



Addendum to the Regional Council Agenda

Regional Council Chambers
Regional Headquarters Building
605 Rossland Road East, Whitby

Wednesday, November 24, 2021

9:30 AM

Note: Additional agenda items are shown in bold

1. Traditional Territory Acknowledgement
2. Roll Call
3. Declarations of Interest
4. Adoption of Minutes
 - 4.1 Regional Council meeting – October 27, 2021
 - 4.2 Committee of the Whole meeting – November 10, 2021
5. Presentations

There are no presentations
6. Delegations
 - 6.1 Councillor Deborah Kiezebrink, re: Bus Stops on Dead End Roads (Previously delegated at the June 2 Works Committee meeting and was requested to delegate at Council)
 - 6.2 Wendy Bracken, Durham Resident, re: Memorandum and Quarterly Technical Report dated September 17, 2021 from S. Siopis, Commissioner of Works, re: Durham York Energy Centre Quarterly (Q2) Long-Term Sampling System Report
 - 6.3 Linda Gasser, Durham Resident, re: Memorandum and Quarterly Technical Report dated September 17, 2021 from S. Siopis, Commissioner of Works, re: Durham York Energy Centre Quarterly (Q2) Long-Term Sampling System Report
Requires 2/3rds vote to be heard

- New** **6.4 Bill Pearce and 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)**

7. Reports related to Delegations/Presentations

There are no reports related to Delegations/Presentations

8. Communications

CC 22 Correspondence from the Town of Whitby re: Noise Abatement at Oshawa Executive Airport

- New** **CC 23 Correspondence from Bill Pearce and 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)**

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Recommendation: Refer to the consideration of Item #1 of Report #8 of the Planning & Economic Development Committee

- New** **CC 24 Correspondence dated November 21, 2021 and July 30, 2021 from Conrad Richter re: Comments on 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)**

Pages 13-24

Recommendation: Refer to the consideration of Item #1 of Report #8 of the Planning & Economic Development Committee

9. Committee Reports and any Related Notice of Motions

9.1 Finance and Administration Committee

9.2 Health and Social Services Committee

9.3 Planning and Economic Development Committee

9.4 Works Committee

9.5 Committee of the Whole

10. Notice of Motions

10.1 International Women's Day Recognition

11. Unfinished Business

There is no unfinished business

12. Other Business

- 12.1 Education and Training Information Session facilitated by Jeff Perera re: Building Bridges Between Us: Allies for Gender Equality

New 12.2 Beaverton Supportive Housing Development (2021-A-21) Pages 25 - 27

13. Announcements

14. By-laws

- 33-2021 Being a by-law to adopt Amendment #185 to the Durham Regional Official Plan.

This by-law implements the recommendations contained in Item #1 of the 8th Report of the Planning & Economic Development Committee presented to Regional Council on November 24, 2021

- 34-2021 Being a by-law to authorize the borrowing upon instalment debentures in the aggregate principal amount of \$15,568,000.00 (\$990,000.00 principal amount of 15 year instalment debentures and \$14,578,000.00 principal amount of 20 year instalment debentures) for capital works of The Corporation of the City of Pickering.

This by-law implements the recommendations contained in Item #7 of the 7th Report of the Finance & Administration Committee presented to Regional Council on September 29, 2021

- 35-2021 Being a by-law to authorize the borrowing upon 10 year instalment debentures in the principal amount of \$1,500,000.00 for a capital work of The Corporation of the Township of Uxbridge.

This by-law implements the recommendations contained in Item #7 of the 7th Report of the Finance & Administration Committee presented to Regional Council on September 29, 2021

- 36-2021 Being a by-law to authorize the borrowing upon 10 year instalment debentures in the principal amount of

\$63,867,000.00 for a capital work of The Regional Municipality of Durham.

This by-law implements the recommendations contained in Item #7 of the 7th Report of the Finance & Administration Committee presented to Regional Council on September 29, 2021

- 37-2021 Being a by-law to authorize the borrowing upon instalment debentures in the principal amounts authorized by by-laws Numbers 34-2021, 35-2021 and 36-2021 in the aggregate principal amount of \$80,935,000.00 (\$65,367,000.00 principal amount of 10 year instalment debentures, \$990,000.00 principal amount of 15 year instalment debentures and \$14,578,000.00 principal amount of 20 year instalment debentures) and the issuing of one series of instalment debentures therefor.

This by-law implements the recommendations contained in Item #7 of the 7th Report of the Finance & Administration Committee presented to Regional Council on September 29, 2021

- 38-2021 Being a by-law to authorize the borrowing upon 10 year instalment debentures in the aggregate principal amount of \$2,117,000.00 for capital works of The Corporation of the City of Oshawa.

This by-law implements the recommendations contained in Item #7 of the 7th Report of the Finance & Administration Committee presented to Regional Council on September 29, 2021

- 39-2021 Being a by-law to designate the Normandy Towns affordable housing project as a municipal capital facility.

This by-law implements the recommendations contained in Item #4 of the 6th Report of the Committee of the Whole presented to Regional Council on September 29, 2021

- 40-2021 Being a by-law to amend By-law Number 22-2018 by which the linear limits of the several roads comprising the Regional Road system are defined.

This by-law implements the recommendations contained in Item #2 of the 8th Report of the Works Committee presented to Regional Council on October 27, 2021

15. Confirming By-law

41-2021 Being a by-law to confirm the proceedings of Regional
Council at their meeting held on November 24, 2021

16. Adjournment

Notice regarding collection, use and disclosure of personal information:

Written information (either paper or electronic) that you send to Durham Regional Council or Committees, including home address, phone numbers and email addresses, will become part of the public record. This also includes oral submissions at meetings. If you have any questions about the collection of information, please contact the Regional Clerk/Director of Legislative Services.

Submissions of Bill and Frank Pearce

Re: Grainboys Application to Durham Council for OPA

Summary:

Grainboy's application seeks to remove valuable prime agriculture land from the prime agriculture land base of Ontario to further its own industrial purposes. At the same time the Natural Linkage Area in the Oak Bay Moraine will be similarly affected.

The Province has given Durham a broad discretion to take a more restrictive approach in the goal to protect the special areas of prime agriculture land, and, Natural Linkage Areas within the Moraine. Durham has for a long period of time maintained a more restrictive approach on such matters to its credit.

The application before Council will be the first of its kind to our knowledge that seeks to lessen the Natural Linkage Area of the Moraine and at the same time will shrink the prime agriculture inventory of the Province. This will likely serve as a precedent as to the Region's policy governing agriculture-related uses within these special areas going forward, whether that be in the present ongoing review process of the entire OP or for similar site-specific applications throughout the Natural Linkage Areas of the Moraine.

Because of the implications of Council's decision on this application we implore you to carefully review the public interest policy considerations of going down the path you are being invited to take. The legislative regime in which you are operating does not expect you to simply give the relief asked for if you have the authority to do so. We do not question your authority in that regard. The question is ultimately what policy will best reflect the public interest. Should you weaken the protection the region has had in place for these many years for these special areas? What is to be gained from doing so? What are the downsides of so doing?

You will also have to be satisfied that the Applicant's proposed operation meets the 'agriculture related uses' definition in the ORMCP. When granting the ZBA Uxbridge Council was satisfied the definitional requirements were met but our appeal from the decision which is pending argues that the Applicant's operation does not meet the definition. The OLT is seized with that issue. We argued before the Planning and Economic Development Committee that Durham Council should push the pause button on the subject application and follow the correct procedure to let the appeal be heard first to determine in a final manner whether or not the applicant's operation meets the definition.

The Committee did not deal with our position but we invite Council to consider the matter. If Council elects to proceed to make a decision at this time it is our position that the Applicant clearly does not meet the definition.

Public Interest:

Section 2.3.3.1 of the 2005 PPS speaks to agricultural uses, secondary uses and agriculture-related uses in prime agricultural areas and the criteria for such uses to be included in municipal planning documents as recommended by the Province, **“or based on municipal approaches which achieve the same objective”**.

Consistent with the PPS, when the ORMCP was created in 2002 to protect the special features of the Moraine the Province was careful to grant the Municipalities the **discretion to have more restrictive provisions than the Plan** (see section 8(2) of the ORMCA) and the Durham OP in turn authorizes second tier municipalities within Region to be more restrictive in their OPs, excluding certain matters in the Plan, agriculture-related uses **not** being one of them (see Durham OP s10B.2.18).

When the Plan came into force in 2002 the definition agriculture-related uses read as follows:

“agriculture-related uses” means commercial and industrial uses that are,

- (a) small-scale,
- (b) directly related to a farm operation, and
- (c) required in close proximity to the farm operation;

The term ‘agricultural-related uses’ is similarly defined in section 15A of the Durham OP. However this use is qualified by Section 9A.2.3 of the Durham OP which says “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.”(my emphasis) The latter highlighted restriction was authorized by s8(2) of the ORMCA and is consistent with the PPS.

When the Plan was approved in 2002 agriculture-related uses were permitted in Countryside Areas of the Moraine but it was not a permitted use in either Natural Core Areas or Natural Linkage Areas, a state of affairs one would expect when you read in particular the Introduction to the Plan and s 12(1) of the Plan. Durham and Uxbridge made amendments to their OPs to bring them into line with the Plan including the fact that agriculture-related uses were not permitted within Natural Linkage Areas.

Then on May 10th 2016 the Province issued an original proposal to make changes to the Plan inviting municipalities and interested parties to send in their comments as part of a Co-ordinated Land Use Planning Review. One of the proposed changes include a new definition of agriculture-related uses that was more expansive than the one enacted in 2002. This definition does not require the use to be “small in scale”. It does not require the use to be related to “a farm operation” or “**the farm operation**”. It can relate to “farm operations in the surrounding area”. And it does not require the uses to be **exclusively devoted** to the farm operation.

The other proposed change of interest in the original proposal included permission for agriculture-related uses to occur on prime agriculture land within Natural Linkage Areas giving the example “**grain dryers to service broader farming community**”. The comments received by

the Province were later posted on the web but we were unable to find any comments relating to this particular proposal and it is our understanding that Durham Region made no submissions in that regard. In 2017 the Plan was changed and one of the changes was to allow agriculture-related uses on prime agriculture land within Natural Linkage Areas.

Neither Durham or Uxbridge have to date changed their OPs to permit agriculture-related uses within Natural Linkage Areas. Nor have they taken any steps to change their definitions of agriculture-related uses. Unfortunately, we have been unable to find any other information which would help explain why the subject changes were made to the Plan. While Durham now has the authority to permit such uses we urge Council to keep in mind they have a discretion to keep the status quo and we are of the opinion that there are many good reasons not to make the changes that are being sought on this application, the first one being the public interest in preserving the land base of both prime agriculture land and Natural Linkage Areas.

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". The World Meteorological Organization reported recently 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 no doubt that the erosion of the prime ag land base is in large part a result of 100s, maybe 1000s of site specific applications such as the one before you, which viewed in isolation may not appear to be a big deal but taken together paint a different picture altogether. 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. One way of doing that is to preserve the status quo. For close to 20 years the Region has allowed ag-related uses on prime agriculture land outside the Moraine and on Countryside Areas within the Moraine. No evidence has been proffered on this application to show either that a change is needed in the criteria for agriculture-related uses or in the areas those uses are permitted.

For example one might expect to see evidence that there is a scarcity of prime agriculture land in Countryside Areas within the Moraine coupled with a scarcity of such land outside the Moraine coupled with evidence of a scarcity of land within industrial areas within the Region that might justify Council giving consideration to allowing such uses in Natural Linkage Areas.

We must not forget the Applicant is an industry which has operated in an industrial park for the past 29 years. It sources its grain, according to its earlier website, across Canada and to a lesser extent around the world. There is no need for it to be located in the present site. Incidentally its application for a ZBL sought industrial zoning for the entire property.

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 the adjacent Natural Core Areas part of which lies on the Applicants site and which completely lies on the property to the east owned by ourselves. The operation, including the truck traffic it will generate, will likely, in addition, have an impact on the hydrological integrity of the Moraine.

For close to 20 years the Region has **not** been lobbied by the farmers of the Region to expand Ag-related uses to Natural Linkage Areas. The Region in turn has not lobbied the Province to change that status quo. Nor has the Province presented the Region with any compelling reasons why it would be in the public interest to expand this use to Natural Linkage Areas. Nor has the Applicant, the Township of Uxbridge or the planning staff of the Region of Durham presented any compelling reasons to Council why the use should be allowed in a Natural Linkage Area, a use which will diminish the land base of both the Natural Linkage Areas in the Moraine and the prime agriculture land base of the Province.

Thus far, the Applicant, the Township of Uxbridge and Durham Region have proceeded on an assumption(based on evidence and reports filed to date) that as long as the Region wants to welcome a member of the food processing industry into the Region the OPA should be granted as a matter of course. That assumption has no basis in the legal regime of Official Plans. The creation of OPs and the amendments to them require Council to carefully examine the policy considerations both for and against to arrive at a decision which they can justify to be in the public interest. Without compelling arguments or evidence to justify a departure from the status quo we ask *Council to turn down the application to amend.*

Moreover, we believe that such a decision would not only be in keeping with the purpose and objectives of Natural Linkage Areas but consistent with s 9A.1.8 of the OP which provides that prime agriculture Areas “**shall be protected** as a significant element of the Region’s economy and a secure source of food.”

Other Option:

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 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*.

An option for Durham Council would be an amendment to the OP which would allow second tier municipal Councils in the Region to permit agriculture -related uses on prime agriculture land within Natural Linkage Areas when need can be demonstrated and there are no reasonable alternatives. Just as Durham imposed the extra restriction of the necessity of such uses being “exclusively devoted to the farm operation” to better protect prime agriculture land it would be quite reasonable to impose the extra restriction of proving need and lack of alternatives and still operate consistently with the PPS and the ORMCP.

In this case the Applicant has indicated to Council that its expansion plans have been scrapped so technically it could remain where it is which is in an industrial park or, if a move is desired for other reasons, it could move to another industrial park. Given it’s present sources for feedstock and location of it’s customers Grainboys has certainly not demonstrated a **need** to relocate to the present location **nor has it demonstrated the lack of reasonable alternatives**, the most obvious one being industrial zoned land elsewhere in the Region or in the Province.

On top of that Grainboys presently has the option, if it can satisfy the definition of agriculture-related uses in the Plan, under existing OPs to relocate its industrial operation to a Countryside Area within the Moraine or, if it can satisfy the present definition of ag-related uses in the Durham OP, to prime agricultural land which is outside of the Moraine.

Agriculture-Related Uses

In the report of Nov 2nd from the Commissioner of Planning and Economic Development to the PEDC reliance is made on the applicant’s Justification Report that the primary activity “is the provision of grain milling and blending services to farm operations in the area” as the main basis for finding that the facility meets the definition of agriculture-related uses. The definition, part (d), requires the user to **“provide products or services, or both, directly to farm**

operations as a primary activity.” The evidence filed shows that the applicant is in the business of supplying customized baking products to its bakery customers in the form of blended flours that meet the customer’s individualized needs. To meet these needs Grainboys buys feedstock from sources across the country.

Most business transactions involve the sale of goods or services. Whether you are in the business of a merchandiser selling products or in the service business service selling services, in each case the customer is the recipient of the products or services and pays the provider money in exchange.

The agriculture-related definition part (d) requires the user to “provide” products or services “to” farm operations. To qualify Grainboys has to provide products or services to farm operations to qualify. It does neither. It provides no products to farmers and provides no services. It is in the business of selling blended flour to bakery customers to satisfy their individualized bakery needs. Whether you characterize Grainboys as a seller of services or a seller of products to it bakery customers doesn’t much matter. It most definitely is **not** a provider of products or services **to farm operations**.

It is obvious that it does not meet the definition. The definition on the other hand would be satisfied if Grainboys was in the business of servicing local farmers by providing milling services or washing and drying services or storage services where it would be servicing the needs of local farmers to either wash, dry, mill or store the farmers wheat in exchange for money.

That is the kind of operation the legislators had in mind and it is reflected in the wording of Durham OP s 9A.2.3 with the example “**such as grain drying and storage**” for farm operations. The May 10th 2016 provincial original proposal to amend the ORMCP also provides a similar example for the proposed “updating” of agriculture-related uses to include “**grain dryers to service the broader farming community**”. It is to be remembered, as discussed, the old definition was restricted to “a” farm. The amendment expanded it to include farm operations in the surrounding area.

The new definition makes it clear the legislative intent was to allow industrial or commercial uses that service the needs of local farmers. It was never intended to allow industrial users that make use of farm products, which would include the entire food processing industry, to qualify as an agriculture-related users.

In summary, there is no basis for Grainboys to qualify as an agriculture-related user. That being the case Council only two options. Either reject the application on that account or adjourn the application to allow the OLT to hear the appeal to determine whether or not Grainboys qualifies as agriculture-related user.

In the unlikely event you are persuaded that Grainboys does so qualify we ask that Council carefully consider the policy implications of its decision as set out above before making a decision.

All of which is respectfully submitted,

Bill Pearce

Frank Pearce

Dated thi 18th day of November 2021

Further Comments on an Application for an Official Plan Amendment for a Proposed Grain Processing Mill

Submitted by: Conrad Richter, 357 Regional Highway 47, Goodwood

Subject property: 3469 York-Durham Line, Part Lot 12 Concession 1

Applicant: Grainboys Holding Inc.

File no.: Region of Durham OPA 2021-004

Durham Region's Planning Department has made gross errors in its analyses of the Grainboys ZBA and OPA applications. The conclusions of the agriculture-related use evaluation cannot be trusted.

Background

The applicant, Grainboys Holding Inc., has applied to the Region of Durham for an official plan amendment (OPA) to permit a grain processing mill at 3469 York-Durham Line, Uxbridge Township. A concurrent application for amendment of the Uxbridge Official Plan has been approved. Both applications support an earlier zoning by-law amendment (ZBA 2020-069) approved by Uxbridge Council in June 2020.

This submission adds to an earlier submission made on July 20, 2021. I note, however, that my earlier submission does not appear in any meeting agenda or addendum of Regional Council or the Planning Committee. Therefore I am resubmitting it together with this submission.

Is Council Well Informed?

Regional Council relies on staff planners and their recommendation to decide whether to approve or deny an OPA application. The staff planners are planning professionals who are presumed to know the technical details of planning policy in Ontario and in the Region. As members of Council, you expect that they are fully informed and up-to-date on the relevant policies and that they will apply them faithfully to each application.

However it may surprise members of Council that the Region's staff planners have made gross errors in

their evaluations of the various Grainboys applications, including this OPA 2021-004.

Since 2018 there have been four applications from Grainboys for zoning by-law and official plan amendments relating to two different properties, at 351 Highway 47 and 3469 York-Durham Line, in the Township of Uxbridge. In every case there have been gross errors in the staff reports.

A Record of Gross Errors

Grainboys ZBA for 351 Highway 47, Township of Uxbridge

The Region reviewed the original Grainboys application to the Township of Uxbridge for a zoning by-law amendment for 351 Highway 47 and submitted its report to the Township on June 25, 2018.¹ In its *Planning Justification Report*,² the Applicant asserted that the “proposed use is consistent with Agriculture-Related Uses as defined in the PPS 2014 and Small Scale Industrial Uses described in ORMCP [Oak Ridges Moraine Conservation Plan 2017] Subsection 40”. The Region agreed with this assessment, concluding that “[t]he Region does not object to the proposed rezoning of the subject site”.

Staff planner David Perkins wrote:

*Countryside Areas are intended to protect prime agricultural areas and provide for the continuation of agricultural and other rural land uses. Permitted uses include, but are not limited to: agricultural-related uses and **small-scale industrial uses** consistent with the ROP [Regional Official Plan] and the Oak Ridges Moraine Conservation Plan (ORMCP). [Emphasis added.]*

However, according to s. 13(5)(a) of the ORMCP, small-scale industrial uses are expressly prohibited on prime agricultural land, and in early 2018 the Province released a new Agricultural System Mapping that clearly indicated the subject land was prime agricultural land. Perkins failed to note this in his report. He uncritically accepted the Applicant’s erroneous view that the subject land was not prime agricultural land. That the Region’s staff had no objections to permitting small-scale industrial uses was a gross error.

Grainboys ZBA for 3469 York-Durham Line, Township of Uxbridge

1 Perkins D (2018, June 25). Regional Review of a Zoning By-Law Amendment, File No. ZBA-2018-07. Letter to Jo Ann Merrick, Public Works & Operations/Development Services, Township of Uxbridge.

2 Zelinka Priamo Ltd (2018, April). Planning Justification Report: 351 Regional Road 47, Township of Uxbridge, Regional Municipality of Durham.

After Grainboys abandoned its original proposal for 351 Highway 47, it pursued a new ZBA application for a similar mill at 3469 York-Durham Line. This property is in a Natural Linkage Area. The Applicant asserted that the proposed mill is a permitted agriculture-related use. In the Region's comments submitted to the Township of Uxbridge,³ staff planner David Perkins wrote that the Region "does not object to the proposed rezoning of the subject site". However, s. 10B.2.1 of the *Durham Region Official Plan (DROP, Consolidation May 26, 2020)* does not permit agriculture-related uses in Natural Linkage Areas. Not only that, s. 9A.2.3 expressly limits what agriculture-related uses are permitted in the Region:

*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.** [Emphasis added.]*

Because grain farming portion of the property will not produce all of the feedstock required by the mill and a substantial portion will come from off-farm sources, the proposal cannot comply with s. 9A.2.3 even if agriculture-related uses were permitted on the site. These are gross errors on the part of the Region's planning department. The staff planners should have advised the Township of Uxbridge that the proposal does not meet the policies of the *DROP*.

Grainboys OPA for 3469 York-Durham Line, Region of Durham

Fearing that the ZBA would be denied by the Local Planning Appeal Tribunal, the Applicant sought to remediate its application by seeking amendments to the official plans of the Township of Uxbridge and the Region of Durham. Staff errors common to the two OPAs are discussed later in this submission. Here the focus is on an error specific to the present Regional OPA.

In the Region's staff report to the Planning and Economic Development Committee,⁴ Brian Bridgeman concluded (s. 13.1):

The proposed amendment is consistent with the PPS and conforms with the policies of the ORMCP. More specifically, the proposed amendment conforms to the four criteria listed in

³ Perkins D (2020, February 27). Regional Review of a Zoning By-Law Amendment, File No. ZBA-2019-12, SPD 2019-10. Letter to Jo Ann Merrick, Public Works & Operations/Development Services, Township of Uxbridge.

⁴ Bridgeman B (2021, November 2). Report to the Planning and Economic Development Committee, Report No. 2021-P-24 (Revised). Regional Municipality of Durham. Retrieved from <https://calendar.durham.ca/meetings/Detail/2021-11-02-0930-Planning-and-Economic-Development-Committee-Meetin/687e184e-9f46-4a8f-a3c3-add000ec0c6f>, pp. 13-21.

the definition of an agriculture-related use provided in the ORMCP. Accordingly, it is recommended that Amendment #185 to the ROP, as shown in Attachment #2, be adopted.

The proposed Amendment #185 reads:

Notwithstanding Policy 9A.2.3, a grain milling, blending and storage facility, including the accessory sales of finished products, is permitted on lands located on the east side of York Durham Line, south of Regional Highway 47, identified as Assessment 18-29-010-001-10200 in Part of Lot 12 Concession 1, in the Township of Uxbridge.

Policy 9A.2.3, quoted in the previous section, presents a key impediment to the proposed development, namely that agriculture-related uses must be “exclusively devoted to the farm operation” – an impediment that this amendment seeks to remove. But it does not remove an entirely separate impediment posed by s. 10B.2.1. That subsection pointedly omits agriculture-related uses as permitted uses in Natural Linkage Areas. If the OPA were to be approved, it would be in direct conflict with policies in s. 10B.2.1. It is hard to imagine how the Region could miss this crucial point and recommend approval.

Agriculture-related Uses – or Not?

Planners for the Applicant and the municipalities have all maintained that the proposed use of the 3469 York-Durham Line property is a permitted agriculture-related use. But is that true?

The *ORMCP* defines an agriculture-related use as “farm-related commercial and industrial uses that”,

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

(b) support agriculture,

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

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

These four criteria impose specific limitations on what operations qualify as agriculture-related. It is clear that the Province did not intend to permit just any operation that happens to process an agricultural product. For example, an operation that mills dried mango pieces to make mango powder would not be an agriculture-related use under this definition because mangoes are not grown in Canada, and thus the operation cannot satisfy criteria (a) and (c). Likewise, a milling operation that produces flour and gets all of its grain from Western Canada cannot satisfy (a) and (c). Such operations must locate on industrial lands.

If an operation gets only a small percentage of agricultural inputs from the surrounding area, past decisions at the Ontario Land Tribunal (and its predecessors, the Ontario Municipal Board and the Local Planning Appeal Tribunal) strongly suggest that such an operation will not fit the definition because it would not meet (a), (c) and (d).

It is clear then that the portion of an operation's inputs that is sourced from farms in the surrounding area is a key determining factor, and that portion must be substantial. A crucial question before Council is whether or not the proposed Grainboys operation will source a substantial portion of its feedstocks from the surrounding area. Unfortunately, the staff planners have not addressed this key question with any seriousness.

The Region's staff report ⁵ devotes exactly one paragraph (8.2) to the question of whether or not the proposed operation will meet the definition of an agriculture-related use:

The applicant's Planning Justification Report noted that the primary activity of the proposed facility is the provision of grain milling and blending services to farm operations in the area, and would benefit from being in proximity to local seed farms. According to Municipal Property Assessment Corporation (MPAC) data, there are two farm properties currently listed in the Region of Durham as growing grain seeds: one in the Township of Uxbridge and another in the Township of Brock.

The first sentence repeats uncritically the same information that the Applicant provided in its *Planning Report*.⁶ There was no credible attempt by staff to verify the Applicant's claims that feedstocks will come from the surrounding area. There was no attempt to verify that the operation will benefit from being closer to its feedstock sources. Indeed, since the beginning, starting with its first ZBA application in 2018, the Applicant has never revealed how much of its feedstock is sourced from local farms.

The second sentence reveals the full extent that the staff planners tried to answer this question. It amounts to a claim that there is a possibility that farms in Durham and Brock could supply the operation. I own a company that operates two farm properties in Durham engaged in growing and

5 Ibid.

6 Edwards S (2021). Planning Report, 3469 York-Durham Line, Uxbridge, Ontario, Grainboys Holdings Inc., Region of Durham Official Plan Amendment, Township of Uxbridge Official Plan Amendment. GHD. Retrieved from <https://www.uxbridge.ca/en/business-and-development/resources/Documents/Grainboys---3469-YD-townline-Zoning-Application/ROPA-Documents---April-20-2021/11198389-Grainboys-Planning-Report-March-2021.pdf>.

selling seeds. If the two Durham properties that the staff planners found in the MPAC database are the ones operated by my company, I can assure Council that we are not equipped to produce and supply the kinds of seeds Grainboys requires. Each seed crop requires specialized machinery and technical knowhow, and to presume that the two hits in the MPAC database proves there are farms in the surrounding area that will supply the Grainboys operation is highly unrealistic.

I contacted MPAC about its database and what data it is collecting. Brent Hammond, business development sales executive whose responsibilities include business development of MPAC's databases, wrote:⁷

MPAC collects information on the type of farm, like cash crop, dairy etc. To my knowledge there is no information collected on crops grown.

This was his response to my question about the use of the MPAC database:

I have noticed that some municipal planning departments are accessing the MPAC database to discover how many farms are growing certain crops. As a property owner in Ontario, I am not aware of MPAC collecting data on property usage. Because some planning departments are using these data in their planning decisions, I would like to know how MPAC collects crop information, and how it gets updated.

It would seem from Hammond's reply that the value of using the MPAC database to assess whether there are farms that can supply Grainboys is questionable at best.

Port Royal Mills, the Grainboys present operation, located in Aurora, advertises seeds and grains on its website that are not grown in Canada.⁸ In fact, Port Royal Mills is a major importer of certain seeds, as can be verified by a search of Industry Canada's database of major importers.⁹ In addition, Port Royal Mills claims it is a certified organic operation.¹⁰ Under the *Safe Foods for Canadians Act and Regulations*, there are strict limits on what feedstocks qualify for such operations. These are all significant limiting factors that restrict the number of farms that can supply Grainboys.

7 Hammond B (2021, November 22). Re: MPAC Used By Planning Departments. Personal email communication received by Conrad Richter, November 22, 2021.

8 Port Royal Mills (n.d.). Product List. Retrieved from <https://www.portroyalmills.com/products.html>. Examples are poppy seed which is illegal to grow in Canada and sesame which cannot grow in Canada.

9 Industry Canada (n.d.). Canadian Importers Database (CID). Accessed at <https://www.ic.gc.ca/app/scr/ic/sbms/cid/searchProduct.html?lang=eng>.

10 Port Royal Mills (n.d.). About Us. Retrieved from <https://www.portroyalmills.com/about.html>.

At the November 2, 2021, meeting of the Planning & Economic Development Committee, several of the Region's staff planners were in attendance. Councillor Yamada asked about the neighbouring property to the south of the Grainboys property. He asked:¹¹

Looking at the staff report on page 3, right at the top, the parcel south to the land in question is the St Lawrence Grains and Farm Supply. How different is the business to the south to what is being proposed by Grainboys?

Gary Muller, who is the Region's director of planning, referred the question to the project planner, David Perkins, who replied:

We were not given any information about that particular facility from the consultant. Perhaps I could defer it [the question] to Mr Steve Edwards of GHD. We can certainly give you that information at a later time, Mr Chair, but we don't have any information on the details of that operation to the south.

In the context of our discussion about agriculture-related uses and the four criteria that must be met, it is more than a little surprising that the project planner did not have any information about the adjacent property to the south. Part (a) of the definition requires that the proposed use is "directly related to, and compatible with, farm operations in the surrounding area and do not hinder those farm operations" and part (c) requires that the use "benefit[s] from being in close proximity to farm operations". How can the project planner ascertain that the proposed use meets these criteria if he doesn't know anything about the operation immediately adjacent to the subject property?

It appears that there was no serious attempt to evaluate the proposed project according to the criteria for agriculture-related uses. Perkins even suggested that Steve Edwards, the Applicant's planner, should be asked for details on the St Lawrence property. This all suggests that the Region's planning department evaluation of agriculture-related uses was superficial at best. If the use quacks like a duck, the use must be a duck, seems to be the extent of the analysis.

Trust the Staff Planners' Conclusions?

No. The foregoing shows that in this particular case the staff planners have not adequately evaluated whether the proposal is a permitted agriculture-related use.

11 Planning & Economic Development Committee (2021, November 2). [Video file]. Retrieved from <https://vimeo.com/showcase/5896427/embed/>, 12:35-14:05.

The application OPA 2021-004 should be denied.

Comments on an Application for an Official Plan Amendment for a Proposed Grain Processing Mill

Submitted by: Conrad Richter, 357 Regional Highway 47, Goodwood

Subject property: 3469 York-Durham Line, Part Lot 12 Concession 1

Applicant: Grainboys Holding Inc.

File no.: Region of Durham OPA 2021-004

The proposed amendment does not conform to the overall planning objectives and policies of the Durham Region Official Plan.

Background

The applicant, Grainboys Holding Inc., has applied to the Region of Durham for an official plan amendment to permit a grain processing mill at 3469 York-Durham Line, Uxbridge Township. A concurrent application for amendment of the Uxbridge Official Plan has been made. Both applications are in support of a zoning by-law amendment (ZBA 2020-069) approved by Uxbridge Council in June 2020.

Agriculture-Related Uses Prohibited in Natural Linkage Areas

The Applicant's proposed use of the subject property is to build a grain milling and blending facility. In subsection 5.1 of its *Planning Report*¹, the Applicant argues that the proposed facility meets the definition for agriculture-related uses as defined in the *Provincial Planning Statement* (PPS). Even if this contention is true, both the *Uxbridge Official Plan* (UOP, Office Consolidation January 2014, s. 1.9.4.2(ii)) and the *Durham Region Official Plan* (DROP, Consolidation May 26, 2020, s. 10B.2.1(b)) pointedly do not include agriculture-related uses as permitted uses in Natural Linkage Areas.

1 Edwards S (2021). Planning Report, 3469 York-Durham Line, Uxbridge, Ontario, Grainboys Holdings Inc., Region of Durham Official Plan Amendment, Township of Uxbridge Official Plan Amendment. GHD. Retrieved from <https://www.uxbridge.ca/en/business-and-development/resources/Documents/Grainboys---3469-YD-townline-Zoning-Application/ROPA-Documents---April-20-2021/11198389-Grainboys-Planning-Report-March-2021.pdf>.

As discussed in subsection 5.3 of the *Planning Report*, the subject property is located in a Natural Linkage Area, according to the Land Use Designation Map of the *Oak Ridges Moraine Conservation Plan (ORMCP)*. Therefore the proposed use would not be permitted on the property under current official plan policies. The Applicant thus seeks site-specific amendments so that its proposed use no longer fails to conform to the Regional and Uxbridge official plans.

As specified in policy 10B.2.1(b) of the *DROP*, Natural Linkage Areas form “part of a central corridor system, the purpose of which is to maintain, improve and restore the ecological integrity of the Moraine.” The policy goes on to specify that Natural Linkage Areas “support, or have the potential to support, movement of plants and animals among the Natural Core Areas and along river valleys and stream corridors.” There is nearly identical language in s. 1.9.4.2(i) of the *UOP*.

In policy 10B.2.1(b) of the *DROP*, all permitted uses of Natural Linkage Areas are permitted in Countryside Areas, with the addition of several explicitly listed uses including agriculture-related uses. While the *ORMCP* permits agriculture-related uses in Natural Linkage Areas, it is clear from policies 10B2.1(a) and (b) that Durham Regional council intended to exclude agriculture-related uses from Natural Linkage Areas.

Likewise, the *UOP* also clearly indicates that Uxbridge council intended to exclude agriculture-related uses in Natural linkage Areas. Agriculture-related uses are expressly included in the permitted uses for Countryside Areas (s. 1.9.4.3 (ii)) but not in Natural Linkage Areas (s. 1.9.4.2(ii)).

The *ORMCP* states in the Implementation section, under Municipal Implementation, that,

[n]othing in this Plan is intended to prevent municipalities from adopting official plan policies and zoning by-law provisions that are more restrictive than the policies of this Plan, except where prohibited by this Plan or where it conflicts with other provincial plans.

The foregoing indicates that both Durham Region and Uxbridge Township intended to take advantage of this right of imposing greater restrictions on Natural Linkage Areas. The more restrictive provisions are key structural planning policies designed to support and protect the Region’s natural heritage features. To approve the proposed OPA would be contrary to the intent of both official plans and would

open the door to future erosion of official plan protections elsewhere in the municipalities.

During the Region's review process to bring its official plan in conformity with the *ORMCP*, the Region repeatedly referred to the *ORMCP* provision that allows municipalities to adopt more restrictive policies in municipal official plans^{2 3 4}. There was no discussion against restricting agriculture-related uses in Natural Linkage Areas. When the new *ORMCP* terminology was inserted into the official plan those uses were simply omitted. Furthermore, during discussions with the approval authority, the Ministry of Municipal Affairs and Housing, there were no objections to the Region adopting restrictive use policies in Natural Linkage Areas. Ultimately the Ministry approved the Region's enabling amendment.

I reviewed OPAs passed since the current plan was adopted by the Region in 1991. From my analysis of the current *DROP* (Consolidation May 26, 2020), I found that the Region has never approved agriculture-related uses in Natural Linkage Areas, not at least since the official plan was amended to conform to the *ORMCP* in 2004. There was one approval (s. 10A.3.1(a)) for a seed cleaning plant and warehouse on a 4-hectare parcel located on the northern edge of the Oak Ridges Moraine, a site that appears to be mostly Countryside Area with a small Natural Linkage portion. But even if it would fail current policy, this approval likely predates the *ORMCP*. Other than this one possible exception, it appears the Region has stayed true to its policy of prohibiting agriculture-related uses in Natural Linkage Areas.

According to the *UOP*'s provisions for amending the official plan (s. 3.3),

The Official Plan is based on the best information available at the time it was prepared; changes may occur which may require amendments to the Plan.

The Applicant has not demonstrated that there has been any material change that necessitates the proposed amendment. No reason was given in the *Planning Report* to justify overturning an intended prohibition on agriculture-related uses in Natural Linkage Areas. No evidence has been provided that

2 Georgieff AL (2002, October 29). Commissioner's Report No. 2002-P-78. Region of Durham, Planning Committee.

3 Region of Durham (2003). Issues of Directions Report, Region of Durham, Planning Department.

4 Georgieff AL (2004, June 22). Commissioner's Report No. 2004-P-59, Region of Durham, Planning Committee.

the proposed use will “support or have the potential to support the movement of plants and animals among lands designated Natural Core and Linkage Area.” Indeed, no reason has been given to explain why the Applicant could not instead build the mill on a property in a Countryside Area where agriculture-related uses are permitted. If this amendment is approved without showing a justified need, it will open the door for similar proposals in the future with potentially adverse effects on the ecological integrity of Natural Linkage Areas.

In a case in York Region the Ontario Municipal Board stated that in order to amend an official plan when a proposal is not in conformity with the plan “there must be a compelling rationale provided through some expressed planning intent for the area.”⁵ Even if the provisions of a higher order planning document such as the *ORMCP* do not stand in the way of a non-conforming proposal, when that document defers to the official plan -- as the *ORMCP* does in the present case, by allowing more restrictive use policies -- the Board concluded that it “must consider the proposal in relation to the detailed Official Plan policies.”⁶ Thus the specifics of the official plan must be given full regard and the planning intent must be considered. Because the *DROP* allows agriculture-related uses in Countryside Areas only, and not in Natural Linkage Areas, this difference in policy is a clear and strong indication of planning intent. That the Region likely has never approved a site-specific agriculture-related use exception in Natural Linkage Areas reinforces this view.

To use the official plan amendment process to overturn a consistent and coherent planning policy meant to protect Natural Linkage Areas amounts to an abuse of process. A weakening of municipal planning policy, with wide implications on the future ecological health and integrity of the Region, should be done through the municipal comprehensive review process instead.

Because the requested official plan amendment threatens to overturn protections for Natural Linkage Areas it should be denied.

5 Cordone Investments v Town of Richmond Hill (2017), Ontario Municipal Board, PL15114, para. 52. Retrieved from <https://www.canlii.org/en/on/onomb/doc/2017/2017canlii47816/2017canlii47816.html>.

6 Ibid, para. 56.



The Regional Municipality of Durham Report

To: Reginal Council
From: Chief Administrative Officer and Regional Solicitor
Report: #2021-A-21
Date: November 24, 2021

Subject:

Beaverton Supportive Housing Development

Recommendation:

That Regional Council:

- A) Approve the Minutes of Settlement as found in the confidential attachment #1.
 - B) Authorize the Regional Solicitor to execute the Minutes of Settlement as attached in confidential attachment #1.
 - C) Direct the Regional Solicitor that upon approval and execution by Brock Township and the Region of Durham that the Minutes of Settlement be made public.
 - D) Direct the Chief Administrative Officer to do such things as are required to carry out the terms of the Minutes of Settlement.
-

Report:

1. Purpose

- 1.1 The purpose of this report and the confidential attachment is to provide an update on a conditional settlement reached with Brock Township in relation to the Beaverton Supportive Housing project.

2. Background

- 2.1 Regional Council approved the Beaverton Supportive Housing Development on or about July 9, 2020 in Report 2020-SS-9. Subsequently, in or about November 2020, the Council for the Township of Brock implemented an Interim Control By-law blocking the Beaverton Supportive Housing Development for an unappealable period of one year. Subsequent updates have been provided to Regional Council.
- 2.2 The Region of Durham and Brock Township have been engaged in litigation as well as settlement discussions to resolve that litigation. In or about September 2021 the Ontario Land Tribunal issued an order on consent of the parties that the site plan for the Beaverton Supportive Housing Development was approved subject to a resolution on the issue of zoning for the site. At the same time settlement discussions from the period of August 2021 to date accelerated. An agreement in principle was reached and Minutes of Settlement have been prepared subject to approval by both Councils.
- 2.3 The terms of the settlement remain confidential until approved and executed by both the Region of Durham and Brock Township.
- 2.4 A more fulsome and updated report on Beaverton Supportive Housing Development including the implications of the delay caused by the legal proceedings will follow at the appropriate time.

3. Conclusion

- 3.1 Regional staff are recommending that Council approve the Minutes of Settlement in the confidential attachment.
- 3.2 This report has been reviewed by the Social Services, Works, and Corporate Services Departments.

4. Attachments

Attachment #1: Confidential Minutes of Settlement

Respectfully submitted,

Original signed by

Susan Siopis, P.Eng
Commissioner of Works

Original signed by

Stella Danos-Papaconstantinou
Commissioner of Social Services

Original signed by

Don Beaton, BCom, M.P.A.
Commissioner of Corporate Services

Original signed by

Jason Hunt
Regional Commissioner and Director of
Legal Services
Corporate Services Department

Recommended for Approval by Council

Original signed by

Elaine C. Baxter-Trahair
Chief Administrative Officer