

## **0 South Lane Road, Sudbury**

Presented To:	Planning Committee
Meeting Date:	May 8, 2023
Type:	Public Hearing
Prepared by:	Wendy Kaufman Planning Services
Recommended by:	General Manager of Growth and Infrastructure
File Number:	751-6/22-018

## **Report Summary**

This report provides a recommendation regarding an application for rezoning in order to extend a temporary use by-law for a period of three years to permit the temporary outdoor sale of blueberries.

This report is presented by Wendy Kaufman, Senior Planner.

## **Resolution**

THAT the City of Greater Sudbury approves the application by Carpenter Investments Ltd. and directs the city's delegated official to amend Zoning By-law 2010-100Z in order to extend the existing temporary zoning "RU T91" Rural Temporary, in order to permit the outdoor sale of blueberries in accordance with Section 39 of the Planning Act for a temporary period of three years, on those lands described as PIN 73479-0262, Parcel 22728 SES, Part 3, Plan 53R-7705, Lot 12, Concession 5, Township of Dill, as outlined in the report entitled "0 South Lane Road, Sudbury" from the General Manager of Growth and Infrastructure, presented at the Planning Committee meeting on May 8, 2023.

## **Relationship to the Strategic Plan, Health Impact Assessment and Community Energy & Emissions Plan (CEEP)**

The application to amend the Zoning By-law is an operational matter under the Planning Act to which the City is responding. The applications contribute to the 2019-2027 City of Greater Sudbury Strategic Plan goals related to business attraction, development and retention.

## **Financial Implications**

There are no financial implications for this report.

## **Report Overview**

An application to extend a temporary use by-law has been submitted pursuant to Section 39 of the Planning Act in order to permit the outdoor sale of blueberries for an additional temporary period of three years. The subject land is designated and zoned Rural in the Official Plan and Zoning By-law. Staff recommends approval of the application.

## **STAFF REPORT**

### **PROPOSAL:**

The application proposes to amend By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury in order to extend a temporary use by-law for a period of three years, pursuant to Section 39 of the Planning Act, to permit the temporary outdoor sale of blueberries. The temporary use was originally approved in [2014](#), and extended in 2017 and 2020. This is the third extension that has been requested.

The blueberries are sold from a 3 m by 3 m stand with a tent frame that is covered with canvas when in use. The tent frame remains in place year-round. The applicant advises that the site was recently disturbed and then re-leveled as a result of the paving of the adjacent Highway 69 in the summer of 2022. Vehicles enter the subject lands via South Lane Road, circle around the tent frame and exit the site in a forward motion.

### **Existing Zoning:**

The existing zoning on the subject lands is “RU T91”, Rural Temporary, which permits the outdoor sale of blueberries until May 5, 2023. A portion of the property is located within the “FP”, Flood Plain Overlay due to a drainage course between Richard Lake and McFarlane Lake.

### **Requested Zoning:**

The proposed zoning is to extend the existing temporary zoning, “RU T91”, Rural Temporary, to permit the outdoor sale of blueberries for an additional three years.

### **Location and Site Description:**

The subject property is described as PIN 73479-0262, Parcel 22728 SES, Part 3, Plan 53R-7705, Lot 12, Concession 5, Township of Dill. The lands are located at the southeast corner of Highway 69 North and South Lane Road in Sudbury. The property is vacant with a regrowth of vegetation and there is a gravel area at the northwest corner of the property where the blueberry sales occur extending 16 m (53 ft) south of Highway 69 and 24 m (80 ft) east of South Lane Road.

The subject lands are approximately 1.21 ha (3 acres) in size, with 53 m of frontage on Highway 69 North and 492 m of frontage on South Lane Road.

### **Surrounding Land Uses:**

The area surrounding the site includes:

North: residential use

East: vacant rural land

South: mobile home park

West: institutional use (Cecil Facer Youth Centre), residential use

The existing zoning & location map indicates the location of the subject lands to be rezoned and the zoning in the immediate area.

Site photos show the subject lands and the tent frame, the highway and residential uses to the north, and the institutional use to the west.

### **Previous Temporary Rezoning Applications**

The applicant’s agent, Mr. Choquette, has been selling blueberries from this location for approximately nineteen (19) years. In 2013 a complaint was received by By-law Services with respect to the blueberry sales

on this property. In February 2014, the current property owners submitted an application for a temporary use by-law in order to permit the outdoor sale of blueberries for a period of three years. The 2014 application was approved, and a three-year extension was granted in 2017 and 2020.

### **Public Consultation:**

Notice of complete application was circulated to the public and surrounding property owners on November 9, 2022. The statutory notice of the public hearing was provided by newspaper along with a courtesy mail-out circulated to the public and surrounding property owners on April 20, 2023.

The applicant was advised of the City's policy which recommends that applicants consult with their neighbours, ward councillor and key stakeholders to inform area residents of the application. As of the date of this report no telephone calls or written submissions have been received with respect to the proposal.

### **POLICY & REGULATORY FRAMEWORK:**

The property is subject to the following policy and regulatory framework:

- [2014 Provincial Policy Statement](#)
- [2011 Growth Plan for Northern Ontario](#)
- [Official Plan for the City of Greater Sudbury, 2006](#)
- [Zoning By-law 2010-100Z](#)

Provincial Policy Statements and geographically specific Provincial Plans, along with municipal Official Plans, provide a policy framework for planning and development in the Province. This framework is implemented through a range of land use controls such as zoning by-laws, plans of subdivision and site plans.

### **Provincial Policy Statement:**

Municipalities in the Province of Ontario are required under Section 3 of the Planning Act to ensure that decisions affecting planning matters are consistent with the Provincial Policy Statement.

Section 1.3.1 states that planning authorities shall promote economic development by providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses.

Section 1.6.8.3 states that new development proposed on adjacent lands to existing corridors and transportation facilities should be compatible with, and supportive of, the long-term purposes of the corridor and should be designed to avoid, mitigate or minimize negative impacts on and from the corridor.

### **Growth Plan for Northern Ontario:**

Municipalities in the Province of Ontario are required under Section 3 of the Planning Act to ensure that decisions affecting planning matters conform with the Growth Plan for Northern Ontario. There are no policies that are relevant to this application, therefore the application is considered to conform to the Growth Plan.

### **Official Plan for the City of Greater Sudbury:**

The subject lands are designated Rural in the Official Plan. Section 20.5.3 of the Official Plan states that conformity with the land use policies of the Plan is not required for temporary use by-laws.

### **Zoning By-law 2010-100Z:**

The subject lands are zoned "RU T91", Rural Temporary. The outdoor sale of blueberries is permitted at this location until May 5, 2023. The minimum building setbacks for structures on this property are 15 m from Highway 69 and 10 m from the other property lines.

### **Site Plan Control:**

Site plan control is not required for this development given the temporary nature and scope of the proposed use.

### **Department/Agency Review:**

The application has been circulated to all appropriate agencies and City divisions. These responses have been used to assist in evaluating the application and to formulate appropriate zoning by-law standards.

Building Services, Development Engineering, and Infrastructure Capital Planning have advised that they have no concerns from their area of interest.

The Ministry of Transportation (MTO) has requested the existing blueberry stand be moved to reflect MTO's minimum setback of 14 m from the Highway 69 right-of-way. MTO has issued a building/land use permit that permits a setback of 8.0 m, and their requirements have since been updated to a 14.0 m setback. A new building/land use permit should be acquired by the applicant to reflect the current setback requirements (no charge to the client). The applicant is advised that future highway improvement plans for Highway 69 S and South Lane Road may affect future support of this temporary amendment. Should the MTO require the subject lands prior to the expiration of the temporary use by-law, the MTO may cancel the permit at any time.

Conservation Sudbury does not oppose the proposal, and advises that due to wetlands on the property their permission is required prior to any development including the temporary or permanent placement of fill or other material, site grading, and the placement of permanent structures.

### **PLANNING ANALYSIS:**

Planning staff circulated the development application to internal departments and external agencies in December, 2019. The PPS (2014), the Growth Plan (2011), and Greater Sudbury Official Plan, and other relevant policies and supporting guidelines were reviewed in their entirety. The following section provides a planning analysis of the application in respect of the applicable policies, including issues raised through agency circulation.

Outdoor retail sales are not permitted in the Rural zone. The applicant has requested a rezoning to continue to permit the outdoor sale of blueberries for an additional three years. The applicant has used this site in this manner for the past 19 years, and for the past nine years as a formally permitted temporary use.

The application aligns with the Provincial Policy Statement by providing a location for local economic activities, and is compatible with the adjacent Highway 69 corridor. The Ministry of Transportation (MTO) has issued a land use permit in order to permit the proposed use and restricts vehicular access to South Lane Road.

Given this is an application for a temporary use, there is no requirement for the by-law to conform to the Official Plan.

The proposed use is considered to be compatible with the adjacent uses and will not result in land use conflicts. The applicant has indicated that no structures are proposed in conjunction with the temporary use, however, the applicant is advised that the tent is to be placed so that it is not located within the required setbacks prescribed by the City's zoning by-law. MTO has issued a building/land use permit that permits a

setback of 8.0 m, and their requirements have since been updated to a 14.0 m setback. The applicant is advised to work with MTO to update the land use permit regarding the highway setback, as per MTO's request. Staff recommend that the setback prescribed by the zoning by-law and required by the MTO can be accommodated on the site.

It is recommended that further extension of the temporary use would be appropriate given the seasonal nature of the proposed use (e.g. no permanent structures). However, the Ministry of Transportation has indicated that future highway improvement plans for Highway 69 and South Lane Road may affect future support of this temporary use. Going forward, the applicant should be encouraged to identify an appropriately-zoned location for their business.

## **Conclusion**

The Planning Division undertook a circulation of the application to ensure that all technical and planning matters have been satisfactorily addressed.

The following are the provisions of the proposed temporary use by-law:

- Extend the existing temporary zoning, "RU T91", Rural Temporary, to permit the outdoor sale of blueberries for an additional three years.

Staff are of the opinion that the proposed temporary use by-law amendment is appropriate based on the following:

- The application will enable the temporary use of the lands for outdoor blueberry sales and support local economic activity, consistent with the Provincial Policy Statement.
- The use is compatible with the surrounding uses and the abutting Highway 69 corridor, and the applicant has obtained a building and land use permit from the Ministry of Transportation. The applicant is advised to work with MTO to update the land use permit regarding the highway setback, as per MTO's request.

Staff is satisfied that the application is consistent with the PPS and conforms to the Growth Plan. Conformity with the Official Plan is not required given the application would permit the use on a temporary basis. Staff recommends approval of the application.