

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 19, 2018

CASE NO(S): PL161155

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

Appellant: Gladstone Realty (1998) Limited
Subject: By-law No. BL 2016-56
Municipality: Township of McNab-Braeside
OMB Case No.: PL161155
OMB File No.: PL161155
OMB Case Name: Gladstone Realty Ltd v. McNab-Braeside

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

Appellant: Gladstone Realty (1998) Limited
Subject: Proposed Official Plan Amendment No. OPA 9
Municipality: Township of McNab-Braeside
OMB Case No.: PL161155
OMB File No.: PL170217

Heard: March 7, 2018 in Arnprior, Ontario

APPEARANCES:

Parties

Counsel

Gladstone Realty (1998)
Limited ("Appellant")

Garett Schromm

Township of McNab-Braeside
("Township")

Philip Osterhout

**MEMORANDUM OF ORAL DECISION DELIVERED BY DAVID L. LANTHIER ON
MARCH 7, 2018 AND ORDER OF THE BOARD**

[1] The Appellant filed two appeals with the Board in relation to both the site-specific zoning by-law amendment and the site-specific official plan amendment which were passed by the Township to address issues and concerns related to a plan of subdivision governing the Appellant's lands located on part of Lots 9 and 10, Concession 6, in the Township of McNab. The hearing of these appeals was scheduled to commence on this date.

[2] The Board was advised, at the commencement of the hearing that a settlement had been reached, and the Board was presented with supporting affidavit material and a draft Order. No one appeared for the County of Renfrew and no other person attended requesting status before the Board. The settlement had been approved by the municipal Council the evening before the hearing. The Board received supplementary oral evidence from Mr. Bruce Howarth who was qualified as an expert in planning and development and who is the Senior Planner in the County of Renfrew Development and Property Department. The hearing was thus converted to a Settlement Hearing.

BACKGROUND

[3] The Board was provided with the background history in regards to the Hidden River Estates Subdivision ("the Subdivision") both in the municipal record and Mr. Howarth's affidavit (Exhibit 1). A plan of subdivision approved in 1982 gave rise to the development of the Subdivision, but financial difficulties and other issues resulted in non-compliance on behalf of the prior owner. Of the 23 lots originally created by the Subdivision Plan, only six were sold, and homes were constructed on five of them. Under the terms of the Subdivision Agreement, the Township was to receive ownership of a number of blocks and lots as security. The Subdivision Agreement included a number of obligations on the part of the owner of the lands, which included requirements for the construction of roads including Robertson Line, which was the single road access to the Subdivision, after which the roads would be under municipal ownership. There were other shortcomings on the part of the owner's compliance with the Subdivision Agreement. Eventually, the Subdivision lands were foreclosed and

came under ownership of the Appellant. At some point in the history of the Subdivision, the Township failed to obtain conveyances of the lots that were to be conveyed to it, pending satisfaction of the requirements of the Subdivision Agreement.

[4] In the years that have followed, the deficiencies in relation to the roads were not remedied and one particular section of Robertson Line remained particularly problematic as a result of deficient design and vehicle operational constraints. Due to the nature of the non-compliance with the Subdivision Agreement, and the unresolved issues, the Township passed Zoning By-law Amendment 206-56 (the "ZBLA") to rezone the Subdivision lands and add a holding provision and an Official Plan Amendment pursuant to By-law No. 2017-06 (the "OPA"). Both planning instruments were intended to prevent further lot creation until such time as the deficiencies were addressed. The Appellant appealed, and there have been ongoing discussions which have led to the settlement.

PLANNING EVIDENCE

[5] The Board has been presented with a draft form of the ZBLA and the OPA arising from the settlement which essentially allows the appeals in part, by adding certain amendments to the wording of both planning instruments. Both the ZBLA and OPA remain more or less intact as they were passed but the parties have proposed clarifications to the wording of both the ZBLA and the OPA, which are acceptable to both parties. These modifications have been made to the attachments to the draft Order provided to the Board for approval.

[6] The Board received Mr. Howarth's planning opinions and his recommendation that the Board approve the settlement and the resultant Order which would allow for the approval of the modifications to the ZBLA and OPA. The Board accepts Mr. Howarth's evidence and finds that the ZBLA and OPA, as modified, will serve as a positive framework to remedy the deficiencies of the road work and provide for the orderly completion of the Subdivision, and create the safeguards and processes necessary to

ensure that the pre-requisite new or amended subdivision agreement is secured before further lots are developed in the Subdivision. This will benefit and protect the current resident/owners of existing lots and those purchasing lots in the completed and compliant subdivision.

[7] The Board also accepts Mr. Howarth's planning evidence and finds that the modified planning instruments are consistent with the Provincial Policy Statement 2014, conforms to the policies of the Township's Official Plan and are consistent with the Township's comprehensive Zoning By-Law. As such the Board accordingly finds that the revised ZBLA and OPA, as appended to the draft Order, represent good planning, are in the public interest, and will approve the issuance of the draft Order filed as Exhibit 2 in the settlement hearing.

ORDER

[8] The Board orders that the Order and appendices thereto, attached to this Decision as Attachment 1, shall be issued.

"David L. Lanthier"

DAVID L. LANTHIER
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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ATTACHMENT 1

PL161155
PL170217

Ontario Municipal Board Environment and Land Tribunals Ontario

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ORDER

THIS MATTER was convened at the offices of the Township of McNab-Braeside (the “Township”) on the 7th day of March, 2018, at which place and time the Township, on consent, sought approval of a settlement between the Township and the Appellant Gladstone Realty (1998) Limited (“Gladstone”).

WHEREAS Gladstone appealed from By-law no. 2016-56, being a by-law to amend Comprehensive Zoning By-law no. 2010-49 (the “Township Zoning By-law”)(OMB File No. PL161155) (the “Gladstone Zoning Appeal”);

AND WHEREAS Gladstone appealed an Official Plan Amendment adopted by the Township pursuant to By-law 2017-06 (the “Official Plan Amendment”)(OMB File No. PL170217)(the “Gladstone OP Appeal”, and collectively with the Gladstone Zoning Appeal, the “Gladstone Appeals”);

AND WHEREAS the parties have entered into a settlement and the parties now consent to the following Order;

THEREFORE, having read the affidavit of Bruce Howarth dated March 7, 2018 and based upon the consent of the parties, in accordance with section 17(50) and 34(26) of the *Planning Act*, R.S.O. 1990, c. P. 13 as amended,

THE BOARD ORDERS:

1. The Gladstone Appeals are allowed in part but only to the extent to allow for the amendments as set out herein.
2. The Township Zoning By-law shall be amended as described in Appendix "1" hereto.
3. The Official Plan Amendment shall be amended as described in Appendix "1" hereto.
4. There shall be no Order with respect to costs.
5. The Gladstone Appeals have been completely resolved by the present Order.
6. Appendix "1" attached to this Order shall form part of this Order.
7. The Board may be spoken to should any matters arise respecting the implementation of this Order.

APPENDIX "1"

Zoning By-law Amendment:

1. THAT By-law Number 2010-49 be and the same is hereby amended as follows:

- (a) Schedule "A" (Map 1) to By-law 2010-49 is amended by rezoning those lands described as Lots 3, 5, 8, 10 to 23, Block A and Block B, Plan 512, located in part of Lot 9 and Lot 10, Concession 6, in the geographic Township of McNab, on Hidden River Road and Gunsmith Road in Hidden River Estates subdivision, from Rural Residential (RR) and Rural (RU) to Rural Residential-holding (RR-h) and Open Space (OS), as shown on the attached Schedule "A".
- (b) By adding the following subsection 6.4 HOLDING ZONES and 6.4(a) Rural Residential - holding (RR-h), immediately after subsection 6.3(j) Rural Residential-Exception Ten (RR-E10):

“6.4 HOLDING ZONES

- (a) Rural Residential-holding (RR-h) (portions of Hidden River Estates subdivision)

Notwithstanding Section 3.13, or any other provision of this by-law to the contrary, no person shall erect any building or structure on Lots 3, 5, 8, and 10 to 23 on Plan 512 until the holding symbol is removed. The holding symbol will only be removed when the subdivision agreement applicable to these lands has been amended to the satisfaction of the Township.”

Official Plan Amendment:

The Official Plan is amended as follows:

- (a) Schedule "A" of the Official Plan is hereby amended by redesignating those lands described as part of Lots 6, 7, 8, 9 and 10, Concessions 6 and 7, geographic Township of McNab in the Township of McNab/Braeside, to Rural Exception-Five, as shown on the attached Schedule A.
- (b) By adding the following subsections 3.5(e) Rural Exception-Five to **SECTION 3.5 – EXCEPTIONS**, immediately following section 3.5(d):

“(e) Rural Exception-Five

This policy applies to those lands designated Rural Exception-Five as identified on Schedule A to this Plan and located in parts of Lots 6, 7, 8, 9 and 10, Concessions 6 and 7 in the geographic Township of McNab. Robertson Line crosses Hansons Creek in Lot 7 between Concessions 6 and 7. There is a significant vertical sag curve (dip) in the road at the location of the creek crossing. The vertical curves and the steep grade of the road in this location do not satisfy the requirements of the former MTO Geometric Design Standards for Ontario Highways. The Township has therefore identified this area as

having a deficient design as well as vehicle operational constraints when the roadway is snow covered or icy.

Until such time as:

- (1) an engineering study has been completed to the satisfaction of the Township and County of Renfrew that identifies any required roadway modifications that are appropriate to meet projected needs, based on the applicable Transportation Association of Canada (TAC) Guidelines; and,
- (2) the modifications described in the above referenced engineering study have been funded and scheduled for construction;

the creation of new building lots accessing Robertson Line, including the creation of lots through the repeal of deeming by-law 2016-09, in the area designated Rural Exception-Five is prohibited. Existing lots of record may still be utilized (including the construction of new dwellings where permitted) in accordance with the permitted uses and standards of the Comprehensive Zoning By-law. ”