

ISSUE DATE:

October 31, 2011



PL110581

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

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Kelly Strelow
Subject: By-law Nos. 2011-28 & 2011-29
Municipality: Township of McNab-Braeside
OMB Case No.: PL110581
OMB File No.: PL110581, PL110582

APPEARANCES:

Parties

Counsel

Neil Stewart and David Stewart

Kelly Strelow

P. Webber

Township of McNab/Braeside

J. Bradley

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. A. SILLS ON
SEPTEMBER 27, 2011 AND ORDER OF THE BOARD**

This was a Settlement hearing with respect to an appeal by Kelly Strelow (Appellant) of the passing of Zoning By-law Amendments Nos. 2011-28 and 2011-29 by the Council of the Township of McNab/Braeside.

Background

The subject property is located within the Hamlet of Wawa, in the Township of McNab/Braeside. The site is comprised of 1.8 hectares and has a frontage on Highland Road (County Road 23) and Sawmill Road. Waba Creek traverses the middle of the property. Historically, the site was used as a saw mill and contains remnant structures of that use. The owners of the property, Neil Stewart and David Stewart (Applicants), propose to construct two light-load, single storage buildings on an existing concrete slab

located on the south side of the creek. The results of a geotechnical evaluation completed by Levac Robichaud Leclerc Associates Ltd. in July 2010 (Exhibit 1 – page 14), confirmed the existing concrete slab is adequate to support the proposed storage buildings.

The purpose of the proposed Zoning By-law Amendment(s) (ZBA) is to rezone a portion of the property from Residential One (R1) to Hamlet Commercial-Exception Seven (HAC-E7) in order to permit the proposed use.

The effect of the proposed Zoning By-law Amendments is identical; the only difference is By-law No. 2011-28 is for the purpose of amending Comprehensive Zoning By-law No. 99-18, and By-law No. 2011-29 is for the purpose of amending Comprehensive Zoning By-law No. 2010-49. Comprehensive Zoning By-law No. 99-18 of the Township of McNab/Braeside, was passed in July 1999 and remains in force. In November 2010, the Township passed new Comprehensive Zoning By-law No. 2010-49; however, that by-law is under appeal to the Ontario Municipal Board. In the interim, the Township has elected to approve amendments to both the in force By-law, as well as the new Comprehensive Zoning By-law in order to ensure that the rezoning of the lands will constitute legal uses at any such time that the new By-law comes in to force and effect.

Several area residents were originally opposed to the rezoning of the lands to permit the proposed use. However, a number of meetings have been held in an attempt to address these concerns, and a resolution to the satisfaction of all Parties has now been achieved. The proposed Settlement results from certain restrictions being imposed with respect to future and permitted uses, as follows:

- the area to be rezoned south of the creek has been reduced, which effectively results in limiting the potential for future expansion/development of the site;
- open/outdoor storage will be prohibited;
- the storage of goods which are explosive, highly flammable and/or produce noxious odours are prohibited;

- the site plan will include a clause requiring that, the construction of any addition of building(s) beyond the limits of the concrete slab existing as of the date of this Agreement, shall require an engineered foundation/slab.

Planning Evidence

Mr. Bruce Howarth, Senior Planner for the County of Renfrew, provided expert opinion evidence in support of the ZBA's and the proposed Settlement.

It was Mr. Howarth's opinion that the By-law amendments comply with the relevant provisions of the Provincial Policy Statement, conform to the intent of the Township of McNab/Braeside Official Plan, and represents good planning. The terms that have lead to the proposed Settlement appropriately address the concerns of local residents while bringing resolve to this matter, in a manner which is appropriate from a planning perspective. He recommended approval.

Mr. Webber confirmed that the Appellant is in full support of the proposed Settlement. He further submitted that the concerns of local residents have been addressed; the issues related to nuisance concerns have been resolved and the natural environment and pristine nature of the area have been protected.

Disposition

Based on the evidence before me, and on consent of the Parties, the Board approves the proposed Settlement of this matter. The Board is satisfied that the Zoning By-law Amendments conform to the applicable Provincial and municipal planning policies, protects the public interest, and represents good land use planning.

THE BOARD ORDERS that the appeal is allowed in part, and Zoning By-laws Nos. 2011-28 and 2011-29 are amended as set out in Attachment "1" and Attachment "2" respectively, to this Order.

The Board so Orders.

“M. A. Sills”

M. A. SILLS
MEMBER

ATTACHMENT "1"

THE CORPORATION OF THE TOWNSHIP OF McNAB/BRAESIDE

BY-LAW NUMBER 2011-28

A By-law to amend By-law Number 99-18, being the Comprehensive Zoning By-law of the Corporation of the Township of McNab/Braeside, as amended.

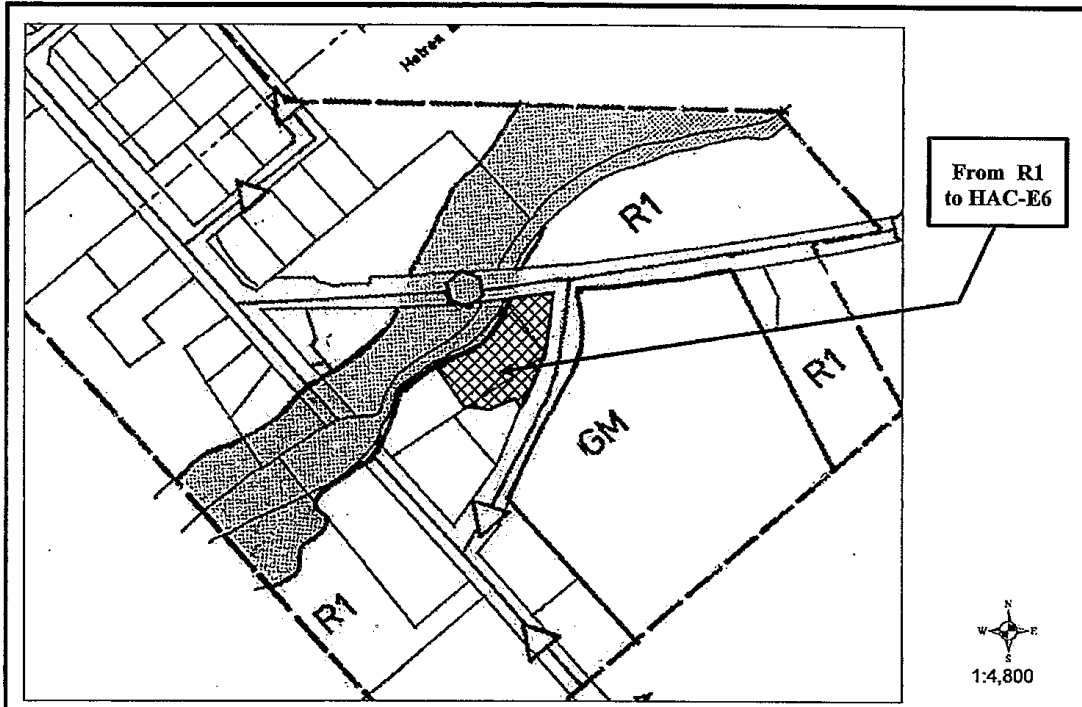
PURSUANT TO SECTION 34 OF THE PLANNING ACT, 1990, THE TOWNSHIP OF McNAB/BRAESIDE HEREBY ENACTS AS FOLLOWS:

1. THAT By-law Number 99-18, as amended, be and the same is hereby further amended as follows:
 - a) Schedule "A" (Map 7) to By-law 99-18 is amended by rezoning those lands described as part of Lot 2, Concession 5, in the geographic Township of McNab, from Residential One (R1) to Hamlet Commercial-Exception Six (HAC-E6), as shown on the attached Schedule "A".
 - b) By adding the following subsection 9.3(f) Hamlet Commercial-Exception Six (HAC-E6) and to SECTION 9.0 – REQUIREMENTS FOR HAMLET COMMERCIAL (HAC) ZONE, immediately following subsection 9.3(e) Hamlet Commercial-Exception Five (HAC-E5):

“(f) Hamlet Commercial-Exception Six (HAC-E6)



Notwithstanding Sections 3.23.(d) and 9.1 of this By-law to the contrary, for those lands described as part of Lot 2, Concession 5, in the geographic Township of McNab and delineated as Hamlet Commercial-Exception Six (HAC-E6) on Schedule "A" (Map 7) to this By-law, the following provisions shall apply:

 - a mini storage establishment shall be the only permitted use
 - all buildings and structures shall be setback a minimum of 12 metres from the high water mark
 - open storage is prohibited
 - the storage of goods which are explosive, highly flammable, or produce noxious odours are prohibited.”
2. THAT save as aforesaid all other provisions of By-law 99-18, as amended, shall be complied with.
3. This By-law, as amended by the Ontario Municipal Board, shall come into effect on the day of issuance of the Order of the Ontario Municipal Board.



CORPORATION OF THE
TOWNSHIP OF McNAB/BRAESIDE
This is Schedule "A" to By-law Number 2011-28 as amended by the Ontario
Municipal Board

LEGEND

- | | | | |
|-------------------------------------------------------------------------------------|--------------------------|--------------------------------------------------------------------------------------|------------------------------------------------------|
| R1 | Residential One | -E1 | Exception Zone |
| GM | General Industrial |  | Area affected by this Amendment
From R1 to HAC-E6 |
|  | Environmental Protection | | |

ATTACHMENT "2"

THE CORPORATION OF THE TOWNSHIP OF McNAB/BRAESIDE

BY-LAW NUMBER 2011-29

A By-law to amend By-law Number 2010-49, being the Comprehensive Zoning By-law of the Corporation of the Township of McNab/Braeside, as amended.

PURSUANT TO SECTION 34 OF THE PLANNING ACT, 1990, THE TOWNSHIP OF McNAB/BRAESIDE HEREBY ENACTS AS FOLLOWS:

1. THAT By-law Number 2010-49 be and the same is hereby further amended as follows:

- a) Schedule "A" (Map 10) to By-law 2010-49 is amended by rezoning those lands described as part of Lot 2, Concession 5, in the geographic Township of McNab, from Residential One (R1) to Hamlet Commercial-Exception Seven (HAC-E7), as shown on the attached Schedule "A".
- b) By adding the following subsection 9.3(g) Hamlet Commercial-Exception Seven (HAC-E7) to SECTION 9.0 - REQUIREMENTS FOR HAMLET COMMERCIAL (HAC) ZONE, immediately following subsection 9.3(f) Hamlet Commercial-Exception Six (HAC-E6):

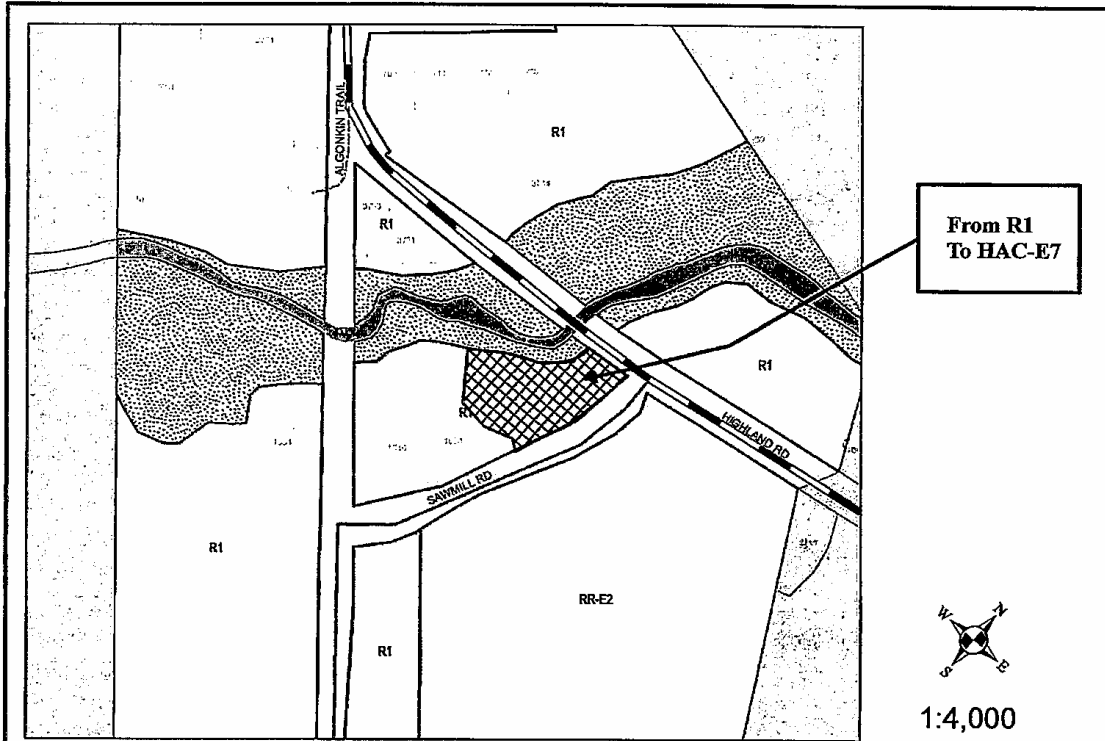
"(g) Hamlet Commercial-Exception Seven (HAC-E7)

Notwithstanding Sections 3.23(d) and 9.3(1) of this By-law to the contrary, for those lands described as part of Lot 2, Concession 5, in the geographic Township of McNab and delineated as Hamlet Commercial-Exception Seven (HAC-E7) on Schedule "A" (Map 10) to this By-law, the following provisions shall apply:

- a mini storage establishment shall be the only permitted use
- all buildings and structures shall be setback a minimum of 12 metres from the high water mark
- open storage is prohibited
- the storage of goods which are explosive, highly flammable, or produce noxious odours are prohibited."

2. THAT save as aforesaid all other provisions of By-law 2010-49, as amended, shall be complied with.

3. This By-law, as amended by the Ontario Municipal Board, shall come into effect on the day of issuance of the Order of the Ontario Municipal Board.



**Corporation of The
Township of McNab/Braeside**

This is Schedule 'A' to the By-law Number 2011-29 as amended by the Oxton
Municipal Board

LEGEND

- | | |
|-----------------------------|------------------------------------------------------|
| R1 Residential One | Water |
| RR Rural Residential | -E1 Exception zone |
| Environmental Protection | Area affected by this amendment
From R1 to HAC-E7 |