

ISSUE DATE:

**Oct. 07, 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. Amend. # 77  
Municipality: City of Ottawa  
OMB Case No.: PL090678  
OMB File No.: PL090678

**APPEARANCES:**

**Parties**

**Counsel\*/Agent**

City of Ottawa

T. Marc\*

Friends of the Greenspace Alliance

J. Lindsay

218447 Ontario Limited

A. Cohen\*

Brookfield Homes (Ontario) Limited

M. Bowman\*

Kizell Management Corporation

J. Dawson\*

2129786 Ontario Limited

P Vice\*

Abbott-Fernbank Holdings Inc.  
2128356 Ontario Inc.

J. Bradley\*

2087875 Ontario Ltd.  
1383341 Ontario Inc.

D. Kelly\*

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. C. DENHEZ  
ON SEPTEMBER 24, 2009 AND ORDER OF THE BOARD**

## 1. INTRODUCTION

The City of Ottawa (the City) undertook a multi-year process dealing with the future of a large new area (674 hectares), to be called the Fernbank Community, with a projected population of 28,000 to 31,000 people. This process ultimately resulted in Council's adoption of Official Plan Amendment No. 77 (OPA 77).

Several appeals were filed at the Board. One developer, 218447 Ontario Limited, a subsidiary of Mattamy Homes (Mattamy) had concerns about the exact location of a proposed district park. Other developers who supported the City's initiative thereupon filed appeals *pro forma*, to guarantee that they would be recognized as parties in any future OMB litigation.

There were, however, other concerns. In July, 2009, there had been flooding in the nearby Glen Cairn neighbourhood, and there were longstanding concerns about analysis of the Carp River. The Friends of the Greenspace Alliance (FGA), an incorporated body, filed an appeal along those lines. A neighbouring property-owner, Dr. Mark Luden, also appealed.

At the Board's Pre-hearing Conference (PHC), substantial progress was made in refining procedural aspects.

## 2. PARTIES

The following were recognized as parties:

- The City of Ottawa;
- The Friends of the Greenspace Alliance (FGA);
- 218447 Ontario Limited;
- Brookfield Homes (Ontario) Limited;
- Kizell Management Corporation.

The following owners of property, affected by OPA 77, also asked to be added as parties, to which there was no objection:

- 2129786 Ontario Limited;
- Abbott-Fernbank Holdings Inc.;
- 2128356 Ontario Inc.;
- 2087875 Ontario Ltd.;
- 1383341 Ontario Inc.

The Board recognizes the above as parties. The Board was advised that the situation of another party, Dr. Luden, appeared to be in transition, and that the Board would be advised by the City, in some sixty days, of the updated status of his appeal.

### **3. PARTICIPANTS**

The Glen Cairn Community Association (GCCA) had expressed interest in participating. At this PHC, however, the Board was not advised whether the GCCA was an incorporated body. If incorporated, the Board's *Rules of Practice and Procedure* would allow it to be a participant in its own name. If unincorporated, it would need to be represented by a person (the FGA proposed that GCCA's president, Mr. Allen Hubley could be considered; he was out of town, but had apparently signalled his interest).

Counsel for Kizell Management Corporation observed that the position of the GCCA had not yet been disclosed to other parties, let alone been found relevant. The Board is satisfied, however, that there is sufficient time for that position to be made clear, and for the other parties to respond appropriately. In any event, if the GCCA undertakes to be a participant, i.e. a witness in a hearing on the merits, it will be expected to file a witness statement like other witnesses.

### **4. ISSUES**

The parties consulted on the Issues List, at some length. That List is reproduced at "Attachment A".

There was consensus, among the many parties, on the following points:

- Question 5 on the Issues List, advanced by 218447 Ontario Limited

(Mattamy) concerning the location of the proposed district park, is substantively different from the other four questions, to the point that it deserves to be treated separately. Accordingly, it will be addressed in a separate phase of the hearing on the merits.

- The wording of Questions 1, 2, 4 and 5 on the Issues List was clear enough to all.
- The wording of Question 3 is preliminary only. The FGA undertook to produce clarifications of the wording of that question, and to forward same to the City by the end of the business day on October 5, 2009.
- If there are further concerns about the specificity of Question 3, they may be addressed in a further PHC, to be held by Telephone Conference call scheduled for the afternoon of October 8, 2009.
- Some of the lawyers for owners reserve the option of not participating in the PHC of October 8, 2009. This did not represent a lack of interest on their part, but rather a willingness to defer to Mr. Dawson, Counsel for Kizell Management Corporation, specifically to speak on their behalf on the subject of the clarification of Question 3.
- The parties have agreed, among themselves, that the identification of an issue does not constitute any admission of relevancy by any party not identifying that issue. The onus of demonstrating the relevancy of any issue and, if relevant, the weight to be ascribed to such issue to the matter before the Board remains with the party identifying the issue.

## **5. PROCEDURE**

The Board's Procedural Order for Questions 1-4 on the Issues List is reproduced at "Attachment B". The Board's Procedural Order for Question 5 on the Issues List is reproduced at "Attachment C".

Aside from the PHC scheduled for October 8, 2009 described below, the parties agreed on the usefulness of scheduling a PHC for November 26, 2009.

## 6. CONCLUSION

As outlined orally at the Pre-hearing Conference, the Board disposes of the above matters as follows:

1. The Issues List is appended as "Attachment 1".
2. The Board expects the Friends of the Greenspace Alliance (FGA) to forward, to the City of Ottawa, its proposed updated wording for Question 3 on the Issues List, by the end of the business day on **Monday, October 5, 2009**.
3. The Board fixes **Thursday, October 8, 2009 at 3:00 P.M.**, for the next Pre-hearing Conference in this matter. The PHC shall be by Telephone Conference Call:
  - a) The parties shall call **(416) 212-0400** or Toll Free **1(866) 355-2663** at the correct time. When prompted, they will enter the **code 6251#** to be connected to the call.
  - b) If assistance is required at any time, one may press '0' for the operator.
  - c) Cellular telephones are not permitted for the call. It is the responsibility of the persons participating to ensure that they are properly connected to the call and at the correct time.
4. The Board fixes **Thursday, November 26, 2009 at 10:00 A.M.**, for a further Pre-hearing Conference in this matter. It shall take place at:

The Keefer Room,  
Ottawa City Hall, Heritage Building,  
110 Laurier Avenue West, Ottawa.

The said Pre-hearing Conference may occur instead by Telephone Conference Call if all the parties agree, and so advise the Board on reasonable notice.

5. The hearing on the merits shall be split into two parts. The first part shall pertain to Questions 1 to 4 on the Issues List.
  - The hearing pertaining to Questions 1 to 4 shall start on **Monday, January 4, 2010 at 10:00 A.M.**
  - It is scheduled for three weeks, at the Keefer Room, above.
  - The Board's Procedural Order for this first phase is appended as "Attachment B".
6. The second part of the hearing on the merits shall pertain to Question 5 on the Issues List.
  - The hearing pertaining to Question 5 shall start on **Monday, March 1, 2010 at 10:00 A.M.**
  - It is scheduled for one week, at the Keefer Room, above.
  - The Board's Procedural Order for this second phase is appended as "Attachment C".
7. No further notice will be given for the matters currently before the Board.

8. This Member is seized of the procedural matters prior to the hearing on the merits, but is otherwise not seized.

It is so Ordered.

"M. C. Denhez"

M. C. DENHEZ  
MEMBER

Attachment “A”

**ISSUES LIST**

<b>First Phase</b>	1.	1. Did the City conduct the appropriate planning and approval process for the class environmental assessment undertakings (wastewater and stormwater) in the Master Servicing Study?
	2.	<p>a) Are the conclusions and recommendations of the five studies, in regards to stormwater, wastewater and flood levels:</p> <ul style="list-style-type: none"> <li>- Terry Fox Drive Extension Class Environmental Assessment;</li> <li>- Hazeldean Road Expansion Class Environmental Assessment;</li> <li>- Fernbank Master Servicing Study –SWM Ponds #1,#2,#3, and associated storm sewers;</li> <li>- Kanata West Class EAs – Carp River Restoration Plan; Maple Grove Road Widening; Kanata West Pump Station; SWM Facilities P1, P2, P3, P4, P5, P6 and associated storm sewers;</li> <li>- Broughton Subdivision –Amended C of A No. 3333 – 7SDLAT; C of A No. 327-7STKDW,</li> </ul> <p>relevant to the process? If so, were they properly considered in the City’s review and approval of Official Plan Amendment No. 77?</p> <p>b) Was information in the Carp River Third Party Review and Restoration Plan (more specifically, Section 5 of the phase 2 report –page 102-103- and Table 3-6 of the phase 1 report) properly considered in the City’s review and approval of Official Plan Amendment No. 77?</p>
	3.	Will the development, in accordance with OPA No. 77, cause an increase in the flood levels of the Carp River? And has the assessment of flood levels in support of approval of OPA No. 77 been completed consistently with the Ontario Ministry of Natural Resources technical guidelines?
	4.	Is the application of quantity control up to the ten year event the appropriate standard for the two ponds in the Carp River Watershed?
<b>Second Phase</b>	5.	Which is the preferred site for the District Park, Site 1 or Site 2 shown on Attachments 3 and 4 to the Procedural Order at “Attachment C”?



**Attachment "B"**

**PROCEDURAL ORDER – QUESTIONS 1 - 4**

**Appeals to Official Plan Amendment No. 77 of the City of Ottawa.**

**OMB Case and File Number: O090678**

1. The Board may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

**Organization of the Hearing**

2. The hearing (on Questions 1 – 4 of the Issues List at Attachment "A" hereof), will begin on 4 January 2010 at 10 a.m.. at the Keefer Room, City Hall, 110 Laurier Avenue West in the municipality of Ottawa.

3. The length of the hearing will be about 15 days.

4. The parties and participants identified at the prehearing conference (*see the Attachment for the meaning of these terms*) are listed in Attachment 1 to this Order.

5. The Issues are set out at Questions 1 – 4 in the Issues List attached as Attachment "A". Subject to paragraph 7, there will be no changes to this list unless the Board permits, and a party who asks for changes may have costs awarded against it.

6. Any person intending to participate in the hearing should provide a telephone number to the Board as soon as possible (*preferably before the prehearing conference.*) Any such person who will be retaining a representative should advise the other parties and the Board of the representative's name, address and phone number as soon as possible.

7. With respect to issue 3, the Friends of Greenspace Alliance shall provide additional particulars to the caseworker and all parties on or before 5 October 2009. A telephone conference call shall be held on 8 October 2009 at 3:00 p.m. for the purposes of the receipt of submissions with respect to the wording or revised wording of issue 3.

**Requirements Before the Hearing**

[8]. A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the Clerk a list of the witnesses and the order in which they will

be called. This list must be delivered on or before 23 October 2009. A participant must also identify on or before 23 October 2009 whether s/he will be providing evidence, or if the participant is an organization, which individual will be providing evidence for the organization.

**9.** An expert witness shall prepare an expert witness statement which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section [12]. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony. The witness statement or report and list of reports or documents must be provided on or before 23 November 2009.

**[10.]** A participant must provide to the Board and the parties the participant statement on or before 23 November 2009 or the participant may not give oral evidence at the hearing.

**11.** Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section [12].

**12.** On or before 23 November 2009 the parties shall provide copies of their witness and expert witness statements to the other parties and to the Clerk of the City of Ottawa.

**13.** On or before 7 December 2009 the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.

**14.** Parties may provide to all other parties and file with the Clerk a written response to any written evidence within 14 days after the evidence is received.

**15.** A person wishing to change written evidence, including witness statements, must make a written motion to the Board.

*(see Rules 34 and 35 of the Board's Rules, which require that the moving party provide copies of the motion to all other parties 10 days before the Board hears the motion.)*

**16.** A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board at least 7 days before the hearing that the written evidence is not part of their record.

**17.** Documents may be delivered by personal delivery, facsimile or registered or certified mail, or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rules [26 – 31] on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

**18.** No adjournments or delays will be granted before or during the hearing except for serious

hardship or illness. The Board's Rules 61 to 65 apply to such requests.

**This Member is not seized  
So orders the Board.**

## ATTACHMENT TO SAMPLE PROCEDURAL ORDER

### Purpose of the Procedural Order and Meaning of Terms

*The Board recommends that the parties **meet to discuss this sample Order before the pre-hearing conference** to try to identify the issues and the process that they want the Board to order following the conference. The Board will hear the parties' comments about the contents of the Order at the conference.*

*Pre-hearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's Rules, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-326-6800, or from the Board website at [www.omb.gov.on.ca](http://www.omb.gov.on.ca).*

### Meaning of terms used in the Procedural Order:

***Party** is an individual or corporation permitted by the Board to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorization from the party.*

***NOTE** that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Board to permit this.*

***Participant** is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Board will set the time for hearing this statements. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Board will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.*

***Written and Visual Evidence:** **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes*