

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: May 18, 2021

CASE NO(S).: PL190065

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Appellant:	Elizabeth Stephenson and Bruce Perkins
Subject:	Proposed Official Plan Amendment No. OPA 1
Municipality:	Town of The Blue Mountains
LPAT Case No.:	PL190065
LPAT File No.:	PL190065
LPAT Case Name:	Perkins v. The Blue Mountains (Town)

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

Appellant:	Elizabeth Stephenson and Bruce Perkins
Subject:	By-law No. 2018-64
Municipality:	Town of The Blue Mountains
LPAT Case No.:	PL190065
LPAT File No.:	PL190002

Heard:	October 28, 2020 by video hearing and written submissions through November 20, 2020
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APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
Elizabeth Stephenson and Bruce Perkins	A. Burton
The Town of The Blue Mountains	L. Longo
636697 Ontario Ltd. known as Scenic Caves Nature Adventure	S. Hahn

DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE TRIBUNAL

BACKGROUND

[1] Scenic Caves Nature Adventure ("Scenic Caves") operates a business within the Town of The Blue Mountains ("Town") that attracts visitors to an area of considerable natural beauty. Scenic Caves has parking facilities for its visitors. At various times during the year, Scenic Caves has more visitors than can be accommodated in its main parking lot.

[2] Scenic Caves is not the only attraction in the area. Blue Mountain Resort is nearby and attracts visitors and tourists year-round with recreational facilities including ski hills and trails.

[3] The steep rise in topography that contributes to the suitability of year-round enjoyment of the area has also meant that this area of the Town has winding roads, often with a very rural cross-section. That is the case on Scenic Caves Road where Scenic Caves is located. Overflow visitors to Scenic Caves often park on the side of the very rural Scenic Caves Road. In light of the road characteristics, on-road parking creates a safety hazard. Both the Town and Scenic Caves wish to see a better option for the Scenic Caves overflow parking.

[4] To accommodate this occasional overflow parking, Scenic Caves applied for an

official plan amendment and associated zoning by-law amendment to permit overflow parking at 214 Scenic Caves Road (“Subject Site”) to be used when the Scenic Caves main parking lot is full. The Subject Site is across the road from the main Scenic Caves parking area.

[5] The Town supported these applications and adopted Official Plan Amendment 1 (“OPA 1”) to the Town’s Official Plan (“TOP”) and By-law No. 2018-64 (“By-law”).

[6] The Subject Site is adjacent to the property of Elizabeth Stephenson and Bruce Perkins (“Appellants”). The Appellants appealed both planning instruments to this Tribunal.

[7] The Tribunal dismisses the appeals against OPA 1 and the By-law. These are the Tribunal’s reasons.

ANALYSIS AND FINDINGS

[8] The Appellants have focussed their objections to the proposed Scenic Caves overflow parking area on ecology and environmental concerns to protect natural heritage features of the Subject Site.

[9] The Tribunal heard from seven expert witnesses: three land use planners, an ecologist, an environmental biologist, a professional engineer with a specialty in water resources, and a professional engineer with a specialty in traffic.

The Proposal

[10] The proposal is not for a commercial parking lot, open to the public who happen to be in the area. This is an overflow parking area for Scenic Caves customers. It will only be used when the parking area on the main Scenic Caves property is full. It will be maintained by Scenic Caves.

[11] The parking area itself will not be paved. Instead, the area's surface will be gravel, permitting continued infiltration of water and reducing runoff.

[12] The Subject Site includes natural heritage areas that are zoned Hazard. A pond provides habitat for various species of wildlife. Adjacent is a wooded area with a watercourse. The natural heritage areas of the Subject Site are protected and are not intruded upon. The area designated by OPA 1 and permitted for parking by the By-law is confined to the area of the Subject Site that had been used previously for a private residence and its associated driveway and lawns.

Designations and Area Character

[13] This is not a quiet, pristine area. This is an area that has been developed with tourist attractions. The area attracts day visitors as well as those who stay over for one or more nights. Accommodations may be for overnight visitors, recreational residences for those whose permanent residence is elsewhere, and residences occupied by permanent residents of the Town.

[14] The focus on the recreational use of the area is echoed in the designations of the applicable plans.

[15] The Subject Site is within the Niagara Escarpment Plan ("NEP") area boundary. The NEP designation is Escarpment Recreation Area. This designation of Escarpment Recreation Area is repeated in the County of Grey ("County") Official Plan ("COP"). The TOP designation is partly Hazard and partly Residential Recreation Area Exception.

Commenting Agencies

[16] In addition to being subject to the NEP, the Subject Site is also within the jurisdiction of the Grey Sauble Conservation Authority ("GSCA").

[17] Both Scenic Caves and the Appellants each filed environmental reports and

responses dealing with the proposed overflow parking area. The Town provided these materials to the relevant agencies for review and comment. No objection to the overflow parking area was received by the Town from the Niagara Escarpment Commission (“NEC”), the County or the GSCA.

Niagara Escarpment Plan

[18] An Environmental Impact Study, a Stormwater Management Letter Report, a Peer Review of the Environmental Impact Study, a Peer Review of Stormwater Quality and Quantity and Groundwater Quality were submitted to the NEC. The NEC reviewed these materials and confirmed that the NEP had been addressed in terms of key natural heritage and hydrologic features.

[19] The NEP permits an accessory use such as this overflow parking area. The NEP also requires that the location of the accessory use be located on the same lot. The overflow parking area meets the requirements of the NEP except that this accessory use is separated from the principal use by Sideroad 15 A. The Tribunal, and the NEC, understand that the intention is to establish a pedestrian trail connection to the main entrance of Scenic Caves.

[20] Phrased another way, it is only the existence of the, relatively narrow, Sideroad 15 A separating the Subject Site from the main Scenic Caves property that prevents the proposed overflow parking from conforming in its entirety with the NEP. The Tribunal notes that this point was dealt with in comments on the proposal and the NEC did not object to the overflow parking

[21] The NEP is a provincial plan. Section 3(5) of the *Planning Act* (“Act”) requires the Tribunal’s decision in this planning matter

3(5) (b) shall conform with the provincial plans in effect on ... [the date of the decision] or shall not conflict with them, as the case may be.

[22] The Tribunal has considered the protection of natural features and functions

provided by OPA 1 and the By-law, the important role the proposal will play in enhancing public safety and the proposed pedestrian trail connection between the overflow parking area and the main Scenic Caves entrance and that the NEC did not object to OPA 1 or the By-law. The Tribunal finds that OPA 1 and the By-law do not conflict with the NEP.

County Official Plan

[23] The overflow parking area supports tourism and public safety in this recreational area. The Tribunal finds that OPA 1 and the By-law conform to the COP.

Town Official Plan

[24] The Tribunal finds that OPA 1 conforms to the policy regime of the TOP by supporting tourism and protecting natural features while enhancing public safety.

The By-law

[25] The By-law includes a holding (“H”) provision. The conditions for removal of this H provision require that the following first be completed:

- a. Granting of Site Plan Approval
- b. Execution of Site Plan Agreement
- c. Issuance of a Grey Sauble Conservation Authority Permit
- d. Completion of a Stormwater management and Drainage Plan
- e. Provision of suitable pedestrian access and road crossing at 15th Sideroad “A”
- f. Dedication of daylighting triangles to the satisfaction of the County of Grey
- g. Preparation of a Landscape Plan including vegetation protection zones along the watercourse, pond and northerly side lot line
- h. Consultation with adjoining property owners to ensure minimization of visual impact

[26] The Subject Site has a portion that is to the rear of the Appellants’ property. The

By-law does not permit any parking to the rear of the Appellants' property, nor is parking permitted near the pond.

[27] A substantial side yard planted buffer of 11 metres in width separates the area used for parking from the Appellants' property. The distance and the plantings are intended to assist in the minimization of visual impact of the intended use.

[28] Approximately half of the Subject Site is zoned Hazard to protect natural features. A GSCA permit is required prior to development or site alteration. The permit will confirm that the works are occurring outside the Hazard zone.

[29] The Tribunal finds that the By-law conforms to the TOP, as modified by OPA 1.

Matters of Provincial Interest

[30] With the protection of natural features, the support for tourism and enhancement of public safety, the Tribunal finds that OPA 1 and the By-law have had regard for the matters of provincial interest set out in s. 2 of the Act. The Tribunal notes particularly s. 2(a) on the protection of natural features and functions, s. 2(h) on the orderly development of safe communities, s. 2(i) on the adequate provision of recreational facilities, and s. 2(o) on the protection of public health and safety.

Provincial Policy Statement 2020

[31] The Provincial Policy Statement 2020 reflects and expands upon the matters of provincial interest found in s. 2 of the Act. With regard to these same items, the Tribunal finds that OPA 1 and the By-law are consistent the Provincial Policy Statement 2020.

ORDER

[32] The Tribunal orders that the appeals filed by Elizabeth Stephenson and Bruce Perkins against the Town of The Blue Mountains Official Plan Amendment 1 and By-law

No. 2018-64 are dismissed.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

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Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248