Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: November 04, 2021 **CASE NO(S).:** PL200633

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Ministry of Municipal Affairs and Housing
Subject:	Proposed Official Plan Amendment No. OP20-06-2
Municipality:	Upper Tier of Oxford
OLT Case No.:	PL200633
OLT File No.:	PL200633
OLT Case Name:	Ministry of Municipal Affairs and Housing v. Oxford (County)

Heard: October 6, 2021 by Video Hearing

APPEARANCES:

Parties	**Counsel*/Representative**
Ministry of Municipal Affairs and Housing	M. Awan* A. Beamish* I. Wilson (student-at-law)
Jeffrey and Tracy Feairs	J. Feairs

DECISION DELIVERED BY S. JACOBS AND JATINDER BHULLAR AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] Jeffrey and Tracy Feairs live on a 12-acre property on Highway 59, in the Township of East Zorra-Tavistock. They would like to create two new residential lots on their

property. The Land Division Committee for the County of Oxford (the “County”) refused the Feairs’ application to sever the property, finding that it was not consistent with provincial policy and did not conform with the County Official Plan (the “OP”).

[2] The Feairs then applied to the County for an amendment to the OP, which would create an exception to allow the two new lots to be severed subject to the consent being approved by the Land Division Committee. County Council adopted the amendment, in the form of Official Plan Amendment No. 249 (the “OPA”), and the Ministry of Municipal Affairs and Housing (the “Ministry”) appealed that decision to the Tribunal.

[3] During the hearing, the Tribunal qualified Kay Grant, planner with the Ministry, to provide opinion evidence in the area of land use planning.

[4] Mr. Feairs represented himself during the hearing. He made submissions and elected not to ask any questions of Ms. Grant. He called one witness, Bob Hart, who owns the farm adjacent to the Feairs’ property and intends to purchase a portion of their property that is farmed, in order to consolidate it with his farm. Also in support of the OPA, Marcus Ryan filed a participant statement with the Tribunal.

[5] The County did not attend the hearing, having earlier advised the Tribunal that it did not intend to participate in this proceeding.

[6] There is one issue in this appeal: whether the OPA, which would facilitate residential lot creation in a prime agricultural area, is consistent with the *Provincial Policy Statement, 2020* (the “PPS”). The Ministry submits that the OPA is clearly inconsistent with the PPS, which only permits residential lot creation in prime agricultural areas for a residence surplus to a farming operation as a result of farm consolidation. While the Feairs agree that the PPS is clear in its direction, they ask the Tribunal to be flexible in its interpretation because the new lots are not suitable for agriculture. Before considering this issue, the Tribunal will briefly describe the Feairs’ property and the OPA.

The Feairs' Property and the OPA

[7] The Feairs' property is located on the east side of Highway 59, between Braemar Sideroad and Oxford Road 17. Their property contains their single detached dwelling, a driveshed, woodlot, and approximately seven acres of land that is currently farmed by Mr. Hart's brother. The surrounding area is mainly agricultural with rural residential uses directly to the north and south.

[8] The Feairs' property is designated Agricultural Reserve in the County OP and zoned Limited Agricultural Zone in the Township Zoning By-law. The OPA, as adopted by the County, creates an exception to allow two non-farm residential lots, each 0.75 acres in area, to be severed from the property by means of a consent to be approved by the County Land Division Committee. This would leave the Feairs with the portion of the property on which their residence is located, and the farmed portion they intend to convey to Mr. Hart. The OPA only pertains to the creation of the two new residential lots.

ANALYSIS

[9] When considering an amendment to an official plan, the Tribunal must determine whether the amendment is consistent with the PPS, as required by s. 3(5) of the *Planning Act* (the "Act"). The Tribunal must also have regard to the provincial interests set out in s. 2 of the Act, as well as the decision of council and the information and material it had before it when it made its decision, in accordance with s. 2.1 of the Act. In this case, though council decided to adopt OPA 249, it had before it a planning staff report that recommended that the OPA not be approved because staff found it to be inconsistent with the PPS.

[10] This case turns on the PPS, and specifically, the protection of prime agricultural areas reflected in policies 2.3.4.3 and 2.3.4.1(c). Protection of agricultural resources is a priority in the PPS. It is also identified as a provincial interest in s. 2(b) of the Act, to which the Tribunal must have regard in its decisions.

[11] Prime agricultural areas are areas in which prime agricultural lands predominate. The PPS defines prime agricultural lands as specialty crop areas and/or Canada Land Inventory Class 1, 2, and 3 lands. Although the Feairs' do not farm the portion of their property they would like to sever for residential use, their entire property is considered Class 2 lands, and therefore prime agricultural lands. There is no question that the property is located in a prime agricultural area.

[12] The PPS is unequivocal in its protection of prime agricultural areas for their long-term use for agricultural. This is reflected in policy 2.3.4.3, which prohibits residential lot creation:

> The creation of new residential lots in *prime agricultural areas* shall not be permitted, except in accordance with policy 2.3.4.1(c). [Italics in original to indicate defined terms].

Policy 2.3.4.1(c) allows a limited exception to create a lot for a residence that has become surplus to a farming operation due to farm consolidation:

> 2.3.4.1 Lot creation in *prime agricultural areas* is discouraged and may only be permitted for:
>
> …
>
> c) a *residence surplus to a farming operation* as a result of farm consolidation, provided that:
>
> 1. the new lot will be limited to a minimum size needed to accommodate the use and appropriate *sewage and water services*; and
>
> 2. the planning authority ensures that new residential dwellings are prohibited on any remnant parcel of farmland created by the severance. The approach used to ensure that no new residential dwellings are permitted on the remnant parcel may be recommended by the Province, or based on municipal approaches which achieve the same objective; …

[13] There is no dispute that the severance the Feairs' seek, as would be permitted by the OPA, is not for a residence surplus to a farming operation as a result of farm

consolidation. Rather, the OPA would allow the Feairs' to create two additional residential lots on Highway 89, subject to the approval of the County's Land Division Committee.

[14] All of the evidence before the Tribunal indicates that this property is in a prime agricultural area and that it does not fit within the limited exception for residential lot creation in the PPS. Mr. Feairs and Mr. Hart agree that this is the case, though they urge the Tribunal to consider the fact that the lots to be severed have not and will not be farmed. While that may be the case, the PPS affords the Tribunal no discretion to consider whether a property is actually farmed. As Ms. Grant testified, the PPS is clear in its intent to protect prime agricultural areas, which can include pockets of land that are not farmed.

[15] Mr. Ryan, in his participant statement, emphasizes the importance of County council's decision. He believes the OPA should stand because it reflects the goals of the community.

[16] Indeed, the Tribunal is required to have regard for the decision of council, as well as the material that was before it when it made that decision. Here, council adopted the OPA and it indicated, in its Notice of Adoption, that the severance of residential lots "does not offend the overall intent of the [PPS] as the proposed lots are not in agricultural production and are not suitable for agricultural uses". Council had before it a planning staff report that recommended against adopting the OPA due to its inconsistency with the PPS.

[17] The Tribunal finds, based on Ms. Grant's uncontradicted evidence, that the OPA is not consistent with the PPS. Although the Tribunal accepts Mr. Hart's evidence and Mr. Feairs' submission that the new residential lots are not suitable for agriculture, that is irrelevant in the face of the clear language of the PPS. The Feairs' property is in a prime agricultural area and the creation of new residential lots is not permitted. The limited exception to this prohibition, to create a lot for a residence surplus to a farming operation, is not met in this case. This Tribunal is required to make decisions that are consistent with the PPS. It does not have the authority to create the exception the Feairs' seek and that the County attempted to create through the OPA.

CONCLUSION

[18] Having found that the OPA is not consistent with the PPS, the Tribunal must allow the appeal. The Tribunal notes, as described in the County staff planning report, that the OPA is not required in order for the Feairs' to proceed with their plan to convey the farmed portion of the property to Mr. Hart.

ORDER

[19] **THE TRIBUNAL ORDERS** that the appeal is allowed and Amendment No. 249 to the County of Oxford Official Plan is not approved.

"S. Jacobs"

S. JACOBS
VICE-CHAIR

"Jatinder Bhullar"

JATINDER BHULLAR
MEMBER