



## Addendum to the Planning & Economic Development Committee Agenda

Council Chambers  
Regional Headquarters Building  
605 Rossland Road East, Whitby

**Tuesday, November 2, 2021**

**9:30 AM**

**Note: Additional agenda items are shown in bold**

1. Roll Call
2. Declarations of Interest
3. Adoption of Minutes
  - A) Planning & Economic Development Committee meeting – October 5, 2021
4. Statutory Public Meetings

There are no statutory public meetings
5. Delegations
  - 5.1 Johan van 't Hof, Board Member, and Deborah Flint, President and Chief Executive Officer, Greater Toronto Airports Authority, re: Annual Update from the Greater Toronto Airports Authority
  - 5.2 Frank Pearce re: Application to Amend the Durham Regional Official Plan, submitted by Kyle Petrovich on behalf of Grainboys Holdings Inc., File: OPA 2021-004 (2021-P-24) [Item 7.2 A]**
6. Presentations

There are no presentations
7. Planning

7.1 Correspondence

- A) Correspondence from Bill and Frank Pearce, regarding Application to Amend the Durham Regional Official Plan, submitted by Kyle Petrovich on behalf of Grainboys Holdings Inc., File: OPA 2021-004 (2021-P-24)**

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**Recommendation: Refer to consideration of Report #2021-P-24**

7.2 Reports

- A) Application to Amend the Durham Regional Official Plan, submitted by Kyle Petrovich on behalf of Grainboys Holdings Inc. to permit the development of a grain processing facility in the Township of Uxbridge, File: OPA 2021-004 (2021-P-24)

8. Economic Development

8.1 Correspondence

8.2 Reports

- A) 2023 Ontario Parasport Games Bid (2021-EDT-8)

9. Advisory Committee Resolutions

9.1 Durham Active Transportation Committee

- A) Waterfront Trail at Corbett Creek Water Control Plant

Recommendation: Refer to staff

10. Confidential Matters

There are no confidential matters to be considered

11. Other Business

11.1 Introduction of Sheril Baldie Jagpat, Manager of Administrative Services

12. Date of Next Meeting

Tuesday, December 7, 2021 at 9:30 AM

New

13. Adjournment

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**Comments of Bill and Frank Pearce to the Early Release Report dated Nov. 2<sup>nd</sup> 2021 of  
the Commissioner of Planning and Economic Development**

In response to the applications for OPAs we filed an 8page commentary in which we asked both Councils to push the pause button to permit our appeal to proceed. The early release report reflects this in para 9.3 but does not provide the reasoning behind our request for a deferral. We wish to set that reasoning out at this time.

The law requires a ZBL to conform with the OPs that were in force at the time the ZBL is passed. What is being attempted now will not affect the appeal. The appeal if successful will set aside the ZBL on both the ground it did not conform to the OPs that were in existence at the time the bylaw was passed and upon the ground that in any case the proposed operation does not conform to Ag-related definitions.

If the present application is proceeded with and the OPA granted there is a very real possibility that the ZBL will be set aside on the appeal leaving the OPAs dangling in the air with no ZBL to support. It is our respectful submission that the timing of the present applications is misguided. There are four possible outcomes of the appeal (1) Grainboys is successful on the conformity with the OPs issue, *as it still maintains it is in conformity with*, and on its compliance with the requirements of the Ag-related uses definition (2) it wins on the conformity issue but loses on the compliance issue (3) it loses on the conformity issue and on the compliance issue, and, (4) it loses on the conformity issue but wins on the compliance issue.

If Council agrees to our present request to adjourn the application for an OPA in only **one** of the possible outcomes (#4) will it be necessary for Council to place the subject matter back onto your agenda for a decision. We submit that the best way to proceed and the one that most closely follows the accepted procedure is to adjourn the present application to permit the appeals to be heard *as the system is designed to allow*.

What normally happens in a situation like this where a prospective applicant for a ZBA has concerns as to whether the zoning sought will be in conformity with OPs is that the prospective applicant brings on an application for a change in the OP at the same time as the application for the ZBL. In that way the local Council would hear and decide both applications at the same time which would ensure that the Planning Act requirement for conformity is met **when the ZBA is passed**. That is the normal procedure to be followed.

There is no reason why this Council should depart from normal procedure. And to depart from normal procedure would undermine the process that is in place to correct mistakes when bylaws are passed that don't comply with the Planning Act which is the appeal process. If you proceed to make a decision on the application you will create a precedent that going forward may waste a lot of time and extra costs for both Regional and Township Councils.

Just think , if Grainboys had not sought an adjournment at the CMC to bring the applications the appeal would already have been determined and if Grainboys was successful this Council and Uxbridge Council would not had had to deal with the matter at all. Why interfere with the course of justice? Let the appeal process take its course we say and only engage in such an application *when it is necessary to do so*.

This procedure incidentally is consistent with a practice that has been endorsed many times by our Supreme Court of Canada to decline to exercise its discretionary power to resolve disputes with a declaration on the rights of the parties where the declaration can be of no practical utility because the events giving rise to the **necessity** to so declare have not crystalized.

**In short, we recommend that the Committee at the upcoming meeting of Nov 2<sup>nd</sup> make a recommendation to Council that it gives consideration to the preliminary issue as to whether Council should consider the application for an OPA at this juncture ie before the appeal has been heard and determined, for the reasons given.**

The second comment we wish to make relates to the second sentence of your conclusion at para 13.1 where it states that the proposed amendment conforms to the four criteria listed in the definition of agriculture-related use. First of all the proposed amendment has to do with whether or not the use of a particular parcel of land should permit agriculture-related uses. There is no issue as to whether the amendment conforms to the definition. That is an issue which was before Uxbridge council and it was decided in favour of Grainboys. That issue is now under appeal and the Tribunal is seized with the responsibility to determine whether or not Grainboy's proposed operation conforms to the definition. It would be quite improper of Council to be make a gratuitous finding that Grainboys proposed operations would be in compliance with the four part criteria in the definition.

Furthermore, the evidence of two farm properties in the Region as growing seeds and the finding that the applicant would benefit from being in proximity to same which would help support a finding that the applicant's operation satisfied part "c" of the definition of agriculture-related uses (see para 6.4 of early release report) are further gratuitous findings that have no place in this document. Incidentally, the evidence of seed farmers was not found in the evidence of Mr. Petrovich either in his supporting affidavit or his evidence at the public hearing at which we were not permitted the right of cross examination. **It would be our recommendation that the agriculture-related use observations of the facts and this Committee's conclusions be deleted from the report.** They are not relevant to the issue at hand nor are they supported by evidence.

The third comment we have relates to the merits of the application itself. We believe that before a decision is made to effectively reduce the prime agricultural land base of the province and to reduce an area designated as Natural Linkage Area Council should examine the public interest issues associated with this move which we outlined in our Comments. Council should reflect on the fact that even though the province through the 2017 amendments to the ORBCP has given the Regions the authority to amend their OPs to allow agriculture-related uses on prime agriculture land that lies within Natural Linkage Areas, **for the first time**, the municipalities have the right to retain the more restrictive provisions that are now in place which do not permit agriculture-related uses on Natural Linkage Areas. This right which you acknowledge in para 9.4 of the early release report is based on s 8 of the ORMC Act.

It appears to us that following the amendments to the plan in 2017 this will be the **first time** that Council will be given the opportunity to decide on the basis of public policy issues whether or not Durham should retain its more restrictive approach or permit such uses and if permission is to be given what terms should apply. Because of the importance of these issues **it is our recommendation that the Committee should retract from its present intention to recommend the amendment sought be granted without debate and instead provide**

**Council with the following options to allow Council to make a considered decision on a topic that may have lasting consequences.**

The importance of maintaining the present prime agriculture base is very real. The Ontario Federation of Agriculture tells in a recent fact sheet that the world's population is projected to rise to 9.8 billion by 2050 "underlining the need to keep Ontario's highly productive agriculture land producing food for Ontario, Canada and the world". On Monday of this week the World Meteorological Organization reported that evidence is showing we are way off target in global reductions of greenhouse gases and on track for a 2.7 C increase in global warming. The UN World Food Program predicted this month the number of people living in hunger will surge by 189 million if average global temperature increase 2 degrees. This doesn't account for the number of migrants that will result from lack of water or dangerous to human health temperatures that are on the horizon. Canada is one of the places to which they will seek refuge or from whom they will seek food and water to survive.

So, on top of that the OFA tells us that between 2011 and 2016 Ontario's small agriculture land base has declined by an equivalent of 175 acres /day or **close to 65000 acres/yr**. OFA writes "Ontario cannot sustain these continuing losses while still maintaining our ability to produce food." People are starting to wake up to the fact we have to change and change fast if we want our species to survive. And so we say to Council- we can't carry on with a business as usual attitude. We have to take extra precautions to preserve every single acre of arable land with the knowledge that all existing prime Ag land has to be preserved.

The OP amendment being sought will remove not just Prime Agriculture Land from the land base but will remove a portion of a green corridor forming an ecological connection between Natural Core Areas . Furthermore, the sound and dust and smell from the operation of the proposed plant (and its possible expansion) will impact on insect, birds and mammals in the surrounding area which includes Natural Core Areas. The operation, including the truck traffic it will generate, will likely have an impact on the hydrological integrity of the moraine.

The proposed amendments will also contravene the ORMCP objectives set out in s4 of the ORMCA which include:

"(b) ensuring that only land and resource uses that maintain, improve or restore the ecological and hydrological functions of the Oak Ridges Moraine area are permitted;

(c) maintaining, improving or restoring all the elements that contribute to the ecological and hydrological functions of the Oak Ridges Moraine Area, including the quality and quantity of its water and other resources;

(d) ensuring that the Oak Ridge Moraine Area is maintained as a continuous natural landform and environment for the benefit of present and future generations;"

We understand that members of Durham Council are at the tail end of a Municipal Comprehensive Review (MCR) of the Regional Official Plan (ROP) which a May 2nd document says will result in a new ROP "with a planning horizon to 2041". The document states the Region is entering a period of significant growth and that there will be among other things "**a heightened expectation to address climate change**" and "planning approaches **that further support the agriculture sector**" with strategic land use planning that will be "responding to climate change and incorporating sustainability provisions." We are concerned that a decision to allow the sought after OPA may set a precedent for a permanent change to a more expansive use of prime

agriculture land for industrial purposes which will not be in the public interest and that Council should await the outcome of that process before making what could be a momentous decision.

**We think that there are sufficient reasons why Council should elect in its discretion to maintain the present restrictions against agricultural uses in Natural linkage Areas on prime agricultural land which would result in the rejection of the application for an OPA which is Option#1.**

In the alternative if Council is of the opinion that notwithstanding the above it may still be desirable to allow such uses in special circumstances we suggest that Council have reference to s41(2) of the Oak Ridge Plan which provides, inter alia, that an application for infrastructure on Natural Linkage Area land cannot be approved unless **“the need for the project has been demonstrated and there is no reasonable alternative”**. S41 (2.1), added in 2017, provides that an application for the development of infrastructure on prime agricultural land shall not be approved unless “the need for the project has been demonstrated and there is no reasonable alternative that could avoid the development occurring in a prime agricultural area.” While a milling plant is not infrastructure its footprint on the environment is the same. These provisions evidence an intention that physical structures should not be built on Natural linkage Areas or on prime agricultural land because these structures would lessen the inventory we have for these special areas which are deserving of protection unless it can be demonstrated there is both a need for the project and there are no reasonable alternatives.

**Option #2 would allow Council would retain discretion to allow such applications only when need and lack of alternatives are demonstrated.** In this case the Applicant has indicated to Council that his expansion plans have been scrapped so technically he could remain where he is which is in an industrial park and still continue his business or if a move is desired for other reasons he could move to another industrial park almost anywhere in southern Ontario given his present sources for feedstock and location of his customers. Grainboys has certainly not demonstrated a need to relocate to the present location nor the lack of industrial zoned land in the province in which to relocate.

**Option #3 is to grant a site specific amendment to the OP which would allow Grainboys to conduct agricultural-related uses on prime agricultural land in Natural Link Areas as you have defined them in the present plan under the heading ‘Prime Agricultural Lands’ as set out in Sub-Section 9A.** The term ‘agricultural-related uses’ is defined in sub-section 15A as meaning farm related commercial or industrial uses *“that are small in scale, directly related to the farm operation and are required in close proximity to the farm operation”*. This definition is more restrictive than the definition of agriculture-related uses in the ORMCP but has the advantage of being in use for a long period of time. If there have not been complaints about it that might be another reason to support it. Our concern is that if the ORMCP definition is followed and the Tribunal upholds Grainboys’s contention its operations comply with the criteria it would set a precedent that would permit any food processing company in North America to relocate to locations on prime agriculture land within Natural Linkage Areas in Durham region on the premise it *might benefit* from the presence of farms in the area who might sell feedstock to the company.

The food processing industry are industrial operations and like Grainboys they are presently located in mostly in industrial parks and it is no accident that Grainboys initially sought a zoning bylaw change to Industrial use for its entire property. We believe that by retaining the present definition of agricultural-related use there is a much better chance that prime ag land and Natural Linkage Areas would be much better protected while still giving individual farmers the opportunity for agricultural- related uses to occur.

As noted in para 8.5 of the early release report the development “is proposed to cover about 2.4% of the site”. The rest of the 36.3 acre property is farmed. **Option #4 would allow the amendment sought for but we suggest two things, one that it refer to grain milling and blending facilities uses “which meet the criteria of agriculture-related uses as set out in the ORMCP”, and secondly, such uses be restricted to the 2.4% footprint identified in the ZBL application.**

Dated this 28<sup>th</sup> day of October 2021