

## Policy Discussion Papers - Decision Requested

---



### Request for Recommendation

#### Topsoil Removal & Site Alteration By-law Update

Presented To:	Priorities Committee
Presented:	Wednesday, Jun 17, 2009
Report Date	Monday, May 25, 2009
Type:	Policy Discussion Papers - Decision Requested

### Recommendation

THAT Council prohibit new topsoil removal operations within the Agricultural Reserve, as defined in the new Official Plan, and

THAT Council permit new topsoil removal operations in the Rural Area and Valley East Urban Expansion Reserve, as defined in the new Official Plan, subject to a Site Alteration Permit, and

THAT Council approve the definition of an “existing operation”, including the nine sites located within the Agricultural Reserve, and

THAT Council allow stockpiles to be removed from all existing operations, subject to an Existing Operations Permit, and

THAT Council allow five hectares of additional removal activity on all existing operations, subject to an Existing Operations Permit, and

THAT Council approve a two-stage permit process that would give existing and new topsoil removal operations 30 days from the passage of the by-law apply for a conditional permit, and an additional 90 to 180 days, respectively, to file any necessary plans, and

THAT Council allow any removal activity beyond five hectares and/or exceeding five years on all existing operations, subject to a Site Alteration Permit; and

THAT Council direct staff to finalize the draft Topsoil Removal and Site Alteration By-law for approval.

#### Signed By

##### **Report Prepared By**

Guido Mazza  
Director of Building Services/Chief  
Building Official  
*Digitally Signed Jun 10, 09*

##### **Recommended by the Department**

Bill Lautenbach  
Acting General Manager of Growth and  
Development / Planning Director  
*Digitally Signed Jun 10, 09*

##### **Recommended by the C.A.O.**

Doug Nadorozny  
Chief Administrative Officer  
*Digitally Signed Jun 10, 09*

The report has been co-authored by Jason Ferrigan, Senior Planner.

## Financial Implications

The approval of the Topsoil Removal and Site Alteration By-law will result in a minimal increase in the cost of topsoil directly purchased by the City of Greater Sudbury.

### 1. Background

Topsoil and topsoil removal is an important community issue. Topsoil is an important resource for Greater Sudbury's agricultural community, which consists of approximately 160 census farms. It is an important resource for property owners seeking to improve the quality of their lands. It is also an important source of employment and income for those who supply and distribute the resource. Like any extractive industry, topsoil removal can alter surface drainage patterns and water quality, contribute to erosion, and cause adverse offsite impacts (e.g. noise, dust), if not properly conducted.

Topsoil removal regulation has been discussed in Greater Sudbury for a number of years. In 1992, the Town of Valley East enacted a Topsoil Removal By-law. This by-law was passed under the authority of the *Topsoil Preservation Act*. Between 1992 and 2003, approximately 20 permits were issued under this by-law. Together, these permits authorized topsoil removal from approximately 360 acres of land within the former Town of Valley East. The *Topsoil Preservation Act* has since been replaced with new provisions in the *Municipal Act*

In recent years a number of new developments including strengthened provincial legislation, a newly defined Agricultural Reserve with enhanced protective policies, and a growing interest in the creation of more sustainable food networks, have led the City of Greater Sudbury to re-examine the need for a by-law to prohibit topsoil removal from its best agricultural land and regulate topsoil removal in other areas to minimize the potential for adverse impacts.

In 2006, City Council passed Resolution #2006-541 to form a Topsoil Committee, comprised of three Council Members, to:

- examine Council's policies and provisions as contained in the Official Plan, the new draft Official Plan, secondary plans and zoning by-laws;
- examine provisions of the Municipal Act, 2001 with respect to topsoil preservation, fill replacement and grading of lands;
- prepare a by-law for Council's consideration if appropriate;
- recommend to Council policies, practices and regulations to preserve the topsoil on lands valuable for agriculture and forestry; and,
- provide for the rehabilitation of lands where topsoil removal is permissible.

The Topsoil Committee met throughout 2006 and held two public meetings, the first with topsoil producers on June 16, 2006, and the second with agricultural producers on July 25, 2006.

Following the November 2006 municipal elections, City Council established an Agricultural and Topsoil Advisory Panel. The Panel's mandate is to provide input and advice on agricultural issues in the community, including such matters as agricultural land use, the promotion of the agricultural sector of the local economy and topsoil preservation.

In 2007, Council approved a budget option to provide the resources necessary to develop a draft topsoil removal by-law for Council's consideration. The draft topsoil removal by-law would be intended to further protect Greater Sudbury's prime agricultural lands for agriculture and related uses, control topsoil removal activities to minimize any potential offsite adverse impacts, such as noise and dust, and ensure that topsoil removal areas are appropriately rehabilitated.

## **2. Evolution of the Draft By-law**

### **2.1. First Draft By-law**

In 2008, City Staff surveyed a number of Ontario municipalities with topsoil removal by-laws, including: Ottawa; Nepean; Kanata; Gloucester; Barrie; Innisfil; Caledon; Brampton; Milton; and, Niagara. Based on this review, City Staff developed a first draft of the Topsoil Removal and Site Alteration By-law (the first draft by-law).

The first draft by-law:

- prohibited topsoil removal in the Agricultural Reserve, as defined in the new Official Plan;
- permitted removal in the Rural Area, as defined in the new Official Plan, subject to approval;
- required existing and new rural topsoil removal operations submit an application to the City for approval, which included prescriptive control and rehabilitation plan requirements;
- required that applications be accompanied by a non-refundable permit fee of \$10/hectare of removal area, with a minimum fee floor of \$500;
- required that applications be accompanied by a refundable environmental protection security deposit of \$500/hectare of removal area to ensure compliance with the approved rehabilitation plan;
- included exemptions for those uses and activities called for in the *Municipal Act*;
- allowed decisions under the by-law to be appealed to Council's Hearings Committee; and,
- repealed the former Town of Valley East's Topsoil Removal By-law.

Permits issued under the first draft by-law would be good for one calendar year, and eligible for renewal for a second one year term. The first draft by-law also included standard enforcement provisions.

The first draft by-law was presented to Priorities Committee on January 21, 2009. At this meeting, Priorities Committee passed Resolution #2009-03, which was ratified by Council on January 28, 2009:

*"That the Topsoil Removal and Site Alteration By-law report and draft by-law be accepted in principle, and*

*THAT the Topsoil Removal and Site Alteration report and by-law be referred to City staff for a meeting in February, 2009, to be attended by staff and any Members of Council who wish to attend in order to receive feedback from the general public, agricultural community and topsoil producers, and*

*THAT an updated report and by-law be brought back to the Priorities Committee for adoption."*

## **2.2. February 2009 Public Meeting and Draft By-law Revisions**

City Staff facilitated a public meeting on the first draft by-law on February 10, 2009. The meeting was broadly advertised and well attended by members of the agricultural community and topsoil producers. Minutes of this meeting are included in Attachment #1. A number of written submissions were made following the public meeting. Staff also met with some of the large topsoil producers to further discuss their concerns. Some key summary comments are:

1. Some public meeting participants felt that the proposed moratorium on topsoil removal should apply to all good agricultural land, both in and outside of the Agricultural Reserve.
2. The topsoil producers felt that sites in and outside of the Agricultural Reserve, including those with permits issued under the Town of Valley East Topsoil Removal By-law, should be grandfathered.
3. The topsoil producers raised concerns regarding the cost associated with the first draft by-law. They felt that the prescriptive nature of the proposed control plan requirements, the engagement of a professional engineer to develop the control plan and monitor the topsoil operation, as well as the application/security deposit fees would eliminate smaller topsoil producers and increase topsoil costs, which would be passed along to consumers.
4. Mining activities subject to a provincially approved Closure Plan issued pursuant to the *Mining Act*, should be exempt from the topsoil by-law.
5. The topsoil producers and public meeting participants expressed some concern that the first draft by-law would un-necessarily restrict residential landscaping activities, and questioned whether this was the intent of the by-law.

In response to this feedback, City Staff proposed a number of changes to the first draft by-law, as follows:

1. The first change saw the prescriptive control and rehabilitation plan requirements replaced with more objective standards that would provide flexibility to tailor the required control and rehabilitation measures to fit individual removal operations. As part of this change, the professionals qualified to undertake the required control and rehabilitation plan was broadened to include landscape architects.
2. The second change saw existing topsoil removal operations in the Rural Area provided with a “grace period” to transition into the requirements of the new by-law. Applicants would have a period of time to file the necessary application form, fee and security deposit with the City to receive a transitional conditional topsoil removal permit. Such applicants would then have another three months to develop and submit the required control and rehabilitation plan.
3. The third change saw a new exemption for mining activities subject to an approved Closure Plan.
4. The fourth change saw additional clarification within the by-law that exempted residential landscaping activities, which are captured within other municipal by-laws such as the existing Site Grading By-law, from this by-law.

These changes were presented to the Priorities Committee on March 4, 2009. At this Meeting, the Priorities Committee passed Resolution #2009-12 and Resolution #2009-13 which were ratified by Council on March 11, 2009:

**#2009-12**

*"THAT the City of Greater Sudbury maintain the prohibition of removal of topsoil within the Agricultural Reserve outlined in the draft Topsoil Removal and Site Alteration By-law presented on January 21, 2009.*

**#2009-13**

*THAT provisions be developed within the draft by-law which would allow the City of Greater Sudbury to "grandfather" existing top soil stock piles in the Agricultural Reserve which were established prior to January 1, 2009."*

### **2.3. Options to Recognize Existing Agricultural Reserve Sites**

City Staff identified a number of potential topsoil removal sites within the Agricultural Reserve and proposed three potential methods to grandfather these operations as part of the draft by-law.

Option #1: Recognize existing topsoil stockpiles.

Option #2: Recognize existing topsoil stockpiles and permit 5 hectares of additional removal, subject to Site Alteration Permit.

Option #3: Permit topsoil removal across all the property, subject to Site Alteration Permit.

These options were presented to the Priorities Committee at its April 22, 2009 Meeting. The Priorities Committee agreed to defer this item to enable an additional public meeting to be held with the topsoil producers, agricultural community and public.

### **2.4. Additional Consultation and May 2009 Public Meeting**

Since this time, City Staff met with local topsoil producers on April 28, 2009 and May 5, 2009. These meetings were productive and resulted in a good exchange of information and perspectives. Some key comments can be summarized as follows:

1. The topsoil producers are concerned with the scope of the draft by-law, which primarily speaks to topsoil removal, but also includes provisions relating to site alteration and the placing or dumping of fill, as permitted under the *Municipal Act*. The producers would prefer the scope of the by-law to be limited to topsoil removal only.
2. The topsoil producers continue to raise concerns with the cost associated with the draft by-law. They feel that the revised control plan requirements, the engagement of a design professional to develop a control plan and monitor the topsoil operation, as well as the application/security deposit fees would eliminate smaller topsoil producers and significantly increase topsoil costs.

3. The topsoil producers have also expressed concerns regarding certain substantive provisions of the by-law including the language relating to rehabilitation, the lifespan of a permit, and the transferability of a permit when ownership of a property changes. The producers propose that more objective language be introduced into the by-law relating to rehabilitation. They also propose that the by-law be revised so that the lifespan of a permit matches the length of the proposed removal activity, and so that a permit can be transferred when property changes hands.
4. The topsoil producers have also expressed concerns regarding certain administrative provisions of the by-law including those relating to the Director's ability to waive certain control plan requirements and an applicant's appeal rights.

Generally, the topsoil producers recognize that some form of regulation is required. They have indicated that, should the draft by-law proceed, any lands purchased or leased for the purpose of topsoil removal prior to January 1, 2009 should be exempt from the provisions of the draft by-law for five years. They also propose that these operations be subject to the Town of Valley East's Topsoil Removal By-law.

In addition to these meetings, City Staff facilitated a second Public Meeting on May 11, 2009. This meeting was broadly advertised and attended by approximately 60 individuals and the majority of Council. Approximately 20 people spoke at this meeting, representing the agricultural community, topsoil producers, community stakeholder groups and concerned citizens. Minutes of this meeting are included in Attachment #2.

### **3. Moving Ahead**

The public and stakeholder sessions on the draft by-law demonstrate a strong and diverse range of thoughts relating to topsoil and its importance to the community today, and in the future. The by-law should achieve the best possible balance between these competing interests. This could be accomplished by:

1. Recognizing existing topsoil removal operations in and outside of the Agricultural Reserve;
2. Developing a timeframe and process to transition existing topsoil removal operations to the full by-law standard;
3. Applying the by-law on a "go forward" basis to all new topsoil removal operations.

#### **3.1. Recognize existing topsoil removal operations**

Existing topsoil removal operations in and outside of the Agricultural Reserve could be recognized in the by-law. This could be accomplished by incorporating a new recognition system into the by-law that would define an "existing operation" and, provided the property meets the requirements of the definition, allow such an operation to continue, for a temporary transition period, subject to an Existing Operations Permit and Modified Control Plan.

- "Existing operation" would be defined as: property designated as "Rural" and "Valley East Urban Expansion Reserve" in the City of Greater Sudbury's Official Plan that was "under development" for the purposes of topsoil removal on or before January 1, 2009, as demonstrated to the satisfaction of the Director.

- The definition of an existing operation would also include those properties within the Agricultural Reserve shown on Attachment #3. Five of the nine properties were identified by City Staff based on an analysis of 2007 air photos as well as site visits. The remaining properties were identified in consultation with topsoil producers. Together, these properties are 750 acres in size. Of this amount, over 200 acres has already seen substantial topsoil removal activity.
- “Under development” would be defined as a property where at least two of the following criteria exist or have existed on the Site: the owner can supply documents evidencing topsoil removal activity (i.e. lease agreements, sales receipts, photographs, statutory declarations from owners/neighbors attesting to the activity, etc.); the owner can establish actual physical actions including but not limited to the removal of vegetation, plowing, harrowing, disking and/or excavation of topsoil; and/or the owner can establish the existence of topsoil stockpiles (i.e. topsoil which has been removed from its native or natural location and placed in an identifiable pile or heap for storage ) on the site.

### **3.2. Transition existing topsoil removal operations to full by-law standard**

Greater Sudbury’s topsoil industry consists of just over 15 producers. This industry can be characterized as a handful of “large” producers, with the remaining being relatively “smaller” producers, who undertake topsoil removal as part of a relatively larger integrated business enterprise (e.g. trucking and hauling). These producers are active on numerous sites throughout the city.

In order to ensure an effective transition to the new by-law, existing topsoil removal operations could be allowed to continue, subject to the submission and approval of an Existing Operations Permit. An Existing Operations Permit application would include a Modified Control Plan, prepared by the owner and/or the owner’s agent. The Modified Control Plan would include a Sketch Plan and describe the site, relevant natural and artificial features, the removal area, existing/proposed control measures, and existing/proposed rehabilitation measures.

An application for an Existing Operations Permit could be made to remove topsoil stockpiles and/or to permit an additional five hectares of removal activity from an existing operation. The life of this permit would match that of the removal project schedule, up to a maximum of five years. Any removal activity beyond five hectares or exceeding five years, may also be permitted from an existing operation, subject to Site Alteration Permit, which includes a full Control Plan.

The by-law would come into effect immediately upon passage. A two-stage application process is proposed to assist existing topsoil removal operations (i.e. those established before January 1, 2009) and new topsoil removal operations (i.e. those established after January 1, 2009) transition into the by-law.

Stage 1: Conditional Permit Application: Existing and new topsoil removal operations would have 30 days from the passage of the by-law to submit an application for a Conditional Permit. In both cases, this would require the submission of an application form, together with the required application fee and performance security deposit. In the case of a new topsoil removal operation, the application would also identify the owner’s design professional.

Stage 2: Submission of Plans: Existing and new topsoil removal operations would then be given an additional period of time to develop and submit their required plans. The by-law would require that Modified Control Plans for existing operations be submitted within 90 days of the Conditional Permit Application. The by-law would require that Full Control Plans for new operations be submitted with 180 days of the Conditional Permit Application.

These timeframes are seen as providing an adequate amount of time to prepare and submit any necessary applications.

### **3.3. Apply the by-law on a “go-forward” basis**

New topsoil removal operations seeking to establish outside of the Agricultural Reserve, would be required to meet the more stringent requirements of the by-law.

The by-law would maintain many key features from the first draft by-law, including all those changes previously endorsed by Council (i.e. the replacement of prescriptive control standards with objective standards, the introduction of an exemption for mining activities, and clarifications around landscape activity exemptions).

The by-law would also incorporate many of the suggestions made since the April 22, 2009 Priorities Committee Meeting. The draft by-law would be modified so that the lifespan of an approved permit coincides with that of the topsoil removal operation schedule to a maximum of five years. The by-law would be modified to introduce new language relating to the rehabilitation of a topsoil removal area and to further scope provisions relating to the satisfaction of the Director. The by-law would be clarified to ensure that permits can be transferred from owner to owner on application to the City.

With these changes incorporated, the by-law would:

1. prohibit topsoil removal in the Agricultural Reserve, as defined in the new Official Plan;
2. permit removal in the Rural Area and Valley East Urban Expansion Reserve, as defined in the new Official Plan, subject to an approved Site Alteration Permit;
3. require existing and new rural topsoil removal operations submit an application to the City for approval, which includes objective control and rehabilitation plan requirements;
4. require that applications be accompanied by a non-refundable permit fee of \$50/hectare of removal area, or \$500, whichever is greater;
5. require that applications be accompanied by a refundable environmental protection security deposit of \$500/hectare of removal area (or such larger amount deemed appropriate by the Applicant's design professional) to ensure compliance with the approved rehabilitation plan;
6. allow decisions under the by-law to be appealed to Council's Hearings Committee; and,
7. repeal the former Town of Valley East's Topsoil Removal By-law.

Concerns have been raised regarding the cost of the proposed topsoil by-law. City Staff estimate that the cost implications of the by-law for an existing operation will be negligible. For example, a producer seeking to extract topsoil from 5 hectares from a parcel of land with an existing operation would be required to pay \$3,000 in application fees and security deposits (\$600 per hectare). Assuming that topsoil is removed to an average depth of 6 inches, and can be sold for \$8 per cubic yard, exclusive of any transportation charge, approximately \$80,000 can be realized in topsoil sales (\$16,000 per hectare).



City staff estimate that the cost of the by-law for a new topsoil removal operation on an 80 acre parcel of land to be less than 10% of current cost, when amortized over the lifespan of removal activity from the property, which is estimated at 15 years. The cost will be higher in the first year of operation, declining over the 15 year period. Ultimately, any cost increase will be passed along to the consumer in the form of higher pricing. City staff estimates that this cost increase will be modest. For example, for a consumer who wishes to place 4 inches of topsoil on his typical residential lot size of 50 feet x 120 feet, the cost would rise by \$225 from the current approximate cost of \$900 to \$1,125.

To further assist with this concern, City Staff will host an information and training seminar with local design professionals to ensure that the expectations and process around the by-law are fully understood. As part of the by-law's administration, applicants will be encouraged to pre-consult with City Staff to ensure the application requirements are tailored to the individual site/operation prior to an application being made. This model is similar to that used for land use planning approvals.

#### **4. Conclusion**

City Staff have conducted additional consultation on the draft topsoil removal by-law. In response to feedback received, City Staff propose a number of changes to the draft by-law, including a new system to recognize existing topsoil removal operations in the Agricultural Reserve, the Rural Area and the Valley East Urban Expansion Reserve.

Based on the above, it is recommended that Council:

1. Approve the definition of an "existing operation", as described above, and including the nine sites located within the Agricultural Reserve;
2. Allow stockpiles to be removed from all existing operations, subject to an Existing Operations Permit;
3. Allow five hectares of additional removal activity on all existing operations, subject to an Existing Operations Permit;
4. Allow any removal activity beyond five hectares and/or exceeding five years on all existing operations, subject to a Site Alteration Permit;
5. Approve the two-stage permit process, which would give existing and new topsoil removal operations 30 days from the passage of the by-law to apply for a conditional permit and an additional 90 to 180 days, respectively, to file any necessary plans.
6. Prohibit any new topsoil removal activity within the Agricultural Reserve, as defined in the new Official Plan;
7. Permit new topsoil removal operations in the Rural Area and Valley East Urban Expansion Reserve, as defined in the new Official Plan, subject to a Site Alteration Permit;
8. Direct staff to finalize the draft Topsoil Removal and Site Alteration By-law for approval.

Attachments

**PUBLIC MEETING  
TOP SOIL REMOVAL & SITE ALTERATION  
DRAFT BY-LAW**

Date: February 10, 2009

Time: 5:30 p.m. – 8:25 p.m.

Place: Committee Room C-11, Tom Davies Square

Present: Guido Mazza, Director of Building Services/Chief Building Official  
Jason Ferrigan, Senior Planner  
Kris Longston, Senior Planner  
Paul Baskcomb, Manager of Community & Strategic Planning  
Eric Labelle, Assistant City Solicitor  
Al Bonnis, Nickel District Conservation Authority  
Alex Sorensen, Dennis Consultants  
Corrie-Jo Delwo, Coordinator of Permits & Approvals Integration  
Valerie Klotz, Recording Secretary

Discussion:

Mr. Mazza, Chair, advised the group that Council's Priorities Committee meeting on January 21, 2009, had requested a public meeting be held on the draft by-law. The intent was to include comments received at this meeting from the public in a report to the Priorities Committee at their March 4, 2009 meeting. The matter would then proceed to Council for their meeting on March 24, 2009.

Before opening the floor to comments and questions, Mr. Mazza gave a PowerPoint presentation entitled "Top Soil Removal & Site Alteration By-law" that outlined the historical background of the by-law, results of Public Meeting Information Sessions, Comparison to other Municipalities, Exemptions from the By-law, Top Soil Removal Permits, Permit Fees, Applicants' Responsibilities, Enforcement and the Next Steps.

Maps depicting the previous and current Agricultural Reserve areas for the City of Greater Sudbury were on display.

It was noted that under the new Official Plan, the Agricultural Reserve has been reduced from 78,000 acres to approximately 14,400 acres. The City determined what lands would be protected through the Official Plan adoption process. The new Official Plan adoption process started 2003 and concluded in 2006. As many as 90 meetings were held including Public meetings, some held in individual communities. The reserve was dealt with as part of the consultation process. The reserve protects agricultural lands from commercial and residential development.

Susie Bell, local farmer, expressed concern on how the City determined what areas would be designated as Agricultural Reserve. She noted because her land is in the Agricultural Reserve, she is unable to server her land in order to have her children build their own homes on the family property. She also noted that some of the land in the new Agricultural Reserve has already been stripped so it

seems pointless for this land to be “protected”. She is upset that the Agricultural Reserve has been reduced and that she didn’t know her land was in the reserve until she applied for a lot severance. She felt that the City didn’t do its homework when it chose which lands to put in the Agricultural Reserve.

Mrs. Bell also asked how farmers are being protected as they receive no financial support. What is the City prepared to do to assist people who want to continue farming? What happens when farmers have to sell their land because they can’t afford to continue to farm? She noted that sod farmers are stripping land and expressed concern about what’s going to happen to that land. If farmers can’t continue, sod farmers may take over the land and strip it.

Mr. Ferrigan responded that this is a complicated issue that many municipalities and provinces face. The City has an Agricultural Advisory Panel in place and they are bringing the matter forward to those who can help, such as the Ministry of Agriculture and Rural Affairs. She could also write to her MPP regarding her concerns with lack of financial support for farmers.

Mrs. Bell asked why sod farmers are exempt. Mr. Mazza responded that they are considered exempt according to the Municipal Act. Sod farming is viewed as a gentler way of stripping soil. If citizens want to have sod farming removed from exemption, they could lobby the government, perhaps through the City’s Agricultural Advisory Panel.

Mrs. Bell asked if there was any way the boundaries of the Agricultural Reserve could be changed. Mr. Ferrigan responded that the City has a legal obligation to review its Official Plan every 5 years and Council may decide to expand the reserve when the Official Plan comes under review.

Mr. Ron Bradley, former City Councillor, addressed the group. In his position as City Councillor, he attended many conferences and stressed the importance of agriculture at every opportunity. He realizes the need for a top soil removal by-law which is long overdue. He noted that since 1985, people have wanted something done about top soil stripping. In the past, sod producers used to take 2½ inches of soil. However now, with improved equipment, not as much soil is removed.

Mr. Bradley hopes that rural areas will be well taken care of and that no mess is left behind after the land is stripped. Mr. Bradley provided photos of an 80 acre parcel of land that had been stripped. Top soil stripping shouldn’t take place in residential areas as the resulting dust issues have been problematic. Mr. Bradley agreed that there was too much of a reduction to the Agricultural Reserve.

Mr. Lee Riehl, 608 Bonin Street, Azilda, expressed his concern about the reduction of the Agricultural Reserve. He indicated several farms that weren’t included in the reserve that should be protected. He doesn’t understand why they weren’t included. He also felt that sod farms shouldn’t be exempt.

Mr. Mike Soenens, 333 Bonin Road, Chelmsford, questioned why some areas were left out of the reserve and if there was any way that City Council could expand this area. He commented that the draft by-law is a good first step in regulating top soil removal.

Mr. Ferrigan noted that citizens still have the right to farm in areas outside of the reserve. People outside of the reserve have the right to sever land unlike those in the reserve.

Mr. Guy Beaulieu, 4764-22 Regional Road 15, Chelmsford, stated that he is a top soil operator and has been for the last 20 years. When viewing his past projects, people would find it difficult to tell that soil had ever been removed. He offered to show these lands to anyone interested. He noted that in his business, they have to plan ahead. He indicated that there is no farming taking place on the lands designated for stripping and that our area is actually not conducive to farming due to the climate.

Mr. Beaulieu feels that the proposal contained in the draft by-law is erroneous and involves too much paperwork. He doesn't feel it's necessary to have a consultant involved. Revenues generated from the business are low. He's not against a by-law as long as it's reasonable and affordable and allows for a grandfather clause. If the by-law comes into effect in March, they will suffer significant losses. He noted that his firm is under contract with the City to provide top soil until 2010. He wondered what would happen to his contract if the by-law comes into effect. Growing top soil involves a 2 year process. They can't just stop it overnight. He would like the grandfather clause to remain in effect for at least 5 years to cover any leases they have on lands for stripping. After that time, they will decide whether they want to remain in the business or not. This industry generates jobs that Sudbury can't afford to lose.

Mr. Eric Labelle, Assistant City Solicitor, addressed Mr. Beaulieu's concern about his contract with the City, noting that he didn't have a response at this time and the matter would have to be considered by City Council at an upcoming meeting.

Mr. Lionel Brosseau, 470 Vermillion Lake Road, noted that he also has a contract with the City to supply top soil until 2010. He has 20 stock piles on his land and asked if he would have to put a fence around each pile. Mr. Brosseau noted that this places a burden on the industry and will increase prices. He would like the grandfather clause to remain in effect for 5 years.

Mr. Mazza responded that fencing, stock piles and dust control would be covered in the Control Plan prepared by the design consultant. He also drew attention to a sample site plan on display. Mr. Mazza noted that the by-law will have an appeal process that will be heard at City Council.

When questioned if the City has a map showing where top soil has already been removed, Mr. Mazza noted that the City hopes to create a data base that will show where stripping has occurred that will aid someone wishing to purchase property for farming. Prospective purchasers will be aware of what lands in the Agricultural Reserve won't be able to sustain agricultural activity. We currently have some of this information in a data base for Valley East.

Mr. Charlie Annett, 797 New Coben Road, Chelmsford, asked if it would be possible to take soil samples from areas that have been stripped to determine what can be grown (e.g. grain and canola). He would like to know how much it would cost to rehabilitate the land to get it farm ready.

Mr. Denis Charbonneau, 216 Seguin Street, asked how the City determines what is viable farmland and non-viable farmland. He noted that growers should be following Ontario Sod Growers Association guidelines, selling just sod, not top soil. Perhaps the City could stipulate that it will only use growers that follow these guidelines when tendering projects. He offered to provide the City with a copy of these guidelines.

Eddie Czerkas, 3348 Regional Road 15, a local cattle farmer, noted that the lands now designated as Agricultural Reserve actually contain 50% bush or swamp. This is not viable farm land. The City should have picked other spots for future preservation. Some of the best agricultural soil, for example on Dominion Drive, isn't included in the reserve. Top soil strippers should be encouraged to use non-viable farm land.

Mrs. Monique Laforge, 3480 Highway 69 North, Val Caron, expressed concern that some areas such as Dominion Drive and Kalmo Road are no longer in the reserve. She's noted top soil removal activity and wonders about what is happening with this land. She stressed the importance of preserving our streams, forests and wild life from the effects of erosion, pollution, etc..

Mr. Baskcomb asked her to provide him with a specific location after the meeting and he will research the area in question.

Mr. Steve Bene, Sudbury, asked how the City obtained its criteria to designate lands as Agricultural Reserve. Was any field work done?

Mr. Baskcomb responded that the Ministry of Agriculture, Food & Rural Affairs identified the area which was designated as Agricultural Reserve. The Provincial Policy Statement provides a definition of prime agricultural land and field work did take place. Agricultural Reserve land determination is soils based. During the Official Plan adoption process, there was too much land deemed as Agricultural Reserve in the previous Official Plan.

Mr. Don Theriault, 4537 Regional Road 35, Chelmsford, noted that even though we should be protecting land that has good soil, not all of this land has been designated Agricultural Reserve. Why is the City protecting farm land that has already been stripped? He doesn't understand why the City doesn't leave land that's already been stripped and grandfather it for the top soil industry. It makes more sense to control areas that are already being stripped rather than have new lands stripped outside the reserve. He noted that his industry needs a certain amount of acreage in order to make the business viable.

Alison (no last name given), spoke on behalf of a friend in the top soil business that was unable to attend the meeting. She reported that she had looked through top soil by-laws of other municipalities such as Guelph, Kingston and Brampton and felt that it was unfair for the City to request local farmers to employ a professional engineer. The City of Guelph provides this service from their City Engineer. The City of Kingston has the stipulation that "other similarly qualified persons" could provide this service. It's too expensive for local top soil producers.

They feel that a parcel registry is an undue burden and that a legal description should be sufficient. With respect to security, Kingston only asks for 10% up to \$200,000 then 1%. The Control Plan requirements depicted in Schedule B in the City's draft by-law is 14 pages, compared to the City of Kingston's ¼ to ½ a page.

An immediate moratorium doesn't allow businesses to plan and is unreasonable. The word "moratorium" has a negative connotation. They will be stuck with stock piles. They feel they should be able to use the land for the same purpose as when they bought it. The City has destroyed their future plans for the land. The City of Kingston has a transitional provision in its by-law that allowed people time to clean up their affairs. Local sod producers can't afford to hire engineers and the requirements of the Control Plan are too much for them to bear.

Mr. Mazza noted that the draft by-law has not been passed by City Council and the moratorium is not yet in effect. The by-law does require a professional engineer and unfortunately, the City is not able to provide the services of an engineer to the industry. A professional engineer carries errors and omissions insurance and follows a prescribed Code of Conduct. He noted that these other municipalities may have a broader tax base to draw upon to provide engineering services to the industry.

Mr. Max Sinclair addressed the group and noted that the City has spent a lot of time and effort creating this draft by-law. He noticed that the most recent amendments to the by-law are not included in the draft copies circulated at the meeting. He was advised that the amended exemptions will be added to the by-law (e.g. mine sites).

Mrs. Claire Viau, 4339 Regional Road 35, Chelmsford, noted that there was a large parcel of land that was stripped across from her property that is now barren. She is also upset that she can't split her land for her sons to build on as she is in the reserve. She bought the land so she could pass it on to her children. She has been approached by a company that wants to lease her land to strip.

Mr. Mazza concluded the meeting by thanking those present for attending and providing their comments. These comments will form part of a report to the Priorities Committee on the draft Top Soil Removal & Site Alteration By-law in March.

/vk

# **TOP SOIL REMOVAL & SITE ALTERATION BY-LAW PUBLIC MEETING #2**

May 11, 2009  
Council Chambers  
7:00 p.m. – 9:10 p.m.

Present: Mayor Rodriquez  
Councillors Dutrisac Landry-Altman  
Barbeau Thompson  
Berthiaume Gasparini  
Cimino Dupuis

City Staff  
Wm. Lautenbach, Acting General Manager of Growth & Development  
Guido Mazza, Director of Building Services/Chief Building Official  
Jason Ferrigan, Senior Planner  
Paul Baskcomb, Manager of Community & Strategic Planning  
Eric Labelle, Assistant City Solicitor  
Corrie-Jo Delwo, Coordinator of Permits & Approvals Integration  
Valerie Klotz, AA to the Director of Building Services/Chief Building Official

Consultant Alex Sorensen, Dennis Consultants

Media: Northern Life, Sudbury Star

## **Presentations**

Guido Mazza gave slide presentation regarding the Draft Top Soil Removal & Site Alteration By-law describing the evolution of the draft by-law to date. In recent consultations, local topsoil producers have expressed concerns with the draft by-law, including the scope, requirements and cost implications. The producers suggest that the lands purchased or leased for the purpose of top soil removal be subject to the terms and conditions of the Topsoil Removal By-law passed by the former Town of Valley East for a period of five years, after which time, they would be subject to the draft by-law. Some possible solutions to the concerns raised by the topsoil removal industry would be to:

- Recognize all operations under development
- Use January 1, 2009 as a cut off date
- Have 90 days to file for an Existing Operation Permit
- Include a Modified Control Plan
- Match the permit life to the project schedule (5 year maximum)
- Clarify permit transferability provisions
- Broaden appeal rights

This system could be implemented in a number of ways as follows:

- Option #1 Apply to existing stockpiles, reduced Control Plan, 5 year maximum
- Option #2 Apply to existing stockpiles plus 5 hectares, reduced Control Plan, 5 year maximum, + 5 ha/5 years – full Control Plan
- Option #3 Apply to the entire parcel, full Control Plan

Guido noted that following discussions with various stake holders the sites in the Agricultural Reserve have been reduced from 12 sites to 9.

The floor was opened to presentations and comments from the attending public.

#### Cathy Orlando-Mather

Ms. Orlando-Mather, MSc, BEd, gave a presentation entitled “A Perspective From a Climate Project Canada Volunteer”. As a mother and volunteer, she stressed the importance of not allowing any further top soil stripping in the Agricultural Reserve and felt that the grandfathering clause for the by-law should go as far back as 2006. She also felt that any topsoil removed should be “put back”. She noted that we should be considering the future food growth for our children and grandchildren while creating a “gold standard” top soil and site alteration by-law that is sustainable.

#### Mike Soenens

Mr. Soenens, a member of the Agricultural Advisory Panel, gave a slide presentation on their behalf. His presentation outlined some of the work the Advisory Panel undertook regarding the selection of the Agricultural Reserve and the draft top soil by-law. The committee would like to see Sudbury’s by-law set the “gold standard” for top soil protection in Canada. They would also like to see the grandfathering clause go back to 2006. He pointed out that some top soil has already been stripped in the Agricultural Reserve. Even though this by-law should have been in effect a long time ago, it is better late than never.

#### Gabe Belanger

Mr. Belanger noted that farmers in Sudbury are a “dying breed” and that farming activities have reduced significantly from the past. As a business owner and a top soil producer, he would like to work with farmers to help increase farming in the area. He suggested that perhaps farmers should examine raising pumpkins, cabbages, mink, bison, exotic birds such as ostriches or horses for meat. As a top soil producer he has helped beautify the City by supplying top soil for such projects as College Boreal and has brought jobs to the City.



### Neil Tarlton

Mr. Tarlton gave a slide presentation on behalf of the Ontario Federation of Agriculture. He stressed the importance of having adequate top soil for use by farmers and for the City to look towards future agriculture possibilities instead of focusing on the present. He cited a famous quote “a nation that destroys its top soil destroys itself”.

He also noted that there are approximately 160 farms with Sudbury’s farm sales equal approximately \$9 million each year. The value of top soil removed per acre is approximately \$8,604 (price per cubic yard is \$8.00). A farmer working that land for 20 years would generate \$17,300. It doesn’t make economical sense to sell the soil for short term gain. The top soil industry is not sustainable but farming is. As a point of interest, he noted that the Municipal Property Assessment Corporation (MPAC) taxes agricultural Class 6 land 25% less than the regular rate.

With respect to the previous options developed by staff, he felt that Option #1 was measurable, Option #2 was not and Option #3 had wide open exemptions that could cause problems.

Sudbury has a world-wide excellent reputation for its re-greening efforts to date through the Land Reclamation Program and it would be going against those efforts to promote stripping of top soil.

### Jim Found

Mr. Found, member of the Agricultural Advisory Panel, noted that Ontario Hydro is considering conversion from coal fired to biomass propulsion. In 10 years or so, there may be a major industry providing crops and wood for this activity.

### Guy Beaulieu

Mr. Beaulieu spoke on behalf of Gabe Belanger and top soil producers noting that Sudbury is very different from southern Ontario because our topography consists of a lot of rock. He feels that our draft by-law was modeled from a southern Ontario by-law and is still too stringent.

Sudbury is hosting the summer games next year and his firm has been tasked with preparing the Laurentian University track for the event. This high profile event projects Sudbury’s image and without top soil this greening project couldn’t take place. They need to provide a special mixed soil and the draft by-law doesn’t mention mixing facilities.

The terms outlined in Schedules A and B are stringent and will put the small top soil producers out of business. Schedule A, Condition “o” may cost producers between \$10,000 to \$30,000. Condition “k” may cost them between \$4,000 to \$8,000. These terms are prescriptive in nature. Schedule A, Condition 3, whereby the Director can waive the necessity of a Control Plan is not fair. The same rules should apply to all. Schedule B, clauses d, e, f, g and h, are all measures on adequate performance which is prescriptive and may cost in the line of \$10,000 to \$30,000. Clause g, may cost \$50,000 to \$60,000, not \$20,000 that the City is projecting.

The draft by-law should only deal with top soil, not site alteration or placing of fill. Top soil producers would like to sit down with City staff and re-work the by-law to focus just on top soil.

He suggested that: the nine sites in the Agricultural Reserve be grandfathered; that the by-law be limited to topsoil removal only; that soil removal parcels in rural areas in the former Town of Valley East have a transition period of 5 years under the terms and conditions of the former Town of Valley East by-law. He also offered to meet with City staff and select Councillors to refine the draft by-law.

#### Ron Bradley

Mr. Bradley stated that he has always been a supporter of the City’s re-greening efforts while he was a member of Council and at his work at INCO. If we don’t do anything to protect top soil now, the generations to come will suffer.

The farming community was very disappointed when the draft by-law was deferred at the Priorities meeting of April 22<sup>nd</sup>, because of all the hard work that went into drafting the by-law. He noted that northern Ontario is predicted to be the prime agricultural area due to climate change. Stripping soil jeopardizes our ability to grow food.

Top soil removal operations shouldn’t be taking place in residential areas as the dust generated from this activity is a major problem. No consideration is shown to residents who live near these operations.

#### Lionel Brosseau

Mr. Brosseau owns a small top soil production company. He noted that some producers will be able to live with the terms of the proposed by-law and some won’t. If the rules are strictly applied, some will have to get out of the business. He has also supplied top soil to the City in the past. He asked the City watch out for the small producers.

### Rene Grandmaison

Mr. Grandmaison, long term resident of Sudbury, is a professional engineer who teaches soil related courses at College Boreal. He stressed that it takes many thousands of years to produce mature soil. We won't be able to replace the soil that is stripped in our life time. He wondered how long we will allow our land to become a dust bowl.

He expressed a concern as to how top soil removal will take place. Trucking will create dust and traffic snarls that will affect his business (a golf course). We have to take a serious look at the situation and the impact this will have on our community and generations to follow.

### Jim Belanger

Mr. Belanger is sympathetic to local farmers however he is a small top soil producer in Rayside-Balfour and feels that people should be able to do what they want with their own property. He has spent a lot of money on top soil equipment and should be allowed to continue with his business. Having to hire an Engineer shouldn't be necessary. If there is no top soil available in Sudbury, people will go elsewhere for the product.

Sudbury is not like southern Ontario and is not a large farming community. Top soil producers also form part of the community. The by-law should not be passed in its current format. If it is, costs will prove too prohibitive and he will be driven out of business even though his operation is not in the Agricultural Reserve. He pointed out that top soil is used to grow trees, etc. Sudbury does need a by-law but it should address everyone's needs and concerns properly.

### Monique & Mark Lafreniere

Mr. & Mrs. Lafreniere, who own a top soil production business, noted that the draft by-law is a 3-in-1 by-law covering top soil removal, placing of fill and site alteration. There should be only 1 by-law dedicated to top soil removal.

They have had a part in the re-greening of Sudbury with involvement in such projects as Bell Park, Laurentian University, the hospital and ball fields. They asked everyone to try to picture these areas without grass.

The top soil industry provides employment opportunities. This restrictive by-law may force companies to lay off people or go out of business and possibly double the average price of top soil to \$800 per load.

They wondered if the draft by-law was copied from the City of Brampton's by-law and pointed out that Brampton doesn't have the amount of rock Sudbury does. Our by-law should reflect Sudbury's unique topography. Schedule A should be completely

removed. Schedule A, Section 3 allows the Director to pick and chose who should comply which is unfair. Sections 18 and 15 of the draft by-law are not acceptable. How can producers promise that a site will look better than before?

If the by-law is passed, any land they have purchased or leased for top soil removal should be grandfathered for 5 years and they should be allowed to follow the terms of the former Town of Valley East by-law.

#### Myrna Gray

Ms. Gray, from Omega Industries in Valley East, felt that this matter came about rather quickly there was not much warning about extra fees, etc. She understands the issues of re-greening and responsible top soil removal. She's part of a small operation and feels that if nobody can afford to produce then the by-law severely restricts the top soil industry. Local farming isn't viable anyway. Top soil can be recycled into lots and gardens. This product can be re-used. If the City puts too high a price on production, top soil producers will not be able to continue with their operations.

#### Vic Bene

Mr. Bene doesn't support the by-law in its current format as it is too large and not clear. It would be better if it just focused on top soil. Producers shouldn't have to have an engineer get involved in the Control Plan.

He noted that we can't re-green without top soil. We are dumping fill into holes when we should be covering them with greenery. He feels that \$800/load is too much to have to pay for top soil.

#### Jean Lamontaigne

Ms. Lamontaigne is a resident of Azilda who lives beside a site where topsoil and clay has been removed. There is big pool of stagnant water on this site. Top soil removal should not take place in residential areas. She feels it's acceptable to take some soil but what happens with the land once it has been stripped? The by-law should be examined very carefully and should be fair to both sides (farmers and top soil producers).

#### Violet Lanthier

Cathy Orlando-Mather spoke on Ms. Lanthier's behalf. Soil stripping is taking place in Ms. Lanthier's area. She feels there should be a moratorium on all stripping activities until the by-law is passed. She expressed concern regarding erosion, habitat loss and dust.

### Mike Soenens

Mr. Soenens gave a slide presentation on behalf of the Sudbury District Soil & Crop Improvement Association. Their association is interested in the responsible management of soil, water, air and crops. They feel that Sudbury's top soil should be preserved and all stripping activities should be terminated. We should buy and eat local. By allowing top soil stripping to continue we are creating more land reclamation opportunities, which goes against the premise of re-greening. Food production cannot survive without a land base and there is already a shortage of farm land in Sudbury.

### Claire Viau

Ms. Viau resides on Regional Road #35, Azilda. She has been approached by a top soil producer to remove top soil from some of her land. Since her land is in the Agricultural Reserve, she cannot split her property and give it to her sons. She noted that the property in front of hers has been stripped 10 to 15 years ago and she invited anyone to come out and see how it has been re-greened with trees and shrubs. She cannot do anything else but lease or sell her land for top soil stripping. Stripping land doesn't necessarily mean the creation of an eye sore.

### Naomi Grant

Ms. Grant spoke on behalf of the Coalition for a Livable Sudbury. They are in support of preserving top soil within the Agricultural Reserve. She noted that of the previous options developed by City staff, Option #1 is the only option that is consistent with the City's Official Plan and the provincial government mandate. Council should choose this option.

The Top Soil Advisory Panel's work thus far has given clear guidance. The protection of future generations' food source is in Council's hands. They must consider the long term benefits.

Mr. Mazza thanked those who attended and spoke for their input.

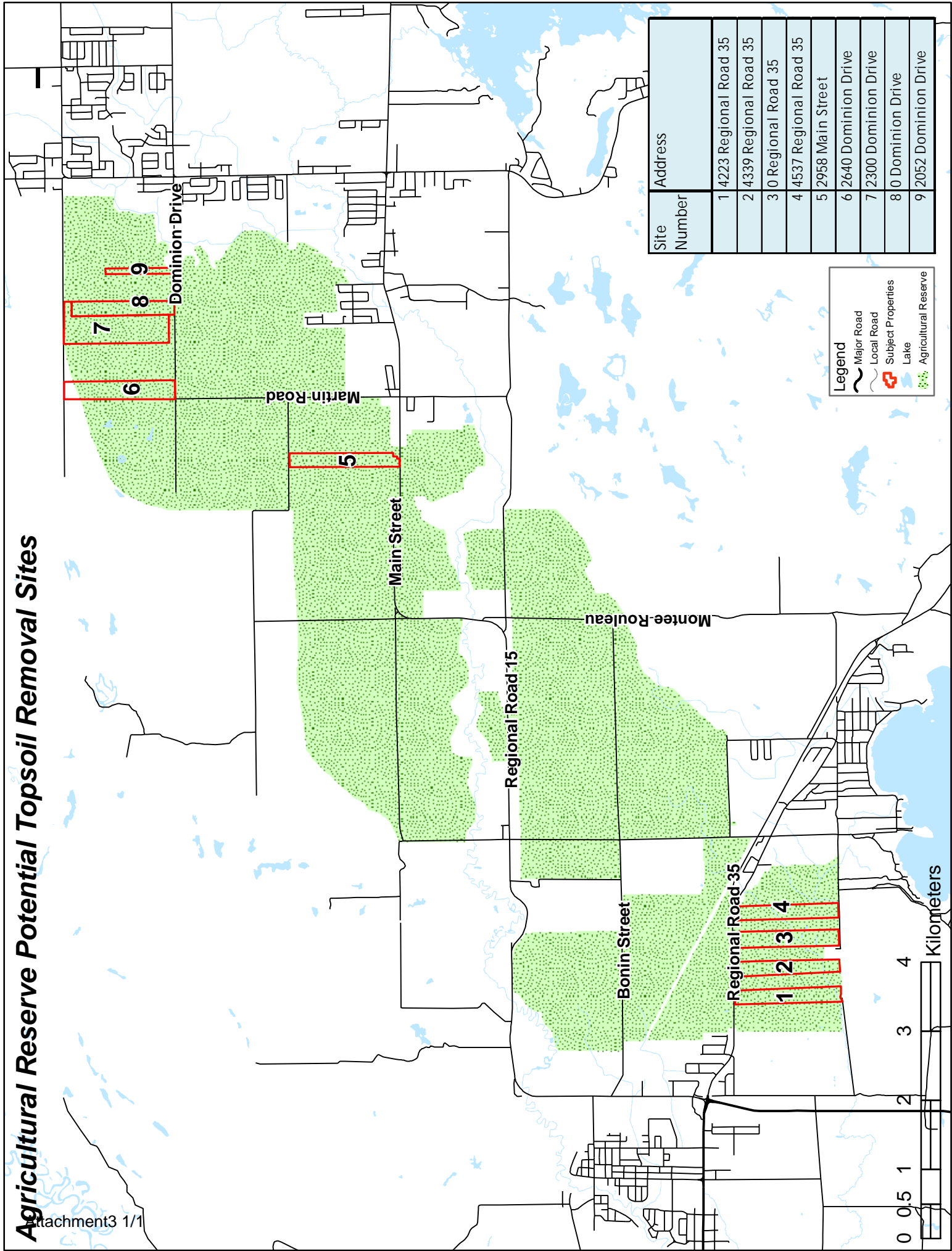
### Next Steps

The issues raised at this meeting will be taken into consideration when staff re-works the options to be presented to Council. All efforts will be made to come up with a balance that addresses both sides.

/vk

# Agricultural Reserve Potential Topsoil Removal Sites

Attachment3 1/1



Site Number	Address
1	4223 Regional Road 35
2	4339 Regional Road 35
3	0 Regional Road 35
4	4537 Regional Road 35
5	2958 Main Street
6	2640 Dominion Drive
7	2300 Dominion Drive
8	0 Dominion Drive
9	2052 Dominion Drive