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A report on the March 21, 2007 Decision:

Subject: OMB Decision on developments "adjacent" to Rural Natural Features

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Date: Mon, 26 Mar 2007 21:15:41 -0400

To: Greenspace Alliance list

The OMB last week issued a Decision on Official Plan matters appealed by the Greenspace Alliance and about which a hearing was held on May 9 and 10 of 2006.

Orally, and confirmed in Decision #1754 (June 20, 2006), the Board had already

- adopted an interpretation of some ambiguous language in section 4.7.3 on Erosion Control that was to our satisfaction;
- ordered City and Alliance (and OC Home Builders' Association) to negotiate a definition of "adverse impact" of development in or near Rural Natural Features; and ordered it be included in the Glossary.

On November 22, 2006, Council adopted such a definition, broadly modeled on the definition in the Plan of the Region of Waterloo; I reproduce it below. It applies to Section 3.2.4 (Rural Natural Features). It came about as a result of negotiations between the Alliance and the City's Deb Irwin, with minor participation by OCHBA.

What remained to be decided was whether the Board would agree to require an Environmental Impact Statement for developments *adjacent* to land designated as Rural Natural Feature. On this point, with Decision #0724 (March 21, 2007) we lost the battle but won the war. To wit:

The Board did not agree that an EIS was required for development within 30 metres of an RNF, but drew attention to what it chose to call the Official Plan's "web of .. 'general residual' environmental provisions applying across the board to all properties, notably

- Protection of vegetative cover,
- Erosion prevention
- Protection of endangered species, and
- Consideration of the sub-watershed."

It then noted that even the preamble of section 3.2 4 referred to adjacent lands and found it significant that the City did *not* argue "the underlying principle that development near environmental assets should be scrutinized."

It further saw as "common ground that only a small percentage of the City's land mass had been studied in depth, so identification of environmental assets was a work-in-progress."

The Board next focused on the Provincial Policy Statement (in both their 1997 and 2005 versions), the importance it placed on adjacency and the emphasis in both the PPS and the OP on ecological *functions*. So, while the Board was satisfied with the City's approach (that any impact on such functions must be identified in pre-consultation and appropriate studies must be performed), it found "not a single word about that" in the OP. Sections 4.2 (Adjacent to Land Use Designations) and 4.7 (Environmental Protection) "are totally silent on the obligations flowing from the opening of Section 3.2.4, i.e., that 'any development ... adjacent to (RNF's) must be assessed in terms of its impact on the area's natural features..." and "neither Section 4.2 nor 4.7 even mention pre-consultations..." "The result, in the Board's opinion, is that the typical member of either (Greenspace Alliance) or the OCHBA would have undue difficulty in discerning what the obligations were, arising from a project near an RNF."

In conclusion, the Board withheld its approval of Section 3.2.4 "until it has received from the City a clarification (satisfactory to GACC and to the OCHBA), at Sections 4.2 and 4.7, of the information/studies which the City may or may not expect to receive in relation to projects adjacent to RNF's, in light of provisions elsewhere in the OP."

I suspect that the Alliance's position will be that such clarification should take the form of an OP Amendment to either or both sections, or at least a change reflected in the 2008 version of the Plan.

Erwin

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Adopted by Council on Nov 22, 2006, for inclusion in the Glossary of the Official Plan:

Adverse Impact - For the purpose of Section 3.2.4, adverse impact means changes likely to arise directly or indirectly from development proposed within lands designated as Rural Natural Features that result in widespread, long-term, or irreversible degradation of significant natural features, impairment of significant natural functions, or both. Examples of changes to be considered in determining if an adverse impact is likely to occur within lands designated Rural Natural Features include, but are not limited to, the following:

- a) fragmentation or reduction in size;
- b) increase in perimeter-to-area ratio;
- c) disruption of natural corridors and ecological linkages;
- d) alteration of natural topography;
- e) disruption or alteration of ecological relationships among significant or representative native species, or their habitat;
- f) alteration of quantity, quality, timing (hydroperiod) or direction of surface or groundwater

flow;

g) alteration of the structure, functions, or ecological interrelationships of natural habitats;

h) reductions in the populations or reproductive capacity of significant species;

i) erosion or compaction of soils or deposition of sediment.

In addition, Council agreed to delete the last sentence of Section 3.2.4.2, which states:

"Any allowed uses should avoid significant encroachment on the features for which the area has been designated."