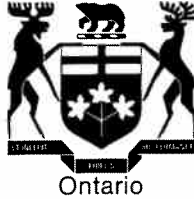


ISSUE DATE:
OCT. 21, 2009



PL090678

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Mattamy Homes
Appellant: Friends of the Greenspace Alliance
Appellant: Mark Luden
Appellant: Kizell Management Corporation
Appellant: Brookfield Homes
Subject: Proposed Official Plan Amendment No. 77
Municipality: City of Ottawa
OMB Case No.: PL090678
OMB File No.: PL090678

APPEARANCES:

Parties

Counsel*/Agent

City of Ottawa

T. Marc*

The Friends of the Greenspace Alliance

J. Lindsay

Brookfield Homes (Ontario) Limited
Abbott-Fernbank Holdings Inc.

M. Bowman*

Kizell Management Corporation

J. Dawson*, M. Yakubowicz*

2129786 Ontario Limited

G. Meeds*

2087875 Ontario Ltd.
1383341 Ontario Inc.
218447 Ontario Limited

D. Kelly*

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. C. DENHEZ
ON OCTOBER 8, 2009, AND ORDER OF THE BOARD**

1. ISSUES LIST

This was the second Prehearing Conference (PHC) in this matter. It was convened primarily to resolve concerns pertaining to the Issues List for the forthcoming hearing.

At the previous PHC, held on September 24, 2009, it had been agreed that the wording of some parts of the Issues List ("Attachment A" to the Board's Decision on that PHC, Issued on October 7, 2009) was preliminary only. The Friends of the Greenspace Alliance (FGA) undertook to produce clarifications of the wording of Issue No. 3, and this prompted a constructive dialogue, which also included Issue No. 2(b).

Mr. Dawson, Counsel for Kizell Management Corporation, suggested the following compromise wording, to combine Questions 2(b) and 3 on the Issues List:

Does the information in section 5 of the phase two report of the Carp River Third Party Review, pp 102-103 and Table 3-6 of the phase one report indicate that development in accordance with OPA No. 77 will cause an increase in peak flood levels of the Carp River? If so, has this been properly considered in the City's review and approval of OPA 77? Has the assessment of peak flood levels in support of OPA 77 been completed consistently with the Ontario Ministry of Natural Resources "Technical Guide-River and Stream Systems: Flooding Hazard Limit (2002)"?

There were, however, two questions which elicited discussion. The first was whether the word "peak" unduly narrowed or diluted the debate over storm water. The second was whether the above wording described storm water concerns with enough specificity to allow parties to gather the correct evidence on point.

The ensuing discussion made the following factors clear:

- The term "peak flood levels" is a standard phrase used in reports. It is *not* to suggest that any flooding becomes acceptable, merely because it is sub-peak.
- Mr. Lindsay said the FGA's concern with the Third Party Review focused on two main questions. The first was whether that Review's modelling and analysis of storm water, in the 674 hectares of the future Fernbank Community, was pivoted on effects before development or after; and if that analysis was pivoted on effects before build-out, whether the results of that analysis represented an accurate portrayal of future risk, in light of the variations which build-out could produce.

- The other question, said Mr. Lindsay, was whether there had been complete consideration of the full implications of the data in Section 5 of the Phase two report of the Carp River Third Party Review, pages 102-103, and Table 3-6, notably whether that data could properly give rise to concerns which had not been fully addressed.

It was agreed to rephrase the Issues List in accordance with Mr. Dawson's wording, but with the further understanding of the above concerns.

2. MISCELLANEOUS

The undersigned Board Member was asked if he would be seized of the hearing. The Board can now confirm that the undersigned will be seized of the hearing.

3. NEXT STEPS

At the PHC, the Board reminded those present of the next PHC, scheduled for November 26, 2009. If any uncertainties re-emerged concerning the scope of Issues or other matters, or if there appeared to be any prospect for Issues to be scoped further, all Counsel and Agents were encouraged to communicate directly with each other, including in advance of that PHC.

4. CONCLUSION

The Board disposes of the above matters as follows:

1. The Issues List, appended as "Attachment A" to the Board's Decision issued on October 7, 2009, is amended as follows:
 - a) By deleting the letter "(a)" at the beginning of Issue No. 2;
 - b) By deleting existing Issue No. 2(b); and
 - c) By replacing existing Issue No. 3 with the following:

3. Does the information in section 5 of the phase two report of the Carp River Third Party Review, pp 102-103 and Table 3-6 of the phase one report indicate that development in accordance with OPA No. 77 will cause an increase in peak flood levels of the Carp River? If so, has this been properly considered in the City's review and approval of OPA 77? Has the assessment of peak flood levels in support of OPA 77 been completed consistently with the Ontario Ministry of Natural Resources "Technical Guide-River and Stream Systems: Flooding Hazard Limit (2002)"?

2. This Member is seized.

It is so Ordered.

"M. C. Denhez"

M. C. DENHEZ
MEMBER