

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: February 23, 2016

CASE NO(S): PL140495
PL141165
PL141235
PL141244

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)

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

Appellant: Greater Ottawa Home Builders Association
Appellant: KNL Developments Inc.
Appellant: Maurice Yelle Excavation Limited
Appellant: Taggart Group Of Companies; and others
Subject: Proposed Official Plan Amendment No. 141
Municipality: City of Ottawa
OMB Case No.: PL141165
OMB File No.: PL141165

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

Appellant: 2087875 Ontario Inc.
Appellant: Greater Ottawa Home Builders' Association
Appellant: Gibson Patterson
Appellant: Taggart Group Of Companies; and others
Subject: Proposed Official Plan Amendment No. 140
Municipality: City of Ottawa
OMB Case No.: PL141235
OMB File No.: PL141235

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Urbandale Corporation
 Subject: By-law No. 2014-343
 Municipality: City of Ottawa
 OMB Case No.: PL141244
 OMB File No.: PL141244

Heard: August 6, 2015 in Ottawa, Ontario

APPEARANCES:

Parties

Counsel/Representative*

City of Ottawa

T. Marc and S. Montreuil

Ministry of Municipal Affairs
and Housing

I. Shachter and C. Young

267 O'Connor Limited,
Starwood Acquisitions Inc.
Claridge Group of Companies,
536555 Ontario Limited, Embros
Development Corporation,
Leitrim South Holdings Inc. and
4840 Bank St. Ltd. Gib Patterson,
Ottawa Hospital and
Ottawa Heart Institute

J. Bradley and E. Blanchard

Richcraft Homes Ltd.
Greater Ottawa Home Builders
Association, Building and Owners
Association of Ottawa
Thomas Kavanagh Construction
Limited, Urbandale Corporation,
Urbandale Construction Limited,
Riverside South Development
Corporation,
KNL Developments Inc.,
Greater Ottawa Home Builder's
Association, 2087875 Ontario Inc.

U. Melinz

Laurentide Engineering Limited, Broccolini Laurentide Holdings Inc., Alterna Savings and Credit Union Limited, Building Owners and Management Association	D. Kelly and B. Hagen
Sunset Lakes Developments, 1374421 Ontario Ltd., Greely Farm Inc., 6980848 Canada Corporation and 7657315 Canada Corporation	P. Webber Q.C. and K. Laframboise
2024644 Ontario Inc., Walton Development and Management LP and Phoenix Properties Inc.	M. Polowin and R. Aburto
Taggart Group of Companies	S. Zakem
Trinity Rideau GP Inc., FSC Rideau GP Inc., and Chapel Street Limited Partnership	P. Foran
Katimavik-Hazeldean Community Association	R. Maclean*
Karen Wright et al	J. Moon
969113 Ontario Inc. (Claude Leclair)	J. P. Vice Q.C.
Group Claude Lauzon Ltée. (cob Claude Lauzon Group) Ontario Stone, Sand and Gravel Association (OSSGA)	G. Meeds
Tartan Land Consultants Inc., 171609 Ontario Inc., 914168 Ontario Inc., McRae Avenue Development and the Estate of Carson, Unsworth, Arnon Corporation, Bridgeport Realty Capital Partners Inc., 2398688 Ontario Inc., Loblaws Properties Limited, Taggart Realty Management Ltd., 3223701 Canada Inc., Maurice Yelle Excavation Limited	A. K. Cohen and J. Cohen

Miller Paving Ltd.	G. K. Bell* and K. Horrigan*
Carmen Charron as the Executor of the Estate of Juliette Mantha and Jeanine Groulx as the Executor of the Estate of Lucille Groulx	R. Guibord*
Greenspace Alliance of Canada's Capital and Ecology Ottawa	E. Dreessen*
Metcalfe and District Citizens' Association	D. Brodhead*
S. Dolan	Self-represented

Participants

Conservation Partnership (Rideau Valley Conservation Authority, Mississippi River Conservation Authority and South Nation Conservation Authority)	J. Chandler*
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DECISION DELIVERED BY R. G. M. MAKUCH AND ORDER OF THE BOARD

[1] This is the second Pre-hearing Conference in connection with a number of appeals against the adoption by City Council of Official Plan Amendment No. 150, ("OPA 150"), (Five Year Review under s. 26 of the *Planning Act*, Case File No. PL140495); Official Plan Amendment No. 141, ("OPA 141"), (Water Protection Update, Case File No. PL141165); Official Plan Amendment No. 140 ("OPA 140"), (Transportation Policies, Case File No. PL141235); and, Zoning By-law No. 2014-343 respecting the property known municipally as 1200 Maritime Way, (Case File No. PL141244).

MOTION BY TAGGART AND WALTON

[2] The purpose of the Pre-Hearing Conference is to hear a motion brought by the Taggart Group of Companies (“Taggart”) and Walton Development and Management (Ontario) LP (“Walton”) for:

1. An Order allowing the appeals of, and refusing to approve, OPA 140, OPA 141 and OPA 150 in their entirety;
2. An Order directing the City to complete the five year review and adopt an OPA, in accordance with s. 26 of the *Planning Act*, on or before August 2017, which incorporates the following:
 - (a) a 2036 time horizon;
 - (b) completion of the LEAR review;
 - (c) completion of the Employment Lands Study;
3. An Order directing the City to complete the five year review and adopt an OPA, containing policies which appropriately implement s. 16 of the *Planning Act*, on or before August 2017;

[3] The materials before the Board on this motion consist of the following documents:

- a) Motion Record of the moving parties, dated July 6, 2015;
- b) Affidavit of Wendy Nott, sworn March 31, 2015;
- c) Affidavit of Paul Girard, sworn April 1, 2015;
- d) Affidavit of Wendy Nott, sworn July 2, 2015;
- e) Reply Affidavit of Wendy Nott, sworn July 24, 2015;
- f) Affidavit of Valerie Akujobi, sworn August 5, 2015;
- g) Notice of Response of City of Ottawa, dated July 16, 2015;
- h) Affidavit of Bruce Finlay, sworn March 17, 2015;

- i) Affidavit of Bruce Finlay, sworn April 1, 2015
- j) Affidavit of Bruce Finlay, sworn July 15, 2015;
- k) Affidavit of Robin van de Lande, sworn July 14, 2015;
- l) Affidavit of Ian Cross, sworn July 15, 2015;
- m) Transcript of cross-examination of Wendy Nott, dated July 31, 2015.

[4] The grounds for the motion are as follows:

1. The City of Ottawa OPA 140, OPA 141 and OPA 150 purport to constitute a five year municipal comprehensive review pursuant to s. 26 of the *Planning Act*. OPA 150 commenced in 2012, coincident with the completion of the previous five year review which was approved as Official Plan Amendment No. 76 ("OPA 76"). OPA 76 was appealed to the Board by Taggart and others and was modified and approved by the Board;
2. Pursuant to s. 26 of the *Planning Act*, the five year review was not required to be completed until 2017. At the outset of the OPA 150 process, City Council, on the recommendation of staff, adopted a 2031 planning horizon. This planning horizon, at the conclusion of the 150 process, will constitute a 15- or 16-year or shorter time horizon. A time horizon of less than 20 years is inconsistent with the decision of the Board with respect to OPA 76 and does not conform to the City of Ottawa Official Plan. Furthermore, adoption of a 2031 time horizon is potentially inconsistent with the Provincial Policy Statement 2014 ("PPS 2014");
3. By beginning the five year review immediately upon the conclusion of the previous five year review, and by adopting a 2031 planning horizon, staff attempted to justify the conclusion that no further urban boundary expansions were required in order to accommodate

- projected future population growth. In this respect, the City of Ottawa is attempting to undo the decision of the Board in OPA 76;
4. The haste with which OPA 150 was conducted and completed has led to a failure to complete the LEAR review process mandated by the City of Ottawa Official Plan as approved by the Board. It has also led to a failure to complete an evaluation of employment lands for possible conversion to non-employment uses;
 5. The PPS 2014 was issued on April 30, 2014 which is the same date as the Notice of Decision issued by the Minister of Municipal Affairs and Housing with respect to OPA 150. As such, OPA 150 is required to be consistent with the PPS 2014. Consistency with the PPS 2014 has not been achieved;
 6. The haste with which the OPA 150 process was completed is magnified by the subsequent adoption of OPAs 140 and 141 in order to correct errors and omissions in OPA 150. This was required because the Ministry of Municipal Affairs and Housing failed to make any modifications to OPA 150;
 7. OPAs 140 and 141 did not follow the process mandated by s. 26 of the *Planning Act*;
 8. Significant elements of OPA 150 contain prescriptive provisions not permitted pursuant to s. 16 of the *Planning Act*; and
 9. Taggart and Walton participated in the process respecting the adoption of OPAs 150, 140 and 141 and have appealed all three amendments in their entirety.

[5] The City is opposed to the motion and argues that:

1. OPA 150, OPA 140 and OPA 141 are consistent with the PPS 2014;
2. OPA 150, OPA 140 and OPA 141 have regard for matters of Provincial Interest listed in the *Planning Act*, s. 2;
3. All necessary findings needed to be made prior to the adoption of OPA 150, in respect of a comprehensive review, and OPA 140 and OPA 141, in respect of amendments adopted pursuant to s. 17, were made;
4. OPA 150 was adopted in accordance with the proper applicable process under the *Planning Act*, s. 17 and 26;
5. OPA 140 and OPA 141 were adopted in accordance with the proper applicable process under the *Planning Act*, s. 17; The matters within OPA 150, 140 and 141 are within the jurisdiction of a municipality to include in an Official Plan;
6. The concerns raised by Taggart and Walton in their Notice of Motion are properly addressed in a standard hearing with *viva voce* hearing and submissions;
7. The determination of when to conduct a s. 26 review is not subject to appeal to the Board;
8. Only the Minister of Municipal Affairs and Housing may direct a s. 26 review to be conducted by the City of Ottawa;

FINDINGS

[6] The Board has carefully considered all of the evidence as well as the submissions of counsel for the parties, and is not prepared at this time to allow the appeals against OPAs 140, 141 and 150 in their entirety and to refuse to approve such official plan amendments.

[7] Counsel for Taggart and Walton rely heavily on the Board's decision in *Smart Centres Inc., Re.*, 2010 CarswellOnt 4695 (O.M.B.). This was a decision of the Board on a number of appeals pursuant to s. 17(24) of the *Planning Act* against Official Plan Amendment No. 72 ("OPA 72") adopted by Toronto City Council. OPA 72 was an amendment to bring the City's Official Plan into conformity with the "Growth Plan for the Greater Golden Horseshoe" required under the *Places to Grow Act, 2005*. In adopting OPA 72, City Council relied on the general consultative provisions of s. 17 of the *Planning Act* instead of the additional requirements of s. 26 of the *Planning Act*.

[8] The City of Toronto had argued that the consultative requirements of s. 26 only apply when the municipality is fulfilling its five year official plan update obligation and that since OPA 72 was not a five year review but rather a one-time conformity exercise required by the *Places to Grow Act*, therefore s. 17 was the operative provision. Home Depot, one of the appellants argued that the nature of the amendments comprising OPA 72 required the City to proceed under s. 26 and that failure to do so had prejudiced it.

[9] The Board found that the planning hierarchy in the Province of Ontario is punctuated by the matters captured by s. 26(1) and the additional consultative requirements of s. 26 and proceeded to repeal the implementing by-law to OPA 72 and refused to approve the amendment because the City had not complied with the consultative process set out under s. 26.

[10] In the present case, it is abundantly clear that OPA 150 was the result of a conformity exercise carried out by the City under s. 26. OPAs 140 and 141 were extensions of OPA 150 and as such, are also subject to the s. 26 consultative process. It is also evident from the evidence before the Board that the "LEAR" and the

“Employment Land Study” were not completed by the City, notwithstanding that these are required under s. 26.

[11] It is noted that the “LEAR” is a tool to assist municipalities to identify prime agricultural areas so that these can be protected in the Official Plan. Agricultural areas currently identified in the Official Plan were identified through a “LEAR” developed in 1997 and since then, provincial guidelines for “LEAR” have changed and new soils and land use information have become available. The City commenced revisions to the “LEAR” in 2010 and this review continues today. It is expected that the new system and soils data will lead to additions and deletions to the Agricultural Resource Areas (“ARA”) that are now protected in the plan. The determination and updating of the ARA lands is critical to the adjudication of the debate over the expansion of the urban boundary and is required to achieve consistency with the PPS 2014.

[12] With respect to employment lands, it is evident that these have a strategic significance for the City. Changes in designation of such lands can only be considered during a review of the plan by the City every five years, it is therefore imperative that the City carry out the necessary studies that include a thorough quantitative as well as qualitative analysis of the issues related to the proper designation of such lands.

[13] The Board finds based on the evidence before it that it would not be in the public interest to issue an order allowing the appeals and refusing to approve OPAs 140, 141 and 150 at this time. It nevertheless has some serious concerns with the City’s failure to complete the “LEAR” as well as the “Employment Lands Study”. The parties to these proceedings are entitled to a full and proper review of these issues by the City before the Board can proceed to a full adjudication of the issues before it. Furthermore, the Board requires this information to carry out a proper adjudication of these appeals on the merits. The City should also review its adoption of a 2031 as opposed to a 2036 planning horizon to ensure consistency with the PPS 2014.

[14] The adjudication of the issues as to whether s. 16 of the *Act* is being appropriately implemented is a matter which should be the subject of a full hearing.

[15] Accordingly, the Board will adjourn the hearing of these appeals *sine die* pending being advised by the City that it has completed the “LEAR” and “Employment Lands Study”. The Board will then schedule a further Pre-hearing Conference to organize the hearing of these appeals.

“R. G. M. Makuch”

R. G. M. MAKUCH
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

A constituent tribunal of Environment and Land Tribunals Ontario

Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Attachment 1

No.	Appellant	*Solicitor/Representative
1	Karen Wright	-
2	Claridge Homes Corporation	*Janet Bradley
3	Gib Patterson	*Janet Bradley
4	Brigil Construction	-
5	Richcraft Homes Ltd.	*Ursula Melinz
6	Greater Ottawa Home Builders Association	*Ursula Melinz
7	Building and Owners Association of Ottawa	*Ursula Melinz
8	Thomas Cavanagh Construction Limited	*Ursula Melinz
9	Phoenix Properties	*Michael Polowin
10	2024644 Ontario Inc.	*Michael Polowin
11	Walton Development and Management Ontario LP	*Michael Polowin
12	Taggart Group of Companies	*Steven Zakem
13	969113 Ontario Inc.	*Peter Vice
14	Groupe Claude Lauzon Ltee.	*Greg Meeds
15	Starwood Acquisitions Inc.	*Janet Bradley
16	536555 Ontario Limited and Embros Development Corporation ("Torgan")	*Janet Bradley
17	Trinity Rideau GP Inc., FSC Rideau GP Inc. and Chapel Street Limited Partnership	*Patricia Foran
18	Sunset Lakes Developments et al	*Paul Webber
19	Taggart Realty Management	*Alan Cohen
20	Loblaw Properties Limited	*Alan Cohen
21	2398688 Ontario Inc.	*Alan Cohen
22	Bridgeport Realty	*Alan Cohen
23	Arnon Corporation	*Alan Cohen
24	McRae Avenue Development and the Estate of Carson Unsworth	*Alan Cohen
25	1716709 Ontario Inc.	*Alan Cohen
26	Laurentide Engineering Limited/Broccolini Laurentide Holdings Inc. et al	*Doug Kelly
27	Urbandale et al	*Ursula Melinz
28	Tartan Land Consultants Inc.	*Alan Cohen
29	Miller Paving Limited	Kim Horrigan
30	Greenspace Alliance	Erwin Dreessen
31	Shirley Dolan	-
32	Metcalf and District Citizens Association	Dal Brodhead