

ADDENDUM II

MAY 27, 2019

COUNCIL

8. REPORTS TO COUNCIL

- g) Report DS 32/19 of Elizabeth Howson, Macaulay Shiomi Howson Ltd. re Grainboys Holdings Inc., Part of Lot 17, Concession 3, 351 Regional Highway 47, Township of Uxbridge – Appeal Submitted by Mr. Stefan Szczerbak, Planscape Inc., Planning Consultant on behalf of Mr. Conrad Richter, President of Otto Richter and Sons Limited.



REPORT

Development Services

TO: Mayor and Members of Council

FROM: Elizabeth Howson
Macaulay Shiomi Howson Ltd.

DATE: May 27, 2019

REPORT # DS 32/19

FILE: ZBA 2018-07

SUBJECT: Grainboys Holdings Inc. Part of Lot 17, Concession 3
351 Regional Highway 47, Township of Uxbridge
Appeal Submitted by Mr. Stefan Szczerbak, Planscape Inc., Planning
Consultant on behalf of Mr. Conrad Richter, President of Otto Richter
and Sons Limited

BACKGROUND:

The Township adopted Zoning By-law Amendment No. 2019-054 with respect to the lands noted above on April 8, 2019. The purpose of the amendment to the Zoning By-law is to permit a dry grain processing plant (mill).

The By-law was appealed to the Local Planning Appeal Tribunal (LPAT) in a letter from Mr. Stefan Szczerbak, Planscape Inc. Planning Consultant on behalf of Mr. Conrad Richter, President of Otto Richter and Sons Limited (the appellant). The letter together with required Appellant Form (A1) was received by the Township on May 13, 2019.

PLANNING STATUS:

The adoption of Zoning By-law Amendment No. 2019-054 was carried out in accordance with the requirements of the Planning Act. In particular, a statutory public meeting was held to consider the proposed Zoning By-law Amendment on June 4, 2018, with notice provided as required under the Planning Act.

A planning report (DS-17/19) was then prepared by the Township's Planning Consultant which was considered at a meeting of Council on April 8, 2019. The planning report reviewed the application in the context of Provincial, Regional and Township planning policy applicable as of that date including the Provincial Policy Statement 2014, Growth Plan for the Greater Golden Horseshoe, 2017, the Oak Ridges Moraine Conservation Plan, 2017, the Durham Region Official Plan and the Township of Uxbridge Official Plan. It also considered input received from the public and agencies. The report concluded that:

"The review of the policy framework indicates, in my opinion, that the proposed development conforms to Provincial, Regional and Township planning policy subject to addressing specific requirements of the policies (i.e. landform conservation) and identified issues. Therefore, in my opinion, the development is appropriate and represents good planning, however, the zoning by-law should include a holding provision, which will only be lifted when the following conditions are satisfied:

- Formal Environmental Compliance Approval (ECA) will be required through the Ministry of Environment, Conservation and Parks (MECP) to address noise impacts and air quality. This will require submission of a noise study indicating strict compliance with NPC-300, as well as an Emission Summary and Dispersion Modelling Report that incorporates the recommended best practices to aid in the reduction of emissions or reducing the impacts of such emissions;
- All studies required by the Township have been prepared to the satisfaction of the Township of Uxbridge and the recommendations incorporated into the Site Plan and Site Plan Agreement for the Subject Lands and financially secured and registered on the title of the property including:
 - A detailed plan for the facility and related processes to mitigate any risk related to the spread of noxious weeds which will be approved by the Township in consultation with Provincial and/or weed control specialists;
 - An agreement with the proponent with respect the appointment of a weed inspector to monitor the facility on a regular basis, at the cost of the operator;
 - Establishment of a truck haul route plan which will minimize the number of trucks travelling through Goodwood;
 - Prohibition of truck deliveries outside the hours of 8 am to 5 pm and the establishment of restrictions on outside activity related to the operation on the site generally for a similar time period;

- Requirement for a Traffic Impact Brief to address operation of the site and site access, with the scope of the Brief to be determined in consultation with the Region;
 - Assessment of the shallow aquifer elevation and establishment of any modifications to the infiltration design with the scope of the review being determined in consultation with the Township;
 - Provision of detailed designs for site servicing including a water and sewage plan, a stormwater management plan, a well monitoring plan for a minimum of five years, a lighting plan, landscaping plan, and cost estimates to address comments identified by AECOM Canada Ltd. and the Region of Durham with the scope of the work being determined in consultation with the Township and the Region of Durham as applicable; and,
 - A landform conservation plan that satisfies the requirements of the Oak Ridges Moraine Conservation Plan, with the scope being determined in consultation with the Township and the Region of Durham;
- Submission of a clearance letter for archeological assessment from the Ministry of Tourism, Culture and Sport to the Region of Durham;
 - Submission of a Regional Reliance letter and Certificate of Insurance to the Region's satisfaction to the Region for environmental work completed (Phase I Environmental Site Assessment); and,
 - Any agreements required by the Region of Durham have been entered into with the Region and registered on the title of the property."

Based on this conclusion, the report recommended:

"

1. THAT Report DS-17/19, Grainboys Holdings Inc., Part of Lot 17, Concession 3, 351 Regional Highway 47, Township of Uxbridge be received for information;
2. AND THAT Council approve the Zoning By-law Amendment Application by Grainboys Holdings Inc., Part Lot 17, Concession 3, 351 Regional Highway 47, Township of Uxbridge and adopt the implementing Zoning By-law amendment."

Council accepted the recommendation and adopted the Zoning By-law amendment on April 8, 2019.

AGENCY AND PUBLIC CONSULTATION:

The input received with respect to Zoning By-law 2019-054 includes comments from the Region of Durham and the Toronto Region Conservation Authority (TRCA). With respect to the public, as noted in the planning report:

“The statutory public meeting for the application was held on June 4, 2018. Four members of the public made submissions at the meeting. Issues identified were:

- Hours of operation;
- Noise;
- Dust and odour issues;
- Air quality;
- Water usage and waste water;
- Light pollution; and,
- Groundwater runoff.

Subsequent to the statutory meeting as a result of public concerns, an informal public open house was held at the Goodwood Community Centre on January 7, 2019.

A total of 104 written submissions were received by the Township through the review process, including a letter signed by 28 residents with a range of questions related to noise and health, grain dust and air pollution. Of the written submissions five were supportive of the application.

Many of the other written submissions registered their opposition to the application and requested the following:

- “1. We would like a formal presentation by the Grain Boys Holdings Inc. representatives.
2. Not have a decision made by Council until we have a formal presentation and until all our questions are answered.
3. We would like a recorded vote for both decisions on record.”

In addition, a range of specific issues were raised which can be summarized as follows and are discussed in Appendix D:

- Noise;
- Grain Dust;
- Prohibited noxious weed introduction;
- Increase in truck traffic in Goodwood, including concerns with safety and increases in air pollution;
- Fire and Explosion Risk;
- Rodents;
- Hours of operation;
- Environmental risk due to septic load and well water levels and quality;
- Light pollution;
- No net economic or other social benefits; and,
- Impact on rural character/not permitted under the ORMCP.”

Mr. Conrad Richter spoke at the public meeting expressing concerns regarding noise, air quality, water usage and waste water. He also made a number of written submissions throughout the review process.

APPEAL:

The appeal of the Zoning By-law was submitted, as noted, in the form of a letter prepared by Mr. Stefan Szczerbak, Planscape Inc. Planning Consultant on behalf of Mr. Conrad Richter, President of Otto Richter and Sons Limited, together with Appellant Form (A1).

In terms of the appeal, the Appellant Form indicates that the appeal is being made because the matter is inconsistent with the Provincial Policy Statement, issued under subsection 3(1) of the Planning Act; fails to conform or conflicts with a provincial plan and fails to conform with an applicable Official Plan. The explanation provided is set out in the appeal letter (See Appendix A to this letter). In summary, the appellant's submission is that:

"The Zoning By-law No. 2019-054 is Inconsistent with the Provincial Policy Statement (the "PPS"), conflicts with several Provincial Plans (ORMCP and the Growth Plan for the Greater Golden Horseshoe) and does not conform with the DROP and UOP."

CONCLUSIONS:

A detailed review of the Provincial, Regional and Township planning framework was carried out as part of the review of this application and is set out in Report DS-17/19. In addition, the Region of Durham provided comments which review Provincial and Regional policy and Provincially-delegated review responsibilities. The results of these reviews do not support the conclusions reached by the Appellant's planning consultant.

RECOMMENDATION:

1. THAT Report DS 32/19 Grainboys Holdings Inc. Part of Lot 17, Concession 3, 351 Regional Highway 47, Township of Uxbridge Appeal Submitted by Mr. Stefan Szczerbak, Planscape Inc., Planning Consultant on behalf of Mr. Conrad Richter, President of Otto Richter and Sons Limited be received;
2. AND THAT Council direct the Township Solicitor and Planning Consultant to participate in the LPAT process and in any oral or written proceedings related thereto for the purposes of opposing the appeal and defending Zoning By-law No. 2019-054.

Submitted by:

A handwritten signature in black ink, appearing to read 'Elizabeth Howson', written over a horizontal line.

Elizabeth Howson, MCIP, RPP
Macaulay Shiomi Howson Ltd.

APPENDIX A

APPEAL LETTER

APPENDIX A - APPEAL LETTER

May 13, 2019

Hand Delivered and by E-Mail to dleroux@unbridge.ca

Ms. Debbie Leroux
Clerk
Township of Uxbridge
Box 190, Uxbridge, ON
L9P 1T1

Dear Ms. Leroux:

**Reference: Notice of Appeal by Otto Richter and Sons Limited Pursuant to s. 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13 – Appeal the Passing of Zoning By-law No. 2019-054 in the Township of Uxbridge, Durham Region.
Township File: ZBA 2018-07
Applicant: Grainboys Holding Inc.**

We are the Planning Consultant for Conrad Richter, President of Otto Richter and Sons Limited (the “appellant”) providing assistance in matters related to application ZBA 2018-07 and the passing of By-law No. 2019-054 on April 8th, 2019. Our client has been involved in this application process for many months on behalf of himself and his neighbours and has submitted letters of objection throughout this process. In addition, the appellant and his neighbours have addressed Council at the statutory Public Meeting and made their concerns known to Council.

This letter will serve as our client’s Notice of Appeal of By-law 2019-054 of the Corporation of the Township of Uxbridge (the “Township”) to the Local Planning Appeal Tribunal (the “Tribunal”) pursuant to s. 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13 (the “Act”).

Please find enclosed a cheque in the amount of \$300.00, payable to the “Minister of Finance – Ontario”, which we understand to be the required fee for this type of appeal and a completed Appeal Form “A1” of the Tribunal, for inclusion with your Record.

Please note the appellant retained us shortly after the approval of By-law 2019-054.

Planning Context

The subject property is designated “Countryside Area” in the 2017 Oak Ridges Moraine Conservation Plan (the “ORMCP”). In addition, the Durham Regional Official Plan (the “DROP”) designates the site as “Oak Ridges Moraine – Countryside Area” within the “Greenlands System”. Similarly, the Township Official Plan (the “UOP”) designates the site as “Countryside Area” on Schedule H of the Oak Ridges Moraine Conservation Plan Area Land Use Plan” in the Township Official Plan. Finally, the property is zoned “Rural (RU)” within the Township’s Comprehensive Zoning By-law 81-19.

The purpose of Application ZBA 2018-07 is to permit a dry grain processing plant (mill) on the subject lands.

Right to Appeal

Our client is appealing the application to the Tribunal pursuant to s. 34(19) of the Act. Before the by-law was passed, our client made oral submissions at the statutory public meeting and provided several written submissions to Council in advance of their decision.

Basis for Appeal

According to s. 10.0.1 of the Act, it is our opinion that:

The Zoning By-law No. 2019-054 is Inconsistent with the Provincial Policy Statement (the "PPS"), conflicts with several Provincial Plans (ORMCP and the Growth Plan for the Greater Golden Horseshoe) and does not conform with the DROP and UOP.

PPS and Provincial Plans

The Province of Ontario, through their Provincial Plans and the PPS provide policy direction to protect agriculture and the Agri- food resources through an Agricultural Systems approach. The ORMCP, Growth Plan and the PPS all provide policies to protect existing agricultural uses by limiting new uses in and around established components of the agricultural system. these.

The Vision of the PPS is to promote the wise use and management of agricultural resources over the long term. The agricultural resource must be managed in a sustainable way to protect public health and safety, minimize environmental and social impacts to meet long-term agricultural needs. Taking action to conserve agricultural production by directing or prohibiting certain land uses to appropriate areas throughout a municipality will avoid the need for costly remedial measures to correct problems and support economic and agricultural principles.

A detailed policy analysis of the PPS, ORMCP and the Growth Plan are included in Appendix A of this letter.

Further, The Province, through the Ontario Ministry of Agriculture, Food and Rural Affairs, mapped the agricultural system throughout the Greater Golden Horseshoe in February 2018. A review of this mapping identifies the site of the proposed industrial use as "Prime Agricultural Area". It is our understanding that a Land Evaluation and Area Review (LEAR) has not been conducted at either the regional or local levels to confirm the findings of the provincial LEAR. Therefore, the areas mapped by the province must be treated as if it were prime agricultural areas. New development proposals shall be compatible with, and shall not hinder, existing and surrounding agricultural operations. Normal farm practices shall be promoted and protected, and non-agricultural uses may only be considered through careful evaluation, including the proper mitigation of impacts on surrounding agricultural operations from any new non-agricultural uses.

It is our client's opinion and our professional planning opinion, that the municipal review of this file did not follow the appropriate policy direction required to implement the overarching Provincial policies, in accordance with the Act. We believe the approval of this application is premature until either a LEAR by the Region or the Township has addressed the agricultural status of this property and the surrounding lands and a fulsome assessment has been completed to ensure compatibility between this proposal and surrounding agricultural uses.



The approval of this application conflicts with several policies contained in the ORMCP, the Growth Plan and the PPS.

DROP and UOP

Both the local and regional Official Plans provide similar policy direction related to the protection of prime agriculture and rural areas. The UOP has been amended to conform with the Moraine Plan. As a result, the policies for the Countryside and Prime Agriculture Areas, essentially reflect the policies contained in the ORMCP. As a result, the issues noted above continue to apply and the planning analysis that supported the application is incomplete as suggested above.

Based on the detailed policy analysis contained in Appendix A, it is our opinion that approval of this application does not conform with the applicable policies contained in the DROP and UOP as the application was not reviewed according to current provincial policy.

Finally, with respect to the approval of this application and the usage of the a "Holding Symbol", the UOP states a holding provision cannot be lifted until the Township is satisfied that the development is consistent with the orderly development of the Township, and has satisfied all the requirements of the Town, all the requirements of the Region and all the requirements of all other agencies, including clearances from provincial Ministries.

By-law 2019-054 contains the following conditions to be fulfilled prior to the removal to the removal of "Holding Symbol":

- Formal approval to address noise impacts and air quality;
- A fire safety plan for industrial (emphasis added) occupancies to mitigate and risks related to fire and fire safety;
- A weed control plan and related mitigation plan to the spread of noxious weeds; in accordance with Provincial and Federal regulations;
- An agreement with the applicant to appoint an inspector to monitor the facility with respect to weed and weed control;
- Addressing of issues related to truck traffic and timing of deliveries to and from the site;
- Submission of a Traffic Impact Brief;
- Submission of an Aquifer assessment; and
- Preparation of a landform conservation plan, in accordance with the ORMCP and in relation to the proposed area disturbed by development and impervious areas.

It is our opinion that in accordance with the applicable policies of the Official Plan, many of these conditions should have been completed prior to the approval of the use through the passage of By-law 2019-054. Specifically related to the approval for a weed control plan, it is our opinion that this plan may not be granted, and the municipality may not have the expertise or the ability to properly and safely implement the plan, including the appropriate monitoring and assessment of the inspection reports. Nor does it have the ability to properly address contraventions in this regard. Had the appropriate studies been done it is our opinion they would have confirmed the use is industrial in nature and not compatible with the existing uses within the Prime Agricultural and Rural Areas.



We trust you will prepare a record and forward the prescribed material to the Tribunal within fifteen days of the receipt of this notice, in compliance with Section 34(23) of the Act. Please kindly forward us a copy of your record for our files.

Thank you for your cooperation in respect to this matter.

Yours truly,

PLANSCAPE INC.



Stefan Szczerbak, M.Sc, MCIP RPP
Senior Planner



Appendix A

LOCAL PLANNING APPEAL TRIBUNAL

GROUNDINGS OF APPEAL

May 13, 2018

Inconsistent with the Provincial Policy Statement

Under s. 3(5)(a) of the *Planning Act*, a decision of the council of a municipality “shall be consistent with the policy statements... that are in effect on the date of the decision.” Below are listed the relevant sections of the *PPS* with which ZBA 2019-054 is not consistent.

1.1.1 *Healthy, liveable and safe communities are sustained by:*

c) avoiding development and land use patterns which may cause environmental or public health and safety concerns;

We understand the Township’s Building Official and Fire Chief define the proposed use is a “High Hazard Industrial Occupancy” use due to stone milling of grain and the resultant emissions of highly explosive grain dust. Facilities with this rating are at a significantly higher risk of fire, explosion, property loss and loss of life. The proposed mill will be located less than 300 m from residences to the east and to the southwest and since there is no municipal water service or water tower in the area, adequate water storage for firefighting use, emergency equipment and power will be required.

The use of a dry grain-processing mill in ZBA 2019-054 is a high hazard use close to existing residences and agricultural operations . The area is un-serviced and thus is inconsistent with ss. 1.1.1(c) of the PPS.

2.3.1 *Prime agricultural areas shall be protected for long-term use for agriculture. Prime agricultural areas are areas where prime agricultural lands predominate. Specialty crop areas shall be given the highest priority for protection, followed by Canada Land Inventory Class 1, 2, and 3 lands, and any associated Class 4 through 7 lands within the prime agricultural area, in this order of priority.*

Similar to the PPS, the Vision of the Growth Plan also acknowledges the importance of agricultural lands and their contribution to the region’s resilience and our ability to adapt to a changing climate. The protection of unique and high-quality agricultural lands is necessary for the provision of healthy, local food for future generations. Farming must be productive, diverse, and sustainable. The Growth Plan also provides direction for the Province to map important agricultural systems, protect prime agricultural areas and avoid situations where



new uses are not compatible to existing and surrounding agricultural uses. This Plan also provides other policies to ensure the protection of the agricultural system.

The Province, through the Ontario Ministry of Agriculture, Food and Rural Affairs, mapped the agricultural system throughout the Greater Golden Horseshoe in February 2018. A review of this mapping identifies the site of the proposed industrial use as “Prime Agricultural Area”. It is our understanding that a Land Evaluation and Area Review (LEAR) has not been conducted at either the regional or local levels to confirm the findings of the provincial LEAR. Therefore, the areas mapped by the province must be treated as if it were prime agricultural areas. New development proposals shall be compatible with, and shall not hinder, existing and surrounding agricultural operations. Normal farm practices shall be promoted and protected, and non-agricultural uses may only be considered through careful evaluation, including the proper mitigation of impacts on surrounding agricultural operations from any new non-agricultural uses.

The use of a dry grain-processing mill in ZBA 2019-054 is inconsistent with the PPS s. 2.3.1 requirement to protect prime agricultural areas.

2.3.3.1 In prime agricultural areas, permitted uses and activities are: agricultural uses, agriculture-related uses and on-farm diversified uses.

Proposed agriculture-related uses and on-farm diversified uses shall be compatible with, and shall not hinder, surrounding agricultural operations. Criteria for these uses may be based on guidelines developed by the Province or municipal approaches, as set out in municipal planning documents, which achieve the same objectives.

The relevant guidelines for the purposes of this section are the Province’s *Guidelines on Permitted Uses in Ontario’s Prime Agricultural Areas*.

Agricultural use

Subsection 2.1.1.1 of the *Guidelines* states agricultural uses are “[t]he growing of crops, raising of livestock and raising of other animals for food, fur or fibre”.

The use for a dry grain-processing mill in ZBA 2019-054 is not an agricultural use.

Agriculture-related use

Subsection 2.2.1.2 of the *Guidelines* states that agriculture-related uses “[s]hall be compatible with, and shall not hinder, surrounding agricultural operations”.

The mill will process foreign seeds that may contain prohibited noxious weeds and/or regulated plant pests. The surrounding farm operations will be harmed because any



— possibility of contamination, as per the applicable provincial and federal regulations will result in disruption of business, loss of sales and costs of eradication.

Even though the municipality required two conditions placed within the approval, intended to address this policy direction, it is my opinion that neither of these conditions will adequately address the risk of weeds and the resultant harm to farm operations. The municipality does not have the resources, competent trained personnel, or statutory authority to enforce federal laws and regulations. These shortcomings related to weeds cannot be addressed by site plan agreements, development agreements, or other agreements as conditions for the removal of the holding provision.

Subsection 2.2.1.3 of the Guidelines states that agriculture-related uses must be “[d]irectly related to farm operations in the area.” The Guidelines state that “the primary feedstock for agriculture-related uses must be farms in the area.” “Uses that provide products or services beyond the immediate agricultural area such as cold storage facilities near airports or other transportation hubs, or meat packing plants that process meat from a long distance, often shipped by transport truck or shipping container, are not agriculture-related uses. They do not directly relate to farm operations in the area. Even if these uses provide some products or services to farms in the area, they are located in serviced industrial or commercial land in settlement areas, rather than prime agricultural areas.”

The Planning Justification Report states that “[n]o grain is delivered directly from field.” It notes that 20% of its grains come from Western Canada, 10% from the United States, and 70% from Ontario. The portion from Ontario could come from anywhere in the province. I understand the company has never revealed what proportion of the grains come from farms in the area. Since the Guidelines specify that the primary feedstock must come from the area, knowing where the applicant’s feedstock is coming from is of considerable importance in determining whether or not the applicant meets, or will meet, this requirement.

Subsection 2.2.1.5 of the Guidelines states that an agriculture-related use “[p]rovides direct products and/or services to farm operations as a primary activity” and, [s]erving farm operations must be a primary function or main activity of the business.” “Serving farm operations” in the context of the proposed mill means buying grains directly from farm operations in the area. However, the applicant has not demonstrated that buying from farm operations in the area will be a primary activity. According to the Guidelines, “[u]ses that do not benefit from being close to farm operations but wish to take advantage of lower costs in prime agricultural areas would not be classified as agriculture-related uses.” In its Planning Justification Report, the applicant states: “The storage of grains is not an efficient use of land in a fully serviced or partially serviced industrial park. Grain milling and blending do not require the level of full or partial water and wastewater servicing found in settlement areas.” We disagree. It has not been demonstrated that this property was selected to be closer to farm operations.



Subsection 2.2.1.6 of the Guidelines states that agriculture-related uses “must benefit from or need to be located near the farm operations they serve.” However, the applicant has operated in a settlement area, the Town of Aurora, for 23 years.

On-farm diversified use

Subsection 2.3.1.1 of the *Guidelines* states on-farm diversified uses must be “[l]ocated on a farm.” The subject property to be used for a dry grain-processing mill in ZBA 2019-054 is not a farm, nor is it intended to be a farm, and therefore is not an on-farm diversified use.

Since the use for a dry grain-processing mill in ZBA 2019-054 fails to meet the requirements of ss. 2.2.1.2-3, 2.2.1.5-6 and 2.3.1.1 of the Guidelines, it is therefore not consistent with Section 2.3.3.1 of the PPS as this use is not an agricultural, agriculture-related or on-farm diversified use.

2.3.6.1 Planning authorities may only permit non-agricultural uses in prime agricultural areas for:

a) extraction of minerals, petroleum resources and mineral aggregate resources, in accordance with policies 2.4 and 2.5; or

b) limited non-residential uses, provided that all of the following are demonstrated:

4. alternative locations have been evaluated, and

i. there are no reasonable alternative locations which avoid prime agricultural areas; and

ii. there are no reasonable alternative locations in prime agricultural areas with lower priority agricultural lands.

Since it is our opinion the use of a dry grain-processing mill in ZBA 2019-054 is not an agricultural use, an agriculture-related use, or an on-farm diversified use, the use is therefore defined as a non-agricultural use. It is our opinion that the proposed use is best defined as major industrial development/use. Therefore, before this type of use can be considered in an area identified by the province as a prime agricultural area and part of the agricultural system, an assessment must be made of whether it meets the tests as laid out in Section 2.3.6.1 b) of the PPS. An assessment was not submitted to address compatibility, nor did it prove the use will not adversely affect the existing agricultural uses. This use can only be permitted in prime agricultural areas if there are no alternative locations and only if there is no lower priority agricultural land available. No required evaluation was conducted to ascertain whether lower priority land was available. The use has the potential to remove prime agricultural land from the agricultural system.

The use of a dry grain-processing mill in ZBA 2019-054 is inconsistent with the PPS s. 2.3.6.1 requirement that non-agricultural uses not be located in prime agricultural areas or on high priority agricultural lands unless an evaluation was conducted to show that no reasonable alternative locations are available.



Applicable Provincial Plans

Under s. 3(5)(b) of the *Planning Act*, decisions of the council of a municipality “shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.” The provincial plans applicable to the subject property are the *ORMCP* and the *GPGGH*.

Non-Conformity with Oak Ridges Moraine Conservation Plan

According to the Province’s *Oak Ridge Moraine Conservation Plan Land Use Designation Map*, the land use designation of the subject property is Countryside Area. Uses of Countryside Areas are limited to those permitted in s. 13 of the *ORMCP*.

Below are listed the relevant sections of the *ORMCP* with which ZBA 2019-054 does not conform.

13(1) The purpose of Countryside Areas is to encourage agricultural and other rural uses that support the Plan’s objectives by,

(a) protecting prime agricultural areas;

(b) promoting and protecting agricultural and other rural land uses and normal farm practices;

The use of a dry grain-processing mill in ZBA 2019-054 is a major industrial development and is non-agricultural. The subject property is located in a prime agricultural area according to OMAFRA’s *Land Base Map*. The use will remove prime agricultural land from potential agricultural uses, agriculture-related uses or on-farm diversified uses. In addition, the use will harm neighbouring farm operations by introducing prohibited noxious weeds.

The use of a dry grain-processing mill in ZBA 2019-054 will not meet the Plan’s objective to protect prime agricultural areas and will not promote and protect agricultural and other rural land uses and normal farm practices in the area.

13(3) The following uses are permitted with respect to land in Countryside Areas, subject to Parts III and IV:

The use of a dry grain-processing mill in ZBA 2019-054 does not fit the uses listed in parts 1, 2, 4-7, 9-12, 15-17 of s. 13(3).

3. Agricultural uses.

The use of a dry grain-processing mill in ZBA 2019-054 does not fit the s. 3(1) definition of agricultural uses, such as growing crops, raising livestock, aquaculture, apiculture, etc.



8. On-farm diversified uses.

The use of a dry grain-processing mill in ZBA 2019-054 does not fit the s. 3(1) definition of “on-farm diversified uses”, which are uses that are secondary to the principal agricultural use of the property, since the principal use is not an agricultural use.

13. Agriculture-related uses.

According to the s. 3(1) definition of “agriculture-related uses”, uses fitting s. 13(3)13 are farm-related commercial and industrial uses that must meet all four conditions in subparts (a) to (d). Of the four conditions, (a), (c) and (d) are not met by the use of a dry grain-processing mill in ZBA 2019-054.

(a) are directly related to, and compatible with, farm operations in the surrounding area and do not hinder those farm operations,

The Province’s *Guidelines on Permitted Uses in Ontario’s Prime Agricultural Areas* state that “[u]ses that provide products or services beyond the immediate agricultural area... do not directly relate to farm operations in the area. Even if these uses provide some products or services to farms in the area, they are located in serviced industrial or commercial land in settlement areas, rather than prime agricultural areas.” Since the dry grain-processing mill in ZBA 2019-054 will process foreign grain, grain from Western Canada, and grain from across Ontario, the applicant has not stated that grains from farm operations in the area would supply the major portion of its feedstock.

The use for a dry grain-processing mill in ZBA 2019-054 will hinder neighbouring farm operations because the mill will process The mill will process foreign seeds that may contain prohibited noxious weeds and/or regulated plant pests. The surrounding farm operations will be harmed because any possibility of contamination, as per the applicable provincial and federal regulations will result in disruption of business, loss of sales and costs of eradication.

(c) benefit from being in close proximity to farm operations, and

The applicant has operated in a settlement area, the Town of Aurora, for many years. According to the applicant, some of its grains come from Dufferin and Brant Counties, which would be further away from the proposed location compared to its present Aurora location.

(d) provide products or services, or both, directly to farm operations as a primary activity.



Providing services to farm operations in the context of the proposed mill means buying grains directly from farm operations in the area. However, the applicant has not demonstrated that buying from farm operations in the area will be a primary activity. As previously noted, by the applicant, “[n]o grain is delivered directly from field.” It stated that 20% of its grains come from Western Canada, 10% from the United States, and 70% from Ontario. The portion from Ontario could come from anywhere in the province. While the applicant stated that some of its feedstock comes from Durham Region, the company has never revealed what proportion comes from farms in the area. Since the *Guidelines on Permitted Uses in Ontario’s Prime Agricultural Areas* specify that the primary feedstock must come from the area, knowing where the applicant’s feedstock is coming from is of considerable importance in determining whether or not the applicant meets, or will meet, this requirement.

14. Small-scale commercial, industrial, and institutional uses as described in section 40, subject to subsection (5).

The use of a dry grain-processing mill in ZBA 2019-054 does not fit as a small-scale commercial, industrial, or institutional use because the subject property is located in a prime agricultural area and this use is prohibited by s. 13(5)(a).

The use of a dry grain-processing mill in ZBA 2019-054 is not a permitted use on land in Countryside Areas.

30(6) An application for development or site alteration with respect to land in a landform conservation area (Category 2) shall identify planning, design and construction practices that will keep disturbance to landform character to a minimum, including,

(b) limiting the portion of the net developable area of the site that is disturbed to not more than 50 per cent of the total area of the site; and

(c) limiting the portion of the net developable area of the site that has impervious surfaces to not more than 20 per cent of the total area of the site.

According to the Province’s *Landform Conservation Areas of the Oak Ridges Moraine* map 2, the subject property is in a Category 2 landform conservation area.

The use of a dry grain-processing mill in ZBA 2019-054 is a “major development” according to the definition in s 3(1). According to the applicant’s *Planning Justification Report*, the use will disturb 48% of the land, and 19.9% of the surfaces will become impervious, which is only 52 m² below the maximum permitted in part (c).

The use is dangerous due to stone milling of grain and the resultant emissions of highly explosive grain dust. Since there is no municipal water service or water tower in the area,



adequate water storage for firefighting use, emergency water pumping equipment, emergency power facility, and fuel storage will be required. No provision for any of these was included in the planning documents. The addition of these structures may exceed the maximum impervious surface permitted.

The use of a dry grain-processing mill in ZBA 2019-054 will exceed the permitted impervious surface area limit for the Category 2 landform conservation area.

34 A non-agricultural use shall not have an adverse impact on agricultural uses or shall minimize and mitigate such impacts on agricultural uses to the extent possible.

The non-agricultural use for a dry grain-processing mill in ZBA 2019-054 will have an adverse impact on surrounding agricultural operations. The applicant did not demonstrate that such impacts will be minimized and mitigated to the extent possible. Since the risk of weed infestation is a propagative risk where even just one weed seed spilling and germinating on rural land can develop into an infestation causing business disruption, loss of sales, and costs of eradication, minimizing and mitigating risk means eliminating all risk in order to avoid harm to farm operations in the area

The non-agricultural use of a dry grain-processing mill in ZBA 2019-054 will not be free of adverse impact on agricultural uses, and was not shown to minimize and mitigate such impacts to the extent possible.

40(2) An application for a small-scale commercial, industrial or institutional use with respect to land in a Countryside Area shall not be approved unless the applicant demonstrates that,

(a) it is not feasible to locate the use in a Settlement Area;

According to the Planning Justification Report, the company has operated in the Town of Aurora for many years. It is therefore feasible to maintain this use within the settlement area.

The use of a dry grain-processing mill in ZBA 2019-054 should not be approved since it is feasible to locate in a settlement area.

40(5) An application to establish or expand a small-scale commercial, industrial or institutional use shall demonstrate that the new or expanded use will have no adverse impacts on surrounding agricultural operations and lands or that such impacts will be minimized and mitigated to the extent possible.



— The applicant did not demonstrate that the use for a dry grain-processing mill in ZBA 2019-054 will have no adverse impacts on surrounding agricultural operations. Nor did the applicant demonstrate that such impacts will be minimized and mitigated to the extent possible.

The use of a dry grain-processing mill in ZBA 2019-054 was not shown to free of adverse impact on surrounding agricultural operations and lands, and was not shown to minimize and mitigate such impacts to the extent possible.

Non-Conformity with Growth Plan for the Greater Golden Horseshoe

4.2.6 2. Prime agricultural areas, including specialty crop areas, will be designated in accordance with mapping identified by the Province and these areas will be protected for long-term use for agriculture.

The non-agricultural use for a dry grain-processing mill in ZBA 2019-054 is on subject land which is located in an area designated as a prime agricultural area. It is a major development that will disturb 48% of the property. This will prevent the use of the land for future and long-term agriculture use.

The use of a dry grain-processing mill in ZBA 2019-054 will not protect the subject land in a prime agricultural area for long-term agricultural use.

5. The retention of existing lots of record for agricultural uses is encouraged, and the use of these lots for non-agricultural uses is discouraged.

The existing permitted uses of the subject property include use as a farm, which is an agricultural use as defined in s. 7. The non-agricultural use of a dry grain-processing mill in ZBA 2019-054 should be discouraged.

The use of a dry grain-processing mill in ZBA 2019-054 should be discouraged so as to retain the existing lot of record for agricultural uses.

Non-Conformity with the Durham Region Official Plan

According to *Schedule “B” - Map “B3”* of the *DROP*, the subject property is in an area designated as “Countryside Area”.

Although the subject property is not in an area designated as prime agricultural land in the Plan’s *Schedule “B” - Map “B3”*, the Province’s *Agricultural System Land Use Map* shows the area as a prime agricultural area. Under the s. 4.2.6.2 of the *GPGGH*, “[p]rime agricultural areas, including



—
specialty crop areas, will be designated in accordance with mapping identified by the Province and these areas will be protected for long-term use for agriculture.” By the definition of “prime agricultural area” under the *ORMCP*, prime agricultural areas include areas that are “identified through an alternative agricultural land evaluation system approved by the Government of Ontario.” Since no municipal comprehensive review was undertaken to augment or refine the provincial mapping pursuant to s. 4.2.6.9 of the *GPGGH*, the Province’s *Land Use Map* designation of the area in which the subject land is located applies. Accordingly, the subject land is in a prime agricultural area for the purpose of the *DROP*.

1.3 Directions

1.3.1 The goals of this Plan will be achieved through the following directions:

h) protecting agricultural lands;

The subject property for the use of a dry grain-processing mill in ZBA 2019-054 is located in a prime agricultural area, which should be protected. Since use is non-agricultural, as discussed, this use fails to conform with the requirement that agricultural lands be protected.

The use of a dry grain-processing mill in ZBA 2019-054 does not conform to the official plan requirement to protect agricultural lands.

9.1 Goals

PRIME AGRICULTURAL AREAS

9.1.3 To protect and maintain agricultural land for future generations.

The subject property for the use of a dry grain-processing mill in ZBA 2019-054 is located in a prime agricultural area, which the goal of the *DROP* is to protect. Since the use is non-agricultural, this use fails to conform with the goal that agricultural lands be protected and maintained for future generations.

The use of a dry grain-processing mill in ZBA 2019-054 does not conform to the official plan goal to protect and maintain agricultural land.

9A.1.1 Prime Agricultural Areas consist of areas where prime agricultural lands predominate. They also include areas of lesser agricultural significance (Canada Land Inventory Classes 4 to 7 soils) and additional areas where there is a local concentration of farms which exhibit characteristics of ongoing agriculture. Agricultural Areas shall be used primarily for agriculture and farm-related uses.



— The subject land is in a prime agricultural area. The use of the land for a non-agricultural use conform with the policy that such lands be used primarily for agriculture and farm-related uses.

The use of a dry grain-processing mill in ZBA 2019-054 does not conform to the official plan policy that agricultural areas be used primarily for agriculture and farm-related uses.

9A.1.8 Prime Agricultural Areas shall be protected as a significant element of the Region's economy and a secure source of food.

The subject land is in a prime agricultural area. The use of the land for a non-agricultural use does not conform with the policy that such lands be protected as a significant element of the Region's economy and a secure source of food.

The use of a dry grain-processing mill in ZBA 2019-054 does not conform to the official plan policy that prime agricultural areas be protected as a significant element of the Region's economy and a secure source of food.

9A.2.3 Agricultural-related uses, such as grain drying and storage for farm produce may be permitted, provided such uses are small in scale and exclusively devoted to the farm operation. Severances for agricultural-related uses shall not be granted.

Even if the use of the subject land were agriculture-related it is a major development and not small-scale and is not exclusively devoted to a farm operation since no farm operation will be operated on the land.

The use of a dry grain-processing mill in ZBA 2019-054 does not conform to the official plan policy that the use of the land is small-scale and exclusively devoted to the farm operation.

10B.2.1 c) Countryside Areas are areas of existing rural land use, intended to protect prime agricultural areas, provide for the continuation of agricultural and other rural land uses and maintain the character of Rural Settlements. Permitted uses include those uses permitted in Core and Natural Linkage Areas as well as agriculture-related uses, small-scale commercial, industrial, and institutional uses and major recreational uses consistent with the policies of this Official Plan.

Prime agricultural areas are shown on Schedule 'B' – Map 'B3', Oak Ridges Moraine Land Use. In accordance with the policies of the Oak Ridges Moraine Conservation Plan small-scale commercial, industrial and institutional uses and major recreational uses shall not be permitted in prime agricultural areas. Notwithstanding the Oak Ridges Moraine Conservation Plan, un-serviced parks shall not be permitted in prime agricultural areas, consistent with the agricultural policies in Sub-Section 9A of this Official Plan.



The subject land is in a prime agricultural area. The use of the land for a non-agricultural use, including an industrial use for a dry grain-processing mill, does not conform with the policy that such use is not permitted in prime agricultural areas.

The use of a dry grain-processing mill in ZBA 2019-054 does not conform to the official plan policy that non-agricultural industrial use is not permitted in prime agricultural areas.

10B.2.13 Major development on the Oak Ridges Moraine shall be prohibited unless all the relevant studies and requirements of the Oak Ridges Moraine Conservation Plan have been completed to the satisfaction of the Region and relevant approval authorities.

The use of a dry grain-processing mill is a major development according to the definition in s. 3(1) of the *ORMCP* as it is greater than 500 m² in area. As such it must be prohibited until all of the relevant studies and requirements of the *ORMCP* are completed.

The use of a dry grain-processing mill in ZBA 2019-054 is a major development and does not conform to the official plan policy since the required studies and other requirements have not been completed.

10B.2.15 Landform conservation areas are areas consisting of steep slopes and representative landforms that shall be protected for their contribution to ecological integrity and hydrologic function. Landform conservation areas (Category 1 and 2) are shown on Schedule 'B' – Map 'B4', Oak Ridges Moraine Landform Conservation. The Region and area municipalities shall consider landform conservation areas when new development or site alteration is proposed. Applications for development or site alteration proposed in a landform conservation area (Category 1 and 2) shall be accompanied by the appropriate study as required by the Oak Ridges Moraine Conservation Plan.

The use of a dry grain-processing mill is a new development and will require a significant amount of site alteration. An appropriate study required by the *ORMCP* did not accompany the application for development and site alteration.

The use of a dry grain-processing mill in ZBA 2019-054 does not conform to the official plan policy that an appropriate study accompanies the application for the new development and site alteration.

Non-Conformity with the Uxbridge Official Plan

According to *Schedule "H"* of the *UOP*, the subject property is in an area designated as "Countryside Area".

Although the subject property is not in an area designated as prime agricultural land in the Plan's *Schedule "B" - Map "B3"*, the Province's *Agricultural System Land Use Map* shows the area as a



—
prime agricultural area. Under the s. 4.2.6.2 of the *GPGGH*, “[p]rime agricultural areas, including specialty crop areas, will be designated in accordance with mapping identified by the Province and these areas will be protected for long-term use for agriculture.” By the definition of “prime agricultural area” under the *ORMCP*, prime agricultural areas include areas that are “identified through an alternative agricultural land evaluation system approved by the Government of Ontario.” Since no municipal comprehensive review was undertaken to augment or refine the provincial mapping pursuant to s. 4.2.6.9 of the *GPGGH*, the Province’s *Land Use Map* designation of the area in which the subject land is located applies. Accordingly, the subject land is in a prime agricultural area for the purpose of the *UOP*.

1.9.4.3 i) The purpose of Countryside Area designation is to encourage agriculture and other rural uses that support the Plan’s objectives by:

a) protecting prime agricultural areas;

The subject property for the use of a dry grain-processing mill in ZBA 2019-054 is located in a prime agricultural area, which must be protected. Since use is non-agricultural, as discussed below, this use fails to conform with the requirement that prime agricultural areas be protected.

The use of a dry grain-processing mill in ZBA 2019-054 does not conform to the official plan requirement to protect prime agricultural areas.

ii) Permitted Uses

The use of a dry grain-processing mill in ZBA 2019-054 does not fit the uses listed in subparts **a), b), d)-l), n), and p)**.

c) Agricultural use

The use of a dry grain-processing mill in ZBA 2019-054 does not fit the applicable *ORMCP* s. 3(1) definition of agricultural uses, such as growing crops, raising livestock, aquaculture, apiculture, etc.

m) Agriculture-related uses

The use of a dry grain-processing mill in ZBA 2019-054 does not fit applicable *ORMCP* s. 3(1) definition of agriculture-related uses for the same reasons discussed under the analysis of the *ORMCP* s. 13(3)13 uses.

o) Small scale commercial, industrial and institutional uses in accordance with the provisions of Section 1.9.4.3 iii) of this Plan

The use of a dry grain-processing mill in ZBA 2019-054 does not fit as a small-scale commercial, industrial, or institutional use because the subject property is located in a prime



— agricultural area and this use is prohibited by the applicable provision in s. 13(5)(a) of the *ORMCP*.

The use of a dry grain-processing mill in ZBA 2019-054 is not a permitted use on the subject property located in a prime agricultural area in a Countryside Area.

1.9.5 vi) Landform Conservation Areas

An application for development or site alteration with respect to land in a landform conservation area (Category 2) shall,

b) limit the portion of the net developable area of the site that is disturbed to not more than 50 per cent of the total area of the site; and

c) limit the portion of the net developable area of the site that has impervious surfaces to not more than 20 per cent of the total area of the site.

According to the Province's *Landform Conservation Areas of the Oak Ridges Moraine* map 2, the subject property is in a Category 2 landform conservation area.

The use of a dry grain-processing mill in ZBA 2019-054 is a "major development" according to the applicable definition in s 3(1) of the *ORMCP*. According to the applicant's *Planning Justification Report*, the use will disturb 48% of the land, and 19.9% of the surfaces will become impervious, which is only 52 m² below the maximum permitted in part (c).

The use can be defined as a hazardous use as the facilities are at a significantly higher risk of fire, explosion, property loss and loss of life. Since there is no municipal water service or water tower in the area, adequate water storage for firefighting use, emergency water pumping equipment, emergency power facility, and fuel storage will be required. No provision for any of these was included in the planning documents. The addition of these structures may exceed the maximum impervious surface permitted.

The use of a dry grain-processing mill in ZBA 2019-054 will exceed the permitted impervious surface area limit for the Category 2 landform conservation area.

1.9.5 vii) Major Development

The proposed structures of the use of a dry grain-processing mill in ZBA 2019-054 will exceed the 500 m² threshold size of the applicable *ORMCP* s. 3(1) definition for a "major development". Therefore, the use is a major development under the *UOP*. It is also a non-agricultural use. As such it must comply with the requirements of this subsection.

Notwithstanding any other provisions of this Plan, in the Oak Ridges Moraine Conservation Plan Area, major development as defined by the Moraine Plan is subject to a number of requirements in addition to those for other development. These include



additional requirements with respect to landform conservation (Section 30(8) of the Moraine Plan); stormwater management (Section 45) and sewage and water services (Section 43).

In addition... new major development is prohibited after April 23, 2007 in accordance with the provisions of Section 24(4) of the Moraine Plan unless:

- a) the watershed plan as described in section 1.9.9.5 of this Plan, for the relevant watershed has been completed;**
- b) the major development conforms to the watershed plan; and,**
- c) a water budget and conservation plan, as described in, and prepared in accordance with, Section 25 of the Moraine Plan and demonstrating that the water supply required for the major development is sustainable, has been completed.**

Neither a watershed plan nor a water budget and conservation plan have been completed.

The use of a dry grain-processing mill in ZBA 2019-054 is a major development and is not in conformity with the requirements under s. 1.9.5.vii.

