

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: November 07, 2019

CASE NO(S):

PL170878
PL091167

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Burls Creek Event Grounds Inc. Et Al
Subject: Failure of Township of Oro-Medonte to announce a decision respecting Proposed Official Plan Amendment No. 2015-OPA-02
Municipality: Township of Oro-Medonte
OMB Case No.: PL170878
OMB File No.: PL170878
OMB Case Name: Burls Creek Event Grounds Inc. v. Oro-Medonte (Township)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Burls Creek Event Grounds Inc. Et Al
Subject: Application to amend Zoning By-law No. 97-95 - Refusal or neglect of Township of Oro-Medonte to make a decision
Existing Zoning: General Commercial (GC), Agricultural/Rural (A/RU), Agricultural/Rural Exception 32 (A/RU*32), Rural Residential 2 (RUR2), Private Recreation Exception 30 (PR*30), Private Recreation 31 (PR*31) and Environmental Protection (EP)
Proposed Zoning: Private Recreation Exception XX (PR*XX), Agricultural/Rural Exception YY (A/RU*YY), Agricultural/Rural Exception ZZ (A/RU*ZZ) and Environmental Protection (EP)

Purpose: To permit camping, parking, concession booths and minor soccer as an accessory use
 Property Address/Description: Part of Lot 21 & 22, Concession 8 Et Al
 Municipality: Township of Oro-Medonte
 Municipality File No.: 2015-ZBA-15
 OMB Case No.: PL170878
 OMB File No.: PL170879

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Burls Creek Event Grounds Inc. Et Al
 Subject: Request to amend the Official Plan - Failure of County of Simcoe to adopt the requested amendment

Existing Designation: Rural and Agricultural
 Proposed Designated: Rural and Agricultural – Subject to Exception 3.6.13 and Agricultural Special Exception Section 3.6.13

Purpose: To permit camping, parking, concession booths and minor soccer as an accessory use
 Property Address/Description: Part of Lot 21 & 22, Concession 8 Et Al
 Municipality: Township of Oro-Medonte
 Approval Authority File No.: SC-OPA-1601
 OMB Case No.: PL170878
 OMB File No.: PL170887

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: County of Simcoe
 Appellant: Midhurst Development Doran Road Inc., and Carson Road Development Inc.
 Appellant: Midhurst Rose Alliance Inc.
 Appellant: Township of Springwater and others
 Subject: Failure of the Ministry of Municipal Affairs and Housing to announce a decision respecting the Official Plan for the County of Simcoe
 Municipality: County of Simcoe
 OMB Case No.: PL091167
 OMB File No.: PL091167

Heard: April 1-12, May 16· Oro-Medonte, ON

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Representative</u>
Burl's Creek Event Grounds Inc. et al.	Nick Macos Adam Giel
Township of Oro-Medonte	Chris Williams Andrea Skinner
County of Simcoe	Marshall Green Mark Vernon
Save Oro Inc. and West Oro Ratepayers' Association	David Donnelly Alexandra Whyte

**DECISION DELIVERED BY SHARYN VINCENT AND ORDER OF THE
TRIBUNAL**

INTRODUCTION AND BACKGROUND

[1] The appeals determined in this decision originally arise from appeals by Burl's Creek Event Grounds Inc. *et al.*, ("Appellant") against the failures of both the Councils of the Township of Oro-Medonte ("Township") and the County of Simcoe ("County") to make decisions with respect to applications to amend the Township and County Official Plans and the Township Zoning By-law. The approvals are sought to crystalize the permissions necessary to permit ongoing, "dual/reversionary", accessory use of lands used, designated and zoned for Agricultural use adjacent to an existing longstanding open air events venue. The permissions sought would allow intermittent camping, parking and concession booths, but only in conjunction with concert and other special events on the venue lands located immediately to the west.

[2] The permissions are required because the Appellant had sought temporary permissions in 2015 pursuant to s. 39 of the *Planning Act*. Time-specific permissions were granted following an 11-day hearing before a panel of the then Ontario Municipal

Board that became referred to as the TUBL, an acronym for a temporary use by-law (PL151011). As contemplated by the *Planning Act*, the temporary permissions were set to, and did lapse on December 31, 2018. The term “dual/reversionary” uses was coined during the TUBL hearing to concisely describe the consecutively alternating use of the lands to produce a viable rye grass crop around scheduled events when the lands may be used for a combination of parking, camping and concessions booths to varying degrees, depending on attendance. A portion of the lands used to host soccer games also forms part of the requested permissions, and was not contested by any of the Parties.

[3] Prior to the commencement of this hearing, on March 19, 2019, the Minister of Municipal Affairs and Housing issued a Minister’s Zoning Order extending the permissions to December 31, 2019, through the 2019 events season.

[4] On the eve of the commencement of the hearing, the Councils of both the County and the Township considered positive recommendations from staff, who were ultimately directed to appear in support of the applications to permit limited accessory camping, parking and concession booths in conjunction with the permitted uses of the principal venue.

[5] The County was not a Party to the TUBL hearing but participated fully in the matter at hand to both support the Township position as a commenting agency and to advance the case that the applications, including the consolidated appeal of the Official Plan for the County of Simcoe for failing to recognize the existing event grounds and to permit the new proposed accessory uses, are consistent with the four criteria of s. 2.3.6.1(b) and s. 2.3.6.2 of the Provincial Policy Statement (“PPS”).

[6] These sections of the PPS require that planning authorities may only permit non-agricultural uses in *prime agricultural areas* when it has been demonstrated that:

1. The land does not comprise a *specialty crop area*;

2. The proposed use complies with the *minimum distance separation formulae*.
3. There is an identified need within the planning horizon provided for policy 1.1.2 for additional land to be designated to accommodate the proposed use;
4. Alternative locations have been evaluated, and
 - a. There are no reasonable locations which avoid *prime agricultural areas*; and
 - b. There are no reasonable alternative locations in *prime agricultural areas* with lower priority agricultural lands.

Section 2.3.6.2 Impacts from any new or expanding non-agricultural uses on surrounding agricultural operations and land are to be mitigated to the extent feasible.

[7] The Tribunal heard voluminous expert evidence from agrology witnesses, planners, land economists and market analysts to address these four fundamental criteria in an attempt by the opposition to defeat the proposition which had been allowed by the decision of the Board in July of 2017. The witnesses, and therefore not surprisingly, the evidence, with minor exceptions, is very similar to the opinions heard by the previous panel as summarized in that decision, albeit in support of a temporary by-law, and therefore is not revisited for the purpose of confirming same in this disposition other than where to support the findings of the Tribunal.

[8] It was evident from the issues and testimony of the parties opposed, namely two stakeholder groups SaveOro Inc. and West Oro Ratepayers' Association ("SaveOro/WORA"), that the principal issues were those of the neighbours who reside opposite on the south side of the country concession which provides principle access to the event venue. The main opposition to the proposed amendments lies in the

proposition of, as described by their Counsel to include, “wild parties, people swimming naked in the lake, aggressively accosting residents on their properties, using privately-owned sugar-bush as a liquor and weapons depot, urinating and defecating indiscriminately across the road from the residents” continuing in perpetuity. More concisely, these issues were referred to as the ‘hullabaloo’ when raised in evidence.

THE EVIDENCE AND ANALYSIS

[9] Having heard all of the evidence, including a full evening session of input from a balanced slate of 15 participants, the Tribunal is satisfied that Burl’s Creek Events Grounds Inc, the County, and the Township, have established the following, or SaveOro/WORA has failed to persuade the Tribunal of their contrary position. The Tribunal makes the following findings:

- i) The concept of dual reversionary accessory uses is consistent with the PPS to protect *Prime Agricultural lands* because no lands according to numerous witnesses, and Michael Hoffman in particular, will be permanently taken out of production. Mr. Hoffman, the expert in the study of agrology retained by the County to peer review the Appellants’ studies rendered this opinion while under summons by SaveOro/WORA;
- ii) Hoffman established the threshold by confirming that in his opinion, the quality, nature or abundance of the crop taken, and the apprehension of soil compaction, are not determinative to the retention of an agricultural use on designated *Prime Agricultural land* as contemplated by the PPS;
- iii) The construct of the proposed planning instruments make clear the terms and conditions of the accessory uses as being limited in duration and only when operative in conjunction with a permitted special event located on purpose zoned lands. No change in the agricultural designation is proposed, consistent with the PPS;

- iv) The SaveOro/WORA argument advanced through their planner Victor Doyle asserting that the PPS directive to protect prime agricultural lands is paramount, subject to the condition of the PPS to contemplate “limited non-residential uses”, fails as having no foundation given the cardinal opinion of Hoffman as set out in ii) above. The witness’s argument that ‘spatially’ the supply of prime agricultural uses have been, or would be impacted by the proposal is thereby critically undermined and does not stand. It therefore follows that the protection of *Prime Agricultural land* is maintained by the concept of dual/reversionary use.
- v) Mr Doyle also introduced the argument that the County, in order to satisfy the terms of s. 2.3.6.1(b)(4)(ii) of the PPS set out in paragraph 6 of this decision, was obliged to look beyond its own jurisdiction, in essence opining that the need for an accessory use to an existing use permitted as of right, must be considered in the context of the Growth Plan for Greater Golden Horseshoe. The Tribunal finds this position untenable, and not reasonable given the unrefuted longstanding existence of the event venue, the technical nature of the required amendment to the County Official Plan, and the clearly accessory nature of the camping, parking and concession booth uses. The Tribunal is persuaded by the evidence of the planning witnesses for the Appellant and the County that the robust alternate site search of over 10,000 parcels comprising some 100,000 acres satisfies the test under the PPS. The market analysis undertaken by Urban Metrics crystalized the locational advantages of the Burl’s Creek site and the merit of the economic value of making provision for the festivals to grow and adapt.
- vi) Prior to the oral evidence at the hearing, and in the Agreed Statement of Facts, all of the planning and agrology witnesses scheduled to lead evidence were *ad idem* on the classification of the proposal as being a Type A land use for the purpose of determining the minimum distance separation (“MDS”) prescribed to protect existing livestock operations. At the outset of the

hearing, the Tribunal was advised that Robert Clark, a planner/agrology expert testifying on behalf of SaveOro/WORA, had resiled from his position in the Agreed Statement, leaving Mr Clark as a singular voice opining the proposed use to be a Type B land use requiring a 2,000 metre, as opposed to 1,000 metre separation from existing livestock operations. Mr Doyle expressed no opinion on the issue. It became clear to the Tribunal that Counsel for SaveOro/WORA in his questioning of witnesses was intent on attempting to introduce the merits of requiring not only additional separation but also visual buffering for his clients residences opposite the access point to the TUBL lands by attempting to push the potential southerly limits of any parking or camping as far away as possible, to be supplemented by planted berming. These objectives have nothing to do with the MDS formulae or the PPS test under s. 2.3.6.2 which addresses the protection of agricultural uses and not rural residential. The Tribunal is not persuaded by Mr. Clark's contrary opinion.

- vii) Extensive expert evidence was heard on the noise, traffic and other mitigation measures deployed by the Appellant and the Township to address the "hullabaloo" nuisance issues raised by the two principal representatives of SaveOro/WORA, Wendy McKay and Bruce Wiggins. The Tribunal also heard evidence on behalf of an existing farm operation from Ms Martensson-Hemsted who owns and farms lands adjacent to the north east portion of the subject lands, who contrary to the SaveOro/WORA position, has not found the abutting events, including the camping and parking, to adversely affect her operation. Nonetheless, the activities at Burl's Creek are subject to the Special Event Permitting process of Council. The protocol has evolved to include input from acoustic and traffic engineers, also the OPP and Ministry of Transportation in both the staging and after the fact assessments of each individual event. The permitting process is not part of the matter to be determined by the Tribunal other than to inform the analysis as to whether mitigation is being addressed.

- viii) The evidence of the extent of the efforts to mitigate the traffic and noise impacts was both compelling and demonstrative of the resources deployed both during events and devoted to assessing after the fact to improving to the extent possible, the short-term effects of significant activity at a longstanding event venue and site of a former race car track. While not unsympathetic to the effected residents, there was no evidence before the Tribunal that the proposed amendments were inconsistent with s. 2.3.6.2 of the PPS.
- ix) The County Official Plan imports verbatim the tests of s. 2.3.6.2 of the PPS and adds five additional considerations when evaluating proposed non-agricultural uses:
- a) Use requires minimal site alteration;
 - b) Use shall be compatible with surrounding agricultural uses [...] and demonstrated to cause minimal disruption to surrounding areas;
 - c) Use is not located in an area that may have an impact on the efficient and logical expansion of the nearby settlement area;
 - d) Use complies with all other applicable provisions of this plan; and
 - e) The proposal is to be supported by adequate technical assessment to ensure that appropriate services can be provided.

Greg Marek testified on behalf of the County and was *ad idem* with the evidence of the Darren Vella and Andria Leigh on behalf of the Appellant and Township respectively, that the proposed temporary accessory uses are consistent with s. 2.3.6.2 as well as s. 3.6.12. of the County Official Plan in that there are no permanent buildings, structures or infrastructure proposed; that the proposed compliance with the MDS arcs will protect

existing livestock operations; that the Township's Noise and Special Events By-law will be used on an event specific basis to regulate emergency planning, traffic management, waste management, Alcohol and Gaming Commission of Ontario licenses and permits amongst other things; and that the lands are not located such to impact on the extension of any settlement area.

The applications are supported by a full range of technical reports which have been peer reviewed in support of the recommendations put before the Councils of both the County and the Township.

[10] During the evening session where participants were in attendance to express their views, the Tribunal heard from the broader community, including owners and operators of hospitality businesses and umbrella organizations representing business interests. In general, the anecdotal evidence supported the economic benefits attributable to the events that ranged from hotel occupancies to the creation of part time jobs and dedicated soccer fields. The Tribunal is persuaded that these broader community benefits offset the predictable, temporary traffic inconveniences and impacts experienced by the surrounding community on a limited number of days over the calendar year. The location of the site, with excellent access to Highway 11 to the west, limits traffic impacts on the principal settlement areas located closer to the lake.

CONCLUSIONS

[11] The Tribunal finds that the Township in particular advanced a balanced approach through the evidence by analyzing the merits of the proposal against any negative impacts on matters of Provincial interest. Taken together with the Township's Official Plan community vision and objectives to maintain the agricultural character while capturing tourism benefits, the evidence is weighted in favour of the merit of the applications.

[12] It is the finding of the Tribunal that the proposed Official Plan and Zoning amendments are consistent with the PPS, 2014 and conform to the Growth Plan for the Greater Golden Horseshoe. The amendments to the Township Official Plan and zoning by-law conform to the County Official Plan, and the provisions of the Township OP otherwise applicable.

[13] Through the TUBL considerations, the Township and Burl's Creek had entered into an AMP (Adaptive Management Plan) agreement to secure funds to be used in the event of a business failure to ensure available funds should they be necessary to carry out mitigation to restore the lands to agricultural uses. During the course of this hearing, the Tribunal heard from Michael Mckenna, the current property manager for Burl's Creek who is responsible for the cultivation and management of the hay crop on the site. He outlined how on a daily basis, and particularly after any events, he and a team of 10 inspect the property and remediate any areas demonstrating soil compaction. It is the understanding of the Tribunal from the submissions of both Burl's Creek and the Township that it is their intention to continue this secured undertaking and register a revised AMP agreement against the subject property if the appeals are allowed.

ORDER

[14] The appeals are allowed in part to amend Official Plans of the County of Simcoe, the Township of Oro-Medonte and Township By-law No. 97-95 generally in accordance with the draft documents in evidence found at Tabs 16, 17, and 18 of Book 2, Exhibit 2.

[15] The Tribunal will withhold its final order until advised that the necessary instruments to give effect to this order have been received in final form.

“Sharyn Vincent”

SHARYN VINCENT
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

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