



Mayor and Council

Township of Algonquin Highlands

1123 North Shore Road

Algonquin Highlands

K0M 1S0

November 15, 2024

RE: AH-ZBA-009/24

Dear Mayor and Council, CAO, Planning Staff

My name is Natalya Garrod, I am a Registered Professional Planning consultant. I am the Owner and Principal Planner at Sumac Environmental Planning. I was hired by the concerned citizens of Halls Lake. I have completed a planning policy review of the proposed zoning by-law amendment application referred to as AH-ZBA-009/24. The results of my review indicate that passing a new zoning by-law that permits for agricultural uses on the property which has two land use designations (one of which does not allow for agricultural uses) would create a situation where the applied zoning does not conform to the Algonquin Highlands Official Plan land use designation (see below).

If Council approves this zoning amendment you would be in contravention of Section 24 of the Planning Act, which prescribes, that Council cannot create a new by-law that does not conform to the Official Plan.

The access to this property is also through an easement on a neighbouring property, that has no direct access to an open and maintained public highway as is required in Section 3.3.6.5 of Haliburton County's OP. Section 7.9.5 states that new developments along private roads will not be permitted. The subject lands front 2 private roads. Both these points were flagged in an email from Elizabeth Purcell to Sean O'Callaghan in a letter dated August 22, 2024.

I have provided two potential solutions to this proposed ZBA at the bottom of my letter. The contents of this letter explain my review of the policies and the challenges that this application faces with conforming to Town policies.

OFFICIAL PLAN DESIGNATION

The zoning applied to a property MUST conform to the Official Plan Land Use Designation and not be in contradiction. The Algonquin Highlands Official Plan states "The Township's comprehensive Zoning By-laws will be updated as necessary to conform to the policies of this plan".

Section 5.2.1 of the Official Plan states that "the waterfront designation applied to those properties that front on, or are adjacent to, or have an influence on any lake or river AND generally included patented property within 150 metres of the shoreline of a waterbody". This policy prescribes how the designation is meant to apply to lands within the municipality, it does not prescribe the exact boundaries on the mapping. This statement is saying it can apply more or less but the only delineation of the boundary can be found in the

Official Plan Land Use Schedule.

The Official Plan Land Use Schedule clearly indicates that the property resides within the Waterfront Designation in addition to the Rural designation. See below for a screenshot of the Official Plan land use designation (waterfront is pink and white is rural) and the aerial photo. The Waterfront Designation does not by any means permit the property to be used for agricultural uses (hobby farm). The applicant has applied to rezone the whole property (waterfront designated lands included) to a zone that permits for agricultural uses. By choosing to rezone the entirety of the property, Council would be creating a non-conforming policy situation where a zone's permitted uses does not comply with the land use designation. This is not legal given the policy of the Official Plan that requires the zoning by-law to conform with Section 24 of the Planning Act which states "Despite any other general or special Act, where an official plan is in effect, no public work shall be undertaken and, except as provided in subsections (2) and (4), no by-law shall be passed for any purpose that does not conform therewith".



The intention of the Waterfront designation is to ensure that development (land use change included in the definition of development) occurs in an environmentally responsible manner, with regard for public health and safety (5.2.1.2). The Permitted Uses in the Waterfront designation does not include agricultural uses. Two official plan land use designations apply to the property and one does not permit the proposed use. An Official Plan Amendment is required.

The Rural Designation only applies to a portion of the property which permits agricultural uses.



If Council decides to support a rezoning it should be restricted to the small portion of the property that is actually located within the Rural designation and could support Rural zoning. Otherwise Council will be approving a new zone on a property which does not conform with the official plan land use designation and therefore contravenes the Planning Act Section 24.

TRANSPORTATION

With respect to transportation, the Rural Area development policies in Section 3.3.6.5. of the Haliburton County Official Plan state that “access to the development may be permitted from a public highway open and maintained on a year-round basis and which is appropriate for the use proposed”. The proposed application is considered development under the Planning Act which is defined as a change in land use or construction of a building or structure. This proposed new use is located on a lot where access to the property is through an easement on a neighboring property and there is no direct access to an open and maintained public highway as required in Section 3.3.6.5. of the County of Haliburton Official Plan. The subject lands front on 2 private roads (Deacons Trail & Carey Close). Both of these points were flagged in an email from Elizabeth Purcell in a letter to the Town dated August 22, 2024. Therefore, the proposed development is not in conformity with the County of Haliburton Official Plan policies.

RURAL LAND USE DESIGNATION REQUIREMENTS

The Official Plan Land Use Schedule applies a small portion of the Rural Land Use Designation to the property. The Rural Land Use designation requires the town to avoid negative impacts on the environment and negative impacts on ground and surface water quality. Section 5.3.4.7 also states that “adequate setbacks and buffers will be maintained on agricultural properties along property lines to ensure compatibility with abutting uses”. The abutting uses in this scenario are residential housing, a cold water lake and some rural properties. The zoning by-law does not require any setbacks on the property to control for impacts on the neighbouring residential properties. How can this official plan policy be implemented in practice if there are no required setbacks?

SOURCE WATER PROTECTION

The Rural land use designation states in Section 5.3.6.1. that “The township will encourage the management of materials containing nutrients in ways that will enhance the protection of the natural environment and provide a sustainable future for agricultural operations and rural development”. How can council be confident that there will be no impact from the proposed hobby farm on the surrounding water quality of Halls Lake (a cold water lake)? What is the setback from the proposed hobby farm to the nearest well? The proposed hobby farm will contain chickens and pigs, which produce manure that contains phosphorus and nitrates. Excess amounts of phosphorus and nitrates can accelerate eutrophication causing algae and plant growth in the lake. Given that the municipality is not located within the boundaries of a Conservation Authority source water protection falls on the municipality. How is source water protection being considered in this application? Are any of the

neighboring residential wells dug wells? How far is the closest well and how can you be sure it won't be impacted?

ILLEGAL NON-COMPLIANCE

As it has been stated by the applicant, the subject property has been currently used in an illegal non-complying manner (agricultural uses) on lands designated Waterfront and Rural and Zoned SR-2. The Zoning By-law states under Violations and Penalties “any person or corporation who contravenes any provision of this by-law is guilty of an offense and upon conviction is liable to the fine (2) as provided for under the Planning Act, R.S.O. 1990 cp.13 as amended”. Has the by-law department issued a fine for illegal non-complying use of this property under the existing zoning? Has the applicant paid the fine? Why was a rezoning application accepted without the penalty of illegal uses? What precedent does this set for property owners in the municipality of Algonquin Highlands?

UNEVALUATED WETLAND ZONING AND RESTRICTIONS

A portion of the subject property is in fact located within an Environmental Protection Overlay Zoning as it contains an unevaluated wetland. The Official Plan states “the EP zone will be considered an overlay zone, with the underlying zones remaining in place”. The Lands within the EP zone are not permitted to be used for ANY other purpose than those that legally exist (permitted in the Official Plan).

See below for a map of the unevaluated wetland location on the subject property (green is an unevaluated wetland). Based on reviewing the aerial imagery in comparison to the EP overlay zone it seems that the proposed hobby farm is existing in the same location as the EP overlay zone. If the zoning application is approved how will the Town ensure that development is not located within EP zone? Will the rezoning application apply to the EP zone?



HOBBY FARM REQUIREMENTS – INSUFFICIENT

The Hobby Farm requirements in the Zoning By-Law require that the farm be in accordance with MDS II which limits the property owners to 2 nutrient units (approximately 7 or 8 pigs).

In the public meeting, Town Planning Staff stated that the applicant would have to conform to the Hobby Farm zoning regulations. These regulations are weak at best and will have no effect of limiting the impact on the surrounding existing uses. The zoning by-law requires that a hobby farm not be located within 30 meters of a watercourse, that the property is a minimum of 1 hectare and have a minimum lot frontage of 60 metres. Restrictions within the zoning by-law on the proposed use (hobby farm) is insufficient and will not have the effect of limiting the impact on neighboring properties or the environment. The hobby farm requirements do not speak to the amount of land on the property that can be taken up by the animals, the location of storage of manure, the compatibility with surrounding existing land uses, or limitations on smell or sound. The Ministry of Agriculture recommends isolating buildings or pens for livestock as far away from neighbors as possible.

Additionally, they recommend reducing the permitted storage volume of manure on-site by requiring removal to an off-site location and using concrete pads to store the manure to limit potential contamination to surface or groundwater.

ENVIRONMENTAL PROTECTION

The Natural Heritage Information Centre 10 km grid identifies the subject property as potentially containing habitat of threatened species including the Woodland Thrush and Species of Special Concern including the Woodland Painted Turtle, the Eastern Wood PeeWee, and the Snapping Turtle. Section 4.2.6.4 of the Official Plan states that “where a property contains potential habitat for any threatened or endangered species and is subject to a development application or rezoning that would generally increase the intensity of use of the development on a property, an Environmental Impact Study (EIS) will be required to determine whether the property contains habitat of the threatened or endangered species”. There is no definition of the intensity of use in the official plan, however, the introduction of new use of this nature should require an EIS. The Objective of the Official Plan states that “Evaluation of environmental impact will be a principal factor in determining the suitability of any property for development”.

It is acknowledged that the applicant has been asked to completed an EIS. Given that Council deferred the application until the results of an EIS is complete than I would remind Council of Section 9.13.3 k) states:

- k) prior to approving a development on the basis of an EIS, Council, in consultation with other appropriate agencies, shall be satisfied that the proposed use will:
- i) not discharge any substance that could harm air quality, groundwater, soil, surface water and plant and animal life or human health;
 - ii) be supplied by an adequate supply of water and that the groundwater taking associated with the use will not harm existing water supplies and plant and animal life;
 - iii) not cause erosion or siltation of watercourse or changes to watercourse morphology;
 - iv) not interfere with groundwater recharge to the extent that it would adversely affect groundwater supply for any use;
 - v) not cause an increase in flood potential on or off the site;
 - vi) maintain, enhance or restore the natural condition of affected watercourses and protect aquatic habitat;
 - vii) not encourage the demand for further development that would negatively affect wetland function or contiguous wetland areas; and,
 - viii) enhance and restore endangered terrestrial and aquatic habitat where appropriate and feasible.

PROPOSED ZONING REQUEST - PROBLEMS

The proposed zoning amendment requests a change from the SR2 zone to the RU (rural) zone. The Rural zone permits for many uses including farm, hobby farm, asphalt plant, kennel, greenhouse commercial, hunt camp, cemetery etc. The property owners have indicated verbally that they want to be able to use their property for a hobby farm and a single detached dwelling and an accessory dwelling. If the Official Plan designation allowed for Rural uses on the entirety of the property (it does not currently), then why did they not apply for the Residential Rural zone? The RR zone has a more limited scope of permitted uses while still allowing for a Hobby Farm.

PROPOSED SOLUTION OPTIONS

If the Town Council decides to support the zoning application then:

- Limit the zoning amendment to the 10% of the property where the Rural Official Plan Designation applies and rezone the property to RR (Rural Residential) Zone – Exception # as opposed to the requested RU (rural) zone. The remaining 90% of the property remain SR2 zoning. The new RR Zone can include site specifications to limit impacts of the proposed use on neighbors. These site specifications can include setbacks to limit the impact of smell, manure storage requirements to limit impacts on source water, etc..
- Turn down the proposed application requiring the applicant submit an Official Plan Amendment and Zoning By-Law Amendment Application to ensure the official plan designation conforms with the proposed zoning.



We hope you take these matters into consideration and ensure conformity with all applicable policies.

Looking forward to hearing from you,

Natalya Garrod, RPP, MCIP

Owner and Principal Planner

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