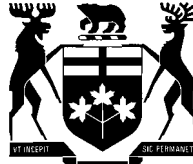


ISSUE DATE:

**FEB. 1, 2001**  
DECISION/ORDER NO:  
**0166**



Ontario

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

PL000128

Ayerswood Development Corp. and A.H. Graat Jr. 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 City of London to change the designation on the subject lands located on the south side of Springbank Drive, east of Commissioners Road West from "Open Space" to "Multi-Family High Density Residential" to permit the development of apartment buildings

City of London File No. OZ-5823

**OMB File No. O00024**

Ayerswood Development Corp. and A.H. Graat Jr. have 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 No. Z.-1 of the City of London to rezone the subject lands located on the south side of Springbank Drive, east of Commissioners Road West from "Open Space - OS1" to "Residential - R9-7" to permit the development of apartment buildings

**OMB File No. Z00027**

Ayerswood Development Corp. and A.H. Graat Jr. have referred to the Ontario Municipal Board under subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, determination and settlement of details of a site plan for lands located on the south side of Springbank Drive, east of Commissioners Road West in the City of London

**OMB File No. M00057**

## **A P P E A R A N C E S :**

### **Parties**

A. H. Graat Jr. and Ayerswood  
Development Corp.

City of London

London Development Institute

Oakridge-Hazeldon  
Community Association

The Urban League of London  
D. Proudfoot, Bill and Anna Hopkins

### **Counsel\*/Agent**

A. R. Patton\* and  
B. D. Bain\*

J. Barber\*

B. Card\*

R. Dickinson

J. Baechler

Walter and Helen Howell

**PARTICIPANT:**

George Goodlete

**DECISION DELIVERED BY M. A. ROSENBERG**

The applicant, A. H. Graat, Jr., owns a 12 acre (5.1 hectare) vacant parcel of land located approximately at the southeast corner of Springbank Drive and Commissioners Road West in the City of London. To the east of the site is Reservoir Park which is approximately 42 acres in size. To the north and west of the site is Springbank Park which is approximately 163 acres in size which contains Story Book Gardens and is located across Springbank Drive. To the southwest is a large aggregate operation approximately 178 acres in size and to the southeast is residential development. The site is close to the Byron area of the City of London.

Ayerswood Development Corp. wishes to build on the 5 acre (2.2 hectares) northwest portion of the site near the intersection of Springbank Drive and Commissioners Road West. Two 12 storey apartment buildings are proposed with a total of 322 apartment units. The two buildings would contain 412 underground parking spaces on three levels. The proposed apartment buildings would face onto Springbank Drive at the base of an existing steep hill and be on full municipal services. The height of the two buildings would be approximately 132 feet.

The owner of the property is requesting a change in the Official Plan designation from "Open Space" to "Multi-Family High Density Residential" and asking for a rezoning on the property from "Open Space (OS1)" to "Residential R9-7.H40" on the 5 acre site. The remaining 7 acres would remain designated and zoned "Open Space (OS1)". A site plan application has also been referred to the Board under Section 41(12) of the *Planning Act*, which refers to the details of the development.

The City of London and a number of residents and ratepayers associations oppose the redesignation and rezoning for the 5 acre site. They wish the whole of the property to remain designated and zoned "Open Space".

A. H. Graat Jr., the owner of the subject property gave evidence before the Board in support of the appeal. Mr. Graat is an experienced home builder/developer, i.e., he has

over 40 years of experience in the City of London and has constructed over 7,000 apartment units, 3,000 of which are still under his control today.

Mr. Graat said:

1. He bought the subject property in 1967 for development purposes as an apartment site;
2. An Ontario Municipal Board decision and court decision in 1975 refused a rezoning on a different portion of the subject property for 912 apartment units in 3-23 storey apartment buildings;
3. The City of London has never sought to designate any of his property for historical reasons;
4. In 1992, he considered 10 single family-detached lots with access off of Commissioners Road on the southerly portion of the site;
5. In February of 1999, he retained a consulting team to advise on the development of the site relating to the current proposal;
6. There is a market in London for high density quality residential accommodation. Vacancy rates are low in the City;
7. Two apartments can be built on the site without compromising the stability or integrity of the land;
8. He has never received an offer from the City of London to purchase his lands. He was willing to sell his lands to the City of London even as late as September 7<sup>th</sup>, 2000, i.e., he would consent to an expropriation and argue about the market value later;
9. It would be a condominium project but the units would be rental and the rents would range from \$1,300.00 to \$1,500.00 a month for a two bedroom apartment. It would be a spectacular building;
10. All visitor parking is underground and there would be very efficient concierge services where visitors would need to be confirmed. Very secure for tenants and visitors;
11. All visitor and/or handicap parking is also located underground at the first level of parking and there would be nightly patrols relating to the parking garage;
12. All buildings will have superintendents and garbage and recycling bins are located in each building;
13. The land is physically capable of safely sustaining the proposed development using standard construction techniques without damage to the environment or the

surrounding lands;

14. Very little water is on the site. The soil is good and very compact. Ideal for two apartment buildings. Vertical shoring is feasible but not likely here; and
15. The final design of the buildings is not completed. Balconies and windows can be addressed with regard to privacy and impact on the two abutting residential neighbours.

On cross-examination, Mr. Graat admitted:

1. Noise attenuation features may require some sort of noise barriers;
2. He bought the land in 1967 for \$10,000.00 from an estate. He had enough land to build 1,000 residential units, i.e., the three buildings proposed had approximately 300 units each in 3-23 storey buildings;
3. The site in 1975 was not serviced. The only thing that has changed in the last 25 years is:
  - (a) more homes have been built in the area;
  - (b) the City indicated they did not need any more park land in this area of the City of London;
  - (c) the site now is fully serviced;
  - (d) the density asked for has been substantially reduced, i.e., from 912 apartment units to 322 apartment units; and
  - (e) no environmental impacts.
4. 75% of the apartment units he builds now have no balconies. Many changes in requests from the apartment dwellers for different amenities;
5. Two apartment buildings built at different times would take two to three years to complete; and
6. He uses existing groundwater to heat and cool about 400 apartment units in the City of London. Very energy efficient with no damage to the environment. Tenants save a lot of money in heating and cooling costs.

Richard Zelinka, is an experienced and qualified planner. Mr. Zelinka also gave evidence before the Board in support of the zone change and redesignation of the site from "Open Space" to "Multi-Family High Density".

Mr. Zelinka said:

1. He addressed 14 issues;
2. A team approach was taken to the project which was very essential;
3. The subject lands are designated "Open Space" in the Official Plan;
4. There is no natural heritage designation in Schedule "B" of the Official Plan for the subject property. It is not a floodplain nor has any environmental feature been identified;
5. The subject property is the only parcel of privately owned land which does not show up on Schedule "B" as having some special environmental features;
6. The proposed development is on 2 acres of the 5 acre site and the built form is kept to a minimum, i.e., underground parking and open space vegetation;
7. The balance of the 7 acres is to be left designated "Open Space" in order to maintain the treed sloped character of the area;
8. Section 8A.2.1 of the Official Plan has been met;
9. Our land is not a natural heritage area. It is private land and private access is discretionary;
10. There is an abundance of open space in this area of the City of London, i.e., Springbank Park, Reservoir Park, and a future open space use for the rehabilitated gravel pit area to the west of the site is proposed;
11. Section 8A.2.6 of the Official Plan sets out certain matters that must be considered if Council wants to acquire privately owned open space lands. None apply in this case;
12. The policies of Chapter 15 of the Official Plan do not apply if the lands are not delineated on Schedule "B" of the Official Plan. The lands are not identified in Schedule "B". Therefore, Chapter 15 of the Official Plan policy does not apply, i.e., it is not a significant woodland;
13. Section 2.2 of the Official Plan sets out the vision statement which has been met;
14. Section 2.6 of the Official Plan has been met. Identifies compact urban development and maintains additional undeveloped on site amenity space. Optimizes the use of the services;
15. Located on main arterial road with two bus stops in front. Encourages public transit use. As well encourages use of bikes and walking paths in the surrounding parks;
16. Lands are extraneous to continuous linear open space network. There already is a well established linear network in the area;
17. Reservoir Park already provides the potential for such a linkage;
18. No additional paths or active park use are necessary in this area;
19. The City has not identified these lands as being of City wide significance nor have

- they identified Reservoir Park as having any City wide significance.
20. An Open Space designation is not appropriate. Section 8A.1 has been adequately addressed;
  21. The lands are not appropriate for low density residential use because:
    - (a) it would not be an efficient use of the services;
    - (b) vehicular access is difficult;
    - (c) safe road access is a problem;
    - (d) no access to Reservoir Park entrance;
  22. Medium density is also not appropriate. Site alterations are a problem and there would be grade problems;
  23. The subject lands are appropriate for multi-family highrise uses. Section 3.4.2 of the Official Plan has been met because:
    - (a) site is surrounded by park lands;
    - (b) bounded by arterial roads on two sides, i.e, Springbank Drive and Commissioners Road;
    - (c) zoning by-law would limit the height of the two buildings;
    - (d) fully serviced site;
    - (e) apartments can be sited in such a manner that the two buildings would not be visible from most of the surrounding area;
    - (f) no significant impact on stable low density residential areas;
    - (g) adequate buffering can protect the two adjoining residences;
    - (h) good public transit;
    - (i) good shopping located to the west in Byron;
    - (j) the buildings will be screened from surrounding uses, i.e., with proper landscaping;
    - (k) the building setbacks minimize the area of the site to be developed, i.e., two acres out of 12 acres;
    - (l) Byron has few apartments. These 2 apartment buildings would improve the distribution and choice of dwelling types in the area.
    - (m) no unacceptable adverse impacts on any surrounding land uses although there will be some loss of privacy and some acceptable shadowing on the dwelling to the east, i.e., Mr. and Mrs. Hopkins property. Buffering is proposed to minimize any impact.
  24. Section 3.7 of the Official Plan calls for a planning impact analysis. Here there are no unacceptable adverse impacts. The height, location and spacing of the two buildings will maximize retention of the existing vegetation. No unacceptable impact

- on traffic flow or safety. No environmental constraints;
25. The City encourages high density residential development near large permanent open space. Many other highrises are located near parks in the City of London. Here one large existing park is across the street, i.e., Springbank Park and immediately east of the property is Reservoir Hill Park;
  26. The two existing adjoining residential dwellings are legal non-conforming and are also zoned "OS1";
  27. The proposed density of the two apartment dwellings is 60 units per acre. "R9-7.H40" zoning meets the intent of the Official Plan (no special provisions);
  28. Provincial Policy Statement (PPS) is satisfied, i.e., it encourages:
    - (a) efficient use of land;
    - (b) supports use of public transit;
    - (c) full range of housing types and densities;
    - (d) aggregate resources on site are not identified by the Minister of Natural Resources;
    - (e) lands do not constitute a cultural heritage landscape; and
    - (f) no negative impacts on the natural features;
  29. Proposed site plan meets Section 19.9.2 of the Official Plan;
  30. The urban design principles of Section 11.1.1 of the Official Plan are met, i.e.,
    - (a) most of the trees are retained;
    - (b) two buildings are tucked into the side of a hill;
    - (c) only small impact on adjoining dwellings;
    - (d) no adverse noise impact; and
    - (e) two buildings are built close to the street line, i.e, near bus stop, easier access to public transit.
  31. Represents good planning and is in the public interest.

On cross-examination Mr. Zelinka admitted:

1. In the 1975 Ontario Municipal Board decision, "significant natural features" were discussed;
2. Application in 1975 by this owner represented bad planning, i.e, three towers and about 1,000 units;
3. In 1989, in the Official Plan the subject lands were designated "Open Space";
4. The Chapter 15 policies were added in the 1989 Official Plan but Chapter 15 does not apply here;

5. Sub-watershed policies do not apply to the subject lands;
6. The City still has not taken any initiative to designate our lands or done any rezoning on our lands as a significant woodland area, i.e., the City has not done any studies;
7. Schedule "A" of the Official Plan does not refer to any significant woodlands;
8. Not everything that is "Open Space" is designated "Significant Natural Features". "Open Space" is not synonymous with natural features;
9. Servicing provisions have changed in 40 years, i.e., now the site is fully serviced;
10. No definition in the Official Plan of what a significant natural feature is;
11. Subject lands are not identified through the sub-watershed planning study; and
12. Chapter 15 of the Official Plan may apply and the Board may consider it.

Ian Seddon is an experienced and qualified planner. Mr. Seddon also gave evidence before the Board in support of the zone change and the Official Plan designation. Mr. Seddon said:

1. The proposed development is not a significant natural heritage feature, nor adjacent to any such feature, i.e, it is not recognized by City Council as a significant natural area;
2. The development is not a significant cultural heritage feature. The Thames River Recreational Corridor will not be compromised by this development;
3. It is not the site of a skirmish during the War of 1812 - 1814 nor a part of the London Water Works System;
4. The site is not a Provincially significant ANSI nor is it a life science or earth science. It is not an ESA i.e., Environmentally Significant Area, and regard has been had to the Provincial Policy Statement;
5. The site is typical of past historical land use, i.e., settlement and land clearing and does not warrant public acquisition by the City of London;
6. The site is an appropriate location for two apartment buildings and conforms with all Official Plan policies and location requirements for apartment development. "Multi-Family High Density" zoning is appropriate;
7. It is the best site available for apartment development within two kilometres of the subject property;
8. Site not appropriate for an "Open Space" designation;
9. The proposal will not affect the macro landscape feature by being located on the Ingersoll Moraine (the Moraine is all developed upon in Byron);
10. There are good shopping facilities, schools and churches in the area and the site is



- fully serviced and all the parking is underground;
11. Subject lands are designated "Open Space", i.e., private open space;
  12. No natural heritage features are shown on Schedule "B" of the Official Plan for the subject property;
  13. The natural communities on the site are not old growth forests. The site has a typical bio-diversity and does not provide an important wildlife habitat. There are no rare or endangered species on the site;
  14. Five criteria mentioned in Chapter 15.4.5 of the Official Plan relating to woodlands do not apply here:
    - (a) site is not shown as a vegetation patch;
    - (b) no unusual ecological functions;
    - (c) lots of surrounding open space and parks in the area;
    - (d) no endangered or natural species; and
    - (e) no distinctive or natural communities.
  15. The value of our land is not as a woodland but as urban green space;
  16. The site is not a significant corridor;
  17. No unacceptable impacts on adjoining neighbours;
  18. The development will blend in with the existing hill;
  19. Compatible with the adjoining two single family residences. Section 2.3 of the Official Plan has been met;
  20. The proposal is located on the inside of a slight curve on the alignment of Springbank Drive. The buildings will be set back and most of the existing trees are being retained on the site;
  21. Good site for public transit, which is located right in front with two bus stops. Regular bus service to both Byron and downtown London;
  22. A City that is not allowed to develop a City landscape because some inhabitants want it to look like a suburb, is a City that limits its potential. The proposal is located in the midst of the City.
  23. Represents sound planning. Very attractive development;
  24. Zoning is appropriate and conforms to the intent of the Official Plan as amended. All underground parking allows for more landscaped open space around the two apartment buildings; and
  25. The proposed Official Plan Amendment and rezoning to allow for two apartment buildings is appropriate and desirable and represents good planning.

On cross-examination Mr. Seddon admitted:

1. No justification for the property to remain designated "Open Space". A lot has changed in the last number of years, i.e., the last 25 years;
2. The City has developed around the site. There is more residential development in the area. As well, there is more commercial development in Byron;
3. There is no subdivision immediately adjacent to the subject property. Section 8A of the Official Plan states that an "Open Space" designation is applied to lands which are to be maintained as park space or in a natural state. Section 8A must be read in conjunction with the rest of Section 8 in the Official Plan;
4. Two apartment buildings can blend in with the sloped treed background of the property;
5. No significant woodland is identified on Schedule "B" of the Official Plan because other designations on Schedule "B" include significant woodlands in them, i.e., ESA and ANSI etc. Right now, there is no separate category on Schedule "B" for significant woodland; and
6. If the lands are designated "Multi-Family High Density" it is precedent setting and unique.

Philip Bedell, is an experienced and qualified engineer and hydrogeologist. Mr. Bedell also gave evidence before the Board on behalf of the applicant in favour of the proposed redesignation and rezoning. Mr. Bedell said:

1. There is a difference in height elevation from Reservoir Park to the Thames River of approximately 280 feet;
2. The subject site is located on the western end of the Ingersoll Moraine and mapping may not be accurate for this area;
3. The proposed two apartment buildings will have a minimum impact on the existing slope on the land;
4. One half to two thirds of the City of London is already built upon the Ingersoll Moraine;
5. The Ingersoll Moraine is a significant resource for aggregates in the area and is not a unique feature;
6. The land forms in Reservoir Park are part of the Ingersoll Moraine, but land forms in Springbank Park are a spillway deposit associated with the River Regime Park;
7. Soils on the five acres are very granular and very dense;
8. Groundwater level is very deep;

9. No slope instability, slopes are stable. Minimum cutting would be made to existing slope. He admits though that the existing slope is steep;
10. He drilled eight bore holes on the property to a depth of between 60 to 70 feet and found:
  - (a) Five feet of sandy topsoil at the top;
  - (b) About 60 feet of very dense brown sand and gravel (which is a very good bearing for foundation of buildings);
  - (c) No groundwater encountered in any of the eight test bore holes, groundwater was not found until 785 feet down, therefore, groundwater is not a factor;
  - (d) Nothing unusual about the site, good site for building structures. Two apartment buildings can be built safely; and
  - (e) The slope cannot be more than 45%. They have to use a cautious approach which complies with the Provincial Legislation, i.e., the Health and Safety Act;
11. Two apartment buildings are geotechnically feasible and can be built utilizing conventional construction procedures;
12. The stabilization of the slope is not a concern;
13. The groundwater is not impacted because any runoff from the hard surface areas will be piped directly to the Thames River;
14. Less impact than if conventional homes were built on the site;
15. No water seepage on any of the 12 acre site;
16. A mature Ravine exists on the site created by glacial deposits, not by erosion. No impact on the remaining 7 acre portion of the site;
17. He is not aware of any peer review of his report;
18. 47% of the 5 acre site will be disturbed during construction but the slope will still be stable after construction;
19. The lands are not hazard lands;
20. Erosion of some of the lands will take place;
21. There will be no impact on Reservoir Park to the east, i.e., with regard to grading;
22. No impact on groundwater or recharge system;
23. The park area near the Thames River has a different water table level, i.e., many springs are located there, therefore, the name of Springbank Park; and
24. The 12 acre site could be used for a large aggregate extraction, (1.2 million imperial tons are capable of being extracted from the site).

On cross-examination Mr. Bedell admitted:

1. Highly stable slopes checked out through a computer analysis;
2. Still need standard precautions for water runoff from the property (addressed in site plan);
3. Big retaining walls are not appropriate for this site;
4. Two apartment buildings will have 14 storeys at the front and 12 storeys at the back; and
5. If the City requests that the applicant set back the two buildings an additional 20 feet, there is a possibility that vertical shoring may be necessary.

Frank Berry is an experienced and qualified transportation engineer. Mr. Berry also gave evidence before the Board with relation to transportation matters in support of the appeal. Mr. Berry said:

1. Access to the site from Commissioners Road was not feasible;
2. The only practical access to the site was from Springbank Drive;
3. He did a traffic impact study and concluded:
  - (a) Springbank Drive is designated as an arterial road and it is a primary road to the Downtown area of London from communities to the west, i.e., Byron, Komolka and Kilworth etc.;
  - (b) Arterial roads can be built up to 7 lanes in width. Springbank Drive is now only two lanes in width;
  - (c) Average daily traffic in 1999 on Springbank Drive was 1,300 vehicles which is at the low end of the range for an arterial road;
  - (d) Intersection of Springbank Drive and Commissioners Road is signalized. Intersection is channelized and includes exclusive left turn lanes;
  - (e) Access to Springbank Drive is also provided for the auto service station located at the corner and for the closest residence to the site to the east of the subject property;
  - (f) In the a.m. peak hour there is an 80/20 trip generation split and in the p.m. peak hour there is a 60/40 trip generation split;
  - (g) Assuming two driveways for the subject property, both two ways then turning movements to and from the site can be accommodated at an acceptable level of service in the peak rush hour;
  - (h) Turning lanes will be required on Springbank Drive at each driveway

- entrance to accommodate left turn movements into the site;
- (i) Sight distances to and from each driveway currently exceed minimum stopping sight distance requirements, and existing undergrowth on both sides of right-of-way on Springbank Drive will be removed. There is a maximum 60 kilometre speed now posted on Springbank Drive and you can assume a 70 kilometre speed for this application;
  - (j) Distance to the stoplight is about 446 feet from the proposed westerly entrance to the site;
- 4. He reviewed the proposed site plan for the site and said that the site plan reflects his conclusions drawn from his traffic impact study;
  - 5. Driveways are not always at right angles, proposed driveways, i.e., angle driveways would function at appropriate safety levels;
  - 6. This section of the roadway would have very few sight conflicts, i.e., signs, driveways, etc., road would function safely, i.e., because there is no development on the north side of Springbank Drive; and
  - 7. No traffic impact on the Hopkins driveway which abuts the subject site to the east.

On cross-examination, Mr. Berry admitted:

- 1. Existing right-of-way is only 66 feet wide but the City policy calls for a 120 foot right-of-way for arterial roads;
- 2. It is now a rural two lane road on Springbank Drive;
- 3. Oxford Street and Commissioners Road will be improved in the future. The level of traffic on Springbank Drive will be about the same or drop slightly. Springbank Drive could remain two lanes wide for quite a while;
- 4. Visitor and handicap parking can be placed on the inside of the parking garage and as well could be placed on the surface of the property;
- 5. If possible, driveways should be at right angles;
- 6. Left turning lane to the east driveway on the site would extend in front of Mr. Hopkins two driveways;
- 7. All road widenings would be on the south side of Springbank Drive;
- 8. Regrading will take place at the front of the property;
- 9. Traffic will not be slowed down on Springbank Drive from traffic generated from this development;
- 10. On a daily basis, 1,500 to 1,600 vehicle trips will be generated from the two apartment buildings onto Springbank Drive;

11. He did not look at pedestrian traffic. Pedestrians are not a significant factor other than people going across the street to Springbank Park;
12. One of the loveliest drives along Springbank Drive is from Byron to Downtown London; and
13. This is an appropriate site for two apartment buildings because the City policy encourages apartments to be located on arterial roads.

E. W. Hodgins is an experienced and qualified Engineering Technologist. Mr. Hodgins also gave evidence before the Board in support of the rezoning and redesignation on the subject property. Mr. Hodgins said:

1. There are existing storm and sanitary sewers available to service the site;
2. A proper storm water management plan will be implemented including roof water restrainers on both buildings which will take water to the Thames River;
3. Water service is available, enough for fire safety requirements;
4. A proper grading plan will be prepared to permit development at the height, bulk and scale proposed;
5. Mr. Graat's property is not the highest point of land in the vicinity, i.e., a higher point is in adjacent Reservoir Park further to the east and there are other locations in the area which are higher;
6. He did a topographical survey of the site;
7. All roadworks will be within the 66 feet of the existing right-of-way on Springbank Drive. This includes dedication of a portion of the lands;
8. The cut line is about 200 feet from Springbank Drive;
9. A new sidewalk will be constructed along the existing front of the property;
10. There are three levels of underground parking. The first level is actually at ground level and will contain 102 parking spaces. The second level will contain 114 parking spaces and the third level will contain 200 parking spaces. This totals about 416 parking spaces which apparently has been revised to 412 parking spaces.
11. On the first floor of the parking level are handicapped parking spaces and visitor parking;
12. A constant road width will be maintained along the front of the property;
13. Usual curbs and gutters are being provided for;
14. Moving the building further to the rear of the site, i.e., an additional 20 feet will have adverse impact on the slope. May require additional shoring but site can still be serviced; and

15. Services can be provided for the Hopkins property which is not serviced now, i.e., at 928 Springbank Drive, if the development proceeds. Mr. Hopkins could obtain the services for a price.

On cross-examination, Mr. Hodgins admitted:

1. If the 90 degree entrances proposed for the driveways by the City were moved there are grading problems and not enough adequate space;
2. Twelve residential units per floor are proposed for the two apartment buildings and each building is twelve storeys in height;

Michael Leonard is an experienced and qualified Landscape Architect and a Woodland and Wetland Evaluator. Mr. Leonard also gave evidence before the Board on behalf of the applicant in support of the rezoning and redesignation. Mr. Leonard said:

1. He spoke about the biological impact of the proposed development on the environment;
2. He looked at the natural heritage functions of various community plans;
3. There are no significant natural heritage features and functions that would be affected by the proposed development;
4. The property does not have any natural or environmentally significant areas, hazards or resources. Site should not be considered an Environmentally Significant Area (ESA). Only one of the seven minimum Environmentally Significant Area criteria is met;
5. The biological function of the site is that of an isolated patch of habitat disjunctive from the broader Thames River Corridor for typically occurring species;
6. The proposed high density residential use will not detract from the City's Regional Parks and Open Spaces adjacent to the subject property;
7. The rezoning is in keeping with the Provincial Policy Statement on the natural heritage system. No constraints are evident;
8. Chapter 15.5 of the Official Plan calls for an Environmental Impact Study but he said the study is not needed here. But in fact, he did an Environmental Impact Study in any event. He said the Environmental Impact Study looks at such things as:
  - (a) Land Use setting;
  - (b) Natural Heritage setting;

- (c) Vascular plant species; and
  - (d) Breeding bird, herptile and mammal species, etc.;
9. The conclusions of the Environmental Impact Study (EIS) were:
- (a) The majority of the sloping property is covered by woodlands in young and midaged states of succession. Plant and animal species on the site are very typical of those in large parts of the Thames watershed. Only one significant plant species, i.e., the goldenrod is located on the site but it is located outside the area proposed for the development footprint of the two apartment buildings;
  - (b) Significant linkages do not exist between the subject property and Reservoir Hill to the east of the site;
  - (c) The two apartment buildings will only occupy the northern 20% of the property. It is feasible to maintain the primary function of the site which is to provide an isolated patch of faunal habitat for common wildlife species; and
  - (d) Any impacts caused by vegetation removal and grading can be mitigated using silvacultural techniques and arboricultural management practices and monitoring practices for at least three years following construction to see if any potential hazards are identified.
10. The site is separated from the Thames River Corridor by Springbank Drive and the man-made landscape of Springbank Park to the north;
11. No endangered species were found on the site;
12. Urban land uses have closed in on the site over the years, i.e., residential subdivisions are in the immediate area and the Thames Valley Golf Course is on the north side of the Thames River;
13. No negative comments were received on the Environmental Impact Study;
14. The site is not an undisturbed woodland. The large diameter sized trees make up a very small proportion of the trees on the site. It is not an old growth forest;
15. The two building footprints are located in such a way that the affect of the prevailing northwest winds are minimized;
16. Any impact will be moderate;
17. With regard to the Provincial Policy Statement, he had regard to Section 2.3 and his comments were:
- (a) There is no significant faunal species on the site. Only one relevant plant species on the site which is the Goldenrod but this is not endangered or threatened;
  - (b) No fish on the site;



- (c) Woodlands on the site are small and isolated. Not a significant woodland;
  - (d) The site is functionally separated by intense urban land uses from the Kains Road Corridor, the Komolka Provincial Park ANSI, the Sifton Bog ESA and the Warbler Woods ESA; and
  - (e) No natural or environmentally significant areas, hazards, slopes or resources. No significant wildlife on the site;
18. Lands not affected by any floodline or erosion line associated with the Thames River Corridor;
  19. There will be no adverse impact on any of the surrounding woodlands;
  20. Property not identified as a significant woodland. Does not meet the five criteria set out in Chapter 15.4.5 of the Official Plan;
  21. Sustainability of the site is not an issue. Ecosystems of the site will still be maintained although there will be some loss of vegetation and any negative impacts will be manageable;
  22. No significant linkages to Springbank Park, or the Thames River, but there is a link to Reservoir Hill to the east which linkage will still be maintained; and
  23. The northern redback salamander is typical for the City of London.

On cross-examination, Mr. Leonard admitted:

1. A tree preservation plan should be done before the site plan is approved;
2. Section 2.3.1 of the Provincial Policy Statement requires two criteria to be met. Here only one criteria is met;
3. Even if the subject site was a significant woodland, removal of 20% of the land would not have any negative impact on the remaining lands; and
4. He has not looked at the specific impact of the two apartment buildings on the two abutting neighbours on either side of the 5 acre site, i.e. either Dr. Howell or Mr. and Mrs. Hopkins properties.

Ron Koudys is an experienced and qualified landscape architect. Mr. Koudys also gave evidence before the Board in support of the proposed development and dealt primarily with site plan matters. Mr. Koudys said:

1. The two apartment buildings are appropriately scaled with regard to the landscape that surrounds it, i.e., surrounded by Springbank Park, Reservoir hill, a gravel pit and two arterial roads;

2. The proposal maximizes the developable area and preserves and integrates the character of the site;
3. The trees south of the two buildings will be at a higher elevation and provide a pleasant background to the development. The horizon line is maintained. The buildings are cited to minimize visual impact on the surrounding community;
4. A view of the development only occurs when vehicles westbound on Springbank Drive approach the boundary of the site;
5. The two buildings are buffered from eastbound traffic on Springbank Drive by typography and retained vegetation;
6. The two buildings will not be seen from Reservoir Hill;
7. The two buildings will be visible from Springbank Park but not from Storybook Gardens or the primary walking paths in Springbank Park. The view of the two apartment buildings from an active park is acceptable;
8. No adverse impacts on properties on the north side of the Thames River;
9. No adverse impact on the retained portion, i.e., the 7 acres of the wooded site. Development will encourage tenants and occupants of the two buildings to take advantage of the surrounding parks in the area;
10. Compatible in height, bulk and scale with other residential properties within the Thames River Valley, i.e., other highrise buildings overlooking the Thames River;
11. There will be some impact on the two adjacent residential properties but any impact is minimal because:
  - (a) There is a buffer zone;
  - (b) Garbage facilities are located inside the building;
  - (c) Parking is underground;
  - (d) Minor shadowing will impact the Hopkins property but no shadow impact on the Howell property;
  - (e) Walking paths and patios will be located away from the two neighbours;
12. The site is not particularly sensitive or unique. Apartment buildings are built on slopes;
13. Will provide a tree preservation plan. Ten acres of the trees are being preserved out of the 12 acre site;
14. This is a built-up area, not a developing area of the City of London;
15. The sidewalk in front is not necessary. It goes to nowhere. In fact if built properly it would require the cutting down of additional trees in front of the two apartment buildings but this would negatively affect the screening at the front of the two apartment buildings;

16. Out of 32 site plan issues, only six remain in dispute. Thirty-two spaces for visitor parking and 8 handicapped parking spaces are included on the first level of underground parking. Taxis and drop-off and pickup and short term parking are provided in 6 spaces on the surface in front of the two buildings;
17. Fencing will partially buffer the two neighbours. The entire site does not have to be fenced;
18. A small portion of the top of the buildings 3 or 4 stories will be seen from across the Thames River;
19. He did some shadow drawings that showed there would be some shadow impact on the Hopkins property to the east of the subject property mainly after 3:00 p.m. Most of the shadowing is caused by the existing trees, but some shadowing will be caused by the two new apartment buildings. There is no shadow impact at all on the Howell property to the west. No difference in the impact if the height of the two buildings was reduced by three or four stories. The apartment building will be about 20 feet higher than the Howell residence. If Estate Single Family Residential development was allowed on the site the consequences would be that many mature trees would be removed from the various lots and the City has no tree cutting by-law even now dealing with private land. Possibly 70% of the site would be changed, i.e., trees cut down, lawns would be mowed and environmental constraints would be removed. Whereas, two apartment buildings would retain most of the trees surrounding it. Only two acres out of 12 acres would be developed. Retained would be 10 acres of park with mature trees.
20. Both adjoining residential homes have their principal views directed away from the proposed two apartment buildings. Additional tree plantings on the boundary lines will also lessen any impact. No unacceptable adverse impact on the adjoining neighbours, Hopkins and Howell;
21. The City wants to move the two buildings further back on the site, i.e., an additional 20 feet. It can work but not much is gained. This only addresses a few issues. The City does not take a holistic approach, i.e., all trees in front would be removed. More shoring needed. Increases shadowing on the Hopkins home etc. He prefers his site plan.

On cross-examination, Mr. Koudys admitted:

1. The site plan was based on a 12 acre site not on just the 5 acres of the property. The rest of the 7 acres is to be left designated "Open Space" but trees could still be

cut down on the other 7 acres because there is no tree cutting by-law in the City of London. But steep slope may limit any useable play area and the site plan agreement will address the tree retention on the balance of the 7 acres. A three year program will monitor the site;

2. There is a five metre distance or approximately 15 feet, from the westerly construction line to Mr. Howell's property line. The easterly building, is about 69 feet from the Hopkins' property line.
3. Land uses are clearly defined and well established in this case. This is basically an infilling situation;
4. The sidewalk need not be extended along the entire frontage of the property although a sidewalk to the traffic light at the intersection of Springbank Drive and Commissioners Road will be a safer pedestrian entrance to Springbank Park.
5. Might be possible to take road widenings on the north side of Springbank Drive and preserve as many trees as possible in front of the two apartment buildings;
6. The bus stop on the south side of Springbank Drive would have to be relocated;
7. Parkland dedication has not been considered, i.e., it would be approximately 2 ½ acres and the land could be donated to the City;
8. Springbank Park is not an Environmentally Sensitive Area (ESA);
9. An 8 foot high retaining wall would likely be required at the front driveway location. May cause some damage to trees in front of the property but many of these trees are Black Walnut Trees and would likely survive;
10. Existing trees on the subject property vary in height from 60 to 100 feet. Some trees are smaller in height. Many trees on the site.
11. Not determined yet where balconies will be located on the two apartment buildings. May be some minor impacts on two abutting residential properties, i.e., loss of privacy;
12. Cars entering and exiting underground garage. Three separate entrances to three different levels of parking will cause some noise problems for adjoining neighbours especially Mr. Hopkins residence;
13. There was some loss of smaller trees on the site when a number of bore holes were drilled;
14. Deer are quite common in the City of London and somewhat of a nuisance; and
15. Electrical and mechanical apparatus will also be placed on top of the two apartment buildings adding at least an additional storey or two in height to the two apartment buildings.

Christopher Andreae is an experienced and qualified Heritage Planner and Historian. Mr. Andreae also gave evidence before the Board in support of the application. He said:

1. The "Skirmish at Byron" in 1813 or 1814 may be a composite of several events;
2. The documentary record is blank on the military events in Byron;
3. Archeological potential for confirming the occurrence or location of any skirmish is very slight, i.e., relating to the Skirmish on Reservoir Hill;
4. Shooting might have occurred 5 to 10 kilometres away or never have happened at all, i.e., at or around October of 1813;
5. Only two written accounts of this event, in the War of 1812 to 1814. One in 1878 and one in 1889;
6. The 1878 account is in the Illustrated Historical Atlas of the County of Middlesex Ontario, 1878. On Page 6, a skirmish took place in the Township of Westminister near the Village of Byron but the year was not mentioned and the account was written 65 years later. In addition, one other location beside the Reservoir Hill has a prominent hill near Byron, i.e., at least two prominent hills in the area;
7. The 1889 account was found in the History of the County of Middlesex. This account does not contain a date for the skirmish and was written 76 years later;
8. He researched the various names and places of the two written accounts;
9. The subject property is not designated as a "Historical Site" for this skirmish either by the Federal or Provincial or Municipal Governments;
10. Designation for the site is not appropriate. Only dedication would be the storytelling itself, not any site itself;
11. No historical significance to the subject property.

On cross-examination, Mr. Andreae admitted:

1. The likelihood of a skirmish occurring at this location is very slight;
2. Reservoir Hill is a possible cultural heritage landscape because of its,
  - (a) High elevation;
  - (b) Vista, and
  - (c) Associated with the waterworks.
3. The City should develop policies or criteria for a cultural heritage landscape. He prepared a report in 1997 but it was never adopted by Council; and
4. Folklore adds to the character of the community.

John Camara is the manager of Construction of Development for Ayerswood Development Corp. Mr. Camara also gave evidence before the Board in support of the appeal. Mr. Camara said the following:

1. He has had 30 years experience in construction of residential and commercial buildings for the applicant;
2. He has been responsible for a number of complex buildings being built and applied various construction techniques. All buildings were safely built;
3. The proposed two apartment buildings and underground parking garage can be built safely utilizing standard construction methods;
4. The site is excellent. He does not have to worry about any water problems;
5. One to one slopes are standard and are commonly used in the industry;
6. Vertical shoring is possible but probably not necessary. One to one slopes will probably work here;
7. The site plan prepared is fairly standard. There are always some exceptions in every building project;

Robin Panzer is an experienced and qualified Planner employed by the City of London. Mr. Panzer gave evidence before the Board in opposition to the change in designation from "Open Space" to "Multi-Family High Density Residential". Mr. Panzer said the following:

1. The subject lands should be left designated "Open Space". The lands warrant protection from development on the basis of their contribution to the natural heritage system. If developed for high density residential use, the natural heritage features would be severely diminished and have an adverse impact on the amenities and the character of the surrounding area;
2. The proposed zoning does not comply with the current "Open Space" designation. If developed, the lands should have a low density to recognize development constraints related to the topography of the site. The view of Reservoir Hill would be blocked. Impacts on the two abutting neighbours;
3. The lands are a significant woodland in accordance with the policies of Chapter 15 of the Official Plan that warrant protection;
4. The high density uses would have a severe impact on the significant woodland and detract from adjacent park and open space uses. Not compatible with surrounding

land uses;

5. Open space designation is appropriate and in keeping with the Environmental strategies and open space objectives of the Official Plan which recognizes the Thames Valley Corridor as the City of London's most important natural cultural and aesthetic resource;
6. Need for multi-family housing in this area of the City is being met. Vacancy rate in the area is 3% for apartment buildings;
7. Visual character and aesthetics of the Thames River Valley Area would be detracted;
8. Provincial Policy Statement is not adhered to. There will be negative impacts on the natural features or ecological functions of the significant woodland;
9. The City has attempted to buy lands and leave them as "Public Open Space". The City has set up a special capital fund in 1999 for woodland acquisition purposes but the City has not actually taken any steps to acquire these particular lands;
10. The City is not expected to map every area or exclude lands that are not a part of Schedule "B" of the Official Plan. Natural heritage features are an evolving process. Schedules change over time as detailed studies are carried out. Chapter 15.2.2 of the Official Plan has not been complied with;
11. The two highrises will have severe negative impact on the abutting residences of Mr. Hopkins and Mr. Howell, i.e., a loss of privacy, shadowing, noise and traffic etc.;
12. Municipal services are available to the site and there are no traffic problems. Good public transit is located on an arterial road but the proposal is not in keeping with the character of the neighbourhood, i.e., which is mainly parkland;
13. No noise and dust study has been done relating to the site because of its location within 300 metres or roughly 984 feet of an extractive industrial area which is located close by. Section 3.5.6 of the Official Plan is not complied with;
14. The most appropriate designation for the lands is "Open Space";
15. Preserve remnant landscapes. Natural heritage feature should be preserved; and
16. The situation has not basically changed since 1975 except more environmental controls are included in the Official Plan and the Provincial Policy Statement.

On cross-examination, Mr. Panzer admitted:

1. Other uses such as "Places of Worship", "Recreational Halls" and four storey structures are now permitted in an "Open Space OS1" zoning category. The uses could be located on top of the hill without benefit of site plan control;

2. The Minister of Municipal Affairs and the Conservation Authority have no comments on the application;
3. In 1975, the development proposed on the site was for 912 apartment buildings in 3-23 storey high apartment buildings on the top of the existing hill with no services. Also access in 1975 was off Commissioners Road. This was a different application in 1975 compared to the current application in the year 2000, 25 years later;
4. The City is only interested in these lands if all the trees remain on the site, although he admitted there is currently no tree cutting by-law in the City of London that prevents the current owner from cutting down all the trees on the site. He says the owner has not indicated any intention over the years to cut down any trees on the site;
5. Compact urban form in Section 2.3 of the Official Plan is a goal;
6. Natural heritage system has not actually been identified as set out in Section 2.4.1(xi) of the Official Plan;
7. The Thames River Valley has also not been identified;
8. The Ingersoll Moraine has been extensively built upon over the years in the City of London;
9. The Thames River Valley Corridor Plan mentioned in Section 2.9.3 (IV) of the Official Plan has not even been started, although put in the Official Plan in 1996;
10. Mr. Howell's property and Mr. Hopkins' property are both legal non-conforming uses;
11. The Official Plan policies in existence as of the date of the application by the owner, i.e, October 19<sup>th</sup> 1999, apply;
12. Only one offer was made by the City of London to acquire these lands and that offer was made in 1975, i.e., no offers have been made in the last 25 years;
13. An environmental impact study is necessary under Chapter 15.5.2 of the Official Plan;
14. Development is not compatible with surrounding open space, having impacts of:
  - (a) Slope disturbance;
  - (b) Vegetation removal;
  - (c) Light wind impacts;
  - (d) Groundwater impacts;
  - (e) Adverse impact of the views of the open space along the Thames River Valley but minimal impacts from the east and west lookout points on Reservoir Hill;
15. There are many situations in the City of London where single family homes abut a



- highrise development;
16. The two buildings will have air conditioning etc., and there are mitigation factors in relation to the Byron Gravel Pits located to the west of the site. Eventually, the Byron Gravel Pits will be rehabilitated to a park use with some additional surrounding residential uses added to the existing gravel pit site.
  17. The site is not designated under the Ontario Heritage Act;
  18. The site is not the second highest point in the City of London;
  19. He does not know if there is artesian water seeping from the site;
  20. There are at least four other sites in the City that have highrise apartments overlooking the Thames River Valley, i.e., not uncommon to have apartment buildings overlooking the Thames River Valley throughout the City of London. Some part of the two apartment buildings will be seen from the park and the river;
  21. Need an Official Plan Amendment to Schedule "B" to include the subject lands as a natural heritage area for woodland preservation;
  22. The subject property is currently not on Schedule "B";
  23. Chapter 15 of the Official Plan says lands subject to the policies of Chapter 15 are delineated on Schedule "B";
  24. Not all woodlands are significant;
  25. Section 8A2.6 of the Official Plan says Council will access the potential for acquiring the property as public open space on the basis of five criteria. He advised Council to buy the subject property; and
  26. The Council was not advised of any alternative development proposals for the site.

Ms Jean Monteith, is an experienced and qualified planner. Ms Monteith also gave evidence before the Board in opposition to the proposed rezoning application and redesignation. Ms Monteith said the following:

1. Development on a site that is a cultural heritage landscape as well as a significant woodland, does not meet the Official Plan objectives nor is it in the public interest. Not good planning because:
  - (a) Social impact;
  - (b) Provincial Policy Statement is not adhered to;
  - (c) Jeopardizes the planned function of established land uses in the area. The site is a significant woodland worthy of preservation;
2. Urban design issues not adequately addressed;
3. Section 3.4.2 of London's Official Plan is not met because:

- (a) Compatibility and buffer not satisfied even though servicing, traffic and public transit criteria are met;
4. No area plan submitted to deal with development within 300 metres of an aggregate extraction activity;
  5. Chapter 15 of the Official Plan not satisfactorily addressed. What is proposed is to remove a component of the City's natural heritage, not adding to it;
  6. Two - 12 storey apartment buildings which are really 14 to 15 storeys in height on an elevated site will be completely out of character with the community. The character is low density with lots of open space. The forested hill will vanish;
  7. The proposal is neither reasonable nor responsible;
  8. Slope and vegetation will be removed. This is part of the unique features of the site and is located between two parks, i.e., Reservoir Park and Springbank Park;
  9. If developed for medium or highrise density, development should be on the back side of the hill so as to maintain the streetscape of Springbank Drive;
  10. Twelve storeys, (more likely 14 to 15 storeys) is too high. Six to 7 storey apartments are in the area. Is out of character with the area;
  11. Possible redevelopment on the remaining 7 acres if this rezoning succeeds. Would need an Official Plan and Zoning etc., on the remaining 7 acre parcel;
  12. Not possible to remove a hill and conserve and protect it at the same time;
  13. Nothing has changed since 1975 except the Provincial Policy Statement which gives adequate protection to natural cultural heritage features;
  14. No planning justification to take open space designation off of property;
  15. The Byron Gravel Pits are eventually supposed to be rehabilitated into a proposed lake;
  16. In the 1961 Official Plan, lands are designated as "Open Space". No transitory designation on the subject site, i.e., to eventually come out of an "Open Space" designation. In all subsequent Official Plan policies, the lands are designated "Open Space", i.e., in the last 40 years;
  17. The building setback is not appropriate. Should be at least 18 metres. The Site Plan does not conform to the current zoning by-law. Even if the zoning by-law is changed, it is not compatible with surrounding land uses;
  18. Physical features of the site, magnitude and bulk of the two buildings;
  19. Multi-Family dwellings are designated in other areas of the City in the Official Plan. That is where highrise apartments should be located;
  20. If this development proceeds it opens the door to similar type of developments on other "Open Space" designated lands;

21. Compact development should not outweigh a significant woodland as referred to in the Provincial Policy Statement;
22. Should probably have put an "Open Space OS5" zoning on the property in 1985 not "OS1". The lands are only identified as a significant feature;
23. Thames River Corridor should be protected. This is a unique corridor of the City of London.
24. The visual impact of the two buildings will be very severe. Buildings located so close to Springbank Drive will create concrete walls across the front of the property;
25. Two adjacent property owners are nestled into the hill but two 12 to 14 storey apartment buildings will not be nestled into the hill; and
26. Site is not disconnected from the rest of the neighbourhood but an integral part of the neighbourhood and the surrounding development is single family dwellings, low density and open space.

On cross-examination Ms Monteith admitted:

1. The slope stability is not an issue;
2. She did not speak to Mr. Leonard about his report;
3. In the last 20 years the importance of valley corridors is stressed and more emphasis is on environmental issues;
4. Views are not protected;
5. Site was identified by LACH (London Advisory Committee on Heritage) as a Cultural Heritage Landscape;
6. Reservoir Hill includes the subject property;
7. Reservoir Hill is part of the Cultural Heritage Landscape. Man has modified it by not developing it, although there are two houses beside the property and a service station located at the corner;
8. Test under Section 2.3.1 of the Provincial Policy Statement is it a significant woodland? Even if it is a significant woodland which she says it is, will there be negative impacts? She says yes.
9. Negative impacts. Our lands part of a larger ecosystem. There is a loss of the natural features but she relies on other experts;
10. Chapter 15 of the Official Plan says "lands subject to the policies of Chapter 15 are delineated on Schedule "B". Floodplain and environmental features. She says Schedule "B" is only a part of the process. Look at a number of factors. Now she has an application. Now it should be added to Schedule "B". She did not realize

there was an obsession with Schedule “B”. City could trigger an Official Plan Amendment and Rezoning on its own relating to adding the subject property to Schedule “B” of the Official Plan;

11. She did not recommend an Interim Control By-law at the present time;
12. City could expropriate the lands;
13. The City did not know the site was a significant woodland until November of 1999;
14. There are a number of highrise apartments located beside single family detached homes in the City of London;
15. She finds it offensive to have highrise buildings lining the Thames River Valley;
16. Illusion - how screened will the two apartment buildings be? Computer models on both sides are taken from a birdseye point of view in the air. Could be misleading;
17. The Thames River is now designated as a “Heritage River”. If any development occurs, it should be low density single family homes along Springbank Drive, similar to Mr. and Mrs. Hopkins’ property, to the east of the site;
18. Section 3.4.2 of the Official Plan says preferred location of high density residential should be near “Open Space” and on an arterial road. Two out of three criteria are met. Also, the site is:
  - (a) Fully serviced;
  - (b) Close to public transit; and
  - (c) No traffic concerns but there is no adequate buffering for the adjacent two residents, i.e., the problem is shadowing and unacceptable adverse impacts on Mr. Hopkins’ property.
19. The entire land is not before the Board. The request for an Official Plan Amendment and rezoning is only on 5 acres. The remaining 7 acres should be rezoned “OS5”, the most restrictive zone in order to protect the wooded area on the hill.

Ms Bonnie Bergsma is an experienced and qualified Ecologist and Planner employed by the City of London. Ms Bergsma also gave evidence before the Board in opposition to the proposed redevelopment for the site. Ms Bergsma said:

1. This woodland meets the criteria for significance based on Chapter 14.4.5 of the Official Plan of London and the Provincial Policy Statement, Section 2.3.3;
2. The land has been designated “Open Space” since 1963;
3. The City of London recognizes the Thames Valley Corridor as its most important natural, cultural recreation and aesthetic resource in the City;

4. The land is a forested patch contiguous with Reservoir Hill and adjacent to Springbank Park;
5. ESA Guidelines support the continued designation of the site as "Open Space" based on significant features and functions;
6. Negative impact cannot be successfully mitigated, i.e., physical loss of natural landscape and slope;
7. The impact of this development into the social environment as it relates to the visual, physical and biological open space network. Subject property has linkages to the Thames River;
8. Provincial Policy Statement Section 2.3.1 and 2.3.3 has not been met. Development would result in a loss of physical and natural features on the site and increase the distance and physical barrier or separation with the natural features of Springbank Park by perpetrating the loss of corridor functions;
9. She used the Natural Heritage Reference Manual in applying Policy 2.3 of the Provincial Policy Statement. Woodland is part of patches located along the Thames River. The woodland is unique and different but not an old growth forest;
10. Chapter 15.4.5 of the Official Plan has not been met because it is a significant woodland and:
  - (a) Slopes are greater than 10%;
  - (b) Trees on the site are protecting erosion;
  - (c) Many large trees on the lot;
  - (d) High diversity of community types on the site; and
  - (e) Stiff Goldenrod and Hairy Buttercup are significant species located on the site.
  - (f) More northern Redback Salamanders are located on the site;
11. Impact is negative because:
  - (a) Significant reduction of slope;
  - (b) Loss of vegetation and large trees on the site; and
  - (c) Edge of construction creates a new ecotone, i.e., transition zone between two communities.

On cross-examination Ms Bergsma admitted:

1. The City has a Woodlands Acquisition Fund which is used to buy lands for public purposes, i.e., park purposes;
2. Just because the property is located on the Ingersoll Moraine does not make it

- significant;
3. She used the Natural Heritage Reference Manual as another test in addition to Chapter 15.4.5 of the Official Plan;
  4. She looked at the subject property in conjunction with Reservoir Hill;
  5. Linkages can be either north/south or east/west or a combination;
  6. Reduction of the vegetation on the subject site has a potential impact on Springbank Park;
  7. Springbank Park is a strong and vigorous woodland;
  8. Three properties have been created in the last 50 years. Hopkins severance, Howell severance and the gas station severance at the corner. These severances have created edges abutting the subject property. The Reservoir Hill to the east has also been developed for residential purposes and creates more edges. In addition, a 6 or 7 lane road on Springbank Drive will also create more significant edges on both sides of Springbank Drive;
  9. She has not done an ecological report on Reservoir Hill but she admitted that it is also a strong and vigorous woodland;
  10. Construction of two apartment buildings would contribute to the cumulative negative impact on the viability of retaining the woodland in a healthy state;
  11. Must determine the significance of the land before you do an environmental impact study; and
  12. The proximity of wooded areas to each other is important.

Greg Barrett is an experienced and qualified Planner employed by the City of London. Mr. Barrett also gave evidence before the Board in opposition to the proposed development. Mr. Barrett said:

1. He referred to the Springbank Park master plan and said:
  - (a) The master plan area is characterized by slopes adjacent to Springbank Park;
  - (b) Springbank Park is the City's premier regional park in the City. It serves as a recreational, social and cultural attraction;
  - (c) The proposed development would have an impact on the park and open spaces;
  - (d) Open Space designation on the subject property is appropriate to preserve the continuous "Open Space" network along the Thames River;
  - (e) There is public interest in the designation of the subject land as "Open

- Space” because of the significance of the woodland feature;
- (f) The woodland on the subject lands are a significant landscape feature adjacent to Springbank Park and Reservoir Hill; and
  - (g) The proposed development in terms of height, bulk and scale is not compatible with the visual and aesthetics of the Thames River Valley.
2. The Woodland Acquisition Reserve Fund was established in 1999. In 1999 \$200,000.00 was allocated to this fund and in 2000 another \$200,000.00. In 2001 another \$500,000.00 has been set aside in the forecast for purchasing lands for park purposes by the City of London.

On cross-examination, Mr. Barrett admitted:

- 1. No additional land is needed for the expansion of Springbank Park;
- 2. No complaints from people about apartments overlooking Springbank Park;
- 3. Main complaints relate to traffic and use of the park;
- 4. Walking to any park is a plus, versus coming to a park by car;
- 5. Over \$1,000,000.00 set aside in the 5 Year Capital Forecast for improvements to existing Springbank Park;
- 6. Relocated mini train and more parking lot areas have been expanded, as well as more walkways in Springbank Park now;
- 7. But the City of London didn't do an Environmental Impact Study under Chapter 15.5.1 of the Official Plan relating to the expansion of Springbank Park even though the park is located beside the Thames River;
- 8. No EIS was done relating to the new municipal fire hall located in Byron, close to the entrance to Springbank Park;
- 9. Storybook Gardens is a fantasy make-believe setting in Springbank Park;
- 10. Some apartments already overlook Springbank Park;
- 11. New fire hall will create noise and traffic problems when the fire hall is in operation in Byron, right beside the entrance to Springbank Park at the westerly end of the park;
- 12. New apartments will detract from the park;
- 13. Subject property is not part of the River Valley lands but only associated with the River Valley lands. Many apartments now exist overlooking the Thames River Valley.

Ted Halwa is an experienced and qualified Planner. Mr. Halwa also gave evidence

before the Board in opposition to the proposed development. Mr. Halwa said:

1. Springbank Drive in this area of the City is very rural in its character. A unique driving experience;
2. Development would have a severe visual impact. Can't hide this development;
3. Section 2.4(xi) of the Official Plan says natural heritage features should be protected;
4. Section 2.9.1 of the Official Plan refers to framework of naturally vegetative areas in the City;
5. Section 8A of the Official Plan says "Open Space" designated land should be maintained as park space or in a natural state.
6. Location and intensity of development is more important than size;
7. The views along Springbank Drive will not be maintained;
8. The solution is for the City to buy the lands;
9. Land dedication along Springbank Drive should be maintained in front of the property;
10. If lands are significant, look at adverse impact under the Provincial Policy Statement;
11. Compact urban area in the City but retain natural features;
12. Site is an isolated area surrounded by "green open spaces", not close to any built up area. To isolated a site. Development would be unique in the City of London.
13. Adverse impact on the surrounding area which is open space;
14. Development will be above the existing tree line;
15. Height and scale not compatible with surrounding area;
16. Hopkins property will be adversely affected. Two apartment buildings not compatible with single family dwelling;
17. The building setbacks from the Hopkins property line, is only 20 metres. Should use a step back approach to setbacks and this would be 36 metres, i.e., move the two buildings further west;
18. There are no spaces for visitor parking above ground;
19. Fragmented land parcels are left. No well thought out approach to the proposal;
20. Public transit is not significant because apartments will be marketed to high income groups;
21. No one from the apartments will walk to the commercial area in Byron. Section 3 of the Official Plan has not been adequately addressed;
22. Chapter 3.5.6 of the Official Plan is not met. No impact study done, relating to



- impact from Byron Gravel Pits on this proposed development, i.e., noise and dust;
23. 300 units will accommodate 600 people. Have to look at the impact from the gravel pit operation;
  24. Alternative locations for this type of development are available in the City of London;
  25. Alternative use of site was not adequately considered, i.e., medium type density and lower density housing on the subject lands;
  26. A church or private club would not be an accessory use to a park use;
  27. OS5 zoning would be appropriate for the balance of the site, i.e, the 7 acres;
  28. More buffering is needed, i.e. versus Hopkins property and more natural features should be retained;
  29. Contrary to Section 8 of the Official Plan;
  30. Not good planning but a piecemeal approach. Does not look at the totality of the site; and
  31. Cutting down trees on the site is not a benefit to the owner.

On cross-examination Mr. Halwa admitted:

1. The development is not compatible with surrounding land uses;
2. Highrises should be oriented closest to activity nodes like shopping and employment centres. Springbank Park is not an activity node.
3. Expect a high standard of urban design;
4. High density does not have to be highrise;
5. Have density in transition;
6. High density residential beside low density residential is not good planning;
7. The widening of Springbank Drive and curbing and gutters would take away from the rural character of Springbank Drive at this location;
8. Subject property is not a part of Schedule "B" to the Official Plan.

Jeff Brick is a natural hazard planner with the Upper Thames River Conservation Authority. Mr. Brick also gave evidence before the Board under subpoena in opposition to the proposed zoning. Mr. Brick said:

1. The development on the face of steep slopes is not supported by the Conservation Authority;
2. The remnant valley slopes were not shown on Schedule "B" of the Official Plan;
3. The original position taken by the Conservation Authority was "no objection" to the

- proposed development. Now the remnant slope hazard had been overlooked;
4. Now no support for the proposed development because:
    - (a) The subject property is now identified as a remnant valley slope which is a hazardous site as defined in the Provincial Policy Statement. Section 3.3.1(c) which directs development outside of hazardous sites;
    - (b) Contravenes Chapter 15.7.2 of the Official Plan and Chapter 15.7.4 of the Official Plan;
  5. Hazard characteristics must be considered along with natural heritage characteristics;
  6. The Municipal Plan Review Guidelines were not followed relating to development on the face of steep slopes. There are Conservation Authority Guidelines but they are not in the City of London's Official Plan;

On cross-examination Mr. Brick admitted:

1. The property is not a floodplain hazard (not in the floodplain);
2. No 100 year storm line affects the subject property, i.e., 100 year erosion limit;
3. Mr. Naylor's report which is a peer review, concludes that the slope is inherently stable. He concurs with the Golder and Associates conclusion, i.e., Mr. Bedell's opinion. He did not peer review Golder's report himself;
4. The applicant is not protecting natural vegetation associated with the features contrary to Section 15.7.2 of the Official Plan. If vegetation remains you cannot protect it;
5. In the Provincial Policy Statement, Section 3.1.1(c) hazardous sites refer to lands that could be unsafe, where slopes are more than three to one;
6. Steep slopes of more than three to one could be potentially hazardous;
7. Section 3.1.3 of the Provincial Policy Statement says development and site alterations to a hazardous site may be permitted. He is concerned about Section 3.1.3(b). Can engineer anything but he has no evidence to indicate any new hazards are being created but he has concerns about the slope at the rear of the two apartment buildings;
8. Also, Section 3.1.3(c) of the Provincial Policy Statement talks about no adverse environmental impacts. He says there will be adverse impacts; and
9. Schedule "B" of the Official Plan conforms to the Provincial Policy Statement.

Dr. Gary Epp, is an experienced and qualified ecologist. Dr. Epp also gave

evidence before the Board in opposition to the proposed rezoning on the lands. Dr. Epp said:

1. He did a peer review and woodland evaluation on the subject property;
2. The property provides significant ecological features and functions in a site specific and City context.
3. The site is a significant woodland.
4. The proposed development would result in a net negative impact on ecological features and functions:
  - (a) 60% to 70% of the woodland cover would be cleared on the 5 acre site;
  - (b) Greater than 50% of the tree cover woodland needs to be removed for the proposed construction of the two apartment buildings;
  - (c) The removal of the Eastern White Cedar growth would impact on discharge area;
  - (d) Effect on the corridor function provided by the woodland communities;
  - (e) Significant on-site soil erosion;
5. Could possibly develop one or two small residential lots on the site;
6. The Provincial Policy Statement Section 2.3.1 has not been met. No protection of natural heritage features. There will be negative impacts;
7. Chapter 15.4.5 of the Official Plan has not been met;
8. Property contains significant ecological features that provide ecological functions;
9. The Natural Heritage Reference Manual talks about four factors to be considered:
  - (a) Woodland size;
  - (b) Ecological functions;
  - (c) Uncommon woodlands;
  - (d) Woodland economic and social values. Subject property meets three of these factors, i.e., (a) (b) and (c).

The woodland on the site is over 4 hectares in size. Connection between the woodland and the Thames River woodlot is not isolated from Reservoir Hill. Woodlands are unique.

10. Criteria in Chapter 15.4.5 of the Official Plan. Three criteria are not met out of the five, i.e., property is part of the Thames River function and the connection to Reservoir Hill. Property located on slope of the Ingersoll Moraine;
11. Stiff Goldenrod species which are very rare will not be protected although the Stiff

- Goldenrod is not located within the construction area itself;
12. The owner does not address the issue of significant woodland; and
  13. The owner only addresses individual trees as opposed to a woodland as a community or ecosystem.

On cross-examination, Dr. Epp admitted:

1. You can have an ecologically significant area that contains driveways, parking lots, water reservoirs and playing fields, i.e., Reservoir Hill;
2. Springbank Park also contains ecologically significant features, although the park has a mixture of uses reflecting human intrusion, i.e., driveways, parking lots, playing areas and a miniature train ride;
3. He didn't do a peer review of Mr. Leonard's report;
4. No question of water retention on the subject lands related to Reservoir Hill or Springbank Park;
5. Some corridor functions will be impacted;
6. The Natural Heritage Reference Manual is only used as a guideline and Chapter 15.4.5 of the Official Plan incorporates five criteria in evaluating the significance of woodlands; and
7. No endangered species are threatened.

Christen Audet, is an experienced and qualified forester. Mr. Audet also gave evidence before the Board in opposition to the proposed rezoning on the property. Mr Audet said the following:

1. He did a review of conservation policies for the Periurban Carolinian Woodland Patches. Our land shows some aspects of a Carolinian Forest;
2. He used the City of London's "Guideline Document for the Evaluation of Ecologically Significant Woodlands" (November 29, 1999) and the score sheet.
3. The most advanced approach is the Toronto and Region Conservation Authority (T.R.C.A.);
4. London's score sheet is a bare minimum that must be considered in deciding whether a woodland patch should be integrated into its heritage network;
5. Woodland is a significant component of the natural heritage system because:
  - (a) Six criteria are met (only need 3 criteria to be met). Subject property is a significant woodland on its own and in relation to Springbank Park and

Reservoir Hill;

6. Disturbance does not play a big role in his assessment;
7. Look at diversity of the site and the soil conditions because it is a part of the Ingersoll Moraine;
8. Vegetation on the site is only a part of the overall consideration. Look at the slope, soil conditions, and the surrounding area;
9. High trees, i.e., Walnut and Beech and shrubs are on the site;
10. The subject property is an important linkage to Reservoir Hill and Springbank Park;
11. The development will have a negative impact on the wildlife, plants and the surrounding area; and
12. Hazard trees should be considered along Mr. Howell's property.

On cross-examination Mr. Audet admitted:

1. Linkage relates to animals like foxes, squirrels and birds;
2. Chain is affected but geographical chain is not broken;
3. Proper mitigation measures can be taken to address the surrounding forest, through (a) replanting, (b) site plan control conditions, (c) revegetation measures and (d) tree planting;
4. Concerned about fragmentation if patches are eliminated; and
5. He did not do a evaluation based on Chapter 15 of the Official Plan alone.

John Gauld is an experienced and qualified planner and landscape architect employed by the City of London as manager of site plan approvals. Mr. Gauld also gave evidence before the Board in opposition to the proposed development. Mr. Gauld said:

1. Out of 32 site plan matters, only 6 items remain in dispute;
2. A tree preservation plan is necessary but is covered in Condition 15 of the Site Plan Agreement;
3. Need building elevations and cross section drawings;
4. Show dimensions to demonstrate compliance with building setback and separation distances;
5. Sidewalk location;
6. Grading along Springbank Drive related to road allowance. Existing trees in front will have to be cut;
7. Two driveways into the property should be at right angles to Springbank Road not at

- an angle. This is a safety issue. Have sidewalks also cross driveways at right angles along Springbank Road;
8. Wants the two apartment buildings set back an additional 20 feet from Springbank Drive into the hill;
  9. Wants more visitor parking on surface level in front of entrances to two apartment buildings, i.e., for taxi cabs, drop offs etc., should be located outside the control access environment of the parking garage;
  10. Landscape strips along the entire frontage of the property; and
  11. Excavation line is five metres from Dr. Howell's property line. Question of preservation of trees to buffer Dr. Howell's property.

On cross-examination Mr. Gauld admitted:

1. If the buildings are moved back an additional 20 feet, there will be a bigger impact on Mr. Howell's property. There is a question of which trees will survive construction and buffer Mr. and Mrs. Hopkins' property to the east;
2. Ultimately, an arterial road is proposed at this location on Springbank Drive. Currently there are only two lanes of traffic. Road allowances can vary between 26 to 90 metres on arterial roads.
3. The City in other apartment projects located in the City of London has allowed retaining walls to be built on existing road allowances.
4. There is some flexibility in applying the Site Plan Manual.
5. Additional landscaping in front of the two apartment buildings will be necessary even if the existing large trees on the site are retained;

Ms Joni Baechler representing the Urban League of London, also gave evidence before the Board in opposition to the proposed zoning. Ms Baechler said:

1. The Urban League of London is a 31 year old organization in the City of London;
2. Forest cover and woodland have been a strong issue and it is a City wide issue;
3. Money from development charges cannot be used to buy this property;
4. She supports the City buying this woodland from the developer;
5. Carolinian Forest should be preserved;
6. A healthy forest cover is 30% for the City of London. The City only has about 7.8% forest cover now;
7. Forests provide environmental bio-diversity and are an essential habitat for plant

and animal species;

8. Preserve the woodland legacy in the City of London, i.e., London is called the "Forest City";
9. The woodland Acquisition Reserve Fund of the City of London has set aside \$500,000.00 in the 2001 Budget to acquire woodlands in the City of London. The City has purchased some of the Clara Bretton Woods property. Hopefully the City will purchase the subject lands.

On cross-examination, Ms Baechler, admitted:

1. The subject property has some Carolinian species in it; and
2. All 12 acres should be purchased by the City, not just a part of the site, at a fair market value.

Ms Rosemary Dickinson, acting as agent for the Oakridge-Hazelden Community Association, also gave evidence before the Board in opposition to the proposed rezoning. Ms Dickinson said:

1. The Oakridge Hazeldon Community Association was formed in 1983 and has about 250 members;
2. The Association was involved in the master plan for Springbank Park;
3. The Association took part in the Vision '96 plan for the City of London;
4. The Thames River is designated as a "Canadian Heritage" river;
5. Paddlers on the Thames River describe the Thames as "canoeing in a trench" because of the steep banks on either side. This relates to the steep hills on the subject property;
6. It would have been more helpful if the Board had different perspectives of the site;
7. The height of the subject property is significant. Two 12 - 15 storey apartment buildings will be seen from many angles;
8. The vistas of the landscape of Reservoir Hill and the subject property should be maintained;
9. The City should buy the land from the applicant at a fair market price;
10. It is a Provincially Significant Woodland and should be preserved as a woodlot; and
11. History and landscape come together here on this site. Maintain this site as Open Space.

On cross-examination Ms Dickinson admitted:

1. The Association has not discussed the widening of Springbank Drive.

Ms Louise Perry also gave evidence before the Board in opposition to the proposed development. Ms Perry said:

1. Her great grandfather, John Wells, sustained an injury in a skirmish on Reservoir Hill in the War of 1812 - 1814. At that time it was called Hungerford Hill.
2. This was related to her by way of word of mouth when she was a little girl. She is now 88 years old;
3. Her ancestors came over on the Mayflower;
4. There was a plaque at one time on Reservoir Hill commemorating the incident of the War of 1812 -1814; and
5. The proposed development is in a bad location on Springbank Drive.

Mr. Albert Gretzky also gave evidence before the Board in opposition to the proposed development. Mr. Gretzky said:

1. His hobby is metal detection;
2. He found musket balls and shell casings on Reservoir Hill in 1983;
3. Many empty shell casings were found on the site which were blanks from a re-enactment in 1913 of the skirmish of 1812 - 1814; and
4. Musket balls could have been used as ammunition for hunting on the site.

Dan Brock is a qualified and experienced historian and teacher in the City of London. Mr. Brock also gave evidence before the Board in opposition to the proposed development. Mr. Brock said:

1. He was disappointed in Mr. Andreae's report because there are numerous errors in his report of his account of the 1812 -1814 skirmish. He said the errors were minor and were on pages 2 and 3;
2. The account of Ms McNames should have been portrayed more as a local heroine. Her name is mentioned frequently. She is the Laura Secord of the London area;
3. Question of whether the Oxford Militia did not fight at the Battle of the Thames (October 5<sup>th</sup>, 1813);
4. Location of the right hill is not in dispute. The skirmish took place on Reservoir Hill. The hill is east of Byron;



5. There were two distinct skirmishes one in 1813 and one in 1814 on Reservoir Hill (Hungerford Hill);
6. A re-enactment of the skirmishes took place in 1913; and
7. There should be a plaque or monument put on the hill, and designate it a Historical Site.

On cross-examination Mr. Brock admitted:

1. He has not asked the City of London to put up a plaque on the City property.
2. The City has not even put up a plaque for the first two town halls which were built for the City of London which were eventually demolished.
3. No designation of the site has been done by the City of London, the Province of Ontario or the Federal Government. The City is usually reactive not proactive he said.

George Goodlete also gave evidence before the Board in opposition to the proposed development. Mr. Goodlete said:

1. The Ontario Municipal Board is a quasi-judicial body. It has no accountability to the citizens of the City of London;
2. Abide by the wishes of the elected City Council;
3. The importance of the open space to the City dwellers. Most City dwellers have to travel long distances to find open space in a City context;
4. Springbank Park is Open Space and the Open Space around the park should be protected;
5. Two apartments will resemble filing cabinets;
6. The scenic views of the Thames River at Springbank Park is worth preserving;
7. What is the benefit of development to the City? None. It is not affordable housing etc.;
8. No one supports the proposal except the applicant and the London Development Institute; and
9. The owner bought the property as Open Space. He gambled. The City has offered to buy the property. He could at least re-coup his original stake.

Mr. Walter Howell, who is the abutting neighbour to the west of the site also gave evidence before the Board in opposition to the proposed development. Mr. Howell said:

1. He bought his property in 1986;
2. The two proposed apartments will have a serious negative impact on him because:
  - (a) Most of the existing mature trees on the subject property that abut his property line will be destroyed;
  - (b) Apartments will overlook his property. There will be a loss of privacy from the height of the 12 to 14 storey apartment buildings;
  - (c) Loss of trees on his property as a result of excavation. Roots will be affected;
  - (d) Loss of personal sight lines from his home;
  - (e) The proposed apartment buildings westerly limit will be about 45 feet from his property line;
  - (f) Increased noise from two apartment buildings and continual noise from cars entering and exiting the two apartment buildings;
  - (g) Use and enjoyment of his property will be diminished;
3. Most of the year, the trees have no foliage. Screening from trees will be diminished;
4. The City's proposed site plan (i.e., 20 feet deeper) eliminates the mature trees in front of the subject property and pushes the two apartment buildings even closer to his property line;
5. Aesthetics of the drive along Springbank Drive will be negatively impacted;
6. The destruction of 20% of the lots vegetation will have a negative impact on the ecology of the rest of the site and Reservoir Hill. The woodlot should remain contiguous;
7. The apartment dwellers in the two apartment buildings will experience severe dust problems from the existing gravel pit operation to the west, i.e., dust on the balconies; and
8. Should remain "Open Space" and the City should purchase the property from the owner.

On cross-examination, Mr. Howell admitted:

1. He has not removed much vegetation from his own property.

Bill Hopkins, who is the abutting neighbour to the east of the site, also gave evidence before the Board in opposition to the proposed development. Mr. Hopkins said:

1. He bought his own property in 1997 which is a one acre site;
2. There is an unacceptable adverse impact. His master bedroom is located on the west side of his house and he will be looking at the 14 storey apartment building 30 metres away, i.e., his sight lines will be negatively impacted;
3. Privacy will be affected. Apartment dwellers balconies will overlook his house and his front and back yard;
4. Shadowing impact from the two highrise apartments;
5. Loss of sunlight to his home, and in the backyard, especially in the late afternoon;
6. Habitat for birds and wildlife will be destroyed;
7. Increased traffic;
8. 1600 daily trips from the two apartment buildings. Safety concerns entering and exiting from Springbank Road, i.e, his own driveway is located very close to the proposed easterly driveway to the two apartment buildings;
9. Heavy rainfall and flooding on his lands now;
10. Reservoir Hill has historical significance and should be preserved, i.e., a highly recognized landmark;
11. Link between animals and Springbank Park;
12. Too much traffic on Springbank Drive now. Extra traffic from this development will add to congestion;
13. The proposed underground parking garage at the east end of the easterly building will negatively impact on him, i.e., traffic from cars entering parking garage and noise of garage doors opening and closing, i.e., 500 cars a day is unacceptable;
14. The site is topographically unique because of its height. One of the highest points in the City of London;
15. Knowledge of the environment has changed in the last 25 years. More awareness now;
16. Future generations should not be punished because of a technicality; and
17. There will be more wind and dust on his property from the gravel pit, i.e, affects of losing existing tree buffer from the subject lands.

On cross-examination, Mr. Hopkins admitted:

1. He did not want any residential development beside him whether it is an apartment building or a single family dwelling;

The Board took a “view” of the site on October 18, 2000 and the tour was completed in approximately 3 hours and was very informative and helpful. The Board appreciates the co-operation of all the parties.

The Board conducted an evening public meeting on October 24<sup>th</sup>, 2000, at London City Hall. Nineteen people spoke in opposition to the rezoning application. Their concerns were as follows:

1. Retain all of the woodland area;
2. The Thames River Watershed should be protected;
3. Historical site in relation to the War of 1812 - 1814;
4. Significant and historical landscape;
5. Preserve the heritage site;
6. Increase in traffic from development;
7. Desecration of the north slope of Reservoir Hill;
8. Part of Reservoir Park scape;
9. Forest cover in the City is only at 11%. Need more forest cover;
10. London is now the second largest smog City in the Province of Ontario. Need cleaner air. Trees help purify the air;
11. Death by inches;
12. Springbank Park is unique to London;
13. Ugly encroachment of existing apartment buildings in Byron;
14. Follow current City of London’s guidelines on retention of woodlots;
15. Follow policies in the City of London’s Official Plan and the Provincial Policy Statement;
16. This is not a built up area. Intensification should take place only in built up areas of the City of London;
17. The good of the many outweighs the benefit of the few;
18. The property is linked to Reservoir Hill;
19. The value of trees and peace and quiet of a park setting;
20. Reservoir Hill as a natural park and should be preserved at any cost;
21. Tallest hill in the City. View should be preserved;
22. The owner should donate the land to the City and have park named after him;
23. Twelve year old boy, rides his bike and takes his dog to Reservoir Hill. Very upset if the park would be taken away;
24. Bad precedent. Opens door for other applications;

25. The Thames River and Springbank Park are wildlife preserves;
26. Storm water problems may exist;
27. A natural treasure is unique and should be preserved for our children and grandchildren;
28. The lands are contiguous to other green space around the Thames River;
29. The lands should be bought by the City of London for a fair price. Mediator should be brought in;
30. Once it is gone, it is gone for good. Protect natural wilderness;
31. The edges of Springbank Park will become less viable with more residential development;
32. Natural areas are in decline;
33. Council unanimously turned down the rezoning application;
34. People in the two apartments will abuse the existing parks in the area, i.e., dog droppings, loss of vegetation, reduced wildlife etc.;
35. Reservoir Hills is a habitat for wildlife. If developed, there will be a decline in wildlife;
36. Allow time for the City to buy the land from the developer, without the Ontario Municipal Board making a decision; and
37. Further development on Reservoir Hill might happen if 12 acres are allowed to be developed for two highrise apartment buildings.

The Board has carefully weighed all the evidence and prefers the testimony of Mr. A. H. Graat, Jr., Richard Zelinka, Ian Seddon, Philip Bedell, Frank Berry, Wayne Hodgins, Michael Leonard, Ron Koudys, Christopher Andreae and John Camara, with one major exception which relates to density.

The Board finds that a redesignation from "Open Space" to "Multi-Family High Density Residential" and a rezoning from "OS1" to "Residential R9-7.H40 on the 5 acre northerly portion of the site is appropriate and desirable and represents good planning, but with one exception relating to density.

The Board finds that only one 12 storey apartment building located in the middle of the 5 acre site is appropriate and desirable. One 12 storey apartment building will have a minimum environmental impact on the existing slope and the 2 abutting neighbours. Two 12 storey apartment buildings would be an over-development of the site and create severe unacceptable adverse impacts on the existing slope and the environment as well as the

two abutting neighbours, Mr. Howell and Mr. and Mrs. Hopkins.

The Board finds that Mr. Howell and Mr. and Mrs. Hopkins would be seriously and negatively impacted in the following manner, if two 12 storey apartment buildings are allowed:

- (a) There would be a serious loss of privacy to both neighbours;
- (b) There would be major sun shadowing on Mr. and Mrs. Hopkins' property;
- (c) There would be unacceptable noise problems relating to cars coming and going from the site and the opening and closing of garage doors;
- (d) Traffic to and from the site would be heavy and excessive at certain times of the day;
- (e) There would be a loss of tree buffering and shadowing and a loss of sight lines; and
- (f) There would be a severe loss of the use and enjoyment of the 2 properties abutting the site.

The subject property is currently designated "Open Space" in the Official Plan and zoned "OS1" in the Zoning By-law. The Board finds that there is no "Natural Heritage" designation for the subject lands found in Schedule "B" of the Official Plan. There are no special environmental features attached to the subject property.

The Board also finds that the remaining 7 acres should be rezoned from "OS1" to "OS5" in order to protect the existing trees and vegetation on the site. The parties have agreed to this procedure.

The Board finds that Chapter 15 of the Official Plan says the lands subject to the policies of Chapter 15 are delineated on Schedule "B" Floodplain and Environmental Features. The Board finds that the subject lands are not delineated on Schedule "B", therefore, Chapter 15 of the Official Plan does not apply. The lands are not a significant woodlot nor have they any significant cultural heritage features. It is not an environmentally significant area (ESA). The subject site has a typical bio-diversity and does not provide an important wildlife habitat. It is not an old growth forest and there are no rare or endangered species on the site. Even if Chapter 15 of the Official Plan applies to the site, the Board finds that none of the five criteria set out in Chapter 15.4.5 of the Official Plan relating to significant woodlands are met.

The site is surrounded on two sides by large parks, i.e., Reservoir Hill and (which is 42 acres in size) immediately to the east of the site and Springbank Park (which is roughly 163 acres in size) to the north and northwest of the site across Springbank Drive. The Board finds that even if Chapter 15 of the Official Plan applies, Chapter 15.5 of the Official Plan relating to environmental impact study has been satisfactorily addressed because:

- (a) There is no significant linkage to Springbank Park;
- (b) Any impacts can be mitigated;
- (c) Sustainability of site is not an issue, and
- (d) Linkage to Reservoir Hill will still be maintained.

The Board finds that a high density residential designation is very appropriate and desirable for the site because:

- (a) The site is fully serviced;
- (b) Only 2 acres out of 10 acres are actually being developed. The remaining 10 acres will surround the development and most trees and shrubs will be retained;
- (c) Part of the 12 storey highrise apartment building will be screened from the front by the retention of mature trees located on the Springbank Drive right-of-way.
- (d) The height of the apartment building is limited to 12 storeys with all parking underground;
- (e) Two public transit bus stops are located in front of the property. Good use of public transit;
- (f) Good shopping facilities, churches and schools are located close by in Byron;
- (g) Provides alternative apartment housing options for the area;
- (h) With proper screening by way of existing trees and shrubs and some additional noise barriers and plantings, the impact of a one 12 storey apartment building on the two abutting neighbours will be minimal and acceptable;
- (i) Existing Springbank Drive can handle the additional traffic and Springbank Drive is a major arterial road where an apartment building should be located;
- (j) Ideal location because of the apartment's proximity to two large existing

- parks;
- (k) No negative impacts on the natural features of the surrounding area. The steep slopes on the site are inherently stable and the groundwater quality will not be impacted since any water runoff will be piped directly to the Thames River;
  - (l) Reservoir Hill which is about 42 acres in size and immediately abuts the site to the east, will not be impacted to any large degree and the two existing lookout points and the views from these locations will still be maintained. The linkage to Reservoir Hill will remain;
  - (m) One apartment building will blend in with the side of the steep slope and the loss of vegetation will be minimal.
  - (n) There will be no impact on Springbank Park located across Springbank Drive to the north and northwest of the subject property; and
  - (o) In the last 25 years, substantial residential development has been built in the immediate area.

This apartment building will provide an upscale residential accommodation in a treed setting opposite two parks in a built up area of the City of London. One apartment building is compatible with surrounding land uses and open park space, and is appropriate.

Section 8 of the Official Plan has been complied with because park links and open space linkage will still be maintained in Reservoir Hill and Springbank Park. The main linkage for wildlife is in an east/west direction on Springbank Park. There is no shortage of open space in this area of the City of London. Ecological features of the two parks are still protected.

The Board also finds that Section 2.3.1 of the Provincial Policy Statement has been adequately addressed. There will only be some slight negative impacts on the natural features and the ecological functions for which the area is identified. These impacts are minimal and acceptable. The site is not a vegetation patch as set out in Schedule "B" of the Official Plan.

The Board also finds that a noise and dust study as set out in Chapter 3.5.6 of the Official Plan is not necessary in these circumstances relating to the proximity of the site to the sand and gravel pit to the west of the property. Matters of dust are generally an inconvenience to surrounding landowners and usually only a minor irritant.



The proposal in 1975 (approximately 25 years ago) on the subject site, was totally different from the current application because of the following:

38. The site was unserviced in 1975; and
39. Proposed in 1975 were 912 apartment units in three 23 storey high apartment buildings located on top of the hill which is the highest point of the land with entrances from Commissioners Road. There were no residential subdivisions in the immediate area as there are now.

What is appropriate now is one 12 storey apartment building with 165 units with parking for 215 cars all underground. The site is fully serviced with access off Springbank Drive, a main arterial road. A totally different proposal today which the Board finds is more in keeping with the surrounding ecological landscape and more in keeping with the environment. The area has an abundance of open space, and park land in Reservoir Hill and Springbank Park. There is no need to add any additional parkland to this area of the City of London.

The Board also finds that there may or may not have been one or two skirmishes on or near the subject property during the War of 1812 - 1814, but the Board notes that none of the site or the adjacent Reservoir Hill for that matter, has been designated an Historical or Heritage Site under any Municipal, Provincial or Federal Legislation. In this case, the Board finds that there is no historical significance nor any cultural significance to the subject property. No Cultural Heritage Landscape as set out in the Provincial Policy Statement has been identified.

It might be appropriate for the City of London, if they wish at sometime in the future, to erect a plaque somewhere on Reservoir Hill in order to recount the skirmish or skirmishes of the War of 1812 - 1814.

The Board also finds that the draft Site Plan proposed by the applicant is appropriate in principle but only for one 12 storey apartment building. The City of London's proposed Site Plan would push the two apartment buildings further to the rear of the site increasing the unacceptable adverse impact on both Mr. Howell's property and Mr. and Mrs. Hopkins' property. As well, there would be more adverse impact on the existing slope and the surrounding environment.

The applicant's proposed Site Plan would retain most of the mature trees along the Springbank Drive right-of-way and the large mature trees would partially screen the front of the apartment building. In this case, the Board finds that it is reasonable and in the public interest to retain as many large trees as possible in front of the new 12 storey apartment building in order to partially screen it from the roadway and from views across the Thames River and Springbank Park. Setbacks and angle traffic entrances to the site are appropriate in the draft Site Plan and should be incorporated in the amended Site Plan relating to only one 12 storey apartment building. As well, since there will be more open space between the new 12 storey apartment building and the two neighbours, Mr. Howell and Mr. and Mrs. Hopkins, the additional open treed and shrub area should be maintained in order to increase this natural buffer area between the apartment area and the adjoining neighbours. Every effort should be made to reduce the physical impact of the 12 storey apartment building on the two adjoining neighbours and the existing steep slope.

The Board also finds that the Thames River Valley Corridor will not be impacted by the revised development for one 12 storey apartment building. The Thames River Valley Corridor will continue to act as the City of London's most important natural cultural and aesthetic resource. The visual character of the Corridor will not be substantially altered.

The Board also finds that over the years, many residential subdivisions and highrise apartment buildings, have been built on the Ingersoll Moraine in the City of London. The subject lands are part of the Ingersoll Moraine and the Board finds that one 12 storey apartment building built on part of the Moraine, is not out of keeping with the whole character of the City of London.

The Board notes that the City of London has had many years, i.e, at least 33 years to acquire this privately owned property from the owner and join it with the balance of the Reservoir Hill lands. No expropriation or acquisition has taken place during that time. The City has failed to purchase the lands during this period of time and the City by maintaining the designation of "Open Space" on this private property, in effect is appearing to expropriate the lands without paying proper compensation. The lands would have a lower value if they remained in an "Open Space" designation than if redesignated "Multi-Family High Density Residential". This is neither fair nor equitable to the owner. Private land owners should not be required to provide "Open Space" for public use. The Board finds that it is not in the public interest to use the appeal process of the Ontario Municipal Board

as a vehicle to determine land values unless we are dealing with an expropriation or an assessment appeal case where land values are the real issues.

In this case, the land values are not the issue. What is an appropriate designation for the site and what if any impacts arise are only a few of the important issues before the Board which are all dealt with under the *Planning Act*. The Provincial Policy Statement and the Official Plan policies, must be satisfactorily addressed and fully considered.

The Board is satisfied that one 12 storey apartment building with appropriate site plan control measures can be built on the site with the least amount of environmental impact and the least amount of impact on the two neighbours. The amended proposal is reasonable, responsible and represents good planning. The Board also finds that the proposed Zoning By-law as modified conforms to the proposed Official Plan Amendment.

In the result, the Board orders that:

1. The appeal be allowed in part;
2. The Board will approve the draft Official Plan Amendment as set out in Exhibit "5" which is appended as Attachment "1" to this decision;
3. The Board will approve the draft Zoning By-law as set out in Exhibit "6" which is appended as Attachment "2" to this decision;
4. The Board will require from the applicant, the following:
  - (a) An additional Zoning By-law zoning the remnant 7 acres from "OS1" to "OS5";
  - (b) A new Site Plan reflecting the Board's decision incorporating the following:
    - (i) Maximum one 12 storey apartment building located roughly in the middle of the two apartment buildings as set out in the existing proposed Site Plan and driveways to the site can be angled;
    - (ii) Maximum of 165 apartment units with a minimum of 215 underground parking spaces. This underground parking will also include visitor and handicapped parking. There will also be a minimum of 6 parking spaces on the surface for pickup and drop-off purposes;
    - (iii) Maintain the existing mature trees at the front and as well, the trees abutting Mr. Howell's property and Mr. and Mrs. Hopkins' property;
    - (iv) Noise attenuation features will be incorporated to deflect noise from any opening and closing of garage doors affecting both property

- owners;
- (v) The developer will donate to the City of London, 2 acres out of the 7 acre parcel for park purposes to be added to Reservoir Hill;

The Board's final order will not issue, until the additional Zoning By-law and the revised Site Plan, are approved by the City of London and forwarded to the Board for approval. Mr. and Mrs. Hopkins and Mr. Howell are to be involved in the revised Site Plan process with the applicant and the City of London.

If there are any questions, the Board may always be spoken to.

"M. A. Rosenberg"

M. A. ROSENBERG  
MEMBER