Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

ISSUE DATE: January 24, 2018 **CASE NO(S).:** PL160012

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

Applicant and Appellant:	Golf North Properties Inc.
Subject:	Application to amend Zoning By-law No. 110-01 - Neglect of the County of Brant to make a decision
Existing Zoning:	Holding provision Residential Type One A with a special exception (h-R1A-3), Open Space with a special exception (OS-3), Environmental Protection (EP), and Environmental Protection with a special exception (EP-1)
Proposed Zoning:	Residential First Density with a special exception (R1-__), Residential Multiple First Density (R4), Residential Multiple Second Density (R5), and Open Space (OS)
Purpose:	To permit a development of 400 residential units comprising of 300 single detached dwellings and 100 multi-unit dwellings
Property Address/Description:	Concession 1 & 2, Part Lots 27, 28 & 29
Municipality:	County of Brant
Municipality File No.:	ZBA47-13-MD
OMB Case No.:	PL160012
OMB File No.:	PL160012
OMB Case Name:	Golf North Properties Inc. v. Brant (County)

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Golf North Properties Inc.
Subject:	Proposed Plan of Subdivision - Failure of the County of Brant to make a decision
Purpose:	To permit a development of 400 residential units comprising of 300 single detached dwellings and 100 multi-unit dwellings

Property Address/Description:	Concession 1 & 2, Part Lots 27, 28 & 29
Municipality:	County of Brant
Municipality File No.:	PS4/13/MD
OMB Case No.:	PL160012
OMB File No.:	PL160013

Heard: January 23, 2018 by telephone conference call

APPEARANCES:

Parties	**Counsel**
Paris Grand Estates Inc.	M. Melling A. Lusty, Student-at-Law
County of Brant	N. Smith A. Toumanians
CRH Canada Group (Dufferin Aggregates)	S. Ferri

MEMORANDUM OF ORAL DECISION DELIVERED BY S. JACOBS ON JANUARY 23, 2018

[1] This was the fifth Pre-hearing Conference ("PHC") concerning appeals to the Ontario Municipal Board (the "Board") by Paris Grand Estates Inc. ("Paris Grand") of the failure of the County of Brant (the "County") to make decisions regarding its applications for a Zoning By-law Amendment and Draft Plan of Subdivision.

[2] The purpose of this PHC was to discuss the status of this matter following the previous PHC, wherein Ms. Smith had advised the Board that the County intended to circulate notice of the revised proposal so that interested persons could seek status in this matter. Ms. Smith advised that the County is hosting an information session regarding the revised proposal on January 29, 2018.

[3] Counsel for the parties agreed that in the circumstances, it is necessary to revise the timelines set out in the Procedural Order (the "PO") issued by the Board on June 22,

2017. This includes the dates for exchange of witness statements and submissions of participant statements, which will now be due on March 29, 2018. The revised PO is attached here as Appendix 1.

[4] There was significant discussion as to how to best accommodate those who wish to seek status in this matter as a result of the revised proposal. Counsel and the Board agreed that another PHC, held in person, would be necessary to allow those seeking party or participant status to attend the PHC and request same. The Board agreed with counsel that while it is sufficient for those seeking participant status to make the request at the next PHC, those seeking party status at this stage in the proceedings should be required to bring a motion to request party status.

[5] Based on the discussions during the PHC, the Board orders that the next PHC shall commence at **11 a.m. on Friday, February 16, 2018 at:**

Municipal Building
Council Chambers
7 Broadway Street West
Paris, ON N3L 2R2

No further notice is required.

[6] Any requests for party status must be made by motion to be heard at the PHC, and motion materials shall be filed in accordance with the Board's *Rules of Practice and Procedure*.

[7] Any requests for participant status shall be made at the next PHC. Should any person interested in participant status be unable to attend the PHC, they may request participant status in writing, in advance of the PHC, to Leesa Kwong, Case Coordinator, who may be contacted by e-mail at Leesa.Kwong@ontario.ca or by phone at 416.326.6785. Such persons shall also submit a written participant statement in accordance with the PO, and it will be within the presiding panel's discretion to grant the

request for status.

[8] The Board further orders that the PO set out as Appendix 1 to this Order shall be in full force and effect for the purpose of governing the required procedure leading up to and including the Hearing scheduled to commence on May 14, 2018. The Board understands that there may be changes to the Issues List based on the revised proposal; the Board expects the parties to address such changes at the February 16, 2018 PHC.

[9] This Member is seized for the purpose of the next PHC only, and will continue to be available for the case management of this matter.

"S. Jacobs"

S. JACOBS
MEMBER

APPENDIX 1

O.M.B. Case No. PL 160012

ONTARIO MUNICIPAL BOARD
Commission des affaires municipales de l'Ontario

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

Applicant/Appellant:	Golf North Properties Inc.
Subject:	Application to amend Zoning By-law No. 110-01 - Neglect of the County of Brant to make a decision
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PROCEEDING COMMENCED UNDER Subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

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Property Description:	Concession 1 & 2, Part Lots 27, 28 & 29
Municipality:	County of Brant
Municipality File No.:	PS4/13/MD
O.M.B. Case No.:	PL160012
O.M.B. File No.:	PL160013

PROCEDURAL ORDER

The Board Orders that:

1. The Board may vary or add to this Order at any time either on request or as it sees fit. It may amend this Order by an oral ruling or by another written Order.

Organization of the Hearing

2. The Hearing will begin on **Monday, May 14, 2018 at 10:00 a.m. and continue until Tuesday, June 26, 2018** at the Municipal Building, Council Chambers, 7 Broadway Street West, Paris, Brant, Ontario, N3L 2R2. The Board will not sit on May 21, 2018 (Victoria Day). The Board may not sit on an additional date, to be determined at a later time, as a result of the Board's professional development schedule. All Parties and Participants shall attend the first day of the Hearing.

3. The Board will conduct a Prehearing Conference on **February 16, 2018 at 11:00 a.m.** at the Municipal Building, Council Chambers, 7 Broadway Street West, Paris, Brant, Ontario, N3L 2R2. The purpose of this Prehearing Conference is to hear requests for Participant Status or motions for Party Status, if necessary.

4. The length of the Hearing will be **30 days**. The length of the Hearing may be shortened as issues are resolved or settlement is achieved.

5. The Parties and Participants (see **Attachment 1** for the meaning of these terms) identified at the Prehearing Conference are listed in **Attachment 2** to this Order.

6. The Issues are set out in the Issues List attached as **Attachment 4**. There will be no changes to this list unless the Board permits. A Party who asks for changes may have costs awarded against it. Notwithstanding the foregoing, if the Applicant proposes substantive changes to the Zoning By-law Amendment and/or Plan of Subdivision that the Applicant is currently seeking approval of (which are included at **Attachment 5**), any Party may raise additional issues arising out of those changes within 15 days of receipt of notice of same.

7. The order of evidence at the Hearing is listed in **Attachment 3** to this Order. The Board may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Board.

Requirements Before the Hearing

8. All Parties and Participants (or their representatives) shall provide a mailing address, email address, and telephone number to the Board. Any such person who retains a representative (legal counsel or agent) subsequent to the Prehearing Conference must advise the other Parties and the Board of the representative's name, mailing address, email address and phone number.

9. A Party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other Parties and to the County Clerk a list of the witnesses and the order in which they will be called. This list must be delivered on or before **Wednesday, February 21, 2018**. For expert witnesses, a Party is to include a copy of the *curriculum vitae* and the area of expertise in which the witness is proposed to be qualified. Any challenges to the qualifications of a witness to give opinion evidence in the area of expertise proposed should be made by motion in accordance with the Board Rules on or before **Monday, March 28, 2018**.

10. Expert witnesses in the same field shall have at least one (1) meeting on or before **Wednesday, April 4, 2018** to try to resolve or reduce the issues for the Hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the Hearing, and provide this list to all of the Parties and the County Clerk on or before **Friday, April 13, 2018**.

11. An expert witness shall prepare an expert witness statement that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and any other reports or documents to be relied on at the Hearing, and a list of the issues which he or she will discuss and the witness' position on the issues. Copies of this must be provided as in Section 14. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.

12. A Participant must provide to the Board and the Parties a participant statement on or before **Thursday, March 29, 2018**, or the Participant may not give oral evidence at the Hearing.

13. Expert witnesses who are under summons but not paid to produce a report do not have to file a witness statement; but the Party calling them must file a brief outline of the expert's evidence and his or her area of expertise, as in Section 14.

14. On or before **Thursday, March 29, 2018**, the Parties shall provide copies of their witness and expert witness statements to the other Parties and to the County Clerk. The Parties shall prepare a Joint Document Book, the reasonable cost of which to be shared by the Parties on or before

Friday, April 27, 2018, and which will be filed with the Board on the first day of the Hearing. A paper copy of any document proposed to be entered into evidence or relied upon shall be provided at the Hearing unless ordered otherwise by the presiding Member.

15. On or before **Monday, April 30, 2018**, the Parties shall provide copies of their visual evidence to all of the other Parties. If a model is proposed to be used the Board must be notified before the Hearing. All Parties must have a reasonable opportunity to view it before the Hearing.

16. Parties may provide to all other Parties and to the County Clerk a written response to any written evidence on or before **Monday, April 30, 2018**.

17. A person wishing to change written evidence, including witness statements, must make a written motion to the Board in accordance with the Board's Rules 34 to 38.

18. A Party who provides the written evidence of a witness to the other Parties must have that witness attend the Hearing to give oral evidence, unless the Board and the Parties are notified on or before **Monday, May 7, 2018** that the written evidence is not part of the record.

19. Documents may be delivered in person, by courier, by facsimile or registered or certified mail, or by email, or otherwise as the Board may direct. The delivery of documents by fax and email shall be governed by the Board's Rules 26 to 31 on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

20. No adjournments or delays will be granted before or during the Hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.

21. The County of Brant, in consultation with the Parties and the Board, shall prepare a Hearing Communication Strategy that may include website posting and a witness work plan posting at the Hearing. Strategy elements will include the best information available to further public engagement but will caution all on the unpredictability of the Hearing process and anticipated scheduling.

This Member is not seized.

SUMMARY OF DATES

DATE	EVENT
Friday, February 16, 2018	Prehearing Conference
Friday, February 21, 2018	Exchange of witness lists (names, disciplines and order to be called)
Thursday, March 29, 2018	Exchange of witness statements, summoned witness outlines, expert reports and participant statements
Wednesday, April 4, 2018	Experts meeting prior to this date
Friday, April 13, 2018	Circulation of Agreed Statement of Facts
Friday, April 27, 2018	Finalize Joint Document Book
Monday, April 30, 2018	Exchange of reply witness statements (if any)
Monday, April 30, 2018	Exchange of visual evidence (if any)
Monday, May 14, 2018	Hearing commences

Attachment 1: Purpose of the Procedural Order and Meaning of Terms

Prehearing conferences usually take place only where the Hearing is expected to be long and complicated. If you are not familiar with the Hearing process you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's Rules, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-326-6800 or Toll Free 1-866-887-8820, or from the Board website at www.O.M.B..gov.on.ca.

The Parties should discuss the draft Procedural Order before the Prehearing conference and identify the issues and the process they propose the Board order following the Prehearing. The Board will hear submissions about the content of the Procedural Order at the Prehearing.

Meaning of terms used in the Procedural Order:

***Party** is an individual or corporation permitted by the Board to participate fully in the Hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other Parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a Party, it must appoint one person to speak for it, and that person will become the Party and assume the responsibilities of a Party as set out in the Procedural Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorization from the Party.*

***Participant** is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the Hearing. At the Hearing, a Participant may be asked questions by the Parties about their statements. Participants do not normally receive notice of a mediation or conference calls on procedural issues and cannot ask for costs, or review of a decision as Parties can.*

Written and Visual Evidence:

> ***Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a Party or Participant intends to present as evidence at the Hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material.*
>
> ***Visual evidence** includes photographs, maps, videos, models, and overlays which a Party or Participant intends to present as evidence at the Hearing. If a model forms part of the evidence, photographs of the model shall also be filed.*

Witness Statements:

*A **witness statement or a participant statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' or Participant's opinions on those issues; and a list of reports that the witness will rely on at the Hearing.*

*An **expert witness statement** should include his or her (1) name and address, (2) qualifications, acknowledgement of the expert's duty, and specific area(s) of expertise (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the Hearing.*

The Procedural Order will set out when and how witness statements are to be exchanged.

Additional Information

***Summons**: A Party must ask a Board Member to issue a summons. This request must be made before the time that the list of witnesses is provided to the Board and the Parties (see Rules 45 and 46 on the summons procedure.) An affidavit may be requested indicating how the witness' evidence is relevant to the Hearing. If the Board is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.*

***The order of examination of witnesses**: is usually direct examination, cross-examination and re-examination in the following way:*

- *direct examination by the Party presenting the witness;*
- *direct examination by any Party of similar interest, in the manner determined by the Board;*
- *cross-examination by Parties of opposite interest;*
- *re-examination by the Party presenting the witness; or*
- *another order of examination mutually agreed among the Parties or directed by the Board.*

***Role of Participants:** Participants are identified at the start of a Prehearing or at the start of a Hearing. Participant statements should be filed with the Board and the Parties in accordance with the direction set out in the Board's Procedural Order. If a Participant does not attend the Hearing and only files a written statement, the Board may not give it the same attention or weight as submissions made orally. The reason is that Parties cannot ask further*

questions of a person if they merely file the material and do not attend.

Attachment 2: Parties and Participants

Appellant/Party	Counsel/Agent	Contact
Paris Grand Estates Inc.	Michael Melling Isaiah Banach	Davies Howe LLP 10th Floor 425 Adelaide Street West Toronto, Ontario M5V 3C1 *MichaelM@davieshowe.com* *IsaiahB@davieshowe.com* P: 416-977-7088
County of Brant	Nancy Smith	Turkstra Mazza Associates 15 Bold Street Hamilton, ON L8P 1T3 *nsmith@tmalaw.ca* P: 905-529-3476
CRH Canada Group Inc.	Quinto Annibale Steven C. Ferri	Loopstra Nixon LLP 135 Queens Plate Drive, Suite 600 Toronto, ON M9W 6V7 *sferri@loonix.com* P: 416-748-4752 *qannibale@loonix.com* P: 416-748-4757

Participant	Contact
Joan Faux	Email: *mom2jnp@gmail.com*
Pamela Nickell	Email: *dapnickell@rogers.com*

Attachment 3: Order of Evidence

1. Paris Grand Estates Inc.
2. County of Brant
3. CRH Canada Group Inc.
4. Paris Grand Estates Inc. (Reply, if any)

Note: ***The Hearing panel will determine the timing for the evidence of Participants.***

Attachment 4: Issues List

COUNTY OF BRANT

DRAFT PLAN OF SUBDIVISION

1. Does the proposed draft plan of subdivision meet the requirements of 51(24) of the *Planning Act* with regard to:

   (a) Road alignments – are they premature pending the Class EA for Grand River Street North?

   (b) Road widenings – are they required at the culvert crossing on Gilbert Creek to accommodate fill slopes?

   (c) Paris Links Road – does the vertical alignment have inappropriate sub-standard values?

   (d) Internal road radii – is the 20m minimum appropriate and is it met?

   (e) Pedestrian pathway – where are they to be located for Stage 3?

TRAFFIC

2. Is a signalized intersection required at Paris Links Road?

3. Does Phase 1 need to be staged to accommodate traffic impacts of the proposed development?

PARIS GRAND AREA STUDY

4. Does the Paris Grand Area Study need to be updated to address:

   (a) Mineral aggregate resources;

   (b) Water source; and

   (c) Road network

PLANNING

5. Does the proposed development conform with Policies 2.3.4.2 (Aggregate Impact Assessment) and 3.13.3. (Geotechnical Study) of the Official Plan?

WATER SUPPLY

6. Has the proponent secured a potable water supply to service the proposed development to the satisfaction of the County?

CRH CANADA GROUP INC.

Note: CRH Canada Group Inc. adopts the Issues of the County of Brant, and raises the following Issues as well.

1. Do the Zoning By-law Amendment and Draft Plan of Subdivision applications have regard to matters of Provincial Interest? In particular:

   (a) the conservation and management of natural resources and the mineral resource base;

   (b) the orderly development of safe and healthy communities;

   (c) the resolution of planning conflicts involving public and private interests;

   (d) the protection of public health and safety; and,

   (e) the appropriate location of development.

2. Are the Zoning By-law Amendment and Draft Plan of Subdivision applications consistent with the Provincial Policy Statement (PPS), 2014? In particular:

   (a) 1.1.1

   (b) 1.2.6

   (c) 1.7.1

   (d) 2.2.2

   (e) 2.5.1

   (f) 2.5.2

   (g) 3.2.1

3. Do the Zoning By-law Amendment and Draft Plan of Subdivision applications conform to the County of Brant Official Plan? In particular:

   (a) 1.9

(b) 1.11.2.1.2

(c) 1.11.2.10.2

(d) 1.11.2.11.2

(e) 2.3.4.2

(f) 2.3.6.4

(g) 2.7.2

(h) 2.7.8

(i) 3.4.3

(j) 3.13.3

4. Have the Zoning By-law Amendment and Draft Plan of Subdivision applications demonstrated that the use will not preclude or hinder the continued use or expansion of Dufferin Aggregate's Paris Pit (the "Pit")?

5. Has the Applicant for the development submitted an Aggregate Impact Assessment as required by the County of Brant Official Plan? If so, has the Aggregate Impact Assessment demonstrated that:

   (a) the resource use would not be feasible; or

   (b) the proposed land use or development serves a greater long-term public interest; and

   (c) issues of public health, public safety and environmental impact are addressed.

6. Has the Applicant for the development evaluated potential incompatibilities between the Pit operations and the proposed development, such as surface and groundwater, dust, vibration, noise and traffic routes, as required by the County of Brant Official Plan and otherwise?

7. Has the Applicant for the development demonstrated that any land use conflict between the Pit and the proposed development, can be fully mitigated prior to the residential use being approved?

8. Does the Applicant's noise impact study appropriately address NPC 300 and the building heights permitted in the Zoning By-law application and does it take into consideration the permissions established on the *Aggregate Resources Act* site plan for the Pit?

9. Has the Applicant conformed with policy 3.13.3(i) of the Official Plan with respect to consultation with the Province regarding the proximity to the Pit and other Identified Aggregate Resource Areas?

10. Has the Applicant demonstrated that the proposed development will not cause adverse impacts to groundwater quantity?

PARIS GRAND ESTATES INC.

1. Does the current operation of the Pit comply with the *Environmental Protection Act*, Ministry of the Environment and Climate Change ("MOECC") Guideline NPC-300 and the County's Noise By-law?

2. If "yes" to issue 1, will planned or proposed expansion of the Pit do so?

3. If "no" to any of issues 1 or 2, what mitigation measures must be employed by the operator of the Pit?

4. Who is responsible for mitigating incompatibilities between the Pit and the proposed development?