

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



ISSUE DATE: September 11, 2020

CASE NO(S): PL190352

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: Beeton Station Condominiums Corporation
Appellant: Ontario Potato Distributing Inc. & Mattamy Homes
Subject: Proposed Official Plan Amendment No. NT-OP-1801
Municipality: Town of New Tecumseth
LPAT Case No.: PL190352
LPAT File No.: PL190352
LPAT Case Name: Beeton Station Condominiums Corporation v. New Tecumseth (Town)

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

Appellant: Beeton Meadows Holdings Inc.
Appellant: Beeton Station Condominiums Corporation
Subject: Failure of County of Simcoe to announce a decision respecting Proposed Official Plan Amendment No. NT-OP-1801
Municipality: Town of New Tecumseth
LPAT Case No.: PL190352
LPAT File No.: PL190353

Heard: September 3, 2020 by video hearing

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
County of Simcoe (“County”)	M. Green
Town of New Tecumseth (“Town”)	J. Feehely and C. Butler
Mattamy Homes Limited and Ontario Potato Distributing Inc. (“Mattamy”)	C. Barnett
Beeton Station Condominiums Corporation (“BSC”)	M. Kemerer appearing for D. White
Beeton Meadows Holdings Inc. (“BMH”)	C. Tanzola
20338148 Ontario Inc. and 1204551 Ontario Inc.	A. Biggart (not attending)
Flato Developments Inc. (“Flato”)	A. Kurts appearing for K. Sliwa
Far Sight Developments Alliston Inc. (“Far Sight”)	A. Toumanians
Indy Properties Operator Inc. (“Indy”)	R. Howe
Rayville Developments Inc., Copperglen Estates Inc. and 301099 Ontario Ltd.	M. Kemerer appearing for D. White

**MEMORANDUM OF ORAL DECISION DELIVERED BY MARGOT BALLAGH
ON SEPTEMBER 3, 2020 AND ORDER OF THE TRIBUNAL**

[1] This Memorandum of Oral Decision and Order results from this second Case Management Conference (“CMC”) in the appeal under Tribunal File No. PL190352 of BSC from the County’s approval of the new Official Plan (“OP”) for the Town pursuant to s. 17(36) of the *Planning Act* (“Act”), and the appeals under Tribunal File No. PL190353 of BSC and BMH from a non-decision of the County on a portion of the OP pursuant to s. 17(40) of the Act.

[2] At the first CMC on January 8, 2020, the Tribunal dealt with all four appeals under Tribunal File Nos. PL190352 and PL190353, and ordered that the appeal of Mattamy from the County's approval of the new OP for the Town pursuant to s. 17(36) of the Act was adjourned *sine die* to allow time for the completion of the County's comprehensive review of its OP. Party status to this Mattamy appeal was granted to the following parties: BMH, Flato, Far Sight, Indy, 2038148 Ontario Inc. and 1204551 Ontario Inc., 301099 Ontario Ltd., Rayville Developments Inc. and Copperglen Estates Inc.

[3] With the County's comprehensive review ongoing, the CMC on September 3, 2020 did not deal with the Mattamy appeal under PL190352.

[4] However, the Tribunal did proceed to case manage the other appeal under PL190352, being BSC's appeal of the decision of the County on the OP related to a variety of general policies pursuant to s. 17(36) of the Act. Party status to this appeal had previously been granted to the following parties: Mattamy, BMH, Flato, Far Sight and Indy.

[5] Marc Kemerer, appearing as counsel for BSC, confirmed that, in or about January 2020, BSC agreed to scope its appeal in PL190352 as a result of settlement of its other related appeals before the Tribunal regarding its OP amendment and Zoning By-law amendment applications. Mr. Kemerer told the Tribunal that BSC is no longer pursuing its appeal of general policies in the Town's OP such that the appeal in relation to these general policies is withdrawn. Its appeal is now site-specific. Mr. Kemerer told the Tribunal that BSC's appeals are now basically a "watching brief" to ensure that the new OP carries over the requested Urban Residential (UR) designation.

[6] As a result of the scoping of the BSC appeal, Mattamy, BMH, Far Sight and Indy, who had sought party status in the BSC appeal of approved general policies in the Town's OP, told the Tribunal that they no longer sought party status in the scoped BSC site-specific appeal under PL190352. These former parties nevertheless requested

notice of future hearing events for the site-specific BSC appeal. For clarity, these former parties to the BSC appeal maintain their party status in the Mattamy appeal under PL190352, which appeal is, as indicated, adjourned sine die pending the County's comprehensive review of the OP. Mr. Kurts, appearing as counsel for Flato, told the Tribunal that his client wished to continue to monitor the now site-specific BSC appeal but he did not yet have instructions from his client to withdraw as a party.

[7] Another result of the scoping of BSC's appeal of the general OP policies to a site-specific appeal, was Mr. Feehely's request on behalf of the Town that the Tribunal notify the County, as the approval authority for the Town's OP, that the appeal by BSC with respect to various policies has now been withdrawn. He noted that his request is pursuant to s. 17(39) of the Act so that the policies that were previously subject to appeal will now be final.

[8] Section 17(39) of the Act provides:

(39) If all appeals made under subsection (36) in respect of all or part of the decision of the approval authority are withdrawn and if the time for filing notice of appeal has expired, the Tribunal shall notify the approval authority that made the decision and,

(a) the decision or that part of the decision that was the subject of the appeal is final; and

(b) the plan or part of the plan that was approved and in respect of which all the appeals have been withdrawn comes into effect as an official plan or part of an official plan on the day the last outstanding appeal has been withdrawn.

[9] On April 24, 2020, Mr. Feehely had emailed the Tribunal a letter, along with an Affidavit of Timothy Schilling, Manager of Policy Planning for the Town, in support of the request under s. 17(39) of the Act. The Tribunal understands that a copy of this correspondence was sent to the County, the solicitor for BSC, the added parties and the participant.

[10] In his Affidavit sworn April 24, 2020, Mr. Schilling provides a history of the BSC appeals, including the deadline of July 18, 2019 to appeal the County's decision to approve the New OP, and indicates in paragraph 6, that as part of the settlement of the appeals on BSC's applications for the OP amendment and the Zoning By-law amendment, BSC scoped its appeal to the New OP so that it would be limited to the "Urban Residential (UR) Designation" for its lands owned in the community of Beeton with the appeal in regards to all other policies and lands being withdrawn. The policies that are no longer the subject of an appeal as a result of the withdrawal by BSC are those set out in Exhibit "B". (Exhibit "B" is attached to this decision as Attachment 1.)

[11] Exhibit "C" to Mr. Schilling's Affidavit is a copy of an email dated January 21, 2020 from David White as solicitor for BSC also confirming the scoping of the appeal. Mr. White writes "The appeal is now limited to the requested Urban Residential (UR) designation on the lands in Beeton owned by my client. The appeal in regard to all other policies and lands is hereby abandoned." Based on the submissions of counsel for BSC, the Tribunal accepts that in abandoning these aspects of the appeal, BSC is withdrawing its appeal of these other policies and those aspects of the appeal relating to other lands for the purposes of s. 17(39) of the Act.

[12] In paragraph 7 of his Affidavit sworn April 24, 2020, Mr. Schilling confirms as of that date that:

7. "As a result of the scoping of the appeal by Beeton Station, there is no longer any other appeal outstanding in relation to the policies set out in Exhibit "B."

(Exhibit "B" is attached as Attachment 1 to this Order.)

[13] Given the confirmations by Mr. Kemerer, Mr. White and the uncontroverted evidence in Mr. Schilling's Affidavit, and hearing no objection from other counsel or those in attendance, the Tribunal is satisfied that all appeals made under subsection 17(36), in respect of the part of the decision of the County related to the policies set out

in Attachment 1 to this Decision and Order, have been withdrawn as of April 24, 2020, the date when Mr. Schilling's Affidavit was sworn. Accordingly, with this determination, with the time for filing notices of appeal having now expired, the Tribunal is able to notify the County, as to those policies set out in Attachment 1 in respect of which all the appeals have been withdrawn.

[14] The Tribunal next dealt with the appeals under Tribunal File No. PL190353 of BSC and BMH from the non-decision of the County on a portion of the OP pursuant to s. 17(40) of the Act. These were site-specific appeals and accordingly there were no other interested parties, other than the County and the Town.

[15] Mr. Tanzola, appearing as counsel for BMH, told the Tribunal that settlement discussions had seemed exhausted and he had originally wanted to set a date for a hearing on the merits. However, after speaking with the Town more recently, Mr. Tanzola felt that a further CMC would be preferable. He, and Mr. Feehely for the Town, requested a further CMC for the BMH appeal in November 2020. They told the Tribunal that by then they expected release of a report related to storm water management that would inform a live issue in the appeal. As the BMH and BSC appeals have been administratively consolidated, Mr. Kemerer for BSC supported a November CMC. Mr. Green for the County concurred.

ORDER

[16] The Tribunal directs that Mattamy, BMH, Far Sight and Indy, who had sought party status in the appeal by BSC from the County's approval of the new OP for the Town pursuant to s. 17(36) of the Act, are no longer parties to that appeal, which has now been scoped to a site-specific appeal limited to the requested Urban Residential (UR) designation on the lands in Beeton owned by BSC.

[17] Upon review of the materials filed with respect to the withdrawal of certain parts of the appeal by BSC relating to certain identified policies and lands, the Tribunal has

determined that those portions of the new OP for the Town pursuant to the proposed Official Plan Amendment No. NT-OP-1801, as are set out in Attachment 1 to this Order, are no longer the subject of Appeals before the Tribunal. The issuance of this Order constitutes notice to the approval authority for the purposes of section 17(39) of the *Planning Act*.

[18] The Tribunal orders that a further CMC is scheduled for **Tuesday, November 17, 2020 at 10 a.m.** by Telephone Conference Call. Individuals are directed to **call 416-212-8012 or Toll Free 1-866-633-0848** on the assigned date at the correct time. When prompted, **enter the code 4779874#** to be connected to the call. It is the responsibility of the person(s) participating in the call to ensure that they are properly connected to the call and at the correct time. Questions prior to the call may be directed to the Tribunal's Case Coordinator having carriage of this case.

[19] The purpose of the next CMC is to consider scheduling a hearing on the merits for the appeal brought by BMH in PL190353 and to review and consider approval of a draft Procedural Order.

[20] This Memorandum of Oral Decision and Order shall be sent to all the parties including the former parties noted in [16] above.

[21] The Member is not seized and no further notice will be given.

"Margot Ballagh"

MARGOT BALLAGH
MEMBER

If there is an attachment referred to in this document,
please visit www.elfto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
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Attachment 1

LOCAL PLANNING APPEAL TRIBUNAL

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

Case No. PL190352

Appellant: Beeton Station Condominiums Corporation
Appellant: Ontario Potato Distributing Inc. & Mattamy Homes
Subject: Proposed Official Plan Amendment No. NT-OP-1801
Municipality: Town of New Tecumseth
LPAT Case No.: PL190352
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LPAT Case Name: Beeton Station Condominiums Corporation
v. New Tecumseth (Town)

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

Appellant: Beeton Meadows Holdings Inc.
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LIST OF OFFICIAL PLAN POLICIES SUBJECT TO THE WITHDRAWAL OF APPEAL BY BEETON STATION CONDOMINIUMS CORPORATION

1. Part 2.0 - Vision, Goals and Objectives (entire part)
 - (i) Sub-paragraphs (a) and (b)
 - (ii) All of Sections 2.1 to 2.9 inclusive
2. Part 3.0 - Growth Management (entire part)
 - (i) All of Sections 3.1 and 3.2

3. Part 5.0 - The Settlement Areas
 - (i) Section 5.1 - Introduction
 - (ii) Section 5.2 - Urban Residential of Part 5.0 with the exception of the Urban Residential Designation for the Community of Beeton as identified on Schedule "B-3" (subject to non-decision of the approval authority)
4. Part 7.0 - Design, Heritage and Parkland
 - (i) Section 7.1 - Design
 - (ii) Section 7.3 - Public Parkland
5. Part 8.0 - Exceptions
 - (i) Section 8(d) - Exception Area 4
 - (ii) Section 8(f) - Exception Area 6
6. Part 9.0 - Infrastructure
 - (i) Section 9.1 - Intent
 - (ii) Section 9.2 - Municipal Water and Sanitary Sewer Services
 - (iii) Section 9.3 - Stormwater Management Facilities
 - (iv) Section 9.4 - Mobility and Active Transportation
7. Part 10.0 - Implementation and Interpretation
 - (i) Section 10.3 - Technical Amendments
 - (ii) Section 10.5 - Complete Applications
 - (iii) Section 10.7 - Block Plans
 - (iv) Section 10.9 - Phasing of Development
 - (v) Section 10.10 - Site Plan Control
 - (vi) Section 10.11 - Zoning By-Laws
8. Schedule "C" - Exceptions
 - (i) That part of Schedule "C" which relates to Exception Area 4