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Mademont Investments Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to the Official Plan for the Town of Newmarket to redesignate lands composed of Part of Lots 88 and 89, Concession 1 W.Y.S. from Environmental Protection Area – ORM to Urban Area – Oak Ridges Moraine to permit the development of a residential subdivision

OMB File No. O070156

Mademont Investments Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to Zoning By-law 19TN-2006-001 of the Town of Newmarket to rezone lands composed of Part of Lots 88 and 89, Concession 1 W.Y.S. from Environmental Protection – Oak Ridges Moraine (EP-ORM) to a site specific classification to permit the development of a residential subdivision

OMB File No. Z070121

Mademont Investments Inc. 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 Council of the Town of Newmarket to make a decision respecting a proposed plan of subdivision on lands composed of Part of Lots 88 and 89, Concession 1 W.Y.S. in the Town of Newmarket

OMB File No. S070074

APPEARANCES:

Parties

Mademont Investments Inc.

Town of Newmarket

Regional Municipality of York

Counsel

C. Barnett and A. Elyea

E. Armchuk-Ball

R. Miller

B. Montgomery (student at law)

DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD

Mademont Investments Inc. (the Applicant) proposes to amend the Town of Newmarket's Official Plan and Zoning By-law from the current Environmental Protection Area – Oak Ridges Moraine (EPA-ORM) designation on its lands and rezone to land uses that would permit residential (townhouses, single-family detached and semi-

detached dwellings), parks, open space and a commercial area. The Official Plan does not contemplate urban uses on the subject lands. The application proposes to remove the EPA-ORM designation over the majority of the subject lands and include these within the Town's Urban Area – Oak Ridges Moraine (UA-ORM) designation (covering three hectares of the eastern portion of the property). There is also an application for draft plan of subdivision to permit the development of a residential subdivision consisting of 448 low and medium density residential dwellings and approximately 2.06 hectares (5.09 acres) of commercial development.

Counsel Chris Barnett represented the Applicant. Counsel Esther Armchuk-Ball represented the Town of Newmarket ("Town") and Counsel Robert Miller represented the Regional Municipality of York ("Region"). On consent, and as confirmed in the Board's Order of May 29, 2008, all Parties agreed that in terms of procedure, the Board would first determine whether the principle of development is established on the subject lands. The hearing would focus on the proposed Official Plan Amendment and, were the Board to allow the appeal, the Board would subsequently hear the case related to the Zoning By-law Amendment and the plan of subdivision details.

The subject lands, 28.6 hectares in size, are located in the Town of Newmarket on the east side of Bathurst Street, south of Mulock Drive and north of St. John's Sideroad West, immediately west of Armitage Creek in the south-western quadrant of the Town. The majority of the site consists of agricultural land uses along a vegetated valley system with a farm crossing that bisects the property at approximately midpoint. Armitage Creek is located at the eastern limit of the subject lands. Lands adjacent to the subject site immediately to the north and south are currently undeveloped and consist primarily of agricultural lands and local wooded areas. The lands located east of Armitage Creek are known as the Armitage Valley Southwest Newmarket Area. Areas within the Southwest Newmarket Area comprise recently completed residential development similar to what is proposed for the subject lands.

Exhibit 9 provides the applicable designations. The Oak Ridges Moraine Conservation Plan (ORMCP) designates 25.6 hectares of the subject land as

Settlement Area. The Region designates the entire property as Urban Area with a Greenlands System running across a portion of the subject lands. The Town of Newmarket Official Plan designates the land as Settlement Area on the Oak Ridges Moraine Land Use Map. Official Plan Amendment 28 (OPA 28) imposes the more restrictive EPA-ORM designation on 25.6 hectares of the subject lands, with the remaining 3 hectares designated as UA-ORM.

In asking the Board to determine whether the principle of development has been established for the subject lands, the Parties submitted the following issues for their witnesses to address and on which the Board was asked to make its determination:

Oak Ridges Moraine

(Issue 1 was removed at the commencement of the hearing on consent)

- Does the proposed development conform to the Oak Ridges Moraine Conservation Act and policies of the Oak Ridges Moraine Conservation Plan?

Provincial Growth Plan and Provincial Policy Statement

- Does the proposed development conform to the Provincial Growth Plan and is it consistent with the Provincial Policy Statement?
- Do the applications represent an expansion to a settlement area as defined in the Provincial Growth Plan and the Provincial Policy Statement?
- What weight should be given to the applications' consistency with the Region of York Growth Management approach that implements Places to Grow?

Region of York

- Are the population numbers represented by the proposed development required to meet the growth forecasts as set out in the Provincial Growth Plan?
- Does the proposed development conform to the Regional Municipality of York Official Plan?

Town of Newmarket

- Can the Town of Newmarket Official Plan impose a more restrictive land use policy on an area than the Regional Municipality of York Official Plan?
- Do the applications conform to the intent and purpose of the Town of Newmarket Official Plan?
- Do the applications conform to the intent and purpose of OPA 28?

Counsel for the Applicant argued that were the Board to determine that conformity with these plans was established, the Applicant could proceed with its development. The Applicant looked to the Provincial Policy Statement, and in particular to the Growth Plan, for situating its proposal in a manner that speaks to the broad provincial objectives regarding development, as well as in a manner that could assist both the Regional Municipality of York and the Town of Newmarket in meeting their respective population growth targets the Province has set forth in these planning instruments. In addition, the Applicant furnished the Board with a number of studies and technical reports that are requirements of any development application within the Settlement Area as covered by the ORMCP. The ORMCP divides the Oak Ridges Moraine into four land use designations: Natural Core Areas, Natural Linkage Areas, Countryside Areas and most relevant for this hearing, Settlement Areas. These Settlement Areas reflect a range of existing communities planned by municipalities to reflect community needs and values. The subject lands, with their restrictive EPA-ORM

designation for most of the property and Urban Area – Oak Ridges Moraine (UA-ORM) for a small eastern portion of the lands, are designated “Settlement Area” in the ORMCP.

Settlement Areas contemplate urban uses and development only if those uses or development are permitted in the applicable municipal official plan. Specifically, Section 18(1) of the ORMCP states that Settlement Areas have the purpose of focusing and containing urban growth as planned by municipalities to reflect community needs and values by:

- a) minimizing the encroachment and impact of development on the ecological functions and hydrological features of the Plan Area;
- b) promoting the efficient use of land with transit-supportive densities, through intensification and redevelopment within existing urban areas; and
- c) providing for the continuation and development of urban land uses consistent with the growth management strategies identified in the applicable official plans.

Section 18(2) states that Settlement Areas also have the objectives of:

- a) maintaining and, where possible, improving or restoring the health, diversity, size and connectivity of key natural heritage features, hydrologically sensitive features and the related ecological functions;
- b) accommodating a trail system through the Plan Area and trail connections to it;
- c) promoting strong communities, a strong economy and a healthy environment; and
- d) providing for economic development that is compatible with the purpose of focusing and containing urban growth.

Section 18(3) states that for land in Settlement Areas, all uses are permitted if the applicable official plan permits them, subject to the provisions of the ORMCP that are listed in Sections 19(3) and 31(4). For development to occur on Settlement Area lands, a proponent must ensure that environmental and land use planning is integrated "...in order to maintain, and where possible improve or restore, the ecological integrity of the Plan Area (Section 19(1) of the ORMCP)." The Applicant, therefore, prepared a series of studies and evaluation reports that respond to the Part III requirements of the ORMCP:

- Planner Robert Forhan's Land Use Planning Assessment, iPLANcorp, July 2008 (as well as an earlier iPLANcorp Planning Justification Report, August 2006);
- Engineer Jason Balsdon's Hydrological Evaluation with Water Budget and Conservation Plan, Proposed Development, Mademont Property, July 2008 (Jagger Hims Report) (as well as a Jagger Hims' Environmental Impact Study, Hydrogeological Component, Proposed Development, Mademont Property...Town of Newmarket, Ontario, August 2006);
- Engineer Harold Reinthaler's (Schaeffers Consulting Engineers) Functional Servicing Report (Storm water Management Plan and Sewage and Water System Plans), Mademont Investments, Town of Newmarket, July 2008 (as well as a Schaeffers *Functional Servicing Report*, June 2006);
- Mr. Reinthaler's Landform Conservation Plan, Mademont Investments, Town of Newmarket, July 2008; and
- Environmental Scientist Jennifer Harker's Natural Heritage Evaluation and Oak Ridges Moraine Conformity Report – Mademont Investments Inc., July 2008, Dillon Consulting Limited (as well as a Dillon *EIS Report*, June 2006).

Planner Robert Forhan told the Board that the Applicant's witnesses had all crafted their opinions and evidence based on the requirements as detailed in the ORMCP. In response to the application, the Town ordered several reports:

- Hydro Geologist Norbert Woerns' Natural Heritage Study Southwest Newmarket, Hydrogeological Assessment/Water Balance Analysis, July 2008;
- Geomorphologist Daryl Cowell's Town of Newmarket OPA 28 Review of Landform Significance within Environmental Protection Area, July 2008; and
- Ecologist Dr. Brent Tegler's Natural Heritage Evaluation of OPA 28, Environmental Protection Area, Town of Newmarket, July 2008.

After taking considerable time to review the broad planning regime applicable to the subject lands, all of the technical and planning reports submitted at the hearing, and in its deliberations on the nature and content of the evidence presented, the Board determines that from a planning perspective, a reading of the most restrictive planning instrument and its policies (in this case, the local planning instrument) is necessary and required for the Board to render an informed decision on whether the principle of development was established at this hearing. Second, the Board considered whether the local authority enjoys a right to be more restrictive than the upper-tier planning authorities in respect of implementing policies governing land use on the Oak Ridges Moraine.

OPA 28 gives clear direction as to whether development can proceed on the subject lands and by extension, in a manner that the Applicant proposes. OPA 28 brings the Town of Newmarket Official Plan into conformity with the Oak Ridges Moraine Conservation Plan. The Oak Ridges Moraine is one of Ontario's most significant landforms:

Through the Oak Ridges Moraine Conservation Act, 2001, and the accompanying Oak Ridges Moraine Conservation Plan (ORMCP)...the Province has established the direction for protecting, restoring and enhancing the Oak Ridges Moraine's ecological and hydrological features and functions. The Province's vision for the Moraine is that of "a continuous band of green, rolling hills that provide form and structure to south-central Ontario, while protecting the ecological and hydrological features and functions that support the health and well-being of the Region's residents and ecosystems." (Exhibit 2, Tab 6)

The OPA 28 area lies within the Oak Ridges Moraine Area as defined within the ORMCP, and is subject to the ORMCP's relevant landform conservation provisions as well as provisions within OPA 28 and the Town of Newmarket Official Plan. General Policy 6.7.1.4 of OPA 28 requires that "all of the policies of this Plan must be considered together, to determine conformity. Individual policies should not be read or interpreted in isolation. The boundaries between the land use designations...are approximate." Ms Armchuk-Ball submitted that this policy gives clear guidance on how to read the Plan and a distinction between "development" and "major development" is critical when considering what the Applicant proposes to do on the subject lands. The Board determines that individual policies should not be reviewed or interpreted in isolation.

Ms Armchuk-Ball submitted that prior to the adoption and approval of OPA 28, the subject lands and surrounding ORM area within the Town of Newmarket had never been considered as an area to accommodate "major development". OPA 28 specifically distinguishes between the terms "development" and "major development". "Development" is defined as:

the creation of a new lot, a change in land use, or the construction of buildings and structures, any of which require approval under the *Planning Act*, the *Environmental Assessment Act*, or the *Drainage Act*, but does not include,

- a) the construction of facilities for transportation, infrastructure and utilities uses, as described in Section 41, of the *Oak Ridges Moraine Conservation Plan*, by a public body, or
- b) the reconstruction, repair or maintenance of a drain approved under the *Drainage Act* and in existence on November 15, 2001, or
- c) the carrying out of agriculture practices on land that was being used for agricultural uses on November 15, 2001.

The EPA-ORM designation does not contemplate, nor was it intended to permit "major development". OPA 28 defines "major development" as:

- a) the creation of four or more lots,
- b) the construction of a building or buildings with a ground floor area of 500 square metres or more, or

- c) the establishment of a major recreational use as described in Section 38 of the *Oak Ridges Moraine Conservation Plan*.

The Applicant's Counsel submitted that the Applicant has not asked the Board to permit "major development" on the subject lands as this concept requires further testing beyond this hearing, which was held only to determine whether the principle of development has been established. He submitted that while the Town's and Region's witnesses provided opinions that the Applicant is proposing major development on the subject lands, this is not the question. Rather, the Board should determine whether the application for development met the tests as set out in the planning documents.

The Board was well aware that the Applicant wished only to have a determination of whether the principle of development was established in relation to the subject lands and in an ideal sense, the Applicant's Counsel would have liked to focus the Board in a very specific way so as to exclude at this stage consideration of what the Applicant ultimately envisions for these lands – the creation of a new subdivision comprising hundreds of new homes. However, the Board recognized the fact that, were the principle of development established, the Applicant would then undertake what must be defined as "major development" of its lands. There was no evidence presented to the Board that the Applicant proposed a form of development for the subject lands that respected the existing EPA-ORM land use designation and thus, a change in land use was sought, thus bringing its lands into the less-restrictive UA-ORM designation.

In the Board's determination, to render its decision on whether development would be possible on the subject lands but to disregard what the Applicant ultimately proposes to do with these lands would be a narrow and inappropriate approach. It also flies in the face of the Board's steadfast objective of determining a case on all of the evidence before it – not just some of the evidence. Both the Region and the Town introduced evidence, and their witnesses advanced professional and unshaken opinions at the hearing that spoke to what the Applicant ultimately proposes to build, which is fairly characterized as major development. For the Board to divorce itself from this consideration would serve to also destabilize and potentially undermine the clear

direction the Province, and by extension the Town of Newmarket, has made in respect of a long-term approach to protection of environmentally sensitive lands within the Oak Ridges Moraine. To decide that development, which the Applicant defines as a change in land use, is permissible through an Official Plan Amendment might be appropriate. However, to set aside what is proposed – major development – is to have the effect of removing a protective designation from the lands that is, in the end analysis, contrary to both the principles of good planning, is in conflict with the local planning policies and is not in the public interest,

The Board determines that the principle of development is established for the subject lands, but not in accordance with the Applicant's definition of development (that is, a change in land use) or of a type of development that the Applicant ultimately proposes for these lands. Rather, the principle of development is established only in a manner that the Municipality defines clearly in the EPA-ORM policies of OPA 28 as specific types of environmentally supportive development; that is, of a type not contemplated in the Applicant's proposal. As such, it would be prudent of the Board to situate the principle of development into the specific context of the case at hand with regard to what the Applicant ultimately wishes to achieve on its lands – that is, a change in land use occurring in the form of an expansion of the urban boundary of the Town of Newmarket in order to create a new residential subdivision on lands that the Town has currently identified for protection. Accordingly, the Board considered the broad developmental objectives of OPA 28 as well as the scope of what the Applicant ultimately proposes to build here.

Not only do the OPA 28 policies protect the natural heritage system and limit development in the EPA designation, they also have the purpose and intent of focusing and containing major development opportunities to the Town's Urban Area designation. It is the Town's Urban Area that establishes policies for major development (as defined and consistent with the ORMCP). The Town's Urban Area – Oak Ridges Moraine section of OPA 28 consciously excludes the EPA-ORM designation:

6.7.6.1 Settlement Areas, as identified within the *Oak Ridges Moraine Conservation Plan*, are shown in Appendix "B" to this Plan. These areas are designated for development of an urban type, permitting a range of residential, commercial, industrial and institutional uses. Settlement Areas correspond to the portion of the "Urban Areas and Towns and Villages" designation, in the Region of York Official Plan, which is located on the Moraine. For the purposes of this Official Plan the "Urban Area-Oak Ridges Moraine" is defined as those lands within the Oak Ridges Moraine Settlement Area, of the Town of Newmarket, but excludes those lands designated as Environmental Protection Area-Oak Ridges Moraine, and Special Study Area-Oak Ridges Moraine.

This policy adds "additional purposes and objectives for Settlement Areas founding Sections 18(1) and (2) of the ORMCP and Policy 6.7.6.2 directs that the uses permitted within the Urban Area shall be in accordance with...all applicable policies of the ORMCP, including the already mentioned Sections 19(3) and 31(4) and policies 6.7.9 to 6.7.19 of OPA 28."

The Town's evidence is that the only way that the Applicant would be entitled to change an Official Plan designation from EPA-ORM to UA-ORM would be through a settlement expansion exercise as provided for in the *Provincial Growth Plan*, the PPS and the Region's Official Plan. Royce Fu, Town planner, gave unrefuted evidence that the only way a settlement expansion could occur is through a municipal comprehensive review.

The Region's and Town's planners opined that the subject lands should retain their existing protective designation. Regional Planning Consultant Raymond Simpson told the Board that maintaining the subject lands in their current planned function, as open space, rural and environmental land uses, is appropriate and good planning. Mr. Fu's evidence was that the application is not consistent with the intent of the EPA-ORM designation of OPA 28 for a variety of reasons, including, in his opinion, that major development on the subject lands is not contemplated in OPA 28 nor is it consistent with the intent of the EPA-ORM designation and that major development is to be contained within the Town's Urban Area designation.

The EPA-ORM designation and its associated policies are set out in Section 6.7.7 of OPA 28:

Policy 6.7.7.1 Settlement Areas, as identified within the *Oak Ridges Moraine Conservation Plan*, are shown in Appendix "B". Certain lands within this designation contain key natural heritage features, hydrologically sensitive features, and associated minimum vegetation protection zones, and/or landform conservation areas, which require protection from development. These environmental areas have been designated as Environmental Protection Area – Oak Ridges Moraine within this Plan, and notwithstanding their Provincial designation as "Settlement Area", these lands shall be subject to the following policies to ensure their protection.

Policy 6.7.7.2 identifies the permitted uses for lands with the EPA-ORM designation:

...fish, wildlife and forest management; conservation projects and flood and erosion control projects; non-motorized trail uses; transportation, infrastructure and utilities uses in accordance with the provisions of Section 6.7.17 of this Plan; natural heritage appreciation and legally existing uses in accordance with the provisions of Section 6.7.2 of this Plan, and the applicable policies of Subsection 19(3) (Protecting Ecological and Hydrological Integrity) and Subsection 31(4) (Specific Land Use Policies) of the *Oak Ridges Moraine Conservation Plan*.

Policy 6.7.7.3 directs that: "All development or site alteration within the Environmental Protection Area – Oak Ridges Moraine shall be in accordance with all applicable policies of this Plan, including Sections 6.7.9 to 6.7.19." Among other things, these sections mirror the relevant sections of the ORMCP and deal with protection of the Town's Natural Heritage System, the Key Natural Heritage Features of the Moraine and its Landform Conservation Areas and the Regional Greenlands System from major development through the EPA designation. While OPA 28 contemplates "development" within the EPA area, it is clear that development is limited in scope and in a manner that complements the intent and purpose of the designation.

The Applicant's planner, Mr. Forhan, differed from the Region's and the Town's planners on the interpretation of the EPA-ORM policies (6.7.1.1, 6.7.7.2 and 6.7.7.3) as well of the UA-ORM policy 6.7.6.1. Mr. Forhan acknowledged that Policy 6.7.7.1 states that the EPA-ORM lands are excluded from the Settlement Area of the Town of Newmarket boundary. This land use policy states that certain lands within the EPA-ORM designation require protection. He interpreted this policy to mean, however, that this does not include all lands with the EPA-ORM designation and instead, the policy means that those lands which are excluded from the "certain lands" in this policy are

thus suitable for development and therefore have only to meet the tests of OPA 28 and the ORMCP for urban development. He opined that the two instruments do, in fact, contemplate development because policy 6.7.7.3 states that development can occur subject to policies 6.7.9 through 6.7.7.19. In his reading, development as defined in OPA 28 is a change in land use and is consistent, therefore, with the definition found in the Provincial Policy Statement. Mr. Forhan agreed that certain areas of environmentally sensitive lands should be protected, but he opined that policy 6.7.7.3 allows the Applicant to address those features that require protection. He added that through the development process, sensitive features in need of protection could be maintained and the remaining lands could be developed.

Policy 6.7.7.4 requires that development or site alteration applications support connectivity by identifying planning, design and construction practices that ensure no buildings or other site alterations impede the movement of plants and animals among key natural heritage features, hydrologically sensitive features and adjacent lands within the Natural Core Area and Natural Linkage Area designations, as identified in the ORMCP. However, this policy must be read in concert with Policy 6.7.7.1 that identifies certain lands within the ORMCP Settlement Area designation as EPA-ORM lands, requiring protection from development. It must also be read in concert with Policy 6.7.7.2 that identifies the precise form development can take on these lands.

Counsel for the Applicant argued that all Parties agree that the intention of the EPA-ORM designation is to protect those "certain lands" contained in Policy 6.7.7.1 from development that "contain features that require protection." In his submission, Policy 6.7.7.3 then provides a method for development to occur in accordance with OPA 28 policies 6.7.9 to 6.7.19. Policy 6.7.7.3 says "all development" within the EPA-ORM area shall be in accordance with these policies, thus permitting a change in land use that can be contemplated in the EPA-ORM zone. Mr. Forhan speculated that if the Town did not want development to occur in this area, the policy would include language like 'prohibit development.' The Applicant's Counsel argued that his and Mr. Forhan's reading of Policy 6.7.7.3 should be preferred to Mr. Fu's interpretation of this policy

which, he argued, would cause the defined term "development" to change, based on an implied intent of Policy 6.7.7.3 – a policy Mr. Fu inferred as intending to exclude any development that may eventually have the possibility of resulting in "major development" (which is not a defined term in Policy 6.7.7.3).

The Board found the Counsel's argument not to be in accord with the correct reading of this section. The Board determines that the EPA-ORM policies should not be subjected to such a parsing of the words contained in these policies – particularly as they relate to how the term "development" should be interpreted – so that something is allowed to occur on these lands that is not contemplated in OPA 28. Policy 6.7.7.1 says "certain lands" within the ORMCP Settlement Area designation contain features that must be protected from development (emphasis added). The Applicant's Counsel argued that the OPA 28 definition of "development" contemplates a change in land use on EPA-ORM lands. These "certain lands" are designated EPA-ORM and Policy 6.7.7.1 states "notwithstanding their Provincial designation as 'Settlement Area', these lands shall be subject to the following policies to ensure their protection." This leads to Policy 6.7.7.2, which lists the range of permitted uses for these "certain lands" – these EPA-ORM lands – that the Board cites anew for emphasis: "...fish, wildlife and forest management; conservation projects and flood and erosion control projects; non-motorized trail uses; transportation, infrastructure and utilities uses...; natural heritage appreciation and legally existing uses..." subject to the specified provisions of OPA 28 and the ORMCP. No other type of development is identified or permitted, as stated in Policy 6.7.7.1, and it must be understood in the context of Policy 6.7.7.2's specified list.

Lastly, Policy 6.7.7.3 requires that all development within the EPA-ORM must be in accordance with Sections 6.7.9 to 6.7.19 that functionally mirror, with two exceptions, the policy tests found in the ORMCP. In the Board's determination, notwithstanding OPA 28's definition of "development" that includes a change in land use, Policy 6.7.7.2 has already established clearly the type of development that can occur on EPA-ORM lands in the Town of Newmarket and further, that the type of development identified in Policy 6.7.7.2 must adhere to the policy provisions found in Sections 6.7.9 to 6.7.19.

Development, therefore, in the Applicant's interpretation as a change in land use, and more specifically, major development as the Applicant ultimately envisions for the subject lands, is not contemplated in the EPA-ORM policies. This is the Board's preferred reading of the policy context for the EPA-ORM lands and this reading is clearly distinguished from, and preferred to, the Applicant's Counsel's submission and Mr. Forhan's interpretation of these policies.

While the Board reviewed, read and considered all of the evidence before it, those aspects and sections of the studies and reports entered as evidence that assisted the Board in determining the overriding threshold issue of whether development is permitted on the subject were of the greatest assistance. As such, it was unnecessary for the Board to make determinative and detailed findings on all aspects of the reports' findings and recommendations but instead, enabled the Board to focus on those elements of all Parties' evidence that addressed the crux of the relevance of the more restrictive OPA 28 policies in this case. The Board's reading of the EPA policies confirmed for it the explicit forms of development that can be contemplated on these lands

Policy 6.7.7.2 both identifies and states clearly the form that development can take on the large portion of the subject lands that the EPA designation covers. This policy is supportive of the Town's restrictive designation that protects the lands from development of a type that the Applicant proposes. Although the proponent's studies and reports presented in fulfillment of OPA 28 requirements were relevant to read, the Board ultimately assigns them little weight, as the Applicant's Counsel and planner offered a less instructive and less persuasive reading of these policies that does not accord, in the Board's determination, with the intent of the restrictive OPA 28 policies covering the subject lands. Accordingly, the principle of development is established only insofar as development is expressly identified in Policy 6.7.7.2, but it is not established by virtue of the Applicant's position that development means a change in land use. Policy 6.7.7.3 cannot be read in that manner and referencing back to Policy 6.7.7.2 is necessary for a proper understanding of what is contemplated. The

Applicant's definition is a valid one when reviewing the OPA 28 policies as a whole, but in the Board's determination, it is not valid for the subject lands by virtue of their special status as EPA protected. As such, the more restrictive policies and list of permitted uses found in the EPA policies supersede that general definition in this restrictive section.

Having considered the relevant policies of OPA 28 and preferring the evidence of the Town's and Region's witnesses and the submissions of their respective Counsels to that of the Applicant, the Board determines that the principle of development for the subject lands is not established in a manner the Applicant proposes with regard to the direction and intent of OPA 28, as the proponents have failed to present a concept for development that is in conformity with this local planning instrument.

As detailed above, the EPA-ORM designation and its requirements for detailed studies and evaluations related to significant and sensitive features that must be protected, confirm for the Board that these are environmentally significant lands. Even though the Applicant's reports were submitted in support of a type of development not contemplated on these lands, they nonetheless confirm that there are a variety of features on these lands that merit protection and where possible, enhancement and restoration. Equally, the Town's reports and studies confirm and persuade the Board that there are features worthy of protection under the EPA-ORM designation and that this designation should not be removed by allowing a change in land use, especially where the policy regime does not support or contemplate such development. The Board cites some of these findings below – not to criticize the opinions and evidence of the Applicant's witnesses, but rather to establish the care that the Town has taken to identify the importance of these lands as deserving of environmental protection.

Kim Baker, Senior Natural Heritage Biologist with the Lake Simcoe Region Conservation Authority (LSRCA), gave evidence that the subject lands were identified as part of the Town's Natural Heritage System through the 2003 Town's Natural Heritage Pilot Project conducted by LSRCA. This study concluded, in part, that the north-west and south-west quadrants of the Town (the latter area wherein lie the subject

lands) should receive strong protection and enhancement measures. Ms Baker also provided the following opinion arising from the 2003 study: "The subject area is the Town's best opportunity within its municipal boundary to restore and enhance the natural heritage features and functions of the Town towards achieving the Region's Greening Strategy target." Considering the Moraine's Key Natural Heritage Features identified by LSRCA and North-South Environmental, the hydrologically sensitive features as identified by Norbert Woerns and Royce Fu, the Landform Conservation areas and constraints as detailed by Daryl Cowell, and the water quantity and quality issues as outlined by Norbert Woerns, all these have demonstrated persuasively to the Board that there is minimal opportunity and no justifiable reason for major development to occur on the subject lands.

The Town has undertaken extensive work in respect of employing policies that ensure Official Plan conformity with the ORMCP and the other upper-tier planning instruments, as well as protecting the lands of the Oak Ridges Moraine as identified within the Town's boundary. The 2003 Natural Heritage Pilot Project and OPA 28 identify consistently, significant natural areas and regional ecological linkages within the south-west quadrant of Newmarket, wherein lie the subject lands. The three key tenets considered in the development of a Natural Heritage System are Landscape Matrix, Ecological Linkage and Core Protection Areas. The EPA-ORM lands are characterized by a diversity of natural heritage features (forest, valley lands, wetlands, meadows, agricultural fields) and ecological functions (significant wildlife habitat, groundwater discharge, ecological linkage, etc.).

Ecologist, Dr. Brent Tegler, provided his professional opinion that by prohibiting more intensive forms of development, future ecological restoration options are maximized. His evidence was that the science combined with the current OPA 28 EPA-ORM policies have created an exceptional future opportunity for the protection of native biodiversity, while not restricting current land use practices. There is no other location in the Town of Newmarket where protection of natural features and functions, combined with future restoration opportunities on this scale, exists. The EPA-ORM designation is

a unique area in the Town of Newmarket because of the presence of the Oak Ridges Moraine with its concentration of natural heritage features, ecological corridor, breeding birds, watercourses and ongoing agricultural uses. Large forest tracts of sufficient size to protect a sizable area of interior forest are also present. The high bird diversity of more than eleven significant bird species characterizes the important wildlife habitat present. Species movement among woodlands evidences internal linkages and inter-regional linkage is identified to the southeast along tributaries leading to the Holland River and to the northwest through natural areas of the Oak Ridges Moraine.

The subject lands offer opportunities for linkages between natural heritage features within the Natural Heritage System, as confirmed through modelling in the Town's Natural Heritage Study. Major development on the lands would impede the ability for the lands to restore or to improve linkages between these features. As the Town's Counsel argued, these lands are part of the last area within the Town of Newmarket to restore or improve these naturally existing features for the benefit of future generations. The introduction of major development onto these lands would impact the ecological integrity of the Natural Heritage System and is contrary to the intent and purpose of the EPA designation

Urban development has encroached on the OPA 28 areas in the Town from the east and now dominates the land use in the northern half of OPA 28 lands. The Board determines that policies of OPA 28, which limit development within the EPA, are consistent with and crucial to, the long-term protection of the valued natural heritage features and functions present. Without these policies, the Town submitted that the cumulative impacts of urban development, such as that proposed by the Applicant, would result in a reduction of ecological integrity and native biodiversity. In this context, the Board determines the Natural Heritage Report completed for the Town by North-South Environmental Inc. to be highly persuasive of the importance of identifying and protecting the subject lands from development.

As already noted, the Town's OPA 28 policies prohibit major development within all areas of the EPA-ORM designation and the type of development contemplated is

expressly stated in OPA 28 Policy 6.7.7.2. In keeping with its focus on protection of the Oak Ridges Moraine, the Town's Official Plan requires an assessment of the potential impact on the environment of any proposed change in land use designation. One of Dr. Tegler's concerns with the Applicant's proposal is that Ms Harker's report did not address the EPA-ORM lands as part of a broader ecological system, even with a review of adjacent lands. He termed this the "systems approach" and the Applicant's witness did not, in his opinion, assess accurately the environmental impact of the proposed development within the context of the 1996 Official Plan or OPA 28. He emphasized that it is current practice for planners to take a systems approach to environmental land use planning in Ontario; an approach supported by science and reflected in the policy documents. As the Natural Heritage section of the Provincial Policy Statement directs in Section 2.1.2: "The diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained". In this regard, Dr. Tegler opined that the Town's approach was the correct one; that is, a systems based approach - viewing the subject lands as part of a single, ecological system, containing unique functions and features that are intended to be protected from development in order to preserve and enhance all areas of the EPA including woodlands, wetlands, valley lands, open habitats and agricultural lands.

In addition, Dr. Tegler characterized Mr. Forhan's interpretation that the EPA-ORM policies only identify "certain lands" that should be protected as a narrow one, and he emphasized once again that the systems approach to evaluating features within the EPA lands is the superior approach. As the EPA-ORM functions as a unit, he criticized the Applicant's approach of looking at the environment, segregating out the pieces for development and then assessing the impact on that particular piece of land. The Town says that all of the EPA-ORM lands must be protected. The Board prefers Dr. Tegler's evidence regarding the importance of the systems approach as a more desirable, appropriate and relevant method of protecting the entire area from development, to the approach taken by Ms Harker that supports development of a type the Applicant proposes, on the EPA lands.

Dr. Tegler opined that it is incorrect to propose a plan of subdivision as the Applicant's had done and then have its environmental witness work backwards from the concept in an attempt to mitigate the effects of that development. Rather, one should evaluate development in the context of the loss of features and functions and this, the Applicant's witness did not do. Development of lands on a site-by-site basis has the effect of a piecemeal approach to development and would cause, as Dr. Tegler opined, a decline and degradation of the Town of Newmarket's remaining ecological features, ultimately creating a loss of the existing features and functions. Dr. Tegler opined and the Board finds most persuasive, that the Town's EPA-ORM designation was achieved through a proper and fulsome assessment of these lands and as a first principle, these lands should not be developed and must be protected.

Both Dr. Tegler and Ecologist Sarah Mainguy evidenced that the restrictive EPA land use designation and its associated policies that prohibit the type of development the Applicant ultimately proposes for these lands, represent good environmental planning supported by science and policy that will provide the Town with a level of protection consistent with the significance and sensitivity of the environmental features and functions present. The evidence of these experts was that major development of the kind the Applicant proposes is not consistent with these policies.

Dr. Tegler's report, Natural Heritage Evaluation of OPA 28, Environmental Protection Area, Town of Newmarket, July 2008 (Exhibit 4, Tab 16), reflects his review of the entire EPA area in the context of the ORM as well as the Town of Newmarket and its surrounding lands and, in the Board's determination, supports the Town's desire to protect these lands from development not contemplated in the EPA policies. Among the conclusions Dr. Tegler reached in his report was recognition that

- urban development has encroached on the OPA 28 area from the east and now dominates the land use in the northern half of OPA 28;
- policies of OPA 28 that limit development within the EPA and Natural Core Area are crucial to the long term protection of the valued natural heritage features and

functions present and without these policies the cumulative impacts of urban development would result in a reduction of ecological integrity and native biodiversity;

- and the EPA policies provide an opportunity for the future development of a large natural core area that meets the test for protection of many native species.

Additionally, as the open spaces and features found on the subject lands are linear, development in these open pods has a very large interface with the natural areas all along the natural heritage edges. Thus, in order to truly protect the remaining natural features and the biodiversity of the lands, Dr. Tegler opined that the rural agricultural landscape of the subject lands must be protected in order to maintain the ecological integrity of these natural areas that would be affected by development along their edges.

Ms Mainguy opined that the applications do not conform to OPA 28, as major development would reduce drastically the function of the agricultural matrix. She noted that the subject lands incorporate not only key natural heritage features, but also incorporate agricultural lands that preserve the agricultural matrix. If allowed, the proposed development would change this to an urban matrix and create a different kind of barrier. She opined that the entire EPA area must be protected as it protects not only the forests and species living therein, but also species that use the agricultural matrix to nest as well as to cross to other areas.

She also cautioned that urban patches, which is what would result, do not support the same level of diversity as in lands designated EPA-ORM. The agricultural lands in this area should be kept open for species habitat and crossing. Where Ms Mainguy acknowledged that the applications do conform to the minimum standards that the ORMCP requires, the EPA designation goes beyond those standards to offer more protection. As such, the applications do not conform to OPA 28 as the whole area is designated as EPA-ORM with intent to protect its agricultural matrix and its Key Natural

Heritage Features. By turning it into an urban matrix, the proposed development will impair the functions.

The Board determines that the Town's OPA 28 designation of the vast majority of the subject lands as EPA-ORM represents good planning as supported by science and policy, and provides a level of protection that recognizes the sensitivity of the environment in this area.

Environmental Planner, Fred Johnson, noted that Section 18 (2) of the ORMCP states that "Settlement Areas also have the objectives of...maintaining, and where possible improving or restoring, the health, diversity, size and connectivity of key natural heritage features, hydrologically sensitive features and the related ecological functions." Mr. Johnson opined that the Town has achieved these objectives with its EPA-ORM designation in OPA 28. It has identified lands with a significant concentration of sensitive, significant and high functioning features and it has protected them through this more restrictive designation. He noted that the subject lands contain, or are in very close proximity to, these significant features (just across the street to the west are lands in the Natural Core designation of the ORMCP). The test of protection is to maintain, and if possible restore, size, health and connectivity. He was also adamant that the words of this section do not seek simply to minimize or mitigate impacts but rather, to "maintain and where possible improve or restore".

The Board determines that the implementation of OPA 28 is a public policy decision made by the Town; a decision that both the Region and the Province have endorsed. As Counsel for the Region, Mr. Miller remarked that there was strong public support expressed at the public meeting by some sixty attendees and twenty residents of the Town for the Town's EPA-ORM designation. They expressed serious concerns with the possibility that major development of a type the Applicant proposed could be allowed to proceed on the Oak Ridges Moraine, particularly as the Town of Newmarket has firmly identified these lands as worthy of environmental protection through a restrictive policy regime that prohibits development of a type that is not contemplated in Policy 6.7.7.2.

The Right of the Municipality to Impose a More Restrictive Land Use Policy on the Area

The Board has determined that the Town of Newmarket, through its policy regime for the subject lands, notwithstanding the ORMCP Settlement Area designation and the Region's Urban Area designation, has imposed entirely appropriate and defensible, more restrictive land use policies for the subject lands by means of the EPA-ORM designation that prohibit the kind of development the Applicant proposes. The Board next determined whether the Municipality was, in fact, within its right to be more restrictive in its application of these policies to the Applicant's lands.

All Parties agreed that the Town of Newmarket enjoys this right in the legislation and specifically, it is a right established clearly in the policies and language of the upper-tier planning instruments. Subsection 3(5) of the *Planning Act* provides that all planning decisions must be consistent with policy statements issued under the Act. Most notable for the Board is that the Act directs it to have regard to matters of provincial interest such as, but not limited to:

- the protection of ecological systems, including natural areas, features and functions;
- the orderly development of safe and healthy communities;
- and the appropriate location of growth and development.

OPA 28 governs an environmentally sensitive area that provides the only example of the Oak Ridges Moraine within the Town of Newmarket, as well as providing a significant landform conservation opportunity including otherwise limited representation of the Oak Ridges Moraine and its attendant landform features. Among these are former glacial lake shorelines, steep slopes and ridges and ravines that include a number of headwater tributary streams flowing into the East Holland River system, some of which Daryl Cowell opined may have significance on a regional or provincial level.

The Board notes that the subject lands are located predominantly in the Settlement Area designation in ORMCP, but this designation does not compel or require the Town to permit urban development, nor does it confer development approval. The ORMCP identifies a range of uses that may be permitted in the Settlement Area and allows the local municipality to determine these uses, which the Town of Newmarket has done. Further, the language of Section 18 of the ORMCP clearly states that the Settlement Area designation identifies lands in which municipalities may accommodate urban growth needs. However, there is nothing in the wording of Section 18 to suggest that the municipality must commit all lands within the Settlement Area to urban land uses. The description of Settlement Areas in the ORMCP in no way implies that such lands are intended for urban development. In fact, in the Board's view, the very purpose of the ORMCP is to minimize the encroachment of development on the Oak Ridges Moraine, and the Town of Newmarket has gone a step further by excluding the subject lands from the Settlement Area and instead including them in a more restrictive EPA-ORM designation that is very specific about the types of development that can occur on those lands.

The Board also notes that Sections 5 (c) and 5 (d) of the *Oak Ridges Moraine Conservation Act* (ORMCA) enable the Province to prohibit official plans and zoning by-laws from being more restrictive than the ORMCP, but the Province has chosen, in Section 33 of the ORMCP, to curtail only a municipality's ability to be more restrictive in respect of agricultural uses, mineral aggregate operations and wayside pits. As Mr. Johnson opined, if the Province wanted to curtail a municipality's ability to restrict urban uses everywhere in the ORCMP area, it would have done so through specific policies provided for in Section 5 of the ORMCA. The fact the Province has not done so reinforces the intent stated in the wording in the Implementation Section of the ORMCP and supports the Town's ability to apply more restrictive policies.

It is evident that the implementation policies of the ORMCP direct that a municipality is within its rights to be more restrictive and to provide what Mr. Johnson termed "even more robust policies" to protect the natural environment. He evidenced

that there is also nothing in the ORMCP that prohibits or restricts the Town from being more restrictive than the plan itself. This is stated in the implementation section of the ORMCP as follows:

Nothing in the Plan is intended to prevent municipalities from adopting official plan policies and zoning by-law provisions that are more restrictive than the policies of this Plan, except where prohibited by the Plan. The Ontario government encourages municipalities to develop additional policies for the Oak Ridges Moraine that support, complement, or exceed the policies of this Plan.

It is noteworthy that Policy 2.5.35 of the Regional Municipality of York Official Plan contains a similar provision:

Nothing in the Plan prevents area municipalities and zoning by-laws from being more restrictive than the Plan and the Oak Ridges Moraine Conservation Plan, except insofar as agricultural uses, mineral aggregate operations and wayside pits are concerned. In the event of a conflict the more restrictive policy shall apply

In the simplest characterization of Mr. Fu's evidence in this regard, the Applicant's proposal for development does not conform to the Region of York Official Plan as it does not conform to OPA 28, which is more restrictive than the Regional Plan. In view of the importance of the local planning instrument in the case at hand, the Board adopts this approach and Mr. Fu's opinion evidence as valid and persuasive that the principle of development is not established for the subject lands and the Town is within its right to be more restrictive in the application of its policies for these lands.

As evidenced by both Mr. Fu for the Town and Mr. Simpson for the Region, the applications do not conform to, nor are they consistent with, the Region of York Official Plan. One reason among several Mr. Fu cited was that the Region's Official Plan provides that local official plans – in this case, the Town of Newmarket Official Plan – may have more restrictive Urban Area policies and designations and that the Town may establish its own independent Urban Area boundary. As Mr. Miller submitted on behalf of the Region, the Region's Official Plan does not supersede a local official plan in determining settlement area expansion. The Town of Newmarket Official Plan is more restrictive than the Region's Plan as the Town's Urban Area is smaller than the Region's Urban area. Mr. Fu gave evidence that this is not a conflict with the Regional

Plan. A conflict would occur if the Town's Urban Area were larger than the Region's Urban area.

The Region's Official Plan and the Town's Official Plan both guide development. The text of the Region's Official Plan is also explicit that an Official Plan with more restrictive policies (in this case, the Town's Official Plan) prevails. Both Mr. Johnson and Mr. Simpson confirmed this fact. Additionally, Mr. Fu provided evidence that the creation of the EPA-ORM designation in the Town's OPA 28 is a more restrictive policy that is intended to preserve and protect the natural environment. As a result, the Region's Urban Area designation does not supersede the Town's Urban Area or the EPA-ORM.

Mr. Simpson also opined that the designation of the subject lands as Urban Area in the Region of York Official Plan does not mean they are necessarily suitable or appropriate for urban development. Rather, the designation simply indicates that the lands are contemplated for development on a regional scale.

Mr. Simpson also testified that it is not uncommon for inconsistencies to occur at the local, regional and provincial levels between various planning documents. This is why provincial and regional plans often include statements that defer to the local municipality, and why there is the general rule that in the case of a conflict, the more restrictive policies shall apply. He noted that this is also why maps and figures often include a disclaimer that they are conceptual in nature. The Board assigned significant weight to the Region's submission that the designations of Settlement Area and Urban Area pertaining to the subject lands do not require or compel urban development on those lands and the Town has a right to be more restrictive in devising its policies for the subject lands. Indeed, the Provincial Policy Statement directs in Section 4 that "Municipal official plans shall provide clear, reasonable and attainable policies to protect provincial interests and direct development to suitable areas."

Mr. Fu noted that in describing the relationship between regional and local official plans, these documents are able to fulfil independent but mutually supportive roles. In

doing so, this Region's Official Plan enables and allows local official plans to be more restrictive and it does not prohibit a municipality's establishment of a local Urban Area boundary, provided that local official plan boundary conforms with the Regional Official Plan. As Mr. Miller noted in Section 4 of the Provincial Policy Statement: "Provincial plans shall take precedence over policies in this [PPS] statement to the extent of any conflict."

The Regional Municipality of York does not consider itself to be the purveyor of settlement areas for the lower tier municipalities. In the Region's submission, the Town of Newmarket's more restrictive policies conform to the Region's Official Plan and there is no conflict between the two Plans as the Region's Official Plan contemplates that local official plans can have and designate their own urban areas, with the more restrictive policies prevailing. Thus, the local plan is not in conflict with the Region's Plan and does not offend the policies of the PPS. Lastly, Mr. Miller argued persuasively that the Region's Urban Area designation does not supersede the Town's Urban Area to guide policies for development on the Oak Ridges Moraine.

Mr. Simpson opined that the need for this development has not been established and the Town has the right to develop policies that are more restrictive than those of the Region. Further, the Region has identified more than enough regional land to accommodate this type of growth in fulfilment of its provincial obligations under the Growth Plan. To suggest that because there is a regional shortfall these subject lands in Newmarket are required is simply not implied in any of the Region's documentation. Both Mr. Miller and Mr. Simpson informed the Board that there are many areas in the Regional Municipality of York where this need can be accommodated.

Mr. Fu also identified the Region's figures to show that growth can be accommodated on lands that the Town of Newmarket has already designated for future growth. The Region also demonstrated persuasively that its calculations have also determined these lands are not needed to accommodate this development. The Board also notes that Mr. Forhan did not provide any evidence of the Town's inability to meet its growth goals. In Mr. Simpson's opinion, the Applicant has not made a case for the

need for development of the subject lands. The Board prefers the Region's evidence in this regard to the Applicant's suggestion that its lands should be used to accommodate any shortfall in land requirements for population forecasts. Both the Region's and Town's Counsels and expert witnesses presented persuasive evidence and opinions that these lands are not needed to accommodate the Provinces' population growth objectives.

The Board determines that the Town of Newmarket has the right to employ more stringent policies in general, and on these lands specifically. More stringent policies are possible at the local level. With three levels of government, Mr. Simpson also submitted that it is the municipality that knows the most about land designations within its boundaries. He added that inconsistencies between plans are also very common because they are written at different times, with lesser and more skilled crafters of language. That is one reason why one must look to the basic and key objectives of the policy documents. In respect of the Oak Ridges Moraine, this is a conservation-based Act that attempts to preserve as much of those lands as possible.

The Applicant did not dispute that the Town of Newmarket may impose more restrictive policies than those found in the other applicable policies regimes that overlay the subject lands, but the Applicant's Counsel argued it is a "novel approach" to planning and it is "ultimately incorrect" to suggest that simply because the Town has imposed more restrictive policies and is permitted to do so under upper tier and provincial policy regimes, the proposed development is not in conformity with those upper tier and provincial policies. During cross-examination, Mr. Reinthaler admitted however, that development cannot occur on the subject lands in the context of the Town of Newmarket's more restrictive EPA designation of the lands and that the Region of York Official Plan allows the Town to be more restrictive in this regard. To comply with the Region's policies requires compliance with the Town's policies – something that the Applicant's witness acknowledged it could not do. Mr. Reinthaler also acknowledged that he employed a methodology in his reports that only factored in the Settlement Area

designation of the ORMCP and not the Town's more restrictive EPA-ORM designation. He further acknowledged he would have to review his findings in that context.

The Board assigns no weight to the Applicant's Counsel's submission above, as there was extensive evidence detailed in the relevant planning documents that the local municipality is expressly permitted in legislation to be more restrictive. The Board also notes that the Town's EPA-ORM designation for the subject lands is in conformity with the broader objectives and goals of the ORMCP and the Region and as such, the Region is wholly supportive of the Town's more restrictive designation, despite its broad Urban Area designation for the larger area. The Region's and Town's witnesses provided persuasive and substantive evidence and rationales for their opinions that the applications do not conform with both the upper-tier policies and the underlying policy tests. The reality that the local municipality can be more restrictive is but one component of the elements reviewed by the Region's and Town's witnesses who formed their opinions that development should not occur on the subject lands.

Where Counsel for the Applicant submitted that all of the policies in place on the subject lands should be considered and evaluated each in light of the other, ultimately the ability of a municipality to implement more restrictive policies – in this case, policies that discourage development of a type that the Applicant proposes – cannot be overlooked and must be accorded significant and persuasive weight. There is also persuasive evidence before the Board that in applying such policies, the Town has undertaken comprehensive and thoughtful planning reviews and technical studies to inform its decision to provide a more restrictive designation to lands comprising part of the last vestige of Oak Ridges Moraine lands within its boundaries. In the Board's determination, so long as it is in conformity with the upper-tier planning instruments, which it is, the Town of Newmarket is uniquely placed and best suited to determine more restrictive designations for the lands found within its boundary in the Oak Ridges Moraine and the EPA designation is appropriate and should not be changed for all the reasons presented by the Region's and Town's witnesses that the Board has accepted as persuasive. Where the Applicant proposes a change in land use with regard to the

Town of Newmarket's Official Plan, the Board is persuaded by the opposing witnesses that such an application translates into non-conformity with the intent and purpose of the entire provincial and upper-tier policy regime and thus, should be rejected.

A comprehensive reading of all of the relevant policies must take into account the more restrictive policies of OPA 28. With no evidence to counter that notion, the Board determines that the broader overlaying designations of Settlement Area and Urban Area in respect of the EPA-ORM designation do not require or compel urban development on those lands. For these reasons, the Board determines that the Town can impose a more restrictive land use policy on these lands than provided for in the Region of York's Official Plan.

Lastly, the Applicant's Counsel spoke of the Applicant's right to seek a change in land use and to bring forward an application for development. The Board determines there is no evidence to suggest the Applicant has ever been denied this right to bring forward an application. An application was in fact made to the Town and when the Municipality failed to make a decision within the specified timeframes identified in the *Planning Act*, the Applicant brought its case to the Board for a decision. Because the Town has chosen to give greater protection to the lands through its EPA-ORM designation, this does not mean that the Applicant has been denied the right to propose development. The Board has undertaken a review of the planning and other evidence to ascertain whether development, and by extension the development ultimately envisioned by the Applicant and expressed through its development concept, is appropriate for these lands.

The applications do not conform to the intent and purpose of the Town of Newmarket Official Plan Amendment 28. This is the defining planning instrument to which the principle of development must be weighed and established. The Applicant has provided no good reasons or evidence to support such a principle on the subject lands in a manner and through the definition of development it has proffered. For all these reasons, the Board determines that the principle of development for the subject lands is not established and development of a type this Applicant envisions is not

permitted to proceed on the subject lands. The EPA-ORM designation shall remain on the subject lands and the Board dismisses the appeal.

So orders the Board.

"R. Rossi"

R. ROSSI
MEMBER