



Regional Municipality of Waterloo

Special Council Agenda

Tuesday, May 26, 2015

9:00 a.m.

Regional Council Chamber

150 Frederick Street, Kitchener, ON

The purpose of the meeting is to approve the items listed below:

1. **Waiving of Rules of Procedure**
2. **Declaration of Pecuniary Interest Under the “Municipal Conflict of Interest Act”**
3. **Motion to Go Into Committee Of The Whole**
4. **Reports**
 - a) [PDL-15-03](#), Regional Official Plan – Background to the Settlement Between the Region of Waterloo and Appellants
5. **Motion for Committee Of The Whole To Rise And Council Resume**
6. **Motion to Adopt Proceedings Of Committee Of The Whole**
7. **Other Business**
8. **Enactment of By-Laws – First, Second & Third Readings**
 - a) A By-law to Confirm the Actions of Council – May 26, 2015
9. **Adjourn**



Report: PDL-15-03

Region of Waterloo
Planning, Development and Legislative Services
Commissioner's Office

To: Chair Ken Seiling and Members of Regional Council

Date: May 26, 2015 **File Code:** L15-20

**Subject: Regional Official Plan – Background to the Settlement Between the
Region of Waterloo and Appellants**

Recommendation:

That The Regional Municipality of Waterloo approve the settlement of the Ontario Municipal Board appeals of the Regional Official Plan as described in Report PDL-15-03, dated May 26, 2015 and authorize the Commissioner of Planning, Development and Legislative Services to sign Minutes of Settlement and any ancillary or related documents or agreements on behalf of the Region to finalize such settlement for submission to the Ontario Municipal Board.

Summary:

In 2009, Regional Council endorsed an entirely new Regional Official Plan (ROP) to replace the existing Regional Official Policies Plan (ROPP). The new ROP was developed following approximately five years of extensive public consultation and technical review. The vision of the ROP was largely founded on the Regional Growth Management Strategy, adopted by Regional Council in 2003 to guide future growth in such ways as establishing more compact development, the protection of environmental systems, reduced dependence on the automobile, and the creation of new strategic employment lands.

In 2010, after extensive review, the Provincial government approved the ROP (with certain modifications). A Notice of Decision was issued followed by an appeal period, during which appeals from over 20 individuals and entities were received. The majority of these appeals pertained to challenges around how the Region should grow, and specifically that additional development lands be designated.

Following the receipt of the appeals, pre-hearings and the first phase of a four phase hearing process were completed by the Ontario Municipal Board (OMB or Board), the Provincially-established entity that hears and rules on these appeals. In its first major decision, the Board ruled (in 2013) on the amount of additional land that should be added for new development. The Region's position was that up to 85 hectares be added, since a large amount of vacant greenfield land to accommodate future subdivisions still existed, the Region intended to grow at higher densities of development, and a greater proportion of development would occur within existing built-up areas (with ready transit accessibility and use of the ION rapid transit system). The appellants argued that 1053 hectares be added. In its ruling, the OMB noted its preference toward the appellants' land budget, which presumed much more land being needed (1053 hectares), based on an assumption that future development would follow historic trends.

Following this OMB ruling, Regional Council initiated a number of legal actions to continue to advance its ROP (and its vision). This included asking the OMB to reconsider its decision (which the Board did and re-affirmed that decision) and two proceedings in Divisional Court. The first proceeding asserts the OMB erred in its interpretation of the Provincial Growth Plan for the Greater Golden Horseshoe. The second proceeding asserts that there was a reasonable apprehension of bias in the hearing that resulted in the 2013 ruling because the OMB received training from a consultant representing some of the appellants at the same time that the appeals were pending before the Board. Both of these proceedings remain before the courts. There is also a related proceeding or motion for leave to appeal based upon the Board's own decision in 2014 on the issue of bias.

In an attempt to arrive at a solution outside of hearings and litigation, and given the fact that only Phase 1 of the OMB hearings had been completed since 2009, the appellants seeking a greater Urban Area expansion, met with the Region in late 2013 and began preliminary discussions. The Region and the appellants then established a negotiating framework and began formal discussions toward a collaborative settlement.

These negotiations have now culminated in a settlement, which is described in this report, that would see the ROP come into force and effect as the community's plan for guiding growth across the Region to 2031. The settlement must receive final approval from the OMB, and a hearing to present that settlement is scheduled to occur in June of 2015. Upon final approval by the Board, the OMB proceedings respecting the growth-related appeals will be concluded and all legal proceedings before Divisional Court will be withdrawn.

The proposed modifications to the ROP policies and mapping are scheduled to be presented to the OMB at its prehearing on June 16, 2015.

The Region of Waterloo views this settlement as a very positive outcome, wherein the community vision for growth in the community will be anchored in the Regional Official Plan, an important legal document that guides growth and development to 2031. The settlement also avoids the added costs and eliminates any uncertainty associated with Provincial tribunals (i.e. the OMB) and Provincial courts making decisions on behalf of the community, which created this collective vision for the future.

Report:

Background and Key Milestones to Date

i) Defining an Official Plan

An official plan (and in this case, the Regional Official Plan or ROP) is a legal document established under the Provincial Planning Act. An official plan guides growth over a 20 year period, and is reviewed every 5 years. A key element of an official plan lies in the delineation of boundaries limiting further development.

ii) Key Milestones

Regional Growth Management Strategy (RGMS) – From 2001 to 2003, Regional Council initiated and adopted (in 2003) the RGMS, containing key elements of the community's vision for the future.

The RGMS was structured on six goals:

- Enhancing our Natural Environment
- Building Vibrant Urban Places
- Providing Greater Transportation Choice
- Protecting our Countryside
- Fostering a Stronger Economy
- Ensuring Overall Coordination and Cooperation.

The specific features and directions of the RGMS included:

- The Region as an area of prosperity and ongoing significant growth attraction. The Region is identified in the Provincial Growth Plan for the Greater Golden Horseshoe (Places to Grow) as being expected to grow from 550,000 people today to over 740,000 people by 2031.
- The dependence of our Region on groundwater. About 80% of the Region's water supply is drawn out of the ground, and there is a compelling need to better protect our groundwater.
- The need to protect environmental systems. The Region has identified about 35,000 acres as Environmentally Sensitive Landscape (ESL), and the ESL system would be completed through the new ROP.

- New strategic employment lands were identified in the RGMS as a critical element to supporting our economy. Specifically, the “East Side” lands (east of the Grand River) were required to provide larger lot opportunities for existing businesses to relocate and expand, or for new investment to develop and create new employment in our community.
- The importance of developing at higher densities in a more compact way, with the better integration of public transit and development. In fact, the ION rapid transit system is currently being built with the dual goals of moving people and shaping the community.

Preparation of Regional Official Plan (ROP) – From 2005 to 2009, Regional Council engaged in an extensive process to develop a new ROP. This document was founded on the vision of the RGMS, the need to conform to the Provincial Growth Plan (which came into effect in 2006), and to reflect the opportunities created by the establishment of a Regional rapid transit system (ION). The process involved unprecedented community consultation and extensive technical review.

ROP Approval – Regional Council approved the new ROP in June of 2009 and forwarded the document to the Province for final approval and a Notice of Decision to be issued, as required under the Planning Act.

Provincial Approval – On December 22, 2010, the Provincial Ministry of Municipal Affairs and Housing (MMAH) approved the ROP with relatively minor modifications being made to address matters of Provincial interest. As approved by the Province, the ROP is deemed to conform to the Growth Plan and the Greenbelt Plan, and to be consistent with the PPS. MMAH subsequently issued a Notice of Decision on January 4, 2011, thereby triggering a 20 day period within which appeals to the decision of MMAH could be filed. Appeals to the ROP are adjudicated by the Ontario Municipal Board (the OMB or Board).

Appeals - A total of 26 appeals were received during the appeal period. The majority of the appeals were growth related. Two appeals were also filed by the Region and the Township of Woolwich relating directly to modifications MMAH made to aggregate policies adopted by Regional Council. In addition, the Region appealed the failure of MMAH to modify the ROP to apply the Protected Countryside designation to the agricultural lands in southwest Kitchener as requested by Regional Council. This omission by MMAH was unintentional and resulted from a clerical error during preparation of the approval.

While some of the appeals have subsequently been resolved, additional persons or groups have also come forward to the Board and formally requested the right to participate in the hearing process. The Board has granted some of these requests, and as a result, there are currently 22 parties with official status in the hearing process. It is important to note that some of the appeals filed relate to the entire ROP, and as a

result, until such time as they are resolved by the OMB, or withdrawn by the appellants, the 1995 Regional Official Policies Plan (the ROPP) remains in full force and effect, and in conjunction with the Growth Plan and the PPS will govern the processing of development applications.

Board Process – Phasing and Motions - As a result of a number of pre-hearing conferences and motion hearings, the OMB ordered that the issues under appeal be addressed through a phased hearing process, as opposed to one omnibus hearing. The benefit of phasing the hearing is that the decisions at the end of each phase can help inform the process for the next phase, thereby potentially allowing some parties to withdraw should the decision on an earlier phase resolve or address their issues. The OMB ordered that the phases of the hearing be addressed as follows:

Phase 1 - The hearing of all appeals related to the land budget related issues including: a) justification for expansions to the urban areas to provide for the growth forecasts contained in Schedule 3 of the Growth Plan; and b) the nature and application of intensification and greenfield density targets. The Phase 1 Hearing was held over five weeks in July and August 2012.

Phase 2 - The hearing of all appeals related to the policies or mapping with respect to: a) the prime and non-prime agricultural area policies and mapping; b) the natural heritage resources policies and mapping; c) the water resource protection policies and mapping; d) the natural heritage resources policies and mapping; and e) the Protected Countryside and Countryside Line policies and mapping.

Phase 3 - The hearing of all appeals related to: a) allocation of population and employment forecasts to the area municipalities; b) site specific allocation of additional Urban Area or Township Urban Area (if any) determined to be required through Phase 1 Hearing; c) general policies and mapping; and d) site specific issues.

Phase 4 – Aggregate policies appeals are being dealt with on a parallel basis. This process is ongoing and will be reported on separately at a later date.

Board Decision – Phase 1 - On January 21, 2013, the OMB released its decision (the OMB ROP Land Budget Decision) regarding the Phase 1 Hearing. In its decision, the Board “preferred” the methodology advocated by the developers, subject to revisions being made to the amount of land permitted to be excluded from the density calculation.

The Region’s position was that up to 85 hectares be added, since a large amount of vacant greenfield land still existed to accommodate future subdivisions, the Region intended to grow at higher densities of development, and a greater proportion of development would occur within existing built-up areas (with ready transit accessibility and use of the ION rapid transit system). The appellants argued that 1053 hectares be

added. In its ruling, the OMB noted its preference toward the appellants' land budget, which presumed much more land being needed (1053 hectares), based on the assumption that future development would follow historic trends.

Subsequent Legal Actions by the Region of Waterloo - Following this OMB ruling, Regional Council initiated a number of legal actions to continue to advance its ROP (and its vision). This included asking the OMB to reconsider its decision (which the Board did and re-affirmed that decision) and two proceedings in Divisional Court. In the first proceeding the Region asserts that the OMB erred in its interpretation of the Provincial Growth Plan for the Greater Golden Horseshoe. The second proceeding asserts that there was a reasonable apprehension of bias in the hearing that resulted in the 2013 ruling because the OMB received training from a consultant representing some of the appellants at the same time that the appeals were pending before the Board. Both of these proceedings remain before the courts. There is also a related proceeding or motion for leave to appeal based upon the Board's own decision in 2014 on the issue of bias.

Settlement Discussions Leading to Current Settlement - In an attempt to arrive at a solution outside of hearings and litigation, the appellants seeking a greater Urban Area expansion, met with the Region in late 2013 and began preliminary discussions. The Region and the appellants then established a negotiating framework and began formal discussions toward a collaborative settlement. Given the fact that only Phase 1 of the OMB hearing has been completed since 2009, all parties also agreed that a negotiated settlement was the best available process.

These negotiations have now culminated in a settlement, which is described in this report, that would see the ROP come into force and effect as the community's plan for guiding growth across the Region to 2031. The settlement must receive final approval from the OMB, and a hearing to present that settlement is scheduled to occur in June of 2015. Upon approval by the Board, the OMB proceedings respecting the growth-related appeals will be concluded and all legal proceedings before Divisional Court will be withdrawn.

The Region of Waterloo views this settlement as a very positive outcome, wherein the community vision for growth in the community will be anchored in the Regional Official Plan, an important legal document that guides growth and development to 2031. The settlement also avoids the added costs and eliminates any uncertainty associated with Provincial tribunals (i.e. the OMB) and Provincial courts making decisions on behalf of the community, which created this collective vision for the future.

Highlights of Regional Interests Achieved in the Settlement

If approved by the OMB, the settlement reached with the appellants would achieve the following Regional interests for the community:

- **Adherence to the vision of the Regional Growth Management Strategy.** Regional Council has maintained its commitment to the goals and directions contained in the RGMS, as generally described in this report. The Region of Waterloo views this settlement as a very positive outcome, wherein the community vision to 2031 will be anchored in the Regional Official Plan, an important legal document that guides growth and development. The settlement also avoids the added costs and eliminates any uncertainty associated with Provincial tribunals (i.e. the OMB) and Provincial courts making decisions on behalf of the community, which created this collective vision for the future
- **Use of the Region's land budget methodology.** If approved by the OMB, the settlement will also provide assurance that, going forward, the parties agree that the Region's methodology will be used to calculate the amount of agricultural land that will be converted to urban development in future official plans so that the Region may plan for and ensure sustainable future development. It should also be noted that the Region's five year average for new residential development in built-up areas is already 55%, well above the 40% threshold required under the Provincial Growth Plan.
- **Establishment of a Countryside Line.** This is a new feature, representing the long-term boundary between the existing future Urban Area/Township Urban Areas and the Countryside.
- **Establishment of a Protected Countryside, including Regional Recharge Areas.** This new feature includes a continuous band of environmental features and agricultural lands surrounding the north, west and south sides of the urban Area designation that is to be permanently protected. **Regional Recharge Areas** further elevate groundwater protection measures by designating large environmental features where considerable deposits of sand and gravel allow for the infiltration of large quantities of rainfall and snowmelt deep into the ground. This important hydrologic function sustains some of the richest sources of groundwater in the Grand River Watershed.
- **Completion of Environmentally Sensitive Landscape (ESL) System.** The new ROP would see the final element of the ESL system completed, namely the establishment of the Dumfries Carolinian ESL.
- **Completion of East Side Lands Prime Industrial Strategic Reserve Designation.** The new ROP would add lands for new employment purposes in north Cambridge that generally lie west of Fountain Street and north of Allandale Road. Lands east of Fountain Street already have this designation, as established under the existing ROPP.
- **Full Integration of Public Transit and Development.** A full chapter of the new ROP is dedicated to policies that direct how this integration will occur (Chapter 2: Shaping Waterloo Region's Urban Centres).
- **Expanded Policies to Further Support the Economy.** The new ROP includes

considerably more policy directed at supporting business and dedicates a full chapter to this imperative (Chapter 4).

- **Continued Recognition of the Importance of the Region's Vibrant Rural Communities.** Chapter 6 of the new ROP, entitled "Supporting the Countryside", includes a range of policies, from agricultural-related uses to the establishment of "Countryside/Future Urban Expansion Area".
- **Minimizing the Addition of Areas for New Urban Development.** This issue is described below.

Overview of Elements Negotiated with Appellants

As with any negotiation, accommodation must be made by all parties to reach settlement. In the case of this settlement, if approved by the OMB, the Region of Waterloo has agreed to:

- Allow for more development lands. The settlement provides for an additional 255 hectares of land to be designated now to permit development. These 255 hectares represents the resolution of the land budget dispute that had the Region proposing a need for 85 additional hectares to accommodate growth to 2031 and the appellants proposing that 1,053 hectares were required. This is over and above the vacant land (approximately 3,500 hectares) that existed at the time the calculations were done in 2009 (based on 2006 data).
- Provide for additional growth forecast by the Province - In addition to resolving the above noted dispute, the settlement also directs how lands required to meet other obligations to accommodate future growth will be addressed. In 2012 the Province amended the Growth Plan to change the population projection for the region in 2031 from 729,000 people (which is what the OMB decision was based upon) to 742,000. The settlement provides that 170 hectares of additional land be designated to permit development to meet this increase in forecasted population. In addition, the settlement provides direction relating to a future 28 hectare expansion in 2019, when the Official Plan will be expanded to provide for growth beyond 2031.
- Determined where new areas for development should be located. The map attached to this report shows the locations of the areas to be designated urban as described above. The new areas where future development will be allowed to occur fall into three categories. 1) development in southwest Kitchener east of Fischer-Hallman Road that was described in the RGMS as a possible new location for future development; 2) development on the East Side which will help support the Region's goals of achieving in the near term a mix of uses in this area that is proposed to accommodate the majority of the Region's long term growth; and 3) a number of minor rounding outs of the currently designated urban lands to create permanent long term boundaries.

- Provides for study of where growth may be considered in the future. Through the settlement discussions it was determined that additional work is required to determine whether a small portion of land located in southwest Kitchener needs to be permanently protected as important groundwater recharge area or whether these lands could accommodate urban development at some time in the future. The resolution of this issue, within what is described in the settlement as the Southwest Kitchener Policy Area, will occur in 2019.

Expected Next Steps

With Regional Council and the appellants having reached agreement, the following next steps will occur:

- The Region and the appellants will present the proposed modifications of the ROP to the OMB for consideration and final approval. This is presently scheduled to occur at the pre-hearing scheduled for June 16-19, 2015;
- The Board will also need to deal with outstanding appeals relating to aggregates (not a part of the settlement described in this report) and a report to Council is expected in the immediate future; and
- The new ROP would come into legal force and effect (replacing the existing ROPP) through a final decision issued by the OMB. The timing of this entire process lies with the OMB.

Area Municipal Consultation/Coordination

All Area Municipalities were involved in the development of the ROP. This is especially important as local official plans must conform to the ROP under the Provincial Planning Act. Over the process of dealing with the appeals, all Area Municipalities were updated as discussions advanced. The settlement would also see the withdrawal of a number of associated appeals to local official plans.

Corporate Strategic Plan:

The ROP supports all focus areas of the Strategic Plan, and particularly Focus Area 2: Growth Management and Prosperity.

Financial Implications:

The 10 Year Capital Program provides a total of \$1.6 million for the completion of Watershed Growth Studies in the years 2015 to 2019 inclusive, and includes the planned studies supporting the ROP, specifically the Randall Drain, Breslau Drain and Cedar Creek Subwatershed Studies. The exact cost to the Region of the above-noted studies would be determined prior to the initiation of the studies, but it is not expected to exceed the funds dedicated for such purposes over this period.

Other Department Consultations/Concurrence:

All Departments were involved in the preparation of the ROP.

Attachments:

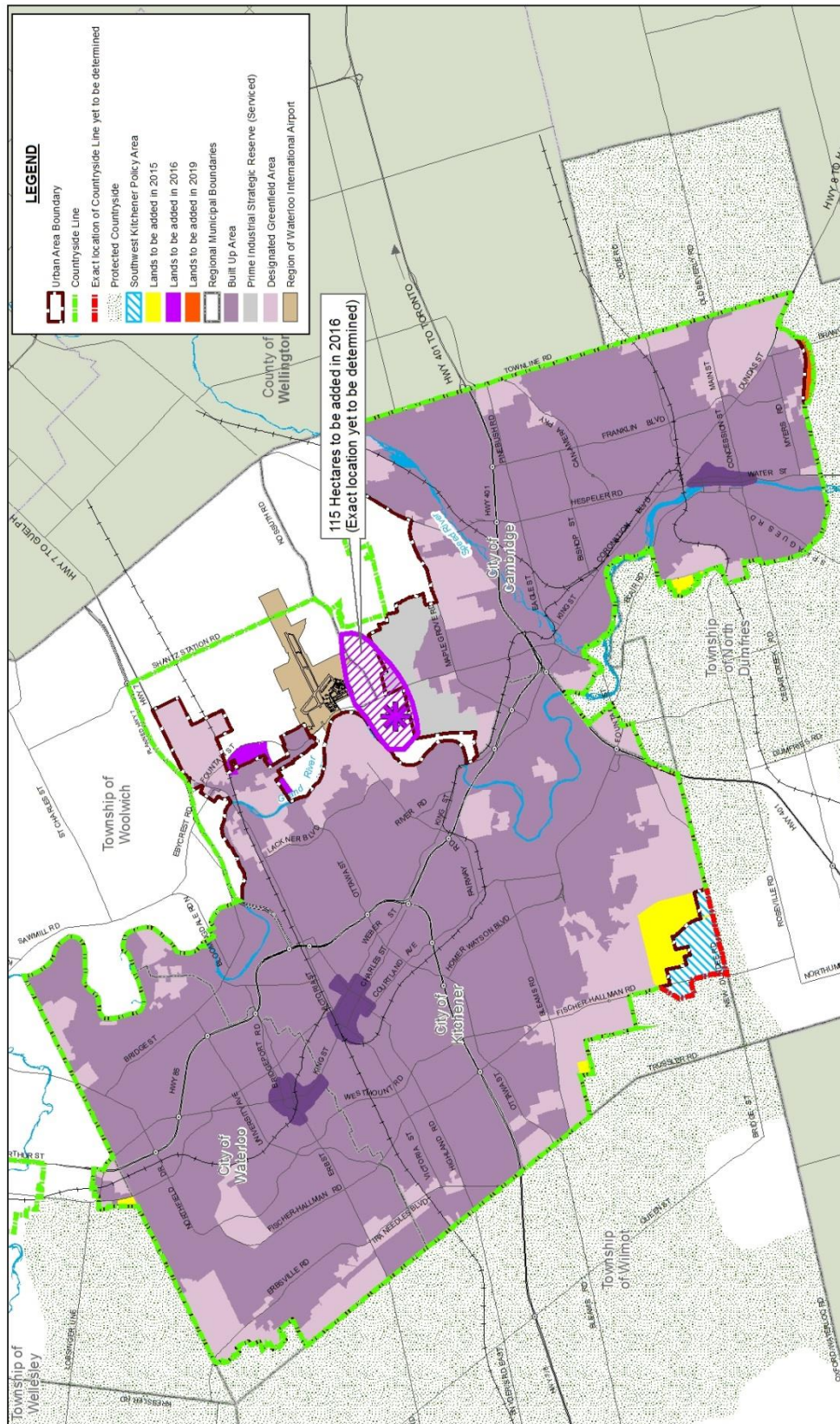
Attachment 1 – Location Map

Prepared By: **Rob Horne**, Commissioner, Planning, Development and Legislative Services

Kevin Eby, Director, Community Planning

Approved By: **Rob Horne**, Commissioner, Planning, Development and Legislative Services

Attachment A



Lands to be added to the Urban Area

Produced by:
Information and Technology Services - GIS Services
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