

"SQUEEZING LANDOWNERS"

Peel/Halton Landowners Association
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Monday, September 18, 2006

Mayor & Members of Council
Corporation of the Town of Caledon
6311 Old Church Road
Caledon, On. L0N 1E0

Re: Conservation Authorities Demands for Private Lands

The Peel-Halton Landowners Association [PHLA] is a newly formed group of rural land owners in the Regions of Peel and Halton who are concerned with a deluge of intrusive legislative initiatives such as Nutrient Management, Oak Ridges Moraine, Greenbelt, Places to Grow, Provincial Policy Statements, Conservation Authorities "Generic" Regulation all of which fall with unfair disproportion on rural landowners but are claimed to benefit the general public good of all Ontarians particularly urban ones. PHLA has adopted the Primary Principle that private ownership and the associated use & enjoyment of lands are an important public good, and several associated corollaries as a basis for comment on both existing and new regulatory initiatives which affect rural landowners. The corollaries are:

1. All other claims to the "public good" must be balanced in relation to private ownership not in complete disregard.
2. If there is a general claim for the "public good" justifying an initiative, then the public should pay compensation to the affected property owner[s].
3. Private landowners have the right to be heard on all initiatives which either effect or may affect their lands and have full rights under the principles of administrative justice.
4. Private ownership & the enjoyment & use of lands may be limited only when narrowly tailored and necessary to protect an important public interest.

Upon reviewing some external agency comments associated with Town of Caledon Committee of Adjustment applications we have noticed that requests are being made by conservation authorities for portions of private lands as a condition of approval. A recent example accompanies File "B" 026/06 located on the south side of Walker Road Caledon East and west of Oliver's Lane where the Toronto and Region Conservation Authority has commented:

"It appears, based on TRCA's aerial photography, that the proposed retained and severed parcels are heavily vegetated. TRCA staff has an interest in conserving, protecting and enhancing natural areas within our jurisdiction. In this regard, TRCA's VSCMP policies discourage the fragmentation of ownership of natural areas. Although the proposed severance line appears to result in fragmentation, it is our understanding that the lands to be

severed are to merge with the adjacent lands to the immediate east (16 Oliver's Lane). As such, no new lot is to be created as a result of this application.

Please be advised, however, the TRCA advocates for the transfer of valley and stream corridors and other natural areas into public ownership to reduce the potential risk to life and property and ensure the ecological integrity of the feature will be maintained on a system basis. This transfer is typically completed through the severance process. As an element of this application staff would request that the applicant enter into an agreement to ensure the protection of such features on the subject property."

These TRCA comments prompt several questions:

1. "It appears, based on TRCA's aerial photography, that the proposed retained and severed parcels are heavily vegetated." "It appears" is an assumption that the subject lands constitute a natural area but no site visit to confirm the type and quality of "vegetation" has been made. Surely it should be mandatory for a careful site visit, with the permission of the landowners, to be made prior to demanding the transfer of private lands into public ownership?
2. "TRCA staff has an interest..." What is the legislative authority for this "interest" or is it just staff's personal preference?
3. "TRCA's VSCMP policies"; What does the acronym VSCMP mean and what is the legislative status of these policies?
4. "...discourage the fragmentation of ownership of natural areas"; Why is fragmentation something to be avoided on the one hand and at what scale is fragmentation considered to occur on the other, anything below the size of Algonquin Park or a hundred acre half lot? Bear in mind that the application in question is located in the village of Caledon East.
5. "TRCA advocates for the transfer of valley and stream corridors and other natural areas into public ownership"; What is the legislative basis for this request for the transfer of private lands? We are aware of carefully circumscribed legislative requirements for land transfer to municipalities under the Planning Act, e.g. road widening and parkland dedication, but nothing under the Conservation Authorities Act.
6. "ensure the ecological integrity of the feature will be maintained on a system basis"; Ecological integrity is more of a conceptual notion than some specific state of nature that may be scientifically determined. How does TRCA measure and monitor for "ecological integrity" to the degree that it may determine whether integrity is achieved? What does TRCA mean by a "system basis"? System of what? At what scale of space or time or community? Answers to these questions are important because TRCA and other conservation authorities are using these vague notions to intervene in municipal land use planning and landowner's normal use and enjoyment of their lands.
7. "This transfer is typically completed through the severance process." The use of the term "typically" suggests to the reader that the transfer of private lands into public ownership upon a landowner's application for a severance is a normal legal practice. There is no reference to the legislative authority for the demand for private lands. Nor is there a hint of a fair market value offer for the private lands of interest and coverage of additional survey, legal and land transfer costs, just give up the lands because...staff have an interest! Could the Town please review conservation authority comments related to severance applications and determine how often conservation authorities have demanded private lands be transferred into public ownership and secondly if they have succeeded in any of their demands for private lands?
8. "As an element of this application staff would request that the applicant enter into an agreement to ensure the protection of such features on the subject property." Presumably this agreement is a legal instrument of some kind and may be registered on title which has the effect of limiting the normal use and enjoyment of private lands for purposes of the general public good. What is the legislative authority for a conservation authority to demand any land use agreement at all?
9. TRCA claims to have made their comments as a "planning and development review service" and demands a fee of \$525.00 from the applicant. The Peel-Halton Landowners Association fails to understand how the self serving TRCA staff comments relate to planning or development matters on the one hand and how the "service" could possibly incur costs reflecting the sum of \$525. Could the Town please review the apparently blanket fee structures of the conservation authorities as to their fairness and appropriateness related to the task?

Mayor Morrison and Members of Council we find the conservation authority comments alarming. An individual landowner can not reasonably be expected to know the meaning and extent of the legislative authority of agency comments and defend their rights. One of the recommended conditions of approval for this particular application is that the applicant makes "satisfactory arrangements" with TRCA regarding their staff comments which gives the conservation authority staff total leverage over the outcome of the application notwithstanding the murky legislative authority of the comments. This state of affairs is unfair. Please investigate the authority comments and attempt to answer our questions on behalf of your constituent landowners in the Town of Caledon. It is important to point out that conservation authorities are creatures of their member municipalities and accountable to them under the Conservation Authorities Act, not the Province.

This PHLA response has been prepared by Ian G. Sinclair, M.A.E.S., O.A.L.A., and approved by the Board of PHLA. If you have question of clarification please do not hesitate to contact the PHLA.

Sincerely,

Original signed by,

Ian G. Sinclair, O.A.L.A., M.A.E.S.
On behalf of the PHLA

cc. Ms. Cindy Pillsworth, Clerk-Treasurer,
Town of Caledon Committee of Adjustment

Chairman Kolb and Members of Council,
Region of Peel