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DECISION/ORDER NO:

0368



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL040841

The Greenspace Alliance of Canada's Capital, Ronald Tolmie, Chris Sullivan and others have appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Ottawa to approve Proposed Amendment No. 77 to the Official Plan for the City of Ottawa (former City of Kanata)
OMB File No: O040162

Ronald Tolmie, Northtech Land Development Inc., the Greenspace Alliance of Canada's Capital and the Kanata Beaverbrook Community Association have appealed to the Ontario Municipal Board under subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Ottawa to approve a proposed plan of subdivision on lands composed of Block 78, Plan 4M-1135, Part Lots 6, 7, 8, 9, Concessions 2 and 3 in the City of Ottawa (former March Township)
OMB File No: S050014

The Greenspace Alliance of Canada's Capital and Chris Sullivan have appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 2004-342 of the City of Ottawa
OMB File No: R040191

APPEARANCES:

Party

Counsel*/Agent

City of Ottawa

T. Marc* and
M. Taggart*

KNL Developments Ltd.

D.B. Kelly* and
U. Melinz*

Kanata-Beaverbrook Community Association

M. Wikinson

Greenspace Alliance of Canada's Capital
Keith McLean
Peter van Boeschoten
Bruce Story
Peter Prins
Gordon Henderson
Mikelis Svilans

A. Kempster and
M. Svilans

Ronald Tolmie

DECISION DELIVERED BY R. G. M. MAKUCH AND ORDER OF THE BOARD

The subject lands consisting of approximately 664.7 acres (269 hectares) represent the last phase of development of a larger parcel consisting of 1,398.6 acres (566 hectares) planned in the late 1970's and early 1980's. The owner at that time, Campeau Corporation, made application for official plan amendment, which would have the effect of including within the General Urban Area, that part of the larger parcel that was not already within this General Urban Area designation. This approval was granted subject to the condition that the owner Campeau Corporation enter into an agreement with the former City of Kanata agreeing to dedicate approximately 40% of the total land area (559.9 acres or 226.6 hectares), as "open space". This agreement has been referred to as the "40% Agreement". As part of that planning process, the location of the western urban boundary was to be determined by the location of the "Western Boundary Road", which is now referred to as Terry Fox Drive. A general concept plan including a general road network was developed at the time to guide the future development of these lands. To date, approximately 440.9 acres (178.43 hectares) have been developed residentially and 294.25 acres (119.08 hectares) have been dedicated in compliance with the above referred "40% Agreement".

The future Terry Fox Drive extension is located immediately to the north of the subject parcel and a residential development known as Morgan's Grant is located immediately to the north of this future Terry Fox Drive extension. The areas to the west and north have also been designated as General Urban Area while the areas to the east and south have already been developed residentially.

The area forms part of the Canadian Shield, which is for the most part forested with wetland pockets and rock outcrops providing a natural recreational area with well-used trails for running, walking, horseback riding and cross-country skiing in the winter. It is quite evident from the evidence adduced during the hearing that the residents of the abutting residential communities and from elsewhere in the region have become quite attached to these lands over the last 20 years or so. Well-used recreational trails cover most of the subject land and consequently the community has expressed a great deal of opposition to the subdivision layout.

The owner KNL Developments Ltd. has made applications for and has received approval from the City for amendments to the former City of Kanata Official Plan (OPA

No. 77), the City of Kanata Zoning By-law and for approval of a plan of subdivision for the development of approximately 3200 residential units in various forms. The application for amendment to the former City of Kanata Official Plan (Proposed OPA No. 77) was to further define the boundaries of the Environmental Protection Areas (EPA) in accordance with the proposed plan of subdivision. The approvals would finalize the specific urban development plan for this area and the proposed subdivision would replace much of the forested area with residential development.

It is noted that the OPA No. 77 land use designation boundaries currently under appeal reflect the boundaries set out in the 2003 new Ottawa Official Plan, now considered to be in effect by the City as a result of Official Plan Amendment No. 28, the approval of which has not been appealed by anyone. Consequently, counsel for the City and KNL contend that the appeal against the approval of Official Plan Amendment No. 77 to the former City of Kanata Official Plan is now moot.

A number of community groups and individuals who reside in the area have appealed these approvals generally on the grounds that the City and the developer have not protected some of the more environmentally significant lands from development. Although these individuals and groups would have preferred to have the totality of these lands remain undeveloped, they recognize that development is inevitable, but would prefer that the configuration of the "Open Space" lands be changed to protect lands they contend are more environmentally and socially significant. In particular, the appellants contend that the City and the landowner should be protecting more land on the ridge north of the Beaver Pond in order to save a number of Black Cherry trees located in that area. They contend that certain policies in the former City of Kanata Official Plan, which suggest that the location of these Black Cherry trees was intended to delineate the boundary of the environmental protection area at that location. They also argue that the area known or identified as the Kizell Pond should be reduced because it is not a provincially significant wetland and because some of the surrounding lands are no longer environmentally significant as a result of an unauthorized tree cutting, which took place in 2002. The Board notes that the developer has agreed to transfer other lands to be protected to the City as compensation for the "clear cut lands". The City has refused to delete the lands on which the trees were cut from the environmental protection area because it does not want to set a precedent by encouraging individuals to cut down trees on such lands in the expectation that the City would subsequently allow the owner develop such lands.

The appellants suggest that the Kizell Pond area could be reduced by the amount of the clear-cut lands and that the area north of Beaver Pond could be increased by a corresponding amount of land. Other concerns raised by these individuals and groups will be also addressed in these findings.

The appellants also contend that these applications should be evaluated against the planning instruments in effect at the time of the application by KNL in April 2003 and that the Board should apply what is referred to as the “Clergy” principle (Clergy Properties Ltd. v. City of Mississauga 34 O.M.B.R. 277) in this case. The Board does not agree, the principle set out in the Clergy case, is only applicable in cases where more restrictive planning policies were put into place by a municipality following an application for development approvals, in order to protect the development rights acquired by a landowner. The relevant planning policies (2003 City of Ottawa Official Plan) adopted and or approved by the City since the making of the development applications by KNL in April 2003 cannot be said to be more restrictive and therefore, the “Clergy” principle does not apply.

The Board has carefully considered all of the evidence as well as the submissions of counsel for the parties and the parties themselves, and finds that these appeals should be dismissed except to the extent necessary to allow the Board to amend the zoning by-law and draft approval of the plan of subdivision for the reasons that follow.

While the Board understands the appellants’ genuine desires to save these lands and that in a perfect world, perhaps all of these lands would have been protected/preserved for public use, the evidence clearly shows that the subject lands have been included in the city’s urban area for some 20 years and that a general concept plan for development of this area has been in existence since the early 1980’s. The City has made it clear that it has no intention of acquiring additional lands from the developer other than what it is entitled to under the 40% Agreement and that it had no choice but to approve the development subject to the review by staff and Council as to what lands are appropriate for protection.

The 1997 Regional Municipality of Ottawa Carleton Official Plan had designated the protected area as “Natural Environment Area - A” and “General Urban Area”.

The 2003 City of Ottawa Official Plan now designates the lands to be protected in the Urban Area as “Urban Natural Feature”. Within the subject lands, this includes the areas known as or referred to as the Beaver Pond, Kizell Pond, West Block (hardwood Beech forest) and Trillium Woods. The remainder of the subject lands are designated “General Urban”.

Proposed OPA No. 77 to the Kanata Official Plan re-designates parts of the subject lands by shifting the boundaries of the current land-use designations dating back to the 1990 Kanata Official Plan, which were based on a 1987 concept Plan for the development of the Marchwood-Lakeside Community. The re-designation would implement the plan of subdivision by adjusting the boundaries of residential designations, move school, park and commercial sites and re-align certain collector streets. The policy amendments proposed would reduce the minimum lot size for the commercial use contemplated and also de-centralize the location of schools and parks. The Board finds based on the evidence before it that the Kanata and Regional official plans are superseded by the 2003 Ottawa Official Plan in terms of the “General Urban Area” policies and land use designation by virtue of City Council’s adoption of OPA No. 28 in July 2005. Furthermore, the Board also finds that an amendment to the City of Kanata Official Plan would not have been required in April 2003 if the new 2003 City of Ottawa Official Plan had been in place at that time. The proposed subdivision is in conformity with the 2003 Official Plan as well as with OPA No. 28 to the Plan.

The proposed draft plan of subdivision will also yield fewer units than the Kanata Official Plan had originally contemplated for this area and as a result, the City proposes an amendment to the zoning by-law, which would increase the density of the “High Density Residential “ site located at the south-west intersection of Gouldburn Forced Road and the railway right-of-way corner from 99 units per net hectare to 150 units per hectare, provided underground or above grade parking structures are provided. The site provides immediate access to the main arterial road through the community and is at an ideal location, adjacent to a future transit road along Gouldburn Forced Road, the community park, schools and a neighbourhood commercial site to the south. The appellants did not lead any evidence in opposition to this request and the Board finds that the proposed amendment represents appropriate land use planning under the circumstances.

The appellants had raised the need for a community building in this area but did not lead any evidence on this issue. The Board is satisfied that the City has made adequate provision of recreational facilities in the area for the benefit of the residents and that any such buildings will be funded through the imposition of development charges pursuant to the appropriate legislation.

The evidence shows that the plan of subdivision consultation process resulted in a number of changes to the plan with respect to road design and lotting, which takes into consideration topographical constraints and setbacks from environmental areas. Several modifications were also made to create more connectivity between the streets to give these a better “grid” pattern. Reverse lotting was also discouraged to eliminate the use of noise walls, which are considered to reduce the aesthetics of a streetscape.

The appellants have not been able to satisfy the Board that Council's decision to approve the draft plan of subdivision should be overturned to allow the modifications advocated by them in this case. City Council with the assistance of City staff have considered all of the interests involved and made a difficult decision, which is in the overall best interests of the present and future residents of the City of Ottawa given the urban designation on these lands, which has been in place for many years.

The proposed draft plan of subdivision provides for adequate school sites and the City proposes to amend conditions 54 and 55 in order to better reflect the wishes of the Ottawa-Carleton Catholic School Board. The Board will approve the amendments to these conditions as proposed.

With respect to the suggestion by the appellants that the Kizell Pond area be reduced, the evidence of Susan Murphy and Bernie Muncaster indicated that the Mississippi Valley Conservation Authority would not allow Kizell Ponds to be filled in and that as a result of its identification as a possible fish habitat, the Federal Department of Fisheries and Oceans regulations would also require that this area be protected. Dredging of the pond is also not an option as it would destroy or lead to the loss of the cattails, which would further reduce the quality of the storm water draining into the pond.

The appellants rely on policy 5.3.5.2 of the 1990 Kanata Official Plan to suggest that a larger area north of the Beaver pond should be protected.

5.3.5.1 The Natural Environment Area includes sites where land

forms, vegetation or topography possess a high environmental value, are ecologically sensitive or have some other special characteristics that require protection from urban development.

- 5.3.5.2 Two categories of Natural Environment Area are distinguished. Category A refers to large ecosystems such as the Kanata Pond/Kizell Creek Drainage Area and the deciduous forest on the Gouldburn Forced Road. Category B refers to the mica quarry, Marchwood Canyon and the Lismer Pines. Only the category A Natural Environment Area are shown on Schedule "B". The boundaries of the Natural Environment Area as identified on Schedule "B" shall take into consideration the location of the Black Cherry trees on the north side of Kanata Pond (Beaver Pond), existing foliage boundaries and topography. With respect to the Category B Natural Environment Area, subdivision agreement provisions shall be used to ensure the preservation and maintenance of these features as the adjacent lands are developed. Safety measures may be required and will be specified in the subdivision agreement".

6.4 Natural Environment Area Policies

2. "The Natural Environment Area shall also include the Black Cherry trees on the north side of Kanata Pond (Beaver Pond), existing foliage boundaries and natural topographic features in the area, pursuant to the 40% open space agreement between Council and the developer".

The Board is satisfied that the City and developer in this case have provided sufficient protection for this area in accordance with the Official Plan policies referred to above. The Natural Environment Area which forms part of the approved plan includes part of the area over which the Black Cherry trees referred to above are located in accordance with the "40% Agreement" as negotiated between the City and landowner.

The Board finds that this is a well-planned community which functions as a whole and there has to be a balance between the preservation of natural features and the development of active parkland for the present future residents of the community, the interests of whom City Council and the Board must consider. With respect to what has been referred to as the "clear-cut lands", the Board agrees with the city's position that

allowing development on these lands would set a bad precedent. In any event the owner has provided replacement lands to the satisfaction of the City.

The approved draft plan protects the lands, which have been identified as the most important such as Trillium Woods, the West Block, Kizell Pond and Beaver Pond. Including the Black Cherry trees on the north side of Beaver Pond.

The Board is satisfied that the proposed development can be accommodated within the planned City of Ottawa road network, with appropriate collector road links and local intersection modifications being constructed as the development is phased in future years as set out in the July 2005 report by Dillon Consulting entitled "Kanata North Neighbourhood Transportation Study" filed as Exhibit 56 in these proceedings. This study follows an appropriate methodology for transportation demand forecasting (trip generation, distribution and screenline analysis) for an area transportation study. It provides sufficient information for the City to respond to transportation issues related to the development, including; expected traffic levels on the collector road network, recommended phasing of key road and intersection projects, expected intersection demands with various implementation scenarios as well as the relative benefits of the Solandt Road connection. The Board is also satisfied that a right-of-way of 24 m is sufficient for the Solandt Road extension.

The Board rejects the appellants' contention that Walden Drive should not be extended to the north into this new subdivision. Walden Drive forms part of the collector road network that was developed as part of the original concept plan for this area, which has been put into effect with the approval of the various plans of subdivision to the north, east and south of the subject lands and removing this connection would not make any sense and would amount to bad land use planning. This roadway is part of that larger transportation network and is intended to be used for future transit service, which would be disrupted if it were to be removed.

The issue of construction traffic has been resolved with the proponent and city agreeing to amend the appropriate conditions of draft approval to add certain streets to the list of streets, where construction traffic would be prohibited.

With respect to the servicing of the subject lands, the Board is satisfied based on the evidence of Robert Wingate, the professional engineer, who gave evidence on behalf of the applicant, that the proposed plan of subdivision can be serviced in an

orderly, cost efficient manner and that it follows the master servicing strategy put into place when the entire parcel was first developed in the 1980's. There has been a substantial investment in major municipal infrastructure, which extends to the east end of the Beaver Pond and development should proceed from east to west in this area. The servicing plan proposed is logical given the location of existing services in the immediate area.

The Board is also satisfied that the adjacent lands to the north of the subject lands and south of the proposed Terry Fox Drive extension owned by the City referred to as the "Crescent" lands are to be included in the Urban Area without an official plan amendment and should be zoned in accordance with Zoning By-law 2004 - 342 as amended by this decision. The professional planning witnesses' who gave evidence all agreed that the official plan policies support the proposition that the urban boundary should be determined by an arterial road, in this case, Terry Fox Drive.

The Board is satisfied based on the evidence before it that Official Plan Amendment No. 77 to the former City of Kanata Official Plan is moot by reason of approval of Official Plan Amendment No. 28 to the new City of Ottawa Official Plan. The Board will nevertheless dismiss the appeals against OPA No. 77.

The Board finds that the draft plan of subdivision has due regard for the matters set out in subsection 51(24) of the *Planning Act* and that it represents good planning.

Accordingly, the appeals are hereby allowed in part in order to amend the zoning by-law and conditions of draft plan approval as follows:

- 1) Zoning By-law No. 2004-342 is amended in accordance with Attachment "1" hereto; (Exhibit 4)
- 2) The draft plan of subdivision is approved in accordance with Exhibits 29 A and 29 B, dated August 20, 2004 subject to the conditions set out in Exhibit 1, Tab 25 in these proceedings as amended by Attachment "2" hereto;
- 3) The appeal against the approval of Official Plan Amendment No. 77 to the former City of Kanata Official Plan is hereby dismissed.

The Board notes that the appeal by Northtech Land Development Inc. was withdrawn sometime prior to the hearing.

The Board Orders that pursuant to subsection 51(56.1) of the *Planning Act*, the City of Ottawa shall have the authority to clear the conditions of draft plan approval and to administer final approval of the plan of subdivision for the purposes of subsection 51(58) of the *Act*. In the event that there are any difficulties implementing any of the conditions of draft plan approval, or if any changes are required to be made to the draft plan, the Board may be spoken to.

The appeals are otherwise dismissed.

It is so Ordered.

“R. G. M. Makuch”

R. G. M. MAKUCH
MEMBER