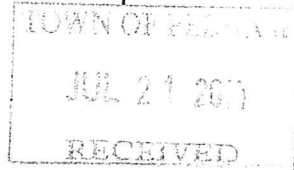


Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: July 18, 2014

CASE NO(S): PL121306

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

Appellant:	Lafarge Canada Inc.
Appellant:	Ministry of Municipal Affairs and Housing ("MMAH")
Appellant:	River Realty Development (1976) Inc.
Subject:	Town of Pelham New Official Plan
Municipality:	Town of Pelham
OMB Case No.:	PL121306
OMB File No.:	PL121306

HEARING EVENT INFORMATION:

Heard: March 11, 2014 in Pelham, Ontario

APPEARANCES:

Parties

Counsel

Town of Pelham	C. Shedden, R. Di Lallo
LaFarge Canada Inc.	W. Fairbrother
Regional Municipality of Niagara	S. Chisholm
Ministry of Municipal Affairs and Housing	J. F. Paquin, L. Donnelly (Student-at-Law)

DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD

INTRODUCTION

[1] This is the decision from the third pre-hearing conference (“PHC”) regarding multiple appeals against the adoption by the Town of Pelham (“Town”) and the approval by the Regional Municipality of Niagara (“Region”) of the new Official Plan for the Town.

[2] Through its decision of January 30, 2014, the Board approved a modified version of the East Fonthill Secondary Plan which comprises a part of the Town’s Official Plan. The intent of the current proceeding was to consider outstanding matters regarding the appeals for the remainder of the Official Plan.

[3] At the beginning of the PHC, the Board was informed that many of the remaining issues had been settled. The parties filed a revised version of the Official Plan (Exhibit 8) which contains changes to which all parties have consented. However, there are two general areas where there is no consent and the parties have agreed that the approval of these sections of the Official Plan should be deferred. These areas involve settlement area policies which were appealed by MMAH and policies related to the Fonthill Kame Area of Natural & Scientific Interest (“ANSI”). The parties agreed that the remainder of the Plan, as modified, can be approved, but that this approval would be on the understanding that it would be without prejudice to LaFarge Canada Inc.’s appeal of the remaining unapproved policies.

EVIDENCE

[4] The Board heard evidence in support of the proposed modifications to the Official Plan and the Plan as revised from Chris Jones, a Principal with Municipal Planning Services. Mr. Jones had been qualified at the previous PHC for this appeal as an expert in land use planning.

[5] Mr. Jones indicated that most of the proposed changes to the Official Plan affect the rural policies. He noted changes to policy B2.1.3.5 in Exhibit 8 which provide for secondary suites in rural areas, policy B2.1.3.10 which clarifies uses allowed in agricultural areas,

policy B2.2.6 which brings the policies in line with the provisions of the provincial Greenbelt Plan, and policy B2.3.2 which ensures consistency of this provision with the Provincial Policy Statement (“PPS”).

[6] Mr. Jones indicated that policy B2.5.2.2 was modified to deal with concerns raised by LaFarge Canada Inc. in order to ensure that certain activities can be permitted in conjunction with Mineral Aggregate Resource areas. Policy B2.5.3.3 was modified to deal with complete application requirements under the *Aggregate Resources Act*. Policy B2.5.3.7 was changed to remove reference to progressive rehabilitation of aggregate extraction operations being determined by the Town and to change the reference to rehabilitation master plans.

[7] Policies B2.5.3.10 to Policies B2.5.3.14 have been modified to protect natural heritage resources in conjunction with potential aggregate operations.

[8] Mr. Jones described a number of changes to the natural heritage policies of the Official Plan. These include adding reference to the *Endangered Species Act* and to federal requirements regarding the habitat of endangered and threatened species, new policies regarding significant natural heritage features within settlement areas, and the addition of policies to require impact assessments within greenbelt areas.

[9] Policy B3.4.4.1 has been amended to include requirements for a 30 m vegetation protection zone to be consistent with the provincial Greenbelt Plan. Policy B3.5.2 has been revised to indicate that Greenbelt is an overlay to other designations. Policy B3.5.4.3 has been amended to bring it into conformity with provincial requirements. The Cultural heritage policies of the Plan have been amended to address provincial comments to ensure that the provincial interest is addressed.

[10] - Mr. Jones indicated that the policies in section C3 (Exhibit 8, p. 164 and 165) relate to the Fonthill Kame ANSI and he requested that these policies be deferred. Furthermore, the reference to the number “7600” in policy A1 (Exhibit 8, p. 3) and policy A3 (Exhibit 8, p. 8-10) of the Plan relate to Growth Management. Mr. Jones indicated that the Region’s

Growth Management Strategy is before another panel of the Board and therefore the Region and the province have requested that these matters should be deferred. The Board heard that section A3 of the Plan should be deferred in its entirety and that section A1 should be approved, except for the reference to the number "7600".

[11] Mr. Jones addressed a number of other changes which are not identified above. All of the changes are included in a version of the Official Plan in which the changes are tracked (Exhibit 8) and have been incorporated into the "clean" copy of the Plan (Exhibit 7).

[12] Mr. Jones stated that the Official Plan as revised conforms with the Regional Official Plan, it is consistent with the PPS, and it complies with the Growth Plan for the Greater Golden Horseshoe ("Growth Plan"). He indicated that it represents good planning and he recommended that it be approved.

[13] The Board heard that the appeal of LaFarge Canada Inc. remains outstanding and the parties have consented to the revisions to the Official Plan without prejudice to the remaining Official Plan policies that will not be approved through this decision.

[14] The parties provided a copy of a draft order for the Board's approval which sets out the sections of the Official Plan that are to be deferred. They requested that the Board adopt the order which will have the effect of approving the revised Official Plan and allowing the deferrals. They requested that the remainder of the appeals be adjourned *sine die*.

ANALYSIS AND FINDINGS

[15] The Board has carefully considered the submissions of the parties. The opinion evidence in support of the revised Official Plan is uncontested. The Board accepts the evidence of Mr. Jones.

[16] The Board finds that the revisions to the Official Plan identified in Exhibit 8 are appropriate and that the revised Official Plan (Exhibit 7) is consistent with the PPS,

complies with the Growth Plan, conforms to the Region of Niagara Official Plan and it represents good planning.

[17] The Board will allow the appeals in part and approve the amended plan except for the areas that are being deferred.

[18] The Board adopts the order provided by the parties which is included with this decision as Attachment 1.

ORDER

[19] The Board orders that the appeals are allowed in part.

[20] The Board approves the Order as set out in Attachment 1 to this decision.

[21] The Town of Pelham Official Plan, dated March 10, 2014 as set out in Exhibit 7, is approved, except for those matters identified in Attachment 1 to this decision.

[22] And furthermore, this approval is without prejudice to the remaining items under appeal by Lafarge Canada Inc.

[23] The remaining appeals are adjourned *sine die*.

"C. Conti"

C. CONTI
MEMBER

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario

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ATTACHMENT 1

ONTARIO MUNICIPAL BOARD

IN THE MATTER OF subsection 17(36) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant: Lafarge Canada Inc.
Appellant: Ministry of Municipal Affairs and Housing (MMAH)
Appellant: River Realty Development (1976) Inc.
Subject: Town of Pelham New Official Plan
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OMB Case No.: PL121306
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ORDER

WHEREAS the Board having read the Notice of Motion and supporting material of the Town of Pelham ("Pelham") and the Notice of Response to Motion and supporting material of Lafarge Canada Inc. ("Lafarge") and having heard the submissions of counsel for Pelham, counsel for Lafarge and counsel for the other parties to this OMB Case No. PL121306;

AND WHEREAS arising out of the second pre-hearing conference on October 16, 2013 and on motion by Pelham certain policies of the Pelham Official Plan were approved on consent by Order of this Board dated January 30, 2014 to facilitate the approval of the East Fonthill Secondary Plan only;

AND WHEREAS the appeal of River Realty Development (1976) Inc. was resolved by through Minutes of Settlement and allowed in part by Order of this Board dated January 30, 2014;

AND WHEREAS the balance of the motion hearing and other unresolved matters regarding the appeals were adjourned until the next pre-hearing conference scheduled for March 11, 2014 at the Town of Pelham Municipal Building;

AND WHEREAS the Pelham Official Plan has been modified since the second pre-hearing conference as a result of consultation between Pelham, Lafarge and the other parties to this OMB Case No. PL121306;

AND WHEREAS Pelham, Lafarge, and the other parties to this OMB Case No. PL121306 have consented to the following Order to approve the Pelham Official Plan without qualification to the East Fonthill Secondary Plan, except for certain policies of the Pelham Official Plan which remain subject to appeal;

AND WHEREAS the appeal filed by Lafarge remains outstanding and the parties have consented to the following Order on the express understanding that the approvals granted therein are entirely without prejudice to the appeal by Lafarge with respect to the remaining, unapproved policies of the Pelham Official Plan;

THE BOARD ORDERS that:

1. In accordance with Section 17(50) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, the Official Plan for the Town of Pelham, as has been modified in the form at Exhibit 7, is hereby approved by the Board and is hereby in force and effect, save and except for all of the following policies which are not hereby approved by the Board and therefore not hereby in force and effect:
 - a. Section C3 in the Official Plan as has been modified in the form at Exhibit 7, being Fonthill Kame – Delta Earth Science Area of Natural Scientific Interest (ANSI), at pp. 139 to 140.
 - b. Schedule B in the Official Plan as has been modified in the form at Exhibit 7, being Environmental Features.
 - c. In Section A1 in the Official Plan as has been modified in the form at Exhibit 7, on p. 3, the words “7,600”.
 - d. Section A3 in the Official Plan as has been modified in the form at Exhibit 7, at pp. 8 to 9.
2. The balance of the motion hearing and other unresolved matters regarding the appeals are adjourned *sine die*.

