3. ONTARIO MUNICIPAL BOARD
DUNROBIN LAKES SUBDIVISION
WEST CARLETON OFFICIAL PLAN AMENDMENT NO. 61
ZONING BY-LAW 18/97

COMMITTEE RECOMMENDATION

That Council approve that the Region support the Township of West Carleton in its request to the Ontario Municipal Board for a rehearing on O.P.A. 61, West Carleton Zoning By-law 18 of 97 and Draft Plan of Subdivision 06T-94001.

DOCUMENTATION:

1. Regional Solicitor's and Planning and Development Approvals Commissioner's joint report dated 27 Apr 98 is immediately attached.

2. Extract of Draft Minute, 12 May 98, follows the report and includes a record of the vote.

REGIONAL MUNICIPALITY OF OTTAWA-CARLETON — REPORT
MUNICIPALITÉ RÉGIONALE D'OTTAWA-CARLETON — RAPPORT

Our File/N/Réf. O.1.2.33
Your File/V/Réf.

DATE 27 April 1998

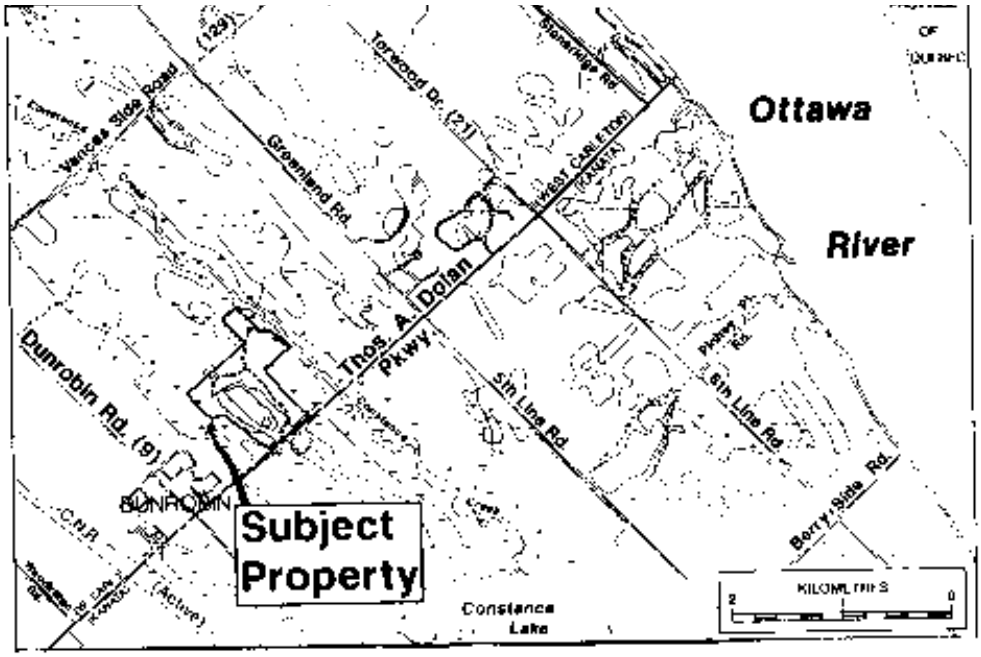
TO/DEST. Co-ordinator, Planning and Environment

FROM/EXP. Regional Solicitor
Planning and Development Approvals Commissioner

SUBJECT/OBJET **ONTARIO MUNICIPAL BOARD**
DUNROBIN LAKES SUBDIVISION
WEST CARLETON OFFICIAL PLAN AMENDMENT NO. 61
ZONING BY-LAW 18/97

DEPARTMENTAL RECOMMENDATION

That Planning and Environment Committee recommend to Regional Council that the Region support the Township of West Carleton in its request to the Ontario Municipal Board for a rehearing on O.P.A. 61, West Carleton Zoning By-law 18 of 97 and Draft Plan of Subdivision 06T-94001.



BACKGROUND

Official Plan Amendment No. 61 to the Official Plan of the Township of West Carleton proposed to re-designate land on Parts 1 and 2, Concession 4 and Part Lot 2, Concession 5 from "Pits and Quarries", "Marginal Resource" and "Hazard Land" in order to permit residential uses and environmental protection. Zoning by-law 18 of 1997 was enacted by West Carleton to zone the lands for low density residential uses as well as a small portion of lands for rural commercial.

The adoption of O.P.A. 61 and by-law 18/97 were in support of an application by Dawn Firestone for draft approval of a plan of subdivision. The draft plan includes 27 blocks for residential development, 2 blocks for commercial development, 2 blocks for private recreation and 1 block for environmental protection. O.P.A. 61 also inserted general policies in the West Carleton Official Plan for the protection of provincially significant wetlands.

By-law 18/97 and O.P.A. 61 were appealed to the Ontario Municipal Board by John Smedley primarily for reasons related to wetland protection. In order that the Board have all the planning matters before it, Ms. Firestone requested that the Region refer the draft subdivision plan to the Board.

The hearing on these three items took place from January 5-8, 1998 at the Township Hall in Kinburn with the decision of the Board being released on 3 February 1998. On 6 April 1998 the Township, through its solicitor, forwarded to the Chair of the Ontario Municipal Board a request for a motion for review of the 3 February 1998 decision. A copy of this request is attached as Annex A to this report.

SUMMARY OF DECISION

The decision of the Ontario Municipal Board in the hearing was not to approve the three development applications before the Board. Although a planner from the Region was summoned to give evidence at the hearing in support of the application by the solicitor for Ms. Firestone, the Region was not itself a party at the hearing. Regional staff were satisfied that the development applications conformed to the Regional Official Plan. To the extent there were hydrogeological concerns, to be discussed below, staff felt that such concerns could be satisfactorily addressed through conditions of approval of the draft plan of subdivision.

The decision of the Board appears to be based upon two fundamental objections by the Board member to the proposed development. The first was the growth strategy for rural Ottawa-Carleton in general and West Carleton in particular. On page four of the decision, Member Yao characterised lot creation in West Carleton as "speculative". On pages 3-4 of his decision, he states:

> This is my concern with this application, that West Carleton's growth is on a first come, first serve basis, without any attempt to consolidate growth nor to direct it to specific locations.

The Board Member felt that such development was contrary to the Provincial Policy Statement, Section 1.1.1 of which reads,

> (a) Urban areas and rural settlement areas (cities, towns, villages and hamlets) will be the focus of growth;
> (b) Rural areas will generally be the focus of resource activity, resource-based recreational activity and other rural land uses.

The second basis for Member Yao's decision was with respect to the question of the availability of water. With respect to lots 1 to 14 which would draw water from the overburden there was no concern over the availability of an adequate supply of potable water. The Board Member stated with respect to the wells in the overburden: "This produces good water." These lots would constitute phase one of the subdivision. However for the balance of the lots, the water supply would have to be found within the bedrock. Two of three bedrock wells had chloride levels in excess of the Ontario drinking water objectives while the third well provided a water supply adequate in quality and quantity. A condition of draft subdivision approval required the conveyance of 0.3 metre reserve around each lot to the Region until a hydrogeologist certified that an adequate water supply existed for that lot. In addressing the Region's responsibility with respect to water supply the Board Member stated;

> What I don't understand is why the Region, which wishes to take responsibility for ensuring that the lots are created, does not take equal responsibility for ensuring that water meets the *typical purchaser's* expectations.

The Board member made reference to the evidence of a citizen who is quoted in the decision as saying, without any evidence being cited in the decision to support the statement:

> I really don't think one can diminish the problem of bad water. What the Ministry says is potable can be really awful water in terms of the contaminants. So purchasers are easily misled when they get a certificate…. Bad water is the number one reason why people sell their houses.

REGIONAL POSITION ON GROWTH

In both the 1988 and the 1997 Regional Official Plans, 10% of growth in residential units are allocated to rural development. The Regional Official Plan does not specify any percentage of growth to be assigned to villages as opposed to growth in the rural areas generally. No modification to the rural growth strategy was made by the Ministry of Municipal Affairs and Housing in its proposed approval of the 1997 Regional Official Plan.

As noted above, the Board member expressed a concern that the Official Plan policies in place established a first past the post system where anyone who met the criteria for rural residential development is permitted to go forward with their development application. Staff acknowledge this to be the case. Staff however are of the view that any person whose development applications conform to the policies in place should be permitted have their development proposals come to fruition. It is true that if the policies were not achieving their objectives, there

might be a need to revisit the policies. However, monitoring done by the Region for the 1988 to 1997 period has shown that the target of 10% of population growth being in the rural area is being achieved.

It is also noted that , as outlined in the correspondence by the solicitor for West Carleton, a number of the Board member's findings with respect to the growth in West Carleton were factually incorrect. It is therefore the opinion of staff that the appropriate policies for rural development were and are in place and that the three development applications in question conform to such policies. No serious evidence was called before the Board to counter this position.

HYDROGEOLOGY

The only hydrogeologicial evidence before the Board was that called by the owner, the evidence of Ingrid Reichenback which evidence supported the application. As noted in Mr. Cohen's letter, the uncontested evidence was that there was potable water available to lots 1 to 14. With respect to the balance of the lots, one of three wells had provided a potable water supply. However in the case of every lot, a 0.3 reserve would be conveyed to the Region prohibiting development until a hydrogeologist certified to the Region that an adequate quality and quantity of water was available to that lot and that a well had been properly installed. This condition is now uniformly imposed by the Region on rural plans of subdivision. This condition has and continues to meet with the support of the development community and the area municipalities.

The Ministry of the Environment did request that Lots 15 to 27 should be developed as a separate phase from Lots 1 to 14. It is the opinion of Regional Staff that since the reserves will prohibit development on the Lots 15 to 27 until a proven water supply is obtained, the intent of the Ministry's comment has been addressed. No representative from the Ministry of the Environment was present at the hearing to oppose the granting of draft approval.

CONCLUSION

It is the opinion of staff that there is simply no basis for the Board to have refused to grant approval to the O.P.A. 61 and the draft plan of subdivision and to have dismissed the appeal to Zoning By-law 18/97. The Regional interest in these development applications is that the Board's decision calls into question the position and practice of the Region in the areas of rural growth and addressing hydrogeological concerns. Staff therefore recommend that the Region support the Township of West Carleton in its motion of review to the Ontario Municipal Board. Should the motion be successful, the Region would seek party status at the new hearing of the development applications.

FINANCIAL IMPLICATIONS

As it is the opinion of planning staff that since the development applications are in conformity with the Regional Official Plan, the motion for review and any subsequent hearing can be dealt by staff. It is estimated that the cost of materials for the motion for review and any hearing would be in the range of $500-$1,000. Funds are available within the Ontario Municipal Board account of the Legal Department.

Approved by
J. Douglas Cameron

Approved by
N. Tunnacliffe, MCIP, RPP

JDC/NT/TCM

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BY OVERNIGHT COURIER

April 6, 1998

COPY

Mr. D. S. Colbourne, Chair
Ontario Municipal Board
655 Bay Street, 15th Floor
Toronto, ON M5G 1E5

Dear Sir:

Re: Request for a review of an Ontario Municipal Board Decision
Board File Nos. 0970145; R970177; and S970060
Board Case File No. PL970731

We are solicitors for the Corporation of the Township of West Carleton on whose behalf we are filing with you the attached formal Request for a review of the Ontario Municipal Board Decision of T. Yao, Member, in regard to the above-captioned matters. Mr. Yao conducted a Hearing in the offices of the Township of West Carleton on January 5, 6, 7 and 8 of this year and his Decision issued on February 3rd, 1998.

The reasons for the request for the Motion for review follow and are corroborated by the attached Affidavit from Tim Chadder, the Planning Director for the Township of West Carleton.

You will find attached, finally, our firm cheque in the amount of $125 to cover the Motion request filing fee.

To be perfectly clear, the party requesting the Motion for review is the Corporation of Township of West Carleton, whose address is 5670 Carp Road, Kinburn, Ontario, KOA 2HO, Attention: Monica Ceschia, Clerk, phone 832-5644, fax 832-3341.

REASONS FOR THIS REQUEST

With regret, I advise the Board that this Request is based on the failure of the Decision to manifest natural justice and material errors of fact and law. I will hereafter cite references in the Board's Decision and provide comments which form the basis of this request.

1. It is respectfully submitted that the Decision contains a serious error of both fact and law with respect to the issue of a growth management study in the Township of West Carleton (the "Township").There is reference on page 4 of the Decision to the growth management strategy that the Township may conduct and there is a quote from it as follows:

> This is my concern with this application, that West Carleton's growth is on a first come, first serve basis, without any attempt to consolidate growth nor to direct it to specific locations. The allotment of 50% or 6,000 persons for country lot growth apparently justifies all subdivision applications that are not on good agricultural land. However, there is no formal monitoring of severances or draft approved lots available to ensure see [sic] the supply of lots is within this objective. In September 1996, West Carleton's highly professional planning staff developed a community approved work program for an [sic] growth management strategy, in which goal 7 is:
>
> > To ensure that decisions supporting residential development in West Carleton and where that development locates is based on the availability of an assured supply of good quality grown water.
>
> Council has deferred the study because of lack of resources.

The implication of the quote appears to be that no development should take place in the Township until one knows where in the Township one may find good water and thereafter all the development should be consolidated in that spot or in those areas.

Firstly, it must be emphasized that the Official Plan of the Township does not require such a study.

Secondly, the purpose of doing the growth management strategy is to determine where the municipal inhabitants believe commercial development should go and how much should occur, where tourist development should take place (and if so to what extent) and, yes, the extent to which residential growth continues to be supported and whether it should only be located where there is good ground water. There is no suggestion, and no evidence was given before the Board, that residential development is inappropriate or should stop until such a study is done.To the contrary, the evidence of Mr. Tim Chadder, Director of Planning and Development for the Township, was that the growth management study was (and remains) a good tool to allow the Township to determine the aspirations of the Township and to determine thereafter whether changes in planning strategies are appropriate if it is deemed desirable to attempt to achieve those aspirations. There was no evidence that residential development, as indicated, should cease or should only occur in consolidated areas.

Furthermore, the evidence at the Hearing indicated that there is good quality ground water in Phase 1 of the proposed subdivision (14 lots) and that Phase 2 should be deferred until such time as there is a demonstration of good quality water. It is respectfully submitted that the Decision is completely inconsistent with this evidence.

2. It is submitted that the issues which the Applicant understood would be raised by the Appellant at the Hearing are set out in documents filed with the Board as Exhibit 4 at Tabs 14 and 20.

By letter dated February 10, 1997 (Tab 14), Mr. Chadder acknowledged the issues raised by the Wetlands Preservation Group (which includes Mr. Smedley the Appellant) at the Public Meeting. These issues were summarized as follows:

-accurate, survey detail, information on the Floodplain
-a review, by a hydrogeologist, of the matter of potential drinking water contamination by nitrates,
-a review of the ISP and the means to address the level of confidence
-a review of the hydroloic [sic] connection between the lake and the creek, particularly during the flood period.

In response to Mr. Chadder's letter, Dr. Sears, on behalf of the Wetlands Preservation Group, wrote to clarify the Group's concerns on February 25, 1997(Tab 15). She agreed that a topographical survey was required, that the hydrogeological connection be determined, that more field work be carried out with respect to the ISP, and that the drinking water be reviewed.

During the Hearing, the Board member brought up the new issue of the growth management study. The Applicant dealt with the issue and attempted to address the Board's concerns, it is respectfully submitted however, that the Applicant was denied the opportunity of making direct submissions on this issue.

3. Pages 1 and 2 of the Decision speak to "[D]evelopment pressure from the Kanata and Ottawa commuter sheds" and "[G]rowth of 12,320 to year 2006 for the next 20 years".

The 20-year growth period started in 1981 at which time the population of the Township was just under 8,000 people. The current population is 16,000 and therefore 2\3 of the anticipated growth has already occurred. This information was conveyed to the Board in evidence given by Mr. Chadder. The recital of the facts in the Decision is inaccurate and emphasizes development pressure and growth beyond that which is in fact the case.This misunderstanding may have contributed to the inaccuracies contained throughout the Decision.

4. At the top of page 3 of the Decision, there is a statement that, "[E]state lots, by their low density, lack of services and scattered nature would seem to be counter to the May, 1996 Provincial Policies for single 'efficient, cost-effective development and land use patterns' ". There is then a recital of Section 1.1.1 of the Provincial Policy.

   The evidence before the Board was clear that the Official Plan for the Ottawa-Carleton planning area stipulates that 90% of the growth in the Region will occur in urban and urbanizing portions of the Region and that only 10% will be in the rural areas. The 10% rural development is itself split, more or less, between 50% in "settlement areas" such as hamlets and villages, leaving only 50% of the 10% (or 5% of the total Regional growth) within the estate lot and agricultural portions of the rural townships. In short, 5% of the total Regional forecast population of just over one million people will be contained within an area that represents approximately 60% of the total Region's land mass.

   In any event, it is submitted that the Provincial Policy Statement in no way prohibits growth on estate lots, whether by severance or plans of subdivision.

   The new (1997) Official Plan for the Ottawa-Carleton planning area was introduced into evidence as was the previous (1988) Official Plan. Both of these documents restrict the total population in the rural areas of the Region to a total of 10% of the entire Regional population and do not speak specifically to the manner in which that 10% will be allocated; it is only the Township's Official Plan that further restricts rural, non-settlement population, to 50% of the total quota for the Township.

   The 1997 Regional Official Plan was clearly adopted subsequent to the issuance of the May, 1996 Provincial Policies and the Minister of Municipal Affairs and Housing, in its review of the 1997 Regional Official Plan, proposed modifications. None of the modifications which pertained to the issue of rural growth anywhere within the Region. All of this evidence was presented to the Ontario Municipal Board and it is contended that the statement that estate lot development is contrary to the 1996 Provincial Policies is an error both in fact and in law.

5. It is stated on page 3 of the Decision that the only objection to the proposed subdivision was from the Ministry of Environment and Energy ("MOEE"). The evidence before the Board was clear that the MOEE had no objection whatsoever to the approval of 14 lots which would be Phase 1 of the subdivision and had no objection either to the Official Plan nor to the Zoning By-Law. The position of the MOEE, as articulated by the Township's planning witness, Mr.Chadder, and as contained within documents tendered as exhibits, was that draft plan of subdivision approval should not be issued for the 13 lots forming

Phase 2 until further water testing had been performed on those lots.

The letter from Ms. Alida Mitton, Ministry of Environment and Energy, filed as Exhibit 12 in the Hearing, states as follows, "[T]o summarize, this Ministry supports the draft approval of Lots 1 to 14 based on the hydrogeological information submitted. Lots 15 to 17 should not be draft approved until sufficient hydrogeological information is submitted to support development on the basis of bedrock wells."

6. Further down on page 3 of the Decision, there is reference to the, RU designation of the remainder. The evidence was clear that those lands are designated marginal resource and not "RU" - which is a zoning application.

7. The Decision goes on to state on page 3 that, "[T]he remainder permits rezoning without an Official Plan Amendment. The criteria for rezoning are not very onerous; lands are eligible if they are not good agricultural lands, hazard lands, mineral resource, or beside a village".

   It is submitted that this statement of the Board is completely erroneous in fact and is inconsistent with the uncontroverted evidence at the Hearing. In order to qualify for estate lot subdivision approval, the lands in question would have to meet criteria in both the Regional and local Official Plans, which criteria includes such things as the nature of the topography, tree cover, access, road patterns, proper functioning well and septics. In addition to the foregoing, the proposed subdivision must not produce an adverse impact on surrounding resource lands. Most important, perhaps, is the fact that the amount of rural development is limited by the provisions earlier referred to in this letter by virtue of population control.

8. Further down in the same paragraph, it is suggested that 80-90% of the Torbolton Ward is made up of lands which are not agricultural, hazard, mineral nor beside a Village and therefore would qualify as estate lot subdivision lands. This is simply not consistent with the evidence and is not the fact. In any event, the statement suggests that there could be unlimited estate lot development within this ward, which is not the case for the reasons given.

9. The end of this paragraph indicates that the planner, "Tim Chadwick" called this a "first past the post system of subdivision approvals". The Decision goes on to say that, "this is my concern with this application, that West Carleton's growth is on a first come, first served basis, without any intent to consolidate growth nor to direct it to specific locations. The allotment of 50% or 6000 persons for country lot growth apparently justifies all subdivision applications that are not on good agricultural land".

To begin with, the remaining growth allocated to the Township of West Carleton is in the order of 4,000 persons in the current plan and not 6,000 persons. In addition, it is submitted that there is nothing wrong with growth on a first come first served basis in a rural municipality, so long as the proposed development meets all the criteria within the Regional and local Official Plans. There is no requirement in the Provincial Policy Statement, in the Region's Official Plan nor in the Township's Official Plan that rural growth be consolidated; the duty is to direct it to those parts of the Township that meet the criteria.

If this aspect of the Decision is correct, then the entire fabric of the recently adopted Regional Official Plan which, as indicated, has been reviewed and approved by the Ministry of Municipal Affairs and Housing, save and except for unrelated modifications, will have to be the subject of a complete revision with respect to any provisions touching on rural development.

10. At page 3 of the Decision, the Board refers to the Township Planner as Tim Chadwick. In fact, the Township Planner is Mr. Tim Chadder. Mr. Chadder's Witness Statement and curriculum vitae were filed with the Board at the commencement of the hearing as part of Exhibit 2.

11. Mr. Chadder did not refer to the system of subdivision approvals as a "first past the post" system as suggested by the Board member at page 3 of the Decision. Rather, the Board member indicated that **he** thought it was such a system and Mr. Chadder replied by stating that the Board could describe it as such, if it so chose, but rather he perceived it as a system that determined whether the proposal met the criteria in the Regional and local Official Plans and then approval might be given - subject to all the normal land use planning tests for appropriateness, compatibility and Official Plan compliance with scrutiny by all the Ministries and agencies of the Crown who are mandated to conduct such reviews.

12. The Decision states, on page 4, that the allotment for country lot growth, "[A]pparently justifies all subdivision applications that are not on good agricultural lands".

    This statement is simply not correct and is inconsistent with the facts and evidence tendered at the Hearing.

13. In the next sentence, on page 4, it is stated that, "However, there is no formal monitoring of severances or draft approved lots available to ensure... the supply of lots is within this objective".

    This statement is inconsistent with the evidence. The Board member asked Mr. Chadder, whether any monitoring was done and Mr. Chadder said that the Township did not perform

the task because the Regional Municipality performs the task.

It was the uncontradicted evidence of Robert McKay, Regional Planner for RMOC, that the Region does perform the monitoring.

14. On page 4 of the Decision, the Board member indicates that, "[T]his is one of those rare cases where I am putting myself in the shoes of the Minister and deciding myself it was good planning against the advice of expert witnesses".

The only evidence in opposition to the Official Plan Amendment, the Zoning By-Law Amendment and the Plan of Subdivision came from one witness called by the Appellant on the last day of the Hearing. Mr. Gordon Cameron, a law professor and resident of an estate subdivision was not tendered as an expert witness and, accordingly, no witness statement was provided to Mrs. Firestone or to the Board. Mr. Cameron's evidence related exclusively to a subdivision in the City of Kanata which pre-dates provincial policies dealing with wetland, growth and settlement, etc. His evidence touched on such matters as private restrictive covenant agreements and whether they are enforceable.

It is respectfully submitted that the evidence clearly demonstrated the appropriateness of the proposed O.P.A., Zoning By-Law Amendment and subdivision, that there was no compelling evidence to the contrary and that the Decision is therefore inconsistent with the evidence before the Board.

15. The Board member states, on page 4, that he is, "[N]ot comfortable about the philosophy of subdivision creation in West Carleton, in which lots are created on a speculative basis with controls on sale unless and until potable water is found".

This statement would have application, at most,to Phase 2 of the subdivision and certainly is unrelated to the intent of the Official Plan Amendment which was to remove a pits and quarries designation, no longer applicable because of the surrendering of the licence, and re-designate the lands to marginal resource and environmental protection. Indeed, there was no evidence given by any party indicating that the Official Plan Amendment proposed by the Township and refused by the Board is inappropriate.

16. There is a portion of the Decision dealing with the, "Lack of co-ordination between West Carleton and Kanata".

Page 4 of the Decision refers to the Thomas A Dolan Parkway as a regional road that divides the two municipalities. Although the Thomas Dolan Parkway is, in parts, a regional road, it is not a regional road where it abuts the subdivision lands; at that location, it is a

boundary road which the Township and City, the evidence indicated, have been maintaining successfully and amicably for years.

17. The Decision goes on to state on page 5 that, "3,500 additional inhabitants could generate the demand for an additional lane of road" and that, "Kanata taxpayers are paying to upgrade facilities, which its Council has protected, by refusing to approve estate lot development".

There was no evidence before the Board that Kanata's Council has refused to approve estate lot development in the area.

The total number of units on the four plans of subdivision within West Carleton as described by the Board member is approximately 100 (or approximately 285 people - information that was provided in evidence). Another 3,500 inhabitants would be another 1,228 units in the vicinity of the Thomas Dolan Parkway - which is a physical impossibility and which is inconsistent with any evidence presented to the Board.

The proposed plan of subdivision, the evidence about which was that it was relatively typical in size, proposed a total of 27 houses or approximately 77 people.

18. The Decision goes on, on page 5 to recite two provisions in the Region's Official Plan demonstrating that the Region, "[D]oes not support indiscriminate rural development".

The same provisions are found in the Official Plan for the Township of West Carleton. ~~and~~ The proposed subdivision was reviewed in light of these criteria and, as the evidence demonstrated, passed the tests.

19. In the next paragraph on page 5, it is suggested that the Region has, "[N]o comprehensive strategy to deal with two municipalities with differing standards for fringe development". It is respectfully submitted that there was never any evidence to suggest that that was the case, nor was there any evidence to indicate that there is anything inherently wrong with different municipalities having different strategies for rural development.

It is an undisputed fact that the City of Kanata did not object to the Plan of Subdivision or to the redesignation and rezoning; there was tendered in evidence a letter from the City of Kanata indicating its concern with respect to the intersection and requiring a contribution to the upgrade of the road. These are matters that could well be attended to by the two municipalities and could have been addressed through the imposition of conditions to subdivision approval and are not, it is respectfully submitted, the basis for the refusal for the plan of subdivision, nor, the

evidence demonstrates, was it a ground of objection from the City of Kanata.

20. The Board member, further in that same paragraph, indicates that, "Mr. McKay (the Regional planner) has approved from 50 to 100 estate residential subdivisions in Rideau and Osgoode".

Mr. McKay was asked how many rural estate subdivisions he had reviewed in his career and he indicated 50 to 100 which included subdivisions he has reviewed in Rideau Township, Osgoode Township, West Carleton Township, Goulbourn Township and in Alberta where he worked for 7 years. The Decision is completely unreflective of Mr. McKay's evidence and indeed, there aren't 100 estate residential subdivisions in Rideau and Osgoode Township combined.

21. That same paragraph ends up by stating, "I was not certain what monitoring the Region does, apart from a laissez faire approach".

I will leave it to the Region to comment on its approach and whether it is laissez faire; as indicated earlier, the evidence was that the Region does conduct a monitoring exercise.

22. Page 5 of the Decision under the heading, "Development restrictions controlled by zoning and owner awareness programs" indicates that home owners within the Saddlebrook Estates subdivision occupied by the Appellant's only witness, Mr. Gordon Cameron, disobey zoning by-laws with impunity. This evidence seems to have influenced the Board to refuse the approvals being sought .

In fact, the the evidence given by Mr. Gordon Cameron did not deal with the contravention of by-laws, but rather with restrictive covenants which are a private matter and would not have involved the municipality in any event. It should be noted, that the municipality in which Mr. Cameron lives, is Kanata and not the Township of West Carleton.

It must be emphasized, that it was a restrictive covenant and not a zoning by-law that may have been infringed and it is available to property owners to have such restrictive covenants enforced by the Courts. The Decision of Mr. Justice Chadwick, referred to at page 6 of the Decision,was not tendered on the Board and there is no clear evidence as to what transpired or whether this case it would be applicable in the Township of West Carleton. The evidence with respect to the violation indicated that there was a dispute over the installation of an antenna which some neighbours tried to prevent and which was deemed to be beyond the scope of the judge to deal with because it was a matter of federal jurisdiction.

The Board member makes no reference to the evidence of Mr. Robert McKay and Mr. Tim Chadder to the effect that individuals who purchase a lot in a subdivision like the one before the Board, will do so with full knowledge that they are acquiring a piece of wetland, and in this instance, it may be part of the purchaser's attraction to the property. Mr. McKay recounted his experience with a similar subdivision and gave his views on the issue of private stewardship. In his professional opinion, the covenants proposed by the developer provided appropriate protection for the wetland and were reasonable.

It is respectfully submitted that the Board member placed undue weight on Mr. Cameron's evidence which was, for the most part, irrelevant to the subdivision proposal before the Board, and ignored the evidence from qualified planners.

23. The Board relies on further evidence given by Mr. Cameron that, "What the Ministry says is potable can be really awful water in terms of the contaminants. So purchasers are easily misled."

The Decision goes on to state, "What I don't understand is why the Region, which wishes to take responsibility for ensuring that the lots are created, does not take equal responsibility for ensuring that water meets the *typical* purchaser's expectations".

Firstly, it is submitted that the evidence that the water in the 14 lots in Phase 1 meets the *Ontario Drinking Water Objectives* was uncontroverted. The mandate for testing the acceptability of the water is that of the MOEE which accepted that the water in Phase 1 is not only potable, but meets all the *Ontario Drinking Water Objectives.*

There was expert evidence respecting the difference between water that is merely potable and water that meets the *Ontario Drinking Water Objectives* both generally and with respect to the subdivision in question. It is respectfully submitted that this evidence should be preferred to the evidence of Mr. Cameron.

It is submitted that it is completely inappropriate to expect or to demand that the Regional Municipality of Ottawa-Carleton will ensure that water meets, "the typical purchaser's expectations". One cannot know what those expectations are and they may well be unrealistic; that is the reason there are provincial standards.

24. Finally, the Board member was heard by both the Applicant and the Solicitor for the Applicant, to say that he didn't know why anybody would live out in the Township of West Carleton in the "middle of nowhere".

It is respectfully submitted, in brief:

1. That the Decision does not reflect the evidence;

2. That there are no grounds whatsoever to refuse to approve the Official Plan amendment;

3. That there was no ground to grant the Zoning Appeal and that indeed no evidence was given to the contrary;

4. There was no ground to refuse the subdivision;

5. The Decision has significant errors of fact and law and predicates tests which are not appropriate and ought not to have been the basis of the refusal;

6. That in order for the Board to refuse to approve a subdivision, and an Official Plan Amendment and to grant a Zoning Appeal, there has to be some compelling evidence, of which there was none;

7. It was never suggested that the municipality's proposed growth management strategy was the basis for refusing or frustrating or stalling development, but rather it was and will be conducted and may form the basis of future policies; and

8. The Decision misconstrues completely the intention, the purpose and effect of the Provincial Policy Statement.

It is respectfully submitted that the Board convene a Hearing at which a Motion for a Re-Hearing may be granted and at such a Motion, the Township will argue that the entire matter should be re-heard by a different member of the Board.

I wish to advise the Board that the Township of West Carleton will not seek Leave to Appeal the Board's Decision in the Divisional Court.

As indicated, the Affidavit of Mr. Chadder attesting to the accuracy of the statements in this letter, is attached.

Yours truly,

Alan K. Cohen

Extract of Draft Minutes
Planning and Environment Committee
12 May 1998

3. ONTARIO MUNICIPAL BOARD
DUNROBIN LAKES SUBDIVISION
WEST CARLETON OFFICIAL PLAN AMENDMENT NO. 61
ZONING BY-LAW 18/97

- Regional Solicitor's and Planning and Development Approvals Commissioner's joint report dated 27 Apr 98

Mr. Marc outlined the reasons staff would like to support the request for a rehearing are, the comments made by and Ontario Municipal Board (OMB) member with respect to the Regional Growth Strategy for Rural Development and the approach taken by an OMB member with respect to hydrogeology.

Councillor Legendre asked if normally, with respect to an OMB decision, ifthe appellants feel the Board made the wrong decision they would pursue it in the courts.

Mr. Marc explained when the decision was released, the appellant could have gone to court on a question of law, but in this case, it is really not legal issues that caused this decision to be wrong, it is the factual and policy approach taken by a member of the Board. He noted he supports Mr. Cohen in his request and felt it is an appropriate one.

Councillor Legendre indicated he was uncomfortable with this and did not feel Regional interest was sufficient to support West Carelton in their request. He disagreed as this calls into question the Region's practice regarding rural growth and hydrogeological studies. He felt in reading the material the Board member is indicating the Region is not doing their job and he agreed. He noted he would not be supporting this recommendation.

Councillor Hume, referring to the letter from Soloway, Wright Barristers and Solicitors, indicated his support of the request for a rehearing based on the inappropriate comments made by a member of the OMB. Councillor Hill agreed and felt the Region should be defended on this issue.

Councillor Bellemare requested the cost of adding the Region as a party to this request from West Carleton. He noted under financial implications, costs are estimated for materials to be $500-1000. He asked for staff to identify staff time for this.

Mr. Marc noted it is a two-step process: appearing before the Board on the motion to rehear and then, if accepted, appearing before the Board for the rehearing. He felt both would take approximately 5 to 6 days of staff time. Mr. Marc's estimated his time would cost approximately $2,500, however, he was unable to estimate other staff's involvement and costs.

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The Committee then considered the staff recommendation.

That Planning and Environment Committee recommend to Regional Council that the Region support the Township of West Carleton in its request to the Ontario Municipal Board for a rehearing on O.P.A. 61, West Carleton Zoning By-law 18 of 97 and Draft Plan of Subdivision 06T-94001.

CARRIED
(G. Hunter dissented.)