

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 11, 2015

CASE NO(S): PL140809

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

Appellant: Harbour View Investments Inc.
Subject: Proposed Official Plan Amendment No. 239
Municipality: Town of Caledon
OMB Case No.: PL140809
OMB File No.: PL140809

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Harbour View Investments Inc.
Subject: By-law No. 2014-056
Municipality: Town of Caledon
OMB Case No.: PL140809
OMB File No.: PL140810

PROCEEDING COMMENCED UNDER subsection 17(45) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Motion Request By: Airfield Developments Inc. and Town of Caledon (Applicant and Municipality)
Purpose of Motion: Request for an Order Dismissing the Appeal
Appellant: Harbour View Investments Inc.
Subject: Proposed Official Plan Amendment No. 239
Municipality: Town of Caledon
OMB Case No.: PL140809
OMB File No.: PL140809

PROCEEDING COMMENCED UNDER subsection 34(25) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Motion by: Airfield Developments Inc. and Town of Caledon (Applicant and Municipality)
Purpose of Motion: Request for an Order Dismissing the Appeal
Appellant: Harbour View Investments Inc.

Subject: By-law No. 2014-056
Municipality: Town of Caledon
OMB Case No.: PL140809
OMB File No.: PL140810

Heard: January 21, 2015 in Caledon, Ontario

APPEARANCES:

Parties

Counsel

Airfield Developments Inc.

S. Mahadevan

Town of Caledon

J. Bang

Harbour View Investments Inc.

J. Alati
M. McDermid

DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND W. ROMAN WINNICKI AND ORDER OF THE BOARD

BACKGROUND

[1] Airfield Developments Inc. (“Airfield”) wishes to develop a 9.5 hectares (“ha”) site at the northeast intersection of Airport Road and Mayfield Road in the Town of Caledon (“Town”). In this location, Mayfield Road is a municipal boundary. On the north side is the Town and on the south side is the City of Brampton (“City”). Both municipalities are within the Region of Peel (“Region”).

[2] The City side has been extensively developed with residential subdivisions and associated neighbourhood plazas. The Town side has very few residential dwellings in this area.

[3] The subject site is within the Tullamore Industrial/Commercial Secondary Plan area of the Town.

[4] The majority of the site is designated Highway Commercial. This designation

contemplates limited commercial uses that serve primarily the travelling public and not the area resident public.

[5] Airfield has proposed a major commercial development with a range of uses targeted primarily to the area resident public and not now contemplated by the Highway Commercial designation.

[6] A smaller portion of the site is designated General Industrial. The proposed development is not contemplated by this designation.

[7] The Town has adopted Official Plan Amendment No. 239 (“OPA 239”) and By-law No. 2014-056 (“ZBLA”), which is an amendment to the applicable zoning by-law, to permit the proposed development.

[8] In addition to adjusting the uses contemplated in the Highway Commercial designation, OPA 239 removes 1.98 ha from the General Industrial designation to add them to the Highway Commercial designation with its proposed revised policies.

[9] Harbour View Investments Inc. (“Harbour View”) owns Country Trails Plaza, a neighbourhood commercial centre located nearby in the City. Harbour View has appealed both OPA 239 and the ZBLA.

[10] Airfield and the Town have brought a joint motion to dismiss the Harbour View appeal of OPA 239 under s. 17(45) of the *Planning Act*, R.S.O. 1990 c. P.13 (“Act”) and to dismiss the Harbour View appeal of the ZBLA under s. 34(25) of the Act.

[11] The Region attended and was represented by Robert MacIver, counsel. Mr. MacIver advised the Board that the Region was in attendance to observe the proceedings and did not yet know if it would seek any status in the hearing of the merits should the Board decide to send some or all of these matters to a full hearing.

ISSUES, ANALYSIS AND FINDINGS

[12] Section 17(45) and s. 34(25) of the Act contain the same grounds for dismissal without a hearing.

[13] Section 17(45) of the Act states in part:

Dismissal without hearing

[\(45\)](#) Despite the *Statutory Powers Procedure Act* and subsection (44), the Municipal Board may dismiss all or part of an appeal without holding a hearing on its own initiative or on the motion of any party if,

- (a) it is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the plan or part of the plan that is the subject of the appeal could be approved or refused by the Board,
 - (ii) the appeal is not made in good faith or is frivolous or vexatious,
 - (iii) the appeal is made only for the purpose of delay...

[14] Section 34(25) of the Act states in part:

Dismissal without hearing

[\(25\)](#) Despite the *Statutory Powers Procedure Act* and subsections (11.0.2) and (24), the Municipal Board may dismiss all or part of an appeal without holding a hearing, on its own initiative or on the motion of any party, if,

- (a) it is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Board could allow all or part of the appeal,
 - (ii) the appeal is not made in good faith or is frivolous or vexatious,
 - (iii) the appeal is made only for the purpose of delay...

[15] In each case, the grounds are disjunctive and only one ground needs to be met for the Board to dismiss all or part of an appeal without a hearing.

[16] The Town and Airfield assert that Harbour View's appeals meet each of these three grounds.

[17] In analyzing these matters the Board had the benefit of extensive affidavit evidence from three land use planners, one each for the Town, Airfield and Harbour View. The Board also had affidavit evidence from two market analysts, one for Airfield and one for Harbour View. In addition, the Board had the benefit of transcripts of cross-examination of the three land use planners and the market analyst for Airfield.

[18] In determining whether the reasons set out in an appeal disclose land use planning grounds upon which the Board could allow all or part of an appeal, the Board's jurisprudence has followed the Board's landmark analysis in *Toronto (City) v East Beach Community Association* (1996) O.M.B.D. No. 1890:

...The Board is entitled to examine the reasons stated to see whether they constitute genuine, legitimate and authentic planning reasons. This is not to say that the Board should take away the rights of appeal whimsically, readily and without serious consideration of the circumstances of each case. This does not allow the Board to make a hasty conclusion as to the merit of an issue. Nor does it mean that every appellant should draft the appeal with punctilious care and arm itself with ironclad reasons for fear of being struck down. What these particular provisions allow the Board to do is seek out whether there is authenticity in the reasons stated, whether there are issues which should affect a decision in a hearing and whether the issues are worthy of the adjudicative process...

[19] The grounds for the appeals by Harbour View, and the issues in these proceedings, fall generally within two broad categories: market issues and land use planning issues.

[20] In a long line of cases, the Board has held that a dispute that is grounded in a wish to depress market competition is not one that rises to the standard of constituting genuine, legitimate and authentic planning reasons.

[21] Any proposed development may change the competitive context in which both existing and proposed developments may operate. That fact alone does not mean that there are no legitimate planning grounds to be tested in a hearing of the merits.

[22] Municipal boundaries are not stone battlements designed to isolate communities

and prevent the flow of people and goods.

[23] When developments are proposed on the border of two municipalities, questions of appropriateness and compatibility should consider the planned function of development on either side of the municipal boundary as expressed in the applicable planning documents. Doing so respects and has regard to matters of provincial interest as set out in s. 2 of the Act, particularly:

- (h) the orderly development of safe and healthy communities;
- (k) the adequate provision of employment opportunities;
- (l) the protection of the financial and economic well-being of the Province and its municipalities;
- (m) the co-ordination of planning activities of public bodies;
- (p) the appropriate location of growth and development;

[24] Harbour View has raised an issue of appropriateness and compatibility between the proposed development in the Town and the planned function of land use designations on the City side, as expressed in the City's official plan. This analysis may contemplate and result in greater commercial competition but do so in a fashion that is appropriate and compatible in a land use planning sense.

[25] The Board finds that this is an authentic land use planning issue capable of adjudication in the context of a proposed development within a municipal boundary condition.

[26] Harbour View has also raised issues of conformity of OPA 239 with the Town of Caledon Official Plan ("Town OP"), including the Tullamore Industrial/Commercial Secondary Plan, given the proposed change in the range and scale of uses being proposed.

[27] OPA 239 includes the redesignation of 1.98 ha of industrial employment lands to highway commercial. Harbour View has raised the issue of whether this constitutes a

conversion of employment lands to non-employment uses and, if so, whether this conversion conforms to the requirements of the Region of Peel Official Plan (“Region OP”), conforms to the requirements of the Growth Plan for the Greater Golden Horseshoe (“GGH”) and is consistent with the requirements of the Provincial Policy Statement (“PPS”).

[28] The Board finds that the issues of conformity with the Town OP, the Region OP, and the GGH, and the issue of consistency with the PPS, are all authentic land use planning issues upon which evidence may be called and are capable of adjudication in a hearing of the merits.

[29] While the Board finds that there are legitimate, authentic land use planning grounds that have been raised, the Board also finds that certain grounds raised are simply market disputes regarding competition that do not rise to the standard of being authentic, legitimate planning grounds.

[30] The Board dismisses reasons 1, 2, 5 and 9 of the Harbour View appeal of OPA 239, and dismisses reason 1 of the Harbour View appeal of the ZBLA.

[31] The Board declines to dismiss the remaining land use planning issues, as paraphrased by the Board and set out above.

[32] By raising these land use planning issues, the Board understands that Harbour View intends to call expert opinion evidence in support of each of these planning issues it has raised.

[33] The Board remits the identified land use planning issues to a hearing of the merits. The Board estimates a needed hearing length of three days. The Board’s case co-ordinator will contact the parties to schedule a hearing of the merits.

ORDER

[34] The Board orders that the motion is allowed in part and:

1. Reasons 1, 2, 5 and 9 of the Harbour View appeal of Town of Caledon Official Plan Amendment No. 239 are dismissed.
2. Reason 1 of the Harbour View appeal of By-law No. 2014-056 is dismissed.
3. The remaining reasons for the Harbour View appeal of Town of Caledon Official Plan Amendment No. 239 and By-law No. 2014-056 are remitted for a hearing of the merits, insofar as they relate to land use planning matters of:
 - i. compatibility with the planned function of development in the City of Brampton as expressed in the City of Brampton Official Plan,
 - ii. conformity with the Town of Caledon Official Plan,
 - iii. conformity with the Growth Plan for the Greater Golden Horseshoe and consistency with the Provincial Policy Statement with regard to the question of whether the Town of Caledon Official Plan Amendment No. 239 constitutes a conversion of employment lands to non-employment uses.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

“W. Roman Winnicki”

W. ROMAN WINNICKI
MEMBER

Ontario Municipal Board

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