

JUL 23 2009

# Notice of Appeal to the Ontario Municipal Board

**Date of Appeal:** July 22<sup>nd</sup>, 2009

**Appellant:** Friends of the Greenspace Alliance  
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Ottawa, Ontario K1P 1A1

CITY OF OTTAWA  
VILLE D'OTTAWA  
Client Service Centre  
Centre du service à la clientèle

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REÇU JUL 23 2009

Initial / initiale

*[Signature]*

**Matter and Subject Lands:**

Appeal of Official Plan Amendment No. 77 to the Official Plan of the City of Ottawa, Fernbank Transportation Master Plan, Master Servicing Study, and Environmental Management Plan, adopted by Council decision on June 24<sup>th</sup>, 2009.

**Purpose and Effect of the Official Plan Amendment:**

The stated intent of the Amendment No. 77 is to amend Schedules A, B, C, and E, and Sections 3.11 and 5.3, and Annex 1 to the Official Plan for the City of Ottawa to implement the land uses and transportation infrastructure established by the Fernbank Community Design Plan (CDP).

**Summary of Issues raised in this Appeal:**

The issues in this Appeal relate to the integration of the approval of the Fernbank Class EAs with the Fernbank OPA under the Planning Act; the apparent failure of the City to implement a plan in accordance with the Province's recognition of a watershed as the appropriate area from which planning should proceed; the application of inconsistent storm water management (SWM) standards; and the consequent increased flooding risk in the Carp River Valley creating health and safety issues.

## REASONS FOR THIS OBJECTION

### BACKGROUND

The stated intent of the City of Ottawa Official Plan Amendment No. 77 is to implement the land uses and transportation infrastructure established by the Fernbank Community Design Plan (CDP) by amending Schedules A, B, C, and E, and Sections 3.11 and 5.3, and Annex 1.

The Fernbank development area is 674 hectares in size and will contain 9,700 to 11,000 homes, with a population of roughly 28,000 to 31,000.

According to staff Report to Planning and Environment Committee 24 May 2009, submitted by Nancy Schepers, Deputy City Manager, DOCUMENT 9, 14) Mississippi Valley Conservation:

“The Fernbank Community is proposed to include approximately 650 hectares of land between the established communities of Stittsville and Kanata. The study area is divided between the watersheds of MVC and the Rideau Valley Conservation Authority (RVCA). Approximately 225 hectares of the study area is tributary to the Carp River and thus is within the jurisdictional watershed area of MVC. This letter and the review of MVC staff only address the area within the MVC watershed.”

The Fernbank CDP was prepared using an “integrated planning and environmental assessment process”, which gave no consideration to other class undertakings affecting directly or indirectly the hydrologic and/or hydraulic conditions in the Carp River watershed within the subject area, namely:

- Terry Fox Drive Extension Class Environmental Assessment
- Hazeldean Road Expansion Class Environmental Assessment
- Fernbank Master Servicing Study – SWM Ponds #1, #2, #3, & associated storm sewers;
- Kanata West Class EAs – Carp River Restoration Plan; Maple Grove Road Widening; Kanata West Pump Station; SWM Facilities P1, P2, P3, P4, P5, P6 & associated storm sewers;
- Broughton Subdivision – Amended C of A No. 3333-7SDLAT; C of A No. 327-7STKDW

Mikelis Svilans, has made a written submission on behalf of the Carp River Coalition comprising the Greenspace Alliance of Canada's Capital, Friends of the Carp River, Ottawa Riverkeeper, and the Sierra Club of Canada – Ottawa Group, to members of the City of Ottawa's Planning & Environment Committee and all the other Councillors in advance of its consideration of the Official Plan Amendment on June 9, 2009.

The Friends of the Greenspace Alliance is an incorporated entity with full rights to use the name “Greenspace Alliance of Canada's Capital”.

## **REASONS FOR THE APPEAL OF AMENDMENT NO. 77**

The Appeal is based on, but not limited to the following issues:

### **1) An integrated planning and environmental assessment process not appropriate for a development of this magnitude.**

The Fernbank CDP encompasses 1685 acres or 674 hectares for accommodating a population of roughly 28,000 to 31,000 in 9,700 to 11,000 housing units. The situation is further complicated by the presence of two river systems (Jock River and Carp River and tributaries) under two different jurisdictions (Mississippi Valley Conservation Authority, MVCA and Rideau Valley Conservation Authority, RVCA).

This is by no means a routine development in terms of size and complexity.

The integrated planning and environmental assessment process as used by the City of Ottawa in this case has no mechanism for addressing the interdependency of other class undertakings via the river systems involved.

The Appellant therefore holds the view that the integrated planning and environmental assessment process applied here and approved by the City of Ottawa is unsuitable and inappropriate.

### **2) The Fernbank CDP is not in accordance with the Province's recognition of a watershed as the appropriate area from which planning should proceed.**

The five class undertakings (specified in the Background Section above) affect directly or indirectly the hydrologic and/or hydraulic conditions in the Carp River watershed. The interdependence between these undertakings is self-evident in view of the Carp River water level and flood levels.

Amendment No. 77 does not incorporate measures or otherwise recognise these interdependencies, opening the way for loss of planning control in the future and introducing the risk of personal and property damage with attendant litigation exposure. It must be remarked that the City is already currently engaged in litigation arising from flooding issues in the above watersheds. Adopting OPA No. 77 in its present form will undoubtedly aggravate the present situation at additional cost to residents and taxpayers.

### **3) The elevation flood levels will be increased by the implementation of the Fernbank CDP.**

The Appellant takes the position that approving a storm water management (SWM) scheme in a greenfield development area like the Fernbank CDP that causes flooding of private property downstream, does not constitute good planning, and should be rejected, not approved.

Section 5.9.7 of the Fernbank CDP, "Carp River Restoration", states:

"The targets for assessing impacts in the Carp River resulting from development of the Fernbank Community are as follows:

[...]

- Ensure that the post-development runoff volume from the Fernbank Lands tributary to the Carp River does not exceed an additional 40,000 m<sup>3</sup> above existing conditions for the 100-year event.

The hydrologic and hydraulic analyses completed for the Fernbank lands indicate that the proposed SWM strategy will meet the recommended targets.”

According to the August 11, 2005 OMB Decision in favour of Del Brookfield, the testimony of their engineering consultant was that: “The proposed storm water management facilities can provide enhanced water quality and peak flow control over existing conditions, and can enhance base flow conditions to the receiving streams namely the Carp River.” In other words, post-development flood levels would be lower than existing conditions.

Thus the additional flow of 40,000 cubic meters above existing conditions constitutes a significant degradation, not improvement of the existing conditions, contrary to earlier testimony that the flood levels would be reduced over existing conditions.

By permitting such an approach, OPA No. 77 goes against sound planning procedures.

#### **4) Inconsistent SWM standards applied in the implementation of the Fernbank CDP.**

Runoff from the Fernbank development into the Carp River (under the jurisdiction of the MVCA) is to be controlled for rainfall events only up to the 10-year event. This is somewhat inconsistent with the requirement for the portion of the Fernbank development that drains to the Jock River (under the jurisdiction of the RVCA), where the appropriate standard is to be applied, namely, to control up to the 100-year event.

Such a planning approach simply makes no sense which cannot and should not be accepted as a responsible and sustainable planning practice.

In closing, approving Official Plan Amendment No. 77 in the present form would expose City of Ottawa residents to the expense of higher property damage risk and potential litigation expenses. Such risks are not warranted, do not bring any benefits to the communities of our City and can not be viewed as responsible stewardship of taxpayers' money.

The contact person for this file is Mik Svilans, **email:** [ga@svilans.ca](mailto:ga@svilans.ca).

Submitted to the City of Ottawa this 23<sup>rd</sup> day of July, 2009,

for the

**Friends of the Greenspace Alliance.**

**(Mik Svilans)**