



August 30th, 2010

BY Hand Delivery

Council of the Corporation of
the Township of Tiny
c/o Doug Luker - Clerk
130 Balm Beach Road West
Perkinsfield ON L0L 2J0

Dear Mr. Luker:

**Re: Public Meeting Submission – McMahan Woods Development Limited – Part Lot 23,
Concession 4 West – Bluewater Dunes Ratepayers Association
Our File: BLU – 10191-11**

We act on behalf of the Bluewater Dunes Ratepayers Association with respect to the above referenced development application. The purpose of this submission is to provide Council with our observations regarding the proposal and to secure our client's entitlement to be party to any future appeal to the Ontario Municipal Board, if required.

Our comments are based on a review of applicable planning policy documents, supporting material submitted with the application, and applicable correspondence by The Jones Consulting Group Ltd and Beacon Environmental. An inspection of the site and surrounding area was also undertaken.

Following our review, we feel that the development has a number of fundamental issues that cannot be addressed by the current application.

Summary of Key Findings:

Our summary of key findings is as follows:

1. The current EIS and resultant County peer review are inadequate to confirm that no negative environmental impacts will occur as a result of the development. This test is required by applicable policy at the Township, County and Provincial levels prior to making a decision on the application.
2. The development in its current form has a negative impact on environmental features and ecological functions and therefore cannot be approved since it does not meet applicable planning policies as required by the Planning Act.
3. The EIS is not complete until the final method of servicing is determined and it is determined that there are no negative impacts (i.e. increased tree loss due to individual wells and septic systems).
4. While recognizing the proposal has development rights through its designation and zoning, planning principles and the Planning Act require that the applications are consistent with applicable policies at the time the applications were made. This is especially true when considered a detailed design 33 years after the site's designation.
5. Development rights apply only to the right to develop and should not be extended to the form of development. In this proposal, the form of development is inappropriate for the site and inconsistent with policies seeking to protect the

site's important environmental features. Specifically, it does not appear that the Environmental Protection Two policies are being applied correctly to the permitted uses established by the Shoreline designation.

6. The proposal fails to address the applicable planning policies of the Province County and Township including but not limited to:
 - a. Failure to demonstrate no negative impact with respect Natural Heritage Features as required by the Provincial Policy Statement.
 - b. An exceedance of the 20 lot maximum permitted in the County Greenlands designation.
 - c. Failure to meet the required minimum lot sizes of the Township, the rezoning requirements of the Regional ANSI and other provisions of the Environmental Protection Two overlay.

Approval of the applications in their current form would be contrary to the Township Official Plan, County Official Plan and the Provincial Policy Statement, together with the spirit and intent of Planning Act legislation.

7. The planning justification for the proposal fails to recognize the Township's significant inventory of existing residential lots already in the Shoreline Designation. The proposed development is not unique and simply adds to an already large and established inventory of lots.
8. This public meeting is premature in the absence of key servicing information, planning policy inconsistencies, and the possibility of subsequent Official plan amendments.
9. A reduction in the plan from 73 to 51 lots does not reduce the subdivision footprint or provide additional areas for environmental protection.
10. Servicing options for the site need to be finalized and justified prior to approval of the draft to ensure policy conformity and the ability of the site to fully respond to the site's environmental constraints. Full services would significantly reduce the amount of vegetation cover lost as a result of development.

The following sections summarize the review of the applications undertaken by The Jones consulting Group Ltd. and Beacon Environmental:

1. **Environmental Impact**

The following observations regarding the environmental were made by The Jones Consulting Group Ltd. and Beacon Environmental:

1.1 **General**

- a) The environmental significance of the site and applicable policies at the Township, County and Provincial levels require that a more fulsome peer review be undertaken to confirm **no negative environmental impact** (as defined by the Provincial Policy Statement). It is unclear if the current peer review being relied upon from the County fully assesses applicable policies and the impact of development. For example, there is no reference in the peer review document of

the site's Regional ANSI characteristics/functions. It is recommended that the Township undertake its own peer review in light of its "environment" first policies.

- b) The importance of ecological functions and environmental linkages with Provincially Significant environmental features in the vicinity (i.e. Tiny Marsh) does not appear to be considered when assessing "no negative impact". In addition, cumulative impacts (including that of the Montebello approved draft plan) have not been considered.
- c) The environmental review by Beacon Environmental concludes that either no development should occur on the site or alternatively, a reduced number of smaller lots (less than 0.4 hectares) are permitted to minimize the loss of significant woodland.

1.2 Environmental Impact Statement (EIS)

- a) The submitted EIS appears to have been prepared in response to an already developed subdivision plan rather than proactively identifying the environmental constraints of the site and then allowing an appropriate development response.
- b) Land use designations in County and Township Official Plans reflect environmental significance/sensitivity for the entire site. The EIS leaves the impression that there is only limited development on the site despite almost 70% of the site being subdivided.
- c) The EIS cannot be relied upon to determine "no negative impacts" since the final methods of servicing (i.e. well locations and size/location of individual septic systems) will have a significant influence on the retention of environmental features.
- d) The conclusion of the EIS that the development "meets the spirit and intent" of the Township Official Plan is misdirected since the true test of environmental policies at the Provincial, County and Township levels is that the development has **no negative impact**. The EIS has failed to demonstrate this fact and therefore any decision of Council is premature. The EIS admits there is an impact but offsets this observation by relying on a subdivision design that retains only some key features.
- e) The stated purpose of the EIS is to assess potential impacts of development but it does not appear to do this in the context of applicable policies.
- f) The site visits undertaken as part of the EIS should have been undertaken at more optimum times to reflect potential on-site species. In particular, the single breeding bird survey and limited Hog-nosed Snake survey (provincially significant species) are insufficient.
- g) Despite standard MNR procedures, no health assessment was undertaken for the Butternut trees. In addition, further assessments of the Butternut trees within 25 meters of development should be undertaken to determine what specimens are "non-retainable".
- h) The EIS does not appear conclusive when determining if other Butternut specimens are on-site. Illustrative of this fact is that it appears the site survey for the peer review found previously overlooked specimens.
- i) There is concern about the current reliance on the EIS Peer review undertaken by SAAR environmental. This peer review appears to be only cursory when considering the wide range of environmental features and functions of the site.

Furthermore, the peer review appears to focus on only a limited number of environmental features (i.e. no review of ANSI functions) rather than assessing the overall impact of development and whether there will be a negative impact on "natural features" or "ecological functions".

- j) All 28 birds identified on-site are forest inhabitants with 11 of the 28 breeding birds being area sensitive. The proposed development will create three new forest edges and significantly reduce interior forest habitat and the value of any retained significant woodlands.
- k) The ecological linkages and habitat corridor functions on this site qualifies the site as Significant Wildlife Habitat in the PPS. The PPS requires no negative impacts on this feature in order for this development to proceed.
- l) The proposed nature corridor along the east development limit effectively constricts wildlife movement along the important north-south Georgian Bay shoreline and two significant Provincially Significant Wetlands, particularly for those species not wanting/able to scale the Nipissing Ridge.
- m) The majority of the subject lands function as a Regionally Significant ANSI, Significant Woodland and Significant Wildlife Habitat thereby upholding the County Greenland and Township Policy designations. These features require that applicable policies be applied to ensure an appropriate form of development.
- n) In summary, the entire site contains both Significant Wildlife Habitat and Significant Woodland as defined by the PPS due to habitat, area sensitive birds, migration corridor functions, and rare plant species. Therefore, the EIS needs to fully assess potential impacts of removing these features while not having a negative impact prior to a planning decision being made.

2 Planning Policy Conformity

2.1 Provincial

- a) Section 2 of Planning Act identifies matters of Provincial interests including ecological protection and orderly development. Section 5 of the Planning Act requires local decisions to be consistent with PPS. The EIS and County peer review are not conclusive when determining no negative impact and conformity with Section 2.1 of the Provincial Policy Statement.
- b) Section 51 (24) of the Planning Act stipulates matters to be regarded for the subdivision application including Parts:
 - o A) – consistency with PPS
 - o B) – prematurity and the public interest
 - o C) – Official Plan conformity
 - o l) - adequacy of utilities and municipal services
 - o L) – optimizing land supply particularly when sufficient existing lands already exist.

In summary, we conclude that the development fails to meet Section 51 (24) of the Planning Act.

2.2 County of Simcoe

- a) An amendment to the County Official Plan is required since the proposal is greater than 20 lots. In addition, the 20 lot maximum required in the Greenland Designation is not a guaranteed minimum for the developer but an upper limit based on no negative environmental impacts. A more detailed EIS and peer review could result in a proposal less than 20 lots.
- b) Greenland policies of the OP seek to restore corridor functions and increase sustainability. We suggest this development will have the opposite effect.

2.3 Township of Tiny

- a) The application is inconsistent with Section A1 and the Township's vision for an "environment first" philosophy. In this proposal, **protection of the environment is NOT taking precedence over development.**
- b) The Environmental Protection Two designation/overlay is intended to 'generally discourage' development. The significant environmental features of the site should dictate that this principle now be applied.
- c) Minimum lot sizes do not meet Township Policy B6.4.2. Lots sizes of 0.6 hectares are **required** by the Official Plan. This language is not discretionary and approval of the applications in their current form would be contrary to the Official Plan and by extension to the Planning Act.
- d) The applicant's EIS confirms that "virtually all of the site lies within the regionally significant Georgina Beach (Life Science) Area of Natural and Scientific Interest (ANSI) and the subject lands "encompass some of these features". As a result, Section B2.6 of the Township Official Plan **requires** that all lands within this environmental feature be placed in an Environmental Protection Zone. It is not considered that features and overall ecological functions of the site are reflected in the proposed implementing zoning by-law.
- e) Section B6.4.2 requires that new lot sizes be a minimum of 0.6 hectares. This requirement is not discretionary. Any approval of the subdivision and rezoning applications would be inconsistent with the Official Plan.
- f) Section A2, part 7, **does not permit** major shoreline development into extensive wooded areas below the Nipissing Ridge.
- g) Section C8 seeks to locate significant woodlands within the Environmental Protection Two designation and discourage development. This proposal occurring within a Significant Woodland, would be contrary to this policy.
- h) There does not appear to be a recognition by the proposal that it must comply with the Environmental Protection Two policies (Section B2.2) in addition to any uses permitted by the Shoreline designation:

"This designation is intended to function as an 'overlay' designation, meaning that uses that are permitted in the underlying designation are only permitted if the proposed use conforms with the policies of this Section."

This clause recognizes that existing use rights may apply as a result of the Shoreline definition but that the form of future development has to reflect the environmental sensitivities of the site.

- i) The proposal does not meet the following policies in Section D5:
 - o The environmental functions of the site will be impacted negatively.

- o The proposal does not meet the test contained in Section 51 (24) of the Planning Act.

3. Growth Management

- a) The County has identified that the application exceeds adopted growth targets. The Township's own land budget confirms a **2,644** residential unit capacity already in place without new development in designated shoreline areas. There are **already 2,060 approved and registered residential lots in the shoreline designation** – more than sufficient to accommodate 80% of the Township's growth. The development of existing lots will already exceed adopted County growth numbers.
- b) We understand that this is a target and growth pressures may dictate numbers otherwise but there is widespread recognition that growth pressures are occurring in southern parts of the County and in areas with a much smaller percentage of existing lots of record.
- c) Section A1 should be considered by Council whereby growth in shoreline areas is to be "carefully controlled, given environmental, servicing, and public access concerns".
- d) No evidence was found in the Official Plans or County land budget that a specific number of residential units have been applied to the subject lands despite the application's planning justification study statement to the contrary.
- e) The proposal fails to justify why, in light of overwhelming policies to preserve environmental features and character, there is a need for any additional residential lots. There is nothing to suggest that the character and locational attributes of the proposed lots are any different than existing lots of record.

4. Draft Plan Changes

- a) A reduction to 51 lots from the former 73 lot proposal does not address the primary environmental concerns of significant wildlife habitat, interior forest habitat and significant woodland features in that the proposed area of development slightly increases.
- b) The currently proposed reduced count of 51 lots does not contribute any additional lands for environmental protection. Typically, the purpose for reducing lot numbers is to increased undisturbed areas of the site to accommodate environmental sensitivities, not to increase lot sizes.

5. Planning Approval Process

- a) The County has indicated that advancing this application is premature while Township staff, as recent as last week, indicated that key servicing details of the proposal are still not known.
- b) The application should not be processed while there is a clear inconsistency with County and Township Official Plans. Official Plan amendments are required and the processing of the applications is a duplication of Council services and a burden for the concerned public.

- c) It is inappropriate to proceed to a public meeting with applications failing to address fundamental issues. Proceeding to a public meeting simply to gauge public reaction and hear issues is inappropriate when significant issues already exists that will likely result in a revised proposal and subsequent public meeting.
- d) There is not sufficient information or justification for the proposal at this time. This fact contradicts the Township's own public notice:

"The purpose of the meeting is to ensure that sufficient information is made available to enable the public to generally understand the proposed Plan of Subdivision and Zoning By-law amendments that are being considered by Council".

6. Existing Development Rights

- a) The existing development rights of this site, established in 1977, are recognized. These development rights should not be extended to allow a form of development inconsistent with applicable planning policies 33 years later.
- b) While the planning justification suggests that County planning policies do not apply, activity of the application suggests otherwise:
 - o The current applications were submitted prior to the new County Official Plan in November 2008 that would preclude this development application from a Regional ANSI. The public meeting is now occurring almost 2 years later.
 - o A request to the County to redesignate the site to Rural as part of the new County Official Plan appears to have been denied despite existing "development rights".
- c) "Shoreline" and "Future Development" as contemplated by the Township Official Plan and Zoning By-law should reflect a form of development consistent with applicable planning policies of the day. To suggest otherwise would undermine the Township's and County's ability to comprehensively control land development 33 years later once the site's features and details of an application are fully understood. OMB case law supports this principle.
- d) The 'development rights' provided to the site through the Shoreline Designation is only one particular planning policy. The site contains five of the six features that the Environmental Protection Two overlay seeks to protect and enhance. The proposed development does not meet the objectives of the Environmental Protection Two designation.

7. Servicing

- a) In some instances, draft plan approval on the basis of future servicing arrangements being finalized is appropriate; however, the environmental sensitivities of this site dictate otherwise. The final combination of wells, municipal water supply and septic systems will greatly impact environmental impacts in terms of significant woodlot retention and ANSI characteristics. Draft approval in absence of final servicing details is premature.
- b) Council needs to balance Section A2, part 30, of the Township OP that does not permit large scale development on partial services with subsequent OP policies

that allow shoreline development to occur on private services. Fifty one lots in a shoreline designation could be considered large scale development. In this instance, full servicing may have the ability to significantly reduce environmental impacts.

- c) The Provincial Policy Statement, Places to Grow, and County planning policies are quite clear with a preference for development on full services. Details of servicing need to be provided to avoid a draft plan approval without viable and responsible options. This detail should be obtained from further on-site testing, and if required by full/partial services, a Provincial Environmental Assessment process.
- d) County policy discourages access to County roads particularly when access is available by local roads. The proposal should clarify if County Road access will be permitted and, if not, what traffic impacts may occur on the local road network. Changes to access will significantly alter the form of development and therefore should be considered at this time.
- e) There should be consideration of future street lighting. There is a potential visual impact for residents but, more importantly, the potential for impacts associated with Significant Wildlife Habitat.

Recommendations

The following recommendations are made as a result of our review:

1. A fulsome peer review be undertaken by the Township (at the developer's cost) to fully assess the impacts of development against applicable environmental protection policies.
2. The current development concept should not be approved because of its potential negative environmental impacts. Any amended development concept should include a much reduced number of lots located along the site's existing road frontages. The maximum of 20 lots stated in the County OP should not be the default number when considering an amended proposal. The lot numbers should be determined based on the revised EIS and Township peer review.
3. The Township's clear policy direction to put "environment first" and the objectives of the Environmental Protection Overlay need to be applied to this site. If there was ever a site worthy of these policies, it is this site.
4. The Township continue to respect the existing use rights of the site, but apply the Environmental Protection Two policies as intended – to recognize uses permitted in the Shoreline designation but only if they conform to policies seeking to protect significant environmental features and ensure "environment first" principles.
5. Council request the proponent and staff to respond to each observation and issue identified in this letter prior making a decision on the applications.
6. Another public meeting be scheduled once fundamental issues have been addressed and the impact of servicing options is fully understood.
7. That servicing options be fully investigated and understood prior to the next public meeting and/or draft plan approval to ensure that the form of development is viable and makes every effort to avoid no negative environmental impacts.

Conclusion

We suggest that the Township of Tiny undertake a cautionary approach when considering this application on the basis of established environmental policies and recognized environmental sensitivities. Further proof by the developer is required to fully understand how a 51 lot development located in an ANSI, designated Environmental Protection, containing Significant Woodland and Wildlife Habitat and removing almost 70% of the site for development can be considered to have no negative environmental impact.

It is recognized that particular fundamental issues raised in this submission have been identified by Township and County staff together with supporting consultants. However, despite assurances and justifications these issues remain unresolved. The expert review of the application by both The Jones Consulting Group Ltd and Beacon Environmental has identified continuing threshold issues that should preclude the current application being processed.

Upon reviewing applicable planning and environmental policies, there is a reoccurring theme of ensuring an appropriate form of development in areas with environmental features important to the Township. A decision by Council upholding these established policies would indeed put the "environment first" and recognize that inappropriate development will not be supported.

Yours truly,

THE JONES CONSULTING GROUP LTD.



Tim Cane RPP
Senior Planner

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