

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: July 3, 2014

CASE NO(S): PL120922

PROCEEDING COMMENCED UNDER subsection 41(12) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Referred By: Bayou Cable Park
Subject: Site Plan
Property Address/Description: East Part of Lot 20, Conc. 2, 385362 Sideroad 20
Municipality(ies): Township of Amaranth
OMB Case No.(s): PL120922
OMB File No.(s): PL120922

PROCEEDING COMMENCED UNDER subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant(s) and Appellant(s): Bayou Cable Park, Brennan Grange
Subject: Consent
Property Address/Description: East Part of Lot 20, Conc. 2, 385362 Sideroad 20
Municipality(ies): Township of Amaranth
Municipal File No.(s): B4-12
OMB Case No.(s): PL120922
OMB File No.(s): PL120991

PROCEEDING COMMENCED UNDER 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Bayou Cable Park has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal to enact a proposed amendment to Zoning By-law 2-2009 of the Township of Amaranth to rezone lands respecting East Part of Lot 20, Conc. 2, 385362 Sideroad 20 from Rural and Agricultural to Recreational to permit a portion of the lake to be used as a wakeboard training facility / Cable Park.

Heard: May 21, 2013 to May 31, 2013 in Amaranth, Ontario

APPEARANCES:**Parties****Counsel**

Brennan Grange / Bayou Cable Park Inc. Harold Elston

Township of Amaranth David Germain

Amaranth Alliance for Rural Preservation Inc. (AARP) David Thwaites

DECISION DELIVERED BY H. JACKSON AND ORDER OF THE BOARD**INTRODUCTION**

[1] The matter before the Ontario Municipal Board (“Board”) is an appeal by Bayou Cable Park Inc. and the owner Brennan Grange (“Appellant”) from the refusal by the Township of Amaranth (“Township”) of his request for a zoning by-law amendment and a consent to sever for the purposes of establishing a wakeboard facility on his property on 20 Sideroad. The appeal also includes the failure to make a decision on the site plan application.

BACKGROUND AND CONTEXT

[2] The subject property, East Part of Lot 20, Conc. 2, 385362 Sideroad 20, has been owned by Mr. Grange since November 2010 and wholly contains a man-made lake about 5.26 hectares (“ha”) in area (about 90 metres (“m”) wide and 616 m long). The proposal is to sever and rezone the western portion of the property (about 19.6 ha) that contains the lake from Rural (RU) to Recreational (RE) to permit the commercial wakeboarding operation and to retain the eastern portion of the property (about 6.4 ha) where the Appellant has his home, a single detached residential dwelling and accessory building. The Appellant wishes to sever the proposed commercial property from the private residential dwelling property. The stated reason for the land division is for the purposes of insurance. The new lot line would be about 15 m from the east shore of the lake. In this way, the lake is wholly contained within the severed parcel, as advised by

the Nottawasaga Valley Conservation Authority. The site plan is to provide details of the operation of the wakeboard facility.

[3] The property is partially screened by trees along the north, east and west property lines. There are two existing access points to the property from 20 Sideroad on the east side of the lake, and one on the west side. Mr. Grange currently uses the lake for water skiing and wakeboarding.

[4] The surrounding area is designated rural and agricultural. The Eagle Valley Equestrian horse boarding and training facility, owned by Laura Shell, is located on elevated lands to the east, the lands to the south have recently been planted with tree saplings, to the west the lands are used for agricultural purposes, and there are two rural residential lots located on the north side of 20 Sideroad across from the subject lands. The area to the north is actively used for agricultural purposes.

[5] The Appellant undertook pre-consultation with the Township planner in August 2010. On October 14, 2010, he submitted an application to amend the zoning by-law to allow for a water sport park including a wakeboarding facility. A site plan application was submitted June 20, 2011 to address various details associated with the proposed development and a consent application was submitted on April 25, 2012. Statutory public meetings were held. Township Council refused the application on July 18, 2012, which led to this appeal.

[6] A group of local residents, Amaranth Alliance for Rural Preservation (“AARP”), was granted party status for the hearing. These residents live in proximity to the subject property and are concerned about noise, traffic and impact on agricultural uses. Three participants also testified at the hearing with similar concerns.

[7] The evidence presented at the hearing established that previous owners had used the lake for water skiing competitions and a triathlon, though these were intermittent activities.

Issues

[8] A joint issues list was agreed upon that include the following categories.

1. Planning

- a. Do the proposed development and severance constitute good planning?
- b. Do the proposed development and severance have regard for the provincial policy statement 2005?
- c. Do the proposed development and severance conform with the Growth Plan for the Greater golden Horseshoe?
- d. Is the proposed use compatible with the surrounding rural and agricultural uses?
- e. Is the proposed use commercial or recreational in nature?
- f. Is the proposed accessory retail use appropriate?

Official Plan

- a. Do the proposed rezoning, site plan and severance conform to the official plan?
- b. Is the proposed severance permitted in the rural designation?

Zoning

- a. Does the proposed rezoning from Rural to Recreational represent good planning?
- b. Does the proposed severance comply with the current and proposed zoning?

Site Plan

- a. How will the proposed development be serviced (including for drinking water, wastewater and drainage purposes) and is that servicing appropriate?
2. Conditions
 - a. If the proposed site plan is approved, what conditions of approval should be imposed?
 - b. If the proposed consent is approved, what conditions of approval should be imposed?
3. Minimum Distance Separation (“MDS”)
 - a. Do the proposed development and severance meet the applicable MDS requirements?
4. Noise
 - a. Do the potential sound exposures arising from day to day operations and special events comply with the applicable standards?
 - b. Are the potential sound exposures arising from day to day operations and special events acceptable in a predominantly rural/agricultural area?
5. Traffic
 - a. Will the intersection of 20 Sideroad and Bayou Cable Park entrance operate safely?
 - b. Is one access to the proposed development sufficient to accommodate the number of trips entering and exiting?

- c. Will the intersection of 20 Sideroad and Bayou Cable Park entrance operate at adequate levels of service during peak hours?
 - d. Will the minimum acceptable sight distances be achieved for the proposed entrance?
 - e. Can the site provide sufficient parking spaces as well as accommodate overflow parking?
6. Impact
- a. Will the impact of the proposed development on surrounding residents be acceptable?

[9] In preparation for the hearing, the experts in each discipline met and were able to scope the issues through agreed statement of facts for each discipline. The key contested issues that remained and were the focus of the evidence presented in the hearing were MDS I formula, noise and planning concerns.

THE WITNESSES

[10] Tim Jessop, who was retained by the Appellant, Christine Gervais, planner for the Township, and Mark Lyon Dorfman retained by AARP, provided opinion evidence on land use planning. Ms. Gervais was also qualified by the Board as an expert in MDS. Sean Colville was retained by the Appellant and qualified by the Board as a professional agrolgist. He provided evidence in relation to the MDS issue.

[11] Dr. Al Lightstone, retained by the Appellant and Scott Penton, retained by AARP, provided opinion evidence on noise engineering.

[12] Howard Wray, retained by the Appellant, and Harry Neimi, the Township municipal engineer, provided opinion evidence in relation to transportation issues.

[13] Terrance Millar provided lay evidence on behalf of the Appellant regarding the sensitivity of horses to adjacent activities. Dr. Alan Manning, retained by the Appellant,

was qualified by the Board as a veterinarian with special expertise in horses.

[14] David Patterson of Water Ski & Wakeboard Canada was retained by the Appellant to provide background to the sport and accreditation of wakeboarding in Canada.

[15] Members of AARP provided lay evidence to support their concerns related to the proposed facility. Robert Mitchnick, Dr. Mary Crawford, Linda Buttrey, and Ms. Shell gave evidence, as did participants Alastair Petrie, Helmut Lange, and Garry Keating.

DEVELOPMENT CONCEPT

[16] Mr. Jessop and Mr. Patterson explained the development concept for the proposed wakeboarding facility. It was explained that wakeboarding is done using an overhead cable system that tows a person standing on a wakeboard across a lake and over various training obstacles. There is an existing cable line at the subject lake that traverses the width of the lake and is supported by two towers approximately 6 m (20 feet "ft") tall on either side of the lake. The proposal includes an additional two towers for a second tow line across the lake.

[17] The proposed facility includes the following:

- A cable system including four towers located on both sides of the lake; two are already in place for the personal use of Mr. Grange
- A utility building (a freight container) housing the transformer / generator associated with the cable system
- Two existing out-buildings and attached decks – the north building will be used for staff and consists of one room and a storage area; the south building is for the proposed change rooms, washrooms and snack bar/gift shop. The buildings are to be renovated
- A new septic system and well located on the west side of the lake for the

servicing of the south building

- Two permanent parking areas providing day to day parking for 40 cars
- An overflow parking area on a grassed field for 252 cars

[18] The facility will operate seasonally, May to October, from Tuesday to Saturday 10 a.m. to 7 p.m., and be open to all ages. The “day to day” operations anticipate a maximum of 108 visitors based on the capacity of the system and three to four staff. There are three “special events” proposed for each season that anticipate larger numbers of people. According to the Appellant, up to a maximum of 300 people may be present for the special events, as these would be competitions that would draw an audience.

[19] To support the proposal, the driveway would be widened to 25 ft. for safe access to 20 Sideroad. A portion of 20 Sideroad would have some tree clearing to satisfy sight line requirements.

PLANNING CONTEXT

[20] The subject property is designated rural in the Township’s official plan. The lands are zoned rural and agricultural under Zoning By-law No. 2-2009. The lake is a man-made feature and is not recognized in municipal planning documents as a natural feature. The proposal is to sever the western portion of the subject lands and rezone this portion from rural (RU) to recreational exception (RE-XX) to permit the use of the wakeboard facility. The retained parcel would have the dwelling and accessory buildings. It is currently zoned rural and agricultural and would not be re-zoned.

[21] A number of studies and reports were undertaken to support the application, including a business plan, engineering (site plan and grading, and drainage, building condition survey), traffic, MDS, noise and planning.

[22] The proposed development is required to be consistent with the Provincial Policy Statement (“PPS”), conform to the Growth Plan for the Greater Golden Horseshoe

(Growth Plan), conform to the Township official plan and represent good planning. In order to allow the consent, the Board must have regard to the criteria set out in s. 51(24) of the *Planning Act*.

[23] The hearing concluded before the PPS (2014) was in effect and therefore no evidence was provided as to whether the proposal is consistent the PPS (2014). For reasons set out in this decision, there is no need, on the facts of this case, to address the 2014 PPS.

[24] The proposal includes the site plan for the wakeboard facility. The Board held the site plan in abeyance pending a decision on the consent and zoning by-law amendment. The details of the site plan and conditions were to be confirmed following a decision on the associated zoning by-law and consent.

EVIDENCE AND FINDINGS

Concerns of Residents

[25] Mr. Mitchnick testified that AARP was formed so that the group could speak with a unified voice to express their values and their concerns. AARP members and the participants spoke consistently about the quiet, tranquil, and private life that they value and that they have achieved in the rural and agricultural setting of the Township. Some of those who testified said that they sought out this area especially for these qualities. Ms. Buttrey said that she is somewhat of a recluse, and enjoys the solitude that she and her husband have at their home in the country. This sentiment was repeated by others.

[26] The resident's concerns are that the project will have a detrimental effect on the character of the area, and will erode the peace and quiet. They stated that this rural agricultural area is not an appropriate location for a wakeboard facility, and it would substantially alter their community.

[27] The residents were specifically concerned about noise. They state that in a rural setting such as theirs, the ambient noise is so low that any additional noise would be

clearly heard. Some testified that the previous use of the lake for waterskiing competitions was noisy, but generally tolerable since it did not occur often. Mr. Keating, who lives about a mile away, testified that when the waterskiing competitions were held on the lake, he was able to hear the noise from the activity, but that he did not complain because it was not frequent. He expressed concern that a “steady diet” of noise from the proposed wakeboarding facility would be a problem.

[28] The residents were concerned that noise from the spectators, the public address (“PA”) system (if present) and the general activity noise will be bothersome. They also are concerned about the number of people that will attend the facility on a day to day basis as well as for the special events, and that there may be more people than described. There was no clear explanation of whether or not there would be a PA system for the day to day scenario, and the PA system for the special events was not yet designed. That the noise had not been fully assessed was a concern to the residents.

[29] There was also a concern that because there is parking for a total of 292 cars, potentially more than 300 people could attend during special events, and this would be very noisy and not appropriate in this setting. Mr. Keating likened it to a rock concert.

[30] Ms. Shell boards horses and gives private lessons. She said that because her property is elevated, the lake is quite visible from the riding arena. She is concerned about how her clients will perceive having their horses so close to the wakeboard facility, particularly because her clients generally want their horses to be stress-free and in a quiet environment. She said she can hear Mr. Grange’s conversations when he is on the lake wakeboarding with friends. Consequently, she is concerned that the operation of the wakeboard facility as a business will be disturbing due to the amount of people and noise that they will make.

[31] In response to Ms. Shell’s concern of impact to the horses, both Dr. Manning and Mr. Millar testified that though horses can be startled by noise and activity, they are creatures of habit and can quickly become accustomed to noise in their surrounding

environment.

[32] Mr. Mitchnick and Dr. Mary Crawford say that the proposed location is not appropriate compared to other wakeboard facilities that are in marinas or on beaches, where noise is expected, or are in isolated areas, such as the wakeboard facility in Kettleby. The Kettleby facility is on a lake that is isolated by trees and there are no nearby residents to be impacted.

Minimum Distance Separation (MDS)

[33] Mr. Jessop testified that the Appellant had originally applied to rezone the entirety of the severed lands (Exhibit 2, Tab 12). However, at about the time the application was to go to Council, Ms. Gervais raised a concern regarding MDS from the barn and agricultural building on Ms. Shell's property. The Ministry of Agriculture, Food and Rural Affairs established the MDS I formula in order to determine the minimum distance that there should be to separate proposed new development from existing livestock facilities and / or permanent manure storage. The Appellant indicated that up to this point, MDS had not been raised as a concern.

[34] The applicable MDS I implementation guideline is Guideline 41:

Measurement of MDS:

For MDS I, measurements are taken as the shortest distance between the area to be rezoned or redesignated and the livestock occupied portion of the livestock facility (or storage).

[35] As was described in the evidence, an MDS I setback of 119 m is required from the edge of the lands to be rezoned due to the presence of the horse barn. Ms. Gervais's calculations as presented in her planning report (Exhibit 2, Tab 35) were that the required setback extended as an arc with the longest distance being 63 m into the proposed severed property and rezoned lands. There was no dispute regarding the calculation of this distance. The arc that defines the MDS zone falls within the southeast extent of the lake.

[36] Mr. Colville prepared a report of July 11, 2012 (Exhibit 3, Tab 3) and concluded

that the intent of the MDS setback was met by the Appellant's proposal, because the area of the lands to be rezoned was within an area where it was highly unlikely that there would be any people. Since the intent of the MDS is to prevent impact of odour to the new use, because the MDS setback arc included lands where it was not expected that people would frequent, he concluded there would be no conflict and the intent of the MDS would be met. He stated there "would be no odour related impacts as development / activity in the area affected and that the application would meet the intent of the MDS I Guidelines."

[37] The application went before Council and was refused on the recommendation of Ms. Gervais. It is her view that compliance requires strict adherence to the MDS setback for the rezoned lands.

[38] Mr. Jessop testified that just prior to the hearing, the application was revised to exclude the portion of land from rezoning that falls within the MDS I setback area. One tower that had previously been located within the MDS I setback area on the east side of the lake was re-located to the north, outside of the arc that defines the setback area of 119 m. The revised proposed rezoning (as provided in Exhibit 2, Tab 13) presented at the hearing proposes that the small sliver of the lake and shore on the southeast side of the lake that falls within the MDS setback arc is not to be rezoned and is to remain rural. The limit of rezoning is proposed to occur within the southern portion of the lake.

[39] This change to the request for rezoning led to a motion by the Township to adjourn the hearing on the basis that this was new information that should have gone before Council. The motion was heard orally at the start of the hearing and was dismissed. Further details of the motion are provided in Attachment A to this decision.

[40] Mr. Jessop testified that the revised rezoning request meets the strict application of MDS I Implementation Guideline 41, whereby the portion that is proposed to be rezoned is outside the MDS setback. Mr. Colville testified that this approach meets both the intent and the strict requirements of the MDS Guideline 41.

[41] Ms. Gervais testified that the revised rezoning request results in a rezoning

boundary that is irrational and artificial, as it does not follow a feature such as a lake boundary or a property line. She testified that the lake as a whole should be rezoned, since it is the lake that will be what the wakeboarding facility will use. She testified that the boundary of the rezoned area should be the limit of the proposed severed parcel. She expressed concern regarding the ability to enforce that area (that is not zoned recreational) being out of bounds as the boundary of the rezoned lands is artificial. The Appellant indicated that buoys or fencing could easily be used to prevent access to the small area that would be within the MDS setback.

[42] Ms. Gervais's opinion was that the recreational use proposed for the severed parcel is an outdoor use, and therefore the outdoor use ranges over the entire parcel up to the property line. It does not stop at the MDS arc, as the MDS arc is not a physical feature. She testified that the presence of wakeboarders encroaching into the MDS setback creates an incompatibility due to odour, and is an enforcement issue, and that this is not good planning.

[43] MDS I Implementation Guideline 42, provided below, applies to the proposed consent. Mr. Colville and Ms. Gervais did not agree on the interpretation of Guideline 42 as it applies to the proposed consent.

- 42. Measurement of MDS for Lot Creation:** For MDS 1, measurements are taken as the shortest distance between the lot line of the lot being created and the livestock occupied portion of the livestock facility (or storage). Where larger lots may be permitted (generally greater than 1 ha), a suitable location must be identified for a 1 ha building envelope outside the MDS I setback.

[44] Ms. Gervais testified that the first sentence indicates that the proposal for consent does not meet the guideline, as the new lot line is within the 119 m setback. She testified that the second sentence is not applicable because no building is being proposed. The principal use is recreational (to conduct wakeboarding) and extends to the limit of the property. Her opinion is that the consent should not be allowed because it does not comply with the MDS I guideline as required by the PPS, the official plan and the zoning by-law.

[45] Mr. Colville testified the 1 ha building envelope outside the MDS I setback is so

that a future building can be built outside the MDS setback that will not be in conflict with the odour generated by the livestock facility. He testified that the proposed severed lot is quite large and can easily accommodate a building envelope of this size and therefore Guideline 42 is met.

Findings on MDS

[46] The Appellant has revised the proposal in an attempt to meet the strict application of the MDS I guidelines. However, this results in a condition whereby the part of the lake and shore lands that are within the MDS arc would not be zoned recreational but would retain the existing rural zoning. This situation requires that the Appellant ensure that the area that is not zoned recreational is in fact not used for recreational purposes and is made inaccessible. The Board agrees with Ms. Gervais's opinion that the presence of wakeboarders potentially encroaching into the MDS setback creates an incompatibility issue due to odour and it is an enforcement issue, since the boundary of the two zones would be within the water of the lake. The Board agrees with Ms. Gervais and finds that the split zoning solution proposed by the Appellant does not represent good planning.

Noise

[47] The noise experts agree that the operation of the commercial wakeboarding facility is required to meet the Ministry of the Environment ("MOE") stationary source noise guideline limits of NPC-232 "Sound Level Limits for Stationary Sources in Class 3 Areas (Rural)". The guideline sound limits, applicable to noise sensitive receptors on adjacent lands, apply at the surrounding residences and within a zone of 30 m around each home. The compliance level for the daytime between 7 a.m. to 7 p.m. is 45 dBA (A-weighted decibels).

[48] Dr. Lightstone undertook noise assessment modelling for day to day operations of the proposed facility and for the special event scenario assuming 300 people present. He did not include a PA sound system in the model assumptions, but he testified that it is possible to design a PA system that would not project beyond the spectator area. He

did not include boats or jet skis as these are only to be used for emergency purposes.

[49] Dr. Lightstone testified that the model results indicate that the day to day operation of the wakeboarding facility is predicted to meet the compliance criteria at all the residential receptors, including the Grange residence on the retained parcel. The Board notes however that the predicted sound level at the Grange residence is 44 dBA, which is very close to the compliance limit of 45 dBA.

[50] However, Dr. Lightstone's modelling results predict an exceedance of the compliance criteria at the Grange residence on the retained parcel for the special event scenario. He also testified that the compliance criterion (the 45 dBA contour line) comes near the equestrian barn under this scenario.

[51] Dr. Lightstone testified that the MOE considers that if a residence is part of an operation it is not considered to be a receptor. However, if Mr. Grange sells either the severed or retained property, there will be a compliance issue for special events at the residence on the retained parcel. Dr. Lightstone testified that an environmental easement could be attached to the retained property so that a future owner would be aware of the noise issue.

[52] The Appellant's position is that the day to day scenario should be given greater consideration since this is the situation that will be occurring for the vast majority of the time. Further, the Appellant's position is that there will be no sound system if it cannot be designed to meet the applicable criteria of 45 dBA at the surrounding residential receptors. Dr. Lightstone concluded that because the modelling predicts that the wakeboarding facility operation will comply at all the offsite receptors except for the owner's residence, there are no adverse impacts on neighbouring properties.

[53] Mr. Penton's opinion is that compliance should be measured against the worst-case scenario, as that is the direction given by the MOE. He undertook predictive noise modelling of the special event scenario for 300 and 500 people. He undertook modelling of a scenario for 500 people, as he considered that given the presence of 292 parking spots, it is possible that 500 people would be in attendance at one time. He used

similar assumptions as Dr. Lightstone, but added 10 dBA for the PA system, a 5 dBA penalty for human voice, and assumed that spectators would be speaking with an elevated sound level (see Exhibit 3, Tab 11, Tab 23, and Exhibit 29). Mr. Penton's model for the special event with 300 spectators predicted exceedances at the Grange residence (58 dBA) and Ms. Shell's residence (49 dBA), the residence to the north (receptor R02 at 50 dBA), and the seasonal residence to the west (receptor R03 at 53 dBA). For the scenario where 500 patrons were present exceedances occurred at an additional four receptors.

[54] Mr. Penton also undertook an analysis whereby he considered whether the noise generated from the special event scenario with 300 people would be analogous to an outdoor concert, and he found it likely that there would be noise complaints.

[55] Dr. Lightstone and Mr. Penton disagree as to whether an environmental compliance approval (ECA) is required for the proposal. Section 9 of the *Environmental Protection Act (EPA)* says that if an operation is to emit a defined contaminant (noise), an ECA is required. Dr. Lightstone testified that clause 18 of Reg. 524/98 exempts the proposed operation because it falls under the following description:

- 18.** Any equipment, apparatus, mechanism or thing that is used during an outdoor entertainment, artistic or sporting event, including an outdoor festival, fair, parade, fireworks display, art show, air show or car show, but not including a race of horses, dogs or motorized or non-motorized vehicles or boats.

[56] Both experts agree that if the MOE considers that an ECA is required, then the environmental easement to deal with the exceedance at the residence on the retained parcel would not likely be acceptable to the MOE.

[57] Ms. Gervais testified that in her opinion, the proposal is premature, as issues related to noise remain. She testified that noise could be an enforcement issue, and that both noise experts acknowledged that the residence on the retained property would be impacted by noise during the special events. She testified that this creates an incompatibility issue and therefore is contrary to official plan policies (3.2.5, and 4.2.9). Her opinion is that it is not good planning to legalize an incompatibility.

Findings on Noise

[58] The Board is not persuaded that it is appropriate to consider only the modelling results by Dr. Lightstone that show the day to day operation of the facility meets the noise guidelines in the assessment of compatibility in relation to impacts due to noise. It was agreed by the experts that the special events are predicted to have noise exceedances at the residence on the retained parcel, and special events, though not frequent, are part of the proposal. This may not be an issue as long as Mr. Grange owns both properties and is actively involved in wakeboarding, but immediately becomes a problem when either of the properties is sold. The Board finds that it is not good planning to legalize a situation that gives rise to future incompatibility between the recreational use on the severed property and the rural (residential) use of the retained parcel.

[59] Dr. Lightstone's results also show that for the day to day scenario, there is a concern at the residence on the retained parcel, because the results indicate a predicted value of 44 dBA, close to the limit of 45 dBA. This suggests the potential for occasional exceedances at this location that may contribute to incompatibility in the future.

[60] Mr. Penton undertook a noise assessment that was much more conservative, and found a greater number of predicted exceedances at more locations. It is not necessary for the Board to determine which model approach is preferred, as it is evident to the Board that there is an issue with incompatibility, and as such, the proposed consent does not conform to the official plan. The Board does not find that the use of an easement on the title recommended by the Appellant solves the incompatibility issue.

[61] The Appellant has acknowledged that the sound system has not been accounted for in the modeling, but has indicated that it would be required to meet compliance levels. Nevertheless the Board is not confident that noise will not be an issue in the future which could lead to issues of enforcement. The Board agrees with Ms. Gervais

and finds that the proposal is premature as the noise issue has not been fully delineated.

Planning

[62] Mr. Jessop testified that the proposal accords with provincial direction as provided in the PPS and the Growth Plan, particularly since the proposal promotes recreation, assists in the provision of “complete communities” within the Township, and provides modest employment opportunities for young people. His opinion is that the proposal conforms to the official plan, is appropriate and is good planning. He also put forward conditions to the site plan that he considers appropriate.

[63] Ms. Gervais does not disagree with Mr. Jessop’s interpretation in regards to the provincial policy documents, her main concern relates to incompatibility of the proposal due to noise and odour (the MDS criteria), and prematurity of the proposal.

[64] Mr. Dorfman disagrees with the planning assessment of Mr. Jessop and Ms. Gervais. He testified that in his opinion the proposed use is not consistent with the PPS because “the proposed wakeboarding activities on an artificial water body are not resource-based”. His opinion is that the lake is not a natural resource, because it is man-made and similar to a farm pond, and the provincial policy ties a recreational activity to a resource which he says this is not. He is of the opinion that the proposed land use is an active recreational activity and therefore is not compatible with the surrounding rural and agricultural uses and the rural landscape. He testified that this is a very quiet rural area, and that it is not possible to isolate the use to the proposed site and prevent impact related to noise and traffic from the rest of the rural area. He states that the proposed land use is not an activity that should be relied upon by the community as sustaining prosperity as this is a seasonal use and is not a use that the Township would anticipate or would have experience with. His opinion is that the proposed use is not consistent with the PPS.

[65] Mr. Dorfman referred to the Vision of the official plan, as follows: “The Township of Amaranth will direct growth in a positive manner that protects the environment, is

sustainable, socially acceptable, sensitive to the heritage of the community, and financially sound.” He described one of the three fundamental principles upon which the plan is based as follows, “The preservation of the quality of life and the quality of the environment are of utmost importance in the Township. These features of the Township should remain largely unchanged over the next 20 years.”

[66] He testified that the proposal is not sustainable, it is not socially acceptable, and it is not sensitive to the heritage of the community and therefore is not compatible with the Vision of the official plan.

[67] Section 1.4 of the official plan provides the basis for policies in the plan and includes the following three points:

- The Township has been essentially rural in character and has faced continuous development pressure as the Greater Toronto Area represents one of the fastest growing areas in Canada. In recent years there has been a recognized out migration of young families from the urban areas to the south into the Township. This migration is the result of an increased ability to work from home and a trend toward more self employment in combination with the desire of many urban area residents to live in an attractive rural environment. These trends will result in increased demand for rural housing and small community living.
- The quality of life that makes the Township a desirable place to live is created largely by the rural character of the area. Throughout the development of this plan, Council and the public have indicated a desire to maintain the open landscape character and natural features of the Township.
- Agriculture continues to play an important role in the economy of the Township, the Township’s heritage and the quality of the natural landscape. Agricultural lands must be preserved for future agricultural use

so that the economy and character of the Township is also preserved.

[68] Mr. Dorfman testified that these principles explain why this particular community wishes to maintain the character of the area. He testified that the combined changes to the site that include the four towers, vehicles, people, and the road widening will clearly change the character of the area.

[69] Mr. Dorfman testified that under the Rural designation, Permitted Uses include:

- c) small scale commercial and industrial uses that service the rural area;
- e) small scale public uses such as schools, churches, cemeteries and community halls servicing the local community;
- g) small scale recreational and tourism uses such as passive parks and trail uses provided that any detrimental impact of these uses on the scenic qualities and natural environment is kept to a minimum.

[70] He testified that the proposed wakeboard facility does not serve the rural area. He said that the proposal will introduce a lot of activity and people to the property and will change and impact the scenic quality of the area.

[71] He testified that the proposed use is an active recreational use, not passive, and was not in the minds of Council when the official plan was developed. He testified that an official plan amendment application would have allowed the Township to consider the proposal in the context of the official plan vision, objectives and policies.

[72] Mr. Dorfman took the Board to the definition of passive recreation in the Township Zoning By-law No. 2-2009:

5.168 Recreation, Passive: Activities enjoyed in the outdoors including walking, hiking, bird watching and resting in a specific public natural environment.

[73] Mr. Dorfman testified that it is his opinion that the proposed zoning by-law does

not conform to the official plan for the reasons stated above.

[74] Both Ms. Gervais and Mr. Dorfman testified that it would be preferable if the rezoning of the severed lot was Rural with an Exception, rather than Recreation, since rezoning as Recreation limits future uses. Mr. Dorfman was concerned that the current approach excludes some of the other uses on the property.

[75] In regards to the severance, Mr. Dorfman testified that it is permitted in so far as it would be the second severance from the original township lot (three severances are permitted by the official plan), however, the severance does not satisfy s. 51(24) questions as follows:

- The resolution of planning conflicts involving public and private interests
- The appropriate location of growth and development
- Whether the proposed subdivision is premature or in the public interest
- Whether the plan conforms to the official plan and adjacent plans of subdivision
- The suitability of the land for the purposes for which it is to be subdivided.

[76] Mr. Dorfman's opinion is that the proposed severance does not satisfy the above matters as well as the welfare of the present and future inhabitants of the municipality.

[77] Mr. Dorfman testified that the site plan control will not integrate the land use into the rural environment, as the proposal is not a small scale commercial development and cannot be designed to maintain the historical character of the Township. Mr. Dorfman testified that it is premature to delve into the conditions for the site plan.

Findings on Planning

[78] The Board does not agree with the premise put forward by Mr. Dorfman that the water body is not a resource. The lake is man-made, however, it has been in place for

over 50 years, and is of a sufficient size to host water skiing competitions, as was acknowledged has occurred in the past. The Board does not find that it is reasonable to compare the subject lake to a farm pond and on that basis determine that it is not a resource.

[79] However, the Board agrees with Mr. Dorfman that the recreational use, as described by the Appellant and consisting of day to day and special events, is not a passive recreational activity, due to the special events, where 300 people are expected to attend, and possibly more, and where there will be a PA system. Irrespective of whether the Appellant can ensure that the PA system does not contribute to an excess of the noise compliance criteria, the Board does not find that the recreational use as described in this proposal and consisting of special events with 300 people can be considered as passive. An active recreational use is not compatible with the surrounding rural and agricultural uses, and as such, is not consistent with the 2005 PPS and does not conform to the Growth Plan or the official plan.

[80] The Board finds that the proposed use exceeds the scale and intensity intended by the official plan for a passive recreational land use. As was pointed out by the residents, if the operation is successful, the level of activity will increase, leading to further incompatibility. The Board finds that the introduction of this active recreational use into the rural area will change the character of the area and could lead to conflicts with the existing uses. The Board finds that the proposed use does not align with the Vision of Council, as articulated in the official plan.

[81] The Board finds that the split zoning solution proposed by the Appellant to deal with strict compliance with the MDS setback requirement does not represent good planning. The Board finds that the proposed consent does not conform to the Township official plan due to the incompatibility of use on the retained and severed lands with respect to noise. The Board finds that it is not good planning to approve a consent and use that will lead to future incompatibility. The Board finds that the consent is premature and not in the public interest.

[82] The Board has not addressed the site plan as the principle of the proposed recreational use is not confirmed.

[83] The Board finds that the redevelopment, as proposed by the Appellant, is not consistent with the 2005 PPS, does not conform to the Growth Plan, and does not conform to the official plan policies of the Township of Amaranth. Given that the applications do not conform to official plan policies, their consistency with the 2014 PPS need not be considered.

DECISION AND ORDER

[84] For all of the reasons given, the Board orders that the appeals are dismissed.

"H. Jackson"

H. JACKSON
MEMBER

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario

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

ATTACHMENT A

Motion to exclude witness statements and adjourn

In advance of the hearing, the Township served a Notice of Motion requesting that the witness statements of Tim Jessop, Sean Colville and Al Lightstone/Ian Matthew, not be admitted into evidence because that information / material was not provided to the municipality before Council made the decision that is the subject of the appeal. The Township requested an adjournment of the hearing until s. 34 (24.5) of the Act has been complied with and the prescribed time period has elapsed. The motion was heard at the start of the hearing and was dismissed for the following reasons.

In this instance, the Board found that with respect to the MDS issue, the proposed new rezoning put forward in the witness statement of Mr. Jessop is not new. The concept, or idea, that the MDS setback could be met by adjusting the area to be rezoned was raised in the letter of June 13, 2012, by Mr. Brennan Grange to the Township. This correspondence was provided to the Township, and is marked as having been received by the Township. The Township planner was aware of this correspondence, though it is acknowledged that the information in the letter was not received by Council.

The Board was not satisfied that the proposed rezoning presented by the applicant can be characterized as new information that that the municipality was not aware of. The letter of June 13, 2012, from Mr. Grange to the Township, states "... an alternative option would be to modify the area to be rezoned to exclude the MDS setback area." This clearly introduces the concept of modifying the rezoning to meet the MDS requirement, and is clearly in the Township's correspondence. The fact that this concept was not explored further by the Applicant or the Township at that time does not negate that the information had been introduced to the Township, and that this information was provided prior to Council deciding upon the matter.

Since the Board has determined that this was not new information or material, it was not necessary to consider whether the information and material could have materially affected Council's decision.

With respect to the allegation that the information provided in the noise report constitutes new information or material that should go back to Council for reconsideration, the Board found that noise, as an issue, was identified prior to Council's decision on this matter, and is described in Ms. Gervais' Planning Report to Council of June 11, 2012. In this report, noise concerns are identified with respect to possibly the transformers, music, PA systems, human voice, and jet skis, and it was acknowledged by the Township planner that the noise assessment had not yet been undertaken by the Applicant.