

## Addendum # 3 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:** August 13, 2015

**Subject:** West Grey – Hanover Secondary Plan – Ontario Municipal Board Proposed Minutes of Settlement Report

**Status:** Recommendation adopted by Committee as presented per Resolution PCD108-15; Endorsed by County Council September 1, 2015 per Resolution CC125-15;

### 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 is a party to the Ontario Municipal Board proceedings;**

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

**NOW THEREFORE BE IT RESOLVED that County staff and the County solicitor be directed to enter into Minutes of Settlement with Municipality of West Grey, the Town of Hanover and the Magwood Family Farms, as outlined in Addendum # 3 to PDR-PCD-19-13, or with minor modifications thereto;**

**AND THAT the County’s support of the Minutes of Settlement is contingent upon the Municipality of West Grey and the Town of Hanover also supporting such Minutes of Settlement;**

**AND FURTHER THAT the parties request that Ontario Municipal Board convene a teleconference hearing at its earliest opportunity.**

## 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 # 2 to Report PDR-PCD-19-13 OPA 122 West Grey Hanover Secondary Plan](#)

[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).

As per the recommendation of the May 20, 2014 Addendum # 2 Report, the County sought and was granted party status in the Ontario Municipal Board proceedings.

A pre-hearing conference was held on November 5, 2014 between all parties. Since then a procedural order was established and a three week Ontario Municipal Board hearing has been scheduled for October 2015.

Since the pre-hearing the parties have been working together to find an amicable settlement, in order to avoid an Ontario Municipal Board hearing. The proposed Without Prejudice Minutes of Settlement and Schedule 4 to the Minutes have been provided as Appendices 1 and 2 to this report.

All parties have been involved with the above-linked Minutes, but they still require ratification by County, Hanover and West Grey Councils, as well as ultimate approval from the Ontario Municipal Board.

### *Summary of the Proposed Changes*

The proposed Minutes of Settlement would generally implement the following changes of Official Plan Amendment 122:

1. wording has been added around the recognition and continued use of existing agricultural uses; however it is clear that no new livestock buildings or expansions will be permitted, in accordance with the existing and proposed zoning;
2. future municipal arterial and collector roads will require the completion of an Environmental Assessment to determine their design, location and need; and
3. Schedule 3Q has been amended in favour of textual descriptions to the future municipal arterial road in the Official Plan Amendment.

### *Planning Analysis*

The proposed Minutes of Settlement would generally have the same effect as the original OPA 122 passed by County Council. County staff have reviewed the Minutes and discussed them with our County solicitor, and have not identified any areas of concern to the County.

Protections have been built into the policies for the involvement of County Transportation Services staff in any new site plan approvals, entrances, or new roads which would have an impact on County Roads in the area.

A ratification of the Minutes by all parties, and subsequent approval by the Ontario Municipal Board would allow for additional commercial and open space uses to be permitted in West Grey, with services being provided by Hanover. The additional wording would also ensure that the Magwood Family would have the ability to continue to utilize their existing farm operations.

The proposed draft Minutes of Settlement generally;

1. have regard for matters of Provincial interest under *the Planning Act*,
2. are consistent with the 2014 Provincial Policy Statement, and
3. conform to the goals and objectives of the County Official Plan.

### 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 a contested OMB hearing on OPA 122. If a settlement can be reached which negates the need for an OMB hearing then staffing and legal costs will be minimized. However if a contested hearing is required (scheduled at three weeks), it would be quite costly. A few years ago the County participated in an eight day hearing, with party status, which cost approximately \$19,000.00 in legal fees. Staff time for that hearing was approximately three to four weeks, including preparation and hearing time.

Ancillary costs, in the form of future upgrades to County Roads in the OPA 122 area, may also be necessary.

## 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*

# Appendix 1: Proposed Without Prejudice Minutes of Settlement

PL140376

## ONTARIO MUNICIPAL BOARD

Commission des affaires municipales de l'Ontario

**PROCEEDING COMMENCED UNDER** subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Magwood Family Farms  
Subject: Official Plan Amendment No. 122  
Municipality: Upper Tier County of Grey  
OMB Case No.: PL140376  
OMB File No.: PL140376

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13 as amended

Appellant: Magwood Family Farms  
Subject: By-law No. 33-2014  
Municipality: Municipality of West Grey  
OMB Case No.: PL140430  
OMB File No.: PL140430

B E T W E E N:

ORLAND MAGWOOD and MAGWOOD FAMILY FARMS (“MAGWOOD”)

and

THE CORPORATION OF THE MUNICIPALITY OF WEST GREY

(“WEST GREY”)

and

THE CORPORATION OF THE TOWN OF HANOVER (“HANOVER”)

and

THE CORPORATION OF THE COUNTY OF GREY (“COUNTY OF GREY”)

### **MINUTES OF SETTLEMENT**

**WHEREAS** on February 14, 2011 the Ministry of Municipal Affairs and Housing approved County of Grey Official Plan Amendment No. 80 (“OPA 80”);

**AND WHEREAS** OPA 80 identified a Future Secondary Plan Area within West Grey and adjacent to Hanover;

**AND WHEREAS** OPA 80 requires that certain criteria be demonstrated prior to the adoption of a secondary plan within the Future Secondary Plan area including that:

- “a) the lands designated for new development, by land use type, shall not exceed the growth requirements of the Town of Hanover, for a 20 year planning horizon,
- b) any lands within the secondary plan which are beyond a 20 year planning horizon shall not be designated or zoned for development purposes,
- c) a phasing plan has been established for new development, including future road and infrastructure improvements,
- d) the subject lands can be serviced by municipal water and sanitary sewer services within the planning horizon,
- e) the subject lands cannot first be accommodated within the Town of Hanover through redevelopment or intensification of their existing land supply,

f) impacts on agricultural operations adjacent or close to the Future Secondary Plan Area are mitigated to the extent feasible, consistent with the Provincial Policy Statement, and

g) impacts on the Natural Environment are minimized, consistent with the Provincial Policy Statement.”

**AND WHEREAS** by Order of the Ontario Municipal Board (“Board”) dated October 24, 2012, OPA 80 was approved;

**AND WHEREAS** Grey County adopted Official Plan Amendment No. 122 on April 1, 2014 being a secondary plan for a portion of the Future Urban Area (attached hereto as Schedule 1 and referred to herein as “OPA 122”);

**AND WHEREAS** West Grey adopted By-law 33-2014 on April 21, 2014, being a zoning by-law to implement OPA 122 (attached hereto as Schedule 2 and referred to herein as “By-law 33-2014”);

**AND WHEREAS** Orland Magwood and the Magwood Family have been opposed to the removal of lands owned by the Magwood Family within the Municipality of West Grey and the Town of Hanover, from their Agricultural designation and zoning classification, for development uses ,including entering into Minutes of Settlement with Hanover and others filed as Exhibit 106 in OMB File No. M7681, issued July 6, 1979 (attached hereto as Schedule 3);

**AND WHEREAS** Magwood appealed County of Grey’s decision to adopt OPA 122 by correspondence dated April 23, 2014;

**AND WHEREAS** Magwood appealed West Grey’s decision to adopt Zoning By-law 33-2014 by letter dated April 29, 2014;

**AND WHEREAS** Hanover, West Grey, County of Grey and Magwood (“the Parties) agree through these Minutes of Settlement to approve OPA 122 and Zoning By-law 33-2014 as amended herein;

**NOW THEREFORE** the Parties in consideration of the mutual consents set out below, the exchange of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge and agree as follows:

1. The Parties shall jointly request that the Board shall approve the modifications to OPA 122 as set out in Schedule 4, which includes changes to:

- (a) Policy 8.5 (i);
- (b) Policy 8.5(ii)(n);
- (c) Policy 8.6 (i)
- (d) Policy 8.6 (ii)(d);
- (e) Policy 8.8 (iv);
- (f) Policy 8.9; and
- (g) Map 3 q.

2. The Parties shall jointly request that the Board approve the modification to Zoning By-law 33-204 as set out in Schedule 5, which includes changes to:

- (a) Section 1 - Permitted Uses.

3. For greater certainty, Hanover and West Grey agree that in the case of the construction of any new municipal arterial/collector roadways commencing at the Eastern Hanover-West Grey municipal boundary between the northerly limit of Grey Road 4 and the southerly limit of Knappville Road on lands owned by Magwood, the need for the new municipal arterial/collector roadways will be determined by an evaluation of all reasonable options, including but not limited to localized intersection improvements at existing intersections, against the “do nothing” alternative as contemplated by the applicable class environmental assessment.

4. To the extent that the terms of these Minutes of Settlement are not complied with, the Parties reserve the right, upon reasonable notice to each other and the Board, to seek to enforce the Minutes before the Board.

5. The Parties shall each bear their own costs associated with this matter.



6. The Parties agree that these Minutes of Settlement address all the terms and conditions of their agreement and that there are no other written or oral terms which amend or modify or otherwise affect the provisions of this agreement.

7. The Parties acknowledge and agree that these Minutes of Settlement may be executed by their solicitors respectively, in counterpart and if so executed, these Minutes of Settlement shall be of full force and effect.

8. It is agreed by and between the Parties that these Minutes of Settlement Agreement shall be enforceable by and to the benefit of the Parties hereto and Orland Magwood's immediate heir.

DATED this \_\_\_\_ day of June, 2015.

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THOMSON, ROGERS

Lawyers for the Town of Hanover and the Corporation of the Municipality of West Grey

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WEIR, FOULDS LLP

Lawyers for Orland Magwood and Magwood Family Farms

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ERROLL G. TRESLAN

Lawyers for the Corporation of the County of Grey

## Appendix 2: Proposed Without Prejudice Minutes of Settlement – Schedule 4

### 8.5 Highway Commercial

#### i) Permitted Uses

The 'Highway Commercial' designation is intended to provide opportunities for new commercial uses which are not suited to locate within the downtown of Hanover due to their size and/or nature, and which do not compete on a functional basis with Hanover's downtown.

Permitted uses shall include, but are not limited to: automotive uses; restaurants; motels; hotels; bulk sales establishments; garden centres; theatres; places of entertainment; and, building supply outlets, grocery stores, wholesale outlets, pharmacies, retail stores, or combination thereof, provided such uses occupy a minimum of 929 square metres of floor area and agricultural uses existing at the time of the approval of Official Plan Amendment 122 (OMB Approval date to be inserted)

#### ii) General Policies

- a. The lands designated 'Highway Commercial' shall be zoned with a "h" (holding) suffix in the implementing amendment to the Municipality of West Grey Comprehensive Zoning By-law. The "h" suffix shall not be removed until all servicing issues have been addressed and a Site Plan Agreement has been registered on title. In addition, where the proposed development involves a building supply outlet, grocery store, pharmacy, retail store or other store representing a combination thereof, and such development occupies a floor area exceeding 2787 square metres, the "h" suffix shall not be removed until a retail market study justifying the need for the additional floor space based on the type of the commercial use within the Town of Hanover and this Secondary Plan Area has been prepared to the satisfaction of the Municipality of West Grey in consultation with the Town of Hanover. The "h" suffix is not applicable to permitted agricultural uses.
- b. Proposals for new development shall be subject to a Site Plan Control Agreement involving the property owner and the Municipality of West Grey.
- c. The creation of new lots along the east side of Grey Road 28 shall be strongly discouraged, and conversely, land consolidation involving the existing lots along the east side of Grey Road 28 shall be encouraged, in

order to promote the best and efficient use of the lands and safe traffic patterns.

- d. Lot creation, where permitted, shall be considered in accordance with Section 6.12 Lot Creation of the County of Grey Official Plan.
- e. The utilization of mutual entrances will be required along the east side of Grey Road 28. Development and re-development of these lands shall require the entrances to be constructed in the locations shown on Schedule 3q. All Site Plan Agreements involving these lands shall require the approval of the County of Grey Transportation Services Department. Should land consolidation occur and/or other situations arise where it is more desirable from the County's perspective to construct an entrance in a different location than shown on Schedule 3q, such entrance may be considered without an amendment to Schedule 3q provided the entrance location and the entire Site Plan is satisfactory to the County of Grey Transportation Services Department.
- f. It is the intent of this Secondary Plan for all development along the west side of Grey Road 28 to gain its access from an internal road in order to eliminate entrances onto the County Road. Consideration for direct access onto Grey Road 28 may be considered where there is no internal road access and the entrance conforms to the County of Grey Transportation Services Department requirements.
- g. All developments may be subjected to the completion of a Traffic Impact Study and a subsequent peer review. All road modifications as recommended in the Traffic Impact Study shall be the responsibility of the developer.
- h. The minimum standards for 'Highway Commercial' development pertaining to, among other things, lot area, lot frontage, parking, lot coverage, outdoor storage, and open space, shall be included in the Comprehensive Zoning By-law for the Municipality of West Grey.
- i. Outdoor storage should be located to the rear of the main building or in an area of the lot where such storage is substantially screened from public view and where such storage will have the least impact on the adjacent land uses.
- j. Outdoor lighting shall direct light away from adjacent streets and properties.
- k. Adequate buffers between Highway Commercial development and adjacent non-commercial uses shall be provided in order to minimize potential land use conflicts.

- l. Re-development of the existing developed lots shall be subject to the policies of this Secondary Plan.
- m. All relevant policies of the County of Grey Official Plan shall apply to all land located within this Secondary Plan area. In the event of a conflict between the County Official Plan and this Secondary Plan, the most stringent policy shall apply.
- n. Notwithstanding section 8.5(i) and 8.5(ii) to this Plan, existing uses, which were legally established prior to the approval Official Plan Amendment 122 at the time of the approval of Official Plan Amendment 122 (OMB Approval date to be inserted) shall be permitted to continue to be used for such purposes. No expansions will be permitted to livestock agricultural uses within these lands.

## 8.6 Open Space

### i) Permitted Uses

The 'Open Space' designation is intended to provide opportunities for active and recreation activities.

Permitted uses shall be various forms of public and private open space including parks, playgrounds, picnic areas, sports fields, tennis courts, community trails and other recreational facilities and agricultural uses existing at the time of the approval of Official Plan Amendment 122. (OMB Approval date to be inserted)

### ii) General Policies

- a. The establishment of open space activities shall be encouraged to locate adjacent to elementary and secondary school sites where possible.
- b. The development of open space activities shall take into consideration the Parks and Recreation Master Plan for the Town of Hanover.
- c. Proposals for new development may be subject to a Site Plan Control Agreement.
- d. Notwithstanding section 8.6(i) and 8.6(ii) to this Plan, existing uses, which were legally established prior to the approval of Official Plan Amendment 122, (OMB Approval date to be inserted) shall be permitted to continue to be used for such purposes. No expansions will be permitted to livestock agricultural uses within these lands.

## 8.8 *Transportation*

- i) The policies of Section 8.5 ii) shall apply.
- ii) Sidewalks shall be required along one side of all new roads where deemed appropriate by the Town of Hanover and Municipality of West Grey.
- iii) The visual impact of a development along a County Road shall be addressed in order to promote beautification along the main thoroughfares of Hanover and surrounding area.
- iv) The construction of new municipal arterial/collector roads commencing at the Eastern Hanover-West Grey municipal boundary between the northerly limit of Grey Road 4 and the southerly limit of Knappville Road may be required. The alignment, design and need for any new municipal arterial/collector roads within those limits will be determined by a Class Environmental Assessment pursuant to the Environmental Assessment Act and the goal of minimizing any impact on existing agricultural operations shall be a significant consideration. An amendment to this Plan will not be required for the identification or construction of any new municipal arterial/collector roads approved pursuant to the Class Environmental Assessment.

## 8.9 *Existing Land Uses*

The Secondary Plan is intended to provide opportunities to private land owners to develop their respective properties. Notwithstanding the land use designations shown on Secondary Schedule Map 3p existing uses, which were legally established prior to the approval of Official Plan Amendment 122 (OMB Approval date to be inserted) shall be permitted to continue to be used for such purposes.

### **Map 3 q.**

Delete reference to Future Arterial Road shown in green.