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Ontario Municipal Board

Commission des affaires municipales de l'Ontario

London Highbury Shopping Centres Ltd., Claybar Developments Inc., Liahn Farms, and others, have appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of London to approve proposed Amendment No. 403 to the Official Plan of the City of London to add a policy to establish the threshold for determining a significant woodland
O.M.B. File No. O060201

APPEARANCES:

Parties

City of London
Sandy Levin

Counsel*/Agent

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(Student at law)

London Exeter Development Inc. (formerly, London Highbury Shopping Centres Limited) 700531 Ontario Ltd., T.W. Johnstone and Mollyanne Johnstone, London Development Institute, Corlon Properties Inc., Norquay Developments Inc., Joanne and Antonia Schalk, Liahn Farms, Sifton Properties Limited, Farhi Holdings Corporation, Drewlo Holdings Inc., Z Group Limited, Crich Holdings and Buildings, Crich Holdings and Buildings Limited, Sunningdale Developments Inc., Claybar Developments Inc.

B. Card

DECISION DELIVERED BY K. J. HUSSEY AND ORDER OF THE BOARD

This appeal concerns the propriety of a proposed Amendment to the Official Plan to set the standard for designating certain lands as "Significant Woodlands", in accordance with criteria scores set out in an ancillary guideline document.

On September 18, 2006, the City of London passed Official Plan Amendment 403 (OPA 403) to establish, within the Official Plan, a threshold for identifying "significant" woodlands. The proposed threshold is linked to an evaluation procedure set out in a guideline document that was approved by the City in August 2006 and was never appealed.

London Exeter Development Inc. and others have appealed the City's decision to pass OPA 403. The Appellants object to delegating to a guideline document, the implementation of the proposed policy. In the Appellants' view, the guideline document is a technical manual that is not transparent and is immune from appeal.

The guideline document contains standards for evaluating significant woodlands, which the Appellants assert are inappropriately low and insufficiently selective. Accordingly, the guideline document effectively serves as a vehicle for expropriating to the Natural Heritage System privately owned vegetation patches in inappropriate cases.

BACKGROUND AND CONTEXT

In 1999, Official Plan Amendment 88 (OPA 88) introduced into the City of London's Official Plan, the components that comprise the City's Natural Heritage System and the associated environmental protection policies. As part of this process, OPA 88 designated certain lands "Environmental Review" (ER), including lands that are the subject of this hearing. The subject lands were identified by the City's Sub-Watershed Studies as "vegetation patches", having potential as significant woodlands.

OPA 88 required that a detailed environmental study be undertaken on ER lands to determine whether they are "significant". Outside the urban growth area (UBG), the City was directed to do the study on the lands during the first 10 years of the planning period (1996 - 2006). Within the UBG, a detailed environmental study would be carried out through area studies or would be triggered by a site-specific development proposal. Restrictive land use policies were established on ER lands, pending determination of "significance".

If lands were determined to be "significant", in accordance with the criteria set out in Section 15.4.5 of the Official Plan, the lands would be re-designated "Open Space".

Otherwise, the lands would be re-designated for the appropriate land use in accordance with Official Plan policies.

Section 15.4.5 of the Official Plan provides the definition of woodlands and the basis for determining significance:

Woodlands are complex ecosystems of different tree species, shrubs, ground vegetation and soil complexes that provide habitats for many plants and animals. Woodlands is a general term which collectively refers to Woodlands identified through the Subwatershed Planning Studies and located outside the recognized Environmental Significant Areas which are shown as Vegetation Patches on Schedule B.

The significance of woodlands will be based on an evaluation of the following considerations:

- I) The Woodland contains natural features and ecological functions that are important to the environmental quality and integrity of the Natural Heritage System.*
- II) The Woodland provides important ecological functions and has an age size, site quality, diversity of biological communities and associated species that is uncommon for the planning area.*
- III) The Woodland is important for the balanced distribution of open space amenities and passive recreational activities across the urban area.*
- IV) The Woodland provides significant habitat for endangered or threatened species.*
- V) The woodland contains distinctive, unusual or high-quality natural communities or landforms.*

In October 2000, the City of London adopted the first guideline document (the "2000 Guideline") that set out a scoring system for evaluating "significance" of woodlands. A threshold was established in the 2000 Guideline that required one of the following to be met for woodland to be considered "Significant":

1. Three or more criteria meeting the standard for "high" or
2. two criteria meeting the standard for High and four or more criteria meeting the standard for Medium or
3. one criterion meeting the standard for High and six or more criteria meeting the standard for Medium or

4. Seven criteria meeting the standard for medium.

The 2000 Guideline and threshold (hereinafter the "Three High Approach"), was the evaluation procedure for woodlands that was used until August 2006. As a result of ongoing review by the City and on the recommendation of consultants hired by the City to carry out the ER land studies, changes were made to the 2000 Guideline criteria. A new guideline document (the "2006 Guideline") replaced the 2000 Guideline. Official Plan Amendment (OPA) 401 added the 2006 Guideline to the list of the City's guideline documents enumerated under Section 19.2.2 of the City's Official Plan.

The 2006 Guideline has since been used as the evaluation procedure for significance of woodlands. However, unlike its predecessor, the 2006 Guideline did not include a threshold for determining "significance". In response to public comments, the Department of Planning and Development recommended that the threshold for significance be made express within the Official Plan. The rationale was that its placement within a policy framework would allow for public review and appeals under the provisions of the *Planning Act*. It is this threshold policy that is now contained in OPA 403 that is the subject of this appeal.

OPA 403 revises the previous threshold from the Three High Approach to the "one high approach" or a "five medium" approach (referred to herein as the "One High Approach") as follows:

THE PROPOSED AMENDMENT

15.4.5.1 *the Woodland would be considered "Significant" if it achieves a minimum of one high or five medium criteria scores as determined by application of the Guideline Document for the Evaluation of Ecologically Significant Woodlands (March 2006) as listed in section 19.2 .2. A Significant Woodland will be designated as Open Space on Schedule A and delineated as a Significant Woodland on Schedule B.*

There is no objection to the last sentence of the proposed amendment quoted above, which stipulates that a Significant Woodland would be designated as Open Space on Schedule A and delineated as a Significant Woodland on Schedule B. The parties have agreed that the Board should approve that sentence.

This Appeal concerns the first sentence of the proposed amendment, quoted above.

The Issues

Eighteen issues were presented in the Board's Procedural Order. On consent, Issue 18 was struck from the list and the other 17 issues are being considered under 5 general headings.

I. Consistency with Provincial Policy Statement.

- a) Is OPA 403 consistent with the PPS?
- b) Would Section 15.4 .5 of the Official Plan as amended by OPA 403, be consistent with the PPS (2005)?
- c) Does OPA 403 have as its "purpose" the identification of woodlands which are "significant" as this term is defined by the PPS.? If so, does it achieve that purpose?

II. Municipal Approaches

- a) Are the City's policies for the protection of significant woodlands based on sound research and in keeping with accepted practices in Ontario?
- b) If the municipality, through its Official Plan, creates a municipal "approach" to the evaluation of woodlands, do provincial criteria, which set out a different approach, continue to be applicable? If so, do the municipal and provincial approaches in this case work in harmony? If not, does OPA 403 sponsor an approach that achieves or exceeds provincial objectives?
- c) Has the Council, through its adoption of OPA 403, adopted relevant and objective standards for the evaluation of significant woodlands for the City of London?

III. Community Values

- a) Do the policies for woodlot protection reflect community values?

- b) Does the *Planning Act* require, and the PPS anticipate, that community values affecting the evaluation of woodlands will be contained in a municipality's Official Plan?

IV. Appropriateness

- a) Is OPA 403 appropriate for inclusion in the Official Plan?
- b) Does the policy and process for identification and protection of significant woodlands constitute appropriate and environmentally responsible land-use planning?
- c) Does OPA 403 attempt to delegate Official Plan policy functions to a guideline document, which does not form part of the City of London Official Plan? If so is this appropriate?
- d) Is OPA 403 capable of being applied?
- e) Would OPA 403 apply to land that has been previously evaluated using different policies? Would it apply equally to land both within and without the urban growth boundary? Is it appropriate to apply the standard contained in OPA 403 to lands within the urban growth boundary?
- f) Does OPA 403 constitute a "down-designation" of the lands to which it applies by substituting a One High Approach for the prevailing Three High Approach and if so, is this "down- designation" justified in the public interest? Is it fair?

V. Conformity with the Official Plan

- a) Are the Guidelines consistent with the Official Plan policies respecting guideline documents, specifically, Policy 19.2.2?
- b) Does OPA 403 introduce a policy that conflicts with other policies of the Official Plan or the criteria found in Section 15.4 .5 of the Official Plan?
- c) Is the basis of OPA 403 sound land use planning?

The Witnesses

The Board heard evidence from four qualified land-use planners:

- 1) Jeff Brick, coordinator, Hydrology and Regulatory Services for the Upper Thames Conservation Authority (under summons by the City of London);
- 2) Robin Panzer, General Manager of Planning and Development for the City of London;
- 3) Mark Dorfman, retained by Sandy Levin, a resident of the City of London who supports the proposed amendment; and
- 4) Chris Pidgeon, retained by the Appellants.

The Board also heard evidence from:

- 5) Bonnie Bergsma, ecologist, employed by the City;
- 6) Dr. Brent Tegler, an applied ecologist, retained by the City; and
- 7) Stephen Aboud, an Arborist and Botanist with expertise in woodland evaluation, retained by the Appellants.

Susan Ross, a City resident, appeared as a participant in support of the proposal.

Appellants' Argument and Evidence

The Appellants do not oppose protection of significant woodlands or vegetative patches that are significant. However, they submit that OPA 403, although fundamentally a good initiative, is flawed. Implementation of this policy as currently proposed would undermine other existing policies. It is not supported by compelling planning rationale or by community values, goals and objectives, which the PPS intends to be implemented through official plan policies and not by a guideline document. The

Appellant's position is that the policy is neither fair, nor in the public interest, and it does not constitute good planning.

In particular, the Appellants argue that the policy is biased toward patch protection, which is not the intent of the PPS or the Official Plan. The definition of 'woodland' in the guideline document is vague and includes by association, vegetation communities that are not woodlands or even contain trees.

The aim of OPA 403 is to capture most, if not all vegetative patches within the ER designation. There were over 600 patches identified as part of sub-watershed planning studies, primarily by aerial photography mapping at a scale of 1: 10,000. The process was incomplete. OPA 88 made it clear that the ER designation would be interim and ER lands are not intended to be part of the Natural Heritage System until a detailed study is completed.

The Appellants submit that a permanent designation requires a full investigation of a patch on the basis of the criteria set out in Section 15.4.5 of the Official Plan. There must be a determination that a patch is treed, important and significant as defined by the PPS and the Official Plan.

Mr. Aboud, the Appellants' arborist and botanist, testified that several standards in the 2006 Guideline do not require the attributes set out in 15.4.5 of the Official Plan. Mr. Aboud testified, for example, that the very common urban amphibian would give a patch a rating of medium. He cited similar standards in the 2006 Guidelines, namely sections 1.1 (a) & (b), 1.2 (a) & (b), 2.2.a), 2.3 (d), 4.2 (a). Mr. Aboud's opinion is that generally, those criteria are too broad and the threshold set to reach a rating of high is too low. In other words, the system appears to be designed to capture as many patches as possible either with the high or medium rating.

The Appellants argue that the Three High Approach, established in the 2000 Guideline would capture 50% of the patches as significant woodlands, whereas the One High Approach proposed in OPA 403 would capture almost 100%. This approach would capture woodlands that are common and insignificant and would go back on the very premise of the ER designation.

Land use Planner Chris Pidgeon agreed. Mr. Pidgeon testified that the City's approach to woodlots as pre-eminent and perhaps somewhat sacrosanct, is contrary to Provincial Policies. That approach makes for inefficient use of lands and does not reflect broad community interest. It does not afford a balance with other interests such as development, recreation, and economic opportunities and it does not constitute sound land-use planning.

Mr. Pidgeon testified that the proposed amendment fails to define and identify appropriate policies of what is important to achieve a One High threshold for significance. Instead, that determination is deferred to a guideline document that can be amended by staff but cannot be challenged. In Mr. Pidgeon's opinion, the process is not clear, it is not transparent and it is not fair. There is no opportunity for public review or for re-evaluation and appeal in situations of dispute.

Mr. Pidgeon asserts that the process that was followed in establishing OPA 403 fails to address reasonable expectations, considering the far-reaching implications of the amendment for the landowner. In his view, minimum standards of notification were met when a more proactive approach was necessary to include all stakeholders. The policy, he said, appears to have been predetermined without sufficient consultation.

Mr. Pidgeon testified that in his opinion, the One High Approach constitutes a "down designation" of ER lands. He notes that when the ER designation was originally applied to the lands identified by interpretation of the 1:10,000 scale aerial photography, the City made representations about "significance" from which they are now retreating. Mr. Pidgeon opined that changes in the thresholds have not been justified; there has not been a comprehensive policy formulation process and it is simply not fair to the owners of lands with vegetated patches. The public interest is served by the wise and efficient use of lands and infrastructure. The present approach is contrary to that principle.

Mr. Pidgeon noted that policy modification for significant woodlands evolved as a result of the Board's hearing on Official Plan Amendment 193 (Hyde Park Community Plan). The hearing was adjourned, at the Board's suggestion, so that the City could set out more clearly in the Official Plan a policy framework to be used for the evaluation, identification and protection of Significant Woodlands and to identify the guideline documents to be used in assessing Woodland features. The Board suggested public

consultation should be undertaken in the preparation of the proposed policy modification. In Mr. Pidgeon's opinion, those processes have not been properly undertaken.

The City's and Sandy Levin's Argument and Evidence

The City and Mr. Levin submit that the initiative contained in OPA 403 reflects the changing vision of the Province in the long-term management and use of the natural heritage resources; the Province's vision for managing and protecting the natural heritage resources has evolved and expanded since the City embarked on its program to protect and enhance its natural heritage system.

Dr. Tegler, an Ecologist retained by the City since 2003 to undertake inventory and evaluation of the ER lands, testified that the evolution of the Province's approach in protection and management of the natural heritage features and areas is evident in recent legislation such as the *Oak Ridges Moraine Conservation Act, 2001*, the *Greenbelt Act, 2005* and in the new policies under the Section 2.1 of the *PPS (2005)* in which "natural heritage systems" is first mentioned and defined in a Provincial Policy Statement.

Dr. Tegler referred to the scientific literature that has influenced the trend towards protecting systems as opposed to individual components. He testified that woodlands should not be considered as "islands". Rather, as stated in the PPS, connectivity and linkage are necessary to maintain biological and geographical diversity, natural functions and viable populations of indigenous species and ecosystems.

Dr. Tegler reviewed the provincial policies and supporting methods determining "significance" in the Natural Heritage Reference Manual 1999 (NHRM). He testified that these policies and methods have given direction to municipalities in the development and application of criteria to determine which woodlands are "significant".

D.Tegler has had "hands-on" experience with the 2006 Guideline, which he uses in his work for the City. He concluded that the City's development and refinement of the criteria, threshold and policies to identify and protect significant woodlands, are comprehensive, science-based, and consistent with the PPS and with current practices

used in other municipalities. He opined that the City's proposal is proactive in light of the changing discipline and the desire of the public for increased protection.

Bonnie Bergsma, the City's ecologist, provided evidence that reinforced Dr. Tegler's. Ms. Bergsma is responsible for providing scientific research and support in the development of policy, procedures, standards and guidelines to implement the natural heritage and environmental policies in the City's Official Plan.

Ms. Bergsma was involved in developing a common set of criteria, standards and methodology to evaluate "significant" woodlands in southern Ontario. She testified the Federation of the Ontario Naturalists ("Ontario Nature") engaged a broad coalition of partners to develop workable and ecologically defensible guidelines to identify "significant" Woodlands. The guidelines were reviewed by a technical panel of planners, ecologists, biologists, foresters, representatives of the Ministry of Natural Resources, Conservation Authorities and others.

The document that emerged from that process is *Suggested Guideline for the Identification of Significant Woodlands in Southern Ontario*, issued in February 2004 ("Ontario Nature's Guideline"). It is, according to Ms. Bergsma, supported by criteria that are scientifically defensible. These guidelines recommend that any woodland satisfying one criterion is to be considered "significant" – i.e., a "One High Approach".

Ms. Bergsma testified that the evaluation criteria and factors in the 2006 Guideline are generally consistent with Ontario Nature's Guideline, with the notable exception that the City employs the Three High Approach rather than the One High Approach for a woodland to be considered significant.

Ms. Bergsma testified that the City participated in the Middlesex Natural Heritage Study steering committee to develop criteria to identify "significant" woodlands in Middlesex County, which surrounds the City. The steering committee recommended that a woodland patch meeting one of the established criteria would be a candidate for significance, the One High Approach. Similarly, other Thames watershed counties and communities, for example, Oxford County, have initiated woodland significance studies and the One High Approach is being endorsed and implemented in those areas.

Ms. Bergsma testified that if the City continued to use the Three High Approach as the measure for significant woodlands, there would be a reduction in forest coverage from 8% to 5%, whereas 30% is the recommended coverage. This would be inconsistent with the directives of the 2005 PPS and it would not reflect community interest. Ms. Bergsma testified that the Three High Approach captures only the highest quality woodlands, or the upper 25% to 35%, leaving approximately 65% of existing woodlands unprotected. By adopting the One High Approach, up to 90% of the existing woodland patches could be ranked as "significant" and be retained. Ms. Bergsma stated that this would be consistent with provincial policy and would satisfy community expectations.

Ms. Bergsma testified that although the matter of a threshold is not strictly a scientific determination, the proposal of a One High Approach can be scientifically supported. Ms. Bergsma drew the Board's attention to the report on the sub-watershed study, which establishes the importance of maintaining and enhancing biodiversity in the London sub-watersheds. The proposed amendment, she said, reinforces that strategy and is consistent with the methods used by surrounding municipalities into which the heritage system extends.

Ms. Bergsma testified that the 2006 Guideline standards are informed by the criteria set out in Section 15.4.5 of the Official Plan and she demonstrated the link between the standards from the 2006 Guideline, the Official Plan and the PPS (Exhibit 1b Tab 14). She compared the 2006 Guideline document with the 2000 Guideline and gave a detailed explanation of the changes and reasons for the changes.

Ms. Bergsma concluded that the process for evaluating significant woodlands in the City of London and the proposed threshold contained in OPA 403 are consistent with the PPS and the methods outlined in the NHRM. She stated that the process reflects best practices that are grounded in sound environmental science.

Mr. Brick, an expert in environmental planning, employed by the Upper Thames River Conservation Authority (UTRCA), provided the Board with details on the two studies to which Ms. Bergsma referred in her evidence, namely, the Middlesex Natural Heritage Studies and the Oxford Natural Heritage Studies. Mr. Brick stated that both are important in understanding the regional context. Mr. Brick opined that the City's

approach for identifying "significant" woodlands not only represents local implementation of general provincial methodology as outlined in the NHRM, but takes into account local and regional conditions.

Mr. Panzer, the City's General Manager of Planning and Development provided direction for the preparation of OPA 403. Mr. Panzer pointed out that the purpose of OPA 403 is not to identify "significant" woodlands, which is done on the basis of appropriate environmental studies and application of the evaluation guidelines; nor is the purpose to revise the criteria for the evaluation of woodlands; nor does it revise policies that provide for the protection of "significant" woodlands. The purpose of OPA 403 is to add a policy to the Official Plan that establishes the threshold of significance as a minimum of a One High or Five Medium criteria scores as determined by the 2006 Guideline. OPA 403 adds a policy that provides greater clarity regarding the evaluation process because it specifies that the 2006 Guideline will be used to implement policy 15.4.5

Mr. Panzer testified that Council adopted OPA 403 after a lengthy debate and full public and agency consultation process. Mr. Panzer opined that an Official Plan should be responsive to community values, changing socio-economic conditions, and should provide direction for evaluation and for implementing proposals for change. He testified that there is growing community awareness and interest in environmental issues. The protection of existing woodlands is foremost among those interests. Council has recognized the value that the community attaches to trees and woodlands and has responded by increasing funding for initiatives on reforestation and re-naturalization programs. There is now a budget allocation for woodlot acquisition.

Mr. Panzer pointed out that this commitment is evident in the caption of the strategic plan 2007 to 2010, which states:

London has been known as the "Forest City" since 1856. Londoners embraced the Forest City as its brand and have adopted the tree as its logo. The tree has become the symbol for growth, renewal, stability and a commitment to environmental stewardship, economic prosperity and a high quality of life.

Mr. Panzer stated that the public interest in enhancing and protecting its woodlands is reflected in OPA 403 and, in his opinion, the threshold of One High is an appropriate standard that is consistent with the PPS.

Mr. Panzer disagrees with the Appellants' position that the Guideline document performs a policy function that is more appropriate for inclusion in the Official Plan. He stated that guideline documents are important tools used to fulfill official plan policies. The Official Plan expressly provides for their use. They are intended to provide detailed direction for policy implementation and generally, they contain policies, standards and performance criteria that are too detailed for the Official Plan, or require more flexibility, in interpretation or implementation, than the Official Plan would allow. Mr. Panzer noted that the 2006 Guideline is 17 legal-sized pages long and contains very specific technical information. It is intended to be used by qualified City staff and environmental consultants as the framework for woodlands evaluation and is inappropriate for inclusion in the Official Plan.

Mr. Panzer pointed out that there are 17 guideline documents listed in Section 19 .2 .2 of the Official Plan. Guideline documents are adopted by resolution of Council and do not form part of the Official Plan. However they are subject to Official Plan Policies and require public consultation and public meetings prior to their adoption by Council. This was the process that was followed in the adoption of 2006 Guideline.

Mr. Panzer testified that an independent consultant (Dr. Tegler) was retained in 2003 and his terms of reference included reviewing the evaluation guidelines. He recommended refinement. This was carried out by an extensive process involving a broad range of stakeholders, including the Ministry, the Conservation Authority and members of the public. Letters were sent to landowners inviting comments and informing them of the public meetings. The meetings were well attended. The 2006 Guideline was reviewed, refined, and then circulated. It was adopted by Council and was never appealed.

Mr. Panzer stated that there is always room for review and refinement and the process will continue as the heritage system is not a static construct. The natural heritage policy establishes the requirements for the refinement and protection of the natural heritage systems through more detailed studies. It recognizes that such processes may warrant changes to the natural heritage system and it provides for the implementation of change.

Mr. Panzer testified that the 2006 Guideline has responded to change and sets out a procedure for evaluating woodlands that is transparent and provides a description of the methods and measures used for attaining Official Plan objectives. Without these approved guidelines to provide for the implementation of official plan policies, woodland evaluation would be ad hoc and inconsistent.

Mr. Panzer rejects the Appellants' claim that OPA 403 constitutes a down-designation of the lands. Mr. Panzer replied to that assertion by observing that the lands that are designated environmental review are part of the natural heritage system that have been identified for retention. There are no development rights that are lost and no change in the designation of the lands. The issue is whether, on an evaluation, based on current policies and guidelines, the patch can be removed from the system.

Planner Mark Dorfman was retained by Mr. Sandy Levin to provide independent expert evidence. Mr. Dorfman's experience in matters dealing with environmental planning has spanned 3 decades. Among other notable appointments, he has been the Chair of Nature Canada, President of the Ontario Society for Environmental Management and the President of the Federation of Ontario Naturalists.

Mr. Dorfman was fully supportive of the City's initiative and concurred with the evidence provided by Mr. Panzer, Ms. Bergsma and Dr. Tegler. Mr. Dorfman concluded that the proposal is consistent with the PPS, consistent with methods used in other municipalities, and constitutes good planning.

Mr. Dorfman testified that the new threshold implements the provincial interest in protecting and conserving significant Woodlands. Based on the City's conclusion that by using the new threshold, up to 90% of existing woodland patches could be evaluated as "significant" and be retained as compared with only 25% to 35% using the three high approach, Mr. Dorfman concluded that the new threshold is needed to ensure consistency with provincial direction.

Mr. Dorfman supports the City's use of guideline documents to assist in the implementation of any aspect of the official plan. He testified that this is standard practice in Ontario municipalities. Guideline documents are useful tools for ensuring that development applications are reviewed under the City's Official Plan in a replicable, traceable, consistent and fair manner. Through the use of the 2006 Guideline the City's

staff is able to implement Official Plan policies and effectively evaluate Woodlands as part of their planning review process. Their evaluation can then be challenged as part of any planning application.

Mr. Dorfman notes that the Natural Heritage Reference Manual is not integrated with the PPS and has the same relationship that the 2006 Guideline has with the Official Plan.

Mr. Dorfman opined that standards contained in the 2006 Guideline with its eight categories of evaluation to determine whether the woodland is "significant", is consistent with the PPS. Specifically, the eight categories are consistent with the three-part definition of "Significant Woodland" in PPS 2005, and the evaluation methodology achieves the desired outcome of the PPS.

Board's Findings:

Having considered and thoroughly canvassed all of the evidence presented, and having considered the submissions of the parties, the Board denies the appeal.

The Board finds that the proposed OPA 403 is consistent with the PPS, conforms to the City of London's Official Plan and reflects community values and the City's objective to protect Woodlands. The standards of evaluation used to determine "significance" are objective, relevant and based on sound research. Moreover, the proposal at issue is in the public interest, is in keeping with approaches used in other municipalities, and is in step with provincial directives for the wise use and management of Natural Heritage Resources and protection of woodlands. It constitutes appropriate and environmentally responsible land-use planning.

The Board recognizes that the 2006 Guideline and its standards and methodology are not under appeal. Nevertheless, much of the hearing focused on whether the evaluation standards set out therein are rooted in sound science and whether they are tied to the pertinent definitions and criteria in the planning documents.

In the Board's view, it is clear from the evidence of Ms. Bergsma and Dr. Tegler that the methodology and standards contained in the 2006 Guideline were not conceived in isolation. Rather, the City was guided by recommendations in the NHRM

and by consultation with a range of stakeholders, including environmental planners, scientists, other municipalities and organizations such as the Federation of the Ontario Naturalists, and all within the context of new policy direction by the Province. Given that evidence, the Board accepts that the 2006 Guideline is based on best practices and is grounded in good science.

Ms. Bergsma, supported by Mr. Panzer and Mr. Dorfman, gave a clear and detailed account of the links between the 2006 Guideline, the Official Plan and the PPS. The Board prefers Ms. Bergsma's evidence to Mr. Aboud's and is therefore unable to agree with the Appellants that the evaluation system for significant woodlands is not linked to the policies, definitions and criteria contained in the planning instruments.

The Board is unable to conclude that the use of the methods in the 2006 Guideline, which the Board accepts as being scientifically sound and linked to policies contained in the Official Plan and the PPS, would result in Open Space designation of woodlands that do not otherwise rise to a level of "significance".

The Board, persuaded by the evidence of Mr. Dorfman and Mr. Brick, finds that the evaluation procedure used by the City of London is consistent with those used by other municipalities and, in particular, that the proposed threshold is consistent with the threshold used in certain municipalities within the Thames watershed.

Based on Mr. Panzer's evidence, the policy to lower the threshold was thoroughly reviewed by stakeholders consisting of both private individuals and public agencies. There was adequate notice given and the public had ample opportunity to participate in the process. The Appellants were among those stakeholders invited to participate.

The Board has considered the Appellants' concern that the City's approach does not reflect wise and efficient use of land. ER lands, subject to evaluation to determine "significance", were set aside based on accepted methods for identifying the resource. These are the only lands that are subject to this proposal before the Board. The Board accepts Mr. Brick's evidence that the process used was reasonable and Mr. Panzer's evidence that sufficient lands have been set aside by the City to accommodate urban growth.

There was no evidence to suggest that the City has not been prudent so far in its approach to determining what woodlands are "significant". The Board is not persuaded that the standard of "significance" would be unduly diminished by the proposal before the Board. If it turns out that lands have been inappropriately designated in a particular case, the landowner will now have an opportunity to challenge such a decision because the threshold will be incorporated within the Official Plan.

In such a case, even if a "one high criterion" were met, the Board's view is the criterion selected is subject to challenge for failing to meet the standard of significance according to an evaluation of the considerations set out in section 15.4.5 of the Official Plan. Mere enumeration of a criterion in the 2006 Guideline is not necessarily enough. In the event of a conflict or inconsistency between the 2006 Guideline designation of significance and the Official Plan designation thereof, the latter will always govern.

The Board accepts Mr. Panzer's and Mr. Dorfman's evidence that it is standard practice that guideline documents are used to fulfill official plan policies. The City's use of the 2006 Guideline as an evaluation procedure for identifying significant woodlands is consistent with the Official Plan policies respecting guideline documents, specifically, Policy 19.2.2. This procedure has been used satisfactorily for many years and has served the public well. The Board disagrees with the Appellants that policy functions and community values are, in this case, inappropriately delegated to the guideline document.

Accordingly, the Board is satisfied that the proposed application is consistent with the Provincial Planning Statement conforms with the Official Plan, meets the requirements of the Planning Act and represents good planning.

Therefore, the Board Orders that the appeal is dismissed.

"K.J. Hussey"

K. J. Hussey
MEMBER