincial Policy Statement does not prevent planning authorities and decision-makers from going beyond the minimum standards established in specific policies, unless doing so would conflict with any policy of this Provincial Policy Statement.

[...]

4.12 *Provincial plans* shall be read in conjunction with this Provincial Policy Statement and take precedence over policies in this Provincial Policy Statement to the extent of any conflict, except where legislation establishing *provincial plans* provides otherwise. Examples of these are plans created under the *Niagara Escarpment Planning and Development Act*, the *Ontario Planning and Development Act, 1994*, the *Oak Ridges Moraine Conservation Act, 2001*, the *Greenbelt Act, 2005* and the *Places to Grow Act, 2005*.

[27] Mr. Usher stated that under policy 4.1 the PPS applies to all decisions that affect a planning matter made on or after April 30, 2014. He said that to do otherwise would inappropriately extend the life of outdated policies. Referring to s. 4.7 of the PPS, Mr. Usher emphasized that official plans are the most important vehicles for implementing the PPS. He said the section requires that official plans identify provincial interests and set out appropriate land use designations and policies. In this regard, municipalities must keep their official plans up to date with the PPS. He stated that s. 26(1) of the *Planning Act* also requires consistency with the PPS. He stated that in the present case, OPA No. 129 fails to identify the provincial interests in the significant wetlands and woodlands on the subject lands and fails to keep the Town's Official Plan up-to-date with the PPS by failing to review, identify, and protect the provincially significant wetland and provincially significant woodland features on the subject lands. He suggested that if OPA No. 129 designated the subject lands as "Environmental Protection", it would comply with these *Planning Act* and PPS requirements.

[28] Mr. MacKinnon opined that OPA No. 129's Urban Residential designation is consistent with PPS policy 1.1.2. He said the proposed development makes lands available to meet projected needs. He also noted that the subject lands are in a settlement area focusing on growth and development. He opined that the Urban Residential designation in OPA No. 129 recognizes the existing development approvals on the subject lands and is consistent with the PPS.

[29] Mr. Dymont stated that the subject lands have been included in the Town's calculations and projections for future population growth in accordance with the growth management provisions in PPS policy 1.2. He said PPS policy 2.1 on the protection of natural features and functions applies where there is development planned; however, he stated that based on the definition of "development", these provisions do not apply where no further planning approvals are needed. He stated that PPS policy 4.1 requires official plans to be kept up-to-date with changes to the PPS and opined that the Town's Official Plan has done that by updating its mapping of significant natural heritage features and hydrologic features on the subject lands.

Findings

[30] PPS policy 2.1.1 states that "natural features and areas shall be protected for the long term". It does not restrict this direction solely to situations where development is proposed. As noted in Growth Plan s. 1.2.3 in reference to the PPS, the PPS provides overall policy directions on matters of provincial interest related to land use and development in Ontario. It does not solely apply to development applications. The Tribunal finds that subject lands' significant wetlands and woodlands are natural features and areas, which under PPS policy 2.1.1 are directed to be protected for the long term.

[31] PPS policy 2.1.2 addresses the diversity and connectivity of natural features and the long-term *ecological function* and biodiversity of *natural heritage systems*. "Ecological function" is defined in PPS policy 6 as:

the natural processes, products or services that living and non-living environments provide or perform within or between species, ecosystems and landscapes. These may include biological, physical and socio-economic interactions.

[32] “Natural heritage systems” is defined in PPS policy 6 as:

a system made up of *natural heritage features and areas*, and linkages intended to provide connectivity (at the regional or site level) and support natural processes which are necessary to maintain biological and geological diversity, natural functions, viable populations of indigenous species, and ecosystems. These systems can include *natural heritage features and areas*, federal and provincial parks and conservation reserves, other natural heritage features, lands that have been restored or have the potential to be restored to a natural state, areas that support hydrologic functions, and working landscapes that enable ecological functions to continue. The Province has a recommended approach for identifying *natural heritage systems*, but municipal approaches that achieve or exceed the same objective may also be used.

[33] “Natural heritage features and areas” is defined in PPS Policy 6 to include provincially significant wetlands and significant woodlands.

[34] Given the size of the wetlands and woodlands on the subject lands and their designations as provincially significant, they are natural heritage systems as defined in the PPS. The Tribunal finds, as directed under PPS policy 2.1.2, that these wetlands and woodlands must be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features. PPS policy 2.1.3 states that natural heritage systems will vary in size and form in settlement areas, rural areas, and prime agricultural areas. From this, it is clear that natural heritage systems may be located in settlement areas such as where the subject lands are located. Based on the mapping set out in PPS Figure 1, the Tribunal finds that the subject lands are in Ecoregions 6E and 7E, and policy 2.1.3 applies.

[35] PPS policy 2.1.4 states that *development* and *site alteration* shall not be permitted in significant wetlands in Ecoregions 5E, 6E and 7E. The subject lands include significant wetlands and are located in Ecoregions 6E and 7E. The Parties

disputed whether the terms “development” and “site alteration” apply to the subject lands. PPS policy 6 defines “development” as:

the creation of a new lot, a change in land use, or the construction of buildings and structures, requiring approval under the *Planning Act*, but does not include:

- a. activities that create or maintain *infrastructure* authorized under an environmental assessment process;
- b. works subject to the *Drainage Act*; or
- c. for the purposes of policy 2.1.4(a), underground or surface mining of *minerals* or advanced exploration on mining lands in *significant areas of mineral potential* in Ecoregion 5E, where advanced exploration has the same meaning as under the *Mining Act*. Instead, those matters shall be subject to policy 2.1.5(a).

[36] It defines “site alteration” as:

activities, such as grading, excavation and the placement of fill that would change the landform and natural vegetative characteristics of a site.

For the purposes of policy 2.1.4(a), *site alteration* does not include underground or surface mining of *minerals* or advanced exploration on mining lands in *significant areas of mineral potential* in Ecoregion 5E, where advanced exploration has the same meaning as in the *Mining Act*. Instead, those matters shall be subject to policy 2.1.5(a).

[37] Mr. Usher opined that the PPS definition of “development” applies to any changes in land-use, including changes on the subject lands. He said the question to determine is what the land is being used for not what it is approved for. He stated that a legally existing land use must reflect the actual use of the land. Mr. MacKinnon stated that PPS policy 2.1 does not apply because there is neither “development” nor “site alteration”, as defined in the PPS, proposed on the subject lands. He stated that the development approvals are in place and are in force and effect. Mr. MacKinnon stated that the definition of “site alteration” does not apply due to the existing approvals on the subject lands; therefore, PPS policies 2.1.4, 2.1.5, and 2.1.8 do not apply. Mr. Dyment stated that the PPS is only applied to the development of lands. He reiterated that “development” is defined in the PPS as “the creation of a new lot, a change in land use, or the construction of buildings and structures requiring approval under the *Planning*

Act". There are some exceptions to this definition, but he stated that they do not apply here. He said the subject lands have subdivision approval, a subdivision agreement, zoning, and a "Certificate of Approval under the Ministry of the Environment". He said Maple Lake can build without triggering the definition of "development" in the PPS. He stated that if Maple Lake however applied to amend the Official Plan, zoning or plan of subdivision, then these provisions should be triggered.

[38] The Tribunal finds that based on the language in PPS policies 2.1.4, 2.1.5, and 2.1.8 and the definitions in policy 6, development and site alteration on the provincially significant wetlands on the subject lands should not be permitted under the Town's Official Plan. It finds that development and site alteration on the provincially significant woodlands on the subject lands should not be not permitted under the Official Plan unless it has been demonstrated that there will be no negative impacts on these natural features or their ecological functions. It finds that development and site alteration on adjacent lands to the wetlands and woodlands should not be not permitted under the Official Plan unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions. No such evaluations have been undertaken here. "Development" and "site alteration" are separate terms. The prohibitions in policy 2.1 apply to each and are not restricted solely to situations where both development and site alterations are being proposed together.

[39] The question whether these prohibitions apply to the existing approvals on the subject lands was a focus of the Parties' submissions. The Tribunal finds that they do not. The PPS applies to land use planning and development in the province. It does not retroactively apply to valid existing developments and approvals. Should further development approvals be sought for the subject lands, they will need to be consistent with the PPS. As stated in policy 4.1, the PPS applies to all decisions in respect of the exercise of any authority that affects a planning matter made on or after April 30, 2014.

[40] Provincial plans take precedence over the PPS where there are conflicts. A conflict reflects a situation where requirements in one instrument prevent the proper

application of another. In the present case, the Tribunal finds that the application of the PPS policies on environment protection do not conflict with the applicable provisions in either the Greenbelt Plan or the Growth Plan. Although the Greenbelt Plan identifies the subject lands as “Towns/Villages”, that does not mean that an environmental protection designation cannot be included within those lands. The PPS and the provincial plans all apply unless there is a conflict. Based on the evidence, there is no conflict between the application of the PPS, Greenbelt Plan and Growth Plan to the subject lands.

[41] PPS policy 4.7 states that:

In order to protect provincial interests, planning authorities shall keep their official plans up-to-date with this Provincial Policy Statement. The policies of this Provincial Policy Statement continue to apply after adoption and approval of an official plan.

Based on this guidance, it is imperative that the Town’s Official Plan is updated to be consistent with the PPS. That is the purpose of OPA No. 129; however, based on the Tribunal’s findings that OPA No. 129 is not consistent with the PPS’ environmental protection policies, the Tribunal finds that the Town is obligated to amend OPA No. 129 to achieve its consistency with those policies. The wording in s. 3(5) and 26(1) of the *Planning Act* is mandatory in that a decision of the Town regarding amendments to its Official Plan must be consistent with the PPS.

[42] OPA No. 129, policy 7.2 provides detailed provisions that apply to the subject lands. The Tribunal finds that these special provisions 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”.

[43] To ensure that the wetland and woodland resources on the subject lands are managed in a sustainable way to conserve biodiversity, protect essential ecological processes, minimize environmental impacts, and meet the province’s long-term needs, the Tribunal finds that the subject lands must be designated in a manner that is

consistent with the PPS. Based on the Tribunal's findings of OPA No. 129's inconsistencies with PPS policies 2.1 and the guidance in policy 4.7 that planning authorities shall keep their official plans up-to-date with the PPS, the Tribunal finds amendments to OPA No. 129 are necessary in relation to its designation for the subject lands.

Conformity with the Growth Plan

[44] The Appellant argues that OPA No. 129 does not conform with Growth Plan sections 2.2.1.2, 5.2.8.2, and 5.2.8.4.

[45] Growth Plan s. 2.2.1.2 states:

2.2.1.2 Forecasted growth to the horizon of this Plan will be allocated based on the following:

- a. growth will be limited in *settlement areas* that:
 - i. are undelineated built-up areas;
 - ii. are not serviced by existing or planned municipal water and wastewater systems; or
 - iii. are in the Greenbelt Area;
- b. within *settlement areas*, growth will be focused in:
 - i. delineated built-up areas;
 - ii. strategic growth areas;
 - iii. locations with existing or planned transit, with a priority on higher order transit where it exists or is planned; and
 - iv. areas with existing or planned public service facilities;
- c. development will be directed to *settlement areas*, except where the policies of this Plan permit otherwise;
- d. development will be generally directed away from *hazardous lands*; and,
- e. the establishment of new *settlement areas* is prohibited.

[46] Mr. Usher stated that s. 2.2.1.2 states that growth will be limited in settlement areas that are in an "undelineated built-up area" or are in the Greenbelt area, such as the subject lands. He also referred to s. 5.2.8.2, which encourages municipalities to develop excess lands such as, he stated, lands south of Keswick, instead of the subject

lands. He referred to s. 5.2.8.4 which states that municipalities are encouraged to deem older plans of subdivision that do not meet the growth management objectives of the Growth Plan as not being registered plans of subdivision. He opined that the Urban Residential designation in OPA No. 129 does not conform with the Growth Plan; but an Environmental Protection designation would conform.

[47] Mr. MacKinnon stated that OPA No. 129's Urban Residential designation conforms with the Growth Plan. He said the projected population of the proposed development on the subject lands is identified in the Town's Official Plan. He said the subject lands do not meet the definition of "excess lands" as there is no evidence that they are in excess of what the Town requires to accommodate the future growth envisioned in the Growth Plan.

[48] Mr. Dymont stated that Growth Plan s. 2.2.1 on managing growth does not apply to areas in which there is already subdivision and zoning approvals. He said growth has been allocated to the subject lands based on the existing zoning and subdivision agreement. He said the subject lands have been included in calculating supply and are not excess lands.

Findings

[49] The guiding principle and vision for the Growth Plan are found in its s. 1.2. In its vision statement, the Growth Plan states:

Now is the time to build on the progress that has been made towards the achievement of *complete communities* that are compact, *transit-supportive*, and make effective use of investments in *infrastructure* and *public service facilities*. At the same time, the Growth Plan will continue to ensure protection of our agricultural and natural areas and support climate change mitigation and adaptation as Ontario moves towards the long-term goal of net-zero communities.

[50] The guiding principles in s. 1.2.1 include:

- Support the achievement of *complete communities* that are designed to support healthy and active living and meet people's needs for daily living throughout an entire lifetime.

- Prioritize *intensification* and higher densities to make efficient use of land and *infrastructure* and support transit viability.
- Support a range and mix of housing options, including second units and *affordable* housing, to serve all sizes, incomes, and ages of households.
- Protect and enhance natural heritage, hydrologic, and landform systems, features, and functions.
- Integrate climate change considerations into planning and managing growth such as planning for more resilient communities and *infrastructure* – that are adaptive to the impacts of a changing climate – and moving towards low-carbon communities, with the long-term goal of net-zero communities, by incorporating approaches to reduce greenhouse gas emissions.

[51] Given the range of guiding principles in the Growth Plan focusing on complete communities, intensification, housing option diversity, and environmental protection, among others, a planning authority, or in this case, the Tribunal, must take a principled approach when determining conformity with the Plan. In the present case, where the Tribunal is asked to determine the appropriateness of an Urban Residential designation on provincially significant wetlands and woodlands, the Tribunal finds that the OPA No. 129 designation for these lands as Urban Residential does not conform with the Growth Plan. A development approval was given regarding these lands roughly 35 years ago and the envisioned growth that the proposed development would provide has been accounted for in the growth projections for the area. However, the Tribunal finds that an Urban Residential designation for an area that under s. 2.2.1.2 is to have limited growth and with which none of the guiding principles in s. 1.2.1 align, does not conform with the Growth Plan. The Tribunal finds that the Urban Residential designation for this area would not achieve a complete community, intensification, housing option diversity, or environmental protection. Given the evidence before the Tribunal, it finds that the Urban Residential designation for the subject lands in OPA No. 129 does not conform with the Growth Plan. However, again, this finding does not affect existing valid development approvals on the subject lands.

Conformity with the Greenbelt Plan

[52] The Appellant argues that OPA No. 129 does not conform with Greenbelt Plan sections 3.4.1, 3.4.3.1, 5.2.1 or its Schedules 1 and 4. Mr. Usher said the subject lands are designated Towns/Villages within in the Protected Countryside under the Greenbelt Plan due to Maple Lake's pre-existing registered plan of subdivision. However, he said s. 5.3 of the Greenbelt Plan allows municipalities to apply policies which are more stringent than the requirements in the Greenbelt Plan. It does not restrict them from extending non-urban designations in Towns/Villages areas. He said an Environmental Protection Area designation for the subject lands would not conflict with the Greenbelt Plan.

[53] Mr. MacKinnon stated that the subject lands are identified as Towns/Villages in the Greenbelt Plan and the transition provisions in s. 5.2.1 allow for the approvals to continue to be recognized. Mr. MacKinnon opined that an Environmental Protection designation would not conform with the Greenbelt Plan because the Greenbelt Plan designates the subject lands as Towns/Villages. Mr. MacKinnon stated that local official plans must conform with the Greenbelt Plan based on natural features mapping. He stated that if the Town's Official Plan were changed, then it would no longer conform with Region's Official Plan or the Greenbelt Plan.

[54] Mr. Dymont stated that Greenbelt Plan s. 4.1.1 designates the subject lands as Towns/Villages and OPA No. 129 must conform to this designation. He stated that s. 3.4.3.1 defers its policies on development in Towns/Villages to the Region and the Town. He stated that there is no transition to be addressed in the present case as the subject lands are designated as Towns/Villages in the Greenbelt Plan and the mapping in OPA No. 129 comes directly from the mapping in the Greenbelt Plan.

Findings

[55] Section 5.3 of the Greenbelt Plan allows municipalities to apply policies which are more stringent than the requirements in the Plan. It states, in part:

Despite the policies in the Greenbelt Plan, there is nothing in this Plan that limits the ability of decision-makers on planning matters to adopt policies that are more stringent than the requirements of the Plan, unless doing so would conflict with any of the policies or objectives of the Plan.

[56] This section does not restrict municipalities from using non-urban designations in Towns/Villages designated areas. The Tribunal finds that both the existing designation of the subject lands in OPA No. 129 and a designation that protects the significant wetlands and woodlands on the subject lands would conform with the Greenbelt Plan. The Tribunal notes that Greenbelt Plan, s. 5.2.1 states that where an official plan was amended before December 16, 2004 to designate land uses, that approval may continue to be recognized and any further applications required under the *Planning Act* to implement the official plan approval are not required to conform with the Greenbelt Plan. Based on the evidence before it, the Tribunal finds that an Urban Residential designation under OPA No. 129 conforms with the Greenbelt Plan as does an Environmental Protection Area designation. Neither of these designations alter development rights under valid existing development approvals for the subject lands.

Conformity with the Region's Official Plan

[57] The Appellant argues that OPA No. 129 does not conform with the Region's Official Plan policies 2.1, 2.2.4, 2.2.35 to 2.2.52, 5.1.4, 5.6.22, 5.5.23, 8.4.14 to 8.4.22 and Maps 1, 2, 4, and 5.

[58] The Region's Official Plan policy 2.2.4 states that it is the policy of the Regional Council:

2.2.4 To prohibit development and site alteration within key natural heritage features, key hydrologic features, and adjacent lands, unless:

- a. it is demonstrated through a natural heritage evaluation, hydrological evaluation, or environmental impact study that the development or site alteration will not result in a negative impact on the natural feature or its ecological functions; or,
- b. authorized through an Environmental Assessment.

[59] The Region's Official Plan policies 2.2.35 to 2.2.42 address wetlands protection. Their objective is "to ensure no loss of wetland function or area in the Region". The preamble to these policies states:

Wetlands are essential natural elements of the Regional ecosystem, providing environmental, economic and social benefits. These lands, which are seasonally or permanently covered by shallow water or where the water table is close to or at the surface, are characterized by hydric soils and hydrophytic or water-tolerant plants. Among other functions, wetlands control and store surface water to assist in flood control and groundwater recharge. Wetlands also act as sediment traps to improve water quality and act as habitat for a wide variety of plant and animal species.

[60] In summary, applicable provisions in policies 2.2.35 to 2.2.42 include that:

- development and site alteration is prohibited within evaluated wetlands and all identified wetlands within the Lake Simcoe watershed, on the Oak Ridges Moraine and within the Greenbelt Natural Heritage System;
- vegetation protection zones be required for wetlands with a width of at least 30 metres;
- private landowners are encouraged to work with local municipalities and public agencies to protect wetlands, create new wetlands and restore existing wetlands, where appropriate.

[61] The Region's Official Plan policies 2.2.43 to 2.2.52 address woodlands protection. The objective of the Region's policies on woodlands is "to protect significant woodlands and their biodiversity and encourage reforestation to provide environmental, social and economic benefits for the residents of York Region". The preamble to the Region's woodlands policies states:

Woodlands are significant components of York Region's natural systems and provide a variety of important environmental, social and economic benefits. These benefits include clean air and water, erosion prevention, water retention, provision of wildlife habitat, recreation and the sustainable harvest of woodland products.

At the time of settlement by Europeans, woodlands covered 90 per cent of the Region. Woodland cover has dwindled to 22.5 per cent today. Because much of the remaining woodland cover is fragmented and lacking in interior habitat areas, maintaining and enhancing significant

woodlands and integrating them into the Region's communities is extremely important.

[62] In summary, applicable provisions in policies 2.2.43 to 2.2.52 include that:

- development and site alteration is prohibited within significant woodlands and their associated vegetation protection zone except as provided for elsewhere within the Plan;
- a vegetation protection zone be required for significant woodlands with a width of at least 30 metres; and
- landowners are encouraged through stewardship initiatives to use good forestry practices.

[63] Part 8 of the Region's Official Plan is on implementation. Policies 8.4.14 to 8.4.22 address transition. In summary, they include provisions that state:

- that all planning decisions shall conform to the Provincial Plans and shall be consistent with the Provincial Policy Statement, subject to applicable Provincial transition provisions;
- that legally existing land uses that conform with in-force local official plans, zoning by-laws and Ministerial Zoning Orders, at the time this Plan is approved, are permitted to continue to the extent provided for in the local official plans and zoning by-laws and Ministerial Zoning Orders;
- that all official plans and zoning by-laws and amendments thereto shall be brought into conformity with this Plan, except as provided for;
- that applications for draft plans of subdivision and condominium, consents, zoning, site plans or minor variances, which are complete as of the date of approval of this Plan and that conform with in-force local official plans are required to conform only with the policies in-force at the time of the complete application, until the date this Plan is amended pursuant to the next comprehensive review;
- that the provisions of this Plan represent Council's opinion of best planning practices, and accordingly, proponents with applications that meet the requirements above, are encouraged but not required to work with the Region and local municipalities to make those applications meet the objectives and policies of this Plan;
- that existing uses and residential dwellings on existing lots of record in the Greenbelt are subject to Section 4.5 of the Greenbelt Plan;
- that existing local official plan and zoning by-law amendments prior to 2005 for approvals in the Greenbelt Area may continue to be recognized and further applications required under the *Planning Act*

to implement the official plan approval are not required to conform to the Greenbelt Plan and are permitted in the Region's Official Plan.

[64] Mr. Usher stated that key natural heritage features under the Region's Official Plan include all wetlands and significant woodlands. He stated that the Region's Official Plan policy 2.2.4 prohibits development and site alteration within key natural heritage features, key hydrologic features, and adjacent lands, unless no negative impacts are demonstrated; however, he acknowledged that policy 2.2.14 exempts development that is permitted under the Greenbelt Plan. Mr. Usher stated that the Region's Official Plan policies 2.2.35 to 2.2.37 prohibit development and site alteration on all wetlands in the Town that lie in the Lake Simcoe watershed and within 30 metres of those wetlands, unless no negative impacts are demonstrated. He said policy 2.2.44 prohibits development and site alteration within significant woodlands and their associated vegetation protection zones. He said the Plan's designation of the subject lands is based on the pre-existing development approvals for the subject lands, when it should be that the development approvals should be based on the Plan's designations.

[65] Mr. Usher questioned whether the proposed development will meet the density requirements set out in the Region's Official Plan policy 5.6.22. That policy requires "best efforts to achieve a minimum density requirement of 50 residents and jobs combined per hectare in the developable area". He said it makes little sense to destroy important natural heritage lands for development that does not meet the required density goals. He said that nothing in the Towns/Villages policies in the Region's Official Plan recognizes development rights from previous approvals.

[66] Mr. Usher opined that policy 8.4.15 (which states that legally existing land uses that conform with in-force local official plans and zoning by-laws at the time that the Region's Official Plan is approved are permitted to continue) does not apply to the subject lands. He said the subject lands are vacant and there are no "legally existing land uses" there. He stated that policy 8.4.16, which requires that all official plans and zoning by-laws and amendments shall be brought into conformity with the Region's Official Plan applies and is consistent with the *Planning Act*. He said the Region's Official Plan policy 8.4.23 states that existing uses and dwellings are subject to the

policies on existing uses in the Greenbelt Plan. He opined that as there are no existing uses or dwelling on the subject lands, this policy does not apply. Regarding the application of the transition policies in policy 8.4.24 on conformity with the Greenbelt Plan, Mr. Usher stated that they use the word “may” and are discretionary.

[67] Mr. Usher stated that the Region’s Official Plan and its Map 4 (key hydrologic features) and Map 5 (woodlands) identify wetlands and significant woodlands on the subject lands. He said these features overlay the Region’s Towns/Villages designation on the subject lands. He stated that Maps 4 and 5 effectively impose the natural heritage features on these lands and should guide the Town in bringing the Town’s Official Plan into conformity. He said the Town can designate lands as Environmental Protection Area within areas designated as Towns/Villages in the Region’s Official Plan.

[68] Mr. McKinnon stated that OPA No. 129’s Urban Residential designation conforms with the Region’s Official Plan as the subject lands are designated “Towns/Villages”. He noted that zoning and a registered plan of subdivision are in place and the Region’s Official Plan policy 8.4.15 recognizes that the existing land uses are allowed to continue.

[69] Mr. Dyment stated that the Greenland System mapping in OPA No. 129 matches the Region’s mapping. He said the Region’s Official Plan policies 2.1.5 and 2.1.9 on development in the Regional Greenlands System do not apply in the present case because they are only triggered by the filing of a new development application. He said policy 2.2.4 on the protection of key natural heritage features and key hydrologic features does not apply, noting that because further planning approvals are not required for Maple Lake to build on the subject lands, the proposed development, in his view, does not meet the definition of “development”.

Findings

[70] The objectives of the wetlands and woodlands policies in the Region’s Official Plan are to ensure no loss of wetland function or size in the Region, to protect

significant woodlands and their biodiversity, and encourage reforestation. The subsequent policies set out how these objectives are to be implemented, including requirements for vegetation protection zones for wetlands and woodlands. Given these requirements, the Tribunal finds that OPA No. 129's Urban Residential designation for the subject lands does not conform with these policies in the Region's Official Plan in that they do not adequately protect the wetland and woodland resources located there. However, it also finds that policies 2.2.4, 2.2.35 and 2.2.43 prohibiting development and site alteration in wetlands and woodlands do not apply to existing approvals. There are no provisions in the Region's Official Plan that state that already approved development or site alteration in wetlands or woodlands must be stopped or prevented.

[71] The transition policy 8.4.15 states that "legally existing land uses that conform with in-force local official plans, zoning by-laws and Ministerial Zoning Orders, at the time this Plan is approved, are permitted to continue to the extent provided for in the local official plans and zoning by-laws and Ministerial Zoning Orders". However, policy 8.4.16 requires "that all official plans and zoning by-laws and amendments thereto shall be brought into conformity with this Plan" (except as provided for in policies 8.4.17 through 8.4.20, which do not apply to the present case). The Tribunal finds that these policies allow the existing development approvals on the subject lands to continue, but the Town's Official Plan must be brought into conformity with the Region's Official Plan, including conformity with the Region's Official Plan policies 2.2.14, 2.2.35 and 2.2.43.

Issues 4 and 5 - If the Tribunal were to find in favour of the "Environmental Protection Area" designation of the subject lands, what would be the appropriate designations on Schedules A1, A2 and D of the Town's Official Plan?

[72] Mr. Usher opined that the entirety of the subject lands should be designated as Environmental Protection Area. Mr. MacKinnon opined that the Urban Residential designation in OPA No. 129 is appropriate and Mr. Dymont opined that any lands that are not designated Environmental Protection Area should maintain their existing designations.

Findings

[73] To ensure consistency with the PPS and conformity with the Region's Official Plan, the wetland and woodland areas and the requisite buffer areas around them on the subject lands should be designated as Environmental Protection Area. The Tribunal was not provided with detailed evidence or submissions on other applicable or appropriate designations for the remaining areas of the subject lands, if any, that fall outside of this area. Therefore, the Tribunal does not make a finding on this issue.

Conclusions

[74] The Tribunal finds that the Urban Residential designation of the wetland and woodland portions of the subject lands and associated buffer lands is not consistent with the PPS and does not conform with the Growth Plan or the Region's Official Plan. Based on the evidence before it, the Tribunal finds that the wetland and woodland portions of the subject lands are set out in the Region's Official Plan Map 4 (key hydrologic features) and Map 5 (woodlands). It finds that these areas and the associated adjacent lands under the PPS and vegetation protection zones under the Region's Official Plan must be designated as Environmental Protection Area under OPA No. 129.

ORDER

[75] The appeal is allowed in part. The Tribunal amends OPA No. 129 by designating the wetland and woodland portions of the subject lands as set out in the Region's Official Plan Map 4 (key hydrologic features) and Map 5 (woodlands) and associated adjacent lands under the PPS and vegetation protection zones under the Region's Official Plan as Environmental Protection Area in the Town's Official Plan.

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

If there is an attachment referred to in this document,
please visit www.elfto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elfto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248