

ISSUE DATE:

**Oct. 21, 2004**

DECISION/ORDER NO:

**1678**



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  
O.M.B. File No. 0020099

## APPEARANCES:

### Parties

### Counsel\*/Agent

Castle Glen Development Corporation

M. Melling\*  
S. Rosenthal\*

Town of the Blue Mountains

R. Beaman\*

County of Grey

E. Treslan\*

Niagara Escarpment Commission

M. Stewart\*

Castle Glen Ratepayers Association Inc.  
and Michael Robbins

C. Barnett\*

### Participants

Blue Mountain Watershed Trust Foundation

N. Wingrove

Grey Association for Better Planning

M. Hutchison

Beaver Valley Heritage Society

M. Kirk

**DECISION DELIVERED BY M. A. F. STOCKTON**

The Board has before it an appeal by Castle Glen Development Corporation ("Castle Glen") with respect to its application for an Amendment to the Official Plan for the Town of the Blue Mountains. In support of this appeal are the Town of the Blue Mountains (the "Town"), the County of Grey (the "County") and the Niagara Escarpment Commission (the "Commission"). Castle Glen, the Town, the County and the Commission are referred to from time to time as the Allied Parties. Opposed is the Castle Glen Ratepayers Association Inc. (the "Ratepayers"). Michael Robbins withdrew as a party during the course of the hearing.

**The Subject Property**

The subject property is situated southwest of the Town of Collingwood, and immediately south of the village of Craighleith in the County of Grey. It is 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 Grey County Road 19. It comprises all of Lots 10, 11 and 12 in the 3<sup>rd</sup> and 4<sup>th</sup> Concession north of the county road, and Lot 9 and part of Lot 8 in the 3<sup>rd</sup> Concession south of the county road.

The entire property is approximately 620 hectares in size, with approximately 505 hectares lying north of County Road 19, 115 hectares south of it. A portion of the property lies above the Niagara Escarpment, a portion encompasses the escarpment face itself (running in a northeasterly direction through the property), and a portion lies below the Escarpment. Generally, the subject lands are a mix of forested areas of various kinds, open fields and wetlands. However, there are two notable exceptions.

The first is a small, private lake (Lake of the Clouds), which is approximately 100 acres (40 hectares) in area, which lies immediately below and east of the Escarpment, and just north of County Road 19. It is roughly oval in shape, and also runs in a northeasterly direction from tip to tip. There is no doubt that this lake is largely spring-fed, with a number of large springs opening in the escarpment face and draining down into the west side of the lake.

The second is a development containing 87 subdivision lots (the Thunder Hills subdivision), which lies immediately north of County Road 19, below the escarpment and in the southeast corner of the lands north of the county road. Over one half of these lots contain residences, which are mostly seasonal. A small number, however, are permanent homes, although the applicable zoning by-law for Thunder Hills permits only seasonal occupation.

The subject lands also contain the headwaters of two important river systems, both running from the Lake of the Clouds area. The first is Silver Creek, which runs generally northwest from the northwest corner of the lake, eventually emptying into Georgian Bay. The second is Black Ash Creek, which runs generally east away from the Lake of the Clouds area, eventually turning north and also emptying into Georgian Bay just west of the Town of Collingwood. It is generally acknowledged that both of these systems contain important fish habitat, the preservation of which is an important condition of any development in the area.

An important historical feature of the property, (and the source of the name "Castle Glen"), is the ruins of a large castle-like mansion built in the early part of the 20<sup>th</sup> century. This site is located just northeast of Lake of the Clouds, on a height of land providing an excellent view in two or three directions.

The subject lands are located in the middle of an area of the province, which has long been recognized as an area of resort development. A number of ski hills, golf courses and adjacent residential and resort commercial complexes are to be found in the immediate area.

### **The Appeal and Minutes of Settlement**

The application for an Official Plan amendment in this matter was submitted on December 28, 2001. An appeal to the Ontario Municipal Board was commenced on July 9, 2002. Since that time, there has been a series of prehearings, adjournments, mediation sessions and settlement discussions.

The result was that in late February 2004, Minutes of Settlement (the "Settlement") between Castle Glen, the Town, the County and the Commission were

entered into. All of these parties (the "Allied Parties") appeared before the Board in support of the proposal, and all called their own expert witnesses to give evidence. The Ratepayers were not, however, a party to this agreement, and continue to oppose the proposed development.

In addition, a number of local residents, many of whom appeared at a public hearing night before the Board, continue to oppose the development.

The Settlement generally sets out terms of agreement between the Allied Parties, and contains as an appendix the draft Official Plan Amendment (OPA). An amended draft OPA, reflecting changes made during the course of the hearing, was filed as Exhibit 217.

There are several other features of the Settlement that are important from a public benefit perspective. The first is that all current planning applications will be abandoned. This is significant because all parties have come to realize that the Official Plan amendment (OPA 7), under which these applications have been filed, is out of date, and a modern planning regime is required. Secondly, the developer, Castle Glen, has agreed to provide municipal services to the Thunder Hills subdivision, so that the existing sewage ponds may be decommissioned and public water can be supplied. Furthermore, the Escarpment face would remain in its natural state, would be conveyed to the Town, and would be designated Escarpment Natural under the Niagara Escarpment Plan. Preservation of the escarpment face would therefore be frozen in perpetuity. Lake of the Clouds would remain a private lake, with restrictions on its use and access to its adjacent springs. Non-power boating, such as canoes, would be permitted, but power boating, water-skiing and fishing would not be allowed.

The ultimate proposal for all 620 hectares, as contemplated in the draft Official Plan Amendment, is for a resort development of 1600 units, a maximum of 300 hotel or commercial accommodation units, a maximum of 5,000 square metres of commercial use and golf related uses.

However, an important, and complicating, feature of the Settlement, and one that was a requirement of the Town, County and Commission (the "Public Agencies"), was that the lands above the Escarpment (except for a designated wetland, two areas of natural habitat, and a small "Rural" designation), would be deferred until further study is

completed. The portion of the proposal relating to the lands above the brow of the escarpment (the “deferred lands”) was not before the Board at this time.

Before the Board, then, is only that portion of the proposal relating to the lands *below* the brow of the escarpment (the “non-deferred” lands). This portion of the proposal contains a greatly reduced scheme of development: namely, a maximum of 543 residential units, 150 hotel or commercial accommodation units, and 1,500 square metres of commercial uses. A maximum of 400 residential units may be located north of County Road 19. A conceptual drawing filed at the hearing showed the potential location of this development, together with a number of golf holes.

Notwithstanding the less ambitious nature of the non-deferred proposal, the splitting of the proposal into deferred and non-deferred lands in itself became an issue in this appeal.

The proposed OPA (Exhibit 217) is an extensive document, comprising 65 pages of policy and five Appendices. It is important for a complete understanding of the Board's decision that some description of its contents be set out here, for the policies contained therein came as a result of extensive negotiations between Castle Glen and the Public Agencies, and, in particular, the Niagara Escarpment Commission.

The draft OPA contains a Concept for Development (Article 4), a dedication to the concept of Sustainable Development (Article 5), and General Development Policies (Article 6). The draft plan also contains a series of maps, including a Land Use Plan (Schedule “A”) and a Karst Assessment Areas map (Schedule “E”). The area of Karst Assessment comprises most of the deferred lands above the brow.

Specific land use policies are extensively described in Article 7, with policies pertaining to each designation. Specific policies relate to Wetlands (W), Environmental Hazard lands (H and H1), the Escarpment (E), Escarpment Golf (EG), lands generally lying below the escarpment where golf is to be permitted.

In the non-deferred lands, there is a designation proposed for Resort Commercial (RC) below County Road 19 for the hotel or commercial accommodation units previously mentioned, and a designation proposed for Resort Recreational (Rst.Rec) at the north end of Lake of the Clouds for the recreation centre. Also in the non-deferred

lands are proposed eleven Resort Residential (RST) designations, including the existing Thunder Hills subdivision. Of the ten new designations proposed, five are located north of County Road 19, north and east of the Thunder Hills subdivision; and the remaining five are located south of County Road 19. Nine of these new designations provide for a maximum density, (ranging from 5 to 15 units per hectare), while one designation with the smallest area (RST.R6) simply provides for a maximum of eight units. Permitted uses are a variety of low density or medium density cluster development, storm water management facilities, and transportation and utility facilities. In addition, golf course development is permitted in seven of the new RST designations, subject to specific policies related to golf course development, found elsewhere in the proposed OPA, in section 7.

Article 8 contains the Detailed Development Policies, which describe the studies that must be completed before any development takes place, the phasing of the development, parkland and open space dedications, pedestrian access, transport and servicing requirements, and minimum setbacks. All development is required to meet a series of natural and cultural heritage objectives, which echo the Provincial Policy Statement. More specifically, prior to the preparation of each Concept Plan (of which there must be at least two) and each Master Development Agreement, an Environmental Constraint Impact Assessment (ECIA) must be prepared by Castle Glen and approved by the Town. The requirements of the ECIA are set out in some detail. Furthermore, at the time of the overall plan of subdivision, site plan or zoning, an Environmental Impact Study must be completed. The criteria for the EIS, again set out in some detail, apply to surface and ground water resources; wetlands; fisheries; woodlands assessment; wildlife habitat; watertaking; and karst systems and landforms.

There are three of the new RST designations (RST.R3, RST.R4 and RST.R5), which contain provisions for a minimum number of units. However, each of the new RST designation contains the proviso that all development shall be in accordance with the Detailed Development Policies set out in Article 8, which will override these minima if necessary.

It was generally agreed during the hearing that the policies set out in Article 8 comprise a rigorous and comprehensive plan for ensuring that the natural features and functions of the subject lands are protected. Witnesses for Castle Glen stated on a

number of occasions that Article 8 contained the most rigorous and comprehensive plan they had ever seen in an Official Plan amendment. While witnesses for the Ratepayers acknowledged that these measures were strong in language and appropriate, they took serious issue with the timing of these studies, as will be discussed in more detail.

Article 7 of the draft OPA also includes separate designations for Hazard lands (H and H1), Wetlands, and Escarpment (E), for which, with certain limited exceptions, ownership will be transferred to the Town. This transfer will be in addition to the usual parkland dedication. These lands would be primarily used for conservation management and passive recreation such as walking, biking and cross-country ski trails. Lake of the Clouds (L), as mentioned earlier, will remain in private ownership, and will be available for passive use only (i.e. no swimming, no power boating).

Mark Dorfman, a consulting planner appearing on behalf of the Ratepayers, expressed the opinion that there are several aspects of the Draft plan that do not represent good planning. One such example is the fact that the proposed Village Core is proposed for the deferred lands above the brow. No village core is proposed for the non-deferred lands. It is Mr. Dorfman's opinion that the village core is an essential part of the development, and its deferral is unwarranted.

Mr. Dorfman also takes issue with the fact that there may be insufficient parking around the recreation centre in the non-deferred lands north of Lake of the Clouds.

On both of these issues, the Board had the evidence of both David Slade and John Genest, the latter of whom has considerable experience in resort development, that the proposal for the non-deferred area can go forward without the Village Core designation and with the parking proposed. While Mr. Dorfman has had some background in resort planning, his experience is not nearly as extensive as that of Mr. Genest. The Board therefore prefers the evidence of Mr. Genest on this issue, and finds that the deferral of the Village Core designation and the parking as proposed do not represent impediments to the proposal going forward.



## **Approach to the Planning Process**

Fundamentally, the Allied Parties and the Ratepayers disagree on the approach to be taken with respect to the natural heritage issues. As discussed earlier, the draft OPA contains strong measures for protection of the natural features and functions on the subject property. A certain body of work has been completed to date, but all parties agree that more work remains to be done before development takes place. Castle Glen and the Public Agencies prefer what they described consistently as the “drilling down” approach: that is, at each stage of development, the required environmental studies become more and more specific.

The Board received evidence (Exhibit 111) to demonstrate in chart form the required studies at each of the stages in the development process. In particular the “drilling down” process requires studies at the Concept Plan stage, at the overall Plan of Subdivision and Zoning stage, at the Plan of Subdivision or Plan of Condominium stage, and at the Site Plan stage. The result may be that in some of the development areas, development may not ultimately take place because of specific environmental features revealed by the next level of study.

The Ratepayers and their witnesses preferred what they describe as the “precautionary” or “environment-first” approach. In other words, while they acknowledge that the regime set out in Article 8 of the OPA is a good one, its application as development proceeds is too late in the process. A much greater level of study should be done *now*, before any designations by way of mapping are contemplated. They believe that not enough is known about the site at this time to make any determinations about appropriate land use designations.

Furthermore, the Ratepayers feel that it is inappropriate to proceed with any development on the non-deferred lands until all studies have been completed on the deferred lands above the brow. The opinion expressed by several of their witnesses, more specifically, was that insufficient study has been completed to ensure that there are no essential natural connections between the deferred lands above the brow of the Escarpment, and the non-deferred lands below the brow.



The Board is of the view that the approach taken by the draft Official Plan is appropriate and represents good planning. The level of study prescribed by Article 8 and in the specific policy sections is comprehensive, and yet recognizes that further work needs to be done. In a project of this size, it is unreasonable to expect that all of the work, in micro-detail, should be done at the Official Plan stage. There is a lot to be done in the planning process before development actually takes place. Subdivision, zoning and site plan issues may well arise, and indeed, may require further decisions of the Board.

Furthermore, the Board is of the opinion that Castle Glen, and the Public Agencies have done considerable work on this project, both in terms of preparation of studies, review of those studies, responses, and finally, extensive negotiation leading to a draft OPA. A considerable amount of expertise has been involved in this process, and in the Board's view, these parties are entitled to know whether or not, in principle, the project may go forward before more time and effort are expended.

Finally, the Board accepts the evidence of the expert witnesses for Castle Glen that there is no significant planning connection between the deferred and non-deferred lands that would prevent the development proceeding in the area below the brow of the escarpment.

### **Natural Heritage Issues**

With respect to the natural features and functions on the subject lands, the Board heard from a number of expert witnesses representing a wide variety of disciplines. On behalf of Castle Glen, the Board heard the testimony of its principal witnesses, Derek Coleman and Al Sandilands on woodlands, wildlife, and fish habitat; Daniel Hurley, who testified with respect to stormwater management issues; Douglas Jagger, Derek Ford, and Stephen Worthington, who gave evidence with respect to groundwater and fisheries issues.

A panel of expert witnesses, J. Robert Nisbet, Anthony G. Goodban and Géza Nicholas Gáspárdy, gave evidence on behalf of the Town, the County and the Commission. Their firm, LGL Limited, had been retained by the public agencies to conduct a peer review of Castle Glen's environmental reports and to provide advice. In

addition the Board heard, on the issue of Karst Topography, from Daryl W. Cowell, an expert initially retained by the Ratepayers, who had been released from this retainer and who was now advising the Town. They all testified that they were satisfied with the level of study to date, and with the policies contained in the draft Official Plan amendment.

Amongst the reports and studies introduced by Castle Glen were: an Environmental Constraints Analysis, prepared by Dr. Coleman; a Wildlife Inventory, prepared by Mr. Sandilands; a Wetlands Evaluation, and a Chemical Loadings Study, prepared by Stantec Consulting Ltd.; an Hydrogeological Assessment, a Groundwater Streams Assessment, and a Groundwater Assessment, prepared by Dr. Jagger; a Preliminary Stormwater Management Report and a supplementary report, prepared by Mr. Hurley; and a Geotechnical Investigation, prepared by Terraprobe Limited, a consulting geotechnical and environmental engineering firm. In addition, there was follow-up work done, and a number of subsequent reports to the Town, County and Escarpment Commission.

It is not the Board's intention to describe these reports in any detail. However, it was the opinion of most, if not all, of the expert planning witnesses testifying on behalf of Castle Glen and the Public Agencies that they had never seen this amount of preparatory work prior to a proposed Official Plan amendment. The Board heard evidence that altogether, 37 "person-days" had been spent on the subject property to date, in preparation of these reports and follow-up comments. In general, the Board found these reports and the supporting level of study to be comprehensive and credible.

Dr. Brett Tegler gave evidence on behalf of the Ratepayers on all environmental issues. Dr. Tegler was qualified as an "Applied Ecologist", and not as a land use planner. He admitted that he was not a hydrogeologist, geologist, hydrologist or fisheries biologist. He described himself as subscribing to the principles of conservation biology, an emerging science, which involves an "environment-first" approach to land use planning. While the Board generally found Dr. Tegler's evidence to be earnest, sincere, principled and professional, it prefers the evidence of Castle Glen's experts, and the Town's peer reviewers, for a number of reasons. Dr. Tegler admitted that he had spent only two days on the subject lands, as opposed to the aggregate 37 days of Castle Glen's and the Town's witnesses. Furthermore, Dr. Tegler conceded that he

had read only some of the reports, and had not been in attendance for all of their evidence. He had not read the transcripts of the evidence which he missed, relying instead on "notes" of the proceedings. To be fair, he had missed some of the hearing due to personal matters. However, he explained that his retainer by the Ratepayers had been limited, and it was argued by the Ratepayers that this limited retainer was appropriate in the circumstances. The Board does not wish to suggest that the Ratepayers' position is completely unfounded. However, the fact remains that the level of study concluded by Castle Glen's witnesses was extensive in comparison to that of the Ratepayers' experts, and more useful to the Board.

The same may be said for the panel of experts, who appeared on behalf of the Nottawasaga Valley Conservation Authority (NVCA). They attended for even less of the hearing, and had read even fewer of the studies. Again, the Board found their evidence to be sincere and professional, but nevertheless finds their evidence to be less useful to the Board than that of the Castle Glen witnesses, and the panel of peer reviewers for the Town. It is the mandate of conservation authorities in the Province of Ontario to comment on matters relating to fish habitat and watersheds. However, this particular panel also gave evidence touching on woodlands. It is the position of the solicitor for the County of Grey that it is the County's responsibility to speak for the Province on matters of Provincial interest other than fish habitat and watersheds, and that therefore the Board should ignore this panel's evidence touching on woodlands. It is the position of the NVCA that commenting on fish habitat and watersheds naturally extends to other areas of the natural environment. The Board believes that it may be necessary for conservation authorities to extend their consideration of fisheries and watershed issues into other facets of the natural environment. The Board did not find the evidence of the NVCA witnesses inappropriate or necessarily beyond their authority. As stated earlier, however, the Board did prefer the evidence of other witnesses on watershed and fisheries issues.

Mr. Sandilands testified with respect to the Environmental Land Classification (ELC) that had been done on the site. This work seeks to classify the various areas on the property as to woodlands, wetlands, and open field areas. This evaluation, together with the constraints analysis, forms the basis of the Official Plan mapping and policies contained in the draft Official Plan amendment.

The Ratepayers pointed to a number of instances of incompleteness, errors and inconsistencies in the work done by Castle Glen to date. For example, several errors were identified during the course of the hearing in the ELC which formed the basis of the mapping in the draft Official Plan. Some of these errors were identified by Dr. Tegler, others by the witnesses for Castle Glen themselves.

It is the opinion of the Board that the errors in the ELC are not significant to the point that the mapping is inappropriate. The Board notes that the draft Official Plan amendment has both mapping and comprehensive policies, which may find development inappropriate even in some areas now designated for development. It is not unusual, in the Board's view, for Official Plan amendments to contain both mapping, often general in nature, together with policies which may ultimately have bearing on the land use designations shown graphically.

Much of the debate on environmental issues centred around the use of the Natural Heritage Reference Manual (Exhibit 40). All witnesses agreed that this manual and the Natural Heritage System which flows from it, represents one method of giving effect to the PPS, and in particular section 2.3. The development of a natural heritage system has four components:

- i) an inventory of streams, lakes, landforms, forest cover, vegetation, habitat, fish and wildlife, soil and geological information, and areas of existing development;
- ii) identification of natural heritage features and areas;
- iii) identification of areas requiring protection to maintain diversity and connectivity between natural heritage features; and
- iv) implementation of the Natural Heritage System within the planning context.

While the use of the Natural Heritage Reference Manual appears to be widespread in environmental planning, it is important to remember that the Manual does not represent a policy document for planning purposes, nor is the use of a natural heritage system mandated.

The principal witness for Castle Glen, Dr. Coleman, gave evidence that he had used the Manual, and therefore a natural heritage system, in advising his client and the Public Agencies with respect to the ultimate mapping and policies that were appropriate in the draft Official Plan amendment. Counsel for the Ratepayers took issue with the fact this was not apparent in any of the background reports, that no reference was made to a natural heritage system, and that no one reading any of the reports would be able to determine that a natural heritage system had been utilized.

The position of Castle Glen and the Public Agencies is that the mapping and the policies contained in the draft plan are the product of analysis based on a natural heritage system. In the Board's view, the mapping demonstrates all of the results contemplated by the Natural Heritage Reference Manual, and the failure to provide any "intermediate" reports or diagrams in no way diminishes the validity of the final product. The Board accepts Dr. Coleman's evidence in this regard.

The Ratepayers also spent a considerable amount of time arguing that connectivity and diversity, both essential elements under section 2.3 of the PPS, had not been addressed in the draft Official Plan amendment. In the first place, it was argued that the subject property must be considered in the context of the natural features and functions of surrounding lands. This is particularly true in the context of protection of watercourses and fisheries on lands downstream in Black Ash Creek and Silver Creek. In the second place, it was argued that by deferring the study of the lands above the brow of the escarpment, the possibility of essential connections between those lands and the lands below the brow was being ignored. In short, it is argued by the Ratepayers, there is an incomplete understanding at the Official Plan level of the natural features and functions on the subject lands. This understanding cannot be gleaned at a later date by going from broad policies to more specific studies to be performed in the planning process.

The Board does not agree. Again, the Board accepts the evidence of the expert witnesses for Castle Glen that there are no significant natural heritage connections either within or extending beyond the subject property, or issues of diversity that would prevent the development proceeding in the area below the brow of the escarpment. Generally, the Board finds that a substantial amount of work has been done to date, sufficient to justify the mapping and policies contained in the draft Official Plan

amendment, and specifically finds that issues of connectivity and diversity have been addressed.

Besides the problems with the ELC mapping referred to earlier, the Ratepayers pointed to other examples of errors which in their view cast doubt on the work done to date. For example, there was some confusion between Castle Glen's experts as to whether roadways were allowed through hazard lands. Once this inconsistency was pointed out, a change to the conceptual plan became necessary. Furthermore, a new wetland designation in the area of Neff Creek in the northeast corner of the non-deferred lands was identified and added during the course of the hearing.

The Ratepayers argue that these errors and inconsistencies demonstrate that not enough work has been done to date, in order for proper land use designations to be made. In the Board's view, the applicable standard is not perfection, but rather a reasonable level of accuracy in the studies and reports prepared to date. In view of the amount of work to be done before any development starts, the Board finds that this reasonable standard has been met.

### **The Planning Context**

During the course of the hearing, the Board heard from a number of expert planning witnesses: Mr. Slade on behalf of Castle Glen; Marion Plaunt, Senior Strategic Advisor for the Niagara Escarpment Commission; Ronald Glenn, Senior Planner for the Corporation of the County of Grey; and Peter Tollefsen, Manager Development Services for the Town of the Blue Mountains. Mr. Genest, as mentioned earlier, a professional planner with experience in resort development, gave extensive evidence on the nature of resorts in general, the relevant demographics, and the operation of the proposed development. Mr. Dorfman, a consulting planner, gave evidence on behalf of the Ratepayers.

The planning history of the subject lands is an important element of this appeal. The lands were assembled in one parcel in the early 1960's. The first development took place in 1969, when the Thunder Hills subdivision was approved for 87 lots. While approximately 70% of the lots have been developed, no municipal services are available, and to this day, the residents of Thunder Hills are reliant on private water



supply and sewage ponds or holding tank systems. The remaining 20 or so lots have remained undeveloped largely due to these servicing limitations.

Shortly thereafter, in 1971, the Beaver Valley Official Plan was passed locally, and approved by the Government of Ontario in 1973. The lands north of County Road 19 were designated Resort Residential, except for a small area surrounding the Lake of the Clouds and extending northeast, which was designated as Escarpment. The lands south of County Road 19 were designated Rural. This plan recognized the demand for resort development in the area, and provided a very general land use designation for Resort Residential.

In 1974, an important amendment to the Beaver Valley Official Plan was passed and submitted to the Minister of Municipal Affairs for approval. This Official Plan Amendment (OPA) was approved by the Minister on March 13, 1975, with some additional amendments, and remains in place today as OPA 7 to the Beaver Valley Official Plan, (referred to earlier). OPA 7 provided for 1720 single and multiple resort residential units, a resort lodge of 300 units, a small convention facility, restaurant and bar facilities, a small ski hill and ski centre, commercial areas, two resort centres, a water recreation area and golf courses. The residential units were generally clustered in "pods", with some flexibility allowed as to their actual location within the pods. By today's planning standards, it was recognized by all parties that OPA 7 is outdated, and its terms inconsistent with today's required level of environmental concern.

As a result of OPA 7, an additional plan of subdivision was given draft approval in 1976 for lands above the brow of the escarpment. This plan included 351 units, a resort centre, a ski hill and ski centre, a 9-hole golf course, and an access roadway. These lots would have been serviced by commercial water supply and sewage disposal. This subdivision has never been developed, although the draft approval is still in place.

In 1973, the *Niagara Escarpment Planning and Development Act* was enacted, which resulted in the formation of the Niagara Escarpment Commission, and the development of the Niagara Escarpment Plan (NEP) in 1985. Under the NEP, the existence of OPA 7 was recognized, and the subject lands were designated as Escarpment Recreation, permitting resort development on the subject property. Since 1985, there have been two 5-year reviews of the NEP, the last one currently before the



Province for approval. There has been no proposed change in the designation of the subject lands.

In 1998, a new Official Plan for the County of Grey was approved. The NEP is given precedence in the County of Grey Plan. However, the importance of the Castle Glen area in the tourism sector is recognized, and the area is designated as Escarpment Recreation.

Finally, in the early 1990's, applications were made to the Township of Collingwood (now the Town of the Blue Mountains) for additional draft subdivision plan approval and zoning by-law amendment for the subject property to implement fully OPA 7. While these applications have never been approved, they have not been withdrawn, and remain outstanding to this date.

Thus the Board is *not* considering a piece of property that, from a planning perspective at least, is in a natural state. OPA 7, with all of its imperfections and anachronisms, provides a significant planning platform upon which the Board must make its decision. It is regime of development which has existed for almost 30 years, and which predates the tenure of many of the residents in the immediate area. It is fair to say that this appeal would not likely be in front of the Board, nor would the public agencies (in particular the Commission) have become parties to the Settlement, but for the existence of OPA 7. As the Board has already alluded to, planning documents at all levels have recognized the potential of these lands as an important site for resort development for almost 30 years. In this regard, the NEP, (the senior planning document, by virtue of legislation) designates the subject lands as Escarpment Recreation. Some issues regarding conformity with the NEP rose during the hearing, but were settled, and amendments made. Ultimately it was the view of all planners that the proposed Official Plan as amended conforms to the NEP, and the Board concurs.

The County of Grey Official Plan also designates the lands as Escarpment Recreation. There was little or no issue raised in this regard, and the Board finds that the proposed Official Plan amendment is in conformity with the County of Grey Official Plan.

Although the NEP is the senior planning document, it remains for the Board to be satisfied that the proposed Official Plan amendment, as required by the *Planning Act*,

has regard for the Provincial Policy Statement. In this regard, the Board is mindful of the language of the Divisional Court in *King City Preserve the Village Inc. v. York (Regional Municipality)*, [2001] O.J. No. 5363, which states that the Board in making its decision must have proper regard, and not merely pay “lip service” to the PPS.

This is not always easy. The Board is required to balance properly and fairly the sometimes competing principles contained in the PPS. On one hand, the Board is required to have due regard to section 2.3, which speaks to natural heritage concerns, and in particular directs that natural heritage features and functions are to be protected from incompatible development. On the other hand, the Board must have regard for the principles of the PPS, which speak to the dependency of the Province’s long term economic prosperity, environmental health and social well-being through the management of change and promotion of efficient, cost-effective development and land use patterns “which stimulate economic growth and protect the environment and public health.”

It is the position of the Ratepayers and their witnesses that because of the sensitivity of the natural features on the subject lands, the balance must fall, in this case, on the side of protecting the natural environment. They conclude that the draft Official Plan amendment, even as amended, does not have due regard for section 2.3 of the PPS.

The Board finds that a proper and fair balance has been achieved in the draft OPA with respect to the principles contained in the PPS. The Board is satisfied, on one hand, that the policies contained in the draft OPA have due regard for section 2.3 of the PPS. On the other hand, the Board accepts the evidence, principally from Mr. Genest, that this region is key to the economic development of the Province. The welfare of the area is largely dependent on its resort and tourist communities, and the subject proposal is quite consistent with those objectives.

### **The Board’s Conclusions**

The Board finds that the proposed Official Plan amendment has proper regard for the Provincial Policy Statement, and conforms to senior planning documents.

Furthermore, in the Board's view, it is a significant improvement on the current planning regime of OPA 7, and it represents appropriate land use policy for 2004.

The proposed development is feasible and an appropriate use for the land. It maintains a proper balance between protection of the Province's natural heritage, and its economic future.

Finally, it was argued by the Ratepayers that the form of the Official Plan amendment, which contains shaded wording with respect to the "deferred lands", is confusing. The Board is satisfied that the form of the draft Official Plan amendment, with the explanatory page at the beginning, is sufficiently clear in its present form.

Accordingly the Board allows the appeal in part and approves the Official Plan amendment, to the extent of the non-shaded areas as contained in Exhibit 217, as Official Plan policy for the non-deferred lands in the Castle Glen secondary plan area. There is presently under way a Class Assessment, with respect to the installation of services to the site. The Board will withhold its Order until proof has been provided to the Board that this study has been satisfactorily completed.

M. A. F. STOCKTON  
MEMBER