

MINUTES

PLANNING AND ENVIRONMENT COMMITTEE

REGIONAL MUNICIPALITY OF OTTAWA-CARLETON

CHAMPLAIN ROOM

13 OCTOBER 1998

3:00 P.M.

PRESENT:

Chair: G. Hunter

Members: D. Beamish, M. Bellemare, B. Hill, P. Hume, J. Legendre, A. Munter,
W. Stewart and R. van den Ham

CONFIRMATION OF MINUTES

That the Planning and Environment Committee confirm the Minutes of the Meeting of 22 September 1998.

CARRIED

Referring to page 4 of the 16 September 1998 Joint Meeting Minutes, Councillor Legendre asked that the last sentence of the third paragraph be amended to read: "In this regard, he asked if it would not be a good approach to set up a regional garbage collection entity at this time." The Councillor felt this would better reflect the intent of his question.

That the Planning and Environment Committee confirm the Minutes of the Joint Meeting of the Corporate Services and Economic Development Committee and the Planning and Environment Committee Meeting of 16 September 1998, as amended.

CARRIED as amended

- Notes:
1. Underlining indicates a new or amended recommendation approved by Committee.
 2. Reports requiring Council consideration will be presented to Council on 28 October 98 in Planning and Environment Committee Report Number 15.

PLANNING ITEMS

1. REGIONAL OFFICIAL PLAN:
MEDIATION ON APPEALS

- Planning and Development Approvals Commissioner's report dated 15 Sept 98
- Correspondence dated 28 Sep 98 from FoTenn Consultants Inc. attached Annex C

Pamela Sweet, Director, Policy and Infrastructure Planning Division, advised the Committee the Ontario Municipal Board (OMB) had, as of September 28, 1998, approved the Region's Official Plan (ROP), save and except for the outstanding appeals. Ms. Sweet went on to say that, overall, staff feel the mediation sessions were a positive and worthwhile exercise. She noted thirty-two letters of appeal had been filed, and of these, she estimated approximately half will have been dealt with through mediation. As well, Ms. Sweet advised of the thirty sections of the ROP the City of Ottawa had appealed, all but two sections have been resolved through mediation. She stated staff want to try to continue to resolve as many disputes as possible prior to the OMB pre-hearing (November 5 and 6, 1998), and in this regard, she advised another report will be coming to the next meeting of the Planning and Environment Committee.

Ms. Sweet went on to point out a few small errors contained in the staff report. Referring to page 2, the last sentence of paragraph 3, it should read the "City of Nepean" and not the City of Kanata. In Annex A, page 5, Section 4.4.3 (f), Ms. Sweet noted that Dr. Lois Smith had brought to her attention a problem in the way in which staff set up the modification in the Plan. She advised that (f) will become Section 4.4.4 and will be reworded accordingly.

Subsequent to staff responding to specific questions of the Committee, the following public delegations made presentations. Committee Chair Hunter pointed out that all of the registered speakers on this item, would be speaking specifically to the Robert Copeland mediated settlement (appearing on page 10 of Annex A of the staff report).

At the Chair's request, Tim Marc, Manager, Planning and Environment Law, clarified a mediated settlement had been reached between Regional staff and Mr. Copeland. Carol Christensen, Senior Project Manager - Land Use, added that Mr. Bill Davidson, who has party status to the appeal, attended the mediation sessions but is not in agreement with the mediated settlement.

Responding to further questions from Chair Hunter, Mr. Marc advised the final decision in this case rests with the OMB. He noted Committee and Council are only dealing with their instructions to staff as to which position to take before the OMB. With respect to options, he advised Committee and Council could choose to sustain the original policy in the Plan as adopted on July 9, 1997; support the proposed new policy in the staff report;

or there could be a third possibility “mid-range” between these two policies. He stated it was his understanding the neighbours of the subject property were not in agreement with the proposed new policy and Mr. Ted Fobert, as their agent, would be seeking party status before the Board should this option be approved. Alternatively, should Committee and Council endorse the original policy (as adopted by Council), he would expect Mr. Copeland would ask for a hearing before the OMB.

Ted Fobert, FoTenn Consultants, explained he had been retained by concerned landowners of property adjacent to the Copeland property. Mr. Fobert expressed his clients’ opposition to the mediated solution to the Copeland appeal and referred the Committee to his letter attached to the staff report at Annex C. He asked that Committee not approve the mediated solution and went on to outline the community’s concerns.

He opined the proposed modification represents the first step towards accepting a future limestone quarry on the Copeland property, noting it will result in a site specific policy being added to the Mineral Aggregate Resource chapter of the Regional Official Plan (ROP). He pointed out the 450 metre buffer is the standard normally applied to limestone quarries, not underground mining operations of limestone. Therefore, while a limestone quarry is not a permitted use in the General Rural Area designation that affects this land, the modification applies a standard for limestone quarries and places the site specifically in a Chapter of the ROP that permits them. Mr. Fobert felt that given the historical attempt to establish a limestone quarry on these lands, the proposed modification appears, without justification, to move the Copeland property one step closer to this goal.

Mr. Fobert went on to outline the ways in which the mediated solution would impact all of the neighbouring properties. He advised that applications for future non-aggregate development on properties adjacent to the subject site will have to demonstrate that their proposal will not restrict the opportunity for future limestone mining on the Copeland property. He felt this to be contradictory to the policies of the General Rural Area where a range of uses are permitted and offends the integrity of the General Rural Area since the modification essentially establishes underground mining of limestone as the preeminent use in that designation. The speaker pointed out no other General Rural Area in the Region has a similar 450 metre buffer around an underground mine of limestone. Mr. Fobert expressed his clients’ concern that the mediated solution will decrease the value of their properties or in the very least it will reduce their marketability.

In conclusion, Mr. Fobert stated the proposed mediated solution was arrived at without meaningful involvement of the adjacent property owners. He referred to a motion passed by the Council of the Township of West Carleton which supported his position that the proposed modification is inappropriate and should not be approved. He felt it would be inappropriate for his clients to have to go to the OMB to fight this battle and expressed his

opinion that the real issue is whether or not the subject land is appropriate as an Aggregate Resource designation.

Responding to questions from Councillor van den Ham, Mr. Fobert confirmed the mediated settlement proposes putting a restriction on property adjacent to the subject lands, wherein these landowners would have to demonstrate that their non-aggregate activities would not impact on the future of the underground mining operation.

Chair Hunter asked staff, if there were three parties to a mediation, and only two agree to the settlement, whether this was sufficient to recommend the proposal to Committee and Council. Mr. Marc advised mediation need not result in a settlement with all parties to justify bringing forward a proposal to Committee and Council. He opined it would be equally valid to bring forward a partial resolution and this must be done if the staff position before the OMB has changed, which is the case in this instance. Mr. Marc explained Provincial policy provides some rationale for protecting Mineral Resources even though there may be an impact on other persons lands. He stated staff decided it was a reasonable compromise to bring forward the new policy 9 as contained in Annex A, even though there was not unanimity amongst all of the parties.

Councillor Legendre asked staff to expand on their reasoning for recommending the partial mediation. Ms. Christensen explained the settlement stipulates Mr. Copeland would withdraw his appeal (so that the designations on the property are confirmed as General Rural Area and Environmental Feature on Schedule K) on the basis of the Region adding the proposed policy. Staff felt it reasonable to provide in the Plan, some warning of the possibility of underground mining on this property particularly since it has been widely known for some time this was Mr. Copeland's intention for this property.

With respect to the review distance, Ms. Christensen stated it is a restriction in the sense that one would have to demonstrate they were not impacting the feasibility of the limestone operation but it is not a "no development" restriction. She pointed out the property in Concession 2, is designated Agricultural Resource and therefore a subdivision is not a possibility. Their only possibility for severance is a retirement lot and staff felt it was logical to believe this would happen on the road frontage located at the east end of those lots. Of the properties in Concession 1, only Lot 7 (Mr. Davidson's property) has existing public road access. Because they do not have public road access, the other properties' potential for subdivision or severance is greatly restricted.

Responding to further questions from the Councillor, Ms. Christensen advised restrictions would not apply if one were applying for a building permit. Rather they would only apply if someone were requesting site plan approval, a rezoning, consent to sever, a plan of subdivision or a local official plan amendment. She stated nothing would be required to establish a farming use on these properties as it is already permitted.

Councillor Legendre questioned why staff were recommending a 450 metre buffer around the subject property, particularly when it is just a “potential” limestone site and not an actual site. Ms. Christensen advised the proposed policy is modeled on an existing policy in the ROP for property that is within 450 metres of a limestone resource “designation”.

Robert Copeland, the owner of the subject property, provided a brief history of the matter before the Committee. He noted in 1980, a resolution in support of underground mining on the subject property was passed by Regional Council. Mr. Copeland said in 1983, William Davidson and Subspace were successful in achieving a redesignation of the subject property for pits and quarries at both the local and regional levels. However, as a result of a change in Mayors, West Carleton chose not to implement the zoning by-law.

Referring to comments made by Mr. Fobert, Mr. Copeland stated there is absolutely no intent for an open limestone quarry on the property; the business plan is for an underground mine and this will remain unchanged.

Mr. Copeland went on to say the Ministry of Natural Resources (MNR) advised him if the entrance to the mine were designed properly, he would not need to obtain a Pit and Quarry license. However, although he is attempting to clarify this with MNR, he does not yet have a letter confirming this and felt he would have no choice but to continue on with the OMB appeal towards a Mineral Aggregate designation.

Finally, Mr. Copeland pointed out that he, Regional staff and William Davidson were bound by a confidentiality agreement on the mediations, which Mr. Davidson saw fit to break. Mr. Copeland stated in giving up his appeal on the Environmental Features overlay on the subject property, he had made a major compromise in the mediated settlement and he said he was very distressed at the activity taking place.

At Committee Chair Hunter’s request, Mr. Copeland clarified that although the mediated settlement was a compromise on his part, he was willing to abide by the mediated settlement and discontinue his appeal.

Responding to questions from Councillor Beamish, Mr. Copeland stated he was not concerned with the physical distance of the buffer (i.e. it need not be 450 metres, it could be 50 metres). He stated what he was adamant about was that any person proposing future development on the abutting lands, be aware of the mining activity on his land.

Councillor Beamish then asked staff if there were other ways to warn neighbours of the mining activity on this site. Ms. Christensen replied staff were not insistent upon the 450 metres. Provided Mr. Copeland was in agreement, the mediated settlement policy could be kept in the Plan but it could be amended to affect the first 10 metres or one metre of the property or the wording could be changed so that a “buffer” was not included.

In response to a question from Councillor Legendre, Ms. Christensen advised in the ROP a general permission exists for underground mining in the General Rural Area designation, with no buffering requirement. She noted the proposed policy is very site specific.

Robert Lackey, Arnprior Region Federation of Agriculture (ARFA), advised the property owners abutting the subject site had asked for his support in this situation. He said he spoke with Mr. Fobert and Councillors from the Township of West Carleton to obtain background information and he said he found the history of this matter to be “self-serving”. He pointed out the Township of West Carleton and the abutting landowners find the proposed settlement unacceptable and he said it appears the mediator is dictating what will happen in this instance.

Mr. Lackey felt the generally accepted rules of mediation had been disregarded, noting Mr. Davidson had not signed the agreement and had initially been excluded from participating in the mediation sessions. The speaker suggested this mediated settlement should be set aside as a “non- mediation”.

Mr. Lackey stated ARFA has a tremendous amount of respect for a persons use of his land. He said just as Mr. Copeland enjoys privileges with his acreage, so too should the rights of those landowners surrounding the subject land be respected. He urged the Committee to have regard to the resolution of the Township of West Carleton and to respect people’s land use as a majority, not just the “squeaky wheel”.

Anthony J. Cody, expressed his concern with the effect this underground mine will have on the area's water supply. He noted the properties’ water comes from springs and he felt the blasting that would be associated with the mining operation would cause the water course to change direction. By way of example, Mr. Cody spoke of the effect the installation of a pipeline had on his water supply, causing him to lose two springs.

Percy Granger, advised his Mother owns the adjacent property on Lot 5, which is completely surrounded by Mr. Copeland’s land. He noted there is an old road that goes through Mr. Davidson and Mr. Copeland’s property which allows him access to this land to cut cedar trees to use for fences on his farm. As well, his family owns Lot 4 to the east of the subject land, which Mr. Granger uses for pasture. He said he is only able to access this land off of Upper Dwyer Hill Road through a forest road, approximately 20 to 30 feet wide, between Lots 3 and 4. Mr. Granger stated if an open pit or quarry is put on Mr. Copeland’s land or if the buffer is left in place, he would be unable to access his land at all, and it would be very difficult to sell it.

Chair Hunter pointed out the speaker is assuming an open pit operation would be part of this agreement and asked staff to clarify this point. Ms. Christensen reiterated that Mr.

Copeland had withdrawn his appeal for a Mineral Aggregate designation and has agreed to the General Rural designation and the Schedule K overlay which would not permit an open pit or quarry.

Clinton Drader, advised his wife's family has owned Lot 3 since 1841 and it has always been a farming operation. He expressed his very strong opposition to any change that would affect the farming in this immediate area.

William Davidson, sought to clarify some points raised by Mr. Copeland in his remarks. With respect to his involvement with Subspace, Mr. Davidson said Mr. Copeland had approached him in 1978/79 with an offer to purchase his land. At the time, Mr. Davidson was unsure what use he wanted to make of his land and did give some thought to Mr. Copeland's idea of underground mining. However, in 1984 Mr. Davidson offered to sell his land to Mr. Copeland, which Mr. Copeland declined, and since that time, Mr. Davidson has not been associated with Mr. Copeland.

Mr. Davidson went on to say he has put much time and energy into developing his property and establishing "roots" in the community and he felt it important to note he had purchased his property prior to Mr. Copeland purchasing the subject property. He stated there was no reasonable compromise associated with buffering and could not accept any amount of buffer being put in place.

Councillor Munter noted Mr. Copeland will, if the mediated settlement is set aside, proceed with his OMB appeal, seeking a Mineral Aggregate designation on this property which, unlike the General Rural Area designation, would permit a pit or quarry. The Councillor asked the delegation if he was prepared to take this risk. Mr. Davidson replied he was prepared to take this risk and he felt the community was as well.

Councillor Beamish asked the delegation if he would be satisfied with a warning clause, which would not restrict activities on the neighbouring properties, as opposed to the buffer zone. Mr. Davidson stated he would not accept anything that would have to be placed on title to his lands.

Having heard from all public delegations, the matter then returned to Committee.

Councillor Hill put forward a motion that the proposed new policy 8.2.9 (as outlined on page 10 of Annex A of the staff report) be deleted from Annex A. The Councillor highlighted the problems associated with the mediated solution, namely, the neighbouring property owners were not involved in the mediation session and the buffer puts very serious restrictions on their properties. She noted the Township of West Carleton supports the position of the neighbouring property owners and she urged the Committee to support her motion to delete the proposed new policy.

Councillor Munter stated although he could understand Mr. Copeland's desire to warn potential neighbours about the possibility of an underground mining operation, he felt the onus would clearly be on the buyer of land to check with the Township or the Region to see what the neighbouring parcels are designated or could possibly be designated. However, he said he was prepared to take the advice of the ward councilor and support her motion. Councillor Munter felt it important the residents understand that in supporting the Councillor's motion to delete the proposed policy, the matter would be out of the hands of the Region and the ultimate decision will be made by the OMB.

Councillor van den Ham sought clarification with regard to development in the General Rural Area; specifically, the last sentence of Section 3.7.4.1(k) (page 47 of the ROP) which reads "The local municipality shall ensure that there is adequate screening and separation to protect existing and further adjacent land uses." He asked staff if perhaps the Region was going into too much detail and would the local municipality not deal with this matter. Ms. Christensen replied that at some level of government, adequate separation and screening would have to be ensured.

Councillor van den Ham stated, as a rural landowner, he could not tolerate any kind of restrictions being placed on his property to benefit a neighbour's. However, in that Mr. Copeland's intent is to warn the neighbours of the mining operation, the Councillor expressed the hope this could be addressed by the local municipality when the mining operation begins (i.e. local municipality will decide on the amount of separation distance needed from the actual operation to the property lot line).

Councillor Legendre said he would be voting on this issue as though the mediation were not successful. He said, had the neighbouring property owners accepted the mediated solution, he too could have accepted it; but, since they are not in agreement, he felt they deserved "their day in court". Further, the Councillor suggested the process followed was not mediation and he expressed his hope that in the future, it would be made clear to the mediators the Region hires, what constitutes "mediation".

Mr. Marc replied, although he could understand Councillor Legendre's point, he believed in this instance the mediator provided to Committee and Council her best judgment as to what was a reasonable position for the Region to take and what was a viable compromise. In the end it may not succeed but he believes it was a valid outcome of the process.

Councillor Beamish indicated he would support Councillor Hill's motion, however, he voiced his opinion the property owners have chosen the worst and most expensive option available. He noted the neighbours could have supported either the proposed policy or a new policy with a warning clause; instead, they have chosen to proceed with a lengthy and costly OMB hearing that could result in a worse outcome (i.e. an open pit mine).

The Committee then considered Councillor Hill's motion.

Moved by B. Hill

That the proposed new policy 8.2.9 be deleted from Annex A.

CARRIED

YEAS: D. Beamish, M. Bellemare, B. Hill, P. Hume, G. Hunter, J. Legendre, A. Munter,
W. Stewart and R. van den Ham.....9

NAYS:0

Councillor Munter commended staff for a job well done on this mediation process.

Committee Chair Hunter then drew the Committee's attention to Section 4.4.3, and the proposed change mentioned by Ms. Sweet in her opening remarks. Councillor Munter agreed to move a motion regarding this change.

Moved by A. Munter

That the policy shown as 4.4(3)(f) be deleted and the following inserted as 4.4.4.:

Consider whether a site specific transportation study may be required when reviewing development proposals in Business Parks.

CARRIED

The Committee then considered the report as amended.

That the Planning and Environment Committee recommend that Council:

1. Approve the mediated settlements in Annex A, attached hereto, as amended by the following:

a) That the policy shown as 4.4(3)(f) be deleted and the following inserted as 4.4.4.:

Consider whether a site specific transportation study may be required when reviewing development proposals in Business Parks.

b) That the proposed new policy 8.2.9 be deleted from Annex A.

- 2. Request the Ontario Municipal Board modify and approve those sections of the Regional Official Plan in accordance with the mediated settlements identified in Recommendation 1.**

CARRIED as amended

2. LOCAL OFFICIAL PLAN AMENDMENT 7
CITY OF NEPEAN

- Planning and Development Approvals Commissioner's report dated 29 Sep 98
- Annexes 2, 3 and 4 issued previously

That the Planning and Environment Committee recommend that Council approve local Official Plan Amendment 7 to the City of Nepean Official Plan subject to the modifications outlined on the approval pages attached as Annex 1 to this report.

CARRIED
(A. Munter dissented)

3. LOCAL OFFICIAL PLAN AMENDMENT 9
CITY OF NEPEAN (MONARCH DEVELOPMENT CORP.)

- Planning and Development Approvals Commissioner's report dated 29 Sep 98

Mrs.M. Sinha expressed her objection to Nepean Local Official Plan Amendments 9 and 7 (indicating she would be speaking predominantly to Amendment 9) and stated she was generally opposed to approval of development south of the Jock River in Nepean. Mrs. Sinha provided a written brief, detailing her objections (held on file with the Regional Clerk). In concluding her remarks, Mrs. Sinha requested that she be informed when this matter is scheduled to go before the Ontario Municipal Board.

That the Planning and Environment Committee recommend that Council approve local Official Plan Amendment 9 to the City of Nepean Official Plan subject to the modifications outlined on the approval pages attached as Annex 1 to this report.

CARRIED
(A. Munter dissented.)

4. SUMMARY OF ASSIGNED FUNCTIONS
OFFICIAL PLAN AMENDMENTS, SUBDIVISIONS,
CONDOMINIUMS, PART LOT CONTROL BY-LAWS,
ZONING BY-LAWS, SITE PLANS AND SEVERANCES
- Planning and Development Approvals Commissioner's report dated 10 Sept 98

That the Planning and Environment Committee and Council receive this report for information purposes and confirm the Planning and Development Approvals Department's appeal of one zoning by-law as noted in Annex V and one severance as noted in Annex VI.

CARRIED

ADDITIONAL ITEM

5. PLANNING
LOCAL OFFICIAL PLAN AMENDMENT NO. 1
GOULBOURN OFFICIAL PLAN
- Planning and Development Approvals Commissioner's and
Deputy Regional Solicitor's joint report dated 9 Oct 98

Moved by B. Hill

That the Rules of Procedure be suspended to consider this item.

CARRIED

At Committee Chair Hunter's request, Tim Marc, Manager, Planning and Environment Law, provided a brief overview of the staff report. He noted Council adopted Regional Official Plan Amendment (ROPA) 51 in July, 1997, which redesignates a portion of the lands owned by Mr. Sweetnam as General Urban; the amendment went on the Ministry of Municipal Affairs and Housing and was approved. Subsequently LOPA 1 came to Committee and Council for approval, which deals with the Goulbourn Official Plan but inserts policies similar to those in the Regional Official Plan. Mr. McKinley had put in a referral request on the basis that LOPA 1 merely implemented ROPA 51 and, on the basis that ROPA 51 was now an approved document, the Committee (on the advice of staff) dismissed the referral request and approved LOPA 1. Subsequent to that Regional staff received documentation from Mr. McKinley which clearly shows that on July 22, 1997 he submitted a document that was in pith and substance a referral request of ROPA 51, there were grounds for his referral request and the Ministry ought not to have approved ROPA 51. On the basis that ROPA 51 was improperly approved, staff are now recommending LOPA 1 should now be referred to the OMB. This is on the basis of Divisional Court quashing the approval of LOPA 1 and ROPA 51. He opined the most expedient thing to

do is to sent LOPA 1 to the OMB so that it can be consolidated with the hearing that is occurring beginning January 4, 1999 and it is also staff's opinion there is no valid reason to dismiss Mr. McKinley's request.

Responding to a question posed by Councillor Hill, Mr. Marc advised the solicitor for the land owner, Mr. Vice, agrees with this course of action.

The Committee then considered the staff recommendation.

That Planning and Environment Committee recommend to Regional Council that Local Official Plan Amendment No. 1, as modified on the Approval Page attached as Annex I, be referred to the Ontario Municipal Board at the request of 867718 Ontario Limited.

CARRIED

CONFIDENTIAL AGENDA

1. PLANNING
REGIONAL OFFICIAL PLAN - MEDIATION
APPEAL BY ASSOCIATION OF RURAL PROPERTY OWNERS
- Regional Solicitor's report dated 06 Oct 98

The Committee waived discussion on the following confidential report and received the report without an In Camera session.

That Planning and Environment Committee receive this report for information.

RECEIVED

INQUIRIES

Councillor Munter referred to a recent article in Le Droit regarding a program in the Municipality of Clarence/Rockland which requires businesses to participate in its recycling program. He asked staff if they were aware of this program and under what legislated authority Clarence/Rockland was doing this. As well, he asked whether or not this had been considered for the Region. Pat McNally, Director, Solid Waste Division, advised he had not seen the article but would look into the matter and respond to the Councillor's questions. Councillor Munter asked that a report be brought back to Committee.

ADJOURNMENT

The meeting adjourned at 5:10 p.m.

COMMITTEE COORDINATOR

COMMITTEE CHAIR