

To: Warden and Members of County Council

From: Director of Community Planning

Application for Official Plan Amendment OP 22-25-4 – Barbara & Johannes Hakkenberg

RECOMMENDATION

1. That Oxford County Council not approve Application No. OP 22-25-4, submitted by SBM Ltd. c/o Simona Rasanu on behalf of Barbara & Johannes Hakkenberg for lands described Part Lots 10-11, Conc. 4, (Dereham) and municipally known as 344154 Ebenezer Road in the Township of South-West Oxford to include a site specific development policy to recognize the trucking operation on the subject lands.

REPORT HIGHLIGHTS

- The application for Official Plan Amendment proposes to include a site-specific development policy to permit a trucking operation within the Agricultural Reserve, as an on-farm diversified use.
- The proposal is not consistent with the relevant policies of the Provincial Policy Statement and does not support the strategic initiatives and objectives of the Official Plan regarding on-farm diversified uses, agriculture-related uses and/or non-agricultural uses in agricultural areas.

Implementation Points

The recommendations contained in this report would result in no implementation measures.

Financial Impact

Consideration of this application will have no financial impacts beyond what has been approved in the current year's budget.







Communications

In accordance with the requirements of the Planning Act, notice of complete application and public notice regarding this proposal was provided to surrounding property owners in accordance with the requirements of the Planning Act on February 7, 2023 and May 23, 2023, respectively.

As of the date of the writing of this report, no comments have been received.

The decision of Council will be communicated to the applicant and any other parties that have expressed interest in the proposal.

Strategic Plan (2020-2022)

					
<i>WORKS WELL TOGETHER</i>	<i>WELL CONNECTED</i>	<i>SHAPES THE FUTURE</i>	<i>INFORMS & ENGAGES</i>	<i>PERFORMS & DELIVERS</i>	<i>POSITIVE IMPACT</i>
		3.ii			

DISCUSSION

Background

Owner: Barbara & Johannes Hakkenberg

Agent: SBM Ltd. c/o Simona Rasanu
 1599 Adelaide St. North, London, ON, N5X 4E8

Location:

The subject lands are described as Part Lots 10 and 11, Conc. 4, (Dereham) in the Township of South-West Oxford. The lands are located near the southeast corner Plank Line and Ebenezer Road, and are municipally known as 344154 Ebenezer Road.

County of Oxford Official Plan:

Existing:

Schedule 'S-1'	Township of South-West Oxford Land Use Plan	Agricultural Reserve
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Proposed:

Schedule 'S-1'	Township of South-West Oxford Land Use Plan	Agricultural Reserve - with a site specific policy to permit an on-farm diversified use consisting of a trucking operation/terminal
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Township of South-West Oxford Zoning By-law 25-98:

Existing Zoning: 'General Agricultural Zone (A2)'

Proposal:

The County of Oxford and the Township of South-West Oxford have received applications for Official Plan Amendment (OPA) and Zone Change to recognize an existing truck terminal that operates on the subject lands. The application for OPA proposes to implement a site-specific policy which would apply to approximately 2.3 ha (5.8 ac) of the subject lands for the purpose of recognizing the existing truck terminal use as an on-farm diversified use.

According to the Planning Justification Report submitted in support of the applications, the existing truck operation is a family owned and operated business which has operated on the subject lands since 2011 and primarily trucks bulk agricultural commodities. In total, there are approximately 20 transport trucks which make up the fleet associated with the use, and it is the intent of the business (pending approval of the subject planning applications) to secure a licence from the Ministry in order to perform safety inspections on the company's trucks.

The associated application for zone change proposes to rezone the lands on which the truck terminal operates from 'General Agricultural Zone (A2)' to 'Special General Agricultural Zone (A2-sp)' to implement the proposed Official Plan amendment and recognize the existing truck operation as a permitted use.

The whole of the subject lands comprise approximately 40.3 ha (98.6 ac) and will continue to be used for agricultural purposes or retained as natural environment features. The proposed area to be designated and zoned, including the location of existing buildings and structures, is generally as shown on Plate 3.

The lands have access to both Ebenezer Road and Plank Line, the latter of which is a Provincial Hwy and currently serves as the principal access to the trucking operation. Surrounding land uses in the immediate vicinity consist mainly of Agricultural lands with significant environmental features and recreational uses (Oxford Hills Golf Course). The Village of Mount Elgin is located approximately 800 m (2,624 ft) south of the subject lands.

In addition to an existing single-detached dwelling on the subject lands, there are a number of buildings and structures associated with the business, as outlined below:

BUILDING	APPROX. FLOOR AREA
Truck repair shop, wash bay & office	700 m ² (7,535 ft ²)
Truck bay (5 bays) and storage	1,300 m ² (13,994 ft ²)
Smaller storage building	74 m ² (797 ft ²)

Plate 1, Location Map & Existing Zoning, identifies the location of the subject lands, as well as the zoning of the lands in the surrounding area.

Plate 2, Aerial Map (2020), provides an aerial image of the subject lands and the surrounding area.

Plate 3, Applicant's Sketch, shows the proposed configuration of the lands to which the special OP and Zoning provisions will be applied.

Plate 4, Building 1 – North Side View, shows the existing wash bay, repair shop and office building.

Plate 5, Building 2 – South Side View, shows the existing truck bay/storage building.

Plate 6, Sand & Gravel Resource, shows the extent of the resource on the subject lands.

Comments

2020 Provincial Policy Statement

The 2020 Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. Under Section 3 of the Planning Act, where a municipality is exercising its authority affecting a planning matter, such decisions shall be consistent with all policy statements issued under the Act.

Section 2.3 of the Provincial Policy Statement (PPS) directs that prime agricultural areas shall be protected for long term agricultural use. In prime agricultural areas, permitted uses and activities include agricultural uses, agriculture-related uses and on-farm diversified uses.

Proposed agricultural-related uses and on-farm diversified uses shall be compatible with, and shall not hinder, surrounding agricultural operations. Criteria for these uses may be based on guidelines developed by the Province (e.g. Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas) or municipal approaches, as set out in municipal planning documents, which achieve the same objectives. New land uses, including the creation of lots, and new or expanding livestock facilities shall also comply with the Minimum Distance Separation formulae.

According to the PPS, agricultural-related uses are farm-related commercial and farm-related industrial uses that are directly related to farm operations in the area, support agriculture, benefit from being in close proximity to farm operations, and provide direct products and/or services to farm operations as a primary activity.

Alternatively, on-farm diversified uses are defined as being limited in area and secondary to the principle agricultural use of the property. On-farm diversified uses include, but are not limited to, home occupations, home industries, agri-tourism uses, and uses that produce value-added agricultural products.

Further, according to Section 2.3.6, planning authorities may only permit non-agricultural uses in a prime agricultural area for the extraction of minerals, petroleum resources and mineral aggregate resources and limited non-residential uses, provided that all of the following are demonstrated:

- the land does not comprise a specialty crop area;
- the proposed use complies with the minimum distance separation formulae;
- there is an identified need within the planning horizon for additional land to be designated to accommodate the proposed use; and
- alternative locations have been evaluated, and it has been determined that there are no reasonable alternative locations which avoid prime agricultural areas; and no alternative locations within lower priority agricultural lands.

Impacts from any new or expanding non-agricultural use on surrounding agricultural operations and lands are to be mitigated to the extent feasible.

In addition to the foregoing, the province has published a guideline document on permitted uses in prime agricultural areas which details appropriate types of agriculture-related uses and on-farm diversified uses, and provides further direction on their review criteria, in accordance with the PPS.

This review criteria provides that farm-related industrial uses may include uses such as industrial operations that process farm commodities from the area such as abattoirs, feed mills, grain dryers, cold/dry storage facilities, fertilizer storage and biomass pelletizers if they meet all the criteria for this category of uses. Many of these uses add value to the agricultural commodities produced in the area.

To be considered an agricultural-related use, the proposed use shall be compatible with and shall not hinder surrounding agricultural operations and uses should be appropriate to the available level of services. Further, agricultural-related uses shall maintain the agricultural character of the area and should not undermine the agricultural nature of the area.

This direction also provides that agricultural-related uses shall be directly related to farm operations in the area, primarily provides, produces or services that are associated with, required by or that enhance the agricultural operations in the area and such use shall be supportive of agriculture and shall directly serve farm operations as a primary activity.

Trucking yards are identified in the 'Guideline on Permitted Uses' document as an example of a use that is not considered to be an agricultural-related use or an on-farm diversified use.

Official Plan

The subject lands are located within the Agricultural Reserve designation according to the Township of South-West Oxford Land Use Plan, as contained in the Official Plan. The policies of the Agricultural Reserve designation permit a wide range of farming uses together with accessory residential uses required for the farm and farm buildings and structures necessary to the farming operation. Agricultural-related uses and secondary uses, such as home occupations are also permitted, in accordance with relevant review criteria.

Section 3.1.1 of the Official Plan directs that the goal of the Agricultural Reserve policies is to ensure prime agricultural lands are preserved for food and fibre production by avoiding the fragmentation of the land base, by minimizing conflict between agricultural and non-agricultural uses and by supporting the needs of the agricultural community by permitting land uses which are complimentary to and supportive of agriculture. The on-going goal of the Agricultural Reserve designation is to minimize conflicts between farm operations and commercial, industrial and residential developments.

Agriculture-related uses permitted in the Agricultural Reserve include agricultural commercial and agricultural industrial uses, subject to the policies of Section 3.1.4.6 of the Official Plan. Council may permit the establishment of new agricultural industrial activities subject to compliance with the following criteria:

- The predominant activity will be related to the farm operation and unable to function successfully or properly without a location in close proximity to that farm operation. Uses which do not satisfy these criteria will be directed to designated settlement areas to reinforce the traditional community and service functions of these areas.
- Only proposals stating a specific use will be considered by the Area Council. The land area proposed for the agricultural commercial or industrial use will be consistent with the requirements of the proposed use.
- The proposal must demonstrate that nearby underdeveloped or vacant, properly zoned sites are unsuitable for the proposed use before other properties are rezoned.
- For new uses, the Area Council will also be satisfied that the following locational criteria have been considered:
 - the use is proposed on existing undersized agricultural parcels of a size and shape which constrains agricultural activity;
 - the use is proposed in an area made unsuitable for agriculture by former or surrounding land uses.
- The location of the new use shall not create a traffic hazard due to proximity to bridges, railway crossings, curves or grades or any other potential traffic hazard. Further, such uses shall be located on a road capable of accommodating the nature of the traffic anticipated to be generated.
- The new use shall be limited in scale so that it does not hinder surrounding agricultural operations or other existing land uses. Appropriate scale limitations for such uses shall be established and may include limits on total floor area for associated buildings and structures, number of employees, open storage, sale of goods and materials and other provisions necessary to limit the overall type and scale of use.
- New agricultural commercial or agricultural industrial uses will be located in conformity with Minimum Distance Separation Formula I.
- The proposed use will be of a size and scale suitable for private services.
- The agricultural commercial and agricultural industrial proposal will be in compliance with the Environmental Resource and Resource Extraction policies.
- The proposal shall be subject to site plan approval to address concerns related to setbacks, building location, buffering and screening, etc.
- Agricultural commercial and agricultural industrial uses are considered to be part of the farm operation and the severance of such a use from the farm parcel shall not be permitted.

Section 3.1.5 of the Official Plan states that it is an objective of the Plan to only permit new non-agricultural uses where such uses do not conflict with the 'Goal for Agricultural Policies' set out in Section 3.1.1. Further, non-agricultural uses shall remain clearly secondary to the principal function of food and fibre production, and shall be directed to designated settlements as a first priority.

Non-agricultural uses include commercial, industrial, institutional, infrastructure, public works yards, recreational and residential uses that are not directly related to, or supportive of agriculture.

Within the Agricultural Reserve designation, the use of prime agricultural land for agricultural, mineral, petroleum and environmental resources will be given higher priority in land use decision making than other non-agricultural uses.

To maintain the agricultural land resource for agriculture and related uses, and to ensure that new commercial, industrial and institutional uses develop on an appropriate level of services, new non-agricultural commercial, industrial and institutional uses will not be permitted within the Agricultural Reserve.

Section 3.1.6 of the Plan directs that proposals to amend the Official Plan to permit the establishment of new non-agricultural uses in the Agricultural Reserve will be considered in accordance with the following:

- Justification analysis, which provides compelling evidence that the proposed development should be located outside of a designated settlement, with consideration for the following:
 - there is a demonstrated need within the planning period for additional land to be removed from agricultural production;
 - nature of the proposal and whether the use requires special locational requirements or physical features that are only available in prime agricultural areas;
 - amount of land proposed for the new development will be consistent with the requirements of the proposed use; and,
 - long-term suitability and feasibility of the proposed site for centralized waste water and/or water supply facilities or private water and private septic systems.
- Agricultural impact analysis, which demonstrates:
 - the lands do not comprise a specialty crop area;
 - there are no reasonable alternatives which avoid prime agricultural areas;
 - there are no reasonable alternatives on lands with lesser agricultural capability or on lands left less suitable for agriculture by existing or past development;
 - MDS I is satisfied; and,
 - Impacts from the new use on nearby agricultural operations are mitigated to the extent possible.
- The proposed use shall not create traffic hazards and the road infrastructure shall be capable of accommodating the new use.
- The proposal is consistent with Environmental Resource Policies and Cultural Heritage Policies.

- The proposal will not conflict with Resource Extraction Policies.
- The proposal is acceptable regarding the ability to achieve the Goal for Agricultural Policies as set out in Section 3.1.1, the precedent to be established for other sites within the County and the ability to implement planned land uses in the vicinity.

Section 3.4.1.3.1.3 of the Official Plan regarding prohibited uses in Mineral Aggregate Resource Areas directs that within the Sand and Gravel Resource Area as identified on the schedules and appendices of the Plan, new non-agricultural commercial, industrial or institutional or non-farm rural residential uses shall not be permitted.

Zoning By-law

The subject lands are currently zoned 'General Agricultural Zone A2' according to the Township's Zoning By-law. The A2 zone permits a variety of agricultural uses, including a farm and single detached dwelling if accessory to a farm. The A2 zone requires a minimum lot area of 30 ha (74.1 ac) and a minimum lot frontage of 100 m (328.1 ft).

The applicant proposes to rezone a portion of the subject lands comprising approximately 2.3 ha (5.8 ac), and generally as shown on Plate 2, to 'Special General Agricultural Zone (A2-sp)' to recognize and permit an existing trucking operation that has been established without the benefit of municipal approvals, as an 'on-farm diversified use'. The balance of the lands, being approximately 40.3 ha (98.6 ac) will remain in the 'A2' zone and would appear to meet the requirements of the Township Zoning By-law.

According to the current provisions of the Zoning By-law, an on-farm diversified use is defined as a use on a farm that is secondary to the principal agricultural use of the property, and limited in area. On-farm diversified uses include, but are not limited to, home occupations, home industries, agri-tourism uses, and uses that produce value-added agricultural products, but shall not include a home occupation as defined therein.

Agency Comments

Township of South-West Oxford Public Works Department, the Township of South-West Oxford Septic Division, Township Building Department and South-West Oxford Fire & Emergency Services Department have all indicated no concern or comments with respect to the subject applications.

The Upper Thames River Conservation Authority indicated that, as no new development is being proposed, and the area subject to the applications will be limited to the existing area utilized by the trucking business, they have no objection to the application.

The Ministry of Environment, Conservation and Parks (MECP) provided comment advising that while a zone change is not an activity that may impact species at risk (SAR) protected under the *Endangered Species Act, 2007* (ESA 2007), some proposed future development may. In this case, it is MECP's understanding that the zone change is for existing buildings on-site and that no additional development or site alteration is proposed. Based on this information, there are no concerns or need for further consultation with respect to the ESA 2007.

The Ministry of Transportation (MTO) provided comments noting that revisions and actions were required to satisfy the MTO's requirements with respect to both signage and entrances/access points. MTO notes that the existing Highway 19 access is to be used for residential purposes only. In an effort to address MTO's initial concerns regarding the westerly access to the site, the access to Highway 19 (Plank Line) was removed from the site plan drawing to the satisfaction of the MTO.

With the removal of the Highway 19 access, as of the writing of this report, staff note that all necessary revisions and actions required by MTO has been completed and the MTO is now satisfied with the proposal.

Township of South-West Oxford Council

Township of South-West Oxford Council recommended support of the proposed Official Plan amendment, and approved the proposed zoning by-law amendment 'in principle', at the Township's regular meeting of June 20, 2023.

Planning Analysis

Provincial Policy Statement (PPS)

The subject property is located within a prime agricultural area, as defined by the PPS. Section 2.3 of the PPS directs that prime agricultural areas shall be protected for long-term use for agriculture. Permitted uses and activities within a prime agricultural area include agricultural uses, agriculture-related uses and on-farm diversified uses. On-farm diversified uses are defined as those uses that are secondary to the principal agricultural use of the property, are limited in area and include, but are not limited to, home occupations, home industries, agri-tourism uses and uses that produce value added agricultural products.

The 'Guideline on Permitted Uses in Ontario's Prime Agricultural Areas', (the Guideline) published by the Province, further indicates that on-farm diversified uses should be related to agriculture, supportive of agriculture, or able to co-exist with agriculture without conflict. Uses that do not meet the policy criteria for an agricultural use, agriculture-related use or on-farm diversified use should be considered non-agricultural uses.

While the applicant has submitted a Planning Justification Report that characterizes the existing trucking operation on the lands as an 'on-farm diversified use', the above-noted Guideline specifically indicates that trucking yards are not considered on-farm diversified uses or agriculture-related uses. Further, at approximately 2.4 ha (5.8 ac), the trucking yard is not considered to be of a scale in-keeping with the spatial parameter set out in the Guideline for an on-farm diversified use.

While the provincial guidance regarding whether an on-farm diversified use is secondary to the principal agricultural use places emphasis on the spatial characteristics of the use (i.e. the footprint occupied by the use and amount of agricultural land displaced or unavailable for agricultural production), it is the opinion of this Office that it is equally important to consider the

nature and scale of the proposed use relative to the agricultural operations on the lot, in terms of size and importance. To this end, the subject property comprises approximately 40 ha (99 ac) and the agricultural operation on the property appears to be limited to approximately 10 ha (25 ac) in crop production.

Further, there appears to be limited farm infrastructure on the lands to support other types of farming operations, with the vast majority of the property being comprised of significant natural heritage features. The extent of any livestock on the subject lands is limited to fewer than 10 cows, for the property owner's personal use. As such, it is the opinion of staff that the trucking yard is of a size and scale that is not considered secondary to the principal farm operation of the subject on the lands.

In light of the foregoing, Planning staff have considered the trucking operation in accordance with PPS policies for non-agricultural uses, as outlined in the 'Provincial Policy Statement 2020' Section of this report. The subject lands do not comprise a specialty crop area as defined by the PPS, and the Township Chief Building Official has confirmed that the current use would appear to comply with the minimum distance separation requirements from nearby livestock/poultry operations. Further, it is understood that the operation can continue to function with its existing access to Ebenezer Road, and that the use of the Highway 19 access is to be for residential purposes only (to satisfy the comments received from MTO). Staff are satisfied that the lands on which the truck operation has been established have been limited with respect to impacts on the abutting natural heritage features (local wetland and ecologically significant woodland).

However, staff are of the opinion that the need for lands to accommodate the use at this location, particularly in the context of considering alternative locations, has not been established. Specifically, there would appear to be reasonable alternatives for the establishment of this use in nearby Mount Elgin, which has a significant amount of industrially-designated land that would avoid prime agricultural areas.

In conclusion, Planning staff are of the opinion the applicant's proposal to permit a trucking yard on the subject lands is not an on-farm diversified use or an agriculture-related use and the location of the operation is not consistent with the policies of the PPS for the establishment of a non-agricultural use in a prime agricultural area.

Official Plan

The purpose of the proposed Official Plan amendment is to include a site-specific policy for the subject lands to facilitate the continued use of the lands (being the approximately 2.3 ha or 5.8 ac on which the use operates) for a trucking operation.

As noted previously in this report, the applicant is proposing to establish the use as an on-farm diversified use (OFDU) in accordance with Provincial policy and guidelines for such uses. Staff are of the opinion that the use does not meet the tests set out in those documents for an OFDU (specifically, trucking yards are noted as a use that is not considered an OFDU for the purposes of provincial policy and/or the Guideline).

Staff have evaluated the proposal in accordance with the review criteria of the Official Plan to permit the establishment of a new non-agricultural use in the Agricultural Reserve designation. To this end, while the location of the lands for the use has some positive characteristics, as identified in the consideration of Provincial policy, and the trucking operation would appear to be using only lands consistent with the requirements of the development, the applicant has not demonstrated that the use has special locational requirements that are only available in a prime agricultural area. Further, the location of the use would not appear to meet the 'no reasonable alternatives' criteria that are included in both the PPS and the Official Plan.

Regarding the policies of the Official Plan related to Sand and Gravel Resource Areas, the subject lands are located within a broader area identified as a secondary gravel resource. While a significant portion of the site on which the trucking use is established is outside of the said resource area, the southerly portion of the lands are within the area (see Plate 6). As noted, non-agricultural uses are prohibited in such areas.

As noted previously, the goal for agricultural policies, as contained in the Official Plan, direct that the County will ensure that prime agricultural areas are preserved for food and fibre production by minimizing conflict between agricultural and non-agricultural uses and by supporting land uses which are complimentary to, and supportive of agriculture. The trucking operation, although dealing in agricultural products, is a use which is generally viewed as being incompatible with the goals and objectives of the Official Plan for the Agricultural Reserve, and further, it is noted that the use as it currently exists, was not legally established on the subject lands.

In light of the foregoing, Planning staff are of the opinion that the applicant's proposal to amend the Official Plan to introduce a special policy to allow for a trucking business as an on-farm diversified use, or as a non-agricultural use in an agricultural area does not support the strategic initiatives and objectives of the policies of the Agricultural Reserve and has the potential to set an undesirable precedent for the establishment of such uses going forward.

Zoning By-law

The subject lands are currently zoned 'General Agricultural Zone (A2)' in the Township Zoning By-law, which permits a wide range of agricultural uses, but does not allow a transport truck terminal, which is defined to mean the use of lands, buildings or structures where trucks and/or transports are loaded or unloaded, stored, serviced, rented, leased, kept for hire or parked for remuneration or from which trucks and/or transports are dispatched as common carriers or where goods are stored temporarily for further shipment. These types of uses are typically restricted to lands zoned 'General Industrial (MG)', which are predominantly located within settlement areas.

As the subject lands appear to have been utilized as a trucking operation since at least 2011 (based on information obtained from the applicant's Planning Justification Report), it is reasonable to believe that the existing use of the property for a trucking business is in contravention of the Zoning By-law.

Conclusions

In light of the foregoing, Planning staff are of the opinion that the request to permit a trucking business on the subject lands as an on-farm diversified use, or as a non-agricultural use, is not consistent with the policies of the PPS and does not support the strategic initiatives and objectives of the Official Plan. As such, staff are of the opinion that the proposal should not be given favorable consideration.

SIGNATURES

Report Author:

Original Signed By _____
Spencer McDonald, MCIP, RPP
Development Planner

Departmental Approval:

Original Signed By _____
Gordon K. Hough, RPP
Director of Community Planning

Approved for submission:

Original Signed By _____
Benjamin R. Addley
Chief Administrative Officer

ATTACHMENTS

- Attachment 1 - Plate 1, Location Map & Existing Zoning
- Attachment 2 - Plate 2, Aerial Map (2020)
- Attachment 3 - Plate 3, Applicant's Sketch
- Attachment 4 - Plate 4, Building 1 – North Side View
- Attachment 5 - Plate 5, Building 2 – South Side View
- Attachment 6 - Plate 6, Sand & Gravel Resource