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July 28, 2014

Mr. Mike Walters
General Manager, Watershed Management
Lake Simcoe Region Conservation Authority
Box 282
Newmarket, Ontario
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Dear Mr. Walters:

Re: Maple Lake Estates and Subdivisions-in-Wetlands Policy

Further to my submissions to the Authority in late 2013 and early 2014, and staff's responses, new information has come to my attention that leads me to express some concerns about the information staff provided to the Board.

These concerns arise from statements in your and Rob Baldwin's October 9, 2013 report:

"The approval of O.Reg.179/06 resulted in a significant increase in the extent of regulated lands throughout the watershed and created some new challenges for the Authority to implement. As such, LSRCA Watershed Development Policies were amended in 2006 (April 28, 2006). A variety of polices were amended, removed or added as required to be consistent with O.Reg.179/06. One such change was the development of a transition policy (Policy 11.4.1.2) which is the subject of this report."

Unfortunately, this account of the amendment of the Watershed Development Policies is incorrect.

Though the Watershed Development Policies were amended on April 28, 2006, those amendments did not affect the policies governing wetlands previously in effect. It was only on November 28, 2008, that a report from Bev Booth recommended the approval of the Wetlands Policy Statement and its incorporation into the Watershed Development Policies, replacing the pre-2006 wetlands policies. This recommendation was adopted, and the Wetlands Policy Statement now constitutes Section 11 of the Watershed Development Policies.

More specifically, Policy 11.4.1.2, the subdivisions-in-wetlands policy that has been the subject of our exchanges, only came into effect on November 28, 2008, as part of the Wetlands Policy Statement.

This puts into further question the above statement that Policy 11.4.1.2 was a "transition policy". In my submission of October 22, 2013, I questioned how Policy 11.4.1.2 would qualify as a transition policy under any usual meaning of the term. Nevertheless, I accepted staff's assertion that some form of transition policy might be required, and even offered a proposal for a genuine transition policy.

However, it is now clear that the Board did not adopt an alleged "transition policy" until two and a half years after Regulation 179/06 came into force. Any genuine transition policy, whether or not named as such, would have come into effect at the same time as the regulation from which transitional relief was thought to be needed. Given this new information, I really cannot see how Policy 11.4.1.2 could ever have been described as a transition policy, or considered to be one. Nor can I understand how, if the Authority functioned without a transition policy for the first 30 months after Regulation 179/06 - the period when a transition policy would most be needed if needed at all - a transition policy is now needed 99 months after the regulation was made.

The October 9, 2013 staff report continues:

"As a result of the significant changes associated with the new regulation, Authority staff and the Board of Directors . . . recognized the need for a transition policy that would acknowledge previous planning approvals for existing lots of record that would be subject to the new regulation. The intent behind Policy 11.4.1.2 is to respect the rights of landowners who had been following the previous regulatory process, made significant capital investments and most importantly received formal approval from the various planning authorities prior to the creation of the new regulation. . . . This policy was and is considered by staff to be fair and equitable given the significant changes to the regulation."

This strongly suggests that the Board made its decision to adopt Policy 11.4.1.2 as part of the Wetlands Policy Statement, on the basis of specific information and justification from staff. That does not appear to be so, however.

While what is now Policy 11.4.1.2 is clearly part of the Wetlands Policy Statement adopted in 2008, it is never mentioned in Ms. Booth's covering report. Instead, that report asserts without any qualification that the Wetlands Policy Statement prohibits all development in provincially significant wetlands. Nor does that report ever refer to transition policies, or subdivisions, or existing lots of record.

With regard to development control in provincially significant wetlands, the 2008 staff report says the following and nothing more:

"The *Policy Statement* distinguishes between new development within Provincially Significant Wetlands and other wetlands. While the LSRCA would prefer to restrict new development and/or interference in any way from [sic] all wetlands, it would be prohibited within all Provincially Significant Wetlands, and allowed within other wetlands under certain circumstances."

Any Board member who might not have read the full Wetlands Policy Statement, and who might have considered its adoption on the basis of the staff report alone, would not have had the slightest idea she was adopting Policy 11.4.1.2, the subdivisions-in-wetlands policy that (among other things) appears to enable automatic approval of a Section 28 permit for Maple Lake Estates even though most of the development would be located within a provincially significant wetland. Nor do the minutes of the November 28, 2008 Board meeting indicate any discussion of or questions about Policy 11.4.1.2.

Finally, the October 9, 2013 staff report states,

"During the development of Policy 11.4.1.2 staff reviewed a variety of Conservation Authority watershed development policies as well as contacted staff from many of the same CAs to discuss their policy/s [sic] in respect to existing registered lots of record."

However, the November 28, 2008 staff report says only one thing about consultation with anyone:

". . . the development industry (BILD) was consulted to provide comment on the proposed Policy Statement".

I would have thought that if sister conservation authorities were contacted with regard to some or all of the Wetlands Policy Statement, that would have been mentioned in the 2008 staff report along with BILD. A July 10, 2014 letter from LSRCA's Freedom of Information Coordinator to NGFA's Jack Gibbons appears to confirm that other conservation authorities were not consulted in 2008.

More troubling is the implication regarding public consultation in 2008. The staff report appears to indicate that BILD was the only stakeholder group consulted, and the general public was not consulted at all. The July 10, 2014 letter appears to confirm this was so. This wasn't good planning, nor was it in any way consistent with the approach the Authority is now taking in its present review of the Watershed Development Policies. The fact that only BILD was consulted casts some doubt on staff's ability to assert that Policy 11.4.1.2 was "considered . . . to be fair and equitable", as quoted above from the October 9, 2013 staff report. I should also note that according to documents disclosed along with the July 10, 2014 letter, among the BILD delegates meeting with LSRCA on May 7, 2008 to discuss the Watershed Development Policies was Fraser Nelson, representing Metrus Developments Inc./Maple Lake Estates Inc.

If you feel that I am drawing an unbalanced impression from the above-mentioned documents in the absence of other documentation I am not aware of, I would welcome that other documentation.

Yours sincerely,

[original signed by]

Anthony Usher, MCIP, RPP

cc. Rob Baldwin
Bev Booth