

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: September 16, 2016

CASE NO(S): PL111181

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

Appellant: 285622 Ontario Ltd. (Midves)
Appellant: Gordon Crawford
Appellant: Estate Of Marie Louise Frankcom
(Trust.S.Frankcom)
Appellant: Daniel Mallory; and others
Subject: Proposed Official Plan Amendment No. OP38
Municipality: Township of Springwater
OMB Case No.: PL111181
OMB File No.: PL111181
OMB Case Name: Crawford v. Springwater (Township)

Board Rule 107 states:

107. Effective Date of Board Decision A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

Heard: July 18 to 21, 2016 in Midhurst, Ontario and August 23 and September 6, 2016 by telephone conference call

APPEARANCES:

Parties

Township of Springwater

Counsel

Barnet Kussner, Jennifer Meader

County of Simcoe	Roger Beaman, Marshall Green
Ministry of Municipal Affairs	Kenneth Hare, Ugo Popadic
Midhurst Ratepayer's Association	Rodney Northey
Midhurst Rose Alliance Inc.	Ira Kagan
Midhurst Development Doran Road Inc., Carson Road Development Inc.	Susan Rosenthal, Kate Fairbrother
Carson Trail Estates Inc.	Daniel Artenosi, Brad Teichman
Mallory Estates	David Bronskill, Marc Kemerer
Estate of Marie Louise Frankcom	James Feehley
Township of Adjala-Tosorontio	Isaac Tang
City of Barrie	Peter Krysiak

DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD

[1] This is a decision issued regarding appeals of Amendment No. 38 to the Township of Springwater Official Plan ("OPA 38"). This decision is being provided to ensure clarity regarding rulings and direction to the parties provided orally during telephone conference calls ("TCC") on August 23 and September 6, 2016 for the hearing on OPA 38, scheduled to commence on September 19, 2016. Detailed reasons on the Board's rulings and direction will be provided in conjunction with the decision on the appeals.

[2] In addition to the appearances noted above Mr. Artenosi and Mr. Teichman attended the motion hearing on behalf of Mr. Snider who represents 285622 Ontario Ltd. (Midves) as well as on behalf of their client, Carson Trail Estates Inc.

[3] On July 18 to 21, 2016, the Board heard a motion brought by the County of Simcoe ("County") regarding the jurisdiction of the Board to alter or replace decisions of

the County under s. 6.3.2.2 and 6.3.2.3 of the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”). After reviewing the submissions and carefully considering the motion the Board determined that the final decision on the motion should be deferred until the hearing on the merits of the appeal filed by the Ministry of Municipal Affairs (the “Ministry”) proceeded. A number of factors entered into the Board’s decision including the importance and complexity of the decision on the motion, the potential value of hearing the Ministry’s appeal in determining the motion, the deadline set in the Growth Plan for making decisions under s. 6.3.2.2 and 6.3.2.3, and the opportunity to use the scheduled September 19th, 2016 hearing dates to adjudicate the appeal.

[4] As a result the Board convened a TCC on August 23, 2016 at which it provided the following oral ruling to the parties:

From a careful and complete review of the motion materials I have concluded the following:

The Board may have jurisdiction over the distribution of additional population under s. 6.3.2.2 and s. 6.3.2.3 of the Growth Plan. It cannot be ruled out.

There are a number of factors that suggest the Board has jurisdiction;

- a) The motion is related to a decision of the County that is under appeal,
- b) The basis of the Ministry appeal would suggest that the Board has jurisdiction,
- c) The settlements approved by the Board that provided for additional population under s. 6.3.2.2 of the Growth Plan would suggest that the Board has jurisdiction,
- d) The adjudication of population distribution under the Growth Plan would suggest that the Board has jurisdiction.

In addition, there are questions about whether By-law No. 6544 conforms to the Official Plan and if decisions under the By-law should be deemed to be decisions under the *Planning Act*. The Board notes that there has been no attempt to quash the By-law.

There is enough in the submissions to suggest that the Board has jurisdiction, but given the complexity of the matter, the timing of the September 19th hearing, and the January 19, 2017 deadline for permitting additional population under s, 6.3.2.5 of the Growth Plan we are parking the final decision on the motion.

Based upon the findings to date and time constraints, the Board is ordering that the Ministry appeal be re-opened and that it be heard on conjunction with the site specific appeals to commence on September 19th. It is understood that this ruling may create difficulty for some parties,

but it is necessary based upon the preliminary conclusions on the motion and the time constraints in this case.

Also, there may be benefit in hearing the evidence on the Ministry appeal for making the final decision on the motion.

The motion decision will be provided with the decision on the appeals. I have been scheduled to adjudicate the hearing on the site specific matters and will seize myself. I will receive any submissions, if necessary about consolidation of appeals at the beginning of the September 19th hearing.

[5] The Board did not provide more detailed reasons for the ruling, but the parties were informed that full reasons would be included in the decision on the motion that will be provided with the decision on the appeals. The Board will address the contention by some parties that there should have been a separate motion to consider moving forward with the Ministry appeal when it provides its full reasons.

[6] The parties were directed to prepare for the hearing on the Ministry appeal and for the remaining scheduled site specific appeals to commence on September 19th, 2016.

[7] Due to some misunderstanding and oversight, counsel for all parties did not participate in the August 23rd TCC.

[8] The Board convened another TCC on September 6, 2016 in order to discuss matters related to the upcoming hearing. Also, from correspondence received by the Board it was apparent that there was some confusion about the content of the above ruling. The Board began the September 6th TCC by reading the ruling again, but after requests from Counsel agreed to provide the ruling in writing which is being done through issuance of this decision.

[9] At the August 23rd TCC the parties raised the matter of whether the hearing starting on September 19th should consider only the OPA 38 provisions related to the applications by the five parties who applied to the County for additional population under s. 6.3.2.2 and 6.3.2.3 of the Growth Plan or whether other properties within OPA 38 that

also may require population allocation should also be considered for additional population. The Board heard submissions from the parties at the September 6th TCC.

[10] From the submissions the Board understands that Mr. Feehley's client has settled and only four parties are still seeking additional population.

[11] The Board heard that none of the owners of other properties within OPA 38 that may require population allocation has approached the County to seek additional population. The Board understands that the appeals of OPA 38 have been through a number of pre-hearing conferences ("PHC"). These other land owners would have received notice for at least the first PHC. The Board heard that none of the other land owners has sought party status in the appeals.

[12] From the submissions, it appears that there has been little interest on the part of the owners of these other properties in securing additional population under s. 6.3.2.2 and s. 6.3.2.3 of the Growth Plan. The Board understands that if the appeal moves forward without consideration of these other properties their proposed land use designations under OPA 38 will not be changed but would remain under appeal by the Ministry.

[13] Based upon the submissions the Board made another oral ruling at the TCC of September 6th that the hearing commencing on September 19th should only consider the OPA 38 provisions related to the properties of the five (now four) parties who applied to the County for additional population under the Growth Plan, with the caveat that if there are other areas in OPA 38 that are necessary for the development and efficient functioning of the proposed uses on these properties that they should also be included.

[14] Again full reasons for the above ruling and direction will be provided when the decision on the appeal is issued.

[15] The Board directed that the parties should prepare for the hearing and that another TCC should be scheduled for the week of September 12th, 2016.

[16] No further notice is required.

[17] The member is seized of the appeals.

[18] The above is the direction and order of the Board.

"C. Conti"

C. CONTI
MEMBER

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

A constituent tribunal of Environment and Land Tribunals Ontario
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