Tribunals Ontario
Environment and Land Division
Local Planning Appeal Tribunal

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VIA EMAIL

May 14, 2020

David Bronskill
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Counsel for Maple Lake Estates Inc.

Dear Counsel:

RE: Section 35 Request for Review
Decision and Order of Member Hugh S. Wilkins issued December 19, 2019
LPAT Case No. PL161206

This letter is the disposition of the Local Planning Appeal Tribunal ("Tribunal") of the Request for Review ("Request") which you submitted on behalf of Maple Lake Estates Inc. ("Appellant") of the Decision and Order of Member Hugh S. Wilkins issued on December 19, 2019 ("Decision") in respect of the above-captioned case.

The Tribunal Rules to Dispose of a Request

Pursuant to subsection 17(2) of the *Adjudicative Tribunals Accountability, Governance and Appointments Act*, I have been delegated authority by the Executive Chair of Tribunals Ontario to dispose of all aspects of the Request.

Rule 25 sets out the process to request a review of a Tribunal decision or order. Rule 25.7 provides that a request may only be granted if it raises a "convincing and compelling" case that one of the listed grounds in this Rule is applicable to the Decision. This Rule reflects the high threshold that has been established by the Tribunal to review or reconsider a decision.

Background to the Request

The Decision considered and disposed of the appeal filed by the North Gwillimbury Forest Alliance ("Appellant") of the Town of Georgina ("Town") official plan amendment 129 ("OPA

129"). The Town's five-year official plan review resulted in the adoption of OPA 129 which was approved with certain modifications by the Region of York.

OPA 129 designated the lands owned by your client, Maple Lake Estates Inc., ("Maple Lake") Urban Residential. The Appellant appealed this designation and submitted that your client's lands ("Subject Lands") should be designated Environmental Protection Area to reflect the current policy framework and the most recent evaluation by the Ministry of Natural Resources and Forestry who determined that roughly 90 percent of the Subject Lands consist of provincially significant wetlands and provincially significant woodlands. The Tribunal allowed the appeal and amended OPA 129 by designating the wetland and woodland portions of the Subject Lands as Environmental Protection Area. At the same time however, the Tribunal repeatedly stated that this designation would not affect development rights, nor prohibit development and site alteration on the Subject Lands that is permitted by the existing development approvals. The reasons to explain these findings are set out in this 27-page Decision.

The Request asserts that the Decision contains an error of fact and law because it does not direct policy modifications to OPA 129 to recognize the existing development approvals for the Subject Lands. The Request quotes a number of paragraphs from the Decision in support of this ground. The Request also includes a recent letter which the Appellant sent to the Town, following the issuance of the Decision, to illustrate the need for such policy modifications in OPA 129.

Disposition of the Request

I have carefully reviewed the Decision and the content of the Request. I have concluded that the Request fails to establish a convincing and compelling case that there is an error of fact or law in the Decision that is sufficient to warrant the exercise of my review powers which are authorized by Rule 25. I have similarly concluded that the Request fails to establish that the recent letter from the Appellant to the Town is new evidence that was not available at the time of the hearing "but that is credible and could have affected the result."

The Request essentially restates or re-argues the submissions presented to the Tribunal which are considered in the Decision. The Request fails to establish that an error of fact or law was made by the Tribunal that meets the high threshold in Rule 25.7(c). I am satisfied that the Tribunal properly weighed the evidence presented at the hearing and explained the basis for the order in paragraph 75 of the Decision. I am also satisfied that the recent letter from the Appellant to the Town enclosed in the Request is not new evidence, as that term is understood in Rule 25(e).

There are repeated references in the Decision to the existing development approvals that apply to the Subject Lands. These approvals are itemized in paragraph 14 and they include zoning to authorize a residential development and golf course, a registered subdivision plan and subdivision agreement. OPA 129 does not prohibit nor remove these approved development permissions for the Subject Lands. In my view, the Tribunal did not err by failing to direct modifications to recognize these development approvals which are identified

throughout the Decision. The current in-force policy documents, such as the Provincial Policy Statement ("PPS") do not have retroactive application, and, in the case of the upper tier official plan, there are express transition policies which continue legally existing land uses. As such, the in-force policy documents do not remove these development permissions.

Paragraph 63 of the Decision quotes the transition policies in the Regional Official Plan. This policy provides that legally existing land uses that conform with the in-force "local official plans or zoning by-laws" at the time when the upper tier plan is approved "are permitted to continue" to the extent provided for in the official plan or by-law. The Tribunal makes the finding, at paragraph 71, that the existing development approvals on the Subject Lands continue or are transitioned under this policy. In a similar vein, at paragraph 39, the Tribunal concluded that the policies in the applicable PPS which prohibit development in significant wetlands, do not have retroactive application. As such, the PPS does not remove or repeal the existing zoning, or otherwise nullify the subdivision agreement or the approved subdivision on the Subject Lands.

It is important to bear in mind that official plans are broad policy documents that are intended to be read as a whole. It is not uncommon for an official plan to contain a general transition policy that recognizes the continuation of existing development approvals, or even non-compliant uses. The development permissions on the Subject Lands are clearly established on title by the registration of the subdivision, the subdivision agreement and are also set out in the approved zoning. Official plans need not include all existing development approvals applicable to every property within the Town or Regional area, particularly when in-force zoning is in place.

The Decision repeatedly confirms the continuation of the existing development permissions following the approval of OPA 129. The Tribunal determined that it was not necessary to direct policy modifications for the Subject Lands and in this case, I find no error in that conclusion, given the applicable transition policy, the explicit finding that the PPS does not have retroactive application and the numerous references in the Decision to the development permissions.

For all of these reasons the Request is dismissed, and the Decision PL161206 remains in force and effect.

Yours truly,

MARIE HUBBARD

Marie Hubbard
Associate Chair
Local Planning Appeal Tribunal