



Greenspace Alliance of Canada's Capital  
Alliance pour les espaces verts dans la capitale du Canada

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17 February 2012

Subject: OPA 76, Urban Boundary OMB hearing  
The quantum of urban expansion following the Decision and Order for Phase 1

Dear Mr. Marc,

Two things are apparent:

1. The Phase 1 / Phase 2A Panel appears to be of the belief that the Ordered 850 ha expansion excludes 163 hectares in the Fernbank area (Parcels 5a and 5b).
2. The written record in the Book of Documents for Phase 1 unambiguously shows said 163 hectares to be part of the staff-proposed 850 hectares.

Re 1

After giving mixed signals at various points during the hearing, the Panel Members' comments on February 15 following our intervention are consistent only with the correctness of assertion 1.

Re 2

We have no access to the transcript of Phase 1 but references in the Book of Documents for that hearing provide ample proof of assertion 2. For example:

- Vol 4 Tab 31 - Staff report of 4 May 2009 (Comprehensive Five-Year Review)  
Document 2, first page;  
Document 3, Comment 26 and Response;  
Document 4 and Schedule R35.
- Vol 7 Tab 57A - Staff report of 24 May 2009 (Fernbank CDP):  
handwritten page 10-bottom - 11-top.

We surmise that the transcript of the hearing does not include any evidence that the Panel was given to understand that the considered quantum of 850 ha excluded said 163 ha. We can only hope that the transcript provides evidence that the Panel was informed that, net of OPA 77, the staff-suggested quantum was now 687 ha.

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Noteworthy further:

- a. Schedule R35 was still included in the staff report of June 24, 2011 (Phase 2A, Vol 10 Tab 43A) but was deleted in its report of September 1, 2011 (Phase 2A, Vol 10 Tab 44A).
- b. Council's 10 June 2009 OPA 76 approval of an expansion of the urban area by a total of 230 ha included Fernbank's 163 ha. OPA 77 was approved shortly thereafter, on 24 June 2009, and came into force on 18 June 2010. Respective by-laws 2009-209 and 2009-206 were approved by Council on June 24, 2009.
- c. The staff report of 24 June 2011 [Phase 2A, Vol 10 Tab 43A, p2] confirms staff's assertion that 163 ha were approved through OPA 77 and that therefore 687 ha remained to be determined to implement the Board's Phase 1 Order:  
"Council added 230 hectares of urban land through Official Plan Amendment No. 76 (OPA 76), adopted in June 2009. Of the 230 hectares, 163 hectares were subsequently confirmed through Amendment 77, which is now in effect. Consequently, the OMB decision requires that an additional 687 hectares be added for a total of 850 hectares."
- d. Faith Blacquière, in her comments to Planning Committee for its meeting of 13 September 2011, noted the overlap between OPA 77 and OPA 76. (Submission attached, refer to her "Issue 2.") She argued that Parcels 5a and 5b should not have become urban under OPA 77 but instead remain under the umbrella of OPA 76.

The conclusion is inescapable that the Panel's apparent belief is not in accord with the record. There is ample ground for seeking certainty in this matter – in effect, clarifying the Panel's understanding of the record. The misunderstanding has arisen because the City "by-passed" OPA 76 when it approved OPA 77 on one hand but, on the other, may not have made it clear during the Phase 1 hearing that the net staff-recommended quantum was therefore 687 ha.

The process suggested by Mr. Flowers seems appropriate. A reading of Rule 109 for what it does not say is that a Party can request a correction or clarification that is not a request for a substantive change and therefore will not be treated as a section 43 request.

The Rules do not support believing that such a request made by a Participant would be given weight.

We ask that the City make such a request to the Board. Based on the comments made by Messrs. Cohen, Flowers and Zakem on February 15 (if I understood them correctly, despite terrible acoustics and my deteriorating hearing), I surmise that they would lend their support to such an approach.

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We further ask, should it not be feasible to make the actual request next Tuesday, you at least express to the Panel your intent to do so in short order.

The alternative is either an unwarranted and unintended additional 163 ha of urban expansion or else, should uncertainty prevail, an unfocused and inefficient Phase 2B hearing.

Respectfully,

Erwin Dreessen, Ph.D.  
Greenspace Alliance of Canada's Capital

cc: Alan Cohen  
Mark Flowers  
Steven Zakem  
Wendy Nott

Att.