



INFORMATION REPORT

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	August 4, 2021
SUBJECT/REPORT NO:	Update regarding Ontario Land Tribunal (formerly Local Planning Appeal Tribunal) appeals of Rural and Urban Hamilton Official Plans – Urban Boundary Expansion (LS16029(e)/PED16248(e))
WARD(S) AFFECTED:	City Wide
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COUNCIL DIRECTION

N/A

INFORMATION

The purpose of this Report is to provide an update to Council regarding the status of the appeals of the Urban Hamilton Official Plan and Rural Hamilton Official Plan in respect of urban boundary expansion.

Fifty-two appeals of the UHOP were filed in and around April, 2011. Pursuant to Ontario Land Tribunal (formerly Local Planning Appeal Tribunal) (“OLT”) pre-hearing

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conferences and orders/decisions resulting from them, issues in the UHOP appeals were grouped. This report provides information in respect of the UHOP Group 9 appeals and related appeals in the RHOP, which are appeals relating to the expansion of the Urban Boundary.

At issue in the UHOP Group 9 appeals and related RHOP appeals is the urban boundary. None of the appeals filed sought an urban boundary expansion other than the appeal filed by 456941 Ontario Ltd., 1263339 Ontario Ltd. and Lea Silvestri (known collectively as “Silvestri Investments”). Attached as Appendix “A” to Report LS16029(e)/PED16248(e) is a map identifying the appellants/parties and their landholdings.

Concurrent with the UHOP appeals being at the OLT, a Municipal Comprehensive Review (“MCR”) was commenced in late 2016 as part of the Official Plan review to bring the City’s Official Plans into conformity with the updated Provincial plans and policies, and as a requirement for any urban boundary expansion. Additionally, at the same time, the City was undertaking an update to GRIDS (which planned to the year 2031), known as GRIDS2, which will plan for the next 20 years of growth between 2031 and 2051. Many of the studies that are required as part of the MCR are also part of a growth strategy. As such, and in order to combine the public and stakeholder consultation into one process and efficiently use staff time and resources, the MCR is being completed concurrently with GRIDS2.

The studies being completed as part of the GRIDS2/MCR process include a Residential Intensification Update; Designated Greenfield Area Analysis; Employment Update and Employment Land Review; Agricultural System Refinements; as well as a Land Needs Assessment. On December 14, 2020 the draft 2020 Land Needs Assessment (“2020 LNA”) to accommodate the 2051 forecast was presented to the City’s General Issues Committee (“GIC”) and then to Council on December 16, 2020.

The 2020 LNA implements the 2019 Growth Plan (as amended) which uses different inputs compared to the 2006 Growth Plan. The 2019 Growth Plan minimums require 50% intensification target and 50 persons and jobs per hectare (pjh) for Community Area land only. The forecasts have been extended to 2051.

The 2020 LNA modelled four scenarios for Community Area land need based on different intensification targets and density assumptions for new growth areas,

measured in persons and jobs per hectare (pjh). The four modelled scenarios and resulting Community Area land need are:

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- Current Trends (intensification: 40% 2021 – 2051; density: 53 pjh) - 3,440 ha
- Growth Plan Minimum (intensification: 50% 2021 – 2051; density: 65 pjh) - 2,200 ha
- Increased Targets (intensification: 50% 2021 – 2031, 55% 2031 – 2041, 60% 2041 – 2051; density: 75 pjh) - 1,640 ha
- Ambitious Density (intensification: 50% 2021 – 2031, 60% 2031 – 2041, 70% 2041 – 2051; density: 77 pjh) - 1,340 ha

Staff report PED17010(h) identified that due to land supply constraints (the City has supply of approximately 1,600 gross developable ha of available Community Area whitebelt lands), two scenarios can be considered for adoption going forward: Increased Targets or Ambitious Density. The 2020 LNA identified that there is no requirement for additional Employment Area lands to 2051.

Neither the RHOP or UHOP added any lands to an area of settlement but identified the Elfrida area as an area for future urban boundary expansion. In May 2017, the Province introduced the Growth Plan 2017, along with amendments to Transition Regulation O. Reg. 311/06.

On May 2, 2018 an OLT prehearing was held. At the prehearing the issue of the interpretation of the Transition Regulation, specifically which version of the Growth Plan - 2006 or 2017 - would apply to the disposition of the UHOP/RHOP appeals, was raised. The City advised the OLT of its interpretation of the Transition Regulation, namely that the Growth Plan 2017 (now 2019) should apply to the disposition of the UHOP/RHOP appeals. The Elfrida Landowners agreed with the City's interpretation; whereas the other subject appellant groups disagreed.

A motion by the City, seeking approval by the OLT that the Growth Plan 2017 (now 2019) applied to the disposition of the UHOP and RHOP appeals was heard on October 24-25, 2018. The OLT issued its' decision in respect of Motion on January 17, 2020. In its' decision the OLT found that the RHOP and the UHOP would add an amount of land (the Elfrida lands) to an area of settlement and ordered that applicable Growth Plan for the remaining RHOP/UHOP proceedings is the 2006 Growth Plan as it read on June 16, 2006.

While awaiting the OLT's decision on the Motion (October 2018 to January 2020), staff continued the MCR process, consistent with their interpretation that its results, particularly an updated land budget, would be required to apply the Growth Plan 2017 (now 2019) to the disposition of the UHOP/RHOP appeals; however, the forecasts and targets in the Growth Plan, 2006 are significantly different than in the 2017 (now 2019) version, as amended.

In light of the OLT's decision regarding the Transition Regulation coupled with the new MCR process, City Council on December 16, 2020 (LS16029(b)/PED16248(b)) authorized staff to withdraw the City's UHOP appeal with respect to MMAH's deletion of the future urban boundary expansion area for Elfrida, and to participate in mediation (with private mediation being acceptable) in order to attempt to settle the UHOP/RHOP appeals. On December 17, 2020 the City withdrew their appeal and, on the same date, sent correspondence to all parties seeking confirmation if they were willing to participate in mediation. Staff were also instructed to encourage the appellants with urban boundary issues to negotiate amongst themselves and present a settlement to the City for consideration.

On February 2, 2021 the "City of Hamilton Land Needs Assessment to 2031: Preliminary Results related to the 2006 Growth Plan" was finalized. This report was a result of OLT's decision that the amount of community land need from 2021 to 2031 is to be based on the Growth Plan, 2006. As such, the City retained a consulting firm to prepare a Land Needs Assessment based on that direction. The LNA based on the 2006 Growth Plan identified a land need of 500 ha to 2031. If the UHOP appeals proceed to a hearing the OLT may order that an urban boundary expansion occur based on the policies in the 2006 Growth Plan and the amount of community land needed from 2021 to 2031 and this order would be independent of any result of the MCR process that is currently taking place.

Further to City Council's approval (LS16029(b)/PED16248(b)) and at the request of the landowners (TRE, TRW, Elfrida, Silvestri) an independent mediator was hired by all parties. The Ministry of Municipal Affairs and Housing ("MMAH") also agreed to participate in the mediation. The City participated in three days of mediation on March 30, April 1 and May 14. In between April 1 and May 14, the landowners participated in a mediation session held amongst themselves. Mediation has not yet resulted in a settlement which staff can recommend to Council.

A CMC case management conference before the OLT was held on June 22. At the CMC City Legal staff provided the OLT with a status update regarding the mediation efforts and requested the OLT to schedule a further CMC in December 2021, after Council adopts a land density scenario to be used for 2021 MCR. TRE and Silvestri opposed the City's request and instead requested a hearing date to be set in the spring of 2022. City staff, the MMAH and various other landowners opposed the request to set a hearing date. TRE's and Silvestri's request for a hearing date was denied and a further CMC was scheduled for November 2021.

APPENDICES AND SCHEDULES ATTACHED

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Appendix “A” to Report LS16029(e)/PED16248(e) - Map of Appellant/Party Landholdings