

A Review of Ontario Municipal Board Natural Heritage Decisions (1996-2003)

Prepared for Ontario Nature
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INTRODUCTION

The Ontario Municipal Board

One of the best tools for good, green land-use planning in Ontario is a strong municipal Official Plan. That is where environmental conservation and community organizations often try to focus their energy, to get into the planning process “on the ground floor.” However, many land-use planning decisions, actions or inactions by municipal governments pursuant to the *Planning Act* can and are being appealed to the Ontario Municipal Board (OMB). In public discourse about the OMB over the past several years, there has been considerable dissatisfaction expressed about the OMB process and many of the Board’s decisions.

How Does the OMB Work?

The OMB mandate includes authority to decide appeals concerning municipal zoning, and other constraints on development that protect natural heritage. Changes in the *Planning Act* that took effect in 1996 gave developers the right to by-pass municipalities after ninety days and take their appeals directly to the OMB. This often resulted in appeals ending up at the OMB that could have been avoided if the municipality had had more time to review the application.

See flowchart for an overview of the OMB process.

ONTARIO NATURE’S REVIEW OF NATURAL HERITAGE CASE DECISIONS

What we did

While developers were rushing to the OMB, the staff and resources of the government agencies responsible for protecting water and natural heritage (e.g. Ministry of Natural Resources, Conservation Authorities, Ministry of the Environment and Energy) were drastically reduced. Also, the development boom of the ‘90s increased the value of lands zoned for development, and generated great financial rewards for developers who could secure OMB approval. The OMB gained new prominence, sometimes seen as the defender of nature heritage, but often as the facilitator of development and urban sprawl.

In an effort to better understand how the OMB has or has not worked successfully in cases dealing with natural heritage, whether woodlands, wetlands or wildlife in southern Ontario, we have reviewed a number of its natural heritage decisions. The goal was to identify patterns and opportunities to improve future decisions, and to provide answers to these questions:

- How could decisions under the existing tribunal process, rules and guiding policies be improved?
- How would changes in legislation, policies and Board process reduce the impact on natural heritage of future development decisions that come before the Board?

The purpose of this report is to review OMB decisions that had a significant natural heritage component, and to identify patterns and opportunities to improve future decisions.

How we did it

Appendix I summarizes 71 cases with significant natural heritage issues that were decided by the OMB between May 1996 and July 2003. Since this report focused on OMB decisions, the many cases or parts of cases that were resolved by others through mediation or agreement among the parties were not included.

Organization of the Database

The database is organized to help citizens who are contemplating participation in the OMB hearing process. Examination of relevant decisions can provide insight into the Board process, the kind of tests and questions that must be addressed, and the best road to success. As a minimum, the information contained will guide citizens to decisions that will be useful during the preparation process.

The case summaries are organized in two sections:

- Natural Heritage Appeals -- appeals made in defence of natural heritage
- Development Appeals -- appeals initiated to facilitate or expand development, and have a significant natural heritage issue or impact

Within each section, the appeals are sorted by OMB decision:

- ALL -- allowed
- ALL1 -- allowed with conditions
- DEN -- denied

Within each subsection, the appeals are sorted by natural heritage issue (NA for natural area, WET for wetland, etc). For example, you will find first the Natural Heritage Appeals that were “allowed”, and the issue was NA (natural area protection).

An explanation of the codes used can be viewed at the beginning of Appendix I.

Methodology

To obtain a list of cases for this study, several *Quicklaw* (QL) searches were done. Cases resulting from the different searches were combined and duplicates were eliminated. The cases were then read for relevance and screened to eliminate those without significant natural heritage discussion.

The initial list of 578 cases was determined by using the following search terms:

wood lot, woodland, wetland, endangered species, natural heritage, aggregate, naturalist, environmentalist, ecologist, botanist, ANSI, Federation of Ontario Naturalists, Sierra, Greenpeace, Nature Conservancy, World Wildlife, STORM

Of the 578 cases reviewed, 71 were included for this study.

Not included were:

1. Cases that did not have a significant discussion of natural heritage, for example, when the natural heritage feature, etc. was only mentioned in passing, or was not a major focus or point of contention between the parties. Several cases had search terms come up in attachments to the case (for example, parts of an Official Plan) and may have been included as a reference for the case. For example, search terms may have only appeared within the wording of the Official Plan, not in the “case proper”.
2. Preliminary rulings were excluded. Preliminary rulings can include an outline of, or decision on, the parties, issues, expected time needed for the hearing, etc. In the cases identified, rulings that deal with these matters did not address natural heritage issues.
3. Mediated decisions were excluded. Typically, they only provide a brief statement of what was decided or agreed upon and do not go into any significant detail.
4. “Settlement Decisions” were excluded. The OMB reports settlements between parties. These are not “decisions” of the Board and therefore were not considered useful for this study.

View detailed case summaries in Appendix I.

Results

Quantitative Analysis: The Numbers Crunched

The researcher coded all 71 natural heritage decisions of the OMB to facilitate quantitative analysis. The following comments and charts provide a basic analysis to address common questions. It is important to note that many other analyses are possible using the same data.

NOTE: Please see KEY TO CODES for an explanation of abbreviations in the charts.

Who appeals at the OMB?

Developers, or those with development as an objective, initiated more than two-thirds of appeals that affect natural heritage. Defenders of natural heritage launched the remaining one-third of the appeals. It should be noted that some of the natural heritage appeals were to protect natural heritage for its own sake, but others appeared to be initiated by individuals and groups using “environment” or “nature” as an argument to stave off development.

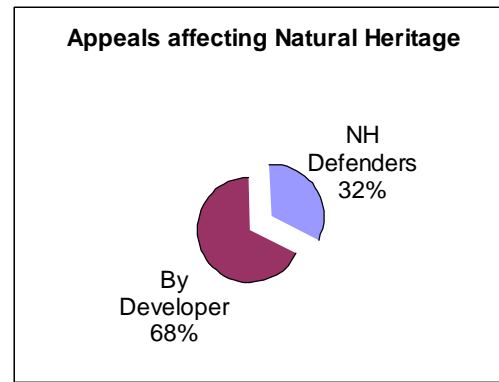


Figure 1

What are the development issues?

Development proposals triggered by far the most appeals (59 percent) followed by severances (25 percent). This pattern was similar for both appeals by natural heritage defenders, and appeals by those interested in development.

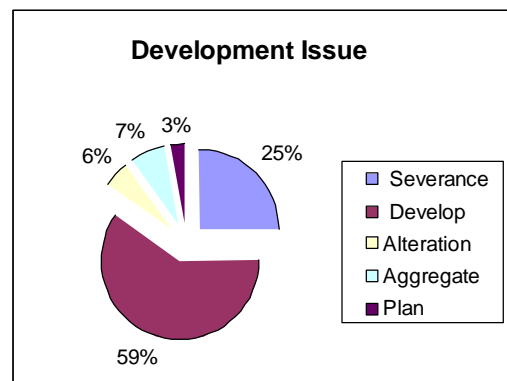


Figure 2

What are the natural heritage issues?

Wetland protection was the leading natural heritage issue. It represented nearly half of all natural heritage appeals, and was the key issue in one quarter of the development appeals.

Refer to the key at the start of Appendix I.

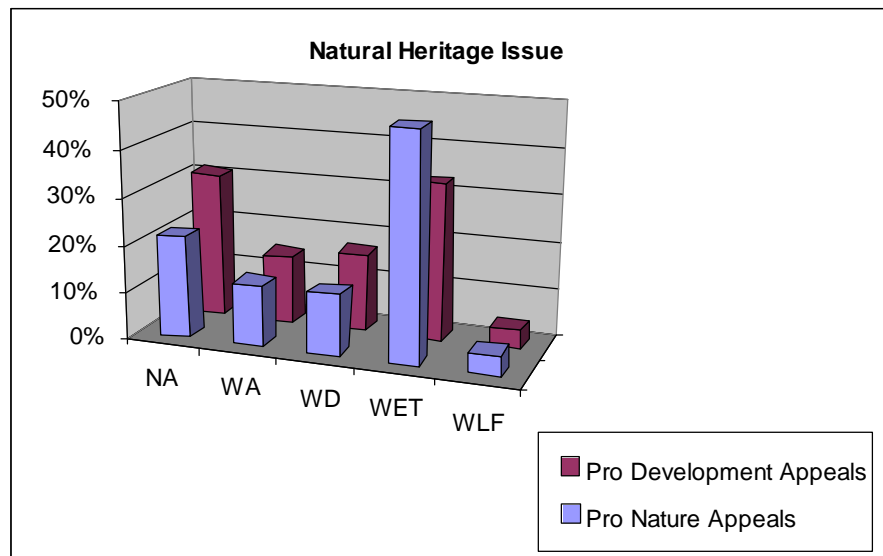


Figure 3

Who succeeds in winning the appeal?

It is not surprising that there is widespread dissatisfaction with OMB decisions in the naturalist community. Defenders of natural heritage had a 30 percent success rate while development interests had a 70 percent success rate in winning the appeal. The result was approximately the same whether the defenders of natural heritage were appealing a damaging decision or opposing development appeals.

While the success percentage was unsatisfactory, there were some very important “wins” for natural heritage as a result of appeals and efforts to oppose development appeals. In addition, there was value in defeat, as development proposals were not left unchallenged.

Nevertheless, a 70 percent failure rate suggests there was something radically wrong. Review of the data and discussion with professionals in the field suggest a number of factors, including:

- OMB weakness in outreach in terms of support or guidance available for potential appellants
- Weakness in the cases presented by natural heritage proponents
- Imbalance in resources between defenders of natural heritage and development interests
- Lack of clarity in the Provincial Policy Statement with respect to natural heritage, and whether or not decisions must be consistent with provincial policy
- Inability of some Official Plans to adequately protect natural heritage
- Variation in understanding and attitude toward natural heritage among OMB hearing officers
- Too many cases proceed to the OMB before proper municipal review. As a result the resources of natural heritage defenders (like conservation authorities) are spread too thin. The large number of appeals arising from the 90-day time limit is a case in point.

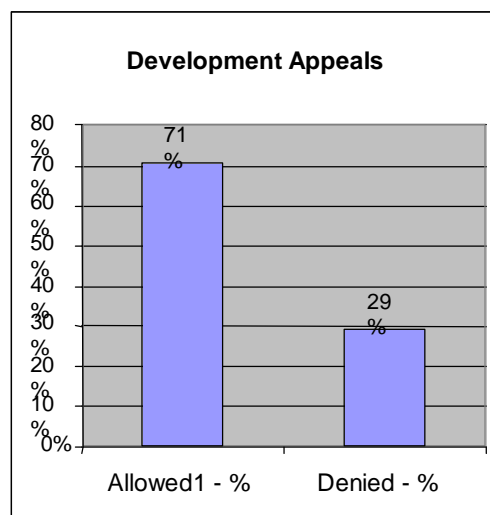


Figure 4

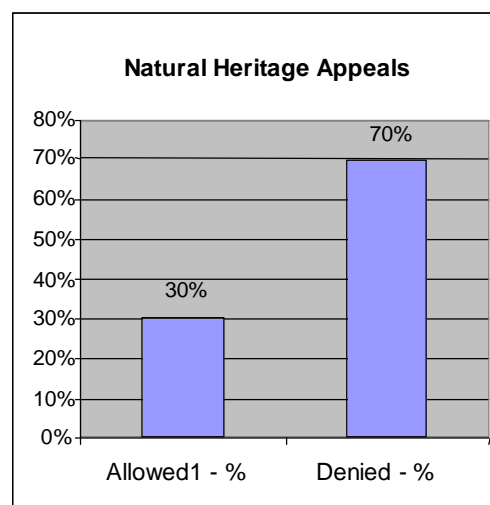


Figure 5

Time Limit Appeals

Since 1996, developers have been able to appeal directly to the OMB after 90 days of failure to make a decision by the municipality. In complex cases or jurisdictions where growth has been rapid, a 90-day response was not always practical. The “time limit” OMB hearing became a common alternative to review by municipal planners and elected officials. 75 percent of the development appeals with significant natural heritage impact were so-called “time limit appeals.” Given the costly nature of OMB hearings, and the fact that the hearing officers are neither elected nor accountable to the affected community, this new provision should be reviewed.

Costs

When hearing costs were awarded against naturalists who objected to a development at “Cedar Point” in Tiny Township (OMB case 1134), a “chill” spread among naturalist groups around Ontario. Added to the common advantage of superior financial resources on the part of the developer, the possibility of a cost award against natural heritage advocates could contribute to a reluctance to pursue the protection of natural heritage at the OMB. This analysis looked at the frequency of a cost award against those defending natural heritage. Refer to the key at the beginning of Appendix I.

It is important to note that the figures shown combine “AWD” where a decision was made to award costs and “RR”, cases where costs could be awarded at a future point in time (but may or may not be awarded in the end). So these figures represent the worst case, and may overstate the impact somewhat.

In summary:

- Costs were not mentioned 79 percent of the time;
- The majority of cost requests were denied;
- In four cases, or 6 percent of the cases, an award was made or reserved against the natural heritage defender.

To reduce the risk of a cost award, both the OMB and others must provide better guides that will assist would-be proponents in preparing and presenting their case.

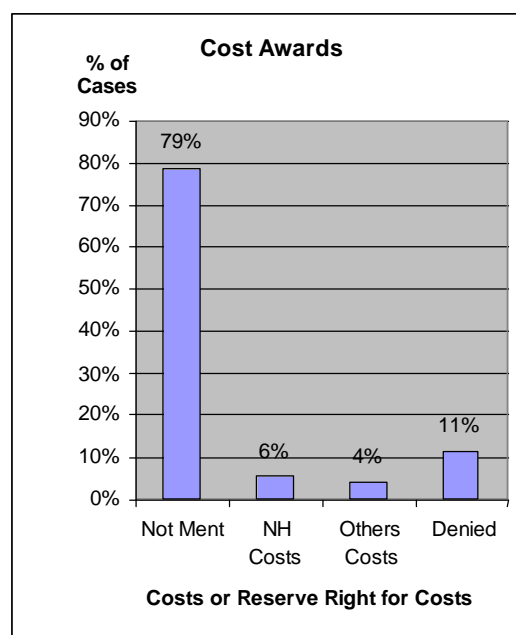


Figure 6

Participation by Agency

There have been concerns that the “one window” approach would greatly reduce participation by the Ministry of the Environment or Natural Resources in OMB hearings. Indeed, MOEE appeared in only 8 percent of cases, but MNR did participate in 35 percent of cases. Clearly the role of agency defender of natural heritage rests with the Conservation Authorities as they appeared in 40 cases or 56 percent of all appeals. However, in 28 percent of the cases, no agency participated or presented evidence to assist the OMB. Refer to the key in Appendix I.

Municipal Participation

Two-thirds of all the cases had involvement from the municipal level (city, town, region, county). Sometimes the appearance was in defence of natural heritage, sometimes neutral (or to address other matters in a “time limit” case), and sometimes negative (as in the case of Marshfield Woods). With this complexity, it is hard to measure the impact of the municipal engagement, and therefore it must be judged on a case-by-case basis. In general, it was advantageous to have the support of the municipality.

For additional information, see:

Appendix II - Quantitative Tables

Appendix III - Agency Participation

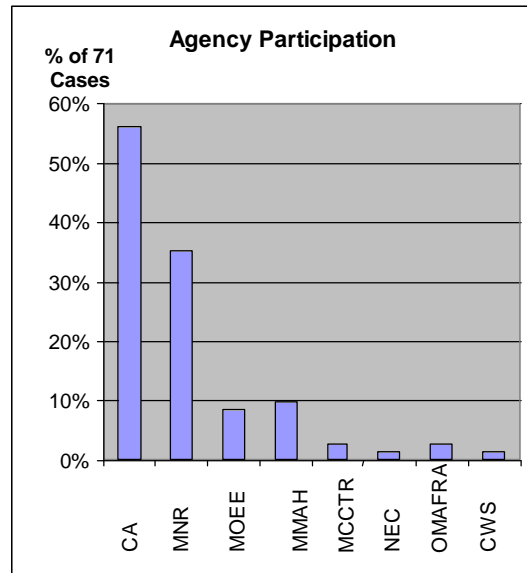


Figure 7

Qualitative Analysis: Success and failure factors in a positive outcome for natural heritage

A review of numerous OMB decisions revealed that certain factors played a significant role in attaining a positive or negative outcome. To achieve the best possible outcome at the OMB the following should be considered when preparing to present at OMB: the evidence presented, policy considerations, OMB process, and opportunities for prior settlement of disputes.

About Evidence

The evidence presented at a hearing must be *strong, relevant* to the dispute at hand, and tightly *focussed*.

Consider and then locate and obtain the best and *strongest* evidence. For the most part, evidence is conveyed to the Board via witnesses. The credentials and experience of the witness or witnesses can be critical. To illustrate this, a witness that has the appropriate credentials and relevant field experience will be better placed to advocate a position and will be more convincing

to the Board than a witness with the appropriate credentials but without the relevant field experience, or vice versa. Gaining the support of government agencies (MNR, Conservation Authority, etc.) and having their employees appear as witnesses can add significant credibility. Other evidence (academic or other studies, etc.) should be beyond reproach. An obscure piece of research, or research conducted by a novice or amateur, will not carry the same weight with the Board as the research of a noted expert in the field. All evidence presented should be detailed, analytical, comprehensive and balanced.

Evidence must be *relevant*. The degree of relevance is significant. For example, an ecologist should not be called if a biologist would be more suitable to speak to the issue, or would be in a superior position to counter an opposing argument or claim. If relevant evidence is not presented it is akin to presenting little or no evidence – the Board makes decisions based on the evidence it has before it. In presenting a case the opposition's evidence must be addressed or refuted. It is not sufficient to only present evidence in support of one's position.

Evidence should be *focused* on the pertinent issue. There are specific policies that the Board must apply. Advancing a general or broad environmental ethic will not be effective or relevant from the Board's standpoint. The most useful evidence to the Board is evidence that is strong, relevant and sharply focused on the issue or issues under consideration.

The following cases are examples that illustrate this. They can be found in the Detailed Case Summaries in Appendix I.

Mississippi Valley Field Naturalists Club v. Mississippi Mills (Town) Committee of Adjustment
Sixteenth Warden Ltd. v. Markham (Town)
Tiny (Township) Official Plan Amendment No. 18 (Re)
561650 Ontario Inc. v. Ottawa
Greenock (Township) Zoning By-law No. 9617 (Re)
Material Handling Problem Solvers Inc. v. Essex (Town)
Erin (Township) v. Erin (Township)
Clarington (Municipality) Official Plan Amendment Special Policies Designations (Re)

About Policy

Policies relevant to the issue at hand are carefully considered. It is important to have *knowledge* of what these policies are, how they are *interpreted*, and that they can be strictly adhered to or simply viewed as a guide.

One of the primary functions of the OMB is the enforcement of policy. Pertinent policy can include Township Official Plans, Regional Official Plans, agency policy, etc. Policy must be comprehended not too narrowly and not too liberally. Once policy is comprehended it will inform the appropriate arguments to be put to the OMB. (Note: the appropriate policy to address is the policy that was in effect at the time the subject of the appeal arose or took place.)

For the most part, the OMB is reluctant to stray from established policy. However, policy can be viewed as a guide and may not be strictly adhered to. If a policy conflicts with the protection of a natural heritage element, the policy may be preferred. If it would be unjust to enforce policy the OMB may look to the intent of the applicable policy in order to find a way to bring about a just

resolution. If the natural heritage area is of very high quality the OMB may give protective policy its most liberal interpretation. If the OMB views a policy as outdated a new course of action may be approved.

The following cases are examples that illustrate this. They can be referred to in the Detailed Case Summaries in Appendix I.

London (City) Official Plan Designate Primary Collector Amendment (Re)
DiCecco v. Amherstburt (Town) Committee of Adjustment
Prince Edward (County) Official Plan Wetlands Amendment (Re)
Scroggie v. Seguin (Township)
Harnell v. Wellington (County) Land Division Committee
King (Township) Zoning By-law No. 74-53 (Re)
St. Catharines (City) Zoning By-law No. 84-419 (Re)
Halton Hills (Town) Official Plan Amendment No. 67
Little v. Grey (County) Planning Approval Committee
Toronto (City) Zoning By-law No. 10217 (Re)
Woudstra v. Halton (Regional Municipality) Land Division Committee

About Board Process

The Board tries to achieve *balance* between private and public interests; however, it cannot act outside its quasi-judicial functions. Procedures of the Board and the responsibilities of those taking part in the OMB process are published by the OMB. It is expected that everyone taking part will consult and adhere to them. *Expectations* of the Board cannot be the same as of courts of law.

If an appeal is being brought, it is not enough to raise issues or to speculate on possible impacts. Cogent, credible evidence in opposition to the application, etc. must be presented.

The OMB works on the premise of balance. It is evident from several decisions that the Board is attempting to achieve a balance between the public good and the private good. It is advisable that the position of the other party be given due consideration and addressed when presenting a case before the Board.

It is the Board's role to protect the public interest under the *Planning Act*. Section 2 of the *Planning Act* and the Provincial Policy Statement refer to provincial interests for which the OMB must have regard. Both should be consulted when preparing a case. Caution and tact should be employed in suggesting to the Board what is in the public interest. Advocates should avoid broad environmental causes that the Board cannot address.

The OMB is not a precedent-setting body, but advocates sometimes provide information, including prior relevant decisions "for the assistance of the Board".

The Board views third party appeals with scepticism. If this route is chosen, enlisting and gaining the support of provincial agencies (MNR, Conservation Authorities, etc.) will add credibility to the position in the eyes of the Board.

Desired outcome should be considered. It must be remembered that the OMB cannot act independently of its general administrative and quasi-judicial functions. The Board does not have the power to grant the types of equitable remedies that have been given to the courts of law by the Judicature Act.

The following cases are examples that illustrate this. They can be found in the Detailed Case Summaries in Appendix I.

Lau v. Richmond Hill (Town) Committee of Adjustment
Mississippi Valley Field Naturalists Club v. Mississippi Mills (Town) Committee of Adjustment
Material Handling Problem Solvers Inc. v. Essex (Town)
Greenock (Township) Zoning By-law No. 96-17 (Re)
Clarington (Municipality) Official Plan Amendment Special Policies Designations (Re)
Tiny (Township) Official Plan Amendment No. 18 (Re)
Aurora (Town) Official Plan Amendment No. 30 (Re)
Aurora (Town) Zoning By-law No. 2213-78 (Re)
London (City) Official Plan Multi-Family Residential Amendment (Re)

About Prior Resolution

The OMB encourages the *settlement* of disputes between parties. Mediation may be requested by the parties or may be suggested by the Board. The OMB may suggest Liaison Committees in the hope of precluding future disputes.

Settlement through negotiation should be considered. Settlements between parties have resulted in the protection of natural heritage elements beyond what the OMB may have decided or required, and even beyond what is required from a planning and environmental standpoint.

The following cases are examples that illustrate this. They can be found in the Detailed Case Summaries in Appendix I.

Ingersoll (Town) Zoning By-law No. 00-3940 (Re)
840180 Ontario Ltd. v. Georgina (Town)
Toronto (City) Official Plan Amendment No. 974 (Re)

ACKNOWLEDGEMENTS

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Ontario Nature wishes to thank Ric Symmes and David Berney, and acknowledge the comments and advice of the following individuals:

Ms. Milena Avramovic, Mr. Brian Buckles, Mr. Jerry Demarco, Dr. Paul Eagles, Ms. Barbara Heidenreich, Ms. Heather Konefat, Ms. Dena Lewis, Mr. Al McNair, Ms. Theresa McClenaghan, Mr. Ron Reid and Dr. Christopher Wilkinson.

APPENDIX I: DETAILED CASE SUMMARIES

KEY TO CODES

AGR	agrologist	GEO	geologist
AGY	agency	GMO	geomorphologist
ALL	allowed	HYD	hydrogeologist
ALL1	allowed in part	INT	interim
AP	appealing party (When AP or OP are not present in front of a code then a position was not taken, mentioned or clear from the case - *Witnesses and Other Input column)	LA	landscape alteration
ARB	arborist	LD	landscape designation
ARC	architect	LIM	limnologist
AWD	awarded	LP	landscape protection
BIO	biologist, fish wildlife technician	LR	leave refused
BOT	botanist	LSA	landscape architect
CA	conservation authority	LSV	land surveyor
CG	community group	LUP	land use planner, land use specialist, planning consultant, environmental planner, manager of planning
CI	commercial interest	M	mentioned
CI	commercial interest	MMAH	Ministry of Municipal Affairs and Housing
COU	county (upper tier)	MNR	Ministry of Natural Resources
CTY	city (lower tier)	MOE/MOEE	Ministry of Environment
CWS	Canadian Wildlife Service	MOT	motion
DEN	denied	MTO	Ministry of Transportation
DEV	developer	MUN	municipality
DP	development proposal	N/A	not available/mentioned
ECE	environmental committee	NA	natural areas, etc.
ECO	ecologist	NAT	naturalist, environmentalist
EDU	institution, school board, teacher	NEC	Niagara Escarpment Commission
EM	environmental manager	NF1	not final till conditions met - by-law, OP, possibility of hearing reopened
ENG	engineer, engineering technician	NHG	natural heritage group
EP	environmental physiologist	NHG	natural heritage group
ES	earth scientist	NM	not mentioned
EW	environmental witness	NVE	noise and vibration expert
EXS	environmental expert, environmental researcher, environmental officer, qualified wetland expert, environmental consultant, author of EIS	OMAFRA	Ministry of Agriculture, Food and Rural Affairs
EXT	extraction (aggregate)	OMBWI	witness called by OMB Board
F	final	OP	Opposition (When AP or OP are not present in front of a code then a position was not taken, mentioned or clear from the case - *Witnesses and Other Input column)
FFA	flood fringe analysis	ORN	ornithologist
FOR	forester	OTH	other (police, by-law officer, local amateur historian, adult lifestyle expert, regional health department, building officer)
GCE	golf course expert, golf course technician		

PAR	partial	UNC	uncertain
PH	phased	WA	water quality
PI	private individual	WD	woodlots, forests, trees
REG	regional, county government (upper tier)	WET	wetlands
RES	residents, landowners, members of the public	WHD	withheld
RR	reserved right to bring motion for costs at later date	WLF	wildlife
SEV	severance	ZOO	zoologist
SOI	soil scientist		
TWN	town (lower tier)		

Detailed Case Summaries: *Natural Heritage Appeals*

CASE NAME/INDEXED AS	<i>Material Handling Problem Solvers Inc. v. Essex (Town)</i> Marshfield Woods, The Hearn Group
CITATION	[2002] O.M.B.D. No. 1133
OMB FILE NUMBER(S)	PL001187 PL010286 R000318 O010089 C010070 C010071 C010097 Z000170 O000223
HEARING OFFICER	Krushelnicki
OTHER HEARING OFFICER	
DATE	30/12/2002
APPEALING	Friends of Marshfield Woods, Essex Region Conservation Authority, MNR
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	CG, CA, MNR
OPPOSITION	Material Handling Problem Solvers Inc. (Hearn) Town of Essex
CODE	DEV TWN
WITNESSES AND OTHER INPUT	AP Qualified Wetland Expert, AP Essex Region Conservation Authority, AP MNR Ecologist, AP Naturalist, AP Naturalist, AP Forester, OP Ornithological, OP Land Use Planner, OP Land Use Planner, OP Golf Course Expert, OP Naturalist
CODE	APEXS APCA APECO APNAT APFOR OPORN OPLUP OPGCE OPNAT
DEVELOPMENT ISSUE(S)	Development Proposal - golf course
CODE	DP
DAYS	N/A
STATUS	F
Natural Heritage ISSUE(S)	Timing of Provincially Significant Wetland identification and the prevention of development upon the wetland. Should a golf course development be permitted on lands that are a Provincially Significant wetland?
CODE	NA
NOTED AGENCY	MMAH
PARTICIPANTS	MNR CA

OVERVIEW/SUMMARY

This decision concerns the Town's approval of a golf course development. Due to a high quality woodlot on the site the lands were identified as an Environmentally Significant Area by the Conservation Authority. Prior to the Town's approval the MNR identified the lands as a Provincially Significant Wetland. The Appellants applied, as third parties, for an Official Plan amendment and by-law to allow for the designation of the "Marshfield Wetland Complex" Provincially Significant Wetland. The Town did not process the application as it was their policy to disregard third party applications/appeals. The appellants appealed the Town's approval of the golf course. The appellants had the support of the Conservation Authority, the MNR and the MMAH. The MNR and Conservation Authority believed that the subject lands to be a relatively rare, high quality wetland and wooded area that would not continue to exist if a golf course is constructed, no matter how environmentally friendly the development was. The Board, if to approve the golf course, would not have given proper regard to the Provincial Policy Statement. The development would not protect the natural heritage feature and would not be good planning.

DECISION

Appeal allowed.

CODE

ALL

Natural Heritage IMPACT

Positive

Natural Heritage SCORE

9

NOTES

Other issues were discussed in this decision. This case has a good discussion of "have regard to" in the Provincial Policy Statement. Approval of a proposal to amend the planning documents is not a right and should not be seen as a foregone conclusion to which one may lay claim, (If purchase lands and want to use those lands for a purpose not permitted on those lands there is no right to have the lands rezoned to allow for your preferred use). Third Party Appeal - application by private citizen with no legal interest in the land to designate or zone the lands on a site specific basis against the owners wishes and without the support of the municipality. Generally, the Board is sceptical of third party appeals, however, in this instance the support of public agencies played a significant role in the way the Board viewed the appeal and the eventual success of the appeal.

REGION

Southwest

COSTS

NM

CASE NAME/INDEXED AS

Lau v. Richmond Hill (Town) Committee of Adjustment, Richmond Hill, Lake Wilcox

CITATION

[2003] O.M.B.D. No. 569

OMB FILE NUMBER(S)

PL030054
C030015

HEARING OFFICER

Emo

OTHER HEARING OFFICER**DATE**

16/05/2003

APPEALING

Sze King Lau, Albert Yong

Natural Heritage Appeal

yes

Time Limit Appeal**CODE**

PI

OPPOSITION

Mahinbanoo Kasravi Taghezadeh

CODE

PI

WITNESSES AND OTHER

AP Land Use Planner, OP Land Surveyor

INPUT**CODE**

APLUP
OPLSV

DEVELOPMENT ISSUE(S)	Severance - creation of residential waterfront lot
CODE	DP
DAYS	N/A
STATUS	F
Natural Heritage ISSUE(S)	Severance of waterfront lot.
CODE	WA
NOTED AGENCY PARTICIPANTS	
OVERVIEW/SUMMARY	Appellant applied for severance of waterfront lot on Lake Wilcox. In approving the severance the Township did not have regard to, and the applicant did not address items under subsection 51(24) of the Planning Act. The application did not comply with OPA 129, the Oak Ridges Moraine Conservation Act and the Provincial Policy Statement. The appeal is allowed.
DECISION	Appeal allowed. Provisional consent is not given.
CODE	ALL
Natural Heritage IMPACT	Neutral
Natural Heritage SCORE	5
NOTES	The Board found that the proposed lot failed to address: i) matters of provincial interest (pertinent policies in ORMCP and PPS), ii) prematurity (no supportive environmental studies), iii) conflicts with the very specific policy regime set out in the Official Plan (OPA 129) for the lands abutting Lake Wilcox and iv) proposes a configuration clearly at odds with the regular shaped lots along this stretch of Plan 240. "The presiding member reminded Mr. Tomlinson (applicant's land surveyor acting as counsel) that the Board has a "web page" and a brochure outlining a Party's responsibilities in such hearings. The Board also noted that its staff are available to answer queries from the public on the details of its procedures." The preceding quote was included as Mr. Tomlinson came to the hearing unprepared to present his client's case to the Board. The appellants requested costs as the applicant was not prepared for the hearing. The Board reminded counsel for the appellants that success in a Board appeal does not automatically result in costs being paid to the winner. The Board's traditional "test" relates to the other Party's conduct in the hearing being "clearly unreasonable" and while it was perhaps foolish and naïve for Ms Taghezadeh and her surveyor to have accepted the comment by (Town) staff without having sought better advice, the Board is of the view that such action does not meet the test of "clearly unreasonable". Accordingly, the Board used its discretion and denied the request for costs.
REGION	South
COSTS	DEN

CASE NAME/INDEXED AS	<i>Blight v. Mississauga (City) Committee of Adjustment</i> Significant Woodlands
CITATION	[1999] O.M.B.D. No. 726
OMB FILE NUMBER(S)	PL990061 C990029
HEARING OFFICER	Wyger
OTHER HEARING OFFICER	
DATE	29/06/1999
APPEALING	Mr. Kenny
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	PI
OPPOSITION	Mr. Hamilton

CODE	PI
WITNESSES AND OTHER INPUT CODE	City Land Use Planner, AP Land Use Planner, AP Arborist, OP Land Use Planner LUP APLUP APARB OPLUP
DEVELOPMENT ISSUE(S) CODE	Severance - creation of residential lot SEV
DAYS	N/A
STATUS	F
Natural Heritage ISSUE(S)	Should a lot be able to be severed for residential development when the proposed lot contains a significant stand of high quality trees that form part of a larger forest area?
CODE	WD
NOTED AGENCY PARTICIPANTS	
OVERVIEW/SUMMARY	The applicant applied for and received provisional consent for the severance of his lot to allow for a new residential lot. The new lot was heavily treed and was part of a nearby forest. The trees were healthy and between the ages of 90-165 years. The opposing party was against the severance and wanted the trees to be retained. There was no applicable tree cutting by-law in effect at the time. The applicant, knowing that tree preservation was a significant issue in the proceeding, proceeded to cut 28 identified trees. Regardless of this action, the Board found that the proposal failed to meet the Natural Heritage provisions of section 2.3.1 of the Provincial Policy Statement and the provisional severance was not given and the appeal was allowed.
DECISION	Appeal Allowed. The land was not suited for subdivision because of the conflict that the residential development would have with the preservation of the remaining natural features on the land and in the surrounding area, in particular the likelihood of further degradation of the woodland; the size and dimensions of the retained parcel will be out of character and the natural resources on the lands will not be sufficiently conserved.
CODE	ALL
Natural Heritage IMPACT	Positive
Natural Heritage SCORE	10
NOTES	The Board found the applicant's actions (cutting of trees) to be in violation of his undertaking to the Committee of Adjustment and an affront to the Planning Process in Ontario. By removing the stumps the applicant eliminated the opportunity of the Board to obtain the best evidence as to the age of the trees. In addition, the applicant circumvented the effectiveness of the tree preservation component of the site plan process. For the proceedings, the Board found that a woodland continued to exist on the site and the woodland qualified as a woodland in the Provincial Policy Statement. The Board preferred the appellant's witnesses as they provided a more comprehensive analysis and did not rely solely on the future site plan process for the purpose of tree preservation. The proposal failed to meet the Natural Heritage provisions of section 2.3.1 of the Provincial Policy Statement. It is the Board's policy to apply the policy prevailing at the time of application, not the time of adjudication. The proposed conveyance did not represent good planning.
REGION	South
COSTS	NM

CASE NAME/INDEXED AS CITATION	<i>Smith v. Verulam (Township)</i> [1998] O.M.B.D. No. 79
OMB FILE NUMBER(S)	PL970527 R970125
HEARING OFFICER	Millar
OTHER HEARING OFFICER	
DATE	29/01/1998
APPEALING	Wendy Smith and other area residents not identified
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	PI, RES
OPPOSITION	Mr. Cousineau County Land Use Planner
CODE	PI LUP
WITNESSES AND OTHER INPUT	OP Land Use Planner
CODE	OPLUP
DEVELOPMENT ISSUE(S)	Development Proposal - zoning amendment - to allow for motor vehicle salvage yard
CODE	DP
DAYS	N/A
STATUS	NF1
Natural Heritage ISSUE(S)	Should the development of a motor vehicle salvage yard be permitted on lands that: are composed of bush and wetlands, abut wetlands to the west and north, abut lands that contain the Martin Creek?
CODE	WET
NOTED AGENCY PARTICIPANTS	CA
OVERVIEW/SUMMARY	Appeal from the Township passing a by-law that would allow the development of a salvage yard on lands designated Rural and Environmental Protection in the County Official Plan. The Township did not have any lands with a zoning that would allow for a salvage yard. The Board found that there was insufficient information to determine the impact of the proposal on the natural environment in the area. The subject site does not abut lands designated as Environmentally Sensitive, Provincially Significant Wetland, or Area of Natural or Scientific Interest. However, the lands abut lands designated Environmental Protection and zoned Open Space. Also, the Ministry of Natural Resources wetland mapping indicated the lands to the east as Wetlands. Site visits were not carried out on these lands at the time of spring run-off. The Board held that until a full and satisfactory environmental impact study is submitted to the Township and the Kawartha Region Conservation Authority, that the application to re-zone the subject lands is premature.
DECISION	Appeal Allowed. The salvage yard is not permitted.
CODE	ALL
Natural Heritage IMPACT	Positive
Natural Heritage SCORE	7
NOTES	
REGION	Central
COSTS	NM

CASE NAME/INDEXED AS CITATION	<i>Uxbridge (Township) Zoning By-law No. 98-055 (Re)</i> [1999] O.M.B.D. No. 14
OMB FILE NUMBER(S)	PL980658 R980129 C980260 C980261
HEARING OFFICER	Boxma
OTHER HEARING OFFICER	Wyger
DATE	13/01/1999
APPEALING	Sandy Ewen, Gloria Ewen, Paul Assinck, Dennis Anderson
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	PI
OPPOSITION	West Hill Redevelopment Company Limited Uxbridge Township
CODE	DEV TWN
WITNESSES AND OTHER INPUT	AP Mr. Ewen, AP Mr. Anderson, AP Mr. Assinck
CODE	APPI
DEVELOPMENT ISSUE(S)	Development Proposal - creation of lots
CODE	DP
DAYS	N/A
STATUS	F
Natural Heritage ISSUE(S)	Subdivision of lands, where part of the lands are within a regional storm floodplain and a Provincially Significant Wetland.
CODE	WET
NOTED AGENCY	CA
PARTICIPANTS	
OVERVIEW/SUMMARY	Appeal against a consent to convey given to West Hill Development Company Limited. One issue raised concerned the desire to have the size of the proposed lots altered to accommodate the Conservation Authority's requirements. With the changes the lots no longer met the required minimum lot size as set out in the Official Plan. Even though the lots did not meet OP requirements the Board found that the development conforms to the intent of the OP.
DECISION	Appeal allowed in part and grants the provisional consents to sever subject to conditions
CODE	ALL
Natural Heritage IMPACT	Positive
Natural Heritage SCORE	7
NOTES	There were other issues dealt with in this case. It would appear that the desires of the CA for the protection of the wetland trumped the minimum lot size requirements of the OP.
REGION	South
COSTS	NM
CASE NAME/INDEXED AS CITATION	<i>Simcoe (County) v. Severn (Township) Committee of Adjustment</i> , PSW [2002] O.M.B.D. No. 855
OMB FILE NUMBER(S)	PL020452 C020164
HEARING OFFICER	Mills

OTHER HEARING OFFICER	
DATE	10/10/2002
APPEALING	County of Simcoe
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	COU
OPPOSITION	Township of Severn
CODE	TWN
WITNESSES AND OTHER INPUT	OP Land Use Planner, AP MNR Biologist, AP Land Use Planner
CODE	APLUP APBIO OPLUP
DEVELOPMENT ISSUE(S)	Severance - creation of new lots near PSW
CODE	SEV
DAYS	N/A
STATUS	F
Natural Heritage ISSUE(S)	Severance of lands in close proximity to a Provincially Significant Wetland.
CODE	WET
NOTED AGENCY	MNR
PARTICIPANTS	
OVERVIEW/SUMMARY	County of Simcoe appealing the Township of Severn's granting of a 2 ac. severance. The Township's Official Plan is to conform to the County's - it did not. The Township believed the lands severed were outside the environmental constraint area and the environmentally sensitive areas of the Township Official Plan. The Township's environmental mapping did not conform to the County's environmental mapping (it is supposed to). MNR mapping shows half of the severed parcel as wetland and the lands are within 120 m. of a Provincially Significant Wetland. An Environmental Impact Study is required. Appeal allowed.
DECISION	Appeal allowed. The consent for severance is not allowed.
CODE	ALL
Natural Heritage IMPACT	Neutral
Natural Heritage SCORE	5
NOTES	County Official Plan overrides the Township Official Plan. The Provincial Policy Statement and the County Official Plan require further environmental study before a consent should be granted. Without an Environmental Impact Study the severed parcel could be making the remaining parcel unbuildable as the remaining parcel is lower than the severed parcel - this is bad planning. An accurate Environmental Impact Study has to be conducted over a 3 season period. The Board found the consent application to be premature as it does not conform to the County's Official Plan or the Provincial Policy Statement.
REGION	Central
COSTS	NM

CASE NAME/INDEXED AS	<i>Ministry of Municipal Affairs and Housing v. Lanark (County) Land Division Committee</i> Loggerhead Shrike
CITATION	[1997] O.M.B.D. No. 1274
OMB FILE NUMBER(S)	PL970073 C970017
HEARING OFFICER	Watty
OTHER HEARING OFFICER	
DATE	03/09/1997
APPEALING	Ministry of Municipal Affairs and Housing for Ministry of Natural Resources

Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	MMAH, MNR
OPPOSITION	Norman Stephens
CODE	PI
WITNESSES AND OTHER INPUT	AP Land Use Planner, AP Dr. James Lafontaine, OP Abutting Land Owner, Shawn Thompson, Naturalist, Naturalist
CODE	APLUP APUNC OPRES NAT
DEVELOPMENT ISSUE(S)	Severance
CODE	SEV
DAYS	N/A
STATUS	F
Natural Heritage ISSUE(S)	Should lands comprising part of Loggerhead Shrike nesting zone be allowed to be severed?
CODE	WLF
NOTED AGENCY	MMAH
PARTICIPANTS	MNR
OVERVIEW/SUMMARY	MMAH, for the MNR, appealed the decision of the Lanark Land Development Committee to allow an application by the applicant to convey lands identified within the 400 metre nesting zone of a Loggerhead Shrike. The MNR does not accept the principle of development within a defined wildlife habitat for a significant endangered species. MNR also had concerns regarding the Holding zone that was attached to the Lanark Land Division Committee's consent to convey as a Holding zone can be removed without circulation or consultation with MNR. The Board would not grant the consent to convey without adequate and implementable management provisions that would be adhered to by the applicant as to do so would interfere with the objectives of habitat protection of the scheduled Loggerhead Shrike. The appeal was allowed. The consent to convey was refused.
DECISION	Appeal allowed. The lands are not to be severed.
CODE	ALL
Natural Heritage IMPACT	Positive
Natural Heritage SCORE	10
NOTES	"It is recognized by the Board that the Provincial Policy Statement provides a reference point on applicable issues of Provincial interest. It does not require conformity. Yet in the present circumstances, because it is complementary to the Endangered Species Act, the purpose and effect of the Provincial Policy Statement assumes a persuasiveness beyond the advisory nature of the statement, standing by itself; "5. No person shall wilfully, b) destroy or interfere with or attempt to destroy or interfere with the habitat of any species of flora or fauna declared in the regulations to be threatened with extinction, R.S.O. 1980, c. 138, s. 5.""
REGION	East
COSTS	NM
CASE NAME/INDEXED AS	<i>Kingston (City) Official Plan Amendment No.13 (Re)</i> Little Cataraquai Creek
CITATION	[2003] O.M.B.D. No. 570

OMB FILE NUMBER(S)	PL020875 O020146 R020203 S020072
HEARING OFFICER	Krushelnicki
OTHER HEARING OFFICER	
DATE	12/06/2003
APPEALING	Vicki Schmolka, Stewart Fyfe, Valley Lands Group
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	PI, CG
OPPOSITION	Llynlea
CODE	DEV
WITNESSES AND OTHER INPUT	AP Land Use Planner, AP Biologist, AP Ecologist, AP Naturalist, AP Area Residents (32), OP Land Use Planner
CODE	APLUP APBIO APECO APNAT APRES OPLUP
DEVELOPMENT ISSUE(S)	Development Proposal - single family residential subdivision
CODE	DP
DAYS	N/A
STATUS	F
Natural Heritage ISSUE(S)	Residential development in an environmentally sensitive area adjacent to Conservation Authority lands.
CODE	NA
NOTED AGENCY	CA
PARTICIPANTS	
OVERVIEW/SUMMARY	The appellants were appealing against a proposed development on lands in close proximity to the Little Cataraquai Creek and associated wetlands. Those appealing, and several local residents, were against the development. They believed the lands should not be developed because of the environmental significance and the environmental sensitivity of the subject lands. Some limited residential development was permitted on the lands. The development proposal was subjected to considerable review. The Board found that "...given all the circumstances of this case, the proposal is a modest and manageable development that has proper regard for the policies applicable to it and that it can be accommodated with acceptable impacts." The appeals were dismissed, the development is to proceed.
DECISION	Appeal Dismissed.
CODE	DEN
Natural Heritage IMPACT	Neutral
Natural Heritage SCORE	4
NOTES	Other issues were discussed in this decision. There was significant public involvement.
REGION	East
COSTS	NM

CASE NAME/INDEXED AS	<i>Norwich (Township) Zoning By-law No. 7-97 (Re)</i>
CITATION	[1998] O.M.B.D. No. 1786
OMB FILE NUMBER(S)	PL970336 R970087

HEARING OFFICER	Hubbard
OTHER HEARING OFFICER	
DATE	23/11/1998
APPEALING	Patricia Parnell, Chris Parnell
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	PI
OPPOSITION	Township of Otterville Mr. Dronfield
CODE	TWN
	PI
WITNESSES AND OTHER INPUT	AP Biologist, OP Township Land Use Planner, OP MNR, OP Grand River Conservation Authority
CODE	APBIO OPLUP OPMNR OPCA
DEVELOPMENT ISSUE(S)	Landscape Alteration
CODE	LA
DAYS	N/A
STATUS	F
Natural Heritage ISSUE(S)	Alteration of landscape to provide for transport truck storage and the effects on the wildlife of the area.
CODE	NA
NOTED AGENCY	MNR
PARTICIPANTS	CA
OVERVIEW/SUMMARY	The appellant was appealing a neighbour's zone change to permit parking of a truck tractor trailer on a rural residential lot. Lane widening and other landscape alteration to accommodate the truck was of concern. The appellant suspected there may be a wetland on the property. There was no wetland found on the property. The applicant's zoning by-law conformed to the Official Plan. Circulation to all agencies met with no objection. The placing of fill was approved. The cutting of trees was approved. The applicant's Environmental Impact Study met the MNR requirements. The Conservation Authority had no objection to the proposal.
DECISION	Appeal dismissed.
CODE	DEN
Natural Heritage IMPACT	Neutral
Natural Heritage SCORE	5
NOTES	Costs were awarded. The Board found that the conduct and course of conduct of the appellant was unreasonable and was for the purpose of delay. The appellant disregarded the advice and opinions given to him by MNR and the Committee of Adjustment and blew the environmental concerns out of proportion and beyond anything he could prove. The Board found that the applicant was merely seeking permission to park his truck at home and the rigours he was put through by these appeals were unreasonable. Costs in the amount of \$9,700. were sought, costs of \$4000. were awarded. The conduct of the appellants in a prior OMB action were also under consideration when costs were awarded.
REGION	Southwest
COSTS	AWD

CASE NAME/INDEXED AS	<i>Little v. Grey (County) Planning Approval Committee</i> Niagara Escarpment Plan
CITATION	[1997] O.M.B.D. No. 496
OMB FILE NUMBER(S)	C960269
HEARING OFFICER	Johnson
OTHER HEARING OFFICER	
DATE	21/04/1997
APPEALING	Joan Little for the Niagara Escarpment Commission
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	AGY
OPPOSITION	Adolf Schmidt
CODE	PI
WITNESSES AND OTHER INPUT	AP Land Use Planner
CODE	APLUP
DEVELOPMENT ISSUE(S)	Severance - recreation of lots after merger
CODE	SEV
DAYS	N/A
STATUS	F
Natural Heritage ISSUE(S)	Should two lots that merged be allowed to be recreated?
CODE	NA
NOTED AGENCY	NEC
PARTICIPANTS	
OVERVIEW/SUMMARY	
DECISION	Appeal denied. Provisional consent is given for the creation of 2 lots
CODE	DEN
Natural Heritage IMPACT	Negative
Natural Heritage SCORE	4
NOTES	"The Commission in this appeal is asking the Board to join it in playing an elaborate game of 'gotcha' in order to accomplish Plan policy." "The Board does not think that, in all the very unique and limiting circumstances that surround the Schmidt application, the giving of this consent to sever the subject property into two parcels identical to those existing in 1989 when merger of title took place is a decision that is other than consistent with any provincial policy statements in effect at the time the application was made and the policies of the Plan. Rather, giving consent will set right an error and provide natural justice to the owner."
REGION	Central
COSTS	NM

CASE NAME/INDEXED AS	<i>Georgina (Town) Official Plan Amendment No. 84 (Re)</i> Jackson Landing, Parkland dedication
CITATION	[2001] O.M.B.D. No. 387
OMB FILE NUMBER(S)	PL000549 O000106 Z000078 S000065 M000027
HEARING OFFICER	Granger
OTHER HEARING OFFICER	
DATE	20/04/2001

APPEALING	840180 Ontario Ltd., Moatfield Management Services Ltd.
Natural Heritage Appeal	yes
Time Limit Appeal	yes
CODE	DEV
OPPOSITION	Town of Georgina
CODE	TWN
WITNESSES AND OTHER INPUT	AP Land Use Planner, AP Town employee, OP Ecologist, OP Land Use Planner
CODE	APLUP APTWN OPECO OPLUP
DEVELOPMENT ISSUE(S)	Severance - Developer conveyance of lands to Township for Parkland
CODE	SEV
DAYS	N/A
STATUS	PAR
Natural Heritage ISSUE(S)	Dedication of parkland in conjunction with residential development. To afford the greatest protection of subject environmentally sensitive lands, should the lands be in public or private ownership?
CODE	NA
NOTED AGENCY PARTICIPANTS	
OVERVIEW/SUMMARY	The applicant wants to dedicate lands for parkland or cash in lieu of parkland per s. 51.1 of the Planning Act. The Town wants cash in lieu of parkland per s. 42 of the Planning Act, (*developer would have to pay more money to the Town if under s. 42). Environmentally sensitive lands are located on the lands proposed to be developed. These lands are not to be part of the development. The Town took the position that the densely wooded, wet nature of the lands are not suitable for parkland. Also, there was no a need for parkland in the area of the development. The appellant took the position that the protection of the lands would be best accomplished if the lands were in the hands of the Town. The Board found that the environmental sensitivity of the lands in question were adequately protected through Official Plan Amendment policies and conditions of draft approval. The lands may be better protected if left alone and not fully accessible to the public. It was believed by the Board that a well informed condominium corporation might be able to afford better protection and stewardship.
DECISION	Appeal denied. (This aspect of the appeal was denied.)
CODE	DEN
Natural Heritage IMPACT	Positive
Natural Heritage SCORE	7
NOTES	Other issues were discussed in this decision. See also <i>840180 Ontario Ltd. v. Georgina (Town)</i> .
REGION	Central
COSTS	NM
CASE NAME/INDEXED AS	<i>Ingersoll (Town) Zoning By-law No. 00-3940 (Re)</i>
CITATION	[2001] O.M.B.D. No. 279
OMB FILE NUMBER(S)	PL001295 R000305
HEARING OFFICER	Granger
OTHER HEARING OFFICER	
DATE	15/03/2001
APPEALING	William Stewart, Shelly Carnie

Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	PI
OPPOSITION	Town of Ingersoll County of Oxford Ingersoll Community Housing Corporation
CODE	TWN REG CI
WITNESSES AND OTHER INPUT	AP Ecologist, OP Ingersoll Community Housing Corporation, OP Town Land Use Planner
CODE	APECO OPCI OPLUP
DEVELOPMENT ISSUE(S)	Development Proposal - condominium adjacent to the Hall River
CODE	DP
DAYS	N/A
STATUS	F
Natural Heritage ISSUE(S)	Development adjacent to a creek.
CODE	WA
NOTED AGENCY PARTICIPANTS	
OVERVIEW/SUMMARY	Appeal against a zoning by-law allowing a 4 story, forty unit condominium on lands adjacent to Halls Creek. The Board found that concerns related to the Halls Creek regulatory flood plain, retention of natural heritage features, storm water quality and quantity controls and appropriate sediment and erosion controls must be addressed to the satisfaction of the Upper Thames River Conservation Authority before any development proceeds.
DECISION	Appeal dismissed.
CODE	DEN
Natural Heritage IMPACT	Neutral
Natural Heritage SCORE	5
NOTES	Other issues were discussed in this decision. Wherever possible, the natural attributes of any site should be protected, integrated and enhanced. On the ecological evidence presented, the Board found that background work for the Official Plan was carried out with respect to identifying significant natural areas throughout the County. The subject lands were not identified as having any provincial or local natural significance and were accordingly designated for medium density residential. the Board encouraged the immediate establishment of a community liaison committee with representation from ICHC, immediate neighbours and the Town. It was suggested this committee work with the developer through the design phase and continue to address issues as part of the ongoing management of the facility.
REGION	Southwest
COSTS	NM
CASE NAME/INDEXED AS CITATION	<i>Grey (County) Official Plan Amendment No. 4 (Re)</i> Golf Course [2001] O.M.B.D. No. 793
OMB FILE NUMBER(S)	PL000524 O000092 R000172 R000192
HEARING OFFICER	Harron
OTHER HEARING OFFICER	

DATE	18/07/2001
APPEALING	Harold Elders
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	PI
OPPOSITION	County of Grey Township of West Grey Town of Hanover 1293426 Ontario Ltd.
CODE	REG REG TWN
WITNESSES AND OTHER INPUT	AP Land use Specialist (OMAFRA), AP Soil Scientist, AP Fish and Wildlife Technician, AP Neighbouring Resident, AP Saugeen Valley Conservation Authority (subpoena), OP Land Use Planner (3), OP Environmental Planner, OP Golf Course Technician, OP Ecologist, OP Agrologist, OP Golf Course Environmental Audit Specialist, OP Engineer, OP Resident
CODE	APLUP APSOI APBIO APRES APCA OPLUP OPGCE OPECO OPAGR OPENG OPRES
DEVELOPMENT ISSUE(S)	Development Proposal - golf course
CODE	DP
DAYS	N/A
STATUS	F
Natural Heritage ISSUE(S)	Is golf course development appropriate for subject lands?
CODE	WA
NOTED AGENCY	CA
PARTICIPANTS	OMAFRA
OVERVIEW/SUMMARY	Appeal from approval of Official Plan Amendment and accompanying by-law to allow a golf course development. Appellant was against the development as he felt a golf course was inappropriate in the agricultural area, and, given the lands were environmentally sensitive, (Saugeen River passed through lands, etc.) the development should not be allowed. The lands were not ANSI or PSW designated. The Conservation Authority was satisfied that their concerns had been addressed. Some of the setbacks in the proposed design were greater than what would have been required if a full EIS had been done. The Board found that the golf course application met the intent of the Grey County Official Plan; that the environmentally sensitive areas would be protected with the mitigation measures required in the site plan. Appeal dismissed.
DECISION	Appeal dismissed. Golf course is an appropriate land use
CODE	DEN
Natural Heritage IMPACT	Neutral
Natural Heritage SCORE	5
NOTES	Other issues were discussed in this decision.
REGION	Central
COSTS	DEN

CASE NAME/INDEXED AS	<i>Tiny (Township) Official Plan Amendment No. 18 (Re)</i> Cedar Point, Blairhampton
CITATION	[1996] O.M.B.D. No. 1134
OMB FILE NUMBER(S)	O950010 O950082 O950007 Z950059
HEARING OFFICER	Morris
OTHER HEARING OFFICER	
DATE	17/07/1996
APPEALING	Local Residents and Landowners
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	RES
OPPOSITION	L.B. Blair Management Limited
CODE	DEV
WITNESSES AND OTHER INPUT	OP Planning Consultant, OP Hydrogeological Engineer, OP Civil Engineer, OP Landscape Architect, OP Architect, OP Environmental Consultant, OP Environmental Manager, Town Land Use Planner, AP Naturalist, AP Ecologist, AP Curator of University of Michigan Herbarium, AP Natural Scientist, AP Ecologist, AP Ecologist, AP Environmental Consultant, AP Biologist, AP Environmental Consultant, AP Planning Consultant, AP Area Residents
CODE	OPLUP OPENG OPLSA OPARC OPEXS OPEM OPLUP APNAT APECO APBOT APES APEXS APBIO APLUP APRES
DEVELOPMENT ISSUE(S)	Development Proposal - subdivision development
CODE	DP
DAYS	N/A
STATUS	INT
Natural Heritage ISSUE(S)	Should development be allowed in a high quality forested environment where a regional ANSI has been identified?
CODE	WD
NOTED AGENCY PARTICIPANTS	

OVERVIEW/SUMMARY

Appeal against the development of 69 upscale single detached homes on 2 acre lots. The site totals 178 hectares. The lands are heavily wooded and contain a bluff area. There is a regional ANSI on the lands, however, it was not included with other environmentally significant areas in the Official Plan. Part of the lands are designated for residential development. Blairhampton (the developer) wanted to have the lowland area re-designated from Environmental to Special Residential. Development was proposed for 94 hectares. The appealing parties wanted the 178 hectares to remain in their natural state. The Board accepted that the development will have some impact on the ecology of the area, however, it was not convinced that it will completely destroy the functional balance of the area as suggested by the appellants. The appeal was not allowed, however, the development was subject to the implementation of mitigative measures - a properly planned development which gives careful consideration to the existing environmental conditions of the site can be developed on the property.

DECISION

Appeal denied. Draft plan of subdivision is approved subject to conditions

CODE

DEN

Natural Heritage IMPACT

Neutral

Natural Heritage SCORE

6

NOTES

There were other issues discussed in this decision. "The Board will state that from the outset counsel for the objectors [appellants] at times tended to ignore the rules of procedure established by the pre-hearing conference and the previously filed witness statements. This was the main cause of the constant objections from counsels for both Blairhampton and the Township." "It was also evident that many of the expert witnesses who appeared for the objectors [appellants] appeared in support of a cause, that cause being the protection of the Environment. What concerned the Board mostly was the fact that many of these witnesses were not aware of the details of the Blairhampton proposal. The Board accepts that Planning is not an exact science and recognizes that reasonable compromise can go a long way in resolving issues. The matter before the Board cried out for such a compromise between the parties, yet such was not forthcoming. The objectors [appellants] appeared to have a polarized position. It would certainly have been helpful to the Board if the experts had met and agreed upon a number of substantive issues." "[T]he Board fully recognizes that it is an individual's right to object to a development application particularly if he or she feels that his or her rights are being infringed upon. The Board also takes the position that those objecting as well as those proposing development have a responsibility to seek ways to resolve their differences. In view of the number of issues brought before the Board, despite the holding of a pre-hearing conference, none of this took place. The result was an unnecessarily long hearing."

REGION

Central

COSTS

RR

CASE NAME/INDEXED AS

Material Handling Problem Solvers Inc. v. Essex (Town) Motion, Marshfield Woods, The Hearn Group

CITATION

[2000] O.M.B.D. No. 94

OMB FILE NUMBER(S)

PL990859
O990152
Z990125

HEARING OFFICER

Beccarea

OTHER HEARING OFFICER**DATE**

08/02/2000

APPEALING

The Friends of Marshfield Woods Coalition

Natural Heritage Appeal

yes

Time Limit Appeal	
CODE	CG
OPPOSITION	Material Handling Problem Solvers Inc. (The Hearn Group)
CODE	DEV
WITNESSES AND OTHER	OP Land Use Planner, AP Friends of Marshfield Woods, AP Forester, Town
INPUT	Chief Building Officer
CODE	OPLUP
	APCG
	APFOR
	OTH
DEVELOPMENT ISSUE(S)	Landscape Alteration - removal of trees in preparation for golf course
CODE	LA
DAYS	N/A
STATUS	MOT
Natural Heritage ISSUE(S)	Preventing the Cutting of trees.
CODE	WD
NOTED AGENCY	CA
PARTICIPANTS	
OVERVIEW/SUMMARY	Motion to prohibit or forbid surface alteration of subject lands (Marshfield Woods) until the Board has ruled on the appellant's application to permit a golf course. The subject property is governed by General Agriculture zoning which does not permit a golf course use. There is no applicable by-law prohibiting or regulating the cutting of trees on the subject lands. In the absence of a zoning by-law passed by either the Town or the County the Board found that to grant the relief requested would be to encroach on the property rights of The Hearn Group. The Board did not have it in their power to prevent The Hearn Group from cutting trees on the subject property. Motion dismissed without costs.
DECISION	Motion denied.
CODE	DEN
Natural Heritage IMPACT	Neutral
Natural Heritage SCORE	2
NOTES	"The Board does not have the power to grant the types of equitable remedies that have been given to the courts of law by the Judicature Act, even if it might agree with the opinion of Ken Colthurst that irreparable harm is being done." The Board cannot act independently of its general administrative and quasi-judicial functions.
REGION	Southwest
COSTS	DEN

CASE NAME/INDEXED AS	<i>Williams v. Harwich</i> Shrewsbury
CITATION	[1998] O.M.B.D. No. 258
OMB FILE NUMBER(S)	PL970662 R970158
HEARING OFFICER	King
OTHER HEARING OFFICER	
DATE	24/02/1998
APPEALING	Rufus Williams
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	PI
OPPOSITION	Terry Butler
CODE	PI

WITNESSES AND OTHER INPUT CODE	Lower Thames Valley Conservation Authority, Planning Consultant OPCA OPLUP
DEVELOPMENT ISSUE(S) CODE	Development Proposal - single family DP
DAYS STATUS	N/A F
Natural Heritage ISSUE(S) CODE	Should a lot adjacent to a wetland be allowed to develop on municipal water and private sewage when the applicable policy of the Township Official Plan prevents it? WET
NOTED AGENCY PARTICIPANTS	CA MNR
OVERVIEW/SUMMARY	Mr. Butler applied for rezoning of a lot adjacent to a wetland to allow for development on municipal water and private sewage. The rezoning by-law was approved. An adjacent landowner appealed the rezoning by-law. Concerns identified included the small size of the lot, and possible negative environmental impacts on the adjacent wetlands. According to the area Official Plan the rezoning did not comply with lot area, elevation, etc. for the approval for private sewage systems. The Lower Thames Valley Conservation Authority originally opposed the by-law, however, this was under the assumption that the old regulations and old septic technologies would be employed. New septic technologies were to be employed and this altered the position of the CA, to where it was no longer in opposition. The Board was confident that the lands could be rezoned and developed with no adverse impact on the adjacent wetlands.
DECISION	Appeal denied. The rezoning and development was allowed based on utilization of new septic technology.
CODE	DEN
Natural Heritage IMPACT	Neutral
Natural Heritage SCORE	5
NOTES	Expert witnesses included: Lower Thames Conservation Authority and a Land Use Planner for the Township. The testimony of both witnesses was not challenged.
REGION	Southwest
COSTS	NM
CASE NAME/INDEXED AS CITATION	<i>Halton Hills (Town) Official Plan Amendment No. 67 (Re)</i> [1997] O.M.B.D. No. 70
OMB FILE NUMBER(S)	O950127 R950358 S950061
HEARING OFFICER	King
OTHER HEARING OFFICER	
DATE	29/01/1997
APPEALING	Michael West, Ross Pezzack, Mark Lyall
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	RES
OPPOSITION	Town of Halton Hills Region of Halton
CODE	TWN REG

WITNESSES AND OTHER INPUT CODE	AP Land Use Planner, Local Residents (3), OP Land Use Planner (3), OP Hydrogeologist, OP Ecologist, OP Fisheries Biologist, OP Engineer (3) APLUP APRES OPLUP OPHYD OPECO OPBIO OPENG
DEVELOPMENT ISSUE(S) CODE	Development Proposal - rural estate residential development DP
DAYS	N/A
STATUS	F
Natural Heritage ISSUE(S) CODE	Protection of environmental attributes of development site. WET
NOTED AGENCY PARTICIPANTS	CA MNR
OVERVIEW/SUMMARY	Appeal from approval of an Official Plan amendment and by-law allowing a Rural Estate Residential development. The subject lands have two significant wetlands identified by the Conservation Authority as part of the Halton Escarpment Wetland Complex, Class 1 Provincially Significant Wetland. Approximately one quarter of the lands are wooded. A unnamed intermittent tributary of the Sixteen Mile Creek traverses the lands. The remainder of the lands were successional. The proposal was for 20 lots between 1.05 - 6.5 hectares. An EIS was conducted and concluded that there would be no negative environmental impacts. The appellant's Land Use Planner recommended more stringent protective measures on parts of the site. The Board agreed with the Town and Region that the EIS strategy for protection of the lands is adequate and should provide protection without "hogtying" the development. The Board approved the amendment and by-law.
DECISION	Appeal denied. The amendment for the Official Plan of Halton Hills is approved. The amendments conform to both the Region's and the Town's Official Plans and represent good planning for the subject property.
CODE	DEN
Natural Heritage IMPACT	Neutral
Natural Heritage SCORE	4
NOTES	Other issues were discussed in this decision. The appellant's land use planner viewed the subdivision proposal as an opportunity to optimize environmental safeguards and protections for an area he considered to be important for its extensive wildlife habitat, its combination of wetlands and forest and its linkages to Environmentally Sensitive Areas. [Author's note: Until environmental protection standards are raised by Town and Regional governments and approval agencies it is unlikely that appeals promoting heightened standards of protection will be successful at the OMB - the bar has to be raised before the Board is likely to require that improved standards be met.] The referrers [appellant's] and their planning consultant played an important role in securing the improvements. Their tenacity resulted in the EIS. Their consultant took part in framing the terms of reference, was a key participant in the design and conduct of the investigation, and made helpful suggestions for mitigation measures. With this subdivision one has a plan of subdivision, a mitigation strategy and many conditions that have to be met in order for development to proceed.
REGION	South
COSTS	NM

CASE NAME/INDEXED AS	<i>Mississippi Valley Field Naturalists Club v. Mississippi Mills (Town) Committee of Adjustment</i> Clayton Lake PSW
CITATION	[2002] O.M.B.D. No. 1026
OMB FILE NUMBER(S)	PL020677 V020334
HEARING OFFICER	O'Brien
OTHER HEARING OFFICER	
DATE	04/12/2002
APPEALING	Mississippi Valley Field Naturalists Club
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	NHG
OPPOSITION	Mr. Bassile (applicant) Town of Mississippi Mills
CODE	PI TWN
WITNESSES AND OTHER INPUT	AP Naturalist Club, AP Biologist, AP Area Resident, OP Land Use Planner, OP Biologist, OP Engineer, OP Consultant in Wetland Evaluations/Assessments
CODE	APNHG APBIO APRES OPLUP OPBIO OPENG OPEXS
DEVELOPMENT ISSUE(S)	Development Proposal - swimming pool within wetland buffer
CODE	DP
DAYS	N/A
STATUS	F
Natural Heritage ISSUE(S)	Construction of pool within Provincially Significant Wetland buffer area.
CODE	WET
NOTED AGENCY PARTICIPANTS	CA
OVERVIEW/SUMMARY	Appeal from approval of variance to allow a swimming pool to be constructed in the buffer of a Provincially Significant Wetland. All of the subject lands (residential) were located within the buffer area. The pool was proposed to be constructed outside of the floodline but within 7 metres from the EP zone. An EIS was done and found there would be no negative effect on the natural heritage features. The Town and the Conservation Authority were satisfied with the EIS. The Board found that development within the 120 metre buffer for a Provincially Significant Wetland is not categorically prohibited. Development is permitted if there is no adverse effect on the environment. The Board viewed the application as minor. There will be no adverse impact or negative effect on the environment. The appeal is denied.
DECISION	Appeal denied.
CODE	DEN
Natural Heritage IMPACT	Negative
Natural Heritage SCORE	2

NOTES

"The Board would be remiss if it did not comment on the case presented by the appellant. While the matter is heard de novo, and the applicant must satisfy the requirements of Section 45(1) of the Act, it is incumbent on the appellant to lead cogent, credible evidence in opposition to the application, it having caused the appeal to be filed. To simply raise issues, speculate on possible impacts, and to then state "we are not satisfied with the responses" is not the role of an appellant in proceedings before the Board. The appellant is not charged with the responsibility to evaluate the evidence or protect the public interest under the Planning Act. That role is the domain of the Board. No matter how well-intentioned the appellant may be, it failed to advance an adequate case to support the appeal, nor did it understand the adjudicative process, the basic rules of evidence and the legislative mandate of the Town and Conservation Authority."

REGION

East

COSTS

RR

CASE NAME/INDEXED AS	<i>Greenock (Township) Zoning By-law No. 96-17 (Re)</i> Greenock Swamp ANSI & PSW
CITATION	[1998] O.M.B.D. No. 1701
OMB FILE NUMBER(S)	PL971174 R970293 M980032
HEARING OFFICER	Emo
OTHER HEARING OFFICER	
DATE	23/11/1998
APPEALING	Dwight Nufield, Barbara Nufield
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	PI
OPPOSITION	Greenock Township
CODE	TWN
WITNESSES AND OTHER	OP Engineering Technician, MNR Aggregate Resources Officer, Sauguen
INPUT	Valley Conservation Authority
CODE	OPENG MNR CA
DEVELOPMENT ISSUE(S)	Extraction - aggregate licence application
CODE	EXT
DAYS	N/A
STATUS	F
Natural Heritage ISSUE(S)	Should a aggregate licence be approved on lands adjacent to an ANSI and PSW?
CODE	WET
NOTED AGENCY	MNR
PARTICIPANTS	CA

OVERVIEW/SUMMARY

Application for a class 'A' licence. The subject lands had a small scale aggregate operation previous to this application. The class 'A' licence would allow extraction of aggregate for local government needs and commercial contractors. The extraction lands abut the Greenock Swamp Life Sciences ANSI. The adjacent lands are also identified as a Provincially Significant Wetland. The appellant was concerned about the possible degradation of the Greenock Swamp. The aggregate lands were the subject of OPA 49 of the Bruce Official Plan which provided an exemption from the 50 metre setback from a water body. The Board found that given the recent Official Plan amendment, where regard was given to the Provincial Wetland Policy, that the environmental effect of the proposed licence was acceptable. The class 'A' licence was to be issued.

DECISION

Appeal denied. Aggregate licence is to be issued.

CODE

DEN

Natural Heritage IMPACT

Negative

Natural Heritage SCORE

3

NOTES

Other issues were discussed in this decision. This pit application is under the new Act, by which in this case the Board is required under section 12(1) to have regard to, among other things, (a) the effect of the operation of the pit or quarry on the environment. The Board: "Mr. Nufield did not present any substantive evidence other than his personal opinions that the proposed pit will have an environmental impact on the Greenock Swamp."

REGION

Central

COSTS

NM

CASE NAME/INDEXED AS

Rogers v. Smith (Township) Aggregate Development, Lakefield Marsh

CITATION

[1998] O.M.B.D. No. 743

OMB FILE NUMBER(S)

PL944477

R940445

M940058

HEARING OFFICER

Eger

OTHER HEARING OFFICER**DATE**

04/06/1998

APPEALING

Lakefield College School, Lakefield Marsh Association

Natural Heritage Appeal

yes

Time Limit Appeal**CODE**

EDU, NHG

OPPOSITION

Doughty Farms Ltd.

Town of Smith

CODE

DEV

TWN

WITNESSES AND OTHER

AP Lakefield College School, AP Lakefield Marsh Association, AP MNR (2), Members of the Public (70), Land Use Planner, Noise and Vibration Specialist, Ecologist, Engineer, Traffic Engineer, OP Hydrogeologist, OP Transportation Engineer, OP Noise and Vibration Specialist

INPUT

CODE	APEDU APNHG APUNC RES LUP NVE ECO ENG ENG OPHYD OPENG OPNVE
DEVELOPMENT ISSUE(S)	Aggregate Extraction
CODE	EXT
DAYS	N/A
STATUS	NF1
Natural Heritage ISSUE(S)	Aggregate extraction in close proximity to Provincially Significant Wetland.
CODE	WET
NOTED AGENCY	MNR
PARTICIPANTS	MOEE CA MCCTR
OVERVIEW/SUMMARY	Appeal from Council's approval of a zoning by-law allowing Doughty Farms Ltd. to carry out an aggregate extraction operation. Doughty Farms Ltd.'s aggregate licence application was also referred to the Board. The portion of the site that contained the Lakefield Marsh, and a distance of 120 metres from the marsh (adjacent lands), were not to be part of the development. Based on a review of all expert opinion evidence the Board found that the proposed pit development will not cause significant adverse impacts or risks to the local ground water supply or to Lakefield Marsh. However, the Board required the well water quality testing programs to be expanded as a condition of a granting of the licence.
DECISION	Appeal denied. Site can be developed for an aggregate pit based on a modified site plan and with firm adherence to amended licence conditions.
CODE	DEN
Natural Heritage IMPACT	Neutral
Natural Heritage SCORE	3
NOTES	"The Board is satisfied that there are adequate controls proposed for the operation of the pit to mitigate physical impacts on the natural environment from the effects of dust, erosion and sedimentation. However, the Lakefield Marsh, being a significant public resource in the Province, should be afforded additional attention. The Board recommends the monitoring of natural conditions on Doughty Farm's lands between the licence boundary and Lake Katchewanooka, as recommended by M. Michalski, be included as a condition of the licence."
REGION	South
COSTS	NM
CASE NAME/INDEXED AS	<i>Huntley v. Mariposa (Township)</i>
CITATION	[1997] O.M.B.D. No. 880
OMB FILE NUMBER(S)	PL958080 M960022 R950376
HEARING OFFICER	Delfino
OTHER HEARING OFFICER	

DATE	09/07/1997
APPEALING	Richard Huntley, Doris McLean, Fred Johnson, R. Anthony, Harold Harper, and others
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	PI, RES
OPPOSITION	Jeff Whyte Farms Ltd.
CODE	CI
WITNESSES AND OTHER INPUT	AP Local Resident Testimony, OP Jeff Whyte Farms Ltd.
CODE	APPI OPCI
DEVELOPMENT ISSUE(S)	Landscape Alteration - access route for aggregate operation
CODE	LA
DAYS	N/A
STATUS	F
Natural Heritage ISSUE(S)	Road development through a Provincially Significant Wetland.
CODE	WET
NOTED AGENCY PARTICIPANTS	
OVERVIEW/SUMMARY	Referral by the MNR of an application by Jeff Whyte Farms Ltd. for a class B Licence for the removal of aggregate. The primary issue was the entrance to the aggregate site as the entrance would determine the haul route. There were two options. Option 1 (endorsed by the applicant) was short but would require passing through a Provincially Significant Wetland. Option 2 (endorsed by the area residents) was considerably longer than Option 1 but would eliminate the need to traverse through the PSW. The Board found Option 1 to be more appropriate. "To the Board, the impacts resulting from a longer haul route to the north, straight through the agricultural lands, is far more damaging from an environmental standpoint than the proposed entrance." The Board dismissed the appeal.
DECISION	Appeal dismissed.
CODE	DEN
Natural Heritage IMPACT	Negative
Natural Heritage SCORE	4
NOTES	
REGION	Central
COSTS	NM

CASE NAME/INDEXED AS CITATION	<i>Aurora (Town) Zoning By-law No. 2213-78 (Re) Wildlife Park</i> [2001] O.M.B.D. No. 752
OMB FILE NUMBER(S)	PL000902 Z000137 S000085 O000160
HEARING OFFICER	Boxma
OTHER HEARING OFFICER	
DATE	06/07/2001
APPEALING	David Tomlinson
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	PI
OPPOSITION	Town of Aurora
CODE	TWN

WITNESSES AND OTHER INPUT CODE	Town of Aurora staff member OPTWN
DEVELOPMENT ISSUE(S) CODE	Landscape Protection - buffer size for part of PSW complex LP
DAYS STATUS	N/A INT
Natural Heritage ISSUE(S) CODE	Extent of buffer necessary to protect the functions of the Provincially Significant Wetland WET
NOTED AGENCY PARTICIPANTS OVERVIEW/SUMMARY	Appeal from the Regional Municipality of York's approval of Proposed Amendment No. 30 of the Official Plan of Aurora. Mr. Tomlinson established a wildlife park and was successful in getting the Town to designate it in Official Plan Amendment 30. Part of the Park includes a Provincially Significant Wetland (East Aurora Wetland Complex). Mr. Tomlinson believed that the appropriate buffer was 120 metres while the Town believed that something less was sufficient. The Board found that the National Heritage Reference Manuel established 120 metres as the area that must be looked at, however, this does not mean that 120 metres is the setback distance. Appeal dismissed.
DECISION CODE	Appeal dismissed. DEN
Natural Heritage IMPACT	Neutral
Natural Heritage SCORE	6
NOTES	"Adjacent lands" are those within 120 metres of a significant wetland, or in case of wetland complex, within 120 metres of individual wetlands. Adjacent lands are not synonymous with buffer areas, nor are they necessarily no-development areas. Provincial Policy Statement section 2.3.2 - development and site alteration may be permitted on adjacent lands to (a) and (b) if it has been demonstrated that there will be no negative impacts on the natural features or on the ecological functions for which the area is identified. To adopt the appellant's position would result in "expropriation without compensation." In the real world, there is the necessity to achieve a reasonable "balance" between the public and private good and this the Board found, was achieved in the buffer that had been determined by the Town. No commenting agency disagreed with the buffer proposed by the Town. There was no relevant site specific wetland or species oriented opinion supporting an enhanced buffer.
REGION	South
COSTS	NM

CASE NAME/INDEXED AS CITATION	<i>Baxter v. Wolfe Island (Township) Committee of Adjustment</i> [1996] O.M.B.D. No. 911
OMB FILE NUMBER(S)	C950381 C950382
HEARING OFFICER	Cooper
OTHER HEARING OFFICER	
DATE	28/06/1996
APPEALING	Don Baxter
Natural Heritage Appeal	yes
Time Limit Appeal	
CODE	PI

OPPOSITION	John Simeone
CODE	PI
WITNESSES AND OTHER INPUT	None
CODE	
DEVELOPMENT ISSUE(S)	Severance - creation of residential waterfront lots
CODE	SEV
DAYS	N/A
STATUS	F
Natural Heritage ISSUE(S)	Should 2 new waterfront lots be allowed to be created in close proximity to a Provincially Significant Wetland?
CODE	WET
NOTED AGENCY PARTICIPANTS	
OVERVIEW/SUMMARY	The applicant applied for and received provisional consent for the severance of two waterfront lots. The lands severed were adjacent to a Provincially Significant Wetland. The appellant was concerned that the severances and development of the lands may have serious environmental consequences. The Board found that the applicant had satisfactorily complied with the process required in the Policy Statement and demonstrated that the wetlands will not be adversely affected by the development. The Board also found that the applicant had adhered to the relevant Official Plan policies in regard to the environment. The appellant's appeal was dismissed.
DECISION	Appeal Dismissed. The Board was satisfied adequate steps were taken to prevent jeopardizing the environmental integrity of the nearby wetland.
CODE	DEN
Natural Heritage IMPACT	Neutral
Natural Heritage SCORE	5
NOTES	The applicant's Environmental Impact Study was approved by the MNR. The appellant had no evidence beyond general environmental concerns. The Board found that there were not sufficient grounds to deny the consents on environmental grounds.
REGION	East
COSTS	NM

Detailed Case Summaries: *Development Appeals*

CASE NAME/INDEXED AS	863935 Ontario Inc. v. Durham (Regional Municipality) Uxbridge, West Duffins Creek
CITATION	[2000] O.M.B.D. No. 674
OMB FILE NUMBER(S)	PL956309 Z980156 O980233 S980095 S990064
HEARING OFFICER	Eger
OTHER HEARING OFFICER	
DATE	29/06/2000
APPEALING	863935 Ontario Inc. (Homefounders Development), P. Geiger
NH Appeal	
Time Limit Appeal	yes
CODE	DEV, PI
OPPOSITION	Regional Municipality of Durham Township of Uxbridge Toronto Region Conservation Authority Vicdom Sand and Gravel (Ontario) Ltd.
CODE	REG TWN CA CI
WITNESSES AND OTHER INPUT	OP MMAH, AP Mr. Faludi, AP Dr. Clayton, OP Mr. Watson, OP Toronto Region Conservation Authority, Geologists (3), AP Noise & Vibration Expert, OP Residents (4)
CODE	OPMMAH APPI OPCA GEO APNVE OPRES
DEVELOPMENT ISSUE(S)	Development Proposal- residential single family detached on lands with environmentally sensitive features.
CODE	DP
DAYS	N/A
STATUS	PH
NH ISSUE(S)	Proximity of site to existing and potential aggregate operations and environmental sensitivity of site were central issues in deciding whether or not the country residential development on private services should be allowed. The site included six wetland areas, two woodlots, a valley stream corridor and a secondary valley.
CODE	NA
NOTED AGENCY PARTICIPANTS	MMAH CA

OVERVIEW/SUMMARY

Appeal from Council's refusal or neglect to enact a proposed amendment to rezone lands from Rural and Environmental Protection to Estate Residential Exception, Environmental Protection, Environmental Protection Exception, Rural Exception to facilitate approval of proposed plan of subdivision. The lands were in close proximity to aggregate operations. The Board found that there was no significant aggregate on the lands in question. Given the environmental sensitivity of the lands (in 1999 MNR identified the wetland areas as part of the Glasgow Wetland Complex (Provincially Significant)) and the applicable policy relevant to the lands, in conjunction with the constraints on development required by the Board, the Board found that "no significant adverse impact" would result from the proposed development.

**DECISION
CODE
NH IMPACT
NH SCORE
NOTES**

The Board allowed the proposal to proceed to Phase II.

ALL

Positive

8

Given the environmental planning policies concerned, the test for environmentally significant lands is "no significant adverse impact on the functionality of the natural areas, on a individual or cumulative basis and not no impact." The Board stated that a new lot should not be allowed to be created entirely within the wetland/buffer area as adverse impacts would be unavoidable. Based on the evidence of the environmental witnesses Woodlot B should not be decreased in order to provide for three lots as this could adversely impact Woodlot B's habitat role and to do otherwise would be contrary to the established Regional policy to provide "...paramount consideration to ecologically significant areas." "Connectivity of environmental areas is seen as important in protecting environmentally significant areas and in maintaining their optimum functions as wildlife habitat. With the identification and protection of the wetlands, woodlots and required buffers as outlined in this decision - a good framework for the protection of ecological functions is in place. However, further consideration is required through detailed design in lot layout, grading, road and culvert design and storm water management to reinforce this framework."

REGION

South

COSTS

NM

**CASE NAME/INDEXED AS
CITATION
OMB FILE NUMBER(S)**

Erin (Township) v. Erin (Township) Brisbane Swamp (PSW)

[1997] O.M.B.D. No. 1582

PL956819

O930249

Z960032

S930111

C960063

HEARING OFFICER

Yao

OTHER HEARING OFFICER**DATE**

24/11/1997

APPEALING

Gulia Partnership (Ugo Gulia, G. Campbell, J. Leenders)

NH Appeal**Time Limit Appeal**

yes

CODE

DEV

OPPOSITION

Mary Shields (Save Erin's Environment)

Lou Maieron

CODE

NHG

PI

**WITNESSES AND OTHER
INPUT**

Save Erin's Environment, MNR

CODE	NHG MNR
DEVELOPMENT ISSUE(S)	Development Proposal - creation of single family detached subdivision
CODE	DP
DAYS	35
STATUS	F
NH ISSUE(S)	Whether the proposed subdivision development meets the Wetlands Policy Statement and is good land use planning.
CODE	NA
NOTED AGENCY	MMAH
PARTICIPANTS	OMAFRA MNR MOEE CA
OVERVIEW/SUMMARY	Appeal by the Gulio Partnership of Council's refusal to allow a 49 lot plan of subdivision. The subject lands were farmland and adjacent to a forested area containing the Brisbane Swamp (Class 1 Provincially Significant Wetland). The developer agreed to convey adjacent woodlot to provide increased protection for Silver Creek Aquaculture Inc. Studies concerning water quality showed that water quality would improve when the lands were developed from agricultural use to residential use. The developer agreed to undertake water quality monitoring of the development and provide remedial measures if negative impacts were found. The Board found that there would be fewer impacts on the wetland (in comparison to the present agricultural use) and subsequently decided that the subdivision development should be approved.
DECISION	Appeal allowed.
CODE	ALL
NH IMPACT	Positive
NH SCORE	7
NOTES	There were other issues discussed in this decision. The Board found that certain lots in close proximity to the wetland should have aerobic filters installed at the time of construction of the sewage system. The filters will reduce the amount of nitrate released by a conventional private sewage system by 50%. The Board member stated: "I must confess I admire Ms. Shields. As a litigant, she was fair, objective, and very well prepared. As a public watchdog, she acted on principle. There are very few Ontarians who would devote six weeks of their lives to a complex hearing, retain experts out of their own pockets and summons the relevant government staff -- all in the name of ensuring that the process is thorough and complete. We all rely on people like this whose constant vigilance adds credibility to what can sometimes be a highly subjective process.
REGION	South
COSTS	NM

CASE NAME/INDEXED AS	<i>Flamborough (Town) Official Plan Amendment No. 71 (Re)</i> Flamborough Centre Swamp
CITATION	[1999] O.M.B.D. No. 1259
OMB FILE NUMBER(S)	PL990052 O990013 Z990011
HEARING OFFICER	Rogers
OTHER HEARING OFFICER	
DATE	29/10/1999
APPEALING	Environs Landscaping Contracting Ltd.

NH Appeal	
Time Limit Appeal	yes
CODE	DEV
OPPOSITION	Town of Flamborough Area Residents
CODE	TWN RES
WITNESSES AND OTHER INPUT	AP Golf Course Expert, AP Land Use Planner, AP Land Use Planner, AP Town of Flamborough Land Use Planner, AP Hydrogeologist, AP Hydrogeologist, AP Ecologist, AP Traffic Engineer, AP Storm Water Resources Engineer, AP Agrologist, OP Local Residents (4), OP Agrologist, OP Land Use Planner, OP Police Officer (traffic issues)
CODE	APGCE APLUP APHYD APECO APENG APAGR OPRES OPLUP OPAGR OPOTH
DEVELOPMENT ISSUE(S)	Development Proposal - golf course
CODE	DP
DAYS	N/A
STATUS	F
NH ISSUE(S)	Golf course development on lands in close proximity to woodlot designated Environmentally Significant Area and a Provincially Significant Wetland.
CODE	NA
NOTED AGENCY PARTICIPANTS	
OVERVIEW/SUMMARY	Appeal from refusal of development application for golf course development. The subject lands were adjacent to a woodlot designated as an Environmentally Significant Area and a Provincially Significant Wetland. The appellant's proposal had the ESA and the PSW remaining substantially untouched. The Board agreed with the evidence of the appellant that there would be no negative impact on the ESA or PSW.
DECISION	Appeal allowed
CODE	ALL
NH IMPACT	Neutral
NH SCORE	3
NOTES	There were other issues discussed in this decision. The award of costs against the Town were in relation to the pursuit of the issue of need for the golf course development without previous disclosure. In relation to the issue of fertilizers and their impact on the ESA and PSW the appellant claimed that any migration to the wetland would have the effect of enhancing plant growth. [Author note: I believe this was said by the appellant as a factor in their favour and was understood/accepted as such by the Board.] The Region's Environmentally Significant Areas Impact Evaluation Group received the applicant's ESI and indicated that no adverse impacts were anticipated.
REGION	South
COSTS	AWD

CASE NAME/INDEXED AS	<i>Heritage Cambridge v. Waterloo (Regional Municipality) Golf Course</i> Development, Grand River, Provincially Significant Wetland, Endangered Species
CITATION	[2003] O.M.B.D. No. 324
OMB FILE NUMBER(S)	PL011160 O010196 O020004 Z020003
HEARING OFFICER	Daly
OTHER HEARING OFFICER	Katary
DATE	09/04/2003
APPEALING	Heritage Cambridge, Southwestern Ontario Chapter of Ontario Golf Course Owners' Association, Les Kadar, City of Kitchener
NH Appeal	
Time Limit Appeal	yes
CODE	CG, CI, PI, CTY
OPPOSITION	City of Cambridge
CODE	CTY
WITNESSES AND OTHER INPUT	AP Environmental Witnesses, AP Ornithologist, AP Area Residents, OP Area Residents, OP Environmental Witnesses, OP City of Cambridge, MNR, Grand River Conservation Authority
CODE	APEW APORN APRES OPRES OPEW OPCTY MNR CA
DEVELOPMENT ISSUE(S)	Development Proposal - golf course
CODE	DP
DAYS	N/A
STATUS	WHD
NH ISSUE(S)	Protection of environmental attributes of development site. Provincially Significant Wetland protection, Protection of endangered species, Protection of Flora and Fauna habitat.
CODE	NA
NOTED AGENCY	MNR
PARTICIPANTS	CA
OVERVIEW/SUMMARY	Appeal concerned a proposed golf course development by the City of Kitchener on lands within the City of Cambridge. The lands are approximately 40 hectares and abut Highway 401, the Grand River and residential development. A Provincially Significant Wetland, a woodlot, a floodplain, important corridors and linkages and uncommon, rare and endangered species (Bald Eagle) in addition to regionally significant flora were noted on the site. The Board was satisfied that: there were sufficient design options to respond to the limitations arising from the natural features on the site, the Provincially Significant Wetland could be protected, corridors for flora and fauna movement would not be degraded, and the Bald Eagle will be protected by closure of certain areas of the site during the Bald Eagle's wintering period. The Board found that the environmental evidence supported the Official Plan and zoning changes proposed by the City of Kitchener. In this instance the Board found that Conservation Easements were the appropriate tool for environmental protection.

DECISION	Appeal allowed. The Board found that the environmental evidence presented supports the Official Plan and zoning changes proposed by the City of Kitchener.
CODE	ALL
NH IMPACT	Neutral
NH SCORE	2
NOTES	There were other issues addressed in this decision. All witnesses were not explicitly mentioned in the decision.
REGION	South
COSTS	NM

CASE NAME/INDEXED AS	<i>Springwater (Township) Official Plan Amendment No. 12 (Re)</i> Simcoe County, Snow Valley
CITATION	[2002] O.M.B.D. No. 365
OMB FILE NUMBER(S)	PL000875 O000183 Z010113 S010045
HEARING OFFICER	Daly
OTHER HEARING OFFICER	
DATE	07/05/2002
APPEALING	Snow Valley Planning Corporation, Gordon Johns, Jean Johns, Jean Miller, Kenneth Cook, 453211 Ontario Ltd., 717350 Ontario Ltd., 703752 Ontario Ltd.
NH Appeal	
Time Limit Appeal	yes
CODE	DEV
OPPOSITION	County of Simcoe Nottawasaga Valley Conservation Authority
CODE	REG CA
WITNESSES AND OTHER INPUT	Land Use Planners (5), Ecologists (2), Farmers (2), Agrologists (2), Engineers (3), Hydrogeologist, Local Business Operator
CODE	LUP ECO RES AGR ENG HYD CI
DEVELOPMENT ISSUE(S)	Development Proposal - large scale urban residential
CODE	DP
DAYS	N/A
STATUS	NF1
NH ISSUE(S)	Mitigation of effects of large scale residential development on the natural environment
CODE	NA
NOTED AGENCY PARTICIPANTS	CA

OVERVIEW/SUMMARY Appeal from neglect or refusal to enact an Official Plan Amendment, etc. concerning Secondary Plan and related development. The Secondary Plan Area is 1700 hectares and development is proposed for 484 residential lots. The primary issue of the hearing was the development areas proposed for the upland areas of the plan and the potential impacts on the natural environment and agriculture. In the lowlands area, proximity of development to the Minesing Swamp was an issue. The Board found that the Secondary Plan, with some modifications, should be approved.

DECISION Appeal allowed with conditions.
CODE ALL
NH IMPACT Neutral
NH SCORE 5
NOTES There were other issues discussed in this decision.
REGION Central
COSTS NM

CASE NAME/INDEXED AS *Toronto (City) Official Plan Amendment No. 974 (Re)*
CITATION [1999] O.M.B.D. No. 143
OMB FILE NUMBER(S) PL970758
 PL980541
 O970216
 O970140
 O980104
 O980129
 Z980088

HEARING OFFICER Delfino
OTHER HEARING OFFICER Lee
DATE 23/01/1999
APPEALING Morningside Heights Landowners' Group
NH Appeal
Time Limit Appeal yes
CODE DEV
OPPOSITION City of Toronto
 Save the Rouge Valley Systems Inc.
CODE CTY
 NHG

WITNESSES AND OTHER Toronto and Region Conservation Authority, Mr. Kitchen, Mr. Ashfield, Mr. Steedman, Mr. Parish, Mr. Sorenson, Dr. Price, Mr. Robb, Ms. Fulford, Mr. Raponi, Mr. Kaposi, Acoustic Expert, Planner from the Province
INPUT
CODE CA
 UNC
 NVE
 LUP

DEVELOPMENT ISSUE(S) Development Proposal - residential, office and commercial development
CODE DP
DAYS N/A
STATUS NF1
NH ISSUE(S) Development within close proximity of: the bank of the Rouge River Valley, the Morningside Tributary, the Neilson Tributary and the Pitchfork Tributary.
CODE NA
NOTED AGENCY CA
PARTICIPANTS MMAH
 MTO

OVERVIEW/SUMMARY

The proposed development site is 700 acres in the northeast of the City of Toronto (former City of Scarborough). The developer is seeking the framework to allow a new community with 2,500 housing units and some office and commercial units. Issues included the protection of the Rouge River Valley and various tributaries that traverse the subject lands. Generous concessions were made by the developer concerning the protection of environmentally sensitive lands, (buffer sizes, etc.). Mediation and negotiations were took place before and during the course of the hearing. The Board stated: "settlements came about as a result of a number of initiatives and arising from different circumstances. What is clear is that this hearing vividly illustrates how an adjudicative process can work well in combination with a parallel track of intense mediation and negotiations, provided that the right human factors are present. The last mentioned is an important ingredient in such a process. These settlements would have been impossible without the tireless efforts of the counsel and in no small degree, the farsightedness of their clients. In this instance, counsel for the Morningside Heights Landowners' Group must be singled out by this panel for credit. They represented and served their clients with undoubted skills and competence. They also served the adjudicative process befitting the role of officers of the court. The hearing would have been inordinately lengthy, costly and unwieldy if they were to maintain an unyielding posture on all issues, an attitude which they had wisely and studiously eschewed." The appeal by Morningside was allowed.

**DECISION
CODE
NH IMPACT
NH SCORE
NOTES**

Appeal allowed. Board will not issue order till plans are revised.

ALL

Positive

7

There were other issues discussed in this decision. Witnesses were not identified by occupation/specialty or by which side they supported. "The City specifically requested the Board to ensure that a consistent 30 metre buffer distance from the top of the bank of the Rouge Valley be maintained at the easterly portion of the site. The Board is mindful from the evidence of Mr. Sorensen and Dr. Kitchen that such a requirement is not called for from a strictly planning and environmental standpoint. The Board is aware that the owners of the Morningside Heights Landowners' Group and the Cedar Brae Golf Course have acceded to such a generous requirement. However, no other owner that may be affected has come forward to oppose, challenge the measure or to put forward any evidence, albeit notice had been served. In the interest of consistency and having weighed the public interests that may be affected, this panel finds such a buffer should be incorporated in the proposed Plan." The Board agrees with the Morningside Heights Landowners' Group with respect to the lack of reasons for the retention and maintenance of the lower arm of the Pitchfork Tributary and the south woodlot. As for the former, the Board has not heard any valid reason for a contrary treatment. The Board accepts Dr. Kitchen's evidence that the lower arm has been highly degraded, partially filled, too narrow, not leading anywhere and cannot provide any future function. As for the latter, the Board also fully agrees with the reasons he expressed as to why the elimination of the south wood-lot is defensible. Its history, the stress it has succumbed to, the species involved, its relative isolated location and lack of significance do not lend itself to the treatment given to the north woodlot. In addition, in view of the many proposed measures to protect and enhance the natural features in this vicinity, the Board does not find the proposed elimination to be inappropriate."

**REGION
COSTS**

South

NM

CASE NAME/INDEXED AS CITATION	<i>Toronto (City) Zoning By-law No. 10217 (Re) Rouge Valley Buffer Size</i> [2001] O.M.B.D. No. 679
OMB FILE NUMBER(S)	PL000639 Z000097 S000068
HEARING OFFICER	Bishop
OTHER HEARING OFFICER	Hubbard
DATE	21/06/2001
APPEALING	Village Securities Ltd.
NH Appeal	
Time Limit Appeal	yes
CODE	DEV
OPPOSITION	City of Toronto Toronto and Region Conservation Authority Friends of the Rouge
CODE	CTY CA NHG
WITNESSES AND OTHER INPUT	AP Land Use Planner (2), AP Environmental Planner, OP Land Use Planner, OP President of Rouge Park Alliance
CODE	APLUP APEP OPLUP OPNHG
DEVELOPMENT ISSUE(S)	Development Proposal - 86 single units and 15 medium density residential units.
CODE	DP
DAYS	N/A
STATUS	F
NH ISSUE(S)	Buffer size. Should all of a buffer be required to be in public ownership?
CODE	NA
NOTED AGENCY PARTICIPANTS	CA
OVERVIEW/SUMMARY	Appeal to allow residential development of 86 single residential units and 15 medium density residential units on 9.9 hectares. Early in the hearing process the City of Toronto and the Toronto and Region Conservation Authority settled with the developer. Friends of the Rouge maintained their objection. One of their objections concerned the buffer between the top of the bank of the Rouge River Valley and the proposed development. Friends of the Rouge wanted a 30 metre buffer in public ownership. Policy required a 10 metre buffer from the top of the valley to be conveyed to public ownership. The developer agreed to convey 20 metres of buffer but wanted compensation for any further buffer area from the City. The City was not in a position to compensate the developer. The developer then wanted the 10 metres buffer area to form part of the rear yards of the subdivision lots (this 10 metres would be subject to a conservation easement and environmental restrictions that would be set out in the by-law). Friends of the Rouge continued their position that all of the 30 metre buffer should be in public ownership. The Board found that the Developer's proposal conformed to all provincial policy documents in relation to the buffer and therefore could not require that the total 30 metres be in public ownership. The Developer's appeal was allowed.

DECISION Appeal allowed. The proposal by the Developer to convey 20 metres of buffer to the Conservation Authority and have an additional 10 metres of buffer in private ownership but subject to a conservation easement and additional land use controls is acceptable. The desire of Friends of the Rouge that all 30 metres of buffer be in public ownership is not required by any policy.

CODE ALL

NH IMPACT Neutral

NH SCORE 5

NOTES Other issues were discussed in this decision. The City of Toronto and the Toronto and Region Conservation Authority settled with the developer.

REGION South

COSTS AWD

CASE NAME/INDEXED AS *Sixteenth Warden Ltd. v. Markham (Town)* Carleton Creek, Berczy Creek, Save the Rouge Valley Inc.

CITATION [2002] O.M.B.D. 388

OMB FILE NUMBER(S) PL010460
Z010079
X010030

HEARING OFFICER Wyger

OTHER HEARING OFFICER

DATE 07/06/2002

APPEALING Sixteenth Warden Ltd.

NH Appeal

Time Limit Appeal UNC

CODE DEV

OPPOSITION Save the Rouge Valley
Town of Markham
Ratepayers Association

CODE NHG
TWN
CG

WITNESSES AND OTHER INPUT AP Land Use Planner, AP Ecologist, AP Environmental Planner, AP Water Resources Engineer, OP Land Use Planner, OP Land Use Planner, OP Environmental Planner, OP President of Save the Rouge Valley, OP Biologist, OP Save the Rouge member

CODE APLUP
APECO
APENG
OPLUP
OPNHG

DEVELOPMENT ISSUE(S) Severance - creation of residential subdivision

CODE SEV

DAYS N/A

STATUS WHD

NH ISSUE(S) Adequacy of buffers and other environmental protective measures.

CODE NA

NOTED AGENCY PARTICIPANTS CA

OVERVIEW/SUMMARY	Appeal from refusal to allow a single family residential subdivision development on approximately 58 acres. The application proposed development on the tablelands between the Carleton Creek and its associated valley and the Berczy Creek and its associated valley. The valleylands, buffer areas and an open space woodlot were to be conveyed to public ownership. The Toronto Region Conservation Authority did not object to the buffer sizes but Save the Rouge Valley (SRV) did. SRV wanted to preserve the environmental integrity of the area and proposed, among other things, increased buffers. "The Board found the proposal to conform to all of the applicable environmental provisions of the Town's Official Plan." The revised proposal conformed to the applicable policies of the Region's Official Plan and the development proposal had regard for the Provincial Policy Statements. The Board found the size of the proposed buffer areas and the area of the tablelands to be developed appropriate.
DECISION	Appeal allowed with conditions but withheld until revised planning documents that give effect to the Board's directions are received.
CODE	ALL
NH IMPACT	Neutral
NH SCORE	6
NOTES	"Dr. Kitchen's evidence was detailed, analytical, comprehensive, balanced, and more persuasive than the evidence presented by the witness for SRV. Dr. Kitchen had considered the natural features on the site in the context of the broader area. He gave reasonable consideration to the impacts arising from the development of thousands of homes in the surrounding area and to the many influences currently affecting the natural features on this site."
REGION	South
COSTS	NM
<hr/>	
CASE NAME/INDEXED AS	<i>Dampsy v. Sebastopol (Township)</i>
CITATION	[1998] O.M.B.D. No. 1292
OMB FILE NUMBER(S)	PL971288 Z970167 O970250
HEARING OFFICER	Jackson
OTHER HEARING OFFICER	
DATE	26/08/1998
APPEALING	Thomas Dampsy, Mary Ferguson
NH Appeal	
Time Limit Appeal	yes
CODE	PI
OPPOSITION	Township of Sebastopol Sally Gilles Diane Hickey Wayne Gorman
CODE	TWN PI
WITNESSES AND OTHER	AP Land Use Planner, AP Geotechnical Engineer, OP Municipal Land Use
INPUT	Planner, OP MNR Biologist (under subpoena)
CODE	APLUP APENG OPLUP OPBIO
DEVELOPMENT ISSUE(S)	Development - construction of seasonal residence on island
CODE	DP

DAYS	4
STATUS	NF1
NH ISSUE(S)	Should further development be allowed on a lake when the water quality of the lake has been declining?
CODE	WA
NOTED AGENCY PARTICIPANTS	MNR MOE
OVERVIEW/SUMMARY	Appeal from refusal or neglect to pass a zoning amendment to permit a seasonal dwelling on a part of an island on Lake Clear. Local residents and the Municipality were concerned with the water quality on the lake and the effects of further development. The Board found strong evidence in support of this application being environmentally friendly. The Board allowed the appeal with strict conditions.
DECISION	Appeal allowed (restrictions)
CODE	ALL
NH IMPACT	Negative
NH SCORE	5
NOTES	Agencies (MNR, MOE) did not object to this development. Site plan approval was to apply to this development. There was to be no alteration to identified fish habitat. A tree inventory was to be carried out and as many of the mature trees are to be retained as possible. There are to be no buildings in the 30 metre setback.
REGION	East
COSTS	NM

CASE NAME/INDEXED AS	<i>Wilmot (Town) Official Plan Amendment New Lots (Re)</i> Region of Waterloo, Sunfish Lake
CITATION	[1999] O.M.B.D. No. 639
OMB FILE NUMBER(S)	PL980802 C980297 O980175
HEARING OFFICER	Emo
OTHER HEARING OFFICER	
DATE	09/06/1999
APPEALING	Deborah Hudspeth
NH Appeal	
Time Limit Appeal	yes
CODE	PI
OPPOSITION	Township of Wilmont Sunfish Lake Cottage-Owners Association
CODE	TWN CG
WITNESSES AND OTHER INPUT	AP Hydro-geologist, AP Land Use Planner, OP Land Use Planner, OP Sunfish Lake Cottage-Owners Association/ Area Residents
CODE	APHYD APLUP OPLUP OPRES
DEVELOPMENT ISSUE(S)	Development Proposal - creation/severance of residential lot
CODE	DP
DAYS	N/A
STATUS	WHD
NH ISSUE(S)	Should development be allowed on lands in the vicinity of an environmentally unique small lake?

CODE	WA
NOTED AGENCY PARTICIPANTS	CA
OVERVIEW/SUMMARY	Appeal from a decision of the Committee of Adjustment of the Township of Wilmont dismissing an application for consent to convey. The lands are within the Sunfish Lake Rural Settlement Area as set out in the Region of Waterloo's and the Township of Wilmont's Official Plans. An Official Plan Amendment was put in place to protect this unique lake - it is one of the oldest small lakes in Canada and it has not suffered eutrophication, it has been meromictic for over 1000 years. To protect this resource nutrient loading and other human impact must be controlled. The appellant's lands are not located on the shores of the lake. A hydro-geologist EIS was approved by the Region's Ecological and Environment Advisory Committee and the Grand River Conservation Authority. Based on the EIS the creation of a new lot on the Applicant's property will not have an impact on the Lake. The appeal is allowed, the lot may be created.
DECISION CODE	Appeal Allowed. Order withheld till Official Plan revised.
NH IMPACT	ALL
NH SCORE	Neutral
NOTES	4 "There is always the old 'bogyman' of precedent but as acknowledged in the hearing each Board decision is based on the particular factum. Thus, while the Board strives to be reasonably consistent in its decision making process, that is not to say that the creation of one lot automatically sets the stage for another new lot. There was significant landowner opposition to the creation of a lot on the subject property.
REGION	South
COSTS	NM

CASE NAME/INDEXED AS CITATION	<i>Brown v. Lanark (County) Land Division Committee</i> Black Lake [1999] O.M.B.D. No. 412
OMB FILE NUMBER(S)	PL981005 C980293
HEARING OFFICER	Makuch
OTHER HEARING OFFICER	
DATE	20/04/1999
APPEALING	Mrs. Brown
NH Appeal	
Time Limit Appeal	
CODE	PI
OPPOSITION	Rideau Valley Conservation Authority (RVCA)
CODE	CA
WITNESSES AND OTHER INPUT	RVCA Manager of Planning, RVCA Biologist
CODE	OPLUP OPBIO
DEVELOPMENT ISSUE(S)	Severance- creation of seasonal waterfront lots
CODE	SEV
DAYS	N/A
STATUS	NF1
NH ISSUE(S)	Environmental impact of increased lakefront development.
CODE	WA
NOTED AGENCY PARTICIPANTS	CA

OVERVIEW/SUMMARY	The appealing party applied for and was refused severance of a 3 acre waterfront parcel into two 1.5 acre parcels. The proposed lots would conform to applicable zoning in the area. The RVCA opposed the severance because of the nature of the lake (catchment), and projected increases of phosphorus loading due to increased waterfront development. The Board allowed the appeal.
DECISION	Appeal allowed.
CODE	ALL
NH IMPACT	Negative
NH SCORE	2
NOTES	The RVCA had a modeling program for projecting phosphorus loading of area lakes, based on this they opposed the creation of the new lots on Black Lake. The Board found that proposed severance is appropriate for the lot and area and is satisfied that there will be no adverse impact. A study carried out by the RVCA identified conditions that could be imposed on new development around the lake that will reduce, if not eliminate, any adverse impact on Black Lake. The typical setback for development on Black Lake was 30m from the high water mark. The Board felt that an increased setback of 50m (as recommended by the RVCA) was appropriate.
REGION	East
COSTS	NM
<hr/>	
CASE NAME/INDEXED AS	<i>Scroggie v. Seguin (Township)</i> Whitefish Lake, Shoreline Development - "at capacity"
CITATION	[2003] O.M.B.D. No. 84
OMB FILE NUMBER(S)	PL01125 C010348 C010349 C010350
HEARING OFFICER	Emo
OTHER HEARING OFFICER	
DATE	27/01/2003
APPEALING	Catherine Scroggie
NH Appeal	
Time Limit Appeal	
CODE	PI
OPPOSITION	MMAH
CODE	MMAH
WITNESSES AND OTHER INPUT	AP Biologist, AP Land Use Planner, OP Hydrogeologist, OP Land Use Planner, OP Research Scientist - MNR Aquatic Research Section, OP Biologist, OP Environmental Officer, OP Land Use Planner, Op Land Use Planner
CODE	APBIO APLUP OPHYD OPLUP OPEXS OPBIO OPEXS
DEVELOPMENT ISSUE(S)	Severance - creation of residential lakefront lots
CODE	SEV
DAYS	8
STATUS	NF1

NH ISSUE(S)	Should further shoreline lot development be allowed on a lake identified as "at capacity?"
CODE	WA
NOTED AGENCY PARTICIPANTS	MOE MNR MMAH CA
OVERVIEW/SUMMARY	Appeal from refusal to allow severance of lots from a larger lakefront holding. Under traditional policy regarding severance of waterfront lots Provincial Agencies or the Town might object to further development if the lake is "at capacity", in that, it is believed that further lakefront development and the resulting additional phosphorus loading could have significant negative environmental repercussions for the health of the lake and certain fish species, etc. The appellant's biologist proposed a new theory relating to phosphorus loading. The Board found in favour of the appellant and allowed two severances but denied one (because of the irregular shape of the lot that would be created).
DECISION	Appeal allowed in part. Three lots were requested to be severed. One lot was not allowed to be severed (largely due to its strange configuration), the other lots were given provisional consent.
CODE	ALL
NH IMPACT	Negative
NH SCORE	2
NOTES	[Author's Note: The Board decided to take a leap of faith and find for modern evidence regarding the phosphorus loading of lakes. In subscribing to the modern theory the Board broke from traditional ways of assessing whether or not a lake was "at capacity" and therefore could or could not accommodate further shoreline development. While this is commendable in one sense, it is also worrisome. Should the modern theory be unsound the Board's decision may have a negative impact on the subject Lake.]
REGION	North
COSTS	NM

CASE NAME/INDEXED AS CITATION	<i>Flamborough (Town) Zoning By-law No. 99-73-Z (Re)</i> [2000] O.M.B.D. No. 413
OMB FILE NUMBER(S)	PL990772 R990191 Z990109
HEARING OFFICER	Beach
OTHER HEARING OFFICER	
DATE	02/02/2000
APPEALING	Ernest Neiser, Joanne Neiser
NH Appeal	
Time Limit Appeal	yes
CODE	PI
OPPOSITION	Town of Flamborough
CODE	TWN
WITNESSES AND OTHER INPUT	Town of Flamborough Land Use Planner, AP Land Use Planner, Hamilton Region Conservation Authority
CODE	LUP APLUP CA
DEVELOPMENT ISSUE(S)	Development Proposal - addition of mobile home to property
CODE	DP

DAYS	N/A
STATUS	WHD
NH ISSUE(S)	Addition of a mobile home to lands identified as ESA No. 12 - Milgrove South Woodlot
CODE	WD
NOTED AGENCY PARTICIPANTS	CA
OVERVIEW/SUMMARY	The applicant wanted to have a mobile home placed on a portion of his lands that he had cleared (prior to approval of application). The Town wanted the mobile home to be located elsewhere on the lot. The Board found it odd that the Town would risk further damage to the woodlot ESA by recommending the location it did. The Board adopted points made by the Conservation Authority - the second access opened by the owners had to be closed, native soil material had to be replaced and the disturbed area allowed to naturalize, and, that the location of the mobile home and the septic should be brought close together to form a compact development area, allowing for a larger area to be rehabilitated.
DECISION	Appeal allowed, but withheld until a by-law amendment was provided in accordance with this decision.
CODE	ALL
NH IMPACT	Positive
NH SCORE	7
NOTES	
REGION	South
COSTS	NM

CASE NAME/INDEXED AS CITATION	<i>Minto Developments Inc. v. Ottawa (City)</i> [2002] O.M.B.D. No. 797
OMB FILE NUMBER(S)	PL010559 S010033 R010141
HEARING OFFICER	Jackson
OTHER HEARING OFFICER	
DATE	03/10/2002
APPEALING	Minto Developments Inc.
NH Appeal	
Time Limit Appeal	yes
CODE	DEV
OPPOSITION	Quarry Forest Preservation Committee
CODE	CG
WITNESSES AND OTHER INPUT	AP Biologist, AP Ecologist, AP Botanist, AP Forrester, AP Engineer, AP Engineer, AP Engineer, AP Noise Expert, OP Botanist, OP Greenspace Alliance, OP Local Resident, OP Local Resident, Land Use Planner, Land Use Planner
CODE	APBIO APECO APBOT APFOR APENG APNVE OPBOT OPCG OPRES LUP

DEVELOPMENT ISSUE(S) Development Proposal - single family residential
CODE DP
DAYS N/A
STATUS F
NH ISSUE(S) Protection of woodlot from development.
CODE WD
NOTED AGENCY PARTICIPANTS
OVERVIEW/SUMMARY Appeal of City's failure to make a decision regarding a subdivision application. The opposition wanted the protection of a woodlot on the development site. The woodlot was found to be worthy of protection under NOSS (Natural Open Space Study). Council had to make the decision to acquire the lands or permit development. The developer's offer to sell the lands to the City at a nominal price was declined by the City.
DECISION Appeal by Minto Developments Inc. is allowed. Subdivision approval is allowed.
CODE ALL
NH IMPACT Neutral
NH SCORE 3
NOTES There were other issues addressed in this decision.
REGION East
COSTS NM

CASE NAME/INDEXED AS CITATION *Richmond Hill (Town) Official Plan Amendment No. 129 (Re)* Woodlot [1996] O.M.B.D. No. 1056
OMB FILE NUMBER(S) O9400001
 S940016
 Z950116
 S940091
 Z910270
 S950078
 Z950133
HEARING OFFICER Krushelnicki
OTHER HEARING OFFICER
DATE 29/07/1996
APPEALING Oak Ridges Farm Co-Tenancy
NH Appeal
Time Limit Appeal yes
CODE DEV
OPPOSITION MNR
CODE MNR
WITNESSES AND OTHER INPUT OP MNR
CODE OPMNR
DEVELOPMENT ISSUE(S) Development Proposal - residential development adjacent to a ESA
CODE DP
DAYS N/A
STATUS INT
NH ISSUE(S) Buffer size. MNR was requesting increased buffers around a designated woodlot - increase from 10 to 15 metres. MNR also requested that the buffer areas not be in the ownership of abutting landowners - that the buffer area be under one ownership.
CODE WD

NOTED AGENCY PARTICIPANTS OVERVIEW/SUMMARY

MNR

The subject lands are 24 hectares with a 2.75 hectare woodlot. The woodlot that was designated a Environmentally Protected Area in the Town Official Plan. The MNR wanted changes to the proposed buffers surrounding the woodlot - increase from 10 to 15 metres, and, to have the buffer area in one ownership instead of in the ownership of several abutting landowners. The additional buffer requested by the MNR (5 metres) was in response to a new body of evidence - that root systems can extend out significantly further than previously thought. The Board refused the extended buffer as the buffer proposed met the minimum required. The MNR request for the buffer area to be in single ownership (to provide for better stewardship, etc.) was not supported by the Board. The Board found the buffer to be an area of transition between the development and the woodlot which implies that it will have some characteristics of both land uses. The aim of the buffer is to protect the edge, it is not meant to replace it or add more edge area. Adding to the area is not what the policy of the Plan intends. It would not be fair or appropriate to re-open the policy question in order to add refinements that would prohibit a multiple ownership of a buffer. The draft plan of subdivision is approved. The appeal is allowed.

DECISION CODE NH IMPACT NH SCORE NOTES

Appeal allowed. Draft plan of subdivision is approved.

ALL

Negative

1

There were other issues discussed in this decision. "The Board, of course, does not dispute this evidence but considers that no amount of buffer will be perfect in balancing the need to protect root systems and permitting some reasonable amount development in proximity to EPAs. However, it is clear that the EPA protects the area under the drip line of the tree and the buffer does this for a further distance of 10 metres. The Board estimates that even in a worst case, the vast majority - perhaps as much as 80 or 90 percent - of the area of the root systems of the very largest edge trees are firmly protected from any and all harm. This is adequate. It is certainly better protection that has been afforded during the entire agricultural history of this land and, as the ORFC-T argues, it is much more protection than if the developers' original plans to place houses in the midst of the woodlot were approved. There will be no additional five metre restriction."

REGION COSTS

South

NM

CASE NAME/INDEXED AS CITATION OMB FILE NUMBER(S)

Harnell v. Wellington (County) Land Division Committee

[1998] O.M.B.D. No. 1802

PL980354

C980107

C980108

C980109

HEARING OFFICER OTHER HEARING OFFICER

Harron

DATE APPEALING NH Appeal

14/12/1998

Richard Harnell, Shirley Harnell

Time Limit Appeal CODE

PI

OPPOSITION CODE

Wellington County Planning Department

REG

WITNESSES AND OTHER INPUT CODE	OP Wellington County Land Use Planner, AP Land Use Planner, AP Agrologist, AP Forester, AP Richard Harnell OPLUP APLUP APAGR APFOR APRES
DEVELOPMENT ISSUE(S) CODE	Severance - conveyance of lands to adjoining landowner SEV
DAYS	N/A
STATUS	F
NH ISSUE(S) CODE	Severance and conveyance of part of a farm woodlot WD
NOTED AGENCY PARTICIPANTS	
OVERVIEW/SUMMARY	The Martin farm consists of 109 acres with 17 acres being woodlot. The appellant (Harnell) owns the 3 acre residential property that abuts the Martin woodlot. The Martins entered into an agreement with a contractor for the sale of trees located in their woodlot. The contractor was not clear on the lot boundary between the Martin and Harnell properties and removed several mature trees from the Harnell property. To resolve this the Martins agreed to transfer 7 acres to the Harnells (subject to consent approval). The Township of Woolwich did not object to the consent but the County of Wellington did as they questioned whether the consent would be in the best long term interests of agriculture and the natural environment, (primary concerns were the effect of dividing a significant woodlot and thereby reducing the size of the woodlot associated with the agricultural use). The Board was satisfied that a 10 acre woodlot would be an acceptable size for the Martin farm. The conveyance was allowed.
DECISION CODE	Appeal allowed. ALL
NH IMPACT	Positive
NH SCORE	7
NOTES	The Provincial Policy Statement would appear to preclude the conveyance as this conveyance did not fall within the categories of: 1. a retirement lot, 2. a surplus residence to the farming operation, and 3. residential infilling. The Board agreed with the County Planner that the major thrust of both County and Township Official Plans is to protect the agricultural industry and retain and protect woodlots. The Board attached conditions to the conveyance - that the lands being conveyed are to be zoned open space or greenbelt and a residence on those lands is precluded as a permitted use.
REGION	West
COSTS	NM

CASE NAME/INDEXED AS CITATION	<i>McDonald v. Wellington (County) Land Division Committee</i> [2000] O.M.B.D. No. 794
OMB FILE NUMBER(S)	PL000317 C000078
HEARING OFFICER	Daly
OTHER HEARING OFFICER	
DATE	24/07/2000
APPEALING	Douglas McDonald, Elizabeth McDonald
NH Appeal	
Time Limit Appeal	

CODE	PI
OPPOSITION	Wellington County Land Division Committee
CODE	REG
WITNESSES AND OTHER	County Land Use Planner, MNR, Hamilton Region Conservation Authority,
INPUT	Grand River Conservation Authority
CODE	LUP
	APMNR
	APCA
DEVELOPMENT ISSUE(S)	Severance - creation of residential lot
CODE	SEV
DAYS	1
STATUS	F
NH ISSUE(S)	Should a lot be permitted to be severed from a woodlot under 10 hectares in size with an overlay designation of Area of Natural or Scientific Interest?
CODE	WD
NOTED AGENCY	MNR
PARTICIPANTS	CA
OVERVIEW/SUMMARY	Appeal from dismissal of application for consent to convey. The land to be severed was within a woodlot of less than 10 hectares and had an overlay designation of Area of Natural or Scientific Interest (ANSI). Development within ANSIs is permitted if it has been demonstrated that there will be no negative impact on the feature. The Board found that all relevant criteria of the Official Plan were met and that no adverse impact was apparent. The three agencies did not express any concern in relation to this issue in their comments. The appeal was allowed and provisional consent was granted. Costs were requested by the applicant and denied by the Board.
DECISION	Appeal Allowed.
CODE	ALL
NH IMPACT	Neutral
NH SCORE	4
NOTES	The Board found that the application to convey satisfied the Provincial Policy Statement and the County Official Plan. The Board found the application to be consistent with the approach taken by the County on other applications in the immediate vicinity of the lands with identical designation.
REGION	West
COSTS	DEN

CASE NAME/INDEXED AS	840180 Ontario Ltd. v. Georgina (Town) Jackson Landing, Lake Simcoe
CITATION	[2001] O.M.B.D. No. 172
OMB FILE NUMBER(S)	PL000549 O000106 Z000078 S000065 M000027
HEARING OFFICER	Granger
OTHER HEARING OFFICER	
DATE	21/02/2001
APPEALING	840180 Ontario Ltd., Moatfield Management Services Ltd.
NH Appeal	
Time Limit Appeal	yes
CODE	DEV

OPPOSITION	Town of Georgina Region of York North Sutton Ratepayers Association South Lake Simcoe Naturalists Area Residents (22) Federation of Ontario Naturalists.
CODE	TWN REG CG NHG RES
WITNESSES AND OTHER INPUT	AP Land Use Planner, AP Resource Ecologist, AP Ornithological, AP Municipal Engineer, AP Traffic Engineer, AP Hydrogeologist, AP Adult Lifestyle Expert, OP Land Use Planner, OP Ecologist, OP Earth Scientist, OP Traffic Engineer, OP Land Use Planner, OP Northeast Sutton Ratepayers Association, OP South Lake Simcoe Naturalists, OP Ecologist, OP Naturalist, OP Forrester, OP Federation of Ontario Naturalists, OP MNR Ecologist, OP Local Residents/land owners (22)
CODE	APLUP APECO APORN APENG APHYD APOTH OPLUP OPECO OPES OPENG OPLUP OPCG OPNHG OPNAT OPFOR OPMNR OPRES
DEVELOPMENT ISSUE(S)	Development Proposal - adult lifestyle community in woodlot
CODE	DP
DAYS	N/A
STATUS	INT
NH ISSUE(S)	Integration of development into forested landscape. Protection of woodlot. Maintenance of riparian and terrestrial linkages. Protection of micro habitats.
CODE	WD
NOTED AGENCY PARTICIPANTS	MNR

OVERVIEW/SUMMARY

Appeal from refusal or neglect to enact a proposed amendment to the Official Plan that would permit a subdivision, and appeal from refusal or neglect to enact a proposed zoning by-law amendment to rezone lands from rural to low density residential and open space. The proposal for the lands in question was an Adult Lifestyle Community of 400 units on 37.45 ha. The woodlot area of the site was divided into 5 sections, (A,B,C,D,E). It was uncontested that area A should be preserved. In addition, the South Lake Simcoe Naturalists wanted areas B and C preserved (significant forest and wildlife habitat). The Board found that protection of part of area B as open space was appropriate. While the Board did find that the appropriate entrance to the development would be through area B, it also found that extensive mitigation efforts should be employed to insure minimal impact on ecological and riparian functioning. The applicant agreed to do a tree study for area C and to use some of the trees to buffer the development from existing residential development. As areas D and E were recently farmed it was found that development should be directed to these areas of the woodlot. The Board approved the proposed Official Plan Amendment as amended through the course of this decision.

DECISION

Official Plan Amendment should be approved substantially as proposed. Appealing party made concessions.

CODE

ALL

NH IMPACT

Neutral

NH SCORE

5

NOTES

"Any site plan required to implement the development of a retirement home will optimise the retention of existing trees and protect the edge of the open space area from development impact." The Board recommended a liaison committee between the Town and Applicant with representation from each of the parties including abutting property owners and the Lake Simcoe Region Conservation Authority. "Every effort should go into making this development a positive model for the appropriate implementation of the Sutton Secondary Plan, Northeast Sutton Development Area." [It would appear from reading this case that the Board was making great efforts to have the two parties cooperate in relation to compromises. It would also appear that the developer was environmentally friendly and willing to make concessions, to a certain degree.] See also *Georgina (Town) Official Plan Amendment No. 84 (Re)*.

REGION

Central

COSTS

NM

CASE NAME/INDEXED AS

Clarington (Municipality) Zoning By-law No. 84-63 (Re)

CITATION

[2000] O.M.B.D. No. 455

OMB FILE NUMBER(S)

PL991153

Z990174

S000005

HEARING OFFICER

Rosenberg

OTHER HEARING OFFICER**DATE**

14/04/2000

APPEALING

Blackcreek Developments Ltd.

NH Appeal**Time Limit Appeal**

yes

CODE

DEV

OPPOSITION

Area Residents (8)

CODE

RES

WITNESSES AND OTHER

AP Biologist, AP Biologist, AP Developer, OP Local Residents (8)

INPUT

CODE	APBIO APDEV OPRES
DEVELOPMENT ISSUE(S)	Development Proposal - 114 unit residential subdivision
CODE	DP
DAYS	N/A
STATUS	NF1
NH ISSUE(S)	Has adequate regard been given to the environment?
CODE	WET
NOTED AGENCY	CA
PARTICIPANTS	
OVERVIEW/SUMMARY	The appellant proposed a 114 unit residential subdivision. Residents raised concerns such as whether or not the site is a Provincially Significant Wetland, inadequacy of MNR mapping and/or investigation of the site, protection of the Black Farewell Wetland Complex, etc. The Board felt environmental issues had been adequately addressed and allowed the subdivision development to proceed.
DECISION	Appeal allowed.
CODE	ALL
NH IMPACT	Negative
NH SCORE	3
NOTES	Board preferred appellant testimony. Found that 114 unit residential subdivision is appropriate and desirable and represents good planning. Intent of regional and municipal Official Plans have been maintained. The Environmental Impact Study was sufficient. Board found that the property is not a Provincially Significant Wetland. Additional mapping by MNR was not required or warranted as the Board found that the mitigation and monitoring measures proposed will generally maintain the character of the area. As the application was started in 1995 and the PPS came into effect in 1996 the PPS doesn't apply.
REGION	South
COSTS	NM

CASE NAME/INDEXED AS	<i>St. Catharines (City) Zoning By-law No. 84-119 (Re)</i>
CITATION	[2001] O.M.B.D. No. 791
OMB FILE NUMBER(S)	PL001079 Z000156 C010050 C010051 C010052 C010053 C010054
HEARING OFFICER	Makuch
OTHER HEARING OFFICER	
DATE	13/07/2001
APPEALING	101954 Ontario Ltd.
NH Appeal	
Time Limit Appeal	yes
CODE	DEV
OPPOSITION	Niagara Peninsula Conservation Authority, City of St. Catharines
CODE	CA CTY

WITNESSES AND OTHER INPUT CODE	Author of Preliminary Geotechnical report/study, Author of Geotechnical report/study, Author of Environmental Impact Study. APENG APEXS
DEVELOPMENT ISSUE(S) CODE	Development Proposal - creation of residential lots DP
DAYS	N/A
STATUS	NF1
NH ISSUE(S) CODE	Should development be allowed on lands that are in part zoned to allow the proposed single family residential development, in part zoned Environmental Protection Area in addition to abutting the shoreline of a Provincially Significant Wetland? WET
NOTED AGENCY PARTICIPANTS	CA
OVERVIEW/SUMMARY	Appeal to allow the creation of four lots for single family development. The lands have more than one zoning category attached to them. One category would allow the proposed development. Another category is ESA - to protect the abutting Martindale Pond Provincially Significant Wetland. The proposed development would include lands in the ESA. The appellant presented three impressive witness. The City did not present any cogent professional evidence to contradict the appellant's witnesses. Lands abutting Martindale Pond were dedicated to the City and access from Martindale Road to the Pond was acquired. The appeal was allowed.
DECISION CODE	Appeal allowed. ALL
NH IMPACT	Neutral
NH SCORE	6
NOTES	The Environmental Impact Study (EIS) recommends that all lands below the 84m. line be deeded to the City. The City Planning Department was looking for rear lot lines at the 88m. contour line but did not provide any justification for this other than to suggest that it would be best to have as much of the EPA lands in the city's ownership as possible. The Board found that the document entitled "NPCA, Resources Planning Program, Plan Input and Review Policies/Guidelines", and referred to throughout the hearing, does not have any legal status. These guidelines purport to impose a minimum set back of 7.5 m. from the authority approved top-of-slope for all development proposals. These "regulations" do not have the status of a Regulation made under the authority of the Conservation Authorities Act, and are no more than an internal staff memorandum to be relied on by NPCA staff when making comments to planning authorities in response to development applications. The guideline was not subjected to any analysis or criticism by interested parties in the industry other than that of the Authority's staff and some comments both pro and con from Municipal staff. The Board cannot give it the same weight as a Regulation or an Official Plan policy in arriving at its decision.
REGION	Southwest
COSTS	NM

CASE NAME/INDEXED AS CITATION	<i>King (Township) Zoning By-law No. 74-53 (Re)</i> [1999] O.M.B.D. No. 138
OMB FILE NUMBER(S)	PL98073 S980072 Z980133

HEARING OFFICER	Daly
OTHER HEARING OFFICER	Katary
DATE	17/02/1999
APPEALING	Peter McKinnon, Eric Leon, Sid Biersteker, Gabryela Oslin
NH Appeal	
Time Limit Appeal	
CODE	PI
OPPOSITION	Township of King Village of Schomberg Community Groups Community Residents
CODE	REG TWN DEV CG RES
WITNESSES AND OTHER INPUT	AP Land Use Planner, AP Biologist, OP Land Use Planner, OP Engineer, OP Transportation Engineer, OP Environmental Planner, OP Land Use Planner, OP Transportation Engineer
CODE	APLUP APBIO OPENG OPEP OPLUP
DEVELOPMENT ISSUE(S)	Development - creation of road through wetland
CODE	DP
DAYS	N/A
STATUS	NF
NH ISSUE(S)	Should a road proposed to service a residential development be allowed to pass through a wetland?
CODE	WET
NOTED AGENCY PARTICIPANTS	
OVERVIEW/SUMMARY	The applicant sought approval for a plan of subdivision to allow for development of 118 residential building lots on municipal services. The road proposed to service the development was to pass through a wetland (this was the primary point of contention). The Community Plan for the Village of Schomberg provided clear policy support for the development of the road. The Board found that the proposed zoning by-law and plan of subdivision will not create an unacceptable adverse impact on the community or the wetland area.
DECISION	Appeal allowed. The Board found that the draft plan of subdivision to be in conformity with the policies of the Official Plan as expressed in the Schomberg Community Plan. The criteria under Section 51(24) of the Planning Act, is met. The Board was satisfied that the proposed plan of subdivision is not premature and that the conditions capture and address the issues raised.
CODE	ALL
NH IMPACT	Neutral
NH SCORE	3

NOTES Schomberg Community Plan provides clear policy support for the development of the roadway. Decisions were made at the time of the Community Plan. The Official Plan is not set in stone and this means that change can occur but in absence of change it is the plan that is in place that must guide development. The roadway was contemplated by the Official Plan despite Environmental Constraint Area designation. There was no Official Plan amendment request before the Board which would allow for consideration of deletion of the roadway.

REGION South
COSTS NM

CASE NAME/INDEXED AS CITATION *Owers v. Ottawa (City) Committee of Adjustment* Mud Lake Wetlands [1997] O.M.B.D. No. 1611
OMB FILE NUMBER(S) PL967995
V960273
HEARING OFFICER Emo
OTHER HEARING OFFICER
DATE 25/11/1997
APPEALING Matthew Owers
NH Appeal
Time Limit Appeal
CODE PI
OPPOSITION City of Ottawa
CODE CTY
WITNESSES AND OTHER AP Land Use Planner, AP Naturalist, OP Land Use Planner, OP area resident
INPUT
CODE APLUP
APNAT
OPLUP
OPRES
DEVELOPMENT ISSUE(S) Development Proposal - location of garage on property
CODE DP
DAYS N/A
STATUS NF1
NH ISSUE(S) Location of garage in Conservation zone where accessory residential structures are not allowed.
CODE WET
NOTED AGENCY
PARTICIPANTS

OVERVIEW/SUMMARY

The appellant moved a garage onto the Conservation zoned portion of his residential property. The property was "split-zoned" (the lot was zoned Residential and Conservation - Conservation being attached to the rear portion of the lot. The Mud Lake Wetlands are located in the vicinity of the subject lands. The National Capital Commission was concerned about seepage into the soil from any chemicals that may be stored in the garage and wanted the garage moved out of the Conservation zone. The Board was satisfied that the actual Mud Lake Wetlands boundary was well clear of the subject property. The Board noted the granting of variances for the use of Conservation lands among other properties similarly zoned in the vicinity of the subject property. Further, the Board cited the Ottawa City Planning Department's consideration of ending "split-zoning" as additional justification for deciding that the siting of the garage in the Conservation zone should not pose an environmental threat. The appeal was allowed. The garage can remain in the Conservation zone of the appellant's property. Conditions were attached - no chemicals stored in the garage, proper concrete floor and a privacy fence between a neighbouring property.

**DECISION
CODE
NH IMPACT
NH SCORE
NOTES**

Appeal allowed. Conditions were attached.

ALL

Negative

2

Board looked at previous Committee of Adjustment decisions related to variances allowed in the Conservation zoned parts of residential lots in the vicinity of the subject lands. The decisions of the Committee in similar circumstances formed part of the reasoning behind the Boards approval of the variance in this decision. [Author's Note: Typically, the Board does not consult previous Committee of Adjustment decisions.]

**REGION
COSTS**

East

NM

**CASE NAME/INDEXED AS
CITATION**

Janda v. Springwater (Township), Orr Lake
[2003] O.M.B.D. No. 453

OMB FILE NUMBER(S)

PL020570
C020199

HEARING OFFICER

Drury

OTHER HEARING OFFICER
DATE

08/01/2003

APPEALING

Garry Janda, Sara Janda

NH Appeal
Time Limit Appeal
CODE

PI

OPPOSITION

Township of Springwater
Orr Lake Ratepayers Association
Nottawasaga Valley Conservation Authority

CODE

TWN

CG

CA

**WITNESSES AND OTHER
INPUT**

Springwater Town Planner, OP Orr Lake Ratepayers Association, OP
Nottawasaga Valley Conservation Authority

CODE

LUP

OPCG

OPCA

DEVELOPMENT ISSUE(S)

Severance - creation of new residential waterfront lot

CODE

SEV

DAYS	N/A
STATUS	F
NH ISSUE(S)	Severance of lands in close proximity to a Provincially Significant Wetland.
CODE	WET
NOTED AGENCY PARTICIPANTS	CA
OVERVIEW/SUMMARY	Subject lands fronted on regional road and Orr Lake. Severance, as originally proposed, was to split the lands at the half-way point. The Orr Lake Ratepayers Association and the Nottawasaga Valley Conservation Authority wanted the dividing line between the two lots to be where an improved/grassed portion of the property met the natural/undisturbed portion of the property so that all of the EP lands were on one lot. The landowner agreed. With these changes, the Board allowed the appeal.
DECISION	Appeal allowed.
CODE	ALL
NH IMPACT	Positive
NH SCORE	7
NOTES	The Board ordered that section 50(3) apply to the lands so that the subject lot is a once-only severance.
REGION	Central
COSTS	NM

CASE NAME/INDEXED AS CITATION	<i>561650 Ontario Inc. v. Ottawa (City)</i> Fernbank Wetland, Wetland Boundaries [2003] O.M.B.D. No. 330
OMB FILE NUMBER(S)	PL011151 O020007 S020005 Z010167
HEARING OFFICER	Katary
OTHER HEARING OFFICER	
DATE	10/04/2003
APPEALING	561650 Ontario Inc., 1252051 Ontario Inc.
NH Appeal	
Time Limit Appeal	yes
CODE	DEV
OPPOSITION	City of Ottawa Goulbourn Wetlands Group
CODE	CTY NHG
WITNESSES AND OTHER INPUT	OP Land Use Planner, OP MNR Ecologist, OP Botanist, AP Land Use Planner, AP Engineer, AP Transportation Engineer, AP Environmental Physiologist, AP Wetland Ecologist, AP Zoologist, AP Engineer/Developer
CODE	OPLUP OPECO OPBOT APLUP APENG APEP APECO APZOO APDEV
DEVELOPMENT ISSUE(S)	Development Proposal - residential subdivision and wetland boundary
CODE	DP

DAYS	N/A
STATUS	NF1
NH ISSUE(S)	Appropriate wetland boundary. When three wetland boundaries have been identified, but only one has been incorporated into the applicable Official Plan, which one is applicable to a development application?
CODE	WET
NOTED AGENCY PARTICIPANTS	MNR
OVERVIEW/SUMMARY	Appeal from refusal or neglect to enact proposed Official Plan Amendment to re-designate lands from Provincially Significant Wetland (PSW) to General Urban Area to permit a residential development on 55 ha. site. Over time the boundary of the wetland on the site was enlarged. The first boundary and designation of the wetland as a PSW were incorporated into the area Official Plan. The second boundary increased the boundary of the wetland and eliminated the PSW classification. The third boundary increased the size of the wetland and designated the lands PSW. Based on the timing of the applications and an analysis of the methodology used for the expansions and designation the Board found in favour of the second boundary enlargement and the removal of the PSW designation.
DECISION	Appeal allowed. Appellant filed application for draft plan of subdivision in Sept. of 2000. The third boundary change for the wetland was in Oct. of 2000. The information used to increase the wetland area and designate the lands PSW in 2000 was found by the Board to be unsound.
CODE	ALL
NH IMPACT	Positive
NH SCORE	5
NOTES	Only the first wetland boundary and PSW designation were incorporated into the area Official Plan. Therefore, the first boundary is the current legal boundary. The established principal is that an application is judged on the basis of applicable planning instruments (statutes, regulations, policies, plans, etc.) as they existed at the date of the application. The Board does not hear an appeal on the matter of identification of a wetland boundary, however, the Board has to decide on the merits of identification and whether or not it ought to become part of the planning instruments of a municipality. The Natural Heritage Group's (NHG) wetland evaluation was seen as flawed as it was carried out by a biologist with no wetland evaluation experience. The 2000 MNR boundary was, in part, based on the NHG's information. The Board preferred the evidence of experienced wetland evaluators and their support of the second wetland boundary and removal of the PSW designation. The appellants could have argued for the first boundary as included in the area Official Plan, but chose to accept the expanded second boundary. "The Board prefers the evidence by the planner for the appellants because of his masterly grasp of the multifarious issues and problems involved in a complex matter such as the one before the Board."
REGION	East
COSTS	RR

CASE NAME/INDEXED AS CITATION	<i>Ajax (Town) Official Plan Amendment No. 47A (Re)</i> Hooded Warbler, EIS [1998] O.M.B.D. No. 1121
OMB FILE NUMBER(S)	PL970148 Z970011 O970069 S970047 O970231

HEARING OFFICER	Emo
OTHER HEARING OFFICER	
DATE	12/08/1998
APPEALING	Nugget Construction Company Limited
NH Appeal	
Time Limit Appeal	yes
CODE	DEV
OPPOSITION	Town of Ajax Toronto Region Conservation Authority Citizens for Carruthers
CODE	TWN CA NHG
WITNESSES AND OTHER INPUT	AP Ornithological, AP Land Use Planner, OP MNR, OP Ecologist,
CODE	APORN APLUP OPMNR OPECO
DEVELOPMENT ISSUE(S)	Development Proposal
CODE	DP
DAYS	N/A
STATUS	F
NH ISSUE(S)	Will one sighting of a threatened or endangered bird species require a more detailed EIS?
CODE	WLF
NOTED AGENCY PARTICIPANTS	MNR
OVERVIEW/SUMMARY	The appellant proposed development of a 15 ha. site. A Environmental Impact Statement (EIS) was submitted and the Town found it to be insufficient regarding how it dealt with the Hooded Warbler. During the field work for the EIS there was a sighting of a pair of Hooded Warblers. There were no sightings previous or since. One sighting of a threatened or endangered bird can be interpreted as the basis for additional study to address the requirements of the Provincial Policy Statement (PPS). The appealing party submitted that the status of the Hooded Warbler in Ontario was vulnerable not threatened or endangered and therefore the PPS need not be dealt with in relation to the Hooded Warbler.
DECISION	Appeal allowed. The EIS is sufficient for the Board's approval of the proposed development.
CODE	ALL
NH IMPACT	Neutral
NH SCORE	4

NOTES

This decision was a continuation of the Board's previous hearings of these appeals. Much of the conflicting evidence heard by the Board dealt with the status of the Hooded Warbler in Ontario and whether this status mandates consideration under section 2.3 of the Provincial Policy Statement. The Board preferred the submissions of the appealing party in relation to the Hooded Warbler, finding their experts depth of experience to be a deciding factor for their endorsing their position. While the Board did not make a finding as to whether or not the Hooded Warbler is vulnerable or threatened, the Board agreed with the appellant experts that one sighting of an endangered or threatened bird does not automatically create a habitat concern. The Conservation Authority that has responsibility for the lands concerned in this appeal did not participate in the Hooded Warbler debate or challenge the EIS.

REGION

South

COSTS

NM

CASE NAME/INDEXED AS	<i>Victoria (County) Official Plan Redesignate Lands Amendment (Re)</i> Loggerhead Shrike, Ferma
CITATION	[2002] O.M.B.D. No. 868
OMB FILE NUMBER(S)	PL990453 O000005 Z990069 M990056
HEARING OFFICER	Culham
OTHER HEARING OFFICER	Beccarea
DATE	29/10/2002
APPEALING	Ferma Aggregates Inc.
NH Appeal	
Time Limit Appeal	yes
CODE	DEV
OPPOSITION	City of Kawartha Lakes Carden Coalition for Responsible Planning
CODE	CTY CG
WITNESSES AND OTHER INPUT	AP Land Use Planner, AP Engineer (2), AP Biologist (3), AP Engineer (2), AP Hydrogeologist, OP Residents (12), OP Victoria Road Association, OP Land Use Planner (2), OP Engineer (3), OP Biologist (2), OP Scientist with Canadian Nature Federation, OP Hydrogeologist, MNR, Ornithologist, Biologist (2), Operations Superintendent of the County of Simcoe
CODE	APLUP APENG APBIO APHYD OPRES OPCG OPLUP OPENG OPBIO OPEXS OPHYD MNR ORN BIO OTH
DEVELOPMENT ISSUE(S)	Aggregate Extraction
CODE	EXT

DAYS	N/A
STATUS	F
NH ISSUE(S)	Adequacy of protective measures for endangered species. Protection of Provincially Significant Wetland. Aggregate operation and effect on water.
CODE	WLF
NOTED AGENCY PARTICIPANTS	MNR CWS
OVERVIEW/SUMMARY	Appeal to amend Official Plan and by-law to allow an aggregate operation. A recommendation concerning the granting of Class A aggregate licence was also sought. The subject lands comprise 427.2 hectares of rural lands. A Provincially Significant Wetland was identified and the appellant withdrew 19 ha to provide buffer area. Pairs of Loggerhead Shrikes, an endangered species, were present on the site. A Management Plan for the Loggerhead Shrike was submitted and approved by the MNR. The Management Plan was challenged. The Board found that the plan met the appropriate MNR policy. The proposed quarry operation was to include dewatering. The Board found that any effects this may have on the surrounding wetlands or other water supplies would be adequately monitored by the proposed groundwater-monitoring regime. The regime would allow the MNR to successfully analyse and assess the progress of any future extraction or dewatering in this application. Should any negative effects occur dewatering would halt. The appeal was allowed with conditions and the licence was recommended.
DECISION	Appeal allowed with conditions. Aggregate licence recommended for approval with conditions.
CODE	ALL
NH IMPACT	Neutral
NH SCORE	3
NOTES	There were other issues discussed in this decision. "The conditions specify the framework for the Loggerhead Shrike Management Plan, the management of any Archaeological resources, noise, blasting, spills, and waste water. The conditions specify the framework for dewatering with a specific regime for water taking, monitoring wells, groundwater and dugout water level measurements, water quality monitoring for domestic wells, and for reporting. There are specific conditions for trigger mechanism and contingency measures for domestic wells, for the N.E. Wetland and for cattle water supply. Conditions also involve complaint resolution, dust control, haul routes, and site plan redline revisions."
REGION	Central
COSTS	NM

CASE NAME/INDEXED AS	<i>Oakville (Town) Comprehensive Zoning By-law No. 1984-63 (Re)</i> East Morrison Creek
CITATION	[2001] O.M.B.D. No. 853
OMB FILE NUMBER(S)	PL010217 Z010039
HEARING OFFICER	Rosenberg
OTHER HEARING OFFICER	
DATE	20/07/2001
APPEALING	Felicitas Vail
NH Appeal	
Time Limit Appeal	yes
CODE	DEV
OPPOSITION	Town of Oakville
CODE	TWN

WITNESSES AND OTHER INPUT	AP Land Use Planner, AP Ecologist, AP Architect, AP Geotechnical Engineer, OP Land Use Planner, OP Environmental Planner, OP Area Residents (16)
CODE	APLUP APECO APARC APENG OPLUP OPRES
DEVELOPMENT ISSUE(S)	Development Proposal - apartment building
CODE	DP
DAYS	N/A
STATUS	NF1
NH ISSUE(S)	Development on ravine or valley lands.
CODE	NA
NOTED AGENCY PARTICIPANTS	CA
OVERVIEW/SUMMARY	The appellant proposed the development of an apartment building on lands comprising a total of approximately 6.5 acres with one acre being tablelands, and the remainder being ravinelands or valleylands. Although the appellant made the distinction between ravinelands and valleylands the Board found there to be no distinction. "The Board finds that the valleylands and the ravine lands are a natural feature and that they are indistinguishable. There is a contiguous link between the two areas. The vegetation and function of both the valleylands and the ravine lands are similar and the 5 2/3 acres form part of the East Morrison Creek System." "The Board is very concerned about slope stability and erosion and any possible detrimental environmental impact to the steep slopes located in this area, i.e., the valley and ravine lands. The Board chose to err on the side of caution relating to the 7.5 metre setback. A greater setback from the top-of-bank was found to be more desirable and appropriate in the circumstances in order to protect and maintain the steep slopes and the environment." Without this distinction the size of the development had to be reduced to allow for setbacks from the valleylands and for proper integration into the surrounding developed area. The appeal was allowed in part.
DECISION	Appeal allowed in part. The number of units and height were restricted
CODE	ALL1
NH IMPACT	Neutral
NH SCORE	5
NOTES	
REGION	South
COSTS	NM
<hr/>	
CASE NAME/INDEXED AS	<i>London (City) Official Plan Redesignate Lands Amendment (Re)</i> Thames River
CITATION	[2002] O.M.B.D. No. 1073
OMB FILE NUMBER(S)	PL020107 Z020010 O020018
HEARING OFFICER	Seaborn
OTHER HEARING OFFICER	
DATE	12/12/2002
APPEALING	Rival Developments Inc.
NH Appeal	

Time Limit Appeal	yes
CODE	DEV
OPPOSITION	City of London Gaile McGregor Beaufort/Gunn and Area Residents Association London Waldorf School
CODE	CTY PI CG EDU
WITNESSES AND OTHER INPUT	AP Fluvial Geomorphologist, AP Land Use Planner, AP Flood Fringe Analysis and Storm water Management, AP Engineer, AP Landscape Architect, AP Hydrologist, AP President of Rival Developments Inc. OP Land Use Planner (2), OP Ecologist, OP Environmental Researcher, OP Teacher, OP School Board Member, OP Area Residents
CODE	APGMO APLUP APFFA APENG APLSA APHYD APDEV OPLUP OPECO OPEXS OPEDU OPEDU OPRES
DEVELOPMENT ISSUE(S)	Development Proposal - residential development on a lot abutting the Thames River
CODE	DP
DAYS	11
STATUS	NF1
NH ISSUE(S)	Development adjacent to a river.
CODE	NA
NOTED AGENCY PARTICIPANTS	CA
OVERVIEW/SUMMARY	Appeal to allow residential infill (townhouse development) on 1.9 hectare site abutting the Thames River to the north and the east. A 30 metre buffer along the River was to be dedeed to the City. Opposing parties wanted the lands to remain Open Space. The proposed development satisfied the Conservation Authority (floodplain development). The Board found that the site did not qualify as an ESA, potential ESA, or ANSI and the evidence did not suggest that it should be designated as such. Evidence did not identify the site as habitat for threatened or endangered species. It was significant, in the Board's view, that the site was formerly occupied for commercial and industrial purposes until 1983. The Board allowed the development of the site.
DECISION	Appeal allowed in part but withheld. If the modifications set out by the Board are complied with the development can proceed.
CODE	ALL1
NH IMPACT	Neutral
NH SCORE	5
NOTES	There were other issues in this decision. While the Thames River is an important natural heritage feature it does not follow that the proposed development will threaten the River itself or its corridor function.

REGION Southwest
COSTS RR

CASE NAME/INDEXED AS CITATION *London (City) Official Plan Multi-Family Residential Amendment (Re)*
[2001] O.M.B.D. No. 99

OMB FILE NUMBER(S) PL000128
O000024
Z000027
M000057

HEARING OFFICER Rosenberg

OTHER HEARING OFFICER

DATE 01/02/2001

APPEALING Ayerswood Development Corp.

NH Appeal

Time Limit Appeal yes

CODE DEV

OPPOSITION City of London
Oakridge-Hazeldon Community Association
Urban League of London
D. Proudfoot
B. Hopkins
A. Hopkins
W. Howell
H. Howell

CODE CTY

CG

RES

WITNESSES AND OTHER INPUT AP Land Use Planner (2), AP Engineer, AP Transportation Engineer, AP Engineering Technologist, AP Landscape Architect (2), AP Heritage Planner, AP Manager of Construction and Development for Ayerswood Development Corp. OP Land Use Planner (5), OP Ecologist, OP Natural Hazard Planner, OP Forester, OP Urban League of London, OP Oakridge-Hazeldon Community Association, OP Historian, OP Area Residents (24)

CODE APLUP

APENG

APLSA

APDEV

OPLUP

APECO

APFOR

OPCG

OPOTH

OPRES

DEVELOPMENT ISSUE(S) Development Proposal - two twelve story residential apartment buildings

CODE DP

DAYS N/A

STATUS F

NH ISSUE(S) Retention of natural lands as Open Space.

CODE NA

NOTED AGENCY CA

PARTICIPANTS

OVERVIEW/SUMMARY

The appellant owns a vacant 12 acre parcel that is designated Open Space. To the east of the parcel is Reservoir Park, to the north is Springbank Park, to the southwest is an aggregate operation and to the southeast is a residential development. The proposed development was for two twelve storey apartment buildings with underground parking. Seven acres were to remain Open Space while 5 acres were requested to be re-designated with actual construction taking place on 2 acres. The Board found that there were no natural heritage designations for the lands in the Official Plan and there were no special environmental features on the property. There will be some slight impacts on the natural features and the ecological functions of the area. These impacts were considered by the Board to be minimal and acceptable. The Board found that the seven acre portion should be rezoned from OS1 to OS5 to provide increased protection to the trees and vegetation on the site. Only one twelve storey apartment building in the middle of the 5 acre site was held to be appropriate. Two 12 storey apartment buildings were seen as overdevelopment and will create severe unacceptable adverse impacts on the existing slope, the environment and the 2 abutting neighbours. The appeal is allowed in part.

DECISION

Appeal allowed in part. Developer's proposal for two twelve storey apartment buildings was not approved. The Board amended the proposal to consist of one twelve story apartment building with appropriate site plan control measures. The amended proposal will cause the least amount of environmental impact and the least amount of impact on the two neighbours.

CODE

ALL1

NH IMPACT

Positive

NH SCORE

7

NOTES

Other issues were discussed in this decision. There was significant public involvement. "The Board notes that the City of London has had many years (at least 33 years) to acquire the property from the owner and join it with the balance of the Reservoir Hill lands. No expropriation or acquisition has taken place during that time. The City has failed to purchase the lands during this period of time and the City by maintaining the designation of "Open Space" on this private property, in effect is appearing to expropriate the lands without paying proper compensation. The lands would have a lower value if they remained in an "Open Space" designation than if re-designated "Multi-Family High Density Residential". This is neither fair nor equitable to the owner. Private land owners should not be required to provide "Open Space" for public use. The Board finds that it is not in the public interest to use the appeal process of the Ontario Municipal Board as a vehicle to determine land values unless we are dealing with an expropriation or an assessment appeal case where land values are the real issues."

REGION

Southwest

COSTS

NM

CASE NAME/INDEXED AS*Middlesex Centre (Township) Official Plan (Re)***CITATION**

[2001] O.M.B.D. No. 1257

OMB FILE NUMBER(S)

PL001143
O000225
C000328
Z010006

HEARING OFFICER

Harron

OTHER HEARING OFFICER**DATE**

09/11/2001

APPEALING

Hugh Gillespie, Catherine Kennedy

NH Appeal**Time Limit Appeal**

UNC

CODE	PI
OPPOSITION	Upper Thames River Conservation Authority Town of Middlesex Centre
CODE	CA TWN
WITNESSES AND OTHER INPUT	AP Land Use Planner, OP Land Use Planner, OP Land Use Planner from Upper Thames River Conservation Authority.
CODE	APLUP OPLUP
DEVELOPMENT ISSUE(S)	Severance - creation of new residential lot
CODE	SEV
DAYS	N/A
STATUS	F
NH ISSUE(S)	Should lands declared an ANSI by the MNR and Conservation Authority be severed?
CODE	NA
NOTED AGENCY PARTICIPANTS	MNR CA
OVERVIEW/SUMMARY	Appeal to allow severance for future development of a single family residential house. Subject lands are approximately 14 acres, contain an existing house, are part of a woodlot that exceeds 4 hectares, are adjacent to the Oxbow Creek, are part of the Kilworth Valleylands and have been declared an ANSI by the Conservation Authority and the MNR. The Board found the subject lands to be unique and environmentally sensitive. The lands should be protected. The creation of a new lot is not appropriate, however the Board accepted that an appropriately constructed addition to the existing house would not offend the intent of the Official Plan. The appeal was allowed in part.
DECISION	Allowed in part.
CODE	ALL1
NH IMPACT	Positive
NH SCORE	8
NOTES	There were other issues addressed in this decision.
REGION	Southwest
COSTS	NM

CASE NAME/INDEXED AS	<i>Clarington (Municipality) Official Plan Amendment Special Policies Designations (Re)</i>
CITATION	[1999] O.M.B.D. No. 851
OMB FILE NUMBER(S)	PL97005 O970004 Z950164 Z950165 O960140 O980028 S960055 S960058
HEARING OFFICER	Katary
OTHER HEARING OFFICER	Beccaria
DATE	28/07/1999
APPEALING	Courtice Heights Developments
NH Appeal	
Time Limit Appeal	yes
CODE	DEV

OPPOSITION CODE	Mrs. Racansky PI
WITNESSES AND OTHER INPUT CODE	AP Municipal Land Use Planner, AP Senior Municipal Land Use Planner, AP Engineer, AP Hydrogeologist, AP Environmental Planner, AP Ecologist, OP Environmental Planner, OP Hydrogeologist APLUP APENG APHYD APECO OPLUP OPHYD
DEVELOPMENT ISSUE(S) CODE	Development Proposal - residential DP
DAYS STATUS	N/A NF1
NH ISSUE(S) CODE	Whether or not the proposed subdivision developments are in harmony with the natural environment. WA
NOTED AGENCY PARTICIPANTS OVERVIEW/SUMMARY	The objector had several concerns, some being: impact of development on ground water and well water in the area, aspects of the environment in general (wetland complex, fisheries, etc). While the objector did not believe that pertinent appellant studies were adequate the Board found that they were. The appellant was successful.
DECISION	Appeal allowed in part. Based on an analysis of all the pertinent evidence in respect to impacts on the environment, the Board found that the proposal does not cause an unacceptable adverse impact upon the functioning of the ecosystem as a whole, and that the proposal is in harmony with the environment.
CODE	ALL1
NH IMPACT	Neutral
NH SCORE	7
NOTES	The Objector only criticized the Appellant studies. The Objector did not do any technical work to show the Appellant's studies were inadequate. The Objector failed to demonstrate limitations in the studies of the Appellant. The Board did not see any inadequacies in the Appellant's studies. The commenting agencies were satisfied with the quality and quantity of the Appellant's studies. In relation to harmony in the environment the Board stated: "Harmony turns on the impact of the proposal on the capacity of the natural environment to absorb the impact and establish a new equilibrium without adversely impeding the integrated functioning of the system as a whole. Harmony is the combination of different elements of nature so as to form a consistent and orderly whole. Harmony implies a dynamic interrelationship between elements and not a static relationship implied by the idea of "balance." Being in harmony means nothing more than being capable of merging with the natural environment in such a way that the integrity of the whole is maintained. In the final analysis, the proposal should not adversely impair the capacity of the natural environment to function as a whole."
REGION	South
COSTS	DEN

CASE NAME/INDEXED AS	<i>Prince Edward (County) Official Plan Amendment Ridge Road Aggregates (Re) Waring Creek Watershed</i>
CITATION	[1999] O.M.B.D. No. 572
OMB FILE NUMBER(S)	PL970191 O970265 Z970184 M970001 O990024 Z990021 O980039
HEARING OFFICER	Jackson
OTHER HEARING OFFICER	
DATE	26/05/1999
APPEALING	Ridge Road Aggregates Inc.
NH Appeal	
Time Limit Appeal	yes
CODE	CI
OPPOSITION	Prince Edward County Waring's Creek Improvement Association Inc. Bay of Quinte Ratepayers Association Inc.
CODE	REG CG
WITNESSES AND OTHER INPUT	AP Hydrogeologist, AP Land Use Planner, AP Environmentalist, AP Traffic Engineer, AP Uncertain, OP Land Use Planner, OP Engineer, OP Biologist, OP Land Use Planner, OP Engineer, OP Director of Public Works, OP Biologist, OP Uncertain, OP Ecologist, OP Hydrogeologist, OP Land Use Planner, OP Area Residents (17)
CODE	APHYD APLUP APNAT APENG APUNC OPLUP OPENG OPBIO OPOTH OPUNC OPECO OPHYD OPRES
DEVELOPMENT ISSUE(S)	Extraction - aggregate licence application
CODE	EXT
DAYS	30
STATUS	WHD
NH ISSUE(S)	Extraction of aggregate on environmentally sensitive lands. Extraction of aggregate below water table.
CODE	WA
NOTED AGENCY PARTICIPANTS	CA

OVERVIEW/SUMMARY Appellant proposed phased aggregate extraction on lands containing significant portions of the Waring Creek Watershed. The Waring Creek is a coldwater watercourse, is regular, provides fish habitat and is undergoing restoration. It is not identified as significant, etc. in the Official Plan or otherwise. The watershed area of Waring Creek was protected with environmental designation. Phases of the aggregate extraction that proposed going below water table could have negative impact on Waring Creek and were not permitted. The appeal was allowed to a certain extent, however there were significant changes/conditions.

DECISION Appeal allowed in part. Extraction was to be in phases. Phases that proposed going below the water table level were not allowed. Conditions were imposed.

CODE ALL1

NH IMPACT Neutral

NH SCORE 3

NOTES Costs were sought against the appellant by the opposing party.

REGION East

COSTS DEN

CASE NAME/INDEXED AS *Kawartha Lakes (City) Official Plan Re-designated Lands Amendment (Re)*
Lake Skugog, PSW

CITATION [2003] O.M.B.D. No. 694

OMB FILE NUMBER(S) PL010018
O010073
Z010022
S010001

HEARING OFFICER Rogers

OTHER HEARING OFFICER

DATE 16/07/2003

APPEALING Gary Marquis, Leo Wall

NH Appeal

Time Limit Appeal UNC

CODE DEV

OPPOSITION City of Kawartha Lakes
South Mariposa Lakefront Ratepayers Association

CODE CTY
CG

WITNESSES AND OTHER AP Land Use Planner, AP Environmental Experts, OP Land Use Planner, OP

INPUT Environmental Experts

CODE APLUP
APEXS
OPLUP
OPEXS

DEVELOPMENT ISSUE(S) Development Proposal - waterfront single family residential development

CODE DP

DAYS N/A

STATUS NF1

NH ISSUE(S) Residential lakefront development. The subject lands were adjacent to a Provincially Significant Wetland. Recent MNR mapping expanded the area of the PSW to include significant portions of the appellant's lands. Should development be allowed?

CODE WET

NOTED AGENCY MOEE

PARTICIPANTS MNR

OVERVIEW/SUMMARY	The appellants owned 88 acres on Lake Skugog. The development proposal was for 64 residential lots on private services. Approximately 7.5ha. was to be zoned nature reserve to provide for a 30m. buffer between the adjacent PSW and the development. All applicable government agencies signed off on the development (MNR, MOEE, etc.). The Board found that cluster shoreline development in this location with the access proposed by the appellants is appropriate, conforms with the Official Plan policies, and the Provincial Policy Statement and represents good planning, provided the size of the development is related to the waterfront access that can be provided. The number of lots (22) are to reflect a compact development that is physically and functionally related to the water access being provided.
DECISION	Appeal allowed. Development was allowed to proceed - however, there was a considerable reduction in the number of lots allowed.
CODE	ALL1
NH IMPACT	Neutral
NH SCORE	5
NOTES	The Board felt that the number of lots proposed was excessive and was likely to create pressure for additional access to the water along that shoreline, possibly resulting in irreversible impacts on the sensitive wetland. The fact that the number of residents proposed for this development outnumber the number of specific accesses to the water, underlay this concern. The appellant's proposal is too large a development to impose on this shoreline community. While the Board was convinced that the financial impacts on the City will be minimal, it is not a proposal, which will be a natural, unobtrusive extension of the existing shoreline development.
REGION	Central
COSTS	NM
CASE NAME/INDEXED AS	<i>Kawartha Lakes (City) Official Plan Re-designated Lands Amendment (Re)</i> Lake Skugog, PSW
CITATION	[2003] O.M.B.D. No. 694
OMB FILE NUMBER(S)	PL010018 O010073 Z010022 S010001
HEARING OFFICER	Rogers
OTHER HEARING OFFICER	
DATE	16/07/2003
APPEALING	Gary Marquis, Leo Wall
NH Appeal	
Time Limit Appeal	UNC
CODE	DEV
OPPOSITION	City of Kawartha Lakes South Mariposa Lakefront Ratepayers Association
CODE	CTY CG
WITNESSES AND OTHER INPUT	AP Land Use Planner, AP Environmental Experts, OP Land Use Planner, OP Environmental Experts
CODE	APLUP APEXS OPLUP OPEXS
DEVELOPMENT ISSUE(S)	Development Proposal - waterfront single family residential development
CODE	DP

DAYS	N/A
STATUS	NF1
NH ISSUE(S)	Residential lakefront development. The subject lands were adjacent to a Provincially Significant Wetland. Recent MNR mapping expanded the area of the PSW to include significant portions of the appellant's lands. Should development be allowed?
CODE	WET
NOTED AGENCY PARTICIPANTS	MOEE MNR
OVERVIEW/SUMMARY	The appellants owned 88 acres on Lake Skugog. The development proposal was for 64 residential lots on private services. Approximately 7.5ha. was to be zoned nature reserve to provide for a 30m. buffer between the adjacent PSW and the development. All applicable government agencies signed off on the development (MNR, MOEE, etc.). The Board found that cluster shoreline development in this location with the access proposed by the appellants is appropriate, conforms with the Official Plan policies, and the Provincial Policy Statement and represents good planning, provided the size of the development is related to the waterfront access that can be provided. The number of lots (22) are to reflect a compact development that is physically and functionally related to the water access being provided.
DECISION	Appeal allowed. Development was allowed to proceed - however, there was a considerable reduction in the number of lots allowed.
CODE	ALL1
NH IMPACT	Neutral
NH SCORE	5
NOTES	The Board felt that the number of lots proposed was excessive and was likely to create pressure for additional access to the water along that shoreline, possibly resulting in irreversible impacts on the sensitive wetland. The fact that the number of residents proposed for this development outnumber the number of specific accesses to the water, underlay this concern. The appellant's proposal is too large a development to impose on this shoreline community. While the Board was convinced that the financial impacts on the City will be minimal, it is not a proposal, which will be a natural, unobtrusive extension of the existing shoreline development.
REGION	Central
COSTS	NM

CASE NAME/INDEXED AS	<i>London (City) Official Plan Designate Primary Collector Amendment (Re) Gibbons Wetland</i>
CITATION	[2000] O.M.B.D. No. 242
OMB FILE NUMBER(S)	PL990713 O990126 S990049
HEARING OFFICER	Daly
OTHER HEARING OFFICER	
DATE	13/03/2000
APPEALING	Sifton Properties Ltd.
NH Appeal	
Time Limit Appeal	yes
CODE	DEV
OPPOSITION	City of London Stoneybrook Heights Uplands Residents Association
CODE	CTY CG

WITNESSES AND OTHER INPUT CODE AP Biologist, AP Land Use Planner, OP Ecologist, OP Land Use Planner, OP Area Residents

APBIO
APLUP
OPECO
OPLUP
OPRES

DEVELOPMENT ISSUE(S) CODE Development Proposal - retirement community adjacent to a wetland
DP

DAYS N/A

STATUS NF1

NH ISSUE(S) Should there be development in proximity to the wetland where the wetland boundary is in dispute?

CODE WET

NOTED AGENCY

PARTICIPANTS

OVERVIEW/SUMMARY Appeal to allow "retirement community" development (mix of nursing or seniors care, cluster housing, medical centre, community club house and convenience commercial with service station). The Gibbons Wetland formed part of the proposed development site. The primary issue was the wetland buffer. The majority of the boundary of the wetland was agreed upon, however, one area was in dispute. The Board would not allow any form of residential development in this area until further clarification of the extent of the wetland area and the necessary buffers are determined. Clarification could entail further environmental consideration in conjunction with additional geotechnical and hydrogeological consideration necessary to determine an appropriate wetland boundary and buffer area. Other buffers proposed by the appellant (where the wetland boundary was not in dispute) were accepted by the Board. Appeal allowed in part. (The area where wetland boundary was in dispute was deferred.)

DECISION Appeal allowed in part. Draft approval was granted with modifications

CODE ALL1

NH IMPACT Neutral

NH SCORE 5

NOTES There were other issues discussed in this decision. All witnesses were not identified in the decision. "For the Board to conclude that the proposed buffers are inadequate, the Board must agree with the City that additional environmental study of flora and fauna is warranted. The Board cannot agree. Given that the whole of the feature is being retained, it only remains for the Board to be comfortable that the buffers proposed are adequate to ensure that species within the wetland have sufficient buffer protection. There is no evidence, ... that there are any threatened or endangered plant species within this area, nor is there any evidence of species which require significant buffers in order to continue to thrive within the wetland area. Additional buffers for buffers sake, are not warranted."

REGION Southwest

COSTS NM

CASE NAME/INDEXED AS *Victoria Point Homes Inc. v. Orillia (City)*

CITATION [1998] O.M.B.D. No. 684

OMB FILE NUMBER(S) PL970556

Z970070

S970055

HEARING OFFICER Rogers

OTHER HEARING OFFICER	
DATE	29/04/1998
APPEALING	Victoria Point Homes Inc.
NH Appeal	
Time Limit Appeal	yes
CODE	DEV
OPPOSITION	City of Orillia
CODE	CTY
WITNESSES AND OTHER	AP Land Use Planner, AP Architect, AP Environmental Planner, AP
INPUT	Ecologist, AP Geo-technical Engineer, AP Expert in Condominium law, AP
	Municipal Servicing Engineer
CODE	APLUP
	APARC
	APECO
	APENG
	APOTH
	OPCTY
	OPMNR
	OPMOEE
DEVELOPMENT ISSUE(S)	Development Proposal - residential townhouse on canal
CODE	DP
DAYS	10
STATUS	INT
NH ISSUE(S)	Residential development on a Provincially Significant Wetland
CODE	NA
NOTED AGENCY	MNR
PARTICIPANTS	MOEE
OVERVIEW/SUMMARY	Appeal from Council's refusal or neglect to enact a proposed zoning by-law amendment that would allow the development of 678 townhouses supported by stilts on a man-made inland waterway in a Provincially Significant Wetland. At the conclusion of the appellant's case the City of Orillia brought a motion to adjourn. The motion was granted. The Board found that the proposed development did not meet the Provincial Policy Statement regarding Natural Heritage. The development proposal did not demonstrate that there would be an acceptable impact on the natural features, ecology or wildlife of the area. The proposal was found not to be in the public interest.
DECISION	Appeal adjourned.
CODE	DEN
NH IMPACT	Positive
NH SCORE	9
NOTES	The Board determined that the developer failed to make an adequate case, and opponents were not required to submit evidence. While the case was adjourned, in practical terms, the appeal was denied and has been coded accordingly.
REGION	Central
COSTS	NM
<hr/>	
CASE NAME/INDEXED AS	<i>Sherborne (Township) Zoning By-law No. 1979-50 (Re)</i>
CITATION	[2000] O.M.B.D. No. 721
OMB FILE NUMBER(S)	PL990957 Z990137
HEARING OFFICER	Watty
OTHER HEARING OFFICER	Culham
DATE	18/07/2000

APPEALING NH Appeal Time Limit Appeal CODE	Michael Anderson, Lorraine Anderson yes PI
OPPOSITION CODE	Township of Sherborne TWN
WITNESSES AND OTHER INPUT CODE	AP Land Use Planner, AP Biologist, AP Area Residents, OP Land Use Planner, AP Limnologist APLUP APBIO APRES OPLUP OPLIM
DEVELOPMENT ISSUE(S) CODE DAYS STATUS NH ISSUE(S) CODE NOTED AGENCY PARTICIPANTS OVERVIEW/SUMMARY	Development Proposal - seasonal residential DP N/A F Residential development of undersized land parcel (island) NA Appeal from refusal to enact amendment to allow seasonal residence. Subject lands are an island consisting of .33 of an acre (under the .4 minimum for lot development). The Municipality took the position that the development was inappropriate given the size and the likelihood of impact on the island's cold water fishery. The appellants claimed that development should be allowed to prevent further despoliation of the island by trespassers; that their development would be better for the environmental health of the island. The Board found the restraints that would be necessary to develop this property would be incompatible with a recreational use of a summer property. "Some ancillary outdoor amenity space is required. If not available, one must conclude the site to be either unsuitable for residential use or given under such constrained building envelope assumption, would be overdeveloped. While a buffer may be required to protect a sensitive natural feature from human impact, it cannot reasonably consume all of the normal setback ancillary to a residential use. To maintain such a use regime would turn an anticipated recreational/ outdoor experience into one of house arrest." That is not good planning. Appeal dismissed. Appeal dismissed.
DECISION CODE NH IMPACT NH SCORE NOTES	DEN Positive 5 "Illegal use of the island together with default in supervision and control by the owners of their property, should not be used as an excuse to relax otherwise valid and defensible restrictions on development." "The Board has been directed to the Provincial Policy Statement on Natural Heritage features and Areas in having regard for the objective that "development and site alteration may be permitted in fish habitats (or on adjacent lands) if it has been demonstrated that there will be no negative impacts on the natural features and ecological functions for which the area is identified." The appropriate jurisdiction for assessing whether or not negative impact is likely rests with the Ministry of Natural Resources and /or the Federal Department of Fisheries and Oceans in the case of fish habitats. The current application has not been subjected to such scrutiny."
REGION	Central

COSTS

NM

CASE NAME/INDEXED AS	Gold Mountain Springs Inc. v. Oro-Medonte (Township) Water Bottling Plant, Bass Lake Kame Moraine (A.K.A. Oro Moraine)
CITATION	[2002] O.M.B.D. No. 141
OMB FILE NUMBER(S)	PL000560 O000109 Z000081
HEARING OFFICER	Fish
OTHER HEARING OFFICER	
DATE	14/02/2002
APPEALING	Gold Mountain Springs Inc.
NH Appeal	
Time Limit Appeal	yes
CODE	CI
OPPOSITION	Township of Oro-Medonte Rosemary Kinsey Peter Kinsey James Grand Jaratt Coulson District Community Group Inc. Several Area Residents
CODE	TWN PI CG RES
WITNESSES AND OTHER INPUT	OP Area Residents, Land Use Planners (5), Hydrogeologists (3), Environmental Planners (2), Traffic Engineers (2), Environmental Biologists (2)
CODE	OPRES LUP HYD ENG BIO
DEVELOPMENT ISSUE(S)	Development Proposal - water bottling facility
CODE	DP
DAYS	40
STATUS	F
NH ISSUE(S)	Taking of water from aquifer for commercial purposes.
CODE	WA
NOTED AGENCY PARTICIPANTS	
OVERVIEW/SUMMARY	Appeal from Township refusal to re-designate Agricultural lands to Industrial Exception and Environmental Protection Two Overlay. The re-designation would permit a water bottling plant and related uses. The subject lands are located on the Bass Lake Kame Moraine, are largely forested and contain a high quality cold water spring. The site is environmentally sensitive. Given that: the OP highlights the importance of protecting natural features, the need of a bottling plant on site was not demonstrated. Two nearby watersheds may be negatively impacted by a reduction in groundwater flow, interior woodland species are likely to be impacted and existing wildlife corridors may be interrupted. The Board dismissed the appeal. The water bottling development is not to proceed.
DECISION	Appeal Dismissed.

CODE DEN
NH IMPACT Positive
NH SCORE 8
NOTES
REGION Central
COSTS M

CASE NAME/INDEXED AS CITATION *Clarington (Municipality) Zoning By-law No. 84-63 (Re)*
 [2003] O.M.B.D. No. 188
OMB FILE NUMBER(S) PL020354
 Z020057
 C020208
HEARING OFFICER Lee
OTHER HEARING OFFICER
DATE 06/03/2003
APPEALING Robert Martin
NH Appeal
Time Limit Appeal yes
CODE PI
OPPOSITION Municipality of Clarington
 Conservation Authority
CODE MUN
 CA
WITNESSES AND OTHER INPUT AP Regional Health Department, OP Municipality of Clarington, OP
 Conservation Authority
CODE APOTH
 OPMUN
 OPCA
DEVELOPMENT ISSUE(S) Severance - creation of residential lot
CODE SEV
DAYS N/A
STATUS F
NH ISSUE(S) Should a lot severance be allowed if it could infringe on the natural features
 and heritage of the vicinity?
CODE WA
NOTED AGENCY PARTICIPANTS CA
OVERVIEW/SUMMARY The appellants wanted a severance to create a new lot. The Conservation
 Authority and the Municipality were concerned about the spatial constraints
 of the proposed lot in relation to a private well and waste disposal system. The
 Regional Health Department provided evidence that the development was
 possible. The Board decided to follow the advice of the Municipality and the
 Conservation Authority and exercise caution. The Board believed that the if
 the lot was allowed the services (well, waste disposal) needed would intrude
 on the environmentally sensitive area of the lot. This was not acceptable and
 the Board dismissed the appeal.
DECISION Appeal dismissed
CODE DEN
NH IMPACT Positive
NH SCORE 7

NOTES	The Environmental Impact Statement stated that development on the lot could occur without impacting the natural features or hazard features. The Board found that the primary systems could be accommodated on the lot, however, the board questioned if the lot would be able to accommodate a secondary system(s) if the original systems should fail in the future.
REGION	South
COSTS	NM

CASE NAME/INDEXED AS CITATION	<i>Ilio v. Mississauga (City) Committee of Adjustment</i> [1999] O.M.B.D. No. 179
OMB FILE NUMBER(S)	PL981078 V980522
HEARING OFFICER	Rogers
OTHER HEARING OFFICER	
DATE	22/02/1999
APPEALING	Frank Di Ilio
NH Appeal	
Time Limit Appeal	
CODE	PI
OPPOSITION	City of Mississauga
CODE	CTY
WITNESSES AND OTHER INPUT	AP Area Residents, OP City of Mississauga Land Use Planner
CODE	APRES OPLUP
DEVELOPMENT ISSUE(S)	Development - construction of shed in wooded area of lot
CODE	DP
DAYS	N/A
STATUS	F
NH ISSUE(S)	Construction of shed within zoned wooded area that prohibited the construction of any structure.
CODE	WD
NOTED AGENCY PARTICIPANTS	
OVERVIEW/SUMMARY	The appellant began construction of a shed in a wooded area to the rear of his residential lot. There was a by-law in place designating the wooded area as 'Natural Feature.' The by-law prohibited the construction of any structure in the wooded area. The appellant was not aware of the by-law and was not told of the by-law when he consulted the City Planning Department. The City denied the appellant's variance application as it believed the shed would be incompatible with the retention of the woodlot area (inhibit natural processes of woodlot - natural regeneration, and could impact root systems of existing vegetation that could lead to the destruction not preservation of existing vegetation). The Board denied the applicant's appeal.
DECISION	Appeal denied. Construction of shed in wooded area is prohibited
CODE	DEN
NH IMPACT	Positive
NH SCORE	8

NOTES

The lack of notice to residents of the provisions of this by-law, the failure of the City's employees to be familiar with their own by-laws, and the quality of the information provided to Mr. Di Ilio by City employees are not matters that can affect the decision of this Board. Also, the Board was not persuaded by the fact that other structures may have been located in other tree preservation areas in the vicinity. It is clear to the Board that the provisions of the Zoning By-law were to provide for the ongoing health and regeneration of a unique natural area. Private ownership has its responsibilities. In this case, private ownership in a unique natural woodlot area, means that activities of the owners are to be restricted in what the Board considers a minimal way, in order to promote the enhancement and preservation of a wooded area.

REGION

South

COSTS

NM

CASE NAME/INDEXED AS	<i>Mississauga (City) Zoning By-law No. 5500 (Re)</i>
CITATION	[2001] O.M.B.D. No. 30
OMB FILE NUMBER(S)	PL968461 Z000066 C960313 V970157 V960518
HEARING OFFICER	Rogers
OTHER HEARING OFFICER	
DATE	16/01/2001
APPEALING	John Welton, Sandra Welton
NH Appeal	
Time Limit Appeal	yes
CODE	PI
OPPOSITION	Umesh Bonde Veena Bonde Dr. Kitching Mrs. Kitching City of Mississauga
CODE	PI CTY
WITNESSES AND OTHER	AP Land Use Planner, OP Arborist, OP Botanist, OP Land Use Planner, OP
INPUT	Land Use Planner
CODE	APLUP OPARB OPBOT OPLUP
DEVELOPMENT ISSUE(S)	Severance - creation of residential lot
CODE	SEV
DAYS	4
STATUS	F
NH ISSUE(S)	Development of a woodland area.
CODE	WD
NOTED AGENCY	
PARTICIPANTS	

OVERVIEW/SUMMARY

Appellants want to sever a portion of their oversized residential lot to allow for an additional lot and a residential structure. When the subdivision was originally developed the subject lot was oversized to protect an unusual botanical grouping. This grouping was later damaged and the appellants felt that, in light of the damage, development should be allowed. Those opposing the severance argued that the lands were still zoned to protect the ecological integrity of the area and that the subject area is still ecologically diverse, healthy and worthy of protection. The Board found that the intent of the City and the developer when the lands were first developed was to protect the natural features on the subject lot for the long term. The site should not be further developed. The character of the residential area and the preservation of the natural forms and functions that were intended to be protected should be maintained.

**DECISION
CODE
NH IMPACT
NH SCORE
NOTES**

Appeal dismissed.

DEN

Positive

10

"The City's botanist gave evidence that the area had, prior to development, been a high quality woodlot. In his view the north half of Lot 9 was still a high quality woodlot. Although some mature trees had been lost, there were still a large number of mature trees. There was good diversity of plant life with shrubs, grasses, flowers and ferns as well as new and mature trees. Wildlife was attracted to the site and had been observed. In this expert's view, the site was a good representation of the original character of the area, with a large population of native species, as well as some regionally rare and uncommon plants. In addition the site was relatively unaffected by its urban surroundings, and therefore contributed to the natural character of the area. The woodlot would continue to flourish as a forest remnant, if left undisturbed." "In reviewing the evidence of the witnesses, the Board notes that the qualifications of the environmental experts called by the City and appellant neighbour were more directly related to the environmental issues at hand, and that the environmental evidence provided by them was more specific. In addition, the planning evidence provided by the Weltons made no reference to the specific environmental policies contained in either the Official Plan or zoning by-law, nor was there any attempt to integrate, relate or rationalize the residential policies and the environmental policies applicable to this site." Furthermore, the Weltons did not call Mississauga planning staff, and the Board therefore was unable to rely on any of the opinions expressed in the staff report prepared in support of the application, given the absence of those opinions being tested by cross-examination."

REGION

South

COSTS

NM

CASE NAME/INDEXED AS	<i>1358872 Ontario Ltd. v. Neebing (Municipality)</i> Lake Superior, Cloud River, Trailer Park
CITATION	[2002] O.M.B.D. No. 610
OMB FILE NUMBER(S)	PL010318 O010190 R010086
HEARING OFFICER	Beach
OTHER HEARING OFFICER	
DATE	21/08/2002
APPEALING	1358872 Ontario Limited (Eagle Mountain Resort)
NH Appeal	
Time Limit Appeal	yes

CODE	CI,
OPPOSITION	Neebing (Municipality)
	MMAH
	Shoreline Stewardship Association
CODE	MUN
	MMAH
	NHG
WITNESSES AND OTHER	AP Biologist, AP Land Use Planner OP Biologist, OP Land Use Planner
INPUT	
CODE	APBIO
	APLUP
	OPBIO
	OPLUP
DEVELOPMENT ISSUE(S)	Development Proposal - seasonal trailer park on Cloud River
CODE	DP
DAYS	N/A
STATUS	F
NH ISSUE(S)	Three features could be impacted by the proposal - Cloud River, Cloud Bay Wetland and Cloud Bay/Lake Superior Marsh. One of the biologists indicated that the features of the lands under consideration qualified as a Provincially Significant Wetland.
CODE	WET
NOTED AGENCY	MMAH
PARTICIPANTS	
OVERVIEW/SUMMARY	The appellant sought approval for the development of a seasonal trailer park on the bank of the Cloud River. The proposed area for development is intimately connected to the functioning of a larger wetland complex. The biologist opposing the development gave evidence of the pristine nature, very high quality, and the extreme rarity of such an environmental feature on the Canadian shores of Lake Superior. Appellant's biologist recognised the environmental significance of the area but believed that negative impacts could be mitigated by careful development in conjunction with the imposition of conditions of use on users of the proposed park.
DECISION	Appeal dismissed. The proposal represents over-development and poses too great a risk to the unique and pristine environment.
CODE	DEN
NH IMPACT	Positive
NH SCORE	10
NOTES	The appellant's biologist set out stringent recommendations for the development and use of the trailer park. However, whether or not the development and users would be "policed" was a significant concern. The Municipality did not possess the manpower or financial resources to take on such a role and the Provincial Government, as represented at the hearing, indicated no interest in taking on the "policing" role. The Board was primarily persuaded to dismiss the appeal as the proposal was found to be incompatible with the areas pristine environment.
REGION	North
COSTS	NM
CASE NAME/INDEXED AS	<i>Woudstra v. Halton (Regional Municipality) Land Division Committee</i>
CITATION	Hilton Falls Complex, ESA
OMB FILE NUMBER(S)	[1997] O.M.B.D. No. 426
HEARING OFFICER	C950527
	King

OTHER HEARING OFFICER	
DATE	07/04/1997
APPEALING	Keith Woudstra, Cynthia Woudstra
NH Appeal	
Time Limit Appeal	
CODE	PI
OPPOSITION	Regional Municipality of Halton Halton Region Conservation Authority Halton Hills
CODE	REG CA TWN
WITNESSES AND OTHER	AP Land Use Planner, OP Regional Land Use Planner, OP Township Land
INPUT	Use Planner, OP Halton Region Conservation Authority
CODE	APLUP OPLUP OPCA
DEVELOPMENT ISSUE(S)	Development Proposal - creation of one residential lot and accompanying residential structure within Hilton Falls ESA
CODE	DP
DAYS	N/A
STATUS	F
NH ISSUE(S)	Should a residential lot be permitted within an Environmentally Sensitive Area if the Region's protection policies have not been approved?
CODE	WET
NOTED AGENCY	CA
PARTICIPANTS	
OVERVIEW/SUMMARY	Appeal from refusal to give consent for the creation of vacant, non-farm rural residential lot of 5.9 ha. The property was located within the Rural Area designation of the Regional Official Plan and totally within ESA 25 - Hilton Falls Complex. The lands were within a wetland complex and adjacent to a Provincially Significant Class 1 Wetland. The appellant took the position that the numerous environmental protection policies of the Region were not applicable as they had not been approved. The Board did not agree, as two of the relevant ESA policies were approved for the site. To allow the appeal would be to go against the word and intent of the Regional and Township Official Plans. The appeal was dismissed.
DECISION	Appeal dismissed. Application denied.
CODE	DEN
NH IMPACT	Positive
NH SCORE	7
NOTES	The ESA had been identified by all relevant authorities. The approved policies affecting the ESA can be understood and applied independently. To do otherwise would render the two approved policies totally ineffective. If that had been the intention, the Minister would not have approved them.
REGION	South
COSTS	NM
CASE NAME/INDEXED AS	<i>Newmarket (Town) Official Plan (Re)</i> Locally Significant Wetland
CITATION	[2001] O.M.B.D. No. 974
OMB FILE NUMBER(S)	PL001043 O000199 Z000144
HEARING OFFICER	Rosenberg

OTHER HEARING OFFICER	
DATE	24/08/2001
APPEALING	Irvine Riopelle, Brenda Riopelle
NH Appeal	
Time Limit Appeal	yes
CODE	CI
OPPOSITION	Town of Newmarket Lake Simcoe Conservation Authority Alexander Muir Community Association
CODE	TWN CA CG
WITNESSES AND OTHER INPUT	AP Land Use Planner, AP Engineer, AP Engineer, AP Biologist, AP Area Residents (7), OP Land Use Planner, OP Biologist, OP Engineer, OP Land Use Planner, OP Land Use Planner, OP Area Residents (18)
CODE	APLUP APENG APBIO APRES OPLUP OPBIO OPENG OPRES
DEVELOPMENT ISSUE(S)	Development Proposal - enlargement of restaurant parking lot
CODE	DP
DAYS	N/A
STATUS	F
NH ISSUE(S)	Should parking lot expansion be permitted on wetland and floodplain?
CODE	WET
NOTED AGENCY PARTICIPANTS	CA
OVERVIEW/SUMMARY	Appeal of refusal or neglect of Council to allow for the expansion of the parking lot of the appellant's restaurant. Expansion would necessitate the filling of a Locally Significant Wetland. There were no nationally, provincially or regionally rare vascular plants or wildlife species observed on the site. The Board was not convinced that additional parking was necessary, it was satisfied that parking could be accommodated in the surrounding area. The Board found that it was not in the public interest or good planning to destroy the locally significant wetland and seriously and permanently damage the environment. Section 12.3.2 of the Newmarket Official Plan was not met - "Development within evaluated wetlands shall be prohibited." The general intent of the Provincial Policy Statement was not maintained even though the lands are evaluated only as a "Locally Significant Wetland" and not a "Provincially Significant Wetland." Buffers and mitigating factors were not adequately addressed or were lacking in the appellant's proposal. The appeals are dismissed. The parking lot expansion is not to proceed.
DECISION	Appeals dismissed.
CODE	DEN
NH IMPACT	Positive
NH SCORE	10
NOTES	There was significant public participation. The wetland cannot be treated in isolation. "There is a strong and continual linkage to surrounding properties." "A wetland is a wetland, is a wetland. The Board finds that a "Locally Significant Wetland" should wherever possible be preserved, maintained and enhanced in its natural state."

REGION South
COSTS NM

CASE NAME/INDEXED AS *Pickering (Town) Official Plan Open Space System - Natural Areas Amendment (Re) Town Line Swamp Wetland Complex*

CITATION [2000] O.M.B.D. No. 1101

OMB FILE NUMBER(S) PL971296
O970221

HEARING OFFICER Rosenberg

OTHER HEARING OFFICER

DATE 23/10/2000

APPEALING Map Realty Ltd.

NH Appeal
Time Limit Appeal

CODE DEV

OPPOSITION City of Pickering

CODE CTY

WITNESSES AND OTHER INPUT AP Land Use Planner, AP Biologist, AP Biologist, AP Ecologist, AP Urban Forest Consultant, AP Hydrogeologist, AP Ground Water Technologist, AP Bear Guide and Outfitter, OP Land Use Planner, OP Biologist, OP Biologist, OP Hydrogeologist, OP Biologist, OP Members of the Public (42)

CODE APLUP
APBIO
APECO
APFOR
APHYD
APOTH
OPLUP
OPBIO
OPHYD
OPRES

DEVELOPMENT ISSUE(S) Development Proposal - Adult Lifestyle Community

CODE DP

DAYS N/A

STATUS F

NH ISSUE(S) Residential development on lands adjacent to a Provincially Significant Wetland.

CODE WET

NOTED AGENCY PARTICIPANTS MNR
CA

OVERVIEW/SUMMARY Appeal to allow residential development on an 8 acre portion of the development site. The 8 acres (former gravel pit) are adjacent to a Provincially Significant Wetland - Town Line Swamp Wetland Complex. The Board found that a designation of Residential was not appropriate for the 8 acres; a designation of "Open Space System - Natural Areas" was appropriate. "The Board found the eight acres to be linked in a natural east-west wildlife corridor to the wetlands on the west and the Petticoat Stream Corridor on the east and that the wildlife corridor should be maintained and preserved as far as possible in its natural state. A residential development on these eight acres will have an unacceptable adverse impact on the environment and break the natural link between the two ecologically sensitive areas." Appeal dismissed.

DECISION Appeal dismissed. The 8 acres of former gravel pit adjacent to the Provincially Significant Wetland is to be zoned "Open Space System - Natural Areas."

CODE DEN

NH IMPACT Positive
NH SCORE 10
NOTES Town Line Swamp is located in the midst of an east-west corridor along the Iroquois Shoreline that connects the Rouge River Watershed to Petticoat Creek, Altona Forest and Duffins Creek.
REGION South
COSTS NM

CASE NAME/INDEXED AS CITATION *1245724 Ontario Ltd. King (Township) Fill Application (Re)* PSW- filling of [1999] O.M.B.D. No. 902
OMB FILE NUMBER(S) PL980850
M980061
HEARING OFFICER Krushelnicki
OTHER HEARING OFFICER
DATE 19/08/1999
APPEALING 1245724 Ontario Ltd.
NH Appeal
Time Limit Appeal
CODE PI
OPPOSITION Township of King
CODE TWN
WITNESSES AND OTHER INPUT AP Ecologist, OP Ecologist, OP MNR, Township of King By-law Officer
CODE APECO
OPECO
OPMNR
OTH
DEVELOPMENT ISSUE(S) Landscape Alteration - filling of marsh
CODE LA
DAYS N/A
STATUS NF1
NH ISSUE(S) Filling of lands identified as part of Provincially Significant Wetland.
CODE WET
NOTED AGENCY PARTICIPANTS MNR, CA,
OVERVIEW/SUMMARY The appellant was granted permits by the Township to fill marshland on his property. The permits were granted before the Township was aware that the MNR had identified the property as part of a significant wetland complex. On application for a further permit the applicant was refused. The refusal was appealed to the OMB.
DECISION Appeal denied. The fill permit should not be reissued. "Although the role that the lands in question play is small it is nevertheless vital. The subject site hosts a high quality wetland containing species of plants and wildlife worthy of consideration as a significant natural area."
CODE DEN
NH IMPACT Neutral
NH SCORE 8

NOTES

The Board found that a Municipality has the power to revoke a fill permit "if it was issued in error." "Council is ultimately responsible for the actions of the municipal corporation and can disagree with the advice of its officials, or... reverse an action of one of its officials in the greater public interest." "The Planning Act and the Provincial Policy Statement, when read together, clearly establish a regime that is applicable generally to all municipal planning matters whether they arise specifically under the Planning Act or under some other authority such as the Municipal Act." Both sides requested the Board for a hearing for costs. The Board refused leave for such argument.

REGION

South

COSTS

LR

CASE NAME/INDEXED AS	<i>Aurora (Town) Official Plan Amendment No. 30 (Re)</i> East Aurora Wetland Complex
CITATION	[2001] O.M.B.D. No. 186
OMB FILE NUMBER(S)	PL000902 O000160
HEARING OFFICER	Granger
OTHER HEARING OFFICER	
DATE	09/02/2001
APPEALING	Town of Aurora
NH Appeal	
Time Limit Appeal	
CODE	TWN
OPPOSITION	David Tomlinson
CODE	PI
WITNESSES AND OTHER	Town of Aurora
INPUT	
CODE	TWN
DEVELOPMENT ISSUE(S)	Landscape Protection - Buffer size for part of PSW complex
CODE	LP
DAYS	N/A
STATUS	PAR
NH ISSUE(S)	Does a dispute in the size of an appropriate buffer between urban development and a provincially significant wetland present an apparent land use planning ground upon which part of the plan could be approved or refused by the Board?
CODE	WET
NOTED AGENCY	
PARTICIPANTS	

OVERVIEW/SUMMARY

Motion by Town of Aurora to have appeal of David Tomlinson dismissed without a hearing. Town claims no land use planning ground on which OPA 30 could be approved or refused by the Board. Town submits that appeal is not made in good faith, or is frivolous or vexatious or is made only for the purposes of delay. Mr. Tomlinson bases his appeal to OPA 30 "on what appears to be the almost complete lack of published scientific data used by the Town and their consultant to establish the extent of these zones around the perimeter of the wetland." The Board did not find Mr. Tomlinson's submissions to be frivolous, vexatious or to be with intention to delay the implementation of OPA 30. Mr. Tomlinson is a qualified landscape architect with extensive experience with flora and fauna and their habitat. He acknowledges that a balance must be struck between the need for human habitation and wildlife protection. Does a dispute in the size of an appropriate buffer between urban development and a provincially significant wetland present an apparent land use planning ground upon which part of the plan could be approved or refused by the Board? In this circumstance, based on the commitment of the appellant to provide direct evidence from both applicable direct experience and research, the Board found that it did. Motion denied. Mr. Tomlinson's appeal is to proceed.

DECISION**CODE****NH IMPACT****NH SCORE****NOTES**

DEN

Positive

10

This is a motion. This is not a case of whether someone is right or wrong today. It is simply an acknowledgment of a land use planning issue that deserves the test of a public hearing of the Board. A final determination of the appropriate buffer may reduce the possibility of a multiplicity of hearings at individual subdivision and zoning by-law amendment stages related to the issue of an appropriate buffer.

REGION**COSTS**

South

NM

CASE NAME/INDEXED AS

DiCecco v. Amherstburg (Town) Committee of Adjustment Essex County, Big Creek PSW

CITATION

[2002] O.M.B.D. No. 364

OMB FILE NUMBER(S)

PL001271

C000343

C000344

HEARING OFFICER

Yao

OTHER HEARING OFFICER**DATE**

07/05/2002

APPEALING

Joe & Anne DiCecco

NH Appeal**Time Limit Appeal****CODE**

PI

OPPOSITION

Town of Amherstburg

Committee of Adjustment (withdrew)

MNR

Conservation Authority

Advisory Committee on Environment

CODE

MUN

MNR

CA

NHG

WITNESSES AND OTHER INPUT	AP Urban Planner, AP Environmental Consultant, OP Essex Region Conservation Authority Biologist, OP MNR Biologist, OP Advisory Committee on Environment
CODE	APLUP APEXS OPBIO OPECE OMBWI
DEVELOPMENT ISSUE(S)	Severance-creation of residential lots
CODE	SEV
DAYS	N/A
STATUS	F
NH ISSUE(S)	Appropriate wetland boundary. When three wetland boundaries have been identified, but only one has been incorporated into the applicable Official Plan, which one is applicable to a development application?
CODE	WET
NOTED AGENCY PARTICIPANTS	MNR CA
OVERVIEW/SUMMARY	Appeal from a refusal to allow a severance of two lots from a vacant 6 hectare parcel. Subject lands abut Big Creek but the parcel was not identified on pertinent mapping as a Provincially Significant Wetland. The Board found that the subject lands abutted a Provincially Significant Wetland and the applicable restrictions apply. The application did not meet the restrictions and was denied. The provisional consents were not granted.
DECISION	Appeal denied and provisional consents refused. Provincial policy regarding wetlands is not met, potential for environmental impacts on Big Creek. Recommendations of the Environmental Impact Study relating to buffer zones and limited access trails were not adequately addressed.
CODE	DEN
NH IMPACT	Positive
NH SCORE	10
NOTES	Although hearing de novo the Board member read and mentioned the decision of the Committee of Adjustment. Wetland evaluation gave a score of 250 out of 250 for species rarity and scarcity, Essex and many surrounding counties are in the Carolinian ecoregion have lost more than 99% of their original natural vegetation. "In such a context, "provincially significant" as set out in the Provincial Policy Statement, should be given its most liberal and purposeful interpretation. The boundaries of an ecosystem are obviously not static or fixed." *"The Ministry of Natural Resources presently has an "open record" wherein anyone with wetland qualifications can submit an evaluation and thus provide the raw data for the Ministry to alter boundaries of provincially significant wetlands."
REGION	Southwest
COSTS	NM

CASE NAME/INDEXED AS	<i>Prince Edward (County) Official Plan Wetlands Amendment (Re) Sawguin Creek Marsh</i>
CITATION	[2000] O.M.B.D. No. 65
OMB FILE NUMBER(S)	PL980237 O980039
HEARING OFFICER	Jackson
OTHER HEARING OFFICER	
DATE	28/01/2000
APPEALING	Ronald Carter

NH Appeal	
Time Limit Appeal	
CODE	PI
OPPOSITION	Prince Edward County Quinte Conservation Authority
CODE	REG
	CA
WITNESSES AND OTHER INPUT	OP Land Use Planner, OP Environmental Planner, OP Biologist, OP Ecologist, OP Land Use Planner, OP Uncertain, OP Uncertain
CODE	OPLUP OPBIO OPECO OPUNC
DEVELOPMENT ISSUE(S)	Landscape Designation - designation as PSW
CODE	LD
DAYS	N/A
STATUS	F
NH ISSUE(S)	Can lands that are logged be classified as wetlands?
CODE	WET
NOTED AGENCY	MNR
PARTICIPANTS	CA
OVERVIEW/SUMMARY	Appeal of Provincially Significant Wetland designation on subject property. Appellant challenged the designation by claiming his lands are logged (selective harvesting) and therefore should be classified as agricultural. Agricultural classification would prevent the lands from being designated as wetlands based on the Policy Statement and the Wetlands Evaluation Manual. The Board found that the exclusion of agricultural lands only applies when the lands have been effectively converted to other uses. The Board did not find that such a conversion had taken place in this instance. Although forestry may be an activity that can be viewed as agriculture for income tax purposes or under an Official Plan, that does not alter the type of forestry referred to under the Provincial Policy Statement or the Wetlands Evaluation Manual. Cutting that is selective and leaves more than 50% of the wetland features in place does not result in agricultural activities for the purposes of the Official Plan or the Wetlands Evaluation Manual. The designation of the appellant's land as Provincially Significant Wetland is approved by the Board.
DECISION	Appeal denied. Designation of appellant's land as Provincially Significant Wetland is approved by the Board.
CODE	DEN
NH IMPACT	Neutral
NH SCORE	7
NOTES	
REGION	East
COSTS	NM

APPENDIX II: QUANTITATIVE TABLES

Pro Natural Heritage Appeals										Development Issue					Costs			
					Natural Heritage Issue					Development Issue					Costs			
	Totals	Municipal ³	Time Limit		Natural Area	Water	Woods	Wetland	Wild life	Severance	Develop	Alteration	Aggregate	Plan	Not Ment	NH Costs	Others Costs	Denied
	Cases	Opposed	Yes	No	NA	WA	WD	WET	WLF	SEV	DP	LA	EXT	LP	NM	AWD RR	AWD RR	DEN
Allowed	7	3	0	0	1	1	1	3	1	4	3	0	0	0	6	0	0	1
Denied	16	9	0	0	4	2	2	8	0	4	6	3	2	1	11	3	0	2
Subtotals	23	12	0	0	5	3	3	11	1	8	9	3	2	1	17	3	0	3
Allowed¹ - %	30%	43%	0%	0%	4%	4%	4%	13%	4%	17%	13%	0%	0%	0%	26%	0%	0%	4%
Denied - %	70%	56%	0%	0%	17%	9%	9%	35%	0%	17%	26%	13%	9%	4%	48%	13%	0%	9%
Totals	100%	52%	0%	0%	22%	13%	13%	48%	4%	35%	39%	13%	9%	4%	74%	13%		13%
Allowed ¹	Allowed (All) and Allowed with conditions (ALL1)																	
Won ²	Means NH appeal allowed, or allowed with conditions, or development appeal denied																	
Municipal ³	includes TWN, CTY, MUN, REG																	

Pro Development Appeals										Development Issue					Costs			
Natural Heritage Issue										Development Issue					Costs			
	Totals	Municipal ²	Time Limit		Natural Area	Water	Woods	Wetland	Wild life	Severance	Develop	Alteration	Aggregate	Plan	Not Ment	NH Costs	Others Costs	Denied
	Cases	Opposed	Yes	No	NA	WA	WD	WET	WLF	SEV	DP	LA	EXT	LP	NM	AWD RR	AWD RR	DEN M
Allowed¹	34	26	27	7	13	5	6	8	2	7	25	0	2	0	26	1	3	4
Denied	14	9	9	5	2	2	2	8	0	3	8	1	1	1	13	0	0	1
Subtotals	48	35	36	12	15	7	8	16	2	10	33	1	3	1	39	1	3	5
Allowed¹ - %	71%	76%	56%	15%	27%	10%	13%	17%	4%	15%	52%	0%	4%	0%	54%	2%	6%	8%
Denied - %	29%	64%	19%	10%	4%	4%	4%	17%	0%	6%	17%	2%	2%	2%	27%	0%	0%	2%
Totals	100%	73%	75%	25%	31%	15%	17%	33%	4%	21%	69%	2%	6%	2%	81%	2%	6%	10%
Allowed ¹	Allowed (All) and Allowed with conditions (ALL1)																	
Won ²	Means NH appeal allowed, or allowed with conditions, or development appeal denied																	
Municipal ³	includes TWN, CTY, MUN, REG																	

Combined 71 Cases																		
					Natural Heritage Issue					Development Issue					Costs			
	Totals	Municipal ³	Time Limit		Natural Area	Water	Woods	Wetland	Wildlife	Severance	Develop	Alteration	Aggregate	Plan	Not Ment	NH Costs	Others Costs	Denied
	Cases	Opposed	Yes	No	NA	WA	WD	WET	WLF	SEV	DP	LA	EXT	LP	NM	AWD RR	AWD RR	DEN
Allowed ¹	41	29	27	7	14	6	7	11	3	11	28	0	2	0	32	1	3	5
Denied	30	18	9	5	6	4	4	16	0	7	14	4	3	2	24	3	0	3
Subtotals	71	47	36	12	20	10	11	27	3	18	42	4	5	2	56	4	3	8
Allowed ¹ - %	58%	71%	38%	10%	20%	8%	10%	15%	4%	15%	39%	0%	3%	0%	45%	1%	4%	7%
Denied - %	42%	60%	13%	7%	8%	6%	6%	23%	0%	10%	20%	6%	4%	3%	34%	4%	0%	4%
Totals	100%	66%	51%	17%	28%	14%	15%	38%	4%	25%	59%	6%	7%	3%	79%	6%	4%	11%
Allowed ¹	Allowed (All) and Allowed with conditions (ALL1)																	
Won ²	Means NH appeal allowed, or allowed with conditions, or development appeal denied																	
Municipal ³	includes TWN, CTY, MUN, REG																	

Natural Heritage Success over 71 Cases														
			Natural Heritage Issue						Development Issue					
	Totals		Time Limit		Natural Area	Water	Woods	Wetland	Wildlife	Severance	Develop	Alteration	Aggegate	Plan
	Cases	Yes	No	NA	WA	WD	WET	WLF	SEV	DP	LA	EXT	LP	
Won²	21			3	3	3	11	1	7	11	1	1	1	
Lost	50			17	7	8	16	2	11	31	3	4	1	
Totals	71			20	10	11	27	3	18	42	4	5	2	
Won² - %	30%			4%	4%	4%	15%	1%	10%	15%	1%	1%	1%	
Lost - %	70%			24%	10%	11%	23%	3%	15%	44%	4%	6%	1%	
Totals	100%			28%	14%	15%	38%	4%	25%	59%	6%	7%	3%	
Allowed ¹	Allowed (All) and Allowed with conditions (ALL1)													
Won ²	Means NH appeal allowed, or allowed with conditions, or development appeal denied													
Municipal ³	includes TWN, CTY, MUN, REG													

APPENDIX III: AGENCY PARTICIPATION TABLE

Natural Heritage Appeals - Agency ⁴ Participation (as "party" or "participant")												
	Cases				Participation by Agency							
	Totals	Participated	None		CA	MNR	MOEE	MMAH	MCCTR	NEC	OMAFRA	
Allowed	7	5	2	71%								
Denied	16	10	6	63%								
Totals	23	15	8	65%	12	8	1	2	1	1	1	
Percent of Cases					52%	35%	4%	9%	4%	4%	4%	

Development Appeals- Agency ⁴ Participation (as "party" or "participant")												
	Cases				Participation by Agency							
	Totals	Participated	None		CA	MNR	MOEE	MMAH	MCCTR	NEC	OMAFRA	CWS
Allowed	34	27	7	79%								
Denied	14	9	5	64%								
Totals	48	36	12	75%	28	17	5	5	1	0	1	1
Percent of Cases					58%	35%	10%	10%	2%	0%	2%	2%

Combined 71 Cases- Agency ⁴ Participation (as "party" or "participant")												
	Cases				Participation by Agency							
	Totals	Participated	None		CA	MNR	MOEE	MMAH	MCCTR	NEC	OMAFRA	CWS
Allowed	41	32	9	78%								
Denied	30	19	11	63%								
Totals	71	51	20	72%	40	25	6	7	2	1	2	1
Percent of Cases					56%	35%	8%	10%	3%	1%	3%	1%