

ISSUE DATE:

Nov. 20, 2008



PL070319

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Osprey Valley Resorts Inc.
Subject: By-law No. 2007-42
Municipality: Town of Caledon
OMB Case No.: PL070319
OMB File No.: R070058

APPEARANCES:

Parties

Osprey Valley Resorts Inc.

Town of Caledon

Counsel

Gerald Swinkin

Nadia Koltun

DECISION BY R. ROSSI AND ORDER OF THE BOARD

Osprey Valley Resorts Inc. (the Appellant) has appealed the Town of Caledon's Zoning By-law 2007-42. Gerald Swinkin represented the Appellant. Nadia Koltun represented the Town. There was only one professional witness who provided the Board with land use planning evidence. Todd Salter, Manager of Policy, Planning and Development Department, Town of Caledon, was qualified to provide expert evidence and his professional opinion in support of the By-law. Farmer, David Lyons, spoke in opposition to the By-law.

Mr. Salter's two decades of planning experience has been gained through progressively senior planning positions while employed by the Town of Caledon. Mr. Salter has appeared before the Board many times before and his curriculum vitae establishes for the Board that this Planner possesses an intimate familiarity of the planning regime in the Town of Caledon; he has had direct project management responsibility for the development of Zoning By-law 2007-42 and related Official Plan Amendment 206; and he was involved in the preparation of the Town's Official Plan environmental and open space policies that are being implemented by By-law 2007-42.

The Appellant's issues were the following:

1. Does Section 5.7.3.1.9 of the Town Official Plan effectively establish the principle that Environmental Protection Agency (EPA) designated lands have compensable value and, if so, is it fair and good planning to rezone the plans into an EPA zone category in the absence of proper compensation to the owner?
2. Does the amendment of the Town Zoning By-law to rezone lands into EPA 1 or EPA 2 zone categories from A1, A2 or A3 zone categories remove certain permitted uses and therefore downzone the affected lands?
3. Specifically, does permission for "Farm, Existing" as defined in By-law 2007-42 represent a downzoning from "Farm" as a permitted use under the Town Comprehensive Zoning By-law?
4. Does the amendment of the Town Zoning By-law to rezone lands into EPA 1 or EPA 2 zone categories from the previous HL zone category under former Zoning By-law 87-250 remove certain permitted uses and therefore constitute a downzoning of the affected lands?
5. Has there been adequate demonstration of harm to the public interest to warrant removing the uses permitted under the HL zone category under the former Zoning By-law 87-250?
6. Has there been adequate demonstration of the public good arising from the amendments into the EPA zone categories against the loss of rights to the private landowner as a result of such rezoning?
7. Are the amendments into the EPA zones fair in light of the removal of previously vested zoning rights?
8. Can the environmental policies under the Town of Caledon Official Plan be satisfactorily implemented without the enactment of By-law 2007-42?
9. Do the enactment of By-law 2007-42 and the placement of EPA zones on agricultural and rural land interfere with the establishment of farms in the Town of Caledon on lands so zoned?

10. Is the enactment of By-law 2007-42 in conformity with the Town Official Plan where it affects lands of good agricultural capability in light of the goal of preservation of high capability agricultural lands in agricultural production as articulated in Section 2.2.3 of the Official Plan and in light of the intended predominance of agricultural use as expressed in Section 5.1.3.14 of the Town Official Plan?
11. Is the amendment of the zoning of lands into an EPA zone where those lands have utility for agricultural, recreation or residential purposes in the absence of compensation or public acquisition contrary to the law or policy regarding fairness in the balancing of private and public interest?
12. Is By-law 2007-42 premature within the limits of the Alton Village area as defined for the Alton Village Study since a comprehensive review of planning policy is underway and delineation of environmental features may be affected by other policy considerations?
13. Does the enactment of By-law 2007-42 conform to the Greenbelt Plan?

As its response, the Town's issues were fewer in number but relate to the issues raised by the Appellant. Namely:

1. Does By-law 2007-42 conform to the provisions of the Caledon Official Plan: in particular does By-law 2007-42 conform to the applicable Official Plan provisions outlining the process for the implementation of EPA policies, being provisions 5.7.3.1.2 and 5.7.3.1.3?
2. Does the balanced re-allocation of permitted uses by By-law 2007-42 in accordance with the applicable provisions of Caledon Official Plan constitute "downzoning"?
3. Taking into account the demonstration of the community's objectives of environmental preservation and protection as found in the Caledon Official Plan and the community consultation process involving Zoning By-law 2007-42, does Zoning By-law 2007-42 represent good planning and equity on the part of the municipality and the appropriate balancing of community and private interests?

4. In passing By-law 2007-42, did Council for the Town of Caledon pass a by-law for a purpose which conflicts with the Greenbelt Plan?

The Parties accept that while there are four site-specific appeals of Zoning By-law 2007-42, the Appellant's appeal in this case is a general appeal that makes no reference to any specific lands that are affected by the provisions of the By-law. The Board determined that it would include within its decision relevant portions of Mr. Salter's witness statement in order to reflect the professional evidence that contributed to the Town's decision to pass Zoning By-law 2007-42, as well as to support the Board's findings in this case.

Caledon Town Council enacted Zoning By-law 2007-42 on March 20, 2007 as an amendment to comprehensive Zoning By-law 2006-50. Caledon's first Official Plan was approved in 1979. Caledon Council adopted the environmental and open space policies that form the basis of By-law 2007-42 as Official Plan Amendment 124 in October 1994. The Board processed various appeals to OPA 124 and subsequently approved the balance of this OPA in 2003. The Appellant's lands known as "Beacon Hall Lands" were exempted from the provisions of that amendment.

Zoning By-law 87-250 is the former Caledon Comprehensive Zoning By-law that came into force in 1988 and was enacted to implement the policies of the 1979 Caledon Official Plan by regulating the use of lands and the character, location and use of buildings and structures in the Town.

Zoning By-law 2006-50 is the Caledon Comprehensive Zoning By-law that came into force in October 2006 and which implements the policies of the Official Plan. Zoning By-law 2006-50 repeals By-law 87-250, including the lands that are affected by Zoning By-law 2007-42. It should be noted, however, that although the repeal of By-law 87-250 with regard to such lands is not effective until Zoning By-law 2007-42 comes into force.

Mr. Salter noted that Zoning By-law 2007-42 is an amendment to By-law 2006-50 and therefore relies on the overall structure and content of 2006-50 to achieve full effect. By-law 2007-42 is the result of the Town's 2004 preparation of an environmental and open space by-law amendment to implement the Official Plan. Its purpose is to amend the Town's Comprehensive Zoning By-law 2006-50 in order to bring it into conformity and to implement the Town of Caledon Official Plan environmental and open

space policies that the Board approved in 2003. The By-law establishes new environmental and open space zones and specific provisions related to these zones, establishes new definitions, creates an environmental “E” suffix in respect of existing uses, carries forward existing site-specific exception zones and recognizes existing uses on a site-specific basis. Further, Zoning By-law 2007-42 rezones lands that have been determined, through a comprehensive mapping refinement exercise, are not environmentally significant to an appropriate zone – predominantly an Agricultural or Rural Zone.

Zoning By-law 2007-42 establishes Environmental Policy Area (EPA 2) Zone the ‘parent’ EPA that has been applied to the majority of lands designated EPA in the Caledon Official Plan (the provisions of this zone reflect the policy directions contained primarily in Section 5.7 of the Official Plan).

The By-law also establishes Environmental Policy (EPA 1) Zones – site-specific zones that generally have been applied to sites that have gone through relatively recent detailed planning approvals processes that have resulted in tailored, site-specific, environmental zones being established in accordance with the Official Plan.

The By-law also establishes Open Space (OS) Zones and Exception Zones. The Exception Zones essentially carry forward all site-specific exception zone provisions currently contained in By-laws 87-250 and 2006-50 on lands affected by Zoning By-law 2007-42. The By-law also establishes Existing Use Zones that essentially recognize all legally existing non-conforming uses as permitted uses within EPA in accordance with the Official Plan.

Mr. Salter referred to the relevant sections of the Caledon Official Plan. Both Parties agreed that the open space areas were not a salient issue to address; rather, it was the environmental policy area of the By-law that was relevant to the appeal.

He provided his analysis and opinion of the Official Plan policies and their effect by citing the relevant policies of the Plan. The principles and goals of the Plan establish that the protection and stewardship of ecosystems is a key land use planning priority for the Town. This priority must be balanced with other goals such as the preservation of high capability agricultural lands.

Section 3.1.2.1 sets out specific objectives related to the maintenance of ecosystem integrity and identifies the types of ecosystem functions, attributes and physical and biological systems that should be protected, maintained, and as appropriate, enhanced and restored.

Section 3.1.2.2.1 directs that the Town's ecosystem principle, goal and objectives form a primary basis for all land use planning decisions. Mr. Salter opined that the Plan's principles, goals and objectives establish that environmental protection is to be given a high priority in considering the appropriate balance between various land use objectives.

These ecosystem goals and objectives also establish the basis for the Plan's "Ecosystem Planning Strategy" contained in Section 3.1.3. This Strategy in turn establishes the foundation of the Environmental Policy Area (EPA) land use designation and the policies that are applied to that designation. Town Council has determined that the protection of the ecosystem components contained in the EPA designation is important for the maintenance of ecosystem integrity in Caledon.

Mr. Salter noted that new development is prohibited within EPA, with the exception of certain permitted uses (section 5.7.3.1.2), among these being legally existing residential and agricultural uses. Section 5.7.3.1.3 states "all lands designated EPA in this Plan shall be zoned in a separate classification in the implementing zoning by-law which conforms to the provisions of this designation." This section of the Plan allows Council to recognize other legally existing uses within EPA as permitted uses on a site-specific basis. Mr. Salter emphasized that Section 5.7.3.1.9 states, as a general direction, that the Town does not intend that EPA lands be brought into public ownership or be open and accessible to the public.

Mr. Salter opined that the policies of the Official Plan establish a reasonable balance between the Plan's environmental protection directions and other land use planning considerations such as agriculture. The EPA designation applies to lands determined to be important to the maintenance of ecosystem integrity in Caledon and has been subject to a thorough refinement process to ensure that this designation is applied only to appropriate lands.

Mr. Salter emphasized that the Official Plan clearly establishes the intent that all lands designated EPA and OSPA be placed in a separate zone category in the Town's implementing Zoning By-law. The policies that apply to the EPA and OSPA designations provide the basis for the provisions to be contained in the implementing zoning by-law such as the provisions relating to permitted uses and the treatment of existing uses. Finally, he noted that it is not the intent of the Official Plan that acquiring or bringing EPA lands into public ownership is necessary to implement the policies of that land use designation.

Mr. Salter outlined the effect of Zoning By-law 2007-42 in a number of ways. It implements the EPA and OSPA designations set out in the Official Plan by placing these designated lands in a separate zoning classification. It rezones lands that are not designated EPA to an appropriate zone, such as Agriculture. It permits uses within the EPA and OSPA zones that are in conformity with the Plan and removes uses that are not in conformity with the Plan. It recognizes all legally existing uses within EPA as permitted uses on a site-specific basis as permitted in Official Plan policy 5.7.3.1.3. It applies the generally more restrictive EPA 1 zone to lands that have been through a more detailed planning process that has justified the use of a more restrictive zone. It also recognizes and carries forward all existing site-specific exception zones.

The Planner also created a comparison chart (part of the documentary evidence as well as his witness statement) of uses permitted under the provisions of By-laws 87-250, 2007-42 and, where relevant, 2006-50. He noted that the provisions of 87-250 that are being repealed and replaced by By-law 2007-45 (the Hazard land and Agricultural zones) reflect policies and land use designations contained in the 1979 Official Plan that have been deleted and replaced by newer policies and designations since By-law 87-250 came into effect in 1988. Thus, the provisions of 87-250 do not conform with the approved Official Plan and, in some instances, conflict with the Plan. Given the purpose and effect of By-law 2007-42, Mr. Salter holds that the balanced re-allocation of uses achieved by the By-law represents the "logical conclusion" of a legitimate standard planning process that has been under way for a number of years, and is not an attempt to down zone.

Mr. Salter opined that Zoning By-law 2007-42 is necessary to implement the approved Caledon Official Plan. The By-law conforms to the approved Plan and thus reflects a reasonable balance struck between the Plan's environmental protection

directions and other land use planning considerations. He called this instrument a “fair approach” to legally existing uses by recognizing them on a site-specific basis and carrying forward their existing zoning, subject to reasonable provisions.

Mr. Salter reviewed the *Greenbelt Act*, 2004 that allows the passing of by-laws provided they do not conflict with the Greenbelt Plan. He noted that conflict arises if a by-law is more restrictive with regard to specified agricultural and aggregate policies contained in the Greenbelt Plan. The Official Plan policies that By-law 2007-42 implements establish a reasonable balance between environmental and agricultural objectives that is consistent with the intent of the Greenbelt Plan. Agriculturally important lands are designated Agricultural Area and environmentally lands are designated Environmental Policy Area.

The balanced approach in By-law 2007-42 regarding existing agriculture within EPA and the non-application of the By-law to lands designated Agricultural Area in the Caledon Official Plan support Mr. Salter’s opinion that By-law 2007-42 does not conflict with the Greenbelt Plan.

The Planner also discussed the municipal conformity exercise that the *Greenbelt Act*, 2005 anticipates as part of a normal five-year Official Plan review that is undertaken in accordance with Section 26(1) of the *Planning Act*. He noted that the Town initiated a Provincial Policy Conformity exercise in 2007 that included, among other topic areas, a review of the Town’s agricultural and rural area policies. Reviewed in the context of the existing Official Plan and Greenbelt policies, Mr. Salter opined that the scope of potential revisions related to agricultural and rural area policies will be relatively limited and the Town expects to complete this exercise by mid-2009.

Mr. Salter referenced Section 26(9) of the *Planning Act* that requires a municipality to amend its zoning by-law within three years of the Official Plan provincial conformity amendments coming into effect. Given the above-noted timelines, he opined that any revisions to the Town’s comprehensive Zoning By-law to implement the results of the provincial conformity exercise are at best, several years in the future. As such, he opined that approval of Zoning By-law 2007-42 would not prejudice the potential outcomes of the conformity exercise or its subsequent implementation through appropriate amendments to the Town’s comprehensive Zoning By-law, should they be necessary. He added that By-law 2007-42 establishes an appropriate and necessary

updated foundation for the provincial conformity exercise and its eventual implementation through any future amendments to the Town's comprehensive Zoning By-law.

Mr. Salter reviewed the *Oak Ridges Moraine Conservation Act, 2001* that allows the passage of by-laws provided they do not conflict with the Greenbelt Plan. Like the Greenbelt legislation, conflict arises if a by-law is more restrictive with regard to specified agricultural and aggregate policies contained in the Oak Ridges Moraine Conservation Plan (ORMCP). Section 13 of the ORMCP sets out policies that encourage and support the protection and continuation of agricultural uses within the Countryside Area designation – policies that are substantially similar to the policies of the Greenbelt Plan regarding the same subject matter.

The Town's ORMCP conformity amendment is OPA 186 and it establishes a similar balance between environmental and agricultural land use policies that were established through the Town's new environmental and open space policies (OPA 124). Mr. Salter opined that provincial approval of OPA 186 indicates that the Province does not consider the Town's policy approach to balancing environmental and agricultural interests to be in conflict with either the ORMCP or the *Oak Ridges Moraine Conservation Act, 2001*. Given the similarities between this *Act* and Plan, and the *Greenbelt Act* and Plan, as well as provincial approval of OPA 186, Mr. Salter opined that the policies of the Official Plan that Zoning By-law 2007-42 implement are not in conflict with the *Greenbelt Act* and Plan.

Mr. Salter responded to the Appellant's issue regarding the Alton Village Study. The Town of Caledon initiated the Study to develop planning, servicing and environmental management strategies to guide development and land use change over the longer term within Alton Village. He added that upon completion, the Alton Village Study might result in appropriate revisions to the Official Plan and potentially the Town's comprehensive Zoning By-law. By-law 2007-42 implements the existing approved Official Plan and is not premature within the Alton Village Study Area. The Planner opined that were this Study to need future revisions to the Official Plan and Zoning By-law, Zoning By-law 2007-42 would not prejudice these future revisions as this By-law is implementing an Official Plan that is currently in effect, and the Alton Village Study will be guided by the same Official Plan.

The Board accepts that the Greenbelt Plan contains similar policies to those contained in the Caledon Official Plan that balance the protection of natural resources and maintain the viability of agricultural uses. The Plan anticipates some degree of regulation of agricultural uses within environmentally significant lands and it directs that municipal Official Plans should support and maintain the viability of agriculture, as well as protect agricultural lands. Mr. Salter opined that the Caledon Official Plan conforms to the Greenbelt Plan.

Mr. Salter opined that implementation of Zoning By-law 2007-42 represents good planning, correctly implements the Town of Caledon Official Plan, and reflects an appropriate balancing of community and private interests.

Mr. Swinkin submitted that the Appellant feels strongly about the “appropriation of rights” in land; specifically, that the Zoning By-law Amendment permits farms that existed prior to October 1994 on environmentally designated lands whereas farms created after October 1994 are not permitted on these lands. The Appellant believes that there need not be a loss of these farming rights for the Town to achieve its goals. Mr. Swinkin argued that the Town did not have to enact the Zoning By-law Amendment to achieve its environmental protection policies, as such policies were already in effect and these would have been sufficient without the need for the Zoning By-law Amendment. While not a farmer, the Appellant as a developer is nevertheless concerned about the loss of rights for future lands that he might acquire.

Mr. Swinkin submitted that the Town might have interfered with the establishment of an agricultural use, resulting in an amendment that might not conform with the agricultural policies of the Town as expressed through its Official Plan as well as with the same policies in the Greenbelt Plan.

Ms Koltun argued that the Municipality has engaged in the true Official Plan exercise, with the community spending a decade on studying and coming to an understanding of the concept of environmental protection, and what the Town wishes to do in this regard. She noted that the Board-approved Official Plan sets out the vision for the community related to environmental protection, while this Zoning By-law Amendment implements that vision.

Ms Koltun also submitted that the enactment of this planning instrument does not represent down zoning, as the uses are re-allocated from what they were previously to what they are now in order to conform to the Official Plan. This process included addressing the role of farming in environmentally protected areas.

The underlying theme of the Town's submissions was one of balance. The Board accepts and determines that the Town has made a balanced decision in the enactment of Zoning By-law 2007-42 by meeting the requirements of the *Greenbelt Act* while ensuring that the Municipality does not enact by-laws that conflict with the *Greenbelt Act*.

Mr. Swinkin submitted that the Appellant is concerned that the traditional farmers' right to stewardship of the agricultural lands has been taken away with this Zoning By-law. However, in the Board's determination, the Zoning By-law does not offend or diminish recognition of farmers having a traditional stewardship role over the management of agricultural lands. This recognition, however, cannot supersede the relevancy and appropriateness of a more formal, systematic use, application and implementation of planning principles and instruments regulating, in an orderly fashion, the treatment and designation of agricultural lands in Ontario communities. In this regard, the Board places more weight on the importance of a broad planning approach for the treatment of agricultural lands versus farmers' individual land management practices for their respective properties.

The Board assigned no weight to the argument that the Town's distinction between existing farms and farms created after October 1994 is discriminatory. The Board does not assign weight to Mr. Swinkin's argument that because existing farmers can carry on their agricultural uses in these EPA-zoned lands, this undermines the ecosystem principles of the Official Plan that drive the EPA zoning. The Board preferred Mr. Salter's evidence that one must read the Plan in its entirety and that the Town has struck an appropriate means of balancing its principles and policies related to the importance of agriculture while recognizing the priorities that must be assigned to environmental protection in the Town. Further, the Official Plan has made a distinction between existing and new farms, and new farms have an opportunity to develop on lands designated Agriculture.

Mr. Salter explained clearly the Town's rationale in creating a by-law that imposes a limitation by recognizing pre-October 1994 farms and prohibiting farming operations after 1994 on these environmental lands. He said that Official Plan policy 5.7.3.1.2 is clear and the Zoning By-law must conform to what the policy dictates. Further, the Town wanted to strike an appropriate balance between environmental protection and the community's agricultural objectives. The Town determined that existing agriculture should be afforded similar protection as other existing uses, but in respect of new farming, the ecosystem principles override the agricultural policy and new uses will not be permitted.

David Lyons is a farmer with various farming operations in the Caledon area. He farms a property he owns in the southwest part of Caledon. Most of his lands are located in the Greenbelt and the Town treats some of his property features as Environmental Protection features. Such lands are not actively farmed, are largely wooded and are not well drained. Some of these areas serve as drainage functions for parts of his farm's agricultural activities, acting as a receptacle or a passage through which waters flow to effective drainage.

Mr. Lyons explained that he had the opportunity to negotiate with Town officials in respect of the extent of his property that the Town deemed to be Environmental Protection Areas.

He told the Board that in his view, zoning creates an obstacle to bringing lands into agricultural production. He said that margins are so narrow in the industry, regardless of the type of production, that zoning becomes another obstacle to the opportunity and people may look to another area that does not carry zoning impediments. This creates sterilization of the landscape for that opportunity and drives people to seek other opportunities in other areas and jurisdictions.

The Board accepted Mr. Lyon's opinion that the battle to maintain an agricultural community in Caledon is being lost as a result of many pressures, but based on the expert planning evidence in this case, the Board determines that Zoning By-law 2007-42 does not contribute to that loss as existing farms are protected and may operate as of right. The introduction of new farming operations on environmentally protected lands is appropriately prohibited to strike the balance of responsibility of maintaining

agricultural lands with environmental protection. By extension, new farming is to be directed appropriately to lands designated for such operations.

The Board preferred the expert planning evidence of Mr. Salter to the presentation of David Lyons as being more comprehensive, founded on recognized planning principles and supported by a comprehensive study, consultative and objective planning processes. In the Board's determination, Mr. Salter's witness statement and his *viva voce* expert testimony were unshaken during Mr. Swinkin's cross-examination and the Board must emphasize that the only planning evidence presented at this hearing was that of Mr. Salter.

While Mr. Swinkin argued that the proposed Zoning By-law does not 'repair or prevent a harm', there is nothing to show that leaving in place the former zoning causes an impact on the environmental features. The Board determines based on the only planning evidence before it, that the zoning is necessary to enable the Town to achieve provincially mandated requirements and to strike a balance between agricultural uses and the contemporary need for environmental protection. The former zoning does not, in the Board's view, provide sufficient safeties for protection and preservation of the environmental features to the extent that the new Zoning By-law does.

In respect of the By-law's conformity with the Official Plan's policies dealing with agricultural uses, one of the Town's goals is ecosystem-based planning and management. Also good agriculture lands are preserved and protected, as are lands currently in agricultural production. The Plan sets out the permitted uses for areas designated as EPA and these uses, among others, will be limited to legally existing residential and agricultural uses.

New farms may not be permitted in the By-law's EPA 2 zones, but the Board determines that the Zoning By-law strikes an appropriate and workable balance between preservation of good agricultural lands and ecosystems. Town Council has protected agricultural lands in EPA zones and the EPA 2 zone category permits existing farms as of right. In the Board's view, Town Council has struck an appropriate balance between farming and ecological protection by bringing forward all existing site-specific exemption zones, and by recognizing that there are indeed farming aspects to environmental and forest management. Thus, the Town of Caledon has, in the Board's view, preserved existing agricultural uses in environmentally sensitive areas with no

prejudice to those who seek to create new farms in the EPA zone category. The Board accepts as persuasive the Town's position that no new farms in these environmentally protected areas is appropriate. To allow new farms to proceed on these lands would subordinate ecological goals to the goal of farming. In the Board's view, new farms in the Town of Caledon belong on lands designated as Agriculture and on land zoned Agriculture. As Ms Koltun emphasized, the objective for these ecologically sensitive areas and in areas designated EPA is environmental protection first.

The Board was not persuaded by the Appellant's counsel that By-law 2007-42 limits new farm creation and does not allow opportunities for existing farms to develop. Such opportunities exist, but not in areas that require, in the Town's view, environmental protection.

The Board does not consider the enactment of Zoning By-law 2007-42 to result in inappropriate down zoning. In the Board's determination, there is a change of uses and a shorter list of uses than agricultural operations enjoyed previously but uses permitted in agricultural zones continue in the EPA 2 zone category if these uses are accessory to an existing farm use. The By-law holds that farms are no longer permitted unless they are existing farms. This is a change, but one made in accordance with the Official Plan, in full compliance with the requirements of the *Planning Act*, and after extraordinary efforts to consult with those potentially affected. After more than one hundred site visits to observe, record and identify the salient features of the area, Town officials negotiated successfully with affected owners, Mr. Lyons included, where the most appropriate places for lines delineating the EPA zones on their properties would be. Further, Council enacted OPA 206 to actually reduce the expanse of areas to be designated as EPA and this was the result of a three-year consultation process.

The Board determines that Section 5.7.3.1.9 of the Town Official Plan establishes effectively the principal that EPA designated lands have value. While it is "fair and good planning" to rezone the plans into an EPA category, this does not create a condition whereby owners of affected lands where farming is not permitted (post October 1994) should be compensated.

Ms Koltun referenced a variety of cases to support the Planner's evidence and her submission that the proposed Zoning By-law is in the public interest. She argued that the environment is protected, loss has been minimized and existing farms are

permitted as of right. She cited the case of *Kitchener (City) Official Plan Amendment No. 45 (Re)*, [2003] O.M.B.D. No. 1079, October 31, 2003 which stands for, among other things, the proposition that the person who asserts the down zoning must show a loss of property value and he must be the property owner. The Appellant in this case makes a general appeal against the proposed By-law without establishing any personal loss resulting from the alleged down zoning that the By-law creates. In fact, there is no evidence to show how the Appellant would be affected by the alleged down zoning. As Ms Koltun noted, the Appellant's Beacon Hall lands were completely exempted from the EPA provisions of the Official Plan and proposed Zoning By-law 2007-42. It is appropriate to quote from the findings made in that decision related to down zoning:

Zoning by-laws involve a balancing of public and private interests, and in a down zoning situation, particular attention must be paid to the question of whether the public benefit to be achieved by the by-law outweighs the private landowner's loss.

Mr. Lyons spoke of the 'potential impact' of zoning that does not permit farms after 1994 but he is not an Appellant in this case. The Board noted and accepted Mr. Lyon's extensive farming history and family presence in Caledon, as well as his volunteerism and activism within the farming community, and in previous local counsellor roles, make his testimony appropriate and relevant. No other farmer or farming organization appeared at this hearing to dispute the proposed Zoning By-law or raise down zoning or any other concern. In the Board's determination, this By-law does not down zone, particularly where the Appellant has not provided any evidence that his property would be adversely affected by the proposed By-law. With neither planning evidence nor personal experience or affectation, the Appellant has failed to demonstrate that Zoning By-law 2007-42 represents down zoning and the Board prefers the evidence of the Planner and the submissions of Ms Koltun on this issue.

The Board determines that Zoning By-law 2007-42's rezoning of lands into EPA 1 and EPA 2 zone categories from A1, A2 or A3 zone categories does not remove certain permitted uses and therefore "down zone" the affected lands. Permission for "Farm, Existing" as defined in the By-law does not represent a down zoning from "Farm" as a permitted use under the Town Comprehensive Zoning By-law.

By extension, the rezoning to EPA 1 and EPA 2 from the previous HL zone category under former Zoning By-law 87-250 does not remove certain permitted uses and does not constitute a down zoning of the affected lands. The Board determines that

the Town is justified under the former By-law 87-250 to remove uses permitted under the HL zone category.

The Board determines that the public good is served by authorizing the amendment that creates the EPA zone categories and determines the loss of rights to a private landowner, if any, to be subordinate to the larger public interest.

The Board determines that the By-law's amendments into the EPA zone categories are fair. The Board also determines that neither the By-law nor the placement of EPA zone categories on agricultural and rural lands interferes with the establishment of farms in the Town of Caledon on lands so zoned.

The Board determines that the existence of the conservation authorities' generic regulation does not alleviate the need to enact Zoning By-law 2007-42. This regulation deals with a different subject area. There is some overlap with the Town's EPA zone categories but the generic regulation addresses hazard lands, wetlands, river and streams valleys and says no development will be allowed unless conservation authorities are satisfied that there is no erosion of lands. It also deals with structures and ensures the presence of those structures does not negatively impact issues of flooding, erosion, pollution, etc.

The proposed Zoning By-law does not deal with these issues. Rather, it addresses land uses. While there is some overlap, it is clear that the thrust of these two planning instruments is different and issues relating to uses are not completely addressed through the generic regulation. Further, the Town holds that the Official Plan provides direct instruction for the Municipality to proceed by way of a zoning by-law, as all lands designated EPA shall be in a separate classification in the implementing zoning by-law.

Ms Koltun submitted that Zoning By-law 87-250 does not implement the approved Caledon Official Plan. Rather, it conforms to the old 1979 Plan that no longer exists. Thus, in order to comply with Section 24 of the *Planning Act*, the Town's by-laws must conform to an Official Plan, thus necessitating the exercise of creating By-law 2007-42 in order to meet the Town's obligations under this section of the *Act*.

The Board also determines that the proposed Zoning By-law provides transparency of the planning process to the Town's citizens, who will have made

available to them a contemporary document that articulates clearly the Town's vision of its, and their, lands. Moreover, the Board determines that it becomes difficult to have a 1979-based by-law to deal with contemporary land issues in late-2008 and which does not conform to the Official Plan currently in place. In the Board's view, this engenders uncertainty for property owners in respect of what they can and cannot do on their lands. Passage of the proposed Zoning By-law represents, in the Board's view, an appropriate objective to uphold both good planning and the public interest. The Board determines that the Town's environmental policies under the Town of Caledon Official Plan cannot be satisfactorily implemented without the enactment of By-law 2007-42.

The enactment of the By-law is in conformity with the Town Official Plan policies, especially articulated in Sections 2.2.3 and 5.1.3.14 of the Plan.

The amendment of the zoning of lands into an EPA zone in the absence of compensation or public acquisition is not contrary to the law or policy regarding fairness in the balancing of private and public interest.

The Board accepted the uncontradicted evidence of Mr. Salter that Zoning By-law 2007-42 is not premature within the Alton Village Study Area. The Board determines that the proposed By-law would not prejudice these future revisions as this By-law is implementing an Official Plan that is currently in effect and the Alton Village Study will be guided by the same Official Plan. Thus, the Board determines that By-law 2007-42 is not premature with the limits of the Alton Village area as defined in the Alton Village Study.

In respect of the Greenbelt Plan, Mr. Swinkin argued that a fair reading of that document reveals its support for both existing and new agricultural uses throughout the Protected Countryside Area. Section 5.3 of the Plan (the municipal implementation side of this Plan) directs that no zoning by-law should be passed which is more restrictive than the Plan (as the counsel alleges Zoning By-law 2007-42 is). He argued that while the Town is in the process of its provincial policy compliance exercise, it is quite conceivable that a determination could be made that policy 5.7.3.1.2. is offside from the Greenbelt Plan and should be amended to become friendly to agriculture in general and not just to existing farms, thereby removing the constraint to allow for an appropriate extension of agricultural uses throughout the EPA 2 zone category.

However, the Board preferred Ms Koltun's argument that Zoning By-law 2007-42 serves as a platform for the Town's ensuring a fair, open and transparent conformity exercise, but the balance must be struck between agriculture and environmental protection, and allowing existing and subsequently new farming operations on these protected lands is unreasonable and creates the potential to overwhelm the environment that the Town is attempting to protect

The Board accepted as persuasive Ms Koltun's submission that it is not a question of conformity with the Greenbelt Plan but rather, one of whether the By-law conflicts with the Plan. The uses that the Greenbelt Plan proposes are not challenged by what the Town has achieved in its By-law. The prime agricultural areas in the Protected Countryside Areas are protected in the Town's Official Plan and all of those uses are contained in the Town's agricultural areas. Also, designations in the Town's Official Plan permit all of the uses that the Greenbelt Plan says should appear. While the EPA provides direction for what farming can exist, the Greenbelt Plan contains nothing that speaks to having no farms in this zone category. Under the Caledon Official Plan, farming areas and the full range of Greenbelt uses are permitted and the uses specified for the EPA zones conform with objective 5(e) of the Greenbelt Plan. By extension, with reference to OPA 186, the ORM provisions are similar to those found in the Greenbelt Plan and this Amendment implements those provisions. The balance that is achieved between agriculture and environmental protection is the same in OPA 186, and Zoning By-law 2007-42 implements it.

Further, the ORM provisions enable the Municipality to bring its planning instruments into conformity by means of the requisite staged process. A by-law cannot be passed which conflicts with the Plan. As such, the Town is currently engaged in the conformity exercise over a five-year period to achieve its proper planning goals. As such, approval of Zoning By-law 207-42 enables the Town of Caledon to conduct the conformity exercise with the Greenbelt Plan at this time, providing it with a platform from which to work in respect of that required exercise. The Board determines that Zoning By-law 2007-42 conforms with the Greenbelt Plan.

Having considered all of the evidence, the Board dismisses the appeal against Zoning By-law 2007-42 and approves amendment of the Town's Comprehensive Zoning By-law 2006-50 with Zoning By-law 2007-42. As requested by the Town of Caledon, the Board exempts the application of this By-law to the three site-specific

appeals of this by-law not yet dealt with, but approves the application of the By-law for all remaining lands.

So Orders the Board.

"R. Rossi"

R. ROSSI
MEMBER