

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: July 27, 2016

CASE NO(S): PL160154

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Bruce Caughey
Subject:	Proposed Official Plan Amendment No. 31
Municipality:	Loyalist
OMB Case No.:	PL160154
OMB File No.:	PL160154
OMB Case Name:	Caughey v. Loyalist (Town)

Heard: July 18, 2016 in Odessa, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Corporation of Loyalist Township

A. E. Fleming* and Robert Gencarelli*

Bruce Caughey

Self-represented

DECISION DELIVERED BY C. HEFFERON AND ORDER OF THE BOARD

BACKGROUND

[1] On January 11, 2016, the Corporation of Loyalist Township ("Township") adopted Zoning By-law No. 2006-001, which enacted Amendment No. 31 ("OPA 31") to the Township Official Plan ("OP"). OPA 31 amends three of the existing OP policies.

[2] Bruce Caughey, a resident of Amherst Island, which is within Loyalist Township, appealed that decision to the Ontario Municipal Board (“Board”).

MATTER BEFORE THE BOARD

[3] Policy 7.5.1.5 of the OP pertains to Road Improvements. OPA 31 amends this policy by adding third and fourth paragraphs to the existing policy. The third and fourth paragraphs provide:

However, unequal widening may be required where factors such as topography, historic building locations, protected heritage properties, natural heritage features, grade separation, channelization, existing development, shoreline erosion or flood susceptibility; or other unique conditions make the dedication of equal widening infeasible.

The Township may require additional road widening dedications in addition to the above with the need for amendments to this Plan for purposes such as the following:

- i) Additional site triangles at intersections and entranceways necessary for traffic operational design purposes;
- ii) Turning lanes at intersections or to provide suitable access to major generator developments;
- iii) Future grade separation or intersection realignments with railway lines and other roads;
- iv) Site for traffic control devices and transit facilities;
- v) Cut and fill requirement for road construction; and
- vi) For other improvements to address safety and maintenance reasons.

[4] Policy 8.9 of the OP pertains to Site Plan Control. OPA 31 amends this policy by removing the final sentence of 8.9(f), which reads:

Topographic constraints may require additional lands to be dedicated.

and, replacing it with the following sentence:

Additional road widenings and unequal widenings may occur in the circumstances described in Section (policy) 7.5.1.5 (a) of the OP.

[5] Policy 8.9(b) of the OP pertains to roads in front of heritage properties. The policy is amended by adding the following text:

As well, all properties adjacent to the protected heritage property, Site Plan Control may apply to all classes of property where such lands are contiguous to a protected heritage property, in order that the heritage attributes of the protected heritage property are conserved.

PARTICIPANTS

[6] The Board recognized the following year-round and seasonal residents of Amherst Island as participants:

- Elizabeth Barr, Annick Mitchell, and Deborah Barrett.

[7] Ms. Barr's witness statement was entered into evidence as Exhibit 4.

[8] The Board noted that some 10 people, all identifying themselves as Amherst Island residents attended the subject hearing, which was held at the Township offices in Odessa.

[9] Pursuant to Rules 61 – 65 of the Board's *Rules of Practice and Procedure*, this Panel refused the request of Blair Anderson, who described himself as a relatively new resident of Amherst Island, that the hearing be postponed until he could apprise himself of the issues and determine whether or not he wished to seek Participant status. He told the Board he did not learn about the Board hearing "until 8:45 a.m. (the morning of the hearing)." The specific reason the Board rejected his requests are noted below in the evidence entered respecting notice.

EVIDENCE AND FINDINGS

[10] The Participants expressed a number of concerns, all of which in the Board's view amounted to the same thing. They are apprehensive of the intentions of the Township *vis-à-vis* a proposed wind farm on the island. The Participants expressed

their apprehension that the underlying or real purpose of OPA 31 is to facilitate the transport of the wind power developer, Windlectric Inc.'s, 26 windmills from their proposed landing area on the north shore of the island (near the existing ferry dock) to their proposed installation sites scattered around the island.

[11] The Participants also expressed consternation that they did not receive adequate notice of the public meeting on January 11, 2016 at which the Township Council passed OPA 31.

[12] The Board qualified Murray Beckel, a registered professional planner who is employed as Director of Planning and Development Services and Chief Building Official by the Township, to provide expert opinion evidence on land use planning.

[13] Mr. Beckel advised the Board that notice of the public meeting was posted in the Kingston Whig Standard. This, he testified, satisfies the requirements of the *Planning Act*. The Participants maintained, however, that notice in a newspaper is today not sufficient as many people, particularly Amherst Island residents, have difficulty securing a copy of the Kingston newspaper and may be unaware when land use matters, which they believe could have significant effect on their properties are scheduled to be considered by Council.

[14] Mr. Beckel further advised that the Township's Economic Development/Planning Advisory Committee had earlier considered OPA 31 in a public session held July 6, 2015. The Minutes of the meeting were entered into evidence as Exhibit 2, Tab 4.

[15] Mr. Beckel pointed out that OPA 31 affects every resident of Loyalist Township, not just Amherst Island residents, and that in his opinion it would not have been practical for the Township to advise each Loyalist Township household individually.

[16] The residents told the Board that it was primarily through the efforts of Bruce Caughey, the appellant in the matter of OPA 31, and Martin Hauschild, another resident of Amherst Island who sent a letter to the Township objecting to Council's

January 11, 2016 decision that the other Amherst Island residents were made aware of the Board hearing. The letters of Messrs. Caughey and Hauschild were entered into evidence as Exhibit 2, Tab 6.

[17] The Board noted the Participants' concerns but accepted the evidence of Mr. Beckel that adequate notice had been given to the residents of Loyalist Township (including the residents of Amherst Island) respecting Council's adopting of OPA 31. The Board also accepted Mr. Beckel's opinion evidence and finds that adequate notice had been given respecting the Board hearing. Confirmation for this was the presence of the 10 or more Amherst Islanders who attended the subject Board hearing.

[18] Mr. Caughey, the appellant in the subject matter before the Board, was not represented. After securing the consent of Mr. Fleming, counsel for the Township, the Board allowed Mr. Caughey both to present evidence and to cross-examine Mr. Beckel.

[19] Mr. Caughey's evidence pertained almost exclusively to the section of South Shore Road that runs across his lands. He described the details of decade-long, apparently acrimonious dispute he has been engaged in with officials from the Township's Engineering Department respecting the portion of public road that crosses his property.

[20] He pointed out that the portion of South Shore Road that runs across his property is a "forced road" (also called a "trespass road") absolute title to which, he maintained, was never acquired by the Township. Mr. Fleming disputed the statement that this portion of South Shore Road is not a municipal. He advised the Board the private property owner has none of the rights of ownership over a forced road.

[21] The Board pointed out to Mr. Caughey that the subject hearing was not the proper forum in which to resolve land title disputes.

[22] Mr. Caughey also expressed some apprehension the Township could, if it chose, take a portion of his lands without compensation.

[23] Mr. Beckel explained the circumstances pursuant to OPA 31 in which the Township could take a portion of private lands for a possible future road widening. These include when Mr. Caughey (or any landowner in Loyalist Township) receives approval for a Plan of Subdivision, consent to sever a lot or lots, or when the landowner receives Site Plan Approval of a development (pursuant to s. 41 of the *Planning Act*). He pointed out that the Township retains the right to make improvements to any public road in the municipality where public health or safety is concerned.

[24] Mr. Beckel also explained the reasoning behind the Township's being permitted to take an uneven portion of a property fronting on a public road is that if one side of the road is protected (for environmental and/or heritage reasons in the case of South Shore Road) the Township may take more land from the other side of the road so as to minimize disruption to the protected feature. He advised that this course of action is pursued in a number of municipalities in Ontario, including the City of Waterloo. Excerpts from the official plans of several municipalities where this is permitted were entered into evidence as Exhibit 2, Tab 11.

[25] It was, however, made amply clear to the Board that the main reason, possibly the only reason, that the other residents of Amherst Island attended the subject hearing was to ensure that OPA 31 was not somehow intended to assist Windlectric Inc. situate its proposed windmills throughout the island.

[26] The Board accepted the evidence of Mr. Beckel and the submission of Township counsel, Mr. Fleming, that Ontario's *Green Energy and Green Economy Act* provides an alternative power developer adequate authority to develop its power generators once it gains the requisite approvals.

[27] The Board also accepted the un-contradicted opinion evidence of Mr. Beckel and finds that OPA 31 is consistent with the 2014 Provincial Policy Statement, conforms to the local land use planning policy as provided in the in-force OP and represents good planning.

ORDER

[28] The Board orders that Mr. Caughey's appeal is dismissed and OPA 31 is approved.

[29] Board Rule 107 states:

107. Effective Date of Board Decision A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

[30] Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

"C. Hefferon"

C. HEFFERON
MEMBER

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

Ontario Municipal Board

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