

Issue Date:

July 20, 2010



PL100171

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: George Moncrieff
Subject: Official Plan Amendment No. 129 (County of Bruce)
Municipality: Municipality of Brockton
OMB Case No.: PL100171
OMB File No.: PL100171

APPEARANCES:

Parties

County of Bruce

G. Moncrieff

Counsel

G. Magwood

DECISION DELIVERED BY C. HEFFERON AND ORDER OF THE BOARD

Official Plan amendment 129 (“OPA 129”) was initiated by the County of Bruce, (“County”) primarily to facilitate approval of the new Walkerton Official Plan which was adopted by the Council of the Municipality of Brockton. On January 7, 2009 the County of Bruce approved OPA 129 as well as the new Walkerton Official Plan.

Mr. G. Moncrieff has appealed the County’s decision to approve OPA 129.

OPA 129 amends the boundaries of the urban settlement of the Community of Walkerton, which in the Municipality of Brockton, by transferring approximately 39 hectares of urban lands from the north portion of the Walkerton settlement area to the County. These lands would be re-designated as Agricultural, Rural and Hazard. In addition, it transfers to the Walkerton settlement area approximately 39 hectares of agricultural lands abutting on the southwest that would be re-assigned appropriate urban designations.

Although Mr. Moncrieff has appealed the entire OPA 129, his main concern is the 8.8 hectare parcel of agricultural land located on the west side of Geeson Avenue known as the “Ralph Pitt Farm”. Mr. Moncrieff’s home is located on the east side of Geeson Avenue directly opposite the Ralph Pitt Farm. Under both the new Walkerton OP and the County OP, the Ralph Pitt Farm lands will be brought within the community of Walkerton urban boundary and re-designated for urban uses.

Evidence and Analysis

Mr. Moncrieff, who was not represented, contended that the Ralph Pitt Farm comprises prime agricultural land and should be reserved for agricultural uses as required by policy 2.3 of the Provincial Policy Statement 2005 (“PPS”). In his view, it is not needed for residential purposes since enough already-designated residential lands exist elsewhere in the Walkerton settlement area to satisfy the needs of the community for decades.

Land Use Planner W. Hollo, who gave opinion evidence on the merits of the new (2009) Walkerton OP and the County OP, noted that neither of these policy documents was appealed by the Ministry of Municipal Affairs and Housing (“MMAH”). This contrasts with what occurred in 2005 when the County amended its OP in order to transfer about 39 hectares, including the Ralph Pitt Farm lands, into the Walkerton urban area. At that time, the County approved OPA 87-05.34, which amended the Walkerton’s Official Plan to changed the settlement area boundaries, and re-designate the Ralph Pitt Farm lands and other lands from “Agriculture and Rural” to “Primary Urban Community”.

The MMAH and Mr. Moncrieff both appealed OPA 87-05.34. The parties settled before the hearing commenced. Under the settlement agreement that was approved by the Board in its Decision/Order No. 3334 (issued November 28, 2006), the appeal was allowed, and OPA 87-05.34 was withdrawn (Exhibit 2, page 23).

The principal reason given for the MMAH appeal in 2005 was that OPA 87-05.34 would remove lands from the agricultural lands inventory, resulting in a net loss of agricultural lands, and this would have been contrary to the agricultural protection policies of the PPS. Mr. Hollo testified that with the current proposal before the Board, OPA 129, approximately the same amount of land would be put back into the agricultural inventory as is proposed to be removed.

Mr. Hollo opined that the Ralph Pitt Farm is not suitable for agricultural uses because it lies directly opposite an estate residential development that has occupied the east side of Geeson Avenue for the past 20 years. Mr. Moncrieff, who lives in one of the estate homes on the stretch of Geeson Avenue opposite the Ralph Pitt Farm, maintained that the soil on the Ralph Pitt Farm is suitable for growing “soybeans and corn” if not for market gardening, which is the Ralph Pitt Farms Ltd. core business.

Opposing this view, Mr. Hollo opined that regardless of the quality of the soil, the fact that the lands are situated in very close proximity to existing estate residential homes effectively disqualifies them under the Ontario Ministry of Agriculture, Food and Rural Affairs’ “MDS Implementation Guidelines” from almost any type of farm use because of the nuisance complaints that such uses would inevitably generate.

After consideration of all the evidence on this point, I adopt the opinion evidence of Mr. Hollo and find that the Ralph Pitt Farm lands are not suitable for agricultural use today because of potential nuisance to the surrounding estate residential uses. Because of the location within what Mr. Hollo characterized as the “natural urban boundary” abutting Geeson Avenue as shown on Schedule B of the Walkerton OP. I find the lands are more appropriate for the proposed urban uses.

Mr. Hollo’s evidence was that research conducted by the County found that there is insufficient designated residential land to meet the needs of residential developers. The approximately 39 hectares of designated residential lands on the north end of Walkerton that are proposed to be transferred to the County and returned to rural uses, have proven over the past decade to be “impossible for its owners to develop. Mr. Hollo evidence was that this had to do primarily with the terrain, and with the economics of development in Walkerton. The inability of the owners, both of which are experienced residential developers, to develop these lands for residential use, has led to a shortage of available residential land for both the short term needs of the community and, perhaps even more important, the longer term needs.

The Growth Management Discussion Paper prepared in connection with the Municipality of Brockton Official Plan update by Meridien Planning Consultants Ltd., submitted to County Council in December 2008, indicated that there is a need in the Walkerton settlement area for 30.7 hectares of additional residential lands and 449

residential units of all types by 2026. A similar study by the County of Bruce Planning & Economic Development Department projected the need by 2026 to be 348 residential units.

In his written submission, Mr. Moncrieff disputed Meridien's figures. By his calculations, there are currently 61.5 ha of residential land available from either existing draft plan of subdivisions, land included in the official plan amendment, or through infilling. These lands, he maintained, are capable of accommodating the 449 residential units that Meridien projected will be required by 2026.

Mr. Moncrieff testified that he calculated the take-up rate for residential lots between 2002 and 2007 averaged around 20 units per year. He gave evidence that by his calculations, there is currently a "decades-long supply" of urban land available for residential uses and therefore, he stated, there is no need to move the Ralph Pitt Farm from Bruce County's agricultural land inventory into Walkerton's urban residential land inventory.

After cross examination by counsel for the County, the amount of the total land currently available for residential uses as compiled by Mr. Moncrieff was considerably reduced. Pointing to the numbers used by Mr. Moncrieff in Table 1, Exhibit "4", Mr. Hollo's evidence in reply was that the estimated 62 hectares, which is the amount of designated residential land Mr. Moncrieff suggests are available, should be reduced by at least 38 hectares because the past experience of its owners demonstrated that these lands are not easily or cost effectively serviced and therefore not suitable for development. He calculated that this would leave approximately 24 hectares. Mr. Hollo testified that a large part of these lands cannot, for various reasons, (including the fact that some are owned by the local School Board), be considered to be available for residential development.

Mr. Hollo acknowledged Mr. Moncrieff's point respecting the urban land take-up rate between 2002 and 2007, but opined that that rate has been distorted by the water crisis of 2000. He observed that growth has been further exacerbated by other factors including the dearth of a choice of serviced lots suitable for different types and tenures of residential units, the limited choice of developers, and by the aggressive growth of nearby communities like Chesley, Paisley and Hanover. Mr. Hollo also disputed Mr.

Moncrieff's land supply calculation and suggested that the County's figures would indicate that at historic take-up rates, the total of lands designated for residential development (as shown in Exhibit 2, pages 86ff) fails to satisfy either Provincial requirements or local needs.

With the opening of the new Clean Water Centre in Walkerton, Mr. Hollo suggested that the community "has begun to put the 2000 water crisis behind it" and the demand for residential lots can be expected to accelerate. He testified that there is already significant pent-up demand for rental townhouse units in Walkerton from seniors downsizing from larger single-family homes and from young families.

After consideration of the evidence, I find that there is currently a shortage in the number of lots available both to satisfy Provincial requirements and to accommodate the projected growth of Walkerton. As well, I adopt Mr. Hollo's opinion evidence that there is a lack of choice in the type of lots available, which has in all likelihood also contributed to the slow growth experienced by the community in the past decade compared with its neighbours.

In demonstrating that the proposed OPA 129 is consistent with the PPS, Mr. Hollo cited PPS policies 1.1, 1.1.3 and 1.2. Policy 1.1.d states that:

"The development of healthy, liveable, and safe communities are sustained by avoiding the development of land use patterns which would prevent the efficient expansion of settlement areas in those areas which are adjacent or close to settlement areas."

The Ralph Pitt Farm lands abut the west side of Geeson Avenue, which has been developed with estate-type residential homes for the past two decades or more. Mr. Hollo testified that including these lands within the urban boundary, represents an efficient use of the existing public infrastructure (water, road and other public services such as fire and police). His opinion is that this also meets the criteria of PPS policy 1.2.1.c, which states:

“A coordinated, integrated and comprehensive approach should be used when dealing with planning matters within municipalities or which cross lower, single and or upper tier municipal boundaries, including infrastructure, public service facilities and waste management systems.”

PPS Policy 1.1.3 speaks to Settlement Areas. It says generally that “settlement areas shall be the focus of growth and their vitality and regeneration shall be promoted”. Policy 1.1.3 goes on to offer specific policy directions for land use within settlement areas. These include encouraging the development of land use patterns that encourage intensification and the compact redevelopment of sites where there is existing infrastructure and public service facilities (Policies 1.1.3.2 (a.2) and 1.1.3.3 and 1.1.3.7).

Mr. Moncrieff did not offer any contradictory evidence (to Mr. Hollo’s) beyond reiterating that the Ralph Pitt Farm lands were not required by the municipality to accommodate the growth expected in Walkerton over the next 20 or more years, and that the Ralph Pitt Farm lands should remain in the County’s agricultural inventory until at least that time.

I adopt Mr. Hollo’s opinion evidence respecting the PPS, and I find that the proposed OPA 129 is consistent with the policies of the PPS. I therefore find that the proposal to be appropriate, in the public interest and represents good planning.

In his final argument, counsel for the County, submitted that the County of Bruce had previously approved OPA 129 after a considerable review process lasting at least four years, and that section 2.1 of the *Planning Act* requires the Board to have regard to this decision.

After consideration of the evidence presented and the evidence that was before Council, I find the decision of Council to approve OPA 129 to be appropriate in the circumstances.

Disposition and Order of the Board

The Board Orders the appeal of Mr. G. Moncrieff against the decision of the Council of the County of Bruce approving OPA 129 is dismissed and Amendment No. 129 to the Official Plan for the County of Bruce is approved.

So Orders the Board.

“C. Hefferon”

C. HEFFERON
MEMBER