

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: September 08, 2014

CASE NO(S): PL140060

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

Appellant:	Ice River Springs Water Co. Inc.
Appellant:	Town of Shelburne
Applicant:	Besley Country Market Ltd.
Subject:	Consent
Property Address/Description:	East Part Lot 30, Conc 2
Municipality:	Township of Amaranth
Municipal File No.:	B16-13
OMB Case No.:	PL140060
OMB File No.:	PL140060

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

Appellant:	Ice River Springs Water Co. Inc.
Appellant:	Town of Shelburne
Applicant:	Besley Country Market Ltd.
Subject:	Consent
Property Address/Description:	East Part Lot 30, Conc 2
Municipality:	Township of Amaranth
Municipal File No.:	B17-13
OMB Case No.:	PL140060
OMB File No.:	PL140061

Heard: July 31 and August 1, 2014 in Amaranth,
Ontario

APPEARANCES:

Parties

Counsel

Besley Country Market Ltd. ("Besley") Aynsley Anderson

Town of Shelburne and Ice River
Springs Water Co. Inc. (collectively
the "Appellants")

Patrick Kraemer and Stephen McNeil

DECISION DELIVERED BY STEVEN STEFANKO AND ORDER OF THE BOARD

INTRODUCTION

[1] Besley is the owner of approximately 25 hectares ("ha") of vacant land ("Property") in the Township of Amaranth ("Township") legally described as part of lot 30, Concession 2. It is zoned Rural and Environmental Protection and its existing use is agriculture.

[2] The Property fronts on the southern portion of County Road 11 ("CR 11") which has been designated a truck route by the County of Dufferin.

[3] The Town of Shelburne ("Town" or "Shelburne") and the Shelburne Industrial Park ("SIP") borders the northerly limit of CR 11. The SIP is approximately 29 ha in area of which 1.6 ha has been developed for Industrial use. The SIP is zoned Employment under the Town's zoning by-law.

[4] By a decision ("Council's Decision") of Township Council ("Council") dated December 11, 2013, Council, as the approval authority, approved the creation ("Severances") of two one ha lots in the northern portion of the Property. These two lots front on CR 11 and are directly across from the SIP. They are also adjacent to a wetland, floodplain and a water feature (Natural Heritage Features"), i.e. a stream and within a large area identified as a Significant Habitat ("Significant Habitat").

[5] Prior to Council's Decision, the Township planning staff prepared a report ("Staff Report") dated December 4, 2013 concerning the Severances. In that report, staff commented that certain reviews and evaluations were required. The Staff Report concluded by recommending that Council defer its decision until Besley submitted "a

satisfactory scoped environmental assessment to the Township and the Nottawasaga Valley Conservation Authority ("NVCA") and also provide satisfactory studies to determine that there is no land use compatibility issues between the proposed residential lots and associated residential uses and the industrial uses permitted in proximity to the Town of Shelburne."

[6] Council's Decision was appealed by the Appellants to the Ontario Municipal Board.

ISSUES

[7] In my view, the salient issues to be determined in this matter are as follows:

- (a) Are the Severances compatible with the SIP?
- (b) Does the proposal conform to the provisions of the Township Official Plan ("Township OP") which relate to Natural Heritage Features and Significant Habitat?
- (c) Does the proposal conform to the growth management policies of the Township OP?

[8] I will deal with each of these issues separately.

ANALYSIS AND DISCUSSION

(i) Compatibility

[9] Besley argues that existing and future industry are compatible with the proposed lots since, among other things, a residential dwelling is permitted as of right on the Property and there are examples, within Shelburne, of major facilities and sensitive uses operating in similar proximity to one another. I am not persuaded.

[10] Section 4.2.9 of the Township OP states that new development is to be compatible with existing land uses and goes on to provide that “Proposals for new development shall include an assessment of the impact of the proposed development on the adjacent land uses including noise, odour, dust, traffic...”

[11] And in the Provincial Policy Statement, 2014, (“PPS”) s. 1.2.6.1 states that “Major facilities and sensitive land uses should be planned to ensure they are appropriately designed, buffered and/or separated from each other to prevent or mitigate adverse effects from odour, noise and other contaminants...”

[12] Furthermore, s. 1.2.2 of the Ministry of Environment (“MOE”) Procedure D-1-1 states that “Consideration of this guideline is required for development applications including zoning by-laws and amendments and variances...and consents.”

[13] The significance of land use compatibility was also addressed in the Staff Report. Christine Gervais, the author of that report, stated quite emphatically that “...land use compatibility for the establishment of new residential lots adjacent to future industrial uses needs to be addressed” and that “...the potential impacts of the future industrial uses in Shelburne be evaluated prior to Council consent...”

[14] No assessment or study has been provided to address the matter of compatibility notwithstanding the comments of Ms. Gervais and the provisions of s. 4.2.9 of the Township OP, the MOE D-1-1 Procedure and D-6 Guidelines. In my estimation, the completion and delivery of such documentation is a prerequisite to any decision on the creation of the proposed lots.

(ii) Natural Heritage and Significant Habitat

[15] In relation to this issue, there are two sections of the Township OP which have direct application: s. 4.1.10 and 4.1.13 (a) and (b) (collectively the “EIA Sections”).

[16] Section 4.1.10 stipulates that “Any development...adjacent to significant Wildlife Habitat areas shown on Schedule B shall only be considered after an Environmental Impact Assessment has been evaluated by Council, the Conservation Authority and other interested agencies.” No such assessment was completed in this case.

[17] Pursuant to s. 4.1.13 (a), an Environmental Impact Assessment (“EIA”) is required for any development proposed adjacent to certain Natural Heritage Features shown on Schedule B. And in s. 4.1.13 (b), proposals for the creation of three lots or less adjacent to the Environmental Protection (which is the case here) require what is referred to as a Scoped Environmental Assessment. Again, no such assessments have been completed.

[18] Besley argues that an email from a NVCA representative dated December 10, 2013, which references threatened species and the distance between the proposed lots and drainage/wetland features, obviates the necessity for completion of the assessments required. Again, I am not persuaded.

[19] The language of the EIA Sections is clear and mandatory. That language does not include any exemption from the assessment requirement and does not give the NVCA, or any other agency for that matter, the authority to unilaterally determine if an EIA, scoped or otherwise, is unnecessary.

(iii) Growth Management

[20] Section 4.2.1 of the Township OP stipulates that residential growth in the Township is to occur at the rate of approximately 25 units per year. As for the distribution of that new growth, s. 4.2.2 states that allocation as follows:

Communities (Laurel, Waldemar and Farmington)	80 per cent (20 units)
Estate Residential Areas	10 per cent (2.5 units)
Rural and Agricultural Areas	10 per cent (2.5 units)

[21] The Staff Report indicates that, in 2013, for Rural and Agricultural Areas, 11 severances were approved and five applications were pending approval. The report also indicated that there had not been any corresponding residential lot development in the Communities and/or Estate Residential Areas of the Township.

[22] Besley argues that one should not draw a negative inference from this one year snapshot of development activity in the Township since the rate and location of growth is approximate, and, in any event, is in the ultimate discretion of staff and Council to determine. I do not agree.

[23] Based on the allocation requirements of s. 4.2.2, the 11 lots approved in 2013 represent over four years of residential lots being allocated to the Rural and Industrial Areas. In addition to s. 4.2.1 of the Township OP, the PPS stipulates, very clearly, that *Settlement areas* are to be the focus of growth and development. In fact, s. 1.1.5.2 of the PPS states that with respect to *rural lands*, limited residential development is to occur

[24] In my view, the Severances simply do not reflect the residential growth policies set out in the Township OP and the PPS.

DISPOSITION

[25] Section 2.1 of the *Planning Act* requires that I have regard to Council's Decision. The Divisional Court of Ontario in *Ottawa (City) v. Minto Communities Inc.* [2009] O.J. No. 4913, dealt with this requirement in some detail. At paragraph 33 of that decision Aston, J. stated that "...I would agree with Member Stefanko in *Keswick Sutherland* that the Board has an obligation to at least scrutinize and carefully consider the Council decision, as well as the information and material that was before Council...However, the Board does not have to find that the Council decision is demonstrably unreasonable to arrive at an opposite conclusion."

[26] When I scrutinize and carefully consider Council's Decision in the context of the

Staff Report and the relevant provisions of the Township OP and the PPS, it is clear to me that Council's Decision cannot be sustained.

[27] For the reasons set out herein, it is ordered that provisional consent for the Severances is denied and the appeals are allowed.

"Steven Stefanko"

STEVEN STEFANKO
VICE-CHAIR

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