

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: County of Simcoe
Appellant: Midhurst Development Doran Road Inc. and Carson Road Development Inc.
Appellant: Midhurst Rose Alliance Inc.
Appellant: Township of Springwater and others
Subject: Failure to announce a decision respecting the Official Plan for the County of Simcoe
Municipality: County of Simcoe
OMB Case No.: PL091167
OMB File No.: PL091167
OMB Case Name: Fellman v. Simcoe (County)

MOTION RECORD

(Returnable by TCC on October 14, 2016)

THOMSON, ROGERS
Barristers and Solicitors
Suite 3100, 390 Bay Street
Toronto, Ontario
M5H 1W2

ROGER T. BEAMAN
416-868-3157
Fax No. 416-868-3134

Lawyers for the Corporation
of the County of Simcoe

**TO: ALL APPELLANTS/PARTIES LISTED IN ATTACHMENTS "A" AND "B"
WITH A COPY TO ALL PARTICIPANTS LISTED IN ATTACHMENT "C"**

AND TO: **ONTARIO MUNICIPAL BOARD**
655 Bay Street, 15th Floor
Toronto, Ontario, M5G 1E5

Attention: Johnpaul Loiacono, Planner
johnpaul.loiacono@ontario.ca

Phone: 416-326-5598
Fax: 416-326-5370

ATTACHMENT A”

For Appellant Parties

Anthony-George D’Andrea	anthony-george.d'andrea@devrylaw.ca
Aynsley Anderson	aanderson@barristonlaw.com
Andrea Skinner	askinner@airdberlis.com
Barry Horosko	bhorosko@horoskoplanninglaw.com
Barnet Kussner	bkussner@weirfoulds.com
Chris Barnett	chris.barnett@dlapiper.com
David White	david.white@devrylaw.ca
Harold Elston	helston@barristonlaw.com
Ira Kagan	ikagan@ksllp.ca
Isaac Tang	itang@blg.com
James Feehely	jfeehely@fglawyers.ca
Jane Pepino	jpepino@airdberlis.com
Marshall Green	marshall.green@simcoe.ca
Meaghan McDermid	meaghanm@davieshowe.com
Michael Melling	michaelm@davieshowe.com
Paul DeMelo	pdemelo@ksllp.ca
Patricia Foran	pforan@airdberlis.com
Roger Beaman	rbeaman@thomsonrogers.com
Susan Rosenthal	susanr@davieshowe.com
Stephen Waqué	swaque@blg.com

ATTACHMENT "B"

For Parties

Aynsley Anderson	aanderson@barristonlaw.com
Christopher Williams	cwilliams@airdberlis.com
Edward Veldboom	eveldboom@russellchristie.com
Harold Elston	helston@barristonlaw.com
Isaac Tang	itang@blg.com
James Feehely	jfeehely@fglawyers.ca
John Dawson	jdawson@mccarthy.ca
Ken Hare	ken.hare@ontario.ca
Leo Longo	llongo@airdberlis.com
Mary Bull	mbull@woodbull.ca
Michael Vaughan	michaelbvaughan@yahoo.ca
Mark Joblin	mjoblin@loonix.com
Paul Peterson	ppeterson@hrgp.ca
Quinto Annibale	qannibale@loonix.com
Raivo Uukkivi	ruukkivi@casselsbrock.com
Roslyn Houser	rhouser@goodmans.ca
Signe Leisk	sleisk@casselsbrock.com
Stephen Waqué	swaque@blg.com
Susan Rogers	sdrogerslaw@rogers.com
Tom Halinski	thalinski@airdberlis.com
Ugo Popadic	ugo.popadic@ontario.ca

ATTACHMENT "C"

For Participants [Monitoring]

Sandy Agnew	sagnew@ecomedic.ca
Ann Truyens	at@iglide.net
Chantale Gagnon	chantalegagnon@bell.net
David Perryman	dperryman43@sympatico.ca
Anna Romano	am_romano@hotmail.com
Bernard Pope	bernard@ontariofarmlandpreservation.org
Colin Elliott	rockeynol32@gmail.com
Anne Ritchie-Nahuis	nahuis@csolve.net
Michael Melling	michaelm@davieshowe.com
Meaghan McDermid	meaghanm@davieshowe.com
Andrew Fyfe	afyfe@townshipofsevern.com
John Strong	[No e-mail provided]
Ralph MacKenzie	nvf4all@gmail.com
David White	david.white@devrylaw.ca
Anthony-George D'Andrea	anthony-george.d'andrea@devrylaw.ca

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INDEX

	<u>PAGE</u>
Notice of Motion of the County of Simcoe	1
Affidavit of Kathy Suggitt, sworn September 28, 2016	4

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NOTICE OF MOTION

(Returnable by TCC on October 14, 2016)

THE CORPORATION OF THE COUNTY OF SIMCOE will make a motion to the Ontario Municipal Board to be heard on **Friday, the 14th day of October, 2016, at 9:00 am by Telephone Conference Call.**

THE MOTION IS FOR AN ORDER:

1. Approving in final form the text and schedules of the County of Simcoe Official Plan as adopted and as modified and approved by prior Board Orders, and as reviewed and further modified with respect to numbering, punctuation, technical and typographical errors, errors in calculation or similar minor errors, all being subject to the site-specific matters for lands that remain under appeal after this motion;
2. Repealing the prior County of Simcoe Official Plan adopted on October 28, 1997 and all amendments thereto except for lands remaining under appeal as set out in paragraph (1) above;

3. Granting relief if needed from Rule 38 to serve information concerning the motion (being the link to the County's website) on short notice; and
4. Such further and other relief as may seem just and appropriate.

THE GROUNDS FOR THE MOTION ARE:

- (a) The Board has already approved the text and schedules of the Official Plan and this motion seeks to preserve those approvals.
- (b) A final review of the Official Plan has disclosed inconsistencies and minor errors with respect to numbering, dates, punctuation, cross-references, technical and typographical matters and calculations that can be modified and corrected at this time under Rule 108.
- (c) The proposed modifications are consistent with the *Provincial Policy Statement, 2014*, conform with the *Growth Plan*, conform with the policies of the approved County Official Plan and represent good planning.
- (d) The proposed modifications fall within Rule 108 of the Board's Rules of Practice and Procedure.
- (e) Such further and other grounds as counsel may advise and this Board may deem necessary.
- (f) *Planning Act*, R.S.O. 1990, c. P.13, as amended, ss. 17(40), 17(45), 17(50).
- (g) *Ontario Municipal Board Rules of Practice and Procedure, Rules 38, 108.*

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Affidavit of Kathy Suggitt, sworn September 28, 2016, and the Exhibits attached thereto;
- (b) the pleadings, proceedings and exhibits filed herein;
- (c) such further and other material as counsel may advise and this Board may permit.

DATED: SEPTEMBER 28, 2016

THOMSON, ROGERS
Barristers and Solicitors
Suite 3100, 390 Bay Street
Toronto, Ontario, M5H 1W2

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AFFIDAVIT OF KATHY SUGGITT, MCIP, RPP

County Official Plan Final Text and Schedules

**I, KATHY SUGGITT, MCIP, RPP, of the City of Barrie, in the Province of Ontario,
MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Manager of Policy Planning in the Planning Department at the County of Simcoe (the "County"). As such, I have knowledge of the matters deposed to herein.
2. I am a Full Member of the Canadian Institute of Planners and a Registered Professional Planner in the Province of Ontario. I have over 25 years of experience in private and public sector planning. A copy of my Curriculum Vitae has previously been filed in these proceedings as attachment A to Motion Record Exhibit 7.
3. I have been directly involved in matters respecting the County's updated Official Plan at all stages of the process since August 2008 leading to its adoption by the County on November 25, 2008 through to the endorsement of the proposed modified Plan by County Council on January 22, 2013, through the partial approvals since April 2013 and to the present including OMB proceedings to date.

Partial Approvals of Official Plan Text and Schedules

- 4. By way of written Orders dated June 13, 2013, July 5, 2013, February 25, 2014, May 15, 2014, July 28, 2014, February 19, 2015, February 20, 2015, August 31, 2015, January 25, 2016, February 19, 2016, March 10, 2016 and May 9, 2016 the Board has approved portions of the County Official Plan text and Schedules throughout the hearing process to date.
- 5. By way of oral decision on June 20, 2016 the Board approved portions of Schedule 5.1 – Land Use Designations except those portions identified as being under appeal on a site-specific basis.
- 6. There are several site-specific appeals that remain unresolved and will be the subject of further hearing processes. The site-specific appeals have been identified and listed in the chart that accompanies Schedule 5.1, and are identified on the final map with a number on the site as accurately as possible. The remainder of the map schedule was verbally approved on June 20, 2016.

Consolidation of Prior Board Orders

- 7. The County has reviewed the Board Orders and prepared a final text of the Official Plan as approved by the prior Board Orders, and as modified to correct typographical errors, numbering, punctuation and similar minor errors, all being subject to the site-specific matters for lands that remain under appeal after this motion.
- 8. Given the Official Plan was approved in parts over the course of three years and dealt with in phases based on topics and each phase was the subject of multiple experts' meetings with many experts involved, inconsistencies crept into the document in terms of attention to certain grammatical matters.
- 9. The chart attached as **Exhibit "A"** summarizes the proposed technical and minor modifications to the County's Plan to correct these inconsistencies, which will be detailed below.
- 10. The first set of modifications were a result of cross-referencing errors. As parts of the Official Plan were approved over the course of over three years of proceedings, this resulted in policies being approved that contained a cross reference to another policy or section that had not yet been approved. The chart has identified where these policy cross-references have been corrected.
- 11. Policy 3.3.5 contained reference to a defined term from the Provincial Policy Statement, however the term should have used the word "or" instead of "and". The definition in Section 5.8 of the Plan contains the term using the word "or" and as such the correct word within the defined term has been shown in the policy.

12. The section of the chart listing the modifications based on Insertion of Text, deals with ensuring a consistency of reference to things such as the Greenlands designation (i.e. removing the capital from the word), as well as adding the words "and areas" to the defined term "*significant natural heritage features and areas*" and the word "are" to the definition of "*lands not for urban uses*" so that it reads "Lands that are designated....."
13. The Insertion of Dates refers to two policies where specific reference is made to the date that something was approved or issued, and the dates are being added in brackets to provide that clarity in the policy for ease of reference.
14. The section of the chart listing the Add Italics Font items is meant to address punctuation and technical errors for consistency in referencing defined terms. Given the Plan was approved in parts over the course of more than a three year timeframe, there were times when the defined terms were not caught or consistently reflected in italics font as a defined term. All of the items listed in that part of the chart reflect defined terms in Section 5.8 of the Plan.
15. The next section of the chart contains one policy where the italics font is proposed to be removed from the word "and" in the phrase "*ecological functions and hydrological functions*". These are two separate defined terms and the word "and" should not have been in italics font.
16. The next part of the chart addresses words that should have a capital letter for consistency throughout the Plan. Examples of this are the word "Roads" when the term "County Roads" is mentioned or the word "Provincial". The policies where those terms have been corrected are listed in the chart.
17. The final section of the chart deals with words, phrases or sentences that must be deleted from the Plan. These are largely a result of remaining references to the Appendices that were in policies that got approved prior to the County deciding to delete the Appendices from the Plan entirely. Other words to be deleted are the words "Schedule" or "Map" from certain policies where reference had been made to the "Table Schedule" or "Map Schedule". The words can be deleted with no change to the policy or its interpretation.
18. There are no proposed modifications to the Schedules. Schedule 5.1 is proposed to have the OMB Approval date added once the written Order is received. All other Schedules already reflect the date of decision on them.

Summary Opinion

19. The proposed modifications to the text are a result of the careful review of the Board Orders and all policies to correct such things as cross-references, punctuation and

typographical or other minor technical errors. None of the modifications change the intent or interpretation of the policies.


20. There are no proposed modifications to the Schedules as approved by the Board.


21. It is my professional planning opinion that the proposed modifications are consistent with the Provincial Policy Statement, 2014, conform with the Growth Plan, conform with the policies of the approved County official plan and represent good planning.

22. I make this Affidavit in support of the County's request for an order of the Board approving the final text and schedules of the County of Simcoe Official Plan as adopted and as modified and approved by prior Board Orders, and as reviewed and further modified, as reflected in the chart in **Exhibit "A"**, with respect to numbering, punctuation, technical and typographical errors or other similar minor errors, all being subject to the site-specific matters for lands that remain under appeal after this motion.

23. The resultant final Official Plan text with all the modifications detailed above and in the chart, and the final Schedules are being posted on the County's website for review.

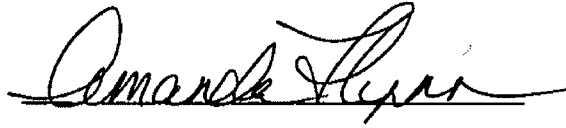
SWORN BEFORE ME)
at the Township of Springwater)
in the County of Simcoe)
this 28th day of September, 2016.)


Commissioner for Taking Oaths, etc.)


KATHY SUGGITT

Amanda Flynn, Deputy Clerk
A Commissioner, etc.,...
for the Corporation of the
County of Simcoe

THIS IS Exhibit "A" REFERRED TO IN THE AFFIDAVIT
OF KATHY SUGGITT SWORN BEFORE ME THIS
28th DAY OF SEPTEMBER, 2016.

A handwritten signature in cursive script, appearing to read "Amanda Flynn", written over a horizontal line.

A Commissioner, etc.

Amanda Flynn, Deputy Clerk
A Commissioner, etc.,...
for the Corporation of the
County of Simcoe

County of Simcoe Official Plan – Proposed Minor and Technical Text Modifications

Type of Modification	Sections	Original Text	Text Modification
Cross References	3.1.1	'Section 3.2.14 to 3.2.16'	Modify to read 'Section 3.2.15 to 3.5.17'
	3.3.20	'Section 4.8.31'	Modify to read 'Section 4.8'
	4.4.1	'Section 3.3.18'	Modify to read 'Section 3.3.19'
	4.4.1	'Section 4.5.18'	Modify to read 'Section 4.5.19'
	4.5.26	'Section 4.5.24'	Modify to read 'Section 4.5.25'
	4.7.12	'Section 3.4.6'	Modify to read 'Section 4.11.7'
	4.8.62	'Sections 3.3.5, 3.3.20, 3.3.21, and 3.3.23'	Modify to read 'Sections 3.3.6, 3.3.21, 3.3.22, and 3.3.24'
	Definition – <i>Institutional</i>	'Section 4.5.11'	Modify to read 'Section 4.5.12'
Replacement of a Word	1.4	'The <i>Plan</i> is divided into six sections'	Modify to read "The <i>Plan</i> is divided into five sections'
	3.3.5	' <i>legal and technical reasons</i> '	Modify to read ' <i>legal or technical reasons</i> '
Insertion of Text	3.5.14, 3.5.28, 3.6.1	' <i>significant natural heritage features</i> '	Add the words " <i>and areas</i> " to read ' <i>significant natural heritage features and areas</i> '
	3.8.1	'of the Greenlands and'	Add the word "designation" to read 'of the Greenlands designation and'
	4.2.1	'within Greenlands and'	Add the word "designation" to read 'within the Greenlands designation and'
	4.8.48	' <i>County's Master Transportation</i> '	Add the word "Plan" to read ' <i>County's Master Transportation Plan</i> '
	Definition – <i>Lands for Urban Uses</i>	'means lands that not designated for'	Add the word "are" to the definition to read 'means lands that are not designated for'
Insertion of Dates	3.8.15 (viii)	'prior to the approval date of this policy'	Modify to read 'prior to the approval date of this policy (May 9, 2016)'
	3.9.3	'directive issued by the Minister of Infrastructure'	Modify to read 'directive issued by the Minister of Infrastructure on February 4, 2013.'

6

Add Italics Font	1.2	'Lake Simcoe Protection Act'	'Lake Simcoe Protection Act'
	3.5.15, 3.8.11	'habitat of endangered species and threatened species'	'habitat of endangered species and threatened species'
	3.3.2, 3.3.13, 3.4.3, 3.5.7, 3.6.1, 4.4.5, 4.7.22, 4.8.64(b), 4.11.10, 4.11.11, Part 5	'Plan'	'Plan'
	3.5.7	'primary settlement areas'	'primary settlement areas'
	3.3.22, 3.3.24	'adverse effects'	'adverse effects'
	3.3.22, 4.10.10	'airports'	'airports'
	3.5.17	'intensification target'	'intensification target'
	3.5.27	'business parks'	'business parks'
	3.6.1	'ecological', 'Strategic Employment Areas', 'Economic Employment Districts'	'ecological', 'Strategic Employment Areas', 'Economic Employment Districts'
	3.7.7	'infrastructure'	'infrastructure'
	4.6.7	'Ontario Heritage Act'	'Ontario Heritage Act'
	4.8.45, 4.11.8	'Planning Act'	'Planning Act'
	4.10.12	'D-4 Assessment Areas'	'D-4 Assessment Areas'
	4.11.5	'Provincial Policy Statement'	'Provincial Policy Statement'
	2.2, 2.3, 3.3.16, 3.3.20, 3.4, 3.4.3, 3.8.9, 4.4.12, 4.5.8, 4.6.8, 4.8.3, 4.8.14, 4.8.16, 4.8.19, 4.8.25, 4.8.26, 4.8.27, 4.8.28, 4.8.29, 4.8.30, 4.8.31, 4.8.32, 4.8.36, 4.8.39, 4.8.43, 4.8.49, 4.8.53, 4.8.58, 4.8.64(b), 4.9.9, 4.10.4, 4.11.8, 4.11.10, 4.11.11, Part	'County'	'County'

10

County of Simcoe Official Plan – Proposed Minor and Technical Text Modifications

	<p>5, Definition - <i>Environmental Impact Statement</i></p> <p>3.3.22, 3.4.1, 3.4.5, 3.6.12, 3.7.7, 4.4, 4.8.20, 4.8.24, 4.8.64(b), 4.11.5</p> <p>3.5.24, 4.11.9, Definitions – <i>Major Goods Movement Facilities and Corridors, Natural Heritage System, Protected Heritage Property, Significant(a), Transit-Supportive</i></p>	<p>'Provincial'</p> <p>'Province'</p>	<p>'Provincial'</p> <p>'Province'</p>
Remove Italics Font	3.1.3	' <i>ecological functions and hydrological functions</i> '	' <i>ecological functions and hydrological functions</i> '
Capitalization	1.2, 3.3.1, 3.3.5, 3.3.6, 3.3.15, 3.3.20, 3.3.22, 3.4.1, 3.4.3, 3.4.5, 3.5.8, 3.6.11, 3.6.12, 3.8.6, 3.8.15, 3.8.19, 4.4, 4.4.9, 4.4.10, 4.4.12, 4.6.7, 4.6.12, 4.7.21, 4.11.14, 4.11.19, 4.11.15	<p>'section'</p> <p>'Designation'</p> <p>'County roads'</p> <p>'provincial'</p> <p>Provincial Plans'</p> <p>'Primary Settlement Areas'</p> <p>'Provincial highways'</p>	<p>'Section'</p> <p>'designation'</p> <p>'County Roads'</p> <p>'Provincial'</p> <p>'Provincial plans'</p> <p>'primary settlement areas'</p> <p>'Provincial Highways'</p>

11

County of Simcoe Official Plan – Proposed Minor and Technical Text Modifications

Deletion			
	1.4	'Section 6 includes Appendices which are an operational part of the Plan.'	Delete the sentence in its entirety
	3.3.20	'5 and 10 year horizons beyond full build-out of the site (see Appendix 2)'	Delete '(see Appendix 2)'
	4.11.9	'This <i>Plan</i> may be altered to correct typographical, grammatical errors and section renumbering in the text or schedules or the Appendices'	Delete 'or the Appendices'
	5.8 last line in Section	'For terms italicized within this <i>Plan</i> but not defined in Section 5.8 of this <i>Plan</i> , reference is to be made to the <i>Provincial</i> under Section 3 of the <i>Planning Act</i> '	Delete the sentence in its entirety
	1.2, 1.3, 5.8	' <i>Provincial Policy Statement (2005)</i> '	Delete '(2005)'
	3.1.1, 3.5.5	'Table Schedule 5.1'	Delete word 'Schedule'
	4.8, 4.8.27, 4.8.28, 4.11.8(a)	'Table Schedule 5.4'	Delete word 'Schedule'
	4.8.30	'Map Schedule'	Delete word 'Map'

12

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416-868-3157
Fax No. 416-868-3134

Lawyers for the Corporation
of the County of Simcoe

(050873 /aph)