

**Desbarats to Echo Bay Planning Board
September 26th 2022**

Agenda

**Location: Tarbutt Council Chambers
27 Barr Road South
Time: 7:00 p.m.**

A. Routine Matters:

- 1. Call to order 7:00 p.m.**
- 2. Declaration of conflict/pecuniary interest**
- 3. Approval of minutes (July 26th 2022)**
- 4. Staff/Members reports**
- 5. Statements 2021 (January – December)**

B. Old Business:

C. New Business:

- 1. Chris Jones, Planner – Presentation on Joint Official Plan – Agriculture Designations**
- 2. Draft Joint Official Plan – Requested Agricultural Designation amendments for Joint Official Plan (Tarbutt Twp.)**
- 3. T2017-06 – Notification and Request to the Board – Correcting Transfer**
- 4. Lynn Watson – Presentation regarding Provincial Housing Shortage**
- 5. Invitation to Agricultural Study – University of Guelph**
- 6. Response from MMAH regarding Zoning By-law and Official Plan**

D. Information:

- 1. FAQs Schedule 24 (Planning Act) to Bill 276, the Supporting Recovery and Competitiveness Act, 2021**
- 2. Gowlings - Official but illegal: Are Official Plans being used in a manner that is a “Bridge to far?”**

E. Seminars/Meetings:

F. Newsletters/Bulletins:

G. Adjournment:

DECLARATION OF PECUNIARY INTEREST

Municipal Conflict of Interest Act, R.S.O. 1990, CHAPTER M.50

s.5.1 - Written statement re disclosure

At a meeting at which a member discloses an interest under section 5, or as soon as possible afterwards, the member shall file a written statement of the interest and its general nature with the clerk of the municipality or the secretary of the committee or local board, as the case may be.

Board Member's Name: _____

Position: _____

Board Name: _____

Date of Meeting: _____

Agenda Item Number: _____

Agenda Item Title: _____

I, _____, declare a pecuniary interest on the above noted matter, for the following reason(s): _____

Board Member's Signature

DESBARATS to ECHO BAY PLANNING BOARD

July 26th 2022

Regular Meeting (zoom and in house)

Present: Lennie Smith - Chair, Jim Withers, Reg McKinnon, Heather Kirby, Todd Rydall, Terry Ross

Staff: Jared Brice, Jean Palmer (via Zoom)

Visitors: Hunter Waugh, Henry Dukes

Terry Ross declared conflicts of interest on Application T2022-07 a & b.

The following minutes are comprised of resolutions and the Secretary-Treasurer's interpretation of the meeting.

Res.: 21-2022 Jim Withers, Todd Rydall

BE IT RESOLVED THAT THE BOARD opens their regular meeting at 7:05 pm. (cd)

Res.: 22-2022 Jim Withers, Todd Rydall

BE IT RESOLVED THAT THE BOARD accepts the Minutes of May 24th, 2022 as presented. (cd)

Res.: 23-2022 Todd Rydall, Jim Withers

BE IT RESOLVED THAT THE BOARD is opposed to implementing the following condition for Consent Applications: That written confirmation from the Township be required to confirm that all outstanding taxes on the subject property have been paid in full prior to final consent being granted. (cd) Recorded Vote: Yes - T. Ross, J. Withers, T. Rydall, R. McKinnon, H. Kirby (cd)

Res.: 24-2022 Todd Rydall, Jim Withers

BE IT RESOLVED THAT THE BOARD receives the Draft Letter to Clerks regarding Joint Official Plan Direction. (cd)

Res.: 25-2022 Jim Withers, Todd Rydall

BE IT RESOLVED THAT THE BOARD gives Provisional Consent to Application(s) T2022-07 a & b.

Applicant(s): Jonathon Karhi with attached conditions and notes. (cd)

Res.: 26-2022 Terry Ross, Reg McKinnon

BE IT RESOLVED THAT THE BOARD gives Provisional Consent to Application J2022-10.

Applicant(s): Alan Martin with attached conditions and notes. (cd)

Res.: 27-2022 Terry Ross, Reg McKinnon

BE IT RESOLVED THAT THE BOARD gives Provisional Consent to Application J2022-10.

Applicant(s): Boris Haischrek & Rachel Jikinsky with attached conditions and notes. (cd)

Res.: 28-2022 Terry Ross, Jim Withers
BE IT RESOLVED THAT THE BOARD receive the information regarding Planning Board Insurance from Northern Insurance. (cd)

Res.: 29-2022 Terry Ross, Heather Kirby
BE IT RESOLVED THAT THE BOARD delegate signing authority for Audited Statements to the Planning Board Chair and/or Deputy Chair and the Secretary-Treasurer. (cd)

Res.: 30-2022 Heather Kirby, Reg McKinnon
BE IT RESOLVED THAT THE BOARD authorizes the agreement between ESRI Canada and the Desbarats to Echo Bay Planning Board as presented. (cd)

Res.: 31-2022 Reg McKinnon,
BE IT RESOLVED THAT THE BOARD receives the letter to the Clerks regarding mapping for residents of the Planning Board Region. (cd)

Res.: 32-2022 Jim Withers, Reg McKinnon
BE IT RESOLVED THAT THE BOARD meeting adjourns at 8:38 p.m. until the next scheduled meeting of at the call of the Chair. (cd)

Date: _____

Chair: _____

Secretary-Treasurer: _____

Desbarats to Echo Bay Planning Board

Statement

as of

January 2021

<u>Revenues:</u> Macfarlane J2021-01	820.00	
Interim Levies Tarbutt	1200.00	
(2021) Johnson	1200.00	
Laird	1680.00	
Macdonald	1920.00	6820.00
<u>Expenses:</u>		
- photo copies & stamps	103.96	
Sec'y - Treas (Tarbutt)	381.85	
Planner (2020 Applications)	1350.00	
Honorariums & Site visits		
Bank Charges	13.60	
		1849.41
Net		4970.59
Bank Balance		14,610.19

file name: statement

Desbarats to Echo Bay Planning Board

Statement

as of

February 2021

<u>Revenues:</u>		
<u>Expenses:</u>		
Auditor (2017, 2018, 2019)	3220.50	
Secretary-Treasurer	360.30	
Honorariums & Site visits	460.00	
Bank Charges	14.50	
Net		(4055.30)
Bank Balance		9354.89

file name: statement

Desbarats to Echo Bay Planning Board

Statement

as of

March 2021

<u>Revenues:</u>		
Brazee T2021-02	300.00	
Keyden Storage E2021-03	620.00	
Hibbert T2021-04	820.00	
		1740.00
<u>Expenses:</u>		
Tarbutt - OACA membership	150.00	
Honorariums & Site visits	535.00	
Bank Charges	17.16	
		702.16
Net		1037.84
Bank Balance		10,477.73

file name: statement

Desbarats to Echo Bay Planning Board

Statement

as of
April 2021

<u>Revenues:</u>		
MacFarlane T2021-05	820.00	
Brazee J2021-02	520.00	
MacLeod E2021-06	800.00	
Porter E2021-07	300.00	
McHale J2021-08	200.00	
D'Amelo E2021-09	300.00	
		3560.00
<u>Expenses:</u>		
Honorariums & Site visits	585.00	
Photo Copies and stamps	103.96	
Bank Charges	16.35	
		705.31
Net		2854.69
Bank Balance		13,107.42

file name: statement

Desbarats to Echo Bay Planning Board

Statement

as of

May 2021

<u>Revenues:</u>		
Johnson (Palter) E2021-07	520.00	
D'Angelo E2021-09	520.00	
		1040.00
<u>Expenses:</u>		
Esri Canada (mapping)	2067.90	
Staff Seminar (DACA conference)	250.00	
Bank Slc	13.94	
		2331.84
Net		(1291.84)
Bank Balance		12,040.58

file name: statement

Desbarats to Echo Bay Planning Board

Statement

as of

June 2021

<u>Revenues:</u>		
Trainor L2021-13	800.00	
Fosset L2021-12	800.00	
Jurich T2021-11	800.00	
Brown E2021-10	800.00	
Miscellaneous (copying)	60.00	
		3260.00
<u>Expenses:</u>		
Honorariums, Site Visits	460.00	
postage	207.92	
Tarbutt (Insc)	1311.71	
Miscellaneous (Zoom meetings)	22.60	
Bank slc	20.38	
		2022.61
Net		1237.39
Bank Balance		
		13,277.97

file name: statement

Desbarats to Echo Bay Planning Board

Statement
as of

July 2021

Revenues:		
Phillips E2021-14	800.00	
		800.00
Expenses:		
honorariums, site visits	735.00	
Bank slc	11.72	
		746.72
Net		53.28
Bank Balance		
		13,991.25

file name: statement

Desbarats to Echo Bay Planning Board

Statement

as of

August 2021

<u>Revenues:</u>		
Walknivs E2021-15	800.00	
Dunning E2021-16	800.00	
Miscellaneous (Copying)	40.00	
		1640.00
<u>Expenses:</u>		
honorariums, site visits	100.00	
miscellaneous (email setup TAMM)	160.27	
Bank slc	14.94	
		275.21
Net		1364.79
Bank Balance		
		14,746.04

file name: statement

Desbarats to Echo Bay Planning Board

Statement

as of

September 2021

Revenues:		
Cauduro, Girardi, Ambeault L2021-18	1639.98	
Macleod E2021-17	800.00	
Scott L2021-19	800.00	
Northhorizon T2021-21	300.00	
MacWilliam T2021-20	1600.00	
Bowman T2021-22	800.00	
Miscellaneous (Copying)	60.00	
		5999.98
Expenses:		
Postage, Office Supplies (incl. printer)	640.35	
Honorariums, Site visits	785.00	
Bank slc	17.56	
		1442.91
Net		4556.07
Bank Balance		
		19.763.11

file name: statement

Desbarats to Echo Bay Planning Board

Statement

as of

October 2021

<u>Revenues:</u>		
Northhorizon T2021-21	500.00	
Hillstrom L2021-23	800.00	
Miscellaneous (copying)	40.00	
		1340.00
<u>Expenses:</u>		
Honorariums, Site visits	560.00	
Postage	207.92	
Tarbut# (encompassil.ca - email)	84.75	
Bank slc	15.77	
		868.44
Net		471.56
Bank Balance		
		20,342.59

file name: statement

Desbarats to Echo Bay Planning Board

Statement

as of

November 2021

<u>Revenues:</u>		
Hatchery 2021-24	800.00	
Copying	20.00	
		820.00
<u>Expenses:</u>		
Planner (2021)	5025.00	
Honorariums & site visits	660.00	
Bank slc	13.55	
		5698.55
Net		(4878.55)
Bank Balance		
		15,591.12

file name: statement

Desbarats to Echo Bay Planning Board

Statement

as of

December 2021

<u>Revenues:</u>		
Tarbutt (final levy 2021)	2200.00	
Macdonald Twp (final levy 2021)	3520.00	
Laird (final levy 2021)	3080.00	
		8800.00
<u>Expenses:</u>		
Staff Bonus	200.00	
honorariums, deeds, site visits	300.00	
Tarbutt (rent)	600.00	
Tarbutt (photocopies, applications)	460.00	
Bank s/c	16.16	
		1576.16
Net		7223.84
Bank Balance		22,464.96

file name: statement

C.2.

Jared Brice

From: Carol Trainor
Sent: September 22, 2022 11:03 AM
To: Jared Brice; Chris Jones
Cc: Jean Palmer
Subject: OP Amendment resolution

Good morning:

The following resolution was passed at the Council meeting of September 21, 2022 enabling a change in designation of ag and rural lands to permit an institutional use near the intersection of Barr Road N and Government Road.

I trust this resolution provides sufficient information, along with the mapping provided by Jared, to ensure this change is made prior to the official review of the OP.

Resolution No: 2022 – 120

Moved by: D. McClelland

Seconded by: U. Abbott

Be it resolved that the report from the Planning and Administrative Assistant regarding amending the use and designation of lands located near the south east corner of Barr Road N and Government Road be received; and

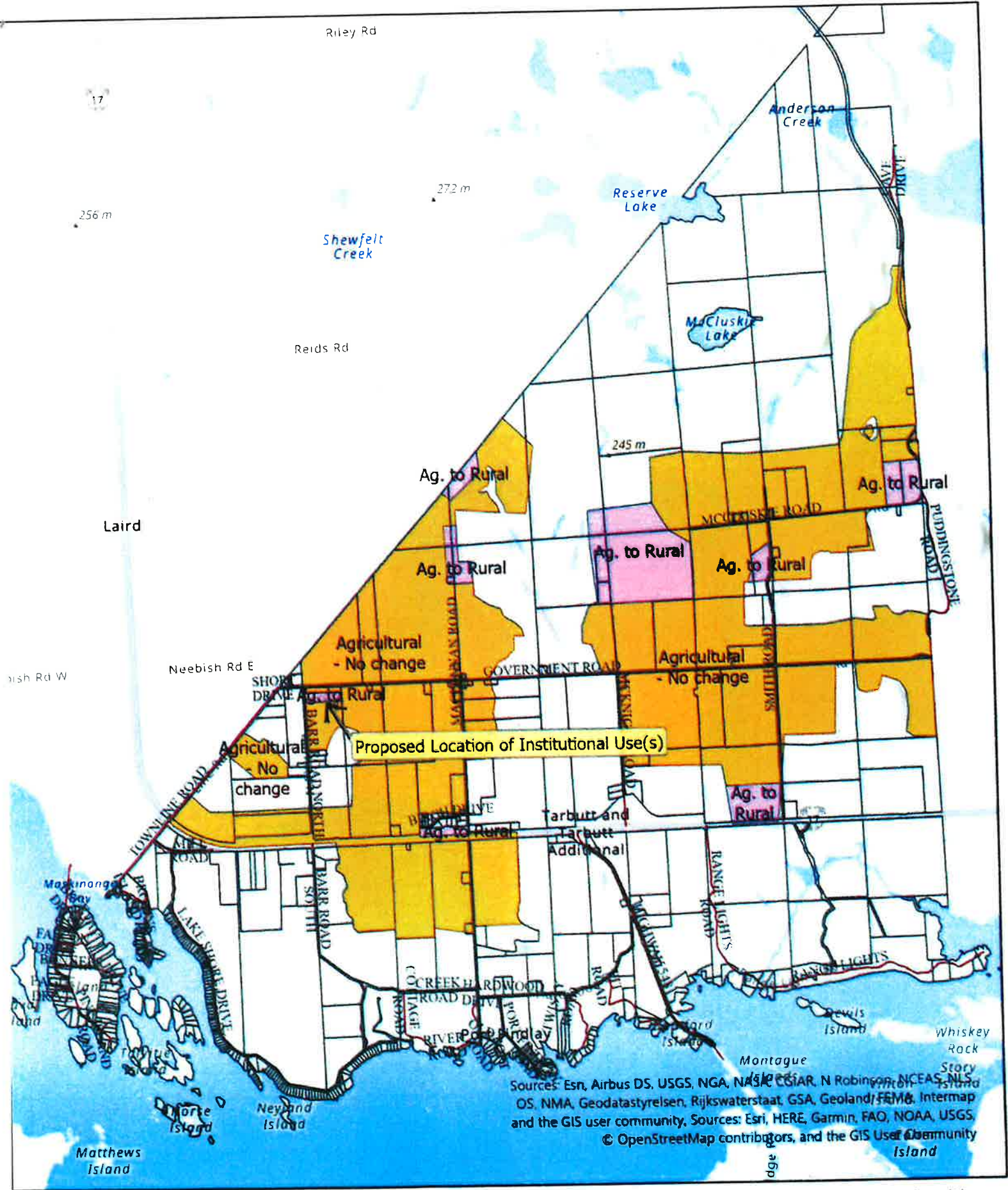
That Council authorize a site specific amendment of the Draft Official Plan for the subject lands, from Agricultural designation to Rural, to permit the Institutional Use within the rural designation.

Carried

Thank you.

Carol O. Trainor, A.M.C.T.
CAO/Clerk
The Township of Tarbutt
27 Barr Road S.
Desbarats, ON P0R 1E0
Ph: 705-782-6776
Fax: 705-782-4274





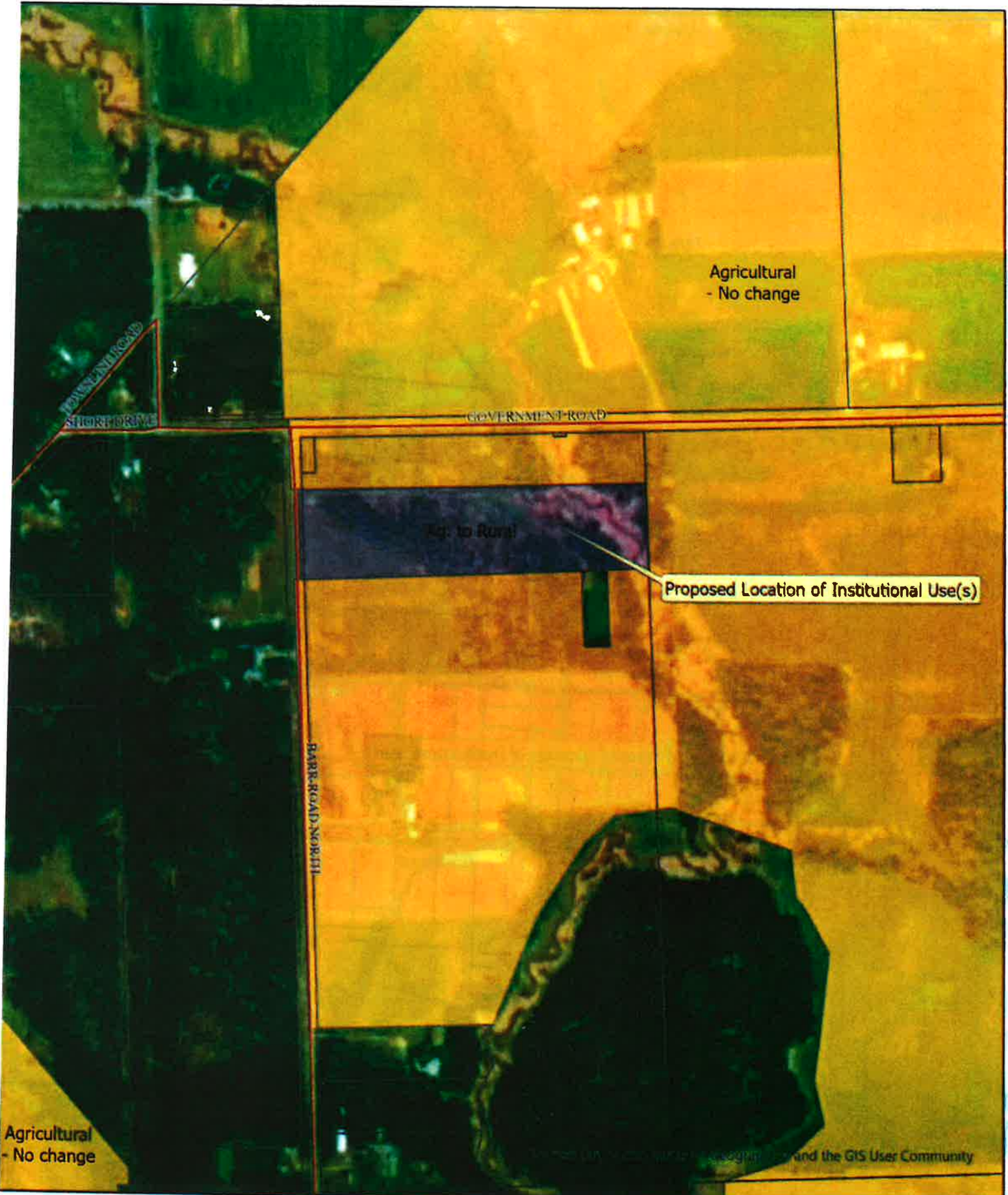
Proposed Agricultural Designation for Tarbutt Township for Joint Official Plan



Maps are provided as a courtesy only and the Desbarats to Echo Bay Planning Board makes no guarantees as to the accuracy of this information. This map is not intended to be used for conveyance, authoritative definition of the legal boundary, or property title. This is not a survey



Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodastatysreien, Rijkswaterstaat, GSA, Geoland/FEMO, Intermap and the GIS user community. Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community



Agricultural
- No change

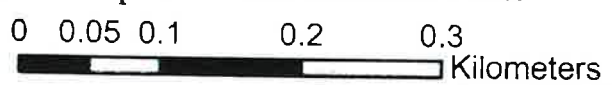
Agricultural
- No change

Ag. to Rural

Proposed Location of Institutional Use(s)



Proposed Agricultural Designation for Tarbutt Township for Joint Official Plan



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C.3

Desbarats to Echo Bay Planning Board

*c/o Tarbutt Township Office
27 Barr Road South, R.R.#1
Desbarats, Ontario, P0R 1E0
phone: 705-782-6776
fax: 705-782-4274*

September 22nd 2022

Subject: Notification and Request to the Board for Correcting Transfer – Consent Application T2017-06

Background

On June 27th, 2017, the Planning Board provided provisional consent to application number T2017-06 (Karhi (1644266 Ontario Inc)) for the Creation of a New Lot of approximately 77.2 hectares (please see attached Notice of Decision and Mapping schedule).

When deposited at the Lands Registry an error was made by the Law Firm. The transfer inadvertently included only the westerly portion of the severed land and omitted the two eastern parcels intended to be included in the transfer.

Proposed Solution

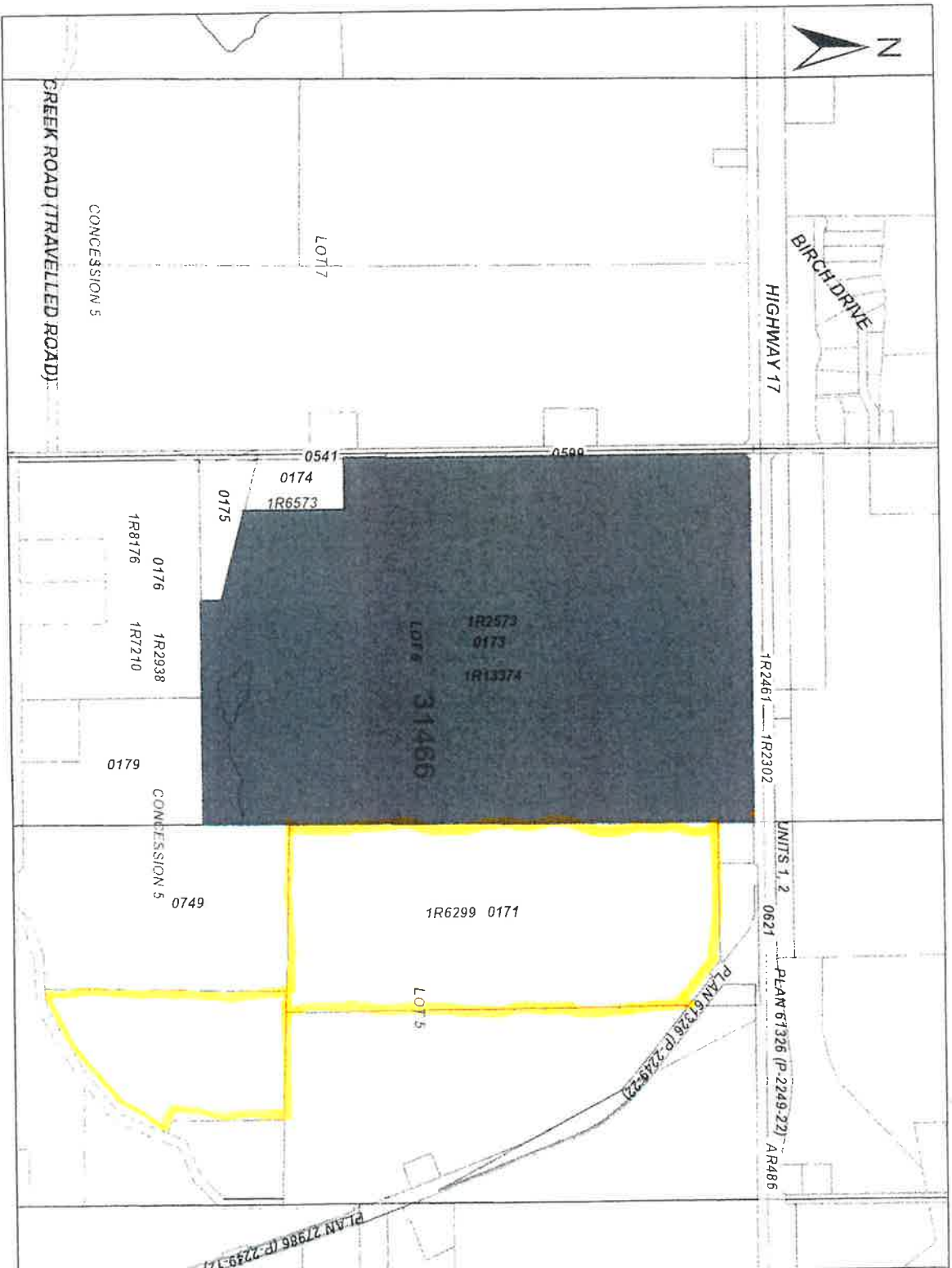
Hugh MacDonald Law Firm and the Planning Board Lawyer Mark Lapore have been working towards a resolution whereby the intent of the original consent application is achieved. As I understand, this involves a two stage process:

- 1. In order to correct title and give effect to the intended severance, a new transfer for the two (2) omitted parcels has been prepared and in order to avoid any misunderstanding arising from the initial transfer of title, the transferee (numbered company) that holds title of the westerly piece has agreed to register a restrictive covenant under section 118(1) of the Land Titles Act on all the overall severed lands to ensure no portion of the severed lands cannot be severed again without consent.*
- 2. To avoid future concern, a request to the Planning Board has been made to approve the arrangement of correcting the transfer to be certified (stamped) by the Board to meet the original intent of the consent application.*



*Jared Brice
Secretary-Treasurer*

Before Consent Application



ServiceOntario

PRINTED ON 06 DEC. 2017 AT 14:46:31
FOR MORRISON



PROPERTY INDEX MAP
ALGOMA(No. 01)

- LEGEND**
- FRESHOLD PROPERTY
 - LEASEHOLD PROPERTY
 - LIMITED INTEREST PROPERTY
 - CONDOMINIUM PROPERTY
 - RETIRED PIN (MAP UPDATE PENDING)
 - PROPERTY NUMBER
 - BLOCK NUMBER
 - GEOGRAPHIC FABRIC
 - EASEMENT

THIS IS NOT A PLAN OF SURVEY

NOTES

REVIEW THE TITLE RECORDS FOR COMPLETE PROPERTY INFORMATION AS THIS MAP MAY NOT REFLECT RECENT REGISTRATIONS

THIS MAP WAS COMPILED FROM PLANS AND RECORDS FILED IN THE LAND REGISTRATION SYSTEM AND HAS BEEN PREPARED FOR PROPERTY INDEXING PURPOSES ONLY

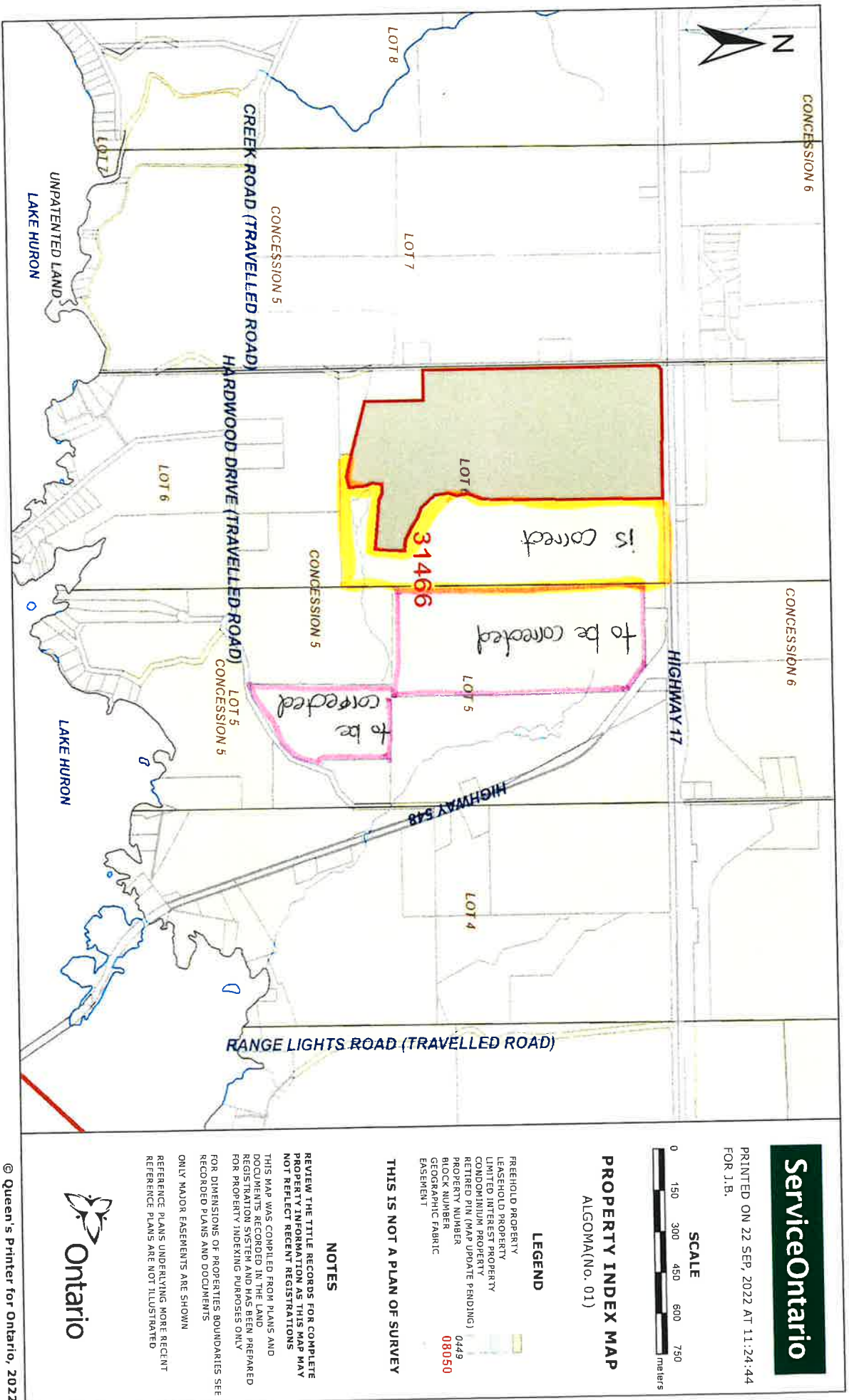
FOR DIMENSIONS OF PROPERTIES BOUNDARIES SEE RECORDED PLANS AND DOCUMENTS

ONLY MAJOR EASEMENTS ARE SHOWN

REFERENCE PLANS UNDERLYING MORE RECENT REFERENCE PLANS ARE NOT ILLUSTRATED



After Consent Application



ServiceOntario

PRINTED ON 22 SEP, 2022 AT 11:24:44 FOR J.B.



PROPERTY INDEX MAP
ALGOMA(No. 01)

- LEGEND**
- FREEHOLD PROPERTY
 - LEASEHOLD PROPERTY
 - LIMITED INTEREST PROPERTY
 - CONDOMINIUM PROPERTY
 - RETIRED PIN (MAP UPDATE PENDING)
 - PROPERTY NUMBER
 - BLOCK NUMBER
 - GEOGRAPHIC FABRIC
 - EASEMENT

THIS IS NOT A PLAN OF SURVEY

NOTES

REVIEW THE TITLE RECORDS FOR COMPLETE PROPERTY INFORMATION. THIS MAP MAY NOT REFLECT RECENT REGISTRATIONS.

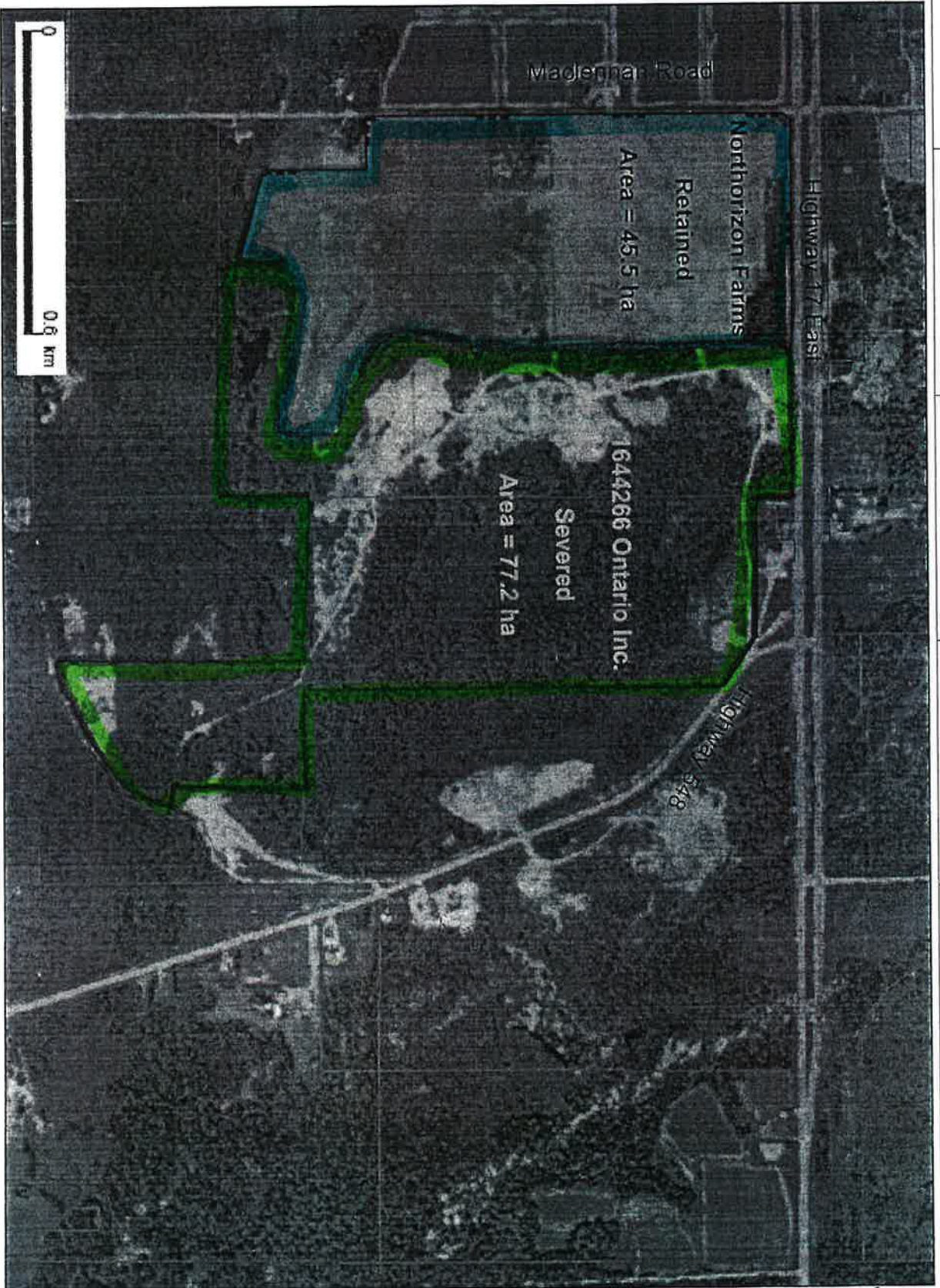
THIS MAP WAS COMPILED FROM PLANS AND DOCUMENTS RECORDED IN THE LAND REGISTRATION SYSTEM AND HAS BEEN PREPARED FOR PROPERTY INDEXING PURPOSES ONLY.

FOR DIMENSIONS OF PROPERTIES BOUNDARIES SEE RECORDED PLANS AND DOCUMENTS.

ONLY MAJOR EASEMENTS ARE SHOWN.

REFERENCE PLANS UNDERLYING MORE RECENT REFERENCE PLANS ARE NOT ILLUSTRATED.





2017-06 S + N

				QCAD.org Open source CAD		LEGEND: — Current Property Boundaries ... Boundary of the Retained Lot — Boundary of the Severed Lot		<small> Planning Department, Ontario Ministry of Municipal Affairs and Housing 1644266 Ontario Inc. and 1644266 Ontario Inc. (Municipal ID#11538) © Copyright © 2017, Ontario Ministry of Municipal Affairs and Housing All rights reserved. No part of this publication may be reproduced without permission. </small>	
DESIGNATION Revision records		BY A B C D E F		DATE A B C D E F		REV A B C D E F		Designated: JMC	
		Date: 05/04/2017		Scale: 1:11538		Sheet: 1/1		Drawing No.: 1	
		Customer/Project: Northhorizon Farms Inc.		Title: Severance Application					

D
C
B
A

1 2 3 4 5 6

1 2 3 4 5 6

D
C
B
A

Applicant: Edwin Karhi
File No.: T2017-06
Mun: Tarbutt Township
Subject Land: Tarbutt Township Con 5 Lot 5
& 6

Date of Decision: June 27th 2017
Date of Notice: June 28th 2017
Last Date of Appeal: July 18th 2017

NOTICE OF DECISION

(Amended)

On Application for Consent Subsection 53(17) of the Planning Act

On June 27th 2017 the Desbarats to Echo Bay Planning Board gave a provisional consent to Application No. T2017-06 in respect of land in Tarbutt Township District of Algoma. A copy of the decision is attached.

When and How to File a Notice of Appeal

Notice to appeal the decision to the Ontario Municipal Board must be filed with the Desbarats to Echo Bay Planning Board on or before the last date of appeal as noted above.

The notice of appeal should be sent to the attention of the Secretary-Treasurer at the address shown below and it must,

- (1) set out the reasons for the appeal, and
- (2) be accompanied by the fee prescribed under the Ontario Municipal Board Act in the amount of \$125.00, payable to the Minister of Finance, Province of Ontario.

Who Can File a Notice of Appeal?

Only individuals, corporations or public bodies may appeal decisions in respect of applications for consent to the Ontario Municipal Board. A notice of appeal may not be filed by an unincorporated association or group. However, a notice of appeal may be filed in the name of an individual who is a member of the association or group.

How to Receive Notice of Changed

Conditions

The conditions of a provisional consent may be changed at any time before the consent is given.

You will be entitled to receive notice of any changes to the conditions of the provisional consent if you make a written request to be notified of changes to the conditions of approval of the provisional consent.

Getting Additional Information

Additional information about the application is available for public inspection during regular office hours at the address shown below.

Mail Address for Notice of Appeal
Desbarats to Echo Bay Planning Board
C/o Tarbutt Township Office
27 Barr Road South
R.R.#1 Desbarats, Ontario
POR IEO
Attention: Secretary-Treasurer
Telephone: (705) 782-6776

Conditions:

The Planning Boards' conditions to the granting of the consent for this transaction which must be fulfilled within one year from the date of this letter are set out below. These

Applicant: Edwin Karhi
File No.: T2017-06
Mun: Tarbutt Township
Subject Land: Tarbutt Township Con 5 Lot 5
& 6

Date of Decision: June 27th 2017
Date of Notice: June 28th 2017
Last Date of Appeal: July 18th 2017

conditions must be fulfilled prior to the granting of consent.

1. That this approval applies to the Consent for the creation of a New Lot of approximately 77.2 ha (190.76 acres) as applied for in the above-noted location and municipality.
2. That the following documents be provided for the transaction described in Condition #1.;
 - a) the original executed Transfer/Deed of Land form, duplicate original and one photocopy for our records, or if electronic registration is being used, a copy of the Transfer application documents;
 - b) a Schedule to the Transfer/Deed of Land form on which is set out the entire legal description of the parcel(s) in question. This Schedule must also contain the names of the parties indicated on page 1 of the Transfer/Deed of Land form or Transfer application; and
 - c) Three copies of the reference plan of survey, which bears the Land Registry Office registration number and signature as evidence of its deposit therein, illustrating the parcel(s) to which the consent approval relates or;
 - d) a certified copy of the Order from the local Land Registrar exempting this transaction from the requirement to provide a reference plan of survey under subsection 150(3) of the Land Titles Act or a letter to that effect from the local Land Registrar.
3. That the Transfer/Deed of Land form noted in Condition 2 shall not identify the transferor and the transferee as the same person.
4. MTO Entrance Permits will be required to reflect any changes in land ownership.

The following NOTES are for your information:

NOTES

1. The required Transfer/Deed of Land form and Schedule page shall contain a complete and accurate legal description. For Lot Additions the description along with the description of the benefiting property shall be shown on the Schedule Page. The Board's certificate of consent will be affixed to the completed Schedule page. For this reason, the names of the parties also must be set out on the Schedule page, so that the consent may be properly related to the intended conveyance.

a) NOTE: For electronic registration, on page one of the 'Application to Transfer' document, the lawyer can indicate the approval has been received from the Desbarats to Echo Bay

Applicant: Edwin Karhi
File No.: T2017-06
Mun: Tarbutt Township
Subject Land: Tarbutt Township Con 5 Lot 5
& 6

Date of Decision: June 27th 2017
Date of Notice: June 28th 2017
Last Date of Appeal: July 18th 2017

Planning Board, as per attached scanned Schedule to show the Registry what the approval authority granted.

Inaccuracies or omissions with regard to the legal description in the Transfer/Deed of Land form, the Schedule page or the survey plan will result in the documents being returned without consent.

2. Prior to the installation of a subsurface sewage system, a Certificate of Approval must be obtained from the appropriate granting Ministry.

3. It is the applicant and/or agent's responsibility to fulfil the conditions of consent approval within one year of the date of this letter pursuant to Section 53 of the Planning Act. We will issue no further notice or warning of the expiration of the one-year period.

4. Any buildings, structures, site alterations, or wells proposed within 395 metres of any intersection along Highway 17, 180 metres of any intersection along Highway 548 or within 45 metres of the limit of the highways, require a Building and Land Use Permit from the Ministry of Transportation.

5. It is understood that the applicant is preparing to apply to MNRF to remove the portion of the subject lands zoned agricultural from their licence area under the Aggregate Resources Act. Even with this amendment to their licence area, MNRF has no concerns with the severance as the aggregate deposit continues to be protected by the Resource Aggregate Overlay in the Official Plan. MNRF does not require an agreement for the continuation of the existing site plan or for the agreement to be registered on title.

If the conditions to consent approval are not fulfilled within one year of the date of this letter and the applicant is still interested in pursuing the proposal, a new application will be required.

C.5



SCHOOL OF
ENVIRONMENTAL DESIGN
AND RURAL DEVELOPMENT

9/6/2022

Assessing the Capacity of Municipalities to Respond to and Support Agri-food Systems in Ontario

This letter is an invitation to participate in a research project being conducted by Dr. Wayne Caldwell from the School of Environmental Design and Rural Development at the University of Guelph. This project is sponsored by the Ontario Agri-Food Innovation Alliance, a partnership between the Ontario Ministry of Agriculture, Food and Rural Affairs and the University of Guelph. The project seeks to inventory municipal and planning department capacity as it relates to agri-food priorities and issues. The research area includes all upper- and single-tier municipalities and aims to have representation from both Northern and Southern Ontario. The following text provides more information about the project, how the collected data will be used, and the benefits of participating.

Project background

A vibrant agricultural sector in Ontario is dependent upon a knowledgeable and supportive municipal sector. With the evolving nature of municipal government and agriculture, it is important that municipalities have the capacity (staff, time, expertise) to respond to new and emerging agricultural issues (climate change, new farming practices, agritourism, etc.). It is equally important that municipal elected officials understand the needs of agriculture and are well positioned to make timely, relevant decisions in support of the agri-food sector and the economy of rural Ontario.

Research methods

This study includes three different types of data collection that will be considered in conjunction with a review of municipal documents (e.g., official plans, budgets, etc.):

- I. A survey sent to elected officials,
- II. A survey sent to the most senior planner at each municipality, and
- III. A semi-structured interview with a member of the planning department.

All upper- and single-tier municipalities in Ontario will be contacted to evaluate their capacity to support the agri-food industry and respond to evolving agricultural issues.

Your participation

Participation in this research project is voluntary. ***If you are able to participate*** we ask that you complete **this survey**. The survey will take approximately 10-15 minutes to complete and is a combination of multiple choice and written responses (full sentences or point form is appropriate). The survey will ask questions related to staff and budgetary capacity, agricultural knowledge, resources used, and agri-food activities in your municipality. ***If you are unable to participate*** we ask that you reply to our email letting us know and if possible recommending another individual in a similar role that we could contact.

Following your completion of the survey, we would like to set up an interview to discuss the research further with either yourself or another senior staff member. The interview will ask questions related to staff background, municipal initiatives, and opportunities for strengthening capacity related to agriculture, etc. Interviews will be conducted remotely by phone or Zoom and will be recorded for note taking and transcription purposes. While Zoom records both video and audio, only the audio recording will be retained for research purposes. The Zoom call has been set so that your camera will be off when you join the meeting. If you do not wish to have your video captured, please do not turn it on.

Anonymity and confidentiality

Identity and contact related information (name, email, phone number) of participants will only be used for the administrative purposes and will be kept until five years after the study has been completed (April 30, 2029). Your name will not appear in any research or report resulting from this project. That being said, please only share information that you would be comfortable with becoming public as your identity may be inferred either by your position and/or geographic information. Confidentiality cannot be guaranteed while data are in transit over the internet. Anonymized quotations may be used. The anticipated risks to you as a participant in this project are very low but may include minimal psychological, social, economic and privacy related risks.

You can stop the survey at any time or skip a question if you do not feel comfortable answering it. Additionally, you are able to withdraw or alter your response until December 31, 2023. If you wish to revise or withdraw your response to this survey, please contact one of the research team members.

This project has been reviewed by the Research Ethics Board for compliance with federal guidelines for research involving human participants. If you have questions regarding your rights and welfare as a research participant in this study (REB#20-04-013), please contact: Manager, Research Ethics; University of Guelph; reb@uoguelph.ca; (519) 824-4120 (ext. 56606).

Benefits

The deliverable of this project is a report for OMAFRA detailing the research findings and providing recommendations for how to better position municipalities to respond to and support agriculture and agri-food in the planning process. It is also anticipated that findings will be presented in non-academic journals such as Municipal World and at conferences such as the Association of Collegiate Planning Schools annual conference. This report will be made available

to all participants and will provide an overview of municipal capacity as well as recommendations for best practices when dealing with agricultural issues. It is our intent that the findings will be of benefit to you and other municipalities across Ontario when dealing with agricultural and agri-food issues. Please let one of the research team members know if you are interested in receiving a copy of the final report.

We are looking forward to speaking with you and thank you in advance for your assistance.

Sincerely,

Natasha Gaudio Harrison, Shanley Weston, and Regan Zink

Graduate Research Assistants, Rural Planning and Development Program
School of Environmental Design and Rural Development, University of Guelph
Supervisor: Dr. Wayne Caldwell

Wayne Caldwell: wcaldwel@uoguelph.ca

Natasha Gaudio Harrison: ngaudiogh@uoguelph.ca

Shanley Weston: westons@uoguelph.ca

Regan Zink: zinkr@uoguelph.ca

C.6.

Jared Brice

From: Holtby, Cara (MMAH) <Cara.Holtby@ontario.ca>
Sent: September 19, 2022 1:00 PM
To: Jared Brice
Cc: Jean Palmer
Subject: RE: Request for Clarification: Desbarats to Echo Bay Planning Board

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Jared – given you haven't provided a specific context here, I can only provide a very general answer. Basically, if you are reviewing an application under the Planning Act (consent, subdivision etc.), the OP and PPS must be considered (the ZBL doesn't take precedence and in the case of an out-of-date OP, the act still requires that all council/board decisions be consistent with the PPS). The only circumstance under which the OP and PPS don't need to be considered is when the CBO receives a building permit application that conforms/complies with the ZBL (i.e. no planning application required). So basically, for the purposes of the planning boards primary functions, the ZBL would never take precedence over the OP and PPS. Hope that helps!

Cara

From: Jared Brice <Admin@tarbutt.ca>
Sent: September 19, 2022 9:23 AM
To: Holtby, Cara (MMAH) <Cara.Holtby@ontario.ca>
Cc: Jean Palmer <planning@tarbutt.ca>
Subject: Request for Clarification: Desbarats to Echo Bay Planning Board

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Good Morning Cara

I hope all is well with you and yours!

The Desbarats to Echo Bay Planning Board is looking for clarification from MMAH regarding what takes precedence when an Official Plan and Zoning By-law do not correlate. At present, one of the municipalities in our planning board region has a 2015 Official Plan and a 1985 zoning by-law. The Planning Board is looking for information on how to proceed until the Joint OP for the Desbarats to Echo Bay Planning Board and associated Zoning By-laws are implemented in the near future.

If you can provide a response by Thursday afternoon it will be greatly appreciated.

Stay Safe and Well



Jared Brice
Tarbutt Township
Administrative/Planning Assistant;
Desbarats to Echo Bay Planning
Board Secretary Treasurer

D.1 (Information)

**Ministry of
Municipal Affairs
and Housing**

Office of the Minister
777 Bay Street, 17th Floor
Toronto ON M7A 2J3
Tel.: 416 585-7000

**Ministère des
Affaires municipales
et du Logement**

Bureau du ministre
777, rue Bay, 17^e étage
Toronto ON M7A 2J3
Tél. : 416 585-7000



Ontario

234-2022-61

Subject: Proclamation of the *Supporting Recovery and Competitiveness Act, 2021* changes to the control of the division of land, including subdivision control, plans of subdivision, consents and validations.

As you know, we made *Planning Act* changes related to control of the division of land, including subdivision control, plans of subdivision, consents and validations through Bill 276, the *Supporting Recovery and Competitiveness Act, 2021*, which received Royal Assent on June 3, 2021. I am writing to confirm that Schedule 24 of Bill 276 and associated regulations came into force on January 1, 2022.

We are proud to make these changes, which will help save time and money for those involved in the land division approval process, including municipalities, landowners, purchasers and some lease holders. Our changes will continue to protect Ontarians when they buy and sell property, while making the rules of subdivision control clearer and simpler.

To facilitate implementation of the changes to the *Planning Act*, complementary and consequential amendments have been made to existing regulations under the Act.

More information about these changes and the feedback we received during our consultation can be found on the Environmental Registry of Ontario ([019-3495 and 019-3958](#)) and Regulatory Registry ([Proposal 21-MMAH008 and Proposal 21-MMAH015](#)).

The decision notices have now been posted which provide an overview of the regulatory changes and a summary of the comments we received. We are appreciative of the time spent to review and provide comments on this proposal. All comments received have been carefully considered.

Questions

Some frequently asked questions regarding the Bill 276 changes to the *Planning Act* are provided below. Any further questions about the changes to the *Planning Act* and related regulations can be directed to ProvincialPlanning@ontario.ca.

Sincerely,

A handwritten signature in black ink that reads "Steve Clark".

Steve Clark
Minister

FAQs

Schedule 24 (Planning Act) to Bill 276, the Supporting Recovery and Competitiveness Act, 2021

What changes will be made to the Planning Act?

- The changes include technical, administrative and policy changes to provisions in sections 50, 51, 53, 54, 55 and 57 of the Planning Act related to control of the division of land, as well as other housekeeping or consequential changes.
- Upon proclamation, the changes will:
 - provide new exceptions to subdivision control and part lot control (i.e., exceptions from the need for land division approval) – for example, by preventing parcels from merging with other lands in certain circumstances
 - change the plan of subdivision process – for example, by aligning the requirements for public notice, information, and public meetings with other instruments under the Act
 - change the consent application process – for example, by requiring a municipality or the Minister, where requested, to issue a certificate for the retained land in addition to providing a certificate for the lands that are subject to the consent application, and
 - make other changes regarding subdivision control and its related processes – for example, by requiring that a decision on a validation conform with the same criteria which are applicable to consents.

What changes will be made with respect to “lot mergers”?

- Changes will be made to the subdivision control provisions to prevent lots from merging where lands were previously owned by, or abutted land previously owned by, joint tenants and where the ownership would have otherwise merged as a result of the death of one of the joint tenants.
- Outside of a “death of a joint tenant” scenario, lot mergers will continue to occur.

What changes will be made to the consent application process?

- Changes will be made to the consent application process to, for example:
 - permit a purchaser of land or the purchaser’s agent to apply for a consent
 - establish a new certificate of cancellation
 - provide for certificates to be issued in respect of retained land in addition to the lands that are subject to the consent application
 - provide for a standard two-year period during which the conditions of a consent must be satisfied, and
 - permit a consent application to be amended by an applicant prior to a decision about the consent being made by the consent-granting authority.
- Municipalities may need to modify or update certain administrative processes as a result of some of these changes.

What is a certificate for retained land?

- Changes to the Planning Act will provide for a consent-granting authority to issue a certificate for the retained land (the other part of the parcel approved through the land division process) resulting from certain consents.
- This certificate will show that the retained land has “consent” status.

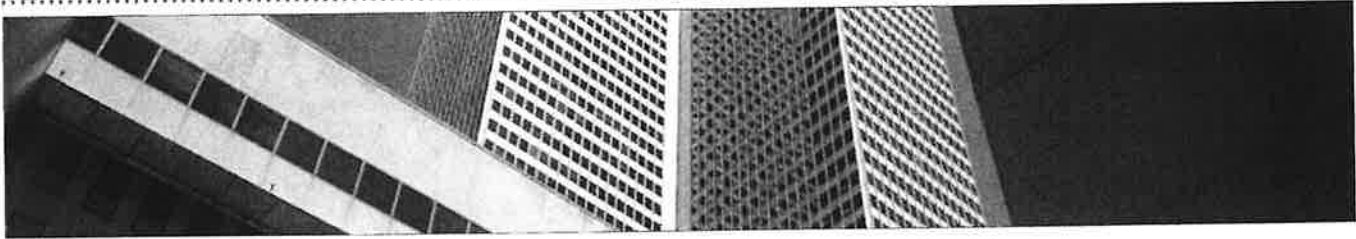
- An applicant will need to specify in their application whether they are requesting a retained land certificate, and if so, require that a statement from a solicitor confirming the extent of the owner's retained land be included as part of that application.

What is a certificate of cancellation?

- In some situations, the original consent granted for a parcel of land may no longer be wanted or needed. This could occur, for example, where a parcel created by consent may need to be widened to accommodate a driveway. In these cases, the original consent may need to be cancelled to ensure the revised parcel will function as a single unit.
- Changes to the Planning Act will allow owners to apply to the consent-granting authority for a certificate of cancellation for a parcel that was previously severed with a consent. The consent-granting authority may also require the owner to apply as a condition of approval.
- Once a certificate of cancellation is issued, the parcel would be treated as though the previous consent had not been given. This could mean that the parcel would merge with neighbouring lands that are owned by the same person.

What considerations need to be applied to validation requests?

- A validation can be used in place of obtaining a consent to the contravening transaction (transfer or other transaction that was made in breach of the Planning Act requirements) in certain situations; for example, where the landowners at the time of the contravention are not available to sign the new transfer documents.
- The validation allows the validation authority to consider each situation on its merits and decide whether a request to validate title should be supported. The validation authority may, as a condition to issuing the validation, impose conditions as it considers appropriate.
- Bill 276 will make changes to require that a decision regarding a validation must conform with the same criteria which are applicable to consents, for example:
 - having regard to provincial interests and the land division criteria set out in the Planning Act
 - ensuring the validation is consistent with the Provincial Policy Statement and conforms, or does not conflict, with provincial plans, and
 - ensuring the validation conforms with all applicable official plans.



Across Ontario, there have been two complementary trends in planning and development law. First, a greater engagement of the public in matters of development, most often concerned about development, including greater height and density in existing neighbourhoods; and second, municipalities, concerned about the first trend, seeking to preclude debate on such matters by placing strict regulation of development and prohibition of uses in Official Plans.

This article, previously published in *The Digest of Municipal and Planning Law* ((2011) 5 D.M.P.L. (2d), August 2011, Issue 8), argues that notwithstanding the prevalence of such a trend, such measures are beyond the legal authority of municipalities, and offers a path to challenge such measures.

INTRODUCTION

An official plan is a useful and necessary tool used by municipalities to plan for their future development and growth. However, as currently used, many, if not most official plans across Ontario contain elements that are not consistent with the law, either in the form of decided case law, or on a plain reading of the *Planning Act*.¹

Many official plans across Ontario attempt to rigidly prescribe performance standards, prohibit certain kinds of uses, or otherwise attempt to specifically regulate use or building form. The practice appears to be a reaction to the continuing clash between a more activist population and the development industry. One planner justified the use of official plans in this way to the author on the grounds of attempting to control the requests for relief by the development industry. Regardless of the reason for or breadth of such a practice, it is not in compliance with the statute and the case law, neither of which allow such content in an official plan. As such, the attempted use of such regulation or prohibition may well be "a bridge too far".

There is a wealth of jurisprudence which suggests that official plans are intended to be broad and flexible policy statements that should and do not have the effect of a statute. Official plans are not intended to be used to prohibit or regulate specific land uses in detail. Rather, these should be implemented through zoning by-laws. Despite this consensus in the current jurisprudence, municipalities appear to more and more be using official plans in a manner not intended or indeed permitted. Indeed, in the face of rancorous public debate over development issues, more and more municipal staff and councils are proposing the use of official plans to prohibit specific uses, or regulate performance standards in a manner approaching the methods of a zoning by-law.

The jurisprudence also suggests that since official plans are intended to be broad and flexible policy documents with an eye towards long-term planning, they should avoid being too detailed or specific to allow for municipal development to freely evolve without the constant need for official plan amendments. The Ontario Municipal Board (the "Board") has approved detailed site-specific amendments to official plans to allow for changes in development in the past, but has voiced its concerns regarding this planning practice.

Finally, there is case law which suggests that when power or authority is explicitly granted in one instance in a statute, the lack of the same expressly granted power in another instance will usually be construed as though the legislature did not intend for the body to have the power in the latter instance, by virtue of the *expressio unius est exclusio alterius* or implied exclusion rule. In this context, the fact that municipalities are expressly given the power to pass zoning by-laws under s. 34 of the *Planning Act* which are intended to "regulate" or "prohibit" suggests that municipalities were not intended to "regulate" or "prohibit" within an official plan because under s. 16 of the *Planning Act*, municipalities are not expressly given the power to "regulate" or "prohibit".² It is the authors' view that it is likely that the implied exclusion rule would be applied in this context.

SUMMARY OF RELEVANT JURISPRUDENCE

1. Content of an Official Plan

*Goldlist Properties Inc v. Toronto (City)*³

The City of Toronto adopted an official plan amendment to enact policies relating to the preservation and replenishment of rental housing, in part by restricting "the demolition of rental property and the conversion of rental units to condominiums." While defining the scope of official plan contents, the court at paragraph 14 explained that the *Planning Act*, apart from s. 16(1)(a) and 16(2)(b), does not contain any other specific provisions limiting the contents of what can be included in the official plan. The court, at paragraph 49, dealt with the issue of what

could be included:

Section 16(1)(a) is cast in terms of the minimum requirements for an official plan, not the outside limits. It does not list heads of power or the subjects that may be addressed by the official plan. There are unquestionably limits to what a municipality may include within its official plan, but the wording and scope of s. 16(1)(a) indicate that those limits cannot be determined solely by a literal application of its terms. To determine what may be included in an official plan, as distinct from what must be included by virtue of s. 16(1)(a), reference must be had to the *Planning Act* as a whole. In this regard, it is important to bear in mind that the purpose of an official plan is to set out a framework of "goals, objectives and policies" to shape and discipline specific operative planning decisions. *An official plan rises above the level of detailed regulation* and establishes the broad principles that are to govern the municipality's land use planning generally. [emphasis added]

2. Policy Versus Regulation

Goldlist Properties Inc v. Toronto (City) spoke to the fact that an official plan is intended to go beyond detailed regulation and establish broad planning principles that govern land use generally. This point, that official plans are not intended to impose specific planning guidelines, but rather zoning by-laws are the appropriate vehicle for such regulation, is canvassed in the following cases.

Steven Polon Ltd. v. Toronto (Metropolitan) Licensing Commission⁴

The court considered an appeal from the decision of the Metropolitan Licensing Commission refusing to issue a salvage yard licence for land in the Township of Scarborough. In refusing to issue the licence to the applicant, the commission based its decision on the township's official plan, which designated the land at issue as agricultural and therefore did not permit the use of the land as a salvage yard or scrap yard, despite the fact that the official plan had not yet been implemented by a zoning by-law. The court held, at paragraph 8, that where an official plan has been enacted by a municipality, but no zoning by-law has yet implemented the plan, the official plan is simply a statement of intention and is not an effective instrument to restrict land use:

As a result of a perusal of ss. 10 to 20 of the *Planning Act*, R.S.O. 1960, c. 296, I am of the opinion that the Official Plan adopted by the respondent municipality is little more than a statement of intention of what, at the moment, the municipality plans to do in the future. Provisions for the amendment of an official plan make it clear that the municipality is not bound to carry out that intention and may from time to time as circumstances develop make such changes as appear desirable. The Official Plan is not therefore an effective instrument restricting land use.

Cadillac Development Corp. v. Toronto (City)⁵

The court addressed, at paragraph 24, the role of an official plan as a policy document:

[T]he Official Plan therefore, as it is in effect from time to time, represents a policy or program having legislative effect, governing the area to which it applies. It is clear from the scheme of the Act that the Official Plan is not immutable (s. 17) and does not have effect to implement the policy outlined by it. Implementation is to be effected by by-laws of the Municipal Council that conform to the policy specified in the plan.

Hamilton Harbour Commissioners v. Hamilton (City)⁶

The court addressed the effect of an official plan amendment in relation to a zoning by-law. Griffiths J. states, at paragraph 95:

[I]n any event, unless and until official plan amendment 281 is implemented by a zoning by-law, which purports to direct, regulate or prohibit uses of the lands (or water) in the open water area, there is no potential conflict whatsoever. The official plan amendment has in itself no binding effect either on the Commissioners or on other land owners in the harbour.

Southwold (Township) v. Caplice⁷

Anderson J. discusses the use of an official plan to prohibit specific uses of land at paragraph 4:

An official plan is not an effective instrument restricting the use of land. That conclusion is implicit in the series of cases dealing with the adjournment of applications for mandamus, where the issue of a building permit was resisted on the ground that the municipality was proceeding to the enactment of a zoning by-law which would prohibit the use for which the permit was sought. In those cases if the municipality could demonstrate that it had shown a *bona fide* intention to effect such a zoning before the application for building permit was made, it was deemed entitled to have the application for mandamus adjourned until the necessary processes to the passage and approval of the By-Law had been completed. Evidence of such a *bona fide* intention was found in those cases in the existence of an official plan to which the proposed zoning would conform. *Had the official plan been effective to restrict the land use it would in itself have been an answer to the application for a building permit.* [emphasis added]

Whitchurch-Stouffville (Town) Interim Official Plan, Re⁸

The town's official plan had provisions requiring both a 200 ft. set-back and a minimum 500 ft. lot frontage along a highway. The Board held that the sections of the official plan were regulatory in nature rather than a policy statement and ruled that such matters should be confined to by-laws: "The board is disturbed that the mention of measurements relative to set-backs is really a regulatory process having no place in

the official plan"; and later, "[o]nce again this is regulatory rather than a policy statement and should be confined to the by-law. The Board agrees with the concept but not the regulatory approach used."

Woodglen & Co. v. North York (City)⁹

It was held that "an official plan and amendments thereto are not effective in themselves to regulate land use" and that "an official plan is a recommendation, or statement of intention only, which may or may not be implemented by the municipality by the enactment of appropriate zoning by-laws".¹⁰

Frontenac-Lennox & Addington (County) Roman Catholic Separate School Board v. Kingston (City)¹¹

There was an inconsistency between the city's new comprehensive official plan and a zoning by-law. While the zoning by-law permitted schools in industrial zones, the official plan prohibited it. As the Board commented at paragraph 5, "[t]he hitch is that the official plan forbids a school. However, the plan is a statement of objectives and policy, designed to guide the City's land use decision-makers. Normally, land use rights depend on the zoning, not the official plan."

Polla v. Toronto (City) Chief Building Official¹²

The decision touches on the city's use of an official plan to regulate the land. Molloy, J. states at paragraph 16:

It is abundantly clear that the conditions imposed by the City are directed towards maintaining the natural environment of the ravine. This objective may well be, and indeed probably is, consistent with the policy expressed in the Official Plan. However, an Official Plan is not law. It is merely a statement of intention, which may or may not be implemented by the municipality by the enactment of appropriate by-laws. Until such by-laws are passed, the Official Plan cannot be used by the municipality to regulate land use ... Therefore, the mere fact that protecting the natural state of the ravine is consistent with the Official Plan does not create jurisdiction in the City to protect the ravine through the site plan approval process.

TDL Group Ltd. v. Ottawa (City)¹³

The 2003 City of Ottawa Official Plan prohibited the establishment of new drive-through facilities in certain areas. The Board ruled that there was no proper basis to support the prohibition, and that such matters should be dealt with in zoning by-laws. The Board's position was summarized as follows at paragraph 19:

The Board agrees that the policy as it exists gives no consideration to the possible effect on the pedestrian environment through design for the unique characteristics of specific locations and that there are a number of ways to develop drive-through facilities on "Traditional Mainstreets", while protecting and enhancing the pedestrian environment. The evidence proffered by the appellant shows that "drive-through facilities" in appropriate circumstances, can be designed to have minimal impact on traffic and the pedestrian environment. [...] The proper approach for controlling [drive-through facilities] is the one adopted by the City of Toronto, which prohibits these facilities through its zoning by-law and not in its official plan. Official Plans do not need to be prescriptive like zoning by-laws.

R & G Realty Management Inc. v. North York (City)¹⁴

The above paragraph in *Goldlist* is cited for the proposition that "an official plan does not have the force of a statute". Rather, in *R & G Realty Management Inc. v. North York (City)* the court states, at paragraph 25 that an official plan "is a 'recommendation, or statement of intention only, which may or may not be implemented by the municipality by the enactment of appropriate zoning by-laws'".

Oakville (Town), Re¹⁵

The most recent statement regarding the use of an official plan to prohibit specific uses is contained in *Oakville (Town), Re*. While S.J. Stefanko states that it is not his role to rule on the merits of the argument that official plans should not prohibit specific uses, he does point out, at paragraph 16, that there "appears to be jurisprudence" which suggests as such. He cites the paragraphs quoted above from *Goldlist* and *TDL Group v. Ottawa (City)*.

These cases illustrate a consensus in the jurisprudence that official plans are intended to be broad documents of municipal planning policy, but are not intended to regulate specific land uses or set out specific performance standards. Zoning by-laws are the proper municipal tool for such, and regulation and policies in official plans are of no effect unless implemented by a zoning by-law. This consensus is so strong, that some decisions have considered the point to be trite law.

In *Csele v. Pelham (Town)*, Fleury, D.C.J. states that "[I] think it is trite law to say that Official Plans are basically an outline of long-term objectives proposed by a municipality and certainly do not take any legal significance until they have actually been implemented by the passage of appropriate zoning by-laws."¹⁶ Also, in *Aon Inc. v. Peterborough (City)*, Howden, J. states that "[I]t is of course, trite law that an Official Plan simply does not 'prohibit' uses; that is the function of the zoning by-law."¹⁷

Being the exception to prove the rule, there is a single Board decision approving of the City of Peterborough's policy of regulating adult entertainment parlours using its official plan. In *Peterborough (City) Official Plan Amendment 56, Re*¹⁸ the city asked the planner

undertaking its official plan review to develop criteria for the regulation of adult entertainment parlours in Peterborough. The policy was adopted in the official plan which provided very limited locations for adult entertainment parlours in the city. Ultimately, the Board was satisfied with the official plan amendment, despite its prohibition of a specific land use. The Board held, at paragraph 24, that the amendment:

[P]rovides guidelines and policies on what is a very difficult matter in this municipality and in other municipalities as well. Instead of pushing the issue away until it explodes as municipalities sometimes do with controversial land use matters, the city has in the past several months taken a constructive path to find a solution that may not please everyone but which attempts to deal fairly between property owners, residents, business operators, adult entertainment parlours, and the persons who wish to use those facilities. There is a balance sought here between the rights of the public, the public interest and the rights of the individual. The board believes that has been fairly struck.

There was no discussion in this case of whether, regardless of the efficacy and suitability of the policy, it should have been implemented by a zoning by-law, rather than at the official plan level. For this reason and because of the strength of the consensus in the above case law it is likely that this case is an outlier and official plans are not the proper vehicles for prohibiting or regulating specific land uses and performance standards.

3. Broad & Flexible Approach

There is substantial jurisprudence which suggests that official plans are intended to be broad policy documents which should be general in nature and flexible in detail. They should provide a stable approach to municipal growth, while not encumbering future development.

***Toronto (City) Central Area Official Plan, Re*¹⁹**

The Ontario Municipal Board, in discussing a proposed official plan amendment, at paragraph 110, accepted the expert evidence of planners who suggested that an official plan "should have as elements, stability and reliability; should be firm in principle with the detail flexible; should provide for continuity and reflect reality. It should also be a long term document".

***Hamilton-Wentworth Planning Area Official Plan Amendment 1, Re*²⁰**

The Ontario Municipal Board, in discussing what constitutes an official plan in Ontario, cited at paragraph 8, the paragraph above in *Toronto (City)* with approval. The Board also rejected, at paragraph 9, counsel's view that the validity of official plans could no longer be relied upon over any period of time because they had become more like a zoning by-law and required amendment in any instance of substantial rezoning.

***Oakville Planning Area Official Plan Amendments 28, 31 and 32, Re*²¹**

The Ontario Municipal Board accepted evidence from several experts, at paragraph 27, that the purpose of an official plan was "to provide a guide to future orderly development by setting out the municipality's intentions and commitments to future development of a certain type at a certain place at a certain time." Further, an official plan should be "something like a constitution—firm in principle but flexible in detail. It follows therefore they should not be changed lightly or without good and sufficient reason."

***North York Planning Area Official Plan Amendment D-11-101, Re*²²**

In rejecting amendments to an official plan and its implementing zoning by-law to provide for hotels and open-air shopping areas in the downtown area, the Ontario Municipal Board was concerned with the piecemeal approach the municipality was taking to its official plan. The Board states, at paragraph 12:

[T]he city has lost sight of its original official plan policies that create a hard boundary between the core uses and the stable residential uses surrounding. The concern of the board is that by introducing piecemeal amendments that disrupt the stability of the neighbouring residential area, the city has lost sight of the need to undertake a comprehensive review of the immediate area that will surround and may become a part of this vibrant city centre that it hopes to achieve.

***Bradford & West Gwillimbury Planning Area Official Plan Amendments 13, 13A & 13B, Re*²³**

The Town proposed several amendments to its official plan. The Ontario Municipal Board agreed, at paragraph 45, with the opinion of an expert planner that there should be flexibility in an official plan to eliminate the necessity of amendments.

***Brampton Planning Area Official Plan Amendment 75, Re*²⁴**

The City of Brampton proposed to remove provisions from their official plan regarding detailed traffic control. The Ontario Municipal Board agreed, at paragraph 5, with the city planner who expressed the opinion that "traffic regulatory provisions and particularly in such detail, have no place in an official plan and that they also encumber council's jurisdiction under the *Municipal Act*^[25] to properly exercise their authority."

In *Cadillac*, cited in the previous section, the court recognized the necessity of having a flexible official plan to avoid the need for amendments. As stated by Henry, J. "a council that wishes to permit development that conflicts with the policy of the plan is restrained and

must first have recourse to the cumbersome machinery for amending the plan and the meticulous scrutiny it entails."²⁶

Halmir Investments Ltd. v. North York (City)²⁷

The applicant was seeking a specific text change in the district plan to permit the development of an apartment building as it only permitted a maximum density of 40 units/acre. While the Ontario Municipal Board ultimately accepted the specific amendment to the official plan, to allow the requested 51 units/acre, the Board voiced its distaste for site specific amendments to official plans. As the Board states, at paragraph 246, "this official plan could achieve the same result for the site in question by a more general statement of policy [...] This plan does not contain what several others do have incorporated within them, namely that the plan is not intended as an instrument to restrict the use of land in the manner of a zoning by-law."

Bele Himmell Investments Ltd. v. Mississauga (City)²⁸

At issue in *Bele* was whether the Ontario Municipal Board erred in law or jurisdiction in deciding that a zoning by-law conformed to the official plan of the municipality. This case is often cited as providing direction on how official plans should be interpreted. At paragraph 22, the court explained that:

Official Plans are not statutes and should not be construed as such [...] Official Plans set out the present policy of the community concerning its future physical, social and economic development [...] It is the function of the Board in the course of considering whether to approve a by-law to make sure that it conforms with the Official Plan. In doing so, the Board should give to the Official Plan a broad liberal interpretation with a view to furthering its policy objectives.

The notion that official plans should remain flexible runs through the jurisprudence. That said, it is not uncommon for the Board to approve amendments that appear restrictive:

Georgina Official Plan Amendment 10, Re²⁹

The Ontario Municipal Board approved three official plan amendments which would facilitate the development of a residential retirement community because it felt that addition of the area to the plan had nothing to do with the other persons in the plan except to improve the economic base to help pay for a new sanitary system and to improve the social welfare of existing residents.³⁰ While the Board did approve these amendments, it did make note of the fact that "an official plan must contain elements of stability and reliability so that property owners might rely on the continuance of the plan."

Elia Corp. v. Mississauga (City)³¹

The city contended that amendments to the official plan should reflect all of the elements contained in the zoning by-law, including the numerical standards, in order to ensure there would be no potential misunderstanding in the future. Despite the appellant's argument that flexibility should be maintained in an official plan which by definition is a broad policy document, the Ontario Municipal Board nonetheless proceeded to accept the city's position and approve the amendments with all the elements contained in the proposed zoning by-law.

The approach taken in *Elia* seems counter to the direction provided by the Supreme Court of Canada in *Subilomar Properties v. Cloverdale*.³² In *Subilomar*, the court stated, at page 606, "[t]he purpose of an official plan has been said on many occasions to be an outline of a scheme or proposal for controlling the use of lands within the municipality." The court then went on to cite *Campbell v. Regina (City)*,³³ where Johnson J. adopted the position taken by the city that, "the scheme is merely a general statement of future intentions. It contends that the scheme does not and is not intended to impose a straight jacket on future development."

It is important to note two specific aspects of the *Elia* decision that strongly suggest it is an outlier. First, the appellant did not object to the city's draft of the official plan amendment, they merely thought its version was superior to the city's version; second and more importantly, while the appellant argued for the flexible approach in the drafting of official plan amendments, there is no indication that it provided the Board with any of the jurisprudence referred to in this letter, nor any case law at all. Therefore, it appears that the Board decided this matter in a vacuum, and without the benefit of guiding authority. As such, it can be seen as having little persuasive authority, and in any event, the bulk of the decided law runs counter to its approach.

4. Implied Exclusion Rule

To determine a municipality's authority with respect to what it can do with its official plan, one must interpret s. 16 of the *Planning Act* which requires municipalities to adopt such plans. To guide one's interpretation of this provision, consideration should be given to the implied exclusion rule of statutory interpretation. This rule is described as follows:

An implied exclusion argument lies whenever there is reason to believe that if the legislature had meant to include a particular thing within its legislation, it would have referred to that thing expressly. Because of this expectation, the legislature's failure to mention the thing becomes grounds for inferring that it was deliberately excluded. Although there is no express exclusion, exclusion is implied.³⁴

In the context of powers conferred by legislation, this rule would suggest that if a legislature expressly conferred an administrative body, court, municipality, etc. with a specific power in one part of a piece of legislation, its failure to expressly confer that same power in another part of the legislation can be construed as implying that the legislature *did not intend to confer the power* in the latter part of legislation.

This interpretation rule becomes important in the context of understanding what the legislature intended with respect to what may or may not become part of an official plan as contrasted to a zoning by-law. The contents of an official plan are governed by s. 16(2) of the Act, while the content of zoning by-laws are set out in s. 34(1). What this rule of interpretation would suggest is that the legislature, by explicitly giving municipalities the power to "regulate" or "prohibit" specific land uses via zoning by-laws under s. 34(1), must have intended that municipalities specifically do not have the power to "regulate" or "prohibit" specific land uses via an official plan, because the legislature did not use prohibitive or regulatory language in s. 16(2).

There is an abundance of jurisprudence which has applied this rule in this way. However, it will not be absolutely applied. The court will look at the context of the situation and see if the application of this rule will lead to consequences that are absurd, unjust or incompatible with the purpose of the legislation.

Tétreault-Gadoury v. Canada (Employment & Immigration Commission)³⁵

This case deals with a decision by the Board of Referees of the Employment and Immigration Commission under the *Unemployment Insurance Act, 1971*³⁶. The relevant issue was whether the Board of Referees had jurisdiction to consider the constitutional validity of a section of the Act. Under previous jurisprudence, the court had held that an administrative body, if given an express power by the legislation to interpret or apply any law necessary in reaching its findings, has the power to apply the *Canadian Charter of Rights and Freedoms*. The problem was that in the Act, the Board of Referees was not expressly given this power. However, an umpire, to whom an appeal from the Board of Referees could be made, was given this express power to interpret or apply any law. The court ultimately applied the implied exclusion rule and held that by expressly giving umpires this power, the legislature must have not intended for the Board of Referees to have that power. The court states, at paragraphs 16-17:

[T]hese two provisions provide a strong indication that the Legislature intended that the umpire have power to find provisions of the Act or its accompanying regulations inconsistent with the *Charter*. It is significant that the umpire has been expressly provided with this power, while the board of referees has not.

The maxim *expressio unius est exclusio alterius*, like all general principles of statutory interpretation, must be applied with caution. However, the power to interpret law is not one which the Legislature has conferred lightly upon administrative tribunals, and with good reason ... It is unlikely, therefore, that the failure to provide the board of referees with a power similar to that given to the umpire was merely a legislative oversight.

Reference re National Energy Board Act (Canada)³⁷

At issue were costs that could be awarded by the National Energy Board. Counsel seeking to obtain costs argued that two specific provisions in the Act which allowed for the National Energy Board to fix costs in certain situations were evidence that the National Energy Board had full discretion to award costs in all circumstances, despite no explicit provision as such, because these provisions merely limited the otherwise unfettered discretion of the National Energy Board. The court rejected this position and states, at paragraph 17:

[T]he fact that Parliament has expressly conferred the power on the Board to award costs in specific situations, strengthens the position of those parties who argue against the Board's general jurisdiction. In my view, the maxim, *expressio unius est exclusio alterius* would apply to this situation. Since the maxim has been interpreted to mean "Express enactment shuts the door to further implication" (Craies on Statute Law (7th ed.) p. 259) I think it clear that when Parliament expressly dealt with costs in this Act in three separate sections dealing with three distinctly different factual situations, then it must have intended to limit the power to award costs only to those specific situations.

M. (T.M.) v. C. (P.)³⁸

This case also deals with a power to award costs. At the time, the Civil Division of the Alberta Provincial Court had the express ability to award costs under the *Provincial Court Act*,³⁹ whereas the Family Division was not given the same express power. A father, whose applications for custody and access had been dismissed, appealed the decision of the trial judge who held that the court had jurisdiction to award costs. Brooker, J. allowed the appeal and held that principles of statutory interpretation supported his conclusion. He states, at paragraph 49:

[A]pplication of the principle *expressio unius exclusio alterius* (implied exception) dictates that by expressly giving the power to award costs to the Civil Division, the Legislature's silence regarding a similar power for the Family Division should be interpreted as excluding that power.

R. v. H. (S.D.)⁴⁰

The issue was whether a Youth Court judge had the jurisdiction to give a young offender a conditional discharge. Under the *Young Offenders Act*[41], a Youth Court judge had the explicit authority to discharge the young offender absolutely. However, there was no similar explicit provision with respect to conditional discharges. In allowing an appeal dismissing the conditional discharge, the court relied on the implied exclusion rule. The court states, at paragraph 3:

[T]he first almost instinctive conclusion from reviewing such a detailed list of powers is to assume that any power not included must have been deliberately excluded—an almost text book application of the maxim *expressio unius est exclusio alterius*. This is particularly so when the first subsection deals specifically with an absolute discharge, so it is impossible to conclude that the question of the conditional discharge was likely to have been overlooked or was intended to be covered by implication or in some oblique or indirect fashion in a subsequent portion of that section.

As these cases illustrate, a court will often apply the implied exclusion rule such that if a legislature expressly conferred a specific power to a body in one part of a piece of legislation, its failure to expressly confer that same power in another part of the legislation can be construed as implying that the legislature did not intend to confer the power in the latter part of the legislation.

However, a court will not apply this rule slavishly. In *The Interpretation of Legislation in Canada*, 3rd ed., the author notes, "since it is only a guide to the legislature's intent, a *contrario* reasoning [another term for a series of rules, including *expressio unius est exclusio alterius*] should certainly be set aside if other indications reveal that its consequences go against the statute's purpose, are manifestly absurd, or lead to incoherence and injustice."⁴²

In this particular situation, these cases suggest that the implied exclusion rule should be applied to ss. 16(2) and 34(1) of the *Planning Act*. The legislature, by explicitly giving municipalities the power to "regulate" or "prohibit" specific land uses via zoning by-laws under s. 34(1), must have intended that municipalities not have the power to "regulate" or "prohibit" specific land uses via an official plan, because the legislature did not use the same in language in s. 16(2).

In the case of the *Planning Act* and the powers of municipalities to regulate through an official plan, the application of the implied exclusion rule is actually in accordance with the purpose of the provisions. As the cases above illustrate, official plans are intended to be broad, flexible, policy documents which outline a municipality's growth plan for the future. This plan is then implemented through a zoning by-law. As in *Goldlist*, an official plan is intended to rise above the level of detailed regulation. This concept of an official plan is supported by the application of the implied exclusion rule. If an official plan is intended to be a broad policy, then interpreting s. 16(2) to allow a municipality to "regulate" or "prohibit" specific land uses, or to prescribe specific performance standards (height, setback etc.) with an official plan goes against that intention, especially given that when the legislature wanted to give those powers to a municipality it explicitly did so in the legislation (i.e. the power to "regulate" or "prohibit" specific land uses via zoning by-laws).

An application of the implied exclusion rule to this question does not create an absurdity, or incoherence or injustice. Instead, it serves only to support what the courts and the Ontario Municipal Board have repeatedly found to be the intention of a properly drafted official plan.

CONCLUSION

There is a consensus in the jurisprudence that official plans are intended to be broad policy documents and are not to be vehicles for regulating specific land uses or imposing specific performance standards. The jurisprudence also suggests that given the intention that official plans be broad, flexible policy documents engaged in long-term planning, they should not be so detailed and specific as to restrict the evolution of municipal development and require multiple amendments to deal with each specific development issue because of their comprehensiveness of detail.

Finally, there is authority for the proposition that when a power is explicitly granted to a body in one instance in a statute, the lack of the equivalent express power in another instance should be construed as though the legislature did not intend for the body to have the power in the latter instance. This is by virtue of the implied exclusion rule of statutory interpretation.

In the context of official plans, s. 34 of the *Planning Act* expressly gives municipalities the power to "regulate" or "prohibit" specific land uses via zoning by-laws. This suggests that the legislature did not intend for municipalities to "regulate" or "prohibit" specific land uses via an official plan because s. 16 of the *Planning Act* does not use the same language but states that an official plan may contain "a description of the measures and procedures proposed to attain the objectives of the plan". This application of the implied exclusion rule is strengthened by the jurisprudence regarding the broad and flexible nature of official plans which illustrates that they are intended to be policy documents rather than regulatory in nature and should not be used to "regulate" or "prohibit".

This conclusion has wide ranging implications for municipal planning in Ontario. Municipalities that have mandated specific performance standards in their official plans, such as minimum setbacks and maximum height requirements, will need to revisit those plans to ensure that they are the broad planning policy documents intended by the legislature, rather than rigid, detail focused planning instruments.

Even more importantly, municipalities in Ontario will need to reconsider how they use official plans to regulate specific land uses, both in their current and future plans. For example, many municipalities have used, or have contemplated using, their official plan to regulate or prohibit drive-through facilities or cogeneration facilities. Some have used their official plans to limit the area in which such facilities are permitted. Other municipalities have used their official plan to impose performance standards, such as setback requirements, on land used for drive-through facilities, or impose maximum or minimum heights on buildings.

Municipalities that have used, or continue to use, their official plans to regulate or prohibit specific land uses should discontinue this planning policy approach. It is clear that the law, both the decided case law and the *Planning Act*, does not give municipalities the authority to use their official plans for this purpose, and that doing so constitutes a "bridge too far" in the use of official plans. Should they continue to do so, they will no doubt be met with opposition from interested members of the public or property owners with the law on their side.

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¹ R.S.O. 1990, c. P.13.

² *Ibid.*, s. 16(2)(a).

³ 44 M.P.L.R. (3d) 1, [2003] O.J. No. 3931, 232 D.L.R. (4th) 298, CanLII 50084 (Ont. C.A.).

⁴ [1961] O.R. 810, 29 D.L.R. (2d) 620, 1961 CarswellOnt 147 (Ont. H.C.).

⁵ (1973), 1 O.R. (2d) 20, 39 D.L.R. (3d) 188, 1973 CarswellOnt 271 (Ont. H.C.).

⁶ (1976), 6 M.P.L.R. 183, 21 O.R. (2d) 459, 1978 CarswellOnt 376 (Ont. C.A.).

⁷ (1978), 8 M.P.L.R. 1, 22 O.R. (2d) 804, 1978 CarswellOnt 1255 (Ont. Div. Ct.).

⁸ (1983), 16 O.M.B.R. 280, 1983 CarswellOnt 1914 (O.M.B.).

⁹ (1984), 26 M.P.L.R. 40, 47 O.R. (2d) 614 (Ont. Div. Ct.).

¹⁰ *Ibid* at 617.

¹¹ (1994), 25 M.P.L.R. (2d) 110 (O.M.B.).

¹² (2000), 15 M.P.L.R. (3d) 103, 2000 CarswellOnt 4291 (Ont. S.C.J.).

¹³ Decision/Order No. 2649, issued September 21, 2006 (O.M.B.).

¹⁴ 63 M.P.L.R. (4th) 192, [2009] O.J. No. 3358 (Ont. Div. Ct.).

¹⁵ (2010), 2010 CarswellOnt 7078 (O.M.B.).

¹⁶ (1985), 29 M.P.L.R. 188, 1985 CarswellOnt 673 (Ont. Dist. Ct.).

¹⁷ (1999), 1 M.P.L.R. (3d) 225, 1999 CarswellOnt 924 (Ont. Gen. Div.).

¹⁸ (1989), 23 O.M.B.R. 57, 1989 CarswellOnt 3512 (O.M.B.).

¹⁹ (1978), 5 M.P.L.R. 270, 1978 CarswellOnt 490 (O.M.B.).

²⁰ (1982), 13 O.M.B.R. 353, 1982 CarswellOnt 1953 (O.M.B.).

²¹ (1978), 9 O.M.B.R. 412, 1978 CarswellOnt 1641 (O.M.B.).

²² (1984), 16 O.M.B.R. 167, 1984 CarswellOnt 1781 (O.M.B.).

²³ (1979), 10 O.M.B.R. 257, 1979 CarswellOnt 1669 (O.M.B.).

²⁴ (1982), 14 O.M.B.R. 482, 1982 CarswellOnt 1966 (O.M.B.).

²⁵ R.S.O. 1990, c. M.45.

²⁶ *Supra*, footnote 24, at para. 25.

²⁷ (1980), 10 M.P.L.R. 241 (O.M.B.).

²⁸ (1982), 13 O.M.B.R. 17, 1982 CarswellOnt 1946 (Ont. Div. Ct.).

²⁹ (1987), 35 M.P.L.R. 219, 1987 CarswellOnt 603 (O.M.B.).

³⁰ *Ibid.* at para. 36.

³¹ 2005 CarswellOnt 6205 (O.M.B.).

³² [1973] S.C.R. 596.

³³ (1966), 58 D.L.R. (2d) 259 (Sask. Q.B.), at 263.

³⁴ Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Markham: Butterworths, 2002) at 186-187.

³⁵ [1991] 2 S.C.R. 22, 1991 CarswellNat 829, 1991 CarswellNat 346 (S.C.C.).

³⁶ S.C. 1970-71-72, c. 48.

³⁷ [1986] 3 F.C. 275, 1986 CarswellNat 225 (Fed. C.A.).

³⁸ 2002 ABQB 416, 2002 CarswellAlta 586 (Alta. Q.B.).

³⁹ R.S.A. 2000, c. P-31.

⁴⁰ [1989] 5 W.W.R. 350, 1989 CarswellSask 268 (Sask. C.A.).

⁴¹ R.S.C. 1985, c. Y-1.

⁴² P.A. Côté, *The Interpretation of Legislation in Canada*, 3d ed. (Scarborough: Carswell, 2000) at 339.

Gowlings can assist landowners, businesses and others determine if Official Plans that seem to interfere with their proposed uses have exceeded a municipalities legal authority. If they do, we can help you develop an approach to getting your concerns heard by the municipality and if necessary to challenge the offending provisions before the Ontario Municipal Board or the Courts.

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