

REGIONAL MUNICIPALITY OF OTTAWA-CARLETON
MUNICIPALITÉ RÉGIONALE D'OTTAWA-CARLETON

REPORT
RAPPORT

Our File/N/Réf. P.1.3.1.7
Your File/V/Réf.

DATE 12 January 1998

TO/DEST. Co-ordinator,
Planning and Environment Committee

FROM/EXP. Deputy Regional Solicitor
Planning and Development Approvals Commissioner

SUBJECT/OBJET **PLANNING - MEDIATION
COMPREHENSIVE REGIONAL OFFICIAL PLAN**

DEPARTMENTAL RECOMMENDATION

That the Planning and Environment Committee recommend to Council that, subject to the allocation of funding in the 1998 budget, the Region engage in a process of mediation with respect to the appeals to the Regional Official Plan.

BACKGROUND

As indicated in the accompanying report from the Planning and Development Approvals Commissioner, 32 letters of appeal were filed with respect to the Regional Official Plan as adopted by Regional Council on 9 July 1997 and as proposed to be modified by the Minister of Municipal Affairs and Housing.

The traditional process for dealing with referrals or appeals to official plans has been that the Ontario Municipal Board would first arrange for a pre-hearing conference. At this conference the parties and issues are identified and a schedule is arranged for the exchange of documentation and the conduct of the hearing. This is then followed, typically three to four months later, by the hearing itself.

Increasingly however courts and administrative tribunals are encouraging parties to a dispute to consider mediation. Furthermore parties are encouraged to consider mediation at the earliest possible point in their dispute. Through mediation it may be possible to conserve the scarce hearing time of the court or tribunal in question. In addition, there is often a middle ground that all parties can accept rather than being left with the "all or nothing" result that is frequently the result of a hearing.

DISCUSSION

With respect to matters before the Ontario Municipal Board, mediation can be in either or both of two formats. Firstly, the parties can request that a member of the Board act as a mediator. This request would be made by way of motion to the Board, upon notice to the other parties. If the motion is successful, the Board would appoint one of its members to serve as a mediator on the appeals to the Official Plan. The second possibility is for the Region to retain directly the services of one or more mediators.

Given the number of appeals, it is highly unlikely that, even if requested to do so, the Ontario Municipal Board would be able to make available one of its members to mediate all the issues raised in the appeals. Therefore, in order to be able to deal with the appeals in a timely manner, staff propose, as was the case with the Ottawa Official Plan, that the Region itself retain the services of one or more mediators to attempt to resolve the issues raised in the appeals. The possibility of this form of mediation has been informally raised with many of the appellants and their response has been uniformly positive.

In the instance of the Ottawa Official Plan, 64 referrals were made to the Ontario Municipal Board, 51 of which were then subject to mediation. In the end, rather than a 8-12 week hearing, only a few days were necessary to deal with the referrals to the Ottawa Official Plan. The direct cost of this mediation was approximately \$57,000. Based upon this experience, it is estimated that the cost of mediation would be \$50,000, exclusive of G.S.T.

If this report is approved, Regional staff would advertise for expressions of interest to mediate all or some of the appeals to the Regional Official Plan. Upon budget approval, the mediators would be formally retained and the mediation process commenced. While the process will depend to a large extent on the mediator(s) retained, it is staff's hope that suggested settlements will be able to be presented to Regional Council for concurrence in the early fall of 1998. Following concurrence of Council, any settlements could then be presented to the Ontario Municipal Board for approval.

MATTERS NOT RECOMMENDED FOR MEDIATION

In the case of four appeals, staff are not recommending mediation but rather a motion to the Ontario Municipal Board to dismiss or narrow the scope of the appeal. These are the appeals by Dr. Smith, the Association of Rural Property Owners, Dr. Sander and David McNicoll. Staff have met with Dr. Smith and Mr. McNicoll and have exchanged correspondence with the Association of Rural Property Owners and the solicitor for Dr. Sander.

In the instance of Mr. McNicoll, who appealed the entirety of the Official Plan, it is the opinion of staff that his appeal is not based on any land use planning ground within the meaning of the *Planning Act*. Because his appeal applies to the entirety of the Official Plan, none of the Official Plan can come into force until the appeal is disposed of.

With respect to the appeal by Dr. Smith, the tenth point of her letter to the Minister is a broad appeal against the schedules to the Regional Official Plan. Staff met with Dr. Smith in an attempt

to see if a settlement with respect to her concerns could be arrived at and did agree to make certain minor modifications to the presentation of the schedules. While Dr. Smith subsequently agreed to withdraw a portion of her appeal, the majority of her appeal remains in place. It is the opinion of staff that the remaining matters in point ten of her appeal disclose no land use planning ground upon which an appeal can be based and are frivolous. With respect to the balance of her letter of appeal, mediation is recommended by staff.

The appeals by the Association of Rural Property Owners and Dr. Sander are identically worded. All of the reasons for appeal relate to section 5.5 of the Official Plan, concerning wetlands. Despite this fact, the association and Dr. Sander have appealed all of Part 5. Regional staff have written to the Association and Dr. Sander inviting them to narrow their appeals to section 5.5 but to date they have not agreed. Given that no reasons are provided in their appeals for challenging the balance of Part 5, staff will seek in a motion to the Board to restrict their appeals to the policies dealing with wetlands.

Legal staff has sought an appointment from the Ontario Municipal Board for a motion to deal with the appeals by Dr. Smith and Mr. McNicoll. It is anticipated that staff will be able to advise of the date of the motion at the time this report is presented to Committee. Staff has requested that the date for the motion concerning the appeals by the Association of Rural Property Owners and Dr. Sander await the recovery of rural Ottawa-Carleton from the ice storm.

Approved by
E.A. Johnston

Approved by
N. Tunnacliffe, MCIP, RPP