

Council Report

Report Number: CA02023-001

Meeting Date: January 31, 2023

Title: **2750876 Ontario Inc. (Riverwalk) Request for Support of a Minister's Zoning Order (MZO)**

Description: This report provides background and options for consideration, should Council support a request from 2750876 Ontario Inc. (Riverwalk) for an MZO on lands both within and abutting the north side of the Lindsay Settlement Area.

Author and Title: Ron Taylor, Chief Administrative Officer
Richard Holy, Director of Development Services

Recommendations:

That Report CA02023-001, 2750876 Ontario Inc. (Riverwalk) Request for Support of a Minister's Zoning Order (MZO), be received for information.

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

At the Meeting of September 27, 2022 Council adopted the following resolution:

CC2022-09.13.1

Minister's Zoning Order Request for Lands Known as 405 St. David Street, Lindsay

Darren Vella, President and Director of Planning, Innovative Planning Solutions
Dan Ridgeway, Associate - Planning and Urban Design, The MBTW Group

Darren Vella, President and Director of Planning with Innovative Planning Solutions, and Dan Ridgeway, Associate - Planning and Urban Design with The MBTW Group, provided an overview of the Riverwalk Community that is proposed for lands at 405 St. David Street, Lindsay. The overview included a summary of the lands involved and outlined that a Minister's Zoning Order would be requested for the development. Council was asked to support the Minister's Zoning Order Request.

CR2022-330

Moved By Councillor Dunn

Seconded By Councillor Seymour-Fagan

That the presentation and request to council for support of a Minister's Zoning Order (MZO) for lands known as 405 St. David Street, Lindsay, being the Riverwalk Community, be received;

That City staff be authorized to work with the requestor and staff at the Ministry of Municipal Affairs and Housing (MMAH) to initiate the appropriate process to support moving forward with this request; and

That City staff report back to the new Council with information and recommendations in January, 2023.

Carried

Council adopted this recommendation at the September 27, 2022 Council meeting. This report addresses that direction.

Rationale:

Ministerial Zoning Order Proposal

On September 16, 2022, the City received a request from Innovate Planning Solutions on behalf of 2750876 Ontario Inc. (Riverwalk) for a municipal support resolution for a Minister's Zoning order on lands that are owned by the developer at Simpson Road and St. Peter Street in Lindsay. On September 27, 2022, (Riverwalk) made a presentation and request at the Council Meeting for a municipal support resolution of a Ministerial Zoning Order (MZO). This was followed by a presentation to Committee of the Whole on January 10, 2023 to the newly elected members of Council.

The MZO does not amend the City's Official Plan to include these lands in the Lindsay settlement area nor does it provide a land use policy framework for which to subdivide the land into a subdivision at this time. A formal request has not been made to the Ministry of Municipal Affairs and Housing as the developer has intended to secure municipal support prior to making the request at the Province.

Riverwalk has purchased this 17.3 ha (42.7 acre) site, approximately of which only 2.5 ha (6.2 acre) are located within the Lindsay Settlement Area. The lands are fronted along Simpson Road and St. David Street, extend along the Scugog River and are west of the Central East Correctional Centre and employment lands owned by the City. The developer is requesting MZO support over the entire property. A planning report has been provided in support of the proposal (See Appendix A). The concept plan proposes a community consisting of:

- 83 units of townhouse units;
- 94 units of laneway decked townhouse units;
- 228 units of back to back townhouse units;
- 1,367 high density units comprised of apartments, senior's home, and hotel;
- 10,000 sq.ft. of retail commercial floorspace
- Protection and restoration of significant natural heritage features along the Scugog River waterfront with construction of a boardwalk and trail system throughout the community forming the basis for a green corridor containing trails throughout the community;
- Preservation of the marina basin as a central feature of the development concept; and
- Provision of new stormwater management facilities to service development.

The submission contained some background reports on planning, servicing and environmental impact assessment to support the submission (see Appendices B to E). A draft Minister's Zoning Order was submitted for consideration.

The planning report is contained in Appendix A to this report, which outlines the proposal in the Provincial and local policy context and suggests that the proposal conforms to all relevant policies.

The servicing brief suggests that the proposal can be serviced through existing watermain located within Simpson Road and St. David Street. Sanitary servicing can be accommodated through a gravity system to a pump station, which will pump these flows into a gravity trunk sewer on St. David Street. Work would be required to determine water and wastewater treatment plant capacity to support this proposed development. Stormwater flows can be accommodated on-site and low impact development techniques can provide for water quality, water balance, and phosphorus reduction as soil conditions permit.

The traffic brief provided by the applicant suggested that the proposal could be accommodated using the existing road network. The increased traffic levels would result in some delays but the level of service would remain acceptable. An all-way stop is warranted at the intersection of St. David and Colborne Streets.

An environmental impact assessment was undertaken for the development lands. The study has provided a number of detailed recommendations for environmental preservation of natural heritage features on the site.

The studies were sent to all relevant City Departments and external agencies for review. Detailed comments were received from Kawartha Region Conservation, which made some recommendations for additional review on the servicing and environmental reports. While the background materials have been reviewed, staff feel that the proposal would benefit from inclusion into the Growth Management Strategy and the Servicing and Transportation Master Plan updates in order to properly assess their impacts on growth as well as servicing and transportation needs. Therefore, staff do not take a position on these background reports.

Planning Process for Urban Area Expansion

The following sections discuss the prescribed approach to the planning process in order to get an urban designation or an urban area expansion; the approach undertaken by Riverwalk; issues associated with Minister's Zoning Orders (MZOs) in general; and, issues with attaching conditions to MZOs.

2020 Growth Plan Policy Framework

Ontario's Growth Plan (see Appendix F) directs that settlement area boundaries are to be delineated in a municipality's Official Plan. The Growth Plan provides for expansions and adjustments to settlement area boundaries in reference to Municipal Comprehensive Reviews (MCRs). The MCR is a multi-year cross-divisional policy review program that results in a new official plan, or an official plan amendment (or series of amendments), is initiated by the municipality under section 26 of the Planning Act, and comprehensively applies the policies and schedules of the Growth Plan. The MCR is informed by a number of critical inputs including a Growth Management Strategy supported by a Land Needs Assessment (LNA), municipal master plans for servicing, transportation and waste disposal, and other supporting studies including, but not limited to, evaluations of natural heritage and environmental features, and prime agricultural lands. The program also includes input from the public, various stakeholders, and internal and external commenting agencies.

On June 14, 2021 the Ontario Land Tribunal ('OLT') established settlement area boundaries in the City's Official Plan (2012) for the City's four (4) urban settlement areas, being Bobcaygeon, Fenelon Falls, Lindsay, and Omemee. The Growth Plan provides three (3) options to changing a settlement area boundary through expansions or adjustments, summarized in the following chart:

Expansion Option 1 MCR (LNA)	Expansion Option 2 Before MCR	Adjustment Option Before MCR
<ul style="list-style-type: none">• Capacity in infrastructure and public service facilities, and are financially viable• Municipal master plans for water, wastewater and stormwater, and that avoid, minimize and/or mitigate negative impacts on watershed conditions and the water resource system• Avoidance of NHS and prime agricultural areas, compliance with MDS, and that avoid, minimize and/or mitigate negative impacts on agri-food network		

Expansion Option 1 MCR (LNA)	Expansion Option 2 Before MCR	Adjustment Option Before MCR
<ul style="list-style-type: none"> Apply PPS and other provincial plans (ORMCP, LSPP, SPPs) to manage resources and protect public health and safety 		
	The lands being added are to a municipally-serviced settlement area, and there is sufficient reserve capacity for the added lands	
	The affected settlement area is not a rural settlement or in the Greenbelt Area	
	The lands being added are planned to achieve at least the minimum density target (and intensification in the case of an adjustment)	
	The lands being added will be fully accounted for in the LNA for the next MCR	No net increase of lands within the settlement area
	The lands being added are ≤ 40 ha	

There are two (2) approaches to settlement area boundary **expansions**:

- 1) **Through a municipal comprehensive review (MCR)** where a Land Needs Assessment has been undertaken that justifies the need for an expansion. A set of criteria (s.2.2.8.3) must then be met to determine the feasibility of, and the most appropriate location for, the proposed expansion:
 - i. sufficient capacity in existing or planned infrastructure and public service facilities, and, that these assets be financially viable over their lifetime;
 - ii. current master plans for water, wastewater and stormwater used to inform the expansion, and, that the services avoid, minimize and/or mitigate negative impacts on watershed conditions and the water resource system;
 - iii. avoidance of the Natural Heritage System and prime agricultural areas to the extent possible, as well as compliance with MDS, and, that any adverse impacts on the agri-food network be avoided, minimized and/or mitigated; and

- iv. application of the PPS policies for Wise Use and Management of Resources and Protecting Public Health and Safety, and uphold the requirements of other applicable provincial plans, including the Oak Ridges Moraine Conservation Plan, Lake Simcoe Protection Plan and source protection plans.

2) **In advance of an MCR** provided:

- i. the lands being added satisfy the criteria under s.2.2.8.3 (listed above);
- ii. the lands being added are to a settlement area that is municipally serviced, and there is sufficient reserve capacity for the added lands;
- iii. the lands being added are planned to achieve at least the minimum density target;
- iv. the affected settlement area is not a rural settlement or in the Greenbelt Area;
- v. the lands being added and the associated forecasted growth will be fully accounted for in the land needs assessment associated with the next MCR
- vi. the lands being added are no larger than 40 ha.

The Growth Plan also provides an approach to settlement area boundary **adjustments** in advance of an MCR provided a series of criteria are met:

- 1) the lands being added satisfy the criteria under s.2.2.8.3;
- 2) the lands being added are to a settlement area that is municipally serviced, and there is sufficient reserve capacity for the added lands;
- 3) the adjustment helps meet intensification and density targets;
- 4) the affected settlement areas are not rural settlements or in the Greenbelt Area;
and
- 5) there is no net increase of lands within the settlement area.

The City has initiated its MCR program through its Growth Management Strategy ('GMS') that will apply the Province's Land Needs Assessment methodology. The Province has provided us with new 2051 growth targets of 117,000 people and 39,000 jobs. While these are minimums, it is prudent to go through the GMS exercise to determine the growth scenario options for urban area expansions. While the GMS

should be concluded this year, followed by natural heritage and agricultural system studies, and a commercial policy review, the companion master plan update to servicing is underway with the transportation commencing shortly for a comprehensive and coordinated approach.

Through the GMS, the City will review all growth and urban expansion proposals and opportunities evaluated based on the following main principles: need for urban expansion, ease of servicing and related infrastructure costs, transportation needs, environmental impacts, and loss of prime farmland.

Preliminary indications suggest that the City's 15-year housing demand of approximately 7,400 units is far exceeded by our forecasted units in active applications (6,000), estimated unit yields on existing and designated vacant lands (6,400), and additional units in endorsed MZO's (6,600) for a total of 19,000 units.

With the magnitude of the MCR program, and in particular the data required to satisfy the provincial criteria, the resulting new official plan (or official plan amendment) process is customarily driven by the municipality, and not an independent proponent.

Riverwalk MZO Request

Riverwalk is aware of the City's forthcoming MCR program, but has not committed in participating in the GMS and subsequent policy studies and municipal master plan updates that will underpin the City's new Official Plan. The public consultation process is open to all members of the community.

An MZO can be used to fast-track development and provide the necessary commitment to development on the subject lands to rationalize their further investment and study.

Riverwalk is aware that notwithstanding the outcome of the MZO request, that the City will continue to advance its MCR process, and Riverwalk will need to submit Planning Act applications (and/or participate in City-led applications) for Draft Approval of a Plan of Subdivision with required supporting studies to facilitate the development of the lands. The application will be subject to approval by the City's Planning Advisory Committee and subsequent appeals process. Whole-scale construction may only commence once all of the necessary municipal background studies, approvals and permits are in place.

While an MZO would establish the zoning for the site, its approval now would be out of sync with the necessary Official Plan policies that frame the zoning, such policies yet to be informed by the outcome of the MCR. Although MZOs do not need to demonstrate their consistency with the PPS, Growth Plan, and Official Plan (with the exception of lands within the Greenbelt), the required Planning Act applications that follow will need to.

An MZO at this time is neither necessary for the development of the site, nor does it advance the statutory prerequisites under the Planning Act.

Issues with MZOs

Section 47 of the Planning Act allows the Minister of Municipal Affairs and Housing to issue MZO's to govern land uses within areas subject to the order. An MZO contains the following six (6) sections:

Definition – that identifies the applicable municipal zoning by-law (in this case, the Township of Ops Comprehensive Zoning By-law 93-30);

Application – that identifies the geographic area and map subject to the Order;

Permitted Uses – that identify the use of lands;

Zoning requirements – that identify the development standards;

Terms of Use – for the Order; and

Deemed By-law – identifying its passage by the municipality.

It is well-documented that MZOs serve a useful purpose in the right circumstances. MZOs can advance shovel-ready developments quickly once the zoning is in place as a result of the MZO, for example during emergencies, or to expedite significant job creation and investment, public health facilities, and affordable housing – all of which are matters of provincial interest.

An MZO within an urban settlement area is not as problematic because growth and servicing has been studied and assigned to a property, as was the case with the CRAFT development in the Jennings Creek area of Lindsay, and appropriate Official Plan policies are already in place to guide growth and development expectations, requirements and implementation.

MZOs are a zoning tool, not an answer to viability or suitability for servicing allocation, capacity, servicing extensions, transportation networks, avoidance of natural heritage and prime agricultural areas.

Through the previously-mentioned studies, and others, such as the City's Development Charges Background Study, cost-effective growth can be implemented through aligned Official Plan policies, and other infrastructure and servicing background and technical studies. Should Riverwalk be successful in obtaining an MZO, the City would be obligated to update its Development Charges Background Study and implementing by-law to collect Development Charges from development on the Riverwalk lands. Amending the existing Development Charges By-law to capture the costs associated with the Riverwalk lands could result in a protracted process. The City is planning an update to our current by-law and associated background study. Council also has the option to impose an area-specific Development Charge specifically for the Riverwalk lands. More review is required to determine the best option and process.

Supporting an MZO is synonymous with committing to development, and committing to the required servicing and infrastructure needed to support that development without a full analysis. In this case, supporting the MZO request commits the City to a specific development expansion for Lindsay in the absence of the evaluation of all growth options to be presented in the GMS. Factors such as servicing cost effectiveness, loss of prime agricultural land, natural heritage systems impacts, and impacts on the transportation network are not considered. This has the effect of predetermining some of the City's future growth, perhaps not in the most cost-effective manner and could constrain and/or limit substantive development potential elsewhere in Lindsay, or in the other three (3) urban settlement areas.

MZOs with Conditions

Although the Minister considers requests supported by a municipal Council resolution, the decision to make an MZO remains at the discretion of the Minister.

Through Section 47 of the Planning Act, the Minister may exercise any of the powers conferred upon councils by s.34 [Zoning by-laws], s.38 [Interim control by-law] or s.39 [Temporary use provisions] – but, s.34(11) to (34) do not apply to the exercise of such powers (i.e. notice, public process, appeals), nor does s.50(4) apply [Designation of plans of subdivision not deemed registered]. **In other words, s.47 does not allow the Minister to impose any conditions** – the Minister cannot fetter himself or his

successor to the effect that the MZO will only be fulfilled once a condition is fulfilled. Therefore, should Council elect to impose conditions, these would not be imposed by the Minister in the Order.

Council is familiar with attaching conditions to the approval of development applications. Should Council choose to support this MZO request, staff strongly recommend that Riverwalk enter into an appropriate, and financially secured framework agreement with the City, to require, among other things:

- Commitment to participate in the City's growth and development planning and servicing studies, including but not limited to, MCR through the GMS Project, municipal servicing and transportation master plan updates, and Development Charges Study update, and prior to building permits issued for development on the subject lands outside of the Lindsay settlement area;
- Commitment to payment of any and all costs and fees typical of development, and inclusive of 405 St. David Road's proportionate share of infrastructure and servicing costs to support the proposed development (Growth pays for Growth concept);
- Commitment to obtain all necessary Planning Act approvals to implement the proposed development;
- Commitment to review and satisfy typical City conditions of development approval applied to subdivisions and non-residential development;
- Commitment to review and satisfy typical conditions of development approval from appropriate agencies and stakeholders, including but not limited to, Kawartha Region Conservation Authority, OMAFRA and First Nations; and
- Commitment to any "community benefits" offered to the community (for example, both FLATO and Bromont Homes have committed to a financial and land contribution to the City's affordable housing program to support the build of 10% equivalent residential units for purpose-built affordable housing units).

Other Alternatives Considered:

In consideration of Riverwalk's request that Council support its MZO request, Council has a number of options:

1. Support the request as presented, without conditions;
2. Support the request as presented, with conditions;
3. Defer support of the request until the statutory planning processes have been completed;
4. Abstain from supporting the request;
5. Deny the request.

Should Council support the request, then the following recommendation could be adopted:

That City Council supports the request from Riverwalk for a Minister's Zoning Order (MZO) on approximately 17.3 ha of land both within and abutting to the north of the Lindsay urban settlement area, and as generally outlined in Appendix A and B to report CAO2023-001;

That staff be directed to work with Riverwalk to prepare a draft framework agreement acceptable to both parties, and that the draft agreement be forwarded to Council for review and approval.

As previously stated, the Minister cannot issue conditions of approval as part of an Order. Should Council support the request from Riverwalk, but an acceptable agreement cannot be finalized, then staff would report back to Council in July of 2023, and recommend that Council request the Minister to revoke any Order(s) in support of this proposal.

Alignment to Strategic Priorities

The four strategic priorities within the 2020-2023 Kawartha Lakes Strategic Plan are:

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

The City will achieve a Healthy Environment through the protection and preservation of natural areas and prime agricultural land by promoting sustainable development. The City will promote an Exceptional Quality of Life through building social infrastructure by continuing to encourage mixed development, with a focus on affordable, attainable and purpose built housing; and, through ensuring recreation and leisure programs are available to all residents by increasing linkages in local trail systems to improve connectivity and maintaining "community hubs" such as parks, buildings and active spaces for social, healthy interactions. These priorities are implemented through the policy framework established by the necessary Planning Act applications to facilitate 405 St. David Road's development concept.

The City will demonstrate Good Government through proper asset management by ensuring municipal assets are well maintained and well managed; and, through increased efficiency and effectiveness of service delivery by completing the Official Plan and Secondary Plans. This priority is influenced by resolution of appeals and completion of the MCR.

Financial/Operation Impacts:

Components of the City's Official Plan and the Lindsay Secondary Plan in its entirety are presently before the OLT; it remains unknown to what extent an MZO would impact resolution of the appeals at the OLT and progress made to date as well as future growth and Development Charges planning.

Consultations:

Relevant City Departments

External Commenting Agencies

Attachments:

Appendix A – Planning Justification Report from Innovative Planning Solutions



Appendix A to
CAO2023-001.pdf

Appendix B – Urban Design Vision Brief from MBTW



Appendix B to
CAO2023-001.pdf

Appendix C –Traffic Brief from Crozier Consulting Engineers



Appendix C to
CAO2023-001.pdf

Appendix D – Functional Servicing Report from Pearson Engineering



Appendix D to
CAO2023-001.pdf

Appendix E – Environmental Impact Study from Oakridge Environmental Ltd.



Appendix E to
CAO2023-001.pdf

**Appendix F – A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019
(and Amendment 1, 2020) – Policy excerpts**



Appendix F to
CAO2023-001.pdf

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Department File: N/A