

ISSUE DATE:

Apr. 21, 2009



PL080813

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: John Bacher
Subject: Proposed Official Plan Amendment No. 82
Municipality: City of Niagara Falls
OMB Case No.: PL080813
OMB File No.: PL080813

APPEARANCES:

Parties

Counsel

John Bacher

City of Niagara Falls
Region of Niagara

Warren Woods Land Corporation

K.L. Beaman

T. Richardson

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. CHEE-HING ON
APRIL 14, 2009 AND ORDER OF THE BOARD**

By way of brief background, Official Plan Amendment (“OPA”) 82 was adopted by the City of Niagara Falls (the “City”) council and approved by the Region of Niagara (the “Region”). The intent of OPA 82 is to redesignate approximately 77 hectares (190 acres) of vacant land owned by Warren Woods Land Corporation (the “Applicant”) from Industrial and Open Space to residential and environmental protection area (“EPA”). This redesignation would facilitate a mixed-use community consisting of approximately 1000-1375 residential units, retail, office, and recreational uses. The subject property contains several woodlots and a creek that traverses the site. The woodlots and the creek are designated as provincially significant wetlands (“PSW”).

Dr. John Bacher appealed OPA 82 to the Board. At issue is an intact, seven-acre forest located within the subject property at the corner of Brown and Kalar Road. The

basis of Dr. Bacher's appeal is that this forest is used as a wintering ground for the local deer population. OPA 82 proposes to designate the northerly half of the forest as PSW and the southerly half as residential in order to permit a storm water management facility for the proposed development. It is Dr. Bacher's contention that the ecological function of the forest as a deer wintering area will be impaired if the developer's proposal for a storm water management facility is permitted in the southern half of the forest.

At the onset of the hearing, the Parties advised the Board that a settlement had been reached. The proceedings were subsequently converted to a settlement hearing to hear professional planning evidence on the merits of the settlement. The minutes of settlement have been endorsed by City Council. The City's planning manager (Mr. J. Barnsley) provided the Board with the details of the settlement and gave opinion-planning evidence on the minutes of settlement. He advised the Board that the entire forest would be designated as EPA. No development is permitted on EPA lands. Mr. Barnsley also advised the Board that the City is preparing a secondary plan for this community, which includes the subject property. The developer will still be required to obtain draft plan of subdivision approvals and rezoning of the subject property. Dr. Bacher indicated that he was satisfied with the minutes of settlement to the extent that the entire forest will be designated as EPA, thus affording a greater level of ecological protection of the forest and the continued use of the forest as a wintering ground for the local deer population.

While the Board accepted the opinion planning evidence of the City's planning manager on the minutes of settlement, the Board had some concerns on the movement of the deer across Brown Road in order to get to the forest and the associated PSW along Warren Creek (see Attachment "1"). It was his testimony that Brown Road will eventually become an arterial road as development increases in the area. Mr. Barnsley acknowledged the Board's concern on the migratory path of the local deer population in this area and indicated that the City will look at the feasibility of providing an overpass or culvert(s) to provide a safe corridor for local wildlife.

Having heard the opinion evidence of the City's planning manager, the Board accepts the minutes of settlement. The status of the local forest was the only issue of the appellant and this has been resolved satisfactorily. The Board is satisfied that OPA

82 is consistent with, and supports the policies found in the Provincial Policy Statement and the Growth Plan.


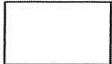

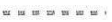
Therefore, the **BOARD ORDERS** that the appeal is allowed in part and Amendment No. 82 to the Official Plan for the City of Niagara Falls is modified as set out in Attachment "1" to this Order and as modified, is approved.

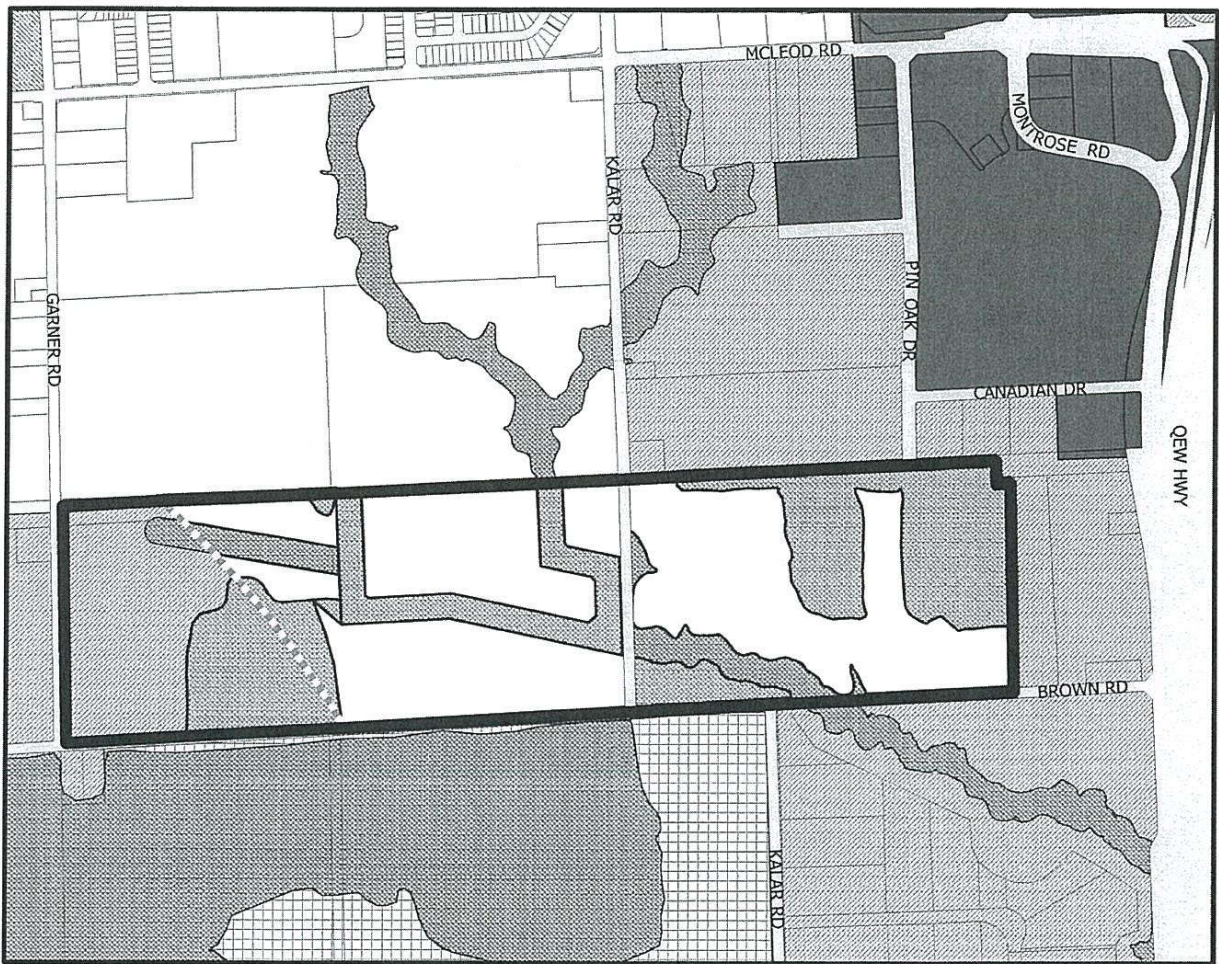
So Orders the Board.

"J. Chee-Hing"

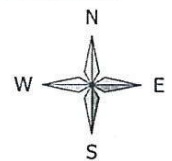
J. CHEE-HING
MEMBER







MAP 1 TO AMENDMENT NO. 82 SCHEDULE - A - TO THE OFFICIAL PLAN

-  Areas Affected by this Change - Special Policy Area "57"
-  Area 1 - Proposed change from Industrial and Environmental Protection Area to Residential - Special Policy Area "57"
-  Area 2 - Proposed change from Industrial to Environmental Protection Area - Special Policy Area "57"
-  Industrial Minimum Distance Separation



**CITY OF NIAGARA FALLS OFFICIAL PLAN
EXCERPT FROM SCHEDULE - A - FUTURE LAND USE PLAN**



- | | |
|---|---|
|  ENVIRONMENTAL PROTECTION AREA |  RESIDENTIAL |
|  GOOD GENERAL AGRICULTURE |  RESORT COMMERCIAL |
|  INDUSTRIAL |  MAJOR COMMERCIAL |

1:NTS

AM-31/2005

NOTE: This schedule forms part of Amendment No. 82 to the Official Plan for the City of Niagara Falls and it must be read in conjunction with the written text.