

1. TAGGART SETTLEMENT OF APPEAL TO OFFICIAL PLAN AMENDMENT 150 – *IN CAMERA* – LITIGATION OR POTENTIAL LITIGATION, AFFECTING THE CITY, INCLUDING MATTERS BEFORE ADMINISTRATIVE TRIBUNALS; RECEIPT OF ADVICE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE, INCLUDING COMMUNICATIONS NECESSARY FOR THAT PURPOSE. REPORTING OUT DATE: UPON RESOLUTION OF THE MATTER

RÈGLEMENT DE L'APPEL DE TAGGART À LA MODIFICATION AU PLAN OFFICIEL 150 – À *HUIS CLOS* – LES LITIGES ACTUELS OU ÉVENTUELS AYANT UNE INCIDENCE SUR LA VILLE, Y COMPRIS LES QUESTIONS EN LITIGE DEVANT LES TRIBUNAUX ADMINISTRATIFS; LES CONSEILS QUI SONT PROTÉGÉS PAR LE PRIVILÈGE DU SECRET PROFESSIONNEL DE L'AVOCAT, Y COMPRIS LES COMMUNICATIONS NÉCESSAIRES À CETTE FIN.

DATE DE COMPTE RENDU : DÈS LE RÈGLEMENT DE LA QUESTION

COMMITTEE RECOMMENDATION

That Council endorse the settlement attached as Document 1 and instruct Legal Services to seek its implementation at the Ontario Municipal Board.

RECOMMANDATION DU COMITÉ

Que le Conseil approuve le règlement annexé comme document 1 et charge les Services juridiques d'assurer sa mise en œuvre à la Commission des affaires municipales de l'Ontario.

DOCUMENTATION / DOCUMENTATION

1. City Clerk and Solicitor's Report, dated 20 June 2017 (ACS2017-CCS-LEG-001).

Rapport du Greffier municipal et avocat général, daté le 20 juin 2017 (ACS2017-CCS-LEG-0001).

2. Extract of draft Confidential Minutes, Planning Committee, 27 June 2017

Extrait de l'ébauche du procès-verbal confidentiel du Comité de l'urbanisme, le 27 juin 2017.

**Report to
Rapport au:**

**Planning Committee / Comité de l'urbanisme
June 27, 2017 / 27 juin 2017**

**and Council / et au Conseil
July 12, 2017 / 12 juillet 2017**

**Submitted on June 20, 2017
Soumis le 20 juin 2017**

**Submitted by
Soumis par:
M. Rick O'Connor,
City Clerk and Solicitor / Greffier Municipal et avocat général
Office of the City Clerk and Solicitor / Bureau du greffier municipal et de l'avocat
général**

**Contact Person
Personne ressource:
Tim Marc, Senior Legal Counsel-Planning, Development and Real Estate /
Conseiller juridique principal-planification, développement et immobilier
Bruce Finlay, Planner / Urbaniste, Community Planning / Planification
Communautaire
(613) 580-2424, 21444, Timothy.Marc@ottawa.ca
(613) 580-2424, 21850, Bruce.Finlay@ottawa.ca**

Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2017-CCS-LEG-0001

SUBJECT: Taggart Settlement of Appeal to Official Plan Amendment 150 – *In Camera* – Litigation or Potential Litigation, Affecting the City, Including Matters Before Administrative Tribunals; Receipt of Advice Subject to Solicitor-Client Privilege, Including Communications

Necessary for that Purpose. Reporting Out Date: Upon Resolution of the Matter

OBJET: Règlement de l'appel de Taggart à la modification au Plan Officiel 150 – à Huis Clos – les litiges actuels ou éventuels ayant une incidence sur la Ville, y compris les questions en litige devant les tribunaux administratifs; les conseils qui sont protégés par le privilège du secret professionnel de l'avocat, y compris les communications nécessaires à cette fin. Date de compte rendu : dès le Règlement de la question.

REPORT RECOMMENDATION

That Planning Committee refer the following recommendation to Council:

- **That Council endorse the settlement attached as Document 1 and instruct Legal Services to seek its implementation at the Ontario Municipal Board.**

RECOMMANDATION DU RAPPORT

Que le Comité de l'urbanisme soumette la recommandation suivante au Conseil municipal :

- **Que le Conseil approuve le règlement annexé comme document 1 et charge les Services juridiques d'assurer sa mise en œuvre à la Commission des affaires municipales de l'Ontario.**

BACKGROUND

Official Plan Amendment (OPA) 150, a comprehensive official plan amendment, was adopted by City Council on December 26, 2013. Following the Minister's decision approving the amendment on April 30, 2014, the City received 32 appeals to the amendment, the following of which were appeals to the entirety of the amendment. These appeals were by:

- a) Taggart Group of Companies
- b) Walton Development and Management
- c) Trinity Rideau GP Inc., FDC Rideau GP Inc, Chapel St Ltd Partnership
- d) 2024644 Ontario Ltd

(This appeal was by the owner to 900 Albert Street, albeit in respect of the entire amendment. Since the time of the filing of the appeal this property has been acquired by Trinity and the appeal has therefore been assumed by Trinity with the appeal in c) above being withdrawn).

e) Phoenix Properties Inc.

As a result of an interim decision on a motion before the Ontario Municipal Board concerning OPA 150, as well as OPA's 140 and 141, the City was directed to complete a review of employment lands and Land Evaluation and Area Review (LEAR) and the Board further encouraged the City to consider adjusting the Planning Horizon for OPA 150 from 2031 to 2036.

The above matters were completed by staff and brought before Planning Committee and Council in November and December 2016 as an official plan amendment that ultimately became OPA 180. In its consideration of OPA 180, Planning Committee recommended and ultimately Council approved on December 14, 2016 the following recommendation:

[T]hat City Staff be directed to engage in settlement discussions with those appellants who have appealed OPA 150 in its entirety, and any related amendments and that those resulting recommendations and comments be reported to Planning Committee, such that City Council can consider any recommendations in Q1 2017.

DISCUSSION

In accordance with the above recommendation, staff have had discussions with each of the four appellants. An understanding has not been reached with Phoenix, Trinity nor Walton. The discussions with Taggart however have lead to an agreement, at the staff level, with Taggart for certain modifications to be made to OPA 150 in return for Taggart, subject to certain matters discussed further below, withdrawing the balance of their appeal to OPA's 150, as well as OPA's 140 and 141 and not appealing OPA 180.

The proposed settlement document is attached as Document 1 to this report.

Planning Discussion – Proposed Modifications

The modifications, requested by the Taggart Group of Companies, to the City's Official Plan and Official Plan Amendment 150 and attached as Document 1 to Document 1, are agreed to by Staff. These changes apply exclusively to Section 2 – Strategic

Directions which provides the background principles by which the City will manage growth and review the Official Plan. The specific changes are as follows:

1. Two minor changes, on pages 2 and 3 of Document 1, to Section 2.1- Patterns of Growth. This section provides a broad overview of how the plan will manage growth and change.

The modifications proposed by Taggart amend this section by:

- a. modifying one of the bulleted strategies under the sub-heading “Managing Growth” by deleting and adding text as follows:
 - *“Growth in the **existing designated urban areas** ~~Urban area will be directed to areas where it can be accommodated in compact and mixed use development, served with quality transit, walking and cycling facilities.~~”*
- b. modifying one of the bulleted strategies under the sub-heading “Building Liveable Communities” by adding new text as follows:
 - *“Agricultural lands, **designated as Agricultural Resource Areas**, will be preserved to ensure the economic vitality of Ottawa’s farm industry, and access to locally produced food and farm products as the basis on which food security can be promoted in the community.”*

The added and removed text, in the two policies, are considered minor changes. The new wording does not change their overall intent of these section of the Plan, they add clarity and they remain consistent with the Provincial Policy Statement. As a consequence, staff has no objection the changes and recommends that Council support these modifications by the Board.

2. A change to the preamble of Section 2.2 - Managing Growth. This preamble introduces the urban and rural structure of the City and the approach to managing the growth in these distinct areas. The modifications proposed by Taggart, on page 4 of Document 1 amend the preamble to this section by adding and removing text as follows:

“Growth will be distributed throughout the urban area to strengthen the city’s liveable communities through:

- *Intensification and infill, **and***

- ***Where it is demonstrated that growth cannot be accommodated through intensification and infill, growth will be accommodated on vacant land by building new communities on vacant land, and/or additions to complete existing communities.***

The added and removed text in the Preamble to Section 2.2 is also considered a minor change. The new wording expands the text to reflect what is stated in more detail later in the policies of this Section of the Plan. As a consequence, staff has no objection to this change to the preamble and recommends that Council support this modification by the Board.

3. Changes to the policies of Section 2.2.1 – Urban and Village Boundaries. The modifications proposed by Taggart amend the Preamble to the section and policies 2 – 4 to 6 as follows:

- a. The Preamble is modified, see page 5 of Document 1, to reinstate the introductory sentence that was to be removed by OPA 150. The reinstated sentence is:

“The Majority of future development will occur within the urban boundary and within the 26 villages designated in this plan.”

This introduction was substituted by OPA 150 for a more direct reference to the provisions of the Provincial Policy Statement. This re-instated text summarizes more clearly the City’s intended direction and clarifies the intent of the following newer sentences for those not familiar with the language of the Provincial Policy. As a consequence, staff has no objection to reinstatement of this introductory sentence.

- b. Policy 2, see page 6 of Document 1, is proposed to be modified as follows:

“Sufficient land will be provided in the urban area to meet the City’s projected requirement for housing, employment and other purposes, which is based upon a planning period of 20 years in accordance with the Provincial Policy Statement identified in Figure 2.2

This change is supported as the Provincial Policy Statement provides that municipalities can plan for a period up to 20 years at the time of a comprehensive review and for longer periods for infrastructure and public service facilities. The Province has also approved City Official Plans with planning periods slightly

shorter and longer than twenty years, when appropriate. As a consequence, staff has no objection to this change and recommends that Council support this modification by the Board.

- c. Policy 3 and 3a), see page 6 Document 1, are to be modified as follows:

“The City will undertake a comprehensive review of the Official Plan and the need to designate additional urban land, in accordance with the Planning Act and the Provincial Policy Statement. As part of that review, the City will assess and update the planning period of the plan and update the projections in Figure 2.2. to meet the City’s requirements will be assessed through a comprehensive review. This assessment-comprehensive review will consider such matters as:

- a. The forecasted demand for addition land to accommodate the forecasted housing and employment in Figure 2.2”***

This change is supported by staff as it simply references back to Provincial Policy Statement requirements for the update of an Official Plan. As a consequence, staff has no objection to this change and recommends that Council support this modification by the Board. Policy 3a is modified to remove a redundant word.

- d. Policy 4 and part of policy 6 are effectively combined and reworded to create a new Policy 4, see pages 6 and 7 Document 1, as follows:

“4. If, as a result of the land supply assessment undertaken through the comprehensive review, City Council amends this Plan to designate additional urban land, such an addition will be sufficiently large to create a complete new community and/or comprise an addition to an existing community to allow for its completion. The comprehensive review will compare and evaluate urban area expansions in consultation with the community, landowners and other interested parties. The evaluation shall comprehensively apply the following criteria to determine the location of a complete new community and/or an addition to an existing community to allow for its completion:

- a. Avoid lands designated 'Agricultural Resource Area' unless there is no reasonable alternative on lands which avoid 'Agricultural Resource Area' or the lands contain primarily***

poorer quality agricultural soils within such 'Agricultural Resource Areas';

- b. Avoid lands designated 'Mineral Resource Area' unless there is reasonable assurance that the resource would be depleted prior to the lands being needed to satisfy the forecast land requirements;*
- c. Avoid 'natural heritage system feature(s)', unless the features are isolated or poorly connected to the larger 'natural heritage system' or, the 'natural heritage system feature(s)' will be maintained if the lands are developed for urban uses. The land containing the 'natural heritage system feature' will not be considered as contributing to developable area until an Environmental Impact Statement and Integrated Environmental Review are completed and identify what land may be developed;*
- d. Address the availability of existing servicing infrastructure capacity to support the development of the urban area expansion, or whether such servicing infrastructure capacity can reasonably be made available within the planning horizon;*
- e. Address the availability of existing transportation and transit infrastructure capacity to support the development of the urban area expansion, or whether such transportation and transit infrastructure is planned or can reasonably be made available within the planning horizon:*
- f. Give priority to land with proximity and access to a Provincial Highway where an urban area expansion is intended to include employment lands;*
- g. Assess the relative scale of the costs associated with new, or significant upgrades to existing, infrastructure such as transportation, transit, water, stormwater, wastewater, public utilities and municipal services;*
- h. Avoid lands containing, or in proximity to, major facilities as defined in the Provincial Policy Statement, and consider whether future sensitive lands uses within an urban expansion area*

would be subject to potential adverse effects from odour, noise and other contaminants in order to minimize risk to public health and safety and ensure the long-term viability of the major facility; and,

- i. Consider any other effect the designation would have on the City's ability to achieve the policies in this Plan.*
- e. The balance of Policy 6, see page 8 Document, is changed as follows:

*"6. The City will guide the development of **any** additional **designated** urban land through **a secondary plan or a** community design plan (or an amendment to an existing community design plan) and a subwatershed plan or environmental management plan".*

The changes to policies 4 and part of 6 reword and simplify the existing policies, without changing their purpose and impact. Policies combining two or more subjects or issues have been separated into stand-alone topics, making them clearer to interpret and terminology has been updated to use terms defined in the 2014 Provincial Policy Statement. The residual Policy 6 is modified to recognize that Secondary Plans may also guide the development of new urban lands.

The final result is a group of policies that are clearer to read yet still support the City's original objectives in the assessment of land need and site selection for future urban expansion lands. As a consequence, staff has no objection to these change and recommends that Council support these modifications by the Board.

- f. Policy 5, see page 8 Document 1, is changed to remove the reference to an "assessment of land supply" as follows:

"The City will consider applications to amend this Plan to designate additional urban land only as part of ~~an assessment of the urban land supply as part of~~ a comprehensive review. Applications received between comprehensive reviews will be considered premature unless City Council directs that the comprehensive review be initiated."

The assessment of land supply is an integral part of a comprehensive review and therefore the removed text is redundant. For this reason, the Taggart's suggested amendment to policy 5 is supported by staff.

For the reasons stated above Staff recommend Committee and Councils endorsement of the changes to the Official Plan and OPA 150, as proposed by the Taggart Group of Companies, and request that the Ontario Municipal Board consolidate these changes in its approval of OPA 150.

RURAL IMPLICATIONS

The proposed changes reinforce the current growth strategy of the Official Plan and have no additional impact on the rural area.

CONSULTATION

As this is a proposed settlement of an appeal before the Ontario Municipal Board, no consultation has been conducted.

COMMENTS BY THE WARD COUNCILLORS

City-wide report – not applicable.

LEGAL IMPLICATIONS

Legal Services has requested a pre-hearing date in late September/early October. It is hoped that such timetable will allow for a decision on OPA 180 to have been made by the Ministry of Municipal Affairs, the appeal period to have run and the appeals to have been forwarded to the Ontario Municipal Board. In the event that Council endorses the proposed modifications, Legal Services would seek to bring forward a motion to have them approved by the Ontario Municipal Board.

Legal Services has also requested a further hearing date later in the year in order for the remaining hearings to be scheduled together with the determination of the appropriate procedural orders for such hearings.

As stated above in this report, Planning staff have provided their opinion that they can support the modifications outlined in Document 1. As such, it is Legal Services opinion that achieving a resolution of an appeal of the entirety of OPA 150, albeit with only one of the appellants, would serve to advance the planning policy interests of the City.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications association with the recommendation in this report.

FINANCIAL IMPLICATIONS

There are no direct financial implications.

ACCESSIBILITY IMPACTS

There are no accessibility implications associated with this report.

TERM OF COUNCIL PRIORITY

This project addresses the following Term of Council Priority:

ES1 - Support an Environmentally Sustainable Ottawa

SUPPORTING DOCUMENTATION

Document 1 – Appendix A to the Minutes of Settlement

DISPOSITION

Legal Services will seek to advance at the Ontario Municipal Board the position of City flowing from Council's disposition of this report.