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PL100206

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: SEE SCHEDULE "1"
Subject: Proposed Official Plan Amendment No. OPA #76
Municipality: City of Ottawa
OMB Case No.: PL100206
OMB File No.: PL100206

APPEARANCES:

Parties

Counsel*/Agent

City of Ottawa

B. Engell* and T. Marc*

Metcalfe Realty Company Ltd. Kanata Research
Park
Simon Fuller
7089191 Canada Inc.
1633799 Ontario Inc.
3223701 Canada Inc.

M. Polowin* and D. Daley*

Taggart Group of Companies
Tamarack Group of Companies
2226561 Ontario Inc.

S. Zakem*

Mattamy Group of Companies

M. Flowers *

Greater Ottawa Home Builders Association
(GOHBA)
Riverside South Development Corporation
Minto Communities Inc.
6458513 Canada Inc.
Amazon Land Development
Epscon Limited

A. Cohen* and U. Melinz*

Richcraft Homes
Castor Creek and Airport Golf Lands Limited

J. Bradley* and A. Cohen*

Gib Patterson Enterprises
Claridge Homes Corporation

Dr. Ranjit Perera (Humanics Universal Inc.)

Friends of the Greenspace Alliance

A. Kempster

Walton Development and Management Inc.

M. Noskiewicz*

Randolfo Mion and M&A Rentals

M. Chown

Paul Johanis

DECISION DELIVERED BY N.C. JACKSON AND A. CHRISTOU

The City of Ottawa following restructuring in 2000 became a one tier municipality with the abolition of the Regional Municipality of Ottawa Carleton. The new restructured Ottawa adopted its first Official Plan in 2003. Following Bill 51 Amendments to the *Planning Act* 2007 the City of Ottawa commenced a Comprehensive Review of that Official Plan within the meaning of the amended provisions of section 26 of the *Planning Act*. Following much public consultation, the City adopted Official Plan Amendment 76 in 2009. Ministry of Municipal Affairs and Housing, as the approval Authority, gave approval with modifications in January 2010. The Approval Authority gave notice respecting appeals. Thirty Appeals were filed with the Approval Authority and such were referred to the Ontario Municipal Board for hearings.

The Ontario Municipal Board held three prehearing conferences with the Appellants. The Board dealt with procedure, process, disputed motions and, on consent, set down the Appeals for hearing in different phases. Nine different hearing dates were scheduled commencing late in 2010 and into 2011. The urban boundary is the subject of this Phase of OPA 76 hearings. Due to the complexity of this issue the Appellants and City agreed that this issue itself would be further phased. The extent in gross hectares of any urban boundary expansion was to be heard for 5 weeks commencing February 22, 2011. The Appellants and City further agreed that if an urban expansion was approved of, a second phase hearing of the urban boundary would determine where the urban boundary would be expanded. The second phase would be

scheduled following the release of the Phase 1 decision on the extent of the urban boundary expansion and would be the subject of new notice and prehearing conference.

In addition to Appellants to OPA 76, the Board added as Parties Walton Development and Management Inc. and Paul Johanis in contested motions. The Friends of the Greenspace Alliance were recognized as a Participant. S. Belle-Isle was recognized on behalf of group opposed to expansion of the urban boundary. S. Belle-Isle did not appear at the full hearing. M. Chown appeared at the commencement of the hearing and withdrew from Phase 1 of the urban boundary. Counsel and planners for the Ministry of Municipal Affairs and Housing appeared at the prehearing conferences, but took no further role in Phase 1 urban boundary hearing. At the commencement of this hearing counsel J. Bradley withdrew indicating her clients were to be represented by Mr. Cohen. Counsel M. Polowin also withdrew indicating his clients would be represented by counsel D. Daley. Mr. Daley was present throughout but in the form of a watching brief.

The City of Ottawa advocated either no expansion of the urban boundary or a 230 gross hectare expansion. The City called staff planning and demographic evidence (populations, projections, urban land requirements) and supplemented that with the evidence of a consulting planner. The Appellants generally grouped together to avoid duplication under the Ottawa Homebuilders Association. Counsel Zakem for Taggart, counsel Flowers for Mattamy and counsel Noskiewicz for Walton then shared with counsel Cohen the calling of evidence in planning and land economy, cross-examinations and argument. Paul Johanis supported the City's case calling four witnesses, cross-examining and making argument. Dr. Perera, as an Appellant, testified on his own behalf and cross-examined others when present. Amy Kempster testified for the Greenspace Alliance in support of the Ottawa position not to expand the urban boundary. All evidence was helpful and is available in a court reporter's transcript. Such transcript was updated on a daily basis and made available to the Board for rulings made and for the consideration of the Board in its deliberations for a final decision.

The hearing scheduled at the estimate of the parties for 5 weeks lasted into a seventh week. This panel of the Board did stand down during the hearing for OMB

mediation on consent, by a different panel of the Board. The mediation did not lead to a settlement and the hearing resumed leading to a reserved decision.

Issues

The main issues in the hearing were respecting whether OPA 76 was consistent with the 2005 Provincial Policy Statement (PPS). Consistency is the test required by the Province in a top down policy led planning system. Related issues were the methodology used by the City in their urban boundary review, projections, propensities, population basis and growth trends.

Jurisdiction for the review of the Ottawa Official Plan

It is important to understand that prior to Bill 51 to amend the *Planning Act*, section 26 of the *Planning Act* required Council to consider the need for a review of its Official Plan every 5 years. Five year reviews were not mandatory. Bill 51 in an omnibus fashion dealt with reform of the *Planning Act* and the Ontario Municipal Board. Up to that time Applicants could apply to the City of Ottawa for a change to the urban boundary. If rejected or if the Applicants were not dealt with in *Planning Act* time frames, the Applicants could appeal to the Ontario Municipal Board under section 22 of the *Planning Act* (private appeal as contrasted with an appeal of an Official Plan Amendment passed under section 17 of the *Planning Act*.) An example in part of the former procedure of an application and appeal of a decision not to amend the urban boundary is the Dell-Brookfield decision of the OMB in 2005, referred to in this hearing as Decision 2092 on August 11, 2005. Such an Appeal from an Application to the Council to amend the urban boundary no longer exists to the OMB. As of 2007, Bill 51 amendment to section 22(7.2) of the *Planning Act*, no appeal is permitted from the refusal or failure to adopt an Official Plan Amendment to alter a boundary of all or part of an area of settlement. Area of settlement is defined inter alia as the urban area.

Coupled with this important appeal restriction in Bill 51 was the repealing of the former section 26 of the *Planning Act*. The former section 26 required the Council to hold a special meeting once every 5 years to determine the need to revise the Official Plan. The new language substituted into section 26 of the *Planning Act* removes the need of Council to determine whether to revise and substitutes inter alia that Council

shall revise the Official Plan as required to ensure it has regard to matters of provincial interest in section 2 of the *Planning Act* and is consistent with policy statements under section 3 of the *Planning Act*. City of Ottawa planning witnesses rely on the changes in the PPS and *Planning Act* for the Official Plan review undertaken leading to the adoption of OPA 76.

The Provincial Policy Statement 2005

The Provincial Policy Statement of 2005 did materially change provincial policy from the 1997 Provincial Policy Statement. The 2003 Ottawa Official Plan was adopted in the era of the 1997 Provincial Policy Statement when the test was have regard to. Policy 1.1.1 of the 2005 Provincial Policy Statement recognizes the need to plan over the long term (repeated twice) for an appropriate range and mix of residential and other uses. Perhaps most repeated in this hearing Policy 1.1.2 states “Sufficient land shall be available through intensification and redevelopment and if necessary designated growth areas, to accommodate an appropriate range and mix of employment opportunities, housing and other land uses to meet projected needs to a time horizon of up to 20 years...” Intensification, redevelopment and designated growth areas are defined terms - more on that later. Policy 1.4 dealing specifically with housing references “To provide for an appropriate range of housing types and densities required to meet projected requirements of current and future residents of the regional market area identified in policy 1.4.3, planning authorities shall:

- a) maintain at all times the ability to accommodate residential growth for a minimum period of 10 years through residential intensification and redevelopment and if necessary, lands which are designated and available for residential development and
- b) maintain at all times where new development is to occur, lands with servicing capacity sufficient to provide at least a 3 year supply of residential units available through lands suitably zoned to facilitate residential intensification and redevelopment and land in draft approved and registered plans.”

Process

Ottawa recognized that terms in the PPS such as current and future residents, range of housing types and sufficient lands shall be made available to meet projected

needs for a time horizon up to 20 years meant a full fledged growth study. Such was undertaken by City staff with a time horizon to 2031. That horizon was set down with other building blocks for the study in a series of reports to Council with adoption by the Council as follows:

1. Planning staff submitted a report dated April 2007 on the scope and timing of the Official Plan review together with the Transportation Master Plan and Infrastructure Master Plan. The report reviewed residential land supply which it opined was sufficient to meet the 2003 Official Plan to 2021. It stated the Official Plan review will investigate the adequacy of both employment and residential lands to around 2031. The scope of the review would update projections for population, dwelling units, employment and urban land and that the urban development strategy would confirm or recommend changes to the urban boundary. It would review matters by which the adequacy of land supply will be assessed (PPS). A comprehensive process involving the public in open houses and statutory meetings was proposed.

The Planning and Environment Committee, Agriculture and Rural Affairs Committee, after fulsome discussions, disclosed in Minutes, recommended that Council approve the strategic directions, approach, scope and timing of the Official Plan and Transportation and Infrastructure Master Plan reviews. On May 23, 2007 City Council did just that in a resolution that "Council approve the strategic directions, approach, scope and timing of the Official Plan, Transportation Master Plan and Infrastructure Master Plan reviews."

2. Planning staff prepared in furtherance of the aforementioned process a background paper dated May 28 2007, a background paper on new growth. The paper noted future long term growth projections are revisited after the results of each five year census and that growth was behind projections in the current 2003 Official Plan. The proposal for new projections was to be undertaken by staff and peer review. The methodology was to be the Cohort-Survival Model in place of a business econometric model used in 2001 for the 2003 Official Plan. The Cohort-Survival Model would apply annual births, deaths, and in migration to the starting year population by age and sex to arrive at projected populations for future years. International immigration was to be an important factor with different scenarios to be made public in public consultation.

Population base for the commencement year, mid 2006 was proposed at 870,000. Projections were to be to the year 2031. The report reviewed the Ottawa-Gatineau Area.

Projections were to be proposed for Ottawa households, housing requirements by dwelling type, and employment. Projections of households and housing were to be developed by applying household and housing propensities (the percentage of persons in each 5 year age group - the cohort - likely to lead a household and the percentage within each of those who are likely to occupy a single detached or other housing form) to the age structure of the projected population. The details in the report "Background Report on New Growth Projections for 2006-2031" were made available to the public. The new projections were stated to be the basis for Official Plan review.

This report was received by the aforementioned City Committees and Council for information purposes by resolutions.

3. Committees and Council approved by resolution a detailed Consultation Strategy dated July 25, 2007 for the Official Plan Review. This included the reference to 20 year plans and their integration (including Transportation and Infrastructure), detailed consultation with community working groups associations, the development community and business associations. Input was sought on policy directions on urban development strategy.

4. Committees and Council approved of a City Housing Strategy Report dated July 17, 2007.

5. Committees and Council received by resolution New Growth Projections for 2006-2031, draft report for Public Consultation dated August 29, 2007. This updated the previous background report and provides new projections for population, households and housing. Projections were to year 2031. Discussion was on the aging of the baby boomers, aging generally, youth and demographic dependencies.

6. Committees and Council received by resolution Report dated October 12, 2007 Tabling of the Official Plan Review White Papers - 9 white papers and 5 rural discussion papers.

7. Committees and Council adopted in staff report dated October 27, 2007 the reference projections as basis for Official Plan Review. Council adopted the Reference Projection of approximately 1,136,000 population, 496,000 households and 703,000 jobs in the City of Ottawa by 2031 as the basis for the Official Plan Review and related master plans review. Professional Peer review results provided critique. Consultation took place in a public information session. Discussion reviewed sprawl in adjacent communities and the difficulty of making sound projections - described as a combination of science and art. Previous projections described as a mixture of accuracy and not, in the 2001 review, were highly overly influenced by the high tech boom that peaked and dissipated. "Understanding recent events in context is one of the principles of good projections, but it is not always apparent what that context is. The best way to address the uncertainty inherent in any projection is to have a good understanding of the community for which the projection is being prepared, monitor actual growth closely after the projection is adopted, and revisit the forecast at regular intervals to correct deviations. The Provincial Policy to review Official Plans at 5 year intervals ensures adjustments will be made regularly."

As to a question that growth will be zero, planning staff responded "Large cities are recognized as the engines of growth in modern economies, and the majority of population growth in Canada is occurring in its major urban centres, one of which is Ottawa. Ottawa will not be among the fastest growing cities in Canada, but it is projected to continue growing at a higher rate than the country overall. Statistics Canada projects that Canada will add 6.5 million people between 2006 and 2031, an increase of 20 percent. The Reference Projection for Ottawa would see this City attracting about 4 percent of overall Canadian growth, for a population increase of about 30 percent. Even if Council considered it desirable to have no growth, it is doubtful this could be successfully implemented."

As to whether the projection was too conservative, staff responded: "There are risks to adopting a projection that is either significantly too low or too high. The risks of being too low include not having a sufficient supply of urban land and of under-sizing key pieces of infrastructure. Being too high risks prematurely designating additional urban land, thus encouraging lower densities, and spending money on infrastructure

sized beyond actual needs. As noted above, reviewing projections at least every five years will avoid ongoing significant deviations in the projection.”

As to insufficient urban land designated, the position was:

“Once the growth projection for the OP review is established, an analysis of urban land requirements will be undertaken. A discussion paper on this topic will be released in the spring of 2008. If that analysis concludes there is a need to designate additional urban land, it will be based on a set of evaluation criteria developed as part of a public process.”

8. Committees and Council received the report dated April 10, 2008 respecting preliminary policy proposals for the Official Plan and Infrastructure Plan and directed further public consultation. Respecting the urban boundary, the planning department reports; “The preliminary proposal suggests that the City establish a performance based urban boundary. The Official Plan would identify Future Urban Areas and require that various criteria be met before these lands are developed. One of the key criteria would be achievement of a City wide intensification target. During consultation the criteria would be refined. During the summer, various locations for Future Urban areas would be assessed and the outcome provided to the Planning and Environment Committee in September. The proposal also indicates that some additional urban land will be required to be added to the urban boundary to meet the requirements of the planning period to 2031.”

9. In a November 12, 2008 report, staff summarized changes proposed noting that Council earlier had approved a new growth projection to the year 2031. They state “that growth projection is the basis for the analysis of urban land requirements.” Committees and Council by resolution, approved that staff table a draft Official Plan Amendment reflecting the changes in this report. Comprehensive Report Residential Land Strategy for Ottawa 2006-2031, a 112 page report, was included. The process for an urban boundary to 2031 is described as complex, involving a balance between policy direction and market forces.

10. A planning report dated January 28, 2009 included a draft Official Plan Amendment. Planning horizon remains 2006 to 2031 with a requirement of additional

850 gross hectares of urban residential land on the basis of aforementioned Residential Land Strategy report. Staff were authorized by Committees and Council to circulate the draft in local papers, e-mailing to 3000 individuals and organizations, the City website, councillors and Federation of Citizen websites.

11. Three public information sessions were held in February, 2009.

12. Public meetings by Planning Committee and Rural Affairs Committee jointly were held March 20, March 31, April 1, April 3, 2009, May 11, 12, 14 and 26, all in 2009.

13. Following intense discussion at Committee with motions to amend the planning staff position and draft OPA 76, City Council commencing on June 10, 2009 defeated motions that the urban boundary be maintained until a public referendum be held, and a motion that the urban boundary not be expanded. A third motion passed that Council retain the existing urban boundary and notwithstanding this that lands within the Fernbank Community Design Plan (CDP) and areas 6A, 6B and 6C should be designated as Future Urban Area. The Fernbank CDP included 163 hectares and was added to the urban boundary formally in OPA 77, one day after OPA 76 was adopted. Parts A, B, and C total 67 hectares. The Recitals to the motion provide the reasons:

“Whereas staff have produced a draft Official Plan Amendment extending to the year 2031 which, while calling for more intensification and higher densities in suburban areas, also requires the expansion of the urban area by approximately 850 hectares.

And whereas the Province requires that municipalities provide for at least a 10 year supply of urban residential land at all times between 5 year reviews of the Official Plan, which is interpreted to mean at least a 15 year supply of urban residential land is required at the time of each comprehensive review of the Plan

And whereas Ottawa has sufficient supply of land in the current urban boundary for:

- An 18 year supply of singles and semi detached housing
- A 25 year supply of townhouses

- Opportunities for apartments beyond 25 years

And whereas the Province allows municipalities to designate land for up to 20 years but does not require that the maximum 20 years be planned for.

And whereas the consequences of not expanding the boundary are that the supply of land for lower density housing forms would be slightly less than 20 years while the supply of higher density dwellings would be more than 20 years.

And whereas Council seeks to plan for a more sustainable future for the City of Ottawa through the Choosing Our Future Urban Area initiative and by supporting intensification at locations that support transit and higher densities in suburban areas.

And whereas lands within the Fernbank Community Design Plan that are not currently designated as Future Urban Area are an integral part of the Fernbank CDP and should therefore be included in the Urban area notwithstanding.”

A second motion at Council with similar recitals as the reasons modified Official Plan Amendment 76 to provide a 15 year supply of land for residential purposes despite projections to 2031 and a 20 year supply for non-residential purposes. In addition to this change in the Strategic Directions, Policy 2, section 2.2.1 was modified to read:

Sufficient land will be provided in the urban area to meet a 15 year forecast for housing and a 20 year forecast for employment and other purposes.

The Council Motion then required in the modified OPA for Council itself to provide funding in 2012 to permit examination of the supply of demand for land for employment, housing and other purposes to meet the requirements of the Provincial Policy Statement with the results of such study to be submitted to Council no later than June, 2014.

14. On June 24, 2009, Council adopted OPA 76.

15. Council on December 9, 2009 proposed modifications (largely clerical) to OPA 76 to be sent to the Minister for formal modification by the approval body. The

Minister subsequently modified OPA 76, gave notice of approval, resulting in the filing of 30 appeals aforementioned.

Regard for the Council position and reasons

Key to the regard the OMB must have for the Council decision and adoption of OPA 76 and the approval authority, pursuant to section 2.1 of the *Planning Act* (Bill 51), is the interpretation of the Provincial Policy Statement and, in particular, what is attributed to the PPS in the Council recitals and resolve clauses. The clear position advanced by counsel for the City is that after Council adoption of a planning horizon for the Official Plan review to 2031, that Council may withdraw from the results that flow from that time frame respecting the projected residential needs of the City and approve of no additional lands or a modified position reducing the needs for urban residential lands to a 15 year horizon, while maintaining employment to what had been projected to the year 2031 in the original planning horizon approved of by Council early in the planning process. The approach is clever, but is not in the view of this Board consistent with the Provincial Policy Statement.

Ottawa emphasizes correctly the effect of section 1.4.1 of the PPS - a 10 year minimum for residential growth. The Board agrees with the 5 year review coupled, this can be viewed as a 15 year minimum. It is, however, a minimum as referenced in policy 1.4.1. This section must be read with other policies of the PPS, in particular policy 1.1.2. wherein sufficient land shall be made available through first intensification and redevelopment and, if necessary, designated growth areas to accommodate an appropriate range and mix of employment, housing to meet the projected needs for a time horizon up to 20 years. The time horizon is a choice for the municipality. Once the choice is made everything that happens in a very complex land need and supply forecasts that follows is dependent on the timing of the forecast. The clear wording of policy 1.1.2 is with the words "shall ... to meet the projected horizon of up to 20 years.", and with the test for meeting the PPS to be consistent with the projected needs for the chosen planning horizon is "that sufficient lands shall be made available". Of assistance is the reference to "a time horizon". Notwithstanding the earlier selection of the joint planning horizon to 2031, the effect of the Council approval is to have separate planning horizons for residential at 15 and employment uses at 20 years. This on its face is

inconsistent with other PPS provisions providing for a co-ordinated, integrated and comprehensive approach.

The Board must be cautious with a late attempt in the planning process to change the planning horizon in an attempt to reduce the numbers in a planning exercise so carefully followed with Council approval. Significant public consultation has followed the setting of the original planning horizon. It was chosen in part to coincide with census years and projections with opinions to propensities followed for the purpose of adjustments. However, the constant is the planning horizon selected by the planning authority.

The shoe was on the other foot in Halton Region in 2005 when the OMB dealt with the Region's 5 year review of their OP. Although there are differences in the *Planning Act* and PPS, both strengthened in terms of section 26 of the Act and policy 1.1.2 of the PPS, the reasoning is analogous and important. In Halton Regional Official Plan Amendment No. 25 [2005] 51 O.M.B.R. 453, developer appellants had sought in their appeals to extend the planning horizon. The municipal review commenced in 2001 with a chosen planning horizon to 2021. Appellants sought to extend the planning horizon to 2031. The Region and lower tier municipalities sought by motion to have those appeal grounds dismissed. The municipalities argued population and employment growth, location of growth, the expansion of urban areas, services for growth and financing for services were all undertaken on the basis of the planning horizon of 2021. The Region referenced the planning horizon as the threshold of the planning exercise with relationships in horizon to the Transportation Plan, Financial Plan and Development Charge By-laws. The Regional Plan had referenced forecasting of population and growth estimates for urban expansion. The public process in Halton had made clear reference to the 2021 planning horizon.

The City of Burlington in support of the Region of Halton argued that the change in the planning horizon would be a material change that could harmfully impact public participation and reliance on the 2021 planning horizon. It was argued by Burlington that to now change the planning horizon, even though the issue was raised in the public process, would be a back door attempt to extend the urban boundary.

The Board found in the Halton case that the alternative planning horizon sought by appellants should be struck as an issue, notwithstanding the wide jurisdiction of the Board to modify Official Plan Amendments under the *Planning Act* and in case law reviewed therein. The Board relied upon the clear legislative intent of the Region in the public process in finding that changing the planning horizon from 2021 to 2031 would be a fundamental or material change that should not be entertained.

In Ottawa there are similar circumstances, perhaps in reverse. The Council approved a 2031 planning horizon upon which population and land requirements were exhaustively analyzed. The 2031 horizon was reflected in white papers and drafts available to the public and in open houses and the public meetings. When there was concern with the results of the analysis, an 850 gross hectare expansion of the urban boundary, Council withdrew from their earlier public position in respect of residential land needs to 2031 to reference a separate planning horizon of residential with a shorter forecast by 5 years to avoid the numbers requiring urban boundary adjustment. There are no numbers in the planning exercise to substantiate no expansion for residential, nor the actual expansion in the notwithstanding clause for Fernbank and the related parcels totalling 230 hectares. The Fernbank lands, in any event, were slated for separate approval in what became OPA 77 shortly after OPA 76 on June 24, 2009. OPA 77 had been the subject initially of appeals to the Regional OP 1997 adjudicated by the OMB and approved. The Fernbank lands need not be considered further.

The Board finds that OPA 76 is not consistent with the PPS and specifically 1.1.2 thereof that sufficient land has not been made available to meet projected housing needs. The change in the planning horizon at the time of adoption of OPA 76 to avoid the numbers generated is not good planning and reflects negatively on the earlier public process. This change and the alternative suggestion to change propensities if the numbers were not viewed kindly, can be viewed as methods to avoid results of an extensive planning exercise. The Board does not view the reliance in the Council recital to the 10 year supply as a means of avoiding the planning exercise required under policy 1.1.2. Rather the 10 year supply and the 3 year supply in policy 1.4.1 b are minimums indicative of the importance of housing capacities. The Board does not agree with the City argument that the planning horizon only arises at the time of adoption by Council. This may be accurate formally, however, the planning horizon arose in early

approvals of the Council in the planning process and is the most fundamental basis of the ensuing planning exercise.

Urban Boundary Expansion Numbers and Evidence

What then is the evidence before the Board as to consistency with the PPS? The planning staff position in this hearing is defensive of the Council position, but reflective of the independence of professional witnesses before this Board and more generally in professional practice. Mr. Cross and Mr. Finley are professional planners with experience in this and related growth management processes. Both gave extensive evidence in this hearing. Mr. Cross testified for 9 days, 7 under cross-examination by counsel Flowers. The City in a detailed land supply demand analysis, calculated new dwellings for the period 2006 to 2031, divided into singles, semis, towns and apartments. The rural share estimated at 10% was subtracted. The resultant urban dwelling demand was reduced by projected intensification resulting in the Greenfield housing demand. The Greenfield demand was reduced by the Greenfield supply resulting in deficiencies in singles and semis with surpluses in townhouses and apartments. Those figures were adjusted for different densities. Since the PPS requires a mix of residential units, so that even if towns and apartments are surplus elsewhere they must be counted in the mix of new Greenfield development. The calculations result in total lands required in net hectares. Since Greenfield lands in urban boundary expansion are gross with roads, schools and parks etc. to be subtracted, the net hectares are then grossed up to arrive at figures representing the total gross hectares required in the planning horizon period 2006 to 2031. The Board finds the City methodology to be reasonable and defensible. This method is used in other municipalities and has been used in Ottawa before, even if not in the last 2003 Official Plan. No objection is taken by other land economists as to methodology although there are different inputs resulting in significant differences in results. Land economists testifying for the appellants projected residential demand to be 2500 gross hectares and 3000 gross hectares to 2031. The work of Malone Parsons used a similar population base but made adjustments in propensities. The second appellant witness panel from the Altus group used a different population base from the Ontario Ministry of Finance rather than Statistics Canada as utilized by the City.

The City figures and results are preferred by the Board for the following reasons; There are many adjustments or propensities possible, as admitted by all land economists. The attempt is to make as educated informed projections as possible, with the knowledge that not all changes to past trends can be factored - for example - the boom to bust in the high tech growth in the Silicone Valley in the City of Ottawa. Likewise the baby boom growth era, particularly for single dwellings may not continue at the same rate as the past. Dr. Norris, a respected statistician formerly with Statistics Canada, thought City projections for singles may be a bit high. The appellant land economists had differing opinions that the demand for singles would not seriously abate.

The Board was referred by the appellants to the 2005 Board Decision 2092. The Board agrees with the conclusions in that case in so far as the nature of the planning exercise and the type of deference therein referred to. Member Atcheson stated at page 37:

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

Same quote - The Board should not interfere in this fundamental 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 Policy Statement, or
- 3) that there has been a breach of the prescribed planning process afforded individuals as a matter of right.

End of long quote.

The Board recognizes these principles were respecting the PPS 1997 and *Planning Act* pre Bill 51. However, based upon Ottawa v Minto [2009] 63 O.M.B.R. 389 (Ont Div. Ct), following the 2005 PPS and *Planning Act* post Bill 51, such principles continue and can be argued to be strengthened. There is no contest here as there was in 2005 wherein Member Atcheson found an important deficiency respecting the maintenance of the 10 year residential supply .

Aside from the Council position respecting the planning horizon dealt with above, the contest is respecting total growth projections over the full planning horizon to 2031. The City has chosen a more cautious approach given surplus lands in the last 2001 analysis for the 2003 Official Plan. There is a basis for such caution. There is no fundamental error in City growth projections. There are differences of opinion - for instance on the use of the Provincial Projection Methodology Guideline 1995. This guideline prefers the use of Ministry of Finance projection work as referenced by the appellants Altus panel. But it very clearly allows the use of other projections. Mr. Cross, growth specialist for the City, was rather cavalier in his reference to the availability of this guideline and that he had little use for it. He did explain, however, some closeness in provincial projections to his own and referenced the validity of Federal census and update material as most relevant and available. The Provincial Projection Methodology document references Provincial Policies in place in 1995 prior to the 1997 and 2005 Provincial Policy Statements. Mr Cross made reference to the currentness of the Provincial Projection Methodology Guideline. The Board is aware of its continued usage, notwithstanding its dated nature. The Board does not find this difference in use of Statistics Canada background data to be a fundamental error. The Board prefers the Cross conclusion of 850 gross hectares based upon the timing of materials available and the considered propensities.

The PPS references the regional market area as being applicable to even single tier municipalities. Notwithstanding the difficulty of implementing cross Provincial consideration, the Board considers that the City evidence best takes into account this bigger planning picture with due regard for possible leap frogging of growth from the City of Ottawa into rural municipalities in Ontario and to Quebec neighbouring municipalities.

The Cross work, painstaking, but significant in both earlier approvals sought from Council and in public consultations, is not without question, nor difference in opinion as to future trends - continuing or changing. However, he maintained in our view the most independence required of an expert witness. Since the current appellants abandoned appeals to the 2003 OP in a manner that suggested continuing consultation in the current 5 year review, there were approximately 34 meetings in the review period between City officials with GOHBA. There were also community groups speaking to Planning Committee and protesting outside City Hall. Yet the reference to the 34 meetings is so plenary that an outsider might question who was the draftsman. When an appellant consultant prepared a background paper asking Planning Committee to direct its planning staff to reconsider its considered opinions and work, this does impact on the independence of such person when later called as an independent witness in the current proceeding. While such conduct or strategy may not bear the term of lobbyist as referenced by Mr. Johanis, it reflects negatively on the independence of a professional witness who is expected to give opinion evidence without advocacy. Conduct in the nature of advocacy should be left to counsel. The Board finds the City planning witnesses on staff to be the most credible, in terms of carriage, use of available material up to the time of adoption and consideration of the previous surplus. The Board finds the City staff planning work to be in accordance with the 2005 PPS as to total lands required. There was no breach in the prescribed planning process which was open to appellants in spades. The Board, in seeing the reference in voluminous reports and in the sworn testimony to the nature of growth required by the Province to be accommodated for, accepts the 850 gross hectares as based upon reasonable projections weighed as one must in this type process appropriately.

Although Member Atcheson IBID recognized clearly the value of evidence at the hearing as being the best evidence, that is a reflection of the testing of the municipal work as compared with other opinions. All of the evidence in the 7 weeks of hearing has been carefully reviewed in exhibits, notes and transcript form in the Board coming to its conclusion of projected growth and residential land needs. Evidence available in the public process has the advantage of being in the public forum when the local decision makers make their decision. The Board is required under section 2.1 of the *Planning Act*, to have regard for the decision of Council, but also “any supporting information and

material that the municipal Council or approval authority considered in making the decision described in clause a.”

The Parties in the current case have all put new evidence back to Council as required under Bill 51 Amendments to the *Planning Act*. The technical requirements have been met. There is still the requirement for the Board to weigh the evidence. Ensuing data post the adoption date and opinions may be used to judge credibility and assign weight. The *Planning Act* requirement of successive 5 year reviews allows for updates in later reviews.

The Board has considered the evidence brought by Paul Johanis, the Greenspace Alliance and Dr. Ranjit Perera. Dr. Perera repeated the need to expand the urban boundary even beyond the GOHBA appellants to reflect human basic life qualities, including the right to City water and sewage disposal. He bases his testimony and interaction in questions and in sum up upon the Human Rights Code and Charter considerations where he argued all have the right to basic qualities of life without discrimination. Dr. Perera does not raise formal Human Rights complaints against the City nor Charter challenges. He has not given notice of such but reminds the City and this Board of inequalities between urban residents within the urban boundary on City services and rural residents outside the urban boundary who do not share such modern efficient and healthy services. The Board is reminded by Dr. Perera of his own Human Rights case with the federal government and to Human Rights in recent OMB case law. Mr. Johanis, who was added as a Party, has brought forward cogent evidence from 4 well qualified witnesses - in particular statistician Dr. Norris and Mathew Paterson, a recent appointee to the United Nations deliberations on climate change. Such testimony was scintillating and perhaps assists in understanding the logical extents to which issues of the urban boundary may be taken. The Board is appreciative of such evidence in the context of the Provincial Policy Statement - to create a healthy environment where economic realities are considered and balanced in the public interest. Such balance is implicit, the Board believes in the City process and planning staff evidence of the addition of 850 gross hectares. The Greenspace Alliance as a Participant took a lesser role but supportive of Johanis and City positions.

Also carefully considered by the Board is the issue of risk - risk of oversupply or undersupply of urban land. This was raised initially by Mr. Cohen and then in summation by Mr. Zakem. Designating too little land could result in an insufficient supply of urban land and the under sizing of key pieces of infrastructure. Conversely, premature designation could encourage lower densities and expenditure of infrastructure expenditure beyond actual needs. It is apparent to the Board that City witnesses, both in testimony and in their reports, considered risks of over and undersupply of urban land. While the undersupply risks are emphasized by appellant witnesses, the Board does not find such evidence to be persuasive of the ultimate issues referred to by the appellants - whether there has been a fundamental error in assessment of projected growth needs. Evidence of planning implementation and the "tool box" is considered in more detail in modifications sought in particular to the intensification targets.

Modifications sought to language and mapping

In the manner that the Minister was asked to make language corrections, there is an extensive list of language modifications sought from the Board in Exhibit 76 to this hearing. The City in final argument has made it clear that there are language changes with which it agrees. In the absence of objection from any party, the Board modifies the language as agreed to in final argument. The Board also modifies language to the City staff urban boundary adjustment projection at 850 gross hectares and requests the parties to put forward an amended document. Other related sections, referenced in Exhibit 76, are modified to the 850 number and the 2031 time.

Remaining in dispute in Exhibit 76 is the New Policy 7 and the important intensification targets and their relationship to future urban expansions.

Section 2.2.1 New Policy 7 reads:

"Council shall provide funding in 2012 to permit an examination of supply of/demand for land for employment, housing and other purposes to meet the requirements of the Provincial Policy Statement with the results of such study to be submitted to Council no later than June 14, 2014. The long term urban needs of the City will be examined as part of Choosing Our Future public engagement process. The results of the Land

Evaluation and Area (LEAR) review of the Mineral Resource policies will also be used to inform the next comprehensive update of this Plan.”

It is not usual to commit to funding in a Planning Policy document. Yet there is obvious relevance to the Provincial Policy Statement. As such, the Board will not modify or delete this policy as argued by the appellants.

Intensification

The term Intensification is significant in terms of the Provincial Policy Statement. The City has largely adopted the definition proposed from the PPS. The appellants would add: “Notwithstanding and in addition to the units included in the definition of residential intensification above, all units located within the Central Area Mixed Use Centre, Main Streets and Town Centres designations on Schedule B shall be included as intensification units for the purposes of the residential intensification target set out in Policy 5”. The Board rejects this change due to the broadness and possible overlap with what is planned for initially. The PPS and the proposed OPA 76 definition of intensification refer to a “net increase in residential units”. The proposed modification would make it difficult to determine what is net. The Board heard City evidence that in interpretation the City would consider under intensification new residential development 4 years after initial development. Rather than being in mind only, the Board adopts that criterion as a modification which it directs be set out in the definition of intensification as applicable including areas referred to by the appellants. Appellant modification in section 11 of exhibit 76 to policy 5 as to the targets and time periods as proposed by the City, add clarity as to the 5 year review periods and are adopted. This language is to be in the redraft to be submitted to the Board.

Intensification Linkage

The intensification goals of the Province and accordingly Ottawa are significant. Ottawa now plans for intensification targets ranging in time periods from 36% to 44%. Ottawa acknowledges that planning changes are necessary and hence yearly monitoring is built into OPA 76 respecting how intensification assumptions are being achieved. Both sides now agree on language linkage that in 5 year comprehensive reviews the City will consider among other matters the achievement of the residential

intensification targets of the Plan. This is consistent with the PPS - to look at intensification and redevelopment and, if necessary, designated growth areas in policy 1.1.2 and policy 1.1.3.6 that specified targets for intensification and redevelopment are achieved prior to or concurrent with new development within designated growth areas. The OPA states that “the zoning applying to the target areas will be reviewed and if necessary amended to enable achievement of the minimum targets. Any necessary amendments will be carried out in consultation with the neighbourhood involved.” The City acknowledges that this has significance involving its staff and outside parties who have process and appeal rights. The City language is that in the 5 year comprehensive review the assessment will consider inter alia “The achievement of the intensification target as identified in section 2.2.2, policy 5 of this Plan. An urban expansion will only be considered if the intensification target of this plan has been met.” The appellants agree on the consideration of the 5 year intensification target but object to the last line that the expansion will only be considered if the intensification target has been met.

The Board finds that the last sentence is inconsistent with the lead in that the City will undertake a comprehensive review with consideration of matters including the intensification target. If the City is unsuccessful in implementation efforts identified in the monitoring set out in the Plan, that should be a consideration. To suggest that urban expansion will only be considered if the target is met (aside from implementation) is to place on the word target an emphasis not intended by the PPS, which uses language “intensification and if necessary designated growth area” and language “intensification prior to or concurrent with new development in designated growth areas.” The language as to achievement of the growth target should remain as a consideration for the Council, particularly when it is acknowledged that implementation and monitoring by the City is required. The language is modified so that the intensification target remains a consideration for the Council.

The City agrees if the number 850 is awarded, Urban Expansion Study Area in the former policy 3.12 should be approved of. The Board so modifies with language reflecting the consideration of the City’s implementation strategy for intensification and density targets and the achievement of intensification targets.

Conclusions

The Board will allow the appeals in part to the extent necessary to give effect to its reasons aforementioned. OPA 76 is modified by the Board to give effect to such reasons. Our finding is that the modifications are required to meet the test of consistency with the PPS, for appropriate regard under section 2 and consistency under section 3 of the *Planning Act*, for appropriate regard for the decision of the Council of the City of Ottawa and supporting information and material considered by the Council under section 2.1 of the *Planning Act*, the test of good planning and in the public interest as set out in the Divisional Court Decision of Ottawa v. Minto *IBID*. The parties are to draft the detail of such modifications in the form of an Order to be submitted to the Board planner within 60 days of this Decision. The Order is to reflect a second phase hearing on the where of the urban boundary expansion with notice and new prehearing conference. The appeals to the quantum of the urban boundary expansion are otherwise dismissed. The Board may be spoken to in the presence of all parties should the need arise in implementation of this Decision.

“N.C. Jackson”

N.C. JACKSON
VICE CHAIR

“A. Christou”

A. CHRISTOU
MEMBER

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