

 **2019967 Ontario Ltd. v. Adjala- Tosorontio (Township), [2010] O.M.B.D. No. 546**

Ontario Local Planning Appeal Tribunal Decisions (f/k/a Ontario Municipal Board)

Ontario Municipal Board

Panel: J.E. Sniezek, Member

Decision: June 28, 2010.

OMB File No. PL070805, OMB File No. PL080020,

(Approval Authority File No.

AT-T-0701), OMB File No. PL080016, OMB

File No. PL080384, OMB File No.

PL080385, OMB File No. PL080352

**[2010] O.M.B.D. No. 546** | 66 O.M.B.R. 104

2019967 Ontario Limited (Alvin Young) has appealed to the Ontario Municipal Board under subsection 22(7) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Township of Adjala-Tosorontio to redesignate land located on Part of Lot 11, Concession 7, Part 1 on Plan 51R-14144, in the former geographic Township of Adjala, from Agriculture to Residential, Open Space Conservation, Open Space Recreation and Institutional to provide for future growth and development within the Settlement Area of Colgan 2019967 Ontario Limited (Alvin Young) has appealed to the Ontario Municipal Board under subsection 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 03-57 of the Township of Adjala-Tosorontio to rezone lands respecting Part of Lot 11, Concession 7, Part 1 on Plan 51R-14144, in the former geographic Township of Adjala from Open Space Conservation (OSC) Zone and Agricultural (A) Zone to Hamlet Residential Exceptions No. \_\_\_ & \_\_\_ (HR1-\_\_\_ & HR1-\_\_\_) Zone, Hamlet Residential Exception No. (HR2-\_\_\_) Zone, Institutional (I) Zone, General Commercial (C1) Zone, Open Space Conservation Exception No. \_\_\_ (OSC-\_\_\_) Zone and Open Space Recreation (OCR) Zone to reflect the multiple uses delineated in the proposed plan of subdivision 2019967 Ontario Limited (Alvin Young) has appealed to the Ontario Municipal Board under subsection 51(34) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from the failure of the County of Simcoe to make a decision respecting a proposed plan of subdivision on lands composed of Part of Lot 11, Concession 7, Part 1 on Plan 51R-14144, in the former geographic Township of Adjala, now in the Township of Adjala-Tosorontio Wayland Farms Inc. & 872424 Ontario Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Township of Adjala Tosorontio to redesignate lands from Rural to Residential, from Rural to Open Space-Conservation, from Rural to Institutional, from Rural to Rural Settlement Area, from Rural to Rural Countryside Area and from Rural to Natural Core Area to permit a residential subdivision. Wayland Farms Inc. & 872424 Ontario Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 03-57 of the Township of Adjala-Tosorontio to rezone lands respecting Part Lots 9&10, Concession 7 from Rural to Hamlet Residential Exception, Institutional, Open Space recreational and Open Space Conservation and Zoning By-law 76-4 of the Township of Adjala-Tosorontio to rezone lands respecting Part Lots 9&10, Concession 7 from Agricultural to Agricultural Exception, Institutional Exception and Open Space Exception zones to permit a residential subdivision. Wayland Farms & 872424 Ontario Inc. has appealed to the Ontario Municipal Board under subsection 51(34) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from failure of the County of Simcoe to make a decision respecting a proposed plan of subdivision on lands composed of Part Lots 9 & 10, Concession 7 in the Township of Adjala-Tosorontio.

(89 paras.)

## **Appearances**

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The Manors of Colgan (2019967 Ontario Limited) (Alvin Young): Scott Snider, counsel.

Wayland Farms (872424 Ontario Inc.): Andrew Biggart, counsel.

County of Simcoe: Thomas Tsakopoulos, counsel, Marshall Green, counsel.

Township of Adjala-Tosorontio: Ian Rowe, counsel.

Mary McMann, Wayne Caldwell, Ann Caldwell, Steve Wynnyk Jean Wynnyk: James Feehely, counsel.

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### **DECISION OF THE BOARD DELIVERED BY J.E. SНИЕZEK**

#### **Introduction**

- 1** Wayland Farms applied to amend the Adjala-Tosorontio Official Plan (local Official Plan) and Zoning By-law and applied to the County of Simcoe for a plan of subdivision containing 315 detached dwellings on lots ranging from 50 feet of frontage to 70 feet of frontage.
- 2** The Wayland Farms lands are bordered on the north by County Road 14, on the east by Concession Road 8, on the south by the Oak Ridges Moraine and on the west by a farm (owned by Ivan Milotic). The local Official Plan designates the subject lands "Rural".
- 3** Manors of Colgan applied to amend the Adjala-Tosorontio Official Plan (local Official Plan) and Zoning By-law and applied to the County of Simcoe for a plan of subdivision containing 310 units with detached dwellings on lots ranging from 40 feet of frontage to 50 feet of frontage and 54 townhouse dwellings and a 170 bed retirement home. The development also contains a commercial block fronting on County Road 14 next door to one of the Appellants - Wayne and Ann Caldwell.
- 4** The Manors of Colgan lands are bordered by County Road 14 on the south, Concession Road 8, on the east, farmland to the north (owned by Mary McMann) and Keenansville Creek along the west boundary (meanders through the westerly portion of the site as well). Ronate Crews owns property along the west boundary of the proposed subdivision.
- 5** The Board held three Pre-Hearing Conferences, a mediation session and a hearing on a motion. The final hearing was based upon a settlement reached between all but one of the parties -- Mary McMann, Wayne Caldwell, Ann Caldwell, Steve Wynnyk and Jean Wynnyk.
- 6** Over a period of five days the Board heard testimony from the following witnesses:

Collette Maguire, Resident

Floyd Pinto, Resident

Angela Rudy, consulting planner retained by the Township

Dave Hopkins, consulting hydrogeologist retained by the Township

Darren Vela, consulting planner retained by Wayland Farms

Tim Cane, consulting planner retained by Manors of Colgan

David Hodgson consulting agricultural resource specialist retained by the Manors of Colgan

Wayne Caldwell, Appellant

Mary McMann, Appellant

Ivan Milotic, Resident

George Sinclair, Resident

Ronate Crews, Resident

Shira Harrison-McIntyre, Resident

Michael Kennedy, Resident

John Yovanoff, Resident

Sharon Yovanoff, Resident

### **Review of the Residents' Concerns**

**7** Collette Maguire lives at 2196 Concession Road 8 abutting the new Wayland Farms development. She is concerned about the nine new homes that will now be looking into her back yard and the impacts these new homes will have on her privacy and she wants a buffer.

**8** Ms Maguire raised the issue about the provision of a sidewalk along Concession 8 that is the route that children take to the school. She commented upon the local water supply and the estimated cost of hook up that is in the neighbourhood of \$10,000 per household.

**9** Ms Maguire also testified as to her fears about increased traffic on Concession 8 and the access to Highway #9.

**10** Mr. Floyd Pinto lives at 1452 Highway #50 in Palgrave and is concerned about the impact that the new municipal well will have on the local water supply. In addition to the concern about the water, Mr. Pinto expressed concerns about traffic, school bus safety, property damage from speeding vehicles and car accidents.

**11** Ivan Milotic owns the farm to the west of the Wayland Farms development that he leases for cash crops. He has some livestock that he keeps on his other lands. He expressed concerns about the sewage treatment facilities, the traffic and road safety implications and the need for a fence along the common property boundary with the Wayland Farms development. In cross-examination, Mr. Milotic admitted that the area where his animals were located was fenced and his only concern was one of trespass. Mr. Milotic also admitted that the proposed residences were separated from his property by a buffer and lots did not directly abut on his property. Mr. Milotic admitted that the waste water treatment plant(s) would be operated by the Township. Mr. Milotic admitted that the intersection connecting the two subdivisions (Wayland and Manors of Colgan) would be a signalized intersection.

**12** George Sinclair, 7357 County Road #14, Colgan, ON, M0G 1W0 moved to Colgan in 1974. The growth in the area has been slow and the historic growth pattern does not justify the proposed expansion.

**13** Ronate Crews expressed concerns about the lack of a public process. She has lived in the area since 2000.

She owns property directly to the west of the Manors of Colgan proposal. She presented a series of photographs indicating the flooding that has occurred on her property (Exhibit 64). She also stated that wells in the area had run dry during times of drought.

**14** Shira Harrison-McIntyre expressed concerns about traffic and healthy communities. She suggested that a bicycle path be constructed along County Road #14 to the Tottenham Road. She noted that no public transit service exists in the area. She repeated the concerns of her fellow residents including water supplies (capacity) and other environmental impacts.

**15** Sharon Yovanoff presented an exhaustive brief (Exhibit 67) that questions the basic growth projections that underlie the development of the two subdivisions, this includes the water supply and waste water treatment assumptions.

**16** John Yovanoff questioned whether the water resources of the area could support the proposed development.

**17** Michael Kennedy provided the Board with a local history of the subject lands and their agricultural and development history. He noted that the economic base of the area had not experienced recent growth and as a result he questioned the assumptions that supported the proposed developments.

### **The Appellants' Concerns**

**18** Mary McMann owns the farm directly north of the Manors of Colgan subdivision. The farm is operated by her son; contains 98.5 acres and houses 75-80 beef cattle. Mrs. McMann is of the opinion that the proposed chain link fence separating her farm from 30 homes that would now back on to her property is an inadequate buffer and would lead to conflicts with her farm operation. She enumerated a number of possible complaints including garbage (now a problem with the 1.5 acre property that she severed three years ago) dogs chasing cattle, children climbing the fence, complaints from the residents about dust, odours and flies. Mrs. McMann proposed that the road be moved further north and lots be removed from the common boundary.

**19** Wayne Caldwell owns the property directly east of the proposed commercial block on the Manors of Colgan and directly south of the proposed subdivision road and residential development (town house development). Mr. Caldwell has lived in his home with his wife, Ann, for eleven years. Mr. Caldwell has a bungalow on his property that has 3500 sq. ft. of living space. The principal living areas of the home face the rear of the lot -- living room, dining room and bedroom. Mr. Caldwell proposes relocation of the commercial block further to the west and the conversion of the seven bungalow town houses facing his home to four single detached lots not facing his property. Mr. Caldwell is of the opinion that the buffer area proposed for the commercial use and the bungalow townhomes is inadequate.

### **Key Facts**

**20** The settlement boundary around the hamlet of Colgan was set in 1972.

**21** The growth projections for the settlement of Colgan range from a low of 158 to a high of 443 units. The build out of the two subdivision plans total 625 units plus 170 bed retirement home.

**22** The County of Simcoe Official Plan (Exhibit 45) provides for a population of 9361 (1996) increasing to 13700 (2016) resulting in a household count of 4580. This produces an increased household count of 362 units.

**23** The Township of Adjala-Tosorontio population in the Places to Grow Simcoe Area: A Strategic Vision for Growth is 13,000 in the provincial allocation and 14,200 in the Simcoe Official Plan (adopted). This results in a range of housing units for Colgan between 158 and 258 units. (Exhibit 48, p. 15).

**24** The Growth Plan for Adjala-Tosorontio allocates 25% of the Township's growth to the Hamlet of Colgan (354 - 443 units).

**25** The projected water supply for the municipal well to service Colgan provides a flow of water of 200 gallons per minute and water supply for 362 homes.

**26** The Provincial Policy Statement (PPS) and *Places to Grow Act* focus growth within settlements.

### **Review of the Evidence Presented by the Professionals**

**27** Dave Hopkins, a consulting hydrogeologist retained by the Township, testified that the new municipal well was located in a deep aquifer (100 feet) and the test pumping of the well indicated a capacity of 200 gallons per minute. The test pumping indicated that there was no interference with wells within 500 metres. The well would require a monitoring program in order to ensure that there were no long term impacts on existing wells.

**28** Darren Vela was retained by Wayland Farms in 2005. In 2006, he prepared or supervised the preparation of the following documents:

1. Settlement Capability Study
2. Planning Justification Report
3. Functional Servicing Study
4. Storm Water Management Report
5. Environment Constraints Review
6. Hydrogeological Study
7. Phase I Archaeological Assessment
8. Colgan Community Plan

**29** With the aforementioned documentation, Mr. Vela filed the rezoning, Official Plan and subdivision applications with the Township and the County following the required pre-consultation and pre-application protocols. The applications were deemed complete by the requisite approval authorities.

**30** The subdivision plan contained the following elements according to Mr. Vela:

1. 315 lots between 60 and 70 feet
  2. One intersection with County Road #14 (the common intersection with Manors of Colgan)
3. Three road intersections with Concession Road 8
4. Block 318 -- Effluent Area
5. Block 320 -- Woodland
6. Block 322 -- Parkland -- centrally located with access to three streets
7. Block 321 -- Open Space
8. Block 324 -- Storm Water Management Pond

**31** In Mr. Vela's opinion the Colgan Community Plan was approved by the Township Council's resolution and this plan satisfies requirement of the Township's Official Plan for the preparation of a "District Plan".

**32** Mr. Vela indicated that the proposed Official Plan Amendment (OPA) #7 (Exhibit 21) "conforms to all applicable planning policies and should be considered for approval by the Board"

**33** The southern portion of the subject lands are part of the Oak Ridges Moraine and are designated under OPA #3 and will not be altered. Mr. Vela indicated that utilities are permitted within the OPA #3 policy area and the water well location does not require an amendment to the plan. The remainder of the site will be redesignated from Rural to Residential for the area to be subdivided, from Rural to Open Space Conservation for the open space, Environmental Protection and Storm Water Management areas, and from Rural to Institutional for the waste water treatment facility.

**34** Mr. Vela stated that the existing zoning was Rural and Open Space Conservation. Proposed By-law 0356 rezones the subject lands "Open Space Conservation, Countryside, Rural, Residential, Hamlet Residential" with a holding. The proposed Zoning By-law provides for lot sizes, full municipal servicing of lots, reduced exterior side yards, a 10 metre setback from County Road 14 and a minimum parking size of 6m x 7.5m. The holding provisions relate to the orderly growth of the subdivision, the provision of services, and a cost sharing agreement between the two developers and the Township.

**35** Mr. Vela went on to confirm that the Parkland area would be zoned Open Space Recreational, the buffer area between the subdivision and the farms to the west would be zoned Open Space Conservation, the Storm Water Management Pond and Hazard Lands would be zoned Open Space Conservation Exception 15 Holding with the Storm Water Management Pond being a permitted use with additional setbacks of 10m from County Road #14. The setbacks for the Storm Water Management pond were set at 10 m. The zoning for the Waste Water Treatment Plant was Institutional Exception # 3 holding that provides for a 10m setback from County Road 14 and limits the use to a waste water treatment facility. Mr. Vela concluded that the proposed Zoning By-law implements and controls the proposed plan of subdivision with appropriate measures to ensure proper servicing.

**36** Mr. Vela indicated that the draft plan approval was for six years to provide for the proper phasing of servicing and development. The servicing arrangements were to be guaranteed with a letter of credit. There was to be a traffic impact study completed. Portions of both County Road 14 and Concession 8 would be rebuilt. A walkway and trail system would be developed to provide safe access to the school. All adjoining uses would be buffered with 2m fencing or landscaping and that this would resolve Mrs. MacGuire's concerns. Mr. Vela confirmed that all the utilities and County conditions had been accepted by his client.

**37** Mr. Vela concluded that the proposed subdivision provided for the logical and orderly growth of the Colgan Settlement Area; that it was adjacent to the built up portion of the community; that it provided appropriate transitional areas and residential diversity; that the method of servicing is consistent with the Official Plans and the PPS; and that the applications before the Board represented good planning.

**38** Mr. Vela pointed out to the Board that the provisions of the Oak Ridges Moraine policies were included in the Zoning By-law that zoned the area and the Official Plan designations confirmed the directions set for the preservation and protection of the moraine.

**39** Mr. Vela acknowledged that the provisions of Section 51(24) of the *Planning Act* had been satisfied and that the council of the Township had reviewed the plan and the attached conditions.

**40** In response to questions from the Board, Mr. Vela produced Exhibit 31 that sets out the policies for the application of the holding provisions and their removal.

**41** Tim Cane was retained by the Manors of Colgan in 2005 and prepared the Official Plan Amendment application in 2006 and followed up the OPA with the subdivision and rezoning requests in June of 2007.

**42** Mr. Cane explained that the 39.85 ha property is a flat piece of land that is cash cropped with two existing lots

located at the intersection of County Road 14 and Concession Road 8 (Mr. and Mrs. Caldwell, one of the Appellants, own the most westerly lot). The area on the western portion of the subject lands is a natural area with hazard and natural area components. The 310 residential units in the proposed subdivision are comprised of 120 forty foot single residential lots, 136 fifty foot single residential lots, and eight blocks of town homes containing 54 units (Blocks 257 across the street from Mr. and Mrs. Caldwell's property, Blocks 258, 259, 260, 261, 262, 263, and 264). There is a retirement/nursing home with 170 beds on a centrally located 1.15 ha block (Block 265). The subdivision contains a 0.82 ha commercial block (Block 266). Other blocks contain a storm water management block (Block 269), Sanitary Treatment Facility and Infrastructure (Block 271), Open Space (Block 267), Environmental Protection Block for the floodplain of the Keenansville Creek (Block 268) and a future development block west of the Keenansville Creek (Block 272). The limits of Block 272 are to be confirmed by the Nottawasaga Valley Conservation Authority (NVCA).

**43** Mr. Cane indicated that the applications had been supported by a functional servicing report, environmental impact report, servicing options report and a planning justification report.

**44** Mr. Cain opined that the proposed development was consistent with the PPS and the *Places to Grow Act*. Mr. Cain brought to the attention of the Board that the basic difference between the Wayland Farms proposal and the Manors of Colgan was the fact that the Manors of Colgan was approved under the Places to Grow while the Wayland Farms was not covered by the Places to Grow because of the difference in the dates that the applications were filed.

**45** Mr. Cain pointed out that the Colgan settlement area was defined in 1972 in the Official Plan. It was defined as a settlement area in the Simcoe Official Plan (Exhibit 49). These policy documents were superseded by the *Places to Grow Act* and the Plan for the Greater Golden Horseshoe. For this reason the densities between the Manors of Colgan and Wayland Farms proposals are different. The Growth Plan provides for the building of compact, vibrant and complete communities that optimize the use of infrastructure. The local Official Plan focuses growth in the hamlets. The area in question, although designated for Agriculture, is within a settlement area and as such is not considered "Prime Agricultural Land". The Minimum Distance Separation (MDS) does not apply to the settlement area, according to Mr. Cane.

**46** Mr. Cain reviewed the new Official Plan designation that would be applied to the subject lands (OPA# 13, Exhibit 33).

- \* The future development block west of the Keenansville Creek will remain designated Agricultural (no change in the designation).
- \* The Keenansville Creek and SWM area will be redesignated Open Space- Conservation.
- \* The waste water treatment area will be redesignated Institutional.
- \* The Nursing Home / Retirement Home will be redesignated Institutional.
- \* The park will be redesignated "Open Space / Recreational.
- \* The residential lots and townhouse blocks will be redesignated Residential.

**47** Mr. Cain reviewed the proposed zoning categories that would be applied to the blocks and lots in the plan of subdivision; the future development block will remain zoned Agriculture.

**48** The Commercial Block will be zoned C1-11 and the following uses will be removed from the C1 zone -- boarding or rooming house, a tavern, an undertaking establishment, an auction facility, a parking structure, a building supply outlet, a hotel or motel, a motor vehicle sales and service establishment, or a motor vehicle service station. The zone is subject to a holding provision for the provision of water and sewer services.

- \* The Nursing Home block is zoned Institutional (I-1(H)) the holding provision provides for servicing.

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- \* The wastewater treatment block is also zoned Institutional (I-2(H)). The holding provision provides for servicing and a 10m setback from County Road 14 also applies.
- \* The Keenansville Creek land is zoned Open Space Conservation OSC-14 that will permit passive recreational uses of a non structural nature.
- \* The SWM facility is zoned OSC-15 permitting a storm water management facility.
- \* The 50 foot lots will be zoned Hamlet Residential 1-19 with a holding zone for servicing.
- \* The 40 foot lots will be zoned Hamlet Residential 1 - 20 with a holding zone for servicing.
- \* The town house blocks will be zoned Hamlet Residential 2-2 with a holding zone for servicing.
- \* Residential Hamlet Residential zones contain a parking space requirement of 6m by 7.5m and an exterior side yard requirement of 3m.

**49** Mr. Cain reviewed the location of the commercial block next to the Caldwell's property. Mr. Cain indicated that the proposed commercial block was centrally located and was close to the intersection of County Road 14 and Concession 8 and the other potential commercial site in the Community Plan. The sight lines for the commercial block are adequate given the 80 kms/hour speed limit and the geometrics of the road. Mr. Cain indicated that the buffer between the proposed commercial use could be enhanced with additional plantings on the Caldwell's property. The buffer would include a five meter buffer and a two meter fence on the commercial site. The additional buffer would be five meters in width on the Caldwell's property. The buffer condition is included as (Condition #44, Exhibit 44). (The Caldwell's preferred other solutions to the buffer on their property).

**50** The eight unit townhouse block facing the Caldwell property is a bungalow style and reduces the potential of overlook. It was his opinion that the bungalow townhouses were an appropriate form of transition. Mr. Cain noted that the sidewalk would be located across the street from the Caldwell property and a fence would be provided between the street and the Caldwell property.

**51** Mr. Cain concluded that the uses abutting the Caldwell residence were compatible reflecting uses that can exist in harmony with one another. Mr. Cain was of the opinion that it was a harmonious planning solution.

**52** Mr. Cain confirmed that the developers agreed to a well monitoring program to protect the wells on abutting properties including the Appellants' (Caldwell and Wynnyk).

**53** Mr. Cain stated that the Wynnyk's concerns had been satisfied with the relocation of the road exiting onto Concession Road 8.

**54** Mr. Cain then turned his attention to the situation of Mrs. McMann. Mr. Cain stated that the barn on the McMann farm was located 380 metres from the common boundary. The settlement boundary was a hard edge and corresponded with the McMann property boundary. The hard edge provides for an efficient development pattern that is similar to the boundaries found in Tottenham, Alliston, Cookstown, and Barrie where buffers to agricultural operations have not been employed. The grazing activity that takes place on the McMann property is not incompatible with residential development and the chain link fencing and warning clause should be sufficient. The warning clause and fencing are included in the conditions of draft approval (Conditions 43 and 45, Exhibit 35). The concerns expressed about water quality in the Keenansville Creek will be addressed by the Ministry of the Environment that will ensure that the development does not impair the water quality in the creek.

**55** Mr. Cain was of the opinion that both developments were within the settlement area boundary and that the Manors of Colgan OPA, Zoning Amendment and Subdivision conform to the Growth Plan, the PPS, the county and local Official Plans and the requirements of the *Planning Act*, specifically Section 51(24). The proposed Manors of Colgan development also represented good planning.

**56** David Hodgson, a soil science and agricultural specialist, was recently retained by the Manors of Colgan to



review the implications of the development upon the McMann farm. Mr. Hodgson indicated that his calculations resulted in a possible 100% increase in the size of the cattle operation from 75 to 150 head. The existing barn is 380m from the property line. It was Mr. Hodgson's opinion that a buffer between the McMann farm operation and the proposed subdivision would not be required and that the 2 metre chain link fence was sufficient.

**57** Angela Rudy, the consulting planner retained by the Township, reviewed the applications for Wayland Farms and Manors of Colgan. She did not prepare a planning report on the applications but monitored the progress of the applications and took part in the negotiations in terms of the final resolution of the applications.

**58** Ms Rudy repeated the evidence of Mr. Cain that the boundary of the Colgan settlement area had been established in 1972 and confirmed in 1995 with the Strategic Plan. Updates to the local Official Plan occurred in 1995 and 1998 and no appeals to the Board were filed. The County Official Plan, the PPS and Growth Plan accept that growth will be directed toward settlement areas -- areas like Colgan.

**59** Ms Rudy authored the Growth Management Study prepared in 2005 and that identifies 55.4 to 69.3 ha of additional residential land for Colgan (Exhibit 55). Ms. Rudy noted that the community of Hockley was not permitted to grow because of topographic limitations and lack of water supply. The proposed developments (17.79 ha for Manors of Colgan and 29.12 ha for Wayland Farms) were within the range suggested for the Growth Management Study. Ms Rudy noted that the density for the development of Wayland (8 units per hectare (uph)) were lower than the 10 uph for the Manors of Colgan that was a compromise from the targeted density of 12 to 13 uph. She observed that the Manors of Colgan included a range of housing types including bungalow townhouses that would tend to house an aging population.

**60** The agricultural designation is now within the defined settlement area of Colgan. Because of its location within the settlement area, the agricultural protection policies do not apply directly to the agriculturally designated properties.

**61** Ms Rudy was of the opinion that the Colgan Community Plan (Exhibit 16) fulfilled the secondary plan requirement of the local Official Plan (Exhibit 46) and there was no need for an Agricultural Impact Study and/or an Environmental Impact Study.

**62** Ms Rudy confirmed the opinion of Mr. Cain that the buffering of the Caldwell property was adequate and that the provision of a fence and landscaping were in excess of the normal zoning requirements. Ms Rudy pointed out that the integration of commercial uses along County Road 14 was a worthwhile objective.

**63** Ms Rudy admitted that the Growth Management Study contained fewer residential units than presently proposed; however the six year lapsing provision will provide the two developers sufficient time to complete their projects that may take from now to 2026 or so to completely build out. It was acknowledged that additional water supply would be required because the existing water supply could only accommodate 382 units. Ms Rudy stated that the growth management study and the community plan did not include the proposed nursing home in the household counts. In cross- examination Ms Rudy admitted that the nursing home must be included in the allocation of sewer and water services.

**64** Ms Rudy concluded that both developments would have to be phased and that with the phasing plan both plans could move forward to eventually complete the community and with that the proposed developments represent good planning and should be approved.

**65** Ms Rudy accepted the fact that the provisions of Section 51(24) of the *Planning Act* had been satisfied.

**66** Ms Rudy admitted in friendly cross-examination that the proposed fence separating the McMann farm was adequate and further buffering was not required.

67 Ms Rudy acknowledged in cross-examination that the provision of a secondary plan could be done through an OPA, as had been done in the case of Loretto and Hockley or by resolution in the case of the Colgan plan.

### **The Issues**

68 The issues in this case can be summarized as follows:

- \* The development of the two subdivisions on agricultural lands is contrary to the policies in the PPS and local and county Official Plans that protect agricultural lands.
- \* The development of two subdivisions lack the required community plan because a secondary plan has not been approved for Colgan.
- \* The amount of development proposed exceeds the limits in the local growth management plan and the county Official Plan.
- \* The lack of servicing for water and waste water means that the proposed development is premature.
- \* The land uses abutting the Caldwell residence are incompatible as far as the proposed bungalow townhouses and the Commercial use and should be replaced with detached lots.
- \* The land use interface between the Manors of Colgan and McMann is inadequately buffered and should be replaced with a road.
- \* Mr. Milotic's demand for a common boundary fence should be agreed to by Wayland Farms.

### **Conclusions and Findings**

**The development of the two subdivisions on agricultural lands is contrary to the policies in the PPS, and local and county Official Plans that protect agricultural lands.**

69 The Board finds that the agricultural designation does not protect agriculturally designated lands within an area designated as a settlement area. Lands within a settlement area are by their nature designated for future development. The direction of the PPS, the *Places to Grow Act* and local and county Official Plans focus growth and development in settlement areas like Colgan. Colgan is designated as a settlement area, the boundaries of which have remained unchanged since 1972. If the local and county authorities wished to protect agricultural lands within settlement boundaries they would have provided a similar policy for Colgan that is applied to Hockley and Lorretto.

4.6. 2.8 a. Certain areas within Hockley and Lorretto are not expected to develop during the life of the Secondary Plan. These areas are presently used for agriculture and rural residential purposes and they should be encouraged to continue as such." (Exhibit 46, p.39, Township Official Plan).

**The development of two subdivisions lack the required community plan because a secondary plan has not been approved for Colgan.**

70 The Township Official Plan contains the following policy:

4.6.1.1 Seven hamlet development areas have been identified in Schedules B1 to B7. Prior to extensive development of these areas, and/or the event that the hamlet population reaches 300 people, detailed secondary plans (district plans) shall be prepared. (Exhibit 46 p. 28)

71 All the planners agreed that the Colgan Community Plan (adopted August 2006 and revised January 2010) met

the requirements of the Official Plan (Exhibit 16). The Colgan Community Plan is supported by the Hamlet of Colgan Master Servicing Plan (January 2010) (Exhibit 17).

**72** There appears to be a mix of "Secondary Plans" for Hockley and Lorretto and Community Plans for Colgan and Everett (Exhibits 16 and 61). The Board understands that Official Plans are not statutes and should be given a broad and liberal interpretation. There is differing language in the use of the terms "district" and "secondary". It is interesting to note that the term secondary is not capitalized in the policy but is when used to refer to the "Hockley and Lorretto Secondary Plan" The Board finds that the terms "secondary" and "district" are both used and could be interpreted to mean two types of plans -- secondary plans adopted as part of an Official Plan and district plans adopted by resolution. The intent is unclear without clear direction. The Board accepts that both forms of plans -- Secondary and Community Plans fulfill the requirements of the policy.

**The amount of development proposed exceeds the limits in the local growth management plan and the County Official Plan.**

**73** The amount of growth that will be accommodated in Colgan amounts to 625 units not including the 170 bed nursing home. The Simcoe Official Plan allocates a total household count of 4580 to Adjala-Tosorontio. An allocation of 25% of the growth results in an increased household count of 362 households (Exhibit 45). The Simcoe Official Plan contains the following statement:

"The above projections are intended to be used as guideline for the growth of the County. They are used as a basis to designate land and identify settlement boundaries; determine transportation, sewer, and water requirements; estimate housing, social programs and school needs; and to provide a framework for service and program planning undertaken by municipalities, agencies, senior governments, and business. Given the assumptions used in developing the projections, the projections in Table 1 will be monitored and updated when appropriate and are not considered as a limitation or target by which municipalities are constrained provided that adequate justification, acceptable to the County, is provided where local projections exceed projections in Table 1. Local official plans shall have regard to the projections and allocations among settlements and rural areas." (Exhibit 45, p.10)

**74** The Colgan Community Plan indicates that the Settlement of Colgan can accommodate 354 to 443 additional units (Exhibit 16 p.3). The Colgan Community Plan contains the following statement:

"An assessment was completed to determine whether sufficient lands have been designated to accommodate future growth need within the Township. It was determined that a shortage exists where the Township is currently not meeting the Provincial requirements of providing a range of housing type and supply to meet a minimum ten (10) year time horizon." (Exhibit 16) (quoted from the Growth Management Study)

**75** The uncontradicted planning evidence is supported by the words in the Simcoe Official Plan that the population projections are only guidelines and not targets. The Board finds that the population and housing projections are only guidelines for growth and given policy directions for more dense and compact communities the proposed development is acceptable. It is noted that the County of Simcoe Official Plan standard uses the "*have regard to*" test rather than the more restrictive "*be consistent with*" test.

**The lack of servicing for water and waste water means that the proposed development is premature**

**76** In the minds of the Appellant's and many of the participants the lack of servicing for water and waste water means that the proposed development is premature. There are policy provisions to protect the public interest in the terms of the future development of services.

**77** Specifically, the Board refers to the holding provisions in the Township's Official Plan that states as follows:

8.5.1.1 In areas of the Township where development is anticipated, but certain conditions such as financial or servicing requirements have not been met, the lands may be placed in a Holding zoning category, as provided in the *Planning Act, RSO 1990*.

8.5.1.2 The objective is to prevent or limit the use of land in order to achieve orderly, phased development and to ensure that the servicing and design criteria established in the Plan have been met prior to removing the Holding symbol.

**78** The Holding symbol can be used to effectively phase development until service capacities can be expanded. There was no evidence presented at the hearing that they cannot be expanded. The residents were concerned about their wells but the evidence by Mr. Hodgson was that the new municipal well will not interfere with existing wells. A well monitoring program will be put in place for the Caldwells' and the Wynnyks' lands.

**79** The case of *Seaton Rockwood Ltd. v. Eramosa (Township)* clearly stands for the proposition that developments can be phased as the servicing becomes available and that there is no harm in using the Holding zone to meet that end.

**80** The Board finds that the phasing of development as water and sewer services become available acceptable and the proposed developments are not premature. The Board understands the concerns of rural property owners about their wells. Wells that are located in local shallow aquifers are subject to seasonal changes and development on communal systems in deep aquifers should not impact those local waters supplies.

**The land uses abutting the Caldwell residence are incompatible as far as the bungalow townhouses and the commercial use and should be replaced with detached lots.**

**81** The evidence of the planners was that the townhouses and the commercial land use abutting the Caldwell residence was acceptable and provided appropriate buffering and transition.

**82** Mr. Caldwell disagrees with that position and wants the townhouse block to be converted to single detached lots and the commercial block to be moved to the other side of the entrance to the proposed subdivision.

**83** The Board is cognisant of the comments of Member Katary in Ottawa (City) Zoning By-law No 40/99 (Re) where he said:

"In the view of the Board, as it has repeated stated in the past, compatibility turns on the impact of the proposal on the character of the environment, both built and natural, with due regard for how the character is likely to evolve in the foreseeable future. Being compatible with is not the same as being the same as. Being compatible with is not even the same thing as being similar to. Being similar to means having resemblance to another thing; they are like one another, but not identical. "Being compatible with" means being mutually tolerant of and capable of co-existing together in harmony in the same area. In the final analysis, the proposal should not cause an unacceptable adverse impact upon existing built and natural environments."

**84** The townhouse block located across from the Caldwell property faces into their property and may cause concern especially because their existing neighbour is a farm field. One can understand and be sympathetic to their unease about now having multiple neighbours facing their back yard. The Board sees that opportunities exist to relocate the townhouse block to another portion of the subdivision lots 184 to 189 or lots 190-195 or 55-60. These sites would not be on the end of a crescent and would not face an existing residence. This appears to be a superior solution and one that would partially allay the Caldwells' concerns.

The relocation of the commercial block is more problematic because it would necessitate the redesign of the subdivision. The solution the Board prefers is to place two 50 foot lots next to the Caldwells slightly reducing the size of the commercial block. This was one of the many options put forward by Mr. Caldwell

but not his preferred one that was to relocate the commercial block further west. Ms Rudy admitted that the designation of the commercial site had not been the subject of a feasibility study with respect to its design or location and this seems to be a reasonable compromise. The Board is entitled to propose any solution that in its opinion is reasonable (see *London (City) v. Ayerswood Development Corp.* [2002] O.J. No. 400, 119 A.C.W.S. (3d) 666 Court File No. 1198.

**The land use interface between the Manors of Colgan and the McMann is inadequately buffered and should be replaced with a road.**

**85** The evidence from Mr. Hodgson and supported by the testimony of Mr. Cain and Ms Rudy was that the interface between residences and farmland is a normal occurrence and that the six foot fence and warning clause are sufficient. The Minimum Distance Separation (MDS) is met for the existing livestock operation and the operation could increase in size. The right to farm legislation protects Mrs. McMann's farm operation and normal farm practices are protected. Mrs. McMann has weakened her argument for further protection by severing a residential lot from her own property. Admittedly she is having problems with refuse from that residence; however there are civil and municipal remedies for garbage complaints on private property.

**86** The Board finds that the warning clause and six foot chain link fence are sufficient protection for the McMann farm based upon the uncontradicted testimony of the planners.

**Mr. Milotic's demand for a common boundary fence should be agreed to by Wayland Farms.**

**87** Mr. Milotic has requested a common boundary fence between his lands and the Wayland Farms subdivision. Wayland Farms response is that their development does not directly abut upon Mr. Milotic's farm and that there is a buffer between the two properties.

**88** The Board agrees with Wayland Farms. There is a solution for Mr. Milotic if he wishes a common boundary fence. He can request a fence view and have the dispute settled under the *Line Fences Act*.

**89** The Appeals are allowed in part and the Board's Orders will issue when the final conditions of draft approval (for six years) (Exhibits 24 and 35) are sent to the Board along with the revised plans for the Manor's of Colgan (Exhibit 29), the revised By-law for the Manors of Colgan (Exhibit 34), the plans for the Wayland Farms substantially in accordance with Exhibit 22, the Zoning By-law substantially in accordance with Exhibit 23 and the final Official Plan Amendments substantially in accordance with Exhibits 21 and 33.

J.E. SNIEZEK  
MEMBER