IN THE MATTER OF subsection 17 (24) of the Planning Act, R.S.O. 1990, c. P. 13, as amended

Appellant: Urbandale Corporation
Appellant: Greater Ottawa Homebuilders Association
Subject: Proposed Official Plan Amendment No. 2009-83
Municipality: City of Ottawa
OMB Case No.: PL090370
OMB File No.: PL090370

APPEARANCES:

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<th>Parties</th>
<th>Counsel</th>
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<td>City of Ottawa</td>
<td>T. Marc</td>
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<tr>
<td>Greater Ottawa Homebuilders Association</td>
<td>U. Melinz</td>
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<td>and Urbandale Corporation</td>
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DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD

This is a settlement hearing held by Telephone Conference Call resulting from a Board conducted mediation regarding appeals by the Greater Ottawa Homebuilders Association and Urbandale Corporation (“Appellants”) of the approval by the City of Ottawa of Official Plan Amendment No. 72 dealing with parkland dedication policies. Prior to the hearing the parties consented to allow the Board member who carried out the mediation to conduct the hearing.

The City had approved OPA No. 72 to enact City-wide changes to their parkland dedication policies. OPA No. 72 was adopted by the City through By-law 2009-83. By-law 2009-95 which the City adopted to implement the new parkland dedication policies was not appealed. However, the settlement was achieved in part through the consent of the parties regarding a number of changes to By-law 2009-95.
The Appellants raised a number of common issues regarding the proposed parkland dedication policies which include the following:

1. The extent of parkland or cash-in-lieu dedication required by the new policies could make medium density residential and small infill projects uneconomic.

2. By-law 2009-95 which implements the policies contains no dispute resolution mechanism with respect to the appraised value of land for the purpose of determining cash-in-lieu payments.

3. By-law 2009-95 is too narrow in defining what land is suitable for parkland conveyance.

4. There are concerns about the way that parkland dedication requirements will be determined for retirement homes.

5. A mechanism is needed for providing advanced notice to the development community of consideration by the City to amend the parkland dedication By-law.

6. A mechanism is required to deal with situations where there is an over-dedication resulting from actual development densities being lower than foreseen at the time of development approval.

In addition to the above issues, Urbandale Corporation raised concerns about the effects of the OPA on the parkland dedication requirements for their holdings in Kanata Town Centre.

The Board heard that the outstanding issues among the parties had been resolved based upon two sets of Minutes of Settlement, one between the City and Urbandale Corporation (Exhibit 1) and the other among the City, Greater Ottawa Homebuilders Association and Urbandale Corporation (Exhibit 2). The Minutes of Settlement between the City and Urbandale resolve the issues involving Urbandale’s holdings in Kanata Town Centre by determining specific parkland dedication requirements for the property.
The other Minutes of Settlement between the three parties resolve the common issues based upon the City’s intent to enact a number of changes mainly to implementing By-law 2009-95. The Minutes recognize that parkland and open space dedication calculations for areas covered by Community Design Plans will be calculated according to the alternative rate of 1 ha. per 300 dwelling units, as set out in section 42 (3) of the Planning Act. As part of the Minutes, the City commits to enact a number of amendments to implementing By-law 2009-95 and one amendment to OPA No. 72 to address the above-noted common issues. Provisions of the Minutes include the City’s commitment to establish a cap of 10% on cash-in-lieu payments for any residential development except for lands subject to Community Design Plans or Council approved concept plans in which parkland dedication requirements are specified. The cap applies only to cash-in-lieu situations.

The City also commits to amending the By-law to include a dispute resolution mechanism for determining the value of appraised land for cash-in-lieu payments. The By-law will also clarify that City staff can use their discretion in determining the lands that are eligible to be included in the dedication.

The City agrees to undertake an analysis of the way that retirement homes will be dealt with in the parkland dedication By-law. The City also agrees to implement mechanisms for notifying the development community of potential changes to parkland dedication requirements and for adjusting the amount of parkland dedication where the actual amount of development of a property is different than that used for calculation of the dedication.

On the basis of the terms of the Minutes of Settlement the Appellants agreed that the remainder of their appeals could be dismissed.

The Board received affidavit evidence in support of the Minutes of Settlement from Bruce Finlay, Planner with the City of Ottawa. Mr. Finlay is a registered professional planner with more than 25 years of experience. The Board accepted him as an expert in land use planning.

Mr. Finlay’s affidavit (Exhibit 3) sets out the changes to the implementing By-law 2009-95 and OPA No. 72 and indicates that they are appropriate and will serve to enact the provisions of the Minutes of Settlement.
Since By-law 2009-95 is not under appeal, Mr. Finlay’s planning opinion only addressed the change to OPA No. 72. He maintains that the change is appropriate, it responds to the concerns of the parties, it is consistent with the Provincial Policy Statement and it represents good planning.

The Board heard that the parties have agreed that the revisions to By-law 2009-95 and the change to OPA No. 72 have resolved their concerns.

Ms Melinz noted that the manner in which parkland dedication policies apply to stacked townhouse proposals is still a concern. In the end, however, the Appellants are generally pleased with the changes that the City has agreed to incorporate into By-law 2009-95 and OPA No. 72 and on that basis will allow the remainder of their appeals to be dismissed. She indicated that concerns about stacked townhouses will be raised further with the City.

The uncontested evidence in this appeal is that both settlements are appropriate. Furthermore the uncontested expert evidence is that the change to OPA No. 72 complies with all relevant policies and represents good planning. The Board accepts the opinion evidence provided by Mr. Finlay. In addition, the Board accepts the submissions of the parties that the changes to By-law 2009-95 and OPA No. 72 incorporate the provisions of the Minutes of Settlement (Exhibit 2).

After considering the evidence, the Board allows the appeal in part based upon the terms set out in the Minutes of Settlement, and Official Plan Amendment No. 72 is amended as set out in Exhibit C of Mr. Finlay’s affidavit (Exhibit 3).

**Order**

THE BOARD ORDERS that the appeal is allowed in part based upon the terms as set out in the Minutes of Settlement (Exhibit 1 and Exhibit 2);

And Furthermore, Amendment No. 72 to the City of Ottawa Official Plan is modified as set out in Exhibit C of the Affidavit provided by the City (Exhibit 3) and as modified is approved.
In all other respects the appeals are dismissed.

So Orders the Board.

“C. Conti”

C. CONTI
MEMBER