

ISSUE DATE:

July 10, 2009



PL070004

**Ontario Municipal Board
Commission des affaires municipales de l'Ontario**

Doug Owen Construction Ltd. 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 Waterloo to make a decision respecting a proposed plan of subdivision on lands composed of Part Lot 44, German Company Tract in the City of Waterloo

Approval Authority File No. 30T-04403

OMB File No. S070026

Doug Owen Construction Ltd. 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 878A of the City of Waterloo to rezone lands respecting Part Lot 44, German Company Tract from (A) to (G1), (FR), (SR3) and (MDI) to permit the development of a subdivision consisting of 36 single detached residential units and 24 townhouse units

OMB File No. Z070001

APPEARANCES:

Parties

Region of Waterloo

City of Waterloo

Doug Owen Construction Ltd.

Counsel

B. Duxbury

W. H. White

Barry Horosko

**MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de
AVELLAR SCHILLER ON APRIL 9, 2009 AND ORDER OF THE BOARD**

This appearance dealt with a motion for Party status by Ms Louise Lanteigne, which the Board denied, and proposed revisions to the draft plan of subdivision and associated zoning by-law amendment.

Withdrawal of Mr. David Wellhauser

The last appearance in these matters was a pre-hearing that also included an appeal by Mr. David Wellhauser of Regional Official Policies Plan Amendment [ROPPA] 23. This amendment is a companion amendment to ROPPA 22, which identified certain lands to be subject to the designation of Environmentally Sensitive Landscapes [ESL].

The first pre-hearing for both ROPPA 22 and ROPPA 23 was held over two days in January, 2007. Ms Lanteigne sought and received Participant status in ROPPA 22 at that time. ROPPA 22 had a large number of Parties and Participants. Mr. Wellhauser was the only appellant for ROPPA 23, and none of the Participants in ROPPA 22 - including Ms Lanteigne -- indicated a particular interest in ROPPA 23. At that pre-hearing, Mr. Horosko, counsel for Doug Owen Construction Ltd. [Owen], advised the Board and all those present of the Owen appeals regarding the proposed plan of subdivision and associated zoning by-law amendment. On consent of the Parties at that pre-hearing, ROPPA 22 would be heard first then ROPPA 23 would be heard with the subdivision and zoning by-law appeals now before this Board.

ROPPA 22 is in full force and effect and is not before this Board. Mr. Wellhauser acknowledged that his interest in appealing ROPPA 23 was in extending the ESL designation to certain lands owned by Owen and which form the subject site of the appeals regarding a draft plan of subdivision and associated zoning by-law amendment now before this Board.

The Owen lands are on the Waterloo Moraine and Mr. Wellhauser expressed particular concern about the impact of the proposed development on groundwater supply and regional recharge. At the close of that pre-hearing, arrangements were made for Mr. Wellhauser, and any expert he chose, to review the proponent's expert studies on these questions and the Region's expert analysis and review. Following meetings of these experts with Mr. Wellhauser, and production of any relevant written material for his review, Mr. Wellhauser withdrew his appeal in its entirety and withdrew from these proceedings. There being no other appeals of ROPPA 23, and no remaining Party in opposition, the Board closed that file and ROPPA 23 is in full force and effect. Only the Owen appeals now remain before the Board.

Motion for Party Status by Ms Louise Lanteigne

At the outset of the last attendance, the Board was advised that Owen, the City of Waterloo and the Region of Waterloo had reached a settlement of the Owen appeals, subject to conditions. The Board was also advised that one of the issues raised earlier by the Region was the question of groundwater recharge as it may relate to the Owen lands but that a detailed review by the Region's experts had now satisfied the Region

that, subject to conditions, groundwater recharge was no longer an issue for the Region with respect to the Owen proposals. This review formed part of the information made available to Mr. Wellhauser.

Also in attendance at this earlier appearance was Ms Lanteigne. At that appearance Ms Lanteigne advised the Board that she intended to seek Party status in the Owen appeals, although she acknowledged that she would also consider Participant status. She confirmed that she had not retained any experts and, if she were granted Party status, did not intend to retain any witnesses for the hearing of the merits. She advised the Board that it was, instead, her intention to seek summonses for various individuals and call her case in that fashion.

Notice for the pre-hearing, sent to Ms Lanteigne and others, clearly states that one purpose of the pre-hearing is to identify and scope issues. This purpose is best fulfilled where Parties, or those who intend to seek Party status, exchange information on their respective issues prior to the pre-hearing. This enables the Parties to determine themselves if one or more issues can be narrowed or resolved and enables the Parties to prepare a draft Issue List for the Board's consideration at the pre-hearing. Ms Lanteigne had made known to Parties opposite her intention to seek Party status. When asked by Parties opposite to provide a draft Issue List prior to that pre-hearing, Ms Lanteigne refused. Nor did Ms Lanteigne present a clear and precise Issue List at the pre-hearing. Under questioning, Ms Lanteigne was only able to articulate her interest and concern in these matters in extremely broad terms. In addition, Ms Lanteigne was unrepresented at this earlier appearance.

For efficiency in the Board's process and for fairness to all parties and to Ms Lanteigne, the Board directed Ms Lanteigne to bring a motion to seek Party status if her decision was to seek Party status rather than Participant status in these matters. The motion was to be returnable at the next pre-hearing, which is this current appearance before the Board. At this appearance, Ms Lanteigne is represented by counsel, D. Charney.

Ms Lanteigne lives 1.5 kms from the subject lands. The Board is persuaded that Ms Lanteigne is generally interested in the Waterloo Moraine and land uses that may be

permitted on the Moraine. She has followed proposals, made inquiries of staff at all levels of government, and attended lectures dealing with the Moraine.

Ms Lanteigne suggests that she represents many others who share her concerns. On this point, the Board notes that no others came forward at any pre-hearing to be added as either Participants or Parties in these matters. Mr. Wellhauser, who appealed ROPPA 23 and identified a key issue as groundwater supply and recharge, has withdrawn his appeal and advised the Board that he has no further interest in the matters remaining before the Board.

In further assessing whether Ms Lanteigne has a genuine interest that would constitute reasonable grounds to be added as a Party, the Board looks to Ms Lanteigne's understanding of the role and responsibilities of a Party to proceedings before this Board and to her actions up to and including this motion.

Ms Lanteigne has stated repeatedly that she considers her role that of a facilitator to bring together experts she hopes to have summoned with experts retained by Owen or retained or employed by the City of Waterloo or the Region of Waterloo. Her stated interest is to act as a bridge to ensure dialogue between the experts on matters of concern to her. This is not the role of a Party, nor does a series of facilitated discussions properly describe the adjudicative process and responsibility of the Board at a hearing of the merits.

While the Board strongly supports mediated discussions, where appropriate, and often directs experts to meet in advance of the hearing of the merits to determine if issues can be scoped or settled, a clear pre-condition is the identification of genuine, triable issues with a clear nexus to the matters before the Board and not simply a set of generalized concerns.

Disclosing the issues a Party intends to address, and ensuring sufficient specificity in the issues to enable Parties opposite either to challenge the appropriateness of an issue or to know the case they must meet if the issues are accepted by the Board as genuine and triable, is intended to ensure a hearing that is both full and fair. Although her proposed issue list touched upon some other areas, Ms Lanteigne has identified her particular concerns as:

1. habitat protection of known threatened or endangered species located on the subject lands; and
2. groundwater supply and recharge, being the same issue raised by Mr. Wellhauser.

While Parties may pursue with vigour genuine, triable issues directly connected to the matters before the Board, the Board expects Parties to be honest, forthright and co-operative in disclosing issues they intend to bring before the Board. At the last pre-hearing, Ms Lanteigne indicated that she would provide her Issue List to Parties opposite the next day. Although it took Ms Lanteigne a bit longer to produce her Issue List, the modest addition of a few days is a minor matter. What is not minor is the refusal by Ms Lanteigne to provide sufficient detail to allow Parties opposite to understand the precise issue being presented. This is best illustrated by Ms Lanteigne's actions surrounding issues she wished to place on the Issue List dealing with threatened or endangered species.

When an issue is tendered for the Issue List that suggests the proposal before the Board has failed to consider the impact on threatened or endangered species, or their habitat, the responsibility rests entirely with the interest seeking to place the issue on the Issue List to:

- identify the threatened or endangered species;
- identify and define that species' habitat, including its boundaries; and
- specify the location of such habitat on the subject lands.

In her initial Issue List following the last pre-hearing, Ms Lanteigne had the following four issues:

1. Does the Owen Property EIS study currently list all the threatened species previously identified in the subject lands or adjacent lands?
3. Does the Owen Property EIS study currently list the total sightings of threatened and endangered species confirmed previously in the subject lands or the adjacent lands?

4. Does the proposal include mitigative [sic] measures to assure this proposal will not kill, harm or harass known threatened and endangered species located on the subject lands and adjacent ESPA as defined in the Endangered Species Act, 2007 ...?
5. Does the proposal include mitigative measures in place to assure this proposal will not damage or destroy the habitat of known threatened or endangered species located on the subject lands and adjacent ESPA 19 as defined in the Endangered Species Act, 2007...?

When asked to identify which threatened or endangered species were being referred to in each of these issues, Ms Lanteigne refused to identify the species to which she was referring and, instead, replied in writing as follows:

There are many reports which predate the EIS which indicates [sic] the presence of threatened and/or endangered species in the area including the Laurel Creek Subwatershed Study, data gathered from area universities, the ROM and MNR etc. I am not an expert but am speaking with many who seem to have expressed an urgency in the need to raise the issues regarding rare species.

Should the Board afford me the right to secure party status I would rather allow bona fide experts to discuss these matters in confidence due to the fact these species are afforded protection under the Freedom of Information Act. I'm not going to name specific species at this time, not because I don't know which ones are of concern, but simply because my roll [sic] at this time is that of an advocate, not expert. I'd rather facilitate the dialogue on the matter than to lead such discussions myself...

The revised Issue List Ms Lanteigne included in her motion record did little to advance an understanding of the species of concern, the definition of their specific habitat, or whether the boundaries of the defined habitat overlapped the boundaries of the subject site. Her revised issue 2, based on her initial issue 5, reads:

2. Does the proposal include mitigative measures in place to assure this proposal will not damage or destroy the habitat of known threatened or endangered species located on the subject lands and adjacent ESPA 19 as defined in the Endangered Species Act, 2007...? For example, the term habitat in the endangered species act includes species upon which life processes of threatened animals rely on. Pileated Woodpeckers create habitats for the Threatened Jefferson Salamander and Coyotes control the raccoon populations that predate on low nesting birds and amphibians. Have we created provisions to protect these key species?

By repeating the general language of the opening sentence, followed only by an illustrative list, Ms Lanteigne failed to provide Parties opposite with sufficient specificity

in the issue to understand the case they must meet if the Board accepts the issue as genuine, triable and connected to the matters before the Board.

In addition to identifying genuine, triable issues, a Party is expected to call evidence in support of the issues identified. As noted above, Ms Lanteigne does not intend to retain any expert witnesses. Her intention is to proceed by way of summons to experts she contends will provide the Board with relevant evidence in support of her issues. In three key instances – two with threatened or endangered species and one with groundwater and regional recharge – Ms Lanteigne is continuing to pursue issues where the experts she hoped to provide expert opinion evidence have already advised her that they do not agree with the issue as she has framed it or her characterization of a problem, have corrected her understanding of the facts, and cannot give evidence in support of her position. In pursuing these issues, and in failing to acknowledge or disclose the contrary advice given her by the very experts upon whom she intended to rely, Ms Lanteigne misuses the Board's process.

The first of these instances deals with birds. Ms Lanteigne seeks to summon Mr. Lyle Friesen, Ph. D., Songbird Biologist with the Canadian Wildlife Service [CWS] of Environment Canada. Ms Lanteigne wrote to Mr. Friesen on March 8, 2009, stating that the Acadian Flycatcher, Hooded Warbler and Red-headed Woodpecker "have already been confirmed in Breeding Bird Lists as seen in the EIS reports" in ESPA 19 in the Regional Municipality of Waterloo and seeking his assistance in opposing the Owen proposals. Mr. Friesen replied by e-mail on March 12, one day prior to Ms Lanteigne's circulation of her initial Issue List and five days prior to Ms Lanteigne's advice to Parties opposite that she would not disclose the threatened or endangered species to which she referred. In his reply, Mr. Friesen stated:

... CSW biologists have been participating in a long-term study in the area and have frequently, and almost daily, visited this site from 1997 to 2008 during breeding seasons. The long-term study is supported by CWS, the City of Waterloo, the University of Waterloo, and the Region of Waterloo. The available evidence does not support the notion that this site represents important breeding habitat for any of the three identified species at risk. The three species at risk in question have occasionally been observed in the ESPA 19, and this why they appear on lists of birds seen during the breeding season. But there has been no confirmed breeding at this site for any of the three species since the start of the study... The Owen property supports regionally significant birds ... but no species under the *Species at Risk Act*. ...

The second instance deals with Jefferson Salamanders. In her motion material, Ms Lanteigne includes a two and a half year old e-mail, under date of October 26, 2006, from Mr. Ken Cornelisse, Water Resources Co-ordinator for the Ontario Ministry of Natural Resources. Mr. Cornelisse is replying to an e-mail to him by Ms Lanteigne, under date of October 23, 2006, in which she states:

... The Laurel Creek Watershed Study confirmed the sightings of 4 varieties of the Jefferson Salamander complex in this area and I have personally found other varieties of salamanders here myself...

In his reply, Mr. Cornelisse states in part:

... It appears the major source for Jefferson salamander observations is the Francis and Campbell article of 1983 (Herpetofaunal Study of Waterloo Region, Ont. Field Bioi. 37(2)). I have reviewed a copy of this report and based on the mapping, it is difficult to pinpoint the locations of the observations because they were mapped at 2km squares. I did contact Dr. George Francis about this paper, but he could not remember the observations from 30 years ago!

ESPA #17 includes Jefferson salamanders and ESPA #17 is proximate to ESPA #19. Wetland "W-12" in ESPA 19 is a vernal pool that remains wet in most years, and is surrounded by upland forest ... This pool is likely the best breeding habitat for salamanders in ESPA #19...

Ms Lanteigne wishes to summon Mr. Cornelisse in support of her concern regarding breeding habitat for the Jefferson Salamander, notwithstanding that even in 2006 his e-mail makes no reference to the Owen lands and simply suggests that ESPA 19, by virtue of its proximity to ESPA 17, may have breeding habitat for salamanders. In addition, what Ms Lanteigne did not disclose in her motion materials is that she received very current e-mail correspondence from Mr. Cornelisse, under date of February 23, 2009, responding to her correspondence to him which included a slide presentation dealing with her concerns about the Owen proposals and the protection of habitat for salamanders.

In the correspondence and slide presentation, Ms Lanteigne asserted that the Owen lands "sit between a known habitat and a most likely habitat for the threatened Jefferson Salamander" and that the lands "provide much needed habitat for species such as Jefferson Salamanders ... confirmed by the MNR..." Mr. Cornelisse rejects Ms Lanteigne's assertion and replied by noting the following:

... In December of 2006, in response to questions by the Regional Municipality of Waterloo, the MNR reviewed the Jefferson Salamanders data in this general area and responded in writing to the Region. That letter states:

We have reviewed the existing data for Jefferson salamanders and their hybrids in the Regional Municipality of Waterloo area, including the MNR – Natural Heritage Information Centre database. Based on their study, which took place between 1976 and 1981, Francis and Campbell (1983) reported Jefferson salamander hybrids ... occurring in the northwest area of the City of Waterloo. The information was reported on a 2km by 2km grid square and this grid square does not appear to overlap with ESPA 19. Many subsequent studies ... that state Jefferson salamanders ... are known to be in the northwest area of Waterloo refer to the study by Francis and Campbell (1983). Subsequent inventory work ... [2004 and 2005] ... did not find Jefferson salamanders or their hybrids. Therefore at this time, Jefferson salamanders or their hybrids are not known to occur in ESPA 19, although potentially suitable habitat exists...

The MNR did undertake monitoring of several vernal pools on the west side of ESPA 19 in the spring of 2008. No Jefferson salamanders or their polyploids were found during this study. This monitoring did occur during the appropriate time for salamander monitoring and these results help to further characterize the distribution of salamanders in this area...

As a result of the fact that the data from Francis and Campbell (1983) are fairly old (1976-1981) and the mapping resolution was low, and there are no other recent, accurate records for Jefferson salamanders in the northwest area of the City of Waterloo, we do not have a "known" location for Jefferson salamanders in the northwest area of the City of Waterloo. Similarly, it is difficult to characterize an area as: "most likely habitat" for the threatened Jefferson Salamander...

The third instance deals with her concerns regarding the role of the Owen lands in groundwater and regional recharge. Specifically, Ms Lanteigne raises concerns regarding the findings of a hydrogeological report undertaken by CH2M HILL and reviewed and accepted by the City of Waterloo, the Region of Waterloo and the Grand River Conservation Authority. In this instance, Ms Lanteigne is continuing an issue identified, and abandoned, by Mr. Wellhauser.

In another hearing, on lands unrelated to the subject lands, Ms Lanteigne retained Mr. Stan Denhoed of Harden Environmental Services Ltd. for expert hydrological opinion evidence. In the matters now before the Board, Ms Lanteigne contacted Mr. Denhoed to provide expert hydrological evidence. On March 19, 2009, Mr. Denhoed wrote to Ms Lanteigne advising that he had read her materials regarding the matters now before the Board, was satisfied with the reports, considered her

concerns unjustified, found no defensible issue in this area and could not provide expert opinion evidence in support of her concerns.

By the time of this pre-hearing, Ms Lanteigne did not include Mr. Denhoed in her list of those to be summoned. She did include Messrs Cornelisse and Friesen, dealt with above. Ms Lanteigne cites five additional witnesses she would like to summon. They are:

1. Alan Morgan, a geology professor whose lectures on the Waterloo Moraine Ms Lanteigne has attended. As of this appearance, Mr. Morgan has not replied to Ms Lanteigne's queries regarding the matters now before the Board and there is no indication that Mr. Morgan has any familiarity with the proposals or expert background analyses in support thereof.
2. Andy Bajc, a geologist with the Canadian Geological Survey, whom Ms Lanteigne e-mailed regarding these proceedings. Mr. Bajc did not reply to the e-mail and there is no indication that Mr. Bajc has any familiarity with the proposals or expert background analyses in support thereof.
3. Gordon Nelson, a professor of planning, who has not replied to Ms Lanteigne and there is no indication that Mr. Nelson has any familiarity with the proposals or expert background analyses in support thereof.
4. Edward Kott, a fish biologist and professor, who met personally with Ms Lanteigne on the matters now before the Board and who advised that he could not provide evidence in support of her concerns.
5. Emil Frind, a professor of hydrogeology. Mr. Frind made submissions to the City of Waterloo raising questions about the proposal but did not appear at any pre-hearing nor did he otherwise contact the Board with any request to be either a Party or Participant in these proceedings. In addition, Mr. Frind advised Ms Lanteigne that he could not provide evidence in support of her concerns.

Prior to issuing a summons, the Board must be satisfied that the person to be summoned will provide evidence that has at least a semblance of relevance in support of a genuine, triable issue with a clear nexus to matters before the Board. In that regard, the Board also expects the person under summons to have a demonstrated knowledge of the specific matters before the Board. The Board may also wish to know whether the person proposed to be summoned is aware of a Party's intention to seek a summons for that person from the Board. These requirements come into particularly sharp focus when a Party or prospective Party advises the Board that they intend to proceed solely by way of summons and do not intend otherwise to retain any experts.

The Board finds that Ms Lanteigne has failed to present genuine, triable issues with a clear nexus to the matters before the Board. In addition to persisting in her wish to summon witnesses to provide expert opinion evidence who have already advised her that they do not agree with the issue as she has framed it or her characterization of a problem, have corrected her understanding of the facts, and cannot give evidence in support of her position, Ms Lanteigne has included prospective witnesses for whom there is no indication of any familiarity with the proposals or expert background analyses in support thereof. In this regard, Ms Lanteigne's proposed list of witnesses to be summoned fails to meet the reasonable, appropriate and necessary standards expected by the Board.

By delaying the disclosure of her Issue List, refusing to provide specificity to clarify her issues, continuing to assert as facts matters that experts she proposes to summon have advised are not facts, and proposing to summon witnesses with no indication of familiarity with the proposals or expert background analyses in support thereof and therefore no semblance of relevance in their possible testimony, the Board finds that Ms Lanteigne has failed to meet the standards expected of a Party, has conducted herself in a manner that has resulted in undue delay, has sought to misdirect the Board and misuse the Board's process.

Ms Lanteigne appears to misunderstand and certainly mischaracterizes the role and responsibilities of a Party to a Board proceeding. Throughout this process, Ms Lanteigne has been reminded that if her focus is a matter of bringing concerns to the attention of the Board, she can do so fully and completely as a Participant. She has declined Participant status. She has also been reminded throughout this process that

generalized concerns do not rise to the requisite standard of genuine, triable issues with a clear nexus to the matters before the Board. And she has been given ample opportunity to consider these matters, consult with counsel and experts, and refine the basis of her request for Party status. Having considered the materials Ms Lanteigne has presented and her pattern of behaviour, the Board is of the opinion that there are no reasonable grounds to add Ms Lanteigne as a Party to these proceedings. Ms Lanteigne's motion for Party status is denied.

The Merits

The proposed draft plan of subdivision and associated zoning by-law amendment apply to 9.6 ha of land on the south side of Wideman Road in the City of Waterloo. The site is immediately west of the Laurel Creek Village subdivision and immediately east of the former McNally lands that now carry the Environmentally Sensitive Landscape [ESL] designation in the Region Official Policies Plan. The ESL designation of the Region Official Policies Plan does not apply to the subject lands.

The subject lands are in three sections. The southern section is partly within Environmentally Sensitive Policy Area [ESPA] 19. The northern section is partly within Sunfish Lake Provincially Significant Wetland [PSW] complex. The central section, a former Christmas tree plantation, contains no similar environmental constraints. A City-owned strip of land, formerly a driveway, separates the northern and central sections.

The Board heard from two qualified land use planners, Robert Trotter for the City of Waterloo and Kevin Eby for the Region of Waterloo. Both are full members of the Canadian Institute of Planners and Registered Professional Planners in Ontario.

The application for the draft plan of subdivision was made in December, 2004, and the application for the zoning by-law amendment was made in January, 2005. The proposals conform to the City of Waterloo Official Plan and the Region Official Policies Plan and no official plan amendment is required. Since the applications pre-date the effective date for the 2005 Provincial Policy Statement [PPS], the 1997 PPS applies. Similarly, the applications were made prior to the issuance in June, 2006, of the Growth

Plan for the Greater Golden Horseshoe. Consistent with the transition regulation, these applications are to be disposed of as if the Growth Plan had not come into effect.

As a result of both the City's and the Region's particular concern with environmentally sensitive lands and proper protection of the environment, the Owen proposal has been the subject of particularly vigorous analysis and review for land use and environmental planning purposes. The lands were included in a land needs analysis by the Region in 1985 and designated for future urban growth by the City in 1988. The lands were part of the Laurel Creek Watershed Study, resulting in an official plan amendment in 1993, and were further reviewed through a scoped subwatershed study in 1999 that was refined and updated in 2004 and in 2008. These environmental analyses and reviews have included experts retained by Owen, staff and retained experts by the City and the Region, staff of the Grand River Conservation Authority, and staff of the Ministry of Natural Resources and the Ministry of Environment. Some of the land use and environmental matters considered included:

- Deep and shallow groundwater recharge;
- Hydrogeological analysis of soils;
- Storm water management plans and design;
- Impacts of road salt;
- Environmental features, including:
 - Environmentally Sensitive Policy Area 19;
 - Sunfish Lake Provincially Significant Wetland complex;
 - Green space buffers;
 - The presence of flora, fauna and amphibians and protection of their habitat where found on the Owen lands;
 - Relationship to the former McNally lands that are now City-owned and protected through the ESL designation;

- Opportunity for trail development; and
- Neighbourhood connectivity and urban design.

As a result of these analyses, the proposals now before the Board represent a substantial reduction in the area to be developed, substantial increases in areas to be maintained for open space and buffers, and a substantial increase in the lands to be conveyed and preserved for environmental protection. All of the public agencies that reviewed these matters are now satisfied with this revised proposal.

The City-owned strip of land separating the northern and central sections is to be conveyed to Owen in order to secure an improved design and layout for the development. As a condition of the sale, 8.32 ha of land will be conveyed by Owen to the City. All of these Owen lands to be acquired by the City are outside of the areas being considered for development. Only 18% of the lands will be used for residential development of the 43 proposed lots. In consideration of groundwater recharge, the zoning by-law limits impervious coverage. Green space, environmental protection or open space and buffers surround the proposed development. In all, 72% of the lands will now be in public ownership, including the ESPA 19 area in the southern section and the PSW lands in the northern section.

Although the timing of applications for this proposal requires the Board to have regard to the 1997 Provincial Policy Statement, the Board has also considered the requirements of the 2005 Provincial Policy Statement. At section 1.4.1(b), the 2005 PPS requires planning authorities to:

... maintain at all times where new development is to occur, land with servicing capacity sufficient to provide at least a 3 year supply of residential units available through lands suitably zoned to facilitate *residential intensification and redevelopment*, and lands in draft approved and registered plans...

Analysis undertaken by the City concludes that this target will not be met easily and that this proposal is an important contributor to meeting that three year supply. Although this is greenfield development, the proposal represents contiguous growth that is adjacent to an existing built up area, involves a reasonable and appropriate extension of existing services, and protects significant environmental features.

The appeal is allowed in part. The proposed zoning by-law amendment, filed in these proceedings as Exhibit 9, is approved. The proposed draft plan of subdivision, filed in these proceedings as Exhibit 2, is approved subject to the conditions of the Region of Waterloo filed in these proceedings as Exhibit 7 and subject to the conditions of the City of Waterloo filed in these proceedings as Exhibit 8. With regard to section 51(56.1) of the *Planning Act*, final approval of the plan of subdivision for the purposes of section 51(58) of the *Planning Act* is given to the Region of Waterloo as the approval authority in which the subject lands are situate.

So Orders the Board.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
MEMBER