

ISSUE DATE:

December 29, 2011



PL110080

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 1541179 Ontario Ltd. and Lea Silvestri Investments Ltd.
(jointly)
Appellant: 1589805 Ontario Inc.
Appellant: 2140065 Ontario Inc.
Appellant: 2163846 Ontario Inc. and others
Subject: Proposed Official Plan
Municipality: Regional Municipality of Waterloo
OMB Case No.: PL110080
OMB File No.: PL110080

APPEARANCES:

Parties

Counsel*/Agent

Regional Municipality of Waterloo

B. Duxbury*

Ministry of Municipal Affairs and Housing
Lea Silvestri Investments Ltd.
1541179 Ontario Ltd.

V. Bacher*

Activa Holdings Inc.
2140065 Ontario Inc.
Stonefield Properties Corp.
Northgate Land Corp.
Hallman Construction Ltd.
Gatestone Development Corp.

R. Howe* and I. Andres*

Brenda and Rusty Brissette

B. Brissette

Springbank Investments Inc.
Kirtoff Holdings Inc.
Edmund Patrick and Linda Margaret Taylor
Mary Alma Corbett
John Kostas
Alfred and Rita Kutajar
Lisa and Willi Kelner
Breslau Properties Ltd.

J. Doherty*

Madison Homes Inc.	B. Horosko*
Connie and Robert Bogusat Hardy Bromberg	C. Bogusat
Mattamy Development Corporation	L. Townsend* and J. Meader*
2163846 Ontario Inc.	R. Norris*
William Gies	S. Rogers*
Township of Woolwich	E. Costello*

Participants

RARE	S. Whelan
Empire Communities – Riverland Ltd.	P. DeMelo*

DECISION DELIVERED BY N. C. JACKSON AND ORDER OF THE BOARD

The Regional Municipality of Waterloo adopted a new Official Plan on June 16, 2009. The Regional Official Plan is intended to conform to the Provincial Growth Plan “Places to Grow: Growth Plan for the Greater Golden Horseshoe (GP)”. The Regional Official Plan, which the Region refers to as the ROP, has been through the public process and was approved by the Minister of Municipal Affairs and Housing on December 22, 2010, subject to modifications. Following the Notice of Decision, by the Province, 26 Appeals were made. One Appellant has withdrawn. There have been several pre-hearings but little or no agreement as to the phasing of Appeals and in particular the issues.

The Board conducted a Mediation wherein it was agreed that:

1. Phasing would be determined by the Board otherwise constituted on Motion.
2. The issue of Planning Horizon would be on a separate Motion.

3. Housing Mix as part of a land budget will not be determined by Motion but will be determined in the Hearing where the context may be set with *viva voce* testimony.

The First Motion concerning phasing, returnable in an earlier pre-hearing, is now before the Board for hearing and disposition. The Parties to the Motion are set out in the reduced Appearance list above. Counsel P. DeMelo seeks and is granted Participant status for Empire Communities – Riverland Ltd. He does not take part in the Motion but conducts a watching brief for the Hearing and requests to be on the Board's mailing list. The Region seeks a Board Order fixing the first Phase to be on the land budget. The Region's Motion and supporting affidavit were properly served. Further Municipal documentation was filed during the hearing of the Motion. The Motion is opposed by the Counsel Howe group of clients, set out above, who prefer policies affecting their lands relating to Protected Countryside, Regional Recharge Area and Environmentally Sensitive Landscape designations, together with Agricultural Areas, Natural Heritage Resources and Water Resources, be heard first. The Howe position set out in responding materials and submissions, is that their lumping of policies into what they call "Growth Constraint" issues can be heard more succinctly than the Region's first phase, called by Howe "Growth Needs" issues, including the land budget and alternative need analysis, urban area expansion to accommodate growth, density and intensification targets and population forecasts and allocations to area municipalities. The Howe group then lump the "where" of any urban boundary expansion implementation issues to area municipalities and the Countryside Line (possible future expansion) into a third phase it calls "Growth Management". Left in separate phases are aggregate issues and site specific issues.

There is no dispute on phases 4 and 5. The Township of Woolwich ("Woolwich") has filed a Response to the Region's Motion in Exhibit 6 supporting the Regions Phase 1, but is asking for a separate and earlier phased hearing. The Region does not object in principle but suggests the need to consider with aggregate issues, related water and environmental issues. Woolwich is not present and an actual disposition should involve that Municipality (response filed). The Board directs the fixing of a date for aggregate issues with discussion on January 12, 2012, when the Board hears the Motion on Planning Horizon. Phase 5 on site specific issues should not be fixed until plenary policies of the ROP are first adjudicated.

The Region's Motion to hear the land budget and related issues first is supported by Mattamy, Madison Homes, and the Doherty group of Parties. They would like to see the land budget heard first because of its significance. Their positions would change in the land budget hearing to oppose the Region since all believe the Region's land budget is restrictive and not suitable to their ultimate aim of expansion of the urban boundary to include their properties. The Doherty group have the advantage of being within the Countryside Line for consideration of future expansion of the urban boundary. The environmental group, "Rare", supports the Region's Motion.

The Howe group opposition to the Region's Motion, is supported by the Bogusat group, 2163846 Ontario Inc., and William Gies. Ms Rogers made it clear however, that Mr. Gies does not formally oppose this Motion and would not appear on the land budget phase.

Other Counsel and Participants in the Appearance list above are present but take no position on the Motion. The Province is not present but Counsel Bacher reports on the proceeding to the Province as well as her clients in the Appearance list. No position is taken by Counsel Bacher on the Motion.

The Motion was heard over two days.

Finding and Reasons

It was estimated the total hearing could take up to 18 weeks for all phases. No one advocates the alternative to phasing – one hearing. There are some benefits to having adjudication results on portions of the ROP that then can be applied to what remains.

The Respondent opposition to the Region's Motion is related directly to the nature of the land policies including designation and overlay provisions of the ROP that they say have the effect of permitting no development on their properties. They reference the word "permanent," which is used repeatedly in policy language of the ROP applicable to their properties. When the policy language of Protected Countryside, the Environmentally Sensitive Landscape and Regional Recharge Areas are read together, the Respondents' interpretation is that they have no development rights.

Rather they argue the intent is to form a ROP greenbelt purposely in perpetuity. This the Respondents interpret as a form of permanent restriction to prevent growth rather than a form of growth management.

The Respondents prefer to make their case in a preferred phase 1 on such a form of policy planning in the ROP and indicate if they lose on their phase 1 they would withdraw from their phase 2 on the land budget and related issues. This, they advocate, is not just convenient but is a form of efficiency to manage the hearing expeditiously.

The Board is not persuaded by the well argued position of the Respondents. The land budget is the basis of the formation of the urban area where growth is preferred. The urban area resulting from land budget considerations is an issue with most of the 25 Appeals to ROP.

The following terms used in the GP

1. Policy 2.2 refers to Growth forecasting and the use of provincial population and employment forecasts (Schedule 3 of GP) to be used for planning and managing growth.
2. Policy 2.2.3.1 directs Intensification.
3. Policy 2.2.4 refers to Urban Growth Centres.
4. Designated Greenfield Areas are to have minimum density targets set out in Policy 2.2.7 of the GP.

are reflected in land budget considerations in a manner that makes the land budget analysis of where Provincial allotments of population and employment to the Region can be accommodated, with supply of units on land in the urban area, central to the Planning Function.

Urban boundary considerations are necessarily related to servicing and budget considerations so planning for the management of growth is holistic in nature.

Moreover the possible withdrawal of some Respondents to this Motion does not warrant that the land budget will not be litigated by other Appellants. Should the

Respondents succeed in their Phase 1, on their attack on the Regional Greenbelt, they would stay in for the fight on the land budget.

Regional considerations of lower tier conformity and delay affecting growth are informative but not determinative of the Motion. Lower tier conformity is a legal requirement similar to other Provincial planning initiatives. In this Region, approvals are being proceeded with notwithstanding this current litigation based upon a combination of the consideration of the new ROP not in effect, and the former ROP still in effect. The Board finds, however, the consideration of delay in additional growth approvals projected in built up areas and within the urban boundary more compelling. Such are, in part, dependent on the land budget considerations of the ROP.

Most determinative of the Motion and proper phasing is, however, the significance of a land budget in the Region's present conformity exercise (*Places to Grow Act 2005*) and section 3 of the *Planning Act*) with the GP. In addition to the terms referenced above in the GP, including the provincial allotments of population and employment, the term municipal comprehensive review in section 2.2.8 of the GP requires any settlement area expansion to include a demonstration of how opportunities to accommodate growth are not available through intensification and density targets. Land budget analysis is foremost a consideration with the adoption of the ROP but will continue with the life of the ROP including five year reviews under section 26 of the *Planning Act*.

The position of three developer groups, who support the Region's Motion for the land budget to be heard in the first phase was also of importance and persuasive. On this day when Board hearings normally involve a plethora of expert testimony, the statement against interest has a ring of veracity to it. The three separately represented developer groups Mattamy, Madison and the Doherty group who will all oppose the Region on the merits of the regional land budget analysis (preferring a larger urban expansion to include their properties) objectively support that litigated issue to be phase 1 as preferred by the Region. The Mattamy response includes an affidavit from a land economist stating that the planning horizon should be determined in the context of a hearing with the land budget and not on a separate motion. That Motion on the appropriate planning horizon is now scheduled for January 12, 2012. The Board

reserves on the planning horizon pending the hearing of the separate motion as agreed upon by the Parties.

Disposition

For the above reasons, the Region’s Motion to schedule a phase 1 on its land budget analysis and related issues is allowed. It is now about one year from the date of Ministerial modified approval of the ROP and two and one half years from initial adoption. It is important to move ahead with scheduling as discussed with the Parties. The Board reserves six weeks estimated to hear phase 1 on April 16, 2012. Regional Counsel is requested to draft the form of Procedural Order, previously distributed by the Board, for the first phase hearing on land budget and related population and employment distribution, reurbanization targets, designated Greenfield area density targets and the need for urban expansion based upon forecasted growth, with consideration of issues in his possession. That document is to be circulated to other Parties in advance of the January 12, 2012, Motion date respecting the planning horizon and be available for consideration on January 12 and 13, 2012. The Respondent issues on the “Greenbelt” policies will be the second phase. Phase 2 will follow phase 1 with an interval of approximately two months to permit a further pre-hearing to conclude a further procedural order and disclosure. Further phases on site specific implementation and aggregate policies will follow. As referred to above the timing of the aggregates phase may be raised on January 12-13, 2012.

This Panel will continue with the Motion on the planning horizon scheduled for January 12 and 13, 2012, and related procedural matters but is not seized of forthcoming hearing events.

So Orders the Board.

“N. C. Jackson”

N. C. JACKSON
VICE-CHAIR