



PROCEEDINGS

Of a Public Meeting to discuss an
Amendment to Zoning By-law #160-2010
(Re: Z04/13 Lougheed)

Tuesday, September 10, 2013
City Council Chambers
At 11:03 a.m.

PRESENT: Councillor L. Roussin, Property & Planning Lead
Mayor D. Canfield
Councillor C. Gallivan
Councillor R. Lunny
Councillor S. Smith
Karen Brown, CAO
Charlotte Caron, Property & Planning Manager
Tara Rickaby, Planning Administrator
Heather Kasprick, Deputy Clerk
Heather Lajeunesse, Deputy Clerk

REGRETS: Councillor R. McMillan
Councillor R. McKay
Wayne Gauld, Planning Advisory Chair

Lead of the Property and Planning Committee, Louis Roussin, opened the meeting. This public meeting is being held by the City of Kenora Property and Planning Committee in accordance with Section 34 of the Planning Act to consider amendments to the City of Kenora Comprehensive Zoning By-law No. 160-2010. The Property and Planning Committee will make a recommendation to Council with respect to whether or not the applications should be approved. The Council of the City of Kenora will make the decision at a meeting of Council.

The Chair asked the Clerk to confirm the dates of notice given by publishing notices in the Kenora Daily Miner and News, being a newspaper that, in the opinion of the Clerk of the City of Kenora, is of sufficiently general circulation in the area to which the proposed by-law would apply that it would give the public reasonable notice of the public meeting. H. Kasprick, Deputy Clerk, advised the Notices pertaining to these public meetings were provided in accordance with Planning Act requirements.

The Chair indicated that if anyone wishes to receive written notice of the adoption of the By-laws is to leave their name and address with the Clerk.

The Chair explained that an appeal may be made to Ontario Municipal Board not later than 20 days after the day that the giving of notice as required by section 34(18) is completed by either the applicant or person or public body who, before the by-law is passed makes oral submissions at a public meeting or written submissions to the Council by filing a notice of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee prescribed under the Ontario Municipal Board Act, with the City Clerk.

The Chair stated that each Applicant/Agent will provide the background information for their application and then the Planning Administrator will provide information from the planning report, after which anyone who wishes to speak either for or against the applications will be given the opportunity to do so, and a record will be kept of all comments.

Applicant Description of details:

Randy Seller representing William Lougheed Trucking Ltd. was present to speak to the application.

Mr. Seller reviewed the staff report and the report is in favour of the rezoning of the property to either hazard lands or rural residential protection lands, depending on the contours identified.. The recommendation is fairly comprehensive as the property has a number of low level areas in the subdivision and those would be zoned Hazard Lands (accessory structures only permitted, without human habitation, and with access driveways permitted) and the remaining parts would be zoned Rural Residential. Flooded lands are to zoned OS – Open Space with only a dock as a permitted use. The applicant has provided a letter from a professional engineer as there could be accessory structures built on the proposed lands.

Planning Administrator Tara Rickaby Introduction:

Alex Clark and John Balkwill, agents for William Lougheed Trucking Ltd., submitted an application for a plan of subdivision on the Winnipeg River. The application was for Phase 1 and consisted of ten (10) new rural residential lots on private services. A new municipal road was also proposed as part of Phase 1, to service the residential lots. The remainder of the land is to be developed as Phase 2 and would be subject to further development applications. The subject site is designated Rural Area in the City of Kenora Official Plan, 2010. The subject site is split zoned Rural and Hazard Land in the City of Kenora Zoning By-law 160-2010.

One of the conditions of approval for this subdivision was that the Developer be required to submit a Zoning By-law Amendment application and any supporting studies to the satisfaction of the City of Kenora. The land to be rezoned from Rural (RU) and Hazard Land (HL) to Rural Residential and Environmental Protection (EP) Zones or any zone that is appropriate in order to comply with the City of Kenora Zoning By-law No. 160-2010. A decision on the Zoning By-law Amendment application is to be made by the City of Kenora Council, prior to final plan of subdivision approval.

The Applicant, Randall Seller, as Agent, is proposing to rezone the property using a site-

specific zone; to rezone from RU and HL to RR and HL, with the specific provision in the HL – Hazard Land areas that structures without foundations and access driveways be permitted in this subdivision. The effect of approval would be to permit access to the actual river (waterfront) for use of the shoreline amenity while ensuring that no permanent structures, which could be subject to flood waters, are permitted on the lands. The application includes a proposal to rezone inundated property to OS – Open Space.

Description of Proposal

- The subdivision plan, given draft approval in October of 2011, is for the creation of 10 lots, a block and a municipal roadway
- The lands which are now inundated will be transferred to the property owners
- There is a current request to change conditions in order to deal with the ownership of inundated lands by way of a common elements condominium agreement application

Subject site and context

The property is legally described as Part of Lot 21 Plan M-135 and part of Location LK2, Geographic Township of Pellatt, City of Kenora, District of Kenora. The subject site is located in the western area of Kenora and is approximately 80 hectares (198 acres). Phase 1 would occupy approximately 13 hectares (32 acres) of the overall land holding. The subject site is located on the Winnipeg River, north of Sunnyside Road and the Highway 17A (Kenora By-pass).

The surrounding land uses are as follows:

North: Winnipeg River and an existing pocket of residential uses

South: rural area

East: existing tourist camp

West: rural area

Provincial Policy Statement (2005)

The Provincial Policy Statement (PPS) contains policies to manage change and promote efficient land use and development patterns. Policy 1.1.1 (b) states that a range of uses including residential shall be accommodated to meet long-term needs. Limited residential development shall be permitted in rural areas according to Policy 1.1.4.1 (a). In addition, Policy 1.1.4.1 (d) states that "development that is compatible with the rural landscape and can be sustained by rural service levels should be promoted."

In addition, public streets, spaces and facilities should be safe and meet the needs of pedestrians and facilitate non-motorized movement, including but not limited to walking and cycling. The provision of trails, open space areas, parklands, water-based resources, and opportunities for public access to shorelines should also be promoted (Section 1.5 – Public Spaces, Parks and Open Space).

Policy 1.6.4.4 permits development on individual on-site sewage services and individual on-site water services to service private residences in rural areas for residential use. Policies related to transportation corridors are provided in Section 1.6.5 of the PPS.

Matters regarding development and site alteration of natural heritage features such as fish habitat are provided in Section 2.1 of the PPS and protection of ground water quality and quantity are provided in Section 2.2 of the PPS.

Furthermore, development and site alteration of natural hazard areas such as flooding hazards and/or erosion hazards are governed by Section 3.1 of the PPS.

The proposed application to amend Zoning By-law No. 160-2010 is consistent with the 2005 PPS.

Official Plan and Zoning By-law

City of Kenora Official Plan (2010)

The subject site is designated Rural Area. Policy 4.8.1 (b) permits limited residential development. Policy 4.8.3 (a) states that new residential lots shall be created where the municipality is presently providing or where road maintenance services can be provided. The lot sizes of new residential lots shall be large enough to sustain private water and sewer systems and comply with the regulations under the Zoning By-law. The proposed residential use is a permitted use in the Rural Area designation of the Official Plan.

The Official Plan provides a list of Guiding Principles and Objectives. One of the objectives under Section 2.2.1 Principle 1 – Sustainable Development is to permit limited residential growth in the Rural Area where the lot sizes and configuration can support private water and sewage systems. The proposed development would also need to be compatible with the character of the land in the surrounding area. Another objective under Section 2.2.1 Principle 2- Natural Environment is to limit shoreline development. Phase 1 of a two phase plan would only create 10 residential lots along the shoreline of the Winnipeg River. The majority of the development would be developed as backshore lots in the future as part of Phase 2.

The proposed plan of subdivision is compatible with the surrounding area and uses through the proposed setbacks and buffering features that will form part of the development. In addition, the proposed residential density would be considered low density.

Water quality preservation is a significant consideration with proposed development adjacent to a watercourse or a lake. On-site septic disposal systems should be located at least 30 m from a watercourse or water body. A Drainage Plan was submitted with the application.

The proposed development is also subject to the policies as set out in Section 3.16 - Hazard Lands, Docks and Shoreline Development of the Official Plan. Comments from the DFO and MNR have addressed the policy implications and requirements as conditions for approval. A condition of approval is "That the Developer provide and maintain a temporary 10 m no disturbance riparian buffer above the high water level of the Winnipeg River until such time that the Ministry of Natural Resources has determined the full site re-vegetation to native shrub and grass species has occurred at which time the buffer will be reduced to a permanent 5 m no disturbance buffer. On individual properties, up to 10% disturbance of this riparian zone buffer will be allowed for the purposes of locating waterlines and docks. The details of this riparian buffer will be documented and implemented in the Subdivision Agreement and as part of the Site Plan Control measures (of all lots that front the dredged shorelines) for this Plan of Subdivision". The subdivision agreement has not yet been approved by Council.

The Official Plan policies regarding Hazard Lands indicates that:

For the purposes of this Plan, Hazard Lands include:

- a) Those lands along the Winnipeg River and Lake of the Woods that are defined as Hazard Lands on the basis of elevations identified by the Lake of the Woods Control Board. On the

Winnipeg River, the following elevations define the Hazard Land designation from the Dalles First Nation upstream to the rapids below Rideout Bay at Old Fort Island below 320.6 m Canadian Geodetic Vertical Datum of 1928(CGVD28); old Fort Island upstream to the Lake of the Woods dams below 321.4 m CGVD28 datum. On the Lake of the Woods, the elevation correlating to the Hazard land designation is 324.60 m CGVD28 datum.

Lands outside of those areas addressed by the Lake of the Woods Control Board that may also be subject to flooding and erosion, such as lands adjacent to watercourses and waterbodies other than the Winnipeg River or Lake of the Woods. In these areas, Hazard Lands should be defined as follows:

- By engineered flood plain mapping, where it exists; and
- Where there is no engineered flood plain mapping, Hazard Lands, as defined by this Plan should include:
 - i. For slopes equal to or greater than 1:1, all lands within 15 m of the top-of-bank of any watercourse or water body; and
 - ii. For slopes less than 1:1, all lands within 15 m horizontal distance of the 1:100-year flooding elevation along any watercourse or water body.

For those Hazard Lands where there is no engineered flood plain mapping, and where Hazard Lands are defined by the 20 m setback, applications for Zoning By-law amendments to allow development and site alteration shall be considered on an individual basis, provided that such proposals are supported by engineered designs and prepared by a qualified professional engineer in accordance with provincial technical standards and to the satisfaction of the City, demonstrating that the site is safe for development in spite of naturally occurring hazards, such as flooding and erosion.

In addition, the proposed development is proposed to be on private services given that it is located beyond the settlement area as identified in the Official Plan. Policy 6.2 (a) provides this policy direction.

With regards to the Transportation Section 7 of the Official Plan, the proposed "Lougheed Drive" will be a municipal public road. Lougheed Drive will be a Local Road and will be subject to Section 7.4 – Local Roads of the Official Plan.

Furthermore, the City shall implement the use of Site Plan Control as a planning tool to protect natural features as per Section 8.4 – Site Plan Control of the Official Plan.

The proposed residential use is in keeping with the Rural Area designation of the Official Plan. Section 8.10.4 indicates that:

- a) Lot creation shall not be granted or approved in the following circumstances:
 - when landlocked parcels are created.
 - for land adjacent to a road from which access is to be obtained where a traffic hazard would be created because of limited sight lines or curves or grades.
 - for a parcel of land that is zoned Environmental Protection or Hazard Land which is subject to flooding unless sufficient non-hazardous land forms part of the severance to permit all buildings for human occupation.

- for residential uses shall not be approved where development would be located close to incompatible land uses such as major highways, railways, waste disposal sites, active industrial sites, or other similar features.

The Developer will be required to provide a report from an Ontario Professional Engineer with respect to the location of a driveway and accessory structures, without foundations, on the HL – Hazard Lands.

The Developer will be required to provide evidence that there are sufficient non-hazardous lands to permit all buildings for human occupation.

Zoning By-law (2010)

The property is currently zoned RU – Rural and HL- Hazard Land, and is currently vacant. The proposed OS – Open Space designation does not permit docking as a use; this use should be added as part of the exception.

Land Use Planning Issues

Lot Size and Frontage

The lot sizes and frontages meet the minimum provision for RR lots; the HL – Hazard Land portion of the lots are to provide amenity space.

The Northwestern Health Unit has indicated that there is adequate area within the lands to be zoned RR to accommodate private sewage systems. The Developer will be required to provide a site plan to indicate that there is buildable area in the RR portion of the lots.

Servicing

Private

Utilities

Hydro One and Bell Canada – Servicing required per the conditions of approval of the subdivision.

Inundated land – Engineer’s Report – Scott Schelske, P. Eng – August 20, 2013

Mr. Schelske’s report indicates that:

- a) He acknowledges he is not supportive of construction of structures which are required to be on permanent, firm foundations in the areas identified as hazard lands;
- b) He would suggest that the phrase "without foundations" be "word smithed" to allow for certain structural underpinning, since even the most basic of structures often have some sort of "foundation". Perhaps the key would be to restrict the use of concrete to only anchoring of cables used to hold docks and shore stations, or to only allow the use of concrete and permanent foundations when they been so designed and inspected by a registered geotechnical engineer
- c) He did inspect the shoreline to determine its suitability for securing floating docks and boat lifts and found that for the most part there were bedrock outcrops within a close enough proximity to the shore to allow for pinning. However, on lots 8 and 9 there is no bedrock along the shore, so the use of alternative anchoring methodologies would have to be employed.
- d) The soil type of the dredge spoil appears to be a fine silt and not a clay. Therefore, the soil would have the tabulated bearing capacity (of 1 – 2 tons per square foot), to enable it to support a shallow lift of rock to allow for the construction of driveways and roadways for access.

The use of a rock core is recommended since the silt would turn to mud upon being saturated with water, should the river reach that flood stage. However, there is nothing to suggest that due to the surrounding elevation that such roadways would be endangered of being washed out in the event of a flood. Should the HL be submerged, the spoil area is of sufficient size and mass that the earth will not be washed away (although there could be some erosion). Furthermore since there does not appear to be any clay type soil on surface (no subsurface soils examination was conducted) the potential for soil failure due to the drawdown of any flood waters is not present.

Mr. Schelske’s opinion is: Therefore, it is my professional opinion that the provision of a designation allowing for the construction of certain structures as suggested in Mr. Seller’s E-mailed request be considered to have a very miniscule risk of sustaining substantial damage due to flooding of the Hazard Lands.

Parking/docking
Fish and Wildlife Resources
Fisheries Assessment

All of the above have been dealt with through the conditions of approval of the subdivision.

Comments from Municipal Staff:

Documents Circulated	Comments Received
Planning Department	<p>The Official Plan is clear in its requirement for a report by a qualified engineer, in order for Council to approve a zoning by-law amendment which would permit development of lands that are (or are to be) designated as HL – Hazard Lands. This is to ensure that the public’s safety is protected.</p> <p>Most of the planning issues have been dealt with through the conditions of approval of the plan of subdivision</p> <p>A site plan must be provided to indicate that there is sufficient developable area on Lots 5,6,9 and 10</p> <p>August 30, 2013 - The recommended “word smithing” of S. Schelske has been incorporated into the proposed amendment to indicate that building would not be for human habitation because that would satisfy the Official Plan policy and zoning provisions.</p> <p>The comments, by the Northwestern Health Unit, point out that a permit can be issued in areas NOT SUBJECT to flooding.</p> <p>A site plan agreement, between the developer and the City of Kenora would be the most efficient tool to ensure that the building lots are developed above 320.6 m.</p> <p>The applicant proposes to describe the inundated lands using a common elements condominium. These lands are proposed to be zoned OS and will be owned by the condominium corporation, which will be made up of the owners of the properties abutting the inundated lands.</p>

Rural Residential in areas not subject to flooding per the City of Kenora Official Plan, 2010, HL – Hazard Land to permit accessory structures in which human habitation will not be permitted, and access driveways, and OS – Open Space to permit only docks, as the application is consistent with the Provincial Policy Statement (2005), and meets the purpose and intent of both the City of Kenora Official Plan (2010) and Zoning By-law No. 160-2010, as amended for the reasons outlined in the planning report..

Carried

Statutory Public Hearing: Scheduled for 10 September, 2013 at 11 a.m.

RECOMMENDATION:

That Council approves the proposed zoning by-law amendment Z04/13 Loughheed for site specific rezoning from RU – Rural, OS – Open Space and HL – Hazard Lands to RR – Rural Residential, OS – Open Space and HL – Hazard Lands [29] Notwithstanding any other provisions of this By-law, on the lands noted by [29] on the Schedules to this By-law, and specifically described as Part of Lot 21 Plan M-135 and part of Location LK2, Geographic Township of Pellatt, City of Kenora, District of Kenora be rezoned to RR – Rural Residential in areas not subject to flooding per the City of Kenora Official Plan, 2010, HL – Hazard Land to permit accessory structures in which human habitation will not be permitted and access driveways, and OS – Open Space to permit only docks, as the application is consistent with the Provincial Policy Statement (2005), and meets the purpose and intent of both the City of Kenora Official Plan (2010) and Zoning By-law No. 160-2010, as amended for the reasons outlined in the planning report.

Councillor Roussin asked if anyone wished to speak in favour of the amendment. There were no comments.

Councillor Roussin asked if anyone wished to speak in opposition of the amendment. There were no comments.

Councillor Roussin asked if there were any questions. Councillor Smith asked a question regarding the docking.

Councillor Roussin the declared the Public Meeting closed at 11:17 a.m.