

ISSUE DATE:
JAN. 14, 2010



PL090678

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 (Ontario) Limited
Subject: Proposed Official Plan Amendment No. 77
Municipality: City of Ottawa
OMB Case No.: PL090678
OMB File No.: PL090678

IN THE MATTER OF subsection 17(45) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Motion Request By: Kizell Management Corporation
Purpose of Motion: Request for an Order Dismissing the Appeal by Friends of the Greenspace Alliance

Appellant: Mattamy Homes
Appellant: Friends of the Greenspace Alliance
Appellant: Mark Luden
Appellant: Kizell Management Corporation
Appellant: Brookfield Homes (Ontario) Limited
Subject: Proposed Official Plan Amendment No. 77
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APPEARANCES:

Parties

City of Ottawa

The Friends of the Greenspace Alliance

Abbott-Fernbank Holdings Inc.
CRT Development Inc.

Kizell Management Corporation

2129786 Ontario Limited

Counsel

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**MEMORANDUM OF ORAL DECISION DELIVERED BY M. C. DENHEZ
FROM A PREHEARING CONFERENCE HELD ON DECEMBER 7, 2009
AND ORDER OF THE BOARD**

1. INTRODUCTION

This Prehearing Conference (PHC) heard a Motion to Dismiss one of the appeals of Official Plan Amendment No. 77 (OPA 77) of the City of Ottawa (the City). OPA 77 set the stage for development of the large new Fernbank Community, between the flood-prone Glen Cairn neighbourhood, and the Jock and Carp Rivers. OPA 77 was supported by several developers, who were recognized as parties at a previous PHC.

One Appellant, the Friends of the Greenspace Alliance (FGA), filed an appeal expressing concerns about flood risk and related hydrological questions, which it wanted addressed on a watershed-wide basis. One of the developers, Kizell Management Corporation (KMC) filed a Motion to Dismiss the FGA's appeal without a hearing. The Motion cited several grounds, notably that the FGA appeal did not disclose apparent land use planning grounds on which the Board could allow all or part of the appeal. The Motion was supported by the City and other developer parties.

In the lead-up, positions were refined and scoped. For example, in the course of challenging the very necessity for the FGA's appeal, Counsel for KMC outlined that:

- "No increase in flood risk" was a "controlling criterion" to all development – *not* to be compromised by other provisions of OPA 77 or related documents (e.g., an application could meet all *numerical* standards, and still fail the overall test if flood risk were increased);
- The hydrographic models remained subject to intervention and change; and
- Although the OPA foresaw no further venues for debate about flood risk on a *watershed-wide* basis, *individual* development projects remained open to challenge for flood risk, on a "street-by-street, subdivision-by-subdivision"

basis, in the light of any evidence that they might increase flood risk.

Counsel for the City and the other developers endorsed the submissions of KMC's Counsel. The Appellant FGA similarly provided important clarifications:

- It saw no necessity for a "complete setting aside" of OPA 77;
- Other aspects of the OPA could "go ahead", as long as one "held off on the wastewater and stormwater".
- The Appellant's concerns pertained only to the Carp River system, not the Jock River system.

The Board has carefully considered all the Affidavit evidence, as well as the able submissions of Counsel. For the reasons which follow, the Board finds that the FGA appeal should not be dismissed, but recast.

The experts' Affidavits disclosed a bona fide disagreement about the appropriate geographic area: which flood-related topics, if any, should best be addressed on a *watershed-wide* basis, instead of a *subdivision* basis? And when should they be addressed? The correct geographic area for a planning process of this kind, and its timetable, are quintessential planning questions.

The Board also has an interest in finality. The scheme of OPA 77 is to review water risk on a subdivision basis. The Board has obvious concerns about setting the stage for repeated disputes, appealable "street-by-street, subdivision-by-subdivision". Granted, every subdivision has its own characteristics; but there may be benefits – to both the public interest and to the development interest – to attempt a definitive resolution, at least of some *generic* aspects, to reduce the risk of repetitive appeals.

The Board therefore finds that the Motion to Dismiss should itself be dismissed. However, the Board also finds that the information brought forth, during debate of this Motion, has significantly changed the complexion of this case, compared to where it stood when the Issues List was drafted at an earlier PHC. The Board is authorized, under Rule 70(a) of its *Rules of Practice and Procedure*, to "determine the issues raised by the appeal"; and the Board does so, at "Attachment 1" hereto.

The details and reasons are set out below.

2. PARTIES AND PROCEDURES

The Board was advised that the record should reflect certain changes of status. The Appellant Mark Luden has withdrawn. Meanwhile, CRT Development Inc. has become the successor in title to the Appellant Brookfield Homes (Ontario) Limited.

Counsel also advised the Board of their uncontested view that regardless of the outcome of the current Motion, it would be inappropriate to proceed at the originally-set start date for the hearing on the merits (January 4, 2010).

3. BACKGROUND

There were several appeals to OPA 77; one was about parkland; others were filed *pro forma*, to guarantee party status in any future OMB litigation. The FGA however, was concerned about water. Two river systems cross the subject lands: the Carp and the Jock. Flooding has occurred in the past – not a major problem when the subject lands were still designated Agricultural under an earlier Official Plan (OP); but in the abutting Glen Cairn neighbourhood (actually farther from the Carp River than the subject lands), flooding has been and still is an issue, as described later.

In **1308574 Ontario Limited et al. v. City of Ottawa, [2005] O.M.B.D. 2092** (amplified in Decision 2711 on September 26, 2006), the Board addressed whether the subject lands should retain their Agricultural designation, or be given an Urban designation. Water was discussed in relation to infrastructure. The Board Panel, otherwise constituted, found in favour of the Urban designation – subject to the requirement for a Community Design Plan before development (*per* Section 3.6.4 of the City's OP). That Panel considered the evidence of Mr. Riddell, the engineering expert of predecessor developers Del, Brookfield and Westpark (and who is also one of KMC's experts). The Decision indicated that the physical context has sometimes been challenging and/or misleading; the overall strategy of the developers' experts featured a limited "high-level" commentary, and significant reliance on *later* work to be done during the eventual development approval process:

Mr. Riddell reviewed for the Board his findings with respect to the provision of stormwater services to the (Del/Brookfield lands).... He did a high level on-site servicing analysis as well as an off-site analysis to determine the feasibility of a stormwater management system required to develop the lands in conformance with regulatory objectives for quality and quantity control of stormwater runoff from the lands.... He advised the Board that the actual design and approval requirements would be addressed through the development approval process.

The main conclusions of his analysis are that: Stormwater management servicing can be provided... to the standards of the City of Ottawa and that stormwater management facilities can provide water quality and quantity control to meet all regulatory objectives.... Proposed stormwater 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.

Under cross-examination, concerns were raised regarding the submerged outlets of storm sewers into the stormwater ponds in his proposal and that this was not a design favoured by the City of Ottawa. He indicated that this was a standard design approach but that the outlet pipes could be raised. Concerns were also raised regarding the depth of certain sections of the storm sewers.... Mr. Riddell acknowledged that in some cases the sewers were deeper than normal. He also acknowledged that in the case of the Del plan the sewer elevations shown were incorrect, however it was his evidence that nothing makes him think that a design solution is not available to meet the design criteria of the Municipality.

It was his evidence that if the lands were brought into the City of Ottawa urban boundary, that a review of the Carp River Subwatershed study would be required....

It was his conclusion that with respect to the provision of stormwater management facilities the Del/Brookfield and surrounding lands can be cost-effectively serviced....

During the course of the hearing, revised drawings found at Exhibit #60 were submitted correcting previous errors....

The Board heard from Mr. Robert Wingate P.Eng who was retained by Westpark to provide municipal infrastructure servicing advice. He confirmed for the Board that he had reviewed (Mr. Riddell's) report and concurred that there are no sanitary sewer or water constraints associated with the development of the Westpark lands, and that they can be cost-effectively serviced. He did a high-level stormwater analysis for the Westpark lands and reviewed the stormwater report prepared for the Del/Brookfield lands. His uncontradicted evidence was that a stormwater system could be designed (so) that... the lands could be developed in a cost-effective manner....

The evidence on the provisions of storm sewers from Mr. Riddell and confirmed by Mr. Wingate is that the Del/Brookfield and Westpark lands can be readily serviced with stormwater management systems that will meet all the municipal and other regulatory requirements. They see no impediments to providing appropriate stormwater systems to the appellant's lands.

It was their uncontradicted evidence that detailed designs would normally be undertaken at the secondary plan or draft plan stage in the development approval process....

The City's infrastructure planning for the west urban area can accommodate the Del/Brookfield and Westpark lands in a cost-effective manner and from this perspective it would be reasonable and appropriate to redesignate these lands

General Urban. The Board is equally satisfied from the evidence that the major trunk municipal infrastructure is essentially in place to accommodate the appellants' lands....

Despite this reassuring and “uncontradicted” evidence to the Board, the Superior Court of Justice later found the vicinity problematic (notably in the abutting Glen Cairn neighbourhood), as described in ***Robinson et al. v. City of Ottawa et al.*, [2009] No. 02-CV-21270**. The Court Decision also cast doubt on the credibility of other previous reports:

In 1996, a number of residents of the Glen Cairn area... suffered flooding damage to their homes.... (Another expert) prepared an expert witness report... which contained the following opinions and conclusions:

That the area where the rainfall was heaviest experienced well in excess of the one in 100 year rainfall...

Remedial measures were completed in the 1980's which brought the minor and major drainage systems *up to current standards*;

(In) the area of Glen Cairn, where flooding occurred,... the drainage systems were in *good state of repair without significant deficiencies*....

In 2002, the Glen Cairn area experienced another severe rainstorm and several homes sustained flood damages for a second time....

The City then retained the engineering firm of Cumming Cockburn to review the Glen Cairn Drainage System. The Cumming Cockburn report concluded that the major drainage system in the Glen Cairn *area* did not meet either the 1996 or 2002 standards. The Cumming Cockburn report expressed the opinion that (the previous expert) had relied on outdated and inappropriate data and that his conclusions were incorrect.... [Emphasis added]

That did not the end the story. As mentioned in Affidavit evidence, 500 homes in Glen Cairn were flooded yet again on July 24, 2009 – for the third time in 13 years.

Counsel for the City said an investigation is underway, including the role of the Hazeldean Pumping Station. Another report is expected in August, 2010.

Counsel for the City also advised about two City officials. Engineer Darlene Conway had been on the file, but disagreed with aspects of the overall Fernbank project; she parted company with the City, and was replaced by engineer Ted Cooper. He also disagreed with aspects of the project, and parted company. The same Ms

Conway and Mr. Cooper are now two experts for the FGA, arguing in their Affidavits that on a watershed-wide basis, the development scenario in OPA 77 was “flawed”.

4. OPA 77 AND ITS APPARATUS

OPA 77 itself says little about water. It changes designations for various lands, and provides for infrastructure agreements and allocation of costs.

It was common ground, however, that OPA 77 is part of an “integrated process” linked to the Fernbank Community Design Plan (CDP), and in turn to supporting studies – the Environmental Management Plan (EMP), and the Master Servicing Study (MSS), i.e. “Master Plans within the meaning of the Municipal Class Environmental Assessment..., (which) outline a framework for planning subsequent projects and/or developments”. OP Section 3.6.4 states that a CDP is required before development is approved in such areas. That CDP was done. In turn, CDP Policy 4(d) specifies that “the Community Design Plan will... complete a subwatershed plan in accordance with Section 2.4.3, should no plan exist for the area”. Counsel for KMC added that:

The terms of reference approved by Ottawa Council for the CDP call for integration with the development design of Master Planning for infrastructure projects for water, wastewater, storm drainage, stormwater management, stream restoration and roads... (and) also to follow the process outlined in Sections A.2.7 (Master Planning) and A.2.9 (integration with the *Planning Act*) of the Municipal Class Environmental Assessment (the ‘Municipal Class EA’). Doing so provides for a single integrated approvals process.

Policies 10 - 12 of OP Section 2.4.3 also refer to an Environmental Management Plan (EMP), when implementation of a subwatershed plan requires further detail.

In this case, the EMP was done by Mr. Riddell (June 2009). Its work program acknowledged that existing studies might contain insufficient detail, requiring further field investigations. Counsel for KMC insisted that this met the requirements of a Municipal Class EA for Master Planning, with in-depth analysis to occur at the subsequent stage of “development applications.” “A key objective of the Fernbank EMP”, Counsel said, “is to establish stormwater management criteria for the Fernbank Community that can be implemented through stormwater site management plans to accompany development applications.” He cited criteria at EMP Section 6.3:

The proposed stormwater management strategy will need to adhere to all applicable policies and guidelines of Mississippi Valley Conservation; the City of Ottawa, MOE, and other approval agencies....

Increases in runoff volume resulting from development are not to exceed an additional 40,000 m³ above existing conditions for the 100-year event;

All development within the Fernbank Community tributary to the Carp River accommodate a per hectare share of the 85,600 m³ deficit volume identified in the Third Party Review until data is available to confirm the model.

The proposed development must not result in any increase in downstream flood risk in the Carp River.

Any proposed increases in flood elevations will need to be reviewed to ensure that they do not represent an increase in flood risk.

Provided this criterion is met, the following design criteria are to be applied....
[Emphasis added]

These criteria, he added, operated “independently” of each other: they would *all* need to be met. Nonetheless, one criterion had a kind of preferential treatment: the criterion of “no increase in downstream flood risk” was what KMC’s expert Mr. Riddell called the “controlling criterion”. Counsel for KMC insisted that other wording in the documents could not compromise the rigour of that criterion.

As for the CDP, Counsel for KMC similarly argued that its “first target” was “to ensure that the proposed SWM (stormwater management) strategy for the Carp River does not present any increase in flood risk downstream. Any increase in the 1:100 year water levels in the Carp River above the existing condition elevations will be reviewed to determine if the increase represents any increase in flood risk.” “The effect of the inclusion of this criterion” in the EMP and CDP, said Counsel for KMC, was that “approval of OPA 77 specifically put in place the policy framework, which if implemented, will serve to prevent additional flood risk downstream”. As mentioned, the instruments (under the *Planning Act* and the Municipal Class EA) were “integrated.” Counsel for KMC said “the goal (is) patently not to increase this (flood) risk. This is already secured, to the extent that it can be secured, with the instrument before the Board in this proceeding, by Section 6.3 of the Fernbank EMP together with Section 6.1.1 of the MSS.... The foregoing does not...foreclose a subsequent argument that a development application... has failed to demonstrate that it has met the criteria in Section 6.3 of the Fernbank EMP”.

Under that “integrated” process, objections would be routed to this Board. There was no other stated venue for objections. Indeed, when the City issued its Notice of Completion of Class Environmental Assessments, it announced that:

Since the City is following an integrated planning and environmental assessment process, there is no opportunity for a Part II Order under the *Environmental Assessment Act*. However, any person or public body with objections to any the projects identified in the Plans and/or to the OPA may file an appeal to the Ontario Municipal Board.

5. THE FGA APPEAL

That kind of appeal to this Board is what the FGA apparently thought it was filing. Its experts called it “an Appeal of OPA No. 77, the Fernbank Community Design Plan, and supporting studies (the Environmental Management Plan (EMP) and Master Servicing Study (MSS)”. The four-page appeal letter outlined water-related concerns, and called for “a plan in accordance with the Province’s recognition of a watershed as the appropriate area from which planning should proceed”.

At successive PHC’s, the Issues List went through several iterations, resulting in the following wording of FGA issues:

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. Are the conclusions and recommendations of the five studies, in regards to stormwater, wastewater and flood levels:
 - Terry Fox Drive Extension Class Environmental Assessment;
 - Hazeldean Road Expansion Class Environmental Assessment;
 - Fernbank Master Servicing Study –SWM Ponds #1, #2, #3, and 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 and associated storm sewers;
 - Broughton Subdivision – Amended C of A No. 3333 – 7SDLAT; C of A No. 327-7STKDW,¹relevant to the process? If so, were they properly considered in the City’s review and approval of Official Plan Amendment No. 77?

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)"?
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?

However, although there initially appeared to be consensus on exchange of hydrological data, problems arose concerning conditions of use of same. The parties did not reach consensus on that exchange until a PHC on November 23, 2009 (data changed hands shortly thereafter).

Four days before that PHC and data exchange, on November 19, 2009, the Board received a Motion from KMC, to dismiss the FGA's appeal without a hearing under the following subsections of Section 17(45)(a) of the *Planning Act*, which reads:

...The Municipal Board may dismiss all or part of an appeal without holding a hearing on its own initiative or on the motion of any party if,

- (a) it is of the opinion that,
 - (i) reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the plan or part of the plan that is the subject of the appeal could be approved or refused by the Board,
 - (ii) the appeal is not made in good faith or is frivolous or vexatious,
 - (iii) the appeal is made only for the purpose of delay....

6. OBSERVATIONS AND FINDINGS

Disagreement on key issues started with what instruments were properly before the Board for adjudication. KMC argued that even in an "integrated" process, review of Class Environmental Assessment undertakings was beyond the Board's jurisdiction.

However, there was essentially no explanation of Board dismissal powers, when Section 17(45) is applied to an appeal involving Section A.2.9 ("integration" of the Class EA document). In other words, to what extent was the Board being asked – on this Motion and/or in this appeal generally, to make or endorse environmental findings, and

what were the implications? For example, Counsel for KMC submitted, as part of his written argument in favour of dismissal, that:

The Volumetric Analysis utilized pre-development flows calculated by the future conditions model available at the time, in which Fernbank was considered to remain undeveloped. It dealt with the possibility that this calculation might be subject to revision by building conservatism into the analysis, including the exclusion of all storage volume capacity on the Fernbank lands. The difference between the 40,000 cubic metre criterion and the 75,000 cubic metre post-development increase in run-off alleged by the Appellant's witnesses, should be viewed taking into account the change in land-use conditions for other lands within the hydrograph between the two models and also in the context of overall flood volumes of 1.27 to 1.44 million cubic metres.

Is such subject-matter the proper purview of a Motion under Subsection 17(45)? Or even of a Board appeal of this Official Plan Amendment? This was not explained.

More importantly, there is the question of standards. Counsel for KMC argued that OPA 77 incorporated appropriate relevant standards – for now. Further refinement of measures could be expected later, on a "street-by-street, subdivision-by-subdivision" basis, as developers filed their applications. The FGA's expert Affidavits replied that certain work would be more appropriately done immediately to address generic issues allegedly affecting the entire subwatershed.

That involves two basic questions. The first pertains to the appropriate geographic area for the planning exercise – subdivision, subwatershed, or a combination of both. The second pertains to the timetable for the planning process – now, later, or a combination.

Those questions cannot be so easily dismissed as involving no "apparent planning ground". The definition of the verb "to plan" (*Shorter Oxford English Dictionary*) is "to arrange beforehand". Geographic terms of reference, and timetables for planning, are traditionally quintessential planning questions.

Matters might have been different, if there had been an indication that the concerns were a mere apprehension. However, the Board is satisfied that the concerns expressed by the Court in the *Robinson Case*, the attention devoted to the subject in previous Board hearings, and the Affidavits of the two FGA experts go beyond what the Board usually treats as mere apprehension.

Pragmatically, the Board is also mindful of its duty to avoid setting the stage for a proliferation of litigation. If the OPA scheme merely defers water-related challenges to a later date – but provides multiple venues for such challenges "street-by-street, subdivision-by-subdivision," then there is a risk of a multiplicity of such challenges. As a matter of prudence, it appears preferable for all concerned to determine whether *generic* issues can at least be disposed of, as definitively as possible.

KMC also challenged the FGA appeal as being not in good faith, frivolous, vexatious, and intended to delay. Counsel relied on correspondence from one of the FGA's experts, who had disclosed an interest in challenging development (a) in various areas of the Carp watershed, and (b) in various venues. In these specific circumstances, the Board does not equate that interest with being in bad faith, frivolous, vexatious, or temporizing. Flooding is a serious issue which respects neither property boundaries, nor planning timetables; and the subject has traditionally overlapped administrative jurisdictions.

The Motion to Dismiss is itself dismissed. The hearing on the merits shall proceed; Counsel have agreed on suggested dates in July 2010, with a further PHC in late January 2010.

In light of the revised positions of the parties, expressed at the hearing, the Board also finds the Issues List (drafted at an earlier PHC and subsequently revised) to be outdated, and in need of re-articulation. That recasting and interpretation of the Issues List should be mindful of several fundamental factors, including:

- This area has already been OP-designated *for development*, pursuant to a previous Board Decision; constructive proposals must be considered in that light.
- Official Plans are, by definition, high-level documents; debate over their merits is not normally expected to digress into the technical minutiae of individual projects.

The Board is authorized, under Rule 70(a) of its *Rules of Practice and Procedure (Rules)*, to "determine the issues raised by the appeal;" and the Board does so, at

“Attachment 1” hereto. The Board replaces the first four questions on the Issues List (all water-related) with three differently-worded questions (the one remaining question on the Issues List, originally Question 5, is unchanged since it dealt with a different appeal involving different parties on a different subject, namely parkland).

Finally, under Rule 70(d) of its *Rules*, the Board is authorized to provide directions for meetings of experts. The Board’s Sample Procedural Order adds that these meetings are expected to try to resolve or reduce the issues for the hearing, and to prepare a list of agreed facts, along with a list of remaining issues to be addressed at the hearing. Both of these lists are then to be supplied to all of the parties, including the municipality. The Board anticipates distinct advantages arising from such a meeting, notably in reducing the time that the eventual hearing on the merits would have to devote to hydrological jargon. The Board directs the meeting accordingly.

7. CONCLUSION

The Board disposes of the above matters as follows:

1. The Motion to Dismiss under subsection 17(45) of the *Planning Act* is itself dismissed.
2. Questions 1 to 4 of the Issues List are hereby replaced by Questions 1 to 3 at “Attachment 1” hereto. If there are difficulties in the interpretation thereof, the Board may be spoken to.
3. Question 5 on the Issues List is renumbered as Question 4, but otherwise remains unchanged.
4. The Board fixes **Thursday, January 28, 2010 at 10:00 a.m.**, for the start of the next Prehearing Conference in this matter. It is scheduled for two days:

Festival Plaza Room, Heritage Building,
Ottawa City Hall,
110 Laurier Avenue West,
Ottawa, Ontario.

5. The hearing on the merits shall start on **Monday, July 5, 2010 at 11:00 a.m.**, and is scheduled for three weeks, other than on Friday, July 16. It shall take place at the same venue as the PHC above.
6. The Board herein directs a meeting of the parties' experts who have filed Affidavits on this Motion. The meeting is to occur after the Board has issued this Decision in writing, and shall be mindful of the revised Issues List attached hereto. The parties are expected to make the necessary arrangements by consensus; if there are difficulties, the Board may be spoken to.
7. No further notice will be given for the matters currently before the Board.
8. In terms of parties, the Board notes that the Appellant Mark Luden has withdrawn, and that CRT Development Inc. has become the successor in title to the Appellant Brookfield Homes (Ontario) Limited.
9. This Member remains seized.

It is so Ordered.

"M. C. Denhez"

M. C. DENHEZ
MEMBER

Attachment “1”:

REVISED ISSUES LIST

Questions 1 to 4 on the previous Issues List, as amended, are hereby replaced by Questions 1 to 3 below. Question 5 on the previous Issues List is renumbered as Question 4 below, but otherwise remains unchanged.

- 1. Appealed Instrument(s):** What instrument(s) are properly before the Board for adjudication?
- 2. Standards:**

 - a)** What is/are the standard(s) set by those instruments pertaining to flood risk in the relevant areas of the Carp River watershed, and is/are the standard(s) appropriate?
 - b)** Does/do the appealed instrument(s) meet established Provincial and Official Plan criteria for such instruments?
- 3. Framework:**

 - a)** Does OPA 77 provide an adequate planning framework to segregate between

 - i)** Analyses and recommendations to be developed on a watershed-wide basis, as opposed to a subdivision basis? And
 - ii)** Analyses and recommendations to be developed immediately, as opposed to later?
 - b)** In particular, does the framework adequately provide that, in terms of flood risk, the preconditions for subdivision development are either (a) ascertained, or (b) ascertainable, in a way that negates any increase in flood risk?
 - c)** When compared with the framework for other locations subject to flood risk, if the subject lands were facing a potential increase in net flood risk, has the framework of OPA 77 adequately provided for that increase to be neutralized and/or reversed? And/or should OPA 77 incorporate further provisions for same? If so, what are they?
- 4. Other:** 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”?