

**The Corporation of the City of Kawartha Lakes
Planning Advisory Committee Report**

Report Number PLAN2020-028

Meeting Date: August 12, 2020

Public Meeting

Title: An application to amend the Township of Fenelon Zoning By-law 12-95

Description: An amendment to facilitate the severance of the farmhouse from the balance of the agricultural land. The property is described as Part North Half of Lot 8, Part South Half of Lot 8, Part of Lot 9, Concession 5, geographic Township of Fenelon, City of Kawartha Lakes, identified as 4027 Highway 35

Ward Number: 3

Author and Title: David Harding, Planner II, MCIP, RPP

Recommendations:

That Report PLAN2020-028, Part North Half of Lot 8, Part South Half of Lot 8, Part of Lot 9, Concession 5, geographic Township of Fenelon, City of Kawartha Lakes, identified as 4027 Highway 35, “2324784 Ontario Inc. – D06-2019-030”, be received;

That a Zoning By-law Amendment respecting application D06-2019-030, substantially in the form attached as Appendix “D” to Report PLAN 2020-028, be approved and adopted by Council; and

That the Mayor and Clerk be authorized to execute any documents required by the approval of this application.

Department Head: _____

Legal/Other: _____

Chief Administrative Officer: _____

Background:

The subject property is an agricultural lot that contains a single detached dwelling and shed containing a well. The owner applied to sever the dwelling from the balance of the agricultural land. On December 19, 2019, the Director of Development Services granted provisional consent to application D03-2019-009 to sever an approximately 0.44 hectare (1.08 acre) residential lot and retain approximately 126.12 hectares (311.64 acres) of agricultural land to be consolidated with other non-abutting lands owned by the farming operation.

As a condition of provisional consent, the agricultural land to be retained is to be rezoned to Agricultural Exception Twenty-Six (A1-26) Zone in order to prohibit residential use, recognize its deficient frontage, and impose a holding provision to prohibit the construction of agricultural buildings until such time as the owner chooses to enter into an agreement with the City to upgrade a suitable length of Robin Road. To further clarify how the lot containing the dwelling is to be used and recognize the reduced lot frontage that is proposed, said lot is also being rezoned to Rural Residential Type One Exception Twenty-One (RR1-21) Zone.

Owner:	Dagmar Teubner - 2324784 Ontario Inc.
Applicant:	David McKay - MHBC Planning Inc.
Legal Description:	Part North Half of Lot 8, Part South Half of Lot 8, Part of Lot 9, Concession 5, geographic Township of Fenelon
Official Plan:	Rural and Environmental Protection within the City of Kawartha Lakes Official Plan
Zone:	Agricultural (A1) Zone in the Township of Fenelon Zoning By-law 12-95, as amended
Site Size:	Severed – 0.44 hectares Retained – 126.12 hectares
Site Servicing	Severed – Private individual well and septic system Retained – Private individual well

Rationale:

Agricultural land is to be protected and preserved from non-agricultural development or any other incompatible land use that may hinder existing or future agricultural operations. To fulfill a proposed condition of provisional consent that requires the prohibition of residential uses on the proposed retained agricultural land, the owner has submitted an application to amend the Zoning By-law that will, if granted, fulfill this condition. The farm operation that owns the property will farm it in conjunction with other non-abutting agricultural parcels. The single detached dwelling on the subject land is deemed surplus to the needs of the farm operation.

Provincial Policies:

Growth Plan for the Greater Golden Horseshoe, 2019 (Growth Plan):

The Growth Plan directs growth to settlement areas, and discourages development on rural lands unless it is for activities such as the management or use of resources (such as agriculture), and/or other activities that are not appropriate for settlement areas.

Such development is to be compatible with the rural landscape, not conflict with the protection of agricultural uses and be sustained by rural service levels.

The proposal conforms to the Growth Plan as it is protecting the long-term viability of agricultural land belonging to a farming operation and is not increasing service levels within a rural area.

Provincial Policy Statement, 2020 (PPS):

Rural areas are important to the economic success of the Province and the quality of life. The long-term protection of rural assets and amenities is essential for a sustainable economy.

Within rural areas, the PPS directs most development to rural settlement areas. Development on rural lands, which form a part of rural areas, is permitted for proposals including agricultural uses. Such development is to be compatible with the rural landscape and sustained by rural service levels.

The proposal is consistent with the PPS as it is protecting the long-term viability of agricultural land belonging to a farming operation and is not increasing rural service levels.

Official Plan Conformity:

The majority of the subject land is designated Rural within the City of Kawartha Lakes Official Plan (Official Plan). Portions of the land are designated Environmental Protection. No development is proposed near the Environmental Protection designation, so none of the policies relating to that designation apply.

Section 16.1 of the Official Plan provides that agricultural land within the Rural designation, which is primarily Class 4-7, shall be protected from fragmentation, development and land uses unrelated to agriculture. One of the objectives of the Rural designation is to support farming operations as an important component of the economy, a source of employment and a way of life for many rural residents.

This application proposes no change to the existing land uses, and the agricultural land will be preserved and protected for future agricultural use.

The City, through its Official Plan, recognizes the generally desirable practice of the consolidation of farms wherever possible. The City also recognizes that it is not always possible to acquire abutting agricultural lots when consolidating an existing farm operation, and has established criteria in accordance with provincial

policy to recognize this circumstance and protect the long term agricultural use of the land. One of the criteria is that the agricultural land be rezoned to prohibit any residential use.

The Rural designation provides for the creation of a rural residential lot to remove a dwelling deemed surplus to a farm operation as a result of a consolidation of farm land with a non-abutting agricultural lot. In accordance with Policy 16.3.5 the residential lot must be between 4,000 square metres and 1 hectare and future residential development be prohibited on the agricultural land to be consolidated. The intent of the Official Plan is to limit the area of land to be severed with the farmhouse to what is needed to sustain it in order to maintain as much land as possible for current or future agricultural operations. As the lot to be severed proposes an area of 0.44 hectares, the area requirement and intent is met. A Zoning By-law Amendment application has been filed to fulfill the requirement to prohibit residential use on the proposed retained lands.

The application conforms to the Official Plan.

Zoning By-law Compliance:

The subject land is zoned Agricultural (A1) Zone in the Township of Fenelon Zoning By-Law 12-95. The lot to be retained exceeds the minimum area (38 hectare) requirement of the A1 Zone by proposing about 126.12 hectares. The lot does not meet the minimum lot frontage (230 metres) requirement of the A1 Zone by proposing about 185.14 metres along Highway 35. An Agricultural Exception Twenty-Six (A1-26) Zone with a holding (H) provision is proposed to replace the A1 Zone on the retained land.

The reason for the holding provision is as follows:

The Ministry of Transportation (MTO) advised during the circulation of the consent application that a separate or mutual driveway access off of Highway 35 for the proposed retained agricultural lot is not supported; sole access to the proposed retained lands must be from Robin Road. The portion of Robin Road which abuts and lead to the subject property is not assumed. However, the applicant has advised that seasonal access can and is achieved from Robin Road. Access to the proposed retained lot may continue to be via Robin Road in its current condition as both the Official Plan and Zoning By-law permit a parcel to have frontage on an improved public street, but not achieve direct access from said street. However, Section 3.6.1 of the Zoning By-law prohibits the erection of any buildings or structures on a lot that does not abut and obtain direct access onto an improved public street. Therefore, no buildings or structures are permitted on the proposed retained lot if the condition of the un-assumed portion of Robin Road remains unchanged. The applicant has advised that the remaining small building on the proposed retained lot protects a well that served the now-demolished agricultural buildings. The building is permitted to remain since its purpose is tied to the existence of the well, and the well could be used for future agricultural purposes. The well building will be considered legal non-complying, and complies with the applicable A1 Zone setbacks.

Through discussion with the City's solicitor, it was determined that if the current or future owner of the agricultural parcel did wish to construct buildings or structures, the Land Management Committee would identify the length of Robin Road to be brought up to a suitable municipal standard by the owner for use as a private service access. However, it would remain the responsibility of the owner to privately maintain the newly improved length of Robin Road. Should the current or future owner wish to undertake such an exercise, the agricultural lot would not fully comply with Section 3.6.1 since the newly improved portion of Robin Road would not be assumed.

The A1-26(H) Zone will protect the agricultural use of the land by prohibiting residential uses in accordance with provincial and municipal policy and provide for the future construction of buildings provided the necessary agreements are made with the City for the upgrade and maintenance of Robin Road.

Section 8.2.1.7 within the A1 Zone provisions permit a rural residential lot created through the consent process to be subject to the Rural Residential Type One (RR1) Zone provisions while retaining its A1 Zone symbol. The proposed severed lot exceeds the minimum area requirement of 2,800 square metres by proposing approximately 4,068 square metres and the dwelling does comply with the applicable RR1 Zone provisions. However, the lot proposes approximately 21.47 metres of frontage instead of the required 38 metres. As a Zoning By-law Amendment application is already required for the proposed retained lot, and formally changing the zone symbol of the proposed severed lot reduces any potential confusion for prospective purchasers as to how the lot is to be used, it is more appropriate to change the zone category to RR1-21 rather than address the matter through minor variance.

Other Alternatives Considered:

No alternatives have been considered at this time.

Financial/Operation Impacts:

There are no financial considerations unless Council's decision is appealed to the Local Planning Appeals Tribunal. In the event of an appeal, there would be costs, some of which may be recovered from the applicant.

Relationship of Recommendation(s) To The 2020-2023 Strategic Plan:

The Council Adopted Strategic Plan identifies these Strategic Priorities:

- Priority 1 – A Vibrant and Growing Economy
- Priority 2 – An Exceptional Quality of Life
- Priority 3 – A Healthy Environment
- Priority 4 – Good Government

This application aligns with a vibrant and growing economy as it provides opportunity to expand the economic base by maintaining and expanding agricultural employment.

Servicing Comments:

The agricultural land contains a well. The single detached dwelling on the land to be severed is serviced by a private sewage disposal system and well.

Consultations:

Notice of this application was circulated to persons within a 500 metre radius, agencies, and City Departments which may have an interest in the application. The Building Division and Community Services Department raised no concerns as a result of the circulation. No comments were received from the public.

Development Services – Planning Division Comments:

The application conforms to the Growth Plan and is consistent with the Provincial Policy Statement. The application also conforms to the policies of the Official Plan. The proposed Zoning By-law Amendment contained in Appendix D will ensure the agricultural land is preserved for agricultural use by introducing the A1-S26 Zone. All other A1 Zone provisions will be maintained as a result of this amendment. Zoning By-law Amendment also ensures that the rural residential lot is zoned RR1-S22 to avoid any future confusion as to how the parcel is to be used and to recognize the accessory building within the front yard. The accessory building is modest in scale and is set well back from the road, closer to the dwelling.

Conclusion:

The application conforms to and is consistent with the provincial policies concerning prime agricultural areas. The application also does conform to the Prime Agricultural designation policies in the City's Official Plan. Staff supports the application based on the information contained in this report and the comments received as of July 28, 2020. Staff respectfully recommends that the application be referred to Council for APPROVAL.

Attachments:

Appendix 'A' – Location Map



Appendix A to
PLAN2020-028.pdf

Appendix 'B' – Sketch for Consent Application



Appendix B to
PLAN2020-028.pdf

Appendix 'C' – Aerial Photograph



Appendix C to
PLAN2020-028.pdf

Appendix 'D' – Draft Zoning By-law Amendment



Appendix D to
Report PLAN2020-02

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Department Head: Chris Marshall

Department File: D06-2019-030