

Addendum # 2 to Report PDR-PCD-19-13

To: Chair Wright and Members of the Planning and Community Development Committee

From: Scott Taylor, Senior Planner

Meeting Date: May 20, 2014

Subject: West Grey – Hanover Secondary Plan – Ontario Municipal Board Attendance Report

Status: Recommendation (Option A) adopted by Committee as presented per Resolution PCD59-14 May 20, 2014; Endorsed by County Council June 3, 2014 per Resolution CC74-14;

Recommendation(s)

WHEREAS the County of Grey approved Official Plan Amendment Number 122 on April 1, 2014 through By-law 4851-14, being an Amendment to adopt a Secondary Plan and re-designate a portion of the lands described as Part Lots 8, 9, 10, 11, 12, 13 and 14 Concession 1 SDR, (Geographic Township of Bentinck) Municipality of West Grey, to the “Highway Commercial” and “Open Space” designations;

AND WHEREAS Amendment Number 122 has been subsequently appealed by the Magwood Family Farms;

AND WHEREAS the County has an approved protocol on the County’s attendance at Ontario Municipal Board proceedings;

AND WHEREAS the County was actively involved in the background work surrounding the Secondary Plan through the completion of the County’s Five Year Review Official Plan Amendment Number 80, and the subsequent Secondary Plan process;

AND WHEREAS the decision on the Secondary Plan has the potential to impact County interests from growth management and transportation perspectives;

Option A

NOW THEREFORE BE IT RESOLVED that County staff and the County solicitor be directed to participate in the Ontario Municipal Board proceedings as a ‘party’

with respect to Official Plan Amendment Number 122 in a collaborative fashion with the Municipality of West Grey and the Town of Hanover;

AND THAT staff be directed to explore possible settlement opportunities with the Magwood Family Farms, the Municipality of West Grey and the Town of Hanover;

AND FURTHER THAT staff be directed to share legal services with the Municipality of West Grey and the Town of Hanover, should the two municipalities be willing.

Option B

NOW THEREFORE BE IT RESOLVED that County staff and the County solicitor be directed to participate in the Ontario Municipal Board proceedings as a 'participant' with respect to Official Plan Amendment Number 122 in a collaborative fashion with the Municipality of West Grey and the Town of Hanover;

AND THAT staff be directed to explore possible settlement opportunities with the Magwood Family Farms, the Municipality of West Grey and the Town of Hanover.

Option C

NOW THEREFORE BE IT RESOLVED the County will not participate in the Ontario Municipal Board proceedings with respect to Official Plan Amendment Number 122;

AND THAT staff be directed to inform the Ontario Municipal Board, the Magwood Family Farms, the Municipality of West Grey and the Town of Hanover of the County's non-participation in this regard;

AND FURTHER THAT the County requests notification from the Ontario Municipal Board of any decision rendered with respect to Official Plan Amendment Number 122.

Background

On April 1, 2014 County Council approved by-law 4851-14 to adopt County Official Plan Amendment Number 122, hereafter referred to as OPA 122. Links to the OPA 122 text and schedules have been provided below.

[By-Law 4851-14 - OPA 122 West Grey - Hanover Secondary Plan](#)

[OPA 122 West Grey - Hanover Secondary Plan Schedules](#)

The approval by County Council was based on recommendations by County staff and the Planning and Community Development Committee, contained in the below reports.

[Addendum to Report PDR-PCD-19-13 OPA 122](#)

[PDR-PCD-19-13 OPA 122 Merit Report](#)

A link to the attachments to OPA 122 has not been provided as the attachments consisted of the OPA text and schedules linked to above.

Subsequent to the County's approval of OPA 122, it has now been appealed by the Magwood Family Farms to the Ontario Municipal Board (OMB). A link to the Magwood appeal letter has been provided below.

[Appeal Letter regarding West Grey - Hanover Secondary Plan OPA 122](#)

In 2013 County Council adopted a new approach towards dealing with County attendance at OMB proceedings. Details of the County's approach can be found in the background report PDR-PCD-08-13 linked below.

[PDR-PCD-08-13 Ontario Municipal Board Attendance Report](#)

Based on the criteria summarized in report PDR-PCD-08-13 the County's attendance at the OMB proceedings for OPA 122 is not automatic. The County could choose to participate as a 'party', a 'participant' or choose not to participate in the OMB proceedings. Each of these options will be assessed in the 'Evaluation of Options' section below. Furthermore it must also be noted that the Municipality of West Grey and the Town of Hanover would also have generally the same options described above. Should two or more municipalities involve themselves in the OMB proceedings, then they would have the option of partnering, or proceeding individually.

In speaking with representatives from the Magwood family, along with their solicitor Ms. Denise Baker, they have generally indicated that they would like all Magwood lands kept out of OPA 122. They have reiterated the fact that the Magwood lands are not for sale for development purposes. In the appeal letter Ms. Baker has also noted that her clients will most likely be appealing the associated West Grey zoning by-law amendment. In accordance with the OMB's normal rules of practice, the matter would then be consolidated to include OPA 122 and the associated zoning by-law amendment. The County, the Municipality and the Town would have the ability through the OMB process, prior to a contested hearing, to try to reach a settlement which negates the need for a hearing.

Evaluation of Options

The evaluation of options is generally caveated with the knowledge that there is no method by which to pre-judge the OMB's decision, or handling of a matter before the Board. Participation in a Board proceeding, or the decision to waive County involvement, would offer no certainty that County interests will be protected in the Board's ruling on the matter.

Option A – County Party Status Involvement in the OMB Proceedings

The County was the approval authority for OPA 122; however that authority has now shifted to the OMB based on the appeal. OPA 122 is implementing the recommendations of the County's Five Year Review, OPA 80, which placed the subject lands in a Future Secondary Plan Area. County Planning and Transportation Services staff did have significant input into OPA 122; helping shape the policy direction and mapping contained within. OPA 122 has the ability to have great impacts on County Roads 4 and 28, through the land use designations, and future arterial roads proposed within. To protect County interests related to growth management and County Roads it may be worthwhile having the County participate, with 'party status', in the OMB proceedings for this matter. Having party status allows the County to call expert witnesses and to have the County solicitor cross examine the appellant's expert witnesses.

Option B – County Participant Status Involvement in the OMB

Proceedings

The County would also have the ability to participate in the proceedings as a 'participant'; however in doing so the County would generally be permitted only one opportunity to speak or give a statement and would not have the ability to cross examine the appellant's expert witnesses. Involvement via participant status may give the County very limited input into a potential settlement, prior to a contested hearing. County staff would generally not recommend participating in OMB proceedings with participant status.

Option C – No County Involvement in the OMB Proceedings

The County also has the option to waive their participation in the OMB proceedings; however in doing so the County would have less input into the outcome of the hearing, and a resulting Board order could have little regard for County interests. Should Council decide not to participate in the hearing County Planning or Transportation staff could still be summonsed to provide evidence at the hearing.

Financial / Staffing / Legal / Information Technology

Considerations

At this point it is difficult to predict the staffing time, or legal costs, associated with maintaining party status at an OMB hearing on OPA 122. If a settlement can be reached which negates the need for an OMB hearing then hopefully staffing and legal costs would be minimized. However if a contested hearing is required, it is likely that a hearing could last between one to two weeks. In the above-referenced OMB attendance report, there is an example of a recent hearing for which the County participated with party status. Legal costs for this eight day hearing were approximately \$19,000.00 and staff time for the hearing was approximately three to four weeks, including preparation and hearing time. The legal costs associated with the OPA 122 hearing could also be reduced should the County split legal costs with the Municipality of West Grey and/or the Town of Hanover.

Should the County choose to participate in the OMB proceedings as a participant then staffing time and County solicitor costs should be vastly reduced. However, by opting to be involved via participant status the County would have much less input into the OMB proceedings.

Should the County choose not to participate in the hearing it is unlikely that the County would incur any further legal costs. County staff time may still be required should County staff be summonsed to appear at the hearing; however this time would be minimized compared to the alternative of having the County appear as a party to the hearing.

Ancillary costs, in the form of future upgrades to County Roads in the area, may be necessary whether the County participates in the OMB proceedings or not.

Link to Strategic Goals / Priorities

An official plan amendment of this nature has the ability to influence a number of the goals contained within the County of Grey Corporate Strategic Plan. Goals 1, 2, and 5 would be particularly relevant to the proposed secondary plan. In accordance with Goal 1, a number of policies within the proposed secondary plan speak to expanding the prosperity base, without negatively impacting commercial lands within the downtown.

Action item 2.10 with respect to enabling healthy and resilient communities, while managing and directing growth through the creation of sound land use planning principles is what the proposed secondary plan is striving to accomplish.

In accordance with Goal 5, the proposed secondary plan has been collaboratively developed by the Municipality of West Grey and the Town of Hanover, with input by landowners and the County.

Respectfully submitted by,

Scott Taylor
Senior Planner

Director Sign Off: *Randy Scherzer*