

Ontario East Municipal Conference

PPS* and Other Treats

***pronounced “Peeps™”**



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Ministry of the Attorney General
Legal Services Branch - MAH
September 17, 2015

Provincial Policy Statement

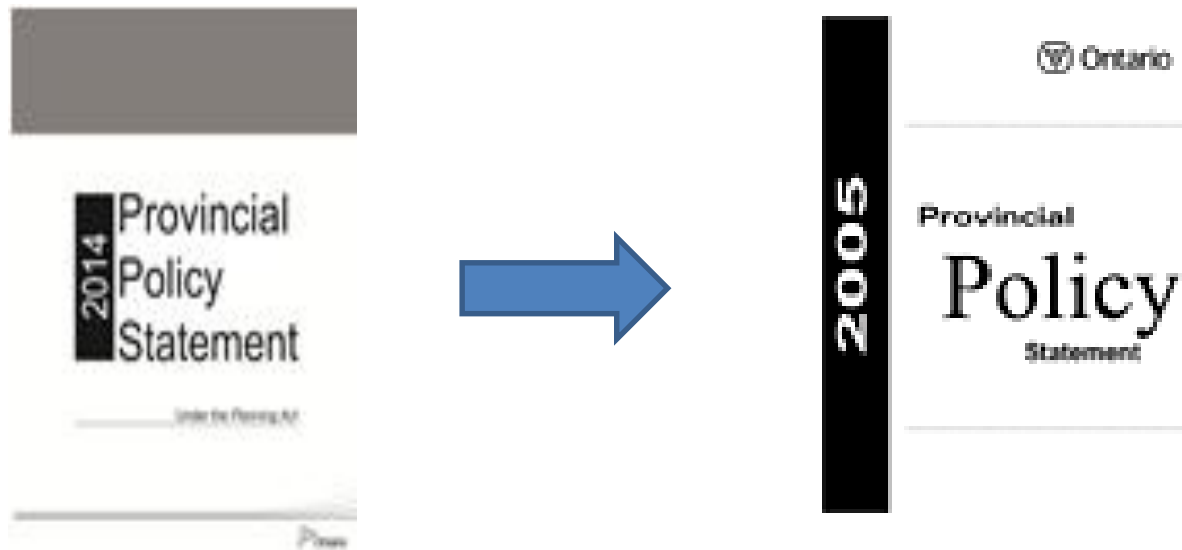
- Came into effect April 30, 2014
- No transition provisions (unlike PPS, 2005 implementation)
- Applications that pre-date January 1, 2007 still get benefit of transition



Provincial Policy Statement

I wasn't listening ... is the PPS, 2014 transitioned?

- Avery v. Sault Ste. Marie (February 27, 2015, OMB File PL130890)



Provincial Policy Statement

The Clergy Principle does not stand for the proposition that an application should be judged by the policies that exist at the time the application is filed.

Greater Toronto Airports Authority v. Clergy Properties Ltd. (1997)

“In carrying out its mandated duties the OMB has exclusive jurisdiction to determine the scope of the issues before it, the procedures to be followed and the appropriate policy choices to be made and applied in order to arrive at sound planning decisions”

Dumart v. Woolwich (1997)

“... the practice of the Board is not perfectly clear or rigidly consistent, although we generally acknowledge that as a body, our usual approach is to apply the policy which is in effect as of the date of the application”

James Dick Construction v. Caledon (2003)

“The Clergy principle is not a law or an inviolate rule. It is a practice [of the OMB] meant to promote fairness in the planning process ... In short, people should continue to expect that the policies that are in place when they apply will be made to apply to them ... The Board is authorized to conclude when it is fair to apply the Clergy principle ... and equally has the authority to conclude when the circumstances of a case warrant the application of more recent policies and more modern standards that are consistent with a compelling public interest.”

Provincial Policy Statement

Rounding Out Policy

- From “rounding out” (Policy 1.6.4.5) to “minor rounding out” (Policy 1.6.6.5)
 - Loutia Investments Ltd. v. Brant (March 31, 2015 – OMB file PL130929)

Individual On-Site Servicing 5-Lot Minimum Policy

- Policy 1.6.4.4 (PPS, 2005)

Provincial Policy Statement

Agricultural Policies – Policy 2.3.2

- “Designating” prime agricultural areas
- Farm consolidations, abutting lands and consents to sever
 - Mitchell v. Hamilton (Sept. 15, 2014 – OMB File No. PL120075)

Provincial Policy Statement

Resource-based Recreational Uses – 1997-2014

- × Fisher v. Hamilton (2000) - auto repair shop
- ✓ Re Grey County OPA No. 4 (2001) - golf course
- × Palson v. Pellatt (2005) - new residential lot for son
- ✓ Griffiths v. Renfrew (2006) - automotive/motorcycle racing track facility
- ✓ Re Elliot Lake Zoning By-law 05-40 (2006) - 16 residential waterfront lots
- ✓ Kimvar Enterprises Inc. v. Simcoe County (2007) - waterfront timeshare resort
- ✓ Worboy v. Smith-Ennismore-Lakefield (2010) - 24 lot waterfront subdivision
- ✓ Re Kawartha Lakes Zoning By-law No 39-30 (2011) - vacation units beside golf course
- × Pacey v. Timiskaming (2011) - waterfront cottage lot
- × Wolverton v. Thunder Bay (2012) - waterfront residence
- ✓ Daeschel v. Township of Frontenac Islands (2012) - 2 waterfront residential lots
- × Daniels v. Thunder Bay (2012) - 3 waterfront cottage lots
- ✓ 1734234 Ontario Ltd. v. Niagara Region (2014) - marina resort complex
- ✓ Bowyer v. Trent Lake (2015) - waterfront cottage lot
- × Crestwood Park Holdings v. Oro-Medonte (2015) – Webers Restaurant

OMB Practice Issues

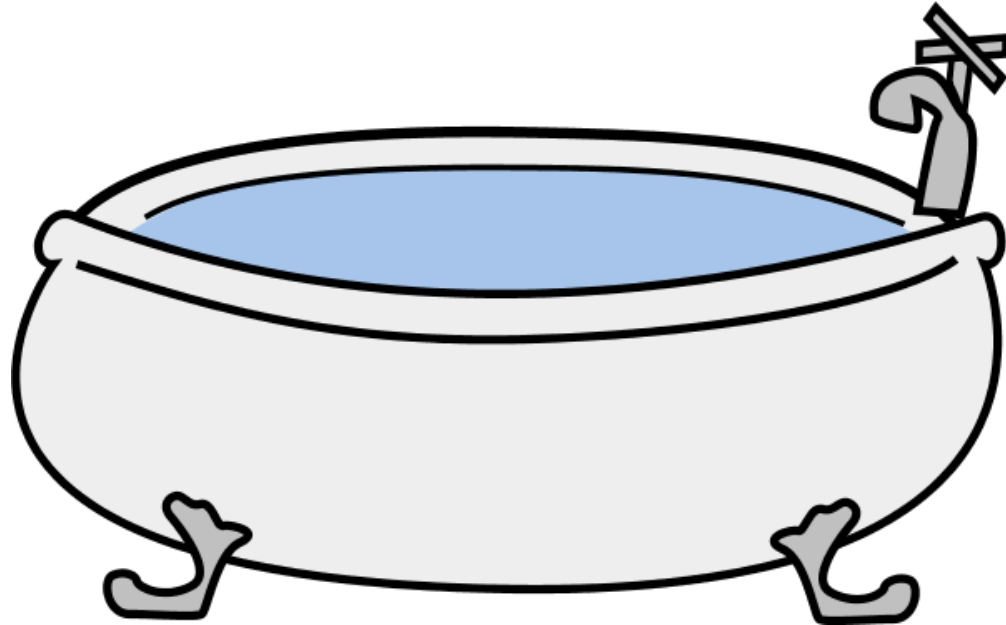
Active Adjudication

- Konialian v. Mississauga (Feb. 19, 2015 – OMB File No. PL131151)
- Ajani v. Richmond Hill (March 16, 2015 – OMB File No. PL130232)



OMB Practice Issues

Using Hot Tubs



- The presentation of concurrent expert evidence

OMB Practice Issues

Settling Issues for the Hearing

- Seipt v. Minister of Municipal Affairs and Housing (March 19, 2015 – OMB File No. MM140002)
 - Issues must be:
 - ✓ Genuine
 - ✓ Triable
 - ✓ Possess a clear nexus to the matters before the Board
 - ✓ Be capable of adjudication within the jurisdiction of the Board
 - ✓ Rest within the relevant land use planning framework

OMB Practice Issues

Settling Issues for the Hearing

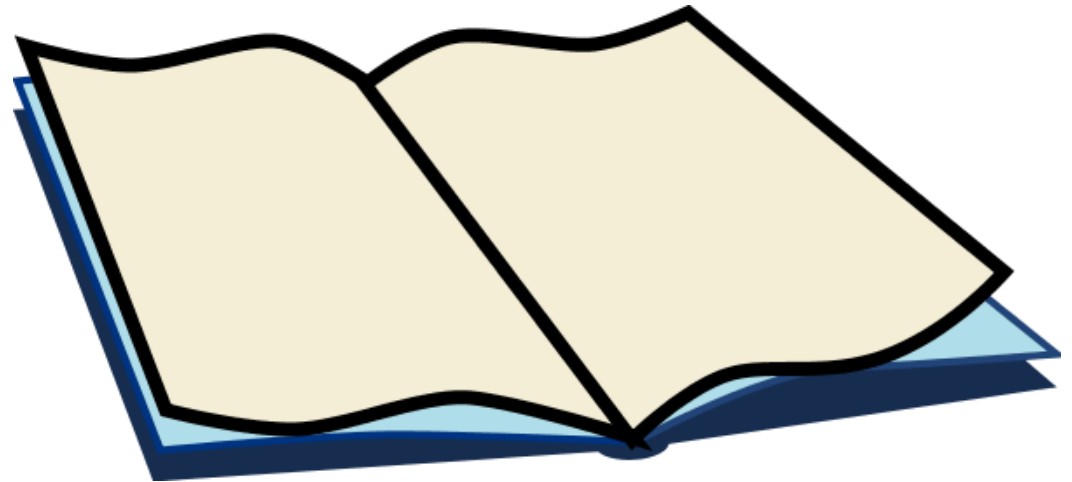
- The “weasel” issues list clause ...

“The identification of an issue does not mean that all parties agree that such issue, or the manner in which the issue is expressed, is appropriate or relevant to the determination of the Board at the hearing. The extent to which these issues are appropriate or relevant to the determination of the Board at the hearing will be a matter of evidence and argument at the hearing.”

OMB Practice Issues

**Not only diamonds
are forever, ...**

**so is
affidavit
evidence**



- Santos v. Barrie (January 29, 2015 – OMB Case PL090870)

OMB Practice Issues

Oral/Written Submissions Before Adoption/Passage

- Yonge-Bayview Corp. v. York (November 17, 2011- OMB File No. PL101128)
- West Whitby Landowners Group Inc. v. Whitby (July 21, 2015 - OMB File No. PL140951)
- Sheldrake v. Springwater (July 24, 2015 - OMB File No. PL141449)

Some Other Treats

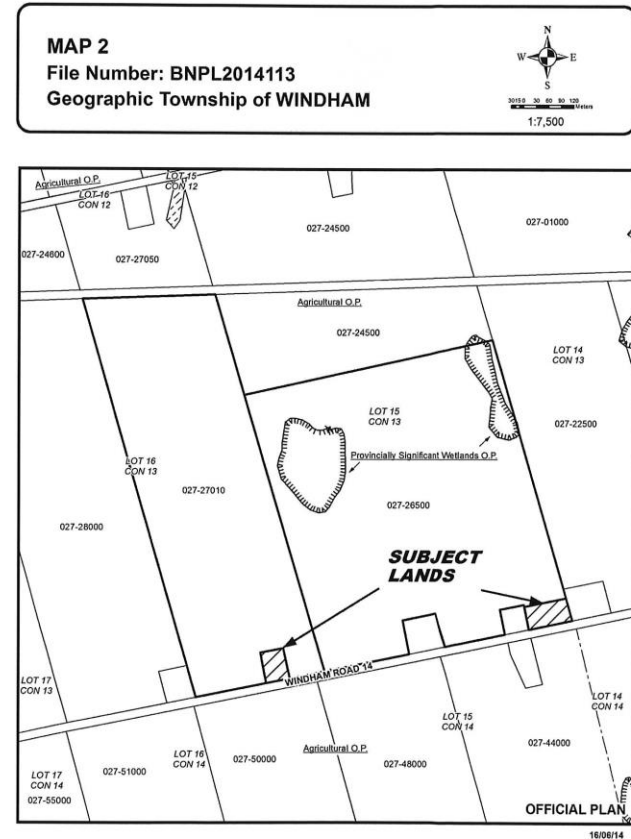
Site Plan/Development: Planning Act v. Building Code Act

- Sheppbonn Ltd. v. Toronto (May 15, 2014, OMB File No. MM130049) - OMB Decision
- Toronto v. Sheppbonn Ltd. (October 9, 2014 - Div. Court File No. 264/14) - Motion for leave to appeal OMB decision
- Toronto v. Sheppbonn Ltd. (August 13, 2015, Div. Court File No. 264/14) - Appeal from OMB Decision
- Sheppbonn Ltd. v. Ann Borooh, Toronto CBO (July 7, 2015 - Ont. Sup. Court File No. CV-15-519351) - Appeal from CBO decision

Some Other Treats

Lot Swap Consents to Sever

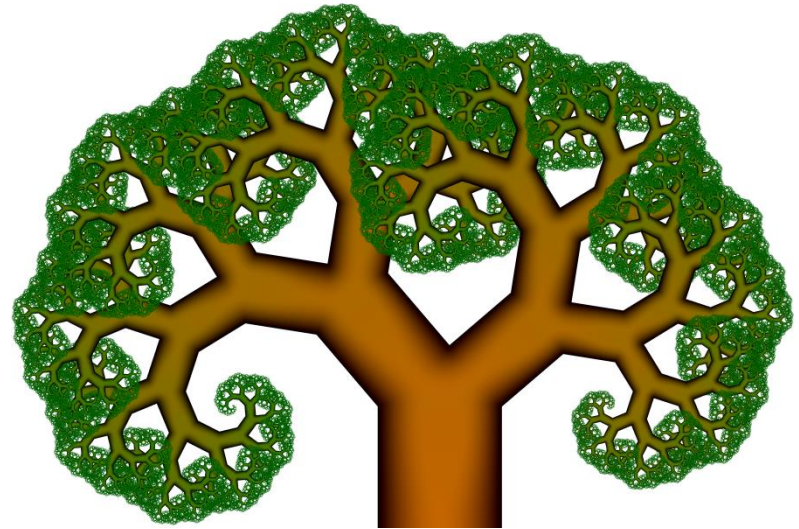
- Schuyler Farms Limited
v. Norfolk County (July 3, 2015
– OMB File No. PL141196)



Some Other Treats

Capping Cash-in-lieu of Parkland Dedication

- Yonge Bayview Holdings Inc. v. Richmond Hill (January 15, 2015 - OMB File No. PL110189)
- OMB imposed a 25% cap on payments of cash-in-lieu of dedication of parkland.



Some Other Treats

Official Plan: Phone Book or Brochure?

- Yonge Bayview Holdings Inc. v. Richmond Hill (January 15, 2015 - OMB File No. PL110189)
- Ashcroft Homes Inc. v. Ottawa (April 29, 2015 - OMB File No. PL130619)
- Mizrahi Development Group v. Ottawa (May 7, 2015 - OMB File No. PL140611)

Some Other Treats

Accessibility for Ontarians with Disabilities Act

- Motavelli v. Toronto (August 18, 2014 – OMB File No. PL140163)
- Variance to permit below grade retail



Some Other Treats

Cooperative cottagers...

- *Glaspell v. Ontario, North Kawartha (Township) and Hart* (June 18, 2015, Ont. Superior Court File CV-12-448912)

