

# Anthony Usher Planning Consultant

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Mr. Jack Gibbons  
North Gwillimbury Forest Alliance  
160 John Street, suite 300  
Toronto, Ontario  
M5V 2E5

Dear Mr. Gibbons:

## **Re: North Gwillimbury Forest - Interim Control Bylaw request**

I have reviewed the Town of Georgina's Report PB-2013-0010, submitted to Council in response to your December 31, 2012 request and my December 19, 2012 supporting report, Protecting the North Gwillimbury Forest. I also watched online Council's January 28, 2013 proceedings. My comments are as follows.

Quotes in *italics* are taken directly from Mr. Lenters's report of January 18 or Mr. Bigioni's letter of the same date.

### ***Interim Control Bylaws - General Considerations***

*"The case law suggests that the mere fact that a review of the Town's Official Plan is being conducted in order to determine what changes might need to be made to bring it into compliance with the Region's 2010 Official Plan . . . is not in itself enough to justify the passage of an interim control by-law. Rather, a study of a specific planning issue must be initiated, and this, in my view, poses a problem in these circumstances."*  
(Bigioni, p. 2.)

This statement somewhat mischaracterizes my report. The lands subject to an Official Plan review under Section 27 of the *Planning Act* are, necessarily, the entire municipality. I did not recommend that all of Georgina be subject to an interim control bylaw (ICB), nor would such a recommendation have been appropriate. My recommendation was instead much more focused on priority properties, to secure interim protection for natural heritage deemed significant and worthy of protection by York Region and the Province through the 2010 Regional Plan.

NGFA's solicitor, Leo Longo, will also be providing you with his opinion and will address the legal aspects of ICBs.

### ***Maple Lake Estates***

*"As explained in the Information Update that was posted on the Town's website in August 2012 . . . Maple Lake Estates . . . has obtained all of the . . . Planning Act approvals . . ."*

*needed . . . . The information presented in Schedule '3' is still relevant and applicable today." (Lenters, p. 5.)*

The *Planning Act* approvals previously granted remain in place at this time. However, the story presented in the Town's information update of August 3, 2012 was less than complete. To remedy this, Mr. Longo and I provided a detailed response, on August 10. The staff report neither provided nor acknowledged our response. I'm attaching it to this letter.

*". . . notwithstanding the submissions of the North Gwillimbury Forest Alliance, neither the Town nor the Region agree that the effect of the [Regional Plan] would be to prevent development of the Maple Lake Estates Retirement Community lands, as currently approved." (Bigioni, p. 2.)*

*"It therefore seems extremely unlikely that a planning study would result in the conclusion that either the current designation in the Town's Official Plan or the existing zoning provisions applicable to these lands should be changed to prohibit their development." (Bigioni, p. 2.)*

Mr. Bigioni repeats a view that various representatives of the Town and Region have expressed at various times over the last few months, but that none of those representatives has ever substantiated.

Mr. Longo's and my August 10, 2012 response provided, in some detail, our understanding of why what Mr. Bigioni asserts, is not so. Neither the Town nor the Region has ever responded to that document.

On August 22, 2012, I wrote Town and Region staff proposing a discussion among planners that would seek to address this apparent difference of opinion. My proposal was declined.

Mr. Bigioni, in his remarks to Council, said that this difference of opinion is the core issue as regards Maple Lake Estates and the ICB request. On this we agree.

It remains my understanding that the obligation to conform to the Regional Plan applies equally throughout the North Gwillimbury Forest, and that no individual property is excluded from that obligation. My reasons are given in our August 10, 2012 response, and were reiterated in my recent report; I remain ready to discuss them further with staff at any time.

Mr. Longo will also be providing you with his opinion on these statements.

*"Instead, the [Regional Plan] recognizes, through the 'Towns and Villages' designation, the existing development rights historically accruing to this parcel as a result of the existing registered plan of subdivision and the subdivision agreement entered into in 1993." (Bigioni, p. 2.)*

The Regional Plan's designation of Maple Lake Estates as Towns and Villages recognizes that the property is a "settlement area" (using the Provincial Policy Statement term), along with the Sutton/Jackson's Point and Pefferlaw secondary plan areas. (The Town's other settlement area, Keswick, is designated Urban Area in the Regional Plan.)

The Towns and Villages designation does not, to my knowledge, recognize "development rights" on any specific property as a result of prior approvals, any more or less than would be the case if that property were in some other designation.

Two minor points:

- the existing plan of subdivision does nothing to the Maple Lake Estates property other than to sever one rural residential lot on Woodbine Avenue,
- the existing subdivision agreement was entered into in 1990, and amended in 1993 and 1996.

Also, the subdivision agreement provides that, at any time, it may be replaced with a new one if the Town so wishes.

*"Furthermore, the lands are excluded from the Regional Greenlands System, as evidenced by Maps 1 and 2 of the [Regional Plan]." (Bigioni, p. 2.)*

That is true for most of Maple Lake Estates, although a small area at the northeast corner is included.

However, Mr. Bigioni's point is not very relevant. As documented in my report, Maple Lake Estates is *not* excluded from the wetlands and woodlands mapping in Maps 4 and 5 respectively of the Regional Plan, nor from the associated policies in Section 2 of the Plan. Most of the property is wetland or significant woodland, and is therefore prohibited from development by the Regional Plan's policies, leading me to propose subjecting it to an ICB, using a consistent set of criteria that I applied throughout the North Gwillimbury Forest. I was surprised that Mr. Bigioni mentions that Maple Lake Estates is mostly not subject to the Regional Greenlands policies, but doesn't mention that the property is mostly subject to the equally or more restrictive wetlands and significant woodlands policies.

### ***Other Properties - Staff Concerns***

I recommended that seven other polygons be included in the ICB. Staff raised three concerns, all of which I believe can be satisfactorily addressed.

*"First, any lands subject to an ICB must be subject to a municipal study that is directly related to the affected lands. . . . However, the Study Area for the [Official Plan Review and Update Study] does not include the lands contained within the new Sutton/Jackson's Point Secondary Plan Area. . . . This is a fundamental problem with the NGFA request that would have to be addressed, should it otherwise be considered appropriate to pass the ICB . . . ." (Lenters, pp. 3-4).*

On October 22, 2012, Council authorized staff to "commence a review of the Town of Georgina Official Plan in accordance with Section 26 and Section 27 of the Ontario Planning Act". This review necessarily applies to the entire Town. Therefore, I understood Council's resolution as applying to all the lands subject to the proposed ICB, and as meeting the test in Section 38(1) of the *Planning Act* that Council has "directed that a review or study be undertaken in respect of land use planning policies in the municipality or in any defined area or areas thereof".

Certainly, the October 5, 2012 staff report that Council considered, made clear that the first phase

of the Official Plan review should deal with the area of the Town that's outside the Keswick, Sutton/Jackson's Point, and Pefferlaw secondary plan areas, and the staff report details this first phase only. As Mr. Lenters notes, three of the polygons I recommended be subject to the ICB are inside the Sutton/Jackson's Point secondary plan area.

I agree with staff that any ICB must be defensible. If Council is willing to pass the ICB, then staff's concern on this point could be easily addressed by a Council resolution that amends or clarifies the October 22, 2012 resolution.

*"The elimination of parcels 'on the outer edge of the NGF' on the basis of imprecise mapping, may not stand up well under scrutiny." (Lenters, p. 4.)*

I did my best to apply a fair and thorough screening process, using the information available to me. My report clearly indicated the information I relied on, and that I conducted a desktop exercise using that information and without site-specific study. The Town has much better information and technology (including its own geographical information system) than I do.

Mr. Lenters suggests my elimination of one polygon may not have been consistent with my inclusion of others. That was certainly not my intention, but it may be evident with the superior information available to the Town. I would be pleased to sit down with staff at any time and review these details in the interest of ensuring a defensible bylaw.

*"Contrary to [a quote from Usher's report], there is good reason to consider treating small vacant lots that are designated and zoned either residential or rural differently, and to not include these lots in an ICB." (Lenters, pp. 4-5.)*

First, the paragraph quoted from my report was a more general comment about both Official Plan and zoning conformity to the Regional Plan. When it came down to the ICB, I did not propose including any lot currently zoned Rural.

Second, Mr. Lenters implies (preceding the above quote) that certain lots should not be included in an ICB because they are within a registered plan of subdivision. How the lot was created should not, in my view, have any bearing on the obligation to conform with the Regional Plan.

Nonetheless, any ICB must conform to Section 4.5.2 of the Greenbelt Plan, quoted by Mr. Lenters. It appears that this constraint would apply to the five undeveloped residentially-zoned lots within two of the polygons recommended for the ICB, 6 and 13.

This does not necessarily mean that these lots should not be included in the ICB. The Greenbelt Plan maintains the right to a single detached dwelling, but it does not prevail over the obligation to conform with the Regional Plan with respect to the rest of the lot. My report already recommends that the ICB exempt from prohibition certain minimal-impact uses. This could be extended to exempt on these five lots the development of a dwelling and the normal accessory uses, subject to site plan control to ensure minimum impact on the rest of the property (the Official Plan states that the dwelling itself cannot be subject to site plan control).

***Other Properties - Deputant Concerns***

In addition to hearing the concerns of the Council deputants representing Briars Estates Limited (polygon 23) and Queen's Court Developments Limited (polygon 21), I spoke with Queen's Court's agent, Gord Mahoney, on January 29.

It is the Regional Plan that identifies wetland on the Queen's Court property. It is the Regional Plan that identifies woodland on both properties, and whose policies appear to result in these woodlands being considered significant woodlands. All that I have recommended is interim protection while the Region's policies are being implemented at the local level. I cannot recommend that that objective be compromised.

However, I now know that Queen's Court is undertaking a planning process that conforms with best-practice standards, that may lead to a planning application. Briars Estates's submission suggests they may wish to proceed down the same path in future.

Therefore, I recommend a further exemption from the ICB, along the lines of:

"Any use outside a wetland or significant woodland identified by the York Region Official Plan, where the application for that use is supported by a site-specific refinement of the wetland and/or woodland boundary, and, if applicable, a site-specific determination that the woodland is not significant woodland, as contemplated by Policy 2.2.1.3 of the Regional Plan, to the satisfaction of the Town and other appropriate agencies. For greater certainty, the site-specific refined wetland and woodland boundaries and significant woodland determination would prevail over any other interpretation of the Regional Plan."

The "other appropriate agencies" would be the Ministry of Natural Resources, for a provincially significant wetland; the Lake Simcoe Region Conservation Authority, for all wetlands; and York Region, for woodlands/significant woodlands.

I believe this exemption should satisfy the concerns of the deputants.

\* \* \*

Do let me know if you require any further information. I would be pleased to discuss this with you, or Town staff, at any time.

Yours sincerely,

*[original signed by]*

Anthony Usher, MCIP, RPP