

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: June 3, 2015

CASE NO(S): PL140635

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Janet C. Hanley-Haines
Subject:	By-law No. 28-14
Municipality:	Township of Scugog
OMB Case No.:	PL140635
OMB File No.:	PL140635
Case Name:	Hanley-Haines v. <i>Scugog (Township)</i>

Heard: November 13, 2014 in Port Perry, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
Township of Scugog	M. Joblin
Marsh Forest Group Inc.	R. Jarvis
Janet C. Hanley-Haines	D. Oake

DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD

INTRODUCTION

[1] This is the decision for an appeal by Janet C. Hanley-Haines (“Appellant”) against the approval by the Township of Scugog (“Township”) of Zoning By-law No. 28-14 which resulted from an application by Marsh Forest Group Inc. (“Applicant”) for an amendment to Scugog Comprehensive Zoning By-laws No. 75-80 and 14-14 to permit

the development of a tourist resort establishment at 138 Portview Road.

[2] The intent of the Applicant's proposal is to establish resort development with a maximum of 230 units consisting of a hotel and convention centre with approximately 80 units, and the remainder will be residential units with condominium tenure. The subject property is approximately 24.5 hectares ("ha") in size and it is located to the north of Highway 7A and on the west shore of Scugog Island to the east of the village of Port Perry. The property includes approximately 8 ha of forest and 8 ha of wetland and it has a potentially developable area of approximately 7 ha (Exhibit 2, Tab 12, p. 51).

[3] The application proposes to amend Comprehensive Zoning By-laws No. 75-80 and No. 14-14 to put into place zoning provisions that will permit the proposed development.

[4] In addition to the appearances noted above, Fred Haines and Susan Martin attended the hearing and requested participant status. The Board granted participant status on consent.

[5] At the beginning of the proceeding Mr. Oake requested an adjournment. He indicated that he had intended to call a witness, who recently became ill and was admitted to hospital. Mr. Oake stated that he had understood that this witness was an architect and planner, but he recently found out that he was not qualified in those areas. Mr. Oake stated that he was not able to find another planning witness to provide evidence at the hearing.

[6] The other parties did not consent to an adjournment and were prepared to proceed.

[7] The Board considered the request for an adjournment and refused the request. Last minute adjournments are discouraged by the Board's *Rules of Practice and Procedure*. Rule No. 64 provides specific guidance for permitting last minute

adjournments which can be granted only in cases of unavoidable emergencies, and the illness of a key witness could qualify.

[8] However, in this case according to the submissions, it is clear that the Appellant had intended to secure a witness to provide expert testimony in the areas of planning and architecture, but had not retained a witness that would be able to provide opinion evidence in those areas. The witness who was ill would not be providing this type of evidence.

[9] It is the responsibility of the parties to secure expert witnesses to provide evidence in those areas that are relevant to their respective cases. It is clear that the witness would not be providing the type of evidence that Mr. Oake anticipated would be relevant to his case and the Appellant had not ensured that a witness with the appropriate expertise had been secured.

[10] The other parties were prepared to proceed with the hearing and the Board determined that they would be prejudiced by an adjournment. Therefore the request for an adjournment was refused.

ISSUE

[11] The *Planning Act* requires through s. 24 that by-laws must comply with the provisions of the official plan. Compliance with the Region of Durham Official Plan and the Township Official Plan is an overriding requirement for By-law No. 28-14. Numerous issues that were raised in the evidence are also discussed later in this decision.

EVIDENCE

[12] The Board heard evidence on behalf of the Township from James Dymant, Partner with MHBC. Mr. Dymant is a Registered Professional Planner who has over thirty years of experience. He was qualified by the Board as an expert in land use

planning.

[13] The Board heard evidence on behalf of the Applicant from Peter Favot of Peter Favot Architect Ltd. Mr. Favot is a member of the Ontario Association of Architects and a Registered Professional Planner who has more than forty years of experience. He was qualified by the Board as an expert in planning and architecture.

[14] The Board also heard evidence on behalf of the Applicant from J. M. Mark, Principal of Mark Engineering. Mr. Mark is a transportation engineer who has more than forty years of experience. He was qualified by the Board as an expert in transportation engineering.

[15] The Board heard evidence in opposition to the proposal from the Appellant who testified on her own behalf.

[16] The Board also heard evidence in opposition to the proposal from the participants, Mr. Haines and Ms. Martin.

[17] After the Appellant had provided her evidence, the Board heard a request from Don Kett, who was a Township Councilor-elect at that time, to read a letter from the Appellant. Mr. Kett was not seeking status at the hearing.

[18] Mr. Jarvis objected and maintained that if the Appellant wanted the letter to be entered into the evidence she would have done so through her testimony. He maintained that if it were entered through Mr. Kett, it would be hearsay and he would not have the opportunity to cross-examine the Appellant about its content.

[19] The Board agreed with Mr. Jarvis and did not allow Mr. Kett to read the Appellant's letter.

RELEVANT FACTS

[20] Based upon the evidence provided by the parties and participants the Board has determined that the following facts are relevant to this appeal.

[21] The Region of Durham adopted Amendment No. 144 to the Region of Durham Official Plan through which the subject property is designated as a Recreation/Tourist Node which permits a resort development on the site (Exhibit 2, Tab 7, p. 14).

[22] The Township has adopted Amendment No. 1 to the Township of Scugog Official Plan to permit the development of a tourist resort on the subject property. A number of conditions are imposed through the provisions of both Official Plan Amendments. The matters covered through the conditions are as follows:

1. A responsibility agreement with the Region of Durham for the construction, operation and maintenance of services and measures to deal with potential default,
2. The phasing of development such that the first phase shall contain no more than 115 units and the development of future phases must be subject to further drilling of additional wells and a hydrogeological assessment and peer review,
3. The approval of the relevant planning instruments for the proposal,
4. The establishment of a program to monitor and report on the quality and quantity of surface water and groundwater for a minimum of five years following construction to the satisfaction of the Region of Durham, Township of Scugog and Kawartha Region Conservation Authority,
5. Approval by the Ministry of the Environment of a Municipal Class

Assessment for the proposed water treatment plant and the sewage treatment facility and required Ministry permits and approvals for these facilities and others associated with the development,

6. A monitoring and maintenance plan for stormwater management facilities,
7. Approval of the Ministry of Natural Resources for potential damage to an Endangered Species being butternut trees on the property,
8. Approval from Parks Canada (Trent Severn Waterway) and Ministry of Natural Resources as may be necessary to develop a waterfront boat launch and docking facility to be used in conjunction with the resort,
9. A final site plan on which to base zoning that will prevent the development and alteration of lands deemed to be part of a significant woodland or wetland and the associated buffers,
10. Establishment of an easement over the lands to enable public access to the waterfront,
11. Completion of Phase 3 and 4 Archeological studies as may be required based on the final site plan,
12. Other required matters (Exhibit 2, Tab 7 and 8, p. 15 and 31).

[23] The above amendments to the Durham and Township Official Plans were not appealed and are in full force and effect.

[24] By-law No. 28-14 as adopted by the Township is provided in Exhibit 2, Tab 9.

[25] The subject property is zoned Agricultural (AG), Agricultural Holding (AG(H)) and Environmental Protection (EP) in Scugog Comprehensive Zoning By-law No. 14-14. By-

law No. 28-14 will change the zoning of the subject property to Tourist Commercial Exception One Holding (C7-1(H)) and Environmental Protection Exception 3 (EP-3) to permit the proposed development.

[26] In the former Comprehensive Zoning By-law No. 75-80 that was in force when By-law No. 28-14 was adopted, the property was Zoned Rural (RU) and Environmental Protection (EP). By-law No. 28-14 proposes to change the zoning to Recreational Commercial Exception Nine Holding (C5-9 (H)) and Environmental Protection Exception Eight (EP-8) which will permit the proposed development.

[27] A number of conditions are included in By-law No. 28-14 which must be fulfilled in order for the development to proceed. They include the all required items in the conditions of the Official Plan Amendments and also requirements for development phasing, for providing easements in favour of the Township for sidewalks and a walking trail, and for site plan approval (Exhibit 2, Tab 9, pp. 37-39).

ISSUES, ANALYSIS AND FINDINGS

[28] The Board has carefully considered all of the submissions of the parties and participants.

[29] The Applicant maintained that the proposal is permitted through the amendments to the Regional and Township Official Plans. The Board heard that the proposal has been subject to numerous studies over a period of nine years and has met the requirements of all relevant agencies. Furthermore, appropriate controls have been incorporated into By-law No. 28-14 and the Official Plan Amendments to deal with any issues that might arise. The Applicant contends that the proposal is appropriate and By-law No. 28-14 meets all applicable planning requirements and it should be approved.

[30] The Appellant raised a number of concerns about the proposal. She maintained that there are traffic issues on Island Road and that accidents are common. The

concern was that the increased traffic from the proposal will aggravate the existing issue. She maintained that appropriate traffic control measures should be installed.

[31] The Appellant raised concern about the practicality of a proposed walkway from the subject property into Port Perry. She questioned if it would be well used and how it would be funded.

[32] The Appellant raised issues about impacts of the proposal on wells in the area. She noted that wells have gone dry in the area and expressed concern that the proposal would cause future problems.

[33] The Appellant indicated that fire protection in the area is a concern. She noted that two fires had occurred in the area recently and the fire department was not able to extinguish them and save the dwellings.

[34] The Appellant raised concerns about potential impacts of the proposal on a spring that she maintained runs through a ravine on the property. She also contended that the proposed sewage treatment system is too close to the forest.

[35] The Board also heard concerns about an aboriginal trail and potential artifacts in the area, about the possibility that the dock proposed for the development would be used for a marina and about controlling impacts of construction traffic.

[36] Mr. Haines raised concerns about the feasibility of the proposal and the assurances provided by the studies. He maintained that implementing the recommendations of studies has not prevented impacts of other proposals. He stressed the need to protect natural heritage features and the lakefront. He also indicated there are frequent accidents at the intersection of Island Road and Highway 7A, and that increased traffic from the proposal will cause additional problems.

[37] Ms. Martin indicated that there had been substantial change in the composition of

Township Council since By-law No. 28-14 had been approved and that the new Council should be given an opportunity to review the proposal before a final decision is made. Ms. Martin reiterated concerns about the impacts of increased traffic and potential impacts on wells. She noted the steep slope on Portview Road and the potential for accidents in the winter and difficulties for safe traffic movement in and out of the proposed development.

[38] While the Board recognizes the concerns expressed by the Appellant and participants, the evidence of the Applicant and Township addressed all of their issues. A tourist resort development is permitted on the subject property as a result of the amendments to the Regional Official Plan and the Township Official Plan. The evidence is that these amendments were not appealed. The By-law is simply putting in place the appropriate zoning controls to permit the type of development that is allowed by the Official Plan.

[39] With regard to the specific issues raised by the Appellant and participants, the Board heard that the development has been designed with best practices to address environmental concerns.

[40] The Board heard that the property is bisected by a ravine which will not be disturbed by the development. The proposal will be confined to areas that have already been disturbed on the property and will not intrude into the forested area and open space except for a trail system. The Board heard that the development will occupy only 20% of the property and that approximately 80% will remain in its natural state.

[41] The Board heard that a private sewage system will be constructed for the proposal and that it is based upon providing tertiary treatment of sewage generated by the resort. Furthermore, it will be setback from the forest.

[42] Hydrogeological studies have been completed for the property to ensure there will be no significant impacts on groundwater. The Board heard that the condition that is

proposed through the By-law for an additional hydrogeological study after the development of the first 115 units is intended to ensure that there will be no impact on wells and other groundwater concerns. The Board also heard that a condition of the site plan agreement will ensure that if there are issues, water will be provided to area residents that may be affected.

[43] Traffic studies have been completed for the proposal. Mr. Mark adopted the initial study for the proposal completed by Paradigm Transportation Consulting and then completed an update of the study to 2013 (Exhibit 1, Tab 7). Mr. Mark indicated that the main traffic flows in the area are east along Portview Road, which runs along the north end of the site, and south along Island Road. He indicated that the impacts of the proposal resulting from increased traffic are minor and can be easily ameliorated through some minor improvements.

[44] Mr. Mark indicated that the studies call for improvements to the section of Portview Road to the north of the subject property which will be completely reconstructed and upgraded and will include a sidewalk. The Board heard that a turn around will be provided on Portview Road so that school children in the area can be picked up by school buses.

[45] To accommodate increased traffic, left turn lanes are required from Island Road to Portview Road mainly to accommodate northbound traffic. Mr. Mark described the proposed construction access from Portview Road and maintained that it will have little impact on local residents. He stated that there should be no construction traffic going north on Portview Road which could impact residents.

[46] The Board heard that environmental issues have been fully addressed. Mr. Favot indicated that AECOM prepared a complete Environmental Impact Study which was accepted by the relevant agencies. With regard to the dock, he indicated that it will be constructed in a manner that will have minimal impact on the lake. Also, the Board heard that it will not accommodate motorized boats.

[47] Mr. Favot indicated that there are butternut trees, an endangered species, on part of the property. The Board heard that the trees have been assessed and only one has been determined to be healthy. It will be protected in accordance with the requirements of the Ministry of Natural Resources and Forestry.

[48] With regard to fire protection issues, Mr. Favot noted that a high volume fire hydrant would be provided at the corner of Portview Road.

[49] Mr. Favot also discussed the value of the proposed trail connection between the development and the village of Port Perry which will be located on the north side of the causeway adjacent to Highway 7A. He indicated that this will be a trail for pedestrians and bicycles and that motorized vehicles will not be permitted. It will provide a safe pedestrian connection between the development and Port Perry. Currently cyclists and pedestrians would need to use the shoulder of Highway 7A which is a busy road. The Board heard that it will be funded by contributions from the Applicant and public sources.

[50] Mr. Dymont and Mr. Favot both indicated that the proposal meets all planning requirements. Mr. Dymont stated that the proposal is consistent with the Provincial Policy Statement ("PPS"). In particular, it assists in accomplishing rural economic development objectives in s. 1.1.4.1 and 1.1.5, and appropriate infrastructure is in place and will be provided for the proposal pursuant to s. 1.1.5.5. The proposal is also consistent with the Natural Heritage policies in s. 2.1.

[51] Mr. Dymont indicated that the subject property is located within the Greenbelt Plan. The Board heard that the Greenbelt Plan in principal permits the development. According to the evidence, the lands are located within the Protected Countryside Area in the Greenbelt Pan and are further identified as Rural Area. The forest area and wetland on the subject property, which is part of a provincially significant wetland, will be protected and a buffer will be provided. A proposed road crossing of the ravine is in the area of an existing farm crossing in order to minimize impacts (Exhibit 2, Tab 12, p. 54).

Mr. Dymont stated that measures have been incorporated into Zoning By-law No. 28-14 to implement the requirements of the Greenbelt Plan for the property.

[52] Mr. Dymont's evidence was that By-law No. 28-14 also complies with the requirements of the Region of Durham Official Plan and the Township Official Plan as they have been amended. He indicated that measures will be incorporated into the site plan and site plan agreement to implement required mitigation and monitoring measures. He stated that the By-law represents good planning and that it should be approved.

[53] The evidence provided by the Applicant and Township and included in Exhibits 1 and 2 is complete and fully addresses all of the issues raised by the Appellant and the participants. The conditions included the Official Plan Amendments and in By-law No. 28-14 address all concerns and ensure that monitoring and mitigation measures will be implemented. The Board notes that archeological concerns should be dealt with through the requirements of Stage 3 and 4 Archeological assessments. This should address the Appellant's concern for an aboriginal trail and artifacts on the site.

[54] Based upon the overwhelming evidence provided by the Applicant and Township, the extensive study that has been undertaken for the proposal, the concurrence of the relevant agencies and the conditions that have been imposed, the Board is satisfied that all relevant planning requirements have been met.

[55] The Board finds that By-law No. 28-14 as provided in Exhibit 2, Tab 9, complies with the Region of Durham and Township of Scugog Official Plans, it is consistent with the PPS and complies with the Greenbelt Plan. Based upon the evidence the Board finds that By-law No. 28-14 represents good planning and should be approved.

[56] Based on the above, the Board is dismissing the appeal and the Township's approval of By-law No. 28-14 is recognized.

[57] The appropriate order is provided below.

ORDER

[58] The Board orders that the appeal against Zoning By-law No. 28-14 of the Township of Scugog is dismissed.

“C. Conti”

C. CONTI
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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