

## **STAFF REPORT**

### **PROPOSAL**

The application proposes to amend By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury by removing the 'H(47)' holding provision from where it restricts development on lands zoned M1-1(21) and OSP(6), until criteria related to the protection of the adjacent Ponderosa PSW and threatened species are met. The application also proposes to add recreation vehicle sales and service establishment, and vehicle sales or rental establishment, to the list of uses permitted in the OSP(6) and M1-1(19) zone. Accessory outdoor display and sales is also proposed in the OSP(6) zone.

The applicant has taken steps to develop the site since a previous rezoning was approved by Council on July 10, 2018. The applicant has installed a stormwater management pond, has worked to address the criteria related to the holding provision, and is completing the process of amending the site plan control agreement with the City.

The application proposes to remove the 'H(47)' holding provision based on the recommendations of an Environmental Impact Study (EIS) and information received from the Ministry of Natural Resources and Forestry.

The application also proposes additional uses to be permitted in certain zones in order to reflect business needs. While automotive sales (which includes utility trailer sales) are already permitted in the M1-1(19) and (21) zone, this application proposes to broaden the permitted vehicle sales and/or service. They are also requesting these same uses be permitted in the OSP(6) zone to enable accessory outdoor display and parking on those lands.

The applicant's site sketches show the location of the H47 holding provision, the proposed rezoning requests, as well as the proposed site layout including outdoor display areas, storage areas, parking, and landscaping.

**Existing Zoning:** H47M1-1(21), H47OSP(6), M1-1(19), OSP(6)

The M1-1 zone permits a wide range of business industrial uses. At the applicant's request, on July 10, 2018, the M1-1(19) zone was created to also permit a vehicle repair shop. The M1-1(21) zone was created to also permit the outdoor storage of vehicles accessory to a vehicle repair shop in that zone. The OSP(6) zone was created to permit an access driveway in addition to public park uses.

The H47 holding provision applies to all of the M1-1(21) zone and a portion of the OSP(6) zone. It restricts the use of the lands to uses which legally existed on July 10, 2018. The H47 holding provision shall only be removed by Council if following criteria have been satisfied:

1. Approval from the Ministry of Natural Resources and Forestry of a re-delineation of a portion of the Ponderosa Provincially Significant Wetland (PSW) boundary such that lands are located outside of the PSW to the satisfaction of the City's Director of Planning Services; and,
2. The submission of an Environmental Impact Study (EIS) to the satisfaction of the Director of Planning Services that demonstrates that there will be no negative impacts on the Ponderosa PSW or its ecological functions, including habitat for species at risk.

**Date: March 9, 2020**

---

**Requested Zoning:** Removal of the H47 holding provisions, and a revised M1-1(19) and OSP(6) zone.

The proposed removal of the H47 holding provisions would enable development in accordance with the underlying zones, being M1-1(21) and OSP(6).

The application also proposes to add the following to the list of uses permitted in the M1-1(19) zone and OSP(6) zone:

- Recreation Vehicle Sales and Service Establishment; and
- Vehicle Sales or Rental Establishment.

Accessory outdoor display and sales is also proposed in the OSP(6) zone.

### **Location and Site Description**

The subject lands are located on the east side of Newgate Avenue, east of Notre Dame Avenue in Sudbury. The lands have an area of approximately 14,604 m<sup>2</sup> (3.6 ac) with approximately 95 m (311.7 ft) of frontage on Newgate Avenue. The northerly portion of the property, immediately behind the adjacent fast food restaurant is undeveloped. The lands are occupied by an industrial building with a floor area of approximately 3,384m<sup>2</sup> (36,426 ft<sup>2</sup>). There are transit stops located at the site on the west side of Notre Dame Avenue, and within 115 m on the east side of Notre Dame Avenue.

### **Surrounding Land Uses**

The area surrounding the site includes:

North:	Restaurant (McDonald's)
East:	vacant, Ponderosa PSW
South:	Automotive use (Palladino RV)
West:	Notre Dame Avenue, and mix of commercial and business industrial uses

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

Site photos show there are mix of commercial and business industrial uses along this section of Notre Dame Avenue.

### **Related Applications**

On Monday, April 9, 2018, Planning Committee recommended approval of a rezoning application to add vehicle repair shop to the list of uses permitted in the M1-1(19) zone, permit vehicle access within the OSP(6) zone, and add the outdoor storage of vehicles accessory to a vehicle repair shop in the M1-1(21) zone (File #751-6/17-29). The approval included a holding provision which was passed by Council on July 10, 2018 that restricted development on a portion of the lands until criteria related to the protection the adjacent Ponderosa PSW and threatened species are met. The amending by-law was not appealed and is in full force and effect.

## **Public Consultation**

There have not been comments from the public to date on this application. Notice of complete application of the application was circulated to the public and surrounding property owners on February 6, 2020. Notice of Public Hearing was circulated to the public and surrounding property owners on April 30, 2020. As of the date of this report, no concerns or objections have been received regarding the proposed zone change application.

## **POLICY & REGULATORY FRAMEWORK**

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

- [2020 Provincial Policy Statement](#)
- [2011 Growth Plan for Northern Ontario](#)
- [Official Plan for the City of Greater Sudbury, 2006](#)
- [Zoning By-law 2010-100Z](#)

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

### **Provincial Policy Statement (PPS)**

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

Section 1.1.3 of the PPS directs that settlement areas shall be the focus of growth and development.

Planning authorities shall also identify appropriate locations for redevelopment taking into account existing building stock. The need for the unjustified and/or uneconomical expansion of services shall be avoided.

Section 1.3.1 of the PPS requires planning authorities to promote economic development and competitiveness by providing for an appropriate mix and range of employment uses to meet long-term needs, and maintaining a range and choice of suitable sites which take into account the needs of existing and future businesses.

Section 1.7.1 states that long-term economic prosperity should be supported by promoting opportunities for economic development and community investment-readiness, and by optimizing the use of land and infrastructure.

Section 2.0 of the PPS, Wise Use and Management of Resources, addresses protecting the Province's natural resources for their economic, environmental and social benefits. Section 2.1.7 states that development and site alteration shall not be permitted in habitat of endangered species and threatened species, except in accordance with provincial and federal requirements. Section 2.1.8 of the PPS, requires that no development or site alteration occur on adjacent lands to significant wetlands unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.

### **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.

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

Section 1.3.2 of the Official Plan acknowledges the link between planning, design and economic development, such as by providing a framework to reinforce the urban structure and achieve efficient urban form and use of infrastructure.

The subject lands are designated as Mixed Use Commercial in the Official Plan. Section 4 of the Official Plan identifies that the Mixed Use Commercial designation is intended to reflect lands where people presently work and lands where employment opportunities will be provided in the future.

Given the function and high visibility of these areas, special attention is to be given to sound urban design principles including supporting active transportation and transit.

All uses except Heavy Industrial may be accommodated in the Mixed Use Commercial designation through the rezoning process, subject to the following criteria listed in section 4.3:

- sewer and water capacities are adequate for the site;
- parking can be adequately provided;
- no new access to Arterial Roads will be permitted where reasonable alternate access is available;
- the traffic carrying capacity of the Arterial Road is not significantly affected;
- traffic improvements, such as turning lanes, where required for a new development, will be provided by the proponent;
- landscaping along the entire length of road frontages and buffering between non-residential and residential uses will be provided; and
- the proposal meets the policies of Sections 11.3.2 (transit) and 11.8 (accessibility), and Chapter 14.0, Urban Design.

Section 9.2.2 contains policies pertaining to significant habitat of endangered species and threatened species. Development and site alteration is not permitted in such habitat, nor is it permitted on adjacent lands unless the ecological function of the lands has been evaluated and it has been demonstrated that there will be no negative impact on the feature or their ecological functions. Section 9.2.3 contains policies pertaining to provincially significant wetlands. Development and site alteration are not permitted on lands adjacent to a sensitive wetland or a provincial significant wetland unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or ecological functions. Adjacent lands are considered to be within 50 metres of any sensitive wetland, and within at least 120 metres of a provincially significant wetland. This area can be modified if justified by a study.

Section 10.2 of the Official Plan identifies situations where development is not permitted in a floodplain, and the approval role of Conservation Sudbury. Section 20.7.1 contains hazard land policies specific to this section of Notre Dame Avenue (known as 'Area B') and states that development may occur subject to the approval of Conservation Sudbury. New development as well as redevelopment of existing buildings may be permitted up to 95 metres east of Notre Dame Avenue. No development will occur closer than 25 metres to Junction Creek.

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

The development standards for the M1-1 zone require a maximum height of 12 m. The minimum required front yard is 9.0 m, the minimum required rear yard is 6.0 m, and the minimum required interior side yard is 3.0 m. The maximum lot coverage is 50%, and the minimum landscaped open space is 5%.

The development standards for the OSP zone require a maximum height of 10 m. The minimum requirement for all yards is 10 m, the maximum lot coverage is 5%, and the minimum landscaped open space is 40%.

The general provisions of the zoning by-law permit outdoor display and sales accessory to automotive sales, vehicle sales or rentals, and recreation vehicles sales and service in required yards, outside of required landscaped open space, parking, or loading spaces. A minimum 3 m landscaped area is required adjacent to Newgate Avenue.

Outdoor storage is only permitted in the M1-1(21) zone, and is limited to the storage of vehicles accessory to a vehicle repair shop. The outdoor storage of vehicles is not required to be screened by opaque fencing.

### **Site Plan Control**

The property is currently subject to a site plan control agreement that was registered on August 19, 1987, and amended on October 7, 1992, and only applies to the lands containing the existing structure (Parcel 46225). The expanded use of the property and improvements proposed through the previous rezoning application triggered the existing site plan to be amended, and an amendment process is underway.

### **Department/Agency Review**

The application, together with the applicable reports noted above, has been circulated to all appropriate agencies and City divisions. Responses received have been used to assist in evaluating the application and to formulate appropriate zoning by-law standards.

Comments from Development Engineering identify matters to be addressed at the site plan stage, including quality control of stormwater, and the need for an easement for a storm main that crosses the lands.

Building Services has advised that the existing shipping and storage containers are not permitted within an M1-1 zone and are required to be removed.

Conservation Sudbury has identified that the subject lands are within the regulatory floodplain and include a small portion of the Ponderosa PSW. Conservation Sudbury has issued a permit for a new driveway, a holding pond for storm water management, and an oil grit separator on site. The permit is still open. When the associated works are complete, the applicant must contact Conservation Sudbury for a final inspection and to close the permit. Any additional work will require a permit pursuant to Section 28 of the *Conservation Authorities Act*. Conservation Sudbury has recommended that the portion of the Ponderosa PSW that is subject to be rezoning be zoned restrictively to prohibit any future development. Conservation Sudbury has also commented that certain uses are not permitted within the floodplain (e.g. hospitals, essential emergency services, uses associated with the hazardous substances).

Environmental Planning Initiatives has commented that the materials submitted with the application are sufficient to meet the requirements for removal of the holding provision. Specifically, the accurate delineation of the Ponderosa PSW, and demonstration that the proposed uses are not anticipated to have significant negative impacts on the Ponderosa PSW or the habitat of species protected under the Endangered Species Act. In order to protect Blanding's Turtle habitat, the upland area 30 metres from the

Ponderosa PSW must be protected by a chain link fence (with reptile barrier). The draft site plan which shows a chain link fence demonstrates that site alterations will be prevented from occurring in Category 2 Blanding's Turtle habitat, and the details of the 'reptile barrier' component of the fence must be included in the final site plan.

As described below, these comments have been addressed to the satisfaction of reviewing departments and agencies.

## **PLANNING ANALYSIS**

Planning staff circulated the development application to internal departments and external agencies in February, 2020. The PPS (2014), the Growth Plan (2011), and Greater Sudbury Official Plan, and other relevant policies and supporting guidelines were reviewed in their entirety. The following section provides a planning analysis of the application in respect of the applicable policies, including issues raised through agency circulation.

### Holding Provisions

Holding provisions were applied to portions of the subject lands restrict development adjacent to the Ponderosa PSW and the habitat of Blanding's Turtle.

In accordance with the policies of Section 9.2.2 of the Official Plan, an EIS was required to ensure that any development or site alteration is restricted to portions of the subject land that will not impact the lands identified as habitat.

At the time of the previous rezoning, preliminary mapping indicated that a portion of the subject lands was included as part of the adjacent Ponderosa PSW. Staff from the Environmental Planning Initiatives Section conducted a site inspection and determined that while the lands should not be classified as part of the Ponderosa PSW itself, they are adjacent and require assessment through an EIS. The applicant has worked with the Ministry of Natural Resources and Forestry to confirm that the boundary of the Ponderosa PSW (correspondence dated April 5, 2019). The majority of the lands are outside the Ponderosa PSW, though a small sliver approximately 2 m<sup>2</sup> in size is on the site.

An EIS has been submitted which demonstrates that the proposed activities lands are outside the habitat of Blanding's turtle, and there will be no negative impacts on the natural features or ecological functions of the adjacent wetlands. Environmental Planning Initiatives has reviewed the EIS and correspondence received from the Ministry of Natural Resources and Forestry and confirm the materials are satisfactory for the holding provision being lifted. A fence with a reptile barrier is required to be constructed 30 m from the wetland boundary in order to prevent site alteration in Blanding's Turtle Habitat as well as keep Blanding's Turtle from moving into areas where activities that could harm them are occurring. Further to the formal comments provided, Environmental Planning Initiatives staff has also recommended that a fence with a reptile barrier be used to exclude Blanding's Turtles from the pond that has been constructed on the OSP(6) lands and the already-developed M1-1(19) lands. A small portion of the Ponderosa PSW is on the subject lands, and Conservation Sudbury has requested these lands be zoned restrictively. The EIS also recommends protection of existing vegetation adjacent to the Ponderosa PSW to prevent negative impacts. Therefore, to ensure conformity with the official plan and consistency with the PPS, as well as implement agency comments, it is recommended that the site-specific zoning provisions for the subject lands include the requirement for a fence with a reptile barrier as well as prohibit development or use of land on the east side of the barrier where the lands are undisturbed.

Staff have reviewed the request in detail and are satisfied that the criteria have been met and further that it would now be appropriate to lift the holding provision, which would allow the uses permitted in the OSP(6) and M1-1(21) zones. Staff therefore recommend that the application to remove the holding provision be approved, subject to the implementation of the recommended site-specific provisions.

### Additional Uses

The application conforms with the general economic policies and guiding land use principles of the Growth Plan for Northern Ontario. The applications are consistent with PPS policies and conform with Official Plan policies that acknowledge the link between land use planning and economic prosperity, and maintaining a range of sites to provide economic opportunities.

The subject lands are within a fully-serviced settlement area. The application aligns with the PPS as well as Official Plan section 1.3.2 regarding directing development to settlement areas to promote long-term economic prosperity by optimizing the use of land and infrastructure.

The proposed use is within a floodplain, and the recommended site-specific zoning provisions described above will prohibit development in the small portion of the Ponderosa PSW that extends onto the subject lands as recommended by Conservation Sudbury. Conservation Sudbury has also commented that certain uses are not permitted within the floodplain (e.g. hospitals, essential emergency services, uses associated with the hazardous substances). These uses would not be permitted as a result of this application. Any future construction of buildings or structures would be subject to Conservation Sudbury permit requirements.

The application meets the specific considerations for a rezoning as listed in policy 4.3 of the Official Plan:

- There are no identified servicing constraints.
- Adequate on-site parking can be provided. The proposed trailer display area would displace 6 parking spaces, with 18 are proposed to be added in the OSP(6) zone, for a net gain of 12 spaces. The site plan demonstrates that 97 spaces can be accommodated on the site. This is expected to be adequate for the uses that are proposed. Detailed calculations will be reviewed as part of the site plan process.
- There is sufficient traffic carrying capacity available to support the development. Traffic improvements, such as turning lanes are not required to support this development.
- Landscaping will be provided along Newgate Avenue, and will be further reviewed as part of the site plan process.
- Policies pertaining to transit and accessibility (e.g. pedestrian connections), as well as urban design, will be further considered as part of the site plan process. Generally, the proposal meets these policies.

In reviewing the application, staff notes the abutting commercial uses, in particular the automotive related businesses to the south. Staff is of the opinion that the request is appropriate at this location and that the added uses of the lands will be compatible with the surrounding land uses.

It is recommended that a condition be implemented requiring the shipping container on the subject lands be removed, given the shipping container is not permitted.

In order to ensure that site works are constructed to the satisfaction of the City it is recommended that a condition be implemented requiring the owner enter into an amended site plan control agreement with the City.

## **CONCLUSION**

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

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

- remove the 'H(47)' holding provision from where it restricts development on lands zoned M1-1(21) and OSP(6);
- add recreation vehicle sales and service establishment, and vehicle sales or rental establishment, to the list of uses permitted in the OSP(6) and M1-1(19) zone;
- add accessory outdoor display and sales to the list of uses permitted in the OSP(6) zone;
- require a fence with reptile barrier; and
- prohibit development on the east side of the fence where the lands are undisturbed.

The development of the subject lands achieves a number of policy directives, including the efficient use of existing infrastructure, promoting a mix and range of employment uses and a diverse economic base. Staff has considered, amongst other matters, a full range of factors through a detailed review when forming the recommendation of approval for this application.

Staff is satisfied that the application is consistent with the PPS and conforms to the Growth Plan and the Official Plan. Staff is of the opinion that the proposed zoning by-law amendment is appropriate based on the following:

- Development in this location aligns with economic policies and directing development to an area with existing infrastructure.
- The proposal has been evaluated in the context of the surrounding and future land uses and is considered appropriate.
- Site-specific zoning restrictions will prohibit development from occurring in the Ponderosa PSW, protect lands adjacent to the Ponderosa PSW to ensure no negative impacts to the PSW as well as prohibit development in the habitat of a threatened species (Blanding's Turtle).
- There are no identified servicing constraints and the traffic increase can be accommodated. Adequate on-site parking is provided.
- The site design, including landscaping provisions, will be further addressed through the site plan control agreement process.

Staff recommend approval of the application on the basis it is consistent with the Provincial Policy Statement, conforms to the Growth Plan for Northern Ontario, the Official Plan for the City of Greater Sudbury, has regard for matters of provincial interest, and represents good planning.