

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 27, 2015

CASE NO(S): PL141313

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicants and Appellants: South Barrhaven Development Corp. Et Al
Subject: Request to amend the Official Plan - Failure of the City of Ottawa to adopt the requested amendment

Existing Designation: Agricultural Resource Area
Proposed Designation: General Rural Area
Purpose: To permit the redesignation of the subject properties from Agricultural to General Rural to allow for future non-agricultural development

Property Address/Description: 3552, 3680, 3206, 3818 Barnsdale Rd. Et Al
Municipality: City of Ottawa
Approval Authority File No.: D01-01-13-0018
OMB Case No.: PL141313
OMB File No.: PL141313
OMB Case Name: South Barrhaven Development Corp. Et Al v. Ottawa (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicants and Appellants: South Barrhaven Development Corp. Et Al
Subject: Application to amend Zoning By-law No. 2008-250 – Refusal of application by the City of Ottawa

Existing Zonings: Agricultural Zone Subzone 2 (AG2), Agricultural Zone – Subzone 3 (AG3), Mineral Aggregate Resource Zone and Mineral Aggregate Resource Zone – Subzone 1 (MR1)

Proposed Zoning: Rural Countryside
Purpose: To permit

Property Address/Description: 3552, 3680, 3206, 3818 Barnsdale Rd. Et Al
Municipality: City of Ottawa

Municipal File No.: D02-02-13-0115
OMB Case No.: PL141313
OMB File No.: PL141314

Heard: July 21-24, 2015 in Ottawa, Ontario

APPEARANCES:

Parties

City of Ottawa (“City”)

South Barrhaven Development Corporation, 1470424 Ontario Inc. Minto Communities Inc. and Greenfield Limited Partnership by its General Partner Minto Greenfield Group Inc. (“Appellants”)

Counsel

T. Marc

A. K. Cohen and J. Cohen

Participant

William Melody

DECISION OF THE BOARD DELIVERED BY R. G. M. MAKUCH

[1] City Council refused the applications for official plan and zoning by-law amendments by the Appellants herein to re-designate the subject lands consisting of 11 parcels totaling 124 hectares (“ha”) from “Agricultural Resource” to “General Rural” and to rezone the lands to “Rural Countryside”, resulting in these appeals.

[2] The evidence in support of the appeals consists of testimony of Pamela Sweet, the land use planning consultant for the Appellants as well as that of Sean Colville, an agrologist and pedologist retained by the Appellants.

[3] The evidence in opposition to the appeals consists of the testimony of Bruce Finlay, a land use planner with the City, who authored the report to Council recommending refusal of the application.

[4] The Board has carefully considered all of the evidence and finds that the appeal should be allowed for the reasons that follow.

[5] The subject lands are bounded in the north by a primarily residential area of the South Urban Community of Barrhaven and other lands designated "General Urban Area"; on the east by Prince of Wales Boulevard, a designated "Arterial Road" and the community of Manotick nearby; on the south by Barnsdale Road (a designated local road) beyond which are lands designated "Agricultural Resource Area" currently being used for agriculture purposes; and on the west by Cedarview Road, a designated "Collector Road", beyond which is Highway 416.

[6] The Appellants are seeking this re-designation and re-zoning in order to recognize that the lands are no longer comprised of a "Prime Agricultural Area" nor are they suited in the long term to continue to be used for agricultural purposes but are more appropriately designated and used for other rural uses reflective of the characteristics of the land and area.

[7] The City has, according to Ms. Sweet, undertaken its statutory five year review of its official plan and as part of this review the City committed to undertaking a new "Land Evaluation Area Review" ("LEAR") analysis to review its agricultural and rural land base. "LEAR" is a provincially-developed land use planning tool to assist municipalities identify and protect "Prime Agricultural Areas" in its official plan. It essentially involves evaluating and scoring a parcel's soil/agricultural capability (land evaluation) and the context of the parcel (area review) to determine whether the lands should be protected for agricultural uses or whether other rural uses can be contemplated on the lands.

[8] The "Agricultural Resource Area" and "General Rural Area" designations in the current official plan were identified through a LEAR analysis developed in 1997. Since that time, provincial guidelines for LEAR analyses have changed and new soils and land use information has become available.

[9] The City has committed to reviewing and revising the 1997 analysis, which involved establishing revised evaluation criteria and a revised scoring system. This process began in 2010 with expectations that the new system and soils data would lead to additions and deletions to the “Agricultural Resource Area” established in the official plan.

[10] Concerns have been raised by City staff during the conduct of this review regarding new provincial soils data, which have to be resolved before the City can go forward with its LEAR analysis. The evidence during this hearing suggested that this may not be completed until at least 2018.

[11] Ms. Sweet’s planning analysis relies on the “Agricultural Impact Assessment” (“AIA”) carried out by the agronomist/pedologist Mr. Cloville.

[12] Mr. Colville’s evidence was un-contradicted and although he was cross-examined extensively by counsel for the City, the conclusions he came to withstood the scrutiny of the cross-examination. He explained that he was retained by the Appellants to prepare an agricultural impact assessment (AIA) to determine the class of soils present on the subject lands and to assess the potential impacts on agricultural lands as a result of the proposed re-designation. He concluded that these lands do not consist of prime agricultural lands as they do not meet the threshold value required for inclusion within the “Agricultural Resource Area”. The subject lands are more similar to other lower capability lands to the north and west than the better agricultural lands to the south of Barnsdale Road. He concluded that re-designation of these lands to “General Rural” will not have a significant impact on the City’s prime agricultural areas. He also concluded that there are minimum mitigation measures required in the event of a re-designation to “General Rural”.

[13] With respect to the City’s argument that the area sought for re-designation is not large enough and that the exercise should be more comprehensive, the minutes of the pre-consultation meeting with the City on June 11, 2013, attended by Mr. Colville

indicate that Cheryl McWilliams, a land use planner with the City indicated that typically, an area of 250+ ha should be considered as a minimum for this type of re-designation as per provincial guidelines, however as the lands form a “boundary condition”, they could be considered on their own.

[14] He concluded that the subject lands consisted of lower capability soils with approximately 75.5 % being in the Class 4 and 5 categories with a high percentage of stones present on the lands. Furthermore, the lands are fragmented into smaller parcels by the presence of “future development” lands in the area. These lands according to Mr. Colville are not prime agricultural lands and are not part of the prime agricultural area but more part of the area to the north.

[15] He also concluded that the proposed land use change will create a logical boundary between the non-agricultural (urban) lands to the north and the agricultural lands to the south across Barnsdale Road. The “General Rural Area” would then act as a buffer between the two incompatible land use designations (urban vs agricultural). Barnsdale Road represents an established and logical boundary that is an easily identifiable feature and conforms to boundary delineation as recommended by the Ontario Foodland Guidelines. Ms. Sweet concurs with that opinion.

[16] It is noted that Mr. Colville’s report was peer reviewed by another agrologist/pedologist, Michael Hoffman, who was not called by the City to give evidence to refute Mr. Colville’s findings. It is also noted that Mr. Hoffman did not take issue with the methodology used by Mr. Colville in his assessment.

[17] City Council relied on the recommendation of its planning department in refusing the applications.

[18] City Council’s grounds for the refusal as outlined in Bruce Finlay’s testimony, were that the re-designation would be more appropriately dealt with comprehensively through the LEAR study and that there is no need for additional lands in the “General Rural” area.

[19] The Provincial Policy Statement 2014 (“PPS”) seeks to protect prime agricultural areas for long-term use for agriculture and seeks to restrict development and non-compatible land uses to ensure that long-term viability. These areas are established based on areas where prime agricultural lands predominate – meaning areas actively farmed with lands classified for this area as classes 1 through 3. The City established a LEAR process to establish the prime agricultural areas designating these “Agricultural Resource” in the Official Plan.

[20] The LEAR study filed with the application was reviewed by the City’s Planning Department and was found to require additional information and clarification on the conclusions contained therein recommending that the lands are not appropriate as prime agricultural lands due primarily to poorer soils and the existing and adjacent urban boundary land uses. The Board finds that Mr. Colville’s evidence has addressed those questions.

[21] The Planning Department’s report to Council respecting these applications indicated that the majority of the area in question is being actively farmed and no specific purpose is being advanced by the proponent for these lands and therefore the proposal cannot be considered to be consistent with the PPS. Mr. Colville’s evidence based on his more current review/analysis suggests otherwise.

[22] Mr. Finlay relies on s. 5.2.2 of the Official Plan, which he says requires that need be demonstrated to re-designate lands to the “General Rural” designation. There are 120,000 ha of land designated “General Rural” in the City of Ottawa and the submission contains no proposed new uses for the lands. Many of the uses permitted within the “General Rural” designation are similar to those permitted within the “Agricultural Resource” designation according to Mr. Finlay, who is concerned that additional commercial and industrial uses as well as the possibility for severances could be more readily available with the change in designation. Section 3.7.2, Policy 15 of the Official Plan also directs that development within one kilometre of the urban or village boundary not adversely affect the potential expansion of that boundary. The majority of the lands

in question are within one kilometre of the urban boundary and some are within one kilometre of the Village of Manotick making the potential development opportunities possible under the “General Rural” policies limited.

[23] The City argues that re-designation of these lands is premature at this time since the Province has yet to complete the necessary mapping, which is an ongoing project by the City in collaboration with the Ontario Ministry of Agriculture Food and Rural Affairs to comprehensively update the “Soils Capacity Mapping” for the City of Ottawa. It was expected that this exercise was to have been completed by the end of 2014. The evidence showed that this will not be achieved and that a more likely date for completion of that exercise will not be until at least 2018.

[24] John Moser, General Manager, Planning for the City made a commitment to the Appellants in a letter dated August 29, 2014, that City staff would proceed with the site-specific official plan amendment application if it was not in a position to present council with a completed comprehensive update to the City’s LEAR mapping by early 2017. The evidence was quite clear and un-contradicted that the City would not be able to meet this objective. His letter also suggests that Mr. Moser does not perceive any consistency issues with the PPS as suggested by Mr. Finlay.

[25] Ms. Sweet’s planning analysis as outlined above relies on the un-contradicted opinions proffered by Mr. Colville, who concluded that these were not prime agricultural lands or part of a prime agricultural area. She also explained that this was not a re-designation to an urban area designation but rather to a “General Rural” designation.

[26] With respect to the City’s argument that a re-designation at this time would be premature, it is evident according to Ms. Sweet and the cross-examination of Mr. Finlay by counsel for the Appellants that the City has not been moving forward with the review of the LEAR system and that landowners cannot be expected to wait forever for re-designation of their lands where they have done their assessments outside of City’s LEAR review. Mr. Colville’s report clearly establishes that the subject lands are not

prime agricultural lands or part of a prime agricultural area and should therefore be re-designated to the more appropriate “General Rural” designation.

[27] The re-designation is appropriate according to Ms. Sweet given Mr. Colville’s uncontradicted opinion. She concludes that given the lands’ status, it is only appropriate that the proper designation be put into effect to reflect such status. The “General Rural” designation is the default designation under the circumstances given that the agricultural resource is not present.

[28] The Board is satisfied that the proposed re-designation and re-zoning is consistent with the PPS and conforms to the policies of the city’s Official Plan and represents appropriate land use planning.

[29] Accordingly, the appeals are allowed and the City is hereby ordered to modify its Official Plan in to re-designate the subject lands from “Agricultural Resource Area” to “General Rural”. The City is also ordered to amend its zoning by-law to zone the subject lands “Rural Countryside”. The Board will withhold its order pending receipt of the amendments and will remain seized.

“R. G. M. Makuch”

R. G. M. MAKUCH
MEMBER

If there is an attachment referred to in this document
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Ontario Municipal Board

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