

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: September 26, 2017

CASE NO(S): PL160746

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Lake of Bays Association
Subject:	Proposed Official Plan Amendment No. OPA 16
Municipality:	Township of Lake of Bays
OMB Case No.:	PL160746
OMB File No.:	PL160746
OMB Case Name:	Lake of Bays Association v. Lake of Bays (Township)

Heard: September 12, 2017 in Dwight, Ontario

APPEARANCES:

Parties

Counsel

Lake of Bays Association

Mary Flynn-Guglietti

District Municipality of Muskoka

Edward Veldbloom

DECISION DELIVERED BY SHARYN VINCENT AND ORDER OF THE BOARD

INTRODUCTION

[1] The Lake of Bays Association (“LOBA”) appealed Official Plan Amendment No. 16 of the Township of Lake of Bays (“Township”) Official Plan (“OP”). The District Municipality of Muskoka (“District”) was the approval authority. The appeal is concerned with only one policy in Official Plan Amendment (“OPA”) 16, H.15, which

reduces the minimum area requirement for waterfront back lots from the present requirement of four hectares (“ha”) (ten acres) to three ha (seven acres). The minimum lot frontage requirement was unchanged at 134 metres (“m”) on a year round maintained public road.

THE EVIDENCE

[2] The Board heard evidence from four planning witnesses, two under summons, two lay witnesses and one participant, Mayor Robert Young who was authorized by Council resolution to speak on behalf of the Council of Township.

[3] The Appellants contend that both Township and District Councils adopted this particular section of OPA 16 without the benefit of a supporting planning staff recommendation, and further contend that the lessening of the minimum area requirement could result in lot creation which could threaten the ecological balance of the principal resource of the Township which is the lake based environment.

[4] The Appellants supplemented the evidence of their planner. Witnesses under summons, one a former Ministry of Municipal Affairs (“MMA”) Manager and the other a current District Planner, gave evidence called to support of the Appellants contention that the current oversupply identified in the consulting reports conducted for the Township as background studies to the OP review would be exacerbated by the reduced area requirement. The witness formerly with MMA took the position that the amendment was not consistent with the Provincial Policy Statement (“PPS”) because the potential additional waterfront back lots that could be created would compete with lots in settlement areas, where the PPS directs growth to occur and would create a supply beyond the 20 year horizon stipulated by the PPS. The District Planner undertook a very high level comparative analysis of potential lot creation based on lot frontage and lot area requirements only and was called to speak to the findings of this very cursory analysis.

[5] The District, through its one planning witness, gave evidence and demonstrated that minimum lot size is but one criterion within the broad policy network of both the Township and District Official Plans which must be satisfied when considering lot creation.

[6] The District takes the position that the change is very minor, that the amount of designated waterfront land is finite, there is no reduction in the minimum lot frontage requirement, and that while the change may create a small increase in potential lot creation, the policy does not create lots, and must be read and analyzed on a site by site basis in concert with the full spectrum of lot creation criteria which in the opinion of the witness, are more determinative than lot size.

[7] To put the concerns and the appeal in context, the Board specifically posed the question and was advised that on average over the past ten years, zero to two applications/year to create waterfront back lots had been received for consideration by the consent granting authority, the Township.

FINDINGS

[8] Having considered all of the evidence thoroughly, the Board prefers the evidence of the District in support of the amendment for the reasons set out below.

[9] LOBA through their planning witness, quite rightly raise concerns about the appropriate protection of the lakes and waterways, the principal environmental attraction and resource of the Township. The Board is however satisfied that the reduction in the size of potential lots will not diminish the rigors of the existing extensive OP policies which establish the criterion for minimum lot areas.

[10] Policy H.39 sets out the general lot requirements, as follows:

All lots will be of sufficient size and dimension and possess terrain suitable to appropriately accommodate the use

proposed. Among other matters, this should include consideration of the following:

- a) environmental concerns and development constraints such as steep slopes, flood prone and sensitive habitat areas;
- b) provision of water supply and sewage disposal;
- c) provision of appropriate access and a safe road entrance; and
- d) provision of a sufficient area to accommodate buildings and structures without substantial alteration to the natural landscape vegetative cover.

[11] The OP in Section D further details criterion to ensure and enhance environmental and landscape conservation. These policies stipulate that conservation of the natural environment will take precedence over development when the two are in conflict and mitigation measures are unable to protect environmentally sensitive or significant natural heritage features and functions.

[12] Policy D.10 requires that the following principles guide lot design:

- a) built form should not dominate the landscape;
- b) visual impact should be minimized;
- c) as much natural vegetation as possible should be maintained and natural vegetative buffers should be retained or restored adjacent to shorelines and roadways;
- d) natural landform and contours should be protected; and
- e) natural infiltration storm water management and construction mitigation techniques should be used.

[13] Beyond these threshold criteria, specific policies and tests exist for development near High Sensitivity and Over Threshold Waterbodies.

[14] Specific policies require that fish habitat impact assessments are carried out and inspections be conducted where development is proposed on or near slopes of 20% or more to ensure that slope stability, erosion, and the preservation of scenic slope faces, amongst other matters, are adequately addressed.

[15] In order to effectively implement the principal OP objective to protect and enhance the environment and character of the Township, a Development permit Process was adopted in 2004. (By-law No. 2004-180).

[16] The entire area of the Waterfront designation is subject to the Development permit By-law.

[17] Section J. 22 of the OP describes the Development permit approval framework as combining development permits, site plan control and site alteration into one permitting system. A Development permit is required prior to undertaking any site alteration or vegetation removal.

[18] The Board is satisfied that the existing network of OP policies in combination with the Development Permit process, can address the concerns of LOBA.

[19] Contrary to the concerns of the former MMA Manager that the reduction in lot size would compete with attracting or directing growth to the settlement areas, the Board agrees with the evidence of the District witness that back lot living for the most part, is a specific lifestyle choice and will not detract from or be inconsistent with the growth management policies of the PPS.

[20] At 3 ha versus 4 ha, the lot area requirement continues to be a parcel significantly larger when compared to the minimums for shoreline development and therefore conforms with the specific policy of the District OP, D.28.

ORDER

[21] The Board orders that the appeal is dismissed and OPA 16 to the OP of the Township , is approved.

“Sharyn Vincent”

SHARYN VINCENT
MEMBER

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Ontario Municipal Board

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