



## Planning Advisory Committee Report

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<b>Report Number:</b>	<b>PLAN2021-035</b>
<b>Meeting Date:</b>	June 2, 2021
<b>Title:</b>	<b>Amend Emily Zoning By-law 1996-30 at Block C, Plan 507, Westview Drive - Rowles</b>
<b>Description:</b>	An application to change the Community Facility Exception One (CF-1) Zone to an appropriate Rural Residential Type Three (RR3-*) Exception Zone to permit a residential use on the subject property
<b>Type of Report:</b>	Regular Meeting
<b>Author and Title:</b>	Mark LaHay, Planner II, MCIP, RPP

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### Recommendations:

**That** Report PLAN2021-035, respecting **Block C, Plan 507, geographic Township of Emily, City of Kawartha Lakes, "Rowles – D06-2020-016"**, be received;

**That** a Zoning By-law, respecting application D06-2020-016, substantially in the form attached as Appendix 'C' to Report PLAN2021-035 be approved for adoption by Council; and

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

**(Acting) Department Head:** \_\_\_\_\_

**Legal/Other:** \_\_\_\_\_

**Chief Administrative Officer:** \_\_\_\_\_

## **Background:**

The statutory public meeting was held by the Planning Advisory Committee on October 7, 2020, which adopted the following recommendation:

### **PAC2020-042**

**Moved By** Councillor Veale

**Seconded By** Councillor Seymour-Fagan

**That** Report PLAN2020-050, **respecting Block C, Plan 507, geographic Township of Emily, City of Kawartha Lakes, Application No. D06-2020-016**, be received; and

**That** Zoning By-law Amendment Application D06-2020-016, Block C, Plan 507 geographic Township of Emily, City of Kawartha Lakes, be referred back to staff for further review and processing until such time that all comments have been received from all circulated Agencies and any other concerns or issues have been addressed.

**Carried**

At the Council Meeting of October 20, 2020, Council adopted the following resolution:

### **CR2020-322**

**Moved By** Deputy Mayor O'Reilly

**Seconded By** Councillor Veale

**That** the Minutes of the October 7, 2020 Planning Advisory Committee Meeting be received and the recommendations, included in Section 11.3 of the Agenda, be adopted.

**Carried**

This report addresses that direction.

Owner:	Sabrina Rowles
Applicant/Agent:	Richard J. Taylor, Barrister and Solicitor
Legal Description:	Block C, Plan 507, geographic Township of Emily
Official Plan:	Waterfront and Environmental Protection in the City of Kawartha Lakes Official Plan

Zone:	Community Facility Exception One (CF-1) Zone in the Township of Emily Zoning By-law 1996-30, as amended
Site Size:	0.482 ha. (1.190 acres - MPAC)
Site Servicing:	Private Well and Private Septic System proposed
Existing Uses:	Vacant land
Adjacent Uses:	North: Rural and Waterfront Residential/Pigeon Lake South: Environmental Protection/Potash Creek/Agricultural East: Pioneer Road (portion unimproved)/Rural/Agricultural West: Westview Drive/Waterfront Residential/Pigeon Lake

The subject property was part of the Glen's green spaces as part of the original plan of subdivision that was registered in the early 1970s and was not originally assessed by MPAC. More recently in 2015, this property has been the subject of a sale by the City of Kawartha Lakes relating to the non-payment of property taxes in accordance with municipal procedures. It has been sold twice, since it was originally under the ownership of the Glen Cottage Owners Association.

## **Rationale:**

The subject property is located within an existing rural residential subdivision within a Waterfront designated community, which is situated adjacent to Pigeon Lake. The subject land is presently vacant. The current owner who purchased the property in 2016 proposes to rezone the property to change the previous community facility use to permit a single detached dwelling, which would also include permitted residential accessory uses.

The applicant has submitted the following documents and plans in support of the application, which have been circulated to various City Departments and commenting Agencies for review:

1. Zoning By-law Amendment Application received February 18, 2020 and deemed complete June 8, 2020.
2. Planning Justification Report prepared by EcoVue Consulting Services Inc., dated December 4, 2019 and supplementary confirmation dated September 23, 2020 that the conclusions of the Planning Justification Report related to the relevant sections of the PPS are still valid as the proposed Zoning By-law amendment is consistent with the policy changes resulting from the 2020 Provincial Policy Statement (PPS).
3. Proposed Concept Site Plan prepared by EcoVue Consulting Services Inc., dated June 1, 2020.

4. Topographic Survey prepared by Elliott and Parr, Ontario Land Surveyors, dated April 26, 2016.
5. Desktop Hydrogeological and Servicing Assessment prepared by Oakridge Environmental Ltd., dated October 2019. The report concludes there is an adequate supply of groundwater to service the single residential development and that there is sufficient area to support a private (conventional) Class 4 sewage system, with the expectation that a partially or fully raised tile bed will be required to accommodate site conditions. This will be assessed at the time of applying for a permit to construct the system. A revised site servicing plan prepared by Oakridge Environmental Ltd., dated November 9, 2020 was submitted and provides for a conceptual sewage system in compliance with the requirements of the Ontario Building Code.
6. Natural Heritage Evaluation (NHE) prepared by Oakridge Environmental Ltd., dated October 2019 in relation to potential natural heritage impacts associated with the proposed development.
7. Stage 1 & 2 Archaeological Assessment (with the involvement of Curve Lake First Nation) prepared by York North Archaeological Services Inc., dated June 25, 2019.
8. Stage 1 & 2 Archaeological Assessment Supplementary Document - First Nation (Curve Lake) Engagement prepared by York North Archaeological Services Inc., dated June 21, 2019.

Staff has reviewed the Planning Justification Report and other supporting documentation and has evaluated the application in the context of applicable zone provisions and policies and generally accepts the planning rationale given.

## **Provincial Policies:**

### **Growth Plan for the Greater Golden Horseshoe, 2019:**

The Growth Plan provides policies for managing growth and development while supporting economic prosperity, protecting the environment and helping communities achieve a high quality of life. Section 2.2.1 d) directs development to settlement areas except where policies permit otherwise, and Section 2.2.1 e) generally directs development away from hazardous lands. Within rural areas, subject to the policies of Section 4, Section 2.2.9.3 permits development outside of settlement areas on rural lands provided the uses are compatible with the rural landscape and surrounding local land uses; will be sustained by rural service levels; and, will not adversely affect the protection of agricultural uses and other resource based uses such as mineral aggregate operations.

The subject land is within the Natural Heritage System according to Provincial mapping, although this mapping does not apply until adopted into the applicable Official Plan. However, the policies would apply to natural heritage systems outside of settlement areas that are identified in the Official Plan. No significant wetland, wildlife habitat or woodland natural heritage features have been mapped on or within 120 metres of the subject property within the Official Plan but a key hydrologic feature, including permanent streams and an inland lake with potential fish habitat is within 120 metres and is subject to the relevant policies.

Relevant 2019 Growth Plan policies from Sections 4.2.2, 4.2.3 and 4.2.4 apply, which include provisions to protect key natural heritage and hydrologic features, maintain connectivity between such features, limit the amount of total developable area disturbance and identify a vegetation protection zone surrounding these features. The Natural Heritage Evaluation (NHE) submitted with the application outlines a number of recommended mitigation measures to protect the natural features and address the natural heritage provisions of the Growth Plan and other policy documents. These include: excluding development activities within the 30 m. vegetation protection zone from Potash Creek/ unevaluated wetland; limiting the total area of disturbance and the development area; ensuring that all necessary vegetation removal is completed outside primary bird nesting periods; and erosion and sediment control. Staff have received comments from the Kawartha Region Conservation Authority (KRCA) advising they had no concern with the application provided the recommendations are followed within the NHE. The KRCA has further advised that it is possible to incorporate the NHE recommendations within their permitting process and that they are supportive of implement an Environmental Protection (EP) zone on the southern portion of the property to generally align with the 15m top of bank vegetation protection zone recommended by the NHE.

In consideration of the above, the application demonstrates conformity with the policies of the Growth Plan.

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

The Provincial Policy Statement provides for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural environment.

Section 1.1.4, Rural Areas in Municipalities, recognizes the importance of rural lands, natural heritage features and areas and other resource areas and building upon rural character and leveraging rural amenities and assets.

Section 1.1.5 of the PPS provides policy with respect to rural lands and permitted uses, which include resource-based recreational uses (including recreational dwellings) and limited residential development which is compatible with the rural landscape and can be sustained by rural service levels.

Section 1.6.6 of the PPS provides policy for how and where sewage and water systems may be developed. In this regard, individual on-site sewer and water services may be used provided that site conditions are suitable for the long-term provision of such services with no negative impact. A Desktop Hydrogeological Study was submitted to determine if a private well and private septic system could be accommodated on the subject property. It recommended that site conditions be verified by excavating test pits at the time of applying for a permit to construct the sewage system. Comments have been received from the Building and Septic Division, advising that the latest site plan provides for a conceptual sewage system in compliance with the requirements of the Ontario Building Code.

Section 2.1 of the PPS provides policy with respect to the Wise Use and Management of Resources to protect Natural Heritage features, which does not permit development in certain significant natural heritage features nor within the habitat of endangered species and threatened species. The Kawartha Region Conservation Authority (KRCA) confirmed a Terms of Reference and scope for an Environmental Study, which is required to demonstrate that the proposed application would not result in negative impacts to the natural environment. Based on this, the submitted Natural Heritage Evaluation was circulated to KRCA. The KRCA advised they had no concern with the application provided the recommendations are followed within the NHE.

Section 2.6 pertaining to cultural heritage and archaeology does not permit development or site alteration on lands containing archaeological resources or areas of archaeological potential unless significant resources have been conserved. A Stage 1 & 2 Archaeological Assessment has been completed and filed with the Ministry of Tourism, Culture and Sport (MTCS) advising that in the absence of archaeological resources with cultural heritage value and interest that no further assessment is warranted or required. Confirmation was received from the MTCS that they are satisfied with the report and it has been entered into the Ontario Public Register of Archaeological Reports.

Section 3.1 of the PPS provides policies for protecting public health and safety by directing development away from hazardous lands and sites that may be subject to flooding and/or erosion or human-made hazards. The entire property is within the regulated area of KRCA. The Conservation Authority permitting policies direct development outside of flood hazards.

The submitted Natural Heritage Evaluation outlines a number of recommended mitigation measures to address the natural heritage provisions of the PPS. Staff have received comments from the Kawartha Region Conservation Authority (KRCA) advising they had no concern with the application provided the recommendations are followed within the NHE. The KRCA has further advised that it is possible to incorporate the NHE recommendations within their permitting process and that they are supportive of implementing an Environmental Protection (EP) zone on the southern portion of the property to generally align with the 15m top of bank vegetation protection zone recommended by the NHE.

In consideration of the above, this application demonstrates consistency with the PPS.

### **Official Plan Conformity:**

The subject property is designated "Waterfront" with the exception of a small sliver along the southeast side of the property, which is designated "Environmental Protection" in the City of Kawartha Lakes Official Plan (CLKOP) that is adjacent to and follows a watercourse. The Waterfront land use designation provides for low density seasonal and permanent residential uses and accessory uses adjacent to lakes.

The natural heritage policies of the CKLOP in Section 3.5 apply. This includes the preparation of an Environmental Impact Study (EIS), also known as a Natural Heritage Evaluation (NHE), for development and site alteration within 120 metres of certain natural heritage features including a wetland and/or fish habitat, development and site alteration within 120 metres adjacent to significant habitat of Threatened and Endangered species, which will be subject at the discretion of the Ministry of Natural Resources and Forestry, and development and/or site alteration within or adjacent to significant wildlife habitat may only be permitted subject to an EIS demonstrating no negative impacts to the natural features or their ecological functions.

The submitted Natural Heritage Evaluation outlines a number of recommended mitigation measures to address the natural heritage policies within the CKLOP. Staff have received comments from the Kawartha Region Conservation Authority (KRCA) advising they had no concern with the application provided the recommendations are followed within the NHE. The KRCA has further advised that it is possible to incorporate the NHE recommendations within their permitting process and that they are supportive of implementing an Environmental Protection (EP) zone on the southern portion of the property to generally align with the 15m top of bank vegetation protection zone recommended by the NHE.

As identified during preconsultation and as outlined in Section 34.13 of the CKLOP, cash-in-lieu of parkland dedication equivalent to 5 percent for residential development

or redevelopment shall be taken. Notwithstanding this requirement, the original subdivision plan provided an overdedication of parklands, as Blocks A to D, Plan 507 were to be dedicated for public park purposes, which represents approximately 17.5% of the area of the subdivision lands. By removing the Block C lands, approximately 15.3 % of the lands remain as parkland, which provides more than sufficient parkland for the subdivision. Therefore, the City will not be taking additional parkland or cash-in-lieu for this application.

Based on the above, this application demonstrates conformity with the CKLOP.

### **Zoning By-law Compliance:**

The property is zoned "Community Facility Exception One (CF-1) Zone" in the Township of Emily Zoning By-law 1996-30, as amended. The CF-1 Zone only permits a public or private park with no buildings or structures other than picnic shelters, gazebos and docks, which are not fully enclosed, playground equipment, a storage shed with a maximum floor area of 10 square metres and two change rooms, with no plumbing or washroom facilities, having a maximum total floor area of 25 square metres. As residential uses are not permitted, a rezoning is required.

The effect of the zoning amendment is to permit a portion of the land to be used for a single residential dwelling and associated accessory uses with appropriate development standards. This includes recognition of the reduced frontage, being approximately 8 metres, along Westview Drive. The applicant's Planner has advised that required yard setbacks can be met through the proposed design. A 30 metre vegetative protection area setback is required to be maintained from the edge of Potash Creek to meet the requirements of the Growth Plan for sensitive hydrological features, and to meet the environmental setback requirements for all buildings, structures and septic systems specified in the City's Official Plan. A minimum 30 metre water setback requirement in the Township of Emily Zoning By-law applies to the location of buildings and structures.

An Environmental Protection (EP) Zone is proposed to be implemented on the southern portion of the property adjacent to Potash Creek to generally align with the 15m top of bank vegetation protection zone recommended by the NHE, which will ensure development does not occur within the environmentally protected area and will minimize the impacts on natural features. In consideration of the 30 metre water setback requirement and the proposed two zone categories, an exception to the proposed zoning by-law is proposed to eliminate the additional 15 metre setback requirement for buildings and structures to an EP zone boundary as well as not treating the EP zone boundary as a lot line for the purposes of compliance with applicable zone provisions.



## **Other Alternatives Considered:**

No alternatives have been considered at this time.

## **Alignment to Strategic Priorities:**

The 2020-2023 Kawartha Lakes Strategic Plan identifies these Strategic Priorities:

- A Healthy Environment
- An Exceptional Quality of Life
- A Vibrant and Growing Economy
- Good Government

This application appears to align with the healthy environment strategic goal as proposed application promotes sustainable development through setbacks and design that protect and preserve natural areas.

## **Financial/Operation Impacts:**

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

## **Servicing Comments:**

The lot is proposed to be serviced by a private individual well and a private septic system. The Building and Septic Division has advised that the latest site plan provides for a conceptual sewage system in compliance with the requirements of the Ontario Building Code.

## **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 and a Public Meeting was held on October 7, 2020.

We have received the following comments:

## **Public Comments:**

On September 17, 2020, J. Anderson and J. Jamieson, the new owners of 100 Westview Drive requested information regarding the application. These owners posed follow up questions on September 21, 2020 regarding driveway location, septic system setback requirements, addressing, boundary trees and outbuilding location. Planning

Staff have responded to most of the questions and are following up with respect to the septic system setbacks.

On September 21, 2020, S. Mason expressed his disappointment with having received notice of the application and provided correspondence relating to a previous meeting held with City Officials in February 2016 regarding the sale of this piece of parkland that was owned the Glen Home Owners Association and that it was unlikely to be rezoned. The City's Chief Administrative Officer has further clarified that the Council at the time (and particularly the area Councillor) was not supportive of a zoning change. Nevertheless, the minutes capture the caution he provided that the City cannot reject a zoning amendment application, and that any application would be reviewed on its planning merits by a future council/administration.

On September 21, 2020, E. Bloom, a resident on Westview Drive outside the 500 metre circulation range requested information and instructions for sending a written submission and to participate remotely on-line. Planning Staff provided her with a copy of the Notice of Public meeting with the instructions attached.

On September 22, 2020, B. Putman of 117 Westview Drive asked for more specific information relating to the location of the subject land in relation to his property and whether it was near the natural forest adjacent to his property.

Up to the public meeting date of October 7, 2020, the following comments and concerns were provided by the following area residents:

- B. Pownall of 93 Westview Drive
- D. Ditchburn of 182 Westview Drive
- B. & T. Fisher of 9 Millbrook Ridge Road
- J. Jamieson & J. Anderson of 100 Westview Drive
- C. Young of 73 Westview Drive
- B. Calwell of 110 Westview Drive

These comments noted several common concerns including:

- loss of formerly common access green space;
- restrictive covenants and deeded access to Block C by neighbouring property owners;
- location of driveway with preference of lot access to be from Pioneer Road;
- location of proposed utility services (i.e. overhead hydro lines);
- setback requirements and location of the proposed well and septic systems and impacts on adjacent properties;
- removal of trees on the property; and,
- the tax sale process that saw the property leave common ownership.

At the public meeting, the following persons spoke:

Joanne and Sabrina Rowles as the owners of the property, and stated that they are confident in their ownership of the property and that they pay property taxes on it.

Donald Ditchburn of 182 Westview Drive spoke as the past president of the Glen Home Owners Association Inc. and provided an overview of the ownership history of the lot, including the tax sale process, which saw the property move into private ownership. He stated he was pleased to see the environmental studies being done on the property due to the proximity of Potash Creek. Overall, while he stated he does not have any strong objection with the Rowles family and is looking to restore relationship with them, he questioned if there is clear title to the property, as most properties in the neighbourhood have access to Block A-G, including Block C.

Jenn Rowles of 116 Westview Drive which is the abutting property and spoke in support of the application. She stated that she has no objection to her sister moving next door, as they have done a lot of work to prepare the property. She also noted that the restrictive covenant could not be enforced over 40 years, and that it has been 55 years.

On October 9, 2020, D. Ditchburn provided follow-up email correspondence reiterating the history of the subdivision and the zoning and purpose of the park blocks.

More recently, J. Jamieson and J. Anderson of 100 Westview Drive have inquired about the status of the application and when they would have further opportunity to comment regarding the application as they are concerned with the entrance driveway location in proximity to their property and questioned whether it could be moved to Pioneer Road.

In response to their driveway location concern, Staff notes that Pioneer Road as constructed terminates and does not extend as an improved road across the property frontage in this vicinity. The road is unopened beyond this point likely because of proximity to Potash Creek. The Westview Drive entrance and driveway location are the furthest possible distance from the creek location and Staff acknowledges that the KRCA is satisfied with this location.

### **Agency Comments:**

On September 11, 2020, the Building and Septic Division advised it has no concerns with the zoning by-law amendment application.

On September 15, 2020, the Engineering and Corporate Assets Department advised that further to their review of the application, they have no objection or comments to the proposed Zoning By-law Amendment to permit a single detached dwelling on the north central portion of subject land.

On September 28, 2020, the Ministry of Natural Resources and Forestry provided direction to access the natural heritage feature resources of their online mapping system.

On October 9, 2020, Kawartha Conservation advised that the entirety of the subject land is regulated and that permits would be required for site development. In addition, Potash Creek was identified as a key hydrologic feature within 120m of the subject land subject to the natural heritage policies of the Growth Plan. The KRCA reviewed the Natural Heritage Evaluation (NHE) submitted with the application and concluded it provided suitable recommendations to minimize the impacts on natural features. The KRCA advised they had no concern with the application provided the recommendations are followed within the NHE. In addition, they advised that a permit will be required for development. As part of the permit application, Kawartha Conservation will require an elevation survey and site grading plan.

On October 6, 2020, comments were received from the Building and Septic Division stating that the proposed filter bed is undersized, and recommended that the plan be revised to provide sufficient on-site sewage treatment.

On November 16, 2020, the Public Works Roads Manager of the East Maintenance Area advised that KRCA approval is to be provided for the driveway work prior the City initiating their administrative review process to ensure the entrance is in compliance with the City's current by-law. This will involve getting the necessary approval to construct the entrance as well as an approved Road Occupancy Permit. Planning Staff note that the KRCA is satisfied with the driveway entrance location.

On November 17, 2020, the Part 8 Sewage Systems Supervisor advised that a revised site servicing plan dated November 9, 2020 was submitted completed by Oakridge Environmental. The revised site plan provides for a conceptual sewage system in compliance with the requirements of the Ontario Building Code. However, the conceptual plan indicates a total loading rate area of 371.9 square metres. This will limit the total daily sewage flow of the proposed dwelling to 2200 Litres/day. The applicant does not see that the proposal will exceed this limit. As such, the Building and Septic Division does not have any further concerns with the Zoning Amendment proposal.

On April 30, 2021 the City Solicitor having evaluated a proposed mitigation measures agreement prepared by the applicant, advised the applicant that although portions of the site will be protected by EP zoning, a building envelope is achievable within the residential zone over the balance of the property. The City Solicitor further advised that this EP zoning approach is a better alternative than a mitigation measures agreement as the agreement does not constitute "applicable law" for the purposes of issuing a building permit.

## **Development Services – Planning Division Comments:**

The background information which has been submitted in support of the application has been circulated to the appropriate agencies and City Departments for review and comment.

The application for Zoning By-law Amendment demonstrates consistency with the Provincial Policy Statement and conformity to the Growth Plan and Official Plan. The proposed Zoning By-law amendment with appropriate zoning provisions along with a proposed Environmental Protection (EP) Zone on the southern portion of the property adjacent to Potash Creek will appropriately facilitate the construction of residential dwelling on the subject property while ensuring development does not occur within the environmentally protected area, which will minimize the impacts on natural features.

## **Conclusion:**

In consideration of the comments and the evaluation contained within this report, and provided there are no further issues or concerns raised, Staff respectfully recommend that the proposed Zoning By-law Amendment application be referred to Council for **Approval**.

## **Attachments:**

The following attached documents may include scanned images of appendices, maps, and photographs. If you require an alternative format, please call Mark LaHay, Planner II, (705) 324-9411 ext. 1324.



Appendix 'A'  
PLAN2021-035.pdf



Appendix 'B'  
PLAN2021-035.pdf



Appendix 'C'  
PLAN2021-035.pdf

Appendix 'A' – Location Map

Appendix 'B' – Aerial Photograph NHE Constraints Map

Appendix 'C' – Draft Zoning By-law Amendment

**(Acting) Department Head email:** [rholy@kawarthalakes.ca](mailto:rholy@kawarthalakes.ca)

**(Acting) Department Head:** Richard Holy

**Department File:** D06-2020-016