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Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL101449

6980848 Canada Corporation has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended, from the failure of the City of Ottawa to make a decision respecting a proposed plan of subdivision on lands composed of Part of Lot 7, Concession 3 (1566 Stagecoach Road) in the Geographic Township of Osgoode now in the City of Ottawa.

(Approval Authority File NO. D07-16-10-0015)

OMB File No. PL101449

6980848 Canada Corporation has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended, from the failure of the City of Ottawa to make a decision respecting a proposed plan of subdivision on lands composed of Parts of 1566 & 1600 Stagecoach Road in the Geographic Township of Osgoode now in the City of Ottawa.

(Approval Authority File NO. D07-16-11-0005)

OMB File No. PL110922

6980848 Canada Corporation has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 2003-230 of the Geographic Township of Osgoode now in the City of Ottawa to rezone lands respecting 1566 Stagecoach Road Developmental Reserve 1 (DR-1) to Village Mixed Use Rural Exceptions (VM1(617r) to permit the development of 40 residential lots.

OMB File No. PL110433

IN THE MATTER OF subsection 69(3) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	6980848 Canada Corporation
Subject:	Protest the levying of fees in relation to an application for Subdivision, Official Plan Amendment and Zoning By-law Amendment
Property Address/Description:	1600 Stagecoach Road
Municipality:	City of Ottawa
OMB Case No.:	PL101449
OMB File No.:	MM110005

## **APPEARANCES:**

### **Parties**

City of Ottawa

6980848 Canada Corporation

### **Counsel**

T. Marc, M. Charron

P. Webber

## **DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD**

### **Introduction**

6980848 Canada Corporation (“Appellant”) appealed against the failure of the City of Ottawa to make a decision concerning applications for a plan of subdivision and an associated Zoning By-law amendment to permit the development of forty residential lots at 1566 Stagecoach Road in the Village of Greely. The subject property abuts the southern boundary of the village which delineates the approved settlement area. The application for the plan of subdivision proposes to divide the western part of the property into 40 lots, while the eastern part of the property is proposed to be divided into blocks. The forty proposed lots in the western part of the property at 1566 Stagecoach Road constitute phase 1 of the Appellant’s development proposal.

The Appellant has also submitted applications for an additional plan of subdivision, a Zoning By-law Amendment and an Official Plan Amendment which includes the eastern part the property at 1566 Stagecoach Road and extends to the south beyond the village boundary onto the property at 1600 Stagecoach Road. The plan proposes to divide the blocks in the eastern part of 1566 Stagecoach Road into twenty lots as phase 2 of the development and includes a 10.12 hectare (25 acre) block beyond the village boundary to be reserved for the purposes of nitrate dilution to service phase 2. The plan also includes approximately 122 lots on the property at 1600 Stagecoach Road which are all beyond the village boundary and would constitute phases 3 to 6 of the development. This plan of subdivision was also appealed to the Board, but the associated Official Plan Amendment and Zoning By-law Amendment have not been appealed.

On June 10, 2011, subsequent to the appeal being filed for the forty lot subdivision and associated By-law Amendment, and subsequent to the filing of the other above-noted applications, the City’s Agriculture and Rural Affairs Committee passed a resolution to

approve no more than forty lots on the entire property at 1566 Stagecoach Road. The Appellant considers this to be a refusal of phase 2 of the development.

### **Overview of Proposal**

The Village of Greely is located in the southern part of the City of Ottawa. The City includes 26 rural villages of varying sizes of which Greely is the largest in terms of land area (Exhibit 2, Tab 9, p. 167). There are no municipal services for water and septic treatment and therefore all new lots must be developed on the basis of private services.

The subject lands are located in the southwestern part of the village. The property at 1566 Stagecoach Road is approximately 18.2 hectares (45 acres) in size. The Appellant is proposing to develop sixty 0.2 hectare lots, forty of which will be in phase 1 and twenty in phase 2.

Stagecoach Road runs in a north/south direction along the eastern boundary of the subject lands. Access to the lands is proposed through a new east/west road which connects with Stagecoach Road and through road connections with the existing subdivision to the north.

Servicing is proposed through individual wells and septic systems. Stormwater will be conveyed from the site through a series of ditches and culverts which will outlet into two stormwater facilities. Phase 1 will be serviced by a wet pond and a dry pond both to be located within the village limits. If phase 2 is approved there is a proposal for a wet stormwater pond to be outside of the village boundary to service this phase. Both facilities are being designed primarily for the purpose of stormwater quantity control.

### **Issue**

The issue in this appeal is whether the development of forty lots on the property at 1566 Stagecoach Road is appropriate and whether the property can accommodate more than forty lots. Furthermore, if it is determined that the property at 1566 Stagecoach Road can accommodate more than forty lots, is it appropriate to use a stormwater facility located outside of the village boundary for nitrate dilution calculations.

These issues relate to phases 1 and 2 of the proposed development. The Parties acknowledged that phases 3 to 6 are dependent upon the approval of the Appellant's Official Plan Amendment application which is not before the Board and requires a comprehensive review to consider expanding the village boundary.

The hearing has been divided into two phases to consider these issues. The first phase of the hearing deals with phase 1 of the proposed development that is the forty lots. If the Board is able to determine that there is potential to accommodate more than forty lots on the property at 1566 Stagecoach Road, then a second phase of the hearing will be convened to consider the additional twenty lots proposed as phase 2 of the development.

### **Motion for Direction**

Prior to commencement of the hearing on the merits of the proposal, the Board heard a motion for direction which had been filed by the Appellant in accordance with the Board's rules, to which the City had filed a response.

The purpose of the motion is to consolidate the appeals of the plan of subdivision and Zoning By-law Amendment for the property at 1566 Stagecoach Road with the appeal of the Appellant's second plan of subdivision that includes the phase 2 lands at 1566 Stagecoach Road and also the lands beyond the village boundary at 1600 Stagecoach Road. The Appellant wants the appeals consolidated so that the Board can consider phase 2 of the proposed development in conjunction with phase 1 and also consider the 10.12 hectare (25 acre) area required for nitrate dilution on the 1600 Stagecoach Road property.

The Appellant contends that there is no reason to delay hearing evidence on phase 2 of the proposal. The Appellant attended pre-consultation meetings with the City for the proposed subdivision at 1566 Stagecoach Road which included consideration of phase 1 and the phase 2 lots. The Appellant acknowledges that the City determined the second plan of subdivision application and the associated Official Plan Amendment and Zoning By-law Amendment applications to be incomplete. However, the Appellant contends that the City's determination was based only upon the need to file a pre-application consultation form and for a pre-consultation meeting. The Appellant maintains that pre-consultation did occur for phase 2 of the proposal and that they were

never informed that a pre-consultation form was required. Since the pre-consultation has occurred the Appellant maintains that consolidation of the files for the purpose of considering phase 2 is appropriate.

The City acknowledges that proper pre-consultation took place for phase 1, but maintains that it did not occur for the subdivision and associated applications that includes phase 2. The pre-application consultation for the second plan of subdivision application and associated Official Plan Amendment and Zoning By-law Amendment occurred after the applications were filed. The City contends that the application with regard to phase 2 is not complete. Furthermore, the City maintains that the second subdivision application cannot be considered until the Official Plan Amendment is dealt with because subsection 51(24) of the *Planning Act* requires that in considering the plan the City (and now the Board) must have regard for whether plans of subdivision conform to the Official Plan. The Official Plan Amendment is dependent on the completion of a comprehensive review since it would require expansion of the settlement area of the village. In addition, the City maintains that if the Board concludes that the City failed to make a decision with regard to phase 2 rather than refused the proposal, then the 180 day period after which an appeal could be filed would only have expired shortly before the hearing and the appeal would not have been before the Board at this time. Based upon these factors, the City maintains that it would be premature to hear evidence with regard to phase 2 and the consolidation should not be allowed.

The Board considered the motion record and response, the submissions of the Parties, including the affidavit evidence and oral testimony of Mr. Gauthier who was cross examined by Mr. Webber. Based upon the submissions it is clear that details with regard to phase 2 were provided to the City at the first pre-consultation meeting including approximately the same number and arrangement of lots that is now being proposed. It is also clear that the City was informed that the Appellant was proposing to develop phase 2. Based upon the evidence, the Board concluded that there was sufficient pre-consultation with regard to phase 2.

The Board was not presented with any clear evidence to indicate that the subdivision application with regard to phase 2 is incomplete. The Board is aware that it cannot consider a proposal which may require a boundary expansion until the appropriate Official Plan Amendment has been dealt with which must include consideration of a

comprehensive review. However, all of phase 2 is within the village boundary. It is not clear that a full comprehensive review is required if the only proposed use of the area outside of the village boundary is for nitrate dilution. Furthermore, it is not clear that using an area outside of the village boundary for nitrate dilution is an appropriate use. The Board needs to consider further evidence on this matter which is expected to be a focus of phase 2 of the hearing.

The Board will not make a finding with regard to whether the resolution of the Agriculture and Rural Affairs Committee constitutes a refusal of phase 2, but there is little merit in delaying consideration of phase 2 on the basis of the timing of the receipt of the appeal. In view of the above, the Board issued the following ruling during the hearing on November 15, 2011:

The Board has considered the motion and submissions of the Parties and provides the following direction;

1. Evidence regarding Phase 2 is relevant to the hearing on the lands at 1566 Stagecoach Road,
2. The Board finds that there has been proper pre-consultation on phases 1 and 2,
3. There has not been sufficient pre-consultation on phases 3 to 6,
4. The applications with regard to phases 3 to 6 are incomplete,
5. The Board reserves on the completeness of the application for phase 2,
6. There must be further notice for the subdivision which includes phase 2,
7. The Board will not consider evidence on lands outside of the village boundary other than as may be required to service phases 1 and 2 since the application for the remainder of the lands is incomplete,
8. The Board is prepared to consolidate the files as related to phase 2 and the lands outside of the village boundary required for servicing.

As noted in item 5 above, the Board reserved regarding the completeness of the application for phase 2, but through this Decision has determined the application for phase 2 to be complete. Through this Decision the Board is also consolidating the two appeals, but only with regard to phase 2 and the lands outside of the village boundary proposed for the nitrate dilution.

At the time of the hearing proper notice had not been provided for the appeal of the second plan of subdivision which includes phase 2. Prior to commencement of the second phase of the hearing, notice must be provided.

## **Evidence**

In view of the above direction, the hearing proceeded to consider phase 1 of the development proposal.

The Board heard evidence on behalf of the Appellant from William Holzman, President of Holzman Consultants Inc. Mr. Holzman is a Registered Professional Planner with more than 25 years of experience. He was qualified by the Board as an expert in land use planning.

Stephen Walker, P. Eng. also testified on behalf of the Appellant. Mr. Walker is a Professional Engineer who is a Principal and Manager of Hydrogeological and Materials Testing Division for the Paterson Group. He was qualified by the Board as an expert in hydrogeology and geotechnical engineering.

A.C. Houle, P. Eng., Principal of Houle Chevrier Engineering Ltd. provided engineering evidence on behalf of the Appellant. Mr. Houle is a Professional Engineer with more than 25 years of experience. He was qualified by the Board as an expert in geotechnical engineering and hydrological studies.

Jean-Francois Sabourin, P. Eng. testified for the Appellant as well. Mr. Sabourin is a Professional Engineer who is President of J.F. Sabourin and Associates Inc. He was qualified by the Board as an expert in Civil Engineering, particularly with regard to surface water management and drainage matters.

Daniel Anderson, Principal of the Appellant corporations also provided evidence.

The Board heard evidence on behalf of the City from Steve Gauthier, who is employed by the City as a Planner II in the Planning and Growth Management Department. Mr. Gauthier is a Registered Professional Planner with more than fifteen years of experience. He was qualified by the Board as an expert in land use planning.

The Board also heard evidence on behalf of the City from Michael Mateyk, Principal of Conestoga-Rovers and Associates. Mr. Mateyk is a Registered Professional Geoscientist who has more than 35 years of experience. He was qualified by the Board as an expert in hydrogeology.

### **Relevant Facts**

Based upon the evidence presented at the hearing, the Board has determined that the facts discussed below are relevant to this appeal.

The lands at 1566 Stagecoach Road are designated Village in the City of Ottawa Official Plan. The designation permits the proposed residential use subject to meeting the requirements of other relevant provisions of the Plan.

The Official Plan provides for some growth in Villages. The Plan assigns 10% of the growth of the City to rural areas, 50% of which is intended to occur in the Villages (Exhibit 2, Tab 8, p. 117 and p. 119). As noted earlier, new development in Villages must be on the basis of private water and sanitary services.

The policies of the Official Plan are implemented for the Village of Greely through a Community Design Plan (Exhibit 2, Tab 9). The Community Design Plan requires that new lots in Greely must be at least 0.2 hectares in size because of hydrogeological conditions and proposals must comply with section 4.4.2 of the Official Plan. Section 4.4.2.1 of the Official Plan requires that subdivisions on private services must be broken up into phases of no more than forty lots (Exhibit 2, Tab 8, p. 147). The size of the proposed lots and phasing of the development complies with these provisions of the Official Plan and Community Design Plan.

The subject property is zoned DR-1, Development Reserve in the Ottawa Zoning By-law which recognises lands intended for future urban development (Exhibit 2, Tab 10, p. 205). The Zoning By-law Amendment is proposing that the property be zoned V1E(617r) which permits low density single detached residential development. The 617r exception changes some of the standards of the V1E zone including a provision for 25% lot coverage rather than 15% as normally required (Exhibit 2, Tab 10, p. 206).



The hydrogeological reports carried out for the proposal have demonstrated that water service can be provided for the development in a manner that meets all of the relevant policies and requirements, and this is not an issue between the Parties.

The assessment of the impact of the proposed private septic systems must be carried out in accordance with Ministry of the Environment (“MOE”) Guideline D-5-4. Nitrates are a contaminant that can negatively affect drinking water supplies, as well as surface waters. The proposal must be designed so that nitrate concentrations at the property boundary do not exceed 10 mg./L.

### **Issues, Analysis and Findings**

The Board has carefully considered the evidence submitted by the Parties including the authorities provided to support their respective positions.

The Appellant contends that the property at 1566 Stagecoach Road can accommodate 60 lots in two phases. The Appellant maintains that to limit the subdivision on the property to 40 lots would not utilize its full development potential and would not be consistent with policies of the Provincial Policy Statement (“PPS”), in particular sections 1.1.1, 1.1.3.1, and 1.1.3.2 which promote efficient development and land use patterns and the efficient use of land and infrastructure within settlement areas. In the Appellant’s opinion, forty lots should be approved for phase 1 in the lot pattern set out in Exhibits 40 and 41 through this first phase of the hearing. This will retain space for the development of 20 lots in the eastern part of the property as phase 2 of the development which can be considered during the second phase of the hearing.

The Appellant is relying on the analysis in the submitted hydrogeological studies (Exhibits 6 to 9) to demonstrate that the proposed septic treatment will meet MOE requirements. The studies include an analysis of contaminant attenuation for nitrate dilution according to the requirements of Guideline D-5-4. The calculations include the dilution resulting from stormwater contained in either one wet pond (to service phase 1), or potentially in two wet ponds if phase 2 is approved, which are being proposed primarily for purposes of stormwater quantity control.

The Appellant has developed a number of properties in the area under the name “Sunset Lakes” which include man made ponds as amenity features. The ponds are

generally held in common by the property owners in the subdivision and as is the case with the current proposal can perform a stormwater management function.

The Appellant maintains that other developments have been approved in Greely for which stormwater facilities or septic treatment facilities are located beyond the village boundary (Exhibits 13, 14 A and 14 B), as is intended for phase 2 of the current proposal.

The City maintains that the property at 1566 Stagecoach Road should not contain more than 40 lots. In the City's opinion the Appellant has not demonstrated that nitrates will be sufficiently diluted to permit more than 40 lots on the property. The City's position relies on the comments of the Conservation Authority (Exhibit 4, Tab 6) and peer reviewers (Exhibit 4, Tabs 4 and 5) which raised a number of issues regarding the Appellant's hydrogeological assessments.

In light of this concern, the City maintains that the proposal may not be consistent with section 1.1.1 (c) of the PPS which requires avoiding development and land use patterns which may cause public health or environmental concerns. The City also contends that the proposal may not comply with a number of provisions of subsection 51(24) of the *Planning Act*. These include having regard for matters of provincial interest in subsection 2 of the Act related to the use and conservation of water, the adequate provision of sewage and water service, and the protection of public health. The City also contends that the proposal may not comply with section 4.4.2.1 of the Official Plan which requires that the hydrogeological study for the subdivision confirms the sustainability of the wastewater disposal system.

The City is also concerned about the need to use lands outside of the village boundary to service phase 2 of the proposal which may not be consistent with section 1.1.1 (d) of the PPS. This section requires avoiding development and land use patterns which would prevent the efficient expansion of settlement areas.

After considering the evidence, the Board notes that both Parties agree that the property at 1566 Stagecoach Road can accommodate 40 lots. The issue is whether the development of more than 40 lots is appropriate. If the Board finds that only 40 lots can be accommodated then this may also affect the configuration of the lots on the property,

and the City has requested a re-lotting of the plan of subdivision if the Board finds in its favour.

If the size requirement of 0.2 hectare lots in the Community Design Plan were the only determinative factor, it is clear that the 18.2 hectare property could accommodate well over forty lots. However, the Board recognizes that other factors are essential in making this Decision. In order for the Board to support the City's position and conclude that the property can accommodate no more than 40 lots there must be a clear finding with regard to at least one of the following two issues:

1. The hydrogeological evidence must clearly demonstrate that nitrate levels would exceed the provincial guidelines if more than forty lots were developed,,
2. It must be clear that providing an area outside of the village boundary for nitrate dilution would be inappropriate.

The main dispute with regard to issue # 1 involves the accuracy of the nitrate dilution calculations in the hydrogeological studies. The City raised a number of concerns about the calculations including that upgradient nitrate levels may not have been accurately considered, that land use type and topography factors input into the calculation are not appropriate, that the consideration of the amount of impervious area should be increased, and that using stormwater for dilution may not be appropriate.

Mr. Walker, who prepared the hydrogeological studies maintains that the calculations of nitrate levels are appropriate and have been carried out according to Guideline D-5-4. Mr. Walker considered various options in carrying out the calculations for the proposal including the use of stormwater runoff for dilution, and not using the runoff but instead using 25 acres outside of the village boundary for dilution. He also prepared calculations using a different type of septic system that would reduce nitrate loadings approximately in half. In all of these different scenarios Mr. Walker testified that the property at 1566 Stagecoach Road could support at least 60 lots. He maintains that with the development of either 40 lots or 60 lots on the property, nitrate levels at the property boundary will be less than the provincial requirement of 10 mg./L.

Mr. Mateyk testified that he carried out dilution calculations in accordance with Guideline D-5-4 using different values than Mr. Walker, and determined that resulting

nitrate levels would allow only 14 lots in the western part of the property and 20 in the eastern part (Exhibit 34). This would allow only 34 lots in total. Mr. Mateyk's analysis assumed no stormwater would be used for dilution, and he indicated that this was the most significant factor for the difference between his calculation and Mr. Walker's.

The Board has carefully reviewed MOE Guideline D-5-4 (Exhibit 4, Tab 1) and notes that it sets out parameters for the dilution calculation rather than a specific formula or methodology. It is the responsibility of applicants to carry out the calculations in a reasonable manner in a way that will satisfy the approval authorities. The guideline states that "only dilution will be accepted by the Ministry as a quantifiable attenuation mechanism for nitrate" (Exhibit 4, Tab 1, p. 14). It also notes that groundwater flowing through the site may only be considered in the dilution calculation where the upgradient lands have been developed for a considerable period of time. In other words only the groundwater resulting from precipitation falling on the site can be considered in the dilution unless there is some certainty about the quantity and quality of groundwater flowing onto the site from upgradient areas.

The Board can find prohibition in Guideline D-5-4 against the use of stormwater for dilution. It appears that the guideline is silent on the matter. However, in the cross examination of Mr. Mateyk he agreed that in relation to the proposal it would be appropriate to consider a portion of the stormwater for dilution, but he disagreed with Mr. Walker about the percentage of stormwater that should be used.

Based upon the above, the Board cannot rule out the suitability of using some portion of the stormwater runoff from the site in the nitrate dilution calculations. After reviewing the evidence the Board still has questions about the percentage of stormwater runoff that should be reasonably considered for diluting nitrate levels. It is noted that the May, 2010 and October 2010 hydrogeological studies (Exhibits 6 and 7) used 80% of stormwater for dilution, where the March 2011 study (Exhibit 8) used 100% of stormwater. The City's evidence also raised concern about the potential for losses from the stormwater ponds due to evotranspiration and discharge of water from the pond outlets which would reduce the amount available for mixing.

Guideline D-5-4, while it sets out general parameters, also calls for some certainty that dilution factors included in the calculation are realistic. In this regard the Board notes the

statement in the guideline about not considering groundwater flowing through the site unless upgradient land uses have been established for a considerable period of time. In the Board's opinion, stormwater should only be used in the dilution calculations if there can be some certainty about the quantity and quality of the stormwater that will be available to dilute the nitrate that will be produced on the site.

In addition the Board is concerned about using a surface water body which will be an amenity feature in the development as part of the septic treatment system. It is not clear if the intent is to use the ponds for recreational purposes, but if so other provincial guidelines for water contact might come into play. There may be a need to meet provincial surface water quality guidelines.

In view of the above considerations, the Board needs to hear further evidence to determine the reasonable percentage of stormwater that should be included in the calculation and to address the other above noted issues about using the stormwater ponds for nitrate dilution.

The Board will not make any findings about the other parameters used in the nitrate dilution analysis at this time, except for the amount of impervious area to be considered which is addressed later in this Decision.

With regard to issue # 2 above, the Board is aware of the policy direction in the PPS requiring a comprehensive study before expanding the settlement area boundary. At present the Appellant's rationale and policy basis for proposing that the 25 acres of land outside of the village boundary should be used for nitrate dilution to service phase 2 is not clear. However, the Board was not presented with evidence that would prevent consideration of using an area beyond the village boundary for this purpose. The Board notes the examples raised by the Appellant of other Sunset Lakes developments which have used areas beyond the village boundary for servicing. Consideration of using the area beyond the village boundary must include a review of the City's ultimate plans for this area, whether a comprehensive study is required, and the potential integration of this area into future development of the village. The Board expects that these matters will be addressed through the evidence at the second phase of this hearing.

In view of the above considerations, the Board accepts the expert planning opinion evidence provided on behalf of the Appellant and finds that the proposed development

of 40 lots within phase 1 is consistent with provisions in the PPS, and it complies with the provisions of subsection 51(24) of the *Planning Act*. Based upon the evidence, the Board finds that the Appellant's proposed plan for phase 1 also meets the provisions of the relevant sections of the City of Ottawa Official Plan, the Community Design Plan, and it represents good planning.

While the Board needs to hear further evidence about the number of lots that are appropriate for phase 2, from the evidence heard to date the Board expects that some level of development of phase 2 will be appropriate. Approval of the proposed lot pattern for phase 1 (Exhibit 41) will leave the phase 2 area available for further development.

The Appellant requested that if the Board approved the phase 1 plan that one of two alternative plans of subdivision (Exhibits 40 and 41) should be chosen. The main difference between the two plans is that Exhibit 40 includes lands beyond the village boundary which are identified on the plan as Development Reserve. The Board understands that these are the lands to be set aside for nitrate dilution for phase 2 of the development.

As noted above, the Board will not approve the use of the area beyond the village boundary for nitrate dilution at this time. Therefore, it would be premature to include the area outside of the village boundary on a plan of subdivision and indicate its use as Development Reserve. The Board finds that the plan of subdivision that does not include the lands beyond the village boundary, as set out in Exhibit 41 is appropriate. If the Board approves phase 2 through the continuation of the hearing on the basis of using the area outside of the village boundary for nitrate dilution, then if necessary, the plan can be amended at that time.

The Parties presented the Board with draft conditions for phase 1 of the proposal (Exhibit 39). There is consent between the Parties on most conditions included in Exhibit 39, but the Board heard that conditions 71, 72 and 88 are still in dispute. The Board heard that some other minor changes are required for some other conditions. The Parties are still in discussions regarding condition 71 and 72 and did not request that the Board rule on the appropriateness of these conditions. However, they did request that the Board include as part of its Decision its finding about the appropriateness of proposed condition 88. This condition proposes to limit the

impervious area of each lot to 220 square metres which would be included in the By-law for the subdivision. The City is proposing this condition to restrict the impervious area to the number used in the calculation for nitrate dilution in the hydrogeological studies. The Appellant submits that this is not a necessary condition and the amount of impervious area in the hydrogeological studies was not intended to be a limit, but simply reflects the judgement of the hydrogeologist about the extent impervious area that can be expected which is the intent of Guideline D-5-4.

The Board agrees with the Appellant's submissions and finds that condition 88 should not be included in the draft conditions. Guideline D-5-4 sets out parameters for calculating nitrate dilution, but it is dependent upon hydrogeologists to apply those parameters in a reasonable manner when determining nitrate dilution for specific proposals. There could be many factors which influence the impervious area of lots, and there is no indication from the evidence that impervious area needs to be limited to 220 square metres per lot.

The Parties should provide a finalized version of the conditions of draft approval to the Board in which condition 88 has been deleted, which reflect a resolution to the concerns about conditions 71 and 72, and which reflect other minor changes as may be appropriate. The Board is generally satisfied with the conditions contained in Exhibit 39. However, the Board requires a final version of the conditions which has the consent of the Parties to attach to its Order. Since they are not yet finalized, the Board will withhold its final Order on approval of the plan of subdivision until the final conditions have been received.

With regard to the Zoning By-law Amendment, the Board was not presented with any evidence to indicate that the proposed V1E(617r) zoning is not appropriate for the phase 1 lands. The City did raise a concern about the amount of impervious area that will be permitted with the 25% coverage allowed in this zoning. The Board has dealt with the issue of impervious area above.

The Appellant has requested that both phases 1 and 2 be zoned as V1E(617r). However, since the full development potential of the phase 2 lands has not been determined, the Board finds that it would be premature to change the zoning of those lands until further evidence is provided through the second phase of the hearing.

With regard to the phase 1 lands, the Board was not presented with a draft By-law and it is not clear from the evidence if the intent is to zone all areas in phase 1 as V1E(617r) including those blocks that are not intended for development. The evidence supports application of the V1E(617r) zone to lots 1 to 40 in the plan of subdivision (Exhibit 41) but the Board is not convinced that this zoning should apply to the other blocks. If those lands are zoned V1E(617r) the Board is concerned that development permissions will be conferred upon those lands. These blocks are not intended to be developed and Block 43 is the proposed location of the stormwater management pond. In view of these concerns the Board's Order will approve the zoning of the lands except for blocks 41 to 48 and 53 and 54. It should be noted that blocks 46, 47, 48, 53 and 54 are within the phase 2 lands. The zoning of these blocks can be addressed by the Parties at the continuation of the hearing if required.

### **Conclusion**

Based upon the above considerations, the Board will allow the appeal in part to approve phase 1 of the subdivision and the rezoning of the phase 1 lands as noted above. Evidence regarding the phase 2 lands will be considered during the continuation of the hearing. The Board understands that the continuation will require approximately one week of hearing time. The Parties should contact the appropriate Board planner to schedule a suitable date for the continuation.

As noted earlier in this Decision, the Board consolidates the appeal of phase 1 with the appeal for the phase 2 lands including those lands beyond the village boundary necessary for servicing phase 2.

The issue of notice was raised by the Board at the hearing. Due to the timing of receipt the appeal for the lands which include phase 2 and the lands at 1600 Stagecoach Road, the Board indicated that adequate notice had not been provided. The Appellant is required to provide additional notice for the appeal as it relates to phase 2 of the development and the lands outside the village boundary which may be required for nitrate dilution.

The member is seized of this matter and can be spoken to if required.

The appropriate Order is provided below.



## **Order**

**THE BOARD ORDERS** that the appeal is allowed in part;

**THE BOARD ORDERS** that zoning By-law 2003-230 of the City of Ottawa is amended so that the lands in phase 1 of the Plan of Subdivision at 1566 Stagecoach Road in the Village of Greely will be zoned V1E(617r), except for blocks 41 to 48 inclusive and blocks 53 and 54 as set out in Exhibit 41, plan of subdivision prepared by J.D. Barnes Limited, dated November 14, 2011;

**THE BOARD ORDERS** that the appeal of phase 1 is consolidated with the appeal for the phase 2 lands at 1566 Stagecoach Road including those lands beyond the village boundary necessary for servicing phase 2;

**THE BOARD ORDERS** that further notice shall be provided for continuation of the hearing related to the phase 2 lands at 1566 Stagecoach Road and those lands outside the village boundary which may be required for nitrate dilution;

**AND FURTHERMORE** phase 1 of the plan of subdivision for the lands at 1566 Stagecoach Road in the Village of Greely as set out in Exhibit 41 will be approved upon receipt of appropriate final conditions of draft plan approval, similar to those provided as Exhibit 39, but excluding condition 88 and which have the consent of the Parties.

So Orders the Board.

“C. Conti”

C. CONTI  
MEMBER