

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: June 20, 2019

CASE NO(S): PL180646

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Sarah Properties Limited
Subject:	Request to amend the Official Plan - Refusal of request by the Township of Amaranth
Existing Designation:	Community Residential
Proposed Designation:	Site Specific – to be determined
Purpose:	To permit a communal wastewater treatment system to facilitate a residential development
Property Address/Description:	Concession 10, East Part Lots 2 and 3
Municipality:	Township of Amaranth
Approval Authority File No.:	OPA2-15
OMB Case No.:	PL180646
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OMB Case Name:	Sarah Properties Limited v. Amaranth (Township)

Heard: April 3, 2019 in the Township of Amaranth and June 13, 2019 by telephone conference call

APPEARANCES:

Parties

Sarah Properties Limited
Township of Amaranth

Counsel

Patrick Harrington
Jeffrey Wilker

DECISION DELIVERED BY THOMAS HODGINS AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This Decision and Order results from the first mandatory Case Management Conference (“CMC”) for an Appeal, pursuant to s. 22 (7) of the *Planning Act* (“Act”), by Sarah Properties Limited (“Sarah”) of the Township of Amaranth’s (“Township”) refusal to approve an Application submitted by Sarah for an Official Plan Amendment (“OPA”) to the Township’s Official Plan (“OP”). This Decision and Order is also informed by a telephone conference call (“TCC”) held with Counsel for the Parties (Messrs. Harrington and Wilker) on June 13, 2019.

[2] The OPA Application is intended to permit a residential development on a property located north of County Road 109, east of the Amaranth-East Luther Townline and west of 10th Line (“Site”) that is serviced by a communal waste water system. The Site is approximately 35 hectares in size and is within the west portion of the Community of Waldemar. Potable water is available to the Site by means of an extension of an existing municipal water supply system.

[3] In conjunction with the OPA Application, Sarah submitted applications for a plan of subdivision with 334 new residential lots/dwellings and for an implementing amendment to the Zoning By-law. The Township has not made decisions on the subdivision and zoning applications and these applications have not been appealed.

[4] The OPA is required pursuant to s. 4.2.5 d) of the OP which reads as follows:

4.2.5 Municipal Water and Sewage Servicing: d) Any proposal to develop lands utilizing communal services shall require an amendment to this Plan. In addition to those matters to be considered in accordance with Section 5.4 of this Plan, Council shall also require a financial impact assessment outlining the long term capital and operating costs associated with communal services.

The matters referenced in s. 5.4 of the OP include compatibility of the proposed use with uses in the surrounding area and the potential effect of the proposed use on the

financial position of the Municipality, the population level and the social character of the community.

[5] The Township's Notice of Decision explains that Council refused the OPA Application for the following reasons:

There has been 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);

The proposed Official Plan Amendment and resulting lot yield does not conform to the Dufferin County Official Plan and the Township of Amaranth Official Plan; and

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.

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..

[6] The Appellant Form submitted by Sarah to initiate its Appeal indicates that Council's decision to refuse the Application is inconsistent with the Provincial Policy Statement (2014) and fails to conform with the applicable provincial and official plans.

THE CMC

General

[7] The CMC was conducted pursuant to s. 39(1) of the *Local Planning Appeal Tribunal Act, 2017* ("LPATA") and Rules 26.17 to 26.26 of the Tribunal's *Rules of Practice and Procedure* ("Tribunal Rules").

[8] Notice of the CMC was undertaken by Sarah's Counsel, at the Tribunal's direction, and the requisite Affidavit of Service was provided and marked as Exhibit 1.

Participation in the Appeal

[9] Sarah and the Township are the Parties to this Appeal and each was represented by Counsel as noted.

[10] The County of Dufferin, the approval authority for OPAs in the Township, did not appear.

[11] There were no requests to participate in this Appeal as a Party.

[12] The Tribunal received 24 requests to participate in this Appeal as a Participant. Twenty three were filed by Trish Hamilton in a package and a further request was received from Jan and Marg Oorebeek. Messrs. Harrington and Wilker have no objection to the Tribunal granting Participant status to each of the requesters.

[13] Pursuant to the LPATA and the Tribunal's Rules, the Tribunal grants, without challenge, Participant status to each of the requesters, the names of which are set out in Attachment 1 to this Decision and Order.

[14] The manner in which the Participants will provide their input to the Tribunal is intended to be considered and determined at a second CMC on this case.

Settlement and Mediation

[15] The Tribunal addressed with the Parties the opportunities for settlement and the possibility of mediation as a means to resolve or scope the Appeal. The Tribunal was advised that a settlement was not possible between the Parties.

Facts and Issues

[16] Material submitted in advance of the CMC and submissions by Counsel at the CMC describe and explain the relevant background associated with the Application, the Council decision and the Appeal and the nature of the dispute and general issues.

[17] In light of the Council resolution which clearly sets out that the Township will not enter into a Municipal Responsibility Agreement (“MRA”), a key issue in this case is whether an MRA with the Township is a prerequisite to the implementation of a communal servicing arrangement for the Site.

[18] Counsel jointly agree that a second CMC should be scheduled for this Appeal. At the second CMC, the Parties and the Tribunal can address the need for, and the process for completing, an Agreed Statement of Facts and an Issues List which clearly identifies, defines and narrows, to the degree possible, the issues in this Appeal.

Disclosure

[19] No requests were made by either Party for direction regarding the disclosure of documents/information relevant to the Appeal.

Confidentiality

[20] No issues of confidentiality were raised by the Parties.

Organization and Attendance at the Hearing

[21] Counsel jointly agree that a second CMC should be scheduled. At the second CMC, the Parties can address with the Tribunal the scheduling of a hearing, the format for a hearing and whether any persons are to attend the hearing for examination by the Tribunal.

Production and Cost Sharing of Document Books

[22] It was agreed, on a preliminary basis, that it was not necessary to produce joint document books for any hearing given the amount of material already submitted to the Tribunal by the Parties in respect to this Appeal. This matter can be canvassed again at the second CMC.

ADJOURNMENT AND POSTPONEMENT

[23] Ontario Regulation 102/18, made under the LPATA, establishes regulatory time periods within which the Tribunal must dispose of *Planning Act* appeals. The subject OPA Appeal must be disposed of within 10 months after the day the appeal is received and validated (O. Reg. 102/18, s. 1.(1)1. Time during an adjournment is excluded from the calculation of the regulatory time period.

[24] Counsel for the Parties jointly agree that it is appropriate to issue a Notice of Postponement (“NoP”). As noted, a second CMC is recommended by the Parties and that CMC is intended to assist with determining certain matters critical to the fair and just determination of this Appeal. Accordingly, the Tribunal adjourns the Appeal pursuant to s. 1.(2)1(ii) of Ontario Regulation 102/18 made under the LPATA and directs that a NoP be issued commencing from the day following the first CMC to the date of the next CMC which is yet to be scheduled.

[25] Accordingly, “the clock is stopped” on the Appeal.

Other Matters

[26] No other matters of significance to assist with a fair, just and expeditious resolution of the issues or proceedings were raised.

ORDER

[27] The Tribunal orders as follows:

- a) The Parties to the Appeal are: Sarah and the Township.
- b) The Participants are listed in Attachment 1.
- c) The Parties are to contact the Tribunal’s Case Coordinator for this case when they are in a position to schedule the second CMC and, in any

event, are to jointly provide a status report to the Tribunal not later than September 30, 2019 if no request is made by that time for the second CMC.

- d) The Appeal is adjourned in order to secure a fair and just determination of the appeal and a NoP will be issued effective from April 4, 2019 to the as-yet-to-be-determined date of the second CMC.
- e) The Parties and Participants are to receive a copy of this Decision and Order.
- f) When the second CMC is scheduled, the Tribunal shall issue a Notice of the Second CMC to the Parties and Participants.
- g) This Member is seized subject to the Tribunal's calendar and may be spoken to by the Parties should any issue arise with the implementation of this Order.

"Thomas Hodgins"

THOMAS HODGINS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
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Waldemar Residents Contact Information

Name	Address
Carol Lee Hubert	24 David Street Amaranth, ON L9W 3Z3
Paul Repka	24 David Street Amaranth, ON L9W 3Z3
Linda Berry	4 Church Street Amaranth, ON L9W 3Z1
Robert Berry	4 Church Street Amaranth, ON L9W 3Z1
Chantale Mitchell	25 Main Street Amaranth, ON L9W 3Z3
Jill Chaput	16 James Street Amaranth, ON L9W 3Z1
Thomas Delivuk	16 John Street Amaranth, ON L9W 5Z2
Sarah and Dean Morrison	2 Evans Avenue Amaranth, ON L9W 3Z1

John Moffat	35 Main Street Amaranth, ON L9W 3Z3
Clancey McGuire	28 Main Street Amaranth, ON L9W 3Z3
Patricia Hamilton	15 Mill Street Amaranth, ON L9W 3Z3
Mary Eberhardt	9 James Street Amaranth, ON L9W 3Z1
Margaret Vandenhoek	19 Mill Street Amaranth, ON L9W 3Z3
Esther Joan Finegan	20 Mill Street Amaranth, ON L9W 3Z3
Patricia Land	17 Mill Street Amaranth, ON L9W 3Z3
Dave Ryzebol	7 Station Street Amaranth, ON L9W 0V2

Andrew Ryzebol	13 Mill Street Amaranth, ON L9W 3Z3
William Prins	5 Henry Street Amaranth, ON L9W 3Z1
Paul McClintock	23 Mill Street Amaranth, ON L9W 3Z3
Annalyn and Jeff Murray	2 Henry Street Amaranth, ON L9W 3Z1
William and Marie Clarke	193031 Amaranth East Luther Line Amaranth, ON L9W 0E2
Alex Hamilton	15 Mill Street Amaranth, ON L9W 3Z3
David and Cindi McWilliams	33 Mill Street Amaranth, ON L9W 3Z3
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