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February 2, 2007
DECISION/ORDER NO:
0294



PL050888
PL050459

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Muriel Geraldine Devins has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the Town of Halton Hills to make a decision respecting a proposed plan of subdivision on lands composed of the West Half of Lot 21, Concession 9 in the Town of Halton Hills
Town File No. D12/Devins 24T-03002/H
OMB File No. S050025
OMB Case No. PL050459

Sheridan Nurseries Limited, Ms Geri Devins, 1232046 Ontario Inc., and Rick & Sally Stull have appealed to the Ontario Municipal Board under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.123, as amended, from a decision of the Regional Municipality of Halton to approve Proposed Amendment No. 113 to the Official Plan for the Town of Halton Hills
Town File No. 24 OP 0196 113
OMB File No. O050145
OMB Case No. PL050888

APPEARANCES:

Parties

Counsel

Sheridan Nurseries Limited

P. Peterson

Muriel Devins

H. Arnold

T. Arnold

Rick and Sally Stull

J. Alati

Town of Halton Hills

B. Ketcheson

Region of Halton

J. Wilker

Credit Valley Conservation Authority

P. DeMelo

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**DECISION DELIVERED BY JASON CHEE-HING AND ORDER OF
THE BOARD**

PART 1: CONTEXT

Background:

The Hamlet of Glen Williams (the “hamlet”) is located within the Town of Halton Hills (“Town”), just northeast of the Georgetown Urban Area. The hamlet sits along the banks of the Credit River and was first settled in 1826 and quickly became an area known for its clothing mills, which during the late 1800’s was the primary employment base for the area. The current secondary plan for the hamlet (formally known as the Glen Williams Secondary Plan) was approved in 1982 and incorporated as OPA No. 2 to the Halton Hills Official Plan in 1985. This secondary plan has stood for over 17 years since 1982. During this time the planning policies respecting urban design, heritage protection and environmental protection have evolved making the plan dated. This combined with the increasing residential development pressures within and outside the hamlet boundaries precipitated the need for a comprehensive review and update of its secondary plan.

The secondary plan review process began in earnest with the establishment and adoption of the terms of reference through the Glen Williams Integrated Planning Project in 2001. In 2003 the Town’s new secondary plan for the hamlet, otherwise known as OPA No.113 was adopted by Town Council and approved with modifications by the Region of Halton (“Region”) in 2005. The approval of the Town’s secondary plan for the hamlet was subsequently appealed by a number of parties to the Board.

The Consolidated Appeals:

A total of eight separate appeals were launched by four appellants against the Glen Williams Secondary Plan (OPA 113) and related proposed plan of subdivisions and zoning by-law amendments. During the pre-hearing conferences, the Board consolidated these appeals at the request of the Region and with the consent of the other parties. The Board determined that the appeals were all on matters related to the

Secondary Plan and that it would be more efficient and in the public interest to adjudicate these appeals within one hearing. Five weeks were set aside over the course of April – September, 2006 to hear these appeals on a phased basis. The appellants to these proceedings are as follows:

1. Sheridan Nurseries Limited (“Sheridan”) on appeals to OPA 113, a proposed plan of subdivision, zoning by-law amendment, and proposed amendment to the Town’s Official Plan;
2. Muriel Geraldine Devins (“Devins”) on appeals to OPA 113 and a proposed plan of subdivision;
3. 1232046 Ontario Inc. (“Charleston Homes”) on appeals to OPA 113; and
4. Rick and Sally Stull (“Stulls”) on appeals to OPA 113.

Status of the Appeals:

During the course of the hearing, the Board issued two decisions with orders that partially disposed of some of the appeals. The Town requested the Board to partially dispose of the appeals related to OMB Cases No. PL020611 and PL050888. On written consent, the objecting parties (Sheridan, Devins, Charleston Homes and Stull) advised the Board that they were prepared to withdraw their appeals in part to PL050888. Additionally, Sheridan agreed to withdraw its appeal related to PL020611. On August 9, 2005, the Board ordered that the appeals be allowed in part and approved the Glen Williams Secondary Plan (OPA 113) as modified subject to certain reservations (O.M.B.D. No. 2243). The appeals relating to these OMB case numbers were dismissed save and except for the portions of OPA 113 that related to the Stull site specific appeal on the location of the hamlet boundary and the Devins site specific appeal of Subsection 5.3(g).

The Board on September 18, 2006 issued a second decision and order (O.M.B.D. No. 2618) relating to the appeals of Sheridan on their proposed plan of subdivision and proposed amendment to Zoning By-Law 74-51 of the Town (OMB Case No. PL060100). On September 12, 2006, the Board was advised by the parties that they had reached a settlement on Sheridan’s draft plan of subdivision and zoning

appeals and that the public agencies were satisfied with the conditions of draft approval for Sheridan's plan of subdivision; the implementing Zoning By-law 2006-0104 and the draft plan of subdivision as redlined on September 12, 2006. The Board determined that the settlement represents good planning and is in the public interest. The Board allowed the appeal in part against ZBL 74-51 and approved Sheridan's draft plan of subdivision subject to conditions.

With these aforementioned Board Decisions and Orders, five of the eight appeals were resolved during the course of the hearing. The remaining appeals being the Stull and Devins matters are the focus of this Board Decision and Orders. Sixty six exhibits were filed by the parties during the course of the hearing.

PART 2: THE "STULL" APPEAL

Amendment to the Stull appeal:

The Stull appeal letter dated August 22, 2005 filed with the Region appealed OPA 113 in its entirety to the Board on the basis that their lands consisting of approximately 100 acres (41.8 hectares) were not included within the Hamlet boundary (EX. 2B). The Stulls currently have a farming operation on the subject lands. The subject lands are designated as "protected countryside area" under the 2005 Provincial Greenbelt Plan and as agricultural under the Town's Official Plan. During the pre-hearing conference, the appeal was scoped to a site specific appeal of OPA 113 to include within the Hamlet boundary, a portion of the Stulls' land holdings consisting of an area of approximately 10.33 hectares (25.5 acres) to allow a residential subdivision consisting of 14 hamlet estate residential lots to be serviced with private septic services and full municipal water. The lot sizes would range from 0.58 hectares to 1.38 hectares (1.43 acres to 3.4 acres) in size (EX.15).

During the course of Phase 1 of the hearing, which dealt with the Stull appeal, counsel and the planner for the Stulls presented a further scoped proposal to the Board. This revised proposal met with the vociferous objections from counsel for all the public agencies being the Town, Region and the Credit Valley Conservation Authority (CVCA) as they had already presented their evidence and called their expert witnesses based

on the Stulls' 14 hamlet estate residential lot proposal. The revised proposal presented to the Board now consisted of 3 hamlet estate residential lots instead of 14 with a reduced land area of 7.4 acres instead of 25.5 acres to be included within the Hamlet boundary. The three lots are to be serviced with private septic services and full municipal water with the condition to be imposed by the Board that the maximum number of lots which can be derived from the Stull lands will be three and that these lots cannot be further subdivided (EX. 28, 37).

The Board was asked to make a ruling on hearing evidence on this revised proposal. The Board ruled it would hear evidence on the modified proposal as it heard no compelling reasons why it should not. It is the wont of the Board to explore reasonable alternatives as presented by the parties before making a decision. There is considerable Board jurisprudence and court decisions that have confirmed the Board's jurisdiction to modify or amend an OPA. It is the Board's view that counsel for the public agencies will have ample opportunity to challenge the veracity of the evidence presented by the appellant and recall their own expert witnesses.

The Positions of the Parties:

It is the position of the public agencies (Town, Region and CVCA) that the inclusion of the Stull lands - whether it is the 14 estate residential lot proposal or the modified proposal of 3 estate residential lots - within the Hamlet boundary runs counter to the Glen Williams Secondary Plan objective of the need to have a firm, rational and defensible boundary for the Hamlet. The Stull proposal represents "ribbon" development, which would significantly compromise the proposed hamlet boundary as delineated in OPA 113, by creating an irregular and illogical boundary that would further encourage rounding out of the proposed Hamlet boundary. The Stull proposal was thoroughly reviewed and considered by the Town's planning staff during the community planning process that led to the Glen Williams Secondary Plan and it was their position that inclusion of the Stulls' lands did not meet the planning criteria established through the secondary plan process.

It is the position of the Stulls that the Hamlet boundaries should be modified to include that part of the Stull lands comprising of 7.4 acres/3 hamlet estate residential lots. This proposal modified from the initial proposal of 25.6 acres/14 hamlet estate

residential lots that was presented at the onset of the hearing will not have a negative impact on the hamlet core; is not encumbered by any natural features; would not have any discernible impact on the Town's population projections and will not have an impact on the Town's allocation of reserve sewage capacity as it will be privately serviced. At three lots, the proposal is small in scale and the inclusion of that portion of the Stull lands within the hamlet boundaries is supportable on the basis of good planning.

Findings of the Board:

During the course of the hearing, the Town called three expert witnesses (a joint panel of two planners and an engineer), the Region called its development engineer, and the applicant called a professional planner to give expert evidence in their respective disciplines. Additionally, there were four participants - Drew Leverette on behalf of the Glen Williams Community Association, Don Jackson, Jim Archdekin, and L. Pilutti - who provided lay evidence. The Glen Williams Community Association and Mr. Jackson were opposed to the application while Mr. Archdekin and Mr. Pilutti were generally in support of the proposal.

The evidence given by the expert witnesses for both the public agencies and the applicant were detailed, comprehensive and exhaustive. The arguments and submissions advanced by counsel were detailed and compelling. The Board considered all of the evidence and submissions in making its findings. These findings are based on the modified three hamlet estate residential lot proposal as presented by the applicant's counsel and planner during the proceedings.

1. The Board finds that the Town's planning objective to have a firm, rational and defensible boundary for the Hamlet of Glen Williams as articulated in OPA 113 to have merit and represents good planning. This was achieved following a comprehensive and lengthy public planning process. The proposal for part of the Stull's lands to be included within the hamlet boundary runs counter to this planning objective. The Board prefers the opinion evidence of the Town's planner (Mr. Burke), that the proposal even after it was modified from 14 to 3 estate residential lots represented a form of ribbon development

- at the periphery, which would create an illogical and irregular boundary through incremental expansion.
2. The Board accepts the Town's and Region's submission that the inclusion of the Trant and Willm residential lots, immediately west of the subject lands within the hamlet boundary were due to extenuating circumstances and should not be used as a rationale for accepting the proposal.
 3. The Board accepts the public agencies rationale for the designation of the "Summertree" and "Megan" lands as hamlet estate residential as having a historical basis and that they were already part of the hamlet and that it is not the intent of the secondary plan to promote additional hamlet estate residential developments. However, the Board does not accept their argument that the Stull proposal may result in the dilution of the wastewater treatment capacity reserve of 2,600 at the Georgetown WPCP.
 4. The Board finds that it is the intent of Modification No.2 of OPA 113, to address infill residential developments within existing developed areas and not as a mechanism for the development of lands outside of the hamlet boundaries as proposed by the Stull application.

The reasons for my findings follow.

The Evidence and Arguments:

Mr. DeRuyter, planner for the Stulls gave evidence that the modified proposal of three lots with a hamlet estate residential designation represents a significant reduction from the previous proposal of 14 lots/25.5 acres. The modified proposal with an area of 7.37 acres represents approximately 29 percent of the proposal that was originally presented to the Board. The configuration of the three lots would be long and narrow, would each have a frontage of approximately 121 feet and would front onto Eighth Line. The proposed lots would be consistent with the lotting pattern in the surrounding areas and would continue the lotting pattern of the properties directly to the west on the other side of Eighth Line being the Trent and Willms lands (EX. 7a, 28). It was his opinion that the planning reasons that he provided to the Board on the 14 lot proposal makes the reduced three lot proposal even more desirable.

The proposal could be developed under the consent application process since a plan of subdivision would not be required as the application is for only 3 lots. Modification No. 2 of OPA 113 could allow the proposal to be developed as an infill development if the Board approved the application.

It was his opinion that the hamlet does not have a single character. Rather the hamlet is composed of two distinct areas which are the core of the hamlet and the outlying areas as characterized by the Summertree and Devins/Meagan subdivisions. The Stull application would be consistent with the character of these subdivisions in the outlying areas of the hamlet (EX. 7a). The proposal would be serviced by private septic systems and municipal piped water that could be extended from the watermain at the Eighth Line and cost shared with the adjacent landowners (the Trants and Willms). The proposal would not require a reserve SDE (single detached equivalent) allocation from the Region as it would be serviced by private septic systems.

On the matter of ribbon developments, it was Mr. DeRuyter's testimony that the proposal is not a ribbon development but rather it would complete the logical extension of the hamlet boundary by extending the north-westerly boundary from the Willms lands across to the proposed 3 lot development. It was his evidence that ribbon development is not a defined term in the Regional OP. Furthermore the proposal will not detract from the hamlet core as it will be compatible with the surrounding lotting pattern of the outlying areas.

It was Mr. Alati's submission that the proposed 3 lot development is as remote from the hamlet core as the Megan subdivision, the Willm and Trant properties which are lands that are now within the hamlet boundaries. There will be negligible impact on the hamlet and the Town's population. On the matter of the existing farming operation and the barn on the applicant's lands, it was the planner's opinion that the barn could be relocated elsewhere on the subject lands to address any minimum distance separation (MDS) concerns. Mr. DeRuyter proffered the opinion that the 3 lot proposal is: very small in scale; would not detract from the hamlet character which the secondary plan strives to protect; would satisfy all provincial, regional and municipal policies; is not impacted by the *Greenbelt Act* and Plan and is compatible with the surrounding community. As such, in his opinion the 3 lot proposal represents good planning.

The Town called its planner, Mr. S. Burke and its planning consultant, Mr. M. Conway to provide planning evidence as a joint panel in support of OPA 113. Although the planning evidence given by the panel was made prior to the introduction of the reduced 3 lot proposal by counsel for the Stull's, it was the opinion of the panel during re-examination that their planning evidence in support of OPA 113 and against an inclusion of the Stull's lands into the hamlet boundary would apply equally as well to a proposal to include a smaller portion of the Stull's lands into the hamlet boundaries.

The Board heard from the panel that OPA 113 was the culmination of an extensive planning study (the Glen Williams Integrated Planning Project (IPP)), which involved a comprehensive public participation process. Two important objectives of the IPP were the need to have appropriate land use planning controls to guide development within the hamlet and the need to have a logical and defensible boundary for the hamlet. It was the evidence of the panel that the Stull's made a number of submissions to the Town for a boundary adjustment to allow their lands to be included within the hamlet. These submissions were reviewed by planning staff whose conclusions were that such a boundary adjustment would not result in a rational and defensible hamlet boundary. It was their testimony that the development proposed by the Stull's – regardless of whether it is 14 or 3 lots – would significantly compromise the rationale for the hamlet boundaries by creating an irregular and irrational boundary penetrating beyond the area of historic development into a Greenfield location and now designated as "Protected Historic Countryside" in the provincial Greenbelt Plan (Ex 1A-C).

According to the panel, the hamlet boundary as delineated under OPA 113 follows a historical development pattern. The northern property limit of the Devins and Megan lands form the edge of this historical hamlet development area. The existing Megan and proposed Devins subdivision were included within the existing boundaries to recognize the existing development pattern (EX. 7A). The inclusion of the Stull's 3 lot proposal would lead to an irregular boundary and has no planning rationale to support it.

Mr. Burke further testified that the Stull application is a form of ribbon development which is discouraged under Section C5e1 of the Region's OP and would lead to incremental expansion of the hamlet boundary which defeats the secondary plan's objective of a firm, rational and defensible boundary. It was his evidence that the Town had considered another proposal that would have led to an incremental

expansion of the hamlet boundary (the Pilutti proposal) and had also denied it on the basis of the proposal being ribbon development. It is not the intent of OPA 113 to ring the hamlet with additional estate residential developments. Those that do exist (Devins, Megan, Summertree developments) had a historical basis to it.

On the intent of Modification No. 2 to OPA 113, it was Mr. Burke's opinion that this was clearly intended for existing lots of record within the hamlet that could be subject to consent applications. This mechanism was intended for infill developments and it was not the intent of the secondary plan to apply this policy to lands outside the hamlet boundary. The Stull lands are considered by the Town to be an agricultural operation that is outside the hamlet boundary. Including a portion of the Stull lands within the hamlet does not assist in establishing a firm rational boundary for the hamlet and there is no sound planning reasons to support such a proposal.

Counsel for both the public agencies (Town, Region and CVCA) on the one hand and the Stulls on the other gave detailed submissions on why the revised 3 lot hamlet estate residential proposal should or should not be included within the hamlet based on the planning (including servicing) evidence proffered by their respective expert witnesses. It is the Board's view that among all those arguments and submissions, the crux of the matter upon which the Board must decide the appeal can be distilled into the following issues:

1. Firstly, whether the proposal is indeed a form of ribbon development and if so, does it represent incremental expansion to the hamlet boundary.
2. Secondly, are there sound planning reasons to support this proposal.
3. Thirdly, can Modification No. 2 to OPA 113 be used as a planning mechanism to allow for this proposal.

On the issue of whether the proposal is a form of ribbon development, Mr. Alati argued that it is not and it is in fact directly across the street from the Trant and Willms lands which are included within the hamlet. It was the evidence of his planner that the proposal is as far from the core of the hamlet as the Trant and Willms, and Devins lands and that it would be incongruent to suggest that the inclusion of the Stull lands would detract from the character of the hamlet core while other lands are as far away from the

core (Trant, Willms, Devins and portions of the Megan subdivisions) yet are included within the hamlet boundaries.

Both Messrs. Ketcheson and Wilker argued that there is a historical basis for this. That the Devins, Megan and Summertree lands form the edge of the historical development area and the evidence of their planners was clear that it was not a planning objective of the secondary plan to create additional estate residential lots at the periphery of the hamlet (EX. 7A). It was their submission that the Town desired to have a firm, defensible and logical hamlet boundary and discourage incremental expansion of this boundary and this planning objective is reflected in Part B, Section 2.0 of OPA 113.

It was the evidence of Mr. Burke, that the Trant and Willms lands were included within the hamlet due to extenuating circumstances. Both residential lots had a water supply problem and they wanted to be able to connect to the piped water supply of the Hamlet. It was only for this reason that these two estate residential lots were included within the boundary. Mr. Burke testified that it was never a planning objective to bring in additional estate residential lots. The Stull lands are designated agricultural and there is an existing farming operation on these lands. It was his opinion that the Stull proposal represents ribbon development and incremental expansion of the hamlet boundary and it is not the intent of the secondary plan to ring the hamlet with hamlet estate residential lots.

Section C5e1 of the Region's OP addresses ribbon form of growth by stating that:

"It is the policy of the Region to: Require the Area Municipalities to prepare Hamlet Secondary Plans in accordance with Section 111-B2e4 and with the objectives of providing for compact, non-ribbon form of growth (Board emphasis) and maintaining the hamlet character of the community." (Ex 2A)

While, Mr. Alati argued that none of the Region's planning documents define what constitutes ribbon development, it is the Board's view that the proposal is a form of ribbon development. The Board prefers the evidence of Messrs. Burke and Conway that this proposal would lead to an incremental expansion of the hamlet boundary. The

Board finds that the proposal is inconsistent with the objectives of the Region's OP for providing compact, non-ribbon form of growth.

The Board prefers the evidence of Mr. Burke that the Willms and Trant lands were included within the hamlet due to extenuating circumstances and should not be used as a basis for accepting the Stull proposal. The Board finds merit in the public agencies position (as advanced by its planning evidence and counsel submissions) that the creation of a rational and defensible boundary for the hamlet was an important planning objective of the secondary plan process and this planning process was comprehensive and involved extensive participation from the community. The Board prefers the evidence of the public agencies that the Stull proposal would compromise the hamlet boundary by creating an irregular boundary that would go beyond the area of historic development.

On the issue of whether there are sound planning reasons to support this proposal the Board finds that the planning evidence suggests otherwise for the reasons mentioned in the preceding paragraphs. The Stull proposal is, in the Board's view, a form of ribbon development which is discouraged under Section C5e1 of the Region's OP. The Town's objective of having a firm, rational and defensible boundary for the hamlet is in the Board's view a worthy planning objective that is based on sound planning reasons. The Stull proposal runs counter to this objective.

The Board was asked to make a finding on whether Modification No. 2 to OPA 113 can be used as an appropriate mechanism to allow for the creation of the 3 lots were the Board to find in the applicant's favour. Firstly, the Board's finding on the applicant's proposal renders such a request moot. However, since considerable arguments were advanced by both parties on this matter the Board makes the following observations. Modification No. 2 to Section 3.5 of OPA 113 refers to the following:

"Existing lots of record and individual lots that are created by consent (land severance) as infilling within existing developed areas may be developed on private, individual wastewater systems. The minimum lot size for new development on private, individual wastewater treatment services shall be 1,900 sq.m., or larger, as may be determined by a hydrogeological study satisfactory to the Town and Region of Halton.." (EX.2B, Tab 27).

It was Mr. DeRuyter's opinion that the Stull proposal could be developed by way of consent to sever under Modification No. 2 as infilling within existing developed areas. Mr. Burke disagreed with this. It was his opinion that the intent of this modification was to provide for lot creation for existing lots of record in already developed (infill) areas and this policy was not intended to apply to lands outside the hamlet boundary.

The Board prefers Mr. Burke's interpretation of Modification No. 2. In the Board's view, this modification was intended for existing infill developments and not as a mechanism to allow for the creation of new lots on lands that are not an infill development and that are outside the hamlet boundary. The Board finds that it is the intent of Modification No. 2 of OPA 113, to address infill residential developments within existing developed areas and not as a mechanism for the development of lands outside of the hamlet boundaries as proposed by the Stull application.

It is for these reasons that the Board dismisses the appeal of the Stulls against OPA 113 to include a portion of their lands within the hamlet boundary. The Board Order is contained in page 25 of this Decision.

PART 3: THE "DEVINS" APPEAL

Amendment to the Devins Appeal:

Muriel Geraldine Devins filed two appeals with the Board. The first appeal is with respect to OPA 113. The second appeal is with respect to a proposed plan of subdivision. The letter of appeal dated August 22, 2005 details the appeal against OPA 113. During Phase 3 of this consolidated hearing which dealt with the Devins appeal, counsel for the applicant, filed with the Board, an amendment to his client's appeal on OPA 113. The amended appeal on OPA 113 now pertains only to Modification No. 13 Section 5.3 g) as follows:

1. The last paragraph of section 5.3 g) be deleted and that the words "...all of the other applicable polices in this plan." in the first paragraph be replaced with "...compliance with the provisions of the Ontario Building Code, the applicable

Ministry of Environment and Energy Guidelines, and the recommendations of the Scoped Subwatershed Plan for Glen Williams.”

2. Appeals to paragraphs 1, 2, and 4 of OPA 113 were withdrawn as per counsel's letter of May 10, 2006.

The appeal on the proposed plan of subdivision was not amended.

The Proposal:

The applicant proposes a 12 residential lot plan of subdivision on the subject lands which are located at east of the Eighth Line, north of Wildwood Road within the hamlet (EX. 7A, 47A). Each lot would be approximately 0.4 hectares (1 acre) in size. The subject lands are approximately 6.88 hectare (17 acres) in area. The proposal would be serviced with municipal piped water and a private sewage disposal system for each lot. The sewage disposal system proposed is a nitrate removal tertiary system rather than a conventional septic system.

The Positions of the Parties:

It is the position of the public agencies (Region, Town and CVCA) that the Devins proposed plan of subdivision with a yield of 12 lots is not supported by the Region's Guidelines for Hydrogeological Studies and Standards for Private Services, which are the applicable servicing guidelines. The acceptable nitrate level at the property boundary is 10mg/l of effluent (nitrates) using the Region's and the Ministry of Environment and Energy (MOEE) effluent standards. The proposal based on a yield of 12 lots will result in effluent levels higher than 10 mg/l which would pose a serious health risk to the ground water supply through contamination.

It is the public agencies position that the use of tertiary systems to remove nitrates is not supported by the Region's servicing guidelines. Tertiary systems are very maintenance intensive and the consequences of a failed tertiary system in terms of public health are grave. There is no long term empirical evidence to support the use of

these systems within residential subdivisions. Using the Region's servicing guidelines, the appropriate lot yield based on the 10mg/l nitrate standard is 8 lots. It is the position of the public agencies that the proposal at 12 lots does not only raise planning concerns but also raises serious engineering, servicing and public health concerns.

It is the position of the applicant that the appropriate system of servicing of sewage disposal should be governed by the MOEE guidelines and the OBC. The proposal meets the MOEE guidelines. Furthermore, the region's servicing guidelines are dated and not consistent with the MOEE guidelines. The region's servicing guidelines do not have the status of an official plan. These guidelines were adopted after the Region's OP was adopted and approved. Tertiary treatment systems are proven technology and approved for use by the Ontario Building Code (OBC) and the MOEE. It is their position that the nitrate levels at the property boundary meet the MOEE standard of 10mg/l and the applicable servicing guidelines are found in the OBC and MOEE guidelines and not the Region's. The proposal meets the OBC, MOEE, and the Scoped Subwatershed Plan for Glen Williams servicing guidelines and meets the requirements of Section 51(24) of the *Planning Act*.

Findings of the Board:

During this phase of the hearing, the Region called four expert witnesses - Mr. P. Johnston, Consulting Planner; Mr. L. Bryck, Consulting Hydrogeologist; Mr. R. Mayberry, Consulting Engineer; and Mr. A. Amalfa, the Region's Manager of Environmental Health – who gave evidence in their respective disciplines. The applicant called two expert witnesses – Mr. G. Wellings, Consulting Planner; and Mr. P. Bowen, Consulting Hydrogeologist and Engineer – to give evidence.

In addition to the land-use planning evidence adduced, the Board heard very detailed and highly technical evidence from both the Region's and the applicant's experts on matters relating to hydrogeology, tertiary treatment systems, conventional septic treatment systems, nitrate loading methodology and calculations, infiltration rates, impacts on public health, and other servicing and engineering concerns. Counsel for both parties submitted previous Board decisions which they considered relevant to their positions. The Board considered all of this evidence (including expert witness and reply

statements) and counsel submissions in making the following findings on the applicant's appeals on OPA 113 and the draft plan of subdivision.

1. The Board finds that Subsections C1c3 and C1c4 of the Region's OP are the applicable sections of the OP that govern all development within the rural system. The Board finds that the Region's Guidelines for Hydrogeological Studies and Standards for Private Services to be the applicable rural servicing guidelines to be used by the Region in accessing individual private waste water treatment systems for developments within the rural system. The applicant's proposed plan of subdivision is within the Hamlet of Glen Williams which is part of the rural system and must comply with these rural servicing guidelines through OPA 113.
2. The evidence of both hydrogeologists (the Region's and the applicant's) was thorough and highly technical. However, the Board prefers the evidence of the Region's hydrogeologist, that the applicant's proposed 12 lot subdivision using a tertiary treatment system would result in nitrate levels higher than the MOEE standard of 10mg/l of nitrate effluent at the property boundary. The Board accepts Mr. Bryck's evidence that based on a conventional septic system (which is the only type that the Regional servicing guidelines recognize) only 8 lots could be supported.
3. The Board accepts the evidence and submission of the public agencies that there is no empirical evidence available to indicate that tertiary treatment systems operate as designed over the long term and that failure of these systems could lead to increased nitrate levels and potential contamination of the ground water supply. The applicant's experts could not provide such long term empirical evidence to support the tertiary treatment system that they propose to use (Waterloo Biomass System).
4. In the Board's view, the public health risk as a result of nitrate effluent contamination of the ground water supply resulting from the potential failure of a tertiary treatment system such as the one proposed over the longer term outweighs any short term benefits in nitrate management that the tertiary system could provide. The evidence and submissions of the Region raise

sufficient doubt about the long term reliability of the Waterloo Biomass tertiary system which the applicant's counsel and expert witness were not able to refute.

5. Following from the Board's findings 1-4, the Board finds that the proposed plan of subdivision based on 12 lots does not have regard for Subsection 51(24) of the *Planning Act*.

The reasons for my findings follow.

The Evidence and Arguments:

On the issue of which servicing policies should govern the 12 lot proposal, the Board heard evidence from the applicant's planner that the Region's OP policies on the rural system apply to the subject site, however the rural servicing guidelines which the Region has used are only guidelines and there is no compliance requirement. It was his opinion that the appropriate guidelines to be used to assess water quality are the MOEE 1995 technical requirements and the OBC.

Mr. Bowen, consulting hydrogeologist for the applicant testified that the use of on-site sewage systems is governed by not only the regional servicing guidelines but also the MOEE 1995 technical requirements and the OBC (EX.49). While the regional servicing guidelines do not recognize tertiary treatment systems for individual residential use, the MOEE guidelines and the OBC do. It was his evidence that the proposal is to service the site with individual tile field systems which will be fitted with nitrate tertiary treatment units. Tertiary treatment systems including the type being recommended are permitted under the OBC.

Mr. Bowen conducted the hydrogeological study for the proposal and it was his testimony that with the tertiary system, the 12 lot proposal would meet the MOEE standard of not more than 10 mg/l of nitrates at the property boundary. Furthermore, tertiary treatment systems are also approved for use by the CVCA and in his opinion the tertiary treatment system will also meet the CVCA's requirements of not more than 2.9 mg/l of nitrates at the nearest watercourse. Mr. Bowen testified that the subject lands can be developed safely with 12 lots using tertiary treatment systems with no adverse impacts to the local ground water supply, no adverse impacts to human health or the

local drinking water supply. In his opinion the appropriate guidelines to be used are the MOEE (1995) and the OBC and not the Region's.

The expert witnesses for the Region on the other hand provided testimony that the applicable guidelines to be used are the regional servicing guidelines. Mr. Johnston, planning consultant testified that the lands are within the rural system and as such Section C1c3 and C1c4 of the OP govern the servicing of the site. Mr. Bryck, consulting senior hydrogeologist, testified that the Region's servicing guidelines uses the MOEE 1995 guidelines as a basis and that the Region's guidelines are more rigorous. Mr. Bryck peer reviewed the applicant's hydrogeological study and subsequent revisions and on each review found that the applicant's 12 lot proposal could not be supported as the nitrate levels were greater than the MOEE standard of 10mg/l measured at the property boundary.

Mr. Amalfa, Manager of Environmental Health for the Region, testified that the mandate of the Region's health department is to protect existing and future groundwater supplies from contamination by private sewage disposal systems and reduce the incidence of water-borne illness in the population. In order to fulfil this mandate, his department uses the Region's servicing guidelines to measure the safety of the ground water supply. The Ontario drinking water standard for nitrate content is 10mg/l as calculated at the property boundary line. It was his testimony that the regional servicing guidelines have been used by the health department as a standard practice since its endorsement by regional council since 1996. It was his testimony that 4 properties downgradient from the subject lands are on well water and would be at risk of water contamination (EX.39).

It was his testimony that the Region's OP requires that in the rural system all development shall be on the basis of private individual well water supply and private individual waste water treatment systems that conform to regional standards, provincial regulations and standards. The regional standards are the regional servicing guidelines and these guidelines recognize only conventional septic systems and not tertiary treatment systems. The health department does not support tertiary treatment systems as a means for reducing nitrate levels due to concerns regarding their long-term operation, maintenance and effectiveness. It was his opinion that these systems should not be relied upon as a primary means of ground water protection.

Section C1c3 of the Region's OP states that:

"Except as provided for under Section III-C5e4, require that all development in the Rural System be on the basis of private, individual well water supply and private, individual waste water treatment system that conform to Regional Bylaws and standards, and to Provincial legislation, regulations and standards. *D1, D4, D13¹

Section C1c4 states further that:

Adopt, after consultation with the Ministry of Environment and Energy, Rural Servicing Guidelines that contain, among other things, design standards for private services, minimum lot sizes taking into account infiltrative capacity of the soils and hydrogeological information, guidelines for hydrogeological studies, procedures for processing development applications on private services, and criteria by which the Medical Officer of Health determines a water supply to be inadequate. *D1, D4²

Mr. Ketcheson, counsel for the Town submitted that a Memorandum of Understanding (MOU) between the Region and the province delegated among other things authority to approve municipal OPs (EX. 39). The regional servicing policies contained in the ROP of 1995 met with the approval of MOE. The then MOE has never expressed concerns with the Region's policy on development within the rural system. Under the "train of jurisdiction", the Region has the authority to review water quality at the planning approval stage. The Region has approved the Town's OPA 113 including approval of its water servicing policies which must conform to the ROP servicing policies. The Devins appeal proposes to modify Section 5.3g by removing all references to the regional servicing guidelines. This in his submission will result in that section of OPA 113 being in non-conformity with the ROP. Mr. Ketcheson submitted further that even if the Board were to approve the amendment to OPA 113, the proposed plan of subdivision would have to meet ROP servicing guidelines. The ROP is not under appeal by the applicant.

Mr. Wilker, counsel for the Region submitted that this is also an issue of public health over the safety of the water supply. It was his submission that the subject lands must conform to the ROP policies on servicing as specified in sections C1c3 and C1c4.

¹ Halton Regional Plan (1995), Pg. 28

² Halton Regional Plan (1995), Pg. 28

Mr. Arnold, counsel for the applicant, on the other hand submitted that the guidelines do not have the status of an official plan and were adopted after the ROP was adopted and approved. He argued that, in fact, the Region has no jurisdiction over septic systems and that this responsibility lies with the Chief Building Official under the *Ontario Building Code Act*. The MOU between the Region and the province only gives the Region a commenting role in relation to MOEE policy and it was his contention that it does not provide that the Region can adopt its own guidelines from those of MOEE. It was his submission that the issuance of permits for private septic systems is the responsibility of the local building departments and not the Region's responsibility at the planning approval stage as argued by Mr. Ketcheson.

Tertiary treatment systems such as the one being proposed are approved for use under the MOEE guidelines and the OBC yet it is not allowed under the regional servicing guidelines. It was his submission that taken together, it is the MOEE guidelines, the OBC regulations that constitute a clear statement of provincial policy in this area. Mr. Arnold argued that the servicing guidelines referred to in the ROP are outdated and should not be given paramountcy over the provincial guidelines and policy.

On the issue of which are the applicable servicing guidelines for this proposal, the Board prefers the evidence of Mr. Amalfa and the submissions of Messrs. Wilker and Ketcheson that the regional servicing guidelines were approved by regional council and form the basis of the regional policy on servicing within a rural system. The fact that these guidelines were approved by Council after its approval of the ROP does not make the guidelines less relevant. It is the Board's view that these guidelines which were revised in 2000 are not outdated. The regional servicing guidelines are based on the MOEE 1996 guidelines and have been used by the Region since that time. If the MOEE had any difficulty or concerns with the Region's servicing guidelines or the interpretation of the MOU they would have notified the Region. In the "train of jurisdiction", the Town's OP must conform to the ROP. By extension, the servicing policies of the Town's OP must be consistent with those of the ROP. The Board does not accept Mr. Arnold's argument that it is the MOEE guidelines and the OBC regulations that should govern the waste water servicing aspects of his applicant's proposal.

The Board finds that Subsections C1c3 and C1c4 of the Region's OP are the applicable sections of the OP that govern all development within the rural system. The Board finds that the Region's Guidelines for Hydrogeological Studies and Standards for Private Services to be the applicable servicing guidelines to be used by the Region in accessing individual private waste water treatment systems for developments within the rural system. The applicant's proposal must conform to these regional servicing guidelines.

Considerable and highly technical evidence was heard on the issue of the use of a tertiary treatment system and the methodology used to measure and meet the required effluent (nitrates) MOEE standard of 10mg/l at the property boundary. Although the regional servicing guidelines only recognizes conventional septic tank and tile bed systems, the Board heard evidence on why a tertiary treatment system should be approved for this proposal and conversely why it should not.

Mr. Bowen who was qualified as an expert witness in hydrogeology, engineering and on-site sewage systems conducted the hydrogeological study of the subject lands for the applicant. The proposal is to service the site with individual tile field systems, which will be fitted with nitrate tertiary treatment units to reduce the nitrate levels on site. There are nitrate tertiary systems readily available, which can reduce nitrates in sewage. The Waterloo biomass system is such a system, which is being recommended. The use of these systems is permitted under the OBC. Maintenance of this system is also addressed in the OBC. With this system his analysis shows that nitrate levels will be below the standard of 10mg/l at the property boundary (EX.49).

It is his testimony that there is no evidence to suggest that there has been any degradation of ground water quality in the hamlet as a result of the use of individual septic tank and tile field systems. The nitrate tertiary system is in effect a septic tank system with an additional tertiary unit to reduce the level of nitrates (EX.57).

Mr. Bowen testified that the OBC is the governing authority for the design and installation of on-site sewage systems. The OBC allows tertiary systems and also provides for long-term maintenance of these systems (EX.43). The Waterloo system is approved for use in Ontario under the OBC. Maintenance of this system can be regulated under the OBC. Tertiary systems are also approved for use by the CVCA. It

was his evidence that on-site sewage systems are governed by a number of guidelines including the Region's servicing guidelines, MOEE technical requirements of 1995 and the OBC.

Mr. Bowen was of the opinion that the subject lands can be developed safely with 12 lots using individual tile systems in conjunction with tertiary units. There would be no adverse effect to the local ground water resource and no impact to human health or the local drinking water supply.

Mr. Byrd, consulting hydrogeologist for the Region conducted the peer review of Mr. Bowen's study and subsequent updates. There was considerable debate on the use of water infiltration rates and recharge rates and which of the two is more relevant in accurately measuring the nitrate levels at the property boundary. Both experts agreed that infiltration rate would be higher than recharge rate since infiltration is when the water enters the ground at the surface and recharge is when the water from the surface reaches the ground water table. Mr. Bowen agreed to re-calculate the nitrate loading for 8 and 12 lots using infiltration rates of 125mm/a and 180mm/a. (EX. 52).

Mr. Byrd gave evidence on Mr. Bowen's re-calculations of nitrate loading. There was fundamental disagreement between the two experts over the appropriate infiltration rate. Mr. Bowen uses 180mm. Mr. Byrd uses 135mm. Mr. Byrd noted that the rate used by Mr. Bowen is actually a recharge rate, which if converted to an infiltration rate would mean that the concentration of nitrates would be higher in his analysis. Using the water balance method which both experts accepted and an infiltration rate of 180mm/a for 12 lots, Mr. Bowen arrived at a nitrate concentration of 10.4mg/l at the property boundary. Mr. Byrd testified that the nitrate concentration would be 13.5mg/l which is much higher if an infiltration rate of 135mm/a was used (EX. 58 A&B). The MOEE standard is 10mg/l. The relevant point to be taken from all this is that aside from the complexity and highly technical nature of these calculations even when using Mr. Bowen's calculations and methodology, the nitrate loading for 12 lots is 10.4 mg/l which is higher than the MOEE standard of 10 mg/l. If one were to accept Mr. Byrd's infiltration rate of 135mg/l as being more appropriate it would be much higher than the MOEE standard.

During vigorous cross-examination of Mr. Bowen, Mr. Wilker submitted that there are four properties on well water that are downgradient from the subject lands which

uses the ground water supply. Mr. Wilker reviewed the technical literature for the waterloo biomass tertiary system, which in his submission raises doubts on the long-term reliability of the system as no long term empirical data is available. Mr. Wilker submitted that test data from the manufacturer is only for 2 years. He questioned the reliability of such a system. In the United States, the waterloo system is approved only for remedial purposes and not as a primary system of waste treatment (EX.55 A&B). Mr. Bowen was not aware of the technical literature on the waterloo biomass tertiary system.

Mr. Wilker submitted that although the waterloo system is approved for use under the OBC, it is silent on the regulation of nitrate removal in terms of monitoring and testing of the system (Ex 55 A&B). Tertiary systems are allowed in the OBC but the OBC does not regulate the removal of nitrates. There is no prescribed means of enforcement by building officials under the OBC. The chief building official cannot force the homeowner to upkeep his tertiary system in the event of its failure. It was his submission that the Region has never approved a tertiary treatment system for use in a residential subdivision.

Mr. T. Arnold submitted that in fact, the Region has endorsed the use of a tertiary treatment system in a subdivision agreement for the Mansewood Industrial Subdivision. It was his submission that the same approach could be used for his client's proposal to allow the use of the tertiary treatment system and the testing and monitoring of nitrates would be part of the subdivision agreement to be monitored and enforced by the chief building official. It was his submission that tertiary treatment systems are a "proven science" and the waterloo biofilter has been approved for use under the OBC and that the active monitoring of nitrate levels for tertiary treatment systems are required under the OBC. Furthermore, the Board has endorsed the use of tertiary treatment systems for other development applications.

Both Messrs. Wilker and Ketcheson challenged Mr. Arnold's submission. It was their contention that the subdivision referred to is an industrial and not a residential subdivision. Mr. Wilker submitted that subdivision agreements are excluded from applicable law and the building officials are not required to enforce the conditions of a subdivision agreement. Mr. Ketcheson submitted that the Town's building department has never taken an active role in enforcing maintenance agreements for nitrate levels in

residential subdivisions. The Town relies on the Region to address issues of public health. OPA 113 must conform to the policies of the ROP including its regional servicing guidelines.

It is the Board's view that the testimony of Mr. Bryck and the submissions of Mr. Wilker raise sufficient doubt about the efficacy and reliability of the Waterloo biomass tertiary system. The Board prefers the evidence of Mr. Bryck that the 12 lot proposal would not meet the MOEE standard of 10mg/l and in fact would be significantly higher. Mr. Bowen's nitrate loading calculations resulted in 10.4mg/l which is higher than the standard. Mr. Wilker's submissions on the long term reliability of the proposed tertiary treatment system were not successfully challenged by the evidence and submissions of the applicant's expert witness and counsel.

In the Board's view, the consequences of a failure of a tertiary system cannot be ignored or given short shrift. The risks to public health as a result of a contaminated ground water supply must be properly considered. There are four residential properties downgradient from the subject lands which are on well water. From a land use planning perspective, Section 2 of the *Planning Act* speaks to matters of provincial interest, including the "orderly development of safe and healthy communities" which the Board must have regard to. The evidence and submissions of the public agencies raise sufficient doubt about the long term reliability of the Waterloo Biomass tertiary system. Furthermore the analyses of both hydrogeologists indicate that the proposal does not meet the MOEE standard for nitrates. This could potentially put the ground water supply at risk to unacceptable levels of nitrate contamination.

Accordingly, the Board finds that the proposed 12 lot development using a tertiary treatment system does not meet the MOEE standard of 10mg/l of effluent at the property boundary.

Following from the finding that it is the regional servicing guidelines that apply to this proposal, the Board finds that the applicant's proposed plan of subdivision does not have regard for subsection 51(24)(c) of the *Planning Act* which speaks to conformity with the OP.

In summary, it is for these reasons that the Board dismisses the appeals of the applicant against OPA 113 and on their proposed plan of subdivision. The Board Order respecting the disposition of the appeals is detailed in page 25 of **Part 4: BOARD ORDERS**.

PART 4: BOARD ORDERS

On the matter of the amended appeal by Rick and Sally Stull against OPA 113, the **BOARD ORDERS** that the appeal is dismissed and Amendment No. 113 to the Official Plan for the Town of Halton Hills is approved.

On the matter of the appeal by Muriel Devins against Section 5.3g of OPA 113, the **BOARD ORDERS** that the appeal is dismissed and Amendment No. 113 to the Official Plan for the Town of Halton Hills is approved.

On the matter of the appeal by Muriel Devins respecting a proposed plan of subdivision the **BOARD ORDERS** that the appeal is dismissed.

These are the Orders of the Board.

“J. Chee-Hing”

J. CHEE-HING
MEMBER