

**THE CORPORATION OF THE TOWNSHIP OF TAY  
PUBLIC MEETING OF MUNICIPAL COUNCIL**

**Proposed Zoning By-law Amendment (08ZBA08)  
Robins Point Rd Lands Behind the Properties  
Addressed as 141, 143, 145, 147 and 155**

**NOVEMBER 11<sup>TH</sup>, 2009 at 7:00 P.M.**

**COUNCIL CHAMBERS  
AGENDA**

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- 1. CALL TO ORDER**
- 2. MOMENT OF SILENT REFLECTION**
- 3. DECLARATIONS OF PECUNIARY INTEREST**
- 4. STATEMENT OF PUBLIC NOTICE**
- 5. STATEMENT OF CORRESPONDENCE RECEIVED**
  
- 6. PRESENTATION OF A REPORT BY TOWNSHIP STAFF**
  - 6.1 Staff Report from the Director of Planning and Development, Re:  
Lands behind the properties at 141, 143, 145, 147 and 155 Robins  
Point Rd.
  
- 7. QUESTION & CLARIFICATION PERIOD - PUBLIC**
- 8. SPEAKERS IN SUPPORT & OPPOSITION**
- 9. QUESTION & CLARIFICATION PERIOD - COUNCIL**
- 10. FINAL STATEMENT BY THE MAYOR**
- 11. ADJOURNMENT**

**PLANNING & DEVELOPMENT DEPARTMENT**  
Planning Services

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TO: Planning and Development Committee  
CHAIR: Deputy Mayor Michael Ladouceur  
FROM: Mara Burton, Director Planning & Development  
DATE: October 27, 2009  
**SUBJECT: Application No. 2008ZBA08 to amend Zoning By-law 2000-57  
1243161 Ontario Limited – Part of Lot 16, Concession 8**

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**1.0 APPLICATION DETAILS**

- 1.1 Application No.: 2008ZBA08
- 1.2 Owner: 1243161 Ontario Limited c/o Dr. Daniel Gibbs
- 1.3 Agent: Jim Nicholson, Preston Nicholson Harvey Inc.
- 1.4 Location: Part of Lot 16, Concession 8
- 1.5 Official Plan: Rural with an Environmental Protection Two Overlay  
Zoning: Rural “RU”
  
- 1.6 Zoning Amendment Application Request:

The proposed Zoning By-law Amendment would rezone the subject lands from the Rural “RU” Zone to the Shoreline Residential “SR-1” Zone and to the Shoreline Residential Exception Two “SR-2” Zone. The property is proposed to be the subject of severance applications that intend to add the subject lands to existing lots having frontage on Robins Point Road being 141, 143, 145, 147 and 155 Robins Point Road. This proposed zoning is the same zone for these properties on Robins Point Road.

**2.0 SITE DESCRIPTION**

The subject lands are located behind residential properties that front onto Robins Point Road. The subject lands do not have frontage and have a depth of approximately 11.5 metres (38 feet) behind 141 and 143 Robins Point Road and have a depth of 18.29 metres (60 feet) behind 145, 147 and 155 Robins Point Road. The subject land is divided into various parts, proposed to be added to the abutting residential property. The property is proposed to be severed to be added

to the Robins Point Road lots resulting in deeper lots. 141 and 143 Robins Point Road are currently approximately 42 metres (138 feet) deep. 145 and 147 Robins Point Road are currently 32.5 metres (106 feet deep) and 155 Robins Point Road is approximately 30 metres (98 feet) deep from Robins Point Road.

### **3.0 COMMENTS**

- 3.1 Treasury – No comments.
- 3.2 Building Services – No comments.
- 3.3 Parks and Recreation – No comments.
- 3.4 Public Works – No comments.
- 3.5 Fire Department – No concerns.
- 3.6 Clerk’s Department – No comments.

### **4.0 BACKGROUND AND CURRENT APPLICATION**

Since 2002 this property has been the subject of the following consent applications:

- 1. 2002B03 - Rear yard addition to 385 Robins Point Road.
- 2. 2004B02 – Sever two lots between 135 and 145 Robins Point Road.
- 3. 2005B05 – Sever 4 lots between 385 and 411 Robins Point Road.
- 4. 2005B08 Sever 2 lots between 97 and 107 Robins Point Road.
- 5. 2006B12 and 2006B13 – Rear yard additions to 411 and 415 Robins Point Road. 2007B02, 2007B03 and 2007B05 – Rear yard additions to 18 properties being 305 to 385 Robins Point Road.
- 6. Current application – Rear Yard additions to five properties being 141, 143, 145, 147 and 155 Robins Point Road.

The newly created lots total an area of 7317.3 square metres (1.8 acres) and the lot additions, including the proposed, total an area of 9358 square metres (2.3 acres) for a total of 16,675.3 square metres (4.1 acres) of the woodlot.

As a requirement of previous zoning and consent applications 2005B05 and 2005B08 to create four lots fronting along Robins Point Road in 2005, the Applicant hired Burnside to undertake an Environmental Impact Study. That

Study concluded that *“There are no environmental impacts specifically associated with the development of these parcels that require mitigation measure, except for the following:*

- *Suitable silt fencing should be erected and maintained to limit siltation, and from the development of these lots into the roadside ditch east of Robin’s Point Road; and,*
- *Clearing of vegetation on the four lots be timed to mitigate impacts on birds and tree-dwelling amphibians and to less effects to ground flora (i.e tree clearing should optimally occur in the middle of winter, and site grading/earthworks should not occur from mid-May to July).”*

Following these applications, severance applications 2006B12 and 2006B13 in 2006 added to the back of two existing lots at 411 and 415 Robins Point Road. Given the scale of this application, the existing Environmental Impact Study by Burnside was consulted and the severances were approved.

These applications were then followed by applications 2007B02, 2007B03 and 2007B05 to extend the lots of properties 305, 307, 315, 319, 321, 325, 331, 333, 337, 339, 341, 345, 347, 351, 375, 377, 383 and 385 were made. Burnside who undertook the first EIS were further consulted for the 2007 applications.

In his March 17, 2007 letter, the Environmental Consultant, Vince Deschamps of Burnside, stated that:

*“Although no development is proposed on these expanded lots at this time and the lot **will remain in a forested state**, these proposed lot extensions will encroach into the woodlot that was covered on our EIS. Based on our review of the EIS and the proposed extensions, it is our opinion that the proposed lot extensions can be undertaken without affecting the form or function of the woodlot.” As such lot extensions will not result in undue stress to the remaining acreage on your property. Property owner should be advised, **however, that any development proposed on these expanded lots will be subject to a site plan control** and will require the appropriate building permits from the Township.”(emphasis added)*

The Planning Department questioned this letter as the support was based on an assumption that the extensions will remain forested and that site plan control will be required. As such, your Director discussed this application with Mr. Deschamps on March 26<sup>th</sup>, 2007, whereby he suggested that he would not support the removal of trees that would come from developing the property other than the construction of a shed being approximately 10 square metres (107.6 square feet). The Consultant suggested that site plan control could be utilized to protect the forest function.

As a result, rather than denying the severance applications, the zoning of Environmental Protection Exception Three was proposed. However, this zoning was not approved in favour of the Shoreline Residential Zone on the understanding that there would not be any future applications.

In hind sight, this zoning would not have worked very well anyway. Zoning has limitations in enforcement, particularly for the removal of a few trees over time. This removal may be gradual and difficult to enforce in a court of law particularly if the owner argues that the tree was dying or dangerous. The same holds true for site plan control, which was recommended by the Environmental Consultant. A Tree Cutting By-law is another tool, however, these generally apply to lots over one acre and therefore would offer no protection for the lot extensions.

The best protection for the forest is for it to remain under one large ownership where there is nothing to be gained by removing trees behind the neighbours. This large tract of land is also subject to the County Tree Cutting By-law. Whereas if pieces are added to the adjacent properties over time, the reality is that trees will be removed in favour of yards, pools and accessory buildings.

We are now in receipt of another application for lot extensions. Two of the extensions to the lots that were previously severed by the Owner of the woodlot who is now seeking that they also be made deeper. What was once an acceptable lot depth is now being called into question by the Applicant and the receiving property owners. This then in turn puts pressure on others to do the same.

Future lot extensions could total another 0.9 acres of lost woodlot if in line with the past applications totaling five acres. This cumulative scenario for the lot

extensions alone is equivalent to a 20 lot subdivision. However, the EIS only addresses each application as though it is independent of the cumulative effect. It is the role of the Township to consider the cumulative effect when making a decision.

## **5.0 PROVINCIAL POLICY**

### **5.1 Provincial Policy Statement:**

Section 1.1.1e) “Managing and Directing Land Use to Achieve Efficient Development and Land Use Patterns” states “*Health, livable and safe communities are sustained by:*

- e) *promoting cost-effective development standards to minimize land consumption and servicing costs.*

Section 2.1.1 “Natural Heritage” states “*Natural features and areas shall be protected for the long term.*”

Section 2.1.2 states “*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, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features.*”

### **5.2 Places to Grow Legislation**

Section 4.1 “Protecting What is Valuable, Context” states: “*As the GGH (Greater Golden Horseshoe) grows, so will the overall demand for water, energy, air and land. The ongoing availability of these natural resources is essential for the sustainability of all communities. This Plan recognizes and supports the role of municipal policy in providing leadership and innovation in developing a culture of conservation.*”

Section 4.2.1.1 “Policies for Protecting What is Valuable, Natural Systems” states: “*Planning authorities are encouraged to identify natural heritage features and areas that compliment, link, or enhance natural systems.*”

The Provincial policies stress sustainability and a culture of conservation. These policies must be considered when making reviewing this application.

## **6.0 COUNTY OFFICIAL PLAN**

The subject property is designated County Greenlands within the County Official Plan. The relevant policies of Section 3.8 “Greenlands, Objectives” state:

*“3.8.1 To conserve and restore the natural character, form, function, and connectivity of the natural heritage system of the County of Simcoe, and to sustain the natural features and ecological functions of the Greenlands and local natural heritage systems for future generations.*

*3.8.2 To promote the restoration of biodiversity and ecological integrity within the Greenland Designation.*

*3.8.3 To improve the quality and distribution of the woodland and wetland cover across the County.*

*3.8.4 To ensure that species and communities of conservation concern and continue to flourish and evolve throughout the County.*

*3.8.6 To ensure that the Greenlands Designation complements and supports the natural heritage systems established in provincial plans and is linked with the natural heritage systems of adjacent jurisdictions, and to require local municipalities to identify and protect natural features and ecological functions that in turn complement and support the Greenlands.*

*3.8.7 To ensure that the location, scale, and form of development respect and support the conservation of the County’s natural heritage system, and that the Greenlands Designation informs decision-making on where growth and settlement occur in the County.”*

Section 3.8.21 “Development Control” states *“Where it is determined that an EIS is required, development will only be approved where an EIS demonstrates to the satisfaction of the County and appropriate agencies that there will be no negative impact on the existing natural features and their ecological functions.”*

## **7.0 TAY OFFICIAL PLAN**

The subject lands are designated “Rural” on Schedule “A” to the Township of Tay Official Plan with an Environmental Protection Two overlay.

Subsection 8.1 “Interpretation, Land Use Boundaries and Roads” states that *“It is intended that the boundaries of the land use designations shown on the schedules to this Plan be considered as approximate, except where defined by highways, arterial roads, railways, rivers or streams or other similar geographical barriers. It is also intended that the location of roads as indicated on the schedules be considered as approximate and not absolute. Therefore, amendments to this Plan will not be required in order to make minor adjustments to the approximate land use boundaries or to the location of roads, provided the general intent of the Plan is preserved. Such minor deviations will not be reflected on the schedules”*.

The Rural designation of the Plan is intended to apply to the large lands located behind the shoreline residential properties that front onto Robins Point Road. The properties that front onto Robins Point Road are designated Shoreline Residential in the Official Plan.

Subsection 4.1.2.2 “Shoreline Residential, Permitted Uses, of the Official Plan states: *“Lands designated “Shoreline Residential” shall allow for seasonal and permanent single detached dwellings.”*

The property is also subject to an Environmental Protection Two overlay. In this regard, the Official Plan states the following: Please note the Official Plan uses the acronym EIA for Assessment versus EIS for Study and have the same meaning.

*“4.8.3.1.1 The “Environmental Protection Policy Area 2” designation is an overlay designation which recognizes areas which are environmentally significant but do not form part of the core of the natural heritage system. Lands contained within the “Environmental Protection Policy Area 2” overlay designation on Schedule A include:*

- (a) Non-forested outwash sands and gravel’s that perform important*

*recharge functions;*

- (b) Small woodlands on the edges of “Environmental Protection Policy Area 1” lands;*
- (c) Younger forest stands with a sparse canopy cover comprising of successional, second growth species; and*
- (d) Areas of steep slopes that generally lack forest cover.*

*4.8.3.1.2 The intent of the “Environmental Protection Policy Area 2” overlay designation is to protect these areas, as much as possible, in order to minimize the loss and fragmentation of woodlands and protect significant wildlife habitat.*

#### *4.8.3.2 Permitted Uses*

*4.8.3.2.1 The uses permitted in areas subject to the “Environmental Protection Policy Area 2” overlay designation shall be those permitted by the underlying land use designation. As an example, where the “Environmental Protection Policy Area 2” designation covers the “Rural” designation, the uses permitted shall conform to the “Rural” designation’s permitted uses.*

#### *4.8.3.3 General Policies*

*4.8.3.3.1 Uses permitted by the underlying land use designation shall not be subject to the policies and/or requirements of this Section. However, new development on land in or adjacent to the “Environmental Protection Policy Area 2” overlay designation is discouraged and development is encouraged to locate outside the natural heritage system designation.*

*4.8.3.3.2 Development in or adjacent to the “Environmental Protection Policy Area 2” overlay designation which requires either an Amendment to this Plan, or the General Zoning By-law, or an application for consent, shall be subject to the requirement for the preparation and submission of an EIA in accordance with this Section. It shall be a policy of this plan that all lands within 50 metres of the “Environmental Protection*

*Policy Area 2” overlay designation shall be deemed to be adjacent lands.*

#### *4.8.3.4 Development Policies*

*4.8.3.4.1 The EIA required by this Section must demonstrate, to the satisfaction of the Township, that the proposed development can occur without having a negative impact on the features, functions, or linkage of the natural heritage system. The EIA study requirements are set out in Section 4.8.2.4 of this Plan.*

## **8.0 SEVERN SOUND SUSTAINABILITY PLAN**

The Severn Sound Sustainability Plan states:

*The Severn Sound Sustainability Plan has a long range 40 year commitment with the nine-municipalities along with the SSEA, and other partners and supporters to ensure a sustainable future for the Severn Sound Watershed. It provides a framework for agencies to ensure that environmental, social, cultural and economic issues are managed, and that action plans are in place, that can be monitored for effectiveness over time. Through the Plan’s implementation, our people can learn to live within our means, and reduce the impact of our combined “footprints” on this watershed – our home.”*

Section 1.2 “The Need for a Plan” states that: *“Like many places near and outside the Greater Toronto Area, the Severn Sound Watershed is experiencing increasing pressure for urban and recreational development. This development is stressing the watershed’s natural environment and land base, as well as community services and municipal infrastructure. With a current watershed population of 110,000 people, the Province of Ontario’s Places to Grow legislation directs that by 2031, the watershed will house an additional 42,000 people and provide jobs for 66,100, creating further stresses on the watershed.*

*The prospect of this growth and the impacts it will have on the watershed are of increasing concern to local decision makers. If the watershed is to develop sustainably, a comprehensive and coordinated approach to managing the impact of future growth on the watershed’s economy community and environment is needed.”*

Section 1.3 “Sustainability Principles” indicates that the meaning of sustainable development is: *“development that meets the need of the present without compromising the ability of future generations to meet their own needs. A sustainable watershed will be one in which we do not live beyond our means. One where we value our community, ecological and economic environments as valued assets. It will nurture an understanding of the limits and value of our natural resources and the impact that our activities have on consuming those resources.”*

*The goal of realizing a sustainable watershed is best achieved through collaboration, and community engagement and action. We need to ensure that our resources are renewed not depleted or contaminated, that our communities and citizens are healthy and that our economy is prosperous but not at the expense of our environment or personal well-being.”*

Some of the relevant policies of the Sustainability Plan are the following:

The Environmental Pillar Goal EN1 states: *“Protect, restore and enhance natural heritage.*

- *Protect restore and enhance open spaces, forested areas, and natural corridors.*
- *Preserve, protect, and restore shoreline habitats.”*

The Environmental Pillar Goal EN2 states: *“Protect and enhance biodiversity.*

- *Protect native species and habitat from invasive plants, animals and pests.”*

The indicators or measures for the above goals of the Sustainability Plan to be monitored include change in area forest cover; the number of invasive species identified annually; and the numbers of species at risk and rare and endangered species.

When we make decisions, the idea of the Sustainability Plan is to meet our triple bottom line in that our decisions are good for the environment, the economy and community wellbeing. Does this application meet our triple bottom line? Are we putting an individual want over the environment. Is there anything to be gained from an economic or community well-being perspective?

## **9.0 ZONING BY-LAW 2000-57**

The proposed Shoreline Residential Exception One “SR-1” and Shoreline Residential Exception Two “SR-2” Zones are consistent with the lots that are proposed to receive these lands.

## **10.0 ANALYSIS**

As required by the Tay and County Official Plans, a scoped Environmental Impact Study (EIS) was conducted for this application. The study did not take into account the cumulative effect of the previous applications or future applications for lot extensions.

Field visits were conducted on May 15<sup>th</sup> and June 16<sup>th</sup>, 2009 for amphibian call counts, incidental wildlife spring and summer botanical surveys and a classification of the existing communities using the Ecological Land Classification. Field visits were also conducted for Breeding Birds on June 6<sup>th</sup> and July 2<sup>nd</sup>, 2009.

The EIS notes that:

*“Two areas sensitive species were observed on the subject lands, the Yellow-bellied Sapsucker and American Redstart, both of which prefer to breed in forest patches greater than 30 ha in size. Two species have been identified by the Partners in Flight program plan for Bird Conservation Region 13 (Lower Great lakes/St. Lawrence Plain region of southern Ontario) as being species of conservation priority, the Eastern Wood-Pewee and Northern Flicker. No species at risk or provincially/locally rare species were identified in the subject land.”*

*“To reduce disturbance to breeding birds, removal of vegetation on the subject lands should not occur during the breeding bird season, i.e. April 1 to July 31. In addition removal of tree cover should be minimized to the extent possible and during development property edges should be clearly delineated to reduce the potential for encroachment into adjacent lands.”*

*“Silt and sediment control fencing must remain in good repair and remain in place during the construction phase of development activities.”*

The EIS makes the following recommendations:

*“To reduce disturbance to breeding birds, removal of vegetation on the subject lands should be limited wherever possible and should not occur during the breeding bird season i.e. April 1 to July 31.*

*A proper erosion and sediment control plan must be designed and implemented throughout all stages of development after removal of vegetation. Silt and sediment fencing must remain in good repair and remain in place during the construction phase of the development activities; and,*

*Use standard mitigation measures regarding the use of fuels and chemicals during the construction process to reduce the risk of groundwater or surface water contamination from accidental spills.”*

This EIS assumes the worst case scenario that trees will be removed from the site. However, it also makes reference to the small percentage of the woodlot under this application and does not consider the cumulative effect of past applications or future applications.

In regard to delineating the property boundary, the type of fence could be more detrimental than beneficial. The SSEA advises that:

*“The type of fence installed can have a big effect on wildlife - a chain link fence would certainly have an impact on wildlife movement. Something like a two-rail split-rail fence made out of natural materials would hopefully not be a significant barrier to most wildlife (deer could jump it, turtles could crawl under it, for example). The downside of something not being a barrier to wildlife means that it also is not a significant barrier to human encroachments (e.g. people could dump grass clippings over the fence), but hopefully people would at least respect the lot lines.”*

The SSEA has further advised that *“The best situation for wildlife is no fence. Alternative to fences could also include fence markers (i.e fence posts but no rails), or a living fence (hedgerow/line of shrubs). Where fences are necessary,*

*less fence is better. I would also encourage the use of natural materials (e.g. cedar) rather than materials like pressure-treated wood that can have other impacts. Fences should be visible, and allow animals to either easily jump over or slip under. Top height – maximum 38” to 40. Bottom height – at least 18” above ground. Spacing of rails or wire – 16”. Problem fences – Too high for wildlife to jump. Too low for wildlife to crawl under. Have loose wires, or wires spaced too close together (causing entanglement). Are difficult for animals to see. Create a complete barrier.”*

Environmental Impact Studies are a snap shot in time for finding wildlife. It doesn't assure that there isn't species at risk that inhabit the area, it only ensures that there wasn't species at risk present at the time of the inspection. The EIS also doesn't take into account future applications. The cumulative result could be that the woodlot slowly gets smaller and the impact of development is such that the diversity of the woodlot suffers reducing it's ability to support diverse wildlife. At some point the whole of the woodlot could be called into question, a creeping normalcy whereby gradual changes over time or not very noticeable yet have the same end result as a more significant development.

## **11.0      SUMMARY**

The standard for lot depth along Robins Point Road continues to creep into the woodlot. However, larger lots, particularly where they encroach into a significant woodlot, are not in keeping with the Provincial Policy Statement, the Places to Grow legislation, the County of the Township of Tay Official Plan or the Sustainability Plan.

These documents are intended to guide our decision making to use land efficiently, be sustainable, create a culture of conservation and protect natural systems. The intent of our own Official Plan for this property is to “*protect these areas, as much as possible, in order to minimize the loss and fragmentation of woodlands and protect significant wildlife habitat*”.

The best protection for the forest is for it to remain under one large ownership where there is nothing to be gained by the owner in removing trees behind the

neighbours. This large tract of land will then continue to be subject to the County Tree Cutting By-law. Whereas if pieces are added to the adjacent properties over time, the reality is that trees will be removed in favour of yards, pools and accessory buildings.

This application puts the wants of an individual over the rights of the community to be sustainable. This application and future applications like it, compromise the integrity of the woodlot. This application does not meet our triple bottom line as it does not benefit the environment, the economy or community well-being.

## **12.0 CONCLUSIONS AND RECOMMENDATIONS**

As per standard practice, your Director will withhold a recommendation until after we have heard from the public at the public meeting for this application.

Respectfully submitted;

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Mara Burton  
Director of Planning & Development

Attachments:      1.      Key Map  
                         2.      Proposed By-law

**THE CORPORATION OF THE TOWNSHIP OF TAY**  
**BY-LAW NUMBER 2009-\_\_**

*"Being a By-law to rezone lands described  
as the Part of Lot 16, Concessions 8"*

**WHEREAS** By-law Number 2000-57 is the General Zoning By-law of the Corporation of the Township of Tay; and,

**WHEREAS** the Council of the Corporation of the Township of Tay have received an Application to Amend the General Zoning By-law and has approved the Application; and,

**WHEREAS** authority is granted pursuant to Section 34 of the Planning Act, R.S.O. 1990 to enact such amendments;

**NOW THEREFORE** be it enacted as a By-law of the Corporation of the Township of Tay the following:

1. Schedule "K" to General Zoning By-law Number 2000-57, is hereby further amended by rezoning from the Rural "RU" Zone to the Shoreline Residential Exception Two "SR-1" Zone and the Shoreline Residential Exception Two "SR-2", those lands described as Part of Lot 16, Concessions 8, as shown on Schedule "A", which is attached hereto and forms part of this By-law.
2. This By-law shall take effect and come into force pursuant to the provisions of the Planning Act, R.S.O. 1990, c.P.13., as amended, and the regulations made thereunder.

**BY-LAW** read a **FIRST, SECOND, and THIRD** time and finally **PASSED** this \_\_\_ day of \_\_\_\_\_, 2009.

**THE CORPORATION OF THE TOWNSHIP OF TAY**

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**MAYOR Scott Warnock**

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**CLERK Alison Thomas**

Key Map  
Zoning By-law Amendment - Application 2008ZBA08  
1243161 Ontario Limited -Township of Tay

