

Recommendation:

That Report Planning-2024-12, dated April 16, 2024, regarding Zoning By-law Amendment – File R-08-24 be received; and

That Council receive all comments related to Zoning By-law Amendment File R-08-24; and

That, provided Council is satisfied the proposed use and rezoning would not preclude or hinder the establishment of new aggregate operations or access to the resources, the By-law to enact the amendment be passed at the appropriate time in the meeting.

Overview:

Owners, Francis Joseph McMahon and Paul Stephen Gerard McMahon have applied to amend the existing zoning on a portion of their property known municipally as 129 Douro Ninth Line, being Roll No. 1522-010-004-04700. The subject property is currently zoned the Extractive Industrial Zone (M2), the Environmental Conservation Zone (EC), the Environmental Conservation Provincially Significant Wetland Zone (EC(P)), the Special District 106 Zone (S.D. 106) and the Rural Zone (RU) as illustrated on Schedule A1 to By-law No. 10-1996, as amended.

The Owners obtained a building permit (Permit DD-2023-1068) for the construction of an approximately 1189 square metre agricultural storage building in the Rural Zone (RU) portion of the subject property. An agricultural use is permitted in the (RU) Zone and structures must comply with Section 9.2.1 of By-law No. 10-1996, as amended. Specifically, Section 9.2.1.1 (c) requires a minimum exterior side yard of 45 metres. The permit was issued based on a site plan that demonstrated the proposed structure complied with the By-law. A copy of the approved site plan is attached to this Report. During construction, the Building Department became aware that the agricultural building was not located in accordance with the approved site plan and was encroaching into the exterior side yard by approximately 19 metres.

Since the subject property fronts on County Road 4 and Douro Ninth Line, County Road 4 is considered the front lot line and Douro Ninth Line is considered an exterior side lot line (Section 22.130.1).

The effect of the Amendment is to rezone a portion of the subject lands from the Rural Zone (RU) to the Special District 258 Zone (S.D. 258). The (S.D. 258) Zone proposes to reduce the minimum exterior side yard requirement from 45 metres to 25 metres to permit the construction of the agricultural storage building. All other applicable zones and provisions of By-law No. 10-1996, as amended will continue to apply.

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

Notice of the public meeting was given on March 22, 2024 by ordinary mail and/or e-mail to all prescribed public bodies and to every person and public body that has provided a written request for Notice.

Notice of the public meeting was posted on the subject property along the County Road 4 and Douro Ninth Line frontages and on the Township Website.

A copy of the Notice is attached to this Report. The giving of Notice complies with the applicable Regulation of the Planning Act.

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

The subject property contains and is located within 120 metres of key natural heritage features and key hydrologic features (provincially significant wetland, watercourse, non-evaluated wetlands, inland lakes and species at risk). Section 4.2.3.1 of the Growth Plan prohibits development and site alteration within key hydrologic features. The storage building is not located within the key hydrologic features.

Section 4.2.4.1 of the Growth Plan states that development and site alteration within 120 metres of the above features requires a natural heritage evaluation/hydrologic evaluation that identifies a vegetation protection zone (VPZ) that is no less than 30 metres.

However, Section 4.2.4.4 (b) and (c) of the Growth Plan state that:

- b) new buildings and structures for agricultural uses, agriculture-related uses, or on-farm diversified uses will not be required to undertake a natural heritage or hydrologic evaluation if a minimum 30 metre vegetation protection zone is provided from a key natural heritage feature or key hydrologic feature; and
- c) uses permitted in accordance with policy 4.2.4.4 b):
 - i. are exempt from the requirement of establishing a condition of natural self-sustaining vegetation if the land is, and will continue to be, used for agricultural purposes; and
 - ii. will pursue best management practices to protect and restore key natural heritage features, key hydrologic features, and their functions.

An Environmental Management Plan (EMP) was prepared by Cambium Inc. (Cambium) dated March 9, 2023 in support of Permit Douro-Dummer-2023-1068. The EMP noted that an Environmental Impact Study (EIS) was completed by Cambium in 2022. The EMP states "the EIS demonstrated that the proposed activities were outside of the adjacent wetland area and that potential negative impacts can be appropriately mitigated. A Site Plan has been developed that incorporates the appropriate setbacks,

as per recommendations in the EIS (Figure 2).” The EMP provides additional details recommended within the EIS, as well as addressing Otonabee Region Conservation Authority (ORCA) requests to support the permit application. A copy of the EMP is attached to this Report.

Based on the EMP and EIS, ORCA Permit Number 2023-065 was approved April 4, 2023 in support of the building permit application and outlines project specific conditions that must be adhered to. A copy of Permit 2023-065 is attached to this Report.

Policy 2.1.5 (d) of the PPS prohibits development and site alteration within significant wildlife habitat unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions.

Policy 2.1.7 of the PPS prohibits development and site alteration, within habitat of endangered species and threatened species, except in accordance with provincial and federal requirements.

Species at Risk Ontario (SAROntario) has previously stated that there are no requirements under the ESA to undergo a species at risk site assessment for passing by-laws. The “provincial requirements” stated in PPS Policy 2.17 include the Endangered Species Act (ESA).

SAROntario stated “the ESA prohibits activities such as killing, harming, harassing and capturing species at risk (listed under the Act). The ESA also prohibits damaging or destroying species' habitat. If the activity that is to be undertaken might affect species at risk then a person may need a permit or authorization...Zoning changes by themselves and in the absence of any additional development proposals are administrative; these activities on their own do not contravene the ESA. Specifically, to contravene the ESA, an activity must have the effect of killing, harming or harassing individuals of a species at risk, or damaging or destroying their habitat. The simple act of passing a bylaw or other similar administrative activities do not result in any of these impacts.”

Policy 2.1.9 of the PPS states that nothing in policy 2.1 is intended to limit the ability of agricultural uses to continue.

The subject property contains portions of a mapped floodplain. In correspondence dated April 3, 2024, the Otonabee Region Conservation Authority indicated the development is not located within a known natural hazard and therefore, the application is consistent with Section 3.1 of the PPS referencing Natural Hazards.

A copy of the ORCA comments are attached to this Report and further comments are outlined below.

The subject property is adjacent to the Peterborough Proposed Bypass, a Ministry of Transportation (MTO) planned corridor. Section 3.2.5.1 (b) of the Growth Plan and Policies 1.6.8.1 through 1.6.8.3 of the PPS require that planning authorities plan for and protect transportation corridors for the long term and shall not permit development in planned corridors that could preclude or negatively affect the use of the corridor for the purpose for which it was identified.

In correspondence dated April 4, 2024, MTO confirmed the subject lands are within MTO's permit control area and Ministry approvals and permits are required prior to the construction and/or alteration of any buildings and/or structures and prior to the issuance of any municipal building permits or approvals as per Section 8. (2) (a) of the Building Code Act.

MTO reviewed the application in accordance with the Public Transportation and Highway Improvement Act (PTHIA) and the Highway Corridor Management Manual to offer the following comments:

- The Ministry has reviewed its files and does acknowledge that the Ministry has issued a Building and Land Use permit (BL-2022-41K-00000004) for this property.
- MTO has no concerns with the proposed zoning by-law amendment.
- Should the proponent intend on developing the subject lands in the future, additional MTO review and approvals will be required.

A copy of the MTO comments are attached to this Report.

The subject property contains an active Class B licenced aggregate pit and primary sand and gravel aggregate resources. The storage building is located within the mapped aggregate resource and within 300 metres of the pit. Policy 2.5.2.5 of the PPS states in known deposits of mineral aggregate resources and on adjacent lands, development and activities which would preclude or hinder the establishment of new operations or access to the resources shall only be permitted if:

- a) resource use would not be feasible; or
- b) the proposed land use or development serves a greater long-term public interest; and
- c) issues of public health, public safety and environmental impact are addressed.

Provided Council is satisfied that the proposed use and the rezoning would not preclude or hinder the establishment of new aggregate operations or access to the resources, the rezoning application appears to have demonstrated consistency and conformity with the applicable provisions of the PPS and Growth Plan.

Conformity to Official Plan:

The subject property is designated Rural, Environmental Constraint, Extractive Industrial, Extractive Industrial Licenced and Provincially Significant Wetland and is subject to Special Policy Section 6.2.2.11(d)(iv) as illustrated on Schedule A4-1 of the Official Plan.

The storage building is located within the Rural designation. The predominant use of land within the Rural designation includes all agricultural uses (S. 6.2.2.2).

New development must be established in accordance with the Minimum Distance Separation (MDS) requirements of the PPS (S. 6.2.2.3 (d)). The description of proposed work for Permit DD-2023-1068 states "Construction of a[n] agricultural accessory storage structure. Slab on grade, see project drawings. Storage will include agricultural equipment and feed (corn, hay, straw etc.)". The keeping of livestock within the building is not proposed and therefore MDS Formula II is not applicable.

The application appears to comply with the Official Plan.

Comments:

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

Comments were received from the following agencies:

- Enbridge Gas Inc.: No objections to the application.
- Peterborough County Engineering and Design: No objections, comments or concerns with respect to the application.
- Kawartha Pine Ridge District School Board: No concerns or issues related to our mandate.
- MTO:

The Ministry has reviewed its files and does acknowledge that the Ministry has issued a Building and Land Use permit (BL-2022-41K-00000004) for this property.

MTO has no concerns with the proposed zoning by-law amendment.

Should the proponent intend on developing the subject lands in the future, additional MTO review and approvals will be required.

- Otonabee Region Conservation Authority:

Otonabee Conservation mapping indicates that the proposed development is not located within a known hazard. Therefore, it is the opinion of Otonabee Conservation staff that the application is consistent with Section 3.1 of the PPS referencing Natural Hazards.

Otonabee Conservation mapping indicates that the lands are partially subject to Ontario Regulation 41/24 Otonabee Conservation's "Prohibited Activities, Exemptions and Permits" regulation. Permits from this agency may be required prior to any site alteration or construction in those areas regulated by Otonabee Conservation.

The subject property is not located within a vulnerable area that is subject to Trent Source Protection Plan (SPP) policies.

Copies of these agency comments are attached to this Report.

The application was circulated to Senior Staff on March 22, 2024. As of the writing of this Report, there were no concerns identified by Senior Staff.

Conclusion:

The requested zoning by-law amendment is required to reduce the minimum exterior side yard setback from 45 metres to 25 metres. A portion of the subject property is proposed to be rezoned from the Rural Zone (RU) to the Special District 258 Zone (S.D. 258) to permit the construction of an approximately 1189 square metre agricultural storage building (Permit Douro-Dummer-2023-1068).

Provided Council is satisfied the proposed use and rezoning would not preclude or hinder the establishment of new aggregate operations or access to the resources, 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/Applicant.

Strategic Plan Applicability: N/A

Sustainability Plan Applicability: N/A

Report Approval Details

Document Title:	R-08-24 (McMahon) Public Meeting Report.docx
Attachments:	<ul style="list-style-type: none"> - R-08-24 Application_Redacted.pdf - R-08-24 Site Plan -129 Douro Ninth Line for rezoning.pdf - R-08-24 DD-2023-1068 - Approved Site Plan from bldg permit.pdf - R-08-24 - ZBA Notice.pdf - R-08-24 - Draft By-law.pdf - R-08-24 2023-03-09 Cambium LTR EMP.pdf - R-08-24 PPRD-2505_ORCA_permit_2023-065 SIGNED AND AUTHORIZED.pdf - R-08-24 - County EandD Comments (April 4, 2024).pdf - R-08-24 - Enbridge Comments (April 1, 2024).pdf - R-08-24 - KPRDSB Comments (March 27, 2024).pdf - R-08-24 - MTO Comments (April 4, 2024).pdf - R-08-24 - ORCA File No PPLD-2306 (April 3, 2024).pdf
Final Approval Date:	Apr 8, 2024

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

Martina Chait-Hartwig