

ISSUE DATE:

**Dec. 4, 2006**

DECISION/ORDER NO:

**3379**



Ontario

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

PL020603

Castle Glen Development Corporation has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Town of the Blue Mountains to redesignate lands generally bounded by the 12<sup>th</sup> Sideroad on the north, 4<sup>th</sup> Line to the west and 2<sup>nd</sup> Line to the east and bisected by County Road 19 to establish detailed policies to permit the development of the lands within the Castle Glen Secondary Plan Area as a four seasons recreational resort in the form of 1,720 residential dwelling units, together with commercial and recreational development with golf related uses  
OMB File No. O020099

**APPEARANCES:**

**Parties**

Castle Glen Developments

Town of the Blue Mountains

County of Grey

Niagara Escarpment Commission

**Counsel**

M. Melling, S. Rosenthal

R. Beaman

E. Treslan

J. Thompson

**DECISION DELIVERED BY M.A.F. STOCKTON AND ORDER OF THE BOARD**

The Board has before it an appeal with respect to amendment to the Official Plan for the Town of Blue Mountains, with respect to certain lands known as "Castle Glen".

In addition, by Order of the Board on May 29, 2006, an appeal of the Town of Blue Mountains Official Plan (Board file O020099) as it applies to the Castle Glen lands, was consolidated with this matter.

The Castle Glen lands comprise some 620 hectares in the Town of Blue Mountains, and are legally described as Parts of Lots 8 and 9, and Lots 10, 11, 12, Concession 3 and Lots 10, 11 and 12, Concession 4 (former Township of Collingwood). The lands are bounded by the 2<sup>nd</sup> Concession to the east, the 4<sup>th</sup> Concession to the

west, and the 12<sup>th</sup> Side Road to the north; and they are divided by County Road 19, which is a major east-west road in the area. The Castle Glen lands are within the Niagara Escarpment Planning area, with part of the lands situated below the Niagara Escarpment, and part above.

This was Phase II of the hearing. The decision with respect to Phase I was issued by this panel of the Board on October 21, 2004 as Decision/Order No. 1678.

At the Phase I hearing, all of the parties now before the Board had agreed to proceed with the appeal as it related to the lands below the brow of the Escarpment, and had entered into Minutes of Settlement with respect to those lands. The Castle Glen Residents Association, then a party to the appeal, objected to the amendment, and opposed the Minutes of Settlement. After a substantial hearing, the Board approved the Official Plan amendment as it related to the lands below the brow. These lands became known as the “approved lands”.

The Minutes of Settlement provided for “conceptual” land use designations with respect to the lands above the brow, (the “deferred lands”), and provided, in general terms, for the additional studies that would be required if these designations were to be supported.

In 2006, Phase II of the hearing proceeded with respect to the deferred lands. At this hearing, the Castle Glen Residents Association did not appear as a party, preferring instead to make a statement only as a participant. Instead, the Niagara Escarpment Commission (the “Commission” appeared in opposition to the approval of the Official Plan Amendment as it related to the deferred lands. Castle Glen Developments (the “Proponent”), the Town of Blue Mountains (the “Town”), and the County of Grey (the “County”) all appeared in support of the Official Plan Amendment as it related to the deferred lands.

Prior to the commencement of the Phase II hearing, the parties were able to settle a number of issues. Specifically, issues surrounding Karst geology and water quality were taken off the table. However, there are a number of natural heritage features on the deferred lands, and these gave rise to a number of lingering issues, upon which the Board heard substantial evidence and with respect to which it must now issue a decision.

The remaining issues are primarily divided into two areas: the planning issues and the natural heritage or environmental issues. The position of the Commission is that the studies completed with respect to the deferred lands do support designation through mapping. However, these studies do not support the designations proposed by the Proponent or suggested by the Minutes of Settlement. The Commission has therefore proposed its own version of mappings and designations with respect to the deferred lands, and has proposed amendments to some of the language agreed to and contained in the Official Plan that the Board approved in Phase I of the hearing.

The position of the Proponents and the municipalities is that the studies completed with respect to the deferred lands support, substantially, the conceptual designations agreed to by the parties in the Minutes of Settlement, and that, subject to certain minor amendments, the Board should approve the Official Plan Amendment substantially visualized in the Minutes of Settlement.

It is also their position that in making its decision, the Board should not consider the deferred area separately from the approved area, but rather should address the protection of natural heritage features and functions in the context of the Castle Glen site as a whole. The Board agrees with this approach. It is not only consistent with the spirit and intent of the Minutes of Settlement; but it is also, in the Board's view, an appropriate approach in the planning context.

## **Environmental Issues**

On behalf of the Proponent, the Board heard evidence from Derek Coleman and Allan Sandilands. Dr. Coleman and Mr. Sandilands co-authored a report entitled "Natural Heritage Study for Castle Glen Deferred Area" on behalf of Stantec Consulting Ltd. (the "Stantec report"). This report recognized and detailed the significant natural heritage features and functions identified on the deferred lands. These included four natural heritage features identified in the Provincial Policy Statement (1997): significant portions of the habitat of endangered and threatened species; a significant Area of Natural and Scientific Interest ("ANSI"); significant wildlife habitat; and significant woodlands. In particular, it noted the presence of Hart's-Tongue Fern and the Butternut Tree, both of which are species at risk. The report also discussed the maintenance of wildlife corridors on the Castle Glen site.

It was the position of Dr. Coleman and Mr. Sandilands that the mapping proposed by the Proponent on Exhibit 281, (and carried forward on to Exhibit 357B) was appropriate. The policies and mapping contained in the Castle Glen Official Plan, (subject to some amendments that will be described below), should be approved by the Board.

The Board heard considerable evidence concerning the Butternut tree. There are many such trees on the Castle Glen lands, both on the approved and deferred lands. Unfortunately, the tree is subject to a canker for which, at the present time, there is little cure. Some specimens manage to survive while others do not, and in ten years time the location of these trees may have changed considerably. Thus, in the opinion of the Proponent's expert witnesses, there is little sense in attempting to designate lands through mapping, which cannot be developed, as Butternut habitat. They argue that it is more appropriate to protect this habitat through policy. This makes sense and the Board agrees.

In fact, the Board was advised that the parties had agreed to new policies, now added to the Castle Glen Official Plan approved in Phase 1, which require specific studies at the Environmental Constraint Impact Analysis (ECIA) stage of the significant habitat of the butternut.

Similarly, as with the butternut, the parties have agreed to a new policy with respect to the significant habitat of the Hart's-Tongue Fern that has been incorporated into Exhibit 357B. The Board was advised that through more of the use of the Global Positioning System (GPS) it was possible to map more precisely the location of significant habitat of the Hart's-Tongue Fern, and that an amendment to the mapping as determined in Phase 1 was appropriate.

The Board also heard evidence from Linda Sober, who had been retained by the Town to prepare a peer review of the Stantec report. She stated that the Stantec report as a Natural Heritage Study was "above standard" and recommended acceptance of its conclusions. Ms Sober stated that her concerns had been addressed by the Proponent and concluded by supporting the Castle Glen Official Plan.

Two witnesses appeared on behalf of the Commission, Marion Plaunt, the Commission's planner, and James Dougan, an environmentalist retained by the

Commission for this hearing. Although Ms Plaunt's evidence was knowledgeable, sincere and forthright, her opinions on the natural heritage issues were largely formulated on the peer review and opinions of Mr. Dougan.

Mr. Dougan was critical of the Stantec report in several respects. In the first place, he stated that the report lacked "integration" of the various natural heritage features on the site. By this he meant that there was no analysis of the interdependence of these features, and that therefore, there had not been an appropriate natural heritage systems approach. In particular he felt that sufficient regard had not been given to the significant habitat of the Hart's-Tongue fern, the butternut tree and the Golden Winged warbler. Furthermore, he felt that the loss of significant woodlands in the Proponents conceptual plan meant an unacceptable reduction in wildlife corridors. On the other hand, he did credit the Stantec Report with its level of detail.

Mr. Dougan concluded by proposing that there be "Level 1" and "Level 2" areas of the deferred lands. The "Level 1" areas are to be free of any development. The "Level 2" areas may be developed, subject to the policies set out in the Official Plan.

The Board prefers the evidence of the Proponent's and the Town's experts. In particular, the Board was impressed by the evidence given by Ms Sober. She appeared direct, objective, forthright and honest in her appraisal of the Stantec Report. In the Board's view, none of the Proponent's witnesses or Ms. Sober were significantly shaken on cross-examination.

By contrast, the Board found Mr. Dougan's answers on cross-examination to be evasive and repetitive. On several occasions it was necessary for the Board to intervene and to request that the answer put to him be answered. While this may be largely a question of style on the witness's part, it left the Board with the impression that the witness had not developed his position with a full understanding of the studies before him. Furthermore, although he was asked to peer review the Stantec report only, he had not spent nearly the number of person-hours on the site as had, for example, Dr. Coleman, Mr. Sandilands and their staff.

The Board finds that the policies contained in the Castle Glen Official Plan, as amended are appropriate, and constitute good planning.

## **Planning Issues**

Also at issue is whether the proposed Castle Glen Official Plan in Exhibit 357B, as it relates to the deferred lands, has regard for the Provincial Policy Statement (1997) (the “PPS”), and conforms to the Niagara Escarpment Plan, the County of Grey Official Plan and the Official Plan of the Town of Blue Mountains. In Phase 1, the Board made this finding as it related to the approved lands.

In this regard, the Board heard detailed evidence from Dr. Coleman, similar to the evidence presented in the Phase I hearing, to demonstrate that the proposed policies in the Castle Glen Official Plan were consistent with, or exceeded the policies contained in the senior planning documents. In the Board’s view, this evidence was largely uncontradicted.

On the contrary, Ms Plaunt supported the evidence given by Mr. Dougan, and presented to the Board, in Exhibit 338, a proposed, revised Castle Glen Official Plan. The proposed mapping reflected Mr. Dougan’s “Level 1” and “Level 2” concept. It was Ms Plaunt’s position that the Commission’s version of the Castle Glen Official Plan (Exhibit 338) conformed to the senior planning documents, while the Proponent’s (Exhibit 357B) did not.

Furthermore, in order to maintain the number of units agreed to by all parties in Phase I, it was necessary for the Commission, through Ms Plaunt, to propose a single “RSTR/VC” designation, which would combine the residential and village core uses. The densities of this single designation were considerably higher than those contemplated by the plan approved at the Phase I hearing. Furthermore, the maximum height of any multi-level dwelling would need to be increased to four storeys.

In reply, the Board heard from John Genest, a land use planner who testified at the Phase I hearing. Mr. Genest has considerable expertise in the area of resort development and planning for tourism. The Board recognizes this expertise, which was not put into question by the Appellant, and accepts his evidence that these levels of density are inappropriate for the lands above the brow.

Finally, in the Board's view, the mapping proposed by the Proponent and the municipalities is completely consistent with the mapping agreed to by all parties to this hearing in Phase I. While Hart's-Tongue Fern and Butternut, for example, were identified in the lands below the brow, these parties were all satisfied with a policy approach in Phase I. The Phase II evidence consistently reiterated the sufficiency of the policies in the Castle Glen Official Plan.

In short, the Board heard no evidence at the Phase II hearing that would cause it to deviate from the policy approach that was found to be acceptable to all of these parties in the Phase I hearing.

For all of these reasons, the Board finds that the Castle Glen Official Plan, as amended in Exhibit 357B, has regard for or conform to, as the case may be, all of the senior planning documents. In Phase 1, the Board made this finding as it related to the approved lands, and finds no reason to depart from that finding in Phase II.

## **Conclusions**

For the reasons given above, the Board finds that the Castle Glen Official Plan, as put before the Board in Exhibit 357B, does the following:

- a) has regard for the PPS;
- b) conforms to the Niagara Escarpment Plan and the Official Plans of the County of Grey and the Town of the Blue Mountains;
- c) provides a policy framework for protecting natural heritage features and functions; and
- d) Represents good planning in the public context.

Therefore, the Appeal on Board File O020099 is allowed in part. The Beaver Valley Official Plan, as amended, is repealed insofar as it applies to the Castle Glen lands encompassing approximately 620 hectares legally described as Parts of Lots 8 and 9, and Lots 10, 11, 12, Concession 3 and Lots 10, 11 and 12, Concession 4 (former Township of Collingwood).

Furthermore, the Appeal on Board File O040227 is allowed; and pursuant to section 43 of the *Ontario Municipal Board Act*, the new Official Plan for the Town of Blue

Mountains is modified and approved insofar as it applies to the Castle Glen lands by incorporating Exhibit 357B as the Castle Glen Community Official Plan, and by further modifying and approving section 4.13 of the Town of Blue Mountains Official Plan as set out in Attachment 1 hereto.

So Orders the Board.

"M.A.F. Stockton"

M.A.F. STOCKTON  
MEMBER



## **Attachment 1**

### Schedule "A"

#### 4.13 Castle Glen

The policies and Schedules of the Castle Glen Resort Community Official Plan document dated October 23, 2006 as approved by the Ontario Municipal Board on October \_\_\_\_, 2006 shall apply to the Castle Glen lands (shown in white) on Schedule "A" – Land Use Plan Map 5.

In the event of any conflict between the other policies of this Plan and the policies of the Castle Glen Resort Community Official Plan, the latter policies shall prevail.