

ISSUE DATE:

**March 25, 2013**



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL101016

et al

IN THE MATTER OF subsection 22(7), subsection 34(11), and subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended from Council's neglect to enact proposed amendments to the City of Pickering's Official Plan, Zoning By-law, and failure to make a decision respecting proposed residential plans of subdivision in the City of Pickering in regards to the Seaton Community

Case Number	File Number	Appellant	Neighbourhood and Legal Description
PL101016 *	PL101036 ** PL101037 ***	1133373 Ontario Limited	Neighbourhood 6, Seaton Community, City of Pickering, Being Part Lots 23-25, Concession 4
PL101017 *	PL101034 ** PL101035 ***	1133373 Ontario Limited	Neighbourhood 10, Seaton Community, City of Pickering, Being Part Lots 22-25, Concession 4
PL101018 *	PL101032 ** PL101033 *** PL101056 ** PL101057 ***	1133373 Ontario Limited	Neighbourhood 11, Seaton Community, City of Pickering, Being Part Lots 23-26, Concession 3, et al.
	PL101024 ** PL101025 *** PL101026 ** PL101027 ***	Hunley Homes Limited 1350557 Ontario Limited Affiliated Realty Corporation Chestermere Investments Limited Zavala Developments Incorporated	
PL101019 *	PL101038 ** PL101039 ***	Zavala Developments Incorporated Hunley Homes Limited 1350557 Ontario Limited Affiliated Realty Corporation Chestermere Investments Limited	Neighbourhood 3, Seaton Community, City of Pickering, Being Part Lots 25-28, Concession 5
PL101020 *	PL101040 ** PL101041 ***	Zavala Developments Incorporated Hunley Homes Limited 1350557 Ontario Limited Affiliated Realty Corporation Chestermere Investments Limited	Neighbourhood 4, Seaton Community, City of Pickering, Being Part Lots, 25-28, Concession 4
PL101021 *	PL101044 ** PL101045 *** PL101042 ** PL101043 ***	Zavala Developments Incorporated Hunley Homes Limited 1350557 Ontario Limited Affiliated Realty Corporation Chestermere Investments Limited	Neighbourhood 5, Seaton Community, City of Pickering, Being Part Lots 24, Concession 5, et al.
	PL101054 ** PL101055 ***	White Sun Developments Limited	

Case Number	File Number	Appellant	Neighbourhood and Legal Description
PL101022 *	PL101028 ** PL101029 *** PL101030 ** PL101031 ***	Zavala Developments Incorporated Hunley Homes Limited 1350557 Ontario Limited Affiliated Realty Corporation Chestermere Investments Limited	Neighbourhood 9, Seaton Community, City of Pickering, Being Part Lots 20,27, Concession 4, et al.
PL101023 *	PL101046 ** PL101047 *** PL101048 ** PL101049 *** PL101050 ** PL101051 *** PL101052 ** PL101053 ***	White Sun Developments Limited	Neighbourhoods 1 and 2, Seaton Community, City of Pickering, Being Part Lots 30, Concession 5, et al.
PL101343 *	PL101353 *** PL101354 **	Mattamy Homes Limited	Neighbourhood 7, Seaton Community, City of Pickering, Being Part Lots 21 and 22, Concession 4 and 5
PL101344 *	PL101351 *** PL101352 **	Mattamy Homes Limited	Neighbourhood 8, Seaton Community, City of Pickering, Being Part Lots 20 and 21, Concession 4 and 5
PL101345 *	PL101349 *** PL101350 **	Mattamy Homes Limited	Neighbourhood 11, Seaton Community, City of Pickering, Being Part Lots 23-26, Concession 3 and 4
PL111108*		Ontario Infrastructure and Lands Corporation	Neighbourhood 17, Seaton Community, City of Pickering, Being Part Lots 19, 20 and 21, Concession 3
PL111109*		Ontario Infrastructure and Lands Corporation	Neighbourhood 20, Seaton Community, City of Pickering, Being Part Lots 16, 17, 18, 19, 20 and 21, Concession 4
PL111110*		Ontario Infrastructure and Lands Corporation	Neighbourhood 20, Seaton Community, City of Pickering, Being Part Lots 17-34, Concession 5

- \* Proposed Official Plan Amendment
- \*\* Proposed Zoning By-law Amendment
- \*\*\* Proposed Draft Plan of Subdivision

**APPEARANCES:**

**Parties**

City of Pickering

**Counsel/Agent\***

Quinto Annibale/Mark Joblin

Marion Thomas/Whitevale and District Resident's Association	David Donnelly/Anne Sabourin
1133373 Ontario Limited, White Sun Developments Limited and Levbovic Enterprises Limited	Michael McQuaid
Zavala Developments Incorporated, Hunley Homes Limited, 1350557 Ontario Limited, Affiliated Realty Corporation and Chestermere Investments Limited	Rob Howe/Anne Benedetti
Mattamy (Seaton) Limited	John Alati
Regional Municipality of Durham	Cindy Boyd
Ministry of Municipal Affairs and Housing	Irv Shachter/ Peter Matheson-Young
Ontario Infrastructure and Lands Corporation	Jason Park
Regional Municipality of York	Robert Miller
Toronto and Region Conservation Authority	Jonathan Wigley/Chris Jones*

**Participants for prehearing**

Transport Canada	John Connolly*
West Whitby Landowners	Caterina Facciolo

**DECISION DELIVERED BY J. de. P. SEABORN AND ORDER OF THE BOARD**

**INTRODUCTION**

[1] The matters before the Board relate to approvals which are sought for two policies of Official Plan Amendment No. 22 ("OPA 22") and the individual land use schedules for the Neighbourhood Plans. OPA 22 implements the Central Pickering Development Plan ("CPDP") for the Seaton Urban Area ("Seaton Community"), and resolves several deferrals to the City of Pickering ("City") Official Plan ("OP"). The

purpose of the hearing was to address Phase 2 issues, a decision having been rendered in respect of Phase 1 on September 28, 2012.

[2] At the conclusion of the evidence presented in Phase 1, the Board approved OPA 22, with the exception of Policy 11.23, Policy 11.74 and the individual land use schedules for the Neighbourhood Plans (“NP’s). At the request of the parties, the Board’s order was withheld pending a decision in respect of Phase 2, which addressed the remaining policies requiring approval to implement OPA 22 in its entirety.

[3] At the commencement of the hearing, Mr. Annibale advised that the majority of the issues for Phase 2 were either resolved or should be deferred (on consent) to Phase 3, which is scheduled to commence in May, 2013. Consequently, there was one outstanding issue identified by Marion Thomas and the Whitevale and District Resident’s Association (“Residents”), described below.

## **ISSUES**

[4] The December 5, 2012 Procedural Order identified twenty-two issues relating to Policies 11.23, 11.74 and the individual NP’s for the Seaton Community. The issue remaining for adjudication, raised by Ms. Thomas and the Residents, is as follows:

*21. The plan fails to identify or recognize the significance and importance of the Whitevale Heritage District Boundary. See Attachment 8 to the Procedural Order showing The Heritage District.*

[5] Given the outstanding matter related to Neighbourhood Plan 18: Mount Pleasant Neighbourhood Plan (NP18), the balance of the NP’s were not at issue and as indicated in the decision and order set out below, each are approved in accordance with the planning evidence provided at the hearing.

## **EVIDENCE AND FINDINGS**

### **Planning Background**

[6] Several planners testified, explaining the history leading up to the development of OPA 22 in its final form and how the individual NP’s (which represent Schedules VIII to XIII to the OP) were formulated. Paul Lowes, Carl Bray, Emma West, Lindsay Dale-

Harris and Robert Martindale were qualified to give opinion evidence in the area of land use planning (and in the case of Ms. West, Dr. Bray and Mr. Martindale, in heritage planning as well). Additional witness statements were filed in support of approving the balance of OPA 22 and the individual NP's, however the appellants coordinated their respective interventions thereby reducing the amount of evidence that was heard and the length of the hearing.

[7] It was the collective opinion of Mr. Lowes, Ms. West and Ms. Dale-Harris that Policies 11.23 and 11.74 and the individual NP's should be approved as each have regard to matters of provincial interest and the decision taken by Pickering Council, are consistent with the Provincial Policy Statement (PPS), and conform to applicable provincial plans, in particular the CPDP and the Growth Plan. Mr. Martindale offered a contrary opinion in respect of NP18, testifying that the proposed development compromises the integrity of the Whitevale Heritage Conservation District ("Conservation District") by introducing land uses that are inconsistent with the rural cultural landscape. It was Mr. Martindale's overall opinion that because the Conservation District is not shown on the land use map depicting NP18, the implication is "that heritage issues were an afterthought and were not properly considered in the development of the Neighbourhood Plans" (Exhibit 1J, Martindale Witness Statement, paragraph 3.14).

[8] Mr. Lowes provided detailed testimony explaining the planning process leading up to the development of the NP's and the two remaining policies for which approval is requested. The individual land use plans for the Seaton Urban Area represent several years of planning directed by a myriad of policies dating back over 30 years. These lands have been designated in the Durham Region Official Plan ("Durham OP") as part of the Urban Area since 1978. The Hamlet of Whitevale ("Hamlet") was excluded from the designation (as were the hamlets of Brougham and Green River). The Seaton Community was identified in the 1983 Pickering District Plan and has been designated in the City's OP as the Seaton Urban Study Area since 1997, but it excluded the lands generally west of the western branch of the Whitevale Creek, north and south of the Hamlet (Exhibit 1I, Lowes Witness Statement, paragraphs 3.1, 3.2). The Seaton Urban Area is bounded by the C.P. Rail line to the south, the West Duffins Creek to the west, Highway 7 to the north including Provincially owned lands north of the Hamlet of Green River, and Sideline 16 to the east (Exhibit 1J, West Witness Statement, paragraph 4.1).

[9] Pursuant to the provisions of the *Ontario Planning and Development Act (1994)* the CPDP was prepared and approved by the Ministry of Municipal Affairs and Housing (“MMAH”) and came into effect by Provincial Order-in-Council dated May 3, 2006 and was amended on June 6, 2012. A provincial plan, the CPDP includes a land use schedule (Schedule 2) which is reflected in the land use designations set out in OPA 22 and the NP’s, as well as land use, housing, employment, social institutional and recreational facilities, transportation, servicing, cultural heritage and design policies. Section 5.1 requires that the goals, objectives and policies of the CPDP be implemented as amendments to the City’s OP through detailed NP’s (Exhibit 1I, Lowes Witness Statement, paragraph 3.3). Mr. Lowes testified that the conformity amendment to the City’s OP was prepared in order to implement the policies set out in the CPDP. Settlement discussions facilitated by the Provincial Facilitator ensued in late 2010/early 2011 and Minutes of Settlement (“MOS”) were signed by the private landowners, the Ontario Infrastructure and Lands Corporation (“OILC”), the City, MMAH and the TRCA. In January 2012 the CPDP was amended and the Minister declared the development of the Seaton Community a matter of provincial interest.

[10] The Seaton Urban Area is divided into six neighbourhoods and the Province owns lands in each of these neighbourhoods, including significant lands designated throughout the area as “Natural Heritage System”. Schedule A to OPA 22 sets out the range of land uses planned for the Seaton Urban Area. Ms. West explained that land use designations applied to the Provincially owned lands within NP18 include the Hamlet Heritage Open Space (“HHOS”) lands, Low Density Area and Heritage Lots. NP18 also identifies Whitevale Road, from the eastern boundary of the Hamlet to the eastern limit of the neighbourhood as a Character Road. The Hamlet is adjacent to Neighbourhood 18. The Conservation District, as defined in the 1990 Whitevale Heritage Conservation District Plan (“Conservation District Plan”), extends east from the Hamlet towards Sideline 26 (Exhibit 1J, Tab 39, West Witness Statement, paragraphs 4.5 to 4.9). In addition to the Province’s substantial landholdings within Neighbourhood 18, White Sun Developments Inc. (“White Sun”) owns three properties within (and two properties outside) the Conservation District, which are designated as Low Density Areas in the CPDP (Exhibit 1J, Dale-Harris Witness Statement, paragraph 5.0).

[11] The decision approving OPA 22, with the exception of Policies 11.23 and 11.74 and the individual NP's, was issued in September 2012 and the Board's order withheld pending a decision on Phase 2.

[12] Policy 11.23 was described by Mr. Lowes as an "encouragement policy" which provides direction to the City to encourage York Region to improve 14<sup>th</sup> Avenue between Donald Cousens Parkway and the York-Durham boundary in order to connect to the Whitevale Road by-pass. The Whitevale Road by-pass/ Fifth Concession Road is to be a regional road and the final alignment will be determined through the Class EA process. The road network has been designed to divert traffic away from the Hamlet itself and connect it to the surrounding Mount Pleasant Neighbourhood through local streets. I adopt the opinion of Mr. Lowes that Section 11.23 is an appropriate policy which provides direction to the City and addresses concerns of York Region (as confirmed by Mr. Miller's submissions) through the revised wording set out in Exhibit 11, Tab 33, p. 1711.

[13] Policy 11.74 addresses phasing of development consistent with the delivery of road and transit infrastructure and requires the preparation of a Staged Servicing and Implementation Strategy ("SSIS"). The purpose of the SSIS is to identify the phasing of development in Seaton and the timing and sequencing and costs of major infrastructure and services required by each phase. Mr. Lowes testified that Policy 11.74 requires that the SSIS determine how much development can proceed in the absence of any of the external road linkages or interchanges further linking development and phasing of development to the delivery of road infrastructure. The revised wording proposed for approval specifically requires a transportation study to be undertaken and the need, and if warranted, the extent and timing of additional transportation improvements that may be required to support development beyond the first phase (Policy 11.74(b)). There is also a provision that indicates that if the Whitevale Road by-pass bridge crossing of Duffins Creek is delayed, the infrastructure staging plan will identify how traffic will be directed to restrict traffic flow through the Hamlet (Policy 11.74(c)). Based on the amendments proposed to Policy 11.74, it was the opinion of Mr. Lowes, which I accept, that "Section 11.74 of OPA 22 sufficiently addresses the matter of phasing of development in line with the delivery of road and transit infrastructure" (Exhibit 11, Lowes Witness Statement, paragraph 7.1).

[14] NP's 16 (Schedule VIII-Lamoreaux), 17 (Schedule IX-Brock-Tauton), 19 (Schedule XI-Wilson Meadows), 20 (Schedule XII-Thompson's Corners), and 21 (Schedule XIII-Pickering Innovation Corridor) were not at issue. The detailed land uses for the individual NP's were included in the evidence of Mr. Lowes. There was no challenge to his opinion, which I accept, that each constitute good planning, implement the policies set out in the CPDP and OPA 22, have regard to the provincial interest, are consistent with policy statements issued by the Minister, and conform to all applicable provincial plans.

### **Neighbourhood Plan 18: (Schedule X-Mount Pleasant)**

[15] As indicated at the outset, OPA 22 is a conformity amendment designed to implement the CPDP. The land use schedule for the CPDP is required to be reflected in OPA 22. Specifically, OPA 22 amends Schedule 1 – Land Use Structure in the City's OP by replacing the "Seaton Urban Study Area" designation with the designations of "Community Nodes, Mixed Corridors, Prestige Employment, Low Density Areas, Medium Density Areas and High Density Areas" for the Seaton lands. Relevant to NP18, OPA 22 replaces the "Agricultural Areas" designation immediately east of the Hamlet with "Hamlet Heritage Open Space" and "Low Density Areas" designations (Exhibit 11, Tab 33, OPA 22, p. 2). Ms. Thomas and the Residents argued that the permitted uses within the new designations negatively impact and compromise the integrity of the lands outside the Hamlet, but within the Conservation District. Several issues were identified by Mr. Martindale, which are addressed below.

[16] NP18 is the western most neighbourhood in the Seaton Urban Area and is generally surrounded by the Seaton Natural Heritage System on all four sides of the neighbourhood. It was Mr. Martindale's view that because the boundary of the Conservation District is not included on the land use map for NP18, heritage issues were an "afterthought" and not properly considered in planning for the neighbourhood. Mr. Martindale suggested that the boundary should be shown on NP18 thereby providing a locational context for the land uses within the Conservation District. Simply put, if the boundary were shown the integrity of the Conservation District would be maintained by continuing the current pattern of development along Whitevale Road by providing for minimum lot depths, establishing a 'heritage home enclave", and providing



a buffer that would not allow uses such as community parks and elementary schools, permitted by the HHOS designation.

[17] The difficulty with Mr. Martindale's opinion is two-fold. First, the Conservation District boundary is not identified on any of the schedules in the City's OP, and for good reason. The boundary is not included because the Conservation District Plan was never intended to act as a land use plan and does not set out any designations or land use restrictions. Moreover, the Conservation District Plan defers to the City's OP on land use matters and recognized that new buildings and new construction will occur within the Conservation District as part of the urbanization of the Seaton Urban Area (originally identified under the Seaton Community Plan). Second, it is clear that cultural heritage was comprehensively considered in the development of the CPDP as evidenced by the series of policies addressing cultural heritage values. Nevertheless, Dr. Bray acknowledged (following a comprehensive review of the City's approach in addressing heritage values) that the CPDP made significant changes to the Heritage Conservation Plan. In this regard he confirmed what he had told the Residents in previous correspondence:

"that the hamlet's heritage character could still be retained with a foreshortened eastern buffer. It further determined that the buffer would not simply remain as farm fields, or be reverted to a natural state, but would instead be an integral part of the larger proposed community, with social, institutional and recreational uses permitted as well as open space. It is not clear why this determination was made but, since the CPDP is a Provincially-mandated plan that supersedes all subsequent planning policies, we must abide by it"  
(Exhibit 11B, Bray Memo, April 26, 2011).

[18] Heritage issues were considered throughout the development of the plans for the Seaton Urban Area, incorporated into the CPDP and are reflected in OPA 22 and NP18. With respect to the single issue (#21) identified for the hearing, I find that NP18 does recognize the importance and significance of the Whitevale Heritage District Boundary. As indicated above, a "boundary" need not be shown on NP18 to reflect the heritage character of the area.

[19] Additional matters beyond the issue identified for the hearing were raised by the Residents through the evidence of Mr. Martindale. Mr. Martindale testified that NP18 fails to maintain the integrity of the rural cultural landscape. The argument advanced was that the policies of the CPDP have not been properly reflected insofar as the HHOS designation is permitted directly adjacent to the Hamlet. That area, the Residents

argued, was intended by the provisions of the CPDP to act as a buffer and the active recreation uses (and to a lesser extent, the location of the Elementary School) “have the potential to be intrusive in the sense that they will incorporate illuminated parking lots and field, along with buildings that are much larger and more institutional in character than any buildings presently” in the Conservation District (Exhibit 1J, Martindale Reply, paragraph 2.2.12).

[20] The HHOS designation adjacent to the Hamlet implements the policies and land use schedules contained CPDP. One of the eight goals of the CPDP is the “integration of cultural heritage into the new community fabric by drawing on the physical legacies of original aboriginal and European occupations” (Exhibit 1E, Tab 17, CPDP, p. 984). Section 4.2 provides detailed objectives in respect of cultural heritage and stipulates that it is a policy of the CPDP to recognize the importance of cultural heritage features in the development of the NP’s. In particular, Policy 4.2.2 provides:

2. Ensure that Neighbourhood Plans for lands adjacent to the designated Hamlet of Whitevale heritage conservation district will:
  - a) Demonstrate appropriate transitional design and compatibility with the area’s existing character, including use of social, institutional, open space and recreational and renewable energy systems to serve as a buffer, as shown on Schedule 2 and referred to as Hamlet Heritage Open Space;

[21] Schedule 2 of the CPDP, OPA 22 and NP18 depict the area immediately adjacent to the Hamlet as HHOS. The Residents interpretation of Policy 4.2.2 was that the HHOS designation should be adjacent to the boundary of Conservation District, not adjacent to the Hamlet. In their view, the CPDP has been misunderstood and the HHOS designation should be shifted to the east. The position taken by the Residents is largely premised on the submission that the CPDP does not include policies to protect the lands that are specifically within the Conservation District. Rather, the policies are formulated to protect lands adjacent to the Conservation District with the result that there exists a “gap” in heritage conservation planning. The difficulty with this interpretation and Mr. Martindale’s opinion is that clearly the HHOS designation was developed to act as the buffer to the Hamlet, in recognition of the cultural heritage features. The HHOS designation was never intended to act as buffer between the Conservation District boundary and development to the east. This very issue was raised during the development of the CPDP. The City advised MMAH that some members of the public “had the impression that the HHOS would remain undeveloped either as

agricultural fields or reforested. In both instances, the residents had the impression that there would be a physical separation between new urban development and the Hamlet itself” (Exhibit 1H, Tab 29, p. 1441). MMAH responded, referring to correspondence between the Minister and local residents, reaffirming that the “Minister clarified that the schools and parks proposed in the Draft Neighbourhood Plan would be examples of social, institutional and open spaces uses that could serve as buffers between new residential development planned for Seaton and the Hamlet of Whitevale provided they demonstrate appropriate transitional design and compatibility with the area’s existing character” (Exhibit 1H, Tab 31, p. 1447). It is clear that the HHOS designation reflected in OPA 22 was mandated by the CPDP and is implemented, as required, through NP18. As explained below, the evidence also supports a finding that the proposed uses demonstrate appropriate transitional design and compatibility, subject to further refinement through the site plan process.

[22] Mr. Donnelly submitted that only passive recreation and small scale land use should be permitted throughout the Conservation District (especially in the HHOS) and that the Community Park should be removed from the area as a use. As indicated above, the Province has consistently taken the position that elementary schools and active parks are permitted in the HHOS, and that community input could be solicited through the site plan process to engage residents in decisions regarding the location, orientation and buffering of the proposed elementary schools and parks from the Hamlet (Exhibit 1H, Tab 31, p. 1448). Mr. Lowes opinion was consistent in this regard and he indicated that the “demonstration of appropriate design and compatibility will be through site plan control and the City’s design of open space and recreational facilities” (Exhibit 1I, Lowes Witness Statement, paragraph 4.6.3). There is no basis upon which to conclude that the uses proposed for the HHOS designation fail to demonstrate appropriate transitional design or compatibility. The contrary is true. The uses closest to the Hamlet are specifically designed to act as a buffer, which is why the HHOS designation is employed. Low density residential development is slated for areas beyond the HHOS rather than immediately adjacent to the Hamlet. Given the Seaton area has been planned for urban development for over 30 years, the choice of land uses respect the Hamlet and provide protection. Development is planned to be more intense as it moves further away from the Hamlet.

[23] Although more properly a site plan matter, the City did provide a preliminary design for the Community Park in the form of a concept plan, showing a proposed layout with sports fields and associated parking. Mr. Martindale's view was that because the Community Park will be illuminated and includes a parking lot, it is an inappropriate use adjacent to the Hamlet, within the Conservation District. However, as Ms. West explained, the policies of OPA 22 require adequate buffering of illuminated outdoor recreational facilities to adjacent homes. The design of the park is not complete and therefore programming and the location of park uses and facilities and their proximity to Whitevale Road and the Hamlet and the design with respect to the adjacent character have not yet been determined. The details and design will be addressed at the site plan stage. Moreover, the policies of OPA 22 require that three community parks and two recreation centres must be located in Seaton. The Community Park adjacent to the Hamlet is not a recreation centre, clearly a more intense year around use. I accept that any impact from the Community Park adjacent to the Hamlet can be addressed through detailed design as part of the site plan process (Exhibit 1J, West Reply, p. 1833).

[24] Mr. Martindale testified that the maintenance of the character of Whitevale Road is "of utmost importance to the integrity of the Whitevale Heritage Conservation District" (Exhibit 1J, Martindale Witness Statement, paragraph 3.3). The *Seaton Neighbourhood Planning Background Report* prepared by Dr. Bray, a study which Mr. Martindale relied upon, reinforces the heritage significance of Whitevale Road and acknowledges that with the introduction of the CPDP, that integrity will be fundamentally altered. The urbanization of Seaton necessitates this fundamental change. However, Mr. Martindale was not satisfied with the policies contained in the CPDP and OPA 22 designed to protect the heritage character of Whitevale Road, despite the fact that Sideline 26/Whites Road and the proposed Whitevale By-pass will be the main spines running through the neighbourhood. The Community Node on Sideline 26/Whites Road is planned to be the heart of the neighbourhood, well separated from the Hamlet. OPA 22 includes extensive policies designed to protect Whitevale Road and identifies it as a Character Road. Nevertheless, Mr. Martindale recommended that Whitevale Road be integrated into the Conservation District by requiring that the depths of lots fronting onto Whitevale Road be a minimum of 150 feet on the north side and 200 feet on the south side of the road. In his view, this would improve transition from the Hamlet of Whitevale and "maintain the integrity of the Heritage Conservation District, including Whitevale Road, while proposed uses do not e.g. Community Park and elementary school"

(Exhibit 1J, Martindale Witness Statement, paragraph 3.4). Similarly, Mr. Martindale recommended that a reserve area be established along Whitevale Road as a heritage home enclave, where existing homes could be protected and unprotected heritage homes moved to the enclave. In addition, it was suggested that consideration should be given to returning ownership of existing heritage homes over to local residents, thereby ensuring both ongoing maintenance and protection. A specific recommendation was made by Mr. Martindale that two heritage homes would relate better to the Conservation District if the alignment of Sideline 26 were altered. In addition, he suggested that a heritage impact assessment be undertaken for the Whitevale Cemetery and provision be made for its expansion.

[25] Dealing first with the proposal to establish specific lot depths along Whitevale Road, I accept the opinions offered by Mr. Lowes and Ms. West that the policies contained in OPA 22 provide direction to protect and incorporate significant heritage resources into the lot pattern of new neighbourhoods through draft plans of subdivision. To simply set lot depths is neither good planning nor a practical solution to providing transition from the Hamlet along Whitevale Road. In particular OPA 22 indicates that lot sizes, setbacks, built form and massing are provided along Whitevale Road which form a transition to higher density development located north and south of Whitevale Road (OPA 22, Sections 11.62, 11.66 d)).

[26] With respect to the second recommendation from Mr. Martindale, the establishment of a heritage home enclave, I accept the submission of Mr. Annibale that this concept is simply not contemplated by the land uses or the policies set out in either the CPDP and OPA 22. Rather, the approach taken in the governing policy documents is to protect the Hamlet itself, identify Whitevale Road as a "Character Road" and protect significant heritage lots, identified as HL on NP18. One of the reasons for the recommended heritage home enclave was that the Residents indicated that the heritage homes located along Highway 7 were previously demolished. The difficulty with developing a heritage home enclave is that it ignores the guidance provided in the CPDP, which represents Provincial direction on how to protect heritage resources. In this regard the objectives in respect of cultural heritage are to restore, rehabilitate, protect and conserve significant cultural heritage resources; and to record and salvage all built cultural heritage features and/or archaeological remains that cannot be conserved in place and document all displaced cultural heritage landscapes (Exhibit 1E,

Tab 17, CPDP, p. 1003). The evidence indicates that NP18 adopts these objectives, providing protection for specific heritage lots on the land use plan and ensures that there is no residential development within the HHOS or Seaton Natural Heritage System designations, each of which make up a significant portion of NP18.

[27] Mr. Donnelly submitted that direction should be given requiring a heritage assessment of the Whitevale Cemetery (privately held), which is on the south side of Whitevale Road. Low density residential development is designated to the east of the cemetery and the lands directly adjacent to the west is part of the natural heritage system. While the rationale for providing an increased buffer to the Whitevale Cemetery was unclear (beyond the argument that it is a heritage feature) and there was no evidence to suggest that the owner is considering an expansion, the evidence suggested that the design of the subdivision to the east could include significant plantings and trees to act as a buffer. In the final analysis, the rationale for an independent study of the Whitevale Cemetery or further buffering was not convincing. Finally, while the CPDP includes a policy requiring consideration of the expansion of the Brougham Pioneer Christian Cemetery, no such direction exists in respect of the Whitevale Cemetery.

[28] Mr. Martindale testified that “the two heritage homes on the east side of Sideroad 26 would better relate to the remainder of the Heritage Conservation District if they were located on the west side of Sideline 26” (Exhibit 1J, Martindale Witness Statement, paragraph 3.2). In this regard, he indicated a preference for the draft version of NP18 (April 2011). However, as explained by Mr. Lowes, the alignment of Whites Road/Sideline 26 is subject to an environmental assessment undertaken by Durham Region. The Region has selected an alignment which is different from what was shown on the draft NP18. The preferred alignment is reflected on NP18. The final alignment of the road will be determined through the environmental assessment process, not through the planning process for the NP’s. On this basis, I reject the recommendation that NP18 should be amended to show a different alignment of Sideline 26. As Dr. Bray pointed out, the suggestion that these two heritage homes be instead relocated (as opposed to a change in alignment) does not represent best practices as they relate to heritage conservation. Retention of these homes *in situ* permits, among other matters, conservation of their related landscape features (Exhibit 1J, Bray Reply, paragraph 2.4).

[29] In evaluating the evidence, especially as it relates to heritage values, there is no question that residents of what has been largely a rural setting are faced with urban development and, as Mr. Howe submitted, change is difficult. The Conservation District plan was developed to protect the Hamlet, the Whitevale corridor and built heritage resources (such as Turner House). It was not however intended to act as a land use plan. What the Province did in adopting the CPDP was to delineate a clear vision for the Seaton Urban Area and it provides clear direction in this regard, including specific mechanisms to protect cultural heritage. Dr. Bray indicated, with reference to the *Seaton Cultural Heritage Resources Assessment (1994)*, that maintaining this most special heritage landscape corridor within Seaton is a key challenge for planning a new community:

“It is my opinion that the current OPA 22, which adopts the majority of the recommendations made in my 2010 Whitevale Road Corridor HDC Review, addresses this objective by conserving significant built heritage resources within the corridor and by conserving viewsheds adjacent to Whitevale Hamlet , within the proposed Hamlet Heritage Open Space. Conservation of entire farmsteads may be possible in a few areas, such as within Natural Heritage Systems and, in modified form, in association with proposed schools and community facilities. As for the integration of agricultural activity within the HCD’s eastern portion, the CPDP takes an alternative approach by concentrating agricultural activity within the Duffins Rouge Agricultural Reserve, a very large area that abuts the western edge of Whitevale Hamlet. It appears that conservation of rural character has been shifted to that side of the hamlet and that the eastern side is to have a character that is a transition into the new mixed use neighbourhoods of the proposed Seaton community” (Exhibit 1J, Bray Witness Statement, p. 1744).

As Dr. Bray testified, the approach taken in the CPDP represents a compromise between saving the exiting setting and accommodating major redevelopment.

[30] I find that OPA 22 and the individual NP’s, including NP18, conform to the CPDP which is, as both Mr. Park and Mr. McQuaid submitted, in full force and effect and must be adhered to. I also accept that significant thought has been put into the CPDP especially given the Province has been the primary landowner in the Seaton Urban Area since the 1970’s. The vision laid out by the Province in the CPDP is appropriately reflected in the policies contained in OPA 22.

[31] Finally, adopting the opinion of Ms. Dale-Harris, I find that the NP’s fairly represent an appropriate balancing of all interests. The CPDP, to which OPA 22 must

conform, contains several objectives and goals for the Seaton Urban Area and policies surrounding cultural heritage cannot be read in isolation. The CPDP establishes a comprehensive new vision for Central Pickering – that of a sustainable urban community integrated with a thriving agricultural community. The allocation of employment and residential areas, the recognition of the Hamlet of Whitevale, the inclusion of measures to support and protect heritage resources, the transportation network and the natural heritage designations and policies are all designed to ensure that a sustainable urban community will be developed (Exhibit 1J, Dale-Harris Witness Statement, paragraph 6.3).

[32] Mr. Donnelly suggested that the Board has the ability to amend, or direct the Province to amend, the CPDP. It was also suggested that a direction be given to the City and the Province to enter into a memorandum of understanding (“MOU”) that built heritage resources be occupied or a separate MOU be negotiated to sell the heritage lots within the Conservation District to either the original landowners or current tenants. I reject both of these submissions. The CPDP is a provincial plan developed under the provisions of the *Ontario Planning and Development Act* and while the Board has wide powers under the *Planning Act*, there is no ability to amend a provincial plan. The City was required to enact an official plan amendment to conform to the CPDP and OPA 22 represents that exercise. The bulk of OPA 22 was approved in September 2012 and what remains for approval are the individual NP’s and two policies. The Board’s jurisdiction is restricted to making a decision on the remaining policies and the individual land use plans, in accordance with the provisions of the *Planning Act*. With respect to the concept of directing execution of an MOU, I accept Mr. Annibale’s submission that there is no ability for the Board to make the order sought. As Mr. Shachter indicated throughout the hearing, the manner in which the Province (and OILC) manages its heritage properties was never identified as an issue for the hearing, nor should it be. MOU’s are voluntary agreements and the suggestion that a direction be made to the City and the Province to enter into any kind of agreement is not necessary or appropriate.

## **DECISION AND ORDER**

[33] For all of the reasons given, the appeals are allowed and Policy 11.23, Policy 11.74 and the Neighbourhood Plan Land Use Schedules-Schedules VIII to XIII to the



Pickering Official Plan are approved. The Board orders that OPA 22, as set out in Exhibit 11, Tab 33 is approved.

### **PHASE 3 PREHEARING**

[34] The hearing of Phase 3 issues, which were identified as general topics in the Board's Order issued December 5, 2012, is scheduled to begin on May 27, 2013 and continue to June 28, 2013. Phase 3 will address the issues deferred from Phase 2, as well as the draft plans of subdivision, including conditions. Counsel advised that more hearing time may be required in early July. The requirement for additional hearing days will be revisited once the issues are determined for Phase 3. In this regard, a further prehearing is necessary to finalize a procedural order to govern the conduct and organization of the hearing. The parties and participants for Phase 3 agreed to provide their issues to the City (accepting that some may be in draft form) no later than March 22, 2013. The City will provide a draft procedural order that will form the basis for the agenda for the prehearing. The prehearing has been set for two days in the event motions are required. At the request of Counsel, the prehearing for Phase 3 is set for two days, commencing **Tuesday April 2, 2013 at 10:30 a.m. at:**

**City Of Pickering  
Council Chambers  
One The Esplanade  
Pickering, ON**

No further notice will be given and I remain seized of the appeals.

"J. de P. Seaborn"

J. de P. SEABORN  
VICE-CHAIR