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Mr. Jim Dymont  
MHBC Planning  
113 Collier Street  
Barrie, Ontario  
L4M 1H2

*and*

Ms. Andrea Furniss  
Town of Georgina  
Keswick, Ontario  
L4P 3G1

Dear Mr. Dymont and Ms. Furniss:

**Re: Official Plan Review - Maple Lake Estates**

I have reviewed the Planning Directions Report of June 4, 2014 and on behalf of my client, the North Gwillimbury Forest Alliance (NGFA), would like to express some concerns, all of which relate to the prospective designation of Maple Lake Estates (MLE).

I should add that I am pleased that the Town and MHBC have taken into account several of the concerns raised in my May 8, 2014 submission in response to the Planning Policy Review report.

***Schedules B1 and B2 and Environmental Protection designation***

Draft Schedule B1 appears to accurately represent the woodland mapping in the Regional Municipality of York Official Plan, and both schedules appear to accurately represent current wetland mapping.

It is not clear whether the "Natural Heritage System" shown on draft Schedules B1 and B2 (and A2) is the Greenbelt Natural Heritage System, or the Town's natural heritage system required by Policy 2.1.3 of the Provincial Policy Statement (PPS). If the former, the labelling on the schedules needs to be clarified. In either case, Section 4.2 of the report seems to suggest that the Greenlands System as there described would constitute the Town's natural heritage system, but this should also be clarified.

It appears from draft Schedules B1 and B2 and Section 4.2 that all features shown on both schedules, as well as vegetation protection zones and linkages, are proposed to be included in the base designation, Environmental Protection Area, shown on draft Schedule A2. If this is so, then all or almost all of MLE should receive that base designation, and likely all of MLE would form part of

the Town's natural heritage system when the Greenlands System overlay designation is taken into account. However, draft Schedule A2 suggests otherwise.

### ***Schedule A2***

This draft schedule shows a clear intent not to include MLE in the Town's natural heritage system, aside from some small areas subject to the "natural heritage system" overlay. This seems entirely contrary to the intent of Section 4.2 and draft Schedules B1 and B2, as well as the obligation to conform to the Regional Plan and be consistent with the PPS which I discuss below.

Section 4.16 of the report indicates a positive intent to maintain MLE as an Urban Residential Area, as shown on the draft schedule. I will discuss this further below.

### ***Transfer of development approvals***

As you know, there are prospects for an exchange that would terminate the existing development approvals at MLE and provide equivalent approvals at another location in Georgina. The only two plausible candidates at this point are lands owned by Maple Lake Estates Inc. between Deer Park Drive and Boyer's Sideroad, or additional density on lands owned by Metrus Development Inc. affiliates in South Keswick. My December 20, 2013 and March 20, 2014 submissions to you, as well as my May 29, 2014 letter to Harold Lenters, describe this in detail, including my preference for the South Keswick option.

I am pleased to see the reference in Section 4.2 of the report to a possible transfer, and agree that a policy reference in the Official Plan is desirable. However, "environmental constraints" should not be the only factor when considering alternative locations. Any such policy should refer to the full range of appropriate considerations, most recently summarized on page 1 of my May 29, 2014 letter. Such a policy should also make clear that any such transfer must be subject to the "comprehensive review" requirements of the PPS (Policies 1.1.3.8 and 1.1.6.4), if applicable (they would apply to the Deer Park-Boyer's option, but not the South Keswick option).

The reference to a transfer in Section 4.16 of the report is more ambiguous. It appears to suggest that any such policy reference should be deferred to a later date, and as such appears to conflict with the discussion in Section 4.2.

Draft Schedule D still shows an "area not to be serviced by municipal water & sewer", that includes one of the candidate exchange areas. My concern remains unchanged from my May 8, 2014 submission to you:

"This [designation] is not explained anywhere in the text. Presumably, this designation is intended to reflect Section 3.20.2.1 of the Official Plan. However, that policy is now in play, given the discussions about relocating MLE, possibly to a site within the 'area not to be serviced' (I am not in any way endorsing that site, as is made clear in my December 20, 2013 and March 20, 2014 letters to you). Regardless, it does not seem appropriate to show this designation . . . at this time.

"As well, Section 3.20.2.1 was understandable in the context of approval of MLE 25 years

ago. However, that was before comprehensive Provincial Policy Statements, the Growth Plan, the Greenbelt Plan, or the first Regional Plan. In today's planning environment, it is quite clear that establishing new serviced areas *anywhere in Georgina* beyond currently designated settlement areas could only proceed after the severest tests. Designating some rural lands in Georgina as 'not to be serviced' implies a lesser test for other rural lands, which seems to me contrary to all current policy."

As well, the "not to be serviced" designation appears to conflict with the references to possible transfers in Sections 4.2 and 4.16, given that it is well known that one of the candidate sites lies within the designation.

On the other hand, if the Town considers it appropriate to continue Section 3.20.2.1 of the Official Plan and represent it on Schedule D, then surely that underlines one of the key reasons why, in my view, the Deer Park-Boyer's site is not a suitable candidate.

Policy references to possible transfers are all very well as contingencies. However, the consummation of any transfer will be a complex process involving the completion of negotiations, the agreement of the affected owners, and the support of the Town, the Region, and in the case of the Deer Park-Boyer's lands, the Province. A transfer (particularly to South Keswick) is desirable, but it may prove impossible to achieve. Therefore, the Official Plan review process should not shirk its obligations to conform with the wetlands and significant woodlands policies of the Regional Plan, as referenced in my November 8, 2013 submission to you, with respect to Maple Lake Estates - and that is the focus of the rest of this letter.

### ***The conformity obligation***

NGFA's counsel, Leo Longo, and I have clearly outlined in past submissions, that the Town Official Plan and zoning bylaw are obliged to conform to the 2010 Regional Plan and that MLE is not in any way exempted from this obligation:

- ▶ In accordance with sections 26 and 27 of the *Planning Act*, the Town is obliged to bring its Official Plan and zoning bylaw into conformity with the applicable wetlands and significant woodlands policies of the Regional Plan, so as to prohibit development on most of the MLE property, despite the Regional Plan's designation of MLE as Towns and Villages (Longo-Usher response to Town information update, August 10, 2012, pp. 2-4; Usher report, December 19, 2012, pp. 1-3; Usher to Gibbons, February 1, 2013, p. 2; Longo to Council, February 19, 2013, p. 2; Longo to Council, March 25, 2013, pp. 2-5; Usher to Dymont and Furniss, November 8, 2013, pp. 1-2). In doing so, the Town must, of course, also be consistent with the PPS and conform with applicable provincial plans as per section 3(5) of the *Act*.
- ▶ There is nothing in the Transition policies (8.4.14 to 8.4.22) of the Regional Plan that indicates that the MLE property is in any way exempt from this conformity obligation (Longo-Usher response, August 10, 2012, pp. 2-4; Longo to Council, February 19, 2013, p. 5; Longo to Council, March 25, 2013, p. 6; Usher to Dymont and Furniss, November 8, 2013, p. 2).
- ▶ Section 5.2.1 of the Greenbelt Plan provides a transition policy for official plan and zoning bylaw approvals that predate the Plan, but does not require any municipality to continue to

recognize those approvals (Longo-Usher response, August 10, 2012, p. 3). I would add that a careful reading of the Plan suggests that this section does not even apply to MLE because it is designated Towns and Villages.

- ▶ Policies 8.4.24 and 8.4.25 of the Regional Plan carry forward the intent of Section 5.2.1 of the Greenbelt Plan (and it appears these policies do apply to MLE and other Towns and Villages). However, these policies are otherwise similar to Section 5.2.1. They do not require any municipality to continue to recognize pre-Greenbelt Plan official plan and zoning approvals. The only obligatory exemption is for subsequent implementing applications (for example, a site plan application). These policies do not appear to interfere with the conformity obligation in any way (Longo to Council, March 25, 2013, p. 6). I recognize that Regional staff interpret these sections and their implication for MLE differently (Shuttleworth and Konefat to Lenters, February 14, 2013), but for the above reasons, I do not agree with their interpretation.

### *Designations are not forever*

The planner preparing or reviewing an Official Plan or zoning bylaw is required, first and foremost, to meet the applicable conformity obligation. However, there may be some individual situations where it is not entirely clear how to proceed consistent with that obligation, or there may be more than one possible approach that meets the conformity test. To that extent, it may be useful as part of a review process to develop guidelines to assist in recommending the most appropriate designation or zoning.

As part of such guidelines, where lands have been designated and/or zoned for development but development has not yet taken place, those approvals should not be removed lightly or without due consideration. However, the conformity obligation must first be met. Such guidelines cannot assume that approvals are inherently unchangeable. I offer the following points in support of that position, both generally, and specifically with respect to MLE.

- ▶ Section 10 of the Planning Directions Report, the protocol for the review of site-specific designations which I will discuss further below, exists because as the introductory paragraph says, "it is necessary to review these site-specific land use designations to determine if the permissions attached to them continue to be appropriate."
- ▶ Policy 1.1.2 of the PPS, plus complementary references elsewhere in the PPS and Greater Golden Horseshoe Growth Plan, indicate that 20 years is the generally accepted long-term planning horizon unless specifically indicated otherwise. The MLE Official Plan approvals have been in place for 26 years. An unused approval that exceeds the long-term planning horizon may no longer be relevant, and certainly should not be considered unchangeable.
- ▶ On June 11, 2004, Town planner Velvet Ross emailed Council members to let them know that by letter of May 18, 2004, the Ministry of Natural Resources had advised of its identification of provincially significant wetlands in the Town, including the expansion of the Paradise Beach-Island Grove wetland to include the majority of MLE. Regarding the implications for the MLE property, Ms. Ross advised Council that the Town had three options:
  - do nothing,
  - amend the appropriate B (Greenlands System) schedules of the Official Plan,

- in addition to amending the B schedules, redesignate the property to Environmental Protection Area 1, appropriately rezone the property, and "de-register" (under section 50(4) of the *Planning Act*) the plan of subdivision (which actions, she advised, would be strenuously opposed).

Ms. Ross advised that while this all required further consideration, "At some point, we will be required to make a decision as to how we intend to proceed with the updated wetland information as it affects all properties, and not just the Metrus property." Surely, after 10 years, that time has arrived.

The subsequent Ministry of Natural Resources letter regarding the wetland and MLE (Farrell to Nelson, October 18, 2004) "recognizes" the MLE two-lot plan of subdivision, though the Ministry had no particular authority to do so. However, the letter is silent on Official Plan and zoning bylaw issues.

- ▶ As well, the subdivision agreement between the Town and Maple Lake Estates Inc. provides that, at any time, it may be replaced with a new one if the Town so wishes. This provision was added in 1996 to the original 1990 agreement, presumably as a result of the Town's own doubts at that time about whether development would ever take place and whether the approvals would indeed be permanent.
- ▶ Leo Longo's February 19, 2013 letter to Council, at pp. 5-6, summarizes the many key changes in planning law and policy since the MLE approvals (to which can be added a fourth PPS, earlier this year). He concludes:

"Surely the time is now to study whether any or all of these developments, especially the [coming into force of the applicable Regional Plan provisions in 2012], might warrant a change in the designation and zoning of the MLE lands that were initiated three decades ago and have remained unexamined and unaltered since then."

### ***The designations review protocol***

I now return to the Planning Directions Report, to comment on the Protocol for the Review of Site-Specific Land Use Designations in Section 10.

Staff have advised me that the criteria have not yet been applied, and that the draft Schedule A2 reflects current designations without regard to screening through the criteria.

- ▶ The entire Protocol is flawed in that it seems to acknowledge conformity obligations only when, and to the extent that, it suits the authors. There does not appear to be any basis on which the use or inclusion of such a scheme in an official plan can mitigate the conformity obligation described above.
- ▶ In terms of planning priorities, the fundamental premise of all five criteria is flawed. For undeveloped lands, criterion 2's critical first hurdle is whether there is a "registered agreement on title establishing development rights", presumably a subdivision, consent, or site plan

agreement in most cases. The Protocol considers this to be more important than key natural heritage or key hydrologic features. However, a subdivision can be deemed not a subdivision after eight years. On the other hand, key natural heritage and hydrologic features are forever. As well, it is clear that the natural heritage protection policies of the PPS and (as noted by Mr. Longo in his March 25, 2013 letter) the Regional Plan are more directive than other policies, and should generally prevail.

- ▶ If and when the Protocol is applied to MLE, it would appear that criterion 2 would result in MLE's Urban Residential Area designation being continued. Of course, if there were no criterion 2, MLE would undoubtedly fall under criterion 5, and the Urban Residential Area designation would at the very least be reconsidered.

As well, concurrent with this letter, Mr. Longo is providing Council with his legal opinion (by letter, August 21, 2014) that the Protocol is flawed and should be rescinded.

### ***Conclusions***

Based on the approach advanced in Section 4.2 of the Planning Directions Report, and for the other reasons I have outlined above, all or almost all of MLE should be redesignated as Environmental Protection Area, subject to a no-development policy due to the presence of wetlands and significant woodlands.

Across the Town, the Official Plan should clearly direct that the zoning bylaw be amended to prohibit development in those portions of the Environmental Protection Area that consist of wetlands and significant woodlands, except where the Regional Plan dictates exemptions. On that basis, the zoning bylaw should prohibit development in almost all of MLE.

Please let me know if you need any further information or clarification.

Yours sincerely,

*[original signed by]*

Anthony Usher, MCIP, RPP