

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 15, 2017

CASE NO(S): PL160282

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

Appellant: 1178460 Ontario Inc.
Appellant: 2156713 Ontario Ltd
Appellant: 548186 Ontario Inc.
Appellant: Ivy Lea Management Ltd; and others
Subject: Proposed Official Plan Amendment No. 8-OP-146602

Municipality: United Counties of Leeds & Grenville
OMB Case No.: PL160282
OMB File No.: PL160282
OMB Case Name: Ivy Lea Management Ltd v. Ontario (Municipal Affairs and Housing)

Heard: March 3, 2017 by Telephone Conference Call

APPEARANCES:

Parties

Counsel*/Representative

United Counties of Leeds and Grenville

Tony Fleming*

Ministry of Municipal Affairs

Ken Hare* and Trevor Sher* (Student-at-law)

Township of Rideau Lakes

Brittany Mulhern

Township of Front of Yonge

Elaine Covey

Township of Leeds and the Thousand Islands

Mark Touw

1178460 Ontario Inc.
548186 Ontario Ltd.
Ivy Lea Management Inc.
2156713 Ontario Ltd.
Ed Huck Marine Ltd.
Clark's Bus and Marina Ltd.

Michael Polowin*

Participants

Big Rideau Lake Association

Peter Hannah

MEMORANDUM OF ORAL DECISION DELIVERED BY SYLVIA SUTHERLAND ON MARCH 3, 2017 AND ORDER OF THE BOARD

[1] This is the third hearing event in the appeal of the new United Counties of Leeds and Grenville Official Plan ("County OP") to the Ontario Municipal Board. At the first pre-hearing conference, the Board addressed various administrative matters, including that the appeals would be addressed in a Coastal Wetland Mapping appeal stream (four appeals), and a Growth Management Policies appeal stream (three appeals). At the second pre-hearing, the parties provided the Board with a status report on their settlement discussions, and asked the Board to set a teleconference to hear the anticipated settlement of the Growth Management Policies appeal stream.

[2] The purpose of this telephone conference is to hear a joint motion by the Ministry of Municipal Affairs ("Ministry") and the United Counties of Leeds and Grenville ("County") to resolve the Growth Management Policies appeal stream. The Township of Rideau Lakes, the Township of Leeds and the Thousand Islands, and the Township of Front of Yonge support the settlement.

[3] This motion does not address the Coastal Wetland Mapping appeals stream.

BACKGROUND

[4] In 2013, the County was one of the few upper-tier municipalities in Ontario that did not have an official plan. On March 19, 2013, *Ontario Regulation 352/02* –

Mandatory Adoption of Official Plans under the *Planning Act* was amended to require the County to prepare and adopt its first official plan.

[5] Over the course of 2014 and the first half of 2015, the County held public meetings, consulted with stakeholders, and worked with its constituent lower-tier municipalities and the Ministry to prepare its first official plan. On July 23, 2015, the County passed By-law No. 15-47 adopting the County OP.

[6] The Minister of Municipal Affairs modified and approved the County OP on February 19, 2016, and Notice of Decision was given on February 24, 2016.

[7] Eight parties appealed portions of the County OP to the Board, while the unappealed portions came into effect on March 15, 2016. The Ministry forwarded the appeals to the Board on March 29, 2016. The County, the Township of Rideau Lakes, and the Township of Front of Yonge (collectively the “Municipalities”) appealed several growth management policies. The Township of Leeds and the Thousand Islands appealed a site specific designation and subsequently withdrew its appeal, and was granted party status at the first pre-hearing conference. The Big Rideau Lake Association, a local residents group, was granted participant status in the appeals.

[8] The remaining appeals by the Municipalities within the Growth Management Policies hearing stream are the subject of this settlement motion before the Board.

PROPOSED MODIFICATIONS

[9] As a result of settlement discussions, the Ministry and the Municipalities successfully addressed the Growth Management Policies appeals. Counsel for the County and the Ministry requested that the Board modify a number of policies in the County OP as set out in Attachment 1 to this Decision. Counsel for the County and the Ministry advised the Board that the modifications provide consistency of language between policies and clarify certain matters to assist with the implementation of the

policies. They suggested that the changes be characterized as clarifications rather than substantive changes.

[10] Planning evidence in support of the proposed amendments was provided in the Affidavit of Morgan Alger, a land use planner employed by the Ministry in its Kingston office. In her evidence, Ms. Alger provides some history relating to the approval of the County OP, identifies the two hearing streams, and provides support for the proposed modifications to 19 growth management policies in the County OP. In her professional opinion, the proposed modifications are consistent with the Provincial Policy Statement (2014) (“PPS”) and represent good planning.

[11] Ms. Alger provided the Board with a three column table in her Affidavit setting out the policies approved by the Ministry, the proposed modifications to the policies in track change format as agreed upon by the government parties, and the rationale in support of each modification. The Board was walked through each of the proposed modifications in the table, which clarify County OP policies and assist with their implementation. The proposed modifications reflect and are consistent with the PPS, including the settlement area (1.1.3), rural area (1.1.4, 1.1.5), water (2.2), and cultural heritage and archeology (2.6) policies.

[12] The Big Rideau Lake Association offered no objections to the settlement, but made a few submissions about protecting the health of the Rideau Lakes when making planning decisions consistent with policy 2.2.1 of the PPS. It was noted that County OP policy 4.4.1 (i), which is already in effect, provides that water quality will be protected by considering lake capacity, including through lake capacity assessments, and that local municipalities may require such assessments when considering development applications. The Big Rideau Lake Association indicated that it will remain involved in protecting the Rideau Lakes, including working with lower-tier municipalities to adopt appropriate policies in their official plans that reflect the requirements in the PPS and the County OP.

[13] On the unchallenged evidence of Ms. Alger, the Board finds that the modifications to the County OP are consistent with the PPS and represent good planning.

ORDER

[14] Pursuant to s. 17(50) of the *Planning Act*, the Board orders that:

1. The appeals of the County OP by the United Counties of Leeds and Grenville, the Township of Rideau Lakes, and the Township of Front of Yonge are allowed, and are entirely resolved by the approval of the modifications to the County OP in Attachment 1 to this Decision.
2. The modifications and approval in the paragraph immediately above does not affect the portions of the County OP that remain under appeal in the Coastal Wetland Mapping appeal stream.

“Sylvia Sutherland”

SYLVIA SUTHERLAND
MEMBER

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

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ATTACHMENT 1

Modifications to the United Counties of Leeds and Grenville Official Plan (Growth Management Policy Appeals)

Section	Approved Policies and Related Administrative Changes
1.1.5.2) Strategic Direction	Focus population and employment growth to <i>settlement areas</i> , to preserve and protect <i>prime agricultural areas</i> and the rural and natural character of the Counties and make efficient use of existing and planned <i>infrastructure</i> . Growth and <i>development</i> in <i>rural areas</i> will be limited, and in keeping with the scale, character, and service levels of the area as well as the objectives detailed in the local municipal Official Plans.
2 Preamble	Growth in the Counties will be managed by focusing and promoting growth within <i>settlement areas</i> , in addition to other appropriate rural areas as detailed in the local municipal Official Plans, thereby optimizing the use of existing <i>infrastructure</i> , developing complete communities, and protecting the natural environment and <i>prime agricultural areas</i> . Growth will be directed to the settlement areas that are able to accommodate additional growth, with limited growth in <i>rural areas</i> in keeping the scale, character, and service levels of the area as well as the objectives detailed in the local municipal official plans.
2.1a) Objectives	Foster the creation of complete, healthy and vibrant communities and enhance the quality of life for all residents by focusing growth and <i>development</i> to <i>settlement areas</i> . Growth in <i>rural areas</i> will be limited and in keeping with the scale, character, and service levels of the area, as well as the objectives detailed in the local municipal Official Plans in order to conserve and protect natural heritage features and areas and <i>prime agricultural areas</i> .
2.1c) Objectives	Promote a settlement structure which focuses growth to the Counties <i>urban and rural settlement areas</i> . Growth in <i>rural areas</i> will be limited, and in keeping with the scale, character, and service levels of the area, as well as the objectives detailed in the municipal local Official Plan.
2.2e) Growth Forecasts and Allocations	The Counties' <i>urban and rural settlement areas</i> will be the focus of growth, subject to appropriate servicing.
2.3.1a) General Settlement Area Policies	The Counties' <i>settlement areas</i> will be the focus of growth. Growth is encouraged in built-up areas to maximize public and private infrastructure investment and to preserve the agricultural area, <i>rural lands</i> and conserve the natural heritage features and areas.
2.3.1f) and g) General Settlement Area Policies	<p>f) Local municipalities are encouraged to establish land use patterns based on densities and a mix of land uses which support the local context and meet the following:</p> <p>g) Local municipalities are encouraged to promote the long term economic prosperity of <i>settlement areas</i> that support the local context through the following:</p>

2.4.1d) Intensification	<p>Local municipal Official Plans will identify appropriate locations and the type and form of <i>intensification</i> to be promoted. For the purposes only of measuring performance relative to the <i>intensification</i> target, local municipalities may measure <i>intensification</i> in a manner that includes any of the following:</p> <p style="padding-left: 40px;">i. Residential <i>development</i> within previously developed areas of a designated <i>rural settlement area</i>;</p> <p style="text-align: center;"><i>[NOTE: Clauses 2.4.1 d) (ii) to (v) remain as approved by the Ministry of Municipal Affairs.]</i></p>
3.2.5e) Agricultural Area Lot Creation and Adjustment	<p>e) Lot adjustments in the Agricultural Area may be permitted for legal or technical reasons. Lot line adjustments will be interpreted to prohibit the creation of new residential or non-farm parcels.</p> <p>f) Applications to sever a previously legal lot of record that unintentionally merged under the <i>Planning Act</i> may be permitted subject to satisfying applicable Provincial, County and lower-tier policies.</p> <p style="text-align: center;"><u>Administrative Change:</u> With the addition of new (f) above, former subsection 3.2.5 (f) now becomes 3.2.5(g).</p>
3.3 Rural Lands	<p>Rural lands are recognized as lands located outside settlement areas and do not comprise prime agricultural areas in the Counties. Rural lands are designated on Schedule A and will be designated in the local municipal Official Plans. Rural lands are intended to protect the natural amenities and rural character of the Counties while providing opportunities for agricultural uses, resource-based activities, recreation and tourism, and other rural land uses.</p>
3.3.1 Objectives	<p>The objectives of the <i>rural lands</i> are to:</p> <p>a) Promote <i>development</i> opportunities related to the management or use of resources; resource-based recreational uses (including recreational dwellings); tourism, limited residential <i>development</i>; home occupations and home industries; and other rural land uses that cannot be located in <i>settlement areas</i>, and/or are detailed in the local municipal Official Plan;</p> <p>h) Provide opportunities to locate new or expanding land uses that require separation from other uses.</p> <p style="text-align: center;"><i>[NOTE: Other subsections in 3.3.1 remain as approved by the Ministry of Municipal Affairs.]</i></p>
3.3.2 Permitted Uses	<p>a) The primary use of land will be for:</p> <p style="padding-left: 40px;">i. the management or use of resources, such as forestry and <i>mineral aggregate operations</i>;</p> <p style="padding-left: 40px;">ii. resource-based recreational uses, including recreational dwellings;</p> <p style="padding-left: 40px;">iii. limited residential development, which will be defined in the local municipal Official Plans;</p>

	<p>iv. home occupations and home industries; v. cemeteries; vi. agricultural uses, agriculture-related uses, on-farm diversified uses and normal farm practices as permitted in Section 3.2.2; and vii. other rural land uses.</p> <p>b) Local municipalities will establish policies in their Official Plans related to rural residential development which may be accommodated on rural lands without compromising the rural character of these lands.</p> <p>c) In addition to <i>agricultural uses</i> and <i>agriculture-related uses</i>, rural industrial/commercial uses which are resource-based and forestry uses, or which are located within or along a local rural commercial area or corridors, may be permitted without an amendment to this Plan, subject to the policies of Section 3.2.3, the local municipal Official Plan, and may be subject to a site-specific rezoning.</p> <p>d) Recreational and tourist commercial uses, open space, and limited residential <i>development</i>, may be permitted in <i>rural lands</i> without requiring an amendment to this Plan, but may be subject to a rezoning, and provided the use is permitted in the local municipal Official Plan, and meets the criteria established within the local municipal Official Plan.</p> <p>e) The specific permitted uses and accessory uses will be established in the local municipal Official Plans and implementing zoning by-laws.</p> <p><u>Administrative Change:</u> Since former subsection 3.3.2(e) was deleted, former 3.3.2 (f) now becomes 3.3.2(e) as shown above.</p>
<p>3.3.3 Land Use Policies</p>	<p>The following land use policies apply to the rural lands:</p> <p>g) Those uses that create or potentially create adverse impacts as a result of air, noise, and/or vibration emissions, and/or the generation and/or handling of solid or liquid wastes will only be considered based on the submission of an impact assessment to the satisfaction of the Counties and/or local municipality, as applicable.</p> <p>k) The local municipalities will establish policies in the local municipal Official Plans to ensure that the following criteria are satisfied where rural industrial/commercial uses, excluding applications under the Aggregate Resources Act, are proposed:</p> <ul style="list-style-type: none"> i. The proposed use will not create or add to a negative impact on the environment, adjacent or nearby sensitive land uses, or traffic patterns; ii. The proponent will demonstrate how outside storage, if any, and the storage and removal of on-site generated waste is to be accommodated; iii. The proponent may be required to demonstrate how the traffic generated from the proposed use will impact the existing roads and how much will be generated; iv. For a use that may have the ability to compromise or contaminate the subject

	<p>lands, the proponent may be required to submit a remediation plan to be used upon the discontinuation of use to the satisfaction of the municipality, Counties, and the applicable Ministry(ies); and</p> <p>v. The proponent may be required to demonstrate how the foregoing and any other requirements set out in this Plan and the local municipal Official Plan will be met.</p>
	<p><i>[NOTE: All other subsections in 3.3.3. remain as approved by the Ministry.]</i></p>
4.4.1j) Water Resources	<p>For newly created <i>lots</i>, local municipal Official Plans and Zoning By-laws shall require that all new <i>development</i> and areas of sewage system discharge be set back at least 30 metres from the ordinary high water mark of all waterbodies with minimal disturbance of the native soils and very limited removal of shoreline vegetation. Water setback requirements shall not apply to permitted encroachments, docks, boathouses, pumphouses and other marine facilities.</p>
4.4.1k)	<p>For existing <i>lots</i> of record, new <i>development</i> should generally be setback 30 metres if possible/feasible, otherwise as far back as the lot permits, with minimal disturbance of the native soils and very limited removal of the shoreline vegetation beyond that required for <i>development</i>. Any proposed reduction to the 30 metre minimum setback will:</p> <ul style="list-style-type: none"> • be consistent with any applicable policies in the Provincial Policy Statement and related implementation guidelines; • maximize the setback through building design and orientation, and the siting of the septic system; and, • minimize disturbance to native soils and shoreline vegetation in accordance with other policies of this Plan. <p>Water setback requirements shall not apply to permitted encroachments, docks, boathouses, pumphouses and other marine facilities.</p>
4.4.3.1a) Develop- ment “At Capacity” Lakes	<p>Generally, the creation of new <i>lots</i> through consent or by plan of subdivision will not be permitted within 300 metres of a lake trout lake that is classified as “at capacity”, except under strict conditions where a proponent can demonstrate that there will be no impacts on water quality. This requires consultation with the Province, and consideration of Municipal Site Evaluation Guidelines. The following are the conditions under which exceptions to allow <i>lot</i> creation is permitted:</p> <ol style="list-style-type: none"> i. To separate existing habitable dwellings, each of which is on a lot that is capable of supporting a Class 4 sewage system, provided that the land use would not change and there would be no net increase in phosphorus loading to the lake; or ii. Where all new septic tile fields would be located such that they would drain into a drainage basin which is not at capacity; or iii. Where all new septic tile fields are set back at least 300 metres from the shoreline of lakes; or iv. Where drainage from the septic tile fields would flow at least 300 metres to the lake. This must be supported by a report prepared by a qualified professional; or v. Where a site-specific soils investigation prepared by a qualified professional

	<p>demonstrates that phosphorus can be retained in deep, native, acidic soils on-site, to the satisfaction of the Province.</p>
<p>4.4.3.2a) Develop- ment “Not At Capacity” Lakes</p>	<p>a) For newly created <i>lots</i>, local municipal Official Plans and Zoning By-laws shall require that all new <i>development</i> and areas of sewage system discharge be set back at least 30 metres from the ordinary high water mark of all waterbodies with minimal disturbance of the native soils and very limited removal of shoreline vegetation.</p> <p>b) For existing <i>lots</i> of record, new <i>development</i> should generally be setback 30 metres if possible/feasible, otherwise as far back as the lot permits, with minimal disturbance of the native soils and very limited removal of the shoreline vegetation beyond that required for <i>development</i>. Any proposed reduction to the 30 metre minimum setback will:</p> <ul style="list-style-type: none"> • be consistent with any applicable policies in the Provincial Policy Statement and related implementation guidelines; • maximize the setback through building design and orientation, and the siting of the septic system; and, • minimize disturbance to native soils and shoreline vegetation in accordance with other policies of this Plan. <p>c) Where lake-specific or site-specific conditions suggest that it would be appropriate, such as through established water resource-based management plans (i.e. Municipal Site Evaluation Guidelines, a Lake Management Plan and/or Subwatershed Study), the minimum required water setback may be increased. Examples of such conditions would include sites with steep slopes, limited soil depth, suboptimal (i.e. very high or very low) soil percolation, or limited vegetative cover. The local municipalities will establish detailed policies and provisions for minimum required water setbacks and associated requirements in the local municipal Official Plans and Zoning By-laws.</p> <p>d) Water setback requirements shall not apply to permitted encroachments, docks, boathouses, pumphouses and other marine facilities.</p> <p><u>Administrative Change:</u> Since subsections (b), (c) and (d) above are newly added, the subsequent existing subsections shall be renumbered as follows: existing 4.4.3.2(b) is now (e), existing (c) is now (f), and existing (d) is now (g).</p>
<p>4.5.2b) Archaeological Resources</p>	<p>b) <i>Development</i> and <i>site alteration</i> shall not be permitted on lands containing <i>archaeological resources</i> or <i>areas of archaeological potential</i> unless significant archaeological resources have been conserved.</p> <p>c) The County and/or local municipalities shall require archaeological assessments and the conservation or excavation of significant archaeological resources in accordance with Provincial requirements. Archaeological assessment reports by licensed archaeologists are to be in compliance with guidelines set out by the Ministry of Tourism, Culture, and Sport, as well as licensing requirements referenced under the <i>Ontario Heritage Act</i>.</p> <p><u>Administrative Change:</u> Since subsection (c) above is newly added, the subsequent</p>

	existing subsections shall be renumbered as follows: existing 4.5.2(c) becomes (d); existing (d) becomes (e); existing (e) becomes (f); existing (f) becomes (g); existing (g) becomes (h); and existing (h) becomes (i).
7.6.3.2a) Consent	Applications to create <i>lots</i> through the consent to sever process will be in accordance with the policies contained in the local municipal Official Plans which are required to be in conformity with the policies contained herein and provincial policy. Applications to sever a previously legal lot of record that unintentionally merged under the <i>Planning Act</i> may be permitted subject to satisfying applicable Provincial, County and lower-tier policies.