

ISSUE DATE:

**August 3, 2006**

DECISION/ORDER NO:

**2203**



PL031324

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

Blue Heron Storage Corp., M.H. Milford Holdings Inc. and others have appealed to the Ontario Municipal Board under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, from a decision of the Minister of Municipal Affairs and Housing to approve a Proposed Official Plan for the City of Ottawa

MMAH File No. 06-OP-0050

OMB Case No. PL031324

OMB File No. O030481

### **APPEARANCES:**

#### **Parties**

#### **Counsel**

City of Ottawa

T. Marc

Blue Heron Storage Corp.  
M.H. Milford Holdings Inc.

J. Moon

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

The amalgamated City of Ottawa (City) is urbanized in 10% of its territory; 90% is rural, interspersed with 26 "Villages" with boundaries specified in the City's new Official Plan (OP). Blue Heron Storage Corp. and M.H. Milford Holdings Inc. (appellants) appealed the OP, arguing that the boundaries of the Village of Dunrobin should be expanded. Dunrobin, on the border between the former City of Kanata (Kanata) and Township of West Carleton (West Carleton), is only a few minutes from Ottawa's high-tech area; but the City disputed water quality, and said that there were already many buildable lots in the vicinity without expanding the Village.

The Board was asked to adjudicate this key feature of the Village's future, without the benefit of the relevant Community Design Plan (CDP), which has been deferred.

The Board has carefully considered all the evidence, as well as the submissions of counsel. The Board finds the appellants' proposal premature: Dunrobin is not ready, and expansion at this time would be impossible to reconcile with the unequivocal wording of the Provincial Policy Statement. The Board hopes, however, that more interesting prospects will emerge from the CDP process, which the Board encourages the City to re-institute as soon as possible. The details and reasons are set forth below.

## **BACKGROUND**

The history of Dunrobin's village boundary is unusual.

The village grew in the early 19th century at a major crossroads (of the historical March Township) known today as the intersection of Dunrobin Road (north-south) and Thomas Dolan Parkway (east-west). When the City of Kanata was incorporated, Thomas Dolan Parkway became its northern boundary; on the other side was West Carleton. Both Kanata and West Carleton were in the former Regional Municipality of Ottawa-Carleton (RMOC), now amalgamated in the new City of Ottawa.

In the days of the former City of Kanata, the four quadrants around the intersection could be characterized (counter-clockwise) as follows:

- Southwest:** This is where most of the original village was built – churches, homes and other buildings. Kanata's OP designated this quadrant "V" (for "Village").
- Southeast:** Aside from a few houses, this quadrant was largely undeveloped. Relevant Official Plans designated it "General Rural". It is the location of the appellants' property. Relatively recently, one of the appellants built a storage facility there (permissible under the "General Rural" designation and zoning).
- Northeast:** (in West Carleton). Aside from one high-visibility older building on the northeast corner, this quadrant remained largely undeveloped until construction of a subdivision called Trails of Dunrobin in the early 1990's.
- Northwest:** (in West Carleton). Aside from a few houses, it too remained largely undeveloped until the late 1980's with the construction of a subdivision called Casey Creek.

The late 1980's saw growing interest in development: Dunrobin is less than ten minutes from Kanata North Business Park, then in the first stages of a high-tech boom. The two new subdivisions were on private well/septic systems; but the Mayor of West

Carleton expressed misgivings over water quality, with many exchanges of correspondence on that subject with the Ministry of Environment (MOE).

MOE divides water quality issues into three categories: Safety, Aesthetics, and Operational. The issue here was not safety, but "aesthetics":

- Topics like nitrates and bacteria are in the **Safety** category;
- The **Aesthetics** category includes iron content (orange discoloration), manganese (black discoloration), calcium chloride (water hardness), and suspended solids which can encrust plumbing.

MOE also monitors sodium (not a "safety" issue except for those on a low-sodium diet).

Municipal positions were consistent on this subject: Kanata's OP noted the water issues around Dunrobin, agreeing with the RMOC that there should be no Village expansion without a servicing study:

- 4.8.1 The Village designation is given to the existing group of small lots... around the intersection of Regional Road 9 (Dunrobin Road) and Thomas Dolan Parkway in the Official Plan for Ottawa-Carleton. However, the Official Plan of the Regional Municipality of Ottawa-Carleton requires servicing studies of Villages be undertaken where expansion is proposed. [OPA 13, February 10, 1993]

A similar position was reiterated and amplified in the RMOC's OP (Exhibit 3, p. 74):

- 3.7.3(4) (Council shall) when considering local Official Plan amendments which expand the boundaries of Villages or increase the total potential development in the Village, require a study to establish:
  - a) The servicing requirements...
  - b) If private services are proposed:
    - ii) That water of sufficient quality and quantity to support the proposed development can be provided...

- iv) That the proposed development will not adversely affect the quality or quantity of wellwater within approximately 2 kilometres of the boundary of the Village....
- d) Expected growth for a 10- to 20-year planning period....

In 1992, Kanata commissioned a study entitled *The Dunrobin Private Services Study*, which (in summary)

indicated that further study should be undertaken before there is an attempt to create a village in the Kanata portion (Exhibit 3, p. 155).

Indeed, Kanata City Council called on the RMOC to *remove* the "Village" designation from the longstanding settled area southeast of the intersection, on the Kanata side of the boundary. The RMOC records of the time (Exhibit 3, page 151) are specific:

Kanata suggests the Regional Plan should reflect the findings of the Dunrobin Private Services Study, Phase I (March 1992), which indicated that further study should be undertaken before there is an attempt to create a Village in the Kanata portion of Dunrobin. The findings of the Phase I study indicated that further investigation of the available aquifers and appropriate lot sizes should be undertaken. It is recommended that the designation "General Rural" be expanded to include what is now called "Village" and that some criteria be established as to what should be evaluated before the designation "Village" could be extended to the Kanata area.

The RMOC complied; it did, however, attach the Village designation to the two new subdivisions north of Thomas Dolan Parkway, in West Carleton. As of 2001, therefore, the situation was counter-intuitive:

- there was a Village designation for the most *recent* additions to the village, northeast and northwest of the intersection,
- but no Village designation to the southwest, where the actual physical village had stood for over 150 years, and continued to stand.

The latter quadrant was designated General Rural – like the largely vacant southeast quadrant.

In 2003, the Council of the new City adopted a new OP which, like the RMOC's OP, designated the two quadrants north of the intersection as "Village", but the two quadrants to the south as "General Rural". That is the subject of this appeal.

The City, however, also instituted an important process to develop secondary plans, called **Community Design Plans (CDPs)**. When Council adopted its new OP in 2003, it made CDPs obligatory; later, Official Amendment No. 28 specified that CDPs were no longer obligatory, though still desirable. The neighbouring village of Constance Bay now has an approved CDP – and its village boundary was also adjusted. A CDP was expected for Dunrobin, and Council passed a motion to that effect.

However, in Spring 2006, Dunrobin's CDP was deferred for two years.

But the absence of a design *plan* for the community does not stop the community from being redesigned in *fact*. The intersection, its most noticeable feature for over a century, is being realigned (Exhibit 8); and for that purpose, the most visible building in the village, a two-storey 1830's building at the intersection, has been acquired by the City for demolition.

## **THE PROPOSAL**

The two appellant companies own ten acres to the southeast of the intersection. They are both controlled by the same family, represented by Dr. Bruce Firestone.

It is not every day that municipal counsel compliment developers at the Board; but counsel for the City made a point of doing so for Dr. Firestone, who teaches development and planning-related topics at Carleton University. Dr. Firestone proposed to "square off" Dunrobin's boundaries, to give them a symmetry encompassing all four quadrants around the intersection. Two quadrants already had a Village designation; the third had been a *de facto* village for over a century; and he proposed inclusion of the fourth, where the appellants' lands are.

The rationale was not just symmetry. Counting the storage facility in the southeast quadrant, there is already *some* urbanization in all four quadrants; but under the OP status quo, the southeast quadrant of the *de facto* village of Dunrobin was

severely limited in development potential which, according to Dr. Firestone, was a manifestly inefficient scenario: it would be more logical, he said to make full use of all four corners. Furthermore, the area is amply supplied with schools and roads, so further development would mean efficient use of that infrastructure, consistent with the Provincial Policy Statement (PPS). Dr. Firestone also cited the emphasis, in the PPS, on development within well-defined settlement areas.

Parenthetically, Dr. Firestone also described his development proposal for the appellants' lands if the Village were to include those ten acres. In the expectation of continued reliance on private services with septic fields, his "sketch plan" proposed eight one-acre lots with a central pond. Such a scenario was impossible under the current OP's General Rural designation because (a) the lots were too small for a "country lot subdivision", and (b) country lot subdivisions were not allowed anyway, within a one-kilometre radius of a Village.

## **ARGUMENTS**

The City's planner, Mr. Sayah, referred to the appellants' proposal as follows:

On the map, it's very convincing; but on the ground, it's different.

That issue "on the ground" was the local water's "aesthetic" quality. Wells would need to be equipped with three or possibly four treatment systems each, to bring water quality into compliance with MOE standards for iron, manganese, hardness and sodium.

Some charts, produced in evidence, suggested that some wells might contain e.g. iron beyond even treatable levels. However, the City did not insist that the water was untreatable; instead, it asked the rhetorical question: why would the City expand a settlement area where such difficulties exist, when there were so many other development opportunities to choose from?

The language of the applicable PPS (1997) was unequivocal:

- 1.1.1 Urban areas and rural settlement areas will be expanded only where
- (b) existing designated areas in the municipality do not have sufficient land supply to accommodate the growth projected for the municipality.

The City estimated buildable lots in the neighbouring villages of Carp, Constance Bay and Fitzroy Harbour at over five hundred, with hundreds more already draft-approved in surrounding rural areas. Dr. Firestone replied that very few were in Dunrobin itself, and he discounted lots that had not yet been draft-approved; but he did not dispute that in the general vicinity, buildable lots numbered many hundred.

The City said there were other uses to which the appellants could put their property. Parenthetically, Mr. Sayah added that he saw nothing particularly distinctive about the new development which the appellants proposed for this expanded village. It was standard "suburban", with few of the features he considered desirable to nurture Dunrobin's distinctiveness: buildings would not be oriented to the street (let alone to the historical crossroads), and would not otherwise "contribute" to Dunrobin's character.

Interestingly, Dr. Firestone did not dispute that assessment. The proposed configuration, he said, was largely dictated by his understanding of expectations at City Hall. Personally, he would have preferred the CDP to proceed, instead of being deferred: a meaningful Community Design Plan might have given Dunrobin some real opportunities to capitalize on its distinctiveness.

Most of the argument, however, remained focused on water. The appellants' hydrogeologist argued that the City's concerns were exaggerated. Dr. Firestone added that "the efforts required (to bring the water into conformity with MOE standards) are not 'heroic': they are typical of a rural subdivision". The City replied that its terms of reference for water-testing had not been fully complied with; the appellant's hydrogeologist countered that his methodology complied with normal professional standards. The sample wells were across the street, in the Trails of Dunrobin subdivision; and Dr. Firestone pointedly observed that notwithstanding the City's arguments about discoloration, the senior officials actually responsible for water (the local Conservation Authority) had raised no apparent alarm over the real-life experience at Trails of Dunrobin, over these many years. That proposition was not disputed.

In short, the Board heard eloquent argument that the water issue had been blown out of proportion. That contention might even be true; the problem for the appellants, however, is that there are other difficulties with the boundary issue.

## CONSIDERATIONS

Expansion of a settlement area is not to be taken lightly. It is usually considered in light of “the big picture”, i.e. an overarching vision addressing the needs and aspirations of the community as a whole. In Dunrobin’s case, there are significant gaps in that picture;

- The first is that ever since the days of the City of Kanata OP, it was expected that “**servicing studies of Villages** be undertaken where (Village) expansion is proposed”. In this case, that has not occurred.
- The second problem is that the wording of the PPS leaves no room for equivocation: settlements are not to be enlarged unless the municipality’s buildable areas “do not have **sufficient land supply**”. Although there were submissions on land supply in the *village*, that was not the Province’s test: it referred to land supply in the *municipality*. That existing “land supply” is substantial (the City called it “huge”). Even disregarding all lots other than those fully approved, the lots “buildable as of right” in the vicinity are numerous. It is simply impossible to assert that there is “insufficient land supply”. As such, the PPS represents a major impediment.

But it was not necessarily an insurmountable obstacle, Dr. Firestone reasoned; if it were, how does one explain the boundary expansion at Constance Bay? For that matter, his counsel argued, a rigorous interpretation (including full build-out of country estate lots) would defeat the PPS preference for settlement-focused development. The City replied, however, that the expansion of Constance Bay was tied to development of secondary access (necessary, e.g., for emergency vehicles) and other distinguishing factors that the Board has no reason to dispute. As for the PPS, its most recent iteration (2005) and related legislation in the past few years display, if anything, even more determination on the part of the Province to regulate the expansion of settlement boundaries, as a fundamental principle of the planning process.

Despite Dr. Firestone's articulate presentation of the planning logic of the case, the Board finds that the expansion of the Village at this time simply cannot be reconciled with the planning documents of today (the PPS), any more than it can be reconciled



with the planning documents of the past two decades (including the prerequisite of a Village servicing study).

Furthermore, the expansion proposal is problematic not only as to content, but as to timing. To be blunt, the planning process around Dunrobin is now so disjointed that the Board is not persuaded that approval of the appellants' proposal at this time would necessarily be in the appellants' own interest, let alone the interest of good planning. It is difficult, if not impossible, to view the future boundaries of the Village in isolation from the future of the village itself – which, at present, is inordinately awkward.

On that point, interestingly, the Board heard more consensus than expected:

- Both the City's planner Mr. Sayah and Dr. Firestone referred to the special "character" of Dunrobin, in appreciative terms.
- Both referred to the importance of contributing to that character.
- Both indicated that the standard "suburban" model of development would not be their first choice.

The Board was told, however, that the very instrument intended to help define and nurture that character, namely the CDP, was on hold – at the exact same time as other City departments were dramatically transforming the face of the community. Although redevelopment of vehicular pass-through might please traffic engineers, the Board was not told how it would "contribute to the character" of the village either. In short, the Board was being asked to pass judgment on the future of the Village, or at least its boundaries,

- not only in the absence of any comprehensive vision,
- but also during a time of City-imposed upheaval, which was also proceeding without the benefit of any such vision.

If the definition of the verb "to plan" (*Shorter Oxford English Dictionary*) is "to arrange beforehand", then that is not "planning". Although the Board commends both Dr. Firestone and Mr. Sayah for their efforts to make the best of the situation, the Board

is optimistic that the future of Dunrobin (including its boundaries) can likely be resolved to the greater satisfaction of all concerned, once the proper instruments are in place.

## **CONCLUSION**

The proposal to expand Dunrobin's Village boundaries is premature.

The reason is not because of any logical inconsistency in the planning grounds presented by the appellants. Nor is the reason because the "aesthetic" challenges to local water were insurmountable: they are not – and to be fair, the City never insisted that they were. The day may yet come, when there is agreement on that issue.

The more immediate problem for the proposal is that the Provincial Policy Statement holds a trump position; and that position says that settlement areas will be expanded only when there is insufficient land supply. That precondition is absent here; accordingly, the appeal fails.

The Board, however, uses the word "premature" advisedly. The Board was told of various steps needed for fully knowledgeable decisions: the Kanata OP spoke of Village servicing studies, and Ottawa Council itself had taken abortive steps toward a Community Design Plan (CDP). The Board noted the statements, by both sides, indicating a shared interest in capitalizing on Dunrobin's special character – leading to the possibility that with mutual support, the parties could reach a scenario far more pleasing to them both. The expeditious launch of the CDP process would be a major asset, which the Board fully encourages.

The appeal is therefore dismissed, but without prejudice to the possibility of a new proposal for boundary expansion at a future date in accordance with the reasoning above.

“M. C. Denhez”

M. C. DENHEZ  
MEMBER