

Policy Discussion Papers - Decision Requested



For Information Only

Top Soil Removal & Site Alteration By-law

Presented To:	Priorities Committee
Presented:	Wednesday, Mar 04, 2009
Report Date	Monday, Feb 23, 2009
Type:	Policy Discussion Papers - Decision Requested

Recommendation

Recommendation One:

THAT the City of Greater Sudbury maintain prohibition of removal of top soil within the Agricultural Reserve outlined in the draft Top Soil Removal & Site Alteration By-law presented on January 21, 2009.

Recommendation Two:

THAT provision 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.

Finance Implications

If the development of a By-law is approved, there will be a minimal impact to the City of Greater Sudbury as only approximately \$50,000 of topsoil is purchased annually by the municipality.

Background & Purpose

Further to Council's Priorities Committee's initial presentation of the "Top Soil Removal and Site Alteration By-law" on January 21, 2009, staff was instructed to conduct a public meeting to present the draft by-law and provide opportunity for input by the general public, local agricultural community and top soil producers.

Staff facilitated a public meeting on February 10, 2009, at 5:30 p.m., at Tom Davies Square in Committee Room C-11. All representatives from the previous two public hearings held in 2006, as well all local top soil producers in the Bell Telephone Yellow Pages were sent registered mail invitations to attend. Newspaper notices of the public meeting were also posted in the Sudbury Star, Northern Life and Le Voyageur for a two week period before the meeting date.

Signed By

Report Prepared By

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Recommended by the Department

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Approximately 35 - 40 individuals attended the public meeting which generated feedback on some key aspects of the draft by-law. Minutes of the meeting were taken and are included as Appendix 'A' to this report. Subsequent to this meeting 10 written submissions were made. Staff has engaged some top soil producers to further discuss their concerns.

The report provides Council with a summary of some of the key comments made on the by-law and a proposed response. This report also seeks Council's direction with respect to two options that could be pursued relating to the future treatment of existing top soil removal operations.

Summary Comments (Received from the Public Meeting)

Proposed Moratorium Area

Planning and Official Plan issues took up 70% of the feed back that evening. The speakers took issue with the definition of what lands were included as Agricultural Reserve in the new amalgamated Official Plan and the majority would have liked to see more lands included in the area proposed for a moratorium of top soil removal since some of the lands, as much as 10%, have already had some top soil removal activity to date. The issue of the inability for owners to sever parcels for some to garner revenue to support agricultural activities was also raised.

Moratorium/Grandfathering

The current draft by-law proposes a moratorium on top soil removal within the reduced Agricultural Reserve. The industry raised issues that sites currently being operated both within and outside the new Agricultural Reserve should be grandfathered to allow continuation of revenue generation on investment and job protection within the industry. Some individuals reported having valid permits under the existing Valley East By-law that in their minds justify their operations in the new Agricultural Reserve within the boundaries of the former Town of Valley East.

Prescriptive vs. Objective Based Regulations

The industry raised issues related to the significant prescriptive measures detailed in Schedule 'B' of the draft by-law which appear too restrictive and do not allow for alternative design options to deal with dust control, siltation and storm water management issues.

Costs & Existing City Contracts

The producers indicated that existing City contracts for blanket purchase order supplies will be affected by the increased cost to comply with regulations within the by-law. Further, these additional costs will be passed on to other consumers. The current contracts expired at the end of December, 2008, with an option to extend for 2009 and 2010, subject to mutual agreement on applicable rates. The total expenditures last year amounted to approximately \$48,000. Neither the City nor the contractors are committed to any rates as of yet for 2009 or 2010. If a mutual agreement cannot be reached, the contract would be re-tendered.

It should be noted, we are currently working with our civil consultants to define the cost implications to the industry of the by-law to bring further clarity on this issue when we come back to the Committee in April.

Mining Operations & Mining Act

A verbal and written submission by a representative of the mining industry was submitted requesting exemption from the by-law based on the fact that their activities related to the by-law are governed by the Mining Act, which is regulated by the Province and these plans are already commented on by the City and subject to stringent regulations.

Residential Site Alteration Activity

Concerns were raised by both the industry and the public on the impact of the by-law on residential landscaping activities based on the restriction of no more than 0.6 metres grade differential, triggering provisions for a permit.

Summary Response (Staff)

The majority of the Planning Act issues revolved around the Official Plan definition of “Agricultural Reserve” raised at past public meetings as part of that process and are regulatory issues governed by provincial authority.

The boundaries of the new Agricultural Reserve are governed by Ontario Ministry of Agricultural, Food and Rural Affairs (OMAFRA), the Canada Land Inventory Classification of Soils, and the Province. The boundaries were set by the latest Official Plan process for the Agricultural Reserve and cannot be changed at present. Council could extend the boundaries of the prohibition beyond the defined Agricultural Reserve at a future date if they so wish.

In 2005, the Province amended its provincial policy statement amending severance rights in agricultural areas.

Proposed Modifications to the Draft By-law

The following modifications to the draft by-law are suggested to incorporate the concerns received by staff at the public meetings:

1. Provide an additional exemption from the by-law for site alteration activities on mining sites covered under a Closure Plan as defined in the Mining Act.
2. Provide for the use of landscape architects as an additional professional qualified to undertake a Control Plan Design.
3. Modify Schedule ‘B’ “Control Plan Requirements” to provide a more performance based document based on objectives instead of the current prescriptive version to allow the industry and professional engineer more flexibility in design to achieve objectives of the by-law.
4. With respect to the initial phasing in of the by-law, provide for a transitional Conditional Permit to allow applicants to apply for permits immediately without full Control Plan documentation allowing the industry to continue delivering product and design professionals time to gather information and put documentation together for City review, with the undertaking of operating within the objectives of the by-law.
5. Provide additional clarification within the by-law that residential landscaping activities, which are

captured within other municipal regulations and by-laws such as the existing Site Grading By-law, the Planning Act, Site Plan Approval process, Subdivision Grading Plans and the Ontario Building Code, are exempt from this by-law.

Required Council Direction

The remaining issues of whether existing operations within the by-law proposed prohibition of removal of top soil within the Agricultural Reserve is a matter requiring some direction of Council to staff.

Currently, based on last year's 2008 aerial photo survey and Valley East's by-law permit data base, we believe that we have the following existing situation:

- i. Three (3) parcels have top soil removal activity within the Agricultural Reserve under permits issued as part of the former Town of Valley East By-law.
- ii. Eleven (11) parcels within the Agricultural Reserve have top soil removal activity with no permitting,

Given that the permit applications for the above would be denied, the current by-law provides for appeals for these individuals through the Hearing Committee of Council for any decisions to refuse permitting within the confines of the Agricultural Reserve. Further, Council is within its authority to place a prohibition on the removal of top soil to protect its diminishing agricultural resource as per the Ontario Municipal Act, Official Plan Policy, Planning Act and Provincial Policy Statements.

Permits not acted upon at this stage or properties purchased with the intent of top soil removal within the reduced Agricultural Reserve would still be subject to the moratorium on removal since this speaks to the speculative nature of investment as opposed to those currently showing activity which sometimes takes 2 to 3 years to achieve a marketable product.

Therefore, Council is presented the first recommendation for direction by staff on this issue. The recommendation below is supported by staff.

Recommendation One

THAT the City of Greater Sudbury maintain prohibition of removal of top soil within the Agricultural Reserve outlined in the draft Top Soil Removal & Site Alteration By-law presented on January 21, 2009.

However, in the spirit of fairness, we have been approached by those individuals as part of this public process who have submitted for permitting under the old Valley East by-law and others for grandfathering. The grandfathering, it is suggested, would only allow them to clear what has been currently stock piled for processing no further. All provisions of the new by-law would apply with respect to protection of adjoining properties/structures as well as rehabilitation.

The grandfathering would allow the material which has been processed and thus been subjected to some investment by property owners or producers to be salvaged for return on investment but no further new removals to be initiated. Council has been presented with the second recommendation for consideration and direction of staff. The recommendation below is supported by staff.

Recommendation Two

THAT provision 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.

Next Steps

Based on this update for Council's information and direction provided by Council's resolution, staff will revise the draft by-law to suit the public input and Council's wishes. We will continue consulting with top soil producers and the Agricultural & Top Soil Advisory Panel in the next month to discuss these and other key comments on the draft by-law with a view toward bringing a revised by-law back to the Committee on April 22, 2009, for final consideration.

Attachment

APPENDIX 'A'

Minutes of Public Meeting

**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 sever 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.

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