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# HALDIMAND COUNTY

## Report PDD-11-2020 Zoning Amendment as a Condition of Consent - Vos For Consideration by Council on May 19, 2020

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### OBJECTIVE:

To present the key planning considerations related to an application to limit the permitted uses on a portion of the subject lands as a condition of consent and to apply site specific zoning provisions.

### RECOMMENDATIONS:

1. THAT Report PDD-11-2020 Zoning Amendment as a Condition of Consent – Vos be received;
2. AND THAT application PLZ-HA-2020-001 to amend the Town of Dunnville Zoning By-law 1-DU 80 by adding a special provision to Parts 1 and 2 of the subject lands to only permit these Parts to be used for access purposes; to rezone Part 2 from 'Agricultural (A)' Zone to 'Hazard Lands (HL)' Zone; and to rezone Part 3 to recognize the existing frontage and right interior side yard setback be approved for reasons outlined in Report PDD-11-2020;
3. AND THAT the proposal is deemed to be consistent with Provincial Policy Statement (2020), Provincial Growth Plan (2019), and other matters of Provincial interest;
4. AND THAT the by-law attached to Report PDD-11-2020 be presented for enactment.

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**Respectfully submitted:** Mike Evers, MCIP, RPP, BES, General Manager of Community & Development Services

**Approved:** Craig Manley, MCIP, RPP, Chief Administrative Officer

### EXECUTIVE SUMMARY:

The subject zoning application is required as a condition of consent. The Committee of Adjustment approved consent application PLB-2020-130 on September 10, 2019 to boundary adjust a portion of the subject lands that form part of a former rail line to an adjacent farm parcel and to retain a portion of the subject lands containing a dwelling. The purpose of this zoning application is to limit the permitted uses in the 'Agricultural (A)' Zone on the severed rail lands in accordance with the Record of Site Condition (RSC) regulations before they are integrated into the adjacent and benefitting farm parcel; rezone portions of the severed lands that coincide with the Niagara Peninsula Conservation Authority (NPCA) regulation limits from the 'Agriculture (A)' Zone to the 'Hazard Lands (HL)' Zone; and to recognize the reduced front and right interior side yard setback on the retained lands containing the dwelling in the Zoning By-law as a condition of consent. It is Planning staff's opinion that the proposal is consistent and conforms with Provincial and County policy frameworks. Planning staff recommends approval of the subject zoning application and passing of the attached zoning by-law.

## BACKGROUND:

The subject lands are part of a former rail line (Parts 1, 2, and 3 in Attachment 1). The severed rail lands (identified as “To be Severed” in Attachment 2) currently bisect the benefitting farmlands (identified as “Benefitting Lands” in Attachment 2). The agricultural lands north and south of the former rail lands are in one ownership and the former rail lands are in another ownership. The Committee of Adjustment approved consent application PLB-2019-130 on September 10, 2019 to sever a portion of the former rail lands having no frontage and being 3.09 hectares (7.64 acres) in size to add to the abutting farm parcel to the north and south of the former rail lands and to retain the portion of the former rail lands containing the existing dwelling having 27.46 metres of frontage and being 3.0 hectares (7.44 acres) in size. The severance plan is included as Attachment 2. Finalization of the consent application will consolidate the agricultural lands on the north and south side of the severed rail lands with the severed rail lands into one lot and one ownership. This will provide secure access to the agricultural lands located south of the severed rail lands (which currently have no frontage).

The subject zoning amendment application is required as a condition of the consent approval. The purpose of the subject zoning amendment application is to:

1. Remove all uses permitted in the ‘Agricultural (A)’ Zone on the severed lands (Parts 1 and 2 in Attachment 1) and to permit only general access in accordance with the Record of Site Condition Regulations.

Planning staff recently received a legal opinion from the County’s solicitor (Sara Premi of Sullivan Mahoney, LLP) to determine if and when a Record of Site Condition (RSC) is required as a condition of consent approval to boundary adjust a former rail line to a farm. The County’s solicitor confirmed that the conversion of industrial lands (i.e. rail lines) to agricultural lands triggers a RSC under section 163.3.1. of the *Environmental Protection Act* (EPA) and is intended to address public interest relating to potential public health hazard (e.g. growing crops/raising livestock on potentially contaminated lands). The County’s Solicitor also confirmed that the County should require one of the following as a condition of consent relating to such boundary adjustment approvals to address the requirements of the Provincial legislation:

- a) a RSC filed through the Ministry of Environment, Conservation and Parks (MECP) when the former rail line is proposed to be integrated into the benefitting farm parcel and converted from a former rail line to agricultural use (i.e. growing of crops, raising and housing of livestock, farm house, etc.); or
  - b) approval of a zoning amendment to remove all agricultural uses from the former rail line and to legally identify the intended use of the rail line for non-agricultural purposes (i.e. access purposes only).
2. Rezone portions of the rail line (Part 2) that coincide with the Niagara Peninsula Conservation Authority (NPCA) regulation limits from the ‘A’ Zone to the ‘Hazard Lands (HL)’ Zone; and  
Through circulation of the subject zoning application, the NPCA recommended that the NPCA regulated features be zoned as Environmental Protection or Hazard Lands as appropriate on the rail lands that are to be added to the farm parcel. The NPCA online mapping indicates there are watercourses running through the severed rail lands.
  3. Recognize the reduced front and right interior side yard setback on Part 3 of the subject lands in the Zoning By-law to recognize existing conditions on the ground for the dwelling on the retained lot.

The severance application spoiled previous permissions for the lot frontage and right interior side yard setback. As such, the variances must be addressed and approved for Part 3 of the

subject lands. There is opportunity to address this requirement through the subject zoning application.

### **Location and Description:**

The subject lands are described as former geographic township of Canborough, Concession 2, Part of Lots 6 to 8 now in Haldimand County and are municipally known as 416 Moote Road. The subject (rail) lands front onto the east side of the Moote Road and are currently 6.1 hectares (15.08 acres) in size. The severed rail lands have no street frontage and are 3.09 acres (7.64 acres) in size which are proposed to be added to the adjacent farm parcel, having no municipal address (Attachment 2). The retained rail lands have 27.46 metres (92.5 feet) of street frontage and are 3.0 hectares (7.44 acres) in size and contain an existing dwelling. The benefiting farmlands are vacant. Surrounding land uses are agricultural and rural residential.

## **ANALYSIS:**

### **Provincial Policy:**

#### ***Provincial Policy Statement (2020):***

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The *Planning Act* directs that decisions affecting planning matters “shall be consistent with” the policies of the PPS.

The PPS permits lot adjustments in prime agricultural areas for legal or technical reasons including severances for minor boundary adjustments, which do not result in the creation of a new lot. The Committee of Adjustment approved severance application PLB-2019-130 to join two landlocked parcels under one title and to provide secure access to the entire benefitting farm parcel (Attachments 1 and 2). The following PPS policy considerations apply to the subject zoning amendment:

#### **Item 1: Removal of ‘A’ Zone uses on the severed lands and inclusion of permission for general access:**

The PPS requires that sites with contaminants in land or water be assessed and remediated as necessary prior to any activity on the site associated with the proposed use such that there will be no adverse effects. To address this, the Committee approved the consent application subject to a list of conditions including a condition requiring that the owner file a Record of Site Condition (RSC) with the MECP and provide proof or that the owner receive approval of a zoning amendment to limit the range of permitted uses. Approval of the subject zoning amendment is consistent with the PPS policies relating to human made hazards.

#### **Item 2: Rezoning portions of the severed rail line from the ‘A’ Zone to the ‘HL’ Zone:**

The PPS directs development outside of natural hazards. Rezoning portions (Part 2) of the subject lands from ‘Agriculture (A)’ zone to ‘Hazard Land (HL)’ will identify where NPCA regulated features (watercourses) and hazards exist along the former rail line that is to be added to the abutting farm parcel. This portion of the zoning amendment will have no affect on the intended use of the former rail line (for general access purposes) and is consistent with the PPS policies relating to natural hazards.

Overall, it is Planning staff’s opinion that the subject zoning amendment is consistent with the PPS.

#### ***Provincial Growth Plan (2019):***

The purpose of the Growth Plan is to address challenges related to the forecasted growth and changes in the Greater Golden Horseshoe, and to ensure the protection and effective use of finite resources. The Growth Plan establishes a unique land use planning framework for the Greater Golden Horseshoe that supports the achievement of complete communities, a thriving economy, a clean and healthy environment, and social equity. Planning decisions must conform to the Growth Plan. The Growth Plan

echoes the PPS policies and does not provide any additional policy direction relating to the subject zoning application. Overall, it is Planning staff's opinion that the proposal conforms to the Growth Plan.

## **County Policy**

### ***Haldimand County Official Plan:***

The Haldimand County Official Plan (OP) creates the framework for guiding land use changes in the County to 2026 by protecting and managing the natural environment, directing and influencing growth patterns and facilitating the vision of the County as expressed through its residents. The OP also provides the avenue through which Provincial Policy is implemented into the local context. Decisions on zoning amendment applications must conform to the OP.

The subject lands are predominately designated 'Agriculture', with the east portion of the subject lands being designated 'Riverine Hazard Lands'. The benefitting farmlands are designated 'Agriculture'.

The OP states that the agricultural industry should be fostered and protected to ensure its viability for the economic and social benefit of the County. In order to accomplish this the County will protect the prime agricultural land for agricultural purposes and encourage the development of agricultural support services within urban areas and designated hamlets. Permitted uses in the 'Agriculture' designation include all forms of farming (including a dwelling), value added uses, secondary uses, and agriculturally related uses. Approval of the subject zoning amendment will facilitate joining two agricultural parcels together (one of which is currently landlocked) and providing secure access thus benefitting an existing agricultural operation. At the same time, the proposal will not have an affect on the surrounding prime agricultural area.

Further, the OP states that the County is committed to protection of life and property by respecting natural and man-made hazards. As such, development shall generally be directed away from hazard lands. Approval of the subject zoning amendment will identify the hazardous lands on the severed rail line that correspond with the NPCA regulation limits and ensure development does not occur within these areas.

Overall, it is Planning staff's opinion that the proposal conforms to the OP.

### ***Town of Dunnville Zoning By-law 1-DU 80:***

The Official Plan (OP) sets out the County's general policies for future land use. The Town of Dunnville Zoning 1-DU 80 puts the OP into effect and legally controls the use of land in the County by stating how land may be used; where buildings and other structures can be located; the types of buildings that are permitted and how they can be used; and the lot sizes and dimensions, parking requirements, building heights and setbacks from the street. If a use is not permitted in the Zoning By-law, the property cannot be used for that use.

The subject lands are zoned 'Agricultural (A)' Zone. The following zoning by-law considerations apply to the subject zoning amendment:

#### **Item 1: Removal of 'A' Zone uses on the severed lands and inclusion of permission for general access:**

The 'A' Zone permits a number of uses including a farm and one family dwelling. The *Environmental Protection Act* requires that a Record of Site Condition (RSC) be filed with the Ministry of Environment, Conservation and Parks (MECP) when a rail line is merged with a farm and converted to agricultural lands. While the proponent intends to merge the former rail lands with his farm, he does not intend to remediate the former rail lands for agricultural purposes. Instead, he plans to use the former rail lands for general access. As an alternative option to the RSC process (which can be very costly and time consuming), the proponent chose to submit a zoning amendment application to limit the permitted uses to those not impacted by soil quality (in this case general access). Changing the zoning of the subject lands will legally identify to current and future owners that the former rail lands are only to be used for

general access purposes rather than uses impacted by soil quality (growing of crops, housing of livestock, construction of a farmhouse, etc.) once they are merged with the benefitting farm. Also, approval of this zoning application will legally implement Provincial and County policies relating to human made hazards and sensitive land uses while at the same time permitting farm consolidation, which is encouraged by Provincial and County policy relating to agricultural lands.

Item 2: Rezoning portions of the severed rail line from the 'A' Zone to the 'HL' Zone:

Through circulation of the subject zoning application, the NPCA recommended that the NPCA regulated features (watercourses) be zoned as Environmental Protection or Hazard Lands as appropriate on the rail lands that are to be added to the farm parcel. Rezoning portions (Part 2) of the subject lands from 'Agriculture (A)' zone to 'Hazard Land (HL)' will identify where NPCA regulated features and hazards exist along the former rail line that is to be added to the abutting farm parcel, in accordance with Provincial and County policy.

Item 3: Recognize the reduced front and interior side yard setbacks:

The Committee of Adjustment previously approved a minor variance (application PLA-2018-170) to permit reduced lot frontage and the right interior side yard setback to facilitate the construction of the dwelling on Part 3 of the subject lands, as these items were considered functional and would not have a negative impact on the surrounding prime agricultural area. Given the legal description of the subject lands will change as a result of the consent application, the severance will spoil the minor variance approval. As such, the variances must be addressed and approved for Part 3 of the subject lands as part of this zoning by-law amendment application. There will be no change or impact on the subject lands and adjacent lands resulting from approving this portion of the application.

Overall, it is Planning staff's opinion that the subject zoning application will legally implement Provincial and County policies. The zoning by-law has been included as Attachment 3.

**Planning Opinion:**

It is Planning staff's opinion that the subject zoning amendment is consistent with the PPS and conforms to the policies of the Growth Plan and OP as it will permit agricultural land consolidation while protecting the public interest.

**Public Consultation:**

The proponent was not required to undertake additional public engagement following approval of the consent application. At the time of writing this report, Planning staff received no inquiries from the neighbours regarding the subject application. Also, at the time of writing this report, the neighbours were circulated on the notice of complete application and will be circulated on the notice of public meeting. A public notice sign was posted well in advance of the public meeting.

**FINANCIAL/LEGAL IMPLICATIONS:**

Not applicable.

**STAKEHOLDER IMPACTS:**

**Canada Post Corporation** – Canada Post does not have any comments on this file for severance or zoning changes as this will not affect mail delivery.

**Hydro One (High Voltage/Corridor)** – We have reviewed the documents concerning the noted application and have no comments or concerns at this time.

**Hydro One (Local)** – Hydro One has no concerns or comments with regards to the zoning amendment put forward in the attached file.

**Planning and Development (Development & Design Technologist)** – No objections.

**Building & Municipal Enforcement Services** – No objections.

**Niagara Peninsula Conservation Authority** – It is not necessary to circulate the NPCA on the subject application. I would recommend that any NPCA Regulated Features be zoned as Environmental Protection or Hazard as appropriate.

Comments were not received from Bell Canada, Mississaugas of the Credit First Nation, Six Nations Council, Union Gas, Emergency Services/Fire Department, Treasurer/Finance Division, and the Municipal Property Assessment Corporation (MPAC).

## **REPORT IMPACTS:**

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

## **ATTACHMENTS:**

1. Location Map.
2. Severance Plan.
3. Draft Zoning By-law.