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October 15, 2019

Ms. Rachel Dillabough
Acting Clerk
Town of Georgina
26557 Civic Centre Road
Keswick, Ontario
L4P 3G1

Dear Ms. Dillabough:

Re: Proposed Zoning Bylaw Amendment, 20971 Dalton Road and associated properties

On behalf of my client the North Gwillimbury Forest Alliance (NGFA), I would like to provide Council and staff with more detailed comments on the above application. I submitted a preliminary indication of concern by email to Dustin Robson on July 2, 2019.

Since then, staff submitted a first report (June 25 for July 17), the public meeting was held (July 17), and the Lake Simcoe Region Conservation Authority (LSRCA) has submitted its detailed comments (September 3). I have reviewed this additional information, as well as the applicant's planning report which I did not have at the time of my original submission.

In this submission, I will focus on the broader policy aspects of this proposal. I will not take any position on the reports submitted in support of the application or on technical aspects of the potential approval.

Introduction

Assuming the York Region GIS is correct, the subject lands consist of six lots, which the applicant's planning report (and subsequently Town staff) have somewhat incorrectly described. The subject lands consist of:

- 20971 Dalton Road, the developed lot on which Schell Lumber is located - which I will refer to for simplicity as the south lot,
- 20975, 20977, and 20979 Dalton Road - the west lots,
- 20987 Dalton Road - the northwest lot,
- an unnumbered lot with no development and no street access - the northeast lot.

My client and I recognize that Schell Lumber is a long-established and valued local business, and that except for the northeast lot, all of the subject lands are designated for mixed-use urban development.

We have no issue with the application inasmuch as it applies to 20971 Dalton Road, provided that all applicable requirements for development near wetlands and woodlands are met.

We also have no issue with the application inasmuch as it applies to the west and northwest lots, provided that:

- ▶ the forest and its required vegetation protection zone are maintained, at the rear of the lots and also including the strip at the south end of the northwest lot that extends west to Dalton Road and promotes connectivity across it, and
- ▶ all applicable requirements for development near wetlands and woodlands are met.

We do not object in principle to the creation of a new wetland on the northwest lot should the applicant wish to do this as a standalone initiative, but as will be explained, we do not agree with this as a compensating measure justifying the removal of the woodland and wetland on the northeast lot.

NGFA's mission is to protect the 1,418 ha North Gwillimbury Forest. As shown in the applicant's environmental impact study (EIS), the northeast lot is almost entirely forested, as are small portions of the west and northwest lots (20975 Dalton excepted). NGFA has long identified these forested areas as lying within the North Gwillimbury Forest. These forested areas are not only valuable in themselves, they also provide connectivity from the larger forest and provincially significant wetland on the west side of Dalton Road, to the easternmost end of the North Gwillimbury Forest which lies primarily on the Briars Estates property and extends right to Lake Simcoe.

The Sutton/Jackson's Point Secondary Plan, appendix I, map 1, also identifies the forested area as "woodland", in approximately the same location on the subject lands.

As well, although no wetland had previously been identified on the subject lands by the Ministry of Natural Resources and Forestry or in the Secondary Plan, the EIS found that most of the northeast lot consists of wetland, and that that wetland continues offsite into the undeveloped forested lands to the north and east (its exact extent is unknown and would require field work on those adjacent lands). The EIS says that this wetland, at least on the subject lands, has been disturbed and is unlikely to be completable with the provincially significant wetland across Dalton Road. The applicant's planning report seems to claim it is not a genuine natural wetland (p. 4), although that claim is not supported by the EIS. Nonetheless, the wetland remains a wetland. No wetland evaluation has been undertaken.

In this context, the proposal to completely clear and develop the northeast and west lots, except for a 10 m strip on the north side of the northeast lot and a minimal buffer against the residential lots to the east, is of considerable concern - regardless of the applicant's proposal to create a compensating wetland on the northwest lot.

Planning Policy

The larger forested area of which the woods on the subject lands form part, would appear to qualify as a "significant woodland" under the definition in the Secondary Plan. If there was any doubt, it has been eliminated by the identification of a wetland in the forest. The wetland area is therefore a "key hydrologic feature" and the larger forested area is also a "key natural heritage feature".

Doubtless on the basis of the existing forest - and without knowing there was a wetland there too - the Secondary Plan designated the northeast lot Environmental Protection, unlike the rest of the subject lands which are designated Dalton Road South Corridor. By virtue of its Environmental Protection designation, the northeast lot is also part of the Sutton/Jackson's Point Greenlands System (section 13.2.2.1) (as well, the forested area on the subject lands also appears to be part of the Regional Greenlands System in the Regional Plan). In any case, key features, including 10 m vegetation protection zones, are required to be designated Environmental Protection (sections 13.2.2.2(a) and 13.2.2.3(b)). The Secondary Plan makes clear that if a feature is identified later, as the wetland has been in this case, it shall be treated as if it had been designated Environmental Protection (section 13.2.2.3(a)).

As LSRCA indicates in its comments, the type of development proposed is not permitted in the Environmental Protection designation (section 13.2.2.2). The Secondary Plan allows for "minor refinements" of boundaries through an EIS (section 13.2.2.2(a)). An EIS that indicates that the key features and buffer areas on which the Environmental Protection designation is supposed to be based are actually more extensive than the Plan mapping, and then proposes that most of the key features be removed, does not meet this test.

Nowhere does the Secondary Plan indicate that key features may be removed if they are compensated for. The only reference of any kind to natural heritage compensation in the Secondary Plan, is with regard to tree removal - this is regardless of whether the trees are part of a key feature and generally applies to all development in Sutton/Jackson's Point (section 13.2.2.3(1)).

Similarly, the York Region Official Plan does not permit development or site alteration within any wetland in the Lake Simcoe basin (policy 2.2.35) and does not allow any exception based on compensation. As well, the Regional Plan does not permit the type of development proposed within a vegetation protection zone extending 15 m beyond a not-provincially-significant wetland (policy 2.2.36).

The portions of the Georgina Official Plan applicable to the entire Town include policies on ecological offsetting (section 5.8). The policy is clear enough:

"Ecologically [sic] offsetting is typically used when avoidance of a feature is not possible and after the conservation hierarchy of avoidance, minimization, and mitigation has been implemented." (preamble)

"The Town requires ecological offsetting through the development process when there is an unavoidable loss of natural heritage features and after the provincial and municipal policy tests have been met." (section 5.8.1).

The applicant's EIS does not demonstrate adherence to the conservation hierarchy. As the introduction to that report makes clear, the authors take the proposed site plan as a given. They immediately jump to the fourth (compensation) step in the hierarchy, apparently because the existing wetland and woodland have been disturbed and are of "low ecological value" (pp. 12, 15). They therefore do not demonstrate that the loss of key features would be "unavoidable".

A less clear aspect of the Town's ecological offsetting policies is "after the provincial and municipal

policy tests have been met". In my opinion, based on the above, absent the offsetting policies, the Regional Plan does not permit the removal of the wetland and the Georgina Plan does not permit the removal of either forest or wetland in this case. So those municipal policy tests have not been met. However, it is theoretically possible that removal could, on a standalone basis, meet the ecological offsetting tests within section 5.8 of the Georgina Plan. If removal did meet the ecological offsetting tests, would that mean that removal would then meet the "municipal policy tests" cited in section 5.8.1?

I think not, for two reasons:

- ▶ To say that removal would then meet the "municipal policy tests" would be a circular argument. This would violate both logic, and the way official plans are normally meant to be read, which the Georgina Plan specifically explains in section 1.3, "Necessity to Read the Entire Official Plan".
- ▶ The Regional Plan still forbids the wetland removal and does not contemplate ecological offsetting, so the removal would not conform with the Regional Plan.

There are also some less clear aspects of the ecological offsetting policies, which leave me uncertain as to whether they can even be considered in this situation:

- ▶ Section 1.3 of the Official Plan says, "Secondary Plans are to be read in conjunction with the Official Plan, however the policies in the Secondary Plans take precedence over the policies of the Official Plan to the extent of any conflict, except where the Official Plan provides otherwise." The Secondary Plan is very clear that both woodland and wetland removal are not permitted in this situation, and does not contemplate offsetting. The Secondary Plan long predates the ecological offsetting policies, which first appeared in the 2016 Official Plan. Nothing in the ecological offsetting policies says that they specifically override the earlier intent of the Sutton/Jackson's Point Secondary Plan not to permit offsetting.
- ▶ Section 5.8.1 indicates that where appropriate, ecological offsetting strategies are required in connection with subdivision plans, condominium descriptions, and site plans. It does not appear to contemplate ecological offsetting in connection with rezoning.

LSRCA

The LSRCA has raised some important issues in its comments of September 3. However, I find some of those comments confusing. The Authority:

- ▶ Suggests removing the proposed new shed from the woodland/wetland, but does not suggest removing the new store which would also be partly located within those features (comment NH2).
- ▶ Says there should be no development or site alteration in the woodland/wetland as that would not conform with the Secondary Plan, but follows that with the much more equivocal statement that the applicant should "consider amending the proposed site plan in a greater effort to be in conformity with the applicable policies of the Secondary Plan" (NH2).

- ▶ Seems to confuse the buffers the applicant is proposing along the north and east side of the northeast lot, to protect the woodlands to the north and the residential development to the east once that lot is developed, with the buffers required to be included in the Environmental Protection designation to protect the key features themselves (NH3).
- ▶ Says that an Ecological Offsetting Strategy report is required for clearing of the woodland/wetland, which seems difficult to reconcile with the earlier comment that removal is not permitted (NH4).

LSRCA's May 2019 Ecological Offsetting Policy, referred to in comment NH4, is even clearer than the Georgina Official Plan:

"Prior to the approval of any development application proposing compensation for the loss of wetland or woodland feature [sic], the following conditions must first be satisfied through an approved Environmental Impact Study (EIS), Natural Heritage Evaluation (NHE) or equivalent:" (p. 5)

The first of five conditions is,

- "▶ Demonstrate conformity with applicable provincial, regional and local plans, including the Oak Ridges Moraine Conservation Plan, Greenbelt Plan, Growth Plan for the Greater Golden Horseshoe, Lake Simcoe Protection Plan, and Official Plans" (p. 5)

As explained above, this proposal does not conform to the Georgina or York Region official plans.

The fourth condition is,

- "▶ Demonstrate that the mitigation hierarchy steps of avoiding, minimizing and mitigating have been followed and that compensation is the only viable option to address impacts to natural heritage features" (p. 6)

Again, the applicant's EIS fails to do this.

It is therefore concerning to see that according to the applicant's planning report, LSRCA, despite its comments and its own policies, has already appeared to condone wetland replacement.

Conclusion

The wetland and significant woodland on the subject lands are part of a considerably larger significant woodland and what may be a considerably larger wetland, extending to the northeast. These natural features are protected by an Environmental Protection designation in the applicable portion of the Town's Official Plan. That designation includes the northeast lot of the subject lands, which lot contains most of the woodland and all of the wetland on the subject lands.

The applicant is proposing to remove a chunk of this larger woodland and wetland, and compensate for that removal at least in part by the construction of a new wetland in a different location on the

subject lands. In no way should that be considered as a boundary refinement (nor does the applicant ever suggest that it should). The applicant's rationale appears to be, (1) the existing features have been significantly disturbed, (2) at least according to the applicant's planner, the wetland doesn't deserve to be a wetland, and (3) the existing features are in the way of what the applicant would like to do.

There is certainly a place for ecological offsetting, *in situations where the removal of natural features may be otherwise permitted by applicable policy*. That is not the case here. In my view, the other applicable policies of the Regional and Georgina Plans do not permit the removal of these features on this property for the proposed purposes - those policies already close the door before one arrives at the potentially open door of the ecological offsetting policies. And while this is a planning approval, not a *Conservation Authorities Act* approval, the Town and Region rely on the advice of LSRCA on natural heritage matters - and the LSRCA's own Ecological Offsetting Policy does not support this proposal in my view.

In my opinion, this proposal as it stands cannot be considered without an amendment to the Secondary Plan - but the amendment necessary to enable the proposal would not conform to the Regional Plan, so amendments to both would be required. To allow this proposal to go forward without such amendments would be a most dangerous precedent. Should such amendments be forthcoming, we will comment on their planning merits, and on the technical merits of any accompanying environmental justification and compensation proposal, at that time.

I trust these comments will assist staff and Council in their consideration of the application.

Yours sincerely,

[original signed by]

Anthony Usher, RPP

cc. Dustin Robson