

Date: March 9, 2020

STAFF REPORT

PROPOSAL:

The owner is seeking approval from the City's Consent Official to create three urban residential lots having frontage onto Edgecliff Crescent in Garson (Files # B0103/2019, B0104/2019 & B0105/2019). Each of the proposed urban residential lots would have an approximate lot area of 1,080 m² (11,625.02 ft²) along with 24 m (78.74 ft) of lot frontage on Edgecliff Crescent and maintain lot depths of 45 m (147.64 ft). The proposed urban residential lots are presently vacant. Three previous urban residential lots were approved through the consent process (Files # B0048/2018, B0049/2018 & B0050/2018) with final consent certificates having been issued on each of the former applications on July 12, 2019.

In accordance with Section 20.4.1 of the Official Plan, the Consent Official has referred the subject applications for consent to the Planning Committee and Council in order to determine whether the application should be permitted to proceed by the way of the consent process, or alternatively, if a plan of subdivision is required.

Existing Zoning: "R1-5", Low Density Residential One

The "R1-5" Zone permits a bed and breakfast establishment within a single-detached dwelling having a maximum of two guest rooms, a group home type 1 within a single-detached dwelling having a maximum of ten beds, a private home daycare and a single-detached dwelling.

The owner is not at this time requesting any changes to the applicable zoning on the subject lands.

Location & Site Description:

The subject lands are located on the west side of Edgecliff Crescent and to the west of Penman Avenue and to the south of Falconbridge Road in the community of Garson. The portion of lands that are the subject of the request for consent referral have an approximate total lot area of 3,240 m² (34,875.07 ft²) with approximately 72 m (236.22 ft) of lot frontage on Edgecliff Crescent. The balance of the lands stretch from Edgecliff Crescent in a westerly direction to Donnelly Drive and do not form part of this request for consent referral. The urban residential lots proposed to be created having frontage on Edgecliff Crescent are presently vacant.

Surrounding Land Uses:

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| North: | Low density urban residential land uses, parks and open space lands (ie. Penman Park), and a general commercial shopping plaza land use on Falconbridge Road. |
| East: | Pre-dominantly lower density urban residential land uses. |
| South: | Vacant lands designated for future urban residential land uses and several large rural parcels of vacant land. |
| West: | Vacant parks and open space lands to the immediate west and a large tract of land zoned for extractive industrial land uses. |

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The existing zoning and location map attached to this report indicates the location of the lands that are subject to the request for consent referral, as well as the applicable zoning in the immediate area. This map has been marked up with a hard black circle by staff to indicate the portion of the subject lands subject to the former and current applications for consent.

Submitted sketches related to the previous three approved consents and the current proposal for three additional urban residential lots are also attached to this report for reference purposes.

POLICY AND REGULATORY FRAMEWORK:

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

- [Planning Act, R.S.O. 1990, c. P.13](#)
- [2014 Provincial Policy Statement \(PPS\)](#);
- [2011 Growth Plan for Northern Ontario](#);
- [Official Plan for the City of Greater Sudbury](#); and,
- [Zoning By-law 2010-100Z](#).

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

Planning Act, R.S.O. 1990, c. P.13:

With respect to statute law, in general lot creation may occur through either the subdivision planning process or by way of the consent process. Part VI of the Planning Act establishes these two land use planning processes that result in the subdivision of land. Under Sections 51 and 53 of the Planning Act, both the subdivision planning process and the consent process are required to have regard for certain criteria set out specifically in the Planning Act whenever new lots are being created.

Section 51(24) sets out those criteria to be evaluated when considering a draft plan of subdivision and regard shall be had, amongst other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality. Specifically, these criteria under Section 51(24) are as follows:

1. The effect of development of the proposed subdivision on matters of provincial interest;
2. Whether the proposed subdivision is premature or in the public interest;
3. Whether the plan conforms to the Official Plan and adjacent plans of subdivision, if any;
4. The suitability of the land for the purposes for which it is to be subdivided;
5. If any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
6. The number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
7. The dimensions and shapes of the proposed lots;
8. The restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;

9. Conservation of natural resources and flood control;
10. The adequacy of utilities and municipal services;
11. The adequacy of school sites;
12. The area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
13. The extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and,
14. The interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area.

2014 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 2014 Provincial Policy Statement (PPS). The following PPS policies are relevant to the request to allow lot creation to proceed by way of consent, as opposed to the subdivision planning process:

1. Section 1.1.1 c) outlines that healthy, livable and safe communities are sustained by avoiding development and land use patterns which may cause environmental or public health and safety concerns; and,
2. Section 1.1.1 e) outlines that healthy, livable and safe communities are sustained by promoting cost-effective development patterns and standards to minimize land consumption and servicing costs.

Growth Plan for Northern Ontario:

Municipalities in the Province of Ontario are required under Section 3 of the Planning Act to ensure that decisions affecting planning matters conform with the Growth Plan for Northern Ontario. Staff has reviewed the planning matters contained within the Growth Plan for Northern Ontario and are satisfied that the request for consent referral in this instance conforms to and does not conflict with the Growth Plan for Northern Ontario.

Official Plan for the City of Greater Sudbury:

The subject lands are designated Living Area 1 in the Official Plan for the City of Greater Sudbury. Living Area 1 includes residential areas that are fully serviced by municipal water and sewer and are to be the primary focus of residential development. Living Area 1 is seen as areas of primary focus for residential development given the desire to utilize existing sewer and water capacity and reduce the impacts of un-serviced rural development.

Section 12 in general outlines that it is the objective of those utility policies contained in the Official Plan to ensure that the City's water capacities are adequate to service existing and proposed development. Section 12.2.2 further states that new development in urban areas is permitted provided that existing and planned water services have confirmed capacity to accommodate the demands of a proposed development. At their own expense, an owner may also upgrade existing water systems to ensure adequate delivery and treatment facilities consistent with municipal standards, including the adequacy of fire flows.

Further to the above noted land use policies, Section 20.4.1 of the Official Plan outlines that, "... all proposals which have the effect of creating more than three new lots shall be considered as applications for a plan of subdivision, unless in Council's opinion a plan of subdivision is not necessary for the proper development of the area.

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Zoning By-law 2010-100Z:

The owner is not requesting any changes at this time to the "R1-5" zoning that is applicable to the subject lands. The request for consent referral if approved would permit the owner to pursue urban residential lot creation by way of the consent process as opposed to the subdivision planning process. This request therefore has no impact on the existing and applicable zoning on the subject lands.

Department/Agency Review:

The consent applications including relevant accompanying materials and the request for a consent referral has been circulated to all appropriate agencies and departments. Responses received from agencies and departments have been used to assist in evaluating the request to allow the proposed lot creations to proceed by way of the consent process, or alternatively, if the lot creations should proceed by way of the subdivision planning process.

During the review of the proposal, comments provided by circulated agencies and departments included the following:

Active Transportation, Building Services, Conservation Sudbury, Leisure Services, Roads, Traffic and Transportation and Water-Wastewater have each advised that they have no concerns and/or comments from their respective areas of interest.

Development Engineering advises that there is insufficient fire flow to service the proposed lot creations. The City's established policy since 2004 is to use the Fire Underwriter's guidelines for fire protection in urban areas and the Fire Marshall's guidelines for rural situations. This results in the requirement for this development proposal of 75 litres per second fire flow. There is the potential for six lots in addition to the original three (ie. approved consents from 2018) to be development from this parcel of land. Developing Engineering is of the opinion that the development of these urban residential lots should proceed by way of the subdivision process to deal with such matters as, but not limited to, insufficient fire flow, lot grading, site servicing and road reconstruction after the installation of services. Development Engineering has also noted that other development along Penman Avenue also have insufficient fire flows and that an equitable solution would be for all parties to join in an application to the City to address the fire flow issue through the City's established cost-sharing policy.

The City's Drainage Section has noted that lot grading and drainage plans will be required in order to properly facilitate the creation of the proposed three urban residential lots.

PLANNING ANALYSIS:

The Planning Act, 2014 PPS, the 2011 Growth Plan, and the City of Greater Sudbury Official Plan, and other relevant policies and supporting guidelines were reviewed in their entirety. The following section provides a planning analysis of the request to permit three urban residential lots to be created by way of consent as opposed to a plan of subdivision in respect of the applicable policies, including issues raised through agency and department circulation.

With consideration given to the criteria for subdividing land under Section 51(24) of the Planning Act, staff has concerns with respect to lot creation by way of the consent process at this time. Staff would further advise that the concerns identified and related to Section 51(24) would be best addressed comprehensively through a plan of subdivision and through the utilization of the City's cost-sharing policy. Specifically, staff has the following comments:

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1. Staff has identified areas of concern with respect to the risks associated with public health and safety should lots continue to develop in this part of the City without addressing the insufficient fire flows that exist in the area. Lots proceeding by consent also do not present a cost-effective solution to the insufficient fire flow issue that exists in the Penman Avenue area, whereas this issue would better be addressed through the subdivision planning process and through the utilization of the City's cost-sharing policy. These are identified matters of provincial interest and are specifically referenced in Section 51(24)(a) of the Planning Act;
2. Staff advises that allowing further lot creation by way of consent will further negatively impact the existing and known insufficient fire flow issues in the Penman Avenue area and as such the applications for consent are viewed as being premature and not in the public interest;
3. Staff is of the opinion that policies within the Official Plan would prescribe the subdivision planning process as the preferred method for lot creation in this particular situation. The report provides more detail and analysis on this later in the report. It should also be noted that two existing draft approved plans of subdivision are located nearby and are impacted by insufficient fire flows; and,
4. Staff is of the opinion that at present the lands are not suitable for lot creation and issues related to insufficient fire flows, lot grading, site servicing and road reconstruction after the installation of services would be best addressed by way of the subdivision planning process and not by way of the consent process.

With respect to the PPS, staff is generally concerned that allowing for further urban residential lot creation through the consent process will further reduce the insufficient fire flows that exist in the Penman Avenue area and therefore can be considered to represent a public health and safety concern. The more lots that are created and introduced into this particular part of the City will across time further reduce already insufficient fire flows and a more comprehensive approach to resolving the issue is required and represents good land use planning. Development Engineering has also noted that there is an opportunity to share the cost of upgrading the infrastructure necessary to provide appropriate fire flows through the City's cost sharing policy. This is viewed as an equitable and cost-effective solution that would benefit not only the owner, but also abutting owners having existing draft approved plans of subdivision with conditions requiring that inadequate fire flows be addressed before development can proceed, as well as the municipality itself.

With respect to Living Area 1 policies in the Official Plan, staff notes that while the lands are located within a fully serviced residential area there would be a negative impact on fire flows in the Penman Avenue should urban residential lots continue to be created in a piece-meal manner across time. Development Engineering has advised that further consent approvals through time will continue to negatively impact the insufficient fire flows that already exist in the Penman Avenue area and while the owner could at their own expense upgrade the existing water system to provide for adequate fire flows in the general area it would likely be cost prohibitive given the infrastructure works that would be required.

There are also two draft approved plans of subdivision accessed from Penman Avenue that also have identified fire flow issues. Both the Fabian Subdivision (File # 780-3/90009) and the Foxborough Subdivision (File # 780-3/86008) are impacted by the insufficient fire flows that exist along and nearby Penman Avenue. Staff notes that the Fabian Subdivision is approved for 22 urban residential lots and no phases have been registered since initial draft approval was granted. Staff further notes that the Foxborough Subdivision has registered 103 urban residential lots and at present 58 draft approved urban residential lots remain undeveloped. Staff would note that both of the above noted draft approved plans of subdivision include a condition that, "The owner provide proof of sufficient fire flow in conjunction with the submission of construction drawings for each phase of construction. All costs associated with upgrading the existing distribution system to service this subdivision will be borne by the owner."

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With respect to Section 20.4.1 of the Official Plan, staff therefore cannot support the creation of a further three urban residential lots on Edgecliff Crescent in addition to the three prior urban residential lot creations by the same owner and would recommend that the subdivision planning process is the more appropriate land use planning tool for creating any further lots beyond an initial three lots permitted under Section 20.4.1 in the Penman Avenue area.

CONCLUSION:

Staff has reviewed and appropriately circulated the consent referral request and advises that there are a number of areas of concern relating to insufficient fire flow, lot grading, site servicing and road reconstruction after the installation of services that would prescribe the subdivision planning process as the preferred method for lot creation in this case. The insufficient fire flow issue impacts other developments in the area accessed from Penman Avenue and the utilization of the City's cost-sharing policy to address this issue is considered to be an equitable and appropriate solution for all impacted parties.

The Planning Services Division therefore recommends that the request to proceed by way of the consent process be denied and therefore that the subdivision planning process and potentially the City's cost-sharing policy be utilized to address those issues described above and in the body of this report.