

Issue Date:

August 3, 2011



Ontario

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

PL091173

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

Township of Muskoka Lakes
District Municipality of Muskoka
Hanna's Landing Inc.
Friends of Port Carling Inc.
Muskoka Lakes Association; and
Rick Spence

Participants

H. Malec

Counsel

E. Veldboom
D. Royston
L. F. Longo
S. D'Agostino, L. Roscoe

DECISION DELIVERED BY A. CHRISTOU

INTRODUCTION

In 2006, the Township of Muskoka Lakes (Township) undertook a comprehensive review of its 1989 Official Plan (OP). The five year review (conformity

exercise) included a number of studies and the Township also participated in growth studies produced for the District Municipality of Muskoka (District) which projects a District population increase from 57,600 in 2006, to 79,500 in 2031 and in Muskoka Lakes from 6,500 to 8,700 respectively. The OP review resulted in the adoption of Official Plan Amendment 40 (OPA 40) which updates the Township's Official Plan and also allowed an expansion of about 81 acres to the Port Carling urban boundary. The District Council is the planning approval authority and it approved OPA 40 with modifications in October 2009, but excluded from the boundary expansion 8 acres from Hanna's Landing property.

The purpose of OPA 40 is to provide comprehensive planning policies to manage growth and govern development in the Urban Centres, Communities, Rural and Waterfront areas of the Municipality over the next 20 years. OPA 40 sets out Council's vision and sets the goals, objectives and land use policies that will guide economic, environmental and community building decisions affecting physical change and land use within the Township.

OPA 40 has attracted a number of appeals which led to this hearing. This hearing was generally about growth, specifically the proposed expansion of the urban boundary of Port Carling, and how this growth should be managed in an area of the province which is beautiful, sensitive, challenging, attractive and desirable as a summer haven and playground by many Ontarians who own grand waterfront summer homes along the many lakes and rivers of Muskoka. They flock to this area in the summer months, apparently "ballooning" the Muskoka area population from about 57,000 to 200,000 people (Muskoka Lakes to 35,000 according to the District Plan). The Board was told that people come to Muskoka to get away from urban development; to have "intimate relationship with the lakes"; enjoy cottage and waterfront recreation experience; "cruising"; water skiing and watercrafts. As such, they provide economic support for the area.

The risks, the benefits, the challenges, the policies, the facts and figures of growth in OPA 40, were painstakingly presented by several expert witnesses and were explored, argued, tested and dissected in detail in cross-examination by experienced and able Counsel during 17 hearing days, extending over a period of four months. The hearing was also attended religiously by a dedicated following of local residents, whom the Board would like to thank for their interest, patience and attentive participation. Regrettably, or perhaps due to a misunderstanding, no one from the community spoke to the Board in support of or in opposition to OPA 40. Hopefully the Parties to this hearing may have addressed their concerns.

The Appellants

1. Hanna's Landing Inc. (HL) has appealed OPA 40 (Tab 63) because it is their opinion that the expansion of Port Carling's urban area boundary ought to have included all of their 54 acre (ac) property, as was originally recommended by the Township Planner and approved by Township Council when it adopted OPA 40. The District Council's decision has excluded an 8 ac portion of their site (generally referred to as the "tail") and the excluded lands continue to be zoned WC3 – Tent and Trailer Park and have existing commercial development rights.

With the exception of the 8 acres excluded from the urban expansion by the District modification, HL sided with the Township and the District on all other matters in support of OPA 40.

Of note here is the fact that there was no planning application by HL before the Board, although an OPA may have been filed in 2006 or 2007. Yet, this property was front and centre and a great deal of the hearing focused on its potential land use designation, density and development pattern.

2. The Muskoka Lakes Association (MLA) which represents over 2,000 waterfront property owners throughout the District Municipality of Muskoka, have alleged concerns with OPA 40 that it provides for the expansion of the urban boundary of Port Carling and designates as "**Urban Residential**", land formerly designated Waterfront and Rural (Tab 62). The expansion and accompanying land use policies will have the effect of destroying the rural waterfront character of land along the Indian River and Mirror Lake, south of the urban centre of Port Carling. The proposed boundary expansion and land use policies under the new designation are inconsistent with provisions of the PPS, do not conform to policies in the District's OP and are not substantiated by the District's most recent Growth Strategy Report. Therefore, the expansion is not required. There is sufficient land to meet the expected housing demand within the current boundary.
3. Rick Spence and the Friends of Port Carling (about 200 families) have alleged concerns with OPA 40 as it facilitates the expansion of the urban boundary of Port Carling in ways that are inconsistent with the PPS, the District's OP, the general intent of the Township's own OP and are not substantiated by the District's Growth Strategy Report (Tab 61).

With the exception of the above concerns, the Parties did not express issues with the remaining contents of OPA 40.

The Board will now grapple with the issues and evidence presented to determine whether a boundary expansion is warranted or if it is appropriate in Port Carling, within the top down policy framework of the Province and the Muskoka District and Township Official Plans. If found appropriate, how much land should be included to satisfy growth and housing demand over the next 20 years (to 2031), and how the policies in the OP should be morphed to better guide development in the expanded area.

Preliminaries

At the start of the hearing, Mr. H. Malec, who owns a 5 acre parcel of land on Stephen Road, which is about 800 m from the Port Carling municipal offices, requested Participant status. On consent, the Board allowed Mr. Malec's request. He had previously appealed the boundary expansion in 1989, but the Board dismissed that appeal. He has not appealed OPA 40. He would like his property to be included in the urban boundary now and asked the Board to consider his request.

Based on the evidence at this hearing, the Board finds Mr. Malec's request can not be met at this time and his property can not be included in the urban boundary because it is quite a distance from the current urban boundary.

Mr. Veldboom, Counsel for Township of Muskoka Lakes (Township) and Mr. Longo, Counsel for Hanna's Landing Inc. (HL) advised the Board that discussions have been ongoing with some of the Appellants and the Planners are working on possible settlements. They requested the Board to consider standing down for the rest of the day to allow further discussions to continue. However, there was an issue with the availability of Professor Amborski, a witness for the Friends of Port Carling, who would not be available after the end of the first week.

Mr. D'Agostino, Counsel for the Friends of Port Carling, MLA and Spence submitted that his clients are opposed to the boundary expansion and do not agree with the growth projections and with the development policies in OPA 40. He argued that the Parties have been meeting for several months but no settlement has been agreed to so far. He submitted that the hearing should commence as scheduled, starting with Mr. Amborski's evidence and when he is finished with cross-examination the Parties can continue their discussion. His premise was that the crux of the matter is growth. OPA 40 depended on the District's (Watson) Growth Report. He will be questioning the growth forecasts, residential densities and the expansion area through Professor

Amborski. He submitted the 20 year growth requirement could be accommodated within the existing Port Carling boundary through residential intensification opportunities.

On consent, the hearing commenced as discussed and the hearing was recessed at the end of Mr. Amborski's evidence. For the record, upon reconvening the hearing the second week, there was no report as to any settlement being reached between the Municipality and HL and the hearing proceeded in earnest.

CONTEXT AND GEOGRAPHY

To put the matter into context, a brief background on the geography would be helpful. The Township of Muskoka Lakes is generally a seasonal recreational community along the waterfront of many lakes and had a population (in 2006) of 6,700 people. The population in the summer grows to between 25,000 and 27,000 according to MLA. It has two urban centres with year round population – Port Carling, the subject of this hearing, and Bala. The recreational/tourist Village of Minett is also in this Township. There are some 80 lakes of various sizes in the Township and they all accommodate seasonal development. Muskoka is located in the Canadian Shield, a very hard rock formation that together with the many slope landforms poses some serious limitations to development, and particularly underground servicing.

Port Carling is a graphic town in the heart of Muskoka, surrounded by and built along a 7 kilometre shore line along the waterfront of Lake Joseph, Lake Rosseau, Lake Muskoka, Mirror Lake and Indian River and other smaller lakes. It is a settlement area according to the PPS. The waterfront in the urban area of Port Carling is approximately 4,000 metres long. It consists of residential, open space, commercial and recreational uses. The town has approximately 530 houses, generally single detached houses on large lots ranging in size from 0.5 to 2.5 acres. Some are seasonal dwellings. The density is about two units per acre. About 400 of the houses are connected to

municipal sewers and water. The population is estimated to be about 900. There are no schools or hospital in town, but there is a fire hall, a community centre, an ice rink, a curling rink and a commercial core with a pharmacy, food store, liquor store and several restaurants serving the population. Business is generally seasonal, with many stores closing in the fall and winter season.

Some of the experts opined there is a demand for permanent housing here, allegedly to accommodate the aging population who wish to continue to stay in Port Carling as they scale down their life styles, plus the new early retirees. They need different, denser types of housing, such as condominium townhouses, but there is very little choice available in town presently, as only two townhouse developments have been approved. Other long term projections seem to point there is growth potential to accommodate the baby boom generation which is now in the retirement stage and they have money and leisure time and are attracted to Muskoka for seasonal or retirement housing and recreation.

The Urban Expansion Area (Exhibit 17)

The various growth estimates range from a low of five to a high of 94 gross acres needed to accommodate the anticipated growth over the next 20 years, with various other estimates in between. The District's Growth Strategy estimated 686 units may be required, but identified 30 new acres of land would be required for the expansion. OPA 40 provides for an 81 acre expansion of the Port Carling urban boundary, with the land to be redesignated Urban Centre. The proposed expansion area on OPA 40 is made up of the following parcels and or ownerships:

1. The Anderson property – 18.24 ac on the east side of HWY 118, is to be used for motel and restaurant. OPA and rezoning applications have been submitted. It is not in the Muskoka Waterfront, but abuts a small lake. It will not generate

residential activity. MLA and the Friends have no issues with this designation and boundary expansion.

2. The "Intervening Properties" between the current boundary and Hanna's Landing, comprise nine privately owned properties fronting on Silver Lake, for a total area of 17 acres. The properties range in size from 0.4 ac to 4 acres. There are no redevelopment applications for these properties. The land is Zoned Waterfront Residential and requires a minimum lot frontage of 200 ft and minimum lot area of 1 acre.

3. Hanna's Landing owns two parcels of land, approximately 54 acres in total: It was the former Glenwood trailer park (51.3 acres) and an abutting 2.7 acre parcel with a residential dwelling on it. It fronts on Omeca Road on the east and it has approximately 1,060 feet frontage on Indian River and 180 feet frontage on Mirror Lake on the west. It is outside the urban boundary of Port Carling, off Muskoka Road (HWY 118). It is designated Waterfront and with the exception of the one dwelling, it is vacant land. With the 8 acres excluded by District Modification, 46 ac remain in the expansion area. The land is zoned Waterfront Commercial.

Hanna's Landing acquired the land for potential development and it submitted applications for residential development to the Township, as the Township was embarking on its five year OP review. They would like a residential designation with a small neighbourhood commercial component, to serve the residents of the area.

The Evidence

The Board heard expert opinion evidence from the following people:

For the Appellants:

David Amborski, Land Economist – Land use planning and land economics, growth under the PPS, consistency. Marie Poirier, Land Use Planner – PPS, District Plan, Township Plan, consistency, and OP conformity. Anne McCauley, Land Use Planner; OPA 40 policies.

For the Municipality:

Derek Hammond, Land Use Planner for the District - review of Watson Report, review of OPA 40 and recommendations for modifications. Steve Fahner, Land Use Planner for Township; Jamie Cook, author of Watson Growth Report, - discussed findings and recommendations.

For Hanna's Landing:

Jeannette Gillezeau, Land Economist and Planner – growth management, demographics; Margaret Walton, Land Use Planner – consistency with PPS, conformity with OP, sound land use planning.

A number of themes evolved throughout the hearing and the Board will endeavour to address them accordingly.

DISCUSSION AND FINDINGS - OPA 40

Does OPA 40 Conform to the District Plan?

The District Plan (Tab 51) sets the stage for how planning in the Municipality is governed. Urban Centres contain rural, urban and waterfront designations. The OP states that there is room in Muskoka to protect the environment and accommodate growth. The Township OP is intended to contain detailed policies for growth and address specific development issues. Urban Centres such as Port Carling are expected to grow both physically and in population. Expansion of boundaries is to be addressed

via local Official Plans through comprehensive reviews. The District however is responsible for generating growth and housing demand figures for lower tier municipalities through comprehensive growth studies. A comprehensive two phase Growth Strategy (also referred to as the Watson Report) was carried out for the District and is included in Tab 64 of the Exhibit Book. Phase 1, is the Background Report and Phase 2 contains the long term analysis and a breakdown of projections. It was approved by the District Council.

The PPS limits growth studies to a 20 year horizon and does not allow growth considerations beyond the 20 year period. The OP review started in 2006 and OPA 40 was approved by Council in 2009. Technically OPA 40 should have a 20 year horizon to 2029. However, the 20 year growth horizon was pegged by Council to 2031 and was approved by the District. Although there was some discussion on the correctness of using 2031, several of the experts concurred that it is the appropriate growth horizon. Given that the appeal hearing concluded in 2011, the Board will accept this as the target year for growth projections for OPA 40.

OPA 40 is a comprehensive document produced through an OP review (involving some 30 studies and reports) under the *Planning Act* and applies to the whole of the Township. It went through various public meetings, consultations and discussions at the Township and the District levels and was approved by both Councils. Council gave consideration to all submissions, including MLA's, and concluded that OPA 40 is appropriate and represents good planning. Similarly, both Councils have determined the expansion of the Port Carling boundary is appropriate.

As a stand alone document, OPA 40 would be considered to be in conformity with the PPS. The District is on record that OPA 40 is both consistent with and conforms to the District Plan and the process envisioned by the PPS for boundary expansions has been met. Based on the evidence and discussion that follows in this decision, the Board agrees that this test has been met.

Is the Urban Boundary Expansion consistent with the PPS?

Policies 1.1.3.9 and 1.2.2 of the Provincial Policy Statement (PPS) provide the following:

- 1.1.3.9 A planning authority may identify a *settlement area* or allow the expansion of a *settlement area* boundary only at the time of a *comprehensive review* and only where it has been demonstrated that:
- a. sufficient opportunities for growth are not available through *intensification*, *redevelopment* and *designated growth areas* to accommodate the projected needs over the identified planning horizon;
 - b. the *infrastructure* and *public service facilities* which are planned or available are suitable for the development over the long term and protect public health and safety;
- 1.2.2 Where planning is conducted by an upper-tier Municipality, the upper-tier Municipality in consultation with lower-tier municipalities shall:
- a. identify, coordinate and allocate population, housing and employment projections for lower-tier municipalities. Allocations and projections by upper-tier municipalities shall be based on and reflect *provincial plans* where these exist;
 - b. identify areas where growth will be directed, including the identification of nodes and the corridors linking these nodes;
 - c. identify targets for *intensification* and *redevelopment* within all or any of the lower-tier municipalities, including minimum targets that should be met before expansion of the boundaries of *settlement areas* is permitted in accordance with policy 1.1.3.9;

The District Municipality of Muskoka is the upper tier approval authority in a two tier jurisdiction. Under the PPS it is responsible for coordination of planning for growth and water and sanitary sewer services and for the regional road system. Muskoka is not subject to *Places to Grow Act* and the Growth Plan. The District commissioned growth studies as required by the PPS. The Watson Phase II Growth studies formed the foundation for the growth projections that have been used by the Township to arrive at its decision that over the next 20 years there will be demand for housing and that additional land should be set aside. The OP review resulted in the adoption of OPA 40 which allowed a proposed expansion of about 81 acres to the Port Carling urban

boundary. The District Council approved OPA 40 with several modifications (Tab 54), but excluded from the boundary expansion 8 acres from Hanna's Landing property.

The Appellants (except for HL) argue that the PPS qualifications are not met and thus there is no authority to expand the Municipal boundary. They have asserted that the growth projections are exaggerated in the Growth Report; there is an oversupply of lots in relation to demand for housing in the Township; and there is no need to expand the Port Carling boundary as proposed, because any anticipated growth can be accommodated through intensification and redevelopment within the current boundaries. We will expand on intensification later.

With respect to PPS consistency, and based on the evidence adduced, the Board is satisfied that the Township considered directions for growth through detailed study in its East Side Expansion. The review of population and growth projections was carried out by the upper tier Municipality and a comprehensive review of the OP was initiated by the lower tier planning authority. The District affirmed its allocation of population, housing and employment projections (Exhibit 83) and concluded that the Municipality meets the PPS requirement for three-year 'draft approved' land and the 10-year designated land in the OP. On this basis, the Board is satisfied that the Urban Boundary Expansion is consistent with the PPS policy 1.1.3.9.

Projections and Forecasts

Municipalities use a variety of tools to forecast long term growth and hence land requirements. The Ministry of Municipal Affairs and Housing (MMA) developed Projection Methodology Guidelines in 1996. Some municipalities and land economists choose to use them as a basis for their projections, others don't. They start by establishing population scenarios, which, by use of formulae are converted to dwelling units and eventually in land needs in terms of acreage. The latter is derived from density allocations in the various residential designations in the OP. Mr. Cook opined that

Growth forecasts are not an exact science and they are based on the best available information at the time. He concluded it is best to use realistic rather than theoretical concepts.

OPA 40 has introduced residential density changes in the Township OP. It increased the density from 6 units per acre (upa) to 8 upa for Low Density single detached residential in the proposed expansion area. It also introduced Medium Density residential designation at 12 upa and High Density residential designation at maximum 24 upa. The Appellants asserted that this increase in density permission and the fact that high density, through intensification, could be accommodated in the core, was not considered in the Growth Report. This omission incorrectly overstated the need for boundary expansion.

According to the Appellants (Friends and Spence), having higher densities of 12 upa gross in Hanna's Landing which is located in the outskirts of town is not appropriate, as the higher densities are best suited to the core of Port Carling, as dictated by the PPS and good planning principles. From a pure planning perspective this would appear to make sense.

However, it is important to note that the MLA was able to arrive at a compromise position during the hearing on the premise that if the waterfront is protected by more stringent policies on Hanna's Landing property, then the increased density would be acceptable. Further, Ms McCauley suggested that should the Board see merit in allowing OPA 40, there should be a number of changes made and she offered Exhibit 36 with her proposal which includes the following:

- . the minimum setback from existing abutting cottage properties be increased to 100 ft to protect the current owners.
- . building height be restricted to three storeys.
- . lot frontage should be increased from 50 ft to 100 ft, to reflect the steep slope character on the HL site.

new urban design policies be incorporated.

Exhibit 36 was subsequently revised and replaced by Exhibit 75, which contains potential Site Plan Policies to the OPA 40 (new Section 19.25.3), that are acceptable to the Municipality.

Furthermore, an interesting "revelation" appears to have developed on the Municipality's position during the hearing. Mr. Fahner opined that the 12 upa overall density (although more consistent with what the PPS aims to achieve) would not be attainable in Hanna's Landing and the number of units anticipated may be high. If that is so, and this density is not attainable, the question arises: why was it recommended in OPA 40?

How much of the gross acreage is developable? The factor is usually referred to as "net to gross ratio" and in most municipalities it is between 50% and 65% of gross acreage is not available for development, depending on the amount of land to be consumed by roads, parks, open space, storm water management ponds, hydro rights of way and other municipal infrastructure. It was suggested that the net to gross ratio would be 65% at Hanna's Landing, particularly given the steep slopes. Ms Walton suggested that 330 units could be developed under the proposed densities, but if the land was to develop with detached dwelling units only, 250 houses at 5 upa would be possible.

Under cross examination Mr. Fahner revealed that a density of 5 upa for Low Density Residential would be more appropriate for Hanna's Landing and Mr. Hammond suggested 6 or 8 units would be a more appropriate overall density. Again, this is slightly different from the minimum density of 7 units the Watson report recommends. It did not provide a maximum. Unfortunately, this waffling and inconsistency with densities raised credibility issues with other numbers in OPA 40, which Mr. D'Agostino explored fully and thoroughly.

With respect to the "intervening lands" and Hanna's Landing, the MLA representative opined there should be additional site specific policies for any potential redevelopment and only single detached dwellings be permitted. There was no objection to this recommendation. The Board finds this adjustment is appropriate and should be incorporated in the OPA.

The "Knoll"

On part of the Hanna's Landing property there is a hilly area, a 5.6 ac "knoll", which is a prominent feature when viewed from the water. It is occupied by tall trees, which tend to exaggerate its height. The land drops off sharply toward the north and west to the water of Silver Lake where Hanna's Landing has 187 ft frontage. MLA advocated that additional policies are required to ensure there will be no blasting, no cutting of the trees and no development be permitted on this knoll in order to protect it as a landmark. The density of this area should be incorporated or transferred on the rest of the site.

The Municipality's evidence indicates that this is not the only prominent landform in Muskoka. Mr. Fahner testified that specific policies in the OP pertain to Natural Areas and "unique" areas are specifically designated. Vistas and natural features are protected by OP policy. He affirmed that there are many such knolls and high points which are used for prominent buildings in Muskoka. This knoll is not identified as being of provincial significance; it is not a heritage area; and is not unique. Therefore there is no need to prohibit or restrict development outright. Ms Walton affirmed the view will remain as there is no intent to remove all the trees; and there is more than adequate buffer for property owners on Mirror Lake.

The Board accepts that although there may be sentimental value on providing restrictive development regulations for the knoll, based on the evidence and facts

presented, there is already protection offered by the existing OP regulations. In the absence of scientific or engineering evidence to the contrary, the Board will allow only single detached residential development in this area, with a request that tree cutting be kept to the absolute minimum.

The "Tail"

The 8 acre parcel of Hanna's Landing land that was deleted by the District Modification from the boundary expansion is referred to as the "tail". It is located behind some cottages and has no frontage on the water. Hanna's Landing would like to include it to the expansion land and designate it Urban Residential. The reason given was that it would provide for the more efficient use of services and to avoid split designation and zoning. Ms Walton opined that Watson was conservative on acreage and there are not many places available for housing. She opined that a "Holding provision" can be placed on it to allow for phased development. She suggested that boundary expansions can also be staged.

The Board is of the view that land ownership is normally not a determining factor for land use or for zoning. Large properties can have more than one designation in the OP and split zoning is common. No compelling reason was given to persuade the Board that the addition of this small strip of land would constitute good planning. Rather, the Board has to consider what amount of land would be required to satisfy the anticipated growth within the given time frame, regardless of land ownership. Hanna's Landing can seek a further boundary expansion at the next five year OP review to include this land, if it can provide convincing planning reasons.

Is Hanna's Landing an Employment Area?

The Appellants advanced the notion that the Hanna's Landing land is "Employment Area", because it previously contained a trailer park, which has been

decommissioned for several years. The land is zoned WC3 – Waterfront Commercial and can be developed as a resort. According to Mr. Amborski and Ms Poirier, including Hanna's Landing into the boundary expansion for residential use would constitute conversion of employment land. Therefore it should not be allowed.

Under cross-examination Mr. Amborski was not able to say when Hanna's Landing was designated Employment use. In fact, tent parks or trailer parks are not included in Employment areas and there is nothing in the OP that supports the assertion of employment land conversion. The land is designated Waterfront (Tab 42) which permits single family residential, resorts, open space and some interspersed commercial uses. Mr. Fahner emphatically concluded in cross-examination that there was no "cluster of business" established to justify an Employment use; tent and trailer park is not included in the OP as a use, and therefore the Township does not consider Hanna's Landing to be an Employment Area under the PPS.

Ms Walton opined the Muskoka District By-law 2009-61, which implements OPA 40, (Tab 46, p 19) deleted the definition for Employment Area and reinstated a revised definition in Waterfront and other areas. The District Plan (Tab 51) does not include tent and trailer parks under resorts. Employment uses are not identified or defined. Further, tent and trailer park does not meet the Employment definition in the PPS. Therefore, there is no conflict with the PPS.

Counsel for the District established through thorough and methodical cross-examination that resort condominiums and commercial tourist developments around the Muskoka Lakes have been developed on municipal services extended through urban boundary expansion exercises, and in most cases these developments have been successful. Therefore, to support tourist commercial (instead of residential) at Hanna's Landing, as advocated by Ms Poirier, would require municipal sewer and water service extensions. If the Urban boundary is not extended, municipal services can not be extended, which becomes a circular argument, leading to no solution.

The Board finds that Policy 5.2.8 in the District Plan provides that Commercial, Industrial or Institutional uses "shall be permitted only on full municipal services". The trailer park was privately serviced on septic systems which have been dismantled. Therefore, the premise that Hanna's Landing site should be considered an employment area does not pass muster in the current context.

Ms Poirier subsequently agreed with Counsel for Hanna's Landing that Employment Centres would be an inappropriate use for this property in the future. The Board therefore accepts and finds that HL is not an Employment Area as defined in the PPS.

Permanent housing versus seasonal housing

There was considerable discussion by the Appellants that there is differentiation between the predominant seasonal housing and permanent housing, suggesting that seasonal houses should be treated differently with respect to growth. The PPS speaks of a mix of residential and other uses. It does not differentiate between seasonal and permanent dwellings. Similarly, there is nothing in the Township OP that differentiates between seasonal and permanent dwellings. Both require the same building permit. The term "seasonal" is not defined.

The Board accepts that all housing is for human habitation, regardless when and how one chooses to use it and should be treated similarly for the purpose of growth exercises and density calculations. While people usually are mindful of change and prefer the *status quo* as far as keeping "newcomers" out of Muskoka, possibly by not increasing the land supply, the Board is content that there is a rising demand for housing in Muskoka Lakes both on the waterfront and in town. Although Port Carling may not have all the services to support seniors, it is a good place to retire or live year round. The issue is how to best accommodate the demand while minimizing adverse

impacts on the environment and the lakes. The Board finds that there are sufficient policies in the OP to accommodate growth while minimizing impacts.

Water quality

Marie Poirier opined that water quality in the lake system is influenced by adjacent land uses. The Township did not address water quality in OPA 40; therefore the proposed boundary expansion to include Hanna's Landing land does not represent good planning.

According to Anne McCauley, water quality is very important in Muskoka. If water quality deteriorates, then the attractiveness will deteriorate and the economic benefits to the residents of Port Carling will decrease. The MLA regularly carries out water quality tests in the Muskoka Lakes, including the areas in question. The Planner testified that Lake Muskoka has good water quality, but it has been specifically poor for many years in the vicinity of Mirror Lake and Indian River. She opined that by removing the expansion land, particularly Hanna's Landing, from the Waterfront designation and placing it in the Urban Residential designation, it will impact the Lake System Health.

However, the Board also heard that all the 124 houses in the Todhome subdivision on the west side of Mirror Lake are purposely not connected to the Town's sewers, but are served with septic systems which are "aging" and contribute a significant source of pollution in this lake, making it "over threshold" on phosphorous sensitivity. Similarly, all the waterfront cottages on the Muskoka Lakes are on septic systems. There is no question the issue of water quality is an important one not only for MLA, but for the Municipality also. Unfortunately, there was no evidence that any steps are being taken by either party to encourage or require the connection of these houses and cottages to municipal sewers, where sewers are readily available, so that water quality can be improved. Instead, the Appellants simply suggest that any expansion in Port Carling should be away from the waterfront.

The Board also heard that the proposed boundary expansion areas and the proposed Hanna's Landing development are to be connected to the Town's sewers, thus substantially eliminating any negative impact to the water quality. In addition, in OPA 40 the waterfront is proposed to remain open space for the first 100 ft on the Hanna's Landing property, whereas only 66 ft is required in other parts of the waterfront. 75% of this space is to be left undisturbed to naturalize. Relatively limited development or activity will be permitted near the water, including no boat houses. It appears that OPA 40 provides adequate policies for the protection of the waterfront and lake water quality. Through discussions at this hearing, some of the policies recommended by MLA will be further strengthened as agreed to by the Township. The Board is satisfied the proposed policies for the expanded area in OPA 40, including Hanna's Landing, will guide development to be set back some distance from the water, with strict land use policies guiding what development and where it is to be permitted.

To put this into perspective, one has to compare the policy regime in OPA 40 with the one acre cottage lots that are the norm along the area's waterfront, which properties are adorned with large residential buildings (cottages), boat houses with large residential components above that accommodate many visitors, garages, cabanas, gazebos, boat landings and piers and the constant boating activity in the summer months. Accordingly, the argument that OPA 40 puts development pressure that will adversely affect the waterfront, is moot. Yes, there may be more density proposed on Hanna's Landing, including medium and high density housing which is proposed to be located further from the water. However, it has not been demonstrated by the Appellants (excluding HL) that such development would impose greater impact on the natural resource than what takes place on individual properties situated directly on the water. Under cross examination Ms Poirier did agree that OPA 40 policies support the protection of the environment. The Board finds the Appellants' argument on water quality, as it pertains to the boundary expansion and Hanna's Landing land, to be moot.

The Village of Minett

A lot of discussion at this hearing involved the Resort Village of Minett, an important tourist and employment centre in Muskoka Lakes, about 15 minutes north of Port Carling, and how it impacts on the growth projections. The Township OP refers to Minett as a place to live, work and play – which includes a desire to have people live in the village year round. Policy directs 50% of housing to be for residents and to provide an employment base for the recreation mainstay objective of Minett/Red Leaves. The intent was that Minett employees would live in the surrounding urban centres such as Port Carling.

Unlike Port Carling and Bala, Minett is not designated as an urban centre in the District OP. Rather, it is designated as a Community in the Township OP (page 50). The Minett Master Plan approved by the Township was to develop as a four-season tourist resort over 23 years (2008 to 2031). The village is to be serviced by sewers. This 543 acre purpose-planned facility is owned mainly by Red Leaves Resort (385 ac) and by others (158 ac). It is to develop at 12 upa and contain 2,858 residential and resort units when completed. The Township OP has designated 806 permanent housing units in Minett. However, only a small part of Red Leaves has been developed so far, mainly the Roseau J. W. Marriott Hotel, which is on private temporary sewage facility. The hotel is not considered to be nor is it counted as residential units. Red Leaves has yet to construct the sewage plant which is required to allow the development of the Community.

The Board was advised that the hotel was under receivership, but it was still operating at the time of the hearing. No additional money can be spent at this time and the developer cannot build the sewage plant. According to Ms McCauley, this is not adequate or acceptable as far as MLA and the District OP are concerned, as the lake water quality is being significantly affected from the hotel development.

The Appellants (excluding HL) asserted that the Port Carling boundary expansion was premised on the expected employment generation of 140 to 160 seasonal jobs at the hotel and an additional 4,000 Red Leaves permanent jobs in Minett that would require housing in the area. Since the tourist development (and jobs) of Minett is caught by the financial recession and may not materialize as anticipated, the proposed boundary expansion is premature. Only a small number of hotel employees are presently housed in communal quarters in Port Carling and Bala. As a result, according to Ms McCauley, housing demand in Port Carling is overstated and there is sufficient residential land supply for 21 years. Therefore there is no need to expand the boundary now.

Mr. Cook disagrees. He opined that Minett would have only a minimal impact on Port Carling, as it provides only a small amount of housing for Red Leaves. Port Carling has its own growth demands. Although waterfront properties are more desirable, people are also attracted to other areas. There is a 29 year supply of waterfront lots in the Township, but there are constraints on non waterfront supply for permanent housing. Therefore, the boundary expansion is required.

Protect the character of Muskoka

One of Appellants (excluding HL) assertions was that the boundary expansion will affect the character of Muskoka. Granted, Muskoka does have a distinct character as a summer recreation area with large summer houses on the water, which attracts considerable tourist and residential development. It is also a place to live and work, particularly in the small towns such as Port Carling and Bala. The waterfront is desirable to people who live in Port Carling and beyond and according to Walton, everyone should have access. Both the District and the Township Official Plans advocate a balanced approach to growth and development.

The Appellants asserted that the boundary expansion, if required, should avoid the waterfront areas, in order to maintain the character of Muskoka's waterfront, i.e. the cottage community with its ambiance. According to Ms McCauley, the OPA 40 policies are inadequate to protect the waterfront and the character of Muskoka and the community. They are not sufficient to give certainty of what can be expected to develop in the expanded boundary area. These comments were particularly aimed at the Hanna's Landing portion of the expansion. It was Mr. Hammond's view however, that by retaining the 100 ft wide vegetation strip along the 1,000 ft of waterfront on Indian River, the character of Muskoka would be maintained. The Board agrees that the integrity and character of what is Muskoka would not be jeopardised by the policies of OPA 40. In some ways it strengthens and reinforces the waterfront by providing a 100 ft buffer against development, which is significantly wider than in other areas and designations in the Municipality. This is not a new concept.

Mr. Fahner carried a comprehensive review of 12 candidate expansion areas. He concluded that "regardless of which way we go, any expansion will involve waterfront". The issue may perhaps be academic given the configuration of Port Carling and the surrounding lakes. Therefore, one must consider what is the real reason behind the Appellants' opposition to the proposed OPA 40 and particularly Hanna's Landing.

Intensification v Expansion

Tab 30, the Port Carling East Side Growth Report provides a detailed analysis of whether growth can be achieved in the urban boundary. It concludes that supply is not enough to meet anticipated demand for 400 units over the next 20 years within the urban boundary.

Tab 64, Growth Strategy, shows there is a residential deficit of 118 units which would require 30 gross acres to accommodate the units. Subsequently, Mr. Cook

revised this to 47.7 gross acres (Exhibit 68). Counsel for the Appellants (excluding HL) skillfully took each of the witnesses through a painstaking detailed examination of the growth figures. He was able to "extract" some concessions:

- some of the potential units through intensification were not accounted for;
- no Higher Density Residential units have been allocated in the core area;
- different lot size calculations lead to different density figures;
- some of the unit numbers were inflated;
- there is a margin of error in the forecasts;

The municipal witnesses however, stood their ground under terse cross-examination, affirming that although intensification is a goal in the OP, its implementation in Port Carling is fraught with difficulties. Mr. Hammond asserted there is minimal opportunity to accommodate intensification and that "you need to look at community planning reasons, not just numbers". This was substantiated by several of the witnesses. Also, one cannot assume that all the vacant lots will develop in Port Carling. The boundary expansion is needed to address the affordable housing need for seniors and others who would like to locate here but there is no available housing.

What is the Growth Test in the PPS?

Mr. Amborski opined there is no District OPA allocating growth to Port Carling. He contends that the Township should be responsible for growth numbers. In his opinion, both the Township and the District meet their 20 year growth requirements. Only Port Carling is short on space, but Watson's conclusion was based on 2006 data. The economic recession has affected demand for recreational housing. He opined that the demand is overestimated and there is no basis in the growth report and no need to designate new land now. It would be best to wait for the next five year review to see what the demand for housing would be. Contrary to the above, under cross examination Mr. Amborski agreed that the PPS (p 29) does not state population growth projections should be included in District Official Plans.

The Appellants (excluding HL) purport that boundary expansion is the last resort to accommodate growth and growth targets could be met without an expansion. The PPS directs compact development on the core and Highway Commercial designated lands. OPA 40 now permits medium density residential at 12 units per acre (upa) which according to Mr. Amborski the Watson report did not account for. Therefore he opined that growth targets can be met by intensification and infill development.

To support his premise, Mr. Amborski carried out an investigation of building permits issued in the Township over a three year period, in order to determine housing demand over the target period. He concluded that 6 or 7 permits for new housing units were issued per year in Port Carling and based on the supply of land there is sufficient supply now for 23 years. There is sufficient land to accommodate growth within existing boundaries. Cook and Gillezeau asserted however that you cannot use a short three-year permit activity as historical data to determine growth when considering need for residential land. Perhaps a 20 or 25 year activity may be more appropriate.

According to the Township Planner, there are only two medium density buildings developed in Port Carling. This is a small town where people are attracted to because of its tranquility and most people choose single detached homes on sizable lots. The Municipality sees no dramatic change in trends for medium or high density housing demand in Port Carling. Most development has been waterfront cottages outside Port Carling.

Theoretically, a case can be made for intensification, and the Highway Commercial designation does permit Medium Density Residential as a freestanding use. Mr. Hammond opined that about 336 units could be achieved in Highway Commercial areas. Although it is conceivable that some form of multi-unit development may be attracted in the core or in one of the highway commercial parcels in the future, one has to weigh the possibility of such development materializing.

The OPA reflects a higher level policy direction for a variety of dwelling unit types which may or may not be achievable in reality. The Board is cognizant that projections and forecasts are not exact mathematics and numbers games usually have some limitations when it comes to actual development, particularly where there are inherent environmental, natural or economic constraints. Mr. Cook accepted that growth projections are not an exact science and therefore future five year OP reviews can make the appropriate adjustments.

Mr. Fanher and Mr. Hammond alluded that the 8 upa density for Low Density housing in OPA 40 is perhaps unrealistic and should be reduced. However, they did not elaborate as to what would be more appropriate. Mr. Hammond suggested 8 upa should be the maximum, not the minimum density. The OP however, does not speak of minimum and maximum densities. Is it reasonable to expect that development will occur at the maximum OP density? This undoubtedly is not absolute or certain as the OP provides for a guide, should it be appropriate to develop at such densities. Should the Municipality find this density to be high in practice, it would have an opportunity to correct it at the next OP review.

The Board also heard of several recent examples of faltered development starts in this Municipality, which have had undesirable results from what was envisaged. These include a commercial development on the rock by the locks in Port Carling, which has been abandoned due to unforeseen high development costs; the "Water Tower" site which was suggested by the Appellants (excluding HL) has had draft plan of subdivision approvals for 186 units for some 20 years, but remains undeveloped. However, according to Mr. Hammond, it was not draft approved and the file is to be closed by the District; the prominent Minett resort and Red Leaves tourist development experiment that is under economic difficulties and far behind its targeted development schedule; and other attempts to develop resort sites in this Municipality that have not panned out.

The Board is cognizant of the development constraints and challenges in the Port Carling area due to steep rocky slopes and topography which create difficult challenges when considering growth options. Although it may be theoretically possible to engineer a rocky slope for development, witnesses opined that the cost factor has to be considered. The Board must therefore weigh the theoretical number crunching with the policy direction of the PPS and the OP. The Growth Strategy assumes that 70% of the growth will be directed to the urban areas and 30% to the waterfront, which is considered to be consistent with the PPS. The Board agrees that growth should be directed to the Port Carling core and within the existing boundary, where Mr. Cook identified 68 available sites for development. Intensification, where it can be achieved, is a goal recognized by both levels of Municipal Government and represents good planning. However, it is prudent that local circumstances be taken into consideration when reviewing the PPS with respect to growth.

Mr. Fahner agreed when asked by the Board that the best location to provide the highest densities is in the urban centre. Modification 27 by District Council, in fact provides for medium density in conjunction with commercial development. He opined that 45 residential units could be achieved in mixed use development. However, his experience leads him to believe that it may be difficult to do so in Port Carling. The application of that goal may be elusive in this case, given the environmental and development constraints. On this basis, he opined that in order to achieve the density objectives of the OP, higher densities have been allocated to Hanna's Landing area.

Did the Municipality consider all options and intensification opportunities before determining a boundary expansion is required? Yes. The Board is satisfied that it did. However, the Board has to establish if the amount of land proposed to achieve the Municipality's growth objective for the 2031 horizon in this five year review of the OP is appropriate and how much weight to give to intensification as a tool of growth management in Port Carling.

How much land should be set aside for the boundary expansion?

It was suggested by some experts that affordable housing in Port Carling would offer more competitive housing and HL would help increase the supply. OPA 40 provides for affordable housing in Hanna's Landing where 15% of dwelling units must be affordable. This would be consistent with the PPS.

During the hearing different figures were provided by different people on the supply and the demand sides. Although the Board requested from Mr. D'Agostino a table of all the figures as they were recalculated during his cross-examination of the witnesses, I did not receive one during the hearing. The following numbers are compiled from the Board's notes:

2008-2030	Exh 1 TAB 64	GILLEZEAU	COOK	WALTON HL only	SHORTFALL
DEMAND	626 units	741 (626 +65 seasonal +50 affordable)	626 units		
SUPPLY	375 units		517.5 units	330 units or 250 detached	366 units
ACREAGE NEEDED	46 ac @ 8 upa	92 net ac @ 6 upa @ 65% net/gross	47.7 ac	54 ac	

Assuming the shortfall in supply of 366 units can be accommodated over the next 20 years in a combination of infill and intensification plus new dwellings at Hanna's Landing, the figures above seem reasonable. Will the additional units have impact on the waterfront? Possibly a minor one, but certainly it would be within the projected population increase in OPA 40 when units are converted to people. Further, if one puts the numbers into perspective with the population influx that happens over the summer months in this area, the projected population increase represents only a small percentage and it is considered to be manageable.

Although OPA 40 provides for an expansion of 81 gross acres, 35.24 of those (Andrews Motel and the intervening lands) were not strenuously contested. Only the 45.6 acres of Hanna's Landing are of concern to the Appellants. Out of the 45.6 acres one would have to subtract $(1059+187 \times 100 / 43560)$ (Longo's figures) 2.9 acres which represents the 100 foot wide protected area along the water. There is no land estimate for the steep area of the Knoll that can also be subtracted. In the overall scheme, 43 gross acres in a challenging terrain is not an unreasonable amount of land to provide for the orderly growth and development of this area over the next 20 years. Although no one suggested this, it would be close to the 30 acres Watson originally recommended. Given that OPA 40 promotes intensification and a range of residential units, any additional housing demand can be accommodated elsewhere, consistent with Provincial policy. The Board finds the planning objectives are met and OPA 40 represents good planning. The planning process has been fair and the Council of the day had adequate information to inform its decision.

Ms Walton was optimistic that Hanna's Landing residential development would be consumed quickly, perhaps over the next 10 years. Although this may be hopeful, it may be helpful to analyze it in terms of the 20 year growth horizon of OPA 40. Hypothetically, assuming Ms Walton's premise for 250 dwellings (or 330 dwellings of low, medium and high density designations) was over the whole Hanna's Landing property of 54 ac, we need to subtract the 8 ac or 15% of the land as per the District's approval. Similarly, 85% of the 250 units would represent 212.5 units, or a potential development of 10.6 units per year. This is only 3.9 units per year more that Mr. Amborski discovered in his building permit investigation. The next question is how much land the 212.5 dwellings would consume? If we assume the net to gross ratio of 50% should apply, there would be 23 or 24 developable acres. At 6 upa, 144 units can be anticipated; at 8 upa, 192 units; and at 12 upa, 288 units. However, 212.5 dwellings divided by 24 acres would generate a net density of 8.85 upa, which is not too far from what the Municipality recommended in OPA 40. The same exercise could be done for the 330 units and 65% net to gross ratio.

Further, one has to take into account that if OPA 40 is approved by the Board, there are still several technical steps and planning approvals pending – Zoning By-law Amendments, Subdivision, Condominium and Site Plan Approvals. Further, services have to be extended and installed on the property and building permits have to be obtained before any housing construction can commence. All these processes require time and some are also subject to appeals. The Board is satisfied that the proposed growth can be managed within the proposed boundary expansion as adopted by the District and that the time horizon of 2031 is appropriate to accommodate the anticipated growth in Port Carling and Muskoka Lakes, given the status of other development activities in the Municipality.

More On Growth in Muskoka Lakes and Port Carling

Although municipalities may plan for 10 or 20 year horizons on simple extrapolation of previous trends or other “planned” events, in reality, it may take more years for these plans to take effect. Planning after all is not an exact science. Concepts and plans change and the economy some times interferes with long and short term planning objectives, in effect making plans such as for example the Red Leaves development incomplete on their own planning horizon.

The evidence wasn't abundantly clear whether the current financial situation at Red Leaves can or it will resolve itself and the sewage plant will be completed any time soon, to facilitate the somewhat ambitious plan for a recreational tourist facility with houses and jobs created in Minett and some of the employee housing allocated to Port Carling and Bala. What weight must we assign to the lost opportunities in Port Carling if Minett's development is delayed in the long term? Would it be prudent to hold off orderly planned development in Port Carling until Minett comes back to life? The answer was given by Mr. Cook that Port Carling has its own growth demands, independent of Minett. Based on the evidence, the Board agrees with this conclusion.

It wasn't also clear from the evidence that some growth will not continue to manifest, thus creating some demand over the longer horizon for permanent and seasonal housing in this very desirable Muskoka community of Port Carling. Tab 30, page 12 forecast shows that demand for housing in the District may triple, requiring 450 units. It suggests 100 to 150 acres may be required within the Port Carling boundary. How realistic is this demand? Can one rely on past trends to indicate future growth in Muskoka? The Appellants (excluding HL) in fact countered with much different numbers to show the demand is lower than projected, and can be accommodated within the current boundaries.

The Board recognizes that it may not be possible to apply growth policies in Muskoka the same way they may be applied in urban municipalities. Growth studies are guidance instruments and there is flexibility on how Council may apply these guidelines. Applying strict mathematical formulae or projections for example, may be trumped by land form and other restricting considerations. Also, it has proven inefficient and perhaps poor planning in Muskoka over the years to rely on only one or two large developments such as Minett and the Water Tower, to provide for all the future growth needs of the Municipality. While there needs to be some flexibility on making some land available for growth, there also needs to be vigilance and certainty that development will take place as anticipated at Hanna's Landing.

Notwithstanding Ms Walton's assertions that new housing on Hanna's Landing will be absorbed in a short period of years, the Board must weigh what may happen if it does not approve the expansion or even if it approves a smaller amount of land in the Urban Boundary. Will demand for housing in the area increase the cost of housing in the absence of supply, and what effect this may have on the residents of Port Carling? It depends on whose opinion one relies on. It is a fact that housing on the water is much more expensive than housing in town. It was also alluded that there is not enough of the second type of housing to satisfy demand, and that has been pushing

prices up and making it unaffordable. The Board is aware that as people move to other locales to find affordable housing, the economic base of the town is reduced and commerce cannot be supported in the slow months. Stores are now closed eight months of the year. Although we may reject growth for selfish or other reasons, it remains the engine for vitality of towns such as Port Carling. The Board therefore concludes that moderate growth as forecasted in OPA 40 is appropriate and will provide for the housing needs of people in the area over the next 20 years.

Servicing

Boundary expansion requires municipal services to be expanded. An expansion to the Port Carling sewage plant is being constructed and is expected to be operational in 2012. It has a 30 year life span. It is sufficient to accommodate the expansion area including HL. It is paid by District with Infrastructure funds. Hanna's Landing will pay for the extension of services and will contribute Development Charges toward all other costs, through the building permit application process

Mapping of Land Uses and Densities

One area of concern that the Board shares with the Appellants is the lack of clarity as to where and how the proposed commercial, Medium Density and High Density land uses and a park are to be established and their magnitude in OPA 40. Township Council has chosen a descriptive approach rather than a graphic or mapping one for its OP (Exhibit 57, page 17). This unfortunately creates ambiguity and leaves the reader in an uncomfortable position, as no one knows exactly where these different densities apply in OPA 40 and there are no guidelines to help the reader comprehend what is the Municipality's intent. Mr. Fahner agreed when asked by the Board that some guidelines would be helpful, but the Municipality has not put any thought on the subject.

The Board believes that clarity of Council's intent is paramount and will require the land uses and densities for the expansion area to be identified in an OP map format before it issues final approval of OPA 40. The schematic should also show the commercial and Open Space areas as originally provided for by the District modifications. A further policy should clarify that the low and medium density areas shall be low profile in nature.

The Neighbourhood Commercial space should also be limited in scope to a maximum of 5,000 sq. ft. to ensure it is to serve this community and not to compete with core commercial. The Board directs that the policy in OPA 40 be drafted accordingly.

Is the urban boundary expansion on Hanna's Landing appropriate and necessary?

There was criticism by the Appellants' Planners (excluding HL) that the Municipality should not be planning an urban boundary expansion for the benefit of private land owners such as Hanna's Landing. The boundary expansion exercise should be guided by the PPS and OP policies and based on identified need through appropriate growth studies. They argued that Hanna's Landing property was inappropriately included in the urban expansion.

The Municipality countered by arguing that they had studied all possible options on where the boundary could be expanded, but because of the geography around Port Carling, all options would include waterfront land. In their analysis they considered other areas for the Urban Boundary expansion. However, Hanna's Landing was ready to submit an OPA in 2007, to be processed parallel to the OP review. Nonetheless, it was advised that the matter would be best considered as part of the Official Plan review as required by the PPS. The Planning Report in Tab 27 provides the basis for this. Also, some growth studies had been undertaken as early as 2006, suggesting that some growth is warranted. Therefore it doesn't appear that Hanna's Landing may have unduly influenced the Municipality to include its lands in the expansion. It was perhaps

timely or coincidental that Hanna's Landing became an option at the time, as the owners had prepared scenarios for residential development of its land. Based on the Township's evidence, between March 2007 and March 2009, the Municipality followed the appropriate planning steps to justify its growth needs.

Notwithstanding the Appellants' assertions, the Board finds that OPA 40, as modified and approved by the District Council was based on comprehensive review based on some 30 supporting studies undertaken by the Township and the District over a number of years (Tab 11, p 2). It considered alternative directions for growth and provides planned services to accommodate growth in a settlement area. It is therefore consistent with the PPS.

New evidence dispute and Motion

At the close of the cross-examination phase of the hearing, Mr. D'Agostino and Ms Roscoe intended to introduce reply evidence through a new witness, Mr. McKinley. This evidence was to deal with reply to Mr. Cook's and Ms Gillezeau's evidence on MLS property sales. The Parties opposite objected to this as not being proper reply, on the basis that evidence was provided in the witness statements of the two expert witnesses as per the Procedural Order, but none was provided by Mr. McKinley.

Mr. Longo brought a Motion together with his "Proper Reply Evidence Notes" which include excerpts from case law in support of his Motion and on the basis of fairness. Mr. Longo, Mr. Royston and Mr. Veldboom joined in raising strong objection suggesting the evidence of the two witnesses was not "new" evidence and that it could have been anticipated by the Appellants. Although several weeks have passed since Mr. Cook's evidence, there was no notice given to the Parties of the surprise witness being promoted at this late stage of the hearing. They argued that this is not proper reply as Mr. McKinley did not produce a witness statement and no evidence was preferred when the case was introduced. To introduce a new witness at this late stage

of the hearing would be splitting the Appellants' case. Mr. Longo asserted that the Board is guided by the Ontario Court of Appeal decision in *R. v Michael* that "the Party beginning must exhaust its evidence in the first instance and may not split the case...". The Parties are entitled to know the case they have to meet from the start.

The Board's review of the Cook and Gillezeau evidence shows one instance where property sales values were proffered. The Board realizes that property values do differ significantly in relation to the property's proximity to the water, the size and type of dwelling and facilities therein.

The Board finds that "reply" is not the time to bring forth new evidence that was not anticipated before and during the hearing. To allow such evidence would be unfair to the Parties. The Board therefore did not grant leave to hear Mr. McKinley's evidence on MLS values in Port Carling.

A. McCauley

Mr. Longo expressed concerns with Ms McCauley's ability to provide independent planning opinion evidence given that she is also a member of the MLA executive. She also introduced evidence in the hearing that was not included in her witness statement, contrary to the Board's Procedural Order. Contrary to OPPI practice standards, Ms McCauley trespassed on the HL property without permission. For these reasons, Mr. Longo asked that the Board disregard her evidence.

The Board understands the duality of the roles played by the MLA planner. She is a member of the MLA Board of Directors and also gave planning opinion evidence in opposition to OPA 40. One cannot be an advocate and also provide expert opinion evidence at a court or tribunal. The Board has carefully considered the ramification of Ms McCauley's dual role in this hearing. The Board finds that although she may have acted for the interest of a large umbrella organization that has played an important role

in maintaining among other things the health and water quality of the Muskoka Lakes system, she maintained a reasonable balance and professional demeanor throughout the hearing and also contributed to planning solutions detailed in her Exhibit 36, that were partly acceptable to the Municipality. In this sense, the Board finds that Ms McCauley acted in a respectful, professional manner and her planning opinions have been duly weighed in the Board's deliberation. The issues of her CIP-OPPI responsibilities and or professional transgressions are not a matter for the Board to deal with.

Conclusion

The Official Plan is a policy and directions document for future development in the Municipality. It is not a document providing restrictions and performance standards for development as some Appellants would like. This is usually left to the Zoning By-law.

The Board recognizes that the establishment of a Municipality's growth strategy is a fundamental long term planning decision, as it gives effect to its economic development and growth strategy, its long term capital budget, and it establishes for the private sector and the general public the basic land use expectations. As much as we may want things to stay the same, change is inevitable. Change is managed through good planning that aims to satisfy growth in a balanced and equitable way.

The *Planning Act* provides for a thorough and comprehensive approach to municipal planning and includes many opportunities for public input. There was no evidence the Municipality veered from the public process in its five-year conformity plan. It carried out some 30 studies leading to OPA 40. It held two open houses and two public meetings before adopting OPA 40 at a Council meeting on March 17, 2009. The Township of Muskoka Lakes OP appears to include policies respecting the environment, the waterfront and lake water quality. These policies are repeated for

each of the OP sections: Waterfront, Urban Centres and Rural. OPA 40 adds and reiterates the same policies in the proposed boundary expansion area, for the sake of locking-in the protections to the waterfront, to ensure they are followed in the development process. Although MLA expressed some concern with how the Municipality may implement its OP policies, there was no compelling evidence adduced that the Township would not apply its own policies, as intended, at the development stage.

No matter how wholesome, respected, protective and influential a large community group may be, there is only one approval authority for planning matters in Ontario municipalities: the duly elected Council, and on appeal, the OMB. Township of Muskoka Lakes Council, in making its decision to adopt OPA 40, held a number of public meetings and it heard submissions from various parties including Hanna's Landing, the Friends of Port Carling and MLA. Council made its decision having fully considered the community's concerns. In adopting OPA 40, Council rightfully set out what its intent was – to expand the urban boundary of Port Carling to accommodate modest growth over the next 20 years. Under normal circumstances, it is the duly elected Council that represents the interests of all the residents and determines what the public interest is, notwithstanding that some people may not agree with that decision. Further, the Board is required by the *Planning Act* to have regard for Council's decision and it has carefully reviewed the process and finds that Council's decision was fair, informed and proper.

Having carefully reviewed all the facts, the Board is satisfied that OPA 40 identifies and promotes intensification and redevelopment. The Municipality has demonstrated a rationale for the need of a boundary expansion - with the provision of municipal services; with a long term objective the protection of the waterfront; and the need to provide for affordable permanent and seasonal housing. One of its aims is to provide for a full range of housing, consistent with the District Plan and the PPS, and to accommodate people who want to stay in this area but don't need large houses and

properties. As such, OPA 40 is consistent with Provincial Policy and provides sufficient guidance for future development and safeguards for the environment along the Muskoka Lakes waterfront.

The Board is satisfied that the amount of land proposed to be included in the urban expansion, as modified by the District, was considered and approved following a comprehensive review by the District, consistent with the PPS, and is therefore appropriate. It will respond to the needs of the community for a range of housing units and will be serviced by municipal sewers and water, thus minimizing impacts to the water quality. OPA 40 provides for the necessary safeguards to the environment; a larger than normal setback from the water; and the newly proposed Site Plan policies will ensure future development will fit within the context of the area. It represents good planning. The Board will therefore allow the appeal in part and will approve OPA 40 generally as discussed in this Decision.

Under its power vested in s. 17(50) of the *Planning Act*, the Board will adopt Mr. Hammond's recommendation to incorporate in OPA 40 all urban design policies contained in Exhibit 75. This will enhance the protection of the waterfront; increase building setbacks; adopt improved policies to protect the knoll; incorporate site plan policies, phase development and distribute densities (subject to mapping representation); and reinforce and strengthen the vitality of Port Carling.

The Parties are to draft the detail of such modifications in the form of an Order to be submitted to the Board planner within 60 days of this Decision and the Municipality is directed to incorporate the changes in OPA 40.

The Board may be spoken to in the presence of all parties should the need arise in implementation of this Decision.

The Board's Order will issue when the updated OPA 40 is submitted to the Board.

"A. Christou"

A. CHRISTOU
MEMBER

