

ISSUE DATE:

Feb. 18, 2011



PL101270

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 960121 Ontario Inc.
Appellant: Blue Mountain Watershed Trust Foundation
Subject: Proposed Official Plan Amendment No. OPA-20
Municipality: Town of The Blue Mountains
OMB Case No.: PL101270
OMB File No.: PL101270

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 960121 Ontario Inc.
Appellant: Blue Mountain Watershed Trust Foundation
Subject: By-law No. 2010-47
Municipality: Town of The Blue Mountains
OMB Case No.: PL101270
OMB File No.: PL100845

APPEARANCES:

Parties

Counsel*/Agent

Town of The Blue Mountains
County of Grey

J. Metras*

Blue Mountain Watershed Trust Foundation

D. Kerr and N. Wingrov

Terrasas Development Corporation

R. Kanter*

960121 Ontario Inc.

D. Slade

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. HEFFERON
ON FEBRUARY 4, 2011 AND ORDER OF THE BOARD**

On consent of the parties to these proceedings, the prehearing conference that was scheduled for this time was converted into an Ontario Municipal Board ("Board") hearing.

Background

On June 28, 2010, Council of the Town of The Blue Mountains ("Town") approved the application of Terrasan Development Corporation to rezone Part Lot 21 and 22, Concession 1 ("subject lands") from Institutional (I), Residential (R3), Rural Estate Residential (RERa), Highway Commercial (C2-52, C2-53 and C2-47), Development D and Deferred Development DD.

Zoning By-law 2010-47 amends Zoning By-law 83-40 and rezones the subject lands to Residential R3-227-h, Residential R7-227-h, Institutional (I-227-h), Village Core General Commercial (C5-227-h), Hazard (H), Private Recreational (PRED-227-h) and the Public Open Space (OS1).

The subject lands consist of lands municipally known as 209811, 209681, 209843, 209881, and 209871 Highway 26 West, 111 Brophys Lane and 11 Blue Mountain Road in the Town of The Blue Mountains. Open space and wetlands comprise approximately 47% of the lands.

The purpose of the rezoning is to reflect the proposed development in conformity with OPA 20, which was adopted by the Town on June 28, 2010 and approved by the County of Grey in October 2010. OPA 20 (Exhibit 2) would provide for a mixed use development that would consist of 39 single detached lots, 112 attached houses, 60 residential apartments above commercial spaces, 6735 square metres of commercial and 2088 square metres of institutional space on 13.65 ha.

Appeals

Two appeals were filed against Council's decision to approve the Terrasan Corporation application.

The first appeal by 960121 Ontario Inc. pertains to the development potential of its lands immediately north of the subject lands. The appellant claims that the extension of a hazard zone to the southern boundary of the property will be associated with a buffer, which may have the potential to limit development as regards a draft plan of subdivision and draft plan of condominium proposal that is currently being reviewed by the Town.

The second appeal by Blue Mountain Watershed Trust Foundation ("Foundation") pertains to the designation of a portion of the property as Provincially Significant Wetland ("PSW") and Wetland Buffer. The Foundation claims that the zoning by-law amendment, By-law 2010-47 and Official Plan Amendment ("OPA") 20 will not adequately protect the Silver Creek Wetland with the proposed setbacks. Mr. Kerr, representing the Foundation, informed the Board that the Silver Creek Wetland constitutes a large part of the lands in the area and performs an invaluable ecological function. The Foundation also claims that OPA 20 is inconsistent with the requirements of the Provincial Policy Statement 2005 ("PPS") to complete an environmental impact study ("EIS") by a qualified expert prior to the development to demonstrate that it will have no negative impacts within the adjacent lands.

Evidence & Analysis

At the commencement of the prehearing conference, the Board was informed that a Settlement between the Town and the Foundation had been reached. A condition of the Settlement was for the Foundation to withdraw its appeals. The Minutes of Settlement duly signed by the parties are identified as Exhibits 11 and 12.

Ms C. Welsh, who was qualified by the Board to give opinion evidence on land use planning, testified that the Settlement conforms to the provisions of the Official Plans of both the Town and the County of Grey, represents good planning and is in the public interest. After consideration of the testimony of Ms Welsh and after hearing no contradictory testimony, I accepted the Settlement.

Regarding the appeal of 690121 Ontario Inc ("Ken Havens"), the Board heard testimony from Mr. A. Pascuzzo, whom I qualified to give opinion evidence on land use planning. Mr. Pascuzzo testified that two portions of the Silver Creek PSW abut the Ken Havens lands. The Ken Havens lands are identified in Exhibit 8. The boundaries of the second or southern portion (shown in blue shading in Exhibit 8) were identified after a Provincial study and so designated by OPA 85, which amends Schedule A, Map 2 of the County of Grey Official Plan. OPA 85 is shown as Exhibit 9.

Mr. Pascuzzo testified that the boundaries of the southern portion of the PSW are inaccurate and, as drawn, the wetland buffer would preclude the Ken Havens lands from achieving their planned potential.

Mr. Kanter, legal counsel for Terrasan, submitted that this matter has nothing to do with the matter before the Board, which is the appeals against Zoning By-law 2010-47 and OPA 20, and the Ken Havens' appeal should be dismissed. After consideration of the land use planning evidence of Mr. Pascuzzo, and the submissions of Mr. Kanter and Mr. D. Slade, agent for Ken Havens, I find that the matters raised by the Ken Havens team pertain only to the Ken Havens' development application that is currently being considered by the Town.

On consent of the parties, the Board finds that the portion of the PSW and wetlands buffer that abut the Ken Havens lands on the south boundary are removed from OPA 20. A decision on their status is deferred until such time as the Town deems appropriate.

Disposition & Order of the Board

The appeal by the Foundation has been withdrawn as a condition of Settlement between and among the parties. The Board accepts the Settlement.

The Board Orders that the appeal by 960121 Ontario Inc. is allowed in part. The Board Orders that:

- i) OPA 20 is modified to remove the northern portion shown as provincially significant wetlands and wetlands buffer on Schedule A-20-C as drawn on Attachment 1. As modified, OPA 20 is approved.
- ii) Zoning By-law 2010-47 is modified to remove the northern portion shown as provincially significant wetlands and wetlands buffer on Schedule A-20-C as drawn on Attachment 2. As modified, Zoning By-law 2010-47 is approved.

The balance of the appeal by 960121 Ontario Inc. is dismissed.

So Orders the Board.

"C. Hefferon"

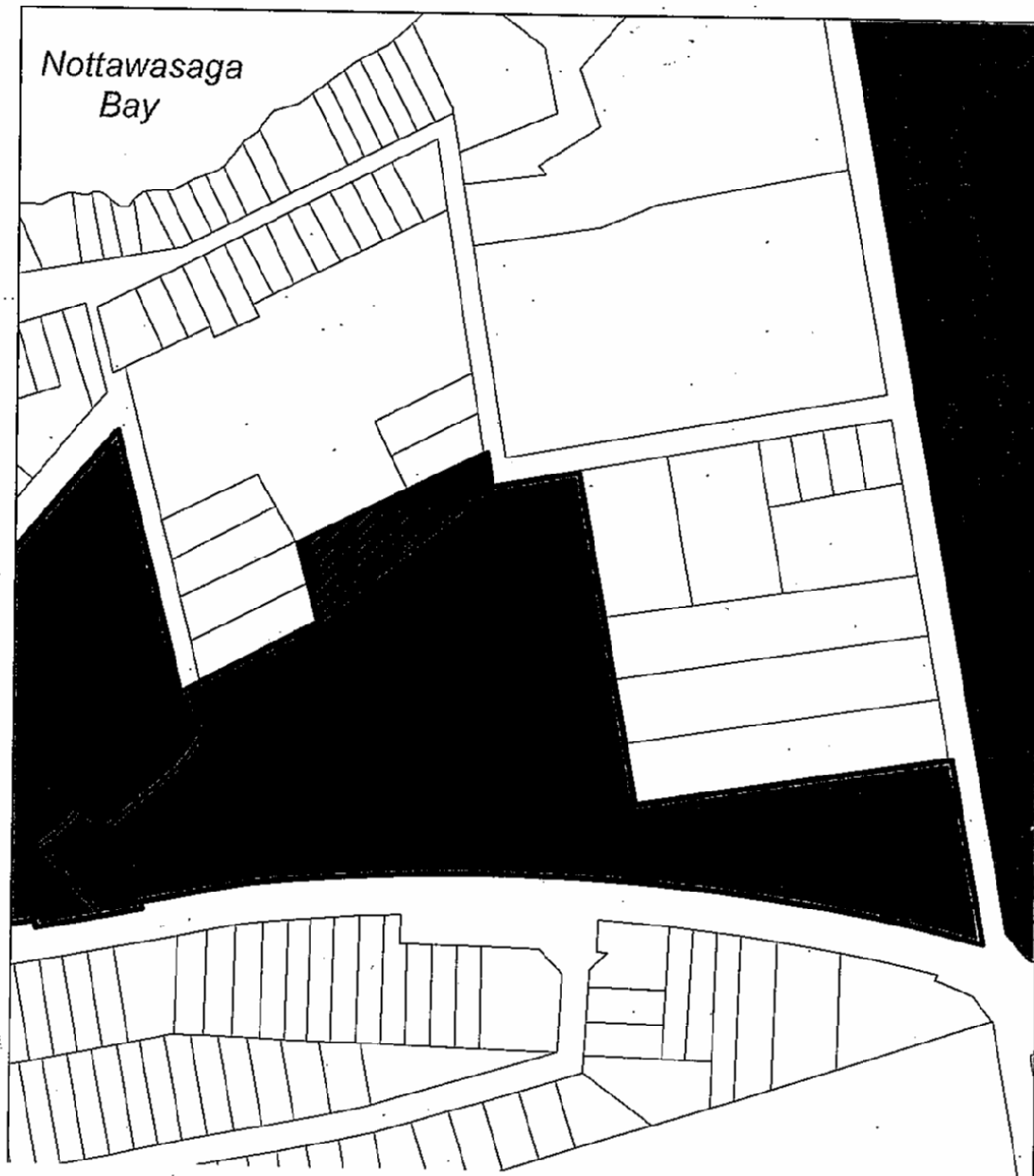
C. HEFFERON
MEMBER

ATTACHMENT 1

 Wetlands and Wetlands Buffer Designations Not Approved by the Ontario Municipal Board

East Sub-area To Be Re-designated To:

- | | |
|--|---|
|  Craigleith Village Residential |  Public Open Space |
|  Craigleith Village Commercial |  Wetlands |
|  Hazard |  Wetlands Buffer |



ATTACHMENT 2
TOWN OF THE BLUE MOUNTAINS
Key Map Schedule A-2
By-Law No. 2010 - 47

 Hazard Zone Remains Subject To Appeal By 960121 Ontario Inc.

