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August 21, 2014

File No. 112062

By Email [pnash@georgina.ca] & Facsimile

Mayor & Council Members
Town of Georgina
26557 Civic Centre Road
R.R. #2
Keswick, Ontario L4P 3G1

Attn: Patricia Nash, Deputy Clerk

Your Worship & Members of Council:

Re: *Planning Directions Report*
Re: Maple Lake Estates
Re: September 3 Council Meeting – Presentation Request

We act on behalf of the North Gwillimbury Forest Alliance ("NGFA").

We hereby request the opportunity of making a presentation to Council on the above-captioned matters and enclose our completed Presentation Request Form.

Tony Usher, our client's planning consultant, has analyzed the June 4, 2014 *Planning Directions Report* prepared by the Town's planning consultant MHBC as part of the current Official Plan Review. He has submitted his comments on behalf of NGFA by letter of August 22, 2014 to MHBC and Town staff.

It is clear from Mr. Usher's analysis that the current intent of the *Planning Directions Report* is that Maple Lake Estates retain its Urban Residential Area designation, and not be subject to the no-development policies that conformity with the 2010 York Region Official Plan would dictate.

By way of an overview, according to the *Planning Act* of Ontario, the Town of Georgina is legally obliged to bring its Official Plan into conformity with the York Region Official Plan and be consistent with the Provincial Policy Statement, 2014 ["PPS"]. Specifically, the Town must amend the its Official Plan to prohibit development on all of the Town's wetlands and significant woodlands including those located on the Maple Lake Estates property in the North Gwillimbury Forest.

Despite this, MHBC and staff are recommending that the Town should ignore its *Planning Act* obligations if there will be an adverse financial impact on the owners of the

wetlands and significant woodlands (e.g., Maple Lake Estates Inc.). This recommendation is contrary to the law.

It is my respectful submission and request that as part of the Official Plan Review, Town Council direct MHBC and staff to develop as soon as possible amendments to the Town's Official Plan to bring it into conformity with the York Region Official Plan and ensure consistency with the Provincial Policy Statement, 2014.

As requested by our client, and further to Mr. Usher's submission, we have completed a review of chapter 10 of the *Planning Directions Report*, entitled "Protocol for the Review of Site-Specific Land Use Designations". We offer the following comments.

The initial paragraph correctly sets out that the Town's Official Plan ["OP"] review has "the objective of updating the document to implement provincial policy and the Regional Plan". That is indeed the Town's task... but as will be seen below, the Town staff is merely paying lip-service to this principle.

Furthermore, the second paragraph contains two fundamental errors:

- 1) it misapprehends and incorrectly states the legal "test" of the Official Plan review exercise; and
- 2) it takes into consideration matters that are not relevant to that exercise.

The Legal "Test"

The following subsections of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, set out what the Town must be addressing in undertaking its OP review: 3(5); 26(1) & 27(1):

"Policy statements and provincial plans

3. (5) **A decision of the council** of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter,

(a) **shall be consistent with the policy statements** issued under subsection (1) that are in effect on the date of the decision; and

(b) **shall conform with the provincial plans** that are in effect on that date, or shall not conflict with them, as the case may be.

Updating official plan

26. (1) If an official plan is in effect in a municipality, the **council** of the municipality that adopted the official plan **shall**, not less frequently than every five years after the plan comes into effect as an official plan or after that part of a plan comes into effect as a part of an official plan, if the only outstanding appeals relate to those parts of the plan that propose to specifically designate land uses,

(a) **revise the official plan as required to ensure that it,**

(i) **conforms with provincial plans** or does not conflict with them, as the case may be,

(ii) has regard to the matters of provincial interest listed in section 2, and

(iii) **is consistent with policy statements** issued under subsection 3 (1);

and

(b) revise the official plan, if it contains policies dealing with areas of employment, including, without limitation, the designation of areas of employment in the official plan and policies dealing with the removal of land from areas of employment, to ensure that those policies are confirmed or amended.

Amendments to conform to official plan

27. (1) **The council of a lower-tier municipality shall amend every official plan and every by-law passed under section 34, or a predecessor of it, to conform with a plan that comes into effect as the official plan of the upper-tier municipality.**" [emphasis added]

These sections **require** that there be consistency with the Provincial Policy Statement, 2014 ["PPS"] and conformity with the York Region's Official Plan.

The proposed protocol mentions that eliminating site-specific Official Plan designations may bring the OP "into closer compliance with upper tier documents". "Closer compliance" is not the legal test or the planning test... "consistency" and "conformity" are what the *Planning Act* requires... and what any Town protocol must ensure. Anything less is unlawful.

Irrelevant Considerations

The report states that "removing existing permission for land use can have serious implications for the land owners. In order to address these situations" the protocol has been proposed.

The rationale for the protocol is to address protecting private interests...not implementing the PPS and Regional Official Plan that was acknowledged in the initial paragraph as being the relevant goal of the OP review exercise. As such, the entire basis of the protocol is flawed.

The Town is required to implement provincial and regional policies. It is not given the discretion whether to do so.

In both (i) assessing the "serious implications for the land owners" of the potential effect of what it is legally required to do, and (ii) allowing that assessment to influence whether it does what it is legally required to do, the Town is taking into consideration factors that are subjective and irrelevant to the Official Plan review exercise.

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The first four recommended protocol criteria all propose to carry forward existing site-specific designations, and even the fifth and last criterion leaves the door open to doing so, regardless of what the PPS and/or Regional Plan policies state about that site. That is preposterous! Planning policies evolve and change over time to reflect current planning...and new policies can and do affect land that has already been developed.

Dealing specifically with Maple Lake Estates, what might have been designated in Georgina's OP three decades ago... and subsequently subdivided (into two lots) and partially serviced... does not make that property and servicing infrastructure immune from the application of current provincial and Regional planning policies and the *Planning Act*.

It is respectfully requested that Council instruct MHBC and Town staff to discard the proposed Section 10 Protocol, and instead ensure that all Official Plan Review recommendations regarding site-specific designations are based first and foremost on the Town's obligation to conform with the Regional Plan and be consistent with the PPS, as described above.

Yours truly,

AIRD & BERLIS LLP



Leo F. Longo

LFL/ek

cc. Jack Gibbons, NGFA
Tony Usher
Fraser Nelson, Metrus

19284301.1



TOWN OF GEORGINA

• PRESENTATION REQUEST FORM •

For completion ten (10) days prior to the meeting

The Presentation Request Form and any written submissions and background information for consideration by Council must be submitted to the Clerk's Department personnel by the following deadline:

10:00 a.m. on the Monday ten (10) days prior to the Wednesday meeting

PLEASE PRINT CLEARLY:

NAME: LEO F. LONGO AIRD & BERLIS LLP

ADDRESS 181 BAY ST.
Street Address

TORONTO M5J 2T9
Town/City Postal Code

PHONE #: DAY: 416-865-7778 EVENING: _____

FACSIMILE #: 416-863-1515 E-MAIL ADDRESS: llongo@airdberlis.com

NAME OF ORGANIZATION OR PERSON(S) BEING REPRESENTED (if applicable):

NORTH GWILLIMBURY FOREST ALLIANCE (NGFA)

1) COUNCIL DATE you wish to attend:

SEPTEMBER 3 / 14

2) BRIEF SUMMARY OF THE PURPOSE OF YOUR PRESENTATION:

PLANNING DIRECTIONS REPORT - CHAPTER 10 - PROTOCOL

MAPLE LAKE ESTATES

SEE COVER LETTER

(over)



Presentation Request Form

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- 3) HAVE YOU BEEN IN CONTACT WITH A TOWN STAFF MEMBER IN REGARD TO THE MATTER OF INTEREST? YES ☐ WITH WHOM _____

NO ☒

IF YES, outcome of your discussion: _____

- 4) DO YOU REQUIRE ANY EQUIPMENT FOR YOUR PRESENTATION? IF YES,

Please specify: DIGITAL PROJECTOR

- 6) DO YOU REQUIRE ANY ACCESSIBILITY ACCOMMODATION?

YES ☐

NO ☒

IF YES, what do you require? _____

- 7) REQUEST NOTIFICATION OF DECISION.

YES ☒

NO ☐

NOTES:

The Presentation Request Form and supporting materials, presentations notes must be received by the Clerk's Department personnel **no later than 10:00 a.m. on the Monday ten (10) days prior to the Wednesday meeting.**

I confirm that I have read and understand the instructions and procedure and shall abide by the Presentation Procedures under the Procedural By-law 2013-0133.

Signature

Les F. Longo

Date

August 22/14

Personal Information on this form will be used for the purposes of sending correspondence relating to matters before Council. Your name, address, comments and any other personal information is collected and maintained for the purpose of creating a record that is available to the general public in a hard copy format and on the internet in an electronic format pursuant to Section 27 of the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.M. 56, as amended. Questions about this collection should be directed to the Clerk's Department, Town of Georgina, 26557 Civic Centre Road, Keswick, ON L4P 3G1. Telephone 905-476-4301, Ext. 2223; Fax 905-476-1475.