

Recommendation:

That Report Planning-2023-14, dated April 4, 2023, regarding Zoning By-law Amendment – File R-01-23 be received and;

That Council receive all comments related to Zoning By-law Amendment File R-01-23; and;

That the By-law to enact the amendment be passed at the appropriate time in the meeting.

Overview:

Carveth's Marina Ltd. (Randy Hauth), has applied to amend the existing zoning on portions of the property located at 426 Carveth's Marina Road, being Roll No. 1522-020-004-14400. The subject property is currently zoned the Commercial Tourist Zone (CT) and the Rural Zone (RU) as shown on Schedule B6 to By-law No. 10-1996, as amended.

The rezoning is required as a condition of consent for severance applications File B-90-21 and B-91-21, which were conditionally approved by Peterborough County on July 20, 2022.

The condition required by the Township and imposed in the decision for each application stated "that the severed lot be rezoned with a Holding (H) provision subject to the approval of site plan and agreement to the satisfaction of the municipality in accordance with Township of Douro-Dummer Site Plan Control By-law 2002-71."

The Notice of Complete Application and Public Meeting identified that the Zoning By-law Amendment proposes to place a holding symbol "H" on the severed parcels (Lot A and Lot B) in order to limit development in the area of an escarpment (steep slope) which is present at the rear of the proposed lots.

The Notice indicates that the severed parcels will be rezoned from the Rural Zone (RU) to the Rural – Holding Zone (RU-H) and that the holding symbol "H" will not be removed until such time as a Site Plan Control Agreement has been entered into in which includes the submission of a Site/Grading Plan acceptable to the Township and the Otonabee Region Conservation Authority which delineates the 3:1 stable slope line and a suitable building envelope for each lot.

After the posting of the Notice, Township Staff obtained legal advice regarding the imposition of Site Plan Control on the severed lots. Recent changes to the *Planning Act* through Bill 23 limit how site plan control can be applied to residential development. The Township's legal firm, Aird and Berlis, confirmed that, although the requirement for site plan approval is a condition of the severance applications which were submitted in 2021, the requirement is no longer valid under the amended *Planning Act*.

Aird and Berlis confirmed that the Holding provision can still be imposed via Section 7.11.3 (a) & (d) of the Official Plan which states that:

- a) a holding zone may be applied when development or redevelopment is anticipated in accordance with the provisions of this Plan, but where the details of that development have not been determined; and
- d) when lands are affected by adverse environmental effects or other constraints on development which can be resolved to the Township's satisfaction.

Aird and Berlis also confirmed that a new Notice is not required to be recirculated given that the Township is still requiring a site/grading plan as part of the lifting of the Holding. Section 34(12)(a)(i) of the Planning Act states that before passing a zoning by-law, Council must ensure that "sufficient information and material is made available to enable the public to understand generally the zoning proposal that is being considered by the council". It is the opinion of Aird and Berlis that enough information has been provided to generally understand the rezoning.

Given this information, Staff sought confirmation from the Otonabee Region Conservation Authority to ensure that the natural hazard (steep slope) on the severed parcel will be adequately addressed. Through verbal communication, ORCA indicated that the rezoning could further refine the application of the Holding provision to that portion of the severed parcels between the Top of 3:1 Stable Slope and the Top of Slope as identified on Figure 1 of the Site Plan prepared by Cambium dated November 23, 2021. Further, it would be appropriate to apply the Environmental Conservation Zone (EC) to the area of the severed parcels between the Top of Slope and the rear of the lots as identified on Figure 1. The remainder of the lots from the Top of 3:1 Stable Slope to the front lot line could remain in the Rural Zone (RU). A copy of ORCA's formal comments received on March 28, 2023, are attached to this Report.

Staff support this approach as it will allow future owners of the severed parcels the ability to develop within the (RU) zoned portion of the lots without the need for additional slope stability studies. If future building plans cannot confine the development to the (RU) Zone, then the Owner will be required to submit additional technical information to the Conservation Authority to ensure that the development can be safely permitted within the area zoned (RU-H). Development will not be permitted within the area zoned (EC) except in accordance with Section 19 of By-law No. 10-1996, as amended.

Given this information, the draft By-law has been revised from the By-law originally posted on the Township Website.

There are no changes proposed to the existing Commercial Tourist Zone (CT) or the remainder of the Rural Zone (RU) on the retained lands.

A copy of the revised draft By-law is attached to this Report.

Conformity to Provincial Policy Statement (PPS) and A Place to Grow, Growth Plan for the Greater Golden Horseshoe (Growth Plan):

A Natural Heritage Evaluation (NHE) was prepared by Cambium, dated June 23, 2021, in support of the severance applications. A copy of the NHE is attached to this Report.

The NHE identified a number of natural heritage features and recommended mitigation measures and best management practices to ensure that the existing natural heritage features are protected and their functions are not negatively impacted during or following construction.

Figure 4 of the NHE illustrates an escarpment and the Report recommends a 15-metre setback from the top of the escarpment to provide adequate protection from these hazardous lands.

Policy 3.1.1. of the PPS directs development to areas outside of hazardous lands. The Otonabee Region Conservation Authority (ORCA) reviewed the NHE and in correspondence dated October 8, 2021, requested that, in order to demonstrate consistency with PPS Section 3.1, Cambium provide cross-sections that:

- Delineate the toe of the slope;
- Determine the height of the slope;
- Calculate the 3:1 stable slope; and,
- Delineate the 3:1 stable slope on the cross-sections.

ORCA indicated that applying a 15-metre setback may result in lots which are too confined. ORCA suggested a slope stability study could be used to assess the hazard, and apply a setback to be zoned appropriately. A copy of ORCA's comments are attached to this Report.

In response to ORCA's comments, Cambium prepared a second submission dated November 23, 2021. The second submission included a Slope Stability Study.

ORCA reviewed the submitted Slope Stability Study and provided comments dated December 13, 2021. Cambium's submission provides an analysis of the cross-sections of the slope and illustrates the extent of a safe building area. ORCA noted that the 3:1 Stable Slope line identified in Figure 4 [should read Figure 1] must be delineated on site/grading plans for the severed lots. ORCA noted that development, including filling and/or grading, will not be permitted beyond the 3:1 Stable Slope line without additional slope stability studies and that a building envelope should be provided at the time of the building permit. ORCA concluded that, provided their comments are incorporated into future applications, it is the opinion of Otonabee Conservation that the severance applications have demonstrated consistency with PPS Section 3.1.

Copies of the November 23, 2021 Cambium Report and ORCA's December 13, 2021 comments are attached to this Report.

The Township Staff Report prepared for the severance applications, dated February 25, 2022 indicates that development of the severed lots should proceed through Site Plan Control to address the grading and fill issues as well as mitigation measures outlined in the Summary of Recommendations included in the NHE prepared by Cambium dated June 23, 2021. The mitigation measures have been registered on title at the Land Registry Office and copies of the registered agreements are attached to this Report along with the Township Staff Report. As mentioned previously, the requirement for site plan approval as it pertains to these applications is no longer valid.

Notice of the proposed Zoning By-law was provided to ORCA and in correspondence dated March 28, 2023, ORCA indicated that the zoning should be made appropriate to protect (e.g. Environmental Constraint) future owners from site alteration or construction in the erosion hazard area as shown in Figure 1 of Cambium's November 23, 2021 Report and would demonstrate consistency with PPS Section 3.1. The application has demonstrated consistency with PPS Sections 2.1 and 2.2 and Sections 4.2.3 and 4.2.4 of the Growth Plan.

Permits from their agency will be required prior to any site alteration or construction in the erosion hazard and a further 15 metres into the site.

The subject property is not located within a Vulnerable Area for a municipal drinking water source.

As noted previously, a copy of the ORCA comments are attached to this Report.

Conformity to Official Plan:

The subject property is designated Commercial, Rural and Environmental Constraint as illustrated on Schedules 'A4-2' and 'A4-3' of the Official Plan.

The severed lots are located within the Rural designation. Low density residential development is permitted within the Rural designation (S. 6.2.2.2).

Section 6.2.2.10 (a)(iii) of the Official Plan encourages landowners to maintain and establish tree and shrub cover in hazardous areas such as steep slopes in order to reduce runoff rates and minimize soil erosion.

Section 4.1.3.2 of the Official Plan states that, where a development proposal contains or abuts a steep slope, watercourse or shoreline in an area where no detailed floodplain mapping exists and where erosion hazard limits have not been defined, development will be subject to the establishment of flooding and erosion hazard limits by the appropriate Conservation Authority in consultation with the local municipality. The

Official Plan further states that development adjacent to an identified flood or erosion prone area may be subject to a setback from the flood or erosion prone boundary area. The setback will reflect the most restrictive requirements of the local municipality, the appropriate Conservation Authority and/or the Ministry of Natural Resources, and federal ministries or agencies.

As mentioned previously in this Report, Section 7.11.3 of the Official Plan permits the use of Holding Provisions under the following circumstances which are applicable to this proposal:

- a) a holding zone may be applied when development or redevelopment is anticipated in accordance with the provisions of this Plan, but where the details of that development have not been determined; and
- d) when lands are affected by adverse environmental effects or other constraints on development which can be resolved to the Township's satisfaction.

With the implementation of the Holding Symbol in order to require a site/grading plan and additional slope stability studies if the proposed development will encroach beyond the Top of 3:1 Stable Slope along with the identification of a suitable building envelope, the application appears to conform to the Official Plan.

Comments:

Comments were received from the Owners of 394 Carveth's Marina Road. No objections were raised to the creation of the new lots, however, the Owners did inquire as to whether there will be any change to the water table as a result. A copy of these comments are attached to this Report. In e-mail correspondence dated March 27, 2023, Township Staff replied that there were no concerns related to the water table identified during the circulation of the severance applications.

Staff also spoke with the Owner of 1499 Birchview Road who had questions regarding the nature of the application, the stability of the slope and the need for the rezoning. Upon the conclusion of the telephone conversation, the Owner verbally indicated their concerns appear to have been satisfied.

As of the writing of this Report, no further comments have been received from members of the public.

Comments were received from the following agencies:

- Enbridge Gas Inc.: No objections to the application.

Conclusion:

The requested zoning by-law amendment rezones a portion of the severed parcels (Lot A and Lot B) to the Environmental Conservation Zone (EC) and places a holding symbol

“H” on a portion of the severed parcels and is required in order to limit development in the area of an escarpment located to the rear of the proposed lots. Portions of the severed parcels will be rezoned from the Rural Zone (RU) to the Rural – Holding Zone (RU-H) and the Environmental Conservation Zone (EC). The rezoning is required in order to meet the conditions of Peterborough County Land Division Files B-90-21 and B-91-21.

The rezoning will ensure a suitable building envelope exists for the severed parcels by appropriately identifying the hazardous areas. The proposed rezoning meets the intent of municipal and provincial policies.

Financial Impact:

All costs related to the application for a Zoning By-law Amendment are the responsibility of the Owner.

Strategic Plan Applicability: N/A

Sustainability Plan Applicability: N/A

Report Approval Details

Document Title:	R-01-23 (Hauth) Report.docx
Attachments:	<ul style="list-style-type: none"> - Cambium NHE (Scanned).pdf - B-90-21, Hauth, 426 Carveths Marina Road (Lot 1) ; ORCA File PPLD-2204.pdf - B-91-21, Hauth, 426 Carveths Marina Road (Lot 2), ; ORCA File PPLD-2205.pdf - 2021-11-23 - LTR RPT - 426 Carveth's Marina Rd Slope Stability.pdf - B-90-21 Hauth 426 Carveths Marina Road (Lot 1) ; ORCA File PPLD-2204-13DEC2021.pdf - B-91-21 Hauth 426 Carveths Marina Road (Lot 2) ; ORCA File PPLD-2205-13DEC2021.pdf - Township Staff Report - Files B-90-21 and B-91-21.pdf - 45R-17389.pdf - Registered Mitigation Agreements.pdf - R-01-23 (Hauth) Enbridge Gas (March 28, 2023).pdf - R-01-23 Hauth 426 Carveths Marina Road ORCA File PPLD-2268 (March 28, 2023).pdf - R-01-23 394 Carveth's Marina Road Comments (March 25, 2023).pdf - R-01-23 - Revised Draft By-law.pdf
Final Approval Date:	Mar 28, 2023

This report and all of its attachments were approved and signed as outlined below:

Martina Chait-Hartwig

Elana Arthurs