

Below is the verbatim text of an information update (excluding appendixes) released by the Town of Georgina, Aug. 3, 2012. The North Gwillimbury Forest Alliance has added the responding comments of its counsel, Leo F. Longo of Aird & Berlis LLP, and its planning consultant Anthony Usher. These comments are in red type enclosed in square brackets.

MAPLE LAKE ESTATES DEVELOPMENT

Town of Georgina Information Update

August 3, 2012

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Summary:

This update serves to inform the citizens of Georgina on the current status of the Maple Lake Estates (MLE) development site and to clarify policy and processes regarding the development.

Town of Georgina:

Metrus approached the Town in September 2011 regarding a proposal to amend the existing planning approvals on the MLE lands through applications for Official Plan Amendment, Plan of Subdivision, and Zoning By-law Amendment.

As of August 2, 2012, no *Planning Act* applications have been received by the Town for the MLE lands.

The existing Town of Georgina Official Plan policies, registered Plan of Subdivision (and registered Subdivision Agreement), and Zoning permissions remain in effect on the MLE property. [With regard to the Official Plan and Zoning By-law, true . . . for now . . . until they are amended within the year, as they must be, to conform with the new York Region Official Plan.]

The Ministry of Natural Resources (MNR), in its letter of October 18, 2004 (written after its wetland evaluation was complete, which deemed the Paradise Beach – Island Grove Wetland Complex as Provincially Significant), states:

“The MNR recognizes that the existing Registered Plan of Subdivision predates the Ministry’s recent wetland work and recognizes the legal status of the Plan to be implemented as proposed, without due regard to the wetland complex.”

[True . . . but all this quotation does is state is the obvious . . . that the MNR classification of the provincially significant wetland did not, nor could not, alter the legal status of the 1992 registered plan of subdivision and the registered subdivision agreement. This MNR letter does not purport to address, nor in any way does it limit, how that same legal status could be altered

by other mechanisms, such as the adoption of a new Regional Official Plan and the application of Section 27 of the *Planning Act* requiring the Town's Official Plan and Zoning By-law to be revised to conform with the new Regional Plan.

For example, the quotation is silent on:

(i) how the policies of the Provincial Policy Statement would apply to the MLE Lands, now that a provincially significant wetland had been identified on those lands;

(ii) what effect a new Regional Plan might have on the Town's Official Plan and Zoning By-law.

The wetlands map, Map 2, of the former (1994) Regional Plan did not show the Paradise Beach-Island Grove wetland as identified in 2004. Although the former Regional Plan predated the wetland identification, Section 2.2.16 of the former Plan - not mentioned in the MNR letter - required the Region to amend Map 2 to add any subsequently-identified provincially significant wetland. For whatever reason, the Region never did this.]

Should Metrus wish to proceed to develop the MLE lands under the existing planning approvals, a permit would be required from the Lake Simcoe Region Conservation Authority in accordance with the requirements of Ontario Regulation 179/06.

York Region:

The MLE lands are designated as "Town and Village" [True . . . but other policies of the new Regional Official Plan also apply to the MLE Lands. Map 4, "Key Hydrologic Features", and Map 5, "Woodlands", cover most of the MLE lands with Wetland and Woodland overlay designations respectively. Policies related to Maps 4 and 5 are found in Section 2.2 of the Regional Plan, especially in 2.2.35-2.2.42 which prohibits development within a provincially significant wetland, and 2.2.43-2.2.52 which prohibits development within a significant woodland.]

which allows residential development in accordance with the existing approvals. [Nothing in the Towns and Villages policies suggests that existing residential approvals override all other applicable Regional Plan policies cited above that would apply to the MLE Lands in addition to the Towns and Villages designation.]

York Region has been abundantly clear in its assertions that the existing development rights remain in place [which they do, for now, until revised as is required by Section 27 of the *Planning Act*], and that these existing rights give MLE the right to proceed with the existing approvals and develop the land accordingly. [We are not certain if, how or when the Region ever said this. Context is very relevant; while a special transition policy was being considered for the MLE Lands some weeks ago, this is no longer the case. The MLE Lands will now not be subject to any site-specific transition policy whatsoever, and in fact Section 8.4.16 of the new Regional Plan requires that the Town's planning policies and zoning regulations for the MLE Lands be brought into conformity with the Regional Plan. Therefore, previous statements of the Region must be regarded with some care. As well, this ignores the Town's statement above that concedes LSRCA approval is required.]

THEREFORE:

i) the MLE lands are designated as “Town and Village” [. . . and for the most part, “Wetland” and “Woodland”, and are subject to various other Regional Plan policies] and are permitted to develop under the existing approvals [The Regional Plan contains no such policy nor makes any such statement] in accordance with the Town and Village policies contained in the *York Region Official Plan* (YROP) [Surely, development must also be in accordance with the other Regional Plan policies referenced above!]; and,

ii) the existing approvals on the MLE lands are not subject to the enhanced environmental policies of the in-force *YROP*. [. . . but they will be when the Town Official Plan and Zoning By-law are revised as required by Section 27 of the *Planning Act* and Section 8.4.16 of the new Regional Plan.]

Provincial Policy Statement (PPS), 2005 (see Appendix 'A' for more detail)

The existing development approvals on the MLE lands are not subject to the policies of *PPS, 2005*. [It is more accurate to state that the existing 1988-92 approvals were not subject to the policies of the 2005 Provincial Policy Statement . . . but no decision “that affects a planning matter” can now be made respecting the MLE Lands unless it is consistent with the PPS.]

To the extent to which any activities on the MLE lands engage the *PPS, 2005*, the *Greenbelt Plan, 2005*, and/or the *Lake Simcoe Protection Plan, 2009*, the latter Plans would take precedence over the *PPS, 2005*. [The Greenbelt Plan prevails over the Provincial Policy Statement, an official plan, and a zoning by-law. The Lake Simcoe Protection Plan generally prevails over the same instruments, but states that, respecting the PPS vs. the Lake Simcoe Plan, whichever policy offers the greatest ecological protection of the watershed shall prevail.]

Greenbelt Plan, 2005 (see Appendix 'B' for more detail)

MLE lands are recognized as a Town/Village, and existing approvals are transitioned under the *Greenbelt Plan, 2005*.

[The Greenbelt Plan does identify the MLE lands as a Town/Village, and Section 5.2.1 of the Plan does provide transition policies for prior approvals. However, nothing in Section 5.2.1 or elsewhere in the Greenbelt Plan lessens or makes inapplicable Section 27 of the *Planning Act*, which requires the Town’s Official Plan and Zoning By-law to be revised to now conform with the new Regional Plan and its enhanced environmental policies. The Greenbelt Plan also makes clear that the development of settlement areas continues to be generally determined by the policies of local plans - and those would include the wetlands and woodlands policies of the new Regional Plan.]

Lake Simcoe Protection Plan (LSPP), 2009 (see Appendix 'C' for more detail)

The existing development approvals on the MLE lands are not subject to the policies of the *LSPP, 2009*. [Actually, some policies of the Lake Simcoe Plan would apply to the issue of a permit by the Lake Simcoe Region Conservation Authority. It would be more accurate to say that the existing settlement area designation and planning approvals are identified by the Lake Simcoe Plan.]

To the extent to which any activities on the MLE lands engage *the LSPP, 2009*, the MLE lands are recognized in the Plan as an existing settlement area, and would be subject to Policies 6.32 – 6.34 alone, which recognize the existing development approvals. [This statement is somewhat confusing. Policies 6.32 to 6.34 of the Lake Simcoe Plan would not apply to the development of the MLE Lands in accordance with the existing *Planning Act* approvals, although they would apply to the issue of a Conservation Authority permit. The policies the Town cites would certainly be relevant should MLE seek *new* planning approvals - however, so would many other policies of the Lake Simcoe Plan. The Plan must be read in its entirety.]

HERE'S WHAT NEEDS TO HAPPEN NEXT:

Having previously received Town Councils direction, staff will be proceeding over the next year with the review and update of the 2002 Official Plan for the Town of Georgina to bring it into conformity with the *YROP*, which permits the development as approved on the MLE's provincially significant wetlands. [The Regional Plan does not permit development in any provincially significant wetland. No transition policy was inserted into the Regional Plan to exempt development by MLE in the Paradise Beach-Island Grove Wetland. The Town's statement about the Regional Plan is patently WRONG.]

Such updates to the 2002 Town of Georgina Official Plan cannot prohibit development of the MLE lands in accordance with the approvals already obtained. [This is a misleading statement. Changes to the Town Official Plan alone cannot prevent development of existing approvals, as it is the Zoning By-law that must be revised to effectively prohibit that development . . . and Section 27 of the *Planning Act* requires that indeed, the Zoning By-law must be so amended within the year.]

If *Planning Act* applications pertaining to MLE are received to amend the existing development approvals, they will be reviewed and evaluated against all applicable Provincial, Regional and Town legislation and policies.