

ISSUE DATE:

January 24, 2014



PL120650

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: 2064945 Ontario Inc.
Subject: By-law No. 2012-07
Municipality: Township of Tay
OMB Case No.: PL120650
OMB File No.: PL120650

APPEARANCES:

Parties

Counsel*/Agent

2064945 Ontario Inc.

Daniel Artenosi*

Township of Tay

Paul Peterson*
Mara Burton

DECISION DELIVERED BY J. V. ZUIDEMA AND ORDER OF THE BOARD

[1] A Telephone Conference Call ("TCC") was scheduled to address a settlement which had been reached between the Township of Tay and by 2064945 Ontario Inc. ("the Appellant"). The purpose of the application was to consider an amendment to Zoning By-law No. 2000-57 to rezone certain lands to the Environmental Protection "EP" or to refine the "EP" zoning on the following properties:

1. 1865 Gervais Road - Rezone a portion of 1865 Gervais Road from the Environmental Protection "EP" Zone to the Rural "RU" Zone to recognize the existing dwelling and correct a drafting error.
2. Rezone a portion of 26 Acorn Crescent from the Environmental Protection "EP" Zone to the Limited Service Residential "LSR" Zone to recognize the existing dwelling and correct a drafting error.

3. Rezone a portion of 1973 Rumney Road from the Environmental Protection "EP" Zone to the Rural "RU" Zone and from the Rural "RU" and Agricultural "A" Zones to the Environmental Protection "EP" Zone to better reflect the environmental conditions on the property.

[2] On May 9, 2012, the Township of Tay Municipal Council passed By-law No. 2012-07 and the Appellant appealed for the following reasons:

- First, the effect of By-law No. 2012-07 would be to extend the LSR Zone boundary on the Property by approximately 2.362 metres in perpendicular width. The stated intention of this minor extension was to extend the LSR Zone 1 metre past the existing cottage that the existing LSR Zone boundary currently bisected. In this manner, it was proposed that the LSR Zone boundary only extend approximately 10-11 metres in perpendicular width along the property's shoreline frontage, with the remaining portion of the property being zoned EP.
- Second, the existing boundary between the EP Zone and LSR Zone on the property did not reflect the true condition of the land and that it should be corrected accordingly. The extent of the proposed rezoning from EP to LSR as set out in proposed By-law No. 2012-07 also did not accurately reflect the conditions of the property. The proposed boundary dividing the EP and LSR Zones would unduly restrict the use of portions of the property that did not warrant the level of environmental protection provided under the EP Zone.

[3] As part of the settlement, sections 1 and 3 of the original By-law No. 2012-07 had been rescinded affecting lands other than that owned by the Appellant. The Appellant owns 26 Acorn Lane in the Township of Tay ("Township") and as such, is concerned with the treatment of that particular property only.

[4] Following this action, the Township enacted By-law No. 2012-46 which was not the subject of an appeal and addressed sections 1 and 2.

[5] The Board heard from and received sworn affidavit evidence from Mara Burton who was qualified and accepted as an expert in land use planning. Her evidence was

not challenged by the Appellant. Following some questions from the Board, a supplementary affidavit was provided. That has been included into the record and marked as Exhibit 4.

[6] On the basis of the unrefuted evidence of Ms. Burton, the Board provides a decision to allow the appeal in order to give effect to the settlement reached between the parties.

[7] The Board is satisfied based on the contents of the supplementary affidavit that the proposed revised draft zoning by-law amendment represents good planning, is in the public interest and meets the requirements of both the provincial policy regime as well as the Township's policies.

ORDER

[8] Therefore, the Board orders that the appeal is allowed in part in order to give effect to the settlement achieved and filed with the Board as Minutes of Settlement (Exhibit 1) and by doing so approves the revised zoning by-law amendment as attached as Appendix "A" to the Minutes of Settlement.

[9] There is no order as to costs.

"J. V. Zuidema"

J. V. ZUIDEMA
VICE-CHAIR