

**Title: 1085937 Ontario Inc.**

**Date: December 12, 2019**

## **STAFF REPORT**

### **PROPOSAL:**

This application for Zoning By-law Amendment seeks to amend By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury by changing the zoning classification of the subject lands from "A", Agricultural to "A(S)", Agricultural Special. The proposed rezoning is intended to recognize an existing reduced lot frontage and prohibit the use of the lands for residential purpose on the subject lands.

Section 57 of the Planning Act allows for a certificate of validation to be issued in order to validate or correct a prior registered document, such as a transfer of land or mortgage, that was completed in contravention of the subdivision provisions of the Planning Act. Validation of title is not used to create new lots. In this particular case on Municipal Road #15, the lot that was severed (ie. residential dwelling) and retained (ie. farm remainder) was done so by way of a previous and approved consent application, however the transfers to facilitate the lot creation were not completed correctly during two transfers of title. When a validation of title request is made, municipalities review the request through the current and in-force planning policy and regulatory framework. It is not uncommon for relief to be required in these circumstances and in this particular instance a rezoning application would help facilitate issuance of a validation certificate that would validate a lot fabric that is in compliance with Zoning By-law 2010-100Z.

The lands were incorrectly transferred twice on January 8, 1987 and later on March 21, 1995 in contravention of the Planning Act, and the rezoning would therefore also facilitate the approval of an application to the City's Consent Official to validate title of the lands under Section 57 of the Planning Act. When title to lands are validated it is typical that the current and in-force planning policy and regulatory framework documents (eg. PPS, Official Plan and Zoning By-law) are examined in terms of conformity and compliance. In this particular instance, the validation of title would require relief from the City's Zoning By-law.

The owner has submitted an old zoning map which outlines that properties that were incorrectly transferred in support of the proposed rezoning that would recognize an existing reduced lot frontage and prohibit the use of the lands for residential purpose on the subject lands.

### **Existing Zoning:** "A", Agricultural

The "A" Zone permits a single-detached dwelling, mobile home dwelling if mounted on a permanent foundation, a bed and breakfast establishment within a single-detached dwelling having a maximum of two guest rooms, a group home type 1 within a single-detached dwelling having a maximum of ten beds, and a private home daycare. Permitted non-residential uses include an agricultural use, animal shelter, forestry use with buffer setback requirements to residential buildings and zones, garden nursery, kennel with buffer setback requirements to residential buildings and zones, a public utility, and a veterinary clinic.

### **Requested Zoning:** "A(S)", Agricultural Special

The proposed rezoning would recognize an existing reduced lot frontage and prohibit the use of the lands for residential purposes. Non-residential uses would continue to be permitted.

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**Location and Site Description:**

The subject lands are located on the south side of Municipal Road #15 and to the east of Montee Rouleau in the community of Chelmsford. Martin Road is located further to the east with the Whitson River being located along the southerly lot line of the lands. The lands are bisected by a hydro utility corridor, which is owned by Hydro One Networks. The lands have an approximate total lot area of 36.12 ha (89.39 acres) with approximately 22 m (72.18 ft) of lot frontage on Municipal Road #15. The lands at present contain no residential land uses and are used for agricultural purposes.

**Surrounding Land Uses:**

North: Rural residential uses and agricultural lands.

East: Rural residential uses, agricultural lands and vacant rural lands.

South: Whitson River, agricultural uses, cluster of residential dwellings along St. Laurent Street.

West: Rural residential uses, agricultural lands and vacant rural lands.

The existing zoning and location map attached to this report indicates the location of the subject lands to be rezoned, as well as the applicable zoning in the immediate area.

**Public Consultation:**

The statutory Notice of Application was provided to the public by newspaper and to nearby landowners and tenants located within 244 m (800 ft) of the subject lands on October 31, 2019. The statutory Notice of Public Hearing dated December 19, 2019 was provided to the public by newspaper and to nearby landowners and tenants located within 244 m (800 ft) of the subject lands.

The owner was also advised of the City's policy recommending that applicants consult with their neighbours, ward councilor and key stakeholders to inform area residents of the applications prior to the public hearing. The owner indicated on their application form that given the technical nature of the rezoning request that they would contact abutting neighbours to explain the application and answer any questions that they may have ahead of the public hearing at Planning Committee.

At the time of writing this report, no emails or letter submissions have been received by the Planning Services Division. Staff did receive one phone call seeking clarification on the application to rezone the lands to ensure that no new residential development or intensified commercial or industrial use of the subject lands was being proposed.

**POLICY AND REGULATORY FRAMEWORK:**

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

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

The PPS and the Growth Plan for Northern Ontario, along with the City's Official Plan, provide a policy framework for land use planning and development in the City of Greater Sudbury. This framework is implemented through a range of land use planning controls such as, but not limited to, zoning by-laws, plans of subdivision and site plans.

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**2014 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 2014 Provincial Policy Statement (PPS). The following PPS policies are applicable to this application for rezoning:

1. Section 6.0 provides a definition for a “Residence surplus to a farming operation” as being, “... an existing habitable farm residence that is rendered surplus as a result of a farm consolidation (the acquisition of additional farm parcels to be operated as a one farm operation); and,
2. Section 2.3.4.1 addresses lot creation and lot adjustments in prime agricultural areas and specifically outlines that a residence surplus to a farming operation as a result of a farm consolidation is permitted provided that the municipality ensures that new residential dwellings are prohibited on any remnant parcel of farmland created by severance.

**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. Staff has reviewed the planning matters contained within the Growth Plan for Northern Ontario and are satisfied that the application to rezone the lands conforms to and does not conflict with the Growth Plan for Northern Ontario.

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

The subject lands are designated both Agricultural Reserve and Rural in the Official Plan for the City of Greater Sudbury. The majority of the lands are however designated Agricultural Reserve and in particular the deficient lot frontage onto Municipal Road #15 is entirely within the Agricultural Reserve. The lot in question also resulted from the prior owner utilizing residence surplus to a farming operation land use planning rationale as the retiring farmer would live on the created residential lot and a purchaser to farm the remainder had been secured. This application is therefore being assessed purely on the basis that the validation of title seeks to correct a contravention that took place through two land transfers under the Planning Act that had a related consent approval (File # B0275/1986) that relied on the above noted policy framework.

Section 6.2.2 addresses lot creation in the Agricultural Reserve land use designation. Specifically:

1. Agricultural Reserve areas are to be preserved in large parcels. Lot creation in the Agricultural Reserve designation will only be permitted for:
  - a. Agricultural uses;
  - b. Agricultural-related uses;
  - c. A residence surplus to a farming operation as a result of a farm consolidation; and,
  - d. Infrastructure purposes.

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2. In the case of a farm consolidation, a new lot may be created for a residence surplus to a farming operation. The proposed lot creation must meet the following criteria:
  - a. The new lot will be limited to a minimum size required to accommodate the dwelling and appropriate sewage and water services;
  - b. The new lot is separated from agricultural uses in accordance with the Minimum Distance Separation formulae; and,
  - c. That new residential dwellings are prohibited on any vacant remnant parcel of farmland created by the severance.

The application conforms to the Official Plan for the City of Greater Sudbury subject to a review of the above noted land use planning considerations.

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

The lands are presently zoned "A", Agricultural in the City's Zoning By-law. The owner is requesting that the subject lands be rezoned to "A(S)", Agricultural Special and is intending to recognize an existing reduced lot frontage and to prohibit residential uses on the lands in order to facilitate the approval of an application to the City's Consent Official to validate title of the lands under Section 57 of the Planning Act. No additional site-specific relief has been requested by the owner.

**Department/Agency Review:**

The application including relevant accompanying materials was been circulated to the City's Legal Department and the Ministry of Agriculture, Food and Rural Affairs. The rezoning application is largely technical in nature and will facilitate a validation of title that would be issued in the form of a Validation of Title Certificate following the completion of the rezoning of the land by the City's Consent Official. No concerns were identified through the circulation of the rezoning application.

**PLANNING ANALYSIS:**

The 2014 PPS, the 2011 Growth Plan, and the City of 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 and department circulation.

The proposed rezoning is consistent with the PPS for the following reasons:

1. Staff understands that the consent application in 1987 intended to sever a surplus residential dwelling in order to transfer the remaining farmed lands to an abutting farming operation. The PPS today continues to allow for this practice from a good agricultural land use planning perspective; and,
2. The owner has indicated in their rezoning application form that they intend on and are agreeable to prohibiting any residential uses on the lands in order to validate title of the lands. The City in this case would be required to prohibit residential uses in the amending zoning by-law in order to ensure consistency with this policy direction.

Staff in general has no concerns with respect to the proposed rezoning conforming to the applicable Agricultural Reserve policies in the Official Plan for the City of Greater Sudbury. Those policies relevant to the development proposal which is intended to recognize an existing reduced lot frontage and prohibit the use of the lands for residential purpose on the subject lands are discussed in detail below.

With respect to general Agricultural Reserve policies in the Official Plan, staff has the following comments:

1. The resulting parcel once rezoned and validated would have a total lot area of approximately 36.17 ha (89.39 acres) and is considered by staff to be a viable farming parcel. Aerial photography of the lands indicates the resulting parcel is presently being farmed and staff understands farming operations are intended to continue;
2. The rezoning would facilitate the validation of title of a lot having good title on a parcel of land that was intended originally to be created through consent in order to allow for a residential dwelling lot deemed surplus to a farming operation as a result of a farm consolidation;
3. The new lot that was intended to be created by consent in 1986 (File # B0275/1986) appears to have been mindful of ensuring the residential lot to be created is of the minimum size required to accommodate the residential dwelling, including appropriate space for private sewage infrastructure. The lands were at the time serviced with municipal water infrastructure. Staff has no concerns with the original consent decision;
4. The new lot was created on the basis it contained a residential dwelling considered to be surplus to a farm operation following a consolidation. Minimum Distance Formulae (MDS) today would not be applicable as described in Figure 3 – Implementation Guideline #9 under the MDS Publication 853 document published by the Ministry of Agriculture, Food and Rural Affairs because the original lot intended to be severed did not contain a livestock barn. Where a new lot is proposed with an existing dwelling, and that dwelling is already located on a different lot from surrounding livestock facilities or anaerobic digesters, MDS is not applied as a potential odour conflict is already present between the surrounding livestock facilities or anaerobic digesters and the existing dwelling because they have the ability for separate ownership. There are also no livestock barns on the resulting retained lands after the surplus dwelling lot was created; and,
5. Staff is recommending that residential uses be prohibited on the vacant remnant parcel of viable farmland that was intended to be created at the original time of severance. This meets both PPS and Official Plan criteria for creating agricultural lots in this particular circumstance.

Staff is therefore of the opinion that the proposed rezoning conforms to the Official Plan for the City of Greater Sudbury.

The owner is requesting that the subject lands be rezoned from “A”, Agricultural to “A(S)”, Agricultural Special. Staff has no concerns with the requested zone category provided that two site-specific provisions are applied through the amending zoning by-law. Firstly, that a reduced lot frontage of 22 m (72.18 ft) be permitted and, secondly, that residential uses on the subject lands be prohibited. These site-specific provisions ensure that the resulting lot would be consistent with agricultural land use planning directions in the PPS and conformity with the intent of the City’s Official Plan would be maintained.

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**CONCLUSION:**

Staff has reviewed the development proposal and is satisfied that it conforms with the Official Plan for the City of Greater Sudbury. The development proposal is also generally consistent with the land use planning policy directions identified in the PPS. Staff also notes that the application conforms to and does not conflict with the Growth Plan for Northern Ontario. It is to be noted that should the rezoning application be approved, it would facilitate a validation of title certificate from the City's Consent Official and would correct two previous contraventions that inadvertently took place in 1987 and later in 1995 under the Planning Act. Staff understands that the intent at the time of the original consent was to create a lot containing a residential dwelling that would be surplus to a farming operation following a farm consolidation.

The following are the principles of the proposed site-specific amending zoning by-law:

- That residential uses be prohibited;
- That a minimum lot frontage of 22 metres; and,
- That non-residential uses continued to be permitted.

The Planning Services Division therefore recommends that the application for Zoning By-law Amendment be approved in accordance with the Resolution section of this report.