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*This time, don't just blame the OMB*

# How City bungling ballooned Ottawa's new urban area to nearly five times the original intent

*Erwin Dreessen<sup>1</sup>*

The Ontario Municipal Board (OMB) is a favourite villain for many poor planning decisions in Ottawa and elsewhere. But the recent series of decisions regarding urban expansion in Ottawa came about in large part as a result of bungling by some City staff and caving-in by Council after the 2009 Official Plan review. As a result, despite Council having approved only 230 ha in 2009, it's now official: 1,104 ha will be added to Ottawa's urban area, a nearly 5-fold increase over Council's original decision.

Back in 2007, City staff projected Ottawa's growth in population, households and employment to 2031 and concluded that the city should expand its urban area by 850 hectares. This was in preparation for a comprehensive review of the Official Plan—Ottawa's key land use planning document. Since 2005 in Ontario, a municipality can expand its urban boundary only following such a comprehensive review.

In part at the request of rural landowners across the City to consider various parcels, planning staff then proceeded to devise a methodology to identify which lands would be selected. Some of these lands were in the Fernbank area in Kanata—163 hectares that were part of a Community Design Plan that had been under consideration for some time. In fact, and not surprisingly, these particular parcels, surrounded by areas that are already urban, achieved top scores using the staff criteria.

## **How 850 hectares became 1,104 hectares**

This is a saga of how 850 ha became 230, then went back to 850 which turned out to mean 1,013; then it became at least 1,065 and eventually 1,104 ha. Partway through, we need to bring "Area 2" into the picture.

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<sup>1</sup> Erwin has been involved in land use issues in the national capital area since 1994.

### ***From 850 to 230—and back***

The expansion of the urban boundary was just one of several items under review in the Official Plan. When the Official Plan Amendment 76 (OPA 76) reached Council for final approval in May and June 2009, there was significant controversy between the development community, citizens and Councillors, including a demonstration against any urban expansion attended by about 200 people in front of City Hall. In the end, Council did not accept staff's recommendation on urban boundary expansion and scaled it down to just 230 hectares. The 230 hectares it approved included the 163 hectares at Fernbank.

But then the first of several peculiar things happened. At the very same Council meeting at which the by-law for the modified OPA 76 was approved, Council also approved a by-law for OPA 77—which again declared those 163 Fernbank hectares urban. The same parcels of land were approved twice!

One citizen had pointed out that this was irregular but she was ignored. She also pointed out that OPA 77's urban expansion would have to be approved by the Minister of Municipal Affairs and Housing (as was OPA 76) but that comment was ignored as well.

Naturally, just about every developer in town appealed Council's decision to the OMB—arguments had been made that Ottawa's urban area should expand by 2,000 hectares or more. Eighteen months later, these appeals began to be adjudicated. In a decision on Phase 1 of the urban boundary hearings, issued on June 3, 2011, the Board found that Council's decision was not valid and that, in fact, 850 ha was the right number for urban expansion.

Phase 2 dealt with the methodology the City had employed to identify lands suitable for urbanization; the eventual outcome of that phase was to confirm the City's methodology and criteria. Phase 3, which was to begin on July 3, 2012, would get down to determining the actual parcels to be urbanized.

### ***How 850 morphed into 1,013***

In the middle of Phase 2, on February 8, 2012, the OMB Panel astounded everyone by casting doubt on what was meant by the 850 hectares that it had determined was the degree of urban expansion Ottawa needed. The Panel chair reiterated the somewhat obscure wording in the Phase 1 Decision, claiming that the 163 hectares of OPA 77 were over and done with and that the Board's determination of 850 hectares would be in addition to that. Jaws dropped. The City lawyer interrupted a Council meeting, shouting that something extraordinary had just happened. Various lawyers representing developers at the hearing commented to the Board that this was not how everyone had understood what the 850 hectares meant and urged the Board

to provide clarity and certainty, otherwise Phase 3 of the hearing would be thrown into chaos.

Even before the end of the Phase 2 hearing, a community organization which had been monitoring the hearing urged the City to immediately seek a review that would clear up the situation, noting that there was not a shred of evidence in the OMB record that supported an interpretation of the meaning of 850 hectares other than what staff had determined in its projections of 2007. On February 22, at the end of the hearing, the City's lawyer informed the group that instructions to clarify the situation had been received "from the highest level." Still, it took more than a month, to March 28, for Legal Services staff to present a motion to Council to formalize those instructions.

The motion called on the City Clerk and Solicitor "to take any necessary steps to confirm that the 850 hectares . . . include the 163 hectares . . . in Fernbank." The motion passed with only one dissent.

Many more weeks went by without any overt initiative by the City to urge the Board to clarify the matter. Then, at the occasion of an OMB Phase 3 pre-hearing conference on May 17, the City put forward a motion which, if accepted, would confirm in a roundabout way that the 850 hectares did include Fernbank's 163 hectares. Most of two days was devoted to debating that motion. Comments by the Panel initially gave reason to think that it clearly understood the source of the confusion. Naturally, most—though not all—landowners argued against the City's motion, seeing a windfall in the offing.

Alas, in the Decision on the motion, issued on June 4, the Board stuck to its earlier interpretation and confirmed that the 850 hectares were on top of Fernbank's 163, claiming the 850 hectares to be "a Board number."

850 hectares had now become 1,013 hectares.

### **Huntmar Valley ("Area 2")**

This new target of 1,013 ha changed the game for Phase 3 and put into play a wedge of land between the Terry Fox Drive Extension and Huntmar Drive in Kanata, referred to as "Area 2." (See photo). To the north, this land rises steeply to a rocky highland, bordering the South March Highlands Conservation Forest. The Carp River forms its southern border—in fact, more than one-third of its 66 hectares is designated flood plain. To the west and southeast are agricultural lands. Already heavily compromised by the construction of Terry Fox Drive along the eastern edge, this area is critical for the maintenance of a wildlife corridor between the forest and



*Aerial photo taken in 2000, looking northeast, giving an overview of the South March Highlands region showing the Ottawa River in the background. Source: Canadian Aerial Photo Corporation. The light grey line overlain on this photograph gives the approximate location of the 4 km Terry Fox Drive Extension (TFDE), which delineated the urban boundary before the current expansion. The light grey line was derived from the TFDE environmental assessment report. Area 2 is in the foreground, bounded by the Hazeldean Escarpment to the north, the TFDE, the Carp River, and Huntmar Drive.*

the river. Comments by the community had been very clear: Area 2 should not be developed, though staff had proposed that it could be.

Belatedly, just days before the start of the Phase 3 hearing, in a report recommending a position from Council for that final Phase of the hearing, planning staff came to agree with the community's assessment. The City's senior environmental planner recommended that the developable portion of Area 2 be reduced to zero, based on its function as an eco-corridor and because it was highly likely that the Ministry of Natural Resources would declare it habitat for Blanding's Turtles, a federally- and provincially-listed "threatened" species.



*Photo taken by Christopher Busby on June 3, 2012 outside his home in the Carp Hills. A four-year study on the habitat of Blanding's Turtles around Terry Fox Drive is underway.*

The Year 2 report of a four-year study on Blanding's Turtles—a condition out of the environmental assessment of the construction of the Terry Fox Drive Extension—had just become available. Ten of the 75 Blanding's Turtles observed in the area had been outfitted with radio antennas so that their movement could be monitored. One had been observed to have moved back and forth along the southern edge of Area 2.

Observations of Area 2 proper had only been cursory because it was, and is, not the main focus of the study. But the absence of direct Blanding's Turtle observations in Area 2 was enough for the landowner's biologist to claim that there was no evidence that Area 2 was potential turtle habitat. The Planning Committee and, the following day, Council, bought that argument and the development potential of Area 2—39 ha—was restored back to what it had been previously.

At that same Planning Committee meeting (on June 26, 2012), staff also recommended a way to break ties in scoring. (There were in fact three parcels vying for "last in" at 48 points.) Staff suggested that the parcel or parcels that brought the total acreage closest to the desired objective (now 1,013 ha) should be allowed in. (See map for the expansion staff recommended at this stage of the process.) Urged on by developers, Planning Committee and Council disagreed, deciding that, in case of a tie, all such parcels should become urban. In effect, Council was now recommending that Ottawa's urban area should expand by 1,065 hectares, 25 percent more than the level staff had recommended in 2009.

#### *Errors in scoring not brought forward*

The readiness of wastewater infrastructure is one of the elements that forms the basis for awarding points under staff's evaluation methodology. Area 2 was awarded six points meaning that it qualified halfway between "requiring moderate upgrades" (4 points) and "existing trunk sewers and/or pump stations having residual capacity to service the area with no or minimal investment" (8 points).

At the June 26 Planning Committee meeting, a citizen noted that the Master Servicing Study for Kanata West demonstrated that in fact no pump station capacity was left to serve Area 2. He also quoted from a presentation by the landowner's lawyer back in 2009, who pleaded with Councillors to install bigger pipes during the construction of Terry Fox Drive so that Area 2 could be serviced in the future. But that was not done. The citizen asked if it was therefore correct to award this area six points. Unfortunately, infrastructure staff was not present to answer the question. The City lawyer only confirmed that, indeed, the pipes did not have the capacity to service Area 2—upgrades would have to be done at the expense of the developer. The specific issue of the validity of the score was not answered.

A memorandum obtained through access to information tells the real story. In an email to his superior dated June 8, 2012, forwarded to the key City witness for these hearings on June 11, a senior project engineer concluded that "based on upgrades and infrastructure designed and/or constructed since [the 2009 evaluation] was undertaken," "the wastewater score for Area 2 should be reduced from 6 points to 0 points." The memo went on to explain, in seven bullets and with two exhibits, the technical grounds for this conclusion. The access to information request turned up

no counters to this advice.

Had this information been conveyed to Committee on June 26 or Council the next day, or at the Phase 3 hearing that started on July 3, Area 2 would have been declared ineligible for urbanization at this time.

### **The final count**

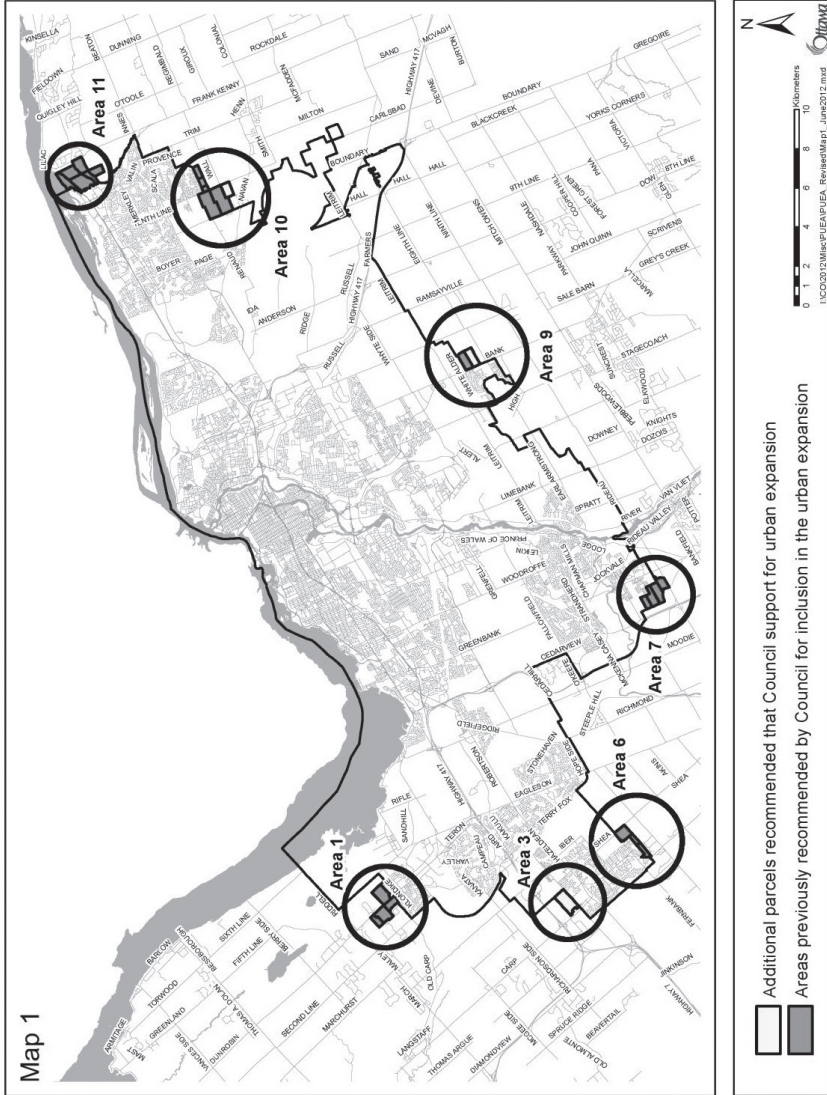
With the score for Area 2's wastewater infrastructure readiness unchallenged, the rug pulled out from under staff's argument about Area 2 being unsuitable for environmental reasons, plus the caving-in by Council to developers' solutions on breaking tied scores, the City presented a motion at the start of the Phase 3 hearing that all parcels scoring 48 points or more be urbanized. The Board agreed.

Just two minor questions were then left to be determined in Phase 3: the fate of one 39-hectare parcel awarded 2 points short of the magic score of 48; and another parcel rejected halfway through the evaluation process because of its adjacency to DND's Connaught Rifle Range. On August 22 the Board issued its decision that the latter needed more work before it could be declared urban, but awarded the former two more points so that it too reached the threshold of 48 points. This added another 39 ha to the urban area, now bringing the final total to 1,104 ha.

With an additional 1,104 ha Ottawa is expanding its urban area 30% above the originally determined need of 850 hectares, and 4.8 times more than what Council originally approved. Let's recap how this amazing result came about:

- + staff laid the groundwork for confusion by having Council approve 163 hectares as urban twice;
- + the OMB made a determination which has no basis in the evidence it heard;
- + staff repeatedly delayed action in getting the matter cleared up and then attempted to do so in a roundabout way which failed;
- + Council was persuaded by flimsy arguments made by the landowner of Area 2, rejecting the professional opinion of the City's own senior environmental planner;
- + Council remained in the dark about a needed correction in the scoring for wastewater service at Area 2, which would have been fatal for its suitability for development;
- + Council opted for further expansion by refusing to adopt a tie-breaking rule, again against the advice of staff;
- + the OMB added the final touch by allowing in another area.

Now if you think that the development industry would be satisfied with these major victories, think again. At that same June 26 Planning Committee meeting, Councillors also had before them the workplan for the next round of Official Plan



*This map of urban expansion areas was presented to Planning Committee on June 26, 2012, but then Councillors added more land in Area 2 and Area 8, and the OMB in its final decision added more land still in Area 1.*



Review, to be concluded in 2014. Staff demonstrated that maintaining the planning horizon at 2031 would amply satisfy provincial policy requirements. But that didn't stop the Greater Ottawa Home Builders Association from proposing a bargain: set the horizon further out and we promise, they said, that none of our members will appeal the additional urban expansion that this longer horizon would inevitably entail.

Councillors didn't fall for it. But it's a long way to 2014.

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## Turkey Vultures

*Murray Citron*

Food is what matters. Those featherless ugly heads  
Are perfect to plunge in fluid, flesh and fat  
And seize out nutrients and leave the shreds  
That cycle back into the habitat.

When the vulture chicks are fledged the families  
Form kettles: funnel clouds that move along  
Cliff-faces, streams, and over fields and trees.  
Flying and feeding. It's how they teach their young,

The grownups glide on thermals in the sky,  
And they are eloquent. They soar and sway,  
Black keels, black sails, that signal from up high  
That death is graceful, seen from far away.