OMB PL100206 Final - 29 June 2011

Flewellyn Special Policy Area and Quarry and Remaining General Environmental Issues hearing

Final Argument
Friends of the Greenspace Alliance

Key Points

The PSWs must be recognized in the OP

The failure of City Council to recognize Provincially Significant Wetlands in the Goulbourn area is longstanding, going back as far as 2003 when the first additional wetlands were identified by MNR. Not only that, but the City has condoned site alterations performed by landowners in their attempts to change reality on the ground. While MNR at first advised that the PSWs should be recognized in the OP, MAH subsequently went along and actively promoted accommodating landowners in their unhappiness about the PSW designations.

Unfortunately, the scientific evidence provided by witnesses for MNR clearly showed that these areas have been wetland for decades if not centuries and are, in the main, not wet as a result of recently overactive beavers or blocked drainage.

Section 2 of the PPS is clear, and so was witness Stow for the City [Stow WS, p. 6]: PSWs duly identified by MNR enjoy protection from development and site alteration, regardless of whether they are designated as such in an OP or not. Activities that interfere with the functioning of such wetlands are in violation of the PPS. The status of PSW identifications as "open files" does not change that fact. The Board should not allow a "compromise" that condones interference with PSWs in efforts to undo their identification as PSWs, nor should it allow further delay in recognizing these PSWs in the OP.

Witness Ethier for MAH was frequently unhelpful to the Board because he had come late to the file and denied knowledge of what had transpired prior to his arrival. Still, in contrast to witness Finlay for the City, whose chronology was sometimes rather selective, Ethier's chronology brought out clearly that both the City and Ministry officials bent over backwards to accommodate landowners while failing to enter into meaningful and timely consultations with parties who for many years had actively promoted protection of these wetlands. His repeated description of a "unique situation" (based on hearsay from landowners – "landowners feel" [par. 6.1] – that contradicted the scientific evidence accepted by MNR), acceptance of the need for further studies, and failure to insist that the "compromise" include prohibition of site alteration render his evidence biased in favour of the landowners. For these reasons, much of his opinion should be rejected. (The only substantive but untested evidence of recent changes in drainage came from a 2006 report by Robinson & Associates which witness Stow admitted he had miscast as providing "strong evidence ... that vegetation communities ... continue to evolve rapidly." [Stow WS, p. 8]

It was useful, however, to hear witness Ethier testify that, in his day-to-day interaction with MNR colleagues, he was under the clear understanding that protection of PSWs trumps extraction of aggregates. This makes sense in light of section 2.1.1 of the PPS: "Natural features and areas shall be protected for the long term." Long term protection of a natural feature and area is not compatible with its destruction for the sake of extracting aggregates. He also brought out the common-sense guideline in the Natural Heritage Reference Manual that it is better to leave a natural feature alone than to destroy it and then try to rehabilitate it. Witness Stow for the City expressed the same opinion [p. 6].

The 2008 case of Stormont, Dundas and Glengarry OPA No. 2 (PL070441, O070064) is not applicable here because, unlike OPA76 before this Board, that OPA already recognized PSWs within the Special Policy Area. The OPA then required Environmental Impact Studies for any new development adjacent to these wetlands.

Witness Stow's reading of the PPS as comprising "objectives" and "approaches is, as he testified, not generally shared and should not be relied upon as justification for "compromise" solutions to conflicting opinions.

We reject the Township of Goulbourn's top soil preservation and the City of Ottawa's drainage by-laws as in any way an effective substitute for simply including a prohibition against site alteration to protect these wetlands. These by-laws have never been used for that purpose in the Goulbourn area though there has been ample opportunity to do so when landowners made extensive site alterations and altered drains between 2005 and 2009. As witness Stow has testified, until recently staff was even unaware of the existence of the Goulbourn by-law and then was initially advised that it was no longer in effect. He agreed that the definition of alteration in the Goulbourn by-law is narrower than in the PPS. Further, he testified that neither by-law could prevent tree-cutting or removal of vegetation. He agreed that determining what is the "existing drainage pattern" would be difficult to establish. We conclude that mention of these by-laws in section 3.2.5 is mere window dressing.

Acquisition policy

The witness for Cavanagh denied that requiring that the City acquire any land that receives a protective designation was a form of compensation for the landowners, arguing instead that such acquisition would be the only way to ensure the land is protected for the long term. This argument must be rejected. As witness Stow testified, there are several other ways in which environmentally sensitive land can be protected. For example, the owner could donate the land or agree to a conservation easement (and receive handsome tax benefits in the process). We heard that, even if they do nothing, significant tax benefits become available as a result of PSW identification.

We support the City's reasoning that the acquisition policy does not need to extend to Rural Natural Features and General Rural Areas [Stow WS, pp. 10-11].

We agree with witness Stow that Cavanagh's suggestion to designate all natural features in the Official Plan is impractical, unreasonable and not required by the PPS [Stow WS, p. 5].

Allowed uses in the floodplain

The witness for Cavanagh was of the opinion that hard surfaces in flood plains do not affect flood flows. No evidence was provided to support this opinion. It flies in the face of common sense. We support witness Finlay's interpretation of section 3.1.3 b) of the PPS – hard surface uses in the floodway that by their nature must not be located there are not consistent with the PPS.

Relief Sought

We ask that section 3.2.5 in Amendment 76 be deleted and all wetlands identified by MNR as Provincially Significant be so recognized in the Official Plan.

In the alternative, should the Board agree to retain a Flewellyn Special Study Area, we ask that, in conformity with language in the PPS, the section prohibit site alteration as well as development while the overlay is in effect.

We are not opposed to conducting a cumulative effects study *per se* but see no reason why such a study should stand in the way of designating PSWs today based on MNR's evaluations. Should a reference to such a study survive in what the Board approves, we ask that the Board order the City to include meaningful public consultations, including consultation about the study's terms of reference and the draft report.

Still in that alternative, we have no objection to including a reference to the current Mineral Resource Study in the section.

We further ask that the Board take note of the uneven treatment by Ministry and City officials alike of landowners on one hand and proponents of wetland protection on the other in reaching a "compromise" about Ministry Modification 33 and its further amendment.

Finally, as regards other elements of the agreement reached between the City, MAH and certain appellants (page references are to Exhibit 24), we oppose deletion of

> "by adding to policy 8.b immediately following the phrase "Subwatershed objectives" a new phrase as follows: "in such areas as forest cover which reflect the unique qualities of the area";"

in section 2.4.3 - modification k) [item 15, page 8].

We also opposed deletion of the reference to Ontario Regulation 230/08 in section 4.7.2 [item 197, page 18] but are pleased with the City's agreement to instead refer to the Endangered Species Act "and its regulations."