



THE PRESERVATION OF
AGRICULTURAL LANDS
SOCIETY (PALS)

*Working to Protect the
Best Farmlands in Canada
Since 1976*

SPRING 2013

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PRESIDENT'S LETTER

Dear PALS Supporters,

Over the past several months numerous prime farm and fruit land preservation threats have come to the fore. From the Ontario Municipal Board (OMB) hearing regarding PALS appeal of the Fort Erie Raceway OMB decision, to the north west Niagara Falls expansion attempts of Club Italia, to the Hamilton Aerotropolis expansion, PALS' research consultant, John Bacher, has been extremely busy preparing briefs and attending municipal and regional meetings, providing advice to PALS and other groups, and presenting our case for farmland and natural area preservation at the OMB.

At the same time, he has kept abreast of the lengthy ongoing discussions between the Region of Niagara and the Province regarding the Region's attempts to allow urban expansions in Niagara Falls, and West Lincoln through the use of inflated population projections. So far the Province has stuck by its farmland and natural area preservation - position, with the latest evidence being a very strong Ministry letter to the Regional Municipality of Niagara planning staff opposing the Club Italia expansions onto grape lands in Niagara Falls. (See article.)

John has also attended ongoing meetings regarding planned provincial expressways. While his and others' efforts to prevent the Niagara-GTA (Mid Peninsula Highway) corridor were quite successful in protecting Niagara fruit and prime agricultural lands and the Escarpment, there is still uncertainty regarding the routing of a new transportation corridor between Highway 406 to the QEW near Fort Erie. Nevertheless, the Ministry of Transportation, more ominously, seems quite determined so far that there be a new GTA west corridor which would run through prime farmland in the Burlington and Milton areas, and John is now attending meetings in an effort to provide alternative, more transit-friendly options.

Meanwhile PALS tender fruit land 'easement' promotional team is hoping to make a foray up to Queens Park to meet with the new Premier Kathleen Wynne, who is also the Minister of Agriculture and Food. This will be the fourth 'Minister of Agriculture' venture to Queens Park, the first being thwarted by Ministry bureaucrats, the second by an election and the third by 'prorogation'. Our efforts are particularly important as the 2015 Greenbelt Review discussions are underway and the supposedly "permanent" boundaries abutting the irreplaceable fruit lands are under ever-accelerating pressures. The Region is hosting ongoing public meetings and by the time you receive this letter PALS will have attended at least four to date, where we have noticed considerable farmer pressure against what they feel are Greenbelt constraints on the fruit lands.

We appreciate your support for our ongoing work and will keep you informed along the way.

Regards - Val O'Donnell, President

Here's a photo of our 2013 Heritage Mennonite hand crafted quilt.



The pattern is the same as last year's quilt, but with varied colours of pink, burgundy and shades of green, against a cream background.
2nd prize is a Robert Bateman print of Seagulls.

Tickets cost \$2 each, 3 for \$5 and \$15 per book of 10. (note slight reduction for a book from 2012 price of \$17)

p.s. The very happy winner of last year's quilt was Amanda Hinnels of Burlington.

AROUND THE PROVINCE

Farmland and Natural Areas Threatened in Midhurst

One of the cornerstones of the Growth Plan intent to prevent sprawl in the vicinity of Midhurst area of the Greenbelt, is the restriction of any urban boundary expansions to the municipalities of Barrie and Orillia, and later, through an amendment No. 1 to the Growth Plan, Alliston. Recently, John Bacher, as a result of a speaking tour related to his book, *“Two Billion Trees and Counting: The Legacy of Edmund Zavitz”*, experienced some disturbing insights as to how a failure to enforce the policies of the Growth Plan is threatening the future of Springwater Provincial Park. It is proposed to be closed, which would mean that all its facilities, such as washrooms, would be shut down and garbage collection would cease.

Under the Growth Plan there are not supposed to be any more urban boundary expansions in Midhurst. However, after touring around Springwater Provincial Park and learning its history, John had this to say, *“I can certainly see why this policy is in place. Once a desert, the park is now in the part of an ecologically restored landscape with abundant wildlife. Six deer were seen roaming through the park on our visit, and it is the most southerly location in Ontario to view bears. In a forest Right across the road from the park we viewed an application to change the zoning from environmental protection to urban residential. Unless the Growth Plan is enforced however, which would involve OMB appeals to re-zonings that violate its principles, the dust bowl of sand which reforestation in the past reversed, may be replaced with one of cement.”*

ACROSS THE REGION

PALS Argues for a Rehearing of Fort Erie Motorway at March 21st OMB Hearing

On December 6, 2012 the Executive Chair of the Ontario Municipal Board, (OMB) Lynda Tanaka, effectively issued a stay to OMB Vice Chair Susan de Avellar Schiller’s November 12th 2012 approval of the Canadian Motor Speedway in Fort Erie. This was done by way of a letter granting PALS the opportunity to argue the merits of its Section 43 request for a rehearing, based on OMB Vice Chair Schiller’s possible denial of natural justice to PALS in refusing to consider the expert opinions of PALS proffered witness. Dr. Hugh Gayler, based solely on his “self declared” membership in PALS.

The March 21st review hearing at the Board Offices was chaired by Hearing Officer James R. Mackenzie, and PALS agent John Bacher argued PALS case in opposition to legal counsel for Fort Erie, the developer, 1746391 Ontario, and the Region of Niagara (the latter merely indicating support for the town and the developer.)

Key to PALS arguments was Executive Chair Tanaka’s inclusion in her letter of a reference court case, “Henderson v. Risi” presided over by Ontario Superior Court Justice, Mr. Alan Lederman. This involved an attempt by a Plaintiff to deny a “proffered” expert to be qualified to testify on behalf of a defendant on the basis of a business

PALS Blossom Walkabout

You are invited to walk in our Saturday May 18th Blossom Walkabout at the home of Leo and Liisa Harju at 1746 Cream St., Fonthill.

**You can also help us by sponsoring a PALS Board Member.
(see enclosed card)**

If you are walking please phone Liisa at 905 892 7871 to indicate what pot luck food you can bring.

PALS ANNUAL MEETING : WEDNESDAY APRIL 10TH

For those of you who live close enough to attend:

You are invited to PALS

37th AGM Wednesday April 10th 7:00 p.m.

St. Catharines Centennial Library 54 Church St.

SPEAKER : DR. MICHAEL BROWNBIDGE:

Research Director, Horticultural Production Systems, Vineland Station

Subject: Food For Thought : Niagara Crops

Light refreshments at 7:00 p.m. | Business 7:30 p.m. | Speaker 8 p.m.

partnership. Despite the existence of this partnership Justice Lederman ruled that he could be qualified as an expert since, *“The assessment of ultimate reliability cannot take place at the admissibility stage. To attempt to decide the ultimate reliability of expert evidence at the admissibility stage would be akin to making a final decision before knowing all the facts.”*

The opposing parties also attempted to argue that Dr. Gayler should be disqualified on the basis of colourful extracts which they took out of context from his witness statement. They alleged that OMB Vice Chair Schiller had considered these extracts in making her decision. In response during his final arguments, Dr. Bacher pointed out that these statements were not the basis of Dr. Gayler’s disqualification by Ms. Schiller. **They were not referenced by the Vice Chair and indeed, her decision was based entirely on the arguments of his PALS membership i.e. institutional affiliation. In this way, Ms. Schiller played what the Courts have determined to be a “gatekeeper” role when the decision on the proffered expertise should have been determined by the weight of the evidence given . PALS concluded by pointing out that such a process was a fundamental denial of natural justice and therefore a rehearing of the speedway decision should be ordered under Section 43 of the Planning Act. The OMB Hearing Officer reserved his decision.**

PALS Takes Part in Niagara Region’s Review of Greenbelt

Although the government’s Greenbelt Review is not scheduled to begin until 2015 the Niagara Region has begun extensive public consultations as to what its input should be when the process starts. Three years ago when the Niagara Region did its review of conformity to the provincial Growth Plan, the Town of Grimsby indicated that it wished to use the 2015 review to urbanize its remaining tender fruit lands south of the Niagara Escarpment. This is indicative of the negative way in which the Niagara Region’s consultation may be used to mobilize supporters of the paving over of the fruit lands.

During the Niagara Region’s consultations a case needs to be made for the expansion of the Greenbelt. The rationale for this has been amply demonstrated by the region’s background study for the Growth Plan conformity plan, the Dillon Report. The Greenbelt Review offers a good opportunity for all of Niagara’s agriculturally zoned lands to be Greenbelted. This would protect Niagara from development schemes such as the Canadian Motor Speedway. (Information on the region’s planned Greenbelt consultations can be found at www.RegionalMunicipalityofNiagara-UpFront – provide your feedback on phase two of the Greenbelt Plan.)

Province Remains Firm in Opposition to Urban Boundary Expansions in Niagara- Except “Special Policy Area” of Speedway

With the exception of the *“Special Policy Area”* of the Canadian Motor Speedway, the provincial government has remained firm in its opposition to urban boundary expansions in Niagara. It has even taken the unusual measure of appealing an OMB ruling that favored Fort Erie’s attempts to change the designation of industrial lands in Fort Erie to residential to the courts. The disputed area had been suggested by PALS’ proffered expert Dr. Hugh Gayler as a possible alternative site for the Canadian Motor Speedway. Led by a former Ontario legislator, Ron Kantor, developers and land speculators from many corners of Niagara are preparing for a pre-hearing conference of the OMB against the provincial government’s opposition to the proposed Niagara Regional Growth Plan conformity amendments.

The strength of the province’s objections to various proposed amendments to expand urban boundaries in Niagara was also shown in a March 6th, 2013 letter, to the Niagara Region from Mark Christie, Ministry Manager of Community Planning and Development. Regarding Niagara Falls and regional Niagara efforts to claim that the proposed Niagara Falls urban expansions conform to the weaker 1997 Provincial Policy Statement (PPS), Christie noted that the PPS provides *“for a maximum 20-year time horizon to accommodate growth”*, while those being used to justify the expansion are based on a 28 year supply. He also pointed out forcefully that *“The analysis relies on housing data completed at the City level, not the regional level”*, and that the Ministry of Municipal Affairs and Housing, *“is not aware of any studies which demonstrate that there are no reasonable alternative locations.”* Christie also reinforced Jean Grandoni’s consultant’s arguments’ by stressing that, *“There is no planned servicing to support the urban boundary expansion.”*

QUOTABLES

Excerpts from PALS Factum to Ontario Municipal Board re Appeal for Re-Hearing

(24) It is PALS' position that OMB Vice Chair Schiller’s disqualification of Dr. Gayler as an expert, because of his membership in PALS is procedurally unfair and contrary to the rules of natural justice.

This is particularly so, given her qualification of two planners who are employees of other parties, the Town of Fort Erie and the Regional Municipality of Niagara.

(25) For a membership in a voluntary society in 1996, which required payment of a small fee of \$3 to be given more weight than employment by a municipality which involves the receipt on an annual basis thousands of dollars, certainly does warp what this section terms, *“the rules of natural justice or procedural fairness, including those against bias.”* PALS also disputes that these two municipal entities are any more *“advocacy groups”* than ourselves. They are routinely involved in informing the provincial government concerning land use policy, and on occasion appearing at Ontario Municipal Board Hearings, in the same fashion as PALS.

(31) Justice Lederman gives an eloquent description of why the changes in the Rules of Civil Procedure in Ontario were introduced. The Osborne report he stressed, was concerned with the *“issue of hired guns”* and *“opinions for sale.”* These had been *“repeatedly identified as a problem.”* Rather than serving as a gate keeping function the reforms are supposed to *“expressly impose on experts an overriding duty to the court rather than to the parties who pay or instruct them.”* Its purpose was to *“cause experts to pause and consider the content of their reports and the extent to which their opinions may have been subjected to subtle or overt pressures...”*

Conclusion

(33) In response to our motion, opposing parties may argue that had he been qualified by the Vice chair Schiller, Dr. Gayler’s evidence would not have impacted the outcome of the hearing. However, the determination of the hearing, involving the removal of 827 acres of agricultural zoning and designations, inherently rested on the need for opinion evidence from qualified expert land use planners from all parties to the Hearing.

(34) These experts, including Dr. Gayler, followed Vice Chair Schiller’s directions regarding meetings on-site and pre-submission of their expert advice on time - although the proponent’s and the municipal planners failed to respond to Dr. Gayler’s evidence- and certified in writing (form 53) their over-riding duty to the Board Member. Only Dr. Gayler was disqualified from presenting his recognized expert evidence.

Note: Complete arguments will be up soon on our PALS web site @ www.Preservationofagriculturalandsociety.com.

"Response By Preservation of Agricultural Lands Society (PALS) To Draft Provincial Policy Statement (PPS) - John Bacher (PhD) November 20, 2012

1. Introduction

In general PALS is pleased with the proposed changes in the draft PPS, which address many loopholes that in the past have served to legitimate urban sprawl. There is one exception however, to the protectionist thrust of the revisions in the aggregate extraction section, which appears to encourage an approach which provides reduced protection to natural heritage lands where they conflict with aggregate resources. ...

3. Policy 1.1. 3. Settlement Areas

Regarding Settlement Areas PALS has found that the use of *“Special Policy Areas”* has been a device used to drain this term of essentially all meaning. In the case of a proposed urban expansion on full services to permit the establishment of the Canadian Motor Speedway in Fort Erie, this term was used to justify an urban boundary expansion permitting all normal urban uses except for residential ones. ... There needs to be specific language in the PPS to require that extension of an urban service area of a municipality, is indeed expanding the Settlement Area. This is needed to ensure the goal of the policy to ensure that, *“Settlement areas shall be the focus of growth or development”* and the source of *“their vitality and regeneration..... A major reform of the PPS, which is carried on in the draft policies, is the requirement that any expansion of a settlement area only take place within a comprehensive five year review of an official plan. Before this, expansions of settlement areas which had been turned down after exhaustive scrutiny, could immediately begin again. ... An improvement in the PPS would be the adoption of language similar to the Growth Plan to encourage intensification within urban areas. This would include phasing policies for specified targets for intensification and redevelopment.*

4. Policies

1.1.4 “Rural Areas in Municipalities” and 2. 3. “Agriculture”.

PALS recognizes that the principal difference between *“Rural”* and *“Agricultural”* areas in the PPS, is the more permissive attitude towards severances in the former area. While PALS believes that the prohibition of severances in agricultural

areas, except for surplus residential lots, to be the greatest achievement of the 2005 PPS, the proposed refinement in this regard appears reasonable. ... The suggested changes to the Rural Policy are all appropriate since they recognize the reality that agriculture is an important land use in this area and needs to be protected. Unfortunately however, there are no suggested additional restrictions proposed on severance activity, which in reality is the biggest threat to agriculture on Rural lands. In actual practise the only control on consents in Rural areas are minimum lot sizes, commonly two and a half acres, which tend to be imposed by public health authorities.

Planning by consents is inherently bad planning. While severances in the Rural Area do not lead to the loss of large blocks of prime Class One to Three Agricultural land, they encourage the removal of Class Four to Six land. These lands when used for pasture are an important and ecologically sustainable feature of Ontario's agricultural economy.....If consents in Rural area are not to be abolished, they should at least be further limited. One way to do this is to restrict them to infilling situations, as was done by the PPS in the Prime Agricultural Area, before they were prohibited under the 2005 PPS.

There is encouragement in the draft PPS for more agriculturally related uses within the prime agricultural area. As a safeguard, PALS believes it would be prudent that some additional working qualifications be developed. This would require that, Such uses shall be limited in scale, and criteria for these uses shall be included in municipal planning documents as recommended by the Province, or based on municipal approaches which achieve these same objectives.

5. Need For Prohibition on Urban Boundary Expansions.

PALS supports , as previously noted, the language in the draft PPS which is intended in essence to make achieving an urban boundary expansion on prime land more difficult. However, we must take this opportunity to make our case that such expansions should not be permitted. PALS is aware of detailed studies by organizations such as the Neptis Foundation which have looked at the capacity of urban boundaries. Invariably these studies have found that with reasonable population projections urban boundaries have more than enough capacity to contain future growth. What these studies conclude moreover, is that even with a freeze on urban boundaries urban densities would be too low to be supportive of transit for the next three decade planning framework.

6. Employment Areas (Section I. 3)

The tone of the section regarding Employment Areas treats them wrongly as a threatened resource. As noted in the previous paragraph these areas are considerably over-zoned. The protective attitude towards such over- zonings is a factor which encourages urban sprawl.

13. 1.7. Long-Term Economic Prosperity

PALS supports the proposed additions that have been made to the proposed long-term economic prosperity policies, especially that there be provided *"opportunities to support local food."* The new policy k), which outlines the need to minimize *"negative impacts from a changing climate and considering the ecological benefits provided by nature"* is also long overdue. An important new section which is being proposed is (d). This is *"encouraging a sense of place, through built form, cultural planning and promoting features that help define, such as cultural heritage resources."*

The entire agricultural landscape of southern Ontario is a culturally significant one. It is based on a long agricultural history with its roots in the farming practices carried out by native peoples. This needs to be appreciated since the well being of farmers who are responsible for it is a factor which is very different from the natural landscape. Although management strategies are important for the long term responsible care of natural features, they are not responsible for the creation of the very qualities of the landscape, such as the production of tender fruit in the unique Niagara tender fruit lands, that are being protected.

An appreciation of cultural landscapes is also important to protect them from inappropriate intensification. There are very few landscapes in Ontario which have gone through the cumbersome and minute detail necessary for protection as Designated Heritage Districts under the Ontario Heritage Act. These areas however, are subjected too frequently to ill considered efforts at intensification, justified through perverse and misleading applications of the PPS....

19. Minerals and Petroleum and Mineral Aggregate Resources.

Regarding Minerals and Petroleum and Mineral Aggregate Resources, PALS comments are informed by long involvement in land use planning in Ontario going back to 1976. In this regard we are familiar with a land use planning system that operated without the use of a PPS. It appears that

the first policy statement to be developed by the province, once they were provided for by revisions to the Planning Act, was done to protect aggregate resources.

The main impact of the creation of a Mineral Aggregate Policy Statement was to remove the ability of municipalities to restrict the establishment of new licensed pits and quarries through the establishment of zoning controls. Although this situation before the development of the Mineral Aggregate Policy Statement led to the defeat of a number of proposals for the establishment of new quarries, **we are not aware of any studies which documented, as is frequently alleged, that this resulted in a shortage of aggregate in various regional markets of the province. Indeed at the time, unrebutted studies by the Foundation for Aggregate Studies showed an abundance of supply in existing licensed operations.**

In general PALS finds that the draft PPS we are currently reviewing is depressingly familiar to other revisions to the planning system in Ontario since 1976. In this regard what is most disturbing is the suggestion in the draft PPS under Policy 2.4.2.2, that “*significant areas of mineral potential*” and “*known petroleum resources*” “*shall be identified.*” **This appears ominously similar to changes in the planning regime in Ontario in the early 1980s which negated policies for forest and agricultural protection through extensive mapping of potential aggregate resources. That this proposed change is now being circulated is disturbing, what with the new potential conflicts between fracking for natural gas and protection of ground water resources.**

PALS is supportive of the tougher requirements for rehabilitation on speciality crop lands for aggregate extraction. Even here however, the draft

PPS would waive these requirements if aggregate resources are below the water table. This policy is quite inappropriate considering the limited extent of lands which are now designated for Specialty Crops. These are restricted currently, (although this situation should be remedied through a consultation long overdue of other areas) to the Niagara Fruit Belt and the Holland Marsh. Priority for such additional mappings should be in Niagara on lands in Niagara Falls immediately south of the currently designated Good Grape area below Mountain Road. This policy appears to be directed solely to facilitate deep excavation in the Town of Pelham .

While it is understandable that lands that are not Speciality Crop could be rehabilitated into a natural environment condition, there are challenges to the best designed rehabilitation projects which are not considered in the PPS. Rehabilitation will be more difficult because of the unpredictability caused by climate change.

20. PALS Hopes a Stronger Planning Framework Will Emerge From PPS Consultations.

In summary, PALS hopes that a stronger land use planning framework will emerge out of the consultations regarding the PPS review. Many of the issues identified in the review are related in subtle ways. Urban sprawl for instance encourages expressways which consume large amounts of aggregate. It is to be hoped that a holistic vision will guide those who make the final decisions in this process”

Note: Complete arguments will be up soon on our PALS web site @ [www. Preservation of agricultural lands society](http://www.PreservationofAgriculturalLandsSociety.com) .



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