

*"Inspiring a Healthy Environment"*

September 12, 2012

Chair and Members, Planning and Environment Committee  
The Corporation of the City of London  
P.O. Box 5035  
London, Ontario N6A 4L9

**Sent Via E-Mail**

**Re: Planning & Environment Committee Recommendation Regarding Residential Intensification in Flood Plains in the City of London**

**Background**

It is our understanding that the City of London Planning and Environment Committee (PEC) passed the following recommendation at their July 16, 2012 meeting :

14. *"The Civic Administration be requested to undertake a review of residential policies in floodplains with the Upper Thames River Conservation Authority"*

An e-mail was sent by Planning Staff on July 17, 2012 requesting comments from the UTRCA on residential intensification in flood plain areas. The UTRCA provided an e-mail response on July 18, 2012 which was based mainly on the context of a recent Planning Act application located in the West London Flood Plain area. The UTRCA has now been requested to attend a PEC meeting to speak to the issue of residential intensification in flood plain areas. This letter is provided as background information to assist with that discussion. This letter includes a discussion on residential intensification in flood plain areas in general and provides some specific discussion on the West London neighbourhood.

**UTRCA Role**

The UTRCA reviews land use planning applications and provides policy and technical advice to watershed municipalities to assist them with fulfilling their responsibility to make decisions that are "consistent with" the Provincial Policy Statement (PPS, 2005). In regard to natural hazards such as lands within the Regulatory Flood Plain and lands affected by the 100 Year Erosion Limit, the UTRCA is the delegated authority and provides policy and technical comments on behalf of the Minister of Natural Resources. UTRCA staff comments follow the Board of Directors approved Environmental Planning Policy Manual (June 2006). This manual establishes a policy and technical framework for UTRCA staff that is consistent with the PPS (2005) but also recognizes the unique characteristics of the Upper Thames watershed management area.

In addition to providing land use planning support to our watershed municipalities, the UTRCA is also responsible for administering Ontario Regulation 157/06 made pursuant to Section 28 of the *Conservation Authorities Act*. This regulation requires that landowners obtain written approval from the UTRCA prior to undertaking any site alteration or development within the Regulation Limit. Regulated activities include filling, grading, construction, alteration to a watercourse and/or interference with a wetland. The Regulation Limit includes lands within the Regulatory Flood Plain and the 100 Year Erosion Limit, wetlands and an area of interference around wetlands and all watercourses. In terms of administration of the *Building Code Act* by the City, regulations made under the *Conservation Authorities Act* are considered to be “other applicable law” and therefore, if a proponent requires a Building Permit, the permit from the Conservation Authority must be obtained prior to issuance of the Building Permit.

### **Development in Flood Plain Areas**

We are not certain of the exact interest that the City has in the topic of residential intensification in flood plain areas. Rather than providing an exhaustive analysis of the PPS and UTRCA policies, we will introduce the concepts and provide London examples that can serve as a framework for further discussion.

Section 3.0 of the PPS (2005) sets out the Province’s interests with respect to protecting public health and safety. In general, the PPS indicates that development should be directed to areas outside of flood plains and some clarifications and exceptions are noted. The following policy concepts and terms are noted:

#### Regulatory Flood Standard

The Regulatory Flood Standard is established on a watershed basis and the standard is approved by the Minister of Natural Resources. The minimum Regulatory Flood Standard for Ontario is the 1:100 Year Flood (meaning a flood that would be expected to occur once in one hundred years on average) and the recommended local watershed standard is a flood with a frequency of approximately 1:250 years. The approved Regulatory Flood Standard for the Upper Thames watershed is the Regulatory Flood and this standard is derived from the observed 1937 Thames River Flood event which was approximately a 1:250 year flood.

#### Floodway

The portion of the flood plain that is characterized by deeper and/or faster moving water. This is the more dangerous part of the flood plain. Development is generally prohibited in floodway areas.

#### Flood Fringe

The portion of the flood plain that has shallower and/or slower moving water. The flood fringe tends to be at the outer edges of the flood plain and given the shallower and/or slower moving water, there is less risk to people and property.

#### Two Zone Flood Plain Concept

The policy approach where the flood plain is divided into a floodway area and a flood fringe area. Development is generally prohibited in the floodway and development in the flood fringe portion may be permitted provided that it can be flood proofed and safely accessed during times of flooding.

### One Zone Flood Plain Concept

The policy approach where the entire area within the Regulatory Flood Plain is considered to be floodway and development is generally prohibited.

### Flood Plain Special Policy Area

In cases where there is an existing viable neighbourhood located in a floodway area, a municipality can request that the area be identified as a Flood Plain Special Policy Area (SPA). The policies for a Flood Plain SPA could allow for limited development that does not meet the minimum provincial standard. A Flood Plain SPA must be approved by the Minister of Natural Resources and the Minister of Municipal Affairs. The Land Use and Development Policies in a Flood Plain SPA are designed to allow limited development which will allow the existing community to remain viable while still limiting risk. Some examples of Flood Plain SPA policy directives include:

- Encouraging conversion of existing residential uses to commercial uses as this reduces risk and also limits social disruption during times of flooding;
- Allowing reconstruction or renovation of structures that might otherwise be prohibited due to being at risk of severe flooding or having limited or no access during times of flooding. Other flood mitigation measures such as prohibiting basements and requiring that flood proofing be maximized to the extent feasible are included;
- Intensification of use is prohibited; and
- New day care, hospital, nursing home and school uses are not permitted.

The Coves neighbourhood in London is an example of a Flood Plain SPA that has been approved. These policies have been incorporated into the City's Official Plan in Section 15.6.4.1. The West London Neighbourhood has been identified as a Candidate SPA in the City of London's Official Plan.

### **The West London Flood Plain Area Example**

The West London area is protected from the Thames River by the West London Dyke. The dyke protects the neighbourhood located behind it to the 100 Year flood elevation. However, if the dyke were to be overtopped during a flood event, or if it failed during a flood event, large areas of this neighbourhood would be inundated with up to 3 - 4 metres of flood water. The UTRCA manages upstream flows during flood events using a system of flood control structures and works with the City of London on the management of the West London Dyke. Even with these efforts, the area is still at risk and for the purposes of flood plain management and for the interpretation of Provincial and UTRCA Flood Plain Policy, the land in the West London Flood Plain is considered to be floodway. As such, any proposed development or any intensification of use would not be consistent with the PPS (2005) and UTRCA policies that guide land use planning commenting and administration of O. Reg. 157/06 made pursuant to the Conservation Authorities Act.

The West London neighbourhood is an existing viable community that is in the floodway and as such, it could be deemed as a Flood Plain Special Policy Area (SPA). Application for SPA status must be made by the local municipality and the proposed designation and guiding policies must be supported by the local Conservation Authority and ultimately approved by the Minister of Natural Resources (MNR) and the

Minister of Municipal Affairs and Housing (MMAH).

The UTRCA and the City of London have discussed SPA designation for the West London neighbourhood in the past. As previously noted, the West London Neighbourhood has been identified as a "Candidate SPA" in the City of London Official Plan and the City developed interim policies which were endorsed by the UTRCA. The application package was submitted to the MNR for Provincial approval but we understand that no action has been taken. The UTRCA is encouraging the City to proceed with re-activating the application in order to obtain the formal approval of the Flood Plain SPA for West London.

In the absence of an approved Flood Plain SPA for West London, the UTRCA, in cooperation with the City of London, has followed Interim Policies for Candidate SPAs. These policies were originally created in 1991 for the four Candidate SPA areas identified in the Official Plan at the time. The policies were developed in anticipation of the pending Flood Plain SPA application process and allowed some flexibility. It was anticipated that these policies would be implemented as the result of a Flood Plain SPA review. The Interim Policies are implemented by the UTRCA through the review of Planning Act Applications and the review of permit applications made under the Conservation Authorities Act (O. Reg 157/06). It is noted that without these Interim Policies, all new development in the floodway would be prohibited in accordance with Provincial Policy. The UTRCA has expressed concern over the extended period of time which these Interim Policies have been applied. It is important that policies to allow development that does not meet the minimum Provincial Standard receive the approval of the MNR and MMAH and UTRCA is recommending that the Flood Plain SPA for West London be pursued by the City.

As indicated, there were a total of four Candidate SPAs included in the City's 1989 Official Plan. Flood Plain SPA status was explored for the Broughdale area, however, alternative means of protection were implemented and this area is no longer a Candidate SPA and a standard "two zone" flood plain approach is applied in this neighbourhood. As previously noted, the City was successful in obtaining Flood Plain SPA status for the Coves Area and the policies for this SPA are in the current City of London Official Plan. The SPA policies for the Coves are generally consistent with the Interim Policies and these policies can be consulted for an indication of the type of policy approach that is applied in a Flood Plain SPA. Lastly, the Ada Street neighbourhood was also identified as a Candidate SPA however no action has been taken on this area. Ada Street is a relatively small flood plain area that does not have the significant flood depth and access issues that West London has. It is recommended that a Flood Plain SPA study be undertaken for Ada Street eventually but at this point, West London is the priority for action.

### **Potential for Residential Intensification in the West London Flood Plain SPA Area**

City staff inquired recently about the potential for residential intensification in the West London Candidate SPA area. Consistent with Provincial Policy, and given that there is no approved Flood Plain SPA for the area, no new development (intensification) is permitted. As noted earlier, there are Interim Policies that are being applied in London. The Interim Policy is summarized as follows:

- a) Intensification of use, either through the creation of lots or through zoning, is not permitted;

- b) New basements are not permitted;
- c) The conversion of non-residential use to residential is not permitted. Conversion of residential uses to commercial uses is encouraged;
- d) Specific construction requirements, including maximizing flood proofing, are implemented through the Section 28 Permit process.

Even under the Interim Policy framework, residential intensification is prohibited. Also, the approved policies for the Coves Flood Plain SPA should be consulted. The Coves Flood Plain SPA, which received endorsement from the UTRCA and approval from MNR and MMAH, does not permit residential intensification.

### **Summary**

The foregoing information is intended to provide a brief overview of flood plain policy and terminology to facilitate further discussion at the upcoming PEC meeting which is scheduled for September 24, 2012. UTRCA staff will be in attendance at that meeting. For those wishing more information about the Authority's role and policies, you may refer to the UTRCA's Environmental Planning Policy Manual which is available at:

[http://www.thamesriver.on.ca/Planning\\_Permits\\_and\\_Maps/env\\_planning\\_policy\\_manual.htm](http://www.thamesriver.on.ca/Planning_Permits_and_Maps/env_planning_policy_manual.htm)

Finally, if PEC Members have any specific questions or require additional clarifications, we would be happy to receive them in advance of the meeting so that we can be prepared to answer. Please direct your inquiries to Christine Creighton, Land Use Planner via e-mail to [creightonc@thamesriver.on.ca](mailto:creightonc@thamesriver.on.ca) or by telephone to 519-451-2800 extension 293.

Yours truly,  
UPPER THAMES RIVER CONSERVATION AUTHORITY



Jeff Brick, MCIP, RPP  
Coordinator, Hydrology and Regulatory Services

- c.c. John Fleming, Director of Planning (via e-mail)
- Gregg Barrett, Manager III, Land Use Planning Policy (via e-mail)
- Michael Tomazincic, Planner, Community Planning and Urban Design (via e-mail)