

ISSUE DATE:

December 14, 2011



PL091173

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Hanna's Landing Inc.
Appellant: Muskoka Lakes Association
Appellant: Rick Spence and Friends of Port Carling
Subject: Proposed Official Plan Amendment No. 40
Municipality: Township of Muskoka Lakes
OMB Case No.: PL091173
OMB File No.: PL091173

APPEARANCES:

Parties

Counsel

Township of Muskoka Lakes

E. Veldboom

District Municipality of Muskoka

D. Royston

Hanna's Landing Inc.

L. F. Longo

Friends of Port Carling Inc.
Muskoka Lakes Association; and
Rick Spence

S. D'Agostino

DECISION DELIVERED BY A. CHRISTOU AND ORDER OF THE BOARD

This hearing of the Board, held on November 7, 2011, was to receive from the Parties the final coordinated wording for OPA 40, that the Board had directed the Parties to undertake in its August 3, 2011, Decision. The revisions were to include the following with respect to Hanna's Landing land: the application of policies presented in Exhibit 75; the removal of the "tail" from the area to be incorporated in the urban boundary; the provision for only detached dwellings on the "knoll"; the showing of proposed land uses on a map; limiting of Neighbourhood Commercial (NC) to 465 m²; and providing policy direction for Low and Medium density housing to be low profile.

The Board thanks the Parties for their keen interest and efforts in this endeavor. Although there was partial agreement on some matters, the Parties did not resolve all their differences. In the absence of compromise, the Board will finalize OPA 40 on the basis of its findings and directions already specified in the original Decision and as discussed herein.

The areas the Parties agreed upon are as follows:

1. There are no issues arising with respect to the “Intervening Lands”;
2. At least one publicly owned road is acceptable;
3. The term “attainable housing” is acceptable in place of “affordable housing”;
4. No additional docking facilities are to be provided, but reconfiguration is acceptable;

The areas of disagreement with respect to Hanna’s Landing are as follows:

1. The total number of residential units;
2. The actual location of the Highway Commercial nodes;
3. Whether 15% of “attainable” units is to be provided on each phase of development;
4. The extent of renaturalization of the Shoreline Open Space in Phase 1;
5. Building height be tied to the “tree canopy”;
6. The designation of the “knoll” to Park;
7. The development of next phases be conditional on substantially sold houses of previous phase.

The Total Number of Residential Units.

In its deliberation, the Board considered on page 29 of the Decision, the number of units proposed for Hanna's Landing. For the 54 acres, 330 were proposed, inclusive of a "seniors" building. However, when the 8-acre "tail" was excluded from Hanna's Landing (approximately 15 percent of the land), this could commensurably have reduced the units to about 280. The municipality advised at this hearing that 295 residential units would be acceptable.

OPA 40 provides for specific densities in units per hectare within each of the residential designations: Low Density Residential at 15 units per hectare (6 upa), Medium Density Residential at 20 units per hectare (8 upa) and High Density Residential at 30 units per hectare (12 upa). This measure is to ensure the maximum number of units within the land designated for each of the respective densities. There is no minimum density proposed. If, for some reason, these density values provided by the Municipality are not to be trusted, then an absolute maximum number of units ought to have been proposed originally. Although there was discussion about the veracity of these density figures, the Board heard no compelling evidence to support that these values were incorrect. Taking into account the historical rate of growth in this area, the proposed densities would appear to be liberal, but not unrealistic. Further, the terrain and other limitations on the property, combined with the policies already contained in OPA 40 are sufficient to accommodate a reasonable number of dwelling units.

The difference between a total of 330 units and 295 units now proposed is not particularly significant, if taken over the 20-year horizon of the plan. The Board is satisfied that the gradation of densities in OPA 40 is sufficient to determine a potential unit yield and is not prepared to prescribe an upper limit of units for Hanna's Landing in OPA 40. However, should the developer decide to agree with the municipality to a maximum commitment of 330 units, it may do so.

The Location of the Highway Commercial Node(s).

Neighbourhood Commercial (NC) is defined in the OP and includes a clubhouse. Hanna's Landing would like to build a clubhouse near the water. Some of the Parties agreed that a portion of the NC allocation could be situated in the Low Density Residential designation, as long as it is adjacent to the public street. The municipality

and others prefer that the NC node be situated near the entrance to the development and along the public street.

Given the limited size of the NC node that has been allocated (465 m² or 5,000 sq. ft.), it would be up to the developer to determine if they wish to split the NC designation. The Board is prepared to allow up to a maximum of 116 m² of the Neighbourhood Commercial designation to be located in the Low Density Residential area on the Hanna's Landing property. This may include a clubhouse as currently permitted in the NC designation. A second NC designation, not exceeding 349 m² in size, may be situated within the Higher and or Medium density designations. The actual location(s) can be determined at the Zoning stage.

Should 15% of “Attainable” Units be Provided on Each Phase of Development?

The Board heard in evidence and accepted in policy in OPA 40, that a minimum 15 percent of the dwelling units in the Hanna's Landing development are to be “attainable”, some perhaps in the form of “seniors” housing. There was no opinion evidence presented at the hearing that 15% affordable housing was to be provided on each phase of development. There was no compelling evidence adduced that Hanna's Landing does not intend to provide its required share of affordable housing. The municipality has policy in its OP and mechanisms available at its disposal to ensure that this type of housing is provided in the development over all, regardless of phasing. The Board therefore accepts there is sufficient policy to ensure the whole allocation will be provided and will not require a phased allocation at this time.

The Extent of Re-naturalization of the Shoreline Open Space in Phase 1.

A 30 m (100 ft.) wide strip of land along the shoreline on the Hanna's Landing property is to be designated Shoreline Open Space. This is one-third more land than what is required on other properties in the municipality that abut the shoreline. The Parties are to be commended for achieving this commitment and the developer for accommodating this wider strip of land, which will provide greater protection to the natural environment.

The OP contains extensive and comprehensive policies that govern all activity on this strip and provide guidance for its re-naturalization. The municipality now wishes the

Board to rule that the total re-naturalization of the shoreline be achieved on the first phase of development, with a minimum of 60% re-naturalization. Although this may be a desirable objective for the municipality, its introduction at this late stage would appear to be an afterthought, as the timing and phasing issue was not explored in detail at the hearing and the evidence was not tested. There is also an element of fairness raised by this proposal, should the Board require this site to provide more stringent protection measures than all other properties in the municipality. A policy should apply equally to every one affected. If the municipality wishes to implement such radical change to its policy, it may do so at the next five-year review of its Official Plan.

The Board is satisfied that the robust shoreline protection policies already contained in the OP, requiring 75% re-naturalization target, will adequately ensure the timely implementation of re-naturalization of the Hanna's Landing shoreline. The Board is not in a position to retroactively apply such policy to OPA 40. The rules of natural justice and procedural fairness do not allow the Board to reopen the matter for new discussion at this late date.

Building Height Tied to the "Tree Canopy".

There are many trees on the Hanna's landing property, many exceeding 15 m to 20 m (45 to 60 feet) in height. On page 33 of the August 3, 2011, decision, the Board required "*a further policy should clarify that the low and medium density areas shall be low profile in nature.*" Detached dwellings seldom exceed two to three storeys in height, depending on the terrain, while wood construction of multiple dwellings cannot exceed four storeys in height, according to the building code. The evidence also was that most higher density buildings in the Township do not exceed three to four storeys. Four-storey buildings would not generally exceed 12 m in height. This would appear to be well within the tree canopy that prevails in the area. On this basis, the Board finds no compelling reason to incorporate redundant policy in OPA 40. Building height is best regulated in the Zoning By-law.

The Designation of the "Knoll" to Park.

On page 16 of the August 3, 2011, decision, the Board stated with respect to the knoll, that it "*...will allow only single detached residential development in this area, with a request that tree cutting be kept to absolute minimum.*" At the November 7, 2011,

hearing, the municipality presented a revised Schedule G2B, proposing that the top of the knoll be designated Open Space, together with an Open Space corridor leading to the Shoreline Open Space Area. This is new information, which was not presented by the municipality at the original hearing, and its merits were not tested by Counsel. It appears to be an after the fact wish of the municipality and different to what the municipality originally intended for this area. Further, the OP permits parks in all residential designations. Consistent with the advice recently given by the Township planner to Council, the municipality may acquire any required parkland for this development through the development process, pursuant to *Planning Act* requirements. The Board concurs.

The rules of natural justice and procedural fairness do not allow the Board to reopen the matter for new discussion or new evidence at this late date. The Board must therefore decline the municipality's proposal to designate the knoll as park or Open Space.

The Board is satisfied with the District's modifications, which provide for the designation of the waterfront and the steep slopes to the north and west of the knoll to Open Space, as generally shown on the revised Schedule G2B.

Should the Development of Next Phases be Conditional on Substantially Sold Houses of Previous Phase?

Given the projected rate of growth in Port Carling, phasing of development of the Hanna's Landing property over a number of years would be an acceptable program. Given the length of the development process and the high cost of development, it is not common or prudent that a builder would construct houses before adequate sales materialize. The Board heard no evidence to support the proposed condition and does not find that such policy is appropriate or necessary in OPA 40. This would be best addressed in a subdivision or development agreement.

Other

The Parties, on consent, requested that the Board add Policy 19.25.3.10, Phasing, to OPA 40 (page 21 of Mr. Longo's submission) which was inadvertently omitted in the Proposed Revision Charts. The Board will do so.

In its August 3, 2011, decision, page 38, the Board incorrectly attributed Exhibit 75 to Mr. Hammond. The Board acknowledges that Ms Walton submitted Exhibit 75.

Disposition

THE BOARD ORDERS that the appeals are allowed in part and Amendment No. 40 to the Official Plan of the Township of Muskoka Lakes is modified as set out in Attachment 1 to this Order by repealing and replacing the respective Policies, and as modified is approved.

THE BOARD ORDERS the Township of Muskoka Lakes to revise Schedule G2B – Port Carling Expansion Area 2011, submitted to the Board on November 7, 2011, as follows:

1. Delete the Neighbourhood Commercial designation in its entirety and reinstate the Medium Density Residential and High Density Residential designations accordingly;
2. Delete the Open Space designation from the developable area of the knoll and the linear Open Space designation leading to the Shoreline Open Space Area and reinstate the Low Density Residential designation;
3. Apply the Open Space designation to the steep areas to the north and west of the knoll.

This is the Order of the Board.

“A. Christou”

A. CHRISTOU
MEMBER

ATTACHMENT 1

Revisions to the Site Specific Policies in OPA 40

19.25 Additional land in Lot 32 and 33, Concession 2 and 3 and Part Lot 32 and 33, Concession 2 and 3, in the former Township of Medora, are included within the boundary of Port Carling to meet an identified need for residential and resort commercially designated land.

19.25.1 Tourist Commercial

For the lands described as Part Lot 32 and 33, Concessions 2 and 3, Medora (Anderson) designated as "Resort Commercial" and "Environmental Protection", on Schedule G2 and further identified on Schedule G2B, development shall proceed in accordance with all applicable policies of this Plan except that only one accessory dwelling is permitted. In addition, where an extension of water and sewer services is required to service development, the developer shall finance such an extension. Development and site alteration shall not be permitted until an Environmental Impact Study (EIS) has demonstrated that the proposed development will not negatively impact the features and functions of a wetland located on the subject lands.

19.25.2 Existing Residential - South East Mirror Lake

For the lands described as Part lot 32, Concession 2, Medora (South East Mirror Lake) designated as "Residential" on Schedule G2 and further identified on Schedule G2B, development shall proceed in accordance with all applicable policies of this Plan. In addition, the following policies shall apply:

19.25.2.1 Only single detached dwelling units shall be permitted.

19.25.2.2 In order to protect the character of the shoreline area on these lands, only Low Density residential development in accordance with Section C.11.2 shall be permitted within the first 60 m (200 feet) beyond the shoreline area to the satisfaction of the Township.

19.25.2.3 In recognition of the location of these lots on the shoreline and in accordance with Policy C.16, lots abutting the shoreline shall have a minimum frontage of 30 metres (100 ft.).

- 19.25.2.4 The retention of natural vegetation along the shoreline shall be encouraged to protect and preserve the littoral zone. The role of natural vegetated shorelines in buffering water bodies from erosion, siltation and nutrient migration adjacent to the sensitive littoral zone is critical to the protection of water quality. The frontage of a lot will be maintained in natural state to a minimum of 75% natural shoreline and a depth of 20 m (66 ft.), shoreline setback area, where new lots are being created and where vacant lands are being developed.
- 19.25.2.5 This shoreline setback area will be retained or restored to a natural state using a mix of native trees and shrubs to effect and maintain a vegetative buffer which in addition to protecting the littoral zone, minimizes the visual impact of development from the water.
- 19.25.2.6 All new development shall be on municipal sewer and water services.

19.25.3 Residential – Former Glenwood Trailer Park

For the lands described as Part Lot 32 and 33, Concession 2 Medora (Former Glenwood Trailer Park) designated as “Residential (Former Glenwood Trailer Park)” on Schedule G2 and further identified on Schedule G2B, development shall proceed in accordance with all applicable policies of this Plan. In addition, the following policies shall apply:

- 19.25.3.1 Permitted Uses:
- 19.25.3.1.1 Residential uses will predominate.
- 19.25.3.1.2 Limited Neighbourhood Commercial uses (such as a convenience store, personal service shop, club house with accessory food service) are also permitted. Such neighbourhood commercial uses will be located with direct access to the main access road, will be designed to be compatible with the surrounding residential neighbourhood and will be limited in size to a maximum of 465 square metres (5,000 square feet) gross floor area. Any Neighbourhood Commercial use located in the Low Density area shall be restricted in size to 116 square metres.

- 19.25.3.1.3 The residential unit and boat storage building existing as of October 26th, 2010 may be retained and incorporated into the development.
- 19.25.3.2 **Servicing:**
- 19.25.3.2.1 All development shall be serviced by municipal sewer and water.
- 19.25.3.2.2 Where an extension of water and sewer services is required to service development, the developer shall finance such an extension.
- 19.25.3.3 **Roads/Access:**
- 19.25.3.3.1 At least one public road, maintained year round, shall be provided and financed by the developer.
- 19.25.3.3.2 Despite Section C.5, other roads which connect to the main access road and which provide access to a limited amount of development as determined by the Township may be owned and maintained by a condominium corporation.
- 19.25.3.3.3 The rights afforded by existing rights-of-way shall be recognized and addressed in the development of these lands, including any road construction. Access shall continue to be provided to existing lots.
- 19.25.3.4 **Density:**
- In order to protect the character of this area within the Port Carling Urban Centre, the following hierarchy of residential densities has been identified on Schedule G2B.
- 19.25.3.4.1 **Low Density**
In this area, development shall proceed in accordance with section C.11.2, except that the maximum density shall be limited to 15 units per gross hectare.
- 19.25.3.4.2 **Medium Density**
In this area, development shall proceed in accordance with Sections C.11.3.4 – C.11.3.10, except that the maximum density shall be limited to 20 units per gross hectare.

- 19.25.3.4.3 **High Density**
In this area, development shall proceed in accordance with Section C.11.3.14 – C.11.3.19, except that the maximum density shall be limited to 30 units per gross hectare.

- 19.25.3.5 Range of Housing**
- 19.25.3.5.1 A range of types of housing is permitted and encouraged. A minimum of 15% of the units will be attainable as defined by the District of Muskoka.
- 19.25.3.5.2 Maximum unit sizes may be imposed in an implementing zoning by-law.

- 19.25.3.6 Shoreline Open Space Area**
- 19.25.3.6.1 No new development, including roads, shall occur within 30 metres (100 ft.) of a navigable waterway.
- 19.25.3.6.2 The shoreline Open Space area as shown hatched on Schedule G2B will be re-naturalized to attain a target of 75% natural shoreline along the width of the natural shoreline.
- 19.25.3.6.3.1 The Shoreline Open Space area shall be retained in one ownership as a block or common element created by a plan of subdivision or condominium description. A portion or all of the lands in this area may be transferred to public ownership.
- 19.25.3.6.4 Notwithstanding Section 19.25.3.6.1, within the Shoreline Open Space Area, only meandering pathways or access points to the shoreline, minor structures such as gazebos of limited size, benches and a pumphouse are permitted. Where possible, pervious material on pathways will be preferable.

- 19.25.3.7 Dockage**
- 19.25.3.7.1 The total area of dockage shall not exceed that which existed on October 26th, 2010.
- 19.25.3.7.2 Within narrow water bodies, the length of docks shall be limited to what existed on October 26th, 2010.
- 19.25.3.7.3 Outside of narrow water bodies, provided that the total area of dockage does not exceed that which existed on October 26th,

2010, it may be reconfigured and rebuilt in compliance with Township regulations.

19.25.3.7.4 No boathouses/boatports are permitted.

19.25.3.8 Site Design

19.25.3.8.1 All lands shall be subject to site plan control.

19.25.3.8.2 Development in the low and medium density areas, as shown on Schedule G2B, shall be low profile in nature and shall be sympathetic to the natural landscape and character of the area.

19.25.3.8.3 No new development except minor structures shall occur within the 15 m (50 ft.) of a side lot line forming part of the perimeter of the property ownership of the former Glenwood Trailer Park holding as on October 26, 2010, save and except for the main access road.

19.25.3.8.4 Minimum setbacks shall be established in the implementing Zoning By-law for development near or adjacent the rights-of-way.

19.25.3.9 Knoll Area

The knoll area, as shown cross-hatched on Schedule G2B, is a rock promontory located on the northwest portion of the former Glenwood Trailer Park property that contains steep slopes and mature trees and any development in this area shall be sympathetic to its character.

19.25.3.9.1 The following principles shall guide development on the knoll:

- i) built form shall be low profile in nature;
- ii) development shall be restricted to single detached dwellings;
- iii) natural vegetation on slope faces shall be preserved and no development will be permitted in the area designated as Open Space and shown cross hatched on Schedule G2B;

- iv) development will fit into and respect the natural character of the area. Natural form and contours should be preserved by ensuring that site alteration and tree cutting is kept to a minimum;
- v) natural infiltration, storm water management and construction mitigation techniques will be used; and
- vi) the Township's Site Alteration and Tree Cutting By-laws, as identified in sections F.19 and F.20 of this Official Plan shall apply to any development including roads on this portion of the property.

19.25.3.10 Phasing

- 19.25.3.10.1 Development shall proceed in phases.
- 19.25.3.10.2 Water and sewer servicing capacity allocation will be in accordance with an Allocation Strategy approved by The District Municipality of Muskoka and the Township.
- 19.25.3.10.3 The first phase of development shall contain the main access road that is publicly owned and maintained year round.

19.25.3.11 Parkland Dedication

- 19.25.3.11.1 The Township shall consider appropriate lands as part of a parkland dedication under the *Planning Act*.
- 19.25.3.11.2 Any public land shall be accessed by a year round, publicly maintained road.