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Ontario Municipal Board
Commission des affaires municipales de l'Ontario

PL130137

Peter Eliopoulos has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's neglect to enact a proposed amendment to the Official Plan for the Township of King to redesignate an approximately 49 hectare (121 acres) parcel of land located on the west side of Highway 400 between the 18th Sideroad and Lloydtown-Aurora Road, municipally known as 3550 18th Sideroad, from "Prime Agriculture Land" to "Rural Land" to allow consideration of major recreational uses within the Oak Ridges Moraine Countryside land use designation for the purpose of permitting an outdoor banquet facility, a children's camp and other related accessory uses

Township of King File No. OP-2011-01

OMB Case No. PL130137

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Peter Eliopoulos has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's neglect to enact a proposed amendment to Zoning By-law 74-53, as amended, of the Township of King to rezone an approximately 49 hectare (121 acres) parcel of land located on the west side of Highway 400 between the 18th Sideroad and Lloydtown-Aurora Road, municipally known as 3550 18th Sideroad, from "Oak Ridges Moraine Countryside (ORMC)" to an "Oak Ridges Moraine Countryside (ORMC) – Exception" zone to permit an outdoor banquet facility, a children's camp and other related accessory uses

Township of King File No. Z-2011-03

OMB Case No. PL130137

OMB File No. PL130138

APPEARANCES:

Parties

Peter Eliopoulos

Township of King

Stewards of the Moraine Inc.

Counsel

M. Melling & K. Sliwa

T. Halinski

D. Donnelly, A. Sabourin & D. Cortese

DECISION DELIVERED BY SYLVIA SUTHERLAND AND ORDER OF THE BOARD

[1] This hearing was related to an Official Plan Amendment (“OPA”) application by Peter Eliopoulos (“Applicant/Appellant”) to re-designate land on the west side of Highway 400 between the 18 Sideroad and Lloydtown-Aurora Road, municipally known as 3550 18 Sideroad (‘subject lands’) in the Township of King (‘Township’) from “Prime Agricultural Land” to “Rural Land”. The purpose for this re-designation is to allow consideration of major recreational uses within the Oak Ridges Moraine Countryside (“ORMC”) land use designation.

[2] In addition, there is a zoning by-law application by the same Applicant/Appellant to rezone the subject lands from “ORMC” to an “OMRC Exception Zone” to permit an outdoor banqueting facility, a children’s camp and other related accessory uses.

[3] The applications have been appealed pursuant to s. 22(7) and s. 34(11) of the *Planning Act* (“Act”) from the failure of the Township to make a decision within the time frames prescribed by these sections of the Act.

[4] The Board was informed in a letter dated November 20, 2013 that the parties agreed that the most effective way to conduct the hearing was to phase it into two parts. This is Phase 1, in which the Board was asked to address the land use issue of whether the use is permitted. Phase 2, if required, would be scheduled for a later date.

[5] The two issues for Phase 1 were:

1. Is the outdoor banquet facility permitted by the Oak Ridges Moraine Conservation Plan (“ORMCP”)?
2. Is the outdoor banquet facility a major recreational use under the ORMCP and is it consistent with the definition of “recreation” in the Provincial Policy Statement (“PPS”)?

THE PROPOSAL

[6] The proposal is to use three environmentally sustainable garden areas accommodating up to 200 people each to host “green” wedding events. The facility would be operated by Peter and Paul’s Corporate Services, which has been in operation since 1982 and runs several other event venues where it offers a variety of entertainment services including complete package deals for weddings and bar mitzvahs. There would be tent-like structures at each garden, with solid floors and three solid sides to host the events in case of inclement weather. Existing buildings would be used for storage.

SUBJECT SITE

[7] The subject lands, comprising an area of approximately 49 ha, are designated as Oak Ridges Moraine Countryside in the Township Official Plan (“TOP”). Permitted uses include Major Recreational uses; however these uses are not permitted in prime agricultural areas. An OPA was necessary because Schedule G of the TOP identifies the subject lands as prime agricultural land. On August 26, 2013, Township Council has approved recommendations from the planning department to re-designate the lands from Prime Agricultural to Rural.

[8] The surrounding lands consist of rural lands and non-farm residences, with some agricultural lands to the north and east. To the west, there are residential homes, a home occupation and a car wash. Current development on the property consists of one residential unit, one large barn and a number of smaller buildings previously used for agriculture.

WITNESSES

[9] James Dymont gave expert land use planning evidence and opinion on behalf of the Applicant/Appellant, while Stephen King and Robert Lehman did the same on behalf of the Township and the Stewards of the Moraine Inc. (“Stewards”) respectively. Gerrit de Boer, George Puccia and Greg Locke appeared as lay witnesses on behalf of the Stewards, and Sylvia Bowman appeared as a participant representing the Save the Oak Ridges Moraine Coalition (“STORM”). All opposed the application.

MOTION

[10] On the third day of the hearing, Mr. Melling, counsel for the Applicant/Appellant, introduced a motion to exclude Mr. Lehman from the hearing during his cross-examination of Mr. Kitchen, arguing that he would be putting the same questions to both witnesses. Maintaining that he was not suggesting that Mr. Lehman would tailor his evidence, Mr. Melling nevertheless maintained that Mr. Lehman should not hear Mr. Kitchen's answers. He stressed the extreme importance of cross-examination in the discovery of the truth.

[11] The Board has the authority under s. 52.06(1) of the *Courts of Justice Act* to, at the request of any party, order that a witness be excluded from the room. However, circumstances must be such that exclusion is warranted, and in this instance the Board concurred with both Mr. Halinski and Mr. Donnelly that those circumstances were not present.

[12] No evidence was presented to show that Mr. Lehman, a highly respected planner with more than 40 years' experience, would change or tailor his evidence based on the answers given by Mr. Kitchen under cross-examination. In fact, Mr. Melling, when introducing his motion, made that exact point. As an expert, Mr. Lehman's opinion would be based on facts. He would not be creating the facts to support that opinion. The Board agreed with the observations of Mr. Halinski in response to the motion when he noted that the best evidence would be heard if Mr. Lehman remained in the room during Mr. Kitchen's cross-examination, and Mr. Melling's motion was denied.

FINDINGS

[13] Section 8(1) of the *Oak Ridges Moraine Conservation Act*, 2001, states, "Despite any other Act, the Oak Ridges Moraine Conservation Plan prevails in the case of conflict between the Plan and:

- a) an official plan.
- b) a zoning by-law; or

- c) a policy statement issued under section 3 of the *Planning Act, 2001*, c. 31, s.8(1)

[14] Section 38(1) of the ORMCP defines a major recreational use as follows:

Major recreational uses are recreational uses that require large-scale modification of terrain, vegetation or both and usually also require large-scale buildings or structure, including but not limited to the following:

1. Golf courses.
2. Serviced playing fields.
3. Serviced camp grounds.
4. Ski hills

[15] This definition was also adopted by the TOP. The PPS defines "Recreation" as follows:

Leisure time undertaken in built or natural settings for the purpose of physical activity, health benefits, sport participation and skill development, personal enjoyment, positive social interaction and achievement of human potential.

[16] In the end, the hearing turned to a large extent on whether a wedding can be considered a major recreational use.

[17] In Mr. Dymont's opinion it can. He maintained that a wedding, in itself, is a recreational activity. He went further to state that courting can also be considered a recreational activity. In addition, there will be walking trails where participants can enjoy trees and flowers; a pond where they can fish and dance floors in the event gardens where they can dance. Referencing the definition of "recreation" found in the PPS, he said that a wedding represents "positive social interaction".

[18] Mr. de Boer, a self-proclaimed "expert" on weddings ("My wife is has 10 sisters and two brothers, and I come from a large family. As a result, I have been to anywhere from 100 to 150 weddings."), took issue with the idea that either a wedding or courting represent a recreational activity.

[19] "A wedding is a celebration of life where two people commit to each other by taking vows. It is not recreational. And I would have never gone out with my wife if

her father thought going out on a date was a major recreational event,” he told the Board.

[20] It was Mr. de Boer’s contention that the proposal represented a commercial venture of a type that would not be allowed under the ORMCP.

[21] While Mr. de Boer was not an expert witness on land use planning, or even weddings, the Board found his observations interesting.

[22] It found the expert opinions of Mr. Kitchen and Mr. Lehman convincing. Neither considered the proposed use recreational, but rather commercial. Neither considered the commercial use small scale, which, dependent upon the nature of the commercial activity, is permitted under s. 40 of the ORMCP, which states that such uses include, but are not limited to:

1. Farm implement stores, feed stores and country markets.
2. Portable mineral aggregate crushing plants, portable asphalt plants and composting plants.
3. Schools, places of worship, community halls, retirement homes, and cemeteries, intended mainly to serve nearby Rural Settlements within the plan area.

[23] Mr. Lehman pointed out that the ORMCP describes major development as any development consisting of building(s) with a gross floor area greater than 500 square metres (Exhibit 18, Tab 1). The proposed banquet/wedding/event facility includes structures which cumulatively are in excess of the 500 square metre threshold and are therefore considered major development within the policy context of the ORMCP. Only small scale commercial uses are conditionally permitted by the ORMCP in the Countryside Area designation, within which the subject lands are included.

[24] Mr. Kitchen contended that the definition of “recreation” deals with the achievement of human potential, rather than the celebration of human potential.

[25] He stated (Exhibit 8):

There are both direct and indirect benefits from physical activity listed in the definition of 'recreation' in the PPS. The items identified by the applicant which coincide with the proposed banquet use appear to be at most indirect benefits, being personal enjoyment and positive social interaction which are considered to be more general in nature and extend to countless activities. The activities proposed by the applicant do not constitute recreation at their core.

[26] Mr. Dyment contended that a golf course, which is considered a recreational use under the *Oak Ridges Moraine Conservation Act*, most frequently has an accompanying club house in which such activities as weddings take place. This is certainly the case, but a club house is auxiliary to the primary function of a golf course which is golf. In this instance strolling the trails of the subject property, or fishing – if one were inclined to bring a fishing pole to a wedding – between the ceremony and the banquet is auxiliary to the primary function of the facility, which is the hosting of weddings, and most probably other celebrations and meetings as well.

[27] The Board concurs with the contention of Mr. Lehman and Mr. Kitchen that the definitions of "recreation" found in both ORMCP and the PPS suggest a certain amount of physical activity with accompanying health benefits, sports participation and skill development. Even most camp grounds, the most ambiguous of the uses listed in s. 38 (1) of the ORMCP, most frequently include areas for such activities as well.

[28] In this regard, Mr. Lehman stated (Exhibit 18, Tab 1):

Where there is any ambiguity in relation to a permitted use, it is valid to consider the use within greater policy content by giving weight to the intent, purpose and objectives of the ORMCP and applicable land use designation. This is consistent with the approach taken by the Ontario Municipal Board for Case No. PL130506 in which the Board considered the validity of a permitted use on the Oak Ridges Moraine within the policy context and legislation of the ORMCP.

[29] He then quoted from the Board Decision/Order No. 0256:

Specifically in reference to the permitted uses, the objectives are to protect "the ecological and hydrological uses that maintain, improve or restore the ecological and hydrological functions of the Oak Ridges Moraine Area"; to ensure "that only land and resource uses that maintain, improve or restore the ecological and hydrological functions of the Oak Ridges Moraine Area are permitted"; and further, to provide for "land and

resource uses and development that are compatible with other objectives of the Plan.”

[30] Mr. Lehman concludes that “the clear intent of the ORMCP is to limit uses and the intensity of uses within the ORMCP Area” and that “consideration of a permitted use must be qualified by its definition and framed within the context of the legislation and objective of the ORMCP.”

[31] It is his opinion that the proposed banquet/wedding/event facility is not a recreational use as anticipated by the Province in the ORMCP. The Board agrees.

ORDER

[32] The Board orders that the appeal to amend the Official Plan of the Township of King and By-law 74-53 to permit an outdoor banquet facility on the subject property is dismissed.

[33] In light of this order, there is no need for Phase 2 of the hearing.

“Sylvia Sutherland”

SYLVIA SUTHERLAND
MEMBER