

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: February 19, 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) Friday, the 19th
MEMBER)
) day of February, 2016

S. SUTHERLAND) Friday, the 19th
MEMBER)
) day of February, 2016

THESE MATTERS having come before the Ontario Municipal Board (“Board”) by Written Motion;

AND THE BOARD having issued an Order on February 4, 2016;

THE BOARD ORDERS that the Order issued on February 4, 2016 is rescinded;

AND THE BOARD FURTHER 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, August 31, 2015 and January 25, 2016, 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 Written Motion Record of the County dated December 23, 2015 brought under Rule 36 of the Board’s Rules of Practice and Procedure and dealing with certain policies for Phase 4a Greenlands and Resource Conservation and the supporting Written Response to Motion dated January 14, 2016 of The Ontario Stone, Sand and Gravel Association and Parties J2 to J6, filed, no other responses being filed, that the Official Plan be further modified by substituting and approving the policies set out in Schedule 1 to this Order.

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.

A handwritten signature in black ink, appearing to read "Jeanne Hogg". The signature is fluid and cursive, with a period at the end.

SECRETARY

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Ontario Municipal Board

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Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

SCHEDULE 1

Greenlands and Resource Development – Phase 4a

3.3.17 *Natural heritage* conservation and forestry uses are permitted in all designations of this *Plan*, subject to Section 3.8 and *County* and *local municipal* bylaws.

Stormwater Management

3.3.18 *Local municipalities* are encouraged to establish stormwater management policies relating to *development* associated with new plans of *subdivision* and condominium and other large scale *development* in order to protect, improve or restore the quality and quantity of water resources and related *natural heritage systems*. The policies will consider the requirement for a Stormwater Management (SWM) Report to address the impacts of the development on: stormwater runoff volumes; water quality; erosion and sedimentation; and environmental features, including *fish habitat*.

Subject to Sections 3.4 to 3.9, adjacent to *County* Roads where applicants are proposing new plans of *subdivision* and condominium; the creation of more than five (5) new lots by consent; and other large scale commercial, industrial and institutional *development*, the *County* will require a supporting SWM Report. The SWM Report shall be prepared by a qualified professional engineer registered with the Association of Professional Engineers of Ontario to the satisfaction of the *County* and any other applicable authority. The SWM Report shall be prepared in accordance with the Stormwater Management Planning and Design Manual (Ontario Ministry of Environment, 2003) and the Fish Habitat Protection Guidelines for Developing Areas (Ontario Ministry of Natural Resources, 1994) or their successors.

Stormwater Management Reports are to address the following:

- Control post-*development* run-off rates to the *County* right-of-way to the pre-*development* condition for the 1:2 year through 1:100 years design storm event or Hurricane Hazel storm (1954)/Timmins storm *flooding hazard* limit, whichever is greater;
- Site-specific assessment to determine whether equalization of run-off rates is actually possible and what the significance of changes in run-off rate would actually be on the particular surface water bodies which could be affected;
- maintain post development runoff water quality to meet applicable provincial/federal guidelines and standards for stormwater quality;
- All attempts should be made to maintain existing watershed boundaries and drainage patterns;

- Identify the erosion and sedimentation control measures required to be undertaken during construction to mitigate the potential *negative impacts* of the *development*;
- Describe how the stormwater plan will provide for the protection and maintenance of *natural heritage systems*, including *fish habitat*; and
- How the landscaping plans are recommended as part of the stormwater management plan as vegetation is considered as an important functional component in the design of stormwater management facilities.

3.3.21 Major facilities, such as utility and transportation facilities and corridors, airports, sewage treatment facilities, *waste disposal sites*, industrial installations, and *mineral aggregate operations*, and *sensitive land uses* shall be appropriately designed, buffered, and/or separated from each other in accordance with provincial standards and guidelines to prevent unacceptable adverse effects from odour, noise, vibration, and other contaminants.

Section 3.8 Greenlands

Objectives:

- 3.8.1** To protect and restore the natural character, form, function, and connectivity of the *natural heritage system* of the County of Simcoe, and to sustain the *natural heritage features and areas* and *ecological functions* of the Greenlands and local *natural heritage systems* for future generations.
- 3.8.5** To contribute to the protection, improvement, and restoration of the quality and quantity of surface water and ground water and the function of *sensitive surface water features* and *sensitive ground water features* within the *County*.
- 3.8.6** To ensure that the Greenlands Designation complements and supports the *natural heritage systems* established in *provincial* plans and is linked with the *natural heritage systems* of adjacent jurisdictions, and to require *local municipalities* to identify and protect natural features and *ecological functions* that in turn complement and support the Greenlands.
- 3.8.8** To provide opportunities for natural heritage enjoyment and appreciation and for recreational and tourism uses in keeping with the Greenlands objectives, that foster healthy and liveable communities and enhance the sense of place and quality of life that characterize the *County*.

3.8.17 *Infrastructure* authorized under an environmental assessment process may be permitted within the Greenlands Designation or on *adjacent lands*. *Infrastructure* not subject to the environmental assessment process, may be permitted within the Greenlands Designation or on *adjacent lands* in accordance with Section 3.3.15.

3.8.24 If *natural heritage features and areas* or *ecological functions* within the Greenlands Designation are damaged or destroyed after July 1, 2008 by causes not beyond the control of the landowner, the designation of the affected lands in this *Plan* or the *local municipal* official plan will not be changed as a result. *Development* will only be considered if it is a condition of approval that the damaged or destroyed features and functions be restored to the satisfaction of the *County* or *local municipality*.

3.13.49 Subdivision and Site Plan Agreements

Municipalities shall ensure that site alteration is undertaken in accordance with the following measures which shall also be incorporated into subdivision agreements and site plan agreements:

- a) keep the removal of vegetation, grading and soil compaction to the minimum necessary to carry out ***development*** activity;
- b) removal of vegetation shall not occur more than 30 days prior to grading or construction, unless a different timeframe has been established through environmental studies to the satisfaction of the appropriate approval authority;
- c) put in place structures to control and convey runoff;
- d) minimize sediment that is eroded offsite during construction;
- e) seed exposed soils once construction is complete and seasonal conditions permit; and
- f) ensure erosion and sediment controls are implemented effectively.

Section 4.5 Resource Conservation

Water is a crucial resource to almost every form of land use and economic sector. The resource traverses municipal boundaries and is subject to intensive use affecting its quality and available quantity. Water conservation, or the wise management of it as a resource, is essential; watershed-based planning is needed, including assessment of cumulative effects of water use. The *County* wishes to promote the gathering of information regarding water resources and watershed-based management of the resource.

Landform and soil conservation are also important for environmental, economic and social reasons. Landform features such as moraines must be managed wisely. Energy conservation and alternative energy and renewable energy systems must also be wisely planned and managed for the overall benefit to the *County* and the environment.

4.5.1 Land use planning and *development* within the *County* shall protect, improve or restore the *quality and quantity of water* and related resources and aquatic ecosystems on an integrated *watershed management* basis.

4.5.2 Water resource systems consisting of *ground water features, hydrologic functions, natural heritage features and areas, and surface water features* including shoreline areas which are necessary for the ecological and hydrological integrity of the watersheds within the *County* shall be identified in *local municipal* official plans, and include policies for their protection, improvement or restoration including maintaining linkages and related functions.

Development and *site alteration* shall be restricted in or near *sensitive surface water features* and *sensitive ground water features* such that these features and their related *hydrologic functions* will be protected, improved or restored. This will be demonstrated through a Risk Assessment Study for Ground and Surface Water where applicable.

Local municipal official plans shall provide that mitigative measures and/or alternative development approaches may be required in order to protect, improve or restore *sensitive surface water features, sensitive ground water features, and their hydrologic functions.*

4.5.4 *Development* in the *County* shall occur in a manner that will protect human life and property from water related *hazards* such as flooding and erosion. *Flood plain* management shall occur on a *watershed management* basis giving due consideration to the upstream, downstream, and cumulative effects of *development*.

4.5.5 The *County* will work with *local municipalities*, Conservation Authorities, Source Protection Authorities, Parks Canada- Trent-Severn Waterway, and other *Provincial* agencies in the development of *watershed* and *sub-watershed management* plans. This may include the determination of cumulative flooding risks and impacts and the determination of a river system's capacity to assimilate effluent from point and non-point sources.

4.5.6 Aquifers, headwater areas, and recharge and discharge areas shall be identified and protected in the policies and maps of *local municipal* official plans and/or through the *development* and *subdivision* approval process. *Development* should generally be directed away from areas with a high water table and/or highly permeable soils. In *settlement areas* or other *development* centres where this is not possible, potential environmental impacts shall be mitigated using all reasonable methods.

4.5.9 *Development* shall generally be directed to areas outside of:

- a) *hazardous lands* adjacent to the shorelines of the *Great Lakes – St. Lawrence River System* and *large inland lakes* which are impacted by *flooding hazards, erosion hazards* and/or *dynamic beach hazards*;
- b) *hazardous lands* adjacent to *river, stream and small inland lake systems* which are impacted by *flooding hazards* and/or *erosion hazards*; and
- c) *hazardous sites*.

[4.5.10 NOTE - Deferred]

4.5.11 *Development* shall not be permitted to locate in *hazardous lands* and *hazardous sites* where the use is:

- a) an *institutional use* including hospitals, long-term care homes, retirement homes, pre-schools, school nurseries, day cares and schools;
- b) an *essential emergency service* such as that provided by fire, police and ambulance stations and electrical substations; and
- c) uses associated with the disposal, manufacture, treatment or storage of *hazardous substances*.

4.5.12 *Local municipalities* shall consider the potential impacts of climate change that may increase the risk associated with natural hazards.

[4.5.13 NOTE - Deferred]

4.5.14 Where there is a One Zone Concept in place, uses which may be permitted in the *flood plain* subject to the approval of the regulatory agencies include:

- a) open space for public or private recreation and related structures;
- b) *agricultural uses* and related structures, excluding dwellings;
- c) structural works for flood and erosion-sediment control;
- d) additions to existing structures;
- e) replacement structures on existing lots subject to local official plan policies, and satisfactory engineering studies; and
- f) Aggregate development provided all requirements of the *Aggregate Resources Act* and the relevant conservation authority are met.

Generally, subject to the approval of the appropriate regulatory agencies, agricultural structures in the *flood plain* may be rebuilt where destroyed by fire or other event.

4.5.15 Stormwater management quality and quantity facilities shall be located outside of the *flood plain* except as provided in the *flood fringe* above the 1:100 year storm event level under the establishment of a Two Zone Concept or *Special Policy Area* or as otherwise permitted by the Conservation Authority or other appropriate authority.

4.5.16 Any *development* or *site alteration* permitted in the *flood plain* shall require written approval from the Conservation Authority or other appropriate authority, in consultation with the *local municipality*.

4.5.17 Delineation of the flood prone areas shall, where applicable, be identified on schedules to *local municipal* official plans. In the absence of detailed *flood plain* analysis, a *development* applicant may be required to provide a *flood plain* study as a prerequisite to any *development*, prepared to the satisfaction of the Conservation Authority or other qualified professional, and the *local municipality*. The cost of preparing the study and professional review if required shall be borne by the applicant.

4.5.18 *Development* will be prohibited on slopes and ravines which could be subject to active *erosion hazards* or historic slope failure.

4.5.19 *Minerals* and *petroleum resources* shall be protected for long-term use.

4.5.20 *Mineral mining operations* and *petroleum resource operations* shall be identified and protected from *development* and activities that would preclude or hinder expansions or continued use.

4.5.21 Known *mineral deposits*, known *petroleum resources*, and *significant areas of mineral potential* shall be identified and *development* and activities in these resources or on *adjacent* lands which would preclude or hinder the establishment of new operations or access to the resources shall be identified and only be permitted if: a) resource use would not be feasible; or b) the proposed land use or development serves a greater long-term public interests; and c) issues of public health, public safety and environmental impacts are addressed.

Human-Made Hazards

4.5.22 *Development* on, abutting, or adjacent to contaminated sites, lands affected by *mine hazards*, oil, gas, and *salt hazards*, or former *mineral mining operations*, *mineral aggregate operations*, or *petroleum resource operations* may be permitted only if rehabilitation or other measures to address and mitigate known or suspected hazards are under way or have been completed.

Sites shall be remediated as necessary prior to any activity on the site associated with the proposed use such that there will be no *adverse effects*.

4.5.24 New *development* and *redevelopment* should be sufficiently set back from rivers, streams, and lakes within the *County* in order to develop vegetative corridors along shorelines and watercourses. The *development* setback distance shall be determined on-site in consultation with a *qualified professional* at the applicant's expense. The following factors shall be considered when establishing the setback distance, established through an *EIS* and slope stability report if necessary, with the intent of protecting *significant natural heritage features* and *ecological functions*, providing riparian habitat, and minimizing risk to public safety and property:

- i. soil type;
- ii. vegetation type and cover;
- iii. slope of the land including existing drainage patterns;
- iv. *natural heritage features* and *ecological functions* including *fish habitat*;
- v. the nature of the *development*;
- vi. defined portions of *dynamic beaches*; and

vii. flooding and *erosion hazards*.

4.5.25 Agricultural land users should have regard to the factors in 4.5.24 and farm management plans within their agricultural practice.

4.5.29 In shoreline areas, a Stormwater Management Report shall be prepared in accordance with Section 3.3.18 of this *Plan*, for *developments* identified in 3.3.18, to the satisfaction of the appropriate approval authorities.

4.5.30 Where *individual on-site sewage services* and *individual on-site water services* are provided to existing lots or new *developments*, *local municipalities* shall establish minimum lot sizes sufficient to ensure sustainable *development* and no impact on water quality or water quantity.

4.5.32 *Development* proposed near lakes and water bodies with an established management plan shall be developed in accordance with the management plan. The *County* encourages the preparation of such plans, and will participate in their preparation.

4.5.33 New *development* proposed along the shoreline of Lake Huron/Georgian Bay, Lake Simcoe and other *large inland lakes* may require the preparation of a Coastal Engineering Study. The Coastal Engineering Study, prepared by a coastal engineer, must identify the coastal processes associated with the Lake or Bay. Where *development* is permitted, the Study must demonstrate the proposed mitigation measures to address the shoreline hazard. The Coastal Engineering Study must be prepared to the satisfaction of the municipality and local conservation authority or appropriate agency.

Fish Habitat

4.5.34 *Development* and *site alteration* are not permitted in *fish habitat* except in accordance with *provincial and federal requirements*.

4.5.36 The *County* shall continue to acquire County Forest Lands in accordance with the County Forest Acquisition Principles.

4.5.38 The *County* encourages forestry management practices that sustain the viability of both the woodlot and the harvest of woodland products.

4.5.42 The *County* supports the Niagara Escarpment Plan and the Oak Ridges Moraine Conservation Plan and will assist in ensuring *development* takes place in accordance with those plans and according to Sections 3.10 and 3.11 of this *Plan* respectively.

4.5.43 The *County* encourages *local municipalities* to pass bylaws to restrict the removal and movement of topsoil before appropriate *development* agreements are in place. The removal of topsoil or vegetation, or other disturbances of land, associated with a proposed land use change, should not proceed until approvals have been granted under the *Planning Act*. Where such activities take place to foster a *development* application prior to its consideration and approval, such activities will not be considered a basis for supporting the land use change.

4.5.44 This *Plan* promotes improved air quality through land use *development* patterns that promote compact and mixed use *development*, transit usage where appropriate, alternative transportation and active transportation systems, and forest management and reforestation efforts as a means of fostering maintenance and improvement of air quality. The *County* will work in co-operation with the appropriate agencies to assist in the maintenance and improvement of air quality in the *County*.

Energy Conservation and Renewable Energy

4.5.45 The *County* will promote energy conservation through land use *development* patterns that:

- a) promote compact, mixed use *development*;
- b) promote active transportation and the use of transit;
- c) maximize, where appropriate, the use and production of *alternative energy systems* or *renewable energy systems*, such as solar, wind, biomass or geothermal energy; and
- d) maximize the use of existing natural areas and newly planted vegetation to reduce the urban heat island effect.

4.5.46 *Renewable energy systems* and *alternative energy systems* should be promoted, where feasible, in accordance with *provincial and federal requirements*.

4.5.47 Development of *renewable energy systems* shall be in accordance with the *Green Energy and Green Economy Act*. Renewable energy undertakings are exempted from *Planning Act* approvals as per Schedule K of the *Green Energy and Green Economy Act*.

5.8 Definitions:

COASTAL WETLAND: means any *wetland* that is located on Georgian Bay or any other *wetland* that is on a tributary to Georgian Bay and lies, either wholly or in part, downstream of a line located 2 kilometres upstream of the 1:100 year floodline (plus wave run-up) of Georgian Bay.

ENVIRONMENTAL IMPACT STATEMENT (EIS): means a report or document that identifies and describes *natural heritage features and areas* and *ecological functions* and determines and evaluates the implications of proposed *development* or *infrastructure* and its interactions with the *natural heritage features and areas* and *ecological functions* of an area. An EIS must determine whether the likelihood of *negative impacts* occurring on the *natural heritage features and areas* and *ecological functions* is definite or probable if the development proceeds under a given proposed design. The EIS will determine the need for modifications to proposed plans, buffers, and other mitigation strategies to demonstrate that there will be no *negative impacts* on *natural heritage features and areas* and *ecological functions* of the County or local *natural heritage systems*. In the case of *infrastructure*, the *EIS* will demonstrate only such *negative impacts* as are consistent with Sections 3.8.17 through 3.8.20 of this *Plan*.

ESSENTIAL EMERGENCY SERVICE: means services which would be impaired during an emergency as a result of flooding, the failure of flood-proofing measures and/or protection works, and/or erosion.

HABITAT OF ENDANGERED SPECIES AND THREATENED SPECIES:

means:

- a) with respect to a species listed on the Species at Risk in Ontario List as an endangered or threatened species for which a regulation made under clause 55(1)(a) of the *Endangered Species Act, 2007* is in force, the area prescribed by that regulation as the habitat of the species; or
- b) with respect to any other species listed on the Species at Risk in Ontario List as an endangered or threatened species, an area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding, as approved by the Ontario Ministry of Natural Resources; and

places in the areas described in clause (a) or (b), whichever is applicable, that are used by members of the species as dens, nests, hibernacula or other residences.

INSTITUTIONAL USE: for the purposes of policy 4.5.11, means land uses where there is a threat to the safe evacuation of vulnerable populations such as older persons, persons with disabilities, and those who are sick or young, during an emergency as a result of flooding, failure of floodproofing measures or protection works, or erosion.

NATURAL HERITAGE FEATURES AND AREAS (NATURAL HERITAGE): means features and areas, including *significant wetlands, significant and other coastal wetlands, habitat of endangered species and threatened species, fish habitat, significant woodlands, significant wildlife habitat, significant valleylands, and significant areas of natural and scientific interest*, which are important for their environmental and social values as a legacy of the natural landscapes of an area.

NATURAL HERITAGE SYSTEM: means a system made up of *natural heritage features and areas*, and linkages intended to provide connectivity (at a regional or site level) and support natural processes which are necessary to maintain biological and geological diversity, natural functions, viable populations of indigenous species and ecosystems. These systems can include *natural heritage features and areas*, federal and provincial parks and conservation reserves, other natural heritage features, lands that have been restored or have the potential to be restored to a natural state, areas that support hydrologic functions, and working landscapes that enable ecological functions to continue. The Province has a recommended approach for identifying *natural heritage systems*, but municipal approaches that achieve or exceed the same objective may also be used.

TWO ZONE CONCEPT: means an approach to *flood plain* management where the *flood plain* is differentiated in two parts: the *floodway* and the *flood fringe*.

VALLEYLANDS: means:

- within areas of conservation authority jurisdiction, all lands below/within the stable top of bank, predicted top of stable slope, *flood plain* limit, or predicted meander belt limit, as prescribed in Section 2(b) of each conservation authority's Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses regulation under the *Conservation Authorities Act*;
- in the rest of the *County*, *valleylands* as defined by the *Provincial Policy Statement*.

WATERSHED MANAGEMENT PLAN: refers to a report or to information regarding a watershed or sub-watershed which establishes guidelines for *development* and best land use practices and management to conserve:

- ground and surface water quality and quantity
- *natural heritage* features
- *woodlands*
- *fish habitat*
- recharge, discharge, and headwater areas

WILDLIFE HABITAT: means areas where plants, animals and other organisms live, and find adequate amounts of food, water, shelter and space needed to sustain their populations. Specific wildlife habitats of concern may include areas where species concentrate at a vulnerable point in their annual or life cycle; and areas which are important to migratory or non-migratory species.

WOODLANDS: means treed areas that provide environmental and economic benefits to both the private landowner and the general public, such as erosion prevention, hydrological and nutrient cycling, provision of clean air and the long-term storage of carbon, provision of wildlife habitat, outdoor recreational opportunities, and the sustainable harvest of a wide range of woodland products. *Woodlands* include treed areas, woodlots or forested areas and vary in their level of significance at the local, regional and provincial levels. *Woodlands* may be delineated according to the *Forestry Act* definition or the Province's Ecological Land Classification system definition for "forest".