

Elson Advocacy

September 17, 2020

Board of Directors

Lake Simcoe Region Conservation Authority (“LSRCA”)
120 Bayview Parkway
Newmarket, Ontario
L3Y 3W3

Dear Board Members,

Re: Maple Lake Estates Inc. - Unlawful LSRCA Permit to Destroy North Gwillimbury Forest Wetlands

I am writing on behalf of the North Gwillimbury Forest Alliance (“NGFA”) further to my letter of August 11, 2020 regarding the permit granted to Maple Lake Estates to destroy provincially significant wetlands at the heart of the North Gwillimbury Forest. As you know, the recent permit was surrendered on August 19, 2020. However, the developer could apply for another permit at any time and the issues are far from moot. We therefore ask that the LSRCA:

1. Respond in writing to each of the points in my letter of August 11, 2020;
2. Immediately notify the NGFA and Town of Georgina if the developer applies for another permit; and
3. Grant the NGFA and Town of Georgina the opportunity to make submissions before the LSRCA makes a decision.

Response to August 11, 2020 Letter

A response to the points in my letter of August 11, 2020 is critically important as the LSRCA continues to publicly make assertions that are legally incorrect and could result in the granting of another permit in the future. For example, The Georgina Post reported on August 25, 2020 that the LSRCA’s General Manager of Planning and Development said that “the LSRCA had no choice but to reissue the permit as MLE is an approved registered subdivision.”¹ It is very concerning that LSRCA staff still believe they *must* issue this permit. This topic is discussed in the following paragraph excerpted from my letter of August 11, 2020:

¹ Mike Anderson, *Town threatens LSRCA with legal action after DG Group surrenders section 28 permit*, The Georgina Post, August 25, 2020, [link](#).

[T]he LSRCA incorrectly believed it had no choice but to issue the permit because the developer had been granted prior development approvals.² This is an error of law. There is no doubt that the LSRCA is exercising its own jurisdiction and is required to consider the relevant factors and considerations regardless of previous development approvals.³ Development approvals do not mean that permission under section 28 must follow as a foregone conclusion.⁴ The LSRCA made a legal error in believing that its own discretion was fettered such that it was required to grant approval. Indeed, an analogous argument was made by the developer in the recent LPAT case in relation to amendments to the Town of Georgina's Official Plan, and was soundly rejected by the Tribunal.⁵

More generally, it is concerning that the LSRCA believes it *must* issue the permit when in fact the opposite is true – it must *not* issue the permit, including because it conflicts with the *Provincial Policy Statement*. For the details explaining why a permit cannot be issued, please see the letter of August 11, 2020. The NGFA requests a substantive response to these.

Notification and Opportunity to Make Submissions

As noted above, the NGFA asks that it and the Town of Georgina be notified if the developer applies for another permit. The NGFA also asks for an opportunity to make submissions before the LSRCA makes a decision. This is required by the common law duty of procedural fairness.

Procedural rights, such as the right to notice, can be found in (a) legislation or (b) the common law. The NGFA acknowledges that the legislation does not specifically grant the NGFA the right to notice and submissions in this case. However, the legislation does *not* rule that out and the common law rules around procedural fairness in fact require it. Common law rules are based in past legal precedents. According to those precedents, parties may have procedural rights even if those are not specifically set out in legislation.⁶ Those rights are determined by a number of factors, including “the importance of the decision to the individual and individuals affected.”⁷ In this case, the decision is incredibly important to the NGFA and the Town of Georgina. They have a right, in the very least, to be notified that the LSCRA is considering another permit

² See e.g. LSRCA Staff Report No. 10-18-BOD, March 16, 2018, p. 5.

³ *Rinaldi v. Lake Simcoe Region Conservation Authority*, File No. CA 008-01, H. Dianne Sutter, Deputy Mining and Lands Commissioner, February 3, 2003 (“Just because the plan was registered did not guarantee him any development rights.”); *611428 Ontario Limited v. Toronto and Region Conservation Authority*, Appeal No. CA 007-92, L. Kamerman, Mining and Lands Commissioner, February 11, 1994; (“In fact, it must be recognized that, notwithstanding a designation on an Official Plan which would be favourable to development, a proposal must still obtain the permission of the conservation authority for lands within its jurisdiction.”); Linda M. Kamerman, Mining and Lands Commissioner, *Edited Speaking Notes for Speech to Urban Development Institute*, June 11, 2002 (“By the provisions of the Conservation Authorities Act, a CA has, over those lands within its jurisdiction, the power to outright prohibit, regulate or grant permission to a private property owner the right to develop his or her land as he or she sees fit. For purposes of an application under section 28, Official Plan designations or zoning are not relevant. Just to be clear, lands having a certain designation for municipal planning purposes such as residential, industrial or commercial, does not mean that permission under section 28 must follow as a foregone conclusion.”).

⁴ *Ibid.*

⁵ *NGFA v. Town of Georgina*, Case No. PL161206.

⁶ *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

⁷ *Ibid.*

application. Furthermore, the provision of notice and the opportunity to make submissions is not at all onerous. Weighing the importance of the issues to the NGFA against the non-burdensome nature of the participatory rights in question, it is clear that the NGFA should be notified and granted the opportunity to make submissions.

Furthermore, it would benefit the LSRCA to have an opportunity to review submissions made by the NGFA before making a decision. This will provide more information on which to base a decision. As shown by the recent LPAT victory, the NGFA has useful knowledge and expertise to bring to this issue. In that case, the NGFA's position prevailed even though it was opposed by a number of officials and the developer. Going forward, we hope the LSRCA will consider the NGFA to be an important stakeholder whose contribution will be considered and addressed seriously.

Next Steps

I will be making a deputation at the LSRCA board meeting on September 25. In the interim, I would greatly appreciate a substantive response to my letter of August 11, 2020 and to the above requests.

Yours truly,



Kent Elson

cc: Harold Lenters, hlenters@georgina.ca
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