

Conservation Authority Board Composition and Policy Implementation*

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Abstract: Included in the debate between polycentrists and consolidationists over the governance of metropolitan areas are arguments over the advantages and disadvantages of specialized governments. An extension is to explain what happens if the boards of specialized governments are consolidated or not. By comparing two conservation authorities with different geographical reaches – the Upper Thames River Conservation Authority (UTRCA) and the Hamilton Conservation Authority (HCA) – this paper assesses the extent to which board composition affects policy implementation. The UTRCA’s board is fragmented because its jurisdiction encompasses many municipalities, the largest being London. The jurisdiction of the HCA is mostly within Hamilton’s municipal boundary, so board membership is consolidated. The goals of development and watershed management often conflict and conservation authorities are supposed to intervene when they do. Here, the dependent variable is responsiveness to the provincial mandate for watershed management. The hypothesis is that the UTRCA will be more responsive to the provincial mandate than the HCA, because its board structure insulates it from the control of any municipality. This paper examines subdivision applications in London and Hamilton which impact areas regulated by these CAs. Responsiveness is operationalized as the percentage of applications for which the corresponding CA issues a recommendation of deferral. During the period studied, the UTRCA deferred a greater number of subdivision applications in regulated areas. This difference is significant after the introduction of updated regulations in 2006. So, specialized governments that serve several municipalities are less captured by special interests than those dominated by a single municipality.

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Introduction

As an extension of their debate over the governance of metropolitan areas, polycentrists and consolidationists also argue over the advantages and disadvantages of specialized versus general purpose governments. Responsiveness is a key variable in these debates. Polycentrists argue that specialized governments are more responsive to citizens' preferences than general purpose governments. This is because service demands vary across service areas, and it is easier for citizens to evaluate and compare the performance of specialized governments (for example, Frey and Eichenberger, 1999; Hawkins, 1976; Ostrom, Tiebout, and Warren, 1961). Consolidationists argue that specialized governments confuse citizens and are more susceptible to the influence of private or special interests. According to them, decision making is more visible in general purpose governments, and resources are more likely to be allocated according to majority preferences (for example, Bollens, 1961; Foster, 1997; Lyons and Lowery, 1989).

Recent comparisons of the policy responsiveness of special purpose districts and municipal departments from the United States have had mixed results. Mullin (2009) found that special districts with elected boards are more responsive to the median voter than municipal departments or special districts with appointed boards. But Berry (2009) found that special districts with elected boards are more likely than municipal departments to be captured by groups with a stake in the service that is provided. The result is the allocation of benefits to special interest groups, at the expense of all taxpayers. Both Mullin and Berry focused mainly on the differences between specialized and general purpose governments, as these comparisons are a logical extension of the broader theoretical debate. These differences still need further clarification, but even less has been written about the behaviour of specialized governments of different kinds.

Many special purpose districts in the US have directly elected boards and the authority to levy taxes. However, in other jurisdictions, specialized governments are more "embedded" within the general purpose government system (Hooghe and Marks, 2003: 238). In Canada, specialized local governments are generally referred to as special purpose bodies. Most special purpose bodies are governed by appointed representatives, and often some of these are elected municipal councillors. Some special purpose bodies are dominated by a single municipal government and others serve many municipalities, their board composition reflects this. Depending upon board composition, municipalities may be able to exert more or less control over specialized governments. Neither Mullin nor Berry considers how boards made up of appointed representatives from multiple or single general purpose jurisdictions may affect the responsiveness of specialized local governments. This is an important distinction for special purpose bodies like conservation authorities, because their jurisdictions are determined by their function rather than existing municipal boundaries.

Using watershed management in Ontario as a case study, this paper will illustrate the extent to which board composition matters for responsiveness. In the local government literature, responsiveness usually refers to the willingness of governments to respond to local preferences. However, preferences are shaped through governments, and in North American municipalities the voices of development interests are often the loudest. Insofar as this results in a systematic bias towards development interests in local politics, specialized governments that are more insulated from municipal control may be more responsive to the public interest. And indeed, many special purpose bodies in Ontario are agents of the provincial government, rather than municipalities. Here, responsiveness refers to the willingness of conservation authorities (CAs) to faithfully implement provincial policy when making recommendations on subdivision

applications.¹ Responsiveness to the provincial goals of watershed management may result in decisions that do not necessarily match the preferences of potential homeowners for large lots encroaching onto natural areas, or with the interests of those developers who would build and sell such homes, or with the preferences of municipal politicians for growth and a larger tax base. But it is in the broader public interest to ensure that resources are wisely managed and that public health and safety are protected.

As will be explained below, watershed management is about considering the health of the watershed as a whole. Decisions regarding land use are an important component of this process, because development impacts watershed health. These impacts can be mitigated, but this may result in added costs and lost revenue for developers and municipalities. This is especially evident in instances where subdivision developments abut particularly hazardous or sensitive areas of the watershed. People want to live near water or natural areas and developers want to maximize their profit in any proposed subdivision development. Municipalities, though bound by provincial land-use planning policies, want to facilitate development because property taxes, development fees, and building permits are important revenue sources. The province is interested in ensuring that development proceeds in a way that protects watershed health and minimizes public safety risks. And CAs have considerable responsibility in ensuring that these provincial goals are met. Subdivision approval is thus a complex and often contentious process. Municipalities and CAs have specific and sometimes overlapping roles, and their interests can conflict. Board composition is likely to play a role in determining the extent to which a CA is willing to faithfully implement provincial policy.

The variable of board composition is isolated because the relationship of the CAs to their primary cities is different. The UTRCA – the CA that covers most of the City of London – has a jurisdiction that spans multiple municipalities, while the HCA’s boundaries align closely with the City of Hamilton’s. Representatives from the City of London comprise a much smaller contingent on the UTRCA board, as compared with City of Hamilton representatives on the HCA board. London appoints four out of 15 members to the UTRCA board, while Hamilton appoints 10 out of 11 HCA board members.

The hypothesis is that the UTRCA will be more responsive to the provincial mandate, because its more fragmented board insulates it from municipal control. Responsiveness is measured as the percentage of subdivision applications that encroach upon natural hazard and natural heritage features regulated by CAs, for which the UTRCA and HCA recommend deferral. A recommendation of deferral means that the CA does not support moving the application forward unless certain changes are made to the plan of subdivision or more information is submitted. This is representative of the preventative and precautionary approach advocated by the province to ensure that development does not negatively impact watershed health. The findings indicate that board composition does affect policy implementation. The UTRCA deferred a greater percentage of subdivision applications during the study period, and this difference is statistically significant after the introduction of updated regulations in 2006. UTRCA staff seized upon their new regulatory responsibilities and were more willing than staff at the HCA to faithfully implement provincial policy on subdivision applications that encroached upon natural hazard and natural heritage systems, because the UTRCA board was more protective of its mandate.

Data for the responsiveness measure is drawn from official correspondence between the UTRCA and the City of London, and between the HCA and the City of Hamilton. Interview data

¹ This is an unusual use of responsiveness, but it is the best language that is available.

is also drawn upon to help explain some of the intricacies of this policy area and highlight some of the differences between the two CAs.² The time period selected is from 2001 to 2010, because the amalgamated City of Hamilton was established in 2001 and in Ontario, the most recent full municipal council term ended in late 2010.

The paper proceeds in six sections. This first provides background information on CAs in general, the UTRCA and the HCA, and their relationships with the City of London and City of Hamilton, respectively. The second section will explain the provincial interest in watershed management and its development. The third section outlines the roles and responsibilities of CAs in the municipal land use planning process, with a specific emphasis on subdivision approvals. The fourth section explains the hypothesis, which is tested in the fifth section. The sixth concludes.

Case Background

Among the provinces, Ontario has the longest tradition of watershed management, and its CAs are the most comprehensive watershed based governing instruments in place in Canada (Cervoni, Biro and Beazley, 2008: 336). The *Conservation Authorities Act* was passed by the Ontario Legislature in 1946. This legislation allows for the incorporation of CAs as a means to facilitate watershed based decision making. CAs are governed by a board appointed by member municipalities, many of whom are municipal politicians. Representation on the board is determined by the population of participating municipalities.

There are currently 36 CAs in Ontario and over 12 million people, or approximately 90 percent of the population, live in watersheds managed by a CA. The combined annual operating budget of all 36 CAs is \$300 million (Conservation Ontario, 2011). Originally, provincial funding accounted for half of CAs' budgets, but since the early 1990s the provincial share has been reduced dramatically and CAs have diversified their revenue sources. In general, the breakdown is as follows: 37 percent self-generated, 43 percent municipal, three percent federal and 17 percent provincial (Ibid). CA budgets are set by the governing board and member municipalities are sent a levy for their share of the overall budget. With boards made up predominantly of municipal politicians and member municipalities representing the largest source of funding, some have called into question the ability of CAs to make decisions that are best for the watershed, especially when they run contrary to the wishes of the municipality that is directly affected (Chung, 2007).

The Upper Thames River Conservation Authority

The Thames River is the second largest watershed in southwestern Ontario. It has three main starting points, which converge in London. It then flows parallel to the Lake Erie shoreline until it enters Lake St. Clair (Thames River Coordinating Committee, 2000: 3). The governance of the Thames River watershed is divided between the Upper Thames River Conservation Authority (UTRCA) and the Lower Thames River Conservation Authority (LTRCA). After initial efforts to

² Interviewees included CA staff from the UTRCA and the HCA, and municipal staff and councillors from London and Hamilton. In order to protect their anonymity, this is how they are identified throughout the paper. Interviewees were deliberately chosen based upon their role in the land-use planning process and efforts were made to ensure fair municipal and CA representation.

form a CA covering the entire Thames River watershed in 1947 failed, a CA was established in the upper catchment, where support for an authority was the strongest. It was not until 1961 that the LTRCA was formed. The province has recommended the amalgamation of the UTRCA and the LTRCA, but member municipalities have been reluctant to merge (Shrubsole, 1996: 327).

The jurisdiction of the UTRCA spans approximately 3,400 square kilometers, serving a population of 485,000 within Perth, Huron, Oxford and Middlesex Counties, the City of London, the City of Stratford and the separated town of St. Marys (UTRCA, 2006: 1-3). The UTRCA is not the only CA with jurisdiction in the City of London. London is also a member of the Kettle Creek Conservation Authority, and the Lower Thames Valley Conservation Authority, but most of the city is covered by the UTRCA's jurisdiction.

The UTRCA has 15 board members, four of whom are appointed by the City of London. During the study period, two of these appointees were municipal councillors and two were citizen representatives. The rest are appointed by the 16 other municipalities that belong to the UTRCA, with some municipalities appointing a shared representative. For 2009 and 2010, the approved operating budget for the UTRCA was approximately \$13.2 million and \$12.9 million, respectively. In 2010, the municipal levy represented 26 percent of UTRCA's revenues, of which the City of London is responsible for around 66 percent. So, for 2010, London's financial commitment to the operating budget was approximately \$2 million (UTRCA, 2011: 3).³ On budgetary matters, voting is weighted so that London's voting weight is 50 percent. On other matters, a majority vote is taken. Despite the apparent degree of control that this gives the City over the annual budget, the UTRCA does get resistance from the City over the levy, at some level, in most years. According to one UTRCA staff member, there is "resentment that CAs have the ability to levy municipalities" and if the request is anywhere over a zero percent increase, there will some push-back (Interview 4). Nonetheless, the UTRCA board is often quite protective of the organization. As a City of London councillor with UTRCA board experience explains, it is "the UTRCA's job to protect people, not to give a zero percent increase" (Interview 3).

The Hamilton Conservation Authority

The jurisdiction of the Hamilton Conservation Authority (HCA) encompasses most of the City of Hamilton, and parts of the Town of Grimsby and the Township of Puslinch. This area is approximately 477 square kilometers and is home to about 400,000 people. The HCA also holds 10,700 acres of environmentally sensitive land in public trust. The first version of what is now the HCA was established in 1958 as the Spencer Creek Conservation Authority. Member municipalities included the Townships of Puslinch, East Flamborough, West Flamborough, Beverly and Ancaster, and the Town of Dundas. In 1966, parts of the City of Hamilton and the City of Stoney Creek came under its jurisdiction. At that time, it was renamed the Hamilton Region Conservation Authority (HCA, 2009b: 3). It was renamed again, as the Hamilton Conservation Authority (HCA) in 2001, when the municipalities of Hamilton, Ancaster, Dundas,

³ London's population comprises about 75 percent of the watershed's total population, but the municipal levy is determined by the aggregate assessment base of all of the land under the jurisdiction of the CA. There is also a separate flood control capital levy, which represents funding for the board-approved 20 Year Capital Maintenance Plan for Water and Erosion Control Structures. This levy is used to cover the costs associated with the operation and management of water and erosion control structures on behalf of member municipalities. The City of London's contribution is set at just over \$1 million annually (UTRCA, 2011: 31).

Glanbrook, Flamborough, and Stoney Creek, and the Regional Municipality of Hamilton-Wentworth were amalgamated into the new City of Hamilton. In addition to the Spencer Creek watershed, the HCA includes the Red Hill Creek watershed, Stoney Creek, Battlefield Creek, Borer's Creek, and Chedoke Creek. All of these watercourses ultimately drain into Lake Ontario. While most of the City of Hamilton falls under the jurisdiction of the HCA, the City is also a member of Conservation Halton, the Niagara Peninsula Conservation Authority and the Grand River Conservation Authority.

The HCA has 11 board members. The Township of Puslinch appoints one member and the City of Hamilton appoints the other 10. During the study period, five City of Hamilton appointees were municipal councillors and five were citizen representatives. As one City of Hamilton councillor put it, "for lack of a better word, we kind of dominate the board" (Interview 11). For 2009 and 2010, the approved operating budgets for the HCA were approximately \$10.9 million. Municipal levies represent approximately 30 percent of the HCA's total revenue. In 2009, Hamilton contributed approximately \$3.4 million; its 2010 contribution was closer to \$3.5 million. Over the same period, Puslinch's contributions were \$9,602 and \$9,794 (HCA, 2009a; 2010). The HCA takes two votes on the municipal portion of its operating budget. The first vote is for the much smaller, matching levy, which matches a provincial transfer of approximately \$174,000. This vote is taken by a simple majority. The second vote is for the non-matching levy and represents the bulk of the municipal contributions. For this vote, each Hamilton representative has a weighted vote of 9.9721 percent and the Puslinch representative's vote is worth 0.279 percent. The HCA follows the City of Hamilton's recommendation on its annual levy, even though this practice has put the financial well-being of the HCA at risk (Interview 5). A number of interviewees explained that this is directly related to board structure (Interviews 5, 11, and 14).

The Provincial Interest in Watershed Management

The extent to which CAs are responsive to the provincial interest in watershed management is the dependent variable for this case study. CAs are important players in meeting the province's goals for watershed management. These goals have evolved over time as the emphasis has shifted from flood management, to drainage plans, to the current conceptualization that considers the watershed as the appropriate scale for a more coordinated, ecosystem-based approach to land use planning (Conservation Ontario, 2003: 7; Ontario, 1993c: 4). Climate change and its impact on the Great Lakes, the frequency of extreme weather events, and the changing range of different plants and animal species have also moved the process forward (Conservation Ontario, 2010: 98).

Since the early 1990s, the province has issued a number of policy documents intended to inform land use planning and protect natural resources – which often extend beyond the boundaries of individual municipalities. These documents lay out the benefits of a watershed approach, such as the protection of ecosystem and human health (Ontario, 1993a; 1993b; 1993c; 1997; Ontario MNR, 1999; 2002a; 2002b; 2010a). They recognize that short-sighted decisions based on the immediate economic impacts of urban and industrial growth have traditionally won out over the long-term ecological, economic, and public safety benefits of natural resource management. Moreover, earlier planning practices, which emphasized the protection of individual natural heritage or natural hazard features, failed to take into account the

interconnectivity of these systems. Ecosystem or watershed based planning is encouraged as a way to maintain ecological functioning and protect people and property from flooding and other water related hazards (Ontario MNR, 1999: 35; 2002a: 5; 2002b: 8; 2010a: 18). The province maintains that integrating broader ecological considerations into the planning process will result in land use patterns that protect ecosystem and human health and avoid the need for expensive and complicated adaptive measures (Ontario, 1993a; 1993b; 1993c). Thus, watershed management is in the public interest, as “a failure to sustain natural ecosystems undermines the well-being and property rights of all individuals” (Ontario, 1993b: 11). And land use planning decisions informed by watershed based studies are beneficial for not only the environment but for the social and economic well-being of communities and individuals as well (Ontario, 1993a: 3).

Elements of watershed management have also gained teeth through provincial legislation, such as the *Planning Act*, the *Conservation Authorities Act* and the *Clean Water Act*. In 2005, the wording in the *Planning Act* was strengthened, requiring planning applications to “be consistent with” policy statements issued under the act rather than just “have regard to” them. This is significant because the Provincial Policy Statement (PPS) directs growth away from “significant or sensitive resources and areas which may pose a risk to public safety” (Ontario MMAH, 2005: 3). Revisions to Section 28 of the *Conservation Authorities Act*, first implemented in 2006, give CAs the authority to regulate all wetlands, the shorelines of inland lakes and the Great-Lakes St. Lawrence River System, watercourses, hazardous lands, and watercourses (Conservation Ontario 2008). And the *Clean Water Act*, passed in 2006, requires communities to identify potential threats to the safety of their drinking water supplies and develop a watershed based plan to minimize or eliminate these threats (Conservation Ontario, 2009b). This act represents another expansion of the provincial interest in watershed management to include the protection of drinking water sources.

In sum, the province has a strong interest in watershed management. The concept of watershed management has evolved from its early concerns with flood management to include considerations of river and stream systems, groundwater, wetlands, and environmentally significant areas. There is also a clear indication that the province favours a preventative and precautionary approach where development may have an impact on watershed health. The next section will explain the role of CAs in the subdivision approval process and the regulatory authority that they have at their disposal.

The Role of CAs in Land Use Planning

CAs have been granted a number of powers, including responsibility to develop a natural resources management strategy for the watershed, prevent flooding, build dams, and purchase land. With regards to land use planning, CAs provide plan input services to the municipalities within their jurisdiction through the review of proposals submitted under the *Planning Act*. These include official plans and amendments, zoning by-laws, consents, draft plans of subdivisions and condominiums, and site plan approvals. Commenting on planning applications is a key responsibility for CAs, as land use change is one of the most significant threats to watershed health (David Suzuki Foundation, 2012: 23). Since this paper is concerned primarily with draft plans of subdivision, this is the plan review process that will be explained here.

Plans of subdivisions are required when land is divided into more than two parcels. Naturally, the land is then sold. In this paper, the focus is on residential subdivisions (as opposed to industrial subdivisions). Plans of subdivision include information on lot sizes and locations, the names and locations of streets, and the location of schools or parks. Both London and Hamilton have been delegated approval authority for plans of subdivisions by the Ministry of Municipal Affairs and Housing (MMAH). Applications are managed by the respective planning departments. Once an application is received and accepted for consideration, the planners managing the file have 30 days to decide whether the application is complete. If it is, the planning department has 180 days from the date of submission to make a decision on draft approval. Planning staff must also circulate the application to the various agencies, boards, and commissions with regulatory or commenting responsibilities.

CAs are notified of subdivision applications through the authority granted to them under the *Conservation Authorities Act*, the *Planning Act*, the Conservation Ontario/Ministry of Natural Resources/Ministry of Municipal Affairs and Housing Memorandum of Understanding on CA Delegated Responsibilities, and through service or technical agreements with municipalities, or other levels of government. Based on this authority, they may recommend that the application be approved with no conditions, recommend conditions of draft approval, or recommend that the application be deferred or refused until the applicant provides further information or makes certain changes to the plan of subdivision. An example of a draft condition from a CA is a requirement that the applicant prepares and submits a lot grading plan to the satisfaction of the CA before any development takes place.

After the CA and other relevant agencies and departments have issued draft conditions, the planning department may either grant draft approval or refuse the subdivision application. This decision may be appealed to the Ontario Municipal Board (OMB).⁴ Draft approval represents a commitment by the approval authority to move forward with the process. Once draft approval has been granted, the applicant can put lots up for sale; however, no lots can actually be sold until the plan of subdivision is registered. Plans of subdivisions are registered once all of the draft conditions are met (Ontario MMAH, 2010).

CA regulatory authority is the primary focus for this paper, because it is backed with clear legislative authority through the *Conservation Authorities Act*. The scope of this authority has evolved over time, and there was a considerable change made to the regulation during the period covered by this study. Prior to May 2006, CAs regulated the placing or dumping of fill in areas where the control of flooding, pollution, or the conservation of land⁵ would be affected, the construction of buildings and structures in any area susceptible to flooding during a regional storm, and the straightening, changing, diverting or interfering in any way with a waterway (Conservation Ontario, 2009a). Beginning in May 2006, the regulatory authority of CAs was expanded to include development and activities in or adjacent to river or stream valleys, watercourses, hazardous lands, wetlands, and the shorelines of inland lakes and the Great Lakes-St. Lawrence River System (Conservation Ontario, 2008). This was an important change because it greatly expanded the amount of land regulated by most CAs. Within these regulated areas

⁴ The OMB is an administrative tribunal that hears land use planning appeals.

⁵ The conservation of land refers to the conservation of natural heritage features that are associated with natural hazard features. This is often used as an add-on rationale when making decisions on applications, because it is rather vague and therefore vulnerable to appeals. But it is important for the value it places on natural heritage features (Interview 1).

property owners must apply for and receive a permit from the appropriate CA prior to any development, site alteration, construction, or placement of fill (UTRCA 2006, 6-6).

The land use planning process and the permit process are separate in that they occur at different stages of development – permits are usually retained after draft approval, but before building permits are issued. However, CAs make their planning recommendations based upon their regulatory authority. Prior to the introduction of the new regulation, CAs had to rely on the goodwill of municipalities, and their more limited *Planning Act* powers to ensure that wetlands, shorelines and hazardous slopes were protected. CAs only avenue of recourse, when municipalities did not follow their recommendations, was the OMB. Appeal through the OMB is costly and resource-consuming and CAs do not have funding to cover arbitration costs (Interview 3). With the updated regulation, CAs now have the legislative authority to prevent development in these areas. Waiting to address regulatory concerns until after draft approval puts CA staff at a disadvantage, because it is much more difficult to change lot lines after draft approval has been granted (Interviews 1 and 6).

Responsiveness to the Provincial mandate of Watershed Management

A recommendation by a CA to defer or refuse a subdivision application could have serious implications for the entire development, and also for the ability of the municipality to make a decision within the 180 day timeline. Moreover, recommendations issued by the CA may result in the need for major amendments such as the revision of lot lines and road allowances, and the relocation of stormwater management ponds. Here, responsiveness to the provincial mandate of watershed management is operationalized through the recommendations made by CAs on draft plans of subdivisions that encroach or abut onto regulated areas. As the section on the provincial interest in watershed management illustrates, the province favours a precautionary approach to development in areas that may negatively impact watershed health. A recommendation to defer a draft plan of subdivision until further information is submitted or lot lines are changed is representative of this more precautionary approach. Thus, deferral demonstrates the willingness of a CA to delay draft approval in order to ensure that the provincial goals of watershed management are achieved. This measure of responsiveness is based on the assumption that municipalities face a different set of incentives with regards to draft approval.

In the local government literature, municipal councils are generally considered to be supportive of residential development because it is seen as a form of growth (Leo, 2002: 226; Logan and Molotch, 1987). They are also competing with other municipalities for assessment base growth, development charges, and construction jobs (Interviews 2, 3, 8, 10, 11, and 14). Municipalities compete to find ways to develop a positive environment for investors and developers and maximize the assessment base, but with the understanding that applications must meet provincial policy and the official plan (Interviews 8, 10, and 14). In London and Hamilton, there is recognition among some councillors that residential growth does not necessarily pay for itself, but at least some councillors remain de facto supporters of new subdivisions (Interviews 3, 11, 13, and 14). Thus, municipal councils can be divided on the benefits of new subdivisions, but market demand for this type of product and the pressures of inter-local competition mean that most municipalities will continue to facilitate their development. Environmental consequences are often discounted as a result (Eidelman, 2010: 1218). Obviously, the goals of development and watershed management can come into conflict. CA recommendations for smaller or fewer lots in order to protect a natural hazard or natural heritage feature can mean that a city loses out

on revenue from development charges, building permits, and ultimately property taxes. For example, developers often want to build stormwater ponds in the flood plain so that they do not have to build a pumping station, this also increases the land available to put houses on (Interviews 2 and 13). And intensification is sometimes used as an excuse for developing natural features within the urban area (Interview 9).

Another example of how planning goals impact municipal decision making is in regards to the 180 day limit for a decision on draft approval. This is an important target for municipalities, as one of the primary goals of planning departments is to avoid appeals to the OMB (Interviews 8 and 10). Within the 180 day period, planning departments receive the application, ensure it is complete, collect all of the supplementary information such as geotechnical studies and environmental impact statements, circulate the application to get comments from the public and other agencies, evaluate those comments and try to get a resolution, and then come up with a recommendation that meets the tests of the *Planning Act* (Interview 10). There is pressure on planning departments to make a decision on draft approval within this time frame (Interviews 8 and 10). If developers feel the process is dragging on, they will often go to the appropriate ward councillor to express their concerns. And councillors will then usually go to staff, either to try to determine the reasons for the delay, or to press them to find a solution (Interviews 3, 11, 13, and 14). Indeed, this pressure was felt by at least one staff member from the City of Hamilton, “if natural environment is affecting what a developer wants to do, the councillor will often ask to meet with me and try and talk me out of my position” (Interview 9). In instances where the CA’s comments are holding up the approval process, municipal planning staff will sometimes encourage CA staff to offer draft conditions before they are prepared to (Interviews 6, 7, and 10), or to frame their comments as conditions in the planning report (Interview 8).

In sum, subdivision approval takes place in a political environment, where councillors are pressured by developers and are attuned to inter-municipal competition. Municipalities must consider a range of factors when evaluating subdivision applications, of which watershed management is only one. CAs are the only actors that approach this process from a watershed perspective.

Data and Hypothesis

Information was collected from official correspondence regarding subdivision applications between the HCA and the City of Hamilton, and the UTRCA and the City of London. In total, 70 subdivision files were located that encroached onto regulated areas from 2001-2010: 27 from the HCA and 43 from the UTRCA. Efforts were made to ensure that all relevant files were collected, but it is possible that some were missed. Some applications also had to be discarded because of incomplete information.

The UTRCA and the HCA will be compared based on their positions taken on proposed subdivision developments that directly impacted watershed health. The HCA is an example of a CA where a single municipality essentially has control over the board. The UTRCA is an example of a CA where board membership is more fragmented, and no single municipality is dominant. The dependent variable is responsiveness to the provincial mandate of watershed management. This will be operationalized in terms of the percentage of draft plans of subdivisions in regulated areas in London and Hamilton where the CA recommends deferral

(refusals were treated the same as deferrals). A deferral label was attached to all applications for which the CA made the decision to hold off on offering draft conditions until more information was submitted, or certain revisions were made to the draft plan of subdivision or its accompanying studies or reports.⁶ Again, regulated areas include natural hazards such as watercourses, flood hazards, and since 2006 wetlands, erosion hazards, and the Great Lakes shoreline. Although CAs may comment on applications that are located outside of regulated areas, this project will focus solely on those applications that require a permit from the CA in order to facilitate comparison. This methodology also controls largely for the presence of natural hazard and natural heritage features: that is, for the prospective damage to the environment.

As mentioned above, deferral gives the CA greater control over the process and ensures that no lots are put up for sale until the necessary revisions are incorporated into the application. In this sense, a recommendation of deferral is an application of the precautionary approach advocated by the province. The burden of proof is on the applicant to demonstrate that the subdivision will not aggravate hazards or cause environmental harm. By recommending deferral, a CA is communicating to both the applicant and the planning department that it cannot support the granting of draft approval until its concerns are addressed. After draft approval is granted, the burden of proof shifts to the CA (Interviews 1 and 6). A recommendation of deferral also ensures that the CA’s position is clear if there is an appeal to the OMB (Interview 2). The hypothesis is that the UTRCA will defer a greater percentage of subdivision applications in regulated areas than the HCA. The null hypothesis is that both will defer a similar percentage of applications.⁷

Results and Discussion

For the entire 2001-2010 period, the HCA deferred approximately 41 percent of all subdivision applications in regulated areas. The UTRCA deferred approximately 58 percent. This finding is consistent with the initial hypothesis, but because of the small sample size, the results are not statistically significant.⁸ These results are presented below in Table 1.

Deferred	HCA	UTRCA	Total
No	16 (59.26%)	18 (41.86%)	34 (48.57%)
Yes	11 (40.74%)	25 (58.14%)	36 (51.43)
Total	27 (100%)	43 (100%)	70 (100%)
Pearson chi2 (χ^2) = 2.01, Pr = 0.156			

⁶ While the UTRCA usually literally recommends “deferral” in these instances, the HCA issues a recommendation of “not applicable – see comments”, but this is their way of recommending deferral (Interview 6).

⁷ A weakness in this design is that it is difficult to assess the extent to which individual applications encroach onto regulated areas, or breach provincial policy without studying the technical reports and mapping more carefully. Not all of this information was available for every application. The assumption is that on average the applications are equally objectionable.

⁸ On two applications, one from 2009 and another from 2010, the UTRCA issued a recommendation of “deferral or refusal”. This was an intentional strategy on the part of staff to ensure that their objections were clear where it appeared the applicant would appeal to the OMB (Interviews 1 and 2).

The null hypothesis cannot be rejected based on the findings for the entire period, but the differences in rates of deferral from such a small sample merit further examination. A number of other possible variables can be considered based upon the information that is included in the correspondence between the CAs and municipalities. The introduction of the updated regulation, which came into force on May 1, 2006, is one of these.⁹ As mentioned above, this new regulation greatly expanded the amount of land regulated by CAs. The new regulation was received differently by UTRCA and HCA staff. Staff from the UTRCA viewed the change as strengthening their hand and giving them “the ability to more effectively monitor the full range of development in the watershed” (Interview 4). The introduction of this new regulation was described by one staff member as an incremental policy change that “gave us the legislative ability to protect all wetlands” (Interview 1). Staff at the HCA described the new regulation as a form of downloading and argued that a lot of land covered by the new regulation did not need to be regulated (Interviews 5, and 6). One HCA staff member labelled the new regulation as a “form of downloading, as it increased responsibility, with the same resources” (Interview 5). Another described the updated regulation as “over-regulation” (Interview 6). When the HCA was developing its implementing regulation, it lobbied the province, arguing that it did not have the financial or staff capacity to enforce this new regulation limit, and that municipalities, the development community, and private landowners would be likely to resist the necessary fee increases (HCA, 2005: 14-15).

As can be seen in Table 2, the introduction of this change produces results that are statistically significant at the 95 percent level. After the introduction of the new regulation, the HCA deferred 23 percent of applications in regulated areas, while the UTRCA deferred 64 percent. Thus, the relationship between the structure of the CA and deferral is more significant when the CAs gained more power. Over the whole time period, the difference is not statistically significant. Lambda tests the strength of the relationship. Lambda is approximately 0.37, which is moderately strong.

Table 2 Percentage of Subdivision Applications Deferred Under the New Regulation			
Deferred	HCA	UTRCA	Total
No	10 (76.92%)	9 (36%)	19 (50%)
Yes	3 (23.08%)	16 (64%)	19 (50%)
Total	13 (100%)	25 (100%)	38 (100%)
Fisher’s Exact ¹⁰ = 0.038			
Lambda _a = 0.3684			

⁹ Other explanatory variables such as different interpretations of what a recommendation of deferral signals to applicants and municipalities, better coordination between the HCA and the City of Hamilton, and the influence of private developers were also considered, but differences were small or non-existent. Data or further explanation regarding these other variable can be obtained through correspondence with the author.

¹⁰ Fisher’s exact test is used here, because cells have a frequency below five. Fisher’s exact directly calculates a p-value.

As the results indicate, the HCA did not seize the opportunity presented by the new regulation to be more assertive in its recommendations regarding subdivision applications in regulated areas. The UTRCA did. Since the introduction of the updated regulation, the UTRCA has been more responsive to the provincial goals of watershed management than the HCA. The HCA has been much less receptive to changes in regulatory authority and fewer applications have been deferred since the new regulation has been in effect.

Thus, in a comparison of the UTRCA and the HCA it appears as though board composition plays an important role in policy implementation. CA boards are not directly involved in the decision to defer a subdivision application, but they do make important decisions on issues which affect the ability and willingness of CAs to fulfill their mandate for watershed management. The more fragmented UTRCA board is more likely than the HCA board to act in the best interests of the CA when they conflict with the interests of member municipalities. Their different approaches regarding the municipal levy are illustrative of this. The independence of the UTRCA affords staff the resources and capacity to exercise the authority granted to them under the new regulation. The HCA board, which is made up primarily of appointees from the City of Hamilton, is less independent and staff were less willing and able to assert their new regulatory authority.

Conclusion

In this instance, board composition appears to have had an impact on policy implementation. The goals of development and watershed management can sometimes work at cross-purposes. When they do, CAs have the legislative authority to intervene. At the UTRCA, where board membership is fragmented, staff expressed confidence in their new regulatory authority and their expanded role as an advocate for natural hazard and natural heritage protection. Staff at the HCA, where board membership is primarily drawn from a single municipality, were less receptive to these changes.

The hypothesis put forward at the outset was that the HCA would be less likely to defer subdivision applications in regulated areas than the UTRCA. For the entire 2001-2010 period, the HCA deferred 41 percent of all subdivision applications in regulated areas and the UTRCA deferred 58 percent. However, due to the small sample size, this result was not statistically significant. Controlling for the new regulation, the HCA deferred 23 percent of all subdivision applications in regulated areas and the UTRCA deferred 64 percent. This difference was significant at the 95 percent level and the measure of association was moderately strong. The findings would be made more generalizable by including more CAs in the study, but they do indicate that differences in board composition matter for appointed boards.

As an extension of the theoretical debate between polycentrists and consolidationists, recent empirical comparisons of specialized and general purposed governments have focused mainly on specialized governments with elected boards. Mullin does make a distinction between elected and appointed boards, but she does not differentiate based upon the board composition of appointed boards. In this case, a CA board where members are appointed by multiple municipalities was more responsive to the provincial interest in watershed management than a CA board made up mostly of members from a single municipality. This finding seems to indicate that specialized governments that serve multiple municipalities are less likely to be captured by the special interests that dominate local politics than those controlled by a single municipality.

Interviews

Interview 1, UTRCA staff member, March 30, 2012
Interview 2, UTRCA staff member, April 5, 2012
Interview 3, City of London councillor, April 12, 2012
Interview 4, UTRCA staff member, April 12, 2012
Interview 5, HCA staff member, April 27, 2012
Interview 6, HCA staff member, April 27, 2012
Interview 7, HCA staff member, May 3, 2012
Interview 8, City of Hamilton staff member, May 24, 2012
Interview 9, City of Hamilton staff member, May 24, 2012
Interview 10, City of London staff member, June 4, 2012
Interview 11, City of Hamilton councillor, August 8, 2012
Interview 13, City of London Councillor, August 14, 2012
Interview 14, City of Hamilton Councillor, August 23, 2012

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