

ISSUE DATE:

**August 2, 2013**



PL091167

Ontario  
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

Appellant: County of Simcoe  
Appellant: Midhurst Development Doran Road Inc.,  
and Carson Road Development Inc.  
Appellant: Midhurst Rose Alliance Inc.  
Appellant: Township of Springwater  
Subject: Failure of the Ministry of Municipal Affairs and  
Housing 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

**APPEARANCES:**

See Attachment 1

**DECISION DELIVERED BY SYLVIA SUTHERLAND AND M. A. SILLS AND  
ORDER OF THE BOARD**

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[1] The List of Appellant Parties, followed by the List of Parties at this pre-hearing conference ("PHC") is found as Attachment 1 appended to this order.

[2] The Participant's List was finalized at this PHC and is appended to this order as Attachment 2.

[3] This is a decision on a motion by the County of Simcoe ("County") to dismiss the appeal of proposed Official Plan Amendment 43-OP-2008 ("Plan") by the Midhurst Ratepayers' Association ("MRA") dated August 21, 2012 ("Appeal") in its entirety heard on June 20, 2013 as part of a PHC on the Plan.

[4] Supporting the motion were 451082 Ontario Limited, the Township of Springwater, Carson Road Development Inc. and Midhurst Development Doran Road

Inc., Midhurst Rose Alliance Inc., Midhurst Rose Alliance Johns Inc., Midhurst Rose Alliance Cooney Inc., Midhurst Rose Alliance O'Brien Inc. and the Estate of Marie Louise Frankcom.

[5] The only Party opposing the motion was the MRA.

[6] Generally, those supporting the motion did so on the following grounds:

- This is not the appropriate forum in which to seek relief relating to the boundary of the Midhurst Settlement Area, and therefore the Appeal is an abuse of process.
- The Appeal form filed by the MRA discloses no land use planning grounds. No specific information about what is being appealed, as required by s. 6(1) of the Board's appeal form, is given. The MRA Appeal states only "Proposed County of Simcoe Official Plan."
- Section 6(2) of the form asked the appellant to outline the nature of the appeal and the reasons for it. It states "be specific and provide land-use planning reasons...." The Appeal states only "Lack of Decision." No land use planning grounds are given.
- The MRA's appeal is posited on the singular issue of whether the Midhurst Settlement Area Boundary in the Plan and the land use designation within the boundary are appropriate. There are no land use designations within the Midhurst Settlement Area in Schedule 5.1 to the Plan beyond simply being identified as "settlement." The only issue, therefore, relates to the settlement area boundary.
- Midhurst has been established as a settlement area since 1983, and its existing boundaries have been designated and delineated since 1998 by the approved Township of Springwater Official Plan ("SOP") and are recognized by the in-effect County Official Plan ("COP"), which was approved by the Province in 1998 and by the Board, upon appeal, in 1999.
- The Midhurst Settlement Area Boundary identified in the Plan is the same boundary that has existed for the last 15 years.
- The built boundary is clearly intended to be part of the settlement area.

- The MRA acknowledges in its Notice of Response that it is pursuing an appeal of the Plan because it attempted to appeal the Midhurst Secondary Plan (“MSP”), OPA 38, almost one-and-a-half years after the expiry period, and was refused by the Board for being filed out of time. The MRA’s real appeal is against the MSP, which, at no time during the three years from its date of adoption until the expiry of the appeal period did the MRA or any of its members appeal to the Board.
- The merits of the MSP are not before this panel of the Board.
- Significant public and private resources have been expended in reliance on the in-force settlement area boundaries. The Appeal is frivolous and vexatious, particularly since the MRA failed to exercise its statutory rights with respect to either the MSP or the related Class Environmental Assessment when it had an opportunity to do so.

[7] In response, Ian Bender, the consulting planner for the MRA and the former director of planning for the County, maintains in his affidavit that no settlement area boundary is set out in the SOP, only a study area within which there will be future growth opportunities. He quotes the SOP as stating “previous development has generally expanded the settlement area to its limits as defined by the adjacent highway and surrounding agricultural and environmental lands.”

[8] Mr. Bender states that the SOP does not show settlement area boundaries on its schedules and opines that an appropriate settlement boundary of Midhurst encompasses the area where existing development is concentrated. He does not believe that the settlement area of Midhurst was established in the 1998 SOP and maintains that it should be established “in the context of the current policy regime led by the Growth Plan.”

[9] It is also Mr. Bender’s position that the study area boundaries established by the SOP are an inappropriate device to manage growth throughout the Township, as the boundaries would accommodate growth that far exceeds the 20-year forecasts and allocations of the Growth Plan.

[10] David Strachan, secretary-treasurer of the MRA, states in his affidavit (Exhibit 41) that “it must be made clear from the high level of MRA activity since becoming aware of the extent of the proposed development, that MRA would probably have appealed Simcoe’s decision (re the MSP, OPA 38) had they known of it.”

[11] The Board, frankly, is at a loss as to why the MRA maintains it did not know of the County's decision on the MSP. In its response motion (Exhibit 36), Carson Road Development Inc. et al, states that the MRA "cannot plead ignorance with respect to the approval of the MSP, or the process for appealing the County's decision to appeal the same. The Appellant's (MRA's) website acknowledges that they have been aware of the MSP since at least 2008."

[12] The response also points out that notice of the County's decision to approve the MSP, detailing the rights of appeal, was provided in accordance with the requirements of the *Planning Act* ("Act"). The County's decision to approve the MSP and the appeal period was also publicized in the local media. Six parties appealed within the required time frame.

[13] When questioned by the Board as to why the MRA did not appeal the MSP within the required time frame, Margaret Hutchinson, spokesperson for the MRA, stated that "at least four members did not receive notice." The MRA has more than four members, and Exhibit 35 shows that the three, Connie Spek, Peter Young and Bette Bull, who swore affidavits that they did not receive notification of approval of OPA 38 by the County as required under the Act, were included on the list of those to whom Notice of Decision was mailed.

[14] As to the status of the Midhurst settlement area, the Board accepts the position of Kathy Suggitt, manager of policy planning for the County, that it is indeed a settlement area, not a "study area" (Exhibit 35). Section 8.1 of the SOP includes policies that state that the Township's growth would be directed to these Urban Settlement Areas, and Midhurst is identified as one of two that would receive a significant amount of future growth. It is her opinion that map Schedule A-8 represents the entire Midhurst Settlement Area, and the reference to a "study area" is simply the area within which the secondary plan(s) would take place to ensure comprehensiveness and planning for long-term growth. Quite frankly, no other interpretation makes sense.

[15] It is clear to the Board that the MRA's target is the MSP. It is also clear, that the MRA, having missed the opportunity for whatever reason, to appeal the MSP within the statutory time period is now attempting to come in through the back-door. The MSP (OPA 38) is not before the Board. It is now in force. The Settlement Boundary has been established, and the County, as well as many others, have relied on this 1998 boundary in the planning of infrastructure and subsequent land use. To undo what has been arrived at in an open and democratic process would be unfair to all those who

have relied upon it. The MRA, whose desire to retain the environment as its members now experience it, the Board well understands have missed its opportunity to do so.

[16] As Mr. Strachan so aptly put it in his affidavit, the “MRA has uncovered many more issues with OPA 38 than with the County Plan, but accepts that this may not be the appropriate forum in which to present evidence.” In that he is correct.

[17] Rule 56 of the Board’s Rules of Practice and Procedure allows the Board to dismiss a proceeding without holding a hearing if, among others, the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which all or part of the appeal could be allowed. Section 17(45) of the *Planning Act* (“Act”) states that the Board may dismiss all or part of an appeal without holding a hearing on its own initiative or on the motion of any party if it is of the opinion that,:

- (i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the plan or part of the plan that is the subject of the appeal could be approved or refused by the Board.

[18] The Board grants the motion and dismisses the appeal of Proposed Official Plan Amendment 43-OP02008 by the Midhurst Ratepayers’ Association dated August 21, 2012, in its entirety.

“Sylvia Sutherland”

SYLVIA SUTHERLAND  
MEMBER

“M. A. Sills”

M. A. SILLS  
MEMBER

**ATTACHMENT 1**

**Simcoe County Official Plan Prehearing Conference #3  
List of Attendees June 20, 2013**

<b>Counsel/Representative</b>	<b>Appellant/Party/Participant</b>
Roger Beaman/David Germain	Appellant 1
Jeff Davies	Appellants 2a, 2b
Cory Estrela/A. D'Andrea (student-at-law)	Appellants 8a, 8c, 8d, 8e, 8f, 8g, 11, 12a, 12b, 13, 14, 21, 22, 23, 24, 25, 26
Brent Spagnol*/Robert Brindley*	Appellant 6
Edward Veldboom	Parties C1, C2
Quinto Annibale/Mark Joblin	Party D
Leo Longo	Appellant 30, Party B
Leo Longo (for Tom Halinski)	Party E
Wes Crown*	Party F
Ian Rowe/Adrianna Pilkington	Appellant 17, Parties G1, G2, G3, V, X
James Feehely	Appellant 7, Party H
Stephen Waqué	Party I
Ken Hare/Soojin Lee	Party A
Tanya Nayler	Appellants 3, 4
Ira Kagan/Paul DeMelo	Appellant 5
Jennifer Meader	Appellant 10
Jennifer Drake	Appellant 15
David Strachan*/Margaret Hutchison*	Appellant 16
Patricia Foran	Appellant 18
Chris Barnett	Appellants 27a, 27b
Caterina Facciolo	Appellants 28, 29, Party M
Brian Goodreid*	Appellants 19a, 19b
Mary Bull/Alexandra Sadvari	Parties J1, J2, J3, J4, J5, J6, K
Michael Vaughan	Party L
John Dawson	Party P
John Barzo	Party Q
Susan Rogers	Party R
Harold Elston	Parties S, T
Sandy Agnew*	Participant 1
Ann Romano*	Participant 3
Raivo Uukkivi	Participant 5
Paolo Sacilotto*	Participant 6
Bernard Pope*	Participant 8
Anne Ritchie-Nahuis*	Participant 9
Wendy Harry*	Participant 10
Chantale Gagnon*	Participant 11
Marvin Geist	Participant 13
John Strong*	Participant 16

**\*Agent**

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**ATTACHMENT 2**

**LIST OF PARTICIPANTS -- COUNTY OF SIMCOE OFFICIAL PLAN PL091167**

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12	Township of Severn	Henry Sander	<a href="mailto:hsander@townshipofsevern.com">hsander@townshipofsevern.com</a>
13	K. Winter Sanitation Inc. Kenneth and Ruth Winter	Marvin Geist	<a href="mailto:marvin@marvingeist.ca">marvin@marvingeist.ca</a>
14	(ANSI – Oro-Medonte)	Joe & Ruth-Ann Langman	<a href="mailto:ruthannlangman@gmail.com">ruthannlangman@gmail.com</a>
15	(ANSI – Severn)	Don & June Bickell	<a href="mailto:paniswickweld@aol.com">paniswickweld@aol.com</a>
16	John Strong	John Strong	No e-mail given; 705-424-9350 6760 Simcoe County Road 21 Essa Township, Ontario, L9R 1V2
17	Clearview Community Association	Janet Gillham	<a href="mailto:gillham2@bell.net">gillham2@bell.net</a>
18	(App 27a, 27b)	Ralph MacKenzie	905-729-3984
19		Kevin Newman	<a href="mailto:k.newman@rogers.com">k.newman@rogers.com</a>
20		Jill Appleby	
21	(Midhurst)	Sandy Buxton	<a href="mailto:s.buxton@rogers.com">s.buxton@rogers.com</a>
22	R & M Homes Limited (Everett)	Cory Estrela	<a href="mailto:cory.estrela@Devrylaw.ca">cory.estrela@Devrylaw.ca</a>
23	285622 Ontario Ltd. (MIDVES II)	Emil Mlinarevic	<a href="mailto:emilm@millersonconsulting.com">emilm@millersonconsulting.com</a>
		Bette Bull	