

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: January 25, 2016

CASE NO.: PL091167

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)

BEFORE:

M. SILLS) Thursday, the 21st
MEMBER)
) day of January, 2016

S. SUTHERLAND) Thursday, the 21st
MEMBER)
) day of January, 2016

THESE MATTERS having come before the Ontario Municipal Board (“Board”) on December 3, 2015 and in accordance with s. 17(50) of the *Planning Act*, the Board orders as follows:

THE BOARD ORDERS that in accordance with the provisions of section 17(50) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, and further to the partial approval Orders of this Board issued June 13, 2013 as amended by an Order issued July 5, 2013 and Orders issued February 25, 2014, May 15, 2014, July 28, 2014, August 1, 2014, August 25, 2014, February 19, 2015 February 20, 2015 and August 31, 2015, the Official Plan of the County of Simcoe as adopted by the County of Simcoe (“County”) on November 25, 2008 and as recommended to be modified by the County on January 22, 2013, (the “Official Plan”), is hereby further modified and approved in part to implement this Order as provided below.

AND THE BOARD FURTHER ORDERS on reading the Motion Record (Exhibit 138) of the County dealing with certain policies for Phase 3d Agricultural #2, the supporting letter (Exhibit 140) of the Township of Ramara, the Response to Motion (Exhibit 141) of the Township of Clearview seeking alternative relief, the Reply (Exhibit 143) of the County to such Response, filed, and hearing the submissions of counsel on December 3, 2015 including submissions on Rule 108 of the Board’s Rules of Practice and Procedure, that the Official Plan be further modified by substituting the disjunctive word “or” for the word “and” at the conclusion of s. 3.6.7 c) of the Official Plan and substituting and approving the policies set out in Schedule 1 to this Order.

AND THE BOARD FURTHER ORDERS on reading the Motion Record (Exhibit 145) of the County for Phase 4b Aggregate Developments and Cultural Heritage Conservation, the supporting letter (Exhibit 140) of the Township of Ramara, the supporting Response to Motion (Exhibit 147) of The Ontario Stone, Sand and Gravel Association and Parties J2 to J6, filed, and hearing the submissions of

counsel on December 3, 2015, no party being in opposition, that the Official Plan be further modified by (i) substituting and approving the policies set out in Schedule 2 to this Order and (ii) deleting Appendix 3 of the Official Plan.

AND THE BOARD FURTHER ORDERS on hearing the submissions of counsel for the County and for Crestwood Park Holdings Inc. (“Crestwood”) on December 3, 2015, and being advised of the concurrence of counsel for the Township of Oro-Medonte, no party being in opposition, that the status of the site-specific appeal rights of Crestwood as set out in Exhibits 125 and 126 originally scheduled to be heard on September 4, 2015 be adjourned to a date to be set.

AND THE BOARD FURTHER ORDERS on reading the Motion Record (Exhibit 149) of Tesmar Holdings Inc. (“Tesmar”), the Response and Cross-Motion Record (Exhibit 151) of Narinder Mann (“Mann”), the Notice of Response (Exhibit 153) of the County, the map excerpt (Exhibit 155) of Official Plan Schedule 5.1 showing cross-hatched lands to remain under appeal and the Angus Agreement (Exhibit 156) being an agreement of counsel for the County, Tesmar and Mann dealing with the deconsolidation or separation of the determination of the northern Settlement Area Boundary of Angus and the designation of the cross-hatched lands, filed, and hearing the submissions of counsel and the consent of counsel for the Township of Essa on December 3, 2015, no party being in opposition, that relief as set out in Exhibit 156 be granted as follows:

- a) that the northern Settlement Area Boundary for Essa and the designation of the lands shown cross-hatched on Exhibit 155 be deconsolidated or separated from the proceedings in PL091167;
- b) that Schedule 5.1 of the Official Plan be further modified by approving the Settlement Area Boundary of Essa, save and except for the northern portion set out in a) above;

- c) that Schedule 5.1 of the Official Plan be further modified by approving the designation of the lands shown in Gray and Red within Angus on Exhibit 155, as “Settlements” and “Built Boundary” respectively;
- d) that the Issues List for Tesmar on Page 21 of Exhibit 54 in these proceedings be struck and that the Tesmar appeal be dismissed other than for item a) above;
- e) that the Issues List for Mann on Page 30 of Exhibit 54 in these proceedings be struck and that the Mann appeal be dismissed other than for item a) above;
- f) that Tesmar remain as Party Z[M] to the proceedings in PL091167 for defensive monitoring of Phase 4a;
- g) that Mann remain as Party ZA to the proceedings in PL091167, Phase 4a woodland/wetland issues, with its draft issues as set out in Exhibit 157 to be finalized by agreement or resolved by the Board; and
- h) that the orders above are without prejudice to future positions of any party to be taken on the Essa appeals in file PL090519.

AND THE BOARD FURTHER ORDERS on reading correspondence sent by the County to all Parties on November 20, 2015 (Exhibit 159), filed, and hearing the submissions of counsel on timeframes for items necessary to finalize the Procedural Order, that the following be undertaken:

- a. All Parties are to delete spent issues on their Issues Lists (Exhibit 54) by December 18, 2015;
- b. All Parties are to declare their interest in continuing or monitoring remaining Phases of the County proceeding by December 18, 2015;
- c. All Parties are to advise of any pending related lower tier OMB matters by December 18, 2015;
- d. The County is to prepare a revised consolidated issues list, a phasing chart and an updated Official Plan document by January 13, 2016;

- e. Parties are to decide on whether related OMB files are an upper tier (County) plan matter or a lower tier (local) plan matter for hearing purposes by January 29, 2016;
- f. Parties are to decide on phasing of the County hearing by January 29, 2016;
- g. Parties are to decide on the time required for each component of the County hearing by January 29, 2016;
- h. Parties are to settle the schedule of dates for inclusion in the Procedural Order by January 29, 2016; and
- i. If there is no agreement on items (e), (f), (g), or (h) above, then the dispute will be referred to the Board for a decision.

AND THE BOARD FURTHER ORDERS that the partial approval of the Official Plan as modified shall be without prejudice to, and shall not limit, any party and the Board from seeking, considering and approving modifications, deletions or additions to the unapproved policies, schedules and appendices of the Official Plan on a general, area-specific or site-specific basis, as the case may be, provided that the parties shall be bound by the commitments made by them to scope their issues to an area-specific or site-specific basis.

AND THE BOARD FURTHER ORDERS that the remaining appeals filed in respect of the Official Plan shall be determined through the hearing process or as otherwise consented to by the parties and approved by the Board.

AND THE BOARD FURTHER ORDERS that it may be spoken to in the event some matter should arise in connection with the implementation of this Order.

A handwritten signature in black ink, reading "Jeanne Hoge." with a period at the end. The signature is written in a cursive, flowing style.

SECRETARY

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

Case No. PL091167

COUNTY OF SIMCOE OFFICIAL PLAN

List of Attendees at December 3, 2015 PHC #14

Counsel/Representative*	Appellant/Party/Participant
Roger Beaman, Marshall Green	Appellant 1
Meaghan McDermid (for Susan Rosenthal)	Appellants 2a,b and 3[M]
David White	Appellants 2a,b, 8a,c,d,e,f, 11, 12a,b, 13, 14, 21, 22, 23, 24, 25, 26, 35, 36, 37, 39a,b, 40, 41, Participant 22[M]
James Feehely	Appellants 7, 15, 32
Meaghan McDermid	Appellants 10, 38, Participants 11a,b[M]
Ian Rowe	Appellants 17, 34, Parties G1,2,3, V1,2,3, X
Chris Barnett	Appellants 27a,b
Isaac Tang	Appellant 33, Crestwood (pending)
Ken Hare	Party A
Edward Veldboom	Party C, Participant 12[M]
Mark Joblin	Party D
Mary Bull	J1,2,3,4,5,6, K[M]
Aynsley Anderson	Parties S, T
Sandy Agnew*/Ann Truyens*	Participant 1

SCHEDULE 1

Agricultural #2 Policies – Phase 3d

3.6.7 In the Agricultural designation lot creation is discouraged and may only be permitted for:

- a) *Agricultural uses*, provided new lots for *agricultural uses* should not be less than 40 hectares or the original survey lot size, whichever is lesser, or 16 hectares in *specialty crop areas*;
- b) *Agriculture-related uses* (PPS 2014), provided that any new lot will be limited to a minimum size needed to accommodate the use and appropriate *sewage and water services*. Residential uses shall be prohibited on such lots, and they shall be zoned accordingly;
- c) a *residence surplus to a farming operation* as a result of farm consolidation, provided that:
 - i. the new lot will be limited to a minimum size needed to accommodate the residential use and appropriate *sewage and water services*, and should be an approximate maximum size of 1 hectare; and
 - ii. new residential dwellings are prohibited on any remnant parcel of farmland created by the severance. To ensure that no new residential dwellings are permitted on the remnant parcel, municipalities may use approaches such as zoning to prohibit the *development* of a dwelling unit(s), and/or the municipality may enter into agreements imposed as a condition to the approval of lot creation and the agreements may be registered against the land to which it applies; or
- d) *infrastructure*, where the facility or corridor cannot be accommodated through the use of easements or rights-of-way.

3.6.11 Proposals to re-designate lands from the Agricultural designation may only be considered for expansions to *settlement areas* in accordance with applicable policies of this *Plan*, Provincial policy statements issued under the *Planning Act* and *provincial plans*.¹

3.6.12 Non-agricultural uses in *prime agricultural areas* may only be permitted for:

- a) extraction of *minerals, petroleum resources* and *mineral aggregate resources*, in accordance with the appropriate policies of this *Plan*, Provincial policy statements issued under the *Planning Act* and *provincial plans*; or
- b) limited non-residential uses, through a site-specific *local municipal* official plan amendment, provided that all of the following are demonstrated:
 1. the land does not comprise a *specialty crop area*;

¹ Parties C2 and T reserve the right to request that site-specific language be added to policy 3.6.11 to address their respective site-specific issues.

2. the proposed use complies with the *minimum distance separation formulae*;
3. there is an identified need within the planning horizon provided for in this *Plan* for additional land to be designated to accommodate the proposed use;
4. alternative locations have been evaluated, and
 - i. there are no reasonable alternative locations which avoid *prime agricultural areas*; and
 - ii. there are no reasonable alternative locations in *prime agricultural areas* with lower priority agricultural lands;
5. the proposed use requires minimal site alteration, as determined through pre-consultation with the *local municipality* and the approval authority;
6. the proposed use shall be compatible with the surrounding agricultural uses or in a location that is separated from the primary agricultural operations by physical features and demonstrated to cause minimal disruption to surrounding area;
7. the proposed use will not be located in an area that may have an impact on the efficient and logical expansion of nearby *settlement areas*;
8. the proposed use complies with all other applicable provisions of this *Plan*; and
9. applications for non-*agricultural uses* must be supported by adequate technical assessment to ensure that appropriate services for the proposed use can be provided.

Impacts from any new or expanding non-*agricultural uses* on surrounding agricultural operations and existing land uses are to be mitigated to the extent feasible. *Local municipalities* shall utilize site plan control to regulate the impact of non-*agricultural uses* in *prime agricultural areas*.

NOTE: approved policy 3.6.12 is renumbered 3.6.13.

SCHEDULE 2

Aggregate Developments and Cultural Heritage Conservation Policies – Phase 4b

4.4 Aggregate Developments

- 4.4.1** *Mineral aggregate operations* are not subject to Section 3.3.15, 3.3.18, 4.5.6, and 4.5.18 and shall be located according to the following criteria:
- i.) Shall not be located in *significant wetlands* or *significant coastal wetlands*;
 - ii.) Shall not be permitted in *significant woodlands, significant valleylands, significant wildlife habitat, significant areas of natural and scientific interest, and coastal wetlands* (not subject to 4.4.1 (i)) unless it has been demonstrated that there will be no *negative impacts* on the natural features or their *ecological functions*;
 - iii.) Shall not be permitted in *fish habitat* except in accordance with *provincial and federal requirements*;
 - iv.) Shall not be permitted in *habitat of endangered species and threatened species*, except in accordance with *provincial and federal requirements*;
 - v.) Shall not be permitted on *adjacent lands* to the *natural heritage features and areas* identified above unless the *ecological function* of the *adjacent lands* has been evaluated and it has been demonstrated that there will be no *negative impacts* on the natural features or on their *ecological functions*;
 - vi.) Within the Niagara Escarpment Plan area, shall not be located in the Escarpment Natural or Escarpment Protection Areas identified on Schedule 5.3.1;
 - vii.) Within the Oak Ridges Moraine Conservation Plan area, shall be permitted in the Natural Linkage Area and Countryside Area Designations identified on Schedule 5.3.2, and be subject to the policies of Section 3.11 and the provisions of the Oak Ridges Moraine Conservation Plan;
 - viii.) Within the Greenbelt Plan area, shall be permitted in the Protected Countryside designation identified on Schedule 5.3.3, and be subject to the policies of Section 3.12 and the provisions of the Greenbelt Plan.

In assessing negative impact, proposed mitigation measures, rehabilitation and ecological enhancements, if any, shall be considered.

- 4.4.6** *Mineral aggregate operations* shall minimize impacts to adjacent or nearby uses by reason of dust, noise, effects on water table and quantity or other effects from mining activities or transportation of aggregates.
- 4.4.8** The County may require a Cultural Heritage Report in support of a proposed new or expanded *mineral aggregate operation* to identify *significant cultural features* as outlined in Section 4.6. If *significant cultural features* are identified they shall be *conserved* which may include mitigation measures and/or alternative development approaches.
- 4.4.12** The *County* may enter into agreements with the owners and operators of mineral aggregate extractive *developments* to determine the appropriate use of County Roads as haul routes. The *County* will seek to establish haul routes on County Roads that are

suitable for the function based on traffic patterns and existing and proposed land uses served by the roads. Where there are two or more alternative haul routes, the haul route having the least impact shall be selected. The costs of upgrading the roads shall be borne by the operators who require the upgrading.

4.6 Cultural Heritage Conservation

- 4.6.1** *Significant built heritage resources, and significant cultural heritage landscapes, will be conserved.*
- 4.6.2** The *County* will work with *local municipalities* and heritage committees to create and maintain an inventory of local and *significant cultural features* including but not limited to:
- a) heritage resources designated under Parts IV and V of the *Ontario Heritage Act*;
 - b) sites or areas having historical, archaeological, cultural, scenic, or architectural merit both on land and underwater;
 - c) cemeteries; and
 - d) other cultural heritage resources of community interest and significance.
- 4.6.3** The *County* shall maintain available archaeological site data locations and relevant mapping from the provincial archaeological database of the Ministry of Tourism, Culture and Sport (MTCS) under the provisions of a municipal-*provincial* data sharing agreement, for the purpose of heritage conservation planning and *development* review. The mapping database will be updated regularly when appropriate, as new archaeological sites are identified.
- 4.6.4** The *County* may consider undertaking the preparation and completion of a cultural heritage and/or archaeological management plan to assist in identifying sensitive cultural and archaeological areas including cemeteries and burials within the County, which is to include but not limited to:
- a) comprehensive mapping and inventories of *significant built heritage resources, significant cultural heritage landscapes, and areas of archaeological potential*;
 - b) identification and evaluation of cultural heritage and archaeological resources;
 - c) strategies for conserving and enhancing these identified resources;
 - d) programs to foster interpretation and promotion; and
 - e) education and public participation in cultural heritage conservation.
- 4.6.5** *Development and site alteration* shall not be permitted on lands containing *archaeological resources* or *areas of archaeological potential* unless *significant archaeological resources* have been *conserved*.
- 4.6.6** *Development and site alteration* shall not be permitted on *adjacent lands* to *protected heritage property* except where the proposed *development and site alteration* has been

evaluated and it has been demonstrated that the *heritage attributes* of the *protected heritage property* will be *conserved*.

- 4.6.7** The County of Simcoe shall determine and notify the *local municipality* of the need for archaeological assessment by an archaeologist licensed under the Ontario Heritage Act, for applications for official plans and amendments, secondary plans, and plans of *subdivision*, where it is the approval authority, in accordance with the *County's* Cultural Heritage Guidelines. All archaeological assessment reports are to comply with current *provincial* archaeological assessment standards and guidelines.
- 4.6.8** The *local municipality* shall determine the need for archaeological assessment for applications where they are the approval authority in accordance with the *County's* Cultural Heritage Guidelines and notify the *County* of any *significant archaeological resources*.
- 4.6.9** Applicants shall provide to the County of Simcoe a copy of the completed Archaeological Assessment reports for heritage resource register purposes.
- 4.6.10** Where feasible and desirable, incentives may be provided by *local municipalities* to land developers in exchange for preservation of *significant cultural features*. This can be accomplished by permitting increased densities, density transfers, and other means considered appropriate, in exchange for resource preservation, through the application of the relevant provisions of the *Planning Act*.
- 4.6.11** *Local municipalities* are encouraged to:
- (a) Establish policies within their official plans that promote and encourage the designation of heritage properties under the *Ontario Heritage Act*, and include within these policies the criteria as set out in the *Ontario Heritage Act* amendment 2006 as Regulation #1 to be used to evaluate the architectural and historic significance;
 - (b) Create and support a heritage committee within their community to deal with heritage matters considered appropriate;
 - (c) Zone sites containing *significant cultural features* sites to ensure preservation in accordance with Section 34(1) 3.3 of the *Planning Act*; and
 - (d) Apply the objectives and criteria set out in the *County's* Cultural Heritage Guidelines.
- 4.6.12** When burial places are identified during the *development* process or are encountered during any excavation activity, the provisions of the *Funeral, Burial and Cremation Services Act*, *Ontario Heritage Act* and the relevant regulations must be followed. Licensed archaeologists may be involved in heritage burial assessments for delineation of boundaries and excavations if required. Appropriate *provincial* Ministries and authorities will be notified.

4.6.13 Should aboriginal archaeological resources or burial places be found through assessment or during the *development* process, then the County and/or applicable local municipality shall provide notification to the appropriate aboriginal community(s).

4.11.4 A *local municipal* official plan or zoning bylaw may contain provisions which are considered more restrictive to *development* than this *Plan* and, to the extent such a conflict exists, the local plan or bylaw shall prevail provided they are in conformity with *Provincial* plans and are consistent with the *Provincial Policy Statement*.

Section 5.8 Definitions:

CULTURAL HERITAGE LANDSCAPE means a defined geographical area that may have been modified by human activity and is identified as having cultural heritage value or interest by a community, including an Aboriginal community. The area may involve features such as structures, spaces, archaeological sites and natural elements that are valued together for their interrelationship, meaning or association. Examples may include but are not limited to, heritage conservation districts designated under the *Ontario Heritage Act*, villages, parks, gardens, main streets and neighbourhoods, cemeteries, trailways, natural areas and industrial complexes of heritage significance; and areas recognized by federal or international designation authorities.

CULTURAL FEATURES refer to historical, architectural, archaeological, recreational, and aesthetic built and natural features of cultural significance including *significant built heritage resources*, *significant cultural heritage landscapes*, and *archaeological resources*.

PROTECTED HERITAGE PROPERTY means property designated under Parts IV, V or VI of the *Ontario Heritage Act*; property subject to a heritage conservation easement under Parts II or IV of the *Ontario Heritage Act*; property identified by the Province and prescribed public bodies as provincial heritage property under the Standards and Guidelines for Conservation of Provincial Heritage Properties; property protected under federal legislation, and UNESCO World Heritage Sites.

HERITAGE ATTRIBUTES means the principal features or elements that contribute to a *protected heritage property's* cultural heritage value or interest, and may include the property's built or manufactured elements, as well as natural landforms, vegetation, water features, and its visual setting (including significant views or vistas to or from a *protected heritage property*).