

ISSUE DATE:

Jan. 11, 2008



PL041188

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

Trinison Management Corporation, Danigire Holding Incorporated, Star Oak Developments Limited *et al* have appealed to the Ontario Municipal Board under subsection 22(7) 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 the Official Plan for the Town of Oakville to establish the North Oakville East Secondary Plan for the land in the general area bounded by Dundas Street, Sixteen Mile Creek, Highway 407 and 9th Line  
Approval Authority File No.42.12I.11  
OMB File No. 0040214

**APPEARANCES:**

**Parties**

**Counsel**

**North Oakville Management Inc.- Settled**

Star Oak Developments Ltd. and Mel-Oak Developments Inc.

R. Cheeseman

Osmington Inc.

I. Kagan

Oakville 23-2 Inc.

R. Beaman

Argo (North Oakville 1) Ltd. and Argo (North Oakville II) Ltd.

P. Harrington

Belmont Properties Inc.

M. Flowers

Trinison Management Corp.

R. Smith

Timsin Holding Corp.

R. Smith

Eno Investments Ltd., Mattamy Development Corporation, Bressa Developments Limited and North Oakville Community Park Inc. (taking over from Danigire Holding Incorporated)

R. Beaman

Green Ginger Developments

C. Barnett

**Other North Oakville Landowners**

Diam Contractors Limited, Antonio Capobianco, In Trust, A. Capobianco and Sons Ltd. and Joshua Creek Community Developments

R. Webb

Memorial Gardens Canada Limited

T. Barlow

Leo and Sybil Rampen

A. Fernandez (absentia)

Redthorn Co.

M. Melling (absentia)

Shell Canada Products Ltd.

B. Taylor

Ontario Realty Corporation

K. Sliwa

Jim and Diane McGowan

M. McQuaid

Canada Lands Company Limited

J. Fleischmann

St. Peter and Paul Serbian Orthodox Parish of Oakville and Mississauga

Other Parties

Town of Oakville

C. Lyons and R. Howe

Halton Catholic District School Board

P. Patterson

Halton District School Board

W. Thatcher

Region of Halton and Halton Region Conservation Authority

F. Coburn

Participants

Ministry of Municipal Affairs and Housing

S. Lockwood

David Bazar and Marie Monique Deguire

Residents Association of North Dundas

L. Knowlton, president (agent)

Taras H. Shevchenko Museum and Memorial Park Foundation

G. Morris, planner (agent)

## **DECISION DELIVERED BY SUSAN B. CAMPBELL AND ORDER OF THE BOARD**

### **Background/Chronology**

On June 2, 1998, Regional Official Plan Amendment No.8 ("ROPA 8") was approved by Council of the Regional Municipality of Halton (the "Region"). ROPA 8 (Exhibit #6a, TAB 1) sets out proposed expansions to the existing urban area of the Region to accommodate the projected residential and employment growth which could not be accommodated within existing urban areas. Included in this expanded area were lands in the Town of Oakville (the "Town") known as the "North Oakville Lands", that is, lands south of Highway 407, north of Dundas Street West, west of Ninth Line and east of Tremaine Road. It is intended that these lands will eventually accommodate 50,000 residents.

On May 29, 2002, Council of the Town approved Official Plan Amendment No. 198 ("OPA 198"), which incorporated approximately 3,000 hectares of land in the area bounded by Highway 407, Dundas St.W., Ninth Line and Tremaine Rd. (the "North Oakville Lands" into the Town's urban area. OPA 198 was eventually approved by the Board on September 12, 2003.

The lands which are the subject of these appeals are within the North Oakville lands. They are termed the "North Oakville East Lands", as they include the above lands, east of Sixteen Mile Creek.

In January 2002, the North Oakville Creeks Subwatershed Study (the "Subwatershed Study"), was initiated "to provide guidance for the future management of the North Oakville Creeks Subwatershed, and specifically to meet the goals and objectives within the context of future land use and other activities within the watershed. The guidance provided reflects the goals and objectives set for the area and the characteristics of the watershed" (Exhibit #9(c)). The Subwatershed Study considered in this hearing, and which vitally informs the Board's decision on the boundaries of the Natural Heritage System (the "NHS") is contained in Exhibits #9(c)-(h), the Characterization Report, the Management Report, the Implementation Report, two volumes of appendices, an addendum (figures) and an addendum (text). The

Subwatershed Study is a comprehensive document, which reflects six years of intensive work, by a broad group of experts. It will be more fully considered below.

Following the initiation of the Subwatershed Study, the Town opened a competition to select consultants to prepare a secondary plan for North Oakville East. In February 2003, Macauley Shiomi Howson were retained. Ms Howson provided expert land use planning evidence on behalf of the Town in this hearing.

In May 2003, the Town determined that an Inter-Agency Review ("IAR") process should be involved in the development of the Secondary Plan. This resulted from the fact that, "the Town has placed a priority on the development of a linked natural heritage/open space system for North Oakville. This priority is reflected in the fact that the North Oakville Natural Heritage Inventory and Analysis Study was the first background study initiated by the Town with respect to North Oakville. Further, the Town is in the process of preparing a Subwatershed Study for North Oakville, a study that, together with the Secondary Plans for this area, is intended to establish a linked natural heritage/open space system" (Exhibit #6(b), TAB 3, Staff Report, May 16, 2003).

The IAR allowed for input during the development of the Secondary Plan from the Province, through the Ministry of Municipal Affairs and Housing and the Region. The IAR was intended to allow the Town, the Region and the Province "to develop options for a common policy framework with respect to the potential elements of the natural heritage/open space system which would be suitable for the urban context of North Oakville..." Conservation Halton and the Ministry of Natural Resources ("MNR") were also participants in the IAR. The work of the IAR will be considered below.

During 2003, draft Subwatershed Study Analysis Reports were released. On February 10, 2004 a Preliminary Draft North Oakville Subwatershed Management Strategy, Preliminary Draft Natural Heritage/Open Space Official Plan Amendment, and Preliminary Draft East and West Secondary Plans/Official Plan Amendments were released. In March 2004 a number of North Oakville landowners, collectively referred to as North Oakville Management Inc. ("NOMI") filed an application for a proposed official plan amendment to establish a North Oakville East Secondary Plan. Therefore, two separate Secondary Plans had been put forward for consideration. In November 2004, NOMI commenced the subject appeal.

## **The Settlements**

By August 14, 2007, after an extended period of successful mediation and negotiation, the Board was informed that a comprehensive settlement endorsed by Town Council and most of the NOMI landowners had been reached. During the course of this hearing further settlements were reached.

The Board heard the uncontradicted evidence of Ms Howson on the planning merits of the Settled Official Plan Amendment No. 272 ("OPA 272"), Exhibit #5 and on further amendments with respect to lands owned by Shell Canada Products Ltd., the Taras H. Shevchenko Museum and Memorial Park Foundation and Joshua's Creek Community.

Having considered the evidence of Ms Howson, the Board finds that OPA 272, with the exception of the NHS boundary on the lands owned by Capobianco and Bazar, the agricultural use policies, and the location of the secondary school symbol on the lands in the northwest quadrant of Neyagawa Blvd. and Dundas St.W., which will be considered below, constitutes good planning. OPA 272 has regard for the Provincial Policy Statement, 1997 (the "PPS"), it conforms to the Regional OP and it conforms to the specific framework for development of the Town's North Oakville Secondary Plans, set out in OPA 198.

The Board finds, based on Ms Howson's evidence, that both the settled portions of OPA 272 and the portions still in dispute must be considered in light of three key General Development Objectives contained in section 4.1 of OPA 198. These objectives are as follows:

- Establishing as a "first priority of the Town a natural heritage/open space system to protect, preserve, and, where appropriate, enhance the natural environment...";
- "New urbanism" which is a planning approach incorporating inter-related patterns of land use, transportation and urban form;
- A transit-first approach to transportation designed to create a multi-modal transportation system which should reduce reliance on the automobile.

The Board accepts Ms Howson's evidence that OPA 272 achieves these objectives, and significantly, achieves them in an appropriate balance.

With respect to the Shell lands, the Board will allow the modification of section 7.6.4.2 of OPA 272 in accordance with Exhibit #107. The Board's final order on this matter will be withheld until the Board has been advised that the Town and Shell have entered into a site plan agreement.

With respect to the Shevchenko Foundation lands, the Board orders that section 7.6.13.3(b) of OPA 272 be amended in accordance with Exhibit #108. Appendix 7.3, the North Oakville Master Plan (the "Master Plan"), will be amended in accordance with Exhibit #109.

With respect to the Joshua Creek Community lands, the Board orders that section 7.6.8 of OPA 272 be amended in accordance with Exhibit #110.

There are four issues remaining in dispute:

1. the location of a storm water management pond north of Burnhamthorpe Rd. and west of Ninth Line;
2. matters raised by the Residents Association of North Dundas ("RAND") in respect of the width of existing Burnhamthorpe Rd. and the protection of existing residential uses in North Oakville;
3. the boundary of the Natural Heritage System with respect to lands owned by Diam Contractors Limited, Antonio Capobianco In Trust, A. Capobianco and Sons Ltd. (the "Capobianco lands") and by David Bazar and Marie Deguire (the "Bazar lands"); and
4. the location of the secondary school symbol, currently proposed for the northwest quadrant of Neyagawa Blvd. and Dundas St. W.

#### *1. The Location of Storm Water Management Ponds:*

Mr. and Mrs. McGowan and Mr. Anderson raised concerns about the proposed location of storm water management ponds illustrated on the Master Plan. Ms Howson reviewed with the Board the policy framework in OPA 272 under which such facilities must be studied and approved, sections 7.4.5, 7.6.2.2(a) and 7.8.3. The Board is satisfied, based on Ms Howson's evidence, that these policies are appropriate. Until the

requisite detailed studies are done, the final location of the ponds cannot be determined. Therefore, the Board will not order any change to the location of the pond symbols as illustrated on the Master Plan.

*2. The RAND Issues:*

On behalf of RAND, Ms Knowlton spoke to the Board about the concerns of existing North Oakville residents, about the width of existing Burnhamthorpe Rd. and the protection of existing residential uses. She particularly addressed the OPA policies dealing with the Transition Area Designation.

Ms Howson testified that OPA 272 appropriately provides for the maintenance of the character of Burnhamthorpe Rd. to the extent possible, given planned urbanization. Further, she reviewed with the Board the Transition Area designation and the manner in which the OPA addresses compatibility between existing residential uses and future development. In Ms Howson's opinion the compatibility issue is addressed appropriately, there is a balance between the needs of the existing residents and the needs of the expanding urban community. The Board accepts Ms Howson's opinion. No changes will be made to OPA 272 policies with respect to Burnhamthorpe Rd. or the Transition Area designation.

*3. The Boundary of the Natural Heritage System:*

As noted above, OPA 198, in response to ROPA 8, which brought the North Oakville lands into the urban area, addressed the issue of the results of the urbanization of the lands. For the purposes of determining the extent of the boundary of the NHS mandated by the Secondary Plan, the Board must have regard to the detailed policies of OPA 198, the Halton Regional Official Plan (the "Regional OP"), ROPA 8 and the Secondary Plan. Underpinning these policies is the PPS. In addition, the Board must consider the exhaustive work done for the purposes of the Subwatershed Study, including the IAR, and the work done by the Town's and Region's witnesses for this hearing.

## **The Provincial Policy Statement**

Ms Howson reviewed with the Board the relevant portions of the PPS (Exhibit #6a, TAB 5). Policy 1.1, Developing Strong Communities, calls for urban areas to be the focus of growth in the Province. In Ms Howson's opinion, ROPA 8 and OPA 198 followed the provincial policy direction by bringing the North Oakville lands into the urban area. The Secondary Plan, OPA 272, accomplishes the goals of the PPS, in her opinion, by providing for a full range of land uses, for an appropriate range and mix of housing, for an appropriate public infrastructure and ensuring the economic well-being of the Town.

With respect to Resources, Policy 2, in Ms Howson's opinion the agricultural policies are not applicable to OPA 272 as the subject lands were properly brought into the urban area through ROPA 8 and OPA 198. However, what is of enormous significance with respect to these lands is Policy 2.3, Natural Heritage.

Policy 2.3.1 provides:

Natural heritage features and areas will be protected from incompatible development.

- (a) Development and site alteration will not be permitted in:
  - Significant wetlands south and east of the Canadian Shield; and
  - Significant portions of the habitat of endangered and threatened species.
- (b) Development and site alteration may be permitted in:
  - Fish habitat
  - Significant woodlands south and east of the Canadian Shield
  - Significant wildlife habitat; and
  - Significant areas of natural and scientific interest

If it has been demonstrated that there will be no negative impacts on the natural features or the ecological functions for which the area is identified.

Section 2.3.2 provides, "Development and site alteration may be permitted on adjacent lands to (a) and (b) if it has been demonstrated that there will be no negative impacts on the natural features or on the ecological functions for which the area is identified".

In Ms Howson's opinion, the objective of the PPS is to protect natural heritage features and adjacent lands from the negative impacts of incompatible development. Policy 2.3.3 speaks directly to "the diversity of natural features...and the natural connections between them", mandating maintenance and improvement, where possible.

In Ms Howson's opinion, the Secondary Plan has achieved the directions of the PPS; it has established a NHS comprised of core areas and linkages which are to be protected from the negative impacts of incompatible development. The Board accepts Ms Howson's opinion and finds that OPA 272 has appropriate regard for the policies set out in the PPS.

### **Regional Official Plan (1995)**

The Regional OP speaks to a "proper balance" being maintained among "...protecting the natural environment, enhancing its economic competitiveness and fostering a healthy, equitable society". Within the urban system, which, following ROPA 8, includes the North Oakville lands, it is the goal of the Region *inter alia* to "...retain local community identity, create healthy communities, promote economic prosperity, maintain a high quality, sustainable natural environment, and preserve certain landforms permanently".

The "Greenlands System" is specifically addressed in Part D, which speaks to "...an interconnected system of natural areas and open space that will preserve areas of significant ecological value while providing, where appropriate, some opportunities for recreation".

The Regional OP was amended by ROPA 25 after the subject application was filed. However, ROPA 25 contains a special policy for the North Oakville lands. The Board was asked to, and will make a determination on the conformity of OPA 272 with ROPA 25.

The Greenlands System policies set out in the Regional OP are enhanced in ROPA 25. It provides in Policy 114 "the goal of the Greenlands System is to maintain as a permanent landform an interconnected system of natural areas and open space that will preserve areas of significant ecological value..." Policy 115 specifically allows for a "systems approach" to be utilized in identifying and protecting the Greenlands System within a Secondary Plan provided that, *inter alia*, the Region has been consulted, the public and affected agencies have been informed, and most significantly, the Board finds "...utilizes a systems approach that is based on a detailed and comprehensive analysis, carried out as part of a Subwatershed Study covering at least the Secondary Plan area".

Having heard the evidence of Ms Howson and the Town's and Region's experts, Mr. Stephenson (biologist/ecologist), Dr. Tegler (ecologist), Ms Axon (environmental planner/ecologist), Mr. Gregory (plant ecologist) and Mr. Tufgar (water resources engineer), the Board is satisfied that in developing the policies for, and the boundaries of, the NHS, the Town appropriately utilized the regionally permitted systems approach. Even the Capobianco expert witnesses agreed that a systems approach to developing the boundaries of a NHS is an appropriate method to be utilized. While Counsel for Capobianco seemed to suggest that a features based approach to determining the boundaries of the NHS might be more appropriate, especially in the vicinity of the Capobianco lands, the Board accepts the evidence of the expert witnesses that there is good reason to use a systems based approach. The use of such an approach contributes to good planning when a valuable, irreplaceable natural heritage system is to be identified and protected. To use any other approach after the completion of the Subwatershed Study would be a retrograde step.

#### **OPA 198**

OPA 198 explicitly speaks to the significance of the NHS and the care which must be taken in delineating and protecting the system. Due to the significance of this system to the Town, and the dispute over its boundaries, the Board has thoroughly considered the provisions of part 4.1(e) General Development Objectives: Environment and Open Space:

1. To establish as a first priority of the Town a natural heritage/open space system to protect, preserve and, where appropriate, enhance the natural

