

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: June 17, 2016

CASE NO(S): PL101449
PL140495

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 6980848 Canada Corporation & 7657315 Canada Corporation
Subject: Proposed Plan of Subdivision - Failure of the City of Ottawa to make a decision
Purpose: To permit residential development
Property Address/Description: Part of Lot 7, Concession 3 (1566 Stagecoach Road) in the Geographic Township of Osgoode now in the City of Ottawa
Municipality: City of Ottawa
Municipality File No.: D07-16-10-0015
OMB Case No.: PL101449
OMB File No.: PL101449
OMB Case Name: 6980848 Canada Corporation & 7657315 Canada Corporation v. Ottawa (City)

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 6980848 Canada Corporation & 7657315 Canada Corp
Subject: Proposed Plan of Subdivision - Failure of the city of Ottawa to make a decision
Purpose: To permit residential development
Property Address/Description: Parts of 1566 & 1600 Stagecoach Road in the Geographic Township of Osgoode now in the City of Ottawa
Municipality: City of Ottawa
Municipality File No.: D07-16-11-0005
OMB Case No.: PL101449
OMB File No.: PL110922

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 6980848 Canada Corporation & 7657315 Canada Corp
 Subject: Application to amend Zoning By-law No. 2003-30 - neglect of Application by the City of Ottawa
 Existing Zoning: Developmental Reserve (DR-1)
 Proposed Zoning: Village Mixed Use Rural Exceptions (VM1(617r))
 Purpose: To permit residential development
 Property Address/Description: 1566 Stagecoach Road
 Municipality: City of Ottawa
 Municipality File No.: D02-02-10-0050
 OMB Case No.: PL101449
 OMB File No.: PL110433

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 7657315 Canada Corporation
 Subject: Request to amend the Official Plan - Failure of the City of Ottawa to adopt the requested amendment
 Existing Designation: General Rural Area and Rural Natural Features Area
 Proposed Designated: General Rural Area
 Purpose: To permit the expansion of the Village of Greely boundary and allow for the development of Phases 3 – 6 of the Cedar Lake subdivision
 Property Address/Description: 1566 & 1600 Stagecoach Road
 Municipality: City of Ottawa
 Approval Authority File No.: D01-01-11-0001
 OMB Case No.: PL101449
 OMB File No.: PL150739

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 7657315 Canada Corporation
 Subject: Application to amend Zoning By-law No. 2008-250- Neglect of the City of Ottawa to make a decision
 Existing Zoning: RU and DR
 Proposed Zoning: Site Specific to be determined
 Purpose: To permit the development of Phases 3 – 6 of the Cedar Lakes Subdivision
 Property Address/Description: 1566 & 1600 Stagecoach Road
 Municipality: City of Ottawa
 Municipality File No.: D02-02-11-0024
 OMB Case No.: PL101449
 OMB File No.: PL150740

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellants: See Attachment 1
 Subject: Proposed Official Plan Amendment No. 150
 Municipality: City of Ottawa
 OMB Case No.: PL140495
 OMB File No.: PL140495
 OMB Case Name: Dolan v. Ottawa (City)

Heard: October 19 to 23, 2015 in Ottawa, Ontario

APPEARANCES:

Parties

6980848 Canada Corporation and
 7657315 Canada Corporation
 (Sunset Lakes Developments)

City of Ottawa

Counsel

P. Webber

T. Marc

INTERIM DECISION OF THE BOARD DELIVERED BY C. CONTI

INTRODUCTION

[1] This is an interim decision for appeals by Sunset Lakes Developments (“Appellant”) regarding applications for the development of a proposed plan of subdivision and with regard to Ottawa Official Plan Amendment No.150 (“OPA 150”). The Appellant filed an application for a plan of subdivision and associated applications for amendments to the City of Ottawa Official Plan and to Zoning By-law No. 2008-250 for a property at 1600 Stagecoach Road in the Village of Greely (“Greely”). These applications have been appealed due to the failure of the City of Ottawa (“City”) to make a decision within the required time limits. The Appellant has also appealed the approval by the City of OPA 150 which is the amendment to bring into force the City’s five year review of its Official Plan. Through a decision issued on June 15, 2015, Board Member Makuch, who is adjudicating matters regarding the remainder of appeals of OPA 150,

consolidated the Appellant's appeal of OPA 150 with the appeal of the private planning instruments.

[2] The Board has approved previous applications by the Appellant for phases 1 and 2 of the subdivision development located within the village boundary of Greeley which is coincident with the settlement area of the village.

[3] The applications under appeal are for phases 3 to 5 of the subdivision proposing 116 single family residential lots which are located outside of the village boundary and to the south of the approved phases. Approval of the plan of subdivision and associated amendments to the Official Plan and Zoning By-law is dependent on expansion of the settlement area of the village.

[4] The Appellant filed with the Board a proposed amendment to the Official Plan (Exhibit 21, Tab 5), changes to the Zoning By-law (Exhibit 21, Tab 4 and Exhibit 4), a draft plan of subdivision (Exhibit 54), proposed revisions to the Community Design Plan (Exhibits 5 and 53) and proposed conditions of draft plan approval (Exhibit 50 and Exhibit 51) all in pursuit of approval of the plan of subdivision. The Appellant also filed proposed changes to the text of OPA 150 (Exhibit 2).

[5] The Appellant had initially included lands owned by others in its proposed amendments to the Official Plan and Community Design Plan ("CDP"). Approval of these amendments would have required expansion of the settlement area to include these lands as well as the Appellant's property. During the course of the hearing the Appellant abandoned its application related to those lands and Counsel for the parties agreed that only the matters related to the Sunset Lakes property should be subject to the Board's consideration in this appeal.

[6] The proposed amendments to the CDP and to the Official Plan designations were revised to remove those areas outside of the Appellant's ownership which are reflected in Exhibit 53. In addition near the end of the hearing the parties agreed that the lotting in phase 5, an area that is subject to further environmental studies, would be

deferred through the draft plan conditions until the results of the studies were known. These changes were included in the last set of draft plan conditions filed with the Board (Exhibit 51). The Board understands that the draft plan of subdivision (Exhibit 54) also requires revision to reflect these changes.

[7] Subsequent to the hearing for this appeal, a decision by Board Member Makuch issued on February 23, 2016 found that the City must complete a Land Evaluation Area Review (“LEAR”) and Employment Lands Study before the provisions of OPA 150 that are under appeal by other appellants can be further considered. While the Appellant’s appeal of OPA 150 only involves certain rural area and village policies and no other appellant appeared at the current hearing to provide evidence on these matters, the Board cannot rule out the possibility that evidence may come forward resulting from the LEAR or Employment Lands Study that could affect some of the Board’s findings related to the Appellant’s appeal. For this reason, the Board will issue an interim decision in this matter and withhold its order until after the LEAR and Employment Lands Study are completed. If the results of those studies may affect the findings of this interim decision, the parties are advised to contact the Board in order to determine if the hearing should be re-opened in order to consider additional evidence.

PROPOSED PLAN OF SUBDIVISION

[8] The proposal as submitted to the Board is for 116 single family residential lots, each with a minimum size of 0.2 hectares (“ha”) on 40.49 ha of vacant land. The eastern boundary of the property has frontage on Stagecoach Road and to the west the property is bounded by an existing plan of subdivision. Another existing plan of subdivision is located on the east side of Stagecoach Road. Lands to the south are vacant. Road connections have been provided from phases 1 and 2 of the development on the Appellant’s lands to the north. The internal roads in the proposed subdivision are intended to connect to these roads in phases 1 and 2.

[9] Portions of the property are wooded. In particular, the western part of the property contains natural heritage features that may be of significance. The Appellant

has prepared an Environmental Impact Statement and Tree Conservation Report and an Integrated Environmental Review to address potential natural heritage issues associated with the development.

[10] The proposed development will be serviced through individual private wells and septic systems. The proposal includes three man-made “lakes” that are intended to provide amenity features in the subdivision and act as storm water ponds. These “lakes” have also been included in the calculation of nitrate in groundwater leaving the site which is a critical factor in meeting the water quality requirements of the Ministry of the Environment and Climate Change (“MOECC”).

[11] The lands abutting the property to the west are within the village boundary, while the lands to the east including the subdivision on the east side of Stagecoach Road and the lands to the south are outside of the village and settlement area.

ISSUE

[12] There are numerous issues related to this appeal as identified on the issues list (Exhibit 6). However, the issues in this appeal involve two main areas.

[13] First, a fundamental issue for the Board in making this decision is to determine if the proposed expansion of the settlement area is appropriate and if it is consistent with the provisions of the Provincial Policy Statement, 2014 (“PPS”) and meets the requirements of the *Planning Act* (“Act”). If expansion of the urban area is not appropriate, then it is clear that the subdivision cannot be approved. On the other hand if it is determined that the settlement area should be expanded, then the plan of subdivision must meet the requirements of s. 51(24) of the Act and the proposed conditions of draft approval must be reasonable under s. 51(25).

[14] Second, the Board must consider if the sections of OPA 150 that have been consolidated with the Appellant’s appeal are appropriate and meet the requirements of the Act, are consistent with the PPS and comply with other relevant provisions. The

Board must also determine if the Appellant's proposed revisions to OPA 150 are appropriate, are consistent with the PPS and comply with other requirements.

EVIDENCE

[15] The Board heard evidence on behalf of the Appellant from William Holzman, President of Holzman Consultants Inc. Mr. Holzman is a Registered Professional Planner with more than 30 years of experience. He was qualified by the Board as an expert in land use planning.

[16] Stephanie Morris, Planner with Holzman Consultants Inc. also provided planning evidence on behalf of the Appellant. Ms. Morris has approximately three years of experience in the planning field and after some questions of clarification from Tim Marc, the Board qualified her to give opinion evidence in land use planning.

[17] The Board heard evidence on behalf of the Appellant from Christina Heydorn, Principal with Malone Given Parsons Ltd. Ms. Heydorn is a Registered Professional Planner and Member of the Ontario Association of Land Economists. She was qualified by the Board as an expert in land use planning and as a land economist.

[18] Bernie Muncaster, Principal with Muncaster Environmental Planning Inc., testified on behalf of the Appellant. Mr. Muncaster who has more than 30 years of experience was qualified as an expert in biology and ecology.

[19] The Board heard evidence on behalf of the Appellant from Stephen Walker, Senior Geotechnical Engineer and Hydrogeologist with John D. Patterson & Associates Limited. Mr. Walker is a Professional Engineer who has approximately 40 years of experience. He was qualified by the Board as an expert in geotechnical engineering and hydrogeology.

[20] Daniel Anderson, a principal of the Appellant corporation, also testified.

[21] The Board heard evidence on behalf of the City from Ian Cross, Program

Manager, Research and Forecasting Unit in the City's Planning and Growth Management Department. Mr. Cross is a Registered Professional Planner with more than 35 years of experience. He was qualified by the Board as an expert in land use planning with expertise in forecasting.

[22] The Board also heard evidence on behalf of the City from Bruce Finley, a Planner with the City. Mr. Finley is a Registered Professional Planner with more than 25 years of experience. He was qualified by the Board as an expert in land use planning.

[23] In addition, Robin Kell provided evidence on behalf of the City. Mr. Kell is a Professional Engineer and is an Associate and Hydrogeologist/Engineer with Dillon Consulting Limited who has more than 25 years of experience. The Board qualified Mr. Kell as an expert in hydrogeology and environmental engineering.

[24] The Board heard evidence on behalf of the City from Sean Moore, Development Review Planner with the City. Mr. Moore is a Registered Professional Planner with more than 10 years of experience. He was qualified by the Board as an expert in land use planning.

[25] The Board also heard evidence on behalf of the City from Harry Alvey, Project Manager and Acting Senior Infrastructure Approval Engineer in the City's Development Rural Services Group. Mr. Alvey is a Professional Engineer who has approximately 30 years of experience. He was qualified by the Board as an expert in civil engineering, geotechnical engineering and site development.

RELEVANT FACTS

[26] Based upon the submissions of the parties, the Board has determined that the following facts are relevant to this appeal.

[27] The subject property is designated as General Rural Area and Rural Natural Features in the City's Official Plan (Exhibit 13, Tab 8, p. 6). The Appellant's proposed Official Plan Amendment (Exhibit 21, Tab 5) will bring the lands within the village

boundary and provide land use designations for the subdivision property that will permit the development.

[28] The property is outside of the settlement area boundary of the village and in order to develop the proposed subdivision the boundary must be expanded. Proposals for boundary expansions are subject to s. 2.2.1 of the Official Plan which indicates that the most appropriate time to consider land supply and therefore settlement area expansions is when the City does its five year Official Plan review. Policy 3 of s. 2.2.1. sets out matters to be considered when undertaking a comprehensive review to determine if settlement area expansion is required. These include the need for additional land to meet the forecasted demand for housing and employment, current land supply, its distribution and potential, provincial requirements to maintain a ten year supply of land available for residential development and intensification and a three year supply with servicing capacity in draft approved and registered plans, the potential for meeting the demand through reconsideration of permitted land uses, and the achievement of intensification targets (Exhibit 8, Tab 2, p. 28).

[29] If the evaluation described in policy 3 identifies the need for an expansion then policy 4 identifies a number of considerations through which "...the merit of designating land in different locations and amounts will be compared and evaluated in consultation with the community, landowners and other interested parties." Among these considerations are the ability of existing or planned infrastructure to support the development and the need to provide new or to upgrade existing infrastructure and municipal services. Policy 5 indicates that applications to expand settlement area boundaries received between the times of the five year assessments of urban land supply and comprehensive reviews will be considered premature unless Council directs that a comprehensive review be initiated.

[30] A number of policies in the PPS are relevant to the proposed expansion of the urban area, the provisions of OPA 150 and the subdivision proposal. In s. 1.1.3.1 it states, "*Settlement areas* shall be the focus of growth and development and their vitality and regeneration shall be promoted" (Exhibit 8, Tab 3, p. 11). The policies in s. 1.1.3 of

the PPS generally promote intensification and the efficient use of land and resources. Section 1.1.3.2 a)2. indicates that land use patterns in settlement areas shall be based on densities and a mix of land uses which, “ ...are appropriate for, and efficiently use, the *infrastructure* and *public service facilities* which are planned or available, and avoid the need for unjustified or uneconomical expansion;...” (Exhibit 8, Tab 3, p. 11).

[31] Section 1.1.3.8 states in part:

A planning authority may identify a *settlement area* or allow expansion of a *settlement area* boundary only at the time of a *comprehensive review* and only where it has been demonstrated that:

- a) sufficient opportunities for growth are not available through *intensification*, *redevelopment* and *designated growth areas* to accommodate the projected needs over the identified planning horizon;
- b) the *infrastructure* and *public service facilities* which are planned or available are suitable for the development over the long term, are financially viable over their life cycle, and protect public health and safety and the natural environment;... (Exhibit 8, Tab 3, p. 12).

[32] In s. 1.1.4.1 the PPS indicates that healthy and viable rural areas should build upon rural character, promote regeneration, accommodate an appropriate range and mix of housing within settlement areas, use rural infrastructure and public service facilities efficiently. Section 1.1.4.2 states that in rural areas, rural settlement areas shall be the focus of growth and development and their vitality and regeneration shall be promoted.

[33] With regard to housing s. 1.4.1 of the PPS states the following:

To provide for an appropriate range and mix of housing types and densities required to meet projected requirements of current and future residents of the *regional market area*, planning authorities shall:

- a) maintain at all times the ability to accommodate residential growth for a minimum 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, land with servicing capacity sufficient to

provide at least a three year supply of residential units available through lands suitably zoned to facilitate *residential intensification and redevelopment*, and land in draft approved and registered plans.

[34] In s. 1.6.6 the PPS sets out a hierarchy of sewage, water and stormwater servicing for development where municipal sewage and water services are preferred, private communal services are the second priority and private individual services are third in priorities. Section 1.6.6.2 of the PPS states, “*Municipal sewage services and Municipal water services* are the preferred form of servicing for *settlement areas*. *Intensification and redevelopment* within *settlement areas* on existing *municipal sewage services* and *municipal water services* should be promoted wherever feasible.”

[35] In s. 1.6.6.4 of the PPS it states “Where *municipal sewage services* and *municipal water services* or *private communal sewage services* and *private communal water services* are not provided *individual on-site sewage services* and *individual on-site water services* may be used provided that site conditions are suitable for the long-term provision of such services with no *negative impacts*. In *settlement areas*, these services may only be used for infilling and minor rounding out of existing development” (Exhibit 8, Tab 3, p. 21).

[36] The subject property is zoned RU in the City’s Zoning By-law. The proposed zoning by-law amendment would bring the lands under the V1E(617r) zoning in order to permit the development (Exhibit 4).

ISSUES, ANALYSIS AND FINDINGS

[37] To briefly summarize the positions of the parties; the Appellant contends that sufficient demand for housing exists in Greeley to justify the proposed boundary expansion. The Appellant maintains in carrying out the comprehensive review, the City has underestimated the demand for housing in Greeley and furthermore, that grouping of Greeley with the villages of Manotick and Richmond will favour the other two villages since they currently have, or in the near future will have, municipal services.

[38] The Appellant contends that expanding the village boundary to include the proposed subdivision lands is appropriate and is consistent with the PPS. Furthermore, it should be considered to be a “minor rounding out” as permitted in s. 1.6.6.4 of the PPS.

[39] The Appellant maintains that the proposed subdivision complies with the lot size requirements in the CDP and that the proposed septic servicing of the lands meets the requirements of the D-5-4 guideline of MOECC. Furthermore, the Board has approved the Appellant’s subdivisions in the past using the same septic servicing method and water quality monitoring results have shown it to be an effective method to protect water quality and meet provincial requirements for nitrate in water.

[40] Furthermore, the Appellant maintains that its proposed modifications to OPA 150 are appropriate and should be approved.

[41] The City contends that a sufficient supply of lots is available in Greeley and that a settlement area expansion is not required. The City indicated that no expansions of village settlement areas were recommended through the comprehensive review.

[42] The City maintains that it is appropriate to group the villages of Manotick, Richmond and Greely together when considering settlement area expansions and that priority for development should go to villages with municipal services. The City does not agree that the proposal can be considered a “minor rounding out” under s. 1.6.6.4 of the PPS.

[43] The City contends that the subdivision is not appropriate and that it has not been demonstrated that the proposed method of sanitary servicing will protect water quality and maintain nitrate levels within the provincial requirements.

[44] The City also maintains that OPA 150 is appropriate and requested that the Board approve a number of policies related to the rural area and villages. In particular, the City has requested that the Board approve policy 26 in s. 2.2.2 which should be

moved to s. 3.7.1, policies 7, and 9 to 16 in s. 2.2.1, and policy 10 in s. 3.7.1 as set out in Exhibit 8, Tab 2.

[45] During the course of the hearing, the Board heard evidence from the parties on numerous issues related to their positions and the provisions of the relevant planning documents, including the issues on the issues list. Based upon the evidence, the Board has concluded that the issues discussed below are those that are critical to making this decision. The Board's findings are provided where appropriate.

Jurisdictional Issue

[46] As noted earlier the first consideration for the Board in making this decision involves the proposed boundary expansion. However, in his argument Mr. Marc also raised the question of the Board's jurisdiction to consider a boundary expansion in this appeal, since no boundaries of villages were changed as a result of the comprehensive review. Mr. Marc contended that the Board's jurisdiction to change parts of an Official Plan is limited by s. 17(50.1) of the Act and he raised a number of authorities, including the decision of the Ontario Superior Court, *Hobo Entrepreneurs Inc. v. Sunnidale Estates Ltd.* 2013 CarswellOnt 946, 2013 ONSC 715 in support of this position. He maintained that the Board cannot approve a boundary expansion in this case since the boundaries of the villages in the Official Plan, including the boundary of Greely, have not been changed in OPA 150.

[47] Paul Webber argued that the Board does have the jurisdiction to approve a boundary expansion in this case. He noted that the wording of s. 17(50.1) limits the Board from changing parts of an Official Plan that "were not dealt with in the decision of Council". He referred to Exhibit 13, Tab 29 which contains the minutes of the City Council meeting where OPA 150 was considered which specifically refers to refusing to expand the boundary for Greely. Mr. Webber also provided authorities in support of his position including a previous decision of this Member, *Zellers Inc., Re* 2104 CarswellOnt 6140. He maintained that clearly the matter was dealt with in the decision of Council, and therefore the Board has the jurisdiction to alter the village boundary.

[48] In considering the submissions, it is important to examine the wording of both s. 17(50) and s. 17(50.1) which state the following:

(50) Powers of the O.M.B. – On an appeal or a transfer, the Municipal Board may approve all or part of the plan as all or part of an official plan, make modifications to all or part of the plan and approve all or part of the plan as modified as an official plan or refuse to approve all or part of the plan, 1996, c. 4, s. 9.

(50.1) Same – For greater certainty, subsection (50) does not give the Municipal Board power to approve or modify any part of the plan that,

(a) is in effect; and

(b) was not dealt with in the decision of council to which the notice of appeal relates. 2006, c. 23, s. 9(13).

[49] The above noted Superior Court decision appears to interpret the wording of s. 17(50.1) as limiting the Board's power to approve or modify only those parts of an official plan that were changed through the decision of council. In the Board decision that was before the Court, *Angillette Re 2012 CarswellOnt 7976*, an appeal of an official plan was dismissed based upon the limitations on the Board's jurisdiction provided in s. 17(50.1) of the Act.

[50] The Board recognizes that the above provisions of the Act place limitations on the Board's powers. It should also be noted that through s. 22(7.1) and s. (7.2) appeals are not allowed against the refusal or failure to adopt private applications for official plan amendments that are intended to alter part of a settlement area boundary or establish a new area of settlement. These provisions recognize the role of municipalities as primary decision makers when it comes to determinations about the expansion of settlement areas.

[51] However, as Mr. Webber noted in his submissions, s. 17(50.1) uses the words "was not dealt with" in the decision of Council when referring to the parts of the plan that cannot be approved or modified by the Board. The Act does not use the words "was not changed or modified". If the intent of the Act was to always limit the Board's powers to only those sections that were changed or modified it could have specifically used those words.

[52] In the Board's view, the wording of s. 17(50.1) allows some flexibility for the Board to modify parts of an official plan in cases where it is clear that those parts were "dealt with" in the decision of Council, even if those parts were not changed. From the Minutes of the City Council meeting where OPA 150 was approved, it is clear Council's decision dealt with expansion of the village settlement area boundaries in two ways. First, a motion to expand the settlement area boundary to include the Appellant's lands and the others that were originally included in the Appellant's appeal was defeated (Exhibit 55, p. 52 to 54). Second, through clause 3 of the motion on OPA 150 Council adopted the following about village settlement area expansion: "Approve the position that there is sufficient land in Villages and the rural area for residential, employment, and other non-residential and non-employment uses to meet the city's needs to 2031, and there is no need to amend Village boundaries for any purpose...." (Exhibit 55, p. 89). There can be no doubt from these clauses that the matter of the expansion of the settlement area boundary of Greely was dealt with in Council's decision.

[53] Furthermore, boundary expansions invariably involve considering a number of areas throughout a municipality to determine which area might best be able to accommodate growth. Studies determining the areas that are best suited to growth and growth management projections involve considering the merits of expanding the settlement area boundaries in different areas of a municipality. The determination of where growth should be located is often a matter of balancing various factors and choosing the locations where the benefits of growth can be optimized and where various criteria and policy objectives can be met.

[54] The Board has been involved in many appeals of Official Plan Amendments related to the Growth Plan for the Greater Golden Horseshoe ("Growth Plan") where boundary expansions are considered. Many of these cases have involved consideration of expansions of urban boundaries that were not changed in the official plan amendments adopted by the relevant municipalities. The Board's jurisdiction to approve modifications to those official plan amendments has not been limited to only those areas where the urban boundary has been changed by the municipality.

[55] In addition s. 17(50) of the Act gives the Board the power to, "...make modifications to all or part of the plan and approve all or part of the plan as modified as an official plan..." It is difficult to understand how the Board would be able to approve all of a plan as modified if the Board had no jurisdiction to approve those parts of a plan that were not changed. Modified plans generally include sections that have not been changed by a municipality, and the Board has, where appropriate, approved all of those plans including the unchanged sections. If the intent were that the Board could only approve sections of official plans that have been changed, the Board expects that s. 17(50) would indicate that only the modified parts of the plan could be approved.

[56] Based upon these considerations, the Board concludes that the matter of village boundary expansions was clearly dealt with in the decision of Council and therefore the Board has the jurisdiction to change the village boundary of Greely.

Village Boundary Expansion

[57] Having come to this conclusion, the Board now must consider if the evidence supports expanding the village boundary of Greely.

[58] The Board heard that the City conducted a comprehensive review as part of its five-year Official Plan review to determine if the urban boundary of the City and boundaries of the villages within City's municipal area should be expanded to accommodate urban uses. The expansion of a village boundary constitutes the expansion of a settlement area which through s. 1.1.3.8 of the PPS can only be considered through a comprehensive review. The comprehensive review included the Rural and Residential Growth Strategy through which the City considered growth in rural areas and the need to expand the settlement areas of villages that are within the City's boundaries (Exhibit 9, Tab 11). The Board heard that in the comprehensive review the three largest villages, that is Manotick, Richmond and Greely were grouped together because of the similarity in size of these villages, existing infrastructure and facilities and their ability to develop into complete communities.

[59] Mr. Cross testified that the City's study reviewed the demand for housing and the projected housing supply in the 26 villages located in the City and concluded that there was no need for any village boundary expansion. In determining the potential supply of lots on private services the study assumed 0.4 ha. sized lots unless a different size had already been approved. The study concluded that there was more than a 10 year supply of lots within the villages as required in the Official Plan.

[60] Mr. Cross stated that he updated the land supply analysis using 2014 numbers and assuming an annual housing demand of 80 units per year for Greely. The updated analysis indicates that there is more than a 17 year supply of units in the three villages grouped together and more than a 15 year supply in Greely (Exhibit 7, Tab 16, p. 77).

[61] Mr. Cross referred to s. 2 (f). (g). (l) and (o) of the Act which require having regard for the efficient use of sewage and water services, minimization of waste, the orderly development of communities and the protection of public health and safety. Mr. Cross also referred to s. 1.1.3.2 and s. 1.1.3.8 of the PPS which require the efficient use of land and resources and the use of infrastructure that is planned or available. He noted that s. 1.6.1 indicates that planning for infrastructure must be financially viable and s. 1.6.3 requires that before consideration is given to new development the use of existing infrastructure should be optimized. Mr. Cross also noted s. 1.6.6.1 and s. 1.6.6.2 which sets out the servicing hierarchy and indicates that municipal services are preferred. The City's review of suitable areas for growth was carried out in light of these policies.

[62] Mr. Cross stated that municipal services have been provided or are being provided to the villages of Manotick and Richmond. He indicated that OPA 150 policies focus growth in areas where existing and planned infrastructure is available and place a priority on areas that have municipal services. The City maintained that the focus of rural growth on the three largest villages is in keeping with the direction in the PPS.

[63] Ms. Heydorn contended that the City underestimated the demand for village housing in its studies. She maintained that grouping the three largest villages was not

appropriate since it assumes that the villages are all the same and that the demand is the same in each of them. She noted that the Official Plan indicates that 50% of the demand for rural housing should be accommodated in the villages, but she maintained that approximately 59% of the growth was going to villages and the three largest villages were accommodating approximately 41% of the growth. She maintained that the demand estimates used by the City are conservative and they don't reflect recent trends.

[64] Ms. Heydorn undertook an analysis based upon 921 units being available in Greely which is the number of available units at the end of 2010 estimated by the City. In her analysis this represents the supply of units (Exhibit 14, Tab 1, p. 52).

[65] Ms. Heydorn indicated that the estimated demand for housing in villages is driven by Official Plan policies which state that 9% of housing is expected to go to the rural area. Based upon the City's numbers the total demand for housing in the entire rural area is 10380 units between the years 2011 and 2031.

[66] Ms. Heydorn prepared four different projections based upon the supply of 921 units and using different levels of demand (Exhibit 14, Tab 5 and Exhibits 32 and 33). She indicated that based on the City's analysis an average of 74 units per year were being absorbed in Greely for the ten year period ending in 2010. She looked at estimates based upon demands of 80 units per year, 93 units per year, 104 units per year and 126 units per year. She indicated that if demand were 80 units per year starting in the year 2011 the supply in Greely would be exhausted by 2023.

[67] Ms. Heydorn indicated that from the years 2011 to 2014 Greely has accommodated 22% of the growth in the rural area. If this trend continues Ms. Heydorn contended that between 2015 and 2031 there could be demand for 126 units per year in Greely. According to her projections, if this level of demand continues there would be no more supply in Greely by 2020.

[68] After reviewing the evidence, it is clear that a main difference between the parties

regarding expansion of the urban boundary involves the projections for new housing demand in Greely. The City maintains that projected demand should be in the range of actual housing starts in Greely (approximately 74 units per year) and that the existing supply will last substantially more than 10 years. Policy 8 in s. 2.2.1 of the Official Plan requires that sufficient land be maintained for a 10 year supply of housing employment and other purposes in villages. The Appellant contends that the City's projections are too low and that in recent years Greely has had a significantly higher percentage of housing starts than the other two large villages.

[69] However, Ms. Heydorn acknowledged during cross examination that Greely has not always had the highest number of housing starts among the villages during the period 2001 to 2015. She also acknowledged that the average number of housing starts in Greely between 2004 and 2014 was 70 units per year and between 2011 and 2014 the average was 74 units per year. These numbers are reflected in the tables included in Ms. Heydorn's witness statement (Exhibit 7, Tab 22, p. 11).

[70] Ms. Heydorn contended that one cannot always look at averages when making projections. She noted that the demand in Greeley has generally been greater than in the other villages and that the City's proposal to eliminate country lot subdivisions could result in increasing demand for Greely. However, the City maintained that since Richmond and Manotick are being provided with municipal services, some of the demand will shift to these villages.

[71] In reviewing the evidence, the Board finds that the City's approach and projections for Greely are reasonable. While Ms. Heydorn has demonstrated that a significant percentage of new units have been located in Greely in recent years, the number of housing starts during this period has still been at the 74 units per year level. This number is in line with the City's original projections for Greeley through which it was determined that more than 15 years of supply is available and that a boundary expansion is not required. The longer term rate (2004 to 2014) of 70 units per year is less than the rate used in the City's projections. Furthermore, in the updated City projections using a demand of 80 units per year, there was still more than a 15 year

supply of housing in Greely.

[72] Ms. Heydorn's projection using a potential demand of 126 units per year was based upon Greeley accommodating 22% of the housing demand from 2015 to 2031 using the total projection of 10380 rural units required from 2011 to 2031 and subtracting the number of number of actual housing starts from 2011 to 2014 (Exhibit 7, Tab 17, p. 80). From the evidence, the Board cannot determine that attributing 22% of the rural housing demand to Greely is realistic. While this may have been the portion of the housing accommodated in Greely between 2011 and 2014, it is not clear that this level will continue in the future. As noted above, Greely has not always had the highest number of housing starts among the three largest villages since 2001. Furthermore, the provision of municipal services to Manotick and Richmond is likely to reduce the percentage of housing starts in Greely.

[73] Based upon consideration of all of the relevant factors raised through the evidence, the Board agrees with the City's approach where the demand projections are based upon the actual number of housing starts in Greely in past years.

[74] The Board heard that the number of housing units available in Greely may be reduced because of issues that have arisen with communal services in the existing Shadow Ridge subdivision. The Board heard that the development of lots in the subdivision have been suspended until the servicing problems are resolved.

[75] However, according to the evidence, even if these lots are removed, there would be more than a 10 year supply of units available in Greely. Furthermore, the Board understands that the potential removal of these lots from the supply will only be temporary until the issues are resolved.

[76] The Appellant contended that the three largest villages should not be grouped together, but should be considered separately. However, the PPS has a clear focus on intensification and it directs municipalities to identify opportunities for intensification. Also, the PPS indicates that new development should take advantage of existing and

planned infrastructure and it has established a hierarchy of servicing where municipal services are preferred, communal services are a second priority and private individual services are the least preferred option.

[77] In this context, it is reasonable to group the three largest villages together when considering future growth because of their similarity and because they have existing infrastructure and services. This will likely result in more units being built in the villages that have or will have municipal services, that is Manotick and Richmond. The Board concludes that the approach of the City is consistent with these provisions of the PPS.

[78] The Appellant's evidence has not established that there is reason to seriously doubt the City's projections. The Board also notes that the policies of the OPA 150 require monitoring of the 10 year supply of land in villages.

[79] Furthermore, policy 16 of OPA 150 states the following; " The City shall conduct a comprehensive review in accordance with Section 2.2.1, Policy 9 to determine if there is a need to provide for additional land within large and medium villages, as well as the villages of Sarsfield and Constance Bay. The review shall be submitted to City Council as part of the next Comprehensive Official Plan review." (Exhibit 8, Tab 2, p. 30). Based upon this provision of OPA 150, the need for a boundary expansion of the villages will be monitored by the City and the Board understands that another comprehensive review for the villages will be undertaken during the next five-year Official Plan review. Any need for revising the projections for housing demand in Greely and other villages should be examined during the next comprehensive review.

[80] In consideration of the above, the Board concludes that based upon the projected supply and demand for housing and expectations of where growth will be located, there is no need to expand the village boundary of Greely.

[81] As noted earlier, s. 1.4.1 of the PPS requires planning authorities to maintain an appropriate range and mix of housing types and densities to meet the requirements of the regional market area which is a defined term in the PPS. There was some

suggestion from evidence of Ms. Morris that Greely or a slightly larger area could be considered as the “regional market area”. The Appellant’s evidence indicated that there should be greater focus on the needs and characteristics of Greely in assessing the need for growth. In the PPS definition of regional market area it states that, “The upper or single-tier municipality or planning area will normally serve as the regional market area.” It goes on to state, “Where regional market areas are very large and sparsely populated, a smaller area, if defined by an official plan, may be utilized.” (Exhibit 8, Tab 3, p. 51).

[82] The Board understands that when assessing housing needs, the entire City was used as the regional market area. While the PPS definition does allow for using a smaller area, the Board concludes that it is appropriate in carrying out a comprehensive review as part of the five year review of the official plan to consider growth and housing needs in a number of locations within the municipality and to ensure that a supply and range of housing is available to meet the needs in a larger area. Part of the definition of “comprehensive review” in the PPS includes considering, “...alternative directions for growth or development; and determines how best to accommodate the development while protecting provincial interest.” (Exhibit 8, Tab 3, p. 43-44).

[83] As part of its official plan review, it would not be reasonable for the City to focus only on the village of Greely in considering housing needs when there are other areas within the municipality that could accommodate growth and may be more appropriate locations for growth. In this case, the evidence shows that the City reviewed the needs for the rural area specifically and focussed on the three largest villages when considering housing needs. The Board finds that this approach is appropriate.

[84] The Appellant also contended that the Board should consider the application for a boundary expansion to be a “minor rounding out”. Based upon a letter from a planner at the Ministry of Municipal Affairs and Housing (“MMAH”), Ms. Morris and Mr. Holzman contended that s. 1.6.6.4 of the PPS could be interpreted to allow expansion of a settlement area as a “minor rounding out” of an existing boundary (Exhibit 13, Tab 17).

[85] In reviewing the letter from MMAH, the Board notes that it was prepared in 2012 prior to the 2014 PPS coming into effect. It appears from the letter, that MMAH at that time was prepared to allow some “minor rounding out” of development on private services. However, the Board cannot determine from the letter if the intent is that “a minor rounding” is acceptable as an expansion of a settlement area or rather that it can be allowed within a settlement area as a way to provide for the continuation of development on private services.

[86] The Board also notes that s. 1.6.6.4 of the PPS refers specifically to settlement areas as the locations where minor rounding out may be permitted and it states, “In *settlement areas*, these services may only be used for infilling and minor rounding out of existing development” (Exhibit 8, Tab 3, p. 21). Furthermore, this provision is included within the “Infrastructure and Public Service Facilities” section of the PPS, not in the sections that deal more directly with growth and the expansion of settlement areas such as the “Settlement Areas” section or the “Rural Areas in Municipalities” section.

[87] The Board cannot conclude from the reference in s. 1.6.6.4 that “minor rounding out” is intended to be a mechanism for the expansion of settlement areas on private services. Rather, it appears that “minor rounding out” can be a means of permitting additional development within settlement areas on private services in view of the hierarchy of services identified in the PPS where private individual services are at the lowest level of priority.

[88] The Appellant raised the provisions of the Village of Greely Community Design Plan which the Appellant contends support expansion of the village boundary. Mr. Holzman maintained that policy 2 in s. 3.2 is particularly significant. It indicates that development adjacent to the village boundary should provide for the integration of lands outside of the village to ensure future orderly development (Exhibit 8, Tab 6, p. 10).

[89] The Board has noted earlier that the Appellant’s subdivision within the village boundary has made provision for road connections to its lands outside of the boundary. However, providing for future development does not presume the suitability or the timing

of that development. The Appellant's proposed development can only be approved if the village boundary is expanded. The comprehensive review has determined that expansion of the village boundary is not required at this time. The fact that the connections are available from the adjacent lands does not create a need for village expansion. The need is determined through the comprehensive review and the consideration of the supply and demands for housing in the rural area and throughout the City.

[90] Based upon the above findings, that there is no need to expand the settlement area boundary of Greely and since the Appellant's proposed plan of subdivision and associated Official Plan Amendment and Zoning By-law Amendment depend upon the boundary expansion, the Board finds that the Appellant's proposal is premature and cannot be approved at this time. The Board will not provide more detailed findings about the Appellant's proposal.

OPA 150

[91] The Appellant submitted proposed changes to OPA 150 in Exhibit 2.

[92] In his submissions, Mr. Marc requested that the Board dismiss the appeals and that the Board direct that OPA 150 policy 26 in s. 2.2.2 be relocated to the last policy in s. 3.7.1, and that the Board determine that this policy as relocated, policies 7, and 9 to 16 in s. 2.2.1, and policy 10 in s. 3.7.1 are in force.

[93] Policy 26 in s. 2.2.2 which in some of the submissions has been referred to as policy 28 states the following;

26. The City will also encourage employment in the Villages of Greely, Manotick and Richmond and a ratio of at least 0.65 jobs per household will be reflected in the amount of land designated for employment and residential development in each of these villages. (Exhibit 8, Tab 2, p. 40).

[94] The Board understands that this is the policy that the City requested to be relocated to s. 3.7.1 and approved as part of that section. Policy 26 was dealt with in

some detail in the evidence whereas policy 28 in s. 2.2.2 as included in Exhibit 8, Tab 2, p. 40 appears not to be in dispute and was not proposed to be changed in the Appellant's evidence.

[95] The City's proposed policy 7 in s. 2.2.1 of OPA 150 amends the current Official Plan policy to emphasize that growth will occur in villages where public infrastructure exists or can be efficiently provided or upgraded. The revised policy also states that most development will occur in the large and medium villages.

[96] Policy 9 in s. 2.2.1 removes the specific reference to requiring the City to undertake a comprehensive review every five years to assess the need for village boundary expansion, and indicates that a comprehensive review should ensure that sufficient land is provided within the village boundaries for housing, employment and other purposes.

[97] Policies 10 to 12 in s. 2.2.1 of OPA 150 are new and state the following:

10. The 10-year supply of land will be monitored, and an assessment of future land needs will be undertaken within each group of villages as follows:

- a. within the largest and fastest growing villages, being Manotick, Greely and Richmond considered as a group; and
- b. within the medium-sized villages, being Carp, North Gower, Metcalfe, Cumberland, Vars, Osgoode, Navan, Munster and Constance Bay, considered as a group.

11. Where the comprehensive review determines additional land is necessary to accommodate growth in one of the groups referred to in policy 10, the City will give priority to the expansion of a village or villages where:

- a. a good balance of facilities and services to meet people's every day needs, including schools, community facilities, parks, a variety of housing and places to work and shop are available; and
- b. the new land can be connected to municipal water and wastewater services (central or communal) where they already exist or can be efficiently provided.

12. Within the villages not identified in policy 10 new development, renewal and infill will continue to occur on private services and will build out the designated boundaries of these villages. No changes to the current boundaries of these villages will be considered. (Exhibit 8, Tab 2, p. 29).

[98] In policy 13 of s. 2.2.1, the City has incorporated changes to the wording through OPA 150 to emphasize the need to assess the impact of a potential village boundary expansion on Agricultural Resource Areas and agricultural operations and to assess the demand on existing infrastructure. Policy 14 in s. 2.2.1 has been changed so that when a village boundary expansion is proposed an update to a village secondary plan and a new or updated master servicing study will be required. The need to safeguard village character has been removed from this section.

[99] Policy 15 in s. 2.2.1 indicates that applications for village boundary expansions that are received between comprehensive reviews will be considered to be premature unless Council directs that a comprehensive review be undertaken.

[100] Policy 16 in s. 2.2.1 which was quoted earlier in this decision requires a comprehensive review for the large and medium villages as well as the villages of Sarsfield and Constance Bay to be undertaken with the next comprehensive Official Plan review.

[101] With regard to proposed policy 10 in s. 3.7.1 it states the following: "A range of housing forms to meet the needs of the village's population will be permitted in villages. The form and scale of development will be limited by the available servicing methods and subject to the policies of Section 4.4 on water and wastewater servicing. Where new lots are proposed for residential purposes that rely on private services, the minimum lot size shall be 0.4 ha." (Exhibit 8, Tab 2, p. 134).

[102] The City's proposed changes to these sections of the Official Plan were supported through the evidence of Mr. Finley, Mr. Cross and Mr. Kell. Mr. Finley and Mr. Cross referred to the direction in the PPS which promote intensification, the use of existing and/or planned infrastructure, the location of new development in proximity to infrastructure and community services, the creation of complete communities, and which encourage compact form of development. They also referred to the hierarchy of services established in the PPS as a basis for OPA 150 policies which give top priority

to village development on municipal services and second priority to development on communal services.

[103] Mr. Finley noted that the PPS directs growth toward settlement areas through s. 1.1.3.1 and through s. 1.1.3.2 requires the efficient use of land and resources and infrastructure. Mr. Finley also raised s. 1.1.1(c) and s. 1.1.3.4 of the PPS which require avoiding development and land use patterns which may cause environmental and public health and safety concerns and which require promoting development standards to facilitate intensification, redevelopment, compact form and avoiding or mitigating risks to public health and safety. He also referred to s. 1.1.4.2 of the PPS which indicates that in rural areas, rural settlement areas shall be the focus of growth.

[104] Mr. Finley indicated that the policies in s. 2.2.1 of OPA 150 are consistent with these provisions of the PPS. The policies focus rural area development on the settlement areas and do not permit country lot subdivisions. Through the policies, the areas which have municipal services and other infrastructure are the preferred areas for new development.

[105] Mr. Finley indicated that the requirement to provide a 10 year supply of land to accommodate housing and other needs was added into the Official Plan in response to concerns expressed by residents of villages that development should be limited. He indicated that this policy provides for the monitoring and limiting of village development.

[106] Mr. Kell addressed the size requirements for lots on private services. He prepared a Minimum Lot Size Assessment, which focussed on the minimum lot size requirements for lots on private services in Greely (Exhibit 7, Tab 26). Mr. Kell conducted a review of minimum lot sizes on private services in other Ontario municipalities and prepared an analysis of lot size requirements in Greely. The analysis considered the amount of water infiltration that would be available for the dilution of nitrate using Agriculture Canada Eco-district water surplus values and considering a variety of infiltration rates based upon differing types of soil. Effluent rates in the calculations were the same as those in the MOECC D-5-4 guideline ("D-5-4 guideline").

Mr. Kell indicated that through his analysis a minimum lot size of 0.5 ha was recommended. However, after consultation with the City and recognizing that effluent rates using current systems are generally lower than those included in the D-5-4 guidelines which were prepared in 1995 he reduced the minimum recommended lot size to 0.4 ha.

[107] Mr. Kell also raised concerns about Mr. Walker's hydrogeological analysis for the proposed subdivision. He questioned the accuracy and completeness of the soils analysis and maintained that there is more downward movement of infiltration than predicted by Mr. Walker. Mr. Kell maintained that the analysis in the D-5-4 guidelines require an assumption of complete mixing of septic effluent with infiltration. Based upon Mr. Walker's analysis, Mr. Kell indicated that complete mixing could not be assumed. He also indicated that the water in the man-made "lakes" should not be considered in the analysis to reduce nitrate levels. Since the "lakes" are well removed from the septic systems and because of the downward movement of infiltration, complete mixing could not be assumed.

[108] The evidence of Mr. Holzman, Ms. Morris and Mr. Walker contended that OPA 150 policies should emphasize the need to maintain village character. The Appellant proposed amendments to OPA 150 in Exhibit 2. A number of the proposed changes are intended to ensure that maintaining village character would be specifically considered. Also, the Appellant proposed amending OPA policy 10 in s. 2.1.1 so that the land supply for the three largest villages would be considered individually.

[109] The Appellant also proposed adding a new section (c) to policy 11 in s. 2.2.1 which would state, "Where municipal sewage services and municipal water services or private communal sewage services and private communal water services are not provided, individual on-site sewage services and individual on-site water services may be used provided that site conditions are suitable for long-term provisions of such services with no negative impacts. In settlement areas, these services may only be used for infilling and minor rounding out of existing development." Changes are also proposed to policy 14 to eliminate the need to update a village secondary plan and to

prepare or update a master servicing study when a village boundary expansion is approved.

[110] In addition, the Appellant is proposing to amend policy 10 in s. 3.7.1 by adding the following sentence to the end of the provision proposed by the City:

Notwithstanding the foregoing, where special circumstances exist such as isolation of drinking water supply, approved use of tertiary treatment systems, site conditions, or factors providing additional dilution or nitrate reduction, supported by an approved hydrogeological study, smaller lots may be considered, but in any event, no less than 0.2 ha. in area.
(Exhibit 2).

[111] Mr. Holzman and Ms. Morris maintained that these changes are appropriate. They noted s. 1.4.1 of the PPS which requires municipalities to provide for an appropriate range and mix of housing and densities. They also referred to s. 1.1.4.1(a) of the PPS which indicates that healthy communities in rural areas must build upon rural character. The proposed changes to OPA 150 would help to ensure consistency with these policies.

[112] Mr. Holzman and Ms. Morris also noted that the CDP for Greely was prepared based upon public consultation. The CDP requires a minimum lot size on private services in Greely of 0.2 ha.

[113] The Board heard that there is no timetable for extending municipal services to Greely and the Appellant is concerned that the policies of OPA 150 will result in changes to village character and a lack of development activity.

[114] Mr. Walker contended that his hydrogeological analysis is appropriate and it accurately assesses the potential nitrate in groundwater resulting from the proposed subdivision using the D-5-4 guideline. He maintained his studies demonstrate that the subject property could be developed while maintaining nitrate levels below 10 milligrams per litre at the property line as required by the D-5-4 guideline (Exhibit 16). He maintained that it is appropriate and permitted through the guideline to use the man-made "lakes" in the dilution calculation. Furthermore, he noted that a number of

properties have been developed in Greely using this system and there have been no issues with exceeding the provincial requirements for nitrate levels. He presented results from the sampling of wells in the area which was developed using the proposed septic treatment system and he maintained that nitrate levels were very low and well below the provincial requirements. It was Mr. Walker's opinion that this type of development with 0.2 ha lots and using the man-made "lakes" for dilution is appropriate.

[115] After considering the evidence and submissions, the Board must conclude that the direction provided through policies 7, and 9 to 16 in s. 2.2.1, and policy 10 in s. 3.7.1 of OPA 150 is consistent with the PPS. It is clear from the evidence that the policies provide for future development to be focussed within existing settlement areas and they encourage the use of existing infrastructure and services.

[116] Furthermore, the proposed policies in OPA 150 recognize the priority of development on municipal services. The policies provide for village development to take place in those areas that have or will receive municipal services or communal services. Through policy 12 in s. 2.2.1 some development is allowed on individual private services, but only to fill out existing designated areas. These policies are consistent with the direction in the PPS.

[117] The intent of the modifications proposed by the Appellant in Exhibit 2 is to allow for some development to occur on individual private services when the provisions of the D-5-4 guideline can be met, to continue to allow 0.2 ha lots in Greely, and to provide for consideration of the large villages individually during a comprehensive review so that growth that may occur in one village will not be assigned to another.

[118] The Board has already determined in this decision that for the purposes of a comprehensive review it is reasonable to group the three largest villages together. The Board heard that these villages are similar and have the best capability of developing into complete communities. From the evidence, the villages are in relatively close proximity and the three villages provide a similar type of housing, although in the short term, Richmond and Manotick will undoubtedly provide greater density because of the

availability of municipal services.

[119] With regard to proposed policy 10 in s. 3.7.1 which requires minimum lot sizes of 0.4 ha for lots on private services, there is little question that larger sized lots provide the potential for greater dilution of septic effluent. However, this represents a significant change from the current standard of 0.2 ha for lots on private services in Greely. In the past, the Board has approved a number of proposals in Greely with 0.2 ha lots. As noted earlier, the Board has also approved a number of subdivisions in Greely which utilize the system proposed by the Appellant where man-made “lakes” are used to attenuate nitrate levels in groundwater.

[120] However, after reviewing the evidence the Board must conclude that larger lots are likely to provide better protection for the water resources simply because they provide a greater percentage of a property that will be available for dilution compared to the percentage of the property occupied by the septic system. Therefore, adopting 0.4 ha lot size as the minimum requirement for lots on private services generally should provide for less potential for septic effluent to impact ground water.

[121] While it may seem that this conclusion is inconsistent with past approvals of the Appellant’s subdivisions utilizing the proposed method for nitrate attenuation, this is not the case. The Board approved those proposals based upon the evidence brought forward at the hearings. With regard to phases 1 and 2 of the Appellant’s current subdivision which were approved by this Member, the evidence provided at the relevant hearings, including the hydrological evidence and the D-5-4 guideline calculations clearly supported approval of the proposals with 0.2 ha lots and using the “lakes” for nitrate attenuation. Furthermore, the Board can find nothing in the D-5-4 guideline that would prevent consideration of the “lakes” as part of the nitrate dilution system. The guideline clearly requires determination of nitrate levels at the boundary of the development which in the case of the Appellant’s proposals includes the “lakes”. (Exhibit 18, Tab 1, p. 8).

[122] However, the Board must recognize that the Appellant’s method where man-

made “lakes” are used as part of a system for nitrate dilution is not the conventional approach. There is no doubt that in specific circumstances through appropriate hydrogeological studies and in the context of site characteristics, the requirements of the D-5-4 guideline can be satisfied for lot sizes less than 0.4 ha. However, the Official Plan is attempting to establish a standard size to be applied across the City. Through the Official Plan policy the City will ensure that the minimum lot size is large enough to mitigate ground water contamination that could result from the operation of septic systems associated with new lots. In specific circumstances it is possible to demonstrate that provincial requirements for nitrate loading can be met for smaller sized lots based upon the D-5-4 guideline calculation. However, choosing 0.4 ha lots as this standard size rather than 0.2 ha lots provides a greater level of assurance that provincial water quality requirements related to the operation of septic systems will be met.

[123] The Appellant contended that requiring 0.4 ha lot sizes represents a less efficient use of land and infrastructure than 0.2 ha lot sizes which would be contrary to the provisions of the PPS. Mr. Holzman referred to s. 1.4.1 of the PPS and contended that adopting the 0.4 ha lot size would not be consistent with the intent of this provision to provide an appropriate range and mix of housing and densities since the current standard size for village lots in Greely is 0.2 ha.

[124] However the requirement for 0.4 ha lot sizes represents a balancing of PPS requirements for the efficient use of land and infrastructure and the provisions requiring the protection of ground and surface water. The proposed requirement in the Official Plan for 0.4 ha lots on private services may be weighted more toward protection of ground water and health concerns, rather than toward the efficient use of land and resources. However the Board heard that the Appellant’s proposal when including the area of the “lakes” and open spaces has a gross land to lot ratio close to 0.4 ha per lot.

[125] The Board expects that this type of larger ratio is required to ensure that the D-5-4 guideline calculation meets the provincial nitrate requirement. Therefore, in terms of efficient use of land, the Board concludes that not much is to be gained by having a

standard lot size of 0.2 ha rather than he proposed 0.4 ha. Furthermore, the City is addressing the efficient use of land and services through the proposed OPA 150 policies that favour development in villages that have or will have municipal and communal services which will result in lots smaller than 0.2 ha.

[126] In addition, the City maintained that there already exists a range and mix of housing in Greely due to the current 0.2 ha lot size requirement and the presence of some smaller lots on communal services. The provisions of a mix and range of housing is expected to continue through future development on communal and ultimately on municipal services.

[127] After considering the evidence, the Board agrees with the opinion provided by Mr. Kell and Mr. Finley that the provisions of OPA 150 which prefer development to occur in areas with municipal services and communal services and which require residential lots on private services to have a minimum size of 0.4 ha are consistent with the PPS and that through Exhibit 2 the Appellant is seeking changes that would essentially maintain the status quo. The Board also agrees with the City's evidence that the PPS requirements to provide for a range and mix of housing and for the efficient use of land and services are addressed by the OPA 150 policies.

[128] With regard to proposed policy 26 the Appellant expressed concern that requiring a ratio of 0.65 jobs per household be reflected in the amount of land designated for employment and residential development in each of the large villages will be used to restrict the amount of land designated for residential uses. The City maintained that this is not the intent of the policy; rather it is intended to protect employment lands. Mr. Cross indicated that the policy is not intended to restrict residential development and it would not prevent the Appellant's proposal.

[129] In the Board's view policy 26 is simply promoting the development of complete communities by ensuring that employment uses are provided along with residential development. The Board does not consider the intent of this policy as a means to limit residential development, based upon lack of employment opportunities or lands

designated for employment. It will be the City's obligation to maintain the supply of employment lands and promote employment opportunities to provide the proposed ratio. The Board agrees with the City's evidence that this policy is appropriate. However the policy must be applied with some flexibility so that residential development in one of the villages is not unduly restricted by lack of employment opportunities within that village.

[130] After fully considering the evidence and submissions, the Board finds that the proposed amendments to the Official Plan in OPA 150 that are before the Board in this hearing, that is policy 26 in s. 2.2.2, policies 7, and 9 to 16 in s. 2.2.1, and policy 10 in s. 3.7.1 are appropriate, are consistent with the PPS and comply with the intent of the Official Plan and represent good planning. The Board directs that policy 26 in s. 2.2.2 should be relocated to the last policy in s. 3.7.1. The Board finds that these policies should be approved.

SUMMARY AND CONCLUSION

[131] Based upon the evidence, the Board has found that it has the jurisdiction to make determinations about the proposed boundary expansion of Greely because the matter was clearly dealt with in Council's decision. In addition, the Board has found that the City's method for projecting the supply and demand for lots in Greely is appropriate and that there is more than a 10 year supply of lots in Greely. Therefore, the Appellant's proposed boundary expansion cannot be justified at this time. Furthermore, The Board has found that the provisions of OPA 150 that the City has requested that the Board approve, which are identified above, are consistent with the PPS and represent good planning, and that the Appellant's proposed revisions are not appropriate.

[132] The Board has considered all of the authorities provided by the Appellant and finds that they do not alter the above findings and they can all be distinguished from the current appeal. In the decision *Sunset Lakes Development Corp v. Ottawa (City)*, 2004 CarswellOnt 6869 the Board approved an application by the Appellant that was outside the settlement area based upon proof of groundwater isolation from septic effluent.

However, it is clear from that decision that hydrogeological issues were the determining factors in that hearing. The appeal in that case took place before the 2005 PPS came into force and there is no indication from the decision that there was any dispute between the parties about expansion of the settlement area based upon a comprehensive review or similar exercise.

[133] In the Decision, *1374421 Ontario Ltd. V. Ottawa (City)*, 2004 CarswellOnt 7164, some lots in the subdivision under appeal were outside of the settlement area, but the Board only approved phase 1 of the subdivision based upon a settlement, and refused phase 2. In the Decision, *Sunset Lakes Development Corp. v. Ottawa (City)*, 2008 CarswellOnt 5272, the Board refused approving additional lots proposed by the Appellant because neither groundwater isolation nor dilution could be proven.

[134] The other Board decisions provided in the authorities, including those by this Member did not involve expansion of the settlement area boundary.

[135] In making this decision, the Board recognises the Appellant's concerns that with the provision of municipal services to Richmond and Manotick, the majority of development may be directed to those villages, rather than Greely. The policies in OPA 150 require the City to monitor the 10 year supply of land in the villages and to conduct a comprehensive review in conjunction with the next Official Plan review. The Board expects the City to be vigilant to ensure that the health, viability and character of Greely, as well as the other villages, are maintained.

[136] The Board also recognises that decision may make it more difficult to obtain approval for the type of proposal that the Appellant has developed over the last number of years. It is expected that an Official Plan Amendment may be required if the Appellant proposed the development of 0.2 ha lots. However, the Board is not opposed in principal to the type of development that has been approved for the Appellant in the past. The Board has recognized in this decision that in specific circumstances, the Appellant's development concept can be demonstrated to meet provincial requirements through the use of the D-4-5 guideline.

[137] As noted earlier, the Board is providing an interim decision in this matter until after the LEAR and Employment Lands Study are completed. The Board directs that the City advise the Board and the Appellant regarding the completion of those studies. If either of the parties determines that the results of those studies may impact the findings in this interim decision, they are directed to contact the Board to re-open this hearing so that further evidence may be brought forward.

[138] If the Board does not hear from the parties regarding the need to re-open the hearing within 90 days of being informed that the studies have been completed, the Board will finalize the interim decision and issue its final order dismissing the appeals and approving the sections of OPA 150 identified above.

“C. Conti”

C. CONTI
MEMBER

If there is an attachment referred to in this document
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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