

2. **PLANNING - MEDIATION**  
**COMPREHENSIVE REGIONAL OFFICIAL PLAN**

**COMMITTEE RECOMMENDATION**

**That Council approve 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.**

**DOCUMENTATION:**

1. Deputy Regional Solicitor's and Planning and Development Approvals Commissioner's joint report dated 12 Jan 98 is immediately attached.
2. Extract of Draft Minute, 10 Feb 98, immediately follows the report and includes a record of the vote.

REGIONAL MUNICIPALITY OF OTTAWA CARLETON  
 MUNICIPALITÉ RÉGIONALE D'OTTAWA CARLETON

REPORT  
RAPPORT

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Our File/N/Réf. Your File/V/Réf.	P.1.3.1.7
DATE	12 January 1998
TO/DEST.	Co-ordinator, Planning and Environment Committee
FROM/EXP.	Deputy Regional Solicitor Planning and Development Approvals Commissioner
SUBJECT/OBJET	<b>PLANNING - MEDIATION      COMPREHENSIVE REGIONAL OFFICIAL PLAN</b>

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### **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*

Extract of Draft Minute  
Planning and Environment Committee  
10 February 98

PLANNING - MEDIATION  
COMPREHENSIVE REGIONAL OFFICIAL PLAN

- Deputy Regional Solicitor's and Planning and Development Approvals  
Commissioner's joint report dated 12 Jan 98

Mr. Tim Marc, Solicitor, Regional Legal Department, said a mediation process would be worthwhile for the Regional Official Plan (ROP), and that one had worked extremely well with the City of Ottawa's Official Plan of 1991. He noted at this point, staff were asking for approval of mediation in principle; funds would still have to be allocated by the Budget. Pending Budget approval, staff would advertize, call for proposals for mediators, and commence the mediation process, even prior to the pre-hearing on 5-8 of May 98.

Councillor van den Ham asked if "mediation" meant the services of a mediator or a facilitator would have to be engaged every time, or whether the process could take place more informally, with an applicant meeting with the Commissioner or Planning staff in an attempt to resolve disputes.

Mr. Marc suggested one or the other, or a combination of the two could be used, depending on the issue.

Councillor Legendre noted mediation was one option, and offered community-based conflict resolution as another.

Ms. Sweet said a number of staff had taken conflict resolution courses, and were familiar with the principles and their uses. She said these were used on a continuing basis, noting the Region had undergone a large review process resulting in only 32 appeals to date, partly because staff were able to use conflict mediation and resolution. She cited the example of the wetlands issue, which involved a great deal of discussion between staff and the public.

Councillor Legendre then brought to Committee's attention the existence of the Canadian Institute for Conflict Resolution, a world-renowned organization housed on the St. Paul University campus. He said the Institute offered courses, and recommended that both Councillors and staff could benefit from their use, noting a high percentage of the Region's police officers had done so.

Councillor Munter asked if the \$57,000.00 recommended for the mediation process could not be used to hire, train and retain someone as a permanent in-house resource should a future need arise.

Mr. Marc did not anticipate it would be necessary to spend this money annually. He foresaw the possibility that more than one person might be required to mediate the ROP, and was not sure one person would have the expertise required. Mr. Marc said staff's approach allowed for the retention of the services of more than one person.

Extract of Draft Minute  
Planning and Environment Committee  
10 February 98

The Committee Chair pointed out that, as the Region was one party to the mediation, and those appealing the ROP to the OMB were another, the mediator would have to be at arm's length from both, and could not be on staff. The Chair also said he wondered how, with so many bosses with different voices, the person negotiating on behalf of the Region would feel they had the authority to agree to changes or modifications that might become unraveled when the report came back to Committee and Council.

Mr. Marc acknowledged this concern. He noted, however, that the process had worked for the City of Ottawa, and was hopeful it would be successful for the Region as well.

Committee Chair Hunter believed it was important to emphasize to Committee and Council that the Region would be trusting the person carrying out the mediation to look after the Region's best interests, and would be trusting in their abilities to do so. He believed the persons and parties in the mediation had to have ownership in the solution.

There being no further discussion, Committee considered the staff recommendation.

**That the Planning and Environment Committee recommend to Regional 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.**

CARRIED