

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: October 31, 2019

CASE NO(S): PL180727

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	John Bacher
Subject:	Proposed Official Plan Amendment No. OPA 128
Municipality:	City of Niagara Falls
LPAT Case No.:	PL180727
LPAT File No.:	PL180727
LPAT Case Name:	Bacher v. Niagara Falls (City)

Heard: By written submission

APPEARANCES:

Parties

John Bacher
City of Niagara Falls
GR (Can) Investments

Counsel

Self-represented
Chris Barnett
N. Jane Pepino
Maggie Bassani

**DECISION DELIVERED BY SHARYN VINCENT AND ORDER OF THE
TRIBUNAL**

INTRODUCTION

[1] John Bacher is the sole Appellant to Official Plan Amendment 128 (“OPA 128”) which amends the Official Plan of the City of Niagara Falls (“City”) to add new community plan policies to both provide a comprehensive framework and to guide the future *Planning Act* applications necessary to permit the redevelopment of 48.5 hectares (“ha”) of a total holding of 195 ha adjacent to Dorchester Road and Chippawa Parkway, a development known locally as the Riverfront Community.

[2] It was determined through the Case Management Conferences that the issues to be addressed through a written hearing pursuant to the provision of *the Planning Act* as amended by Bill 139, are as set out:

- i) Is the proposed OPA 128 consistent with s. 2.1.4 (a) of the Provincial Policy Statement, 2014 (“PPS”) (Significant Wetlands);
- ii) Is the proposed OPA 128 consistent with s. 2.1.5 (b) of the PPS (Significant Woodlands);
- iii) Is the proposed OPA 128 consistent with s. 2.1.5 (d) of the PPS (Significant Wildlife Habitat);
- iv) Is the proposed OPA 128 consistent with s. 2.1.7 of the PPS (Habitat of Endangered and Threatened Species).

BACKGROUND

[3] In 2008 the lands subject of OPA 128 were subject of OPA 81, which converted the designation of the lands from Industrial permissions to Residential. At that time Special Policy Area 56 policies were imposed on the subject lands requiring development to occur in accordance with a Secondary Plan to be adopted as an amendment to the Official Plan. Special Area Policy 56 specifically recognizes that the extent of the Residential designations and Environmental Protection Areas that may be

affected by the environmental and feasibility studies yet to be completed, will be refined through the Secondary Plan process.

[4] In 2017, GR (Can) Investments (“Applicant”) made application to embark on the required work and made application to amend the Official Plan supported by the full complement of required technical studies including those directly germane to the determination of the issues before the Tribunal, an Environmental Impact Study and a Phase 2 Environmental Assessment (Savanta studies). These studies were circulated and reviewed by the Ministry of Natural Resources and Forestry (MNR) and the Niagara Peninsula Conservation Authority (NPCA).

[5] The normal, iterative circulation and commenting process ensued, the outcome being the recommendation and adoption of OPA 128, which is summarized by both the City and Applicant in their submissions as:

1. Re-designating land that is currently “Residential” to “Environmental Protection Area” where recommended;
2. Containing policy language which mirrors the PPS with respect to the protection of natural heritage features and their function; and
3. Providing a policy basis for further study of natural heritage features and their functions and tests that must be met in the future *Planning Act* Applications.

ANALYSIS

[6] Having reviewed all of the materials filed and forming the Record, together with the written submissions of the Parties, the Tribunal understands it is the contention of Mr. Bacher in the most general of terms that OPA 128 is based on flawed data and conclusions from a broad range of experts and authoritative individuals from the commenting agencies.

[7] Mr. Bacher asserts throughout his written submission unqualified opinions and statements not supported by the record or any qualified land use planner or ecologist. His own interpretation appears to be based either on apprehension or a lack of comprehension of the rigours of the planning processes which still lie ahead before any aspect of the site is altered.

[8] Mr. Bacher fails to recognize the OPA as a policy framework which stipulates next steps through requirements for study of any development or site alteration within areas designated Environmental Protection Area (EPA).

[9] Policy 13.56.5 of OPA 128 stipulates:

Refinement to the extent of the Environmental Protection Area and other designations and the establishment of appropriate setbacks and linkages will occur at the Secondary Plan, zoning by-law, plan of subdivision, plan of condominium and site plan control stages and shall be based on detailed Environmental Impact Studies.

[10] Each of the planning processes requires full circulation of supporting materials and all recommended courses of action or subsequent approvals will be subject of a public process.

[11] The Tribunal must, and has weighed Mr. Bacher's appeal against the uncontradicted expert opinion evidence of the three Affiants to the Responding Appeal Record and the Request for Party Status, John Barnsley, John Henricks and Tom Hilditch, two qualified, experts in matters of land use planning, and a qualified ecologist, who share the opinion that OPA 128 is consistent with the PPS and conforms to the Growth Plan for the Greater Golden Horseshoe, 2017, and as amended in 2019 ("Growth Plan").

[12] The Tribunal finds that the Appellant has failed to bring any evidence to demonstrate how OPA 128 is inconsistent with the PPS and does not conform to the Growth Plan and therefore dismisses the appeal pursuant to s. 17(49.1) of the *Planning Act*, as it read on September 2, 2019.

ORDER

[13] The appeal is dismissed.

“Sharyn Vincent”

SHARYN VINCENT
MEMBER

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Local Planning Appeal Tribunal

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