

ISSUE DATE:

Aug. 11, 2005

DECISION/ORDER NO:

2092



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL971478

PL030622

PL030649

PL040803

1308574 Ontario Limited and Brookfield Homes (Ontario) Limited have appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the former Regional Municipality of Ottawa-Carleton and the former Township of Goulbourn to redesignate land described as Part of Lots 26, 27 and 28, Concessions 10 and 11 from Agricultural Resource Area and General Rural Area to General Urban Area in the former Region of Ottawa-Carleton Official Plan and Agricultural Resource and Marginal Resource to Residential and General Commercial in the former Township of Goulbourn Official Plan

City File No. OCP2001-0041

OMB File No. O030111

OMB Case No. PL030622

443641 Ontario Limited has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the former Regional Municipality of Ottawa-Carleton and the former Township of Goulbourn to redesignate land described as Part of Lots 26, 27 and 28, Concessions 10 and 11 from Agricultural Resource Area and General Rural Area to General Urban Area in the former Region of Ottawa-Carleton Official Plan and Agricultural Resource and Marginal Resource to Residential and General Commercial in the former Township of Goulbourn Official Plan

City File No. OCP2001-0041

OMB File No. O030112

OMB Case No. PL030649

Brookfield Homes Limited and Del Corporation have appealed to the Ontario Municipal Board under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the Minister of Municipal Affairs and Housing to modify and approve part of the Official Plan for the former Regional Municipality of Ottawa-Carleton

MMAH File No. 06-OP-0125

OMB File No. O970262

OMB Case No. PL971478

830289 Ontario Ltd., 891748 Ontario Limited, SRI Limited, Margaret Watters (collectively known as Westpark Estates Limited Partnership) and A. Van Doormal have appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Region of Ottawa-Carleton Official Plan and the Kanata Official Plan to redesignate 5465 Fernbank Road in the former City of Kanata, from Agricultural Resource Area to General Urban Area in the Region of Ottawa-Carleton Official Plan and from Agricultural Resource to various urban uses in the City of Kanata Official Plan to permit a subdivision

City File No. OCP2001-0011

OMB Case No. PL040803

OMB File No. O040006

APPEARANCES:

Parties

Counsel

City of Ottawa

Tim Marc
G. Laurence (Student-at-Law)

Brookfield Homes (Ontario) Limited
& 1380574 Ontario Limited (Brookfield)

Michael Bowman
R. Consor (Student-at-Law)

443641 Ontario Ltd. (Del Corporation)

John Dawson
T. Piurko

Loblaw Properties Limited

Alan K. Cohen

830289 Ontario Limited, 891748 Ontario
Limited, SRI Limited, Margaret Watters
(Westpark Estates Limited Partnership)
A. Van Doormal

J. Peter Vice
Brian Karam

Ottawa-Carleton Homebuilders Association,
Minto Development Developments Inc. and
Tartan Land Consultants Inc. (Homebuilder)

Douglas B. Kelly
U. Melinz

**MEMORANDUM OF ORAL DECISION DELIVERED BY J.P. ATCHESON ON
JUNE 22, 2005 AND ORDER OF THE BOARD and DECISIONS DELIVERED
BY J. P. ATCHESON**

This is a hearing of the Board resulting from an Order of the Board dated September 17, 2004 (#1509) in the matter of appeals by Brookfield Homes and Del Corporation which seek to amend the former Region of Ottawa-Carleton Official Plan and the former Township of Goulbourn Official Plan to redesignate some 232 hectares of land from an "Agricultural Resource Area" and "General Rural Area" to "General Urban Area" in the 1997 Regional Official Plan and to redesignate from "Agricultural Resource" and "Marginal Resource" to "Residential" and "General Commercial" in the

former Township of Goulbourn Official Plan in order to allow a full range of urban development as an extension to the existing Stittsville urban area. The parties have also appealed a decision of the Minister of Municipal Affairs to modify and approve part of the Official Plan of the former Regional Municipality of Ottawa-Carleton. Consolidated with this hearing are the appeals of Westpark Estates Limited Partnership (Westpark) (Board File PL040803), which will be heard immediately upon the conclusion of the Del/Brookfield hearing.

At the commencement of the hearing the Board was presented with a number of motions of both a procedural and a substantive nature. The Board received and identified 36 exhibits including in exhibit #1 eight document books identified as exhibit 1 volume 1 thru 8 to be proven during the course of the hearing. The Board also received exhibits 37 through 50 being the motions, reply motions, their proof of service, and a request for an abridgement of time for notice by Mr. Cohen in his motion material seeking party status.

The Board also received as exhibit #51 a procedural order that among other things identifies the agreement between the parties respecting the interpretation of the issues and the issues, which are intended to govern the hearing of these appeals.

The motions considered by the Board were:

1. Motions from the City of Ottawa
2. Motions from Del Corporation
3. Motions from Brookfield
4. Motions from Loblaw Properties Limited
5. Motions from Ottawa-Carleton Homebuilders et al.

The homebuilders in their motion support the position of the City in its motion only insofar as they seek exclusion of evidence which seeks to address, consider,

interpret and or apply the policies in the 2003 Official Plan of the City of Ottawa or which seek to address, consider, interpret and or apply to the policies in any amendment or proposed amendment to the 2003 Official Plan. The homebuilders rely in part on the Decision/Order (#1097) of the Board to deconsolidate the Del and Brookfield appeals from the appeals of the 2003 Official Plan and on the understanding that this hearing would proceed under the planning policies in place at the time of the appeals.

The Board heard from Mr. Cohen, Counsel for Loblaw. Loblaw is seeking party status at this hearing and an order of the Board abridging the standard notice requirements. The Board will grant Mr. Cohen an abridgement of the notice requirement for his motion only insofar as to permit him to present his motions. Loblaw's other concerns are related to the evidence that may be adduced at the hearing regarding employment lands and employment demand evidence and the associated land needs in the 2003 Official Plan. Loblaw has no difficulty in relation to the facts and policy directions associated with the former Regional Official Plan and the former Township of Goulbourn Official Plan and the former Official Plan of the City of Kanata being the basis for the hearing. Loblaw's concern is much the same as the homebuilders in that this hearing may usurp hearings in which they have appeals still outstanding with the 2003 City of Ottawa Official Plan. In part Loblaw has relied on the decision of the Board, which deconsolidated this hearing from the 2003 Official Plan hearings.

It is clear to the Board that Loblaw has a venue for the consideration of their issues but it is not this hearing.

The Board after carefully considering Loblaw's submission denies its motion seeking party status at this hearing for the following reasons.

Loblaw will not be adversely impacted by any decision of the Board in these proceedings. The addition of Loblaw as a party at this time would add unnecessary delay and complexity to the hearing, which has already been delayed some 4 years with little or no additional benefit. Loblaw's motion is premised on the erroneous assumption that the Board will be making its decision based upon the 2003 City of Ottawa Official Plan and that the finding in this case will in some way prejudice other matters currently

under appeal in the 2003 City of Ottawa Official Plan. The appeal to the City of Ottawa 2003 Official Plan is not before this panel of the Board and any findings that this panel may make in this case are not binding on any subsequent panel of the Board.

The City of Ottawa in its motion is seeking an order restricting the evidence that may be lead in the hearing or in the alternative an order of the Board consolidating the appeals by Brookfield and Del Corporation with the already consolidated appeals in the Board files O030111, O030112 and O970262 and to consolidate as well the Westpark appeal from a decision of the Minister to modify and approve part of the Official Plan for the City of Ottawa with Westpark's appeal in Board file O040006.

The City in clause three of its motion again seeks to consolidate the matters of this hearing with the appeals against the City of Ottawa's 2003 Official Plan. This matter was revisited by the Board under a Section 43 review to the procedural order issued by Member Krushelnicki. The Board has carefully reviewed this decision and the decision of Vice Chairs Lee and Campbell, which among other things deconsolidated these appeals. This panel of the Board endorses the Decision/Order of the Board dated June 21, 2004 (Decision/Order #1097) in its entirety. To reconsolidate these appeals now would be unfair and prejudicial to the appellants and others who have relied on the Boards decision dated June 21, 2004.

The City in clauses one and two of its motion is seeking a direction excluding and or limiting evidence regarding the City of Ottawa 2003 Official Plan which for all intensive purposes is still under appeal. The matters before the Board in this hearing will find its policy directions from the planning policy documents in place at the time of the appeals and any subsequent agreements reached among the parties. The Board however would be remiss if it did not consider the best evidence related to the matter of this appeal and the Board can give such evidence the appropriate weight within the planning policy context that frames these appeals.

In this hearing contrary to what the City is requesting through its consolidation request the Board has no jurisdiction to direct any changes to the 2003 Official Plan. This document is not before the Board.

The procedural order found at exhibit #51 agreed to by all the parties will be the basis for the hearing.

After considering all of the submissions and arguments made by the City and the Homebuilders the Board denies their motions in their entirety.

In the matter of the motions of (Del Corporation) and Brookfield Homes Limited, Brookfield endorses and supports Del's motions.

Mr. Vice on behalf of his clients Westpark advised the Board that he adopts the positions advanced by Del and Brookfield.

Del and Brookfield jointly are requesting

1. an order excluding the City of Ottawa from references to any material or testimony, which interprets section 2.4.1.5. of the 1997 Official Plan of the Regional Municipality of Ottawa-Carleton in a manner contrary to evidence already led by the Region (to which Ottawa is successor) in this proceeding;
and
2. an order excluding from evidence any reference in the City of Ottawa material or testimony, which is contrary to the agreements and or representations made as between Del, Ottawa and Brookfield Homes Ontario Limited (Brookfield) upon which evidence has been prepared and on which the hearing is to proceed.

Counsel provided very complex and detailed arguments in support of their position. The concern expressed to the Board with respect to part 2 of the motion is that the City is reneging on past understandings and will be basing part of its case on the opinions of City witnesses that the best evidence upon which to adjudicate this case is yet to come.

It is incumbent upon the Board to base its decision on the best possible evidence available at the time of the hearing and within the context of the planning framework

approved and in place at the time of the applications and the agreed to procedural Order.

The Board at the commencement of the hearing does not want to stymie any party's case. The Board must be circumspect in excluding evidence through a motion process rather than through the hearing process where the veracity and value of the evidence can be determined in a more complete fashion.

It is not uncommon when a matter has taken several years to come to a hearing for witnesses to modify their evidence based upon more current information and the Board is quite capable of giving the evidence it hears the appropriate determinative weight within the context of what has been agreed upon prior to the hearing.

The parties have agreed to the hearing date, they have agreed to the procedural Order found at exhibit #51 and the issues that are outstanding.

The Board is not persuaded at this time that the City of Ottawa has acted in bad faith in its dealing with the appellants in securing studies that can be used at this hearing.

The other request is for an order excluding from evidence any reference in the City of Ottawa's material or testimony, which interprets Section 2.4.1.5 of the 1997 Official Plan of the Regional Municipality of Ottawa-Carleton in a manner contrary to evidence already led by the Region (to which the City is successor) in this proceeding.

In this regard the Board is mindful that the 1997 Regional Official Plan Policies are part of the policy basis upon which the parties have agreed to try these appeals. At the very least there may be a contextual basis to assist the Board in arriving at a decision and just because there may be different opinion evidence with respect to previous interpretations of a particular policy and its evolution is not a reason that should preclude the Board from hearing anything about the matter and giving it the appropriate weight.

The Board is equally mindful of clause D in the agreed to procedural Order, which states:

The issues set out on the "Issues List" may be raised at the hearing, but it is open to any party to dispute the relevance of any issue or the weight to be attached thereto.

Section 2.4.1.5 is found in the agreed to issues list.

The Board after carefully considering all of the submissions and arguments denies the motions of Del and Brookfield.

At this point the Board is satisfied that all of the parties in bringing their motions have acted in good faith.

The Board dismisses the motions for costs in all cases.

During the course of the hearing of the motions it was agreed by all parties that the procedural Order found at exhibit #51 was agreed to with the following 4 exceptions:

1. To use the 2003 population projections found at Page 14 of the 2003 Official Plan.
2. To use a transportation model based upon the transportation master plan (EMME/2).
3. To use the model for water infrastructure (H2O Map) and for sanitary sewer infrastructure (an Excel Spreadsheet model).
4. To use a 30% model split as opposed to a 20% model share.

The Board Orders that exhibit #51 be amended to reflect the agreed to changes.

The Board so Orders.

The Board after delivering its oral decision on the motions inquired if the parties wished time to consider the oral decision before proceeding.

The parties agreed that they were prepared to proceed.

Mr. Vice on behalf of his clients Westpark indicated that they would like to reserve the right to a limited cross-examination of witnesses on the understanding that the evidence in this hearing that is applicable would be stipulated in the hearing to follow this proceeding dealing with the Westpark appeals. (Board file PL 040803)

The Board on the agreement of the parties consented to Mr. Vice’s request.

The Board advised Mr. Vice that the member would be seized of the Westpark appeal and that this matter would be heard immediately upon the conclusion of this hearing.

During the course of the hearing the parties stipulated in exhibit #52 that the Novatech report found at exhibit #6B is admitted as fact as it relates to water and sanitary (wastewater). Namely that the Del and Brookfield lands can be feasibly and cost-effectively serviced with respect to these two pieces of infrastructure.

The parties on July 12, 2005 submitted a revised procedural order found at Exhibit #58 reflecting the Board’s directions and agreements that have been reached among the parties with respect to sanitary sewers and water supply to the appellants’ property.

The parties have also stipulated that the population projections as set out in the 2003 Official Plan Exhibit #1 Vol. 5 tab p.14 are agreed to for the purposes of this hearing and are as follows:

Figure 2.2

City of Ottawa Population, 1991 to 2021				
	Population			
	1991	2001	2011	2021
Inside Greenbelt	492,000	517,000	562,000	588,000
Outside Greenbelt:				
West	45,000	73,000	132,000	186,000
South	22,000	42,000	110,000	172,000
East	72,000	88,000	111,000	131,000
Total Urban	631,000	720,000	915,000	1,077,000
Total Rural	70,000	80,000	97,000	115,000
Total	701,000	800,000	1,012,000	1,192,000

City of Ottawa Households, 1991 to 2021				
	Households			
	1991	2001	2011	2021
Inside Greenbelt	200,000	223,000	257,000	283,000
Outside Greenbelt:				
West	14,000	24,000	45,000	67,000
South	7,000	13,000	36,000	61,000
East	21,000	29,000	39,000	50,000
Total Urban	242,000	289,000	377,000	461,000
Total Rural	22,000	27,000	33,000	41,000
Total	264,000	315,000	410,000	502,000
City of Ottawa Employment, 1991 to 2021				
	Employment			
	1991	2001	2011	2021
Inside Greenbelt	342,800	403,000	479,000	514,000
Outside Greenbelt:				
West	13,600	36,000	76,000	90,000
South	2,600	8,000	45,000	70,000
East	10,400	15,000	31,000	45,000
Total Urban	369,400	462,000	631,000	719,000
Total Rural	13,600	18,000	25,000	29,000
Total	383,000	480,000	655,000	749,000
Notes:	1. Totals may not add due to rounding 2. 1991 and 2001 are actual, 2011 and 2021 are projected 3. Population and households are based on post-censal estimates			

This population forecast in 2021 is higher than that found in the 1997 Regional Official Plan by some 177,000 persons.

The parties also agreed that they were only seeking a determination from the Board with respect to the redesignation of their land to the General Urban Area designation and were not seeking a determination on the details of their concept plans submitted with their private Official Plan Amendments to the 1997 Regional Official Plan and area municipalities' Official Plans. They are also seeking a determination of the applicability of Sections 2.2 and 2.3 of the 1997 Regional Official Plan as these policies might apply to their property.

The Board heard from Ms Wendy Nott a well-qualified land use planner. Ms Nott was retained by Del and Brookfield in December of 1999 to study and advise them on the use of their lands for urban purposes. She has provided them with consulting advise

on their appeals, and the policies of the 1997 Regional Official Plan, Regional Official Plan Amendment #9 (ROPA#9) and Regional Official Plan Amendment #33 (ROPA#33) together with the applicable lower tier Official Plans, as well as the new City of Ottawa Official Plan (2003 Plan).

Ms Nott provided the Board with a contextual overview of the subject properties and a very meticulous history of the evolution of planning thought and associated policies for the lands around the Corel Centre and the Kanata West area.

The lands the subject of these appeals are situated immediately east of the Stittsville Urban Area and are identified as appeals #20 (Del) and appeal #8 (Brookfield) on Schedule B to the 1997 Official Plan of the Region of Ottawa-Carleton. The Del property consists of some 95 hectares of land. The property fronts on Hazeldean Road along its northern boundary. Its western boundary abuts a business park area in Stittsville and its southern boundary with the Brookfield lands is separated by a former railway right-of-way which is now part of the Trans Canada Trail system. To the immediate east of the Del lands are agricultural properties. The Del property is proposed to be designated Agricultural Resource Area on Schedule A to the 1997 Regional Official Plan. The current use of the property is described as approximately 50% being under agricultural cultivation, 25% being scrub land and the balance being used for pasture. A 50-metre 230kv hydro corridor bisects the lower 1/3 of the property.

The Brookfield property consists of some 232 hectares of land situated north of Fernbank Road. A portion of the property on the north abuts the urban area of Stittsville and a high school and recreation complex about the property along Abbott Street. The western 1/3 of the property is idle while the balance of the lands are in forage, pasture and some row crops. The proposed land use designation in the 1997 Regional Official Plan is General Rural Area to the west and Agricultural Resource Area for the eastern 2/3 of the property.

Del and 867718 Ontario Limited appealed the 1997 Regional Official Plan on the basis that their land should have been designated for urban uses and included within the General Urban Area designation of the 1997 Regional Official Plan.

Brookfield as a successor to 867718 Ontario Limited was made party to the appeals and is seeking a General Urban Area designation for their lands.

In December 2001 both Del and Brookfield applied for private amendments to the 1997 Regional Official Plan and to the Official Plan of the Township of Goulbourn in order to advance the consideration of the respective appeals to the 1997 Regional Plan. These appeals were made within the context of the considerations associated with the urban expansion being proposed for the lands around the Corel Centre to the north of their properties which found expression in Regional Official Plan Amendment #9 (ROPA#9) for the Kanata West Business Park.

Their private Official Plan Amendment applications were refused by the City of Ottawa on April 23, 2003.

The 1997 Regional Official Plan at Section 4.17 as part of its economic development strategy contemplated a study of the lands around the Corel Centre to determine "if and how the Corel Centre could be used as the basis for increased economic activity and employment opportunities."

The appellants' lands were not included in the study.

The consulting firm of Malone Givens Parsons (Vol. 4 tab k 1) in December 1999 presented its findings regarding the market opportunity and potential for increased economic activity and employment opportunities associated with designating lands for urban development around the Corel Centre. After a comprehensive review Regional Council at its February 23, 2000 meeting endorsed the expansion of urban boundary in the Kanata West Area and provided directions for staff to prepare a draft Official Plan Amendment, which included an "analysis of the development of a business park south of Maple Grove"

Option #4 of the report was preferred by Regional Council but was not the recommended option of the consultants. This change by Council brought the consideration of the urban boundary down to Hazeldean Road immediately north of the Del lands.

While it is informative to note the debate that took place between Staff, the consultants, and Regional Planning Committee, ultimately Council speaks by resolution and or by-law, and in this case the by-law adopting ROPA#9.

Regional Council on October 11, 2000 adopted ROPA#9, which among other things expanded the Ottawa urban area by some 725 hectares and designates new lands to be developed primarily for "Business Park use". This amendment designated the lands between Maple Grove and Hazeldean Roads as General Urban Area. ROPA#9 is found at Vol.1 Tab C-4 and is in full force and effect.

The next step in the planning process for the Kanata West Area established by the Municipality is the development of more detailed land use concepts plans. During the ensuing two years, terms of reference were developed and approved, and very detailed studies were undertaken that resulted in The Kanata West Concept Plan dated August 2002 Exhibit #1 Vol.4 Tab M3. This plan was prepared by the 42 landowners within the defined expansion area under the guidance of a landowners steering committee and a City project steering committee.

The Appellants were not part of the group developing the concept plan as their lands were outside of the urban boundary area defined in ROPA#9.

It should be noted that during this period the new City of Ottawa was created and a parallel planning process was begun to develop a new Official Plan for the City of Ottawa (2003 Official Plan).

In July of 2002, City Council directs that any existing or new applications for a change in the urban boundary be deferred pending the preparation of the new 2003 Official Plan.

In the spring of 2003 the various planning issues with respect to the urban boundary issue come together.

On March 26, 2003 the Planning Committee adopted the Kanata West Concept Plan and directed the preparation of an Official Plan Amendment (ROPA#33). The next

day March 27, 2003 they recommend the refusal of the Del/Brookfield Private Official Plan Amendments. Council ratified the recommendations to refuse the Del/Brookfield applications on April 23, 2003. This is the same day that City Council had before it the new City Official Plan (2003 Plan) which they adopted by By-law on May 14, 2003.

The Kanata West concept report recommended a modified plan to that previously approved by Council and which found expression in ROPA#9.

According to the report the recommended plan

provides for approximately 25,000 jobs, 5,000 residential units and supporting services, all set within a framework of natural corridors and waterways, The mix of uses include office, housing, retail, institutional, entertainment and leisure activities.

The number of jobs estimated from this plan is well below the 31,000 to 36,000 established in ROPA#9. The area between Maple Grove and Hazeldean Road has been changed from a Business Park designation to predominately residential uses with Community Level Retail being proposed along the north limit of Hazeldean Road.

The report in section 3.9 also deals with the issue of conformity with ROPA#9 and states:

The Concept Plan meets the municipal intent for development in the study area. As established in "The Framework for Concept Planning". However the shift in approach from a traditional campus style business park, as proposed in the approved ROPA#9, to a mixed-use area as directed by the City and as recommended in the Concept Plan, necessitates changes to both the policies and the schedules of the approved Regional Official Plan.

In order to implement the changes found in the Kanata West Concept Plan Regional Official Plan Amendment #33 (ROPA#33) was adopted on September 24, 2003.

In October 2003 Del and Brookfield appealed ROPA#33, and the associated Official Plan Amendments to the former lower tier Official Plans in the Kanata West Area on the basis that the amendments were inconsistent with ROPA#9 as approved

and lacked the required housing demand and residential lands need studies mandated by ROPA#9.

These appeals are not before this panel of the Board, nor are the appeals to the 2003 Official Plan and as such do not constitute the planning policy framework upon which these appeals should be decided.

The Board during the course of the hearing held a night session in the Stittsville area to hear deputations from local residences. The Board heard from four residences. Their concerns may be categorized as follows:

1. Maintain agricultural buffer to help distinguish Stittsville from the urban area of Kanata by maintaining the current urban boundary.
2. Major servicing cost beyond hard services. Will lose volunteer firefighting added cost to existing residences.
3. Will double the size of the Stittsville community area, and Stittsville will lose its small town character.
4. The lands are not needed at this time.
5. The agricultural lands have been lost by previous decision re Kanata West and the Corel lands.
6. If project goes forward there is a need for front ending agreements to ensure that infrastructure is in place prior to development.
7. There is a need to look for alternative sites.

The Board heard from Dr. Mackintosh a qualified specialist in agricultural impact assessments. He was retained by Del in 1998 to do an agricultural impact study of their lands and jointly retained in June of 2001 by both Del and Brookfield to undertake with Ms Nott's firm the appropriate studies in support of their applications including an

agricultural impact assessment and alternative site study to determine the agricultural priority that could be attributed to their lands.

This work was updated and is found at exhibits 3A and 4.

It is Dr. Mackintosh's evidence that the Provincial Policy Statement (PPS) permits the use of prime agricultural area for the expansion of urban areas in accordance with policy 1.1.1.c, which states:

Urban areas and rural settlement areas will be expanded only where existing designated areas in the municipality do not have sufficient land supply to accommodate the growth projected for the Municipality. Land requirements will be determined in accordance with Policy 1.1.2.

The PPS also requires that expansions into prime agricultural areas are permitted only where:

There are no reasonable alternatives which avoid prime agricultural areas; and

There are no reasonable alternatives with lower priority agricultural lands in the prime agricultural area.

It was Dr. Mackintosh's opinion that the decisions in 1991 regarding the Corel Centre, the agricultural resource assessment done in 2002 in support of ROPA#9, and the adoption of the Kanata West Concept Plan set the tone for urban expansion in the area between the agricultural areas of the Carp River Valley to the north and the Richmond Plain to the south. In his opinion as a result of these decisions the subject area is under heavy urbanization pressure which is exacerbated when one considers the City Master Transportation Plan which projects widening of Hazeldean Road to six lanes, the extension of an albeit conceptual arterial road running through the Del and Brookfield lands, and the alignment of Terry Fox Drive to the east of the subject property. (Exhibit #3a figure #2)

It was his opinion that the entire area between Stittsville and Kanata and from Hazeldean Road down to Fernbank Road should be considered for urban expansion as

previous land use decisions have seriously eroded their priority for continued long-term prime agricultural production. The current situation in his opinion already prevents intensive agriculture use in the area, and that due to the absentee land tenure there is a low potential for investment in agriculture in this area. It was his opinion that strong agricultural protection policies south of Fernbank Road would do more to protect the Richmond Plain area than keeping this area out of urbanization. It was his opinion that the conversion of these lands to urban use will not have a significant impact on the surrounding agricultural area. It was also his opinion that the MDS impacts on existing farm operation can be mitigated through appropriate secondary planning and urban design.

It was his perspective that the issue with respect to these lands is not one of agricultural preservation, but only when and in what form urban development will take.

It was his opinion that having proper regard for the PPS it is appropriate to designate the Del and Brookfield lands as well as the remaining lands down to Fernbank Road for urban use provided that the urban need has been demonstrated.

The Board heard from Mr. Cherepacha a qualified transportation engineer with over 40 years of experience in transportation impact studies and traffic engineering studies. He was retained by Del and Brookfield in 2001 to provide traffic operations and transportation planning advice to them with respect to the development of their lands. He provided a traffic analysis report for their proposed private applications in August of 2002 and at exhibit #5B provided an updated traffic impact study for this hearing.

His analysis of the Del/Brookfield proposal was done at both a Regional level and at a local level.

His Regional analysis uses the City of Ottawa 2003 Official Plan projections and the recommended Transportation Master Plan as its base case. To this base case he added the estimated population from the Del/Brookfield lands some 16,760 persons and as a third scenario he added some 15,278 persons for the remaining lands down to Fernbank Road thereby filling in the area between Stittsville and Kanata.

It was his evidence that on the assumption that all of the infrastructure was in place as contemplated by the Transportation Master Plan that there would be capacity to accommodate the proposed expansions at satisfactory services level in 2021 without further capacity increases being required to the proposed transportation infrastructure. He pointed out that this level of analysis is for long range planning purposes (2021) and that during the course of the build out phasing, and implementation issues would have to be identified and tested during each stage of development.

It was his evidence that the Regional scale analysis using the City's transportation model indicated that the proposed expansion of the urban boundary would not require modifications to the Transportation Master Plan.

Mr. Cherepacha also ran the Regional model on the basis that the improvement to Highway 417, which is under Provincial control, would not be in place. The results of this analysis are found on P 10 of Exhibit 5B. Estimating a 30% modal split target at the Eagleson Road and Terry Fox screenlines the network will just accommodate the traffic without any expansion of capacity on Highway 417. With the 20% transit mode split the base case is accommodated (186,000 person according to 2003 Official Plan). However, the Del/Brookfield addition of some 15,000 additional persons brings the screen line up to capacity, and the development of the other lands would put the volume capacities over the capacity limit. It was his evidence that one should not develop a land use scenario for 218,000 people in the west area without the Highway 417 expansions. He also pointed out that the current Official Plan population forecast of 186,000 people in the west from a transportation perspective can be accommodated with the proposed City improvements to the transportation network without the Highway 417 expansion.

The second phase of his traffic impact study evaluated the road interface coming from the proposed development with the adjacent road network and the impacts that this development would have on the area road system.

It was Mr. Cherepacha's evidence that the Del/Brookfield lands would require the extension of the north-south arterial from Hazeldean to Fernbank, and a collector road connection to Abbott Street and Fernbank Road to accommodate the full amount of

development from the Del/Brookfield lands. He also suggested that a connection from Iber Road to Huntmar to the north from the Del/Brookfield lands. It was his evidence that in addition to the road construction required to accommodate traffic within the Del/Brookfield lands that there were two improvements required outside of their property. It was his opinion that at Hazeldean Road a double left turn lane configuration is required for eastbound traffic. At the intersection of Fernbank and the new north-south arterial road a four-lane cross-section is required on Fernbank through the new intersection.

Mr. Cherepacha indicated the local traffic impact were assessed at final build out of the Del/Brookfield development but that since the proposal would be developed in stages it would be far better to conduct traffic studies at each stage of development thus ensuring with more precision the road and transit needs for each stage. The analysis at each stage would be dependent upon the amount of development being proposed, and the extent to which other development that has occurred or is underway in the area, the status of the roadway system, and the capacity available at that time. He advised the Board that in his opinion detailed concept plans would be required and that at that time more detailed traffic analysis should be undertaken to determine precise road needs.

It was his evidence that the current transportation model being used by the City is quite sophisticated, has a long history, and is appropriate for macro transportation modeling at the Regional scale. It was his evidence that there needs to be a determination of the land use configuration within the population of 186,000 forecast for the area.

In his opinion this is the upper limit that can be accommodated locally without the 417 Highway expansions.

The Board heard from a Mr. John Riddell a qualified Professional Engineer with over 29 years of experience in municipal engineering and land development. He was retained by Del/Brookfield to provide an analysis of the municipal servicing of their lands as part of their private Official Plan Amending applications. He conducted a more detailed study of municipal services for this proceeding. As stipulated earlier by the

parties the issues surrounding the cost effective provision of water and sanitary sewers services to the Del/Brookfield and Westpark lands are no longer an issue before the Board.

Mr. Riddell reviewed for the Board his findings with respect to the provision of storm water services to the Del/Brookfield lands and for the remaining vacant lands in the vicinity of the Del/Brookfield lands between Stittsville and Kanata south to Fernbank Road. He based his analysis on a concept Plan found at figure 1 in Exhibit 6B. He did a high level on site servicing analysis as well as an off site analysis to determine the feasibility of a storm water management system required to develop the lands in conformance with regulatory objectives for quality and quantity control of storm water run off from the lands. His analysis of the storm water issues for these lands is based upon a build out in 2021.

He advised the Board that the actual design and approval requirements would be addressed through the development approval process.

The main conclusions of his analysis are that:

1. Stormwater management servicing can be provided for the Del/Brookfield lands and the surrounding vacant lands to the standards of the City of Ottawa and that storm water management facilities can provide water quality and quantity control to meet all regulatory objectives.
2. The proposed development will not have an adverse impact on the Monahan Drain Constructed Wetlands.
3. The proposed storm water management facilities can provide enhanced water quality and peak flow control over existing conditions, and can enhance base flow conditions to the receiving streams namely the Carp River.

It was his evidence that if the lands were brought into the City of Ottawa urban boundary that a review of the Carp River Subwatershed study would be required as well as amendments to the Flewellyn and Monahan Municipal drain reports.

Under cross-examination concerns were raised regarding the submerged outlets of storm sewers into the Stormwater ponds in his proposal and that this was not a design favoured by the City of Ottawa. He indicated that this was a standard design approach but that the outlet pipes could be raised. Concerns were also raised regarding the depth of certain sections of the storm sewers in the proposed designs found on drawings 101108-STM 1 and 2. Mr. Riddell acknowledged that in some cases the sewers were deeper than normal. He also acknowledged that in the case of the Del plan the sewer elevations shown were incorrect, however it was his evidence that nothing makes him think that a design solution is not available to meet the design criteria of the Municipality.

It was his conclusion that with respect to the provision of storm water management facilities the Del/Brookfield and surrounding lands can be cost effectively serviced within the context of the build out projected in the 2003 Official Plan forecast.

During the course of the hearing revised drawings found at exhibit #60 were submitted correcting previous errors. The City offered no contradictory evidence to this exhibit.

The Board heard from Ms Gillezeau a qualified Economist with Clayton Research. She has a broad range of experience in the areas of housing policy, land needs studies, municipal finance, development charges studies, and demographic analysis. Del/Brookfield retained her in October 2001 to assess the adequacy of the residential land supply in the Ottawa-Carleton area and the west urban area of Kanata Stittsville in support of their private Official Plan Amendment applications. In that report she concluded:

that as of December 2001 the designated and available supply of single and semi-detached houses and town houses was not sufficient to meet the projected needs over the next ten years (2001 to 2011).

Over that period from 2001 she has continued to monitor the adequacy of the City's housing supply and has updated her findings for this proceeding. She also provided opinion evidence on the municipal finance implications associated with the

expansion of the urban boundary for her client's lands and the surrounding lands in the Kanata Stittsville area. Her witness statement and summary of her findings are found at Exhibit #7.

In determining the adequacy of the residential land supply in the now City of Ottawa she relies in part on the directions of the PPS found at section 1.2.1 that a municipality will maintain at all times at least a ten year supply of land designated and available for new residential development and residential intensification. She reviewed for the Board the forecasting methodology guidelines (vol.1 tab E-2) associated with the PPS and the applicable policies of the 1997 Regional Official Plan and area Official Plans relating to jobs and housing.

In preparing her forecast she advised the Board that she followed strict adherence to the PPS definition of designated and available. In other words lands currently within the urban boundary but not currently designated in a manner that would permit residential development or which did not have secondary planning studies underway were excluded in her calculations of the housing supply.

She accepts the agreed to forecast of population households and employment as set out in figure 2.2 of the 2003 City of Ottawa Official Plan. She also accepts the City's projection of total demand of 191,300 dwelling units over the period 2001 to 2021 with the following breakdown by housing types.

New single detached houses (46%)	87,700
New multiple units (semi detached and townhouses) 21%	39,600
Apartments (33%)	64,000

She noted to the Board that the City in its Where Will We Live document did not project housing demand by dwelling type for the west urban area. She at figure #6 projects the 2003 household growth for the west urban area by dwelling unit type on the assumptions that 55% are singles detached dwelling, 30% multiple units and 15% apartments. She projects a total growth in housing demand for the period 2001 to 2021

of some 23,650 singles, 12,900 multiples, and 6,450 apartment for a total growth of some 43,000 units over the forecast period.

During the course of the hearing Ms Gillezeau and City staff with the consent of all parties attempted to re-work the dwelling unit supply figures on a citywide basis. The results of this effort are found at exhibit #59 and are reflected in the following table.

Exhibit #59

REVISED TABLE 12					
LINE #		SINGLES	MULTIPLES	APTS	TOTAL
1	RURAL POTENTIAL*	14,200	0	200	14,400
2	KWBP	2,565	2,750	940	6,255
3	VURLS 2002 ADJUSTED FOR CDP	26,459	14,495	7,263	48,217
4	COMPLETIONS 2001-02	5,000	4,200	3,000	12,200
5	ADJUSTED WWWL**	13,250	12,518	153,788	179,556
6	COMMUNITY DESIGN PLANS***	12,109	11,353	4,841	28,303
7	TOTAL SUPPLY	73,583	45,316	170,032	288,931
8	PROJECTED DEMAND	87,700	39,600	64,000	191,300
9	DIFFERENCE	-14,117	5,716	106,032	97,631
<p>*staff have a different interpretation of the Rural Potential. Staff estimate there is a potential for 18,900 single detached and 400 apartment units in the Rural Area, for a total of 19,300.</p> <p>**The WWWL Adjustment removes units on Community Design Plan areas which are reintroduced at Line 6 and accounts for Density Adjustments.</p> <p>*** Community Design Plan units denote units appearing in known plans. Staff believes there may be additional potential in CDP areas arising from Special Study Areas which remain unplanned and other sources of residential supply resulting from subdivision and development activity, such as surplus school sites.</p> <p>Shaded lines denote numbers that are mutually agreed upon.</p>					
		SINGLES	MULTIPLES	APARTMENTS	TOTAL
	ORIGINAL BASE SUPPLY	22,546	23,995	161,998	208,539
	DENSITY-ADJUSTED (DA) BASE SUPPLY	20,719	21,166	162,342	204,227
	SUBTRACTED FROM BASE SUPPLY (DA)	-3,280	-5,459	-7,899	-16,638
	ADDED TO BASE SUPPLY (DA)	2,272	1,211	301	3,784
	CDP UNITS (DA)	-6,461	-4,401	-955	-11,817
	LINE 5 (DA) SUPPLY	13,250	12,517	153,789	179,556
<i>“Uncertainty” and “Contingency”</i>					

Table 12 in the Witness Statement of Jeannette Gillezeau contains lines titled "Adjustment for Uncertainty" and "Contingency Allowance".
 In the recalculation of Table 12, Ms Gillezeau has provided the following adjusted totals for these two lines.
 City Staff do not agree that these form part of the calculation of land supply.

	SINGLES	MULTIPLES	APARTMENTS	TOTAL
Contingency Allowance	3,289	1,485	2,400	7,174
Adjustment for Uncertainty	0	3,165	38,286	41,451
Net Impact on Difference	-17,406	1,066	65,346	49,006

Based upon the table the estimated short fall of single family dwelling units to meet the agreed to growth forecast on a citywide basis is somewhere between the City's estimate of 3,999 to 9,217 and Ms Gillezeau's estimate of 13,250 to 17,406 single family dwelling units. There is no disagreement among the parties regarding the adequacy of supply for multiples and apartments.

The difference in the forecasted estimates provided by the parties are the result of their differing assumptions on how household demand will be translated into dwelling unit type demand by the housing market, differences in the growth expectation for the rural area, a differing assumption about the role of intensification, and the designation of lands within the urban boundary.

The Board then heard from a panel consisting of Dr. Mackintosh and Ms Nott who were retained by Del/Brookfield to do an alternative site analysis of the Del/Brookfield land when their private Official Plan Amendments application were refused by the City of Ottawa, in part on the basis that their properties had not been evaluated under the urban boundary expansion policies of the PPS namely section 1.1.1c and sections 2.1.3.

Section 2.1.3 states that

An area may be excluded from prime agricultural areas only for an expansion of an urban area or rural settlement area, in accordance with section 1.1.1c

which states:

- 1.1.1 c) Urban areas and rural settlement areas will be expanded only where existing designated areas in the municipality do not have sufficient land supply to accommodate the growth projected for the municipality. Land requirements will be determined in accordance with policy 1.1.2.

The policies of Section 2: Resources, and Section 3: Public Health and Safety will be applied in the determination of the most appropriate direction for expansions. Expansions into *prime agricultural areas* are permitted only where:

1. there are no reasonable alternatives which avoid *prime agricultural areas*; and
2. there are no reasonable alternatives with lower priority agricultural lands in the *prime agricultural area*;

The test in committing prime agricultural lands for urban boundary expansion is to determine that there are no other reasonable alternative locations within the area which could satisfy the growth needs, and secondly whether or not there are any reasonable alternatives with lower priority agricultural lands.

The report found at exhibit #4 studied an area around Kanata West as well as areas around the entire urban boundary of the City of Ottawa as shown on figure #2. The study then excluded Agricultural Resource Area as defined in the Official Plan with the exception of subject lands. (Figure #4) The study then used a screening technique with nine land use constraints and six infrastructure and land use planning constraints found at Exhibit #4 table 1.

Within the Kanata West Area one potential area alternative site was determined north of Kanata (see figure #7). This site during the second screening process was deemed inferior to the Del/Brookfield property for a variety of reasons namely that between 20 to 30 % of the areas is already developed with country lot subdivisions, the site represent linear development as opposed to infill, and there is better transit service currently available on Hazeldean Road for the Del/Brookfield lands.

The study also identified five other alternative sites in other locations to the east and south of the urban boundary.

The City, for the purposes of this hearing only, did not disagree with the findings of the panel for the sites designated OAS3 and OAS5. The City during cross-examination suggested that the remaining three sites had a lower agricultural priority and should be preferred to the appellant's sites.

The panel's opinion was that while alternative sites OAS1, OAS2 and OAS3 were all located on lower priority agricultural lands that the constraint analysis showed them to be inferior from an urban development viewpoint.

It was the opinion of the witness after their evaluation that there are no reasonable alternative sites within the study area that avoid prime agricultural areas and met the objectives of the 1997 Regional Official Plan and in particular the jobs to household target ratio. The Board accepts the uncontradicted opinion of Dr. Mackintosh that the Del/Brookfield lands as a result of previous land use decisions have suffered a lower agricultural priority and that lands with a lower LEAR rating in the immediate area would not be sufficient in and of themselves to constitute a reasonable alternative site.

The Board also accepts the evidence of the panel that the other three OAS areas questioned by the City would not be helpful in fulfilling the directions found in the 1997 Regional Official Plan and ROPA#9 and are inferior.

It is clear to the Board that there are other areas in proximity to the current urban boundary that have a lower agricultural priority rating than the Del/Brookfield lands. However this is not the sole determinative criterion from a land use planning perspective in determining whether prime agricultural should be committed for urban development.

The Board accepts the conclusions of the panel and previous evidence of Dr. Mackintosh that the Del/Brookfield lands and the remaining lands between Stittsville and Kanata from Hazeldean Road to Fernbank Road are truly no longer prime agricultural lands worthy of protection.

The Board is satisfied that the policies and tests directed by the PPS with respect to the use of prime agricultural lands for urban purposes would permit the inclusion of the Del/Brookfield land as well as the entire lands between Stittsville and Kanata down

to Fernbank Road to be brought within the urban boundary of the 1997 Region of Ottawa-Carleton Official Plan.

Mr. Ray Simpson a well qualified land use planner with particular expertise in land economics, demography, and urban growth management studies was retained in the fall of 2002 by Del/Brookfield to provide them with his conclusions on the adequacy of the employment land supply to achieve the employment forecasts set out in the 2003 Official Plan of the City of Ottawa and the impact of converting employment lands for residential purposes.

Mr. Simpson advised the Board that in his opinion the appropriate methodology for determining the demand, and this supply of employment land is found in the projection methodology guideline of the PPS, a document that his firm helped develop.

He noted for the Board that the policy context for the consideration of the appropriate level of employment land designation is found in the 1997 Regional Official Plan at sections 2.4 and 4.2.1 which state:

Section 2.4

In order not to preclude additional employment growth, which may be desirable regionally, provincially, and national, the plan provides more land for employment growth than is required to meet the projection. This allows for competition among locations, which should help reduce land costs.

Section 4.2.1

To plan and provide land for employment purpose based on the employment projections of this plan, plus additional lands to accommodate possible higher rates of employment growth and a sufficient surplus to allow for choice and competition in the market.

Mr. Simpson also noted that the 2003 Official Plan has similar objectives to the 1997 Regional Official Plan of providing sufficient serviced urban land to meet long-term employment needs together with the principle of providing a balance of jobs and households in the areas set out in the 1997 Regional Plan at table #4.

Mr. Simpson accepts the population and employment forecast found in the 2003 Official Plan as the basis for his analysis of the demand and supply of employment lands within the Municipality. He then follows the land use breakdown for employment lands into the four categories found in the PPS methodology. Using 2001 census information he determined the employment distribution in Ottawa by the four types. This distribution was used to estimate the 2004 employment by type, which showed a growth of about 22,000 jobs to 502,000 jobs in 2004 for the Ottawa area.

Utilizing the distribution of employment jobs found in table #2 (exhibit #8) Mr. Simpson then distributes the jobs to the 2021 horizon year using the forecasted job estimate of the 2003 Official Plan of 749,000 jobs.

Table #3 of his report shows the results of his calculations that one might expect 155,000 jobs in the employment land urban category by 2021.

Mr. Simpson also did a second scenario based upon a 2% reduction in the job allocation to the major office category and added this percent growth to the employment land sector. The result being an estimate of 170,000 jobs being allocated to the employment lands urban sector by 2021.

Mr. Simpson then proceeds to determine the urban net occupied and vacant supply of land in the City of Ottawa available to meet these forecasted demand scenarios. His initial base was the City of Ottawa 2004 inventory of vacant industrial and business park lands to which he made three adjustments identified on page 10 of his report resulting in a reduction in the supply of employment land in 2005 to 3970 net hectares Table#6 (Exhibit#8).

The City's estimate was 5287 hectares.

It was Mr. Simpson's opinion that the 3970 net hectares is an optimistic estimate as additional adjustment could be made for sites that may not be available for development such as federal lands, lands under applications for conversion from employment lands, or lands surrounded by challenging land uses.

In estimating the supply of available employment lands Mr. Simpson uses a 90% capacity factor and a slightly lower employee density factor of 45 employees per net hectare where the actual calculated density in Ottawa is 49 employees per net hectares. The results of Mr. Simpson’s forecast are as follows.

Table 7		
Comparison of Employment Potential of the Land Supply To Forecast Employment Growth		
Employment Potential of Land Supply		
Ultimate occupied Employment Land Supply (90% of the total supply 3,970 net ha)	3,570 net ha	
Density of Ultimate Development (employees per net ha)	45	
Employment Potential of Land Supply	160,700	
Growth Forecast	Scenario 1	Scenario 2
Employment Land Employment in 2021	155,000	170,000
Surplus/(Shortage)	5,700	(9,300)
Land Surplus/(Requirement) (net ha)	130	(210)

Source: Hemson Consulting Ltd. Based Upon City of Ottawa Data

According to Mr. Simpson under scenario #1 there would be a small surplus of 130 net hectares of employment lands available at the end of the planning period. Under his second scenario a short fall of some 210 net hectares would occur before 2021.

It was Mr. Simpson’s conclusion that under the 1997 Regional Plan there is not a sufficient supply of employment lands to accommodate the agreed to growth forecast for employment to 2021, and that the conversion of employment lands to bolster the need for residential lands is poor planning.

It was his opinion that one should not change employment land designations in response to short-term economic downturns particularly when you have an asset such as designated employment lands that are difficult to replace.

Mr. Jacobs, the Director of the Planning, Environmental and Infrastructure Policy Branch of the City of Ottawa and a qualified land use planner provided the Board with very different opinion evidence regarding the need and appropriateness of designating the Del/Brookfield lands with a General Urban Area designation. In his witness statement he traced the history of the applications back to the 1988 Regional Official Plan, the appeals to the 1997 Regional Official Plan, the private Official Plan Amendments to the 1997 Regional Official Plan and the Township of Goulbourn Official Plan and the City of Kanata Official Plan, and the decisions of Ottawa Council to refuse their applications, and the subsequent appeals to this Board.

He noted that Del/Brookfield have also appealed the 2003 Official Plan which is not before this panel of the Board.

It was his evidence that within the context of the 1997 Official Plan that the Del/Brookfield lands were not needed to meet the growth projections of the 1997 Official Plan and that there was sufficient land designated within the urban boundary to meet the growth objectives of the 1997 Official Plan and that their applications were premature.

It was his opinion that with the passing of ROPA#9 there was still no need to consider including the appellant's lands within the urban boundary of Ottawa-Carleton.

It was also his evidence that during the deliberations of the 2003 City of Ottawa Official Plan and considering the growth forecast found in that document which is the agreed forecast for this hearing that the City still has enough designated land within the urban boundary to meet the growth strategies of the 2003 Official Plan.

This document is currently under appeal and this panel of the Board will make no finding of fact with respect to the 2003 Official Plan nor can the Board rely on the

planning strategies of the 2003 Official Plan to meet the growth needs generated by the 1997 Regional Official Plan and ROPA#9 when considering these appeals.

In making his assertion that there is an adequate supply of land to meet the growth forecast he relies in part on Mr. Cross's evidence. He also considered the lands designated for future urban expansion as available even though the 1997 Regional Official Plan at section 2.4.1.6. and section 2.4.1.8 requires studies and amendments to the Official Plan to redesignate these expansion lands for urban use.

He was consistent in his opinion that the lands under appeal by Del/Brookfield and Westpark were not required under the 1997 Regional Plan, were not required under the 1997 plan with the adoption of ROPA#9, and are not required under the policies of the Council adopted 2003 Official Plan.

He notes that in an April 23, 2003 staff report that adopted the new 2003 Official Plan that the agreed to growth projection could be accommodated provided:

the pattern of development changes from past practices. That slightly higher densities occur in Greenfield locations, new potential through mixed use development, and more development through intensification would contribute to meeting demand for residential land.

It was his evidence that the appropriate time to consider the issue of the need for an urban boundary expansion would be in 2008 at the time of the five year review of the new City of Ottawa Official Plan and that the appropriate methodology for determining this issue is the work plan found at Exhibit #41, and until this work program is complete it was his opinion that "any application to extend the City's urban boundary is premature pending the City's decision on how it will manage growth and whether that choice entails an expansion to the Urban Boundary."

It was his opinion that the jobs to household ratio found in section 2.4.1.5 which states:

Ensure that planning policies and zoning by-laws provide opportunities for jobs in the ratio of 1.1 jobs per household in each urban area outside the Central Area. For purposes of this policy, Kanata and Stittsville are considered to be a single urban

area. Zoning by-laws shall provide for a reasonable level of employment in Stittsville, although the 1.1 ratio is not expected to be achieved.

was only a target and varies on a citywide basis, and that the policy has no implications for the Del/Brookfield lands in that the policy is not used to determine the need for residential land, but rather serves to project employment land needs for future development and need not be followed slavishly.

Ms Nott on the other hand sees the directions of section 2.4.1.5 as mandatory.

It is clear to the Board that the ratio was a target to ensure that there was a balance in the urban areas outside the Central area between employment lands and residential lands so that people could live and work in proximity and that the objectives of the 1997 Regional Plan attempt in part to meet this target and should not be abandoned lightly.

It was Mr. Jacob's opinion that Del/Brookfield has not demonstrated that their lands are the best lands upon which to permit urban expansion. He does not share the opinion that the previous planning decisions in ROPA#9 have reduced the agricultural value of these lands and that current land ownership is a determining factor of the lands long-term agricultural potential.

It was his evidence that with respect to the Regional Development Strategy Policies found in section 2.3 of the 1997 Regional Official Plan that the proposed development of the Del/Brookfield lands is neutral to negative in its effects on many of the proposed directions and that there is no evidence that development here minimizes public infrastructure costs or that this is the most cost effective area to service.

Under cross-examination he admitted that he was not aware that the City had just let a tender for the construction of the Terry Fox arterial road situated to the east of the Del/Brookfield lands and adjacent to the Westpark lands.

It was also his evidence that if the Del/Brookfield appeals or the Westpark appeals succeeded that future consideration would have to be given to the remaining

lands between Kanata and Stittsville in order to plan comprehensively for urban growth in this area.

The Board heard from Mr. Ian Cross a well qualified planner who is the Program Manager, Research and Forecasting in the Planning and Growth Management Department of the City of Ottawa. He has responsibility for data collection, analysis and forecast of changes in population, housing, land use, and employment information across the Municipality.

He traced for the Board the history of the current forecast that has been agreed to by all the parties as the basis for this hearing and noted some of the adjustments that had been made to the forecast from the one Council adopted on October 10, 2001. which transferred some of the growth to the second decade.

It was his evidence that the agreed to forecast used a “top down approach” with the highest level being the citywide forecast which was subsequently allocated to the five areas based on a range of factors, including vacant residential land capacity, rural lot potential, rates of housing construction by area, known development proposals, trends in average household size. Planning policies and the potential for intensification.

He made the following comment with respect to the agreed to forecast found at figure 2.2 of the 2003 Official Plan

1. The growth of population and households within the greenbelt area was based upon the FoTenn report of Feb. 1997 and that monitoring in 2004 of actual development would lead him to believe that rate of intensification is actually higher than forecast.
2. The forecast for the west area was based upon the assumption that the area would provide approximately 16,000 housing units in addition to a substantial number of jobs as directed by City Council. But that the final concept plan approved in April of 2003 provided less than half of this number. (6255 Units) However the forecast was not changed and the infrastructure modelling was carried out on the basis of the agreed forecast.
3. The forecast of growth for the rural area was based on draft policies that would have limited growth in this area to about 7.5% of the total

citywide housing increase. These policies were not approved. The historical growth in the rural area has been about 10%.

He advised the Board that the City monitors on a yearly basis growth and development trends and that their 2004 report indicated that during the 2001 to 2004 period the reported population increase was only 45% of the agreed forecast and that if this trend continued revisions to the forecast would be warranted and that this review would be done as part of the research identified in the work plan for the 2008 Official Plan.

He reviewed for the Board sections of the 2004 report entitled "Where Will We Live" and directed the Board to figure 5. It was his conclusion that there is significantly more potential housing supply than is required to provide for forecasted demand to the end of the 2021 planning period of the Official Plan. He also indicated that while in total there was sufficient supply that there was a shortfall in the single family dwelling unit category of some 4,000 units citywide. He also agreed with the revised table 12 of Ms Gillezeau report exhibit #59 that there is an estimated shortfall of single family dwelling units over 2001 to 2021 planning period of some 13,250 single family dwelling units. However he believes that there are other techniques in the 2003 Official Plan that can overcome the proposed deficit; namely intensifications, redesignation of lands for residential use and maintaining the historical level of development in the rural areas.

Within the Kanata West Area he noted that the infrastructure modelling had been done on the basis of 16,000 units but that the concept plan when finally approved only provided for some 6,255 residential units of which 2,565 are single family dwellings with the rest being multiples and apartment units thereby leaving a deficit of some 10,000 units.

It was his evidence that the new Official Plan with the establishment of enterprise areas, the mixed use area, the redesignation to residential of certain areas, and the approval of a comprehensive amendment to the 2003 Official Plan that the difference could be reduced to about 900 dwelling units. This is of course dependent on the 2003 Official Plan and the new comprehensive amendment being finally approved as adopted and being successfully implemented over the planning period.

Under cross examination he conceded that for the purposes of this hearing the parties had agreed to the forecast found at figure 2.2 of the 2003 Official Plan including the rural projections.

It was his evidence that the average annual build-out of single family units in the Ottawa area is about 4,300 units.

He also agreed with the estimates found in exhibit 59 save and except for the caveat regarding the level of single family development that one might expect in the rural area. He believes that the rural potential for single family development of 14,200 units agreed to by the parties should be 18,900 single family dwelling units

He expressed the same opinion as Mr. Jacobs that there was no immediate shortage of urban land and that any decision on urban boundary changes should wait until new forecasts were prepared for the 2008 Official Plan review.

Mr. Stoddard a senior project engineer with the City reviewed the 2003 transportation master plan as it pertains to the Kanata West Area and the appellant's lands. He confirmed that the City provided the direction to the appellant's consultants and recommended the use of the current transportation model for the high-level screen lines analysis. He also confirmed that in developing the new transportation master plan that they had based the modelling on the growth forecast agreed to by the parties.

He advised the Board that the City would be developing what he termed a new transitional transportation model for the 2008 Official Plan review and as other municipal officials he expressed the opinion that it would be preferable to wait for the new data set to be used in this new model.

Under cross-examination he confirmed that the transportation model is constantly being modified as developments come forward and that the agreed to population forecast of 186,000 was what the transportation master plan was based upon. He also agreed that the policy framework being established for developing communities in the new 2003 Official Plan would provide the opportunity to do more detailed transportation planning as more concrete development proposal were brought forward.

THE WESTPARK APPEALS (OMB File PL040803)

The Board at the conclusion of the Del/Brookfield hearing and in accordance with the procedural order commenced the hearing in the matter of the Westpark appeals (Board File PL040803). The parties agreed and stipulated that where applicable the evidence adduced in the Del/Brookfield hearing would apply for the purpose of this hearing.

The parties have also agreed that the issues list as set out in Exhibit #58 is applicable for this hearing and as with the Del/Brookfield appeals there is a tacit agreement that in the event that the Board were to allow the appeals to the 1997 Regional Official Plan and the City of Kanata Official Plan that the Board withhold any Order in order to permit the parties to develop the appropriate Official Plan Amendments in compliance with the Board's decision and direction.

The Board for the purposes of continuity has consolidated the decision respecting the Westpark appeals with the Del/Brookfield appeals.

The Westpark lands consist of some 125 hectares situated immediately east of the Brookfield lands and north of Fernbank Road. On the east the lands are bounded by the proposed extension of Terry Fox Drive, which generally establishes the existing urban boundary. The lands are generally used for agricultural purposes.

Westpark's appeals were filed on May 02, 2001 to change the designation in the 1997 Regional Official Plan from "Agricultural Resource" to "General Urban Area" and from "Agricultural Resource" to various urban designations in the Official Plan of the former City of Kanata.

The Board heard from Mr. Robert Wingate P.Eng who was retained by Westpark to provide municipal infrastructure servicing advice. He confirmed for the Board that he had reviewed the Novatech report and concurred that there are no sanitary sewer or

water constraints associated with the development of the Westpark lands, and that they can be cost effectively serviced.

He did a high-level storm water analysis for the Westpark lands and reviewed the storm water report prepared for the Del/Brookfield lands his uncontradicted evidence was that a storm water system could be designed that would have no impact on the Monahan wetland system and that the lands could be developed in a cost effective manner.

He noted for the Board that the City does not design for over-sizing beyond the urban boundary and that development was currently taking place on the east side of the tendered Terry Fox extension which abuts the Westpark lands.

The Board then heard from Mr. Ronald Jack a qualified Transportation Engineer who has done a great deal of work in the Kanata West Area. He has reviewed the work of Mr. Cherepacha, which in his words was the appropriate analysis to undertake. He advised that the next step would be transportation modelling of design concepts with the final modelling being done at the subdivision or development stage. This would be similar to the process followed in Kanata West in which he has been involved. It was his evidence that with respect to the Westpark and Del/Brookfield lands the transportation analysis was appropriate and indicated that these lands could be developed within the context of the Transportation Master Plan.

CONCLUSIONS

In considering appeals to expand the urban boundary of a municipality the Board recognizes that for an urban municipality the establishment of its growth strategy is one of the most fundamental planning decisions it can make. It gives effect to its economic development and growth strategy, gives direction to its long-term capital budget, and establishes for the private sector and the general public the basic land use expectations of the municipality.

The Board should not interfere in this fundamental municipal planning exercise and decision making process unless it is clear:

- (1) that the municipality has made a fundamental error in its assessment of its need for urban land to achieve its projected urban growth and approved development strategies, or
- (2) that the decision to expand or not to expand the urban boundary is at odds with the directions of the Provincial Planning Statement, or
- (3) that there has been breach of the prescribed planning process afforded individuals as a matter of right.

The Board has no evidence in this case of a breach in the prescribed planning process.

The Board also recognizes that planning is a dynamic process in which one should expect change, however for planning to be effective it must equally bring certainty and reliability to the deliberative process associated with development applications. In this regard the principle as set out in Clergy Properties Ltd. v. Mississauga (City), [1996] O.M.B.D. No.1840 is clear:

The Board in determining the policy framework under which an application should be examined, has consistently stated that an application must be tested against the policy documents in place at the date of the application. It has done so in order to lend some certainty to the land use planning process and to ensure that fairness to all parties prevail. In the Board's view, to now depart from this consistent adjudication of matters would undermine the planning process and bring the integrity of the planning and adjudication process into disrepute.

The application of this principle in these appeals requires that the 1997 Regional Official Plan, the lower tier Official Plans of the Township of Goulbourn and the City of Kanata, the 1997 Provincial Policy Statement, the agreed to facts and procedural Order of the Board form the policy basis in determining these appeals.

The primary determination in these appeals is the one of need, only when the matter of land need has been determined should the Board turn its mind to the secondary but equally important issues of the appropriateness of the subject lands to meet the urban development objectives of the Official Plan.

The Board finds after carefully considering all of the evidence and the submissions made within the context of principles previously enunciated, that the best evidence with respect to issue need on a citywide basis is found at exhibit #59.

It is clear to the Board, after listening to the opinion evidence of various witnesses with respect to the growth forecasts, that this type of forecasting is a dynamic process constantly subject to change over time. It is equally clear that this type of forecasting is as much an art as it is a science. The Board does not accept the assertions of the City's witness that waiting for more current information in 2008 is appropriate, or will secure a better outcome.

The benefit of having more designated urban land to meet the housing market's need and the objectives of the City's own development strategies as set out in the 1997 Regional Official Plan far out weighs the serious harm to the community that can result from an under supply of urban designated land.

This principle is clearly stated in section 2.4 of the 1997 Regional Official Plan.

In considering the evidence within the parameters established for this hearing the Board prefers the methodology and the evidence of Ms Gillezeau that the supply of single family dwelling units will be exhausted by the year 2017.

All parties agree that there is no shortage of lands designated for multiples or apartment during the planning period.

Further when one considers the evidence of Mr. Cross that the annual consumption of single family dwelling units is approximately 4,300 units annually. The municipality in order to maintain at all times a 10 year supply (43,000 units) as set out in Section 1.2.1a of the PPS must have in its inventory of designated and available sufficient lands to accommodate 43,000 single family units at all times. The City's inventory of land capable of accommodating 43,000 single family units would fall short of this goal between 2012 and 2013 just seven years from now.

This falls short of the PPS guidelines.

Similarly within the context of the West Urban area Ms Gillezeau's evidence is that there would be a shortfall of some 9,203 single family dwelling units to 2021 meaning that the supply in this area of the City would be exhausted between 2013 and 2014.

When one considers the objectives of the Regional Development Strategy as set out in the 1997 Regional Official Plan in section 2.3 and in particular sections 2.3.4 and 2.3.5 it is clear to the Board that such a shortfall of single family dwelling units in the west area would not meet the approved planning policy of the Municipality nor the guidelines set out in the PPS.

The Municipality knew about this issue in 2001 for at that time Mr. Jacobs in a March 8, 2001 report regarding housing needs in the west area which resulted in ROPA#9, indicated that:

In looking at the available land in existing communities, to satisfy and maintain the Regional Official Plan ratio between housing units and employment, it would be difficult even at higher densities to contain all of the required residential development within the west urban community boundaries.

The Board concludes from the preponderance of the evidence that with the adoption of ROPA#9 a fundamental error was made in respect to the need for residential land to meet the objectives of the approved 1997 Regional Official Plan and the policy directions of the PPS.

The Municipality at that time should have directed its attention to the issue of its urban residential land needs to meet the full range of housing types consistent with its own approved planning policies and the guidelines of the PPS.

It did not do so.

The Board is satisfied that the appellants have properly demonstrated the issue of need for additional urban lands with the context of the planning policy framework governing this hearing.

The next and equally important determination is whether it is appropriate to designate the Del/Brookfield and Westpark lands for urban uses having regard to the PPS and whether the inclusion of these lands represents the “most” cost effective solution with respect to the provision of necessary municipal infrastructure and whether these lands best meet the intent and purpose of the PPS and the 1997 Regional Official Plan.

The terms “most” and “best” are absolutes, rarely used in planning. Normally one deals in relative terms such as “appropriate” or “reasonable” within the planning context that is being considered. The test established in the PPS is one of reasonableness.

In reviewing the evidence on municipal services the parties agree that water and sanitary sewers can be cost effectively extended to the site. The evidence on the provisions of storm sewers from Mr. Riddell and confirmed by Mr. Wingate is that the Del/Brookfield and Westpark lands can be readily serviced with stormwater management systems that will meet all the municipal and other regulatory requirements. They see no impediments to providing appropriate storm water systems to the appellant’s lands. It was their uncontradicted evidence that detailed designs would normally be undertaken at the secondary plan or draft plan stage in the development approval process.

The City did not offer contrary evidence on this issue.

The City’s 2003 Transportation Master Plan and Regional Transportation Model were used as the base case in evaluating the Del/Brookfield and Westpark lands. The evidence of Mr. Cherepacha confirmed by Mr. Jack is that the Del/Brookfield and Westpark lands can be accommodated within the high level screenline analysis directed by the City for the build out in 2021. The one significant area of difference between the City and the appellants evolves around the timing of the proposed widening of Highway 417, which is beyond the control of the Municipality. The City’s position is that since they do not have control of the timing of the widening they do not have sufficient road capacity and they will not be able to achieve their desired modal split.

It was Mr. Stoddard's evidence that the 2003 Transportation Master Plan was modeled on a population forecast for 2021 of 186,000 people for the West Urban Area and that within this population target the transportation plan is viable without the 417 widening. This is same as Mr. Cherepacha's conclusions.

The City's witnesses in their evidence acknowledged that the West Urban Area will not achieve the 186,000 persons upon which the Transportation Master Plan was modelled. All the transportation witnesses agreed that as development goes forward more detailed modelling and phasing of development can occur and the road network can be adjusted to meet phasing objectives. The Transportation Master Plan anticipates a transit terminal being located in the area of Hazeldean Road opposite the Del lands. It is difficult to understand a transit system terminating opposite agricultural lands. If the City is serious about its goal of a 30% modal split one would anticipate urban densities in and around the final transit terminal in the west. Similarly with the agreement of the appellants to have their lands treated as a "Developing Community" and to have the policy direction found in section 3.6.4 of the 2003 Official Plan apply to them provides ample opportunity to the Municipality to phase development as it related to traffic management plans.

It is clear to the Board that the City's infrastructure planning for the west urban area can accommodate the Del/Brookfield and Westpark lands in a cost effective manner and from this perspective it would be reasonable and appropriate to redesignate these lands General Urban. The Board is equally satisfied from the evidence that the major trunk municipal infrastructure is essentially in place to accommodate the appellant's lands.

The Board prefers the evidence of Dr. Mackintosh and Ms Nott when considering the issue of whether it is appropriate to designate the Del, Brookfield and Westpark lands as a "General Urban Area" to be used for predominately residential purposes having regard to the PPS directions regarding the use of prime agricultural land.

The decisions of the Municipality with respect to lands around the Corel Centre and the extension of the urban boundary down to Hazeldean Road have seriously

impacted the agricultural priority of the subject lands. The Board accepts the assertions of Dr. Mackintosh and Ms Nott that with urban development abutting these lands on three sides their agricultural priority has been seriously diminished. The Board is also satisfied that the methodology for evaluating alternative sites found in exhibit #4 is appropriate and that the conclusions reached in that report are sound and preferred by the Board to the limited critique provided by Mr. Jacobs.

The Board when questioning Mr. Cross was advised that the western portion of the Brookfield lands currently designated General Rural Area under current Official Plan policy could be developed for a county lot subdivision. Clearly the more appropriate use of these lands is to develop them at urban densities and thereby assist in relieving the pressure to continue using rural lands to meet urban housing demands. This is a direction encouraged by the PPS. The consideration of these lands for urban purposes would be cost effective and preferable to placing continued development pressure on the rural areas of the Municipality.

The Board in considering all of the evidence provided by the appellants in this case is satisfied that the methodology they have followed is appropriate and reasonable. It is similar to the studies the municipality undertook when considering whether to bring the ROPA#9 lands into the urban boundary.

Further in light of the proven need for residential single family lands it is not premature to consider these lands for urban purposes.

The appeals of Del/Brookfield to the 1997 Regional Official Plan of Ottawa-Carleton are allowed in part and the Board directs that the 1997 Official Plan of Ottawa-Carleton be amended to designate the Del/Brookfield lands General Urban. The Board further directs that the amendment contain policies similar to those found in Section 3.6.4 of the 2003 City of Ottawa Official Plan regarding the preparation of Community Design Plans as applicable to the subject lands, and that the appropriate amendments be made if required to the former Township of Goulbourn Official Plan designating the Del/Brookfield lands for predominately residential purposes.

The appeals of Westpark to the 1997 Regional Official Plan of Ottawa-Carleton are allowed in part and the Board directs that the 1997 Official Plan of Ottawa-Carleton be amended to designate the Westpark lands General Urban. The Board further directs that the amendment contain policies similar to those found in Section 3.6.4 of the 2003 City of Ottawa Official Plan regarding the preparation of Community Design Plans as applicable to the subject lands, and that the appropriate amendments be made if required to the former City of Kanata Official Plan to designate the Westpark lands Residential.

The Board is cognizant of and agrees with the evidence of Mr. Jacobs that if the Board determines that the Del/Brookfield and Westpark lands should be included within the Urban Area designation that the entire area between Stittsville and Kanata down to Fernbank Road should be included in further planning studies. While the area of lot 29 concession 11 of the former Township of Goulbourn is not before the Board if the Municipality so desires the Board would approve including this area within the General Urban designation amendment being directed for 1997 Regional Official Plan.

The remaining appeals of Del, Brookfield and Westpark to the 1997 Regional Official Plan of Ottawa-Carleton are dismissed.

The Board will withhold its Order until it receives the amendments directed by this decision.

If problems of mechanics arise the Board may be spoken to.

J.P. ATCHESON
MEMBER