

ISSUE DATE:

**March 20, 2014**



PL130396

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: Jean Grandoni  
Appellant: Preservation of Agricultural Lands Society (PALS)  
Appellant: Thundering Waters Development Corp  
Appellant: Warren Woods Land Corporation  
Subject: Proposed Official Plan Amendment No. 106  
Municipality: City of Niagara Falls  
OMB Case No.: PL130396  
OMB File No.: PL130396

**APPEARANCES:**

**Parties**

**Counsel**

Regional Municipality of Niagara

P. DeMelo  
S. Chisholm

City of Niagara Falls

K. L. Beaman

Club Italia, Niagara, Order of Sons of Italy;  
Redeemer Bible Church;  
Regency Athletic Resort Ltd.;  
FKS, The Real Estate People Inc. and  
623381 Ontario Inc.;  
Dr. Michael and Margaret Connolly and  
Dr. Farouk K. Abou-Keer;  
Niagara Sports Centre Limited (together  
known as the Northwest Quadrant  
Landowners' Group)

J. Wilker

Thundering Waters Development Corp.;  
Warren Woods Land Corporation

T. A. Richardson

Preservation of Agricultural Lands Society

A. Sabourin

Jean Grandoni

A. Sabourin

**MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER FEBRUARY 25, 2014 AND ORDER OF THE BOARD**

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[1] Thundering Waters Development Corp. (“Thundering Waters”), Warren Woods Land Corporation (“Warren Woods”), Preservation of Agricultural Lands Society (“PALS”) and Jean Grandoni have appealed the City of Niagara Falls (“City”) Official Plan Amendment 106 (“OPA 106”).

[2] OPA 106 applies to approximately 75 ha in the northwest quadrant of the City. OPA 106 expands the Urban Area boundary to include lands located south of Mountain Road, north of the Ontario Hydro corridor, east of Kalar Road and west of Montrose Road which runs parallel to the Queen Elizabeth Way (“QEW”) on its west side.

[3] The same appellants have also appealed Regional Municipality of Niagara (“Region”) Regional Policy Plan Amendment 196 (“RPPA 196”). RPPA 196 applies to the same lands and also expands the Urban Area boundary to these lands. RPPA 196 is Board case PL130395.

[4] Similar evidence may be called in these two cases. These matters have been grouped to be heard together at this point but are not consolidated. The Board will issue separate decisions for each of these two cases.

[5] This is the second pre-hearing in this matter. This pre-hearing dealt with a motion from the Northwest Quadrant Landowners’ Group (“NQLG”) and certain other matters in preparation for the hearing of the merits.

**RETENTION OF COUNSEL**

[6] David Donnelly has been retained by Jean Grandoni. Anne Sabourin, Mr. Donnelly’s associate, appeared at this pre-hearing for Ms. Grandoni.

[7] Ms. Sabourin advised the Board that she also appeared for Preservation of Agricultural Lands Society (“PALS”) on a limited retainer for purposes of this pre-hearing.

### **ADDITIONAL MINUTES OF SETTLEMENT**

[8] At the first pre-hearing, the Board was advised that NQLG and Thundering Watershad reached a settlement.

[9] At this pre-hearing, the Board was advised that NQLG and Warren Woods have also reached a settlement.

[10] Both settlements deal with possible modifications to the City of Niagara Falls ("City "OPA 106. In each case, Thundering Waters and Warren Woods are content to have their appeals of OPA 106 allowed in part to make the modifications to OPA 106.

[11] Both Thundering Waters and Warren Woods also appealed Region RPPA 196. RPPA 196 applies to the same lands as OPA 106.

[12] If the Board approves the proposed modifications to OPA 106, both Thundering Waters and Warren Woods have agreed to then withdraw their appeals of RPPA 196.

### **MOTION BROUGHT BY NORTHWEST QUADRANT LANDOWNERS' GROUP**

[13] In light of the settlements reached between NQLG and Thundering Waters and NQLG and Warren Woods, NQLG has brought a motion seeking an order of the Board to modify OPA 106 in accordance with the settlements.

[14] No responses were filed to the motion and the Board heard no objection.

[15] The motion from NQLG was clear that the request was being made only on the basis that if, following the hearing of the merits, the Board was prepared to approve OPA 106 then the Board was being asked to modify it in accordance with the settlements. NQLG was clear that the motion was not intended to, and would not, prevent a full hearing of the cases to be brought by Ms. Grandoni and PALS against OPA 106. NQLG was also clear that the motion was not in any way intended to ask the Board to prejudge the underlying issue of whether OPA 106 should be approved.

[16] The requested modification resulting from the Thundering Waters settlement is as follows:

Subsequent to the approval of the Gateway North Secondary Plan, no building permit shall be issued for urban development within the Gateway North Secondary Plan prior to January 1, 2016. This policy shall be implemented through a holding provision in the implementing zoning by-law for the Gateway North Secondary Plan.

Notwithstanding the foregoing, owners of lands within the Gateway North Secondary Plan area may continue to apply for building permits, and building permits may be issued, for any repair, renewal or development of those lands in accordance with the provisions of the current zoning provisions in force prior to the date of approval of the Gateway North Secondary Plan or through approval granted pursuant to Section 45 of the Planning Act.

[17] The requested modification resulting from the Warren Woods settlement is as follows:

Prior to any development approvals, servicing capacity and infrastructure requirements for the servicing of the Gateway North Secondary Plan shall be determined by a servicing study, which servicing capacity and infrastructure requirements shall not limit the development potential of lands within the urban boundary as it existed prior to this amendment. Generally, the full costs of the provision of the water, sanitary and stormwater services shall be the responsibility of the owners of land within the Gateway North Secondary Plan area. The manner of funding such costs shall be determined in the Gateway Secondary Plan.

[18] NQLG clarified for the Board that the reference to “Generally, the full costs...” in the second sentence in the proposed modification from the Warren Woods settlement was not intended to suggest that servicing costs for any NQLG development would be borne by other parties.

[19] The Region was clear that it expected the full costs of any Region water, sanitary and stormwater services would be paid entirely by NQLG.

[20] The City indicated that it held a similar position, softened only in the event that some other, non-NQLG related, services might be appropriate to be built at the same time. The City wished to see this flexibility in any modification to OPA 106.

[21] The City advised the Board that it intended to call its case in support of OPA 106, as modified by the provisions set out above that arose from the settlements.

[22] The Board notes and appreciates the qualifications attached to the request that the Board modify OPA 106 on a contingent basis depending on the results of the hearing of merits.

[23] The Board had an affidavit from Glenn Wellings in support of OPA 106, as modified by the settlements. Mr. Wellings is a full Member of the Canadian Institute of Planners and a Registered Professional Planner in Ontario who executed an Acknowledgement of Expert's Duty form. The Board is satisfied that Mr. Wellings is qualified to give the Board independent expert opinion evidence on this matter.

[24] The planning instruments Mr. Wellings explored in his affidavit include many of the same matters cited by PALS in its issue list and are matters that PALS intends to explore through its case in opposition to OPA 106.

[25] Under these circumstances, the Board is not prepared to make an order, even an interim or contingent one, at this time regarding the appeals of Thundering Waters and Warren Woods or the proposed modifications to OPA 106. As such, the Board reserves its decision on the motion.

## **2014 PROVINCIAL POLICY STATEMENT**

[26] The 2014 Provincial Policy Statement ("2014 PPS") was released late on the day before this appearance.

[27] The draft issue list for these proceedings was developed on the basis that the 1997 Provincial Policy Statement ("1997 PPS") is the applicable one for these proceedings. The issue list might change if the 2014 PPS is applicable to these proceedings.

[28] Having regard to s. 41(1) of the *Ontario Municipal Board Act*, R.S.O. 1990 c. O.28, the parties have agreed to the form of the following question which the Board now puts to the parties:

Does the 2014 Provincial Policy Statement apply to these proceedings?

[29] Parties intending to respond to this question are to file their materials, including any authorities, in both hard copy and electronically with the Board not later than 1p.m.

on Tuesday, March 11, 2014. Copies of filings with the Board are to be sent to all other parties.

[30] The Board has set aside one day, April 15, 2014, to deal with this question. The format on that day will be confined to any questions the Board may have as a result of the Board reviewing the written materials in advance. Parties will be advised by the case co-ordinator for these proceedings if the Board has no questions. In such a circumstance, the Board will cancel the appearance.

[31] If the appearance is needed, it will be held on **Tuesday, April 15, 2014 at 10a.m. at:**

**Council Chambers  
Municipal Building  
4310 Queen Street East  
Niagara Falls, ON**

## **PROCEDURAL ORDER**

[32] The parties have had some preliminary discussion regarding dates, deadlines and other details regarding the procedural order. Since the issue list may change, depending on the Board's decision regarding the applicability of the 2014 PPS, a final issue list for the hearing is deferred until the Board's decision is known.

[33] If the Board decides that the 2014 PPS is applicable and if a party then wishes to place the 2014 PPS on to the issue list, that party must identify clearly the specific policies within the 2014 PPS that it intends to cite.

[34] Counsel for NQLG has agreed to prepare the draft procedural order for submission to the Board. Recognizing the time constraints, and the priority that will reasonably go to responding to the Board's question, the Board does not set a specific date at this time for the filing of the draft procedural order. However, the Board asks the parties to file a draft procedural order, even if it is without a final issue list, as soon as the parties are reasonably able to do so.

## **FURTHER REQUEST FOR SITE ACCESS**

[35] At the last pre-hearing conference, the Board had a request from PALS for site access for a site visit by its ecologist. The Board left the determination of the date to PALS and NQLG, with the condition that any such site visit would also include the NQLG ecologist.

[36] Ms. Grandoni has now retained a consultant who is both an agrologist and a planner that she intends to call in the hearing. Ms. Grandoni is now seeking similar site access for a site visit by this consultant.

[37] The Board leaves final arrangement on the site visit to the parties on the following conditions:

1. That the site visit be on the same day as the ecologists' site visit.;
2. That the site visit will involve only a view and will not involve any soil testing.
3. That the NQLG agrologist is also available for on that date.
4. That the NQLG planner, and the planner of any other party to these proceedings, may also attend this site visit.

[38] If difficulties arise in the course of making these arrangements, the Board may be spoken to.

## **ORDER**

[39] The Board orders that the deadlines and requirements for filings and site visits are as set out in the preceding paragraphs.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER  
VICE CHAIR