

# AIRD BERLIS

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July 10, 2018

Our File No.: 145315

## VIA E-MAIL & COURIER

Susan M. Stone, C.A.O./Clerk  
Township of Amaranth  
374028 6<sup>th</sup> Line  
Amaranth, Ontario L9W 0M6

[suestone@amaranth-eastgary.ca](mailto:suestone@amaranth-eastgary.ca)

Dear Ms. Stone:

**Re: Notice of Appeal by Sarah Properties Ltd.  
Filed Pursuant to Subsection 22(7) of the *Planning Act*  
Application to Amend the Township of Amaranth Official Plan  
Township File No.: OPA2-15**

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We act on behalf of Sarah Properties Ltd. ("Sarah Properties") with respect to lands located north of County Road 109, east of the Amaranth-East Luther Townline, and west of 10<sup>th</sup> Line. The lands are approximately 35 hectares (86 acres) and are situated in the west portion of the Community of Waldemar (the "Site").

Sarah Properties filed *Planning Act* applications with the Township of Amaranth in June 2015. The applications sought official plan and zoning by-law amendments as well as the approval of a draft plan of subdivision to permit the development of the Site for 334 single-detached residential homes. The lots are proposed to be serviced via a communal wastewater treatment system and an extension of the existing municipal water system to the Site.

As will be detailed below, the only reason an official plan amendment was filed by Sarah Properties was because the Township of Amaranth Official Plan directs that all proposals to develop land using communal services require an amendment to the Official Plan.

On June 13, 2018, Township Council resolved to refuse Sarah Properties' request for an official plan amendment. The Notice of Decision issued by the Township (dated June 21, 2018) lists the following as the Township's reason for its refusal:

- a) "...inappropriate consideration of the implications of the proposed Official Plan Amendment and resulting scale of development on the rural characteristics of the Waldemar rural settlement in accordance with Policy 1.1.4.3 of the Provincial Policy Statement (2014) and therefore the proposed Official Plan Amendment is inconsistent with the Provincial Policy Statement (2014)";
- b) "The proposed Official Plan Amendment and resulting lot yield does not conform to the Dufferin County Official Plan and Township of Amaranth Official Plan"; and

- c) "The financial impact of the proposed communal wastewater treatment system and the resultant future obligations placed upon the Township of Amaranth have not been satisfactorily addressed."

In addition, the Township's Notice provides the following comments on Sarah Properties' proposal for a communal wastewater treatment system:

Council determined that a Municipal Responsibility Agreement for residential development as required as part of the proposal is not a responsibility that Township Council views is within the public interest, and therefore the Township shall not be entering into a Municipal Responsibility Agreement to support and guarantee the provision of communal wastewater services to service the Subject Lands owned by Sarah Properties Ltd.

Please accept this letter, the attached LPAT form, and the enclosed firm cheque for \$300.00, as Sarah Properties' appeal of Township Council's refusal of the official plan amendment that was filed to permit communal services at the Site.

### **Planning Act Test**

Section 22(8) of the *Planning Act* was amended by Bill 139 to require an appellant of a private official plan amendment application to (a) explain how the existing part of the official plan that would be affected by the requested amendment is inconsistent with a provincial policy statement, fails to conform with or conflicts with a provincial plan, or fails to conform with the upper-tier official plan; and (b) explain how the requested amendment is consistent with/conforms with the foregoing policy documents.

In Sarah Properties' case, the requested private official plan amendment does not seek to amend a designation, policy, map or schedule of the Amaranth Official Plan. An official plan amendment was filed to address Policy 4.2.4(d) of the Amaranth Official Plan, which states that an amendment to the Official Plan is required if any proposal to develop lands utilizes communal services. As will be noted below, Sarah Properties' residential proposal does not require any actual amendments or revisions to the Amaranth Official Plan. It was filed as a process requirement, yet was refused by the Township for reasons that go beyond process.

### **Reasons for Appeal**

The community of Waldemar, including the Site, is within a rural settlement area. Under the 2014 Provincial Policy Statement, rural settlement areas are to be the focus of growth and development. Their vitality and regeneration is to be promoted by local municipal authorities, while also giving consideration to rural characteristics, the scale of development and the provision of appropriate service levels. With respect to services, where municipal sewage and/or water services are not available, municipalities are to allow the use of private communal services (see Policy 1.6.6.3).

Similar policies are provided under the 2017 Growth Plan for the Greater Golden Horseshoe. Rural settlement areas are recognized as key to the vitality and economic well-being of rural communities. New residential development is to be actively directed towards these settlement areas. With respect to services, the policies of the 2017 Growth Plan mirror the 2014 PPS in encouraging communal systems where municipal services are not available. The criteria for

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considering new or expanded communal systems include a proposed strategy for water conservation and other water demand management initiatives, the planning of potential expansions to serve growth that supports intensification and density targets, and the consideration of interprovincial, bi-national or state-provincial agreements (see Policy 3.2.5.4).

The Township does not provide wastewater treatment anywhere within the municipality. Consequently, the Sarah Properties proposal includes a communal wastewater treatment system as well as proposing the expansion of the existing Waldemar municipal water system. The official plan amendment process was integrated with the Municipal Class Environmental Assessment (EA) Study (prepared by C.C. Tatham and Associates Ltd.), which sought to identify the preferred solution for wastewater treatment and effluent disposal for the proposal. At the conclusion of Stage 2 of the EA Study, C.C. Tatham confirmed to the Township that a communal waste water treatment plant (WWTP) with treated effluent discharge to the Grand River was the preferred servicing solution. In addition, a Functional Servicing and Preliminary Stormwater Management Report (prepared by Crozier and Associates) was submitted with the Sarah Properties applications to fully justify and explain how the proposed services will meet all regulatory requirements.

Despite this information, the Township refused the Sarah Properties official plan amendment application. As part of the Township's decision, issues of financial impact and a refusal to enter into a Municipal Responsibility Agreement "in the public interest" were raised. With due respect to the Township, the public record will show that neither of these concerns were expressed during the extended period of municipal processing of the applications. The Township's refusal to allow Sarah Properties to move forward with a communal wastewater system was only raised at the end of the process (without any meaningful opportunity to respond) and came as a surprise to Sarah Properties, given the provincial directives in support of such systems.

The Township's reasons for refusal also refer to Policy 1.1.4.3 of the 2014 PPS, which indicates that planning authorities shall give consideration to rural characteristics, the scale of development and the provision of appropriate services. However, as noted above, an official plan amendment was only required in this case because the Amaranth Official Plan requires that an OPA be filed whenever a communal servicing system is proposed. No changes to the policies, maps or schedules of the Site are proposed, which means the Sarah Properties proposal conforms with the rural characteristics and scale of development applicable to the Site under the Amaranth Official Plan (which, according to Policy 4.7 of the 2014 PPS, is the most important vehicle for the implementation of rural protection policies like Policy 1.1.4.3).

The Dufferin County Official Plan identifies the Site as being within a *Community Settlement Area*. As is the case with other settlement areas within the County, the Wademar Community within Amaranth is to be the focus of public and private investment in growth. Land within the *Community Settlement Area* is to be used efficiently and promoted for healthy, sustainable communities developed through compact urban form, efficient use of infrastructure and the provision of a range of land uses. Importantly in the context of the Sarah Properties official plan amendment, the County of Dufferin Official Plan states that where municipal sewage services are not provided, municipalities may allow the use of private communal sewage services (see Policy 7.3.1). Accordingly, there is no conformity issue with the County Official Plan. In fact, the opposite is true – the County Official Plan specifically permits municipalities to authorize compact urban development within settlement areas based on efficient communal systems. This is precisely the case with Sarah Properties' proposal for the Site.

Under the Amaranth Official Plan, the Site is designated *Community Residential* and forms a natural extension to existing development within the Waldemar Community. In fact, the Site had been approved in 1980 for a residential plan of subdivision of 128 lots. This draft plan lapsed in 1996, but the policies associated with the Site under the Amaranth Official Plan (which were updated in 1996 through OPA 10) continue to indicate the future residential development potential of the Site. The Amaranth Official Plan was updated again in 2010 (through OPA 4) to bring the Official Plan into conformity with the Greenbelt Plan and the Growth Plan. Throughout all of these updates, the Site remained designated for residential development associated with growth directed to the Waldemar Community.

Under the Amaranth Official Plan, communal services are the preferred means of servicing multiple lots/units in areas where full municipal sewage and water services are not or cannot be provided, where site conditions are suitable over the long term (see Policy 4.2.4 b ii)).

The design, lot sizes and lot yield of the Sarah Properties proposal are reflective of current land use planning policy, and respectful of what exists on surrounding lands in Waldemar. Our clients' consultants are firmly of the opinion that the development will reinforce and enhance the local community character while respecting its immediate context. The Site is of a size and character capable of accommodating the proposed level of residential development and the engineering reports provided to the Township clearly demonstrate that the proposed communal sewage system can be deployed in an efficient and effective manner.

The Township's assertions that the Sarah Properties proposal would not be in keeping with the rural character of Waldemar, would cause negative financial impacts to the municipality, and would require a Municipal Responsibility Agreement "that Township Council views is [not] within the public interest" are each demonstrably false. But more significantly, each of these assertions by the Township are contrary to Provincial, Regional and Local growth management policies that encourage and invite precisely the type of residential development that Sarah Properties is pursuing for the Site.

For the foregoing reasons, and others, Sarah Properties asks that the Local Planning Appeal Tribunal direct the Township to reconsider its refusal of its Official Plan Amendment. More particularly, as the Official Plan Amendment at issue was a process requirement only, Sarah Properties asks that the Tribunal direct the Township to reconsider its stance in opposition to residential development within Waldemar on communal services.

### **Potential for Resolution**

Sarah Properties would welcome the opportunity to have its planning and engineering consultants meet with staff and representatives for both Dufferin and Amaranth (and if necessary, the Province) to determine if a more appropriate resolution of the Official Plan Amendment filed pursuant to Policy 4.2.4(d) of the Amaranth Official Plan. This could be done through Tribunal-led mediation or Provincial facilitation if deemed appropriate.

### **Further Appeals**

Township Council has not yet issued decisions on Sarah Properties applications for zoning by-law amendment and draft plan of subdivision approval. We anticipate that our client may elect to appeal these non-decisions to the Tribunal. If these appeals are filed, our request is that they be administratively consolidated by the Tribunal so that the appeals can be heard together.

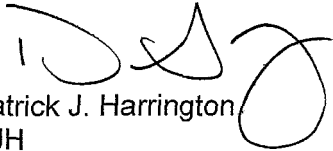
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**Contact**

The undersigned will have carriage of this matter on behalf of Sarah Properties. Should you have any questions or require any additional information, please do not hesitate to contact the undersigned at your convenience.

Yours truly,

AIRD & BERLIS LLP



per

Patrick J. Harrington  
PJH

c. D. Hannam  
W. Broos  
S. Zakem

33089094.2



Environment and Land Tribunals Ontario  
**Local Planning Appeal Tribunal**

655 Bay Street, Suite 1500  
Toronto ON M5G 1E5

Telephone: 416-212-6349  
Toll Free: 1-866-448-2248  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca)

# Appellant Form (A1)

Receipt Number (LPAT Office Use Only)

LPAT Case Number (LPAT Office Use Only)

Date Stamp Appeal Received by Municipality/Approval Authority

**To file an appeal, select one or more below \***

- Appeal of Planning Act matters for Official Plans and amendments, Zoning By-Laws and amendments and Plans of Subdivision, Interim Control By-laws, Site Plans, Minor Variances, Consents and Severances, proceed to Section 1A
- Second appeal of a Planning Act matter for Official Plans and amendments, Zoning By-Laws and amendments, proceed to Section 1B. NOTE: Bill 139, Building Better Communities and Conserving Watersheds Act, 2017, allows appeals to the Tribunal of some Planning Act matters previously determined by LPAT.
- Appeals of other matters, including Development Charges, Education Act, Aggregate Resources Act, Municipal Act and Ontario Heritage, proceed to Section 1C

## 2. Location Information

Address and/or Legal Description of property subject to the appeal \*  
North of County Road 109, East of the Amaranth-East Luther Townline, and west of 10th Line

Municipality \*  
Township of Amaranth

Upper Tier (Example: county, district, region)

## 3. Appellant/Objector Information

**Note:** You must notify the LPAT of any change of address or telephone number in writing. Please quote your LPAT Case/File Number(s) after they have been assigned.

Last Name: Broos | First Name: Walter

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)  
Sarah Properties Limited

Email Address  
wbroos@rogers.com

Daytime Telephone Number \* 519-539-7116 ext. | Alternate Telephone Number

### Mailing Address

Unit Number	Street Number * 836	Street Name * Normandy Drive	PO Box
City/Town * Woodstock	Province * Ontario	Country * Canada	Postal Code * N4T 0E6

#### 4. Representative Information

I hereby authorize the named company and/or individual(s) to represent me

Last Name  
Harrington

First Name  
Patrick

Company Name  
Aird & Berlis LLP

Professional Title  
Solicitor

Email Address  
pharrington@airdberlis.com

Daytime Telephone Number  
416-865-3424 ext.

Alternate Telephone Number

#### Mailing Address

Unit Number  
1800

Street Number  
181

Street Name  
Bay Street

PO Box

City/Town  
Toronto

Province  
ON

Country  
Canada

Postal Code  
M5J 2T9

**Note:** If you are representing the appellant and are not licensed under the *Law Society Act*, please confirm that you have written authorization, as required by the LPAT's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

#### 5. Subject Information

Municipal Reference Number(s) \*  
OPA2-15

For appeals of Official Plans, Official Plan Amendments, Zoning Bylaws and Zoning By-law Amendments, please see information on the LPAT website [<http://elto.gov.on.ca/tribunals/lpat/lpat-process/>] detailing the requirement to set out the nature of your appeal and the reasons for your appeal based on requirement A **or**, for some appeal types, both A and B:

A: If you are appealing a **decision** of a Council or Approval Authority, outline which part of the decision is:\*

- Inconsistent with the Provincial Policy Statement, issued under subsection 3(1) of the *Planning Act*
- Fails to conform with or conflicts with a provincial plan
- Fails to conform with an applicable Official Plan

Please explain: \*

Please see attached covering letter.

**And**

B: If you are appealing a **non-decision or decision to refuse** of a Council for Subsection 22(7) or 34(11), outline how your application brings the Official Plan [22(7)] or Zoning By-Law [34(11)] into:

- consistency with the provincial policy statement, issued under subsection 3(1) of the *Planning Act*
- conformity with a provincial plan
- conformity with the upper-tier municipality's Official Plan or an applicable Official Plan

Please explain: \*

Please see attached covering letter.

**For all other appeal types**

Outline the nature of the appeal and the reasons for the appeal

**Oral/written submissions to council**

If applicable, did you make your opinions regarding this matter known to council?

- Oral submissions at a public meeting of council
- Written submissions to council

**Planning Act matters only**

**Applicable only to official plans/amendments, zoning by-laws/amendments and minor variances that came into effect/ were passed on or after July 1, 2016. (Bill 73)**

Is the 2-year no application restriction under section 22(2.2) or 34(10.0.0.2) or 45(1.4) applicable?

- Yes
- No

**6. Related Matters**

Are there other appeals not yet filed with the Municipality?

- Yes
- No

Are there other matters related to this appeal? (For example: A consent application connected to a variance application)

- Yes
- No

if yes, please provide LPAT Case Number(s) and/or Municipal File Number(s)  
 Zoning By-law Amendment Application: Z4-15  
 Plan of Subdivision Application: S2-15

**7. Case Information**

For *Planning Act* appeals selected in Section 1A for Subsections 17(24), 17(36), 17(40), 22(7), 34(11), 34(19), and 51(34):

Detail the nature and/or expertise of witnesses you will have available should the Tribunal Member require oral evidence at the proceeding. (For example: land use planner, architect, engineer, etc.)

Three (3) Witnesses would be required, a Land Use Planner, an Environmental Engineer, and a Servicing Engineer

**For all other appeal types :**

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.).

**8. Required Fee**

Total Fee Submitted \* \$ 300

- Payment Method \* ▶  Certified cheque     Money Order     Lawyer's general or trust account cheque



## 9. Declaration

I solemnly declare that all of the statements and the information provided, as well as any supporting documents are true, correct and complete.

Name of Appellant/Representative	Signature of Appellant/Representative	Date (yyyy/mm/dd)
Patrick J. Harrington		2018/07/10

Personal information or documentation requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990 c. P. 13 and the *Local Planning Appeal Tribunal Act*. After an appeal is filed, all information relating to this appeal may become available to the public.