Ontario Land Tribunal
Tribunal Ontarien De L'Aménagement du Territoire

OLT Case No. PL200195

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant(s)/Appellant(s):	ClubLink Corporation ULC
Subject:	Application to amend Zoning By-law No. 2008- 250 - Refusal or neglect of the City of Ottawa to make a decision
Existing Zoning:	O1A (Open space, subzone A)
Proposed Zoning:	R1T (Residential First Density Zone), R3V (Residential Third Density Zone), and R5A (Residential Fifth Density Zone) as well as O1 (Parks and open spaces)
Purpose:	To permit the redevelopment of the lands for residential and open space uses, including 1502 residential units which will be mixed between detached, townhouse and mid-rise apartments
Property Address/Description	7000 Campeau Drive
Municipality:	City of Ottawa
Municipal File/Reference No:	D02-02-19-0123
LPAT Case No.:	PL200195
LPAT File No.:	PL200195
LPAT Case Name:	ClubLink Corporation ULC v. Ottawa (City)

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant(s)/Appellant(s):	ClubLink Corporation ULC
Subject:	Proposed Plan of Subdivision - Failure of the City of Ottawa to make a decision
Purpose:	To permit the redevelopment of the lands for residential and open space uses, including 1502 residential units which will be mixed between detached, townhouse and mid-rise apartments
Property Address/Description	7000 Campeau Drive
Municipality:	City of Ottawa
Municipal File/Reference No:	D07-16-19-0026
LPAT Case No.:	PL200195
LPAT File No.:	PL200196

KANATA GREENSPACE PROTECTION COALITION
FINAL SUBMISSIONS

OVERVIEW

1. These submissions are supplemental and in addition to the oral submissions made on February 14, 2022.

2. The Applicant's has failed to demonstrate that its proposed development meets the requirement of the *Planning Act*, R.S.O. 1990, c. P.13. There are three main areas in which the Applicant has failed to demonstrate that the proposed development can function as planned and meets the test of conformity with the Provincial policy Statement ("**PPS**") and the Official Plan ("**OP**"). Collectively, the deficiencies make this proposed development premature. The three areas in which the Applicant has failed to meet the requirements of the *Planning Act* are: the Planning Issues, the Environmental issues, and the Stormwater Management and Subwatershed Issues.

A – PLANNING ISSUES

The Proposed Development Requires an Official Plan Amendment

Section 4.10 of the OP

3. The Applicant has not sought an OPA amendment. Section 4.10 of the OP provides that parkland requirements for the property is subject to the legal agreement to provide 40% greenspace (Exh 8-1, Tab 7, p. 354).

4. The 40% Agreement was an agreement to facilitate the development of 60% of the lands, in exchange for an agreement that the remaining 40% would be maintained as areas of recreation and open space and natural areas. A review of the 40% Agreement and the Genstar Concept Plan assists in understanding the purpose of policy 4.10.5 of the OP, which was to implement the 40% Agreement's intent as open space within the OP. The use of such a historical document is both appropriate and relevant, especially in circumstances where the text of the OP fails to provide complete guidance, or where there is disagreement on the interpretation of an OP policy (*Smits, Re,* 1995 CarswellOnt 8116, paras 41-48 at Schedule "A"; and *Di Biase v. Tiny (Township)* 1994 O.M.B.D. No. 485 at pp. 7-10 at Schedule "B").

5. This 40% open space was to consist of 4 types of areas: (a) the 18 hole Golf Course; (b) the Storm Water Management Area; (c) the natural environmental areas; and, (d) the lands to be dedicated for park purposes (Exh 8-4, Tab 71, p. 4848).

6. The City of Ottawa, introduced section 4.10.5 of the OP to support the 40% agreement. The Applicant's position is that the effect of this Policy is simply to indicate that any of the lands contemplated in the 40% agreement must comply with the general requirements of parkland dedication as found in the OP and the Parkland Dedication By-law. If this interpretation was correct, there would be absolutely no reason to have an exception in the OP for these lands. The City has included, and maintained, this policy, which ClubLink has not sought to appeal or otherwise challenge at any time, and it cannot be interpreted in a way that would render it meaningless. This interpretation is supported by a reading of the 40% Agreement to which it refers, as well as s.8 of the Parkland Dedication By-law, which provides explicitly that the regular rates do not apply to the subject site, as there is an agreement that the area be developed as open space (Exh 8-1, Tab 9, pp. 491).

7. To rezone and develop the lands for urban residential purpose would not conform with section 4.10 of the OP and would necessitate an amendment to the Plan prior to any proposal to rezone for residential development.

Sections 2.2.2 and 3.6.1 of the OP

8. This subject site is not targeted for intensification, it is an established built-up neighbourhood. Policy 2.2.2(22) provides that intensification that is compatible with the surrounding context will be supported on certain types of sites, including "sites that are no longer viable for the purpose for which they were originally used" (Exh 8-1, Tab 7, pp. 262-263). The Applicant's evidence is that the site qualified under this criterion, as the owner no longer wish to operate the Golf Course as a Golf Course and it would no longer be viable for that purpose, equating viability to underutilization from a landowner's perspective. To derogate the meaning of "viable" to be self-serving discounts the importance of reading the policy in its entire context. A finding of the Tribunal that the test of "viability"

has been satisfied would effectively remove the intent, purpose and specific policy direction embedded in the language of Section 2.2.2(22).

9. The Applicant's position is untenable. To reduce the term viable to a desire is simply not consistent with the meaning of the word which is "capable of working successful, feasible". To conform with this section of the OP, there needs to be some evidence that it is no longer feasible for the Golf Course to operate in the manner in which it was originally intended and used. The Applicant has not provided any evidence that the use as a Golf Course is no longer viable, financially or otherwise, or can no longer be used as a fundamental part of the open space network in the existing neighbourhood.

10. Section 3.6.1 of the OP also provides for development to occur in proximity to rapid transit (Exh 8-1, Tab 7, p. 310). For taller building, such as the ones proposed on along Campeau on this site, it should occur within 800 walking distance from rapid transit, as provided in policy 3.6.1(4)(a)(i) of the OP. At its closest point, the subject site is at 950 m of the closest rapid transit station (Exh 10, Tab 1, p. 9).

11. While the application should be refused because no OPA is being sought in respect of Policy 4.10.5, likewise, the Tribunal is encouraged to find and conclude that the application does not and cannot conform to Section 2.2.2(22) or 3.6.1. To find otherwise on the latter two policies will create an undesirable consequence that may be repeatable by other developers in the community as it would negate the explicit requirement of those sections of the OP. The Tribunal's decision on Section 2.2.2(22) and 3.6.1 may be precedent setting either by confirming Council's intent on inclusion of these policies to direct growth in determined areas or open up unintended and unsupported development on application of these policies without regard to Council's intent. The Applicant is seeking to have the OP interpreted in a broad and liberal way while failing to comply with the specific policies applicable. When there are specific standards which form minimum standards for development, such as in this case, the OP cannot be interpreted in a liberal fashion if it means that the specific policies will not be complied with. This is contrary to the requirements of the *Planning Act* and would not be in the public

interest (see *Smits, Re,* 1995 CarswellOnt 8116, para 120 at Schedule “A”; *Byerley, Re*, 1994 CarswellOnt 5225, paras 37-45 at Schedule “C”; and *Armstrong v. Archipelago (Township)*, 1995 CarswellOnt 6630, at p. 2 at Schedule “D”).

The Proposed Development is Not Compatible With The Existing Neighbourhood

12. The existing neighbourhood and the Golf Course were built together as one cohesive and comprehensive development as conceived by the Genstar Master Concept Plan. The Design Guidelines provided that “elevations which face the golf course or other public areas must be given the same design emphasis as the street elevation” (Exh 8-5, Tab 73, p. 4601). These homes were built in a way that would fit harmoniously with the Golf Course. This relationship between the neighbourhood and the Golf Course was guaranteed through an agreement, which has been referred to as the 40% Agreement

13. The proposed development would entirely remove this fundamental characteristic and signature landmark of the neighbourhood. What is being proposed is the replacement of the Golf Course with what is in many cases, multiple new lots backing onto being backed to the existing homes at a ratio of up to 5 to 1. Residents bought into this development with reasonable expectation that the open space would remain as set out in the agreement and implemented through the OP.

The Proposed Tree Buffer is Insufficient

14. The Applicant is heavily reliant on what they have described as the buffer. It relies on these buffers to address any issue of compatibility between the existing neighbourhood and the proposal, including the new developments being introduced in their backyard, the grade change that would be occasioned by this work, the new rear yard structures, fences. There is no equivalency between the golf course buffer and the depleted buffer suggested by the Applicant. The elimination of the golf course represents a material planning land use change that a 6m buffer cannot replicate.

15. The Applicant’s have acknowledged that the City’s Tree Protection By-law will not protect the buffer, and rely on its inclusion in the subdivision agreement, and the goodwill of the new owners to preserve it. The witnesses have repeatedly opined that this is not sufficient to ensure that

notice is given to new owners and that the buffer is protected. It is well acknowledged that subsequent owners in the future would not receive the same notice as they do as an original owner. Removal of trees will become a matter of constant municipal enforcement and potential neighbour disputes between those that want to protect the buffer religiously and those that wish to remove the important tree elements within the buffer and replace with accessory structure such as gazebos, storage sheds and pools.

16. While it is submitted that the tree buffers are inadequate, the only way to maximize their limited effectiveness is to make them subject to a conservation easement. This would increase the likelihood that the new owners would be aware of them, and increase the likelihood that they would be respected and not be abused or removed.

B – ENVIRONMENTAL ISSUES

17. Environmental Site Assessments ("**ESA**") are completed as part of the application process. That is to understand what is actually happening on the subject site. When properly done, these ESAs will also allow the proposed development to be reviewed to determine if there is consistency with the PPS and the OP.

18. The ESAs must be done to meet a minimum threshold that would allow an understanding of the contamination that currently exists on site, and whether, in this case, the presence of these impacts would fundamentally affect the scope and the results of the stormwater modelling and, most importantly, the capability of the receiving water body to entertain any additional loading. In this case, as demonstrated by Mr. Quigley, the Coalition's environmental engineer, there are a number of issues with the ESAs that were completed for this site. The Applicant did not address these deficiencies, but instead relied on the fact that when the Applicant applies for a Record of Site Condition at some time in the future, the Ministry of the Environment will review the ESAs and, should there be any issues, they will be addressed then.

19. This is of no assistance when this Tribunal needs to address whether the proposed development is consistent with the PPS and the OP. To do so, the Tribunal needs to have comfort

that any environmental issue that may affect how this site can be developed has been identified and considered as a part of the development application. It is respectfully submitted that until these environmental issues are quantified and understood, no decision should be rendered about the potential developability of the site: the application is premature.

C – STORMWATER MANAGEMENT AND SUBWATERSHED ISSUES

The Proposed Subwatershed Model is Not Adequate

20. There is a Model of Record in place for this subwatershed – it is the Aecom 2015 Model. The Model of Record has been accepted by landowners and approval authorities. The Model of Record was developed over a number of years using a wide range of storm events, was peer reviewed while it was being created and on a number of subsequent occasions, including by the Applicant's stormwater engineer expert, and found to be as accurate as possible.

21. This Model of Record has not been used by the Applicants to show that the proposed development is viable. Instead, they have created their own subwatershed model which has not been reviewed or approved by anyone. While the new proposed Model appears to accurately replicate the results on the Golf Course lands, it fails to accurately replicate the results downstream from the Beaver Pond. This may be due to the fact that it has been calibrated using a year in which there were no events larger than the 1:2 year event, which does not allow for calibration of more significant and potentially impactful events.

22. This means that the proposed Model cannot be trusted to accurately predict the downstream impacts of the proposed development.

The Proposed Development Will Have an Impermissible Effect on the Provincially Significant Wetland ("PSW")

23. The Applicant has found that there will be an increase in volume in the Beaver Pond (Exh 10, Tab 21, p. 326). This in the Summary Table of Flows and Water Levels, which showed an increase in water levels at the water pond when using the Model prepared by Mr. Sabourin instead of the Model of Record.

24. While the effect of this increase in volume in the Beaver Pond and the PSW is unknown, as the Applicant has failed to provide any study on its effect, it is submitted that, as provided by Mr. Nuttall (Exh 32), any rise in the water level of a PSW constitutes site alteration as contemplated by policy 2.1.4 of the PPS, which is not permitted (Exh 8-1, Tab 6, p. 209).

25. The PPS defines “development” as “the creation of a new lot, a change in land use, or the construction of buildings and structures requiring approval under the Planning Act” (Exh 8-1, Tab 6, pp. 227). It is submitted that the rising of the water level of a PSW constitutes a form of “development” as it changes the land use of the PSW by increasing the volume within it.

26. The Applicant’s interpretation of “development” would restrict analysis of the effects of any proposal only to the site itself, while failing to recognize the impact of that development has downstream. To suggest that a development is free to affect a PSW as long as it is on someone else’s property does not work logically.

27. In any event the Conservation Authority (“**CA**”) will have to review this proposed use of the PSW before it is permitted, which is why it requested information to understand what effect the development would have on the water level of the Beaver Pond, and potential increases in the outlet flow (Exh 8-4, Tab 60, pp. 4130-4131; (Exh 8-4, Tab 62, p. 4298; (Exh 8-4, Tab 64, pp. 4400-4401). This has not been reviewed by the CA, and the entire SWM design is contingent on the CA permitting an increase in the water level of the PSW. Without this mandatory review by the CA, this proposed SWM design may not be possible.

The Applicant Has Not Provided Sufficient Information for the Proposed SWM Plan

28. The Applicant has sought to introduce an entirely new SWM Plan through their Witness and Reply Witness Statements. The result of this limited information provided on the SWM is that the City and the Coalition has been forced to piece together an understanding of the proposal by selecting different pieces of information from various sources. To this day, neither the Coalition or the City have a complete and integrated view of the entire proposal and its impact, and have been unable to fully review the proposal to determine whether or not it would function.

The Applicant Has Not Adequately Determined the Makeup of the Soils on the Subject Site

29. The makeup of the soils and their capacity to take in water is unclear. The majority of the site consists of clay soils. The Applicant's witnesses have indicated, at different times, that the soils would allow a fair amount of infiltration, Exh 10, Tab 21, p. 326) or that it has low permeability and will not allow significant rates of infiltration (Exh 10, Tab 13, p. 218; Exh 10, Tab 15, p. 231).

30. There are inconsistencies between the infiltration values from the site tests performed (Exh 10, Tab 21, pp. 320-321), the guideline infiltration values associated with the types of soils found on the site (Exh 8-6, Tab 123, p. 6191), as well as the soils found by the Paterson geotechnical investigation (Exh 8-4, Tab 47, p. 3438). The infiltration values of the soils on site need to be accurate as it affects the capacity for the site to increase infiltration through the use of measures such as LIDs. Without clarity on these values, it is not possible to determine if the proposed SWM plan can function.

There is No Availability Downstream from the Beaver Pond for Increased Flows

31. It is uncontested that the basic principle of any development from a SWM management perspective is that predevelopment flows must match the post development flows. In this case, an accurate reflection of the potential for infiltration is of particular importance on this site as there is no availability downstream for increased flows. It is uncontested that there is already erosion occurring downstream from the Beaver Pond, and any increase in flows will aggravate this problem. Studies have already been made on the potential to increase flows downstream in the context of the development of the KNL lands, and Stantec (Exh 8-6, Tab 132, p. 6508) has found that any increase in flow rates and water levels will increase flood risks and aggravate existing erosion conditions and downstream sedimentation problems.

32. The Applicant has failed to demonstrate that the proposed SWM design can introduce sufficient infiltration to ensure that there are no increase in flow rates and water levels downstream of the Beaver Pond.

D – THE APPLICATION IS PREMATURE

33. The result of all of the issues raised is that the Application is premature. The Planning Act specifically requires that consideration be given to whether an application for a draft plan of subdivision is premature. It is necessary for the Tribunal to have regard to Subsection 51(24)(b) and whether the proposed subdivision is premature or in the public interest.

34. It is the Coalition's respectful submission that the application is premature, and does not meet the requirements of the PA for the following reasons:

(a) The Applicant made a last minute resubmission of the SWM plan, without the necessary details;

(b) The proposed subwatershed model is incomplete and has not been peer reviewed, or otherwise accepted by the City and other relevant approval authorities;

(c) The Applicant has failed to provide sufficient details on the LIDs that will be used in order for the City to approve their use;

(d) The Applicant has failed to address the servicing issues raised by the City which need to be addressed prior to draft plan approval;

(e) The Applicant has failed to properly assess the environmental contamination issues that may have an impact on the stormwater management design;

(f) The Applicant has failed to provide the necessary information and specificity on what the final plan of subdivision will look like; and,

(g) The Applicant has failed to provide a draft By-law which could be approved by this Tribunal.

35. The effect of all of these outstanding issues is that a full and reviewable application has not been put before this Tribunal, and the application is premature. These are not matters that can be dealt with as a condition of approval. The Coalition submits that these are issues that have the potential to fundamentally change the proposed development, including the revision of lot lines.

E – RELIEF REQUESTED

36. For these reasons, the Coalition requests that the Tribunal deny ClubLink's appeal and not grant the draft plan of subdivision and zoning by-law amendment.

37. In the alternative, should the Tribunal determine that it should approve the development, the Coalition respectfully submits that the conditions of draft approval should be in accordance with Schedule "E" attached to these submissions. The Coalition further submits that the order with respect to the zoning be withheld pending the final determination of the lotting pattern which shall be in accordance with the third submission of the applicant, and until a draft zoning by-law has been reviewed and approved by the parties.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED: February 24, 2022

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SCHEDULE A - *Smits, Re*, 1995 CarswellOnt 8116

1995 CarswellOnt 8116
Ontario Municipal Board

Smits, Re

1995 CarswellOnt 8116

IN THE MATTER OF Section 17(11) of the Planning Act, 1983 and 1990

IN THE MATTER OF referrals to this Board by the Minister of Municipal Affairs for consideration of the following amendments to the District Plan of the Township of Delhi: 1) On a request by John Smits and Maria Smits for proposed Amendment No. 37

Minister's File No.: 28-OP-0037-137

O.M.B. File No.: O 910099

2) On a request by Paul De Cloet and Mary De Cloet for proposed Amendment No. 38

Minister's File No.: 28-OP-0037-138

O.M.B. File No.: O 910099

3) On a request by Scott Paul Holmes for proposed Amendment No. 43

Minister's File No.: 28-OP-0037-143

O.M.B. File No.: O 910099

4) On a request by Steven Malo for proposed Amendment No. 54

Minister's File No.: 28-OP-0037-154

O.M.B. File No.: O 920123

IN THE MATTER OF a referral on a request by James Stowe and Emily Stowe for consideration of proposed Amendment No. 32 to the District Plan of the City of Nanticoke Minister's File No.: 28-OP-0037-532 O.M.B. File No.: O 910100

IN THE MATTER OF referrals for consideration of the following amendments to the District Plan of the Township of Norfolk: 1) On a request by Elizabeth Monnier, now carried on by Kenline Farms Ltd., for proposed Amendment No. 38

Minister's File No.: 28-OP-0037-238

O.M.B. File No.: O 910101

2) On a request by Clay Austin, carried on by Alfons Maria Eys and Hillechien Eys for proposed Amendment No. 39

Minister's File No.: 28-OP-0037-239

O.M.B. File No.: O 910101

3) On a request by George A. Demeyere for proposed Amendment No. 33

Minister's File No.: 28-OP-0037-233

O.M.B. File No.: O 930078

4) On a request by Manuel Oliveira for proposed Amendment No. 51

Minister's File No.: 28-OP-0037-251

O.M.B. File No.: O 930230

5) On a request by Donald O. Dean for proposed Amendment No. 50

Minister's File No.: 28-OP-0037-250

O.M.B. File No.: O 930235

IN THE MATTER OF a referral to this Board by the Minister of Municipal Affairs on a request by Douglas Holstein and Sylvia Holstein for consideration of proposed Amendment No. 69 to the District Plan of the Town of Haldimand Minister's File No.: 28-OP-0037-369

O.M.B. File No.: O 930303

C.M. Millar Member, N.M. Katary Member

Judgment: October 16, 1995
Docket: O 910099, O 910100, O 910101, O 920123, O 930078, O 930230, O 930235, O 930303

Counsel: T.A. Cline, for Regional Municipality of Haldimand-Norfolk
J. Hanson, for Ministry of Natural Resources
S. Scharbach, for Ministry of Agriculture and Food
J.L. Harrison, for George Demeyere

Subject: Municipal; Public

***N.M. Katary Member*:**

1 When does Swiss cheese become all Swiss and no cheese. The counsel for the Region who acted for the applicants maintained that the proposed redesignation of land from agricultural to estate residential in the Region of Haldimand-Norfolk was nothing more than giving character to Swiss cheese. The counsel for the Ministry of Agriculture, Food and Rural Affairs, on the other hand, maintained that the proposed redesignations would irreversibly alter the character and move agricultural land in the Region towards becoming all Swiss and no cheese.

2 The question therefore is whether the impact of redesignation of parcels of land for estate lot development in the Region should be looked at for impacts upon the particular sites that are being redesignated or upon the relevant contiguous areas and the Region as a whole.

3 Secondarily, the question is whether the redesignation in these nine instances will set in motion the potential for triggering similar estate lot proposals in the municipality.

4 With the consent of the parties, the Board had consolidated eleven [11] hearings on official plan amendments dealing with estate residential development in the Regional Municipality of Haldimand Norfolk.

5 The principal reason for holding the eleven hearings in sequence was the fact that the Ministry of Agriculture, Food and Rural Affairs was a party to all of them and was in opposition to all of the proposed amendments.

6 At the commencement of the hearing, Mr. George A. Demeyere, through his legal counsel, requested an adjournment of the hearing on his matter because the planner who was to give evidence in support of the application was unavailable for family health reasons. With the consent of the parties, the hearing on this matter was adjourned to a date which was acceptable to the parties. A few days before the hearing was to resume, the Board received communication requesting an indefinite adjournment of the matter pending further environmental studies. Again, with the consent of the parties, the Board adjourned the matter indefinitely to be brought back on by the applicant, Mr. G.A. Demeyere on a date convenient for all the parties. The Board File 093-0078 is, therefore, closed. The file may be opened with the consent of all parties on motion to the Board subject to recirculation if deemed necessary by the Board.

7 At the hearing, Mr. and Mrs. John Smits, through the counsel for the Regional Municipality, requested an indefinite adjournment on this matter in light of the fact that there may be a potential for settlement. Mr. Smits also stated that "if the Ministry approved the amendment, I will withdraw my request for referral to the Board." The counsel for the Ministry indicated that they would like to explore the matter of settlement further and concurred with the request for adjournment. With the consent of the parties, the hearing on this matter was adjourned indefinitely. The Board requested the counsel for the Ministry to inform the Board in the event of a settlement so that the file could be closed. Since the hearing, the Board has received communication from the Ministry of Municipal Affairs stating that the Ministry has approved Official Plan Amendment 37 in light of the fact that the Ministry of Agriculture, Food and Rural Affairs has elected not to pursue their objections to the Amendment. The Board File 091-0099 is, therefore, closed.

8 This decision, therefore, deals with the other nine referrals for which evidence was adduced at the hearing. The analysis of evidence will follow the same sequence of cases in which evidence was adduced.

9 The following people gave evidence during the entire hearing. Some gave evidence on all nine applications while others gave evidence on only matters that interested them. The evidence by each as it applies to a particular application will be discussed under appropriate circumstances. The witnesses are being identified at the outset to give a picture of the nature of evidence that was presented.

10 Mr. W. Brent Clarkson, a land use planning consultant with approximately fourteen [14] years of experience, gave evidence in support of Amendment No. 54 [the Malo application]. Mr. Larry Holmes, Mr. James Stowe, Mrs. Sylvia Holstein, Mr. William R. Kenline, Mr. Donald 0. Dean and Mr. Alfons Eys gave evidence in support of their respective applications.

11 Mr. James R. McIntosh, the Development Supervisor with the Regional Municipality of Haldimand-Norfolk, a land use planner with approximately twenty-three [23] years of experience, gave evidence in opposition to the amendments except the one requested by Mr. Dean, viz., Amendment No. 50.

12 Ms. Betty E.M. Summerhayes, the Land Use Specialist with the Ontario Ministry of Agriculture, Food and Rural Affairs, an agrologist and a land use planner with approximately fourteen [14] years of experience; Mr. Larry W. Schut, the Pedologist/ Soil Inventory and Interpretation Specialist with the Ontario Ministry of Agriculture, Food and Rural Affairs, a pedologist with approximately twenty-three [23] years of experience; Mr. Richard 0. Lambert, a forest technician with the Ontario Ministry of Natural Resources with approximately twenty-four [24] years of experience; and Ms. Anne-Marie Brunet, a land use planner with the Ontario Ministry of Natural Resources with approximately five [5] years of experience, gave evidence in opposition to the amendments when they were called.

13 The framework for analysis of evidence is provided by the applicable sections of the Regional Official plan and the District Plans for the four Area Municipalities in which the subject sites are located. It is helpful to keep this framework in mind while following the individual cases. Therefore, key elements of the applicable sections of the official plans are reproduced below.

14 The umbrella under which estate lots are to be created in the constituent Area Municipalities is set out in the Official Plan for the Haldimand-Norfolk Planning Area [the Regional O.P.- Ex.2A, Tab 6].

Sec. 3.1 Introduction

Rural land uses cover ninety per cent of the land area of Haldimand-Norfolk. ... A number of conditions, including favourable climate and high capability of soils for agriculture, have resulted in a local agricultural resource which is of provincial significance.

The agricultural industry historically has been the prime economic base of Haldimand-Norfolk. ... It is the philosophy of this Plan that the main threat to the preservation of this heritage lies in the potential infusion of large numbers of rural non-farm dwellings into the rural area. While it is recognized that a limited amount of non-farm growth in the rural areas can provide some benefits to the community, the intent is that the scale of development remain small.

Sec. 3.3.16

Areas outside of Hamlets in the Agricultural Policy Areas will be designated Agricultural in the District Plans [for area municipalities].

Area Municipalities in their District Plans may designate areas as Rural. Such designations shall apply to areas where soil classes 5 to 7 predominate as defined in the Canada Land Inventory of Soil Capability for Agriculture.

. . .

It is recognized that in Area Municipalities where Class 1-4 soils and specialty crop soils predominate, the District Plans may, after full review and justification, designate some of the less productive of those lands as Rural. An area to be considered for the Rural designation should be of a significant size and must exhibit the following characteristics:

(a) The area is relatively self-contained from surrounding agricultural activities, and

(b) There is only minimum interference with agricultural activities.

15 The District Plans [official plans] for each of the four municipalities give guidance on creation of estate residential lots. A careful reading of policies with respect to estate development in the District Plans for the Township of Delhi, the City of Nanticoke, the Township of Norfolk and the Town of Haldimand [Ex.2A, Tabs 7, 8, 9 & 10] indicates that with some differences in words and emphasis, the key sections are very similar. Therefore, key sections from each plan is not reproduced. Only the key sections from the Township of Delhi District Plan are reproduced below for convenience because the cases in this municipality were dealt with first at the hearing.

F. AGRICULTURAL

Introduction

It is intended that agriculture remain the major economic activity in the Township. The policies included are intended to preserve and protect the agricultural land base, avoid potential conflicts between agriculture and adjacent non-farm uses and discourage scattered non-farm development in the Agricultural designation.

F.8. Estate Residential Development

Lands within the "AGRICULTURAL" designation may be considered for estate residential development provided an appropriate official plan amendment is approved, redesignating the lands to "Estate Residential" and providing appropriate development policies are incorporated. In considering such an amendment, the following criteria shall be considered.

> 1. Pursuant to Part III, Policy 3.3.16 of the Regional Official Plan, estate residential development must be located in an area which is defined as Rural by the Regional Official Plan. A rural area is an area where Class 5 to 7 soils predominate as defined in the Canada Land Inventory of Soil Capability for Agriculture. Lands with a high capability for the production of specialty crops (Classes 1 to 3) shall not be considered as Rural.
>
> 2. Notwithstanding Policy 8.1 above, estate residential development may also be considered in areas of Class 4 soils for common field crops and specialty crops with site characteristics which limit agricultural use and which have been out of agricultural production for three years.
>
> In all instances, areas meeting this rural definition within which estate residential development will be considered must be of a significant size and relatively self contained from surrounding agricultural activity by natural features so that there is minimal interference with surrounding agricultural activities.

16 The common elements in each of the four District Plans are the following: [1] Lands within Agricultural designation may be considered for Estate Residential through an official plan amendment; [2] Estate residential development must be located within an area defined as Rural in the Regional Plan and if not; [3] Estate residential may be considered on Class 4 soils with site limitations; [4] the site must be of a significant size; and [5] the site must be relatively self contained. In the words of the counsel for the Region, these then are the threshold tests.

17 In the nine cases before the Board, all are seeking official plan amendments to redesignate land from either "Agricultural" or "Agricultural and Rural" to "Estate Residential."

18 During argument on the three cases in the Township of Delhi, the counsel for the Region stated that throughout the hearing he was urging the Board to keep in mind that conformity with the official plans was not an issue because all applications had to go through an amendment as required by the official plans. When inquired by the Board as to whether or not the requirements set out in each of the four official plans constituted the amending formulae, the counsel stated that "the tests in the plans are threshold tests. Even if an application passes the threshold test, it does not mean that the application can be rubber stamped by municipal councils and the OMB. The amendments must be based upon sound land use planning principles including economic, social and environmental factors as set forth in the Planning Act definition of an official plan. The applications must also satisfy Provincial Policy statements such as the Food Land Guidelines. What I am saying is that you must look beyond the criteria set out in the different plans and look at the applications on their planning merits." The analysis of evidence below is chastened by the consciousness of the very persuasive argument made by the counsel.

19 In light of the fact that the Ministry of Agriculture was the objector to all nine applications, the main points made by the Ministry's principal witness is identified below to facilitate ease of following the nine different cases.

20 The Land Use Specialist with the Ministry of Agriculture, Food and Rural Affairs gave evidence in opposition to all nine amendments before the Board. During evidence on the first amendment dealt with at the hearing, viz., the Malo application or Amendment No. 54 to the District Plan of the Township of Delhi, she went through in great detail over the applicable sections of the Food Land Guidelines [Ex.2A, Tab 5] and stated that her opinions applied to all the amendments and that she was not going to repeat the salient points under every application but would only focus on the most relevant site specific details under each of the nine amendments. She stated that the Board should have regard especially for the following sections and subsections of the Guidelines and outlined the reasons why they were important in this hearing. The applicable policies identified by her were: 1.6, 1.11, 1.12, 2.3, 2.5, 2.13, 2.14, 3.2, 3.11, 3.12, 3.12.3, 4A.11, 4A.12, 4A.13, 4A.22, 4A.23 through 25.

21 Of all the applicable policies, she relied upon Subsection 3.12.3 the most in coming to her conclusions about the nine applications. It is, therefore, helpful to reproduce this section below for convenience.

> Considerable demand for estate residential development has developed in many rural areas in Ontario. Where such development can be accommodated on lands of low agricultural capability that are well removed from agricultural activities, the municipality may want to consider some of this type of development. Where the municipality consists of

predominantly good agricultural land, estate development will need to be restricted in location and amount, or possibly prohibited. If permitted, estate development must be in a separate designation from agriculture.

22 For the agrologist/land use planner with the Ministry, the two criteria, viz., [1] land of low agricultural capability and [2] being well removed from agricultural activities, were central to her assessment of suitability of a site for non-farm estate residential use.

23 It was her opinion that "well removed" meant that there should be a significant separation distance between an estate residential use and the adjacent or nearby agricultural use in order to minimize land use conflicts between the two. She maintained that active agriculture invariably produced dust, noises caused by farm machinery and irrigation equipment, odours caused by fertilizers and chemicals, and spray drifts caused by the use of pesticides and herbicides. It was her view that these natural activities associated with agriculture had adverse impacts upon people living in estate lot non-farm dwellings who complained about these impacts to the point that carrying on of agricultural activity was impeded by the non-farm residents. She steadfastly maintained that what starts out as a few non-farm dwellings in the midst of farms end up as impediments to the very activity that made possible the rural life style. She was, therefore, of the view that without adequate separation distance between the uses, the land use conflicts were inescapable.

24 Under careful cross examination, she admitted however, that "well removed" could mean vegetative and other natural features that mitigated the adverse impacts and that separation distance was not the only way to mitigate adverse impacts. She stated that "well removed is not defined quantitatively. It depends on such things as extent of mature woodlot vs. some trees planted, whether the surrounding lands are in intensive agriculture or not, the extent of agriculture in the whole area, the movement of agricultural machinery in the vicinity of the lot created, etc. A good sized river or bush can provide a good buffer."

25 The Land Use Specialist was so consistent and clear in her position with respect to interpretation of the different official plans and the Food Land Guidelines that at one point the counsel for the Region asked her plaintively, "you are so fixed in your opinions, what can I do to make you show some flexibility?" The witness did not answer the question but looked at him expressionless.

26 The Board has carefully examined the sections and subsections recommended by the Land Use Specialist within the context of her opinions and the full text of the Guidelines in making findings with respect each of the nine amendments before it.

27 The applicant, Dr. Steven Malo, owns a 8.88 ha. [22.0 ac.] parcel of land which is part of Lot 22 in Concession 10 in the Township of Delhi and wants to create an estate lot. The proposed lot is located on the south side of Highway No. 3. Amendment No. 54 to the Township of Delhi District Plan redesignates the land abutting the existing motor hotel and a restaurant to the west from "Agricultural" to "Estate Residential" to create a 0.4 ha. [1.0 ac] non-farm residential lot.

28 Using an aerial photograph, a topographic map and a set of photographs [Exs.7, 8 & 9], the planner retained by the applicant described in some detail the character of existing development, both built and natural, in the vicinity of the subject lot. The lot to be created abuts a motor hotel and a restaurant in the west, wooded area and a stream to the south, an active farm to the east and active farms across Highway No. 3 to the north. Across the Highway, at the northeast corner of the lot is a non-farm dwelling and at the northwest corner of the motor hotel is also a non-farm dwelling. The land across the proposed lot and the motor hotel, on the north side of the Highway between the two non-farm dwellings, is under active agriculture. The aerial photograph and the topographic map show that the land all around the subject lot is under active agriculture. Commencing approximately 800 feet east of the proposed lot on the south side of the Highway are 13 non-farm dwellings and an appliance store. The planner for the applicant stated that within half a mile radius there are 25 non-farm dwellings and 8 farm dwellings.

29 The planner for the applicant contended that in light of the fact that the surface soil capability for agriculture was poor because it consisted of gravel and other fill material, the lot met the first criterion in Section 3.12.3 of the Food Land Guidelines, viz., it was on poor soil. It was also his opinion that a 30 feet buffer in the east between the proposed dwelling and the active farm was adequate to mitigate all adverse impacts. He concluded his testimony on this matter by stating that "although the lot is not well removed in the sense it is commonly used, the 30 feet buffer enables the application to meet the intent of the Section."

30 The agrologist/land use planner with the Ministry of Agriculture, on the other hand, stated that the proposed lot is not well removed from agriculture because the lot is surrounded by active farms. She stated that a 30 feet distance from the farm to the east was not an adequate separation distance because noises, odours, sprays and dust could all easily penetrate the distance and cause an unacceptable adverse impact on the future residents leading to the inevitable complaints about nuisance. She also maintained that the farms across the Highway were separated only by the width of the right of way and that the adverse impacts upon the dwelling would be considerable. In a forceful manner she added, "we cannot count on the people not complaining. The first family that moves in may not do so but what about the families that come later and do not want to be bothered by problems associated with agriculture. These people are not farmers. They are city people who want large lots. I know, because I grew up on a farm."

31 The Board prefers the evidence of the agrologist/land use planner with the Ministry of agriculture because a 30 feet buffer is inadequate to mitigate the adverse impact caused by active agriculture on a non-farm dwelling. The Board, therefore, finds that the proposal does not meet the intent of Section 3.12.3 of the Food Land Guidelines.

32 The planner for the applicant was of the opinion that the proposed lot was relatively self contained because it was bounded by the motor hotel commercial use on the west, the wooded area in the south, the active farm to the east and the highway to the north. He maintained that these human-made and natural features gave the lot its relative self containment and therefore, the proposal met the tests set out in the official plan for the creation of estate residential lots. During some intense cross examination about the likelihood of the proposal leading to infill strip residential development between the existing dwellings and the proposed dwelling, the planner steadfastly maintained that each application must be looked on its merits and that he could not express an opinion on what would unfold in the foreseeable future.

33 The planner with the Region, on the other hand, contended that the proposed lot was not self contained, relatively or otherwise, because the intent of the policy was to mitigate land use conflicts between agricultural and residential uses. He was of the view that the highway does not and cannot stop odour, noise and fertilizer sprays from wafting over the right of way and intruding upon the dwelling leading to complaints. He was especially concerned about the likelihood of the existing strip residential development extending all the way west to the motor hotel if the application was granted. Repeatedly, he pointed to the existing land use map prepared by the applicant's planner [Ex.8] and expressed the opinion that approving the current application would inescapably lead to the infilling of land in between with non-farm dwellings. His opinion in this regard was shared fully by the agrologist/land use planner with the Ministry of Agriculture.

34 The Board prefers the evidence by the planner with the Region because the features identified by the planner for the applicant do not make the proposed lot relatively self contained and therefore, finds that the proposal does not meet the tests set out in the official plan for the creation of estate non-farm lots.

35 Using a soil classification map [Ex.2A, Tab.32], the pedologist/soil inventory and interpretation specialist stated that soils on the proposed lot had been disturbed with gravel fill material and that he had seen concrete and asphalt pieces at surface and therefore, he had not rated the soil using the typical surface soil analysis. He stated further that in such circumstances, it was not helpful to use the CLI classification system on surface soil but that it was more helpful to look at the soils surrounding the site in question within a circle of 1 km. radius to determine the capability of soil underneath the fill material that would be undisturbed.

36 Using a soil classification map at a scale of 1:25,000 [Ex.17], the pedologist pointed out that a circle with a radius of 1 km. at this scale would encompass approximately 300 ha. of land. He stated that the woodlot area adjacent to the creek channels [in blue] contained soils of Classes 5 and 6, that some pockets [in red] contained soils of Class 4 and that the white uncoloured/ unshaded areas contained soils of Classes 2 and 3. Based upon his examination of the soil classes he stated that:

> 10-15 percent of land is Class 4, 20-25 percent is Class 5 and the rest is all Classes 2 and 3. As you can see the predominant soil in this circle is Class 3 with some Class 2 soil. The site is totally surrounded by Class 3 soils to the east, north and west. Based upon this I would say that soil on the land to be severed is mostly Class 3 with some Class 5 soil adjacent to the woodlot in the south.

Although the pedologist was cross-examined carefully, his view of facts and opinions with respect to soil capability were not shaken. Also, his evidence was not contradicted by any duly qualified professional witness.

37 An examination of the evidence indicates the following. In 1979 when the Ontario Ministry of Transportation was looking for a site to deposit some surplus fill material, Dr. Malo offered the northwest corner of his property as the site. The Ministry deposited the fill material between 1979 and 1981. The planning consultant for the applicant is quite correct in stating that out of seven hundred [700] trees planted on the subject lot in 1983, most were lost because of the nature of the soil at the surface being fill material consisting of gravel and other construction material. Again, the planting of another seven hundred [700] trees in 1985 was also largely a failure for the same reason. What is not clear to the Board, however, is why the well qualified and experienced land use planner would insist that because of the bad experience with growing trees on gravel, the soil capability on the subject lot was not suitable for farming. In taking this position, he did not look at the capability of soil under the fill material and inadvertently failed to distinguish between "soil" at the top and top soil. A logical extension of his reasoning could lead to a situation where a farmer who wanted a consent to convey could import fill material on a part of his or her farm parcel and then claim poor soil capability and therefore, a consent to convey. Although in this instance there was no such wilful act, the Board must at all times take account of such possibilities in its deliberations.

38 Based upon an analysis of the pertinent evidence, the Board finds that the majority of soil beneath the fill material is most likely to be in Class 3 and the land can be brought back into active agriculture with the removal of the fill material.

39 The planner for the applicant maintained that the agreement between the owner of the subject lot and the ministry of Natural Resources [Ex.13] would ensure that the proposed non-farm residential use on the lot would address the concerns of the municipalities and the Ministry with respect to environmental impacts. The agreement stipulates that the applicant shall undertake environmental analysis to meet the requirements of the official plans for the Haldimand-Norfolk Planning Area and the Township of Delhi which would also address the requirements of the Provincial Wetlands Policy Statement. The agreement goes on to request the Board to reserve its decision on this matter until the Board is presented with evidence stemming from the environmental analysis indicating conformity with the intent of the three documents just cited.

40 As the Board explained at the hearing, environmental impacts are only some of the factors to be considered in coming to a decision on the matter. The Board is of the view that even if all the adverse environmental impacts can be mitigated to the satisfaction of the Ministry of Natural Resources, the land use conflicts remain. Therefore, the Board is not able to reserve its decision.

41 During argument on the Malo application, the counsel for the Region made eloquent submissions stating that the Board must go beyond the text and give a broad liberal interpretation in arriving at a finding with respect to the application. He also added that his submissions in this regard as it applied to the Malo application applied to all nine applications before the Board. His insistence upon principles outside the text was rooted in his belief that no text, however precise in its guidance, can be interpreted solely upon the text as originally understood.

42 The Board acknowledges that the experienced and learned counsel for the Region is quite correct in his argument that any serious interpretive effort must be rooted in principles both inside and outside of the simple text. The Board recognizes the need to go outside the text because it is very much cognizant of the limitations of the text in certain circumstances. The question, however is, when is this effort warranted? The answer depends upon whether or not the text, structure and history are inadequate for the interpretation of the text at hand for the particular situation. The parties may want to refer to a decision by the Board [OMB File No. 093-0206] where it has stated in some detail the limitations of adhering to the text at all costs.

43 Adherence to the text of a statute is an important way of disciplining members of a tribunal and of preventing the arbitrary exercise of quasi-judicial authority. The text, read in light of semantic principles and substantive principles on which there is general agreement, will limit discretionary interpretation.

44 When the text fails to provide complete guidance, and when the meaning depends not upon semantics or generally accepted principles, but upon principles that demand a substantive defence, then the structure of the text as a whole can be of

assistance. Applicable sections of an official plan must not be read in isolation but in light of one another. Interpretations that make sense out of the whole document lead to consistency, coherence and rationality.

45 When structural analysis leads to competing inferences or no inferences at all, then history can be of some assistance. Where the document is unclear, historical understanding of the meaning of the text must be given due weight. Respect for history is a means of demonstrating deference to the legislative process.

46 The passage of time, however, can limit the usefulness of history. An original understanding of a statute which is very specific is likely over time to be decreasingly pertinent to interpretive meaning. A specific section and its original understanding may often speak to problems that are no longer even relevant. Therefore, a particular history associated with a statute can become less helpful.

47 Pointing out the limitations of text, structure and history does not mean that they do not matter. In fact, they matter a great deal. Faithfulness to the text, structure and history disciplines analysis, but discipline is not an intellectual prison. As we all know, reasoning does not have an algorithm and law is not engineering.

48 In this instance, the text is unambiguous, the structure is coherent and the history is consistent. While the Board acknowledges the need to look beyond the text in some circumstances and give a broad liberal interpretation, in this case, it is simply unnecessary.

49 Based upon an examination of all of the evidence, the Board finds that the proposal causes an unacceptable adverse impact upon existing agricultural activity in the vicinity and therefore, does not fulfil the common law land use principle, viz., a proposed use shall not cause an unacceptable adverse impact upon the use and enjoyment of properties by neighbours. Also, the proposal does not meet the intent of the applicable land use planning instruments.

50 The applicant, Scott P. Holmes, owns a two acre non-farm residential property which is part of Lot 7 in Concession 3 in the Township of Delhi and wants to create an estate lot. The proposed lot is located at the south east corner of Charlotteville East Quarterline Road and Concession Road No. 3. Amendment No. 43 to the Township of Delhi District Plan redesignates the northern half of the two acre non-farm residential property from "Agricultural" to "Estate Residential" to create a 0.4 ha. [1.0 ac] non-farm residential lot.

51 The appellant's father, Mr. Larry Holmes, outlined his experience in farming and stated that the proposed lot was self contained because it was bounded by the roads on the north and west, the bush land to the east and the existing home in the south. Using a set of four photographs [Ex.15], he pointed out that the amenity area on which the lot to be created is being proposed has ponding of water and therefore, not suitable for agriculture. In a very forthright manner he stated that the land to the south west of the proposed lot was under com crop and that "it is marginal land. Mr Gee gets 30 bushels per acre and he is happy. I think it is marginal return." Using a sketch and two supporting letters from owners of land to the south and west of the proposed lot [Ex.16], he maintained that the lands in question were unsuitable for active agriculture. Mr. Holmes did not say anything about the evidence by the land use planner with the Region that Mr. Gee had applied for a consent to convey on his property on the west side of the road.

52 Using an existing land use map [Ex.14], the planner with the Region described the nature of land uses on the subject lot and the surrounding land. The subject lot consists of an existing non-farm dwelling with its amenity area to the north consisting of a well maintained lawn. The land to the east and south on the east side of the road consists of a farm which is not under active cultivation. Across the east-west Concession Road No. 3 to the north is a parcel owned by the Conservation Authority and consists of bush. Kitty corner to the northwest from the subject lot is farm parcel which is under bush. Across the north-south Quarterline Road to the west is a farm parcel approximately 44 acres in size. The planner with the Region concluded his evidence by stating that the application does not meet the tests set out in the official plan because it is not relatively self contained and the soil capability was high because it is in Class 3. It was his opinion that converting existing one non-farm dwelling into two is the kind of process that led to inevitable land use conflicts between agricultural activity and residential activity.

53 The agrologist/land use planner with the Ministry of Agriculture stated that the soil on the lot to be created belongs to Class 3 and that the lot is not well removed from existing agricultural activity and therefore, did not meet the intent of the Food Land Guidelines. Although she was cross examined carefully on the suitability of one acre of land for agricultural viability, her opinions with respect to the potential land use conflicts was not shaken.

54 The pedologist/soil inventory and interpretation specialist with the Ministry of Agriculture stated that the soil on the proposed lot is of Class 3 and that soil within a radius of one kilometre from the subject lot is also in Class 3. He pointed out that wetness of soil is recognized in the classification system when the category 3W is assigned to certain parts of a lot or a parcel of land.

55 The evidence by the two land use planners and the pedologist was not contradicted by any other duly qualified professional witness.

56 As the agrologist/land use planner with the Ministry of Agriculture pointed out, this application is one of the best examples how a typical scenario unfolds in an agricultural area. What we have here is an existing non-farm dwelling on a two acre parcel of land with active agricultural activity to the west. The application is put forward as merely using the surplus amenity area to infill the land between the existing dwelling and the road to create an additional non-farm dwelling. The farm parcel abutting the existing dwelling to the east and south is not under active cultivation at present. As the planner with the Region pointed out, there is a dwelling on the same side of the road [Ex.14 - east side] approximately 850 feet south of the subject dwelling and another dwelling immediately south of it. If the current application is approved, it is easy to conceive of a situation where another one or a set of applications to create estate non-farm dwellings on the east side of the road could be brought forward as infill between the existing dwellings especially in the absence of any limit on the number of consents to convey that can be obtained on a parcel as long as they meet the tests set out, as the land use planner with the Ministry of Natural Resources pointed out during her evidence on the Kenline Farms application. The current pending application by the owner of property for a consent to convey on land to the west is indicative of what is likely to happen.

57 Although the Board considers each application on its merits, in doing so, it also looks at the potential consequence of each application upon the evolution of land uses in the immediate future as well as in the foreseeable future which may impinge upon the intent of the planning instruments as a whole. Developmental momentum is not an academic doctrine but is the very stuff of Canadian property rights jurisprudence.

58 Based upon an examination of all of the evidence, the Board finds that the proposal causes an unacceptable adverse impact upon existing agricultural activity in the vicinity and therefore, does not fulfil the common law land use principle, viz., a proposed use shall not cause an unacceptable adverse impact upon the use and enjoyment of properties by neighbours. Also, the proposal does not meet the intent of the applicable land use planning instruments.

59 The applicants, Paul and Mary DeCloet, own a 20.2 ha. [50.0 ac.] parcel of land which is part of Lot 20 in Concession 8 in the Township of Delhi and want to create an estate lot. The proposed lot is located on the south side of Regional Road No. 1 and is approximately 670.56 m. [2,200 ft.] east of the designated Hamlet boundary of Bill's Comers. Amendment No. 38 to the Township of Delhi District Plan redesignates the north east comer of the parcel from "Agricultural" to "Estate Residential" to create a 0.4 ha. [1.0 ac.] non-farm residential lot.

60 Using a soil classification map [Ex.2A, Tab 20] the pedologist stated that approximately 60 percent of soil on the subject lot is in Class 3F and approximately 40 percent of soil in Class 3W. He also stated that the proposed lot was surrounded by land with high agricultural capability,

61 The land use planner with the Regional Municipality of Haldimand-Norfolk stated that the proposed lot was not well removed to be relatively self-contained from agricultural activity. It was his opinion that given the fact that the soil capability for agriculture being high, the proposed amendment did not meet the tests set out in the official plan for the creation of non-farm estate residential lots.

62 The agrologist/land use planner with the Ministry of Agriculture stated that the proposed lot was on soil with a high capability for agriculture and was not well removed from agricultural activities and therefore, did not meet the intent of the Food Land Guidelines.

63 The evidence by the above three qualified and experienced witnesses was not contradicted.

64 Based upon an examination of all of the evidence, the Board finds that the proposal causes an unacceptable adverse impact upon existing agricultural activity in the vicinity and therefore, does not fulfil the common law land use principle, viz., a proposed use shall not cause an unacceptable adverse impact upon the use and enjoyment of properties by neighbours. Also, the proposal does not meet the intent of the applicable land use planning instruments.

65 The applicants, Mr. & Mrs. James D. Stowe, own a 19.42 ha [47.98 ac.] parcel of land which is part of Lot 16 in Concession 6 in the city of Nanticoke and want to create an estate lot. The proposed lot is located on the north side of the road allowance between Concessions 5 and 6 and is southeast of Renton. Amendment No. 32 to the City of Nanticoke District Plan redesignates the proposed lot from "Agricultural" to "Estate Residential" in order to create a 1.045 ha. [2.58 ac.] non-farm residential lot.

66 In the application before the Board, the proposed lot is located 86.87 m. [285.0 ft.] east of the existing non-farm dwelling near the middle of the farm parcel and has a frontage of approximately 91.44 m. [300.o ft.] on the road and a depth of approximately 114.3 m. [375.0 ft.]. At the hearing, the applicant stated that he was willing to move the lot east so that the eastern boundary of the proposed lot would coincide with the eastern perimeter of the farm parcel from which the lot is being severed. The parties did not consent to amending the application and therefore, the Board is dealing with the application that is before it. The existing farm residence of the appellant is to the northwest of the proposed lot and is approximately 500 feet from the road.

67 Using a set of six large scale photographs [Ex.19], the applicant described the nature of uses and features of the lot and the surrounding land. He stated that "the purpose of the lot is to retire. We live on the parcel now but the land is marginal farm land.

68 The only contentious issue here is the fact that our land is adjacent to agricultural land. There are a number of idle farms in the area." Again, using a sketch [Ex.20], he described the nature of vegetation in the vicinity. He maintained that the application meets Section 3.12.3 of the Guidelines because it is well removed from other agricultural activity in the vicinity by virtue of the fact that there is poor farming in the area and therefore, causing no adverse impact. It was his opinion that "none of the farms in the area meet the definition of a viable farm. The house across the street will act as a buffer between the proposed lot and the existing farm to the south. The lot is not next to viable farms because most of them have trees"

69 Using an existing land use map [Ex.18], the land use planner with the Region detailed the land uses in and around the proposed lot to be created. He pointed to the number of non-farm and farm residences on the road and stated that "permitting the consent here will only mean more strip residential development on the road. There is nothing to prevent the applicant or a future owner of the farm parcel to come forward with an application for another lot between the existing dwelling and the proposed lot as merely infilling." Using the photographs prepared by the applicant [Ex.19], the planner described the land uses in the vicinity. He concluded his evidence by stating that the proposed lot was not relatively self contained because it was adjacent to good farm land and therefore, did not meet the intent of the official plan policies.

70 Using two soil classification maps [Ex.2B, Tab 39 and Ex.21], the pedologist stated that approximately 30 percent of soil on the lot to be created is in Class 1 with the topography as a limiting factor in parts of the land. He also stated that land within a kilometre radius of subject lot consisted of approximately 60 percent in Classes 1 and 2 and the remainder in Classes 5 and 6.

71 The agrologist/land use planner with the Ministry of Agriculture outlined how the application did not meet several sections of the Food Land Guidelines because the lot was adjacent to field crops such as soyabeans and sunflower and that the non-farm residential use would only aggravate land use conflicts on the road. She also described how the road would eventually have numerous non-farm dwellings, if consents to convey such as the one here were approved incrementally one at a time. She was cross examined at length on the woodlots in the vicinity and whether she saw them as adequate buffers to make the

proposed lot well removed. She steadfastly maintained that notwithstanding the woodlots in the vicinity the fact remained that the proposed lot was adjacent to active farms.

72 The evidence by the above three qualified and experienced witnesses was not contradicted by any other duly qualified witness.

73 The Board prefers the evidence by the three professional witnesses because the subject lot is adjacent to active agricultural use and the introduction of non-farm residential use on the subject lot would give rise to land use conflicts between existing agricultural use and the proposed use.

74 Based upon an examination of all of the evidence, the Board finds that the proposal causes an unacceptable adverse impact upon existing agricultural activity in the vicinity and therefore, does not fulfil the common law land use principle, viz., a proposed use shall not cause an unacceptable adverse impact upon the use and enjoyment of properties by neighbours. Also, the proposal does not meet the intent of the applicable land use planning instruments.

75 The applicants, Douglas and Sylvia Holstein, own a 3.38 ha. [8.37 ac.] parcel of land which is part of Lot 43, River Range, North of McKenzie Creek in the Town of Haldimand and want to create two [2] estate lots. The proposed lots are located on the north side of Townsend Road/York Road. Amendment No. 69 to the Town of Haldimand District Plan redesignates the proposed lots from "Agricultural" to "Estate Residential" in order to create two non-farm residential lots which are approximately 0.8 ha. [2.0 ac] in size with frontages greater than 61.00 m. [200.13 ft.].

76 Using a sketch and a set of photographs [Exs.24 & 25] Mrs. Sylvia Holstein described the character of existing development in the vicinity of the proposed lots. She stated that as a real estate agent she knew that it was not practical to farm the 8.37 ac. parcel of land. Pointing to the photographs and sketch, she stated that approximately 5 acres of the total parcel was covered with mature bush and that a creek ran through the northwest comer of her parcel with a dwelling near the southwest corner. She also stated that east, west and south of the subject parcel were hay fields and kitty corner to the southeast from the proposed lots was a 30 acre hunt club. She added that the soil on the subject parcel was heavy Haldimand clay and that her brother-inlaw with a 75 pound weight plough could not plough the land.

77 Using two soil classification maps [Exs.26 & 27] the pedologist stated that approximately 90 percent of soil on the subject land is in Class 3 and approximately 10 percent of soil in Class 2. He also stated that the proposed lot was surrounded by land with high agricultural capability and pointed out that land within a kilometre radius of the subject lot, consisted of approximately 80 percent in Classes 2 and 3, approximately 15 percent in Class 4 and approximately 5 percent in Class 5.

78 The land use planner with the Regional Municipality of Haldimand-Norfolk stated that the proposed lot was not well removed to be relatively self-contained from active agricultural activity. Using a land use map for the area [Ex.23] he pointed out that the subject parcel was surrounded by active farms with hay crops in the immediate vicinity. It was his opinion that given the fact that the soil capability for agriculture being high and the fact that non-farm dwellings would inevitably lead to land use conflicts, the proposed amendment did not meet the tests set out in the official plan for the creation of non-farm estate residential lots.

79 The agrologist/land use planner with the Ministry of Agriculture stated that the proposed lot was on soil with a high capability for agriculture and was not well removed from agricultural activities and therefore, did not meet the intent of the Food Land Guidelines. She detailed how the proposal did not conform to Sections 1.12; 3.12.3, 4A.1; 4A.8 and 4A.22 through 25 of the Guidelines.

80 The evidence by the above three qualified and experienced witnesses was not contradicted by any other duly qualified professional witnesses.

81 The Board prefers the evidence by the three professionals because the subject parcel is surrounded by active agricultural uses and the introduction of non-farm residential use on the subject parcel would give rise to land use conflicts between existing agricultural uses and the proposed non-farm residential use.

82 Based upon an examination of all of the evidence, the Board finds that the proposal causes an unacceptable adverse impact upon existing agricultural activity in the vicinity and therefore, does not conform to the common law land use principle, viz., a proposed use shall not cause an unacceptable adverse impact upon the use and enjoyment of properties by neighbours. Also, the proposal does not meet the intent of the applicable sections of the land use planning instruments.

83 The applicant, Kenline Farms Ltd., owns a 46.46 ha. [115.0 ac] parcel of land which is part of Lot 12 in Concession 3 in the Township of Norfolk and wants to create three [3] estate lots. The proposed lots are located on the north side of the road allowance between Concessions 2 & 3 and is west of Highway No. 59. Amendment No. 38 to the Township of Norfolk District Plan redesignates the proposed lots from "Agricultural and Rural" to "Estate Residential" in order to create three non-farm residential lots which are 0.4 ha. [1.0 ac] in size each.

84 After describing his farming experience with approximately 300 acres of land the applicant stated that the woodlot on the parcel had "no timber value because the land is poorly drained." Under cross examination by the counsel with the Ministry of Natural Resources, he stated that "in 1992, 25 acres of land was logged out but it had little timber value." He added that the land abutting the proposed lots to the east was not under "any field crops but consisted of nothing more than bush and weeds. As a farmer I have no difficulty with non-farm residences in the area."

85 Using an existing land use map and an aerial photograph [Exs.28 & 29] the land use planner with the Region described the land uses in and around the proposed lots. The land where the lots are proposed and the land immediately north and west are under a mature forest cover. The land across the Concession road to the south is also under forest cover but the land southwest of the proposed lots is in active agriculture. The land abutting the proposed lots to the east is under active cultivation. After setting forth all the facts related to existing land uses the planner stated that "the proposed lots are next to active farms and land use conflicts are bound to arise. The proposed lots are not relatively self contained. Taking into account all the factors related to soil capability, access to woodlot behind the lots and the nearness to farms, it is my opinion that the proposal does not meet the tests set out in the official plan."

86 Using two soil classification maps [Ex.2B, Tab 48 and Ex.31], the pedologist/soil inventory and interpretation specialist stated that approximately 75 percent of soil on the subject lots is in Class 3 and the remaining in Class 2. He also pointed out that 100 percent of the land within a radius of 1 km. is in Classes 2 and 3. Under some careful cross examination, the pedologist stated that Class 3W means that there is a limitation caused by wetness. He added, however, that in light of the fact that there was a drain in the north and good drainage to the south and southwest as stated by the applicant, the soil classification reflected accurately the conditions on the field and therefore, the land was suitable for active agricultural practice which was proven by the mature woodlot on the parcel of land.

87 The agrologist/land use planner with the Ministry of Agriculture described how the proposal did not meet the intent of Sections 1.12, 3.12.3, 4A.8, 4A.1 and 4A.22 through 25 of the Food Land Guidelines. She also stated that she disagreed with the preliminary opinions expressed by one of her colleagues in the Ministry [Ex.2B, Tab 46] who appeared to be sympathetic to the proposal. She concluded her evidence by stating that "the proposed lots are on soil that belongs to Class 3 and as you know soils of Classes 1 through 4 are of Provincial significance. The lots are adjacent to active farms and are not well removed. Section 4A.8 of the Guidelines encourages the maintenance of woodlots and if there is any significant wetness in the soil, it acts as a water recharge area. It is my opinion that the mature trees provide an economic benefit to the owner through periodic lumbering and firewood for use and sale." Although she was cross examined carefully, her evidence was not shaken.

88 The forest technician with the Ministry of Natural Resources outlined at some length the nature of his job, described what he did on the subject parcel and went over the report he had prepared [Ex.32]. He drew attention to the key data paragraph in his report which is reproduced below for convenience.

> The tallest (dominant) trees were hard maple and green ash. These averaged 80 feet in height with an average diameter of 12-13 inches measured at breast height (4.5 feet or 1.5 metres above ground). The average diameter of all trees was 8

> inches. Hard maple, red maple, yellow birch, black cherry and white ash were also present. The subject lands have been designated as site Class X and as such are considered to be the best growing land - the most productive for forest growth.

He concluded his testimony by stating:

> Once you lose the woodlot acreage for homes it will never again be used for a woodlot. The residents in the three homes will not be happy with the noise of timber operations or removal of mature trees from their rear yards as they see it. Also, there will be a loss of wildlife habitat.

89 Under lengthy cross examination, the forest technician steadfastly maintained his opposition to the proposal whether it contained three one acre lots or merely one acre lot. He was also clear in his evidence that the land where three lots are proposed contained very few cottonwoods and that the majority of trees were maple and ash.

90 The land use planner with the Ministry of Natural Resources went through her report [Ex.30] in some detail and pointed out how the proposal did not meet the intent of three relevant planning instruments, viz., the Regional Official Plan, the District Plan and the Growth and Settlement Policy Guidelines. She was cross examined at length on the preservation of woodlot through the judicious application of the tree cutting by-law in the municipality. She consistently maintained her position that although "the tree cutting by-law shows consideration for the protection of forest resources, it is not sufficient in this instance because you are removing a good stand of trees that are already there. If the intent of the by-law is to protect trees why do you want to take them down for houses and then protect what is remaining?"

91 The opinions expressed by the three land use planners, the pedologist and the forest technician, representing different organizations, were not contradicted by any other duly qualified professional witness.

92 An analysis of the evidence on this matter indicates the following. The land on which the three lots are proposed has soil with a high capability for agricultural use and it is next to farm land to the east and an active farm to the southwest. Also, the land contains a mature woodlot which is part of contiguous forest land to the north, west and southeast. If the proposed lots are permitted, the access to the entire forest vegetation on the subject parcel would have to be from the north off the Concession 4 road. In so far as the quality of woodlot, the Board prefers the evidence of the forest technician because he has done a careful empirical assessment of the trees on the parcel and has brought to bear his substantial experience in the field in coming to his conclusions.

93 Based upon an examination of all of the evidence, the Board finds that the proposal causes an unacceptable adverse impact upon both the existing agricultural activity and the mature woodlot in the vicinity and therefore, does not conform to the common law land use principle, viz., a proposed use shall not cause an unacceptable adverse impact upon the use and enjoyment of properties by neighbours. Also, the proposal does not meet the intent of the applicable sections of the land use planning instruments.

94 The applicant, Manuel Oliveira, owns a 3.74 ha. [9.28 ac] parcel of land which is part of Lot 6 in Concession 3, N.T.R. in the Township of Norfolk and wants to create six [6] estate tots out of the total parcel. The parcel abuts a dwelling which is located at the south east corner of two public roads. Three of the proposed lots have frontage on the north-south Regional Road No. 30 [Mabee Side Road] and the other three lots have frontage on the east-west road allowance between Concessions 3 & 4, N.T.R. [Rokeby Road]. Amendment No. 51 to the Township of Norfolk District Plan redesignates the proposed lots from "Agricultural and Rural" to "Estate Residential" in order to create six non-farm residential lots of varying sizes which meet the minimum area requirements for estate lots, viz., 0.4 ha. [1.0 ac.].

95 Using an existing land use map [Ex.33] of the area the land use planner with the Region stated that although the parcel itself was not under cultivation and covered with bush, it was surrounded by land under active cultivation. He stated that the parcel contained soils which belonged to Classes 1, 2 & 3 and that the surrounding land also contained soils belonging to Classes 1, 2 & 3. He stated that approving the six non-farm estate lots on the subject parcel would give rise to land use conflicts with existing active farms because the parcel was not well removed enough to be relatively self contained. He concluded his evidence by stating that the proposal did not meet the tests set out in the official plan for the creation of estate lots.

96 The evidence by the qualified and experienced land use planner was not contradicted.

97 Based upon an examination of all of the evidence, the Board finds that the proposal causes an unacceptable adverse impact upon existing agricultural activity in the vicinity and therefore, does not conform to the common law land use principle, viz., a proposed use shall not cause an unacceptable adverse impact upon the use and enjoyment of properties by neighbours. Also, the proposal does not meet the intent of the applicable sections of land use planning instruments.

98 The applicant, Donald 0. Dean, owns a 27.87 ha. [69.00 ac] parcel of land which is part of Lot 5 in Concession 2, N.T.R. in the Township of Norfolk and wants to create an estate lot The proposed lot is triangular shaped and has frontage on both the north-south Regional Road No. 30 [Mabee Side Road] and the southwest-northeast unopened road allowance between Concessions 2 & 3 N.T.R. Amendment No. 50 to the Township of Norfolk District Plan redesignates the proposed lot from "Agricultural and Rural" to "Estate Residential" in order to create a 0.55 ha. [1.36 ac] non-farm residential lot.

99 Using an existing land use map and an aerial photograph [Exs.35 & 37] the land use planner with the Region described the land uses in the vicinity of the lot to be created. He concluded his evidence by stating that "the ravines in the south and north together with the trees in the west provide adequate buffer from active agricultural uses in the vicinity and therefore, the lot is relatively self contained. The soil capability is low. The application meets the tests set out in the official plan and I recommend to you the recommendation I made in my report [Ex.2B, Tab 73] i.e., this application should be approved." Although he was cross examined carefully by the counsel for the Ministry of Agriculture, his opinions were not shaken.

100 Using a sketch and a set of photographs [Exs.38 & 39] the applicant described at some length the landscape features and land uses in and around the proposed lot to be created. The soil on the lot belongs to Class 6. The lot is triangular in shape and is bounded by the north-south Regional Road No.30 [Mabee Side Road] on the east with a frontage of approximately 340 feet on the road. The southern perimeter of the lot is approximately in the middle of a gulley which is approximately 80 feet in width from bank to bank and approximately 40 feet deep and is covered with mature and young trees. The southwestern-northeastern perimeter [third side of the triangle] abuts an unopened designated road allowance with a frontage of approximately 350 feet on the road allowance. South of the gulley is a 10 acre farm under active cultivation with field crops and contains a dwelling. Northwest of the unopened road allowance are mature and young trees. A ravine with varying depths ranging from approximately 60 to 80 feet runs from the northern part of the proposed lot to the northwest and southeast.

101 After outlining his farming experience for 45 years, the applicant stated that the land that is being proposed for a non-farm estate lot is adequately buffered by existing landscape features such as the ravines and trees and that it was his opinion that the proposed residential use and the farm to the south of the gulley could live in harmony.

102 The agrologist/land use planner with the Ministry of Agriculture described how the application did not meet with the intent of Sections 1.12, 3.12.3 and 4A.22 through 25 of the Food Land Guidelines. She was especially concerned that the proposed lot to be created was not "adequately well removed from agricultural activities to the south." She was categorical in stating that she disagreed with the planner from the Region in so far as the proposed lot being well removed from agricultural activities.

103 When the Board drew attention to her previous testimony under cross examination during the Malo application cited above [under her position with respect to all nine applications], viz., "well removed is not defined quantitatively. ..." she stated that "the ravine with mature and young trees for a distance of approximately hundred feet here is not enough to stop noise, odour and dust from the south. If I had to pick a specific number for separation distance I would say it would have to be five hundred feet."

104 An analysis of the evidence on this matter indicates the following. The ravine in the south may not act as an impervious buffer to fully contain noise, odour, dust and spray from reaching the proposed non-farm dwelling, but it will mitigate the adverse impacts to an acceptable level. The intent of separation distance is to minimize adverse impacts. In some instances, even a 500 feet separation distance on farm land under cultivation would not be adequate to fully contain odour, noise and dust if the wind direction is towards the proposed dwelling. The question, therefore, is not one of meeting an ideal standard but one

of reducing impacts to a reasonable person's standard. In this instance, the mature and young trees in the ravines will act as adequate buffers, as the land use planner with the Region pointed out.

105 Based upon an analysis of the evidence, the Board finds that the proposal does not cause an unacceptable adverse impact upon existing agricultural activity and vice versa. Also, the proposal meets the intent of the applicable sections of land use planning instruments.

106 The applicants, Alfons and Hillechien Eys, own a 20.20 ha. [50.00 ac] parcel of land which is part of Lot 20 in Concession 2, S.T.R. in the Township of Norfolk and want to create three [3] estate lots. The proposed lots are located on the south side of a two lane loose top municipal road allowance between Concessions 1 & 2, S.T.R. east of a municipal drain and west of Highway No. 59. Amendment No. 39 to the Township of Norfolk District Plan redesignates the proposed lots from "Agricultural and Rural" to "Estate Residential" in order to create three non-farm residential lots which are 0.4 ha. [1.0 ac] in size each.

107 The applicant commenced his evidence by stating, "I can't argue about the good quality soil on my property." The counsel for the Region also stated, "there is no contest on soil capability."

108 Using a sketch of his property [Ex.42] Mr. Alfons Eys described various features of his farm parcel. He stated that he had planted trees on land abutting the proposed lots to the south and east in 1990 and that isolated the lots. It was also his view that the municipal drain running northwest to southeast isolated the proposed lots and his existing farm dwelling from the land to the southwest of the drain which consisted mostly of vacant land and bush land. On the sketch he pointed out that the land to the east of his parcel was under cultivation where soyabeans were grown in 1989 and corn was grown in 1994. He also pointed out that the land to the north of his parcel was under soyabean production in 1994 although it was under tobacco cultivation in 1989. It was his contention that in light of the fact that there were non-farm dwellings ["five on east and three on west"] on Highway 59 which formed the eastern boundary of his property, he should also be permitted to develop three non-farm dwellings on the concession road which formed the northern boundary of his farm parcel.

109 Using an existing land use map [Ex.40] of the area the land use planner with the Region pointed out that the proposed lots were adjacent to and surrounded by land under active cultivation. After describing the different land uses in the area including large tracts of land owned by the Conservation authority, he stated that the proposal did not meet the tests set out in the official plan with respect to being on Class 5, 6 or 7 soils and not being sufficiently isolated from surrounding agricultural activities.

110 The agrologist/land use planner with the Ministry of Agriculture stated that the features and land uses described by the applicant in his sketch [Ex.42] were accurate. She was of the opinion that the land use conflicts between the proposed non-farm dwellings and the adjacent soyabean farms were inevitable and that the proposal did not conform to Sections 1.12, 3.12.3, 4A.11 and 4A.22 through 25 of the Food Land Guidelines.

111 The land use planner with the Ministry was cross examined on Ministry policy with respect to permitting a mixed commercial/residential tearoom on agricultural land west of the subject farm parcel. She stated that for such uses a separate set of policies applied and that technically the Guidelines did not apply because it is seen as a rural home occupation which is considered as a secondary use to a farm residence. She was not cross examined, however, on the proposal being on high capability soil or on whether it was well removed from agricultural activities.

112 The evidence by the above two qualified and experienced witnesses was not contradicted by any other duly qualified professional witnesses.

113 The Board prefers the evidence by the two professionals because the subject parcel is surrounded by active agricultural uses and the introduction of non-farm residential use on the subject parcel would give rise to land use conflicts between existing agricultural uses and the proposed non-farm residential use.

114 Based upon an examination of all of the evidence, the Board finds that the proposal causes an unacceptable adverse impact upon existing agricultural activity in the vicinity and therefore, does not conform to the common law land use principle,

viz., a proposed use shall not cause an unacceptable adverse impact upon the use and enjoyment of properties by neighbours. Also, the proposal does not meet the intent of the applicable sections of the land use planning instruments.

115 At the heart of the matter in all these cases is the issue of aggregate result, viz., what is the result of each estate lot, taken together, upon active agricultural practice on all public roads in the Region? The counsel for the Region maintained throughout that only the incremental impacts ought to be considered because the aggregate impact is difficult to assess. The counsel for the Ministry of Agriculture, on the other hand, maintained that both incremental and aggregate impacts ought to be considered because private property rights of farmers to carry on their farming without hinderance was at stake here. Both counsel requested the Board to address the issue squarely because of the importance of it to not only the nine cases before the Board but also many other similar cases that may be in the "wings." The Board has reflected a good deal upon the matter before responding to the request by counsel. What follows is an effort to be of some assistance to all parties.

116 No empirical study results were presented at the hearing to show either the total or the rate of non-farm residential lots that have been created in the Region in the past two decades. In the face of such evidence, the Board can take the easy route suggested by all the witnesses who appeared in favour of the applications, viz., decide each application on its merits. In fact, the Board has done just that in analyzing the evidence in each instance on its merits and has come to its findings wherein eight out of nine applications do not meet the threshold tests set out in the official plans and the Food Land Guidelines. In doing so, the Board was not only following the advice of the witnesses and counsel, but also adhering to the long established common law practice.

117 The Board as a quasi-judicial body, however, has to take account of the public interest that undergirds the entire Planning Act. The question, therefore, is what is the public interest in this instance? Public interest here clearly includes two distinct elements. First, is the adverse impact of individual non-farm residential uses upon existing physical environment - both built and natural in the immediate vicinity and the relevant neighbourhood. Second, is the adverse collective impact of all such individual non-farm uses upon the ability to carry on unhindered agricultural practice on lands adjacent to the public roads. The significance of this binary public interest stems from the fact that the Region of Haldimand-Norfolk is one of the prime agricultural resource areas in the province unlike, for instance, the District of Parry Sound.

118 In such instances, the Board would be remiss in its duty not to take account of the public interest solely because detailed empirical evidence based upon a professionally executed study is missing. It is a textbook case where absence of evidence does not necessarily mean evidence of absence. Inductive reasoning and deductive reasoning are not mutually exclusive as Antonio R. Damasio demonstrates so convincingly in his critically acclaimed book, aptly titled, *Descartes' Error: Emotion, Reason, and the Human Brain*, [New York, 1994]. In fact, the two modes of reasoning are complimentary, and when one mode is either inadequate or cannot be applied, we have to rely on the other before making judgements.

119 If we have regard for the opinion of the land use specialist with the Ministry of Agriculture for the purposes of deductive reasoning, the scenario sketched by her falls well within the realm of feasibility. Her scenario unfolds as follows.

120 In the absence of any limitation in the planning instruments on the number of non-farm estate residential lots that can be created in the Region, as long as they meet the criteria set out in the Regional and District official plans, the number that potentially can be created on all public roads is limited only by the interpretive discretion exercised by the decision-making bodies, whether land division committees, municipal councils or an appellate body. In her view, a broad and liberal interpretation of the policies would lead inescapably to the steady removal of active agricultural land adjacent to the public roads. For instance, If the Malo application were granted, she pointed out how in the future, a well qualified land use planner with considerable experience could legitimately take the position that any estate non-farm lot to the east of the Malo lot would constitute in-filling between the existing strip residential development to the east and the Malo lot. To her, in-fill development was too flexible a phrase that could be used in any number of circumstances regardless of the distance separating two non-farm residential dwellings.

121 Estate non-farm residential lots over a period of time, according to the land use specialist with the Ministry of Agriculture, came to occupy land abutting all roads to the point where the agricultural activity would be surrounded by non-farm residential uses. In discussing the complaints by residents of non-farm dwellings, she pointed out that the sheer number would work against

the farmers. In order to be economically viable, the farm parcels would have to be large [owned and/or leased], leading to a situation where one or a few farm families would be surrounded by many non-farm families. She stated that in a democratic society, the elected representatives would have to give greater weight to the greater number of non-farm families, not because they were in favour of non-farm families, but simply because they are in the majority. What starts out as non-farm dwellings in the midst of farm land becomes a situation of farm land in the midst of non-farm dwellings. It was her opinion, therefore, that a liberal interpretation of official plans in this Region as they related to non-farm dwellings was inappropriate.

122 Having seen the loss of agricultural land for non-farm residential purposes, she has obviously drawn a line in the fertile soil. The question for the Board, therefore, is how a public interest emerges from the exercise of private property rights?

123 One of the purposes of land use planning is to secure an optimal balance among the three competing property rights, viz., private, common and collective, in order to protect and enhance their respective values. A certain dynamic tension among the three is inevitable. Just as the right to life and liberty are constantly being tested, the right to use property is also constantly being tested.

124 In such a regime, the need for land use planning arises not only out of a "negative" desire to prevent deleterious activities, but also a positive desire to promote activities enhancing quality of life. An example of the former is the prevention of residential use in flood prone areas. An example of the latter is the promotion of agricultural activity on land that has high soil capability for farming and related activities.

125 Prime agricultural land exists only in certain locations because it derives its composite character by virtue of a bundle of traits including soil capability, local climatic and weather conditions, available precipitation, surface and sub-surface drainage, and the like. Prime agricultural land, therefore, is a scarce resource [sometimes very scarce] the output of which is needed by everyone, although the land itself is owned and put to productive use by only a few. When a scarce resource is used up for other purposes, the result is nearly impossible to reverse.

126 A farmer who exercises her or his private property right to create non-farm residential lots has to concern herself or himself only with the marginal adverse impact upon farmers in the vicinity and the relevant neighbourhood. If *all* of the farmers in an area [area being larger than vicinity and neighbourhood] choose to exercise their right to create non-farm residential lots, each one of them would be concerned only with the marginal adverse impact they cause upon others in the vicinity and the neighbourhood, but not the adverse impact upon the area as a whole. This situation would leave every active farmer in the area equally well off or worse off and, over a period of time, the character of the area would change and cease to be a predominantly farming area. The aggregate effect of this is to remove an area from farming. This outcome removes a scarce resource from being employed for the benefit of all and, therefore, gives rise to a public interest in preserving an area for predominantly agricultural use. This is the first manner in which a public interest comes into being. It can be argued that this is a less significant public interest because the property rights of all the farmers in an area to do as they please was respected.

127 The second manner in which public interest arises is much more significant. Instead of *all* the farmers in an area choosing to exercise their right to create non-farm residential lots, if only a few [several] choose to do so, the consequences are as follows. The marginal adverse impact caused by the few upon many other private property owners [or lessees] who desire to carry on farming unhindered is significant because of the complaints by the non-farm residents with respect to noise, dust, odour, spray, etc. which are integral to active farming. The complaints can be ignored only if a very small number of non-farm residents are in an area As the land use specialist with the Ministry of Agriculture pointed out, when the numbers increase, the complaints cannot be ignored. This results in the undue confinement of the private property rights of farmers for farming. This is an instance where encouraging a few farmers to exercise their right to create non-farm residential lots, by interpreting the planning instruments "broadly and liberally," has the perverse effect of denying other farmers in the area the use and enjoyment of their property rights.

128 This outcome can be called the "Tragedy of the Privates," an ironic companion to the "Tragedy of the Commons," first formulated by Plato and made famous in the Sixties by Garret Hardin. In the "tragedy of the commons," each private owner of cattle maximizes his or her use of a common grazing field [you can substitute Atlantic fisheries or any other common property]

to the point where common property loses its value entirely because of overgrazing. In the "tragedy of the privates," each farmer, acting in her or his own best self interest to create non-farm residential lots, denies the other farmers in the vicinity their right to use and enjoy their property for farming.

129 In order to prevent this outcome, planning instruments confine private development rights of all in some specific ways in order to advance private development rights for all in an area. It is this need for confinement of private rights that leads to the emergence of a public interest. Public interest in this instance stems from a concern for the preservation of private property rights of owners [and lessees] in an area for farming. In a contradiction of terms, the protection of the collective private interest becomes imperative in order to advance their individual private interests, including the use and enjoyment of their own properties through farming. Public interest, in some important ways, is not "public" at all.

130 The only meaningful way to deal with this dilemma of protecting private property rights for all in an area is not to interpret the planning instruments "broadly and liberally," to favour a few but to interpret them in a manner consistent with the preservation of property rights for all. This can be done very pragmatically by examining "each case on its merits" as the canon dictates, doing so in such a manner as to shift the burden of proof upon the applicant to show how her or his non-farm residential lot is "well removed," "relatively self-contained," and "on land with low agricultural capability," all the while keeping the overall intent of the planning instruments firmly in mind, viz., "to preserve and protect the agricultural land base, avoid potential conflicts between agriculture and adjacent non-farm uses and discourage scattered non-farm development in the Agricultural designation."

131 The Board, in the above nine instances, has done just that and found that only one of the nine applications has met the reasonable requirements set by the planning instruments. To do otherwise would amount to permitting a few owners of automobiles to drive on both sides of a major two-lane highway at the posted speed limit of 90 kmh.

132 To look only at each application without looking at the whole is tantamount to looking at the ripples in a lake caused by a single stone. As more and more stones are thrown into the lake, the ripples originating from a number of stones meeting each other cause a wave that could easily overturn even a sturdy voyageurs canoe. Swiss cheese is delicious only as long as it is predominantly cheese.

133 In light of the above reasoning, the Board:

1. Does not approve the Amendment No. 54 to the District Plan of the Township of Delhi;

2. Does not approve the Amendment No. 43 to the District Plan of the Township of Delhi;

3. Does not approve the Amendment No. 38 to the District Plan of the Township of Delhi;

4. Does not approve the Amendment No. 32 to the District Plan of the City of Nanticoke;

5. Does not approve the Amendment No. 69 to the District Plan of the Town of Haldimand;

6. Does not approve the Amendment No. 38 to the District Plan of the Township of Norfolk;

7. Does not approve the Amendment No. 51 to the District Plan of the Township of Norfolk;

8. Approves the Amendment No. 50 to the District Plan of the Township of Norfolk; and

9. Does not approve the Amendment No. 39 to the District Plan of the Township of Norfolk.

134 The Board so orders.

SCHEDULE B – *Di Biase v. Tiny (Township)* 1994 O.M.B.D. No. 485

Di Biase v. Tiny (Township), [1994] O.M.B.D. No. 485

Ontario Local Planning Appeal Tribunal Decisions (f/k/a Ontario Municipal Board)

Ontario Municipal Board

N.M. Katary

May 9, 1994

File Nos. O 93026, Z 920207, C 920409

[1994] O.M.B.D. No. 485

At the request of Pat Di Biase, the Minister of Municipal Affairs has referred to the Ontario Municipal Board under subsection 22(1) of the Planning Act, R.S.O. 1990, c. P.13, Council's refusal or neglect to enact a proposed amendment to the Official Plan for Township of Tiny to redesignate lands described as Part Lot 15, Concession 9 in the Township of Tiny from "Agricultural" to "Rural" to permit the creation of 3 residential lots by consent Minister's File No. 43 OP 4001 A02 OMB File No. O 930206 Pat Di Biase has appealed to the Ontario Municipal Board under subsection 34(11) of the Planning Act R.S.O. 1990, c. P.13, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 30-77 of the Township of Tiny to rezone lands described as Part Lot 15, Concession 9 to permit the creation of 3 residential lots O.M.B. File No. Z 920207 Pat Di Biase has appealed to the Ontario Municipal Board under subsection 53(7) of the Planning Act R.S.O. 1990, c. P.13, from a decision of the Township of Tiny Committee of Adjustment which dismissed an application numbered B 10-92 lands described as Part Lot 15, Concession 9, Township of Tiny O.M.B. File No. C 920409

(22 pp.)

COUNSEL:

I.J. Rowe, for Township of Tiny. B.A. Horosko, for Pat Di Biase.

DECISION delivered by N.M. KATARY AND ORDER OF THE BOARD

The principal issue in this hearing was: When is it appropriate to base findings in interpretive principles outside the text after having read it in light of semantic and substantive principles contained within it?

Four planning principles were put forward by the planner for the applicant in support of an application to create three non-farm residential lots in the Township of Perkinsfield: [1] "Adjacent," in a rural municipality with a population of approximately 7,245, includes residences at a distance of one kilometre from an existing settlement.

[2] A primary arterial road with some development on the north side and very little development on the south side is a spine that unites the north side with the south side and does not act as the edge of development. [3] Four residential units on such an arterial road across from existing development on the north side creates a "mirror" development and constitute infilling. [4] Four lots fronting on such an arterial road with individual access to the arterial road is not strip development but represent a linear pattern of development. The planner for the municipality held a diametrically opposite view in each instance. Who is to prevail?

Mr. Pat DiBiase and his brother own a farm parcel which is approximately 20.5 ha. in size in the Town of Perkinsfield. The brothers want consents to convey three lots from the parcel which are approximately 2,322 sq.m. in size with frontages of 38.1 m. on the County Road 25 [or Balm Beach Road] and of a depth of approximately 61.0 m. each. In order to do so, they went to the Committee of Adjustment. The Committee turned down their applications. The applicants have sought site specific Official Plan and zoning by-law amendments to enable the consent applications to succeed. The Board is dealing with all three matters simultaneously.

Ms. Pearl Grundland and Ms. Beverly M. Agar, a land use planner and an agronomist respectively, both retained by the applicant, and Mr. Pat DiBiase, the applicant, gave evidence in support of the application. Mr. Ronald B. Watkin, a planner retained by the municipality, gave evidence in opposition to the application.

The four aforementioned planning principles were contested within the framework provided by the Official Plan. Therefore, the analysis of evidence with respect to each principle is undertaken in the following pages within that context.

Section 2.3.(c) of the Official Plan [Ex.29], gives guidance on adjacent and Rural Non-Farm development:

> ... It is anticipated that the majority of the non-farm residential development will take place adjacent to existing hamlets where school and shopping facilities are available and where other Municipal facilities such as water supply system can be adequately provided at such time as installations are required. ...

The planner for the applicant maintained that the major intersection which formed the centre of the Hamlet of Perkinsfield was approximately one kilometre away, a walking distance and therefore, the proposal was adjacent to the Hamlet. The planner for the municipality, on the other hand, stated:

> Adjacent means right adjacent to and not one kilometre away. The Hamlet has a communal water system and the municipality could not possibly supply water to the proposed lots because one kilometre is thought of as adjacent by someone.

Based upon the evidence of the planners, the Board views "adjacent" as meaning close to, next to, lying near or adjoining. Applying Ockham's razor, [the principle that one should choose the simplest explanation, the one requiring the fewest assumptions and principles], one kilometre away from the existing built up Hamlet of Perkinsfield [settlement] cannot be viewed as adjacent to it. Even in heavily built up, large, urban agglomerations,

adjacent is not seen as something a kilometre away. To suggest that three lots one kilometre away from a small settlement in a rural area are adjacent to it would either drain the meaning of the word or give an altogether new meaning to it. The Board is unable to do either.

The Board finds that the proposal is not adjacent to existing development and, therefore, finds that it does not conform to Section 2.3.(c) of the Official Plan.

Sections 4.5.(a) (5) and (6) of the Official Plan give guidance on strip development:

> (5) The creation of lots with access onto Arterial Roads shall be discouraged. ...
>
> (6) The creation of strip or linear residential development, shall be prevented wherever possible, particularly along roads designated "Arterial Road" on the schedules to this plan. ...

The planner for the applicant was of the view that the proposed three lots for non-farm residential dwellings did not generate enough traffic to impact adversely upon the functioning of the arterial road and therefore, the proposal met the intent of the policy. She also took some comfort from the fact that the County Engineer had not objected to the proposal in the first two letters he wrote, although the engineer had changed his mind in the latest letter. She took the position that the Board should approve the consents subject to the condition that entrances from the arterial road be secured from the Engineer.

The planner for the municipality was of the opinion that the policy clearly says "discouraged," therefore, the intent is not to have lots on an arterial road. The purpose of the arterial road here was to take traffic off the local roads and put it on the arterial to service Balm Beach. Using the traffic volume data [Ex.19], he stated that the volumes were high and any residential development would begin to impede the flow of traffic.

The planner for the applicant was of the opinion that the proposal was not strip development, but represented a linear pattern of development, although she did not explain the difference between the two. Under some careful cross examination she stated:

> In this context it is not strip development. Elsewhere it could be a strip. I agree that there is nothing behind but the context here is everything. It is a unique site and hence it is not strip development. On the south side, the proposal does not meet the 50 metres requirement and to that extent it is not infilling within the meaning of the policy in Section 3.6.B.3.(f) of the Official Plan.

The planner for the municipality stated that the proposal is nothing but a strip development consisting of three lots on the arterial road, with each of the lots having access to the road. He emphasized that there was no depth to the development and the proposal would start a strip. He added that the Committee of Adjustment had consistently

denied these types of consents since 1977 in order to prevent strip development of the sort that is being proposed here. He was of the view that "wherever possible" in the policy meant that wherever consents that form a strip could be prevented, it ought to be prevented, and in this instance, with absolutely no demonstrated need for non-farm rural residential lots in the municipality, the proposal must be turned down.

Based upon the evidence of the planners, the Board is of the view that strip development is linear development without depth on a spine. The development may be on one or both sides of the spine. All or almost all of the individual properties on the spine have access to the spine. The most distinguishing character of strip development is the absence of any significant development behind the linear development fronting on the spine. When there is some development in the rear, it is invariably not an integral part of the development on the spine with access to its own set of streets. The land use behind strip development is usually either green fields or some form of vegetation.

The Board finds that the proposal is strip development and therefore, does not conform to Sections 4.5. (a) (5) and (6) of the Official Plan.

Sections 4.2.(a)(20) and 3.6.B.3.(f) of the Official Plan [Ex.29, pages 62 and 51] give guidance on infilling in a developed area:

> (20) The infilling of existing developed areas shall be encouraged provided that such infilling takes the form of uses that are compatible with the surrounding area and are in conformity with this plan. ...
>
> (f) ... However, the creation of an infilling lot will be permitted between two existing residential lots on the same side of the road which are or will be used for residential purposes, where the distance between the lots is approximately 50 metres or less.

The planner for the applicant contended that "the common definition of infilling means appropriate location." In this instance, because the proposal "mirrors" the pattern of development on the north side, there is no new development and hence, the proposal constitutes infilling. The planner for the municipality was of the opinion that the area between the settlements of Balm Beach and Perkinsfield was not a built up area and the north side [on County Road 25] had some development but most of it occurred before 1966, and that the south side was basically a rural farm type of use. In his view, both sides must be built up before the introduction of new development could be considered infilling. The planner for the municipality categorically rejected the idea that "mirror" development on an arterial road in a sparsely developed rural municipality could represent infill development.

Under some intense cross examination, the planner for the municipality stated:

> The road here is the dividing line between north side and south side because it is an arterial road. The function of an arterial road is to move the traffic in and out, fast. Scattered residential development on the north side happened prior to 1966. There is negligible development on the south side. If there was

considerable development or even matching development of the south side, then the road can be seen as a spine. "Mirror" development in an urban area may be O.K. because of development on both sides which are brought together by the road. Here, you want to create development across the road where there is no development now. "Mirror" development here is a bad planning principle. The road is the edge here and not the spine because of historical development going back almost thirty years.

Based upon the evidence of the planners, the Board views infill development as filling in between existing development. It is neither continuation nor extension of existing development. It is not "mirroring" what exists across, nor is it strip development between "book-ends" separated by an unreasonable distance. It is not partial development leaving an unreasonable distance between existing and proposed development. It is not even development from the periphery of development towards the centre, if the distance left in between is unreasonable. Infill development is nothing more than a development that fills in a gap and completes the full expression of the prevailing character of the area.

The Board finds that the proposal does not constitute infill development and therefore, does not conform to Sections 4.2. (a) (20) and 3.6.B.3.(f) of the Official Plan.

The analysis thus far has dealt with the proposal within the framework of the current Official Plan. In light of the fact that there is an Official Plan amendment before the Board, it is necessary to examine the appropriateness of the proposed use, viz., the change in designation from Agricultural to Rural Residential.

The agronomist for the applicant, using her report [Ex.25], described in detail the method she employed in arriving at her conclusions. She stated that the scale of mapping used in the Canada Land Inventory classification of soils was too broadgauged in order to be of assistance in determining the quality of soil accurately. She had visited the site, dropped 14 holes and taken samples in each instance to determine accurately the nature of soil. Based upon her analysis she concluded by stating, "the soil here is most certainly not 'high priority' soil. It is between 'low priority' and 'no priority' soil for agricultural purposes." During cross examination, she went on to add that the farm parcel to the west of the subject parcel was also not high priority soil for agriculture and that both the subject parcel and the parcel to the west could be designated as rural in the Official Plan.

The opinion of the agronomist with respect to soil capability was not shaken during cross examination. There was no other qualified, professional agronomist who contested her opinions on soil capability.

The agronomist went through Sections 2.5, 2.15, 3.4, 3.11 and 4A.26 of the Food Land Guidelines [Ex.8], and expressed the opinion that the applications for consents here do not violate intent and purpose of the Guidelines.

The agronomist for the applicant admitted under meticulous cross examination that the subject parcel was opened for farming at the turn of the century and appears to have been farmed continuously to the present. She also admitted that the present wood lot on the parcel appears to be planted, although she was not sure whether it was planted as a tree crop for harvesting. She admitted that she did not know whether trees could be planted outside the wood lot on the remainder of the parcel which could be harvested.

The planner for the municipality stated that he had seen potatoes being grown on the subject parcel and that he had personally bought corn grown on the parcel in 1981. He contended that although he was not an agronomist, the Official Plan [secondary plan] designated the subject parcel and the parcel to the west as Agricultural in 1981 because there was clear evidence that the two parcels were being used for active agricultural purposes, i.e., farm crops.

Under careful cross examination, the planner for the municipality detailed why the change in use proposed is inappropriate, and concluded by stating:

> Even if the soil capability is not within the CLI classes 1 through 4, Section 2.16 of Food Land Guidelines [Ex.8] kicks in. I have seen corn and potato grown on the parcel. The aerial photo clearly shows the healthy wood lot within the parcel. I believe active farming can be undertaken on the land with perhaps better management practices. The zoning by-law definition of farm includes the growing of trees [Ex.30, (31a)].

> Approving the consents would only encourage others to come forward with similar applications on the arterial road. The Board has turned down one application already outside the Hamlet. Approving the strip development here would be against the long standing policy of the municipality to prevent such development as shown here [Exhibit 31]. Before we know it, the road would indeed become a strip and have an irreversible adverse impact on the character of the area. Such a development would be contrary not only to the intent and purpose of the official plan but also the Growth and Settlement Policy Guidelines [Ex.7].

Agriculture is the first "culture" that is rooted in bio-diversity. As the agronomist stated, "agriculture encompasses a variety of crops and vegetation." The singular characteristic of agriculture is that the cultivation of grains, trees, plants, vegetables, fruits, etc. are done in a systematic fashion where planting, nurturing, harvesting and replanting are executed according to a plan. Agriculture in this sense does not mean natural or wild growth, but means growth for a human purpose, which may be short-term or long-term.

Based upon an analysis of the pertinent evidence, the Board finds that the subject parcel is not "high priority" agricultural land under Section 3.6.A.1 of the Official Plan. The Board also finds, however, that the subject parcel is capable of sustaining "low priority" [in the words of the agronomist] agricultural use including, but not limited to, tree crops. Hence, the Board is of the view that the owners of the property are not deprived of any reasonable use and enjoyment of their property.

The Board, therefore, finds that the change in use proposed is inappropriate.

Counsel for both parties made lengthy, vigorous and rigorous submissions, raising some very fundamental questions. The ideas put forward in a lively fashion by both counsel were quite challenging.

Counsel for the applicant argued that the case put forward by the municipality was "a textual and theoretical case," and that the Board must look beyond the text to fundamental planning principles in coming to its conclusion. His insistence on principles outside the text was rooted in his belief that no text, however precise in its guidance, can be interpreted solely upon the text as originally understood. His principal concern was that his client not be deprived of the use and enjoyment of his property. Counsel for the municipality, on the other hand, maintained that his case was based both upon the text and planning principles.

During argument in chief, counsel for the applicant submitted that the inherent right to private property rights under Section 7 of the Charter of Rights and Freedoms is a matter of concern for him. However, during reply argument, after having listened to the submission made by the counsel for the municipality, the counsel for the applicant stated, "my submissions are not based entirely upon Charter right. I am not arguing only a Charter right here. I am suggesting that planning should not deny the freedom to enjoy one's own property."

Responding to the discussion between the Board and the counsel for the applicant, the counsel for the municipality stated, "Section 7 (of the Charter) and the Planning Act are channelled through a public authority very much in the Hobbesian sense of monarch and parliament. Therefore, there is no primacy to be attached to private property rights, over and above the balancing of common property rights underlined in the Planning Act."

Given the lateness of the hour, the Board did not make a ruling on either the need to look beyond the text or the Charter matter, but gave an undertaking that it would outline its position in the decision.

What follows is a response to the careful arguments made by the two counsel. The length of reasoning by the Board is the result of the detailed questions raised by counsel.

The Board acknowledges that the counsel for the applicant is quite correct in his argument that any serious interpretive effort must be rooted in principles both inside and outside of the simple text. The Board recognizes the need to go outside the text because it is very much cognizant of the following limitations of the text in certain circumstances. The question, however, is when is this effort warranted? The answer depends on whether or not the text, structure and history are inadequate for the interpretation of the text at hand for the particular situation. Before attempting an answer to the question in this particular situation, the Board would like to elaborate on the great debate about the limits of the text which was discussed at length at the hearing.

A central problem in dealing with an Official Plan or any other statute, by-law, guideline or, policy statement, is how to approach and make use of the text itself. Different views about the application of policy statements turn on the proper meaning or understanding of the text as it is written. The formalists take the meaning of the text as a simple, straightforward matter of fact where the job of the interpreter is to reveal that fact. Formalists distinguish between the so-called "neutral, apolitical" conception of "original understanding" espoused by the framers of the policy and the "subjective, value-laden" understanding of the members of a quasi-judicial body who must make decisions based on that policy and, in so doing, manifest their own idiosyncratic preferences.

This view of interpretive "neutrality," so eloquently advocated by the formalist par excellence, Justice Robert H. Bork, in his book The Tempting of America, is seriously flawed by the plain fact that no simple fact of meaning can be ascertained without recourse to substantive interpretive principles. Ironically enough, the invocation of the "plain

text" of a policy statement is in itself dependent upon interpretive principles which formalists matter of factly ascribe to the text itself. Such a view fails to recognize that there can be no preinterpretive understanding of any legal text. Recourse to background interpretive principles which require both clear definition and substantive validation is "an inevitable part of the exercise of reason in human affairs" as Cass R. Sunstein points out in his book The Partial Constitution[p.104]. Proponents of formalist "originalism" fail moreover to acknowledge that their own position has its own interpretive principles which require substantive defense as their very underpinning and raison d'etre. This debate is carried out with rigour in the two books just cited, among several others.

Any interpretive principle must be both substantively defensible and strong enough to withstand critical scrutiny. It is not an easy task to establish the validity of original understanding. The answer clearly does not lie in establishing the mindset of the original authors. Such an historical approach may be helpful in some instances, but since the framers of policy, as reasoning individuals, certainly did not believe that their understanding held a surefire answer to questions that would inevitably arise out of future conditions they could neither envision nor anticipate, original understanding is an inadequate approach. New conditions, regardless of their merit, require more than adherence to a literal semantic reading of the text in combination with an invocation of history. History can serve as a guide to interpretation in the reading, but it cannot, and indeed should not dictate the "correct" course of action for either the present or the future.

Not only do facts change, but the framework for viewing those facts, i.e., the values, changes as well. The need for interpretive principles outside the text is best illustrated by the following example. The incompatibility seen between residential use and manufacturing industrial use in 1950 is no longer universally acknowledged. First, there is the change in facts associated with the manufacturing industrial use, where the uses now look, sound and smell like well designed office institutional uses. Second, there is the change in values whereby people do not desire to drive long distances to their jobs, which involves time spent in commuting, energy use, air pollution, the costs of auto maintenance and the sheer stress of driving in large cities. Here we see the facts and values converging, making residential use and manufacturing industrial use compatible. No framer of an Official Plan policy could have foreseen such a major change in facts and values in less than two generations [forty years].

Insistence upon an "unadorned text" moreover reflects a scepticism about the ability of human beings to reason about the serious social and economic problems that inevitably arise in a democracy. Discussions about what is "right" or "good" are seen as too "preferential" or "value-laden" and, therefore, thought to stray from the path of "political neutrality." The only acceptable path for interpreters to follow, in the view of formalists like Justice Bork, is not to stray from the text. In doing so, the formalists conceal their own preference by appealing to the "political neutrality" of a text which is itself rooted in political realities at the time of original formulation.

In interpreting the text, it is, however, nearly impossible to avoid dealing with moral considerations. Substantive interpretive principles must be justified in moral and political terms which inevitably - and quite properly - evolve over time. Defense of such an interpretation can only be firmly rooted in moral and political judgements so long as the dictates of reason prevail. There is no other way.

Advocates of formalism appear to derive their legitimacy from a notion which can be traced back to what is essentially an exercise of raw power. To support this brand of legitimacy is tantamount to saying that "might makes

right" and that the only justification necessary is force alone (i.e., "the ultimate rationale of authority is force") derived from the majority which should prevail simply because it is the majority. This flawed line of reasoning gives the patina of democracy to an approach that derives from nothing less than a legitimate but crippling fear rooted in history of the arbitrary exercise of monarchical power where there is no accountability to the public. Fear is not a rational basis for an approach to tribunal review.

The best example of an interpretive principle outside the text is provided by the words "The just shall live by faith." These words by [or attributed to] St. Paul [50 C.E.?], in his Epistle to the Romans, were the foundation for one of the epochal events in human history nearly 1,500 years later, when Martin Luther was moved by them to launch the Reformation. Context defines meaning as much as the words themselves, whether in the present or in the future, and interpretive principles outside the text are as necessary for the text as is water for the fish to survive.

In the ultimate analysis, what must prevail are interpretive principles with clear, concise definitions and substantive validation where restraints in the selection of these principles prevent the undesirable outcome of placing the meaning of the text solely in the hands of individual members of a tribunal. Since there are bound to be disagreements over what a particular policy actually means, with disagreements turning upon the different principles held by participants in the adjudicative process, the evaluation and judicious selection of substantive principles is of the utmost importance in quasi-judicial review. It is in such instances that resort to fundamental principles of planning becomes paramount.

The intent of this detailed discussion of the limits of the text is to demonstrate that the Board is highly sensitive to the argument made by counsel for the applicant. The question, therefore, is when does it become necessary to resort to principles outside the text?

Going outside the text is warranted if, and only if, the text, structure and history provide an inadequate guide for interpretation.

Adherence to the text is an important way of disciplining members of a tribunal and of preventing the arbitrary exercise of quasi-judicial authority. The text, read in light of semantic principles and substantive principles on which there is general agreement, will limit discretionary interpretation.

When the text fails to provide complete guidance and when the meaning depends not upon semantics or generally accepted principles, but upon principles that demand a substantive defence, then the structure of the text as a whole can be of assistance. Applicable sections of an Official Plan text must not be read in isolation but in light of one another. Interpretations that make sense out of the whole document lead to consistency, coherence and rationality.

When structural analysis leads to competing inferences or no inferences at all, then history can be of little assistance. Where the document is unclear, historical understanding of the meaning of the text must be given due weight. Respect for history is a means of demonstrating deference to planning processes involving a number of people in the community.

Passage of time, however, limits the usefulness of history. An original understanding of a policy which is very specific is likely to be decreasingly pertinent to interpretive meaning. A specific policy and its original understanding

may often speak to problems that are no longer even relevant. Therefore, a particular history associated with a policy becomes less helpful.

Pointing out the limitations of text, structure and history does not mean that they do not matter. In fact, they matter a great deal. Faithfulness to the text, structure and history disciplines analysis, but discipline is not an intellectual prison. As we all know, reasoning does not have an algorithm and law is not engineering.

In this instance, the text is unambiguous, the structure is coherent and the history is consistent. While the Board acknowledges the need to look beyond the text in some circumstances, in this case, it is simply unnecessary.

As indicated earlier [p.11], counsel made submissions on the clause "security of the person" in Section 7 of the Charter of Rights and Freedoms.

To adapt John Rawls, "security of the person" is a concept of which there are many conceptions. One conception is the sense of security a person comes to associate with the ownership and enjoyment of property with a well-defined experience of place.

Experience of place, as detailed by both planners, [in differing terms], is a bundle comprising three discrete elements. First is the physical environment, i.e., the reality of landscape, buildings, climate and aesthetic quality. Second is the interaction of people with their physical environment, i.e., how the buildings and landscape are used and how the culture of the residents has affected them. Third is the symbolic meaning derived by people when they react to the physical environment and its functions, i.e., how the interaction reflects their intentions and experiences or what the place means to people who experience it.

Experience of place is often the result of both market forces and land use planning. To simplify a great deal, market forces primarily reflect private property rights while planning primarily reflects common and collective property rights. The result is a fluid equilibrium where the three types of property rights are held in a dynamic tension.

The idea that property rights are the creation of the legal system has a long legacy. In the much discussed Principles of the Civic Code, Jeremy Bentham wrote, "Property and law are born together and die together. Before the laws there was no property; take away the laws, all property ceases." A century later, Justice Oliver Wendell Holmes, concurring in International News Service v. Associated Press, [248 U.S. 215, 246 (1918)], wrote, "Property, a creation of law, does not arise from value, although exchangeable -[is] a matter of fact." Bentham and Holmes are simply stating what is commonly accepted today: that property and value are products of the legal system and not merely the outcome of private transactions. Land use planning is an integral part of the legal system that defines property rights.

The intent of an Official Plan and its companion zoning by-law is to ensure orderly physical development so that the quality of the physical environment [both built and natural] is maintained and enhanced. The quality of the physical environment is secured through a variety and number of development standards.

As both the planners stated, the standards in an area, in due course, establish the character of built form. The built form, together with landscape, climate and aesthetic quality, constitute the physical environment of the area.

Interaction with and the symbolic meaning derived from this physical environment, over time, creates the experience of place associated with an area. Residents of an area become comfortable with this experience of place and enjoy a sense of security that accompanies this comforting experience.

What is being suggested here is that a comfortable experience of place leads to the security of the person in the same manner as a comfortable standard of living leads to the security of the person. For human beings driven by the territorial imperative, experience of place is no different in principle from adequate income, health and education, however modest any one of these may be.

Therefore, it is trite law to suggest that experience of place secured through land use planning is not property. The experience of place defines both private and common property rights in an area. In fact, the security of the person obtained through a comfortable and comforting experience of place can be seen as guaranteed by the constitution.

It is possible that some may suggest that depriving a particular property owner of her or his rights to develop the property as s/he chooses fit, denies the sense of security that s/he would like to obtain. This is a perfectly legitimate position to take as long as the developmental rights exercised by one do not adversely affect others. It is in recognition of this principle, picturesquely evoked by the much celebrated remark, "Madam, your freedom ends where my nose begins," that planning sets some constraints on developmental rights in the hope of preventing the unfolding of the Hobbesian world of "war of all, against all."

Land use planning is nothing more than an attempt to give the same status to common and collective property rights as to private property rights. The primary purpose of land use planning is not to diminish private property rights for any one person, but to enhance these rights for all. Like all paradoxes, in attempting to enhance these rights, planning confines them in some ways - for all.

As we all know, in all liberal democratic societies, people voluntarily agree to confine their private property rights in some specified ways in order to maximize them in other ways. People have an intuitive understanding that such voluntary confinement of private property rights assures stability of competition (so persuasively argued by Harold Hotelling in 1929) and sense of security for all.

Willingness to accept development standards set out in an Official Plan and zoning by-law is, in fact, a desire to maximize the enjoyment of experience of place in a given area. When the standards are seriously violated even for one, it diminishes the experience of place and, therefore, property rights for all. Official plans, zoning by-laws, site plan agreements, subdivision agreements, building codes and the like are nothing more than efforts at giving common property rights some status with individual private property rights.

The extent to which these planning efforts are resisted is an index of innate human nature to enhance one's own rights. There is nothing inherently wrong with this so long as it is not at the expense of others. When a rough equality among the three types of property rights exists, the larger public interest is served and the security of all the persons in an area is assured. The right to security for one person to the detriment of others is not intended in the constitution when the text, the structure and the history of the evolution of the right is analyzed. It is a classic case of the needs of the many having priority over the wants of a few.

To the extent that planning results in maintaining and enhancing the security of the persons in an area, then planning has to be seen as deriving its legitimacy directly from the constitution regardless of the existence of any other planning instruments, whether statute, regulation or plan. In fact, planning becomes a social obligation to ensure the individual right to security of the person.

In this instance, all the necessary planning instruments are in place, viz., the Planning Act, the Food Land Guidelines, the Official Plan and the Zoning By-law.

Therefore, denying the right to have non-farm residential lots for all in a linear pattern or strip pattern enhances the experience of place for all and, therefore, cannot be seen as denying any fundamental private property rights, or for that matter, any of the freedoms.

For all of the above reasons, the Board does not approve the proposed Official Plan amendment, dismisses the zoning by-law appeal and does not grant the consents. The Board so orders.

N.M. KATARY, Member

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SCHEDULE C – *Byerley, Re*, 1994 CarswellOnt 5225

1994 CarswellOnt 5225
Ontario Municipal Board

Byerley, Re

1994 CarswellOnt 5225

In the Matter of Section 17(11) of the Planning Act, R.S.O. 1990, c. P. 13

In the Matter of a referral to this Board by the Honourable Minister of Municipal Affairs, on requests by Donald Byerley and Pauline Byerley and Alfred and Shirley Wilkie for consideration of Proposed Amendment No. 109 to the Official Plan for the Regional Municipality of Sudbury

In the Matter of Section 34(19) of the Planning Act, R.S.O. 1990, c.P. 13

In the Matter of appeals by Patrick McGregor, Donald Byerley, Pauline Byerley and others against Zoning By-law 92-82 of the Regional Municipality of Sudbury

Katary Member

Judgment: May 24, 1994
Docket: O 920122, R 920210

Counsel: P.J. Cull, for 881611 Ontario Ltd.
M. James, for Regional Municipality of Sudbury
J. Longstreet, for Appellants

Subject: Public; Municipal

Decision of the Board:

1 881611 Ontario Limited owns a vacant lot at the northwest corner of the intersection of Regional Road 80 and Dominion Drive in the Town of Valley East. It wants to build a mixed use building with a local commercial component of approximately 210.13 sq.m. [2,260 sq.ft.] on the first floor and 178.54 sq.m. [1,916 sq.ft.] of residential component containing two dwelling units on the second floor.

2 In order to proceed with the development, the applicant went to the Regional Municipality of Sudbury and secured a site specific Official Plan Amendment No. 109 and a companion Zoning By-law Amendment 92-82. The Official Plan Amendment has been referred to the Board and the Zoning By-law Amendment has been appealed. The Board is dealing with both matters simultaneously.

3 The subject lot is currently designated Residential-Low Density and zoned R1-18 which permits single detached dwellings. All local commercial uses require rezoning.

4 Mr. Donald McCullough, a planning consultant, and Mr. David R. Kivi, a traffic analyst with the Regional Municipality of Sudbury, gave evidence in support of the application.

5 The following people gave evidence in opposition to the application: Mr. James K. Griffin, a resident of the municipality [and a Regional Councillor]; Mr. Marty Kivistik, the Director of Development with the Regional Municipality of Sudbury, under summons; Mr. Ronald A. Hurst, the Commissioner of Public Works with the Town of Valley East; Mrs. Pauline Byerley, the appellant who has a local convenience store abutting the subject lot to the north; Mr. Gerald Blais who operates a home occupation hairstyling business abutting the subject lot to the west; Mr. Alfred Wilkie, the appellant who lives on the south side

of Dominion Drive, six doors to the west of the intersection; Miss Eleanor Hummel, a resident who lives sort of kitty corner northeast of the subject lot; Mrs. Marie Dutrisac, a resident who lives across from the subject property on Regional Road 80, and Ms Joyce Lind, a resident of the municipality.

6 In light of the fact that there is an official plan amendment, the principal issue is the appropriateness of the proposed use. Appropriateness, as the Board stated at the hearing, is a function of two factors in this case: compatibility with existing development and general conformity with the text, structure and history of the Official Plan. As the counsel for the applicant stated in his argument: does extension of C1 zone from the existing Byerley property [confectionary store] south to Dominion Drive constitute good planning?

7 The evidence by both planners indicates the following with respect to the character of existing development. The intersection where the subject lot is located is formed by a north-south Primary Arterial, namely, Regional Road 80, and an east-west Collector Road, namely, Dominion Drive. Three of the four corners created by the intersection contain single detached dwelling units. The map showing existing land uses [Ex.6], indicates that other than the Pinecrest Public School, one block to the west of the subject lot, a daycare centre, approximately two blocks to the east of the subject lot, the RJR confectionary abutting the subject lot to the north and a home occupation dwelling abutting the subject lot to the west, all other uses in the relevant neighbourhood are of the single unit detached dwelling type. The photographs [Ex.8] show that the dwellings are one or one and a half storeys in height and according to the planner retained by the Region, the houses are approximately 15 to 25 years old. In the words of the planner for the applicant, "the area is predominantly a single family bungalow type of neighbourhood."

8 The proposal, as outlined by the planning consultant retained by the Region, consists of a two storey building which is approximately 4,183.75 sq.ft. [388.67 sq.m.] in size located on a lot with a frontage of approximately 96.5 ft. on Dominion Drive and approximately 133.69 ft. of frontage on Regional Road 80. As mentioned earlier, the first floor is for retail commercial use and the second floor is for residential use. The retail uses will consist of a convenience store and a dry cleaning depot. The building is to be located approximately 7 ft. 10 ins. from the western boundary of the lot with the building fronting on Regional Road 80. The building is to be approximately 79 ft. in length and 31 ft. wide at its widest part with the long side of the building being parallel to Regional Road 80. The access to the proposed building is to be via Dominion Drive and the site plan [Ex.4] provides for 9 parking stalls facing Regional Road 80, two of which are reserved for the two dwelling units.

9 Mr. Blais, who lives immediately to the west of the subject lot and operates a hairstyling business from his home, was very concerned about the impact of the proposed building upon his property. He stated that he was particularly worried about the whining noise of the air conditioners, compressors, heating units and exhaust fans that would be part of the proposed commercial building. He stated:

> I have been a building operator and maintenance mechanic with the Taxation Data Centre for two years and a stationary engineer for five years. The noise of the mechanical equipment is something that I know well. The six foot fence 19 feet from my house will do nothing to reduce noise. The building is what, 80 feet long, and I will be looking at a blank wall from my windows and back yard. The garbage bin means paper will be flying all over my backyard and the noise of the truck emptying the bin, as you know, is not small.
>
> If you approve this [proposal], there will be more people coming in and out of the parking lot increasing the noise in the area. I can put up with car noises but not the whining noise of machinery. I want you to know that you are approving a mall and there will be others at the intersection. Why do we need this mall? RJR serves all our needs. Look at the support they have today.

10 Mr. Alfred Wilkie, one of the appellants who lives six doors to the west of the intersection, was concerned about the impact of the proposal upon the existing traffic situation. He stated, "If Mrs. Byerley's store is attracting 100 to 125 cars now, is it not reasonable to assume that the proposal will attract three times that traffic? Why else would they put the mall there if they did not expect high traffic?" He was also concerned about the potential of increased noise and garbage created by the proposed uses. Under cross-examination by the counsel for the Region, he did admit that he lived 300-400 feet away from the entrance to the proposed development.

11 Mrs. Hummel, who lives sort of kitty corner northeast of the subject lot, was very concerned about the traffic safety on the Regional Road and at the intersection. She narrated the details of an accident in November 1992, when she was rear-ended while she was turning right to enter her driveway and spent a week in the hospital. She stated that she had called the 911 emergency number at least 12 times because of accidents on the Regional Road. She contended that the proposal would aggravate the traffic problems in the neighbourhood.

12 Mrs. Dutrisac, who lives across the subject lot on the Regional Road, described at length how a transport truck [coming from Val Caron], rounding the bend at the intersection, rammed right through her home five years ago. She detailed the existing noise caused by the traffic at the intersection when the trucks stop with their radios blaring or when the trucks speed up to avoid stopping at the stop light, and when the trucks stop with the hiss created by the hydraulic brakes. It was her view that the proposal would add a significant amount of traffic onto the Regional Road at the intersection and exacerbate the current traffic and noise problems.

13 Mrs. Byerley, one of the appellants, described the nature of her convenience store operation which is run by her family. She stated that her family lives in the back of the store and the store is open generally from 6:00 a.m. to 10:30 p.m. She stated that approximately 100 adults and 350 children visit the store every day. She added that on average "half of the adults who come in, come in for coffee, pick up and leave. That is the advantage of having access to [Regional Road] 80." It was her opinion that if she was attracting that amount of traffic, the proposed commercial uses would attract considerably more traffic and cause traffic accidents, although she did not present any empirical evidence to support her statement. She stated that she had seen, on many occasions, school buses backed up on Dominion Drive west of the intersection waiting to make a turn onto Regional Road 80.

14 The Commissioner of Public Works with the Town stated that there has been no traffic study for the intersection to indicate the current level of service and the potential impact of the proposal. He did state, however, that from his experience he found the entrance to the proposed commercial use to be too close to the major intersection so as to cause a potential hazard or lead to a traffic back up on Dominion Drive west of the intersection. His principal concern was that if this proposal were to be approved, it would set a "precedent" for other such commercial developments in the other three corners at the intersection. He maintained that the Town Council had acted consistently in the past to limit strip developments throughout the municipality. He added, "at the southeast corner there was an application for a gas bar. The applicant decided not to proceed. I just do not want to see this [development] having a domino effect."

15 The Traffic Analyst with the Region who is a qualified civil engineering technologist confirmed that there was no traffic impact study done for this proposal. He stated, however, that of the four directions from which the traffic converged on to the intersection, the lowest amount of traffic came from the westerly direction from Dominion Drive, on which the entrance to the proposal is located. He stated that the number of reported accidents at the intersection were 7, 10 and 11 for the years 1989, '90 and '91 respectively.

16 In the absence of empirical evidence on the impact of the proposal on existing traffic conditions, the Board has to rely on the best evidence available, namely, the anecdotal evidence given by several residents in the area who are likely to be most knowledgeable in the matter. Also, absence of empirical evidence does not mean evidence of absence of impact caused by the proposal. In such circumstances, the Board can only do the prudent thing by not being a party to further exacerbating an existing situation because no matter how little the impact may be, it is bound be more than what exists now.

17 Compatibility turns on the impact of the proposal on the character of the built environment with due regard for how that character is likely to evolve in the foreseeable future. Compatible means being mutually tolerant and capable of coexisting together in harmony in the same area. In the final analysis, the proposal should not cause an unacceptable adverse impact on existing development [built environment].

18 Based upon an analysis of the pertinent evidence, the Board finds that the proposal causes an unacceptable adverse impact upon the existing development and is, therefore, incompatible with the existing built form.

19 In considering an amendment to a particular section of an official plan, recourse to the applicable section/s of the plan in combination with the structure of the entire plan and the history of the manner in which the plan has been implemented can be of assistance in determining the appropriateness of the proposed amendment.

20 Planners for both parties spent a considerable amount of time interpreting the applicable sections of the Official Plan dealing with local commercial uses, viz., Sections 3.16 and 3.17, to demonstrate how the proposal does or does not meet the intent and purpose of the text.

21 The two planners, both very experienced and highly qualified, were urging upon the Board to make a finding based upon a section of the Plan which is proposed to be amended. It is not clear to the Board why if a section is to be amended, that very same section is used to determine the appropriateness of use. Both of them were essentially suggesting circular reasoning in support of their respective positions. The Board cannot oblige.

22 The counsel for the applicant summed it up best in his argument when he stated, "the proposal obviously does not meet the intent of Section 3.17 c. with respect to not being along a Primary Arterial road. That is why we have an Official Plan Amendment here."

23 When a particular section is proposed to be amended, it is helpful to look at the structure of the entire Plan to determine the appropriateness of the amendment. If a particular amendment has the potential of undermining the intent and purpose of the whole Plan then such an amendment has to be set aside. The evidence by both planners in this regard is very helpful.

24 Sections 2.3 and 2.4 j. give guidance on the matter of structure of the entire Plan and they are reproduced below for convenience:

> 2.3 "The Plan attempts to overcome the problems created by the sprawling, unconsolidated form of urban-type development."
>
> 2.4j "Create consolidated commercial areas which would be both pedestrian and automobile oriented and to avoid strip commercial development along arterial roads."

25 The Director of Development with the Region, under summons by the objectors, stated that the Plan attempts to concentrate commercial development into three settlement areas, namely, Val Caron, Val Therese and Hanmer in order to contain the sprawl which appears to be the dominant characteristic of urban development in the municipality. Commercial expansion which is contiguous and connected with these areas was provided for in the Plan. With the exception of Town Centre Commercial, he said that all other additional commercial designations were rejected with the clear intent to prevent strip commercial development.

26 Mr. Kivistic also contended that the intent of Section 3.17 c. which says in part "...Locations along Primary and Secondary Arterial roads will not be permitted nor will ones which are less than half a kilometre away from nearest commercial development," was to prevent the evolution of local commercial uses into widely based strip commercial activities which over time would prevent the focusing of commercial uses in the three settlement areas intended by the Plan. Under some meticulous cross-examination by the counsel for the Region he stated, "local commercial is kept off the arterial roads to prevent them from evolving into general commercial through subsequent official plan and zoning by-law amendments." He was especially concerned about the proposal becoming a "precedent" for other similar commercial developments, not only at the intersection, but also throughout the municipality.

27 The planning consultant retained by the Region who appeared in support of the application, on the other hand, maintained that the proposal represented good planning because it extended the existing local commercial use southwards with access from a busy collector road at the intersection with a Primary Arterial thus providing good access to clientele. He contended that the proposal was compatible with existing development because there was existing local commercial to the north although under cross-examination he did admit that the existing use appeared "more like a dwelling."

28 Mr. McCullough also maintained that he did not see any further commercialization at the intersection caused by the proposal because the proposal represented commercial development only at one of the four corners. He maintained that the site was less desirable for a single detached dwelling because of its location at the intersection of a busy Primary Arterial and a collector road which may cause safety problems for children. It is not clear to the Board, however, why other property owners at the other three corners could not use his reasoning of undesirable location for a dwelling and seek to secure local commercial designation for their properties.

29 The objector, Mr Griffin, was very concerned about the potential of this proposal to create a precedent for similar commercial developments in the other three corners of the intersection. His other major related concern was the prospect of seeing a number of commercial uses on primary and secondary arterial roads that would create a situation similar to "the Kingsway in the city of Sudbury." He stated that he was not aware of "any spot zoning in a residential area for local commercial on a primary arterial anywhere in Valley East."

30 Several other witnesses were also concerned about the proposal setting a "precedent" for other such developments at the intersection and elsewhere on Primary and Secondary Arterial Roads. Although every application must be considered on its merits, to recount the much cited principle, the Board would be remiss in its duty not to recognize the setting in motion of a developmental momentum, which may countenance such applications at the intersection, by approving this proposal. The now dormant proposal for a gas bar at the southeast corner gives pause to the Board in this matter.

31 Based upon an analysis of the pertinent evidence the Board finds that the proposal would be contrary to the structure of the entire Plan as clearly set forth in the objective in Section 2.4 j.

32 In so far as the history of how the municipality has acted to uphold its policy with respect to local commercial uses, the evidence by Mr. Kivistik [the planner under summons for the objectors], Mr. Griffin and Ms Lind [both very familiar with the planning process in the municipality] is very helpful.

33 Mr. Kivistic, the Director of Development with the Regional Municipality of Sudbury, outlined the process by which the Secondary Plan for the municipality was first adopted in 1980. He then went on to state that the purpose of the Official Plan Amendment No. 119 [Ex.14] was to make general text amendments to policies regarding low and medium density residential and commercial development in the municipality. He stated that the Amendment 119 was in effect at this time having secured Ministerial approval. He also stated that the Amendment 119 did not deal with policies in the parent Plan concerning local commercial, namely, Sections 3.16 and 3.17. He maintained that since the Town Council did not request him to recommend amendments to these sections of the Plan, he assumed that the Council had no problems with them.

34 Mr. Griffin outlined at some length his involvement in the planning process in the Town and the Region including the preparation and adoption of the Secondary Plan in 1980 and the recent Official Plan Amendment No. 119 which updates some sections of the 1980 Plan. He described the existing commercial structure in the municipality by pointing out the shopping plazas in the settlements of Val Caron, Val Therese and Hanmer. His principal concern was that the proposal "would go against everything the Town Council has done in the past twelve years to prevent strip development."

35 Ms Lind, a resident of the municipality and a former member of the Town Council, outlined in great detail the planning process that led up to the present Secondary Plan for the municipality and the efforts made by her and others to preserve and promote the objectives and policies of the Plan. She categorically stated:

> I adopt the position of Mr. Griffin with respect to the planning process and how this proposal would be contrary to the intent and purpose of the plan. I also adopt the position of all the residents who have spoken here against the proposal and their reasons. I fully agree with the position taken by Mr. Kivistic, the Director of Development with the Region, that the intent of the Plan is not to allow local commercial use on Primary or Secondary Arterial roads. I am also worried like Mr. Hurst, the Commissioner of Public Works with the municipality, that if the proponents of this development succeed in buying out Mrs. Byerley's existing confectionery as they tried to do twice already, then this development will have direct access to the

Primary Arterial, namely, Regional Road 80. I do not want to repeat what others have said and take up more time because it is already late. All I want to say is that this proposal is contrary to good planning principles and I hope you turn this down.

36 Based upon an analysis of the pertinent evidence, the Board finds that the municipality has acted consistently to prevent the location of local commercial uses on Primary and Secondary Arterial Roads. The Board sees no compelling reason in this instance to make an exception, notwithstanding the fact that the Council appears to have made the first exception, after three trials, in this instance.

37 During argument, the counsel for the Regional Municipality of Sudbury, citing the decision by Mr. Justice Saunders re. *Bele Himmel Investments Ltd. v. City of Mississauga et al.*, submitted that the Board in this instance "should give to the Official Plan a broad liberal interpretation with a view to furthering its policy objectives," and approve the proposed amendment. The planning consultant retained by the Region also stated, "my personal philosophy is to be as broad as possible when interpreting the official plan. The Official Plan is a general policy document and I recommend to you to take a more liberal and broader point of view than the one urged upon you by Mr. Kivistik."

38 This panel of the Board, having studied the decision by the Ontario Court of Justice, General Division, in its entirety, takes direction from the Court. In doing so, the Board would like to make the following observations applicable in this particular instance.

39 Adherence to the text of a policy is an important way of disciplining members of a tribunal and of preventing the arbitrary exercise of quasi-judicial authority. The text, read in light of semantic principles and substantive principles on which there is general agreement, will limit discretionary interpretation.

40 When the text fails to provide complete guidance and when the meaning depends not upon semantics or generally accepted principles, but upon principles that demand a substantive defence, then the structure of the text as a whole can be of assistance. Applicable sections of an Official Plan text must not be read in isolation but in light of one another. Interpretations that make sense out of the whole document lead to consistency, coherence and rationality.

41 When structural analysis leads to competing inferences or no inferences at all, then history can be of some assistance. Where the document is unclear, historical understanding of the meaning of the text must be given due weight. Respect for history is a means of demonstrating deference to planning processes involving a number of people in the community.

42 Passage of time, however, can limit the usefulness of history. An original understanding of a policy which is very specific is likely over time to be decreasingly pertinent to interpretive meaning. A specific policy and its original understanding may often speak to problems that are no longer even relevant. Therefore, a particular history associated with a policy can become less helpful.

43 Pointing out the limitations of text, structure and history does not mean that they do not matter. In fact, they matter a great deal. Faithfulness to the text, structure and history disciplines analysis, but discipline is not an intellectual prison. As we all know, reasoning does not have an algorithm and law is not engineering.

44 In this instance, the text is unambiguous, the structure is coherent and the history is consistent. While the Board acknowledges the need to look beyond the text in some circumstances and give a broad liberal interpretation, in this case, it is simply unnecessary.

45 For all of the above reasons, the Board does not approve the proposed Official Plan Amendment and allows the appeal with respect to Zoning By-law 92-82 and repeals same. The Board so orders.

End of Document

SCHEDULE D – *Armstrong v. Archipelago (Township)*, 1995 CarswellOnt 6630

1995 CarswellOnt 6630
Ontario Municipal Board

Armstrong v. Archipelago (Township)

1995 CarswellOnt 6630

Robert Armstrong has appealed to the Ontario Municipal Board under subsection 34(11) of the Planning Act, R.S.O. 1990, C. P. 13, from Council's refusal to enact a proposed amendment to Zoning By-law A 100-83, as amended, of the Township of the Archipelago to rezone the parcel of lands comprised of Island B 582 from Natural State (NS) to Residential (R1) to allow a proposed summer cottage

A. DELFINO, MEMBER

Judgment: June 23, 1995
Docket: Z930042

Counsel: R. C. J. Tzekas, for the Township of the Archipelago

Subject: Public; Municipal

A. DELFINO **:**

MEMORANDUM OF ORAL DECISION AND ORDER OF THE BOARD

Robert Armstrong has three children. He would like to provide each with their own seasonal residence. Island B582 in the Township of the Archipelago would complete his wish, should the Board allow his appeal from Council refusal to enact a proposed amendment to By-law A100-83 to rezone the island from Natural State (NS) to Residential (R1) to allow a proposed summer cottage.

At the hearing the appellant was represented by Dr. House and no expert evidence was provided in support of the amendment. The Township of the Archipelago was represented by counsel and the Board heard the testimony of a planner, an environmental officer with the Ministry of the Environment and Energy and an officer whose responsibility is to look at part 8 of the *Environmental Protection Act* and approve permits for septic systems.

The island is about 100 feet wide and 300 feet long with an approximate area of 0.8 acres. At the south end it rises quickly from the water's edge to a plateau area and is heavily covered with a forest of coniferous trees. The intention is to build a cottage near the south end of the plateau which is considered to be the most private location and the most suitable area for some form of sanitary system.

The evidence from the planner dealt with the Official Plan and the rationale for setting minimum standards before development is allowed. The Official Plan, under Section 14.32, requires that single islands in private ownership "will qualify for building permits if the area of the island is at least 0.4 hectares." In this instance the island is about 0.32 hectares and does not qualify. The same minimum standard is carried in the zoning by-law under Section 2.2.4. The planner indicated that while the minimum area requirement may appear to be arbitrary, there are many islands in the Township on which requests for development could be advanced. About twenty of them have an approximate area similar to the subject island and others with lower areas in varying degrees. Without some standards, it would be difficult to determine which is worthy of development given that even the impact from development at a minimum level could affect the character of the area and the quality of the water body.

The testimony of the two experts dealing with the septic system is that the island would not be able to maintain a class four septic system. The Ministry prefers such a system and to date there has been a resistance to approve other systems that may require smaller tile bed areas unless they have been fully tested and have been proven to work.

Dr. House argued that the owner should be entitled to do something with the island since he pays taxes and has held ownership for many years. In his opinion, the Board should treat the rezoning application as a minor variance request. The deficiency in the area, the fact that the impact, both with respect to view and water quality is minimum, in his submission, leads him to conclude that the circumstances are more akin to the requirements for a variance application. Moreover, he views the Official Plan as a document which states broad principles that should be interpreted liberally and not with the rigidity shown by the Township and the planner.

The Board has considered all of the evidence and finds the Township's approach in setting minimum development standards for islands to be sound. Before establishing standards the Township has undertaken an extensive consultative process which has allowed residents the opportunity to provide input at different stages. In fact, those islands that had buildings at the time of the Official Plan approval and did not meet the standards were grandfathered. The Board prefers the testimony of the planner and finds that the requested zoning by-law amendment does not meet the objectives of the Official Plan and fails the test of conformity. While the setting of minimum standards may appear to be subjective to Dr. House, in this instance they have not been set in a vacuum. In general terms the Board may agree with his overall submission that Official Plans generally delineate broad principles that should be interpreted in a liberal fashion. The situation differs when specific standards are contained within the body of the Plan. In this case they are being reinforced by the development standards in the zoning by-law in the form of minimum standards. Additional erosion of the minimum requirements without proper planning merits, would undermine the integrity of the Plan and of the implementing zoning by-law.

The fact that two experts have indicated that a conventional class four septic system could not be accommodated by the surface available on the island to meet the required standards, including setbacks, reinforces the conclusion that the request for the zoning bylaw amendment is not appropriate. Dr. House argued that conditions could be imposed to allow the possibility to look for a more modern system that would be acceptable to the Ministry of the Environment and Energy. To grant such a request would only prolong the issue that has now been ongoing for a number of years.

The Board, therefore, having considered all of the evidence dismisses the appeal for an order to amend By-law A100-83.

The Board do orders.

End of Document

SCHEDULE E – Conditions for Draft Approval

CONDITIONS FOR DRAFT APPROVAL

ClubLink Corporation ULC
7000 Campeau Drive

DRAFT APPROVED DD/MM/YYYY

INDEX

The City of Ottawa's conditions applying to the draft approval of ClubLink Corporation ULC's Subdivision (File No. D07-16-19-0026), 7000 Campeau Drive, are as follows:

1.	This approval applies to the draft plan certified by Francis Lau of Stantec Geomatics Ltd., Ontario Land Surveyor, dated April 1, 2021, showing 632 Residential Lots, 2 medium density blocks, 1 stacked townhouse block, 20 streets, 76 blocks, 3 pathway blocks, 4 park blocks, 4 stormwater management blocks, 11 open space blocks and 1 road widening block. In seeking draft approval the Owner has submitted the following reports. Prior to the issuance of the order by the Ontario Land Tribunal granting draft approval the Owner shall update each of these reports, as necessary, and provide consolidated copies of such updates in accordance with the witness statements provided by the Owner and accommodating any modifications made by the decision of the Ontario Land Tribunal. 1) Transportation Impact Assessment, 7000 Campeau Drive, prepared by BA Group, dated June 2021. 2) Roadway Traffic Noise Feasibility Assessment, 7000 Campeau Drive, prepared by Gradient Wind, dated April 29, 2021. 3) Combined Environmental Impact Statement and Tree Conservation Report (Revised) –Kanata Golf and Country Club Redevelopment, 7000 Campeau Drive, Ottawa" by McKinley Environmental Solutions, dated May 2020. 4) Combined Environmental Impact Statement and Tree Conservation Report (Revised) – Addendum #1 Kanata Golf and Country Club Redevelopment, 7000 Campeau Drive, Ottawa" by McKinley Environmental Solutions, dated May 28, 2021. 5) Phase I – Environmental Site Assessment, 7000 Campeau Drive, prepared by Patterson Group Inc., dated January 18, 2021. 6) Phase II – Environmental Site Assessment, 7000 Campeau Drive, prepared by Patterson Group Inc., dated April 1, 2021. 7) Functional Servicing Report for 7000 Campeau Drive, prepared by DSEL, dated June 2021. 8) Kizell Drain Downstream of 7000 Campeau Drive Geomorphological and Erosion Threshold Assessment, prepared by GEO Morphix, dated May 18, 2021. 9) Geotechnical Investigation Kanata Lakes Golf and Country Club 7000 Campeau Drive, prepared by Patterson Group Inc., dated May 17, 2021. 10) Downstream of 7000 Campeau Drive – Hydrologic Assessment, prepared by J.F. Sabourin and Associates Inc., dated June 15, 2021.	

	11) Kanata Golf & Country Club 2019 Monitoring & Hydrologic Model Calibration Report, prepared by J.F. Sabourin and Associates Inc., dated July 2020. 12) Preliminary Water Balance & Water Quality Controls, prepared by J.F. Sabourin and Associates Inc., dated April 16, 2021. 13) Preliminary Stormwater Management Plan Report, prepared by J.F. Sabourin and Associates Inc., dated June 15, 2021. 14) 2018 Surface Infiltration Testing, prepared by J.F. Sabourin and Associates Inc., dated February 6, 2019. 15) Sump Pump Feasibility Report, Groundwater Monitoring Program, prepared by Patterson Group Inc., dated September 29, 2020. 16) Subsoil Infiltration Review, prepared by Patterson Group Inc., dated April 27, 2021. 17) Witness Statement of Stephen J. Pichette, dated November 12, 2021. 18) Reply Witness Statement of Stephen J. Pichette, dated December 10, 2021. 19) Witness Statement of J.F. Sabourin, dated November 12, 2021. 20) Reply Witness Statement of J.F. Sabourin, dated December 10, 2021. Subject to the conditions below, these plans and reports may require updating and/or additional details prior to final approval.	
2.	The Owner agrees, by entering into a Subdivision Agreement, to satisfy all terms, conditions and obligations, financial and otherwise, of the City of Ottawa, at the Owner's sole expense, all to the satisfaction of the City.	**Clearing Agency**[i]
	General	
3.	Prior to the issuance of a Commence Work Notification, the Owner shall obtain such permits as may be required from Municipal or Provincial authorities and shall file copies thereof with the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA** **Planning**
4.	Prior to commencing construction, the Owner shall enter into a subdivision agreement with the City. The subdivision agreement shall, among other matters, require that the Owner post securities in a format approved by the City Solicitor, in an amount of 100% of the estimated cost of all works, save and except non-municipal buildings.	**OTTAWA Planning**

	The aforementioned security for site works shall be for works on both private and public property and shall include, but not be limited to, lot grading and drainage, landscaping and driveways, roads and road works, road drainage, underground infrastructure and services (storm, sanitary, watermains), streetlights, stormwater management works and park works. The amount secured by the City shall be determined by the General Manager, Planning, Real Estate and Economic Development Department, based on current City tender costs, which costs shall be reviewed and adjusted annually. Securities for on-site works may be at a reduced rate subject to the approval of the General Manager, Planning, Real Estate and Economic Development Department. Engineering, Inspection and Review fees will be collected based on the estimated cost of the works (+HST) and a park review and inspection fee will be based on 4% (+HST) of the total value of the park works as noted herein and in accordance with the City's Fees By-law for planning applications (By-law No. 2018-24 or as amended).	
5.	The Owner acknowledges and agrees that any residential blocks for street-oriented townhouse dwelling units on the final Plan shall be configured to ensure that there will be no more than 25 units per block.	**OTTAWA Planning**
6.	The Owner acknowledges and agrees that any person who, prior to the draft plan approval, entered into a purchase and sale agreement with respect to lots or blocks created by this Subdivision, shall be permitted to withdraw from such agreement without penalty and with full refund of any deposit paid, up until the acknowledgement noted above has been executed. The Owner agrees to provide to the General Manager, Planning, Real Estate and Economic Development Department an acknowledgement from those purchasers who signed a purchase and sale agreement before this Subdivision was draft approved, that the Subdivision had not received draft approval by the City. The Owner agrees that the purchase and sale agreements signed prior to draft approval shall be amended to contain a clause to notify purchasers of this fact, and to include any special warning clauses, such as but not limited to Noise Warnings and easements.	**OTTAWA Legal**

7.	All prospective purchasers shall be informed through a clause in the agreements of purchase and sale of the presence of lightweight fill on the lands, and that the presence of such lightweight fill may result in specific restrictions on landscaping, pools, additions, decks and fencing	**OTTAWA Legal**
8.	The Owner, or his agents, shall not commence or permit the commencement of any site related works until such time as a pre-construction meeting has been held with Planning, Real Estate and Economic Development Department staff and until the City issues a Commence Work Notification.	**OTTAWA Planning**
9.	Prior to the Ontario Land Tribunal order and granting approval of the draft plan being issued, the Owner agrees to provide the City an updated version of the draft plan.	**OTTAWA Planning**
10.	The Owner agrees to submit a signed and dated draft plan to the City for submission to the Ontario Land Tribunal.	**OTTAWA Planning**
	Zoning	
11.	The Owner agrees that prior to registration of the Plan of Subdivision, the Owner shall ensure that the proposed Plan of Subdivision shall conform with a Zoning By-law approved under the requirements of the *Planning Act*, with all possibility of appeal to the Ontario Land Tribunal exhausted.	**OTTAWA Planning**
12.	The Owner undertakes and agrees that prior to the registration of the Plan of Subdivision, the Owner shall deliver to the City a certificate executed by an Ontario Land Surveyor showing that the area and frontage of all lots and blocks within the Subdivision are in accordance with the applicable Zoning By-law.	**OTTAWA Planning**
	Roadway Modifications	
13.	The Owner shall pay all expenses associated with all works related to any roadway modifications identified or recommended in the Transportation Impact Assessment for the subject site, and shall provide financial security in the amount of 100% of the cost of implementing the required works.	**OTTAWA Planning**
14.	The Owner agrees to provide a Development Information Form and Geometric Plan indicating: a) Road Signage and Pavement Marking for the subdivision; b) Intersection control measure at new internal intersections; and c) location of depressed curbs and TWSIs;	**OTTAWA Planning** **Transpo Plg**

	prior to the earlier of registration of the Agreement or early servicing. Such form and plan shall be to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	
15.	Where traffic calming is identified and recommended in the Transportation Impact Assessment for the subject site, the Owner acknowledges and agrees to implement traffic calming measures on roads within the limits of their subdivision to limit vehicular speed and improve pedestrian safety. The Owner further acknowledges and agrees that the detailed design for new roads will include the recommendation(s) from the required supporting transportation studies. The Owner agrees that traffic calming measures shall reference best management practices from the City of Ottawa Local Residential Streets 30km/hr Design Toolbox, the Canadian Guide to Neighbourhood Traffic Calming, published by the Transportation Association of Canada, and/or Ontario Traffic Manual. These measures may include either vertical or horizontal features (such measures shall not interfere with stormwater management and overland flow routing), including but not limited to: • intersection or mid block narrowings, chicanes, medians; • speed humps, speed tables, raised intersections, raised pedestrian crossings; • road surface alterations (for example, use of pavers or other alternate materials, provided these are consistent with the City's Official Plan polices related to Design Priority Areas); • pavement markings/signage; and • temporary/seasonal installations such as flexi posts or removable bollards.	**OTTAWA Planning**
	Highways/Roads	
16.	The Owner acknowledges and agrees that all supporting transportation studies and design of all roads and intersections shall be to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning**
17.	The Owner shall revise the draft plan to provide site triangles at the following locations on the final plan: • Local Road to Local Road: 3m x 3m • Local Road to Collector Road: 3m x 5m • Collector Road to Arterial Road: 5m x 5m	**OTTAWA Planning Legal**

18.	The Owner agrees to provide a construction traffic management plan for the subdivision prior to the earlier of registration of the Agreement or early servicing. Such plan shall be to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning**
19.	The Owner acknowledges that should the plan be registered in phases they are to confirm by way of a phasing plan. Such plan shall be to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning**
20.	All streets shall be named to the satisfaction of the Director of Building Code Services and in accordance with the Municipal Addressing By-law or the Private Roadways By-law as applicable.	**OTTAWA Planning BCS**
21.	The Owner acknowledges that the construction of buildings may be restricted on certain lots and/or blocks until such time as road connections are made so that snow plow turning and garbage collection can be implemented.	**OTTAWA Planning**
	Public Transit	
22.	The Owner shall design and construct, at no cost to the City, passenger standing area and/or shelter pad improvements at existing bus stop locations along the site frontage, and/or new passenger standing areas and/or shelter pads at new or adjusted bus stop locations along the site frontage as determined by Transit Services. Locations and infrastructure requirements will be identified in CUP review.	**OTTAWA Planning Transit**
23.	The Owner shall design and construct all proposed new pathways as indicated in the June 2021 TIA update report, to the required standard to support winter maintenance.	**OTTAWA Transit**
24.	The Owner shall provide pedestrian / pathway connections within Park Block 638 and Open Space Block 640 to any sidewalk terminuses at the north end of Street 7 for continuous pedestrian connectivity to the proposed pathway connection to Knudson Drive near Halldorson Crescent.	**OTTAWA Planning Transit**
25.	The Owner shall inform all prospective purchasers, through a clause in all agreements of Purchase and Sale and indicate on all plans used for marketing purposes, the streets where transit service currently operates, the location of the bus stops, paved passenger standing areas, or shelters pads and shelters, any of which may be located in front of or adjacent to the purchaser's lot at any time.	**OTTAWA Transit**

	Geotechnical	
26.	Where special soils conditions exist, the Owner covenants and agrees that the following clause shall be incorporated into all agreements of purchase and sale for all lots and blocks affected by special soils, and included in the Subdivision Agreement against the title: "The Owner acknowledges that special soils conditions exist on this lot which will require: (a) a geotechnical engineer or geoscientist licensed in the Province of Ontario to approve any proposal or design for a swimming pool installation or other proposal requiring an additional building permit on this lot prior to applying for a pool enclosure permit or installing the pool; and (b) the Owner to submit a copy of the geotechnical engineer's or geoscientist's report to the General Manager, Planning, Real Estate and Economic Development Department at the time of the application for the pool enclosure or additional building permit. The Owner also acknowledges that said engineer or geoscientist will be required to certify that the construction has been completed in accordance with his/her recommendation and that a copy of the certification or report will be submitted to the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA** **Planning**
27.	The Owner shall submit a geotechnical report prepared in accordance with the City's Geotechnical Investigation and Reporting Guidelines and/or Slope Stability Guidelines for Development Applications by a geotechnical engineer or geoscientist, licensed in the Province of Ontario, containing detailed information on applicable geotechnical matters and recommendations to the satisfaction of the General Manager, Planning, Real Estate and Economic Development which include, but are not limited to: a) existing sub-surface soils, groundwater conditions; b) slope stability (including an assessment during seismic loading) and erosion protection, in addition to any building construction requirements adjacent to unstable slope; c) clearly indicate orientation of any cross-sections used in slope stability analysis and location of center of the slip circle; d) grade raise restrictions on the site and, if appropriate, the impacts this will have on the slope stability; e) design and construction of underground services to the building, including differential settlement near any buildings or structures; f) design and construction of roadway, fire routes and parking lots; g) design and construction of retaining walls and/or slope protection;	**OTTAWA** **Planning**

	h) design and construction of engineered fill; i) design and construction of building foundations; j) site dewatering; k) design and construction of swimming pools; l) design and construction of park blocks for its intended uses; and m) in areas of sensitive marine clay soils.	
28.	a) The Owner agrees to any restrictions to landscaping, in particular the type and size of trees and the proximity of these to structures/buildings due to the presence of sensitive marine clay soils, as per the City's Tree Planting in Sensitive Marine Clay Soils – 2017 Guidelines. b) The Owner agrees to provide the following tests, data, and information prior to zoning approval, in order to determine the sensitivity of the clay soils and how it will impact street tree planting and potentially front yard setbacks: i. Shear Vane analysis including remolded values per ASTM D2573. ii. Atterberg Limit testing per ASTM D4318; with the following data clearly identified, Natural water content (W), Plastic Limit (PL), Plasticity Index (PI), Liquidity Index (LI), and Activity (A). iii. Shrinkage Limit testing per ASTM D4943 with Shrinkage Limit (SL). iv. A separate section within the geotechnical report on sensitive marine clay soils, which will include a signed letter and corresponding map that confirms the locations of low, medium sensitivity (generally <40% plasticity) or high sensitivity clay soils (generally >40% plasticity), as determined by the above tests and data. v. The report identifies that foundation walls are to be reinforced at least nominally, with a minimum of two upper and two lower 15M (rebar size) bars in the foundation wall. c) In locations where all six conditions in the Tree Planting in Sensitive Marine Clay Soils – 2017 Guidelines cannot be met (e.g. if soils are generally >40% plasticity) the 2005 Clay Soils Policy will apply, meaning only small, low-water demand trees can be planted at a minimum separation distance of 7.5m from a building foundation, unless otherwise satisfactory to the General Manager, Planning, Real Estate and Economic Development. In these cases, the Zoning By-law will be used to ensure sufficient front yard setbacks to accommodate street trees in the right-of-way. For example, if street trees are planted in the right-of-way at a distance of 2m from the front lot line, then the minimum front yard setback would be 5.5m (7.5m – 2m).	**OTTAWA Planning**
29.	In areas of sensitive marine clay soils, the Owner agrees that, prior to registration, to prepare an information package for homeowners regarding tree planting and watering, in accordance with the supporting geotechnical report. This information must be approved by Forestry Services prior to circulation to homeowners.	**OTTAWA Forestry**
	Pathways, Sidewalks, Walkways, Fencing, and Noise Barriers	
30.	The Owner acknowledges and agrees that all pathways, sidewalks, walkways, fencing, and noise barriers are to be designed and constructed in accordance with City specifications, at no cost to the City, and to the satisfaction of the	

	General Manager, Planning, Real Estate and Economic Development Department.	
31.	The Owner shall construct split-rail fencing adjacent to the side yards of new lots and blocks abutting the pathway connections between the subject open space blocks and the public right of way: • Blocks 635, 636, 637, 641, 642, 646, 649, 650, 718 and 719.	**OTTAWA Planning**
32.	The Owner shall construct 2.0 metre-wide asphalt pathways within open space blocks. Where grading and environmental constraints exists alternative surface options may be considered acceptable and shall be reviewed in accordance with the Park Development Manual, all to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department: • Blocks 635, 636, 637, 641, 642, 646, 649, 650, 718 and 719.	
33.	The Owner agrees to design and construct, in a manner that is accessible under The *Accessibility for Ontarians with Disabilities Act* (AODA) legislation, 2.0-metre-wide asphalt walkways and related works through the length of the public lands in the following locations: • Blocks 731 & 732 • Block 113 on Plan 4M-684	**OTTAWA Planning**
34.	The Owner agrees to design and construct split-rail fences in accordance with the Fence By-law at the following locations: • Blocks 731 & 732 • Block 113 on Plan 4M-684	**OTTAWA Planning**

35.	The Owner agrees to design and construct 1.5 metre black vinyl-coated chain link fences in accordance with the Fence By-law where new lots and blocks have a rear yard abutting the following locations: • Blocks 635, 636, 637, 641, 642, 646, 649, 650, 718 and 719. All chain link fencing that separate public lands and residential lots and blocks shall have a maximum opening (the diamond shape area) of no greater than 37 mm in order to comply with the applicable part of the "Pool Enclosure By-Law". The Owner agrees that any vinyl-coated chain link fence required to be installed with the exception of parks fencing shall be located a minimum of 0.15 metres inside the property line of the private property. The Owner agrees in the subdivision agreement that no fencing will be installed on all passive public property Blocks referenced in Condition 70.	**OTTAWA Planning**
36.	The Owner agrees to design and construct 1.5 metre black vinyl-coated chain link fences in accordance with the Fence By-law in any yards where stormwater management facility pathways (Blocks 634, 639, 640 and 647) are less than 6.0 metres from said yards.	**OTTAWA Planning**
37.	The Owner agrees to design and construct 1.8 metre wood privacy fences in accordance with the Fence By-law at the following locations: • Between Block 648 and Blocks 651, 652 and 653. a) The Owner agrees that any wood privacy fence required to be installed shall be located a minimum of 0.15 metres inside the property line of the blocks listed above.	**OTTAWA Planning**
38.	The Owner agrees to design and construct 1.8 metre wide sidewalks at the following locations, or as otherwise agreed upon:	**OTTAWA Planning**

	• Street No. 1, both sides • Street No. 2, east side • Street No. 3, east side • Street No. 4, south side • Street No. 5, north side • Street No. 6, south side • Street No. 7, both sides between Campeau Drive and Street No. 9, west side only north of Street No. 9 • Street No. 8, west side • Street No. 9, both sides between Street No. 7 and Street No. 11, south side only east of Street No. 11 • Street No. 10, north side • Street No. 11, both sides • Street No. 12, east side • Street No. 13, east side • Street No. 14, east side • Street No. 15, east side • Street No. 16, both sides • Street No. 17, east side • Street No. 18, south side • Street No. 19, south side • Street No. 20, south side • Beaverbrook Road, south side between Street No. 17 and Weslock Way	
39.	The Owner agrees to connect all new pathways, sidewalks, walkways to the existing pathways, sidewalks, walkways located at the following locations: • Street No. 1 at Campeau Drive • Street No. 7 at Campeau Drive • Street No. 11 at Campeau Drive • Street No. 1 at Knudson Drive • Street No. 16 at Knudson Drive • Street No. 16 at Weslock Way	**OTTAWA Planning**

40.	The Owner agrees to design and erect at no cost to the City, noise attenuation barriers in accordance with City specifications at the following locations: • Blocks 651, 703 and 704. The Owner further agrees that any noise attenuation barrier required to be installed under this Agreement, shall be located a minimum of 0.30 metres inside the property line of the private property, and the location of the fence shall be verified by an Ontario Land Surveyor, prior to the release of securities for the noise attenuation barrier.	**OTTAWA Planning**
41.	The Owner agrees that any fencing to be installed is not to encumber any drainage patterns on the final grading plans and not to adversely impact the CRZ (Critical Root Zone) of existing trees on existing adjacent residential lots to the satisfaction of the General Manager of Planning, Real Estate and Economic Development.	**OTTAWA Planning**
42.	The Owner agrees that pathways have to be accessible under The *Accessibility for Ontarians with Disabilities Act* (AODA) legislation. If a pathway cannot meet AODA legislation the block can be relocated where an accessible location can be made, to the satisfaction of the General Manager of Planning, Real Estate and Economic Development.	**OTTAWA Planning**
43.	The Owner shall insert a clause in each agreement of purchase and sale and shall be registered as a notice on title in respect of all lands which fences have been constructed stating that:	**OTTAWA Planning**

	"Purchasers are advised that they must maintain all fences in good repair, including those as constructed by *(developer name)* along the boundary of this land, to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department. The Purchaser agrees to include this clause in any future purchase and sale agreements".	
	Landscaping/Streetscaping	
44.	The Owner agrees, prior to registration or early servicing, whichever is earlier, to have a landscape plan(s) for the plan of subdivision prepared by a Landscape Architect, in accordance with the recommendations contained in the geotechnical report(s) and the combined Environmental Impact Statement and Tree Conservation Report(s) (as amended). The landscape plan(s) shall include detailed planting locations, plant lists which include species, plant form and sizes, details of planting methods, pathway widths and materials, access points, fencing requirements and fencing materials, other landscape features and gateway features where required. The landscape plan(s) shall specifically address the vegetated buffers and afforestation areas recommended in the combined Environmental Impact Statement and Tree Conservation Report as well as the stormwater management pond blocks, parks and street tree plantings. The Owner agrees to implement the approved landscape plan(s) and bear all costs and responsibility for the preparation and implementation of the plan(s). The Owner agrees that where sensitive marine clay soils are present, and the geotechnical report has satisfied the applicable conditions of the Tree Planting in Sensitive Marine Clay Soils - 2017 Guidelines, confirmation of adequate soil volumes in accordance with the subject guidelines shall be provided by a Landscape Architect prior to zoning approval. All of the aforementioned are to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA** **Planning Forestry**

45.	The Owner agrees that for all single detached and semi-detached lots, a minimum of 1 tree per interior lot and 2 trees per exterior side yard lots (i.e. corner lots) shall be provided on the landscape plan(s). In areas of low/medium plasticity sensitive marine clay soils, the following exceptions in accordance with the Tree Planting in Sensitive Marine Clay Soils - 2017 Guidelines will apply in order to maximize the number of medium size trees: a) Where abutting properties form a continuous greenspace between driveways, one medium size tree will be planted instead of two small size trees, provided the minimum soil volume can be achieved. In these cases only, for the purposes of determining the minimum number of trees to be planted, one medium size tree that replaces two small trees will be counted as two trees. b) The medium size tree should be planted as close as possible to the middle of this continuous greenspace (in the right-of-way) to maximize available soil volume. c) On larger lots with sufficient soil volume for a medium size tree, one medium size tree will be planted on each lot (or each side of a corner lot), even if the abutting properties form a continuous greenspace between driveways. d) If trees need to be replaced, Forestry staff reserve the right to plant appropriate size trees at one tree per lot, at the expense of the Owner up to three years past the warranty period. Along park frontages, the Landscape Plan shall locate trees at a 6-8 metre on-centre separation distance along the full extent of the road right-of-way abutting any park block(s). Should specific site constraints prevent the required allocation of trees, the remaining number of required trees shall be provided within any proposed park(s), open space or environmental blocks, non-residential road right-of-way frontages, stormwater management facility(s), or other suitable alternative locations, to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning Forestry**
46.	In areas of sensitive marine clay soils where the six conditions of the Tree Planting in Sensitive Marine Clay Soils – 2017 Guidelines have been met, the following shall be provided: a) The landscape plan shall include a note indicating that is has been developed as per the geotechnical report(s), to the satisfaction of the General Manager, Planning, Real Estate and Economic Development.	**OTTAWA Planning**

	b) At the time of tree planting, in addition to providing an F1 inspection form, the Landscape Architect will provide a signed letter indicating that trees have been planted with appropriate soil volume in accordance with the approved Landscape Plan, to the satisfaction of the General Manager, Planning, Real Estate and Economic Development.	
47.	The Owner agrees to provide the following minimum tree planting setbacks: a) Maintain 1.5 metres from sidewalk or MUP/cycle track. b) Maintain 2.5 metres from any curb. c) Coniferous species require a minimum 4.5 metres setback from curb, sidewalk or MUP/cycle track/pathway. d) Maintain 7.5 metres between large growing trees, and 4 metres between small growing trees. Park or open space planting should consider 10 metre spacing, except where otherwise approved in naturalization / afforestation areas. e) Adhere to Ottawa Hydro's planting guidelines (species and setbacks) when planting around overhead primary conductors.	**OTTAWA Planning Forestry**
48.	The Owner agrees to adhere to the following new tree specifications: a) Minimum stock size: 50mm tree caliper for deciduous, 200cm height for coniferous. b) Maximize the use of large deciduous species wherever possible to maximize future canopy coverage. c) Tree planting on city property shall be in accordance with the City of Ottawa's Tree Planting Specification; and include watering and warranty as described in the specification (can be provided by Forestry Services). d) Tree planting within the vegetated buffers shall be in accordance with the City of Ottawa's Tree Planting Specification; and include watering and warranty as described in the specification (can be provided by Forestry Services) until such time as title has been transferred to another owner. e) Plant native trees whenever possible; only native trees shall be planted in naturalization / afforestation areas. f) No root barriers, dead-man anchor systems, or planters are permitted. g) No tree stakes unless necessary (and only 1 on the prevailing winds side of the tree).	**OTTAWA Planning Forestry**

<table>
<tr><td>49.</td><td>The Owner agrees to adhere to the following hard surface planting guidelines:
Curb style planter is highly recommended.
No grates are to be used and if guards are required, City of Ottawa standard (which can be provided) shall be used.
Trees are to be planted at grade.</td><td>OTTAWA
Planning
Forestry</td></tr>
<tr><td>50.</td><td>In areas where there are no sensitive marine clay soils, the Owner agrees to provide the following minimum soil volumes for all new plantings:

<table><tr><th>Tree Type/Size</th><th>Single Tree Soil Volume (m3)</th><th>Multiple Tree Soil Volume (m3/tree)</th></tr><tr><td>Ornamental</td><td>15</td><td>9</td></tr><tr><td>Columnar</td><td>15</td><td>9</td></tr><tr><td>Small</td><td>20</td><td>12</td></tr><tr><td>Medium</td><td>25</td><td>15</td></tr><tr><td>Large</td><td>30</td><td>18</td></tr><tr><td>Conifer</td><td>25</td><td>15</td></tr></table></td><td>OTTAWA
Planning
Forestry</td></tr>
<tr><td></td><td>Tree Conservation</td><td></td></tr>
<tr><td>51.</td><td>The Owner acknowledges and agrees to abide by the Tree Protection By-law, 2020-340, and that any trees to be removed from the site shall be in accordance with an approved Tree Permit.

The Owner agrees to implement the measures recommended in the supporting tree conservation report and the identification of existing trees on adjacent pre-existing residential lots where the CRZ extends onto the Owner’s lands to ensure preservation of the trees identified for protection, including all vegetated buffers, in accordance with the City’s tree protection requirements listed within the Tree Protection By-law, 2020-340. All of which are to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.</td><td>OTTAWA
Planning</td></tr>
<tr><td>52.</td><td>The Owner agrees to maintain the tree protection measures until construction is complete and/or the City has provided written permission to remove them.</td><td>OTTAWA
Planning</td></tr>
<tr><td></td><td>Gateway Features</td><td></td></tr>
</table>

53.	The Owner acknowledges and agrees that the Primary Neighbourhood Gateway Features located at the following locations: • Campeau Drive at St. No. 1 • Campeau Drive at St. No. 7 • Campeau Drive at St. No. 11 shall be designed, constructed and certified by a qualified professional and shall be in accordance with the City's Design Guidelines for Development Application Gateway Features, applicable by-laws and policies. Prior to the earlier of registration or installation, the Owner shall deposit security to meet the on-going maintenance obligations of the Feature(s) by the Owner for a one-year period after the construction of the Feature. The security will not be reduced or released until the expiration of the one-year period and until the time a certification by a qualified professional confirming that the Feature is constructed in accordance with the Guidelines and approved plans and is in a good state of repair is provided. During the warranty period, the Owner shall be solely responsible for the on-going upkeep and maintenance of the Gateway Feature(s). The Owner shall, prior to registration, make a financial contribution (+HST) to the "Maintenance Fund" in accordance with the City's Design Guidelines for Development Application Gateway Features.	**OTTAWA Planning**

	All of the aforementioned are to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	
54.	The Owner acknowledges and agrees that the proposed Secondary Neighbourhood Gateway Feature(s) located at the following locations: • Kundson Drive at Street No. 1 • Kundson Drive at Street No. 16 • Weslock Way at Street No. 16 • Beaverbrook Road at Street No.17 shall be designed, constructed and certified by a qualified professional and shall be in accordance with the City's Design Guidelines for Development Application Gateway Features, applicable by-laws and policies. Prior to the earlier of registration or installation, the Owner shall deposit security to guarantee on-going maintenance and removal of the Secondary Neighbourhood Gateway Feature(s). The Owner shall be solely responsible for the on-going upkeep and maintenance of the Secondary Neighbourhood Gateway Feature until it is removed, upon which time the security may be released. All of the aforementioned are to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning**
	Parks	
55.	In accordance with the *Planning Act* and the City of Ottawa Parkland Dedication By-law, the Owner shall convey Blocks 638, 645, 666, 667 (the "Park Block") to the City for parkland purposes, to the satisfaction of the General Manager, Recreation, Cultural and Facility Services Department.	**OTTAWA Parks**
56.	The Owner covenants and agrees that Block(s) 638, 645, 666, 667 will be conveyed to the City, at no cost, as dedicated parkland. The size and configuration of the Park Block(s) on the Final Plan shall be to the satisfaction of the General Manager, Recreation, Cultural and Facility Services Department.	**OTTAWA Parks**

	The Owner covenants and agrees that the parkland dedication requirement has been based on the proposed residential use at a rate of one hectare per 300 units (residential >18units/ha), or such other rate as agreed to in writing to the satisfaction of the General Manager, Recreation, Cultural and Facility Services Department. Based on the estimated number of 1,480 dwelling units for this development, a parkland dedication of 4.93 hectares is required. The Owner agrees that any over-dedication of Parkland shall not be compensated or reimbursed as part of this agreement or any further agreement with the City. Any over-dedication cannot be transferred to another development application. In the event that there is a change in the proposed use, block area, residential product and/or number of dwelling units change, the required parkland dedication will also be subject to change.	
57.	The Owner acknowledges and agrees to design and construct at its cost the Park Block(s) in accordance with City Specifications and Standards. The Owner further agrees to provide design plans and documents as detailed in the Park Development Manual 2nd edition 2017 (and as amended) for the park(s). The plans and documents will detail the designs, costs and amenities to be provided in each park. The expected cost of the design, construction, review and inspection of these parks will be in accordance with the rate per hectare and indexing rate utilized for park development by the City at the time of registration of each phase of development. The design plans and documents as well as the final budget for design, construction, review and inspection shall be subject to approval by the City, all to the satisfaction of the General Manager, Recreation, Cultural and Facility Services Department, and shall be referred to as the “Park Development Budget”. The design plans and documents as well as the final budget for design, construction, review and inspection shall be subject to approval by the City, all to the satisfaction of the General Manager, Recreation, Cultural and Facility Services Department.	**OTTAWA** **Parks**
58.	All Owner obligations associated with the Park Block(s) must be completed to the satisfaction of the General Manager, Recreation, Cultural and Facility Services Department within two (2) years of registration of the phase which contains the park block. If the Park Block is not tendered and under construction within two years of registration, the Owner agrees that the Park Development Budget shall be based on the park development rate per hectare in effect at the time of the commencement of the park construction and that the Owner is required to pay the applicable park development rate for the current year that the park is to be built and those funds will be added to the park budget for construction.	**OTTAWA** **Parks**

59.	The Owner acknowledges and agrees that no stormwater management ponds, overland flow routes, and/or encumbrances of any kind, such as retaining walls, utility lines or easements of any kind shall be located on or under dedicated park blocks, unless satisfactory to the General Manager, Recreation, Cultural and Facility Services Department. If encumbrances exist, or are proposed on the park blocks, the park blocks may need to be adjusted, increased in size to accommodate intended parkland development requirements, and said encumbered lands may need to be removed from parkland dedication. The draft plan may need to be adjusted to reflect omission of encumbered lands that restrict parkland development. The removal and/or mitigation of the encumbrances shall be the responsibility of the Owner, at the Owner's expense. All of the aforementioned are to the satisfaction of the General Manager, Recreation, Cultural and Facility Services Department.	**OTTAWA Parks**
60.	The Owner acknowledges and agrees that any encumbrances at, above or below the surface, which are not for the benefit of the park, such as retaining walls, utility lines, floodplain areas, wildlife, environmental and vegetation buffers including the CRZ of existing off-site trees on adjoining lots as identified by the City Forester or easements of any kind on lands, or portion thereof encumbering the design and function of future Park Block(s) must be approved by the General Manager of Recreation, Culture and Facility Services Department, and will not form part of the *Planning Act* parkland dedication requirements unless so approved.	**OTTAWA Parks**
61.	The Owner agrees the Park Block(s) must be fully developable for its intended use based on a geotechnical and soils report. If any constraints to development of the Park Block(s) are found the measures necessary to mitigate the constraints and to provide a subgrade suitable for the intended park(s) uses as identified in the Facility Fit Plan, or if a Facility Fit Plan has not yet been prepared for intended park uses as identified by Parks planning staff, will be undertaken by the Owner. The Owner is solely responsible for the costs of any necessary mitigation measures in addition to the Park Development Budget. All of the aforementioned are to the satisfaction of the General Manager, Recreation, Cultural and Facility Services Department.	**OTTAWA Parks**
62.	Once a Facility Fit Plan is submitted and after all tree protection fencing for on-site and off-site trees on adjoining residential lots has been installed accordingly, both as approved by the General Manager, Recreation, Cultural and Facility Services Department, the Owner may remove vegetation, trees and topsoil from the park(s) to facilitate rough grading of the area. The City agrees that the Owner may stockpile the topsoil either on or off the Park Block(s). If the removal of the native topsoil is required, the Owner agrees to provide replacement topsoil, outside of the Park Development Budget, at a sufficient	**OTTAWA Parks**

	depth and quality for parks as per City Standards for park topsoil. All work shall proceed in accordance with the applicable regulations.	
63.	The City acknowledges and agrees that the Owner may use the Park Block(s) outside of the protected park areas for the stockpiling of materials or staging as needed. The Owner agrees to conduct the stockpiling of soils in accordance with the future excess soils regulation, as amended. The Owner agrees contaminated soils shall not be stockpiled on future park areas. The Owner agrees to provide to the City documentation of the source and quality of the soils temporarily stored on the future park areas. The Owner acknowledges and agrees that in the event that the Owner chooses to use the parkland for stockpiling or staging, once this use of the parkland is completed, all materials will be removed from the parkland and a geotechnical report by a qualified and licensed engineer or geoscientist will be submitted. The geotechnical and soils report shall confirm that the subgrade is suitable for its intended use and that no contaminants have been deposited on the parkland. The geotechnical report must indicate the level of soil compaction on the site and conform to City Standards, to the satisfaction of the General Manager, Infrastructure and Water Services Department. The Owner agrees that any remediation required to the parkland as result of the Owners use of the parkland will be at the Owner's expense and will be in addition to the estimated Park Development Budget calculated at the per hectare rate as indexed and such remediation work shall be completed to the satisfaction of the General Manager, Infrastructure and Water Services Department.	**OTTAWA** **Parks**
64.	The Owner further agrees to prepare and submit upon or prior to registration, for approval all park plans and documents required as noted in the Park Development Manual 2017 based on the approved Facility Fit Plan, all to the satisfaction of the General Manager, Recreation, Cultural and Facility Services Department.	**OTTAWA** **Parks**
65.	The Owner acknowledges and agrees that it is the responsibility of the Owner to fill and rough grade the park where necessary to meet approved subdivision grades, with clean earth borrow, compacted and leveled within the Park Block(s) accordingly, to provide for positive surface drainage as per the City Standards for Park Fill and rough grading as per the approved subdivision grading plan. All at the expense of the Owner.	**OTTAWA** **Planning** **Parks**

	Any fill imported to the future Park Block must be conducted in accordance with the future excess soils regulation, as amended. Documentation of the source and quality of the fill to be imported must be approved by a Qualified Person. Soils must be tested to the minimum parameter list as specified in the excess soils regulation. Importation of soils with no chemical testing will not be permitted. Additional testing may be required by the Qualified Persons as defined in the regulation. Copies of all records related to all soils imported to the future park areas must be provided to the City. All works and fill materials are to be approved by the General Manager, Planning, Real Estate and Economic Development Department prior to being placed on site. All work shall proceed in accordance with the applicable regulations and according to the current (at time of work) approved City details and specifications.	
66.	The Owner acknowledges and agrees that it is the responsibility of the Owner to undertake the final grading, including supply of required fill and topsoil for the Park Block, in accordance to the park design working drawings/ grading and drainage plans. The final grading will be covered by the Park Development Budget to a maximum of 10% of the park construction cost sub-total. Additional fill and grading beyond 10% of the park construction cost will be at the sole expense of the Owner and additional to the park budget. All works and design drawings are subject to the approval of the General Manager, Recreation, Cultural and Facility Services Department and the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning Parks**
67.	Unless otherwise specified the Owner shall provide the following services and utilities to all Park Blocks (638, 645, 666, 667): a) A 300mm (minimum) diameter storm sewer and CB/MH at 2m inside the park property line. b) A 50mm diameter water line complete with standpost at 2m inside the park property line. A city standard park water vault chamber, standard detail W31.1 latest version, must also be installed as part of parks water works. The park water vault will be funded from the park budget. Co-ordination of all park water works including water vault and meter installation is an Owner responsibility. c) 150mm diameter sanitary sewer and MH at 2m inside the park property line [subject to confirmation of requirement at Fit Plan stage]. d) A 120/240 volt, 200 amperes single phase hydro service at 2m inside the park property line. The Owner is responsible for making all arrangements and coordinating the connection of the new hydro (electrical) service, including costs and inspections, with the respective hydro (electricity) agencies. The Owner is also responsible to ensure the park electricity service(s) is included on the approved CUP	**OTTAWA Planning Parks**

	drawings. Due to the linear nature of Park Block 638, the Owner shall provide additional services and utilities, as required, in accordance with the Facility Fit Plan at no cost to the City. All works shall be shown on the approved drawings and shall be subject to the approval of the General Manager, Infrastructure and Water Services Department.	
68.	The Owner shall install fencing of uniform appearance and quality, with a minimum height of five feet (5') (1.5m) along the common boundary of all residential lots and other lots which abut Park Blocks. Fences shall be installed 0.15m on the public side of the common property line, and the location of the fence shall be verified by an Ontario Land Surveyor. All fences must adhere to the City's fence By-law 2003-462. Fence materials will be of commercial grade and consist of 6-gauge black vinyl coated chain link material and black powder coated schedule 40 pipe rails and posts or an approved alternative.	**OTTAWA Parks**
69.	The Owner agrees in the subdivision agreement that no fencing will be installed on all passive public property Blocks (list Blocks here). In all other Blocks or lots, the Owner shall place the following clause in each Agreement of Purchase and Sale and shall be registered as a notice on title in respect of all Lots and Blocks: "The Transferee for himself, his heirs, executors, administers, successors and assigns acknowledges being advised that gates accessing public property are not permitted in the fences."	**OTTAWA Parks**
70.	The Owner shall include a clause in each Agreement of Purchase and Sale and shall be registered as a notice on title in respect of all Lots and Blocks which shall provide notification to all purchasers of lands within the Subdivision that parkland within this subdivision and/or already existing in the vicinity of the subdivision may have: a) active hard surface and soft surface recreational facilities b) active lighted sports fields and other lit amenities c) recreation and leisure facilities d) potential community centre e) library f) day care g) other potential public buildings/ facilities/ amenities.	**OTTAWA Parks**
71.	The Owner acknowledges and agrees that, if the approved park concept design contains amenities proposed by the Owner that exceed the standard Park Development Budget, and if securities are not retained by the City for these items, the City shall not be responsible for these items in the event that the City must complete the park.	**OTTAWA Parks**

72.	The Owner acknowledges and agrees that, following registration of the applicable phase of the subdivision, the Park Block(s) will be transferred to the City. Notwithstanding said transfer, the Owner acknowledges and agrees that, prior to the assumption of the park by the City, the owner will retain all liability for the transferred blocks and that said transfer will in no way exonerate the Owner from its responsibility to design and construct the park pursuant to the terms of the Subdivision Agreement.	**OTTAWA Parks**
73.	Prior to the acceptance of woodland Park Block 645; and Park Block(s) 638, 666 with substantial wooded areas; the Owner agrees to remove any dead, dying or fallen trees and debris from the Block(s) that pose a safety risk. Prior to any removals, the Owner must arrange an inspection of the lands with the City Forester and Park Planner in advance of these works occurring. Any removals/clean up shall follow best forestry practises. The design drawings and documents for woodland Park Block 645 must include a Park Woodlot Management Plan prepared by a registered Professional Forester. The recommendations must be implemented during the park development. The Owner acknowledges and agrees that the costs to remove unsafe trees, costs to prepare the Park Woodlot Management Plan and costs to implement the recommendations found in the Management Plan will be outside of the Park Development Budget, at the sole cost to the Owner.	**OTTAWA Planning Parks**
74.	The Owner acknowledges and agrees to erect, at its expense, on the Park Block at locations selected by the General Manager, Infrastructure and Water Services Department a professionally painted sign. Sign material, size and installation and construction details shall be to the satisfaction of the General Manager, Recreation, Cultural and Facility Services. The signs shall clearly read, in English and in French: Future Parkland No Dumping No Removal Soil or Vegetation No Storage of Materials Parc futur Il est interdit de jeter des déchets Il est interdit d'enlever le sol ou la végétation Entreposage de matériaux interdit The Owner further agrees to maintain the signs (including graffiti) and such signs shall be removed only with the approval of the General Manager, Recreation, Cultural and Facility Services.	**OTTAWA Parks**
75.	Upon registration of the subdivision and transfer of ownership of the Park Block to the City, the Owner agrees to provide: • a certificate of insurance that names the City of Ottawa as Additional Insured, and • a letter of credit which covers the full amount of the Park Design and Construction Cost to ensure the work is completed.	**OTTAWA Parks**

	The Owner will hereby be granted consent to enter at no cost to complete the work. All is to the satisfaction of the General Manager of Recreation Culture and Facility Services.	
76.	The Owner acknowledges and agrees that no work within the right-of-way in front of, or around, any boundary of the park will be a park cost. All right-of-way work including, tree planting, topsoil and sod, and all hard surface work will be at the Owners' expense. Where a park plaza or landscape feature extends into the right-of-way as a continual element of the park development, this work may be considered park work at the discretion of the General Manager, Recreation, Cultural and Facility Services.	**OTTAWA Parks**
77.	The Owner acknowledges and agrees that if there is a deficiency in the quantity of street trees within the Subdivision, and the Owner and the City mutually agree that those trees shall be planted within the Park Block(s), the supply and installation of those trees shall be at the Owners' expense, outside of the Park Development Budget.	**OTTAWA Parks**
78.	The Owner and the General Manager of Recreation, Culture and Facility Services may, if it is mutually beneficial to both parties, enter into an agreement whereby the Owner will provide funding (+HST) to the City for the design and the construction of the Park Block(s). The City will proceed with the design and construction of the park as per the typical City-build park process as described in the Park Development Manual. City may need to hire another consultant due to the Conflict of Interest provisions in Section 42 of the Procurement By-law, as follows: 1. 42. CONFLICT OF INTEREST 2. (1) No person shall provide Consulting Services or Professional Services to both the City and a private sector developer on the same or related project. (2008-332) The timing of the park construction will be at the discretion of the City. The expected cost of the park(s) works to be paid to the City will be based on the rate per hectare, and indexing rate utilized for the park development by the City at the time of registration of the phase of development, which includes the Park Block(s), (referred to as the Park Development Budget), plus a 5% administrative fee for City forces to execute the project, plus 13% HST on the total amount. The funding for park works will be paid to the City at the time of registration for the phase of development, which includes the Park Block. All standard subdivision conditions associated with the park, including, but not limited to: fencing, fill and rough grading, topsoil replacement, tree removal and services stubbed to within 2.0 m inside the Park Block(s) will remain a subdivision cost to be covered by the Owner separate from the Park Development Budget.	**OTTAWA Parks**
79.	The Owner acknowledges and agrees to provide the City with one additional year of warranty on all park construction Works on Block 667, due to the significant amount of fill required for this block.	**OTTAWA Parks**
80.	In accordance with condition 74, the Owner agrees to remove any dead, dying or fallen trees and debris from the Open Space Block(s) that pose a safety risk.	**OTTAWA Parks**

	Prior to any removals, the Owner must arrange an inspection of the lands with the City Forester and Park Planner in advance of these works occurring. Any removals/clean up shall follow best forestry practises, at the sole cost to the Owner.	
81.	Prior to registration, in respect to Park Block 638, the Owner at its sole expense, shall provide mitigation measures, that include measures relating to existing off-site trees and landscaping on adjacent residential lots, to ensure that the design intent of the park block can be achieved. Such work shall include, but not limited to provide culvert and/or structures to allow for pedestrian crossing over the required easement lands, any and all landform works, slope stabilization, barrier or delineation fencing, landscaping and other works that may be required on or within the easement lands to achieve the park design requirements. No park easement works shall be a park budget responsibility, and unless for the benefit of the City, no easement lands will count as parkland dedication. All is to the satisfaction of the General Manager of Recreation Culture and Facility Services.	**OTTAWA Parks**
82.	Prior to registration, the Owner shall ensure Park Block 645 is not encumbered by any structures, underground services and utilities, unless otherwise acceptable to the General Manager of Recreation Culture and Facility Services. Removals of and mitigation including a site condition report as required to be submitted to the City, at the Owner's expense. All is to the satisfaction of the General Manager of Recreation Culture and Facility Services.	**OTTAWA Parks**
	Environmental Constraints	
83.	The Owner shall prepare an Integrated Environmental Review in accordance with the policies of the Official Plan, to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department. This shall include a consolidated summary of the Combined Environmental Impact Statement and Tree Conservation Report recommendations and shall demonstrate how these recommendations have been incorporated into the final plan. It shall specifically include a quantitative comparison of current significant woodland and total forest canopy on the site with the anticipated future forest canopy based on the tree planting shown in the Landscaping Plan.	**OTTAWA Planning CA**
84.	The Owner agrees that prior to registration, early servicing, or other works that would alter the vegetative characteristics of the site, the Owner shall have the environmental impact statement consolidated and updated as necessary to reflect the final plan as approved, and to address any changes to the anticipated impacts and recommended mitigation measures that may be required as a result of changes to the draft plan, changes in the regulatory context with respect to species at risk, or changes in the known environmental context of the site. This update shall be to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning CA**

85.	The Owner acknowledges and agrees that the construction of the subdivision shall be in accordance with the recommendations of the combined Environmental Impact Statement and Tree Conservation Report by McKinley and Muncaster, as amended, including but not limited to: • Afforestation of the Open Spaces, Woodland Park and landscaped buffers (planting plan to be approved by the City) • Fish and wildlife salvage with the exception of non-native invasive species (e.g. carp, goldfish) • Other construction mitigation measures, including measures relating to existing off-site trees and landscaping on adjacent residential lots, such as timing windows for the removal of vegetation.	**OTTAWA Planning CA**
86.	The Owner agrees to abide by all appropriate regulations associated with Provincial and Federal statutes for the protection of wildlife, including migratory birds and species at risk.	**OTTAWA Planning**
87.	The Owner agrees to grant a conservation easement to preserve the landscaped 3.0 metres and 6.0 metres buffers (as shown on the Concept Plan dated February 25, 2021) to the satisfaction of the General Manager of Planning, Real Estate and Economic Development. This easement shall be registered on title and shall be identified in all agreements of purchase and sale for all lots containing a landscaped buffer.	**OTTAWA Planning**
88.	The Owner shall convey, at no cost to the City, the following lands: Blocks 635, 636, 637, 641, 642, 646, 649, 650, 718, and 719 comprising the Open Spaces for afforestation. Final configuration of the Blocks shall be to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department. These lands shall not be credited towards determining parkland dedication requirements.	**OTTAWA Planning**
89.	Where required, the Owner shall prepare, to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department, an Owner Awareness Package (OAP) highlighting the advantages and responsibilities of a homeowner living in or adjacent to naturalized greenspaces. The OAP shall describe the natural attributes of the community and the importance of good stewardship practices to ensure the long-term health and sustainability of the natural features and the urban forest canopy, including the vegetated buffers. Topics to be discussed include, but are not limited to, reducing environmental impacts from common household activities (e.g., water conservation, yard waste disposal, chemical use and storage, etc.), avoiding human-wildlife conflicts, care and maintenance of trees, and recommendations of locally appropriate native species for landscaping. The OAP shall be distributed to all purchasers with the Agreement of Purchase and Sale.	**OTTAWA Planning CA**
	Record of Site Condition / Contaminated Soil	
90.	The Owner agrees in the subdivision agreement, that in order to complete the documentation to obtain the RSC, the Owner shall complete the following work: i) Identify the locations on the Site where imported fill and soil was brought to the Site to construct the golf course and characterize the chemical quality of this material	**OTTAWA Planning BCS**

	ii) Assess the integrity of the receiving tank used for the wash pad and investigate the potential that releases from this system have impacted the soil and groundwater under the Site iii) Investigate potential releases to the environment from the golf cart storage shed and any other locations where golf cart and equipment recharging and maintenance has been done in the past iv) Use the information derived from paragraphs i) to iii) to design and implement a groundwater investigation to assess the characteristics and water quality of the overburden and bedrock groundwater units. This investigation must consider the impacts of the use of irrigation supply wells on groundwater flow and contaminant distribution v) Develop an inventory of pesticide use and application history on the Site from its first developed use to the present. Obtain or develop this inventory from records obtained from the Owner's files and interviews with former employees, long-term area residents, and others as appropriate. Use this inventory and the existing storm water/surface water drainage patterns to design a sediment, surface water quality and benthic invertebrate investigation. This investigation is to be completed in the drainage courses on Site and downstream of the Site. The assessment must follow an iterative process of a sufficient time span to satisfy the relevant guidance, peer review and MOE oversight vii) This work to be completed under the oversight of a peer reviewer to be selected by the City and paid for by the Owner.	
91.	The Owner shall agree in the subdivision agreement to be required to submit a remedial action plan to address soil contamination and other impacts identified in the additional work described above, to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning CREO**
92.	The Owner shall be required to submit a revised Phase II ESA with a remediation report appended upon completion of the remedial work to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning CREO**
93.	The Owner agrees in the subdivision agreement to strict dust, odour, noise and sediment migration control measures in place during the excavation work given the presence of mercury contamination in the Site soil and other contamination that may be identified during the preparation of the RSC documentation.	**OTTAWA Planning CREO**
	Schools	
94.	The Owner acknowledges and agrees to inform prospective purchasers that school accommodation pressures exist in the Ottawa-Carleton District School Board Schools designated to serve this development which are currently being address by the utilization of portable classrooms and/or directing students to schools outside their community.	**OCDSB**

95.	The Owner acknowledges and agrees to notify prospective purchasers that Ottawa Catholic Schools in the area are overcrowded and therefore existing attendance boundaries may be changed and/or students may be directed to schools outside their community or accommodated in portables.	**OCSB**
	Sump Pumps	
96.	Prior to registration or early servicing the Owner acknowledges and agrees to provide a hydrogeological assessment of the seasonal high water table prepared and certified by a hydrogeologist whom is either a Professional Geoscientist or Professional Engineer licensed in Ontario. The assessment will require a monitoring well program designed and supervised by a hydrogeologist, who will also be responsible for the overall hydrogeological assessment, all to the satisfaction of the General Manager, Planning, Real Estate and Economic Development.	**OTTAWA Planning**
97.	The Owner acknowledges requirements for the hydrogeological assessment will be defined in the City of Ottawa Sewer Design Guidelines. The Owner acknowledges and agrees this will include but not be limited to: requirements for the identification of the pre-development high water table, anticipated post-development changes to the long-term water table (where supporting data is available in order to assess these changes), the potential for short-term groundwater concerns during transient events (e.g., spring melt, high intensity storm events), and estimated rate of groundwater ingress for both long-term and transient conditions. This assessment shall be used to support the setting of the underside of footing (USF) elevations for proposed residences in the affected area.	**OTTAWA Planning**
98.	The Owner acknowledges to install a complete sump pump system which conforms to the City of Ottawa Sewer Design Guidelines, to the satisfaction of the General Manager, Planning, Real Estate and Economic Development. The Owner acknowledges and agrees this will include but not be limited to: a. CSA approved sump pump with check valve, b. Design for 200% anticipated flow and maximum head, c. Covered sump pit, d. Backwater valve, e. Back up pump and power supply.	**OTTAWA Planning**
99.	The Owner acknowledges and agrees the costs for the sump pump systems including back-up system and installation are the responsibility of the owner while the costs for the maintenance and operation of the system (including back up) and eaves trough discharge will be the responsibility of the homeowner. These conditions will be included, as part of the planning approval and notice will be required within the purchase and sale agreement, as well as registered on title.	**OTTAWA Planning**

100.	The Owner acknowledges and agrees that in addition to the main sump pump, a back-up system will be required with minimum capacity and continuous hours of operation as will be specified in the City of Ottawa Sewer Design Guidelines.	**OTTAWA Planning**
101.	The Owner acknowledges and agrees only the perimeter foundation drainage system will be connected to the sump pit and agrees the sump pump system shall discharge to the storm sewer.	**OTTAWA Planning**
102.	The Owner acknowledges and agrees all grading plans are to clearly indicate each individual home where a sump pump system is required.	**OTTAWA Planning**
103.	The Owner acknowledges and agrees to include statements in all offers of purchase and sale agreements for all lots, and register separately against the title wording acceptable to the satisfaction of the General Manager, Planning, Real Estate and Economic Development, advising the home is equipped with a sump pump and advising guidelines for its use and maintenance.	**OTTAWA Planning**
104.	The Owner acknowledges and agrees that all sump pump systems including back-up system must be inspected and maintained regularly in accordance with the manufacturer's recommendations. The Owner covenants and agrees that it will advise all prospective lot purchasers of the sump pump systems and back-up system in the agreement of purchase and sale, and shall be registered as a notice on title in respect of all Lots and Blocks.	**OTTAWA Planning**
	Stormwater Management	
105.	The Owner shall provide any and all stormwater reports (list of reports, for example, a Stormwater Site Management Plan in accordance with a Conceptual Stormwater Site Management Plan) that may be required by the City for approval prior to the commencement of any works in any phase of the Plan of Subdivision. Such reports shall be in accordance with any watershed or subwatershed studies, conceptual stormwater reports, City or Provincial standards, specifications and guidelines. The reports shall include, but not be limited to, the provision of erosion and sedimentation control measures, implementation or phasing requirements of interim or permanent measures, and all stormwater monitoring and testing requirements. All reports and plans shall be to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning CA**
106.	Prior to the commencement of construction of any phase of this Subdivision (roads, utilities, any off site work, etc.) the Owner shall: i. have a Stormwater Management Plan and an Erosion and Sediment Control Plan prepared by a Professional Engineer in accordance with current best management practices; ii. provide all digital models and modelling analysis in an acceptable format; and iii. have said plans approved by the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning and MVCA**

	All submissions and any changes made to the Plan shall be submitted to the satisfaction to the City and the Mississippi Valley Conservation Authority. The Owner shall implement an inspection and monitoring plan to maintain erosion control measures. The Owner shall provide certification through a Professional Engineer licensed in the province of Ontario that the plans have been implemented.	
107.	On completion of all stormwater works, the Owner agrees to provide certification to the General Manager, Planning, Real Estate and Economic Development Department through a Professional Engineer, licensed in the province of Ontario, that all measures have been implemented in conformity with the approved Stormwater Site Management Plan.	**OTTAWA Planning**
108.	The Owner shall maintain and implement a monitoring/implementation program for the ultimate stormwater management facilities on-site including low impact development measures in accordance with the recommendations of the Servicing and Stormwater Management Plans and Reports, and the Environmental Compliance Approval(s), until such time as the stormwater management facilities have been given Final Acceptance and has been assumed by the City. The Owner acknowledges and agrees that the City shall not assume the stormwater management facilities until a minimum of 80% of the tributary area of the facility is constructed and occupied, or at an earlier agreed upon date. The Owner acknowledges that the City shall hold a portion of the letter of credit, for the construction of the facility, for the purpose of ensuring maintenance and monitoring is completed in accordance with the approved Plans and Reports, and in accordance with the Ministry of the Environment's Environmental Compliance Approval(s). All of aforementioned are to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning**
109.	The Owner agrees that the development of the Subdivision shall be undertaken in such a manner as to prevent any adverse effects, and to protect or restore any of the existing or natural environment to the extent adversely affected by the redevelopment, through the preparation of any storm water management reports, as required by the City.	**OTTAWA Planning**
110.	The Owner covenants and agrees that the following clause shall be incorporated into all agreements of purchase and sale for the whole, or any part, of a lot or block on the Plan of Subdivision, and registered separately against the title: "The Owner acknowledges that some of the rear yards within this subdivision are used for on-site storage of infrequent storm events. Pool installation and/or grading alterations and/or coach houses on some of the lots may not be permitted and/or revisions to the approved Subdivision Stormwater Management Plan Report may be required to study the possibility of modification on any individual lot. The Owner must obtain approval of the	**OTTAWA Legal**

	General Manager, Planning, Real Estate and Economic Development Department of the City of Ottawa prior to undertaking any grading alterations."	
111.	The Transferee, for themself, their heirs, executors, administrators, successors and assigns covenants and agrees to insert a clause in agreements of purchase and sale for the Lots/Blocks listed below that the Purchaser/Lessee is responsible to maintain conveyance of surface flow over the rear and/or side of their lot, and maintain sub-surface drainage infrastructure, all of which shall be to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department of the City of Ottawa. • All Lots and Blocks except for back-to-back townhome lots/blocks.	**OTTAWA Planning**
112.	The Owner agrees to provide a hydrogeological report for any proposed low impact development measures within the Plan of Subdivision. The Owner further agrees that the proposed LIDs will be in accordance with the City of Ottawa Low Impact Development Technical Guidance Report: Implementation in Areas with Potential Hydrogeological Constraints.	**OTTAWA Planning**
113.	The Owner agrees in the subdivision agreement, that prior to early servicing and/or registration of the Final Plan, it shall provide downstream stormwater modelling (i.e. Kizell Creek) based on the City of Ottawa sub watershed model of record (i.e. AECOM 2015 model including KNL9 developed as well as the updated survey of the Beaver Pond). The Owner is to convert the model of record to continuous modelling (requiring additional parameters to make the model continuous), but not change any downstream parameters (unless to correct errors), to the satisfaction of the General Manager, Planning, Real Estate and Economic Development, and General Manager, Infrastructure and Water Services Department of the City of Ottawa.	**OTTAWA Planning and Infrastructure Services**
114.	Prior to early servicing or registration, whichever comes first, the Owner agrees to update the subwatershed model to solely incorporate the following: i. Include KNL9 developed and the Beaver Pond survey in the model with the 2015 AECOM model as the base; ii. Update the Beaver Pond portion of the existing sub watershed model to improve the existing conditions model calibration; iii. Consider the unaccounted-for underground storage within the 2015 AECOM model; iv. Not rely on the unaccounted for subsurface storage in future conditions modelling; v. Include a monitoring program of water levels in the Beaver Pond and outflows at the outlet of the Beaver Pond, over the course of two consecutive years under existing conditions. This monitoring field data is to be utilized to calibrate and validate the model in addition to the data collected by the Owner in 2019; vi. Evaluate the outfall structure to determine a calibrated stage-discharge relationship;	**OTTAWA Planning and Infrastructure Services**

	vii. Ensure all modifications, calibrations and validations of the model are third party reviewed; viii. Ensure the third part reviewer is paid for by the Owner, yet chosen by and managed by the City of Ottawa; ix. Ensure consultation with City and external stakeholders occurs to discuss, review and accept the updates to the model. External stakeholders include, but are not limited to the Mississippi Valley Conservation Authority, the National Capital Commission, and any developers of properties affected by the model (i.e. KNL); x. Update the model of record to the satisfaction of the General Manager, Infrastructure and Water Services Department; and xi. Any party wishing to consider a major revision of the subwatershed model, beyond the above mentioned changes, would need to seek approval from the General Manager, Infrastructure and Water Services Department.	
115.	The Owner agrees that the above authorized Beaver Pond update to the model of record is to be third-party peer reviewed. The third-party consultant is to be selected by the City, managed by the City, and funded by the proponent. Consultation with City and external stakeholders to discuss, review and accept updates to the model. This update to the model of record is to be completed to the satisfaction of the General Manager, Infrastructure and Water Services Department. The Owner further agrees that the third-party consultant is to be selected by the City.	**OTTAWA Infrastructure Services**
116.	The Owner agrees other than the above authorized changes to the model, the City of Ottawa does not support major changes to the sub watershed model of record at this time. Any party wishing to consider an overhaul of the sub watershed model would need to seek approval from the General Manager, Infrastructure and Water Services Department of the City of Ottawa. The Owner further agrees that the third-party consultant is to be selected by the City.	**OTTAWA Infrastructure Services**
117.	The Owner acknowledges that Watt's Creek and Kizell Drain are subject to the Mississippi Valley Conservation Authority's "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" regulation, made under Section 28 of the Conservation Authorities Act, R.S.O. 1990, c. C.27, as amended. The regulation requires that the Owner of the property obtain a permit from the Conservation Authority prior to straightening, changing, diverting, or interfering in any way with any watercourse. Any application received in this regard will be assessed within the context of approved policies for the administration of the regulation.	**MVCA**

118.	The Owner agrees to provide to the General Manager, Planning, Real Estate and Economic Development Department, any and all hydrologic reports to demonstrate that the onsite water balance will be maintained with the inclusion of low impact development (LID) strategies. The onsite water balance calculations shall be completed exclusive of the stormwater management ponds and underground storage facility. All reports shall be to the satisfaction of the General Manager, Planning Real Estate and Economic Development Department, and Mississippi Valley Conservation Authority.	**OTTAWA Planning and MVCA**
119.	The LID calculations shall be completed exclusive of the stormwater management ponds and underground storage facility. LID measures will be credited with partial effectiveness if being utilized for downstream erosion control measures. The effectiveness percentage is to be to the satisfaction of the General Manager, Planning, Real Estate and Economic development Department.	**OTTAWA Planning and MVCA**
120.	The Owner acknowledges that if there are any changes in the outflow from the Beaver Pond, especially an increase in the flow, the Mississippi Valley Conservation Authority will be required to recalculate the water elevations in the flood plain mapping study, at the Owner's expense. Changes in the outflow from the Beaver Pond must not have a negative impact on the delineated flood line, natural heritage features such as the Provincially Significant Wetland or erosion downstream.	**MVCA**
121.	The Owner shall provide any and all stormwater reports that may be required by the City for approval prior to the commencement of any works in any phase of the Plan of Subdivision. Such reports shall be in accordance with any watershed or subwatershed studies, conceptual stormwater reports, City or Provincial standards, specifications and guidelines. The reports shall include, but not be limited to, the provision of erosion and sedimentation control measures, implementation or phasing requirements of interim or permanent measures, and all stormwater monitoring and testing requirements. All reports shall be to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department and Mississippi Valley Conservation Authority.	**OTTAWA Planning and MVCA**
122.	The Owner agrees to enter into an agreement with the City of Ottawa to establish baseline and post-construction monitoring, for 2 years following the final phase of development, of the downstream storm sewer system along Weslock Way and at the outlet of the Beaver Pond, to identify and measure peak flows, runoff volumes and temperature change impacts, and to identify and implement appropriate mitigation measures. A contingency plan is required if any measures have an impact on the receiving watercourse. Baseline monitoring is to be established at least one year before construction of any part of the subdivision. The monitoring program and contingency plan is to be to the satisfaction of the General Manager, Planning, Real Estate, and Economic Development Department and National Capital Commission. An annual report on the monitored data is to be submitted to the City.	**OTTAWA Planning [and NCC]**

123.	The Owner agrees that at least one year prior to the commencement of any works in any phase of the Plan of Subdivision the monitoring program, described above, will be located at the storm sewer system along Weslock Way and at the outlet of the Beaver Pond to distinguish impacts from the Plan of Subdivision, and will be designed to monitor peak flows, overall water volumes, and water temperatures. The design, location, operational parameters and data collection formats will be in accordance with an approved Stormwater Management Plan to the satisfaction of the City.	**OTTAWA Planning**
124.	The Owner agrees that sign off from the National Capital Commission and other similar properties downstream within this shared watershed (with an appropriate sign off from those identified landowners) will be required prior to the plan of subdivision's use of the downstream watercourse as required by the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning and NCC**
125.	The Owner agrees that erosion control measures are to be implemented either on-site, in-stream within Kizell Creek, or both, should one measure with sufficient factors of safety not be sufficient to limit erosion potential in the stream, to the extent caused by the redevelopment of the subject site, to existing levels.	**OTTAWA Planning**
126.	The Owner agrees to ensure the property continues to have Legal Outlet through the Kizzel Drain for the change in land use from golf course to residential development. If the Owner cannot demonstrate legal outlet for the Plan of Subdivision, they are advised to file a Drainage Act petition through the Municipal Drainage Act. The owner is to prove prior to early servicing and/or registration that the property has legal outlet as a residential development.	**OTTAWA Planning and NCC**
127.	The Owner agrees to provide dedicated blocks for major system drainage received from neighbouring existing subdivisions for temporary storage and release into the minor system, if a direct overland flow route to proposed right-of-ways through City owned land only is not possible. The City does not authorize directing City right-of-way drainage to rear yards. No rear yard easements for existing major overland flow routes will be permitted.	**OTTAWA Planning**
128.	The Owner agrees that the proposed Plan of Subdivision is to have no negative impact from a stormwater perspective, during both minor and major storm events, on the existing surrounding developments within the Kanata Lakes neighbourhood.	**OTTAWA Planning**
	Sanitary Services	
129.	The Owner agrees to submit detailed municipal servicing plans, prepared by a Professional Civil Engineer licensed in the Province of Ontario, to the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning**

130.	As the Owner proposes a road allowance(s) of less than 20 metres, and if the Owner also proposed boulevards between 4.0 and 5.0 metres wide, the Owner shall meet the following requirements: a) extend water, sanitary, and storm services a minimum of 2.0 metres onto private property during installation before being capped; b) install high voltage electrical cable through the transformer foundations to maintain adequate clearance from the gas main; c) provide and install conduits as required by each utility; d) provide and install transformer security walls when a 3.0 metres clearance, as required by the Electrical Code, cannot be maintained. The design and location of the security wall must be approved by the local hydro utility; and e) install all road-crossing ducts at a depth not to exceed 1.2 metres from top of duct to final grade.	**OTTAWA Planning**
131.	The Owner agrees that Early Servicing and/or registration will not be issued for the proposed Plan of Subdivision until the Signature Ridge Pump Station redirection project is completed thereby freeing capacity within the Kanata Lakes Trunk sanitary sewer. Developers are able to front-end City projects once it is identified in the DC by-law. Developers are able, subject to obtaining the approval of Council, to front end.	**OTTAWA Planning**
	Water Services	
132.	The Owner agrees to design and construct all necessary watermains and the details of water servicing and metering for the lots abutting the watermains within the subject lands. The Owner shall pay all related costs, including the cost of connection, inspection and sterilization by City personnel, as well as the supply and installation of water meters by the City.	**OTTAWA Planning**
133.	The Owner shall prepare, at its cost, a hydraulic network analysis of the proposed water plant within the Plan of Subdivision and as it relates to the existing infrastructure. This analysis shall be submitted for review and approval as part of the water plant design submission.	**OTTAWA Planning**
134.	The Owner acknowledges and agrees not to permit any occupancy of buildings on the individual Lots described in Schedule "A" of the Subdivision Agreement until the water plant has been installed, sterilized and placed in service to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning**

135.	The Owner further acknowledges and agrees that the service post, which is the fitting located near the property line that allows access to the shutoff valve, must be visible, raised to finished grade and in working condition in order for the City to turn on the service.	**OTTAWA Planning**
136.	The owner acknowledges and agrees to provide a Water Age Analysis prior to registration which reflects their proposed phasing and scheduling. Where required, through this analysis or through testing, the Owner acknowledges and agrees that flushing infrastructure will be installed at no cost to the City, and that the Owner will be responsible for all costs associated with the consumption and disposal of water, as required, to ensure that adequate chlorine residual is maintained throughout the water system, all to the satisfaction of the General Manager, Public Works and Environmental Services	**OTTAWA Planning**
137.	The Owner acknowledges and agrees not to apply for, nor shall the City issue, building permits for more than 50 dwelling units (or the equivalent) where the watermain for such units is not looped. Any unit serviced by a looped watermain that is not looped shall be required to have sufficient fire protection, to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning**
	Serviced Lands	
138.	The Owner shall be responsible for the provisions of the following works, including oversizing and over depth (where appropriate), at its cost, in accordance with plans approved by the General Manager, Planning, Real Estate and Economic Development Department, and/or the Province: a. Watermains; b. Sanitary Sewers; c. Storm Sewers; d. Roads and traffic plant(s); e. Street Lights; f. Sidewalks; g. Landscaping; h. Street name, municipal numbering, and traffic signs; i. Stormwater management facilities; and j. Grade Control and Drainage.	**OTTAWA Planning**
139.	The Owner shall not commence construction of any Works or cause or permit the commencement of any Works until the City issues a Commence Work Notification, and only then in accordance with the conditions contained therein.	**OTTAWA Planning**
140.	The Owner agrees to provide services oversized and over depth to service lands beyond the limits of the subdivision as required and to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning**

141.	The Owner shall not be entitled to a building permit, early servicing, or commencement of work construction until they can demonstrate that there is adequate road, sanitary, storm, and watermain capacity and any Environmental Compliance Approvals (ECA) necessary are approved. All are to the satisfaction of the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning**
142.	The Owner agrees that the stormwater and sanitary sewers system and plan of subdivision may need to be revised if the City refuses to release City easements.	**OTTAWA Planning**
143.	The Owner agrees all servicing and/or drainage related dedicated blocks are to be sized at a minimum according to the Ottawa Sewer Design Guidelines, Section 3.3 or larger based on the needs of the block, or smaller if acceptable to the General Manager, Planning, Real Estate and Economic Development Department. The Owner further agrees while easements are not intended to be taken, if any are accepted by the City of Ottawa, they are to be sized according to the Ottawa Sewer Design Guidelines, Section 3.3 or larger based on the needs of the block, or smaller if acceptable to the General Manager, Planning, Real Estate and Economic Development Department.	**OTTAWA Planning**
	Utilities	
144.	The Owner is hereby advised that prior to commencing any work within the subdivision, the Owner must confirm that sufficient wire-line communication /telecommunication infrastructure is currently available to the proposed development to provide communication/telecommunication service to the proposed development. In the event that such infrastructure is not available, the Owner is hereby advised that the Owner shall ensure, at no cost to the City, the connection to and/or extension of the existing communication / telecommunication infrastructure. The Owner shall be required to demonstrate to the municipality that sufficient communication /telecommunication infrastructure facilities are available within the proposed development to enable, at a minimum, the effective delivery of communication /telecommunication for emergency management services (i.e. 911 Emergency Services).	**OTTAWA Planning**
145.	The Owner agrees that there is medium voltage underground infrastructure along the [North/South/East/West] side of the property. a) The Owner shall arrange for an underground electricity cable locate by contacting Ontario One Call at 1-800-400-2255, not less than seven (7) working days prior to excavating. There shall be no mechanical excavation within one and a half meters (1.5m) of any Hydro Ottawa underground plant unless the exact position of plant is determined by hand digging methods. Direct supervision by Hydro Ottawa forces, and protection or support of the underground assets shall be at the Owner's expense.	**Hydro Ottawa**

	b) If the change in grade is more than three tenths of a meter (0.3m) in the vicinity of proposed or existing electric utility equipment. Hydro Ottawa requests to be consulted to prevent damages to its equipment. c) The Owner shall not use steel curb and sidewalk form support pins in the vicinity of Hydro Ottawa underground plant for electrical safety. d) The Owner shall ensure that no planting or permanent structures are placed within the clearance areas around padmounted equipment which is defined by Hydro Ottawa's standard UTS0038 "Above Ground Clearances for padmounted Equipment" which can be found at https://hydroottawa.com/accounts-and-billing/residential/guide/clearances. e) The Owner shall ensure that any landscaping or surface finishing does not encroach into existing or proposed Hydro Ottawa overhead or underground assets or easement. When proposing to plant in proximity of existing power lines, the Owner shall refer to Hydro Ottawa's free publication "Tree Planting Advice". The shrub or tree location and expected growth must be considered. If any Hydro Ottawa related activity requires the trimming, cutting or removal of vegetation, or removal of other landscaping or surface finishing, the activity and the re-instatement shall be at the owner's expense.	
146.	The Owner shall contact Hydro Ottawa to arrange for disconnecting the service from the distribution system and removal of all Hydro Ottawa assets at least ten business days prior to demolition/removal the serviced structure.	**Hydro Ottawa**
147.	Hydro Ottawa advises that all underground work to service a subdivision be coordinated together and that at least 14 weeks are needed from receipt of the Owner's deposit to start the material purchase and scheduling.	**Hydro Ottawa**
148.	The Owner shall apply Hydro Ottawa's standards and City approved road cross-section standards for public roads.	**Hydro Ottawa**
149.	The Applicant shall ensure the proposed Private Road complies with Hydro Ottawa Engineering Specification GCG0003 "Typical Private Residential Road Cross Section".	**Hydro Ottawa**
150.	Hydro Ottawa requires to be pre-consulted before approving any proposed reduction to the City of Ottawa three meter (3m) minimum standard setback prior to designing the electrical servicing, as it may affect the electrical servicing design timeline for installation and cost. This includes any proposed overhang encroachment into the three meter (3m) setback space.	**Hydro Ottawa**

151.	Hydro Ottawa requests to be consulted before completing the composite utility plan where any four party trench is proposed.	**Hydro Ottawa**
152.	The Owner is advised that the responsibility for all costs for feasible relocations, protection or encasement of any existing Hydro Ottawa plant resides with the requesting party.	**Hydro Ottawa**
153.	The Owner shall convey, at their cost, all required easements as determined by Hydro Ottawa.	**Hydro Ottawa**
154.	The Owner shall enter an Installation and Service agreement with Hydro Ottawa.	**Hydro Ottawa**
155.	The Owner may be responsible for a Capital Contribution payment(s) towards a distribution system expansion, if the proposed development requires electrical servicing greater than can be provided by the existing distribution system in the vicinity, either in capacity or in extension limit. This amount shall be in accordance with Hydro Ottawa's Contributed Capital Policy and Conditions of Service.	**Hydro Ottawa**
156.	Hydro Ottawa’s standard distribution network is overhead for any voltage system along or through open fields, business parks, rural areas, arterial, major collector and collector roads; any additional premium costs beyond the standard shall be at the Owner’s cost; in all instances, electrical distribution above 27kV shall be via overhead distribution.	**Hydro Ottawa**
157.	The Owner may be responsible for a Capital Contribution payment(s) towards a distribution system expansion, if the proposed development requires electrical servicing greater than can be provided by the existing distribution system in the vicinity, either in capacity or in extension limit. This amount shall be in accordance with Hydro Ottawa's Contributed Capital Policy and Conditions of Service.	**Hydro Ottawa**
158.	The Owner shall comply with Hydro Ottawa's Conditions of Service and thus should be consulted for the servicing terms. The document, including referenced standards, guidelines and drawings, may be found at http://www.hydroottawa.com/residential/rates-and-conditions/conditions-of-	**Hydro Ottawa**

	service. The Owner should consult Hydro Ottawa prior to commencing engineering designs to ensure compliance with these documents.	
159.	The owner shall transfer such new easements and maintenance agreements as are deemed necessary by Rogers Communications Canada Inc. to service this subdivision, to our satisfaction and that of the appropriate authority and at no cost to us. The owner is also to ensure that these easement documents are registered on title immediately following registration of the final plan, and the affected agencies duly notified.	**Rogers**
160.	The Owner agrees, that the application be required, in the Subdivision Agreement, to coordinate the preparation of an overall utility distribution plan. This plan would be showing the locations (shared or otherwise) and the installation timing and phasing of all required utilities (on-ground, below ground) through liaison with the appropriate electrical, gas, water, telephone and cablevision authority. This includes on-site drainage facilities. Such location plan being to the satisfaction of all affected authorities.	**Rogers**
161.	The owner agrees with Rogers Communications Canada Inc. to arrange for and pay the cost of the relocation of any existing services which is made necessary because of this subdivision, to the satisfaction of the authority having jurisdiction.	**Rogers**
	Fire Services	
162.	The Owner acknowledges and agrees that if two-hour firewalls, active fire protection measures such as sprinkler systems, and/or minimum building separations are required to comply with the FUS calculation as per the City Design Guidelines for water distribution systems, the Owner shall note any such requirements on the grading plan. The Owner shall, prior to registration, provide certified plans demonstrating the locations of such oversized services and/or oversized plumbing to compensate for low peak hour pressures in the local water distribution system. All are to the satisfaction of the General Manager of Planning, Real Estate and Economic Development Department.	**OTTAWA Planning**
163.	The Owner acknowledges and agrees that measures which include, but are not limited to, active fire protection measures such as sprinkler systems, two-hour firewalls that compartmentalize the structure into separate fire areas, and oversized services and/or oversized plumbing shall require the posting of securities to guarantee their installation, prior to registration. The securities will be released upon receiving a letter signed and sealed by a Professional Engineer licensed in the Province of Ontario certifying that construction was carried out in accordance with the approved drawing(s)/plan(s). All are to the	**OTTAWA Planning**

	satisfaction of the General Manager of Planning, Real Estate and Economic Development Department.	
164.	The Owner shall insert a clause in each agreement of purchase and sale and shall be registered as a notice on title in respect of all Lots and Blocks wherein the dwelling contains, or intends to contain, a sprinkler system as follows: “Purchasers are advised that they must maintain the sprinkler system in working order to the satisfaction of the City’s Fire Department. The Purchaser agrees to include this clause in any future purchase and sale agreements.”	**OTTAWA Planning**
165.	The Owner acknowledges and agrees that it shall, in the case of insufficient fire flow availability or excessive water age and loss of water disinfectant residual, provide active fire protection options such as sprinkler systems, two-hour firewalls or fire breaks that compartmentalize the structures into separate fire areas, as may be required, to limit the sizing of crescent, dead-end, and other distribution mains to a nominal size of no more that 200mm. All are to be determined by and to the satisfaction of the General Manager of Planning, Real Estate and Economic Development Department.	**OTTAWA Planning**
	Noise Attenuation	
166.	The Owner shall have a Noise Study undertaken related to noise assessment and land use planning with respect to noises generated by moving and stationary sources prepared by a Professional Engineer, licensed in the province of Ontario to the satisfaction and approval of the General Manager, Planning, Real Estate and Economic Development Department. The Study shall comply with: i. the City of Ottawa’s Environmental Noise Control Guidelines, as amended; and ii. address, and be in accordance with, the current version of the Association of Professional Engineers of Ontario Guidelines for Professional Engineers providing Acoustical Engineering Services in Land Use Planning. The study shall provide all specific details on the methods and measures required to attenuate any noise that exceeds the allowable noise limits in locations as determined by the recommendations of the Noise Assessment Study.	**OTTAWA Planning**
167.	Where structural mitigation measures are required as a result of the Noise Assessment Study, the Owner shall provide, prior to final building inspection, certification to the General Manager, Planning, Real Estate and Economic Development Department, through a Professional Engineer, that the noise control measures have been implemented in accordance with the approved study.	**OTTAWA Planning**
168.	The Owner agrees that all purchase and sale agreements for the whole or any part of the lot/block on the Plan of Subdivision shall contain the following	**OTTAWA Planning Legal**

	clauses that shall be registered as a notice on title in respect of all Lots and Blocks:	
169.	Warning Clause Type A: "Transferees are advised that sound levels due to increasing (road) (Transitway) (rail) (air) traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the City's and the Ministry of the Environment's noise criteria."	
170.	Warning Clause Type B: "Transferees are advised that despite the inclusion of noise control features in the development and within the building units, sound levels due to increasing (road) (Transitway) (rail) (air) traffic may on occasions interfere with some activities of the dwelling occupants as the sound levels exceed the City's and the Ministry of the Environment's noise criteria."	
171.	Warning Clause Type C: "This dwelling unit has been fitted with a forced air heating system and the ducting, etc. was sized to accommodate central air conditioning. Installation of central air conditioning by the occupant will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the City's and the Ministry of the Environment's noise criteria. (Note: The location and installation of the outdoor air conditioning device should comply with the noise criteria of MOE Publication NPC-216, Residential Air Conditioning Devices and thus minimize the noise impacts both on and in the immediate vicinity of the subject property.)"	
172.	Warning Clause Type D "This dwelling unit has been supplied with a central air conditioning system which will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the City's and the Ministry of the Environment's noise criteria."	
	Land Transfers	
173.	The Owner shall convey, at no cost to the City, all lands required for public purposes, including but not limited to road widenings, daylighting triangles, walkway blocks, open space blocks, and lands required for parks (or cash-in-lieu thereof) and for stormwater management. In particular, the Owner agrees to convey the following lands: i. Pathway, Walkway or Servicing Blocks – 654, 731, 732 ii. Open Space Blocks – 635, 636, 637, 641, 642, 646, 649, 650, 718, 719 iii. Park Blocks – 638, 645, 666, 667 iv. Storm Water Management Blocks – 634, 639, 640, 647 v. Road Widening Blocks – 633	**OTTAWA** **Planning** **Legal**
174.	The Owner agrees to convey, at no cost to the City, any easements that may be required for the provision of water and wastewater systems, in addition to underground or overland stormwater drainage systems.	**OTTAWA** **Planning** **Legal**

	Blasting	
175.	The Owner agree that all blasting activities will conform to the City of Ottawa's standard S.P. No: F-1201 Use of Explosives. Prior to any blasting activities, a pre-blast survey shall be prepared as per F-1201, at the Owner expense for all buildings, utilities, structures, water wells, and facilities likely to be affected by the blast and those within 75 m of the location where explosives are to be used. The standard inspection procedure shall include the provision of an explanatory letter to the owner or occupant and owner with a formal request for permission to carry out an inspection. The Owner agree to provide a Notification Letter in compliance with City specification F-1201. Specification indicates that a minimum of 15 Business days prior to blasting the Contractor shall provide written notice to all owner(s) and tenants of buildings or facilities within a minimum of 150m of the blasting location. The Owner agrees to submit a copy of the Notification Letter to the City.	**OTTAWA Planning**
	Development Charges By-law	
176.	The Owner acknowledges that some of the works required to service the Subdivision may be eligible for development charges credits pursuant to the City's applicable Development Charges By-law and background study, as well as budget approval by City Council where required. Such contributions are to be determined and agreed to by the City, prior to the commencement of the associated Works or as agreed to by the City. The Owner agrees to enter into any agreements that may be required pursuant to the applicable Development Charges By-law. The Owner further acknowledges that the potential DC works are currently not in the Development Charges By-law, and may be once the DC By-law is updated in approximately 2024. The potential DC project is related to the Signature Ridge Pump Station redirection of flows away from the Kanata Lakes Trunk sewer.	**OTTAWA Planning Legal**
177.	The Owner shall inform the purchaser after registration of each lot or block of the development charges that have been paid or which are still applicable to the lot or block. The applicable development charges shall be as stated as of the time of the conveyance of the relevant lot or block and the statement shall be provided at the time of the conveyance. The statement of the Owner of the applicable development charges shall also contain the statement that the development charges are subject to changes in accordance with the *Development Charges Act, 1997* and the *Education Development Charges Act.*	**OTTAWA Planning Legal**
178.	The Owner acknowledges and agrees that it may enter into any front-ending agreements with the City of Ottawa if required for (SRPS redirection) that are anticipated to be required in advance of the time as approved by Council. The City shall repay the Owner for the cost of works as noted herein in accordance with the approved Front-Ending Policy of the City's Development Charge By-	**OTTAWA Planning Legal**

	law, and subject to budget approval of the required expenditure by City Council in the year in which it is approved.	
179.	The Owner acknowledges that for building permits issued after January 15, 2010, payment of non-residential development charges, excluding development charges for institutional developments, may be calculated in two installments at the option of the Owner, such option to be exercised by the Owner at the time of the application for the building permit. The non-discounted portion of the development charge shall be paid at the time of issuance of the building permit and the discounted portion of the development charge shall be payable a maximum of two years from the date of issuance of the initial building permit subject to the following conditions: a) a written acknowledgement from the Owner of the obligation to pay the discounted portion of the development charges; b) no reduction in the Letter of Credit below the amount of the outstanding discounted development charges; and c) indexing of the development charges in accordance with the provisions of the Development Charges By-law. The Owner further acknowledges that Council may terminate the eligibility for this two-stage payment at any time without notice, including for the lands subject to this agreement and including for a building permit for which an application has been filed but not yet issued. For the purposes of this provision, “discounted portion” means the costs of eligible services, except fire, police and engineered services that are subject to 90% cost recovery of growth-related net capital costs for purposes of funding from development charges. The 10% discounted portion, for applicable services, must be financed from non-development charge revenue sources. “Non-discounted portion” means the costs of eligible services, fire, police and engineered services, that are subject to 100% cost recovery of growth-related net capital costs for purposes of funding from development charges.	**OTTAWA Planning Legal**
	Survey Requirements	
180.	The Owner shall provide the final plan intended for registration in a digital format that is compatible with the City’s computerized system.	**OTTAWA Planning**
181.	The Plan of Subdivision shall be referenced to the Horizontal Control Network in accordance with the City requirements and guidelines for referencing legal surveys.	**OTTAWA Surveys**

182.	The distance from the travelled Centreline of all existing adjacent roads to the subdivision boundary should be set out in the Plan of Subdivision.	**OTTAWA Surveys**
	Closing Conditions	
183.	The City Subdivision Agreement shall state that the conditions run with the land and are binding on the Owner's, heirs, successors and assigns.	**OTTAWA Legal**
184.	At any time prior to final approval of this plan for registration, the City may, in accordance with Section 51 (44) of the Planning Act, amend, delete or add to the conditions and this may include the need for amended or new studies.	**OTTAWA Legal**
185.	The owner shall pay any outstanding taxes owing to the City of Ottawa prior to registration.	**OTTAWA Planning Revenue**
186.	Prior to registration of the Plan of Subdivision, the City is to be satisfied that conditions 1 to 190 have been fulfilled.	**OTTAWA Planning**
187.	The Owner covenants and agrees that should damage be caused to any of the Works in this Subdivision by any action or lack of any action whatsoever on its part, the General Manager, Planning, Real Estate and Economic Development Department may serve notice to the Owner to have the damage repaired and if such notification is without effect for a period of two full days after such notice, the General Manager, Planning, Real Estate and Economic Development Department may cause the damage to be repaired and shall recover the costs of the repair plus the Management Fee under Section 427, of the *Municipal Act*, *2001*, like manner as municipal taxes.	**OTTAWA Planning**
188.	If the Plan(s) of Subdivision, including all phases within the draft approved plan of subdivision, has not been registered by five years after draft plan approval is granted, the draft approval shall lapse pursuant to Section 51 (32) of the *Planning Act*. Extensions may only be granted under the provisions of Section 51 (33) of said *Planning Act* prior to the lapsing date.	**OTTAWA Planning**

Two additional conditions proposed by the City:

191. The Owner agrees to implement a preloading/surcharge program for any segments of proposed City right-of-ways and lands to the extent required based on permissible grade raise exceedances evaluated by a geotechnical engineer and in accordance with the Geotechnical Report, to the satisfaction of the General Manager, Planning, Real Estate, Economic Development Department.

    Commence work notifications for any applicable segments of proposed City right-of-ways and lands subject to the preloading/surcharge program will not be issued for early servicing or registration, whichever comes first, until the preloading/surcharging program (if any) is complete for the applicable segment and any applicable letter of certification from the geotechnical engineer is provided to the satisfaction of the General Manager, Planning, Real Estate, Economic Development Department.

192. The Owner agrees to design and construct 1.5 metre black vinyl-coated chain link fences in accordance with the Fence By-law at the following locations:
    - Blocks 638, 645, 666, 667

    a) All chain link fencing that separate public lands and residential lots and blocks shall have a maximum opening (the diamond shape area) of no greater than 37 mm in order to comply with the applicable part of the “Pool Enclosure By-Law”.
    b) The Owner agrees that any vinyl-coated chain link fence required to be installed with the exception of parks fencing shall be located a minimum of 0.15 metres inside the property line of the park. Refer to Parks condition X for details.

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[i] For Clearing Agencies:
“Planning” refers to Planning Services.
“CA” refers to applicable conservation authorities, including RVCA, MVCA, and SNCA.
“Legal” refers to Legal Services.
“Parks” refers to Parks and Facilities Planning Services.
“CREO” refers to Corporate Real Estate.
“Infrastructure Services” refers to Infrastructure and Water Services.
“BCS” refers to Building Code Services.
“Transit” refers to Transit Planning.
“Transpo Plg” refers to Transportation Planning.
“Forestry” refers to Forest Management.
“Revenue” refers to Revenue Services.
“Surveys” refers to Surveys & Mapping/City Surveyor.