

ISSUE DATE:

**Dec. 29, 2004**

DECISION/ORDER NO:

**1986**



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL970903

6 & 7 Developments Limited has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to amend a proposed amendment to Zoning By-law 1995-14864 of the City of Guelph to rezone lands located at the northwest corner of Woodlawn Road (Highway #7) and Woolwich Street (Highway #6) from "UR" (Urban Reserve) Zone, "WL" (Wetland) Zone, "Specialized SC.2-3" (Service Commercial) Zone and "Specialized SC.2-7" (Service Commercial) Zone to a site specific designation to permit a phased commercial development having an ultimate size of 350, 000 square feet.

O.M.B. File No. Z970119

At the request of 6 & 7 Developments Limited, the Minister of Municipal Affairs has referred to the Ontario Municipal Board under subsection 22(1) of the *Planning Act*, R.S.O. 1990, c. P.13, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Guelph to redesignate lands located at the northwest corner of Woodlawn Road (Highway #7) and Woolwich Street (Highway #6) from "Service Commercial", "Industrial" and "Provincially Significant Wetlands" to a site specific designation to permit a phased commercial development having an ultimate size of 350, 000 square feet.

Minister's File No. 23-OP-3888-A01

O.M.B. File No. O980040

## **APPEARANCES:**

### **Parties**

6 & 7 Developments Limited

City of Guelph

Residents For Sustainable Development In  
Guelph

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

R. Houser\*  
T. Friedland\*

J. Matera\*

E. Gillespie\*

### **Participant**

Ignatius Jesuit Centre of Guelph

D. Galon  
Rev. J. Profit

## **DECISION DELIVERED BY J.R. BOXMA AND ORDER OF THE BOARD**

The first Board hearing relating to these appeals by 6 & 7 Developments Limited ("6 & 7") was held in 1998. Six years later, the matters have finally concluded before the Board.

In 1998, retail commercial proposals on behalf of 6 & 7 at Woodlawn Road and Woolwich Street and on behalf of the University of Guelph on Stone Road were consolidated into one hearing and in 2002, a zoning by-law amendment for a third property at 63 Woodlawn Road (the former Desert Inn site) was appealed and subsequently consolidated into the hearing. All of the properties are located in the City of Guelph.

On May 25, 2004, Council of the City of Guelph passed a resolution indicating that it was now in support of the 6 & 7 and University of Guelph proposals. No one was opposed to the University of Guelph proposal and the appeals proceeded to hearing on July 19, 2004 and the Board's Order (Decision/Order 1249) issued on July 28, 2004.

The University of Guelph had been the appellant of the Desert Inn zoning by-law and it withdrew its appeal with the result that the by-law was deemed to have come in force the day it was passed.

This left the 6 & 7 proposal and it proceeded to hearing on August 3, 2004. There was one remaining party in opposition to the 6 & 7 proposal, Residents for Sustainable Development ("RSD"). Also appearing at the hearing was the Ignatius Jesuit Centre of Guelph (the "Jesuit Centre"), who had been a party earlier on, but requested its status be changed to that of a participant.

Through discussions with RSD and the Jesuit Centre, the final Issues List was narrowed to 7 issues from the 32 issues previously included on the Issues List. As a result, no issues remained with respect to market impact, transportation capacity or physical impacts of the 6 & 7 proposal on the Jesuit Centre. The latter issue was removed because the Jesuit Centre agreed in a letter dated December 6, 2001, that any physical impact and mitigation issues, having been addressed to its satisfaction, would

not be raised at the Board or in any other forum. This letter agreement is attached to this Decision as Attachment 1 and the final Issues List is attached as Attachment 2.

### THE PROPOSAL

The 6 & 7 proposal provides for a commercial development at the northwest corner of Woodlawn Road and Woolwich Street of 155,000 square feet, comprised of a 135,000 square foot junior department store (intended to be a Wal-Mart) and 20,000 square feet of street-related retail uses on a property of 21.4 acres (the "6 & 7 Lands") and the northerly 10.3 acres is to be conveyed to the City of Guelph (the "City") for open space. 6 & 7 controls an additional 9.5 acres that are not the subject of the appeals before the Board and for which no applications have been made to the City.

### BACKGROUND

The 6 & 7 Lands are located at the north end of, and wholly within, the urban area of the City and are at the intersection of two major arterial roads – Woodlawn Road (Highway 6) and Woolwich Street (Highway 7).

In the vicinity of the 6 & 7 Lands there is a range of urban uses, including residential, commercial, industrial, recreational, as well as 2 cemeteries, and, in the Township of Guelph/Eramosa are the lands of the Jesuit Centre. The total holdings of the Jesuits are approximately 600 acres, with approximately 500 acres west of Highway 6 and approximately 100 acres east of Highway 6. The existing commercial uses include a Canadian Tire of 50,000 square feet and a Staples of 24,500 square feet, both at the Woodlawn Centre, which is located at the northeast corner of Woodlawn Road and Woolwich Street. The site of the former Desert Inn has been rezoned for a variety of commercial uses, and is anticipated to be developed as a Home Depot of approximately 84,000 square feet.

The Board has attached exhibit 7 as Attachment 3 and Exhibit 12 as Attachment 4 to this Decision. They are helpful in showing the various land holdings and other aspects which are depicted will be dealt with in greater detail later in the decision.

The 6 & 7 Lands have 2 different designations in the City's Official Plan. 8.9 acres of the 21.4 acres are designated "Service Commercial". An "Industrial" designation applies to the interior portion of the 6 & 7 Lands and section 7.7.1 of the

Official Plan permits a wide range of uses including manufacturing, fabricating, processing, warehousing and bulk storage of goods, transportation terminals and contractors' yards.

### THE PROCESS

The process conducted by the City in respect of the 6 & 7 and University of Guelph proposals extended over a period of eight years, including nine public meetings. The initial proposal of 6 & 7 was for a development of 356,000 square feet and an additional 36,000 square feet of ancillary, but is now for a total of 155,000 square feet. Planning Staff prepared 4 thorough planning reports on both the 6 & 7 and University of Guelph applications and the two applications were processed by City staff concurrently. As well, staff was consistently of the view that, should a choice between the two sets of applications be required for reasons of market impact, the 6 & 7 application should be preferred. The basis for this view was that the 6 & 7 proposal would strengthen and revitalize an underutilized commercial node; would provide a balance among the major commercial centres in Guelph; and would provide an enhanced level of service to north-end residents of the City.

All technical implications of the 6 & 7 proposal, including infrastructure, engineering, environmental, transportation and financial considerations, have been addressed to the satisfaction of City staff.

If the 6 & 7 proposal is approved, the City's technical and urban design requirements are identified in a list of conditions that will be implemented by the City through the site plan approval process. 6 & 7 will be required to update and implement the recommendations of its technical studies prior to building permit issuance.

Condition 3 f) of the City's site plan conditions provide for a building form, elevations and exterior building materials intended to reinforce a "made in Guelph" theme and this condition is set out below and it reads as follows:

- f) Enhancing the visual built form and character of Guelph by ensuring the project building form, elevations and exterior building materials reinforce a 'made in Guelph' theme and are incorporated into the design of the subject site in a manner that is of superior urban design and quality, to the satisfaction of the City and is generally consistent with the Preliminary Elevation Concept attached hereto.

## THE HEARING

The hearing was conducted for 5 days for the hearing of evidence. The Board heard evidence from 4 qualified land use planners; an Anglican Minister; a retired chaplain; and the evidence on behalf of the Jesuit Centre was presented by Dr. Galon and Father J. Profit. 33 exhibits were filed. The Board also conducted an evening session which had a massive turnout; continued for more than 5 hours; the Board heard from more than 40 residents and received more than 20 written submissions. Argument occurred over a 2 ½ day period and the Board had the benefit of Written Outlines; 3 volumes of cases and relevant Legislation were filed. The Board has carefully considered all of this in coming to its decision. It is impossible to attempt to recite each and every piece of evidence and each and every submission made in argument but the Board will set out what it believes are the most salient facts and opinions and arguments advanced in this decision.

## PLANNING CONSIDERATIONS

Section 9.3 of the Official Plan (“O.P.”) deals with amendments to the O.P.

The Section reads as follows:

### **9.3 Official Plan Amendments**

- 9.3.1 It is the policy of Council that any provision of this Plan may be amended pursuant to the requirements of the Planning Act.
- 9.3.2 When considering an application to amend the Official Plan, Council shall consider the following matters:
  - a) The conformity of the proposal to the goals and objectives of this Plan;
  - b) Suitability of the site or area for the proposed use, especially in relation to other sites or areas of the City;
  - c) Compatibility of the proposed use with adjacent land use designations;

- d) The need for the proposed use, in light of projected population and employment targets;
  - e) The market feasibility of the proposed use;
  - f) The extent to which the existing areas of the City designated for the proposed use are developed or are available for development;
  - g) The impact of the proposed use on sewage, water and solid waste management systems, the transportation system, community facilities and the natural environment; and
  - h) The financial implications of the proposed development.
- 9.3.3 Council shall provide information regarding a proposed amendment to the Official Plan to such boards, commissions, agencies and the public that may have an interest in it. Prior to approving a proposed amendment, Council shall afford such organizations and the public an opportunity to submit comments.
- 9.3.4 Council shall, prior to approving an amendment to this Plan, provide information and hold a public meeting for the purposes of obtaining public input concerning the proposal, subject to the provisions of the Planning Act.

The O.P. provides a mechanism for evaluating applications to designate or expand commercial centres and this is found in s. 7.4.24, which reads as follows:

### **Impact Studies**

- 7.4.24 Amendments to this Plan to designate lands for a proposed 'Commercial Centre' or expand an existing 'Commercial Centre', containing 10,000 square metres (108,000 square feet) or more of *gross leasable floor area*, shall require the approval by Council of market impact, planning and transportation studies.
1. An appropriate market impact study shall demonstrate that the proposed 'Centre' can be justified without detriment to the role, function or economic viability of the 'Central Business District' or other 'Commercial Centres' provided for in this plan, including, among other matters:
    - a) An assessment of the current market situation, and the future potential for the expansion of retail facilities;

- b) An evaluation of the economic feasibility of the proposed 'Centre' on the basis of current market demand or retail market opportunity;
  - c) An indication of any adverse affects on the economic viability of existing or planned 'Centre's provided for in this Plan.
2. An appropriate planning study shall demonstrate, among other matters:
- a) That the proposed *development* will be compatible with the adjacent land uses provided for in this Plan;
  - b) The probable impact of the 'Centre' on the social and physical environment of the area in which the centre is proposed to be located;
  - c) That the proposed 'Centre' will be adequately designed to ensure compatibility of uses and activities that could negatively impact adjacent residential areas;
  - d) That the proposed 'Centre' will be developed in an aesthetically acceptable manner.
3. An appropriate transportation study shall demonstrate, among other matters:
- a) That the capacity of roads and intersections are adequate to accommodate the traffic generated by the proposed centre;
  - b) That adequate on-site parking, loading and circulation will be available to accommodate the traffic generated by the proposed 'Centre'.

The Board heard from 4 qualified land use planners. Mr. Peter Smith ("Smith") gave evidence on behalf of 6 & 7. Mr. Craig Manley ("Manley"), the Manager of Policy Planning in the City's Planning Department, gave evidence on behalf of the City.

Professor David Douglas ("Douglas") a professor at the University of Guelph and Mr. Stephen Rodd ("Rodd"), a retired planning professor from the University of Guelph, gave evidence on behalf of RSD and they were called as a panel to give their evidence.

The evidence, opinions and argument that the Board heard relating to the planning issues before it fell into 3 broad categories. The first was the question of compatibility. The second was the question of whether approval of 6 & 7 was

premature. The third was whether a regional node would be established if 6 & 7 was approved.

The evidence of Smith and Manley were directed to each of these categories and they were in full agreement on the conclusions they reached.

Manley's 2004 Planning Staff Report (Exhibit 2, Tab 4) set out "The Planning Tests" and 7.0 was its Summary Opinion. They read as follows;

*The Planning Tests:*

4. Planning issues were addressed in the previous staff reports over the years and most recently in the Nov and Dec 2001 Staff Reports. We continue to hold the position that:
  - Both proposals represent logical locations for commercial use and are expansions of existing designated commercial nodes.
  - Both proposals are considered compatible with the surrounding land uses and can be successfully integrated into the existing environments with proper urban design.
  - Both proposals are at a scale consistent with the intent of the Community Commercial designation.
  - The issue of future incremental or ad hoc expansion in the absence of conducting an overall commercial policy structure review remains a concern for Staff. The City's commercial policy structure is unchanged since 1994. Staff are of the opinion that the ultimate size, function and location of the major retail nodes including the Imperial/Paisley, Stone Road, Woodlawn/Woolwich, South Guelph District Centre, Eastview and other possible nodes is best addressed comprehensively in light of the Official Plan planning horizon (2021). To address this issue Council has passed a resolution requiring that any major commercial proposals be brought to it outlining the potential impacts on the commercial structure. Further incremental expansion of both the Stone Road and Woodlawn/Woolwich nodes should not be considered until the review is completed and the appropriate size and function of these nodes are established. Planning staff continue to recommend that a comprehensive review of the commercial policy structure is necessary to establish an overall updated frame work to guide further commercial development of the City.

- The urban design controls recommended by Staff and attached to this report are integral to ensuring high quality and functional development that address the City's objectives and policies for new growth. Council's adoption of the proposed conditions will provide a basis for the development of site plans consistent with their intent.

*Technical Considerations:*

- The Revised Conditions of development for both proposals as set out in the 2001 Staff Reports satisfactorily address infrastructure, engineering, environmental, transportation and financial considerations of the City.

## **7.0 Summary Opinion**

In summary it is our Planning opinion that the proposed changes to the commercial structure associated with both revised applications satisfy the tests set out in the Official plan and specifically:

- The proposals as detailed in this report are warranted;
- There will be no unacceptable long term detrimental impact to the role, function or vitality of the downtown;
- There will be no unacceptable long term detrimental impact to the role, function, or vitality of other commercial centres;
- Both locations are acceptable from a planning perspective; and
- Transportation and other infrastructure matters can be adequately addressed.

Both planners were of the opinion that due regard had been had to the Provincial Policy Statement and the 6 & 7 application had been processed in accordance with the provisions of the O.P. (specifically s. 9.3 and s. 7.4.24 set out earlier in the decision) and that all O.P. requirements had been met.

Dealing directly with the 3 categories, their evidence was as follows:

### IMPACT

1. The proposed is compatible with surrounding development. There are no unacceptable impacts and it can co-exist harmoniously. (Smith)

2. There are no negative impacts on either the Woodlawn Cemetery (“Woodlawn”) or the Marymount Cemetery (“Marymount”) and neither objected now and neither was a party to the proceedings. Marymount owns the adjacent lands and its recent acquisition (see Attachment 3) from the Jesuits of 39 acres was done in full knowledge of the 6 & 7 proposal. (Smith)
3. Marymount fronts on Highway 6 with Canadian Tire and Staples to the northeast and industrial to the northwest. There will be additional plantings and a 10 acres buffer is being conveyed to the City. There will be a 3 metre (10 foot) berm and noise fence installed (see Attachment 4). (Smith)
4. The 6 & 7 proposal is compatible with the Jesuit Centre and there are no unacceptable, adverse impacts being created. (Smith)
5. There are no negative impacts on the agricultural uses carried out on the lands of the Jesuits and the spreading of manure is addressed in Condition 23 of the site plan conditions. (Smith)
6. The distances from the Wal-Mart to the adjacent and nearby uses are as follows:
  - a) 330 feet (100 metres) to Marymount;
  - b) 550 feet (170 metres) to the Mausoleum at Marymount;
  - c) 2,795 feet (852 metres) to Loyola House, the complex which is used by the Jesuits to house spiritual retreats;
  - d) 492 feet (150 metres) to the nearest part of the Great Auk/Wetland Trail. (Attachment 3, Smith and Manley)
7. There are approximately 6 miles (10 km) of trails. The southerly portion of the Great Auk Trail is on lands owned by Marymount. There is an agreement between the Jesuits and Marymount for its use as part of that trail. (Attachment 3, Galon and Profit)

8. There are no unacceptable physical impacts on any aspect of the Jesuit Centre and this was agreed to by the Jesuits. (Smith and Attachment 1)
9. The building that once was the seminary for the novitiates was converted into an office complex and is known as the Orchard Park Office Centre ("OPOC"). The space is rented by approximately 45 different businesses and the total number of employees, patients and clients who attend the site each day is in the range of 150 to 200 people. It produces income for the Jesuits. (Smith, Galon and Profit)
10. Loyola House, founded in 1964, is behind the OPOC and the proposed junior department store cannot be seen, nor noise heard from it, nor are there any lighting issues. (Smith)
11. With respect to s. 7.4.24.2 (b) of the O.P., specifically "impact on the social environment", if there is no physical impact, there can be no social impact. If it is to be given meaning on its own, distinct from physical impacts (e.g. transportation, servicing) it could only relate to people-related impacts (e.g. community facilities and social services and there would be no such impacts from the 6 & 7 proposal. (Smith)
12. The "social environment" referenced in the O.P. was not intended to encompass subjective perceptions about a particular user, but rather to address the traditional planning tests, which contemplate an objective assessment of impact. (Smith, Manley)
13. Section 7.4.24 was interpreted to also include consideration of proactive social benefits, in terms of providing residents with choice, competition, equitable distribution and convenience. The 6 & 7 proposal would create a net social benefit if impact on the social environment is interpreted in this way. (Smith)
14. In order to assess impact, one quantifies it, measures it and then identifies the methods to address it. (Manley).
15. A planner plans by assessing and analyzing the proposed land use and not on the user. (Manley)

PREMATURITY PENDING COMMERCIAL POLICY REVIEW

The Board will set out paragraphs 39, 40 and 41 of the Outline of Argument presented jointly by counsel for 6 & 7 and the City which addresses this category. They read as follows:

39. Guelph staff have consistently held the view that the 6 & 7 and University of Guelph proposals could appropriately be approved in advance of Guelph's commercial policy review without compromising the commercial policy review, as the Board's decision on the proposals will be considered as part of the policy review.

*Exhibit 2 - 6 & 7 Document Book*

*Tab 4 - Guelph Planning Staff Report – May 25, 2004, (p. 50)*

*Tab 8 - Guelph Planning Staff Report – November 30, 2001 (p. 234)*

*Tab 9 –Guelph Planning Staff Reply Report – December 14, 2001 (p. 287)*

*Tab 10 - Guelph Planning Staff Report – Comprehensive Commercial Policy Review Process April 18, 2002 (p. 298)*

40. At the OMB hearing held on July 19, 2004 in respect of the University of Guelph proposal, from which RSD withdrew as a party, Manley gave the opinion that approval of a Community Shopping Centre designation on the University of Guelph lands is not premature and need not await a commercial policy review. The Board accepted this evidence and approved the University of Guelph proposal.
41. It was the evidence of Manley and Smith that the City needs the 6 & 7 development now to meet its short-term commercial needs. Manley indicated that City staff had been consistently of the view that Guelph's north end requires high order retail commercial space in the short term. The City's commercial policy review, which was re-initiated in May 2004, will examine the City's longer-term needs.

*Exhibit 2 - 6 & 7 Document Book*

*Tab 3 - Council Resolution of May 25, 2004 (p. 36)*

As well, the Board notes the following:

1. The O.P. provides a detailed mechanism for evaluating proposals for new

commercial centres and even when the City was opposed to the proposals of 6 & 7 and the University of Guelph, at no time did it seek an adjournment of the proceedings on the basis that it would be premature for the Board to consider the proposals in advance of the City's commercial policy review.

2. Manley's evidence was that the community commercial centres in Guelph's north end are deficient in that they currently offer discount department store shopping only in two undersized Zellers stores.
3. It was the evidence of both Manley and Smith that the shopping facilities in Guelph's north end do not provide the higher order retail service that is available in other sectors of the City, as the space is comprised primarily of auto-related uses and home furnishing stores.
4. Manley and Smith's evidence was that the introduction of a Wal-Mart in Guelph will assist to recapture the high outflow now occurring to discount department stores in other communities (43.4%).

*Exhibit 2 - 6 & 7 Document Book*

*Tab 4 – Guelph Planning Staff Report – May 25, 2004 (p. 45)*

5. It was the planning evidence of Smith and Manley that there is no designated site in Guelph that could accommodate the proposed Wal-Mart. Neither of the witnesses for RSD identified a designated site in Guelph that could accommodate the proposed Wal-Mart.
6. It is an objective of the Guelph Official Plan to ensure an adequate supply and variety of commercial land at appropriate locations for various types of commercial activity (Section 7.4(a)). Major Goal 14 of the Guelph Official Plan (found in Section 2.3) and Section 7.4(a) are the policies identified by Smith and Manley that promote the goal of an equitable distribution of commercial centres.
7. Manley noted and emphasized the importance of the policy in the Guelph Official Plan which provides that community commercial centres are intended to serve the day-to-day needs of residents living *and working* in the various neighbourhoods and employment districts of the City (Section 7.4.10).

8. Manley testified that new commercial development is needed to serve the existing population in the north end. 70% of the population is in the north end, north of the Speed River, and at build out of the urban area it will still be 64%.

#### UNPLANNED REGIONAL NODE

1. Even if all available lands are built out, this still will not amount to a regional node. The maximum square footage would be 650,000 square feet. There will not necessarily or inevitably be pressures to develop the remaining lands as commercial. If and when additional proposals are made in the future, they will be evaluated on their merits, in accordance with the tests set out in the O.P. and, more generally, in accordance with the principles of good planning. If applications are made, it is not inevitable that they will be approved. There are many tools available to the City to control the timing, the types of uses, restriction on unit sizes and the use of holding by-laws. (Smith)
2. Even if all the lands developed, functionally it will be a sub-regional node and not a regional node. (Smith)
3. The Comprehensive Commercial Policy Review, ("CCPR") now underway, is the appropriate mechanism to determine if additional space is warranted and its timing. There is nothing wrong with that result if the CCPR recommends a sub-regional node. 6 & 7 has agreed not to apply for additional development until the CCPR study is completed. (Smith)
4. The prospect for the 6 & 7 proposal to lead to an unplanned regional node was considered on numerous occasions by Guelph staff, who concluded that adequate controls exist to prevent a regional node if it is ultimately decided that a regional node would not be appropriately located in Guelph's north end.

*Exhibit 2 – 6 & 7 Document Book, Tabs 4-9*

*Tab 4 – Guelph Planning Staff Report – May 25, 2004 (p. 50)*

*Tab 8 – Guelph Planning Staff Report – November 30, 2001 (pp. 234, 236 and 265-272)*

*Tab 9 – Guelph Planning Staff Reply Report – December 14, 2001  
(p. 287)*

5. Manley indicated that City Council has passed a resolution requiring major commercial proposals to be brought before it pending completion of the Commercial Policy Review. In their May 25, 2004 report, staff recommended to Council that this apply to new proposals in the vicinity of the University of Guelph and 6 & 7 Lands. Specifically, the recommendation was that no further expansion of the Stone Road and Woodlawn/Woolwich nodes should be considered until the City's commercial policy review has been completed and the appropriate size and function of those nodes has been established.

*Exhibit 2 – 6 & 7 Document Book, Tabs 4, 7 and 9*

*Tab 4 – Guelph Planning Staff Report – May 25, 2004 (p. 50)*

*Tab 7 – Guelph Planning Staff Report – January 25, 1999*

*Tab 9 – Guelph Planning Staff Reply Report – December 14, 2001*

6. Smith and Manley identified the provisions of the site specific Service Commercial Zones that demonstrate only very limited retail uses are permitted as-of-right.

The Board heard from Rodd and Douglas who gave their evidence as a panel on behalf of RSD and the following sets out their evidence and opinions:

1. Douglas was of the opinion that it is premature for the 6 & 7 proposal to be approved prior to completion of the CCPR. It was his opinion that is a fundamental tenet of planning that significant or structural developments should be critically examined, analyzed, assessed, tested, refined, evaluated and decided upon in the context of all other relevant components of the planning and development context and, therefore, major commercial development, such as that of 6 & 7, should only be examined in the context of a comprehensive and integrated commercial development and land use policy review. He was of the opinion that the process conducted by Guelph was flawed.

2. With respect to the issue of an unplanned regional node, it was Douglas' evidence that the 6 & 7 proposal should be refused on the basis that approval of the development before the Board will lead inevitably to an unplanned regional node in the vicinity of the 6 & 7 lands and his concern arose from the failure of 6 & 7 to test the cumulative market impacts from a future regional node.
3. On the issue of compatibility, Rodd's opinion was that section 7.4.24.2(b) should be interpreted such that the municipality or the Board should deny approval for a user subjectively viewed by a neighbouring property owner to represent spiritual values inconsistent with those held by a neighbour.
4. On the issue of another location in Guelph for the 6 & 7 proposal, neither Rodd nor Douglas identified a designated site in Guelph that could accommodate the proposal of 6 & 7.
5. The Witness Statements of Rodd and Douglas are found in Exhibit 14, Tabs A(Douglas) and B(Rodd).
6. RSD also called Reverend Jean Mitchell and Ms Olga Protz. Their Witness Statements are at Tab C (Rev. Mitchell) and Tab D (Ms Protz) of Exhibit 14.
7. Rev. Mitchell expressed concerns on the increase in noise from traffic in conducting funerals at the Woodlawn Cemetery; of visiting the cemetery and her concern that interludes of quietness that can now be enjoyed will be lost; as a retreatant and guest spiritual director at Loyola House, a concern that this quiet oasis be preserved and that the walking of the land is an intangible which could be disturbed; and finally, her concern for seniors in the area being able to safely cross Woodlawn.
8. Ms Protz testified that as a chaplain in secondary schools, she was concerned that students on retreats need to have places and experiences for reflection and silence to take them away from consumerism and "big box stores" and proximity to the Jesuit Centre will destroy the serenity and tranquility of this space.

The evidence of the Jesuit Centre was given by Dr. Galon and Father Profit ("Galon and Profit") and they read from their prepared Outline of Oral Evidence, which

was filed as Exhibit 33, and they also filed a Document Book which was Exhibit 31 which at Tab 6 had the Participant Statement.

1. It is impossible in this Decision to attempt to repeat all that was said, or describe the “retreat” that the Board was taken on, but the Board listened carefully when the presentation was made and has read and reread Exhibit 33 and Tab 6 of Exhibit 31.

The main thrust of their submissions is found at page 11 of Tab 6 of Exhibit 31 and it reads as follows:

The incompatibility of consumerism (symbolized and promoted by Wal-Mart anchored power centres) and spirituality (symbolized and promoted by the Jesuit Centre) is, in a sense, intrinsic to the English language.

Mega shopping plazas, as monuments of consumerism, are the symbolic opposite of the Jesuit Centre’s spiritual values. Consumerism is the cultural myth that the human spirit can find personal well-being, social fulfillment, and integration through non-essential, conspicuous consumption. It invites a lifestyle based on shopping to quiet the needs created by marketing. It invites us to perpetually seek more and bigger and better versions of what we already have. Consumerism masks the need we all have to turn inward to encounter God immanent at our core. This call to find satisfaction in acquisitions masks the call of the Spirit to find God within. The big box spirituality defining meaning and value in possessions is incompatible with the Jesuit spirituality defining meaning and value in seeking the Divine in all things. Therefore, a Wal-Mart anchored regional retail complex is socially incompatible adjacent to the Jesuit Centre.

2. Profit and Galon said the users of the Jesuit Centre “know it in their bones” that the development proposed by 6 & 7 will be incompatible from a non-physical perspective. The Jesuit Centre asserted that “it is Wal-Mart’s mastery of consumers and their wants that will cause a big box complex to emerge at Woodlawn/Woolwich, if approved, and threaten the spiritual activities of the Jesuit Centre and the cemeteries (Exhibit 33, p. 42)
3. The Jesuit Centre also believed that it will make it difficult to attract retreatants as “they will be affronted by the very values and society that they have desired

to leave behind when they come on retreat.” (Exhibit 33, p.46)

4. They also expressed concerns on its ability to lease the Orchard Park Office Centre, because of the detrimental impact that a Wal-Mart-anchored centre will have on the “atmosphere” of the Jesuit Centre property, and the “atmosphere of the property contributes to the well-being of employees and contributes to tenants renewing their leases.” (Exhibit 33, p.47)
5. Certain operations for the manufacture of commercial products are considered by the Jesuit Centre to be more compatible from a non-physical perspective than the 6 & 7 proposal. Examples given were manufacturing operations such as Rennie Shirts, Biltmore Hats, and assembly plants generally. (Exhibit 33, p.36).
6. Dr. Galon testified that the Jesuit Centre might not be protected from non-physical incompatibility if it were not for the “strong language” of s. 7.4.24.2(b) of Guelph’s Official Plan. (Exhibit 33, p.50).
7. Neither RSD nor the Jesuit Centre objects to Wal-Mart locating elsewhere in Guelph

### EVENING SESSION

The Board characterizes the evidence given by the vast majority of those who spoke and those making written submissions to be in support of the position of RSD and the Jesuit Centre. The Board heard from, among others, tenants of the Jesuit Centre, those who carry out agricultural activities on the Jesuit Centre lands, retreatants, and citizens of Guelph and other municipalities. On agreement of counsel, none were cross-examined in order that as many as possible could be heard from in the session which lasted more than 5 hours. Once again, the Board has carefully reviewed all that it heard and the written submissions made to it.

### DECISION OF THE BOARD ON THE *PLANNING ACT* APPEALS BEFORE THE BOARD AND ITS REASONS

The Board allows the appeals of 6 & 7 and amends the Guelph Official Plan in accordance with Attachment 5 to this Decision. The Board also amends Zoning By-law

1995-14864, as amended, in accordance with Attachment 6 to this Decision. The Board does so for the following reasons.

1. The Board prefers and accepts the planning evidence of Manley and Smith to that of Douglas and Rodd. Their evidence demonstrates that the OPA and Zoning By-law represent good planning and are in the public interest. The issues set out in the Issues List have been fully addressed by the planning evidence of Manley and Smith and the Board agrees with and accepts the positions taken by 6 & 7 and the City on each of the 7 issues.
2. The Board found the evidence of Douglas to be too general and philosophical. Douglas didn't know the uses permitted in the existing Service Commercial zoning and when the uses were put to him he was of the opinion that convenience stores, restaurants and laundry services require a market study and could lead to an unplanned regional node and could impact the viability of the Central Business District. He was unaware of this panel's decision of October 22, 2003, which found that :

If and when proposals come forward on the lands presently not before the Board, those other lands in the vicinity of the 6 & 7 Developments Limited which are the subject matter of this hearing and the lands known as the Desert Inn site, they will need to satisfy the requirements of the Official Plan and the market impact of the development will be determined at that time. It is for the Board to determine what evidence it wishes to hear and it has done so.

Hammerson v. City of Guelph (OMB Decision no 1480  
Issued November 4, 2003)

3. The Board cannot accept the evidence of Rodd. A fact situation was put to him in cross-examination which were exactly the facts of a case decided by this Board member in Markham (Town) Official Plan Amendment no. 26 (Re) (1998), 36 O.M.B.R. 41 and Rodd came to exactly the opposite decision that this Board member did. That involved the establishment of a funeral home adjacent to businesses owned and operated by people of Chinese descent, with a subdivision nearby that also had a large

population of Chinese descent. That decision reviewed a number of Board decisions and funeral homes and concluded with the following at page 428:

The Board, again, agrees with the conclusions reached and reiterates that it does not believe that personal preconceptions are matters that can be addressed in a planning context.

4. It was the opinion of both Smith and Manley that the “social environment” referenced in the Guelph Official Plan was not intended to encompass subjective perceptions about a particular user, but rather to address the traditional planning tests, which contemplate an objective assessment of impact. The focus of “social environment” or a “spiritual zone” cannot be construed to mean that traditional planning tools will not apply. In fact, the contrary is the case. The techniques of distance separation, buffering, mitigation measures, which all apply in this case, will serve adequately to ensure that the Jesuits’ use of the lands can co-exist with other uses. Rodd’s opinion was that s.7.4.24.2(b) of the O.P. should be interpreted such that the City, or the Board, should deny approval for a user subjectively viewed by a nearby property owner to represent spiritual values inconsistent with those held by the neighbour. The Board agrees with Ms. Houser’s submissions in argument that, under cross-examination, Rodd could not explain how the planning system could properly function if the Official Plan were to be interpreted that way.
5. The Board finds that it is not appropriate, nor does it represent good planning, to develop and plan solely according to specific dictates of adjacent or nearby landowners. While all landowners in an area have the right to express views and expect a compatible development with appropriate planning or design responses to address any undue negative impacts resulting from a development proposal, those impacts must be real and substantiated, for landowners, adjacent or nearby, to expect redress.

Those making land use decisions must look to the Official Plan for the principles and policies necessary to determine the appropriate land use,

and balance the interests of groups with competing views of an appropriate use of a site and the impacts it will have on their interests. Balance is the key, and it is neither appropriate nor good planning to favour one interest only, without evaluating and balancing the impacts of what is proposed in relation to the interest that is being advanced and rejecting what is proposed out of hand because a nearby landowner does not want to see the proposed use established.

6. As a first step, the Board finds that regard has been had to the Provincial Policy Statement (P.P.S.) and in particular to 1.1.1., and 1.1.3 and finds proper regard has been had and the well being of the downtown will be maintained. 2.3, Natural Heritage, has been met as there will be no development in the wetland; an Environmental Impact Statement (EIS) has been done; and all community agencies are satisfied.
7. The Board finds that the Official Plan policies set out a clear approach to the consideration of the issues at hand and that such an approach in the context of the evidence before the Board supports the redesignation and rezoning of the 6 & 7 lands. Section 7.4.24 provides the mechanism for evaluating the application that was made by 6 & 7, without the need for a commercial policy review. There is no policy in the Guelph Official Plan mandating a commercial policy review prior to the approval of new commercial centres. At the Board hearing held on July 19, 2004, in respect of the University of Guelph proposal, from which RSD withdrew as a party, Manley gave the opinion that approval of a Community Shopping Centre designation in the University of Guelph lands was not premature and need not await a commercial policy review. The Board accepted this evidence and approved the University of Guelph's proposal. His evidence was the same in these proceedings and, once again, the Board accepts it. Manley is in charge of policy planning in Guelph and the Board prefers this opinion evidence, given his role and experience in interpreting Guelph's Official Plan.
8. It is the Board's finding that the 6 & 7 location is an appropriate location for a proposed Wal-Mart store; there is a need in the north end of Guelph now

for such a store to be built and therefore, it is not premature, and therefore, does not need the CCPR to be carried out before approval can be given.

9. This approval that has been given does not result in an unplanned regional node being established. The only proposal before this Board, at this time, is the proposal by 6 & 7. Each application must be looked at on its own merits. If and when additional proposals are made in the future, they will be assessed and determined in accordance with the tests set out in the Official Plan and, more generally, in accordance with the principles of good planning.

Mississauga (City) Official Plan Amendment No. 112 [2002] O.M.B.D. NC. 385 at para 10.

10. The Board refers back to Attachments 3 & 4, and paragraph 6 in the section titled "IMPACT" in order to emphasize the extensive distances between the various lands and uses. There is also the 10 acre buffer and the noise attenuation measures and plantings being undertaken. The Jesuits agreed that there is no physical impact. The Board, in considering s.7.4.24.2(b)'s requirement of a planning study to demonstrate "the probable impact on the social . . . environment of the area in which the development is proposed to be located" agrees with Manley and Smith and the argument of 6 & 7 and the City that this "social environment" was not intended to encompass subjective perceptions about a particular user, but rather to address traditional planning tests, which contemplate an objective assessment of impact. Land use planning is not based on subjective perceptions and regard for the probable impact on the social environment of the area cannot result in a rejection of a totally, appropriate, well-planned proposal, which meets the tests of the O.P., because of someone's perceived subjective impact results in an undue and adverse impact for that person. If planning was based upon this kind of assessment, potentially no uses could co-exist. The Jesuits have the right to hold their opinions and perceptions of what Wal-Mart represents. Of course, the Board only heard that opinion from Galon & Profit, through

their submissions but put at its highest, if that is what Wal-Mart represents for all Jesuits and all who go to Loyola House on retreat, those aversions, perceptions and notions cannot dictate land use decisions.

11. Ours is a heterogeneous society and the Board believes that our democracy, our system and therefore our rights, requires and is equal to the cooperation amongst people who may have different views.
12. Smith was of the opinion that the Board cannot be an arbiter of conflicting values and the Board agrees.
13. The Board also finds that the Jesuits have adapted and changed what they do on their property as circumstances have changed. The creation of the OPOC by the Jesuits introduced a significant increase in people, traffic and noise on its own property. Loyola House has unobstructed views from its parking lot to a commercial facility (a car dealership) and is completely blocked from view of the 6 & 7 property by a large hill between the 6 & 7 lands and Loyola House. The Jesuits have disposed of portions of its lands (to Cross Creek and Marymount Cemetery) and has introduced income producing activities on its lands. For this it is to be commended and it has adapted as circumstances warranted. The Jesuits have adapted and changed over the years and the Board did not have evidence that the approval of 6 & 7 would result in the Jesuit Centre closing.
14. The Jesuits do not say that the spiritual values of its users will be impeded if a Wal-Mart locates somewhere else in Guelph and that notion it supports. Just not here is what their argument comes down to. The Board agrees with Ms Houser that it is not credible, therefore, for the Jesuits to say, when it is acknowledged that there will be no physical impacts, that the mere presence of a Wal-Mart on the 6 & 7 lands will conflict with the spiritual values of the Centre. Perhaps you can espouse or try to impose a belief or value upon a person using your property but you cannot do so upon another person on another property under the guise of a land use planning principle. No one has a licence to create a "zone of exclusivity" which would be the result if the position of the Jesuits

was adopted. Land use planning is not about symbols (commercialism) nor, in the Board's opinion, is freedom of religion. The retreatant has the full and total use of all of the lands of the Jesuits. It is not a requirement for a retreatant to walk on the most southerly end of the Great Auk Trail. It is a choice. There are over 10 kilometres of trails which can be enjoyed elsewhere on the property and one's ability to practice and partake in a retreat is in no way diminished. The "special needs" of the Jesuits, has been taken into account given the separation distances, the natural buffering, the noise attenuation measures, and the additional plantings and they are of such a scale that the Board has no doubt that the Jesuits will not be adversely affected.

15. The 6 & 7 lands are located in an area which is part of the urban envelope of the City of Guelph. The urban land use designations are on the north side of Woodlawn. The Jesuits were there when this area became urban and their time to object was then if they believed the urban boundary should have been on the south side of Woodlawn. It is not; it is on the north side and intended to fully develop with urban uses, of commercial, residential and industrial, over time. The Official Plan establishes how it will grow over time. The time for the 6 & 7 proposal, based on all the evidence the Board heard, is now.
16. The land use designation resulting from the Decision, is that of a Community Commercial designation. This permitted land use is a junior department store. Although Wal-Mart is the intended user, land use planning principles and decisions flowing from those principles, is based on land uses and not users. The Board finds this to be an appropriate use for these lands.
17. Finally, on the planning matters before the Board, the Board finds that there is no factual basis for the claim that the uses permitted by the proposed planning instruments would be incompatible with the Jesuit Centre. It does not accept RSD and the Jesuits' interpretation of the Official Plan but even if it would have done so, the facts in this case do not

warrant the restriction on use sought by RSD and the Jesuits for the 6 & 7 lands.

The Board believes that this finally disposes of the *Planning Act* appeals that were before it on the 6 & 7 lands. However, as evidence was completing in the hearing and the parties were preparing for argument, Mr. Gillespie, on behalf of RSD, raised the decision of Aitken, J. in *Grushman v. Ottawa* (City), [2000] O. J. No. 4444. Mr. Gillespie says the following in paragraph 29 of his Summary of Final Argument:

29. The only further step R & O has taken was to provide a single case (Grushman) to support the legal argument that it is necessary to consider and apply this evidence as part of the Board's planning decision, given the overriding principle that the Board must always carry out its functions with Charter value in mind.

This resulted in lengthy submissions being made on the role that freedom of religion and, therefore, the Charter of Rights and Freedoms has to play in these proceedings.

The Board agrees with the Reply Argument of 6 & 7 and the City, when it stated the following at paragraph 4:

Accordingly, even if RSD wishes to maintain that it is not actually alleging a violation of the Charter, but rather is simply asking the Board to consider the Charter in assessing compatibility, RSD's argument effectively requires the Board to undertake the same analysis as would be necessary to assess an alleged Charter violation.

The Board will also set out paragraphs 105, 106, 107 and 108 of the Outline of Argument of 6 & 7 and the City in order to set the framework for further consideration by the Board. They read as follows:

105. However, before turning to the threshold questions, on additional question must first be addressed: Is it premature for the Board to consider, at this time, the Charter issue that has been raised?

106. In particular, RSD has raised the Charter issue prior to the Board making a decision on the planning merits of the proposed planning instruments. As a result, and at this time, there is no "law" which could infringe anyone's rights. Instead, RSD is asking

the Board to examine the anticipated or perceived effects of the planning instruments, should the Board approve them.

107. The problem presented by the timing of the introduction of RSD's Charter argument has been considered by the Board in previous instances where Charter issues have been raised:

The significance of this point in this case is that, as we write, there still has been no *decision* on the merits of the proponents' applications for approvals. Thus, unlike most cases in which the Charter is invoked, there has as yet been no breach of the proponents' constitutional rights.

*Unger v. Ministry of Municipal Affairs*, supra at 444 (Brief of Authorities – Tab 13)

108. Moreover, the Board has observed that it may be more reasonable and efficient to await the outcome of a Board hearing in order that the planning instruments being challenged, including their Charter implications (if any), can be precisely understood:

... a by-law is not effective until it is in final form, as approved by the municipality if there is no appeal, or as finally disposed of by the Ontario Municipal Board if there is an appeal to it. Once the appeal is disposed of, then the by-law is in force. Any person in the municipality who feels there is an issue with the by-law may then apply to Court, **with** a final version of the by-law, for a determination of the constitutionality of the by-law. The Courts then know exactly what the legislative instrument provides, and can make a determination of the *Charter* issues with a clear understanding of what it is dealing with ... This approach lends efficiency, certainty and rationality to the resolution of the issues [Emphasis in original.]

*Deveau v. Toronto (City)*. Ontario Municipal Board Decision No. 0569, Issued March 15, 2004, at 42 (Brief of Authorities - Tab 15)

Notwithstanding these observations in *Unger* and *Deveau*, the Board proceeded in both of those cases to analyze whether the prospective planning instruments would infringe the Charter rights at issue. The Board has been invited to do so in these proceedings, as well, and will do so.

The Board intends to be brief and concise on each issue it has to address in this part of the Decision because the task that the Board had to do in arriving at its Decision on the planning appeals before it has now been done and is the basis for the Decision that it has reached and the Board finds that the Charter issues would not lead the Board to any different conclusion than it has reached and it comes to that conclusion for the following reasons:

Mr. Gillespie in his Summary of Final Argument, says the following at paragraph 25 of the Outline of Argument re:

Charter Issue:

Here, as already noted, RSD has never alleged and is not now seeking a determination that anyone's Charter rights have been or will be violated. Instead, RSD is submitting that basic planning principles also require consideration of religious beliefs and practices as part of the inherent application of Charter values. RSD agrees that in situations such as this, allegations regarding actual Charter violations ought to be raised only if and when the OMB approves a final planning instrument that allegedly infringes a right, and such matters should be dealt with by the courts. If necessary, in this case RSD, other individuals and entities can still choose to address those issues in the appropriate forum at the appropriate time.

The Board disagrees if what Mr. Gillespie is saying is that the Board should consider the Charter, but not fully. If Mr. Gillespie is asserting that there may be a prospective breach, that, surely, must be measured against a standard. The Board agrees that the Board must always carry out its functions with Charter values in mind. However, in order to do this, the Board must first evaluate:

- i) The timeliness of the introduction of the Charter issue;
- ii) How the Charter issue has been framed;
- iii) Whether there is a causal link between the legislation in question and the alleged infringement; and

iv) Who is raising the Charter issue.

As to each of these threshold questions, the Board finds the following:

- A. Freedom of Religion was never made an issue in these proceedings. Issue 4 and the note to it, was carefully worded and it does not make freedom of religion part of the question of what constitutes “non-physical” incompatibility.
- B. The Jesuits never used the words “Charter of Rights” or “freedom of religion” in any Witness Statement or evidence given to the Board; nor did any one else. After completion of their evidence, and before cross-examination, Mr. Gillespie had the opportunity to question Galon and Profit. The issue was not put to them.
- C. The issue never having been raised by the Jesuits, this fact leaves the Board at a loss as to how it now can absorb so much time and consideration, when raised by counsel for RSD, who is not and was not counsel to the Jesuits. The evidence called by RSD addressed the 7 planning issues that were before the Board and the Board’s decision on those issues has been rendered.
- D. It was never asserted by anyone in the last 9 years that the test in s. 7.4.24(2) of Guelph’s Official Plan could, should or does include an assessment of “fundamental values that are constitutionally protected under the Charter of Rights.”
- E. The Board disagrees with Mr. Gillespie that the decision of Aitken J. in Grushman, supra, is binding on this Board.

The decision arose out of a Leave to Appeal decision and the words found in that decision only stand for its assessment of a possibility of an error of law having been made. The Board agrees with Ms Houser that Mr. Gillespie was attempting to elevate the Leave decision beyond what it stands for. It does stand for a preliminary view of that judge of whether the Ontario Municipal Board might be wrong. And it must be remembered that the Divisional Court, on appeal, held that the Board properly concluded that it was not required to consider the Charter issue, given the manner in which the issue had been

raised, and accordingly that the Board's decision on the planning merits of the matter before it should stand.

Grushman v. Ottawa (City), [2001] O.J. No. 4642

- F. The Board further finds that there is no causal link between the legislation in question and the alleged infringement. There is nothing on the face of the 6 & 7 planning instruments that could be considered an affront to anyone's right of freedom of religion. In fact, the permission for a junior department store has not been challenged, only that it is a proposed Wal-Mart. No evidence was introduced to suggest that permitting a junior department store on the 6 & 7 lands will cause an infringement of religious freedoms protected under section 2(a) of the Charter. Instead, RSD's challenge is premised on the perceived effects on the Jesuit Centre of the Wal-Mart store that is proposed as the junior department store for the 6 & 7 lands. Surely, freedom of religion does not mean the ability to dictate to a nearby property owner, what that owner can or cannot do on its property if the tests of the Official Plan and of good planning have been met.
- G. On the last threshold question, the Board finds that RSD does not have the requisite standing to advance its Charter argument. The Jesuit Centre never raised a Charter argument and all of its submissions were directly related to the tests set out in the Official Plan, without any mention of Charter values. And yet, RSD, which is not asserting that its own rights have been infringed, has attempted to construct a Charter issue on behalf of the Jesuit Centre but without the requisite standing to do so. Importantly, the Jesuit Centre has never alleged infringement of its Charter rights, instead focussing on the alleged social incompatibility between the Jesuit Centre and Wal-Mart and which the Board has dealt with fully in its Decision and the Board finds that RSD is not allowed to advance a Charter argument that the Jesuit Centre itself has not advanced.

As a result, the Board finds that RSD does not have standing to advance the Charter argument that it has raised. RSD has failed on each of those threshold questions.

- H. Even if the Board is wrong in its conclusions on the four threshold questions it has now answered, the Board believes that a decision of freedom of religion cannot translate into a prohibition of a highly common and well known and understood urban land use designation of a Community Commercial Centre. Its approval will not infringe the religious beliefs of the users of the Jesuit Centre or anyone else. No one is asked or required to alter their beliefs and no one's religious beliefs will be affected.

The Board also finds that it does not infringe upon the practice of religion by the residents and/or visitors to the Jesuit Centre which would disrupt their ability to practice Ignatian contemplation. The Board's reasoning on this has already been expressed earlier in this Decision dealing with the planning issues and it does not change simply by attempting to bring it back into play under a different guise. No one is being directly constrained from exercising whatever practices he or she pleases on the Jesuit Centre lands.

The Board finds that freedom of religion does not extend to protect religious practices that could be affected by the mere presence of a nearby land use (or a particular user). Once again, if the Board is wrong in this conclusion, nevertheless, the Board finds that the alleged infringement must, factually, be characterized as trivial and insubstantial for the reasons set out earlier and in particular:

- i) There will be no unacceptable physical impacts;
- ii) the proposed development will not even be visible from the vast majority of the 600 acres of the Jesuits and the 10 kilometre trail network;
- iii) anyone wishing to avoid the possibility of distraction from a glimpse of the proposed Wal-Mart store has vast, other areas in which to undertake spiritual contemplation;

- iv) the Jesuit Centre has adapted to change both on and off of its property as outlined earlier and the users of the Jesuit Centre have demonstrated the ability to carry out their religious practices notwithstanding the presence of Canadian Tire and Staples and major industrial operations and the noise emanating from Imperial Tobacco;
- v) the Anselm decision stands for the proposition that the allegation of infringement is a question of fact that should be based on “an analysis of whether the alleged belief is consistent with his or her religious practices”. The Board agrees with Ms Houser when she argued that the assertion that the establishment of a Wal-Mart store would interfere with religious practice cannot be viewed as credible where the users currently conduct their religious practices in an environment that is in the urban area of Guelph and includes urban and commercial activities. It also agrees with her when she argued that, in the absence of physical impact from a Wal-Mart store on the 6 & 7 property, the assertion that a Wal-Mart store would interfere with spiritual contemplation, when the same facility at another location would not, is simply not credible.

Syndicate Northurst v. Anselm [2004] S.C.J. No. 46.

This concludes the decision of the Board on all of the matters raised before it and the appeals are allowed and the clerk is authorized to assign numbers to the Official Plan Amendment and Zoning By-law Amendment for record keeping purposes.

This is the Order of the Board.

J.R. BOXMA  
MEMBER

J.R. AKER  
MEMBER

**FOR ATTACHMENTS PLEASE SEE ORIGINAL.**