

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: May 6, 2015

CASE NO(S): PL140700

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Ministry of Municipal Affairs and Housing
Appellant: Phelps Homes Ltd.
Subject: Proposed Regional Official Plan Amendment
No. 3
Municipality: Regional Municipality of Niagara
OMB Case No.: PL140700
OMB File No.: PL140700

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Ministry of Municipal Affairs and Housing
Appellant: Phelps Homes Ltd.
Subject: Proposed Official Plan Amendment No. 37
Municipality: Township of West Lincoln
OMB Case No.: PL140700
OMB File No.: PL140701

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Ministry of Municipal Affairs and Housing
Appellant: Phelps Homes Ltd.
Subject: Proposed Official Plan Amendment No. 38
Municipality: Township of West Lincoln
OMB Case No.: PL140700
OMB File No.: PL140702

PROCEEDING COMMENCED UNDER subsection 17(50) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, section 37 and 38 of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28, as amended, and Rule 34 of the Board's *Rules of Practice and Procedure*

Request by: Township of West Lincoln and Regional Municipality of Niagara
 Request for: To modify and approve certain portions of certain official plan amendments and to bring into effect portions of those official plan amendments that are no longer under appeal

Heard: March 25, 2015 in Smithville, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Minister of Municipal Affairs and Housing	J. Page and F. Paquin
Regional Municipality of Niagara	P. DeMelo and S. Chisholm
Township of West Lincoln	T.A. Richardson
Phelps Homes Ltd.	S. Kaufman
Dunloe Developments Inc. and Quentin Developments Inc.	R. Kanter

MEMORANDUM OF ORAL DECISION DELIVERED BY JUSTIN DUNCAN AND SUSAN de AVELLAR SCHILLER ON MARCH 25, 2015 AND ORDER OF THE BOARD

INTRODUCTION

[1] The Regional Municipality of Niagara ("Region") adopted Regional Official Plan Amendment No. 3 ("ROPA 3") and the Township of West Lincoln ("Township") adopted Official Plan Amendment No. 37 ("OPA 37") and Official Plan Amendment No. 38 ("OPA 38").

[2] Appeals were filed in connection with each of these three planning instruments by the Ministry of Municipal Affairs and Housing (“MMAH”) and Phelps Homes Ltd. (“Phelps”). At a preliminary hearing held on January 7, 2015, the Board added Dunloe Developments Inc. (“Dunloe”) and Quentin Developments Inc. (“Quentin”) as parties to the appeals.

[3] The purpose of this hearing was to hear a motion filed jointly by the Region and the Township requesting an order of the Board:

- a. approving modifications to ROPA 3, Township of West Lincoln OPA 37 and Township of West Lincoln OPA 38, requested by MMAH;
- b. directing that these proceedings shall not result in an increase in the urban area of Smithville in excess of 61.5 hectares (net); and
- c. pursuant to s. 17(50) of the *Planning Act* approving those parts of ROPA 3, OPA 37 and OPA 38 that are not at issue as defined by the Issues List consented to by the parties and set out in a Procedural Order issued by the Board.

[4] The procedural order, with the issues list, was issued on March 13, 2015.

[5] The motion was filed March 16, 2015 on short notice for this March 25, 2015 appearance. No party objected to the short notice and the Board abridged notice for this motion.

[6] MMAH was the only party to file a response to the motion. MMAH supported part of the requested relief, had no objection or took no position on other parts. None of Phelps, Dunloe or Quentin filed any response.

[7] At the hearing, the Board heard submissions from counsel that the parties had reached an agreement that the motion ought to be allowed and was now coming on consent or with no objection from all parties.

[8] The agreement amongst the parties was to modify ROPA 3, OPA 37 and OPA 38 and to then bring into effect those parts of these three instruments which are not under appeal. The modifications agreed upon by the parties are as follows:

(a) ROPA 3:

- (i.) Schedule A is modified to remove the reference to “Rural Employment” on lands previously included in the Smithville Urban Area and to show these lands as “Good General Agriculture”.

(b) OPA 37 and OPA 38:

- (i.) OPA 37 is modified by deleting Policy 2.2.1 which enacts Policy 4.4.3 Site Exception 1 to permit existing rural employment uses in the Good General Agricultural designation;
- (ii.) OPA 37 is modified by amending the map entitled Schedule B-4 to include significant woodlands and wetlands on the Employment lands that are being included in the new urban boundary;
- (iii.) OPA 38 is modified by deleting policy 5.7(c)(iv) and replacing it with the following:

Policy 5.7(c)(iv):

Alternatives for Settlement expansion shall only include lands designated Good General Agriculture where it has been demonstrated that alternative locations have been evaluated, and there are no reasonable alternatives

which avoid Good General Agricultural Areas; and there are no reasonable alternatives on lower priority agricultural lands in the Good General Agricultural Area;

- (iv.) OPA 38 is modified by the inclusion of Policy 5.7(c)(xiii) as follows:

The expanding settlement area is in compliance with the provincial minimum distance separation formulae.

- (v.) OPA 38 is modified by deleting Policy 5.8 entitled “Minor Boundary Adjustment”;
- (vi.) OPA 38 is modified by the deletion of Schedule B-5 and substituting a new Schedule B-5.

[9] The Board had affidavit land use planning evidence from two planners in support of the motion to bring ROPA 3, OPA 37 and OPA 38 into effect on the basis agreed upon by the parties.

[10] Rachele Larocque, a planner with the Township, qualified by the Board to provide expert planning evidence, gave the opinion that the portions of OPA 37 and OPA 38, as modified by agreement of the parties, and which are not under appeal represent good planning, are consistent with the Provincial Policy Statement, 2014 (“PPS”), and conform to the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”). Based on her review of the procedural order and associated issues list on these appeals, Ms. Larocque was of the opinion that there is no reason for the Board not to bring those portions of modified OPA 37 and OPA 38 that are not under appeal, into force at this time. Ms. Larocque was not cross-examined on her affidavit.

[11] Mary Lou Tanner, a planner with the Region qualified by the Board to provide expert planning evidence, gave the opinion that the modified portions of ROPA 3, OPA 37 and OPA 38 not under appeal represent good planning, are consistent with the PPS,

and conform to the Growth Plan. Additionally, Ms. Tanner opined that OPA 37 and OPA 38 were consistent with applicable regional policies. Ms. Tanner was not cross-examined on her affidavit.

FINDINGS OF THE BOARD

[12] The Board, after considering the unchallenged evidence of Ms. Larocque and Ms. Tanner and the submissions made at the hearing of the motion, can find nothing that would alter the opinions provided by the two witnesses and the Board accepts their expert evidence.

[13] The Board finds that the proposed modifications to ROPA 3, OPA 37 and OPA 38 are consistent with the PPS, conform to the Growth Plan and have had regard for the matters of provincial interest as set out s. 2 of the of the *Planning Act*, R.S.O., 1990 c. P.13. Additionally, the Board finds that the proposed modifications to OPA 37 and OPA 38 conform to the Regional Official Plan, as modified.

[14] The parties had agreed previously that the scope of this hearing shall be such that no evidence will be called to permit an expansion of the Smithville urban boundary in excess of 61.5 hectares (net). The Board agreed to this limitation, subject to the understanding that doing so does not fetter the discretion of the Board regarding the determination of the urban boundary.

[15] With the proposed modifications, MMAH has agreed to scope its appeals such that only the following matters remain under appeal and not approved:

- a. Although the modifications referred to above to Schedule A of ROPA 3, Schedule B-4 of OPA 37 and Schedules B-4 and B-5 of OPA 38 are made by this Order, the Schedules to ROPA 3, OPA 37 and OPA 38 themselves are not approved;
- b. Sections 2.2.4, 2.2.5 and 2.2.6 of OPA 37 are not approved; and

c. Sections 5.11(c)(xiii), 6.6.2 and 6.6.6(d) of OPA 38 are not approved.

[16] The Board modifies ROPA 3, OPA 37 and OPA 38 as set out above and, as modified, approves those portions of these three instruments that are no longer under appeal.

FORM OF THE BOARD'S ORDER

[17] Following the oral disposition of the Board allowing the motion, modifying ROPA 3, OPA 37 and OPA 38 and approving those instruments as modified except for those parts which remain under appeal and at issue in these proceedings, the parties requested and the Board permitted additional time for the parties to reach agreement on the form of the Board's Order from the motion. The parties have advised the Board that they have reached substantial agreement on the form of the Board's Order, with two items of disagreement outstanding.

[18] To summarize, Phelps takes the position that the Order should be edited to have the Board retain jurisdiction to further modify those parts of ROPA 3, OPA 37 and OPA 38 which the Board has brought into force by the Board's oral Order at the close of the motion hearing. In effect, Phelps is asking the Board to vary its oral Order in the written disposition.

[19] The remaining parties variously take the position that the revisions proposed by Phelps are unnecessary, are not reflective of what the parties sought to accomplish on the motion, do not reflect the issues list agreed upon by the parties and contained in the procedural order issued on March 13, 2015 by the Board and do not reflect the oral Order delivered by the Board on March 25, 2015.

[20] Based upon the submissions of the parties on the form of the Order from the motion, the Board finds that the edits to the draft Order proposed by Phelps are unnecessary, have the effect of creating uncertainty about what matters remain at issue

on these appeals and would be contrary to the oral decision and Order delivered by the Board.

ORDER

[21] The Board grants the motion and orders that:

1. The appeals of MMAH shall be allowed in part and that the following modifications are made to ROPA 3, OPA 37 and OPA 38:

(a) ROPA 3:

- (i.) Schedule A is modified to remove the reference to “Rural Employment” on lands previously included in the Smithville Urban Area and to show these lands as “Good General Agriculture”.

(b) OPA 37 and OPA 38:

- (i.) OPA 37 is modified by deleting Policy 2.2.1 which enacts Policy 4.4.3 Site Exception 1 to permit existing rural employment uses in the Good General Agricultural designation;
- (ii.) OPA 37 is modified by amending the map entitled Schedule B-4 to include significant woodlands and wetlands on the Employment lands that are being included in the new urban boundary;
- (iii.) OPA 38 is modified by deleting Policy 5.7(c)(iv) and replacing it with the following:

Policy 5.7(c)(iv):

Alternatives for Settlement expansion shall only include lands designated Good General Agriculture where it has been demonstrated that alternative locations have been evaluated, and there are no reasonable alternatives which

avoid Good General Agricultural Areas; and there are no reasonable alternatives on lower priority agricultural lands in the Good General Agricultural Area;

- (iv.) OPA 38 is modified by the inclusion of Policy 5.7(c)(xiii) as follows:

Policy 5.7(c)(xiii)

The expanding settlement area is in compliance with the provincial minimum distance separation formulae.

- (v.) OPA 38 is modified by deleting Policy 5.8 entitled “Minor Boundary Adjustment”;
- (vi.) OPA 38 is modified by the deletion of Schedule B-5 and substituting a new Schedule B-5.

2. ROPA 3, OPA 37 and OPA 38, as modified in para. 1 above are approved, save and except as follows:

- (a) That the modifications referred to in para. 1 above to Schedule A of ROPA 3, Schedule B-4 of OPA 37 and Schedules B-4 and B-5 of OPA 38 are made by this Order, but that the Schedules to ROPA 3, OPA 37 and OPA 38 themselves are not approved by this Order;
- (b) That Sections 2.2.4, 2.2.5 and 2.2.6 of OPA 37 are not approved by this Order; and;
- (c) That Sections 5.11(c)(xiii), 6.6.2 and 6.6.6(d) of OPA 38 are not approved by this Order.

3. The scope of this hearing shall be such that no evidence will be called to permit an expansion of the Smithville urban boundary in excess of 61.5 hectares (net), but does not fetter the discretion of the Board regarding the determination of the urban boundary.

“Justin Duncan”

JUSTIN DUNCAN
MEMBER

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

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

A constituent tribunal of Environment and Land Tribunals Ontario
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