

# MEMORANDUM

---

October 22, 2018

Files: 751-8/17-6

**TO:** Planning Committee

**FROM:** Jason Ferrigan, Director of Planning Services

**RE:** Application for Rezoning – Darlene and John Nathan Nicholson  
Part of PIN 733730-0100, Parcel 5579, Lot 1, Concession 4, Township of Waters(15  
Kalio Road)

---

The request to rezone the subject lands to permit a kennel having a reduced buffer distance to the nearest residential building was deferred by the Planning Committee on September 25, 2017 in order for new information in the form of a noise study recently submitted by the applicant, to be reviewed and considered. The motion to defer was approved by the Committee prior to the public hearing on the application being opened.

The noise study dated September 21, 2017, prepared by ProSonics was submitted to the City on September 22, 2017, after the staff report to the September 25, 2017 Planning Committee had been prepared. Staff had the ProSonics noise study peer reviewed by RWDI who provided a memorandum to the City dated November 23, 2017 which was subsequently provided to the applicant.

In response to the RWDI memorandum, the applicant provided an updated noise study by ProSonics dated April 4, 2018 to the City on April 10, 2018, which was also peer reviewed by RWDI. Planning Staff provided the comments from RWDI dated July 13, 2018 to the applicant on July 19, 2018 with a request that the applicant advise as to their intentions going forward. The applicant advised on August 7, 2018 that they were ready to proceed with the application. Staff's understanding from this response was that there would be no more noise report submissions in response to the peer review comments provided to the applicant on July 19, 2018. Planning staff advise that to date there have been no further noise report submissions from the applicant.

Copies of the two ProSonics noise studies and the peer review comments from RWDI are provided to the Committee with this memorandum.

Below is a summary of the reports, findings and conclusions.

## ProSonics September 21, 2017 Report

The September 21, 2017 ProSonics report outlines that they attended at the site and took acoustical measurements of the background noise and the kennel with 27 dogs present for the duration of the measurement. The full conclusion of the report is set out in the attached ProSonics report.

A summary of the conclusions are as follows:

1. That the noise generated by the dogs was within the Ontario Ministry of the Environment and Climate Change Guideline Environmental Noise Guideline: Stationary and Transportation Sources - Approval and Planning NPC-300, August 2013;
2. The noise was essentially inaudible at the measurement locations and did not impose an objectionable level of noise on adjoining properties in front of which the measurements were made; and
3. That there is no adverse noise impact from the facility on properties adjoining along Kalio Road and Moxam Landing Road.

#### RWDI November 23, 2017 Peer Review

The RWDI peer review identified several issues with the ProSonics Report, which are set out in detail within it. These included along with other matters the following:

- the points of reception, including the absence of addressing the closest residential receptor to the south approximately 47 m to the south of the kennel fencing in the analysis;
- the lack of reference as to whether the barking was assessed as a steady, quasi-steady or impulsive type of noise source, which is necessary to define the assessment and measurement procedure;
- lacking detail as to whether the procedures under NPC-300 were followed such as in the establishment of background sound levels and the reports development of alternative assessment criterion that are not derived from NPC-300;
- clarification on the actual distance from each of the barking locations to the measurement location;
- absence of any statement about assumptions made for atmospheric conditions, intervening ground cover and topography that influence sound travel; and
- no recommendations respecting mitigation measures were identified.

The RWDI report concluded that:

1. The ProSonics conclusion that the noise is within the NPC-33 guideline has not been sufficiently demonstrated;
2. The second ProSonics conclusion that the noise was essentially inaudible is an observation of what occurred at that specific time and place. The continuity of this observation is not assured in seasons when leaves and crickets are not present or under other atmospheric conditions; and
3. The third ProSonics conclusion that there is no adverse impact, appears to be an unlimited blanket statement and such a statement might be supported in the absence of complaints from the facility.

In this regard, staff notes that there have been complaints which the City has received from residents in the area with respect to noise from the kennel.

#### ProSonics April 4, 2018 Report

In response to the RWDI peer review, ProSonics submitted a new noise report to the City based on acoustical measurements taken on January 19 and 20, 2018. The full conclusion of the report is set out in the attached ProSonics report.

A summary of the conclusions are as follows:

1. The noise generated on January 19 and 20, 2018 during normal kennel operations were within the NPC-300 Noise Guideline; and
2. Since the noise was within the guideline at a location approximately 25 m from the exercise yard, the noise level would simultaneously be within the guideline at the property line towards the other three closest residences a minimum of 6.25 times the distance (156m) from the exercise yard with intervening trees and bush acting as an acoustical diffuser.

#### RWDI July 13 2018 Peer Review

The RWDI report noted that several significant items in their November 23, 2017 peer review memorandum had not been clarified, corrected or supplemented and that a conversation occurred between Peter VanDelden of RWDI and David Peters of ProSonics on May 22, 2018.

The following is a summary of the outstanding issues and conclusions:

- The ProSonics report does not follow the NPC-300 requirement to evaluate vacant lots to allow for future sensitive use and suggests the NPC-300 places responsibility for compliance on parties responsible for introducing the sensitive use such as a residence. RWDI have noted that this is an incorrect interpretation of NPC-300. The report should have considered a point of reception for the abutting property to the south;
- A 10 db penalty for quasi-steady impulsive noise sources should have been applied as provided in the Model Municipal By-law's NPC-104;
- Questions remain regarding the assessment methodology, assessment location, source characterization, measurement and procedure validity used by ProSonics;
- Applying the 10 db penalty specified in NPC-104, to the noise levels observed in the ProSonics report, results in source levels of 46 dBA, 49 dBA and 48 dBA, all exceeding the exclusion limits of 45 dBA for daytime and 40 dBA for evening provided in NPC-300; and
- RWDI has concluded that based on their review and discussion with ProSonics, compliance with NPC-300 has not been sufficiently demonstrated.

## Growth Plan for Northern Ontario 2011

The Staff report to the September 25, 2017 Planning Committee did not include any comment with respect to whether the application conforms or does not conflict with the Growth Plan for Northern Ontario. Staff have reviewed the Growth Plan and advise that the application does not conflict with any matters included in the Growth Plan.

### Summary

Planning Staff have considered the two noise reports prepared by ProSonics on behalf of the applicant and the comments provided by the City's peer review consultant on both reports, which indicate that compliance with NPC-300 has not been demonstrated. As set out in the staff report, the Official Plan in Sections 5.1, 5.2.3.4 and 5.2.5.3 set out policies respecting the provision of adequate separation distances between rural industrial/commercial uses from residential areas and minimizing land use conflicts. Staff are of the opinion that the applicant has not adequately demonstrated that the kennel use as currently located on the subject lands has addressed the Official Plan policies respecting these matters.

As a result, Planning Staff remain of the opinion that the recommendation set out in the report to the September 25, 2017 Planning Committee to deny the application continues to be appropriate.

ET/ba

  
Jason Ferrigan, M.C.I.P., R.P.P.  
Director of Planning Services

cc. E. Archer  
T. Cecutti  
E. Labelle

### Attachments

1. ProSonics Noise Assessment, Friends Fur-Ever Pet Resort, September 21, 2017
2. RWDI Noise Study Peer Review Memorandum, November 23, 2017
3. ProSonics Noise Assessment, Friends Fur-Ever Pet Resort, April 4, 2018
4. RWDI Noise Study Peer Review Memorandum, July 13, 2018