

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: July 16, 2015

CASE NO(S): PL140347

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Gray Watters
Subject: Request to amend the Official Plan - Failure of Town of Midland to adopt the requested amendment
Existing Designation: Residential District
Proposed Designation: Site Specific Policy Exception
Purpose: To permit the creation of one new residential lot on a private road
Property Address/Description: 990 Sumac Lane
Municipality: Town of Midland
Approval Authority File No.: OPA-02-13
OMB Case No.: PL140347
OMB File No.: PL140347
OMB Case Name: Watters v. Midland (Town)

Heard: March 23 and 24, 2015, in Midland, Ontario

APPEARANCES:

Parties

Counsel

Gray Watters

Ian Rowe

Town of Midland

Edward Veldboom

DECISION DELIVERED BY KAREN KRAFT SLOAN AND ORDER OF THE BOARD

INTRODUCTION

[1] Gray Watters (“Applicant/Appellant”) made an application for an Official Plan Amendment 02-13 (“OPA”) to amend the Town of Midland’s (“Town”) Official Plan (“OP”) on a site-specific basis through a policy exception to permit the creation of one new residential lot *via* a provisional consent on a private road at 990 Sumac Lane (“subject property”). The Town council refused the application and the Applicant/Appellant appealed to the Board pursuant to s. 22(7) of the *Planning Act* (“Act”). In addition to allowing the creation of one new residential lot, the OPA is also intended to create specific development policies and criteria for development on the severed portion of the subject property.

[2] The OPA would amend policy s. 3.3.7.3, 3.3.7.7 and 8.14.2 of the Town OP, which prohibits the creation of new residential lots on private roads and lands without direct access to an open, improved public road. If approved, the OPA would allow a subsequent application for a consent to divide the subject property in two, thus, creating an additional lot.

Details of the OPA

[3] The Town OP would be amended as follows:

1. Sub-section “3.3.13 Exceptions” of Section 3.3 RESIDENTIAL DISTRICT of the Town of Midland Official Plan is hereby amended by adding a new sub-section “3.3.13.5 990 Sumac Lane” as follows:

3.3.13.5 990 Sumac Lane

Notwithstanding the policies of Sections 3.3.7.3, 3.3.7.7 and 8.14.2 of the Town of Midland Official Plan as they relate to the subject property at 990 Sumac Lane and as shown on Schedule “A” attached hereto, the following policies shall apply:

- a) An application for Provisional Consent to create one (1) new residential lot having frontage on a Private Road shall be permitted. The subject lands and

the proposed lot are considered infilling between the existing lots on a private road that existed on the date of the adoption of this plan, will not require the extension of the private road or the creation of a new private road and the road is of a standard that it can provide access to emergency vehicles.

- b) Application for Provisional Consent respecting 990 Sumac Lane shall be accompanied by the following supporting technical studies and/or reports:
 - i. Survey sketch showing the dimensions of the proposed severed and retained lots.
 - ii. Report from a qualified person respecting the design, location and phosphorous reduction methods employed in the proposed on-site sewage treatment system.
 - iii. Report from a qualified person respecting the design of the waterfront to ensure naturalized shoreline or re-naturalized shoreline.
- c) The subject lands shall be subject to Site Plan Control Approval in accordance with Section 8.8 of this Plan.
- d) The creation of one new lot on the subject property shall be required to meet the highest environmental standards in respect to private sewage treatment systems to minimize the potential impacts of phosphorous on Little Lake water quality, include sufficient shoreline setbacks to protect the natural quality of the shoreline, and propose shoreline naturalization methods to enhance the natural quality of the shoreline while permitting limited access to the lake for human activity.
- e) Provisional Consent may be granted subject to appropriate conditions, including Site Plan Control approval, for the severed and/or retained lot in accordance with the provisions of the *Planning Act*.

Implementation and Interpretation

The provisions of the Official Plan for the Town of Midland, as amended from time to time, regarding the implementation and interpretation of the Plan shall apply in regard to this Amendment.

[4] Township planning staff consulted Town departments and other agencies in the preparations of its reports to Town council. Planning staff recommended that the OPA application not be approved.

SUBJECT PROPERTY

[5] The subject property is one of 10 waterfront lots on the south shore of Little Lake. It is located approximately 950 metres north of Highway 12 on Sumac Lane, which is a private road. When the 10 lots were created in the 1950s they were part of Tay Township. The subject property has a water frontage of 36.58 metres, a depth of approximately 52.3 metres, frontage of 36.58 metres on Sumac Lane and an area of 1,910 square metres or 0.474 acres. The subject property has trees and landscaping, and the land slopes from Sumac Lane to Little Lake. In 2010, a tornado, which caused significant damage to buildings and property throughout the Town, destroyed the original house on the subject property. The current 142 square metres home with deck was built to replace it. In addition to demolishing the original dwelling, the tornado destroyed much of the vegetation on the eastern portion of the subject property.

[6] Of the 10 waterfront lots on Sumac Lane, seven have frontages of 18.2 metres and the remaining three have frontages of 36.5 metres. These lots have a mix of permanent and seasonal, mostly modest sized dwellings. The residents of Sumac Lane, which includes the 10 waterfront lots and an additional lot across the road from the subject property, contribute to the maintenance of the private gravel road as well as sharing costs for snow removal. The subject property is the second to last home at the end of Sumac Lane.

[7] The subject property is designated as a Settlement Area in the County of Simcoe ("County") OP, and it is designated Residential District in the Town OP. Under Zoning By-Law No. 2004-90 the subject property is zoned Residential Zone – R5.

WITNESSES AND EVIDENCE

[8] Two land use-planning witnesses provided expert opinion evidence: Darren Vella on behalf of the Applicant/Appellant and the Town planner, Wesley Crown, on behalf of the Town. In addition, the Board qualified the Town engineer, James Galloway as an expert witness to provide opinion evidence with respect to road engineering. The Town

requested that the Board qualify Acting Fire Chief, Thomas Toole, as an expert witness with regard to issues relating to Sumac Lane; however, Ian Rowe, counsel for the Applicant/Appellant challenged Mr. Toole's expertise in roads and road construction. While the Board acknowledged Acting Chief Toole's expertise in fire fighting, the Board agreed with Mr. Rowe and did not qualify Acting Chief Toole as an expert witness for this hearing.

ISSUES, EVIDENCE AND ANALYSIS

[9] The Board has carefully reviewed the submissions and evidence provided by the Parties, and the expert and lay witnesses. The key issues and conclusions raised in the evidence are discussed below.

[10] Mr. Crown characterised the approach to evaluating this application as two overarching perspectives. The first is a planning policy approach, which according to Mr. Crown is concerned with planning policies and the choices available to the Town. The second approach is a development approval approach where issues and constraints are identified and a determination made on whether these can be mitigated or resolved. In this instance, it was Mr. Crown's opinion that this OPA application is a question of policy and that the correct way to evaluate the application was the planning policy approach. Mr. Crown further maintained that a development application cannot move to a development approval phase until the policy questions are satisfied, such as the public interest. Mr. Crown said that the Town had a choice amongst different policy options for development on private roads and in 2002 the Town made a choice to prohibit new lot creation on private of roads. Thus, for Mr. Crown, the policy question is the "nub of the matter". It was Mr. Crown's opinion that the Applicant/Appellant did not provide the evidence to demonstrate that it is in the Town's benefit that the long-standing policy to prohibit new lot creation on a private road should be changed.

[11] Mr. Vella disagreed, as it was his opinion that the proposal addresses both the Town's concerns regarding the policy change and the objections raised in public

comments. It was Mr. Vella's opinion that the proposal represents good planning, as the OPA is a site-specific policy exemption that would allow for the creation of a new shoreline infill lot in keeping with the character of the 10 other waterfront lots. It was Mr. Vella's opinion that the proposal would not create traffic hazards, and the policies listed within the OPA would provide an environmental net benefit for Little Lake.

Planning Policy Approach

[12] By way of background, Mr. Crown provided information on the province's private road policy as well as identifying the Town's concerns that underpin the rationale for its private roads and lot creation policy. Mr. Vella addressed the implications the proposal has for precedence.

[13] Mr. Crown told the Board that the subject property is part of a group of 10 waterfront lots created in the 1950s and that it is a 'legacy' development in the former Township of Tay. He went on to say that while the Town OP designates all living areas in the Town as Residential District, the OP recognizes that differences exist in some areas. For example, differences occur as a result of annexation where historical development consisted of seasonal, recreational areas. As a consequence, the Town OP designates locations, like Sumac Lane, as Shoreline Residential. The permitted use in Shoreline Residential includes both seasonal and permanent residential uses. (Exhibit 5, Tab 15). Mr. Crown told the Board that cottage properties that were developed a long time ago are undergoing a transition from seasonal to year round use. What were at one time modest, seasonal dwellings are now being renovated and winterized to allow for permanent occupancy resulting in an increased demand for municipal services. Where these former seasonal cottages are accessed *via* private roads, the roads are not under the control of the municipality.

[14] Mr. Vella told the Board that of the 11 homes along Sumac Lane five are seasonal dwellings and the others are permanent. He added that it is an unusual

situation for a private road to exist within the Town's settlement area. This is more common in the Townships of Tiny or Tay.

[15] Mr. Crown directed the Board to the *Private Roads Planning Guidelines for Municipalities, 1982* ("Private Roads Guidelines") (Exhibit 5, Tab 18), which sets out provincial guidelines with regards to development on private roads. Mr. Crown noted in s. 1.0 Introduction of the Private Roads Guidelines:

There are many potential local and provincial problems where private roads provide access to development. Accordingly, the ministry discourages any development on existing and new private roads in the absence of a comprehensive study of planning, financial and legal implications for the municipality, and approved official plan policies on this type of access based on that comprehensive study. (Exhibit 5, Tab 18).

[16] Mr. Crown referenced s. 2.0 Private Road Problems, in the Private Roads Guidelines, which outlines three problem areas related to private roads: financial, legal and land use planning. Broadly, financial problems encompass costs that could arise if property owners successfully pressure municipalities to assume ownership of the road and to maintain it as a means to achieve the same standard as a public road. Legal problems occur when general public use of private roads and the provision of municipal services in maintaining or upgrading result in questions about the status of the road, whether it is private or public. Land use planning problems are particularly problematic in areas where there is a conversion of use from seasonal to permanent, year round residency and the ensuing consequences that conversion has for other land use planning considerations. (Exhibit 5, Tab 18).

[17] Under cross-examination, Mr. Crown was questioned on the utility of a provincial document that is more than three decades old, especially in light of the changed road subsidy funding responsibilities, which have moved from the province to municipalities. Mr. Crown responded that despite the changes in road subsidy funding responsibilities the main issues surrounding private roads are still relevant for the Town. He also noted that until the Private Road Guidelines are revised this is the provincial document in effect.

[18] Mr. Crown told the Board that in practice, Ontario municipalities approach new lot creation on private roads in three ways:

- Municipalities prohibit new lot creation on private roads; or
- Municipalities permit new lot creation on private roads subject to conditions; or
- Municipalities restrict new lots on private roads to infill situations. (Exhibit 5, Tab 7).

[19] Mr. Crown pointed to s. 3.3.3 of the County OP to demonstrate the County's position on new lot creation on private roads:

New lots may be created only where they have access to and frontage on a public highway and where an access permit to that highway can be obtained in accordance with the policies of this Plan and the County of Simcoe, the *Province of Ontario*, and local municipalities. Exceptions may occur in identified seasonal dwelling and resort areas where lots may be created on private roads or with water only access, subject to local municipal by-laws.

[20] Mr. Crown noted that the County OP allows local municipalities to choose the lot creation on private roads policy option they prefer. Thus it was Mr. Crown's opinion that the County OP reflects provincial policy and practice. Mr. Vella agreed, and told the Board that the County OP provides flexibility for municipalities to allow lot creation on private roads in seasonal areas, which is a permitted use in Shoreline Residential where the subject property is located. Mr. Vella pointed to the analysis in the February 27, 2014 Staff Report (Exhibit 2, Tab 6) where it says, "the decision to permit new lot creation on private roads rests solely with the local municipality and the subject application would conform to the County Plan".

[21] Mr. Crown identified the Town's concerns regarding private roads:

- Condition and safety of the private road as the Town has no say in the construction standard and no role in the maintenance of private roads.
- Access for emergency vehicles such as fire, police and ambulance when required cannot be guaranteed.
- Political pressure by property owners who live on private roads to have the Town to assume responsibility for the road.

[22] Mr. Crown told the Board that as a result of these concerns the Town has acted to minimize its liability by prohibiting new development or limiting new development on private roads.

[23] It was Mr. Vella's opinion that the proposal considered the Town's reasons for objecting to new lot creation on private roads and was able to satisfy these concerns. Additionally, Mr. Vella addressed the matter of precedence, as it was his opinion that there was limited potential for new lot creation on private roads within the Town's boundaries.

Condition and Safety of Private Road

[24] The Town Engineer, Mr. Galloway, provided an overview of factors that are used when assessing the condition and capacity of roads. These include, the geometry of the road, corners, sight and distance, signalization, traffic control signs, geotechnical data and the ability to carry loads. While no soil sampling has been done on Sumac Lane to assess the amount of load it can carry, Mr. Galloway undertook a visual review of the road through site visits and satellite imagery. Mr. Galloway said that Sumac Lane is of a reasonable design however the slope is too steep in places, the turning curves are too tight, and the road could only be considered to be one lane as it ranges from 10 feet to 14 feet wide. There is an S-curve part way down Sumac Lane, which assists in two-way traffic flow, however if a vehicle is beyond the S-curve, it may have to back-up to the S-curve in order to allow another vehicle to pass.

[25] Mr. Vella pointed out that while public comments identified concerns regarding safety of access to Sumac Lane from Highway 12, the Ministry of Transportation Ontario ("MTO") was sent the application but did not comment. Mr. Vella further noted that the Town staff report stated, "the addition of one more home would not, in our opinion, change the traffic volumes or turning motions in any significant degree at this intersection and into this neighbourhood". (Exhibit 2, Tab 6).

[26] Mr. Vella told the Board that the road has been used for 65 years and the residents of Sumac Lane share snow ploughing and other maintenance costs. In 2011 the Town undertook a contract to grade the road, which is usually done about once or twice a year on Sumac Lane. (Exhibit 2, Tab 16).

Access for Emergency Vehicles

[27] Acting Chief Toole told the Board that there are no fire hydrants on Sumac Lane and that the closest fire hydrant is on the highway. In the event of a fire, Acting Chief Toole explained that a portable pond must be set up. Fire trucks have to go back and forth between the site of the fire and the fire hydrants on the highway in order to fill the 2,000-gallon portable pond, which requires about 10 trips with the tanker. Acting Chief Toole said that this is problematic given the narrow width of Sumac Lane, as it would not be possible for two fire trucks to pass each other except at the S-curve, part way down the road. Acting Chief Toole further told the Board that trucks have sunk into roads like Sumac Lane especially when there is a rain event. Mr. Galloway also spoke to the challenges of fire trucks accessing roads like Sumac Lane as the trucks are heavy and the geotechnical make-up of a road has to be able to support a fire truck's weight. Mr. Galloway stated that there is no evidence that Sumac Lane has been designed to carry a fully loaded fire truck.

[28] Under cross-examination, Acting Chief Toole replied that his records did not show any specific concerns with Sumac Lane or any evidence of fire trucks encountering difficulties. The fire department did not provide comments on the application. Mr. Galloway acknowledged under cross-examination that at the time of the application, Public Works was the department that would have provided any engineering concerns with regards to Sumac Lane. However, Mr. Galloway noted Public Works did not provide comments on the application.

[29] When asked under cross-examination if the Town's Fire Department could access water from Little Lake to fill the portable pond, Acting Chief Toole told the Board

that it was possible. However, Mr. Galloway contradicted Acting Chief Toole's testimony and said that it would not be possible to pump water out of Little Lake given the site conditions and the Fire Department's equipment.

[30] Mr. Vella noted that the staff report stated that "several comments were submitted by the public concerning the unsuitability of the road for emergency service vehicles and that the new lot would make matters worse". Mr. Vella said that the staff report noted that the Fire Department has indicated concerns responding to calls on Sumac Lane in respect of vehicles turning and damage from narrow road width and overhanging trees". (Exhibit 2, Tab 6-K). However, Mr. Vella pointed out and agreed with the following staff report conclusion, "the addition of one more home on Sumac Lane would not increase or exacerbate the ability of emergency services to respond to calls on this private road. It could be argued that with one additional contributor to the costs of maintaining the road that its standard of maintenance could be improved". (Exhibit 2, Tab 6-K).

Political Pressure on the Town to Assume Private Roads

[31] Mr. Vella explained that s. 3.3.7.3 of the Town OP may require an owner of a lot on a private road "to enter into an agreement with the Town regarding the servicing of such lots before new development or expansion to the existing use is permitted". (Exhibit 2, Tab 25). In fact, Mr. Vella told the Board, the subject property had a Holding Provision. When the original dwelling on the subject property was destroyed by the 2011 tornado, the Applicant/Appellant was required to enter into a private road agreement with the Town in order to have the Holding Provision removed before he was able to construct the new home. Mr. Vella provided the private road agreement in evidence. The private road agreement required the Applicant/Appellant to acknowledge the following:

- The subject property does not front a public street.
- The Town does not maintain or snow plough the private road.

- The Applicant/Appellant will not request that the Town assume or take over the private road. (Exhibit 2, Tab 17).

[32] Therefore, it was Mr. Vella's opinion that this holding provision provided the Town a mechanism to control political pressure to assume private roads. Under cross-examination, Mr. Crown was asked how many times Town Council has received a request from residents to assume a private road. He replied that there was one instance, and that Council did not approve the request.

Precedence

[33] To support his opinion that the implication for precedence is not significant, Mr. Vella provided visual evidence through aerial photographs of the private roads within the Town's boundaries. Mr. Vella identified examples where potential severances could occur based on lot size, configuration and location. It was Mr. Vella's opinion that of the Town's private roads approximately six lots might have the potential to be created *via* severance. Mr. Vella told the Board that as a private road, Sumac Lane, is an unusual situation in the Town and that the Applicant/Appellant submitted the first application that would allow a consent on a private road.

[34] Mr. Vella brought the Board's attention to the Town's staff report, where it had this to say about the proposal and the implications for precedence:

The Town does not have many private roads or significant number of lots on those roads. There are six (6) Private Roads in total including Sumac Lane. Although the subject application is only in respect of the subject property at 990 Sumac Lane, any policy changes in respect of lot creation on private roads could have a precedent in respect of similar applications for other areas or lots serviced by private roads. Staff have not undertaken a detailed analysis of each of these Private Road areas to determine the capacity for new lot creation, but generally agree with the Official Plan where it states, "*within this area there are limited opportunities for the creation of new residential lots*". There may be few other opportunities for similar applications in this neighbourhood or other neighbourhoods in the Town served by Private Roads. However, those applications would be considered on their own merit and in accordance with the policy framework of the day. (Exhibit 2, Tab 6-K).

[35] Under cross-examination, Mr. Crown agreed that he was not significantly concerned about the proposal's implications for precedence.

Development Approval Approach

[36] Mr. Crown told the Board that the staff report evaluated the proposed OPA from both approaches, planning policy and development application. By way of providing background information on the application and the staff reports, Mr. Crown told the Board that his thinking evolved in the final staff report. While he came to the conclusion that there is no public policy reason to change the long-standing prohibition on new lot creation, Mr. Crown told the Board, from a development application evaluation approach, the addition of one more new lot on Sumac Lane would not tip the balance, that the lot is small but not out of character, and that there were ways to address the impacts on Little Lake.

[37] Mr. Vella told the Board that the proposed OPA would allow for a subsequent consent application that would result in the creation of a new lot of which both the retained and severed portions would have frontages of 18 metres. Both are similar in size and dimension to seven of the 10 waterfront lots on Sumac Lane. The building envelope would allow a modest-sized dwelling, thus the lot and the proposed dwelling would be in keeping with the character area.

[38] Mr. Vella provided an overview of the OPA and how its policies have addressed concerns raised through the public comment process and through the Town's departmental and agency review of the application. He told the Board that the OPA would amend the Town OP to allow a consent application on a private road:

- That is considered infilling and that will not require an extension or creation of a new private road;
- That the road is recognized to be of a standard that it can provide necessary access for emergency vehicles; and

- That environmental concerns raised in public comments, will be addressed by the requirement to meet the highest environmental standards with regards to minimizing the impacts of phosphorous on Little Lake water quality through the design, location and phosphorous reduction methods employed by the proposed on-site sewage system, as well as the design of the waterfront to ensure a naturalized or re-naturalized shoreline.

[39] Mr. Vella informed the Board that the Applicant/Appellant is intending to use an enhanced phosphorous reduction technology. Mr. Vella noted that the other residents along Sumac Lane are not required to undertake shoreline naturalization and re-naturalization. In addition, the requirements for shoreline setback would contribute to mitigating any environmental impact of the development. Thus, it was his opinion that the proposal would provide a positive environmental benefit to Little Lake. The proposal is subject to site plan control. Mr. Vella underscored the importance of the Site Plan as it would be registered on the title of the severed portion and that it would specify aspects related to the dwelling and the septic system, as well as vegetation.

[40] The Town's staff report identified that the Applicant/Appellant had a septic evaluation conducted by a licensed designer, which confirmed the proposed severed lot was large enough and had the soil conditions suitable to support a sewage system in full compliance with the Ontario Building Code. Mr. Crown's staff report went on to say, "that the draft amendment to the Official Plan proposes policies to establish the design standards for the sewage treatment system for the proposed new lot (if approved) as the highest environmental standards including tertiary treatment system". (Exhibit 5, Tab 9).

[41] Mr. Vella told the Board that the Severn Sound Environmental Association ("SSEA"), an organization that has a contract with the Town to undertake review of development applications on potential impacts on Little Lake, did not indicate concerns. Mr. Crown told the Board that according to a three-pillar sustainability analysis (environment, community, and economy) there are no negative impacts. In fact, Mr.

Crown's conclusion in the staff report of March 5, 2014, state, "It is also Staff opinion that the proposed development, if approved and guided by the proposed policies in the draft amendment to the Official Plan, would have no negative impact on Little Lake or the surrounding neighbourhood". (Exhibit 2, Tab 9).

[42] Mr. Vella's opinion was that the proposal represented intensification as it is defined in the *Provincial Policy Statement 2104* ("PPS"), particularly as it pertains to parts: b) "*the development of vacant and/or underutilized lots within previously developed areas;*" and c) "*infill development*" and thus, it is consistent with the PPS. (Exhibit 2, Tab 28). For the same reasons, Mr. Vella's opinion was that the proposal conformed with the *Growth Plan for the Greater Golden Horseshoe 2006* ("Growth Plan").

[43] Mr. Crown told the Board that in s. 1.1.3.3 of the PPS, municipalities identify "appropriate locations and promote opportunities for intensification", which in his opinion does not mean that every area in the Town is available for intensification. While Mr. Crown agreed that the proposed lot would be an infill lot, it was his opinion that a lot on a private road in area that is isolated from the rest of the Town and unable to receive any other increase in municipal services would not be a likely location for intensification. To further support his opinion, Mr. Crown went to say that policies in s. 2.2.2 of the Growth Plan, specifically policies a), b) and j) directs new growth to built-up areas, focusing intensification in intensification areas and in settlement areas that offer municipal water and wastewater systems. (Exhibit 2, Tab 29).

[44] Mr. Vella pointed out that in the *Built Boundary Review 2011*, the Town identified the 11 lots on Sumac Lane as part of the built-up area of the Town, which according to the *Built Boundary Review 2011* and the Growth Plan is where the Town's growth is targeted.

[45] As noted earlier in this decision, both Planners, Mr. Crown and Mr. Vella, told the Board that policy 3.3.3 of the County OP provides local municipalities the authority

to create new lots on private roads in areas identified as seasonal. The subject property meets this requirement as it is designated Shoreline Residential in the Town OP, which permits seasonal residential uses. Both Planners agree that the proposal conforms with the County OP.

[46] It was Mr. Vella's opinion that in all respects, other than lot creation on a private road, the application conformed with the Town OP. In particular he identified the Objectives section of the Town OP that spoke to maintaining the character of a neighbourhood, and the encouragement of a high standard of community design, promoting innovative development and intensification as well as the Shoreline Residential section of the Town OP. It was Mr. Vella's opinion that the proposal meets the provisions in policy 3.3.7.7 of the Town OP, Lots by Consent, other than no lot creation on a private road. Mr. Vella's opinion is that the proposal meets the rest of provisions in policy 3.3.7.7 of the Town OP, that a new lot not cause a traffic hazard, and that a new lot can be serviced with appropriate water supply and authorized means of sewage disposal. Mr. Vella contended that there was no evidence, provided by the Town witnesses or in the Town's staff report to demonstrate a traffic hazard would be created by the addition of one new lot on Sumac Lane. Mr. Vella pointed to the policies within the proposed OPA to illustrate that the application would result in a private sewage system of the highest environmental standards. Mr. Crown agreed, that other than the prohibition to create a new lot on a private road, the proposal conformed with the Town OP.

FINDINGS

[47] Both Planners, Mr. Crown and Mr. Vella, agree that the proposed OPA if approved would have no negative impact on Little Lake or the surrounding neighbourhood. Mr. Vella goes further as it his opinion that the OPA policies would result in an environmental benefit to Little Lake. The Town's primary concern is that the proposed OPA should be evaluated from a policy planning perspective, and if so, the application should not be approved. However, based on the evidence heard, the Board

finds that the reasons that underpin the policy prohibition have been addressed through the proposed OPA and its policies. In addition, issues cited by Mr. Crown, that form the rationale for the policy prohibition, in this instance, have not been borne out by the evidence received by the Board.

[48] Regarding condition and safety of private roads, and implications for emergency vehicle access, the Town's witnesses provided oral testimony on general issues of concern. However, they were not able to provide evidence of documented issues specifically related to Sumac Lane. In fact, the Town's staff report, acknowledged that the addition of a new home on Sumac Lane would not increase the problem of emergency vehicles responding to calls but that an additional user of the road could contribute to the costs of maintaining the road, which might lead to an increase of the standard of maintenance. On the matter of political pressure on the Town to assume a private road, the Board heard evidence that the Town has a mechanism to control political pressure on the Town Council *via* a holding provision. If the property owner intends to undertake new development or expansion on a lot on a private road, the owner must enter into a private road agreement with the Town in order to have holding provision removed.

[49] The Board is persuaded by and prefers the evidence of Mr. Vella. It can be noted that Mr. Crown agreed with Mr. Vella's expert opinion in many respects. The Board is satisfied that the proposed OPA has had regard to matters of provincial interest in accordance with s. 2 of the Act and that the proposed OPA is consistent with the PPS and conforms with the Growth Plan. The proposal meets the definition of intensification, albeit modest intensification. The Board also finds that the proposed OPA conforms with the County OP as it meets the County OP policy on lot creation on private roads. Additionally, the Board finds that the policy basis for the prohibition has been addressed as the Town's objections to lot creation on private roads have been satisfied and that in all other respects, the OPA meets the Town OP lot creation policies. The Board further finds that the appeal should be granted and that the OPA should be approved. For the reasons set out in this decision, the Board finds that the proposed OPA will allow a

provisional consent that is in keeping with the character of the area and that will not create a negative impact on Little Lake.

ORDER

[50] The Board orders that the appeal is allowed and the proposed Official Plan Amendment set out in Attachment 1 is approved. The Official Plan for the Town of Midland is amended as set out in Attachment 1.

“Karen Kraft Sloan”

KAREN KRAFT SLOAN
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
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