October 20, 2022

# A1: ADDENDUM STAFF REPORT

## Development Permit Application:

### H/I/2018-2019/261

7106 McNiven Road

Lot 11, Concession 1

Town of Milton, Region of Halton

### Proposal:

To recognize the unauthorized establishment of a grass cutting and snow plowing business (Pro Mow Maintenance Inc.) involving the use of two existing accessory structures and outdoor storage of machinery and vehicles on a 1.6 ha (4.1 ac) lot.

### Received:

August 20, 2018

Note: The application was put on hold at the request of the applicant.

### Source:

REDACTED (property owner and business owner since September 2014)

### Designations:

Escarpment Rural Area

### Issue:

The business does not meet the definition of any permitted use and is recommended for refusal and as such must go to the Commission for a decision. There are agency objections from the Town of Milton and Region of Halton. The NEC has received complaints from a neighbour about the operation of a business and the burning of debris on the property. A business has been operation on the property since 2014 and no NEC Development Permit was issued for the change in use of the residential property to include the business use. At the June 2019 Commission meeting, the Commission deferred the decision to allow the applicant additional time to prepare. The application did not move forward during the pandemic because the applicant wished to appear before the Commission in person.

### Recommendation:

Refusal

### Reasons:

The use is not permitted in the Escarpment Rural Area under the Niagara Escarpment Plan, 2017; the proposed business is not supported by consulted agencies nor consistent with the Town of Milton Official Plan and Region of Halton Official Plan; and the proposal appears to be in conflict with Section 2.3 for Agriculture in the Provincial Policy Statement.

### Related Files:

Development Permit #1335/H/A/1980-1980/109 was issued in 1980 to a previous owner for an agricultural storage building. There are no records of prior Development Permit Applications related to the business.

### Background:

At the June 20, 2019 Commission meeting, the Commission deferred a decision on the subject application to allow the applicants additional time to prepare. The meetings subsequently switched to a virtual platform due to COVID-19 and at the request of the applicant, the application was put on hold so they could attend the meeting in person. With meetings now taking a hybrid format, the application is again before the Commission for a decision. A copy of the original staff report is attached in Appendix 1.

There have been a few updates to the application since the application was last before the Commission. Firstly, the applicant submitted an updated letter on September 9, 2022, outlining the nature of the business in addition to three letters from neighbours and clients. The letters are attached in Appendix 2. Secondly, the Region of Halton’s comments were not addressed in the original staff report, although a copy of the comments was provided to the Commission at the meeting. The Region of Halton had provided formal comments after the previous report had been sent to the Commission. These comments are attached to this report in Appendix 3. Lastly, the Provincial Policy Statement has been updated since the original report. This addendum report is being presented to outline these updates.

The original staff report from 2019 contains the full planning analysis, however due to the amount of time that has passed, this report contains a brief summary of the analysis previously provided in addition to the new information. Despite this additional information, the contents and planning analysis and staff’s recommendation to refuse the application, as outlined in the original June 2019 staff report, remain unchanged.

### Site Description:

The subject property is located on the west side of McNiven Road, north of Derry Road in the Town of Milton, less than one kilometre from the Kilbride Minor Urban Centre. The property is surrounded by agricultural properties, forested areas, and rural residential properties. The property contains a single dwelling and several accessory buildings. These buildings are used for a combination of uses, including for personal use, small-scale agricultural uses (i.e., kitchen garden, poultry), and for the business.

The property contains a tributary of Bronte Creek at the rear and associated flooding and erosion hazards. Most of the property is mapped as within these hazard lands. While not on site, there are several wetlands in proximity of the property. The east side of the watercourse contains sparse vegetation and is located approximately ten metres from the nearest structure on the property. The west side of the watercourse is wooded and connected to a larger wooded area that contains the above-mentioned wetlands. The property is relatively flat, sloping downward toward the creek at the west.

### Proposal:

The business first came to the attention of the NEC when a complaint from a neighbour was received in June 2017, alleging that there is a business operating from the property with large trucks, trailers, and machinery as well as the burning of leaves and garbage on the property. The Development Permit Application was received in August 2018 to recognize the unauthorized establishment of the business using the existing structures. The applicants began operating the business ten years prior to purchasing the property in 2014.

The applicants describe the business as a snow removal and lawn mowing business and not a landscaping business. The business uses a 107 sq m shed for equipment storage and repairs and a 107 sq m structure for equipment storage. Both structures are used for business purposes, farm use, and personal use. Equipment consists of three pickup trucks with snow plows, three landscape trailers, one dump trailer, one compact sidewalk tractor, two slide in pickup salters, and empty salt boxes (summer only).

In the recently received letter, the applicants indicated that they have scaled down the operation since 2019. The business had previously employed three members of the household full time, and one full time and two part time external staff. There are now three employees, two of whom reside on the property, working four days per week in the summer. There is an additional on-call part time employee for winter storms. There is only small-scale maintenance on-site, such as maintenance of lawn mowers, and all other maintenance, including vehicle maintenance, is done off-site. There is only storage of fuel in gas cans and no storage of road salt or landscaping materials (i.e., mulch, soils, stones, fabrics) on-site. Storage of vehicles and equipment is currently within the accessory buildings and outside on gravel and grassed surfaced. Additionally, the firepit has been removed and restored and garbage and debris are disposed of off-site.

The applicants were farmers before purchasing the property and continue to have chickens and turkeys and a vegetable garden on site and cattle and crops on rented land. However, agriculture does not appear to the primary use of the property and as discussed in the agency comments, the Region of Halton does not consider the property to meet the definition of a commercial farm.

### Planning Analysis:

#### Niagara Escarpment Plan, 2017

The property is entirely designated as Escarpment Rural Area by the Niagara Escarpment Plan, 2017 (NEP). The property is also mapped as within a Prime Agricultural Area by the Agricultural Land Base for the Greater Golden Horseshoe and Region of Halton Official Plan.

The original staff report provided a detailed analysis of the permitted uses for the Escarpment Rural Area, noting that the proposed business does not meet the definition of any permitted use within this designation. This analysis included review of the definitions for an agricultural use, agriculture-related use, on-farm diversified use, home industry, and accessory use.

In summary, the business cannot be considered an agricultural use, as it does not produce any products as noted in the definition nor constitute a normal farm practice. The business cannot be considered an agriculture-related use, as the business is not directly related to farm operations in the area or providing services to farm operations as a primary activity. Although neighbouring farms may be clients of the business, the business has a number of rural, institutional and municipal clients. The business cannot be considered an on-farm diversified use, as it is not secondary to a principle agricultural use on the property. NEC staff note that OMAFRA’s Guidelines for Permitted Uses in Prime Agricultural Areas include examples of uses that would typically not fall into certain permitted use categories. Landscape businesses would not be considered agricultural uses, contractor’s yards and landscapers would not be considered agriculture-related uses, and large-scale landscaping businesses do not constitute on-farm diversified uses. While the snow plow and grass cutting business may not be considered a landscaping business, these are closely aligned uses. It is also noted that a smaller scale landscaping business may be considered an on-farm diversified use, however, as noted, the business use is not secondary to an agricultural use as required by the definition and policies.

The definition of a home industry specifies that the use is accessory to a single dwelling or agricultural operation, performed by one or more residents of the household on the property, and provides a service primarily to rural or farming community. While some aspects of this definition may be met, the business includes the storage of materials and equipment on-site, but the majority of work is conducted off-site. The definition of accessory is “naturally and normally incidental, subordinate and exclusively devoted to the principal use located on the same lot”. The business is related to a use that is not conducted on the lot and therefore cannot be considered as accessory to the single dwelling and does not meet the definition of a home industry or accessory use.

When a use is not considered a permitted use under Part 1 of the NEP, a review of the Development Criteria in Part 2 of the NEP is not conducted. However, it is important to note that there are a number of technical concerns with the proposal that would need to be evaluated if the proposal were considered a permitted use. These include the impacts on natural hazards (Part 2.2.2), water resources (Part 2.6), natural heritage (Part 2.7), and agricultural lands (Part 2.8). As noted by the Region of Halton, further investigation of environmental impacts would be required, such as through an Environmental Impact Assessment. Additionally, the Development Criteria specific to each of the above uses (i.e., home industries, agriculture-related uses, on-farm diversified uses) would need to be reviewed in full. However, it is notable that Part 2.2.10(i) states that home industries are to be located in a manner that considers potential land use compatibility issues, such as noise, odour and dust, with adjacent more sensitive uses. The surrounding area is a mix of small, rural residential lots and some larger farm lots. The complaints received from nearby residents suggest that the proposal may not be a compatible land use.

#### Provincial Policy Statement, 2020

Staff have reviewed the proposal in the context of the 2020 Provincial Policy Statement (PPS). At the time of the original staff report, the 2014 Provincial Policy Statement was in effect. There have not been major changes to the relevant policies and as such the new PPS does not change staff’s recommendation. Part 2.3 of the PPS provides for the long-term protection of prime agricultural areas for agricultural use. As the snow removal and grass mowing business is not considered an agricultural use, agriculture-related use, or on-farm diversified use, it is not a permitted use in prime agricultural areas. The location of the business is in close proximity to a woodland and watercourse. It remains unclear if the policies for natural heritage and water within Sections 2.1 and 2.2, respectively, can be satisfied. Additionally, the buildings and outdoor storage area are within the floodplain and erosion hazard warranting consideration of Section 3.1 regarding natural hazards. However, it is recognized that the buildings are already existing.

### Agency Consultations:

#### Region of Halton

The subject property is designated as Agricultural Area and Regional Natural Heritage System (RNHS) within the Regional Official Plan. The Agricultural Area is also subject to the Prime Agricultural Area overlay. The landscape and snow plow business is located within the RNHS designation. There is no direct link between the business and a primary farm operation on the subject lands and furthermore the business use is not considered an agricultural, agriculture-related, or on-farm diversified use.

Regional staff have determined that the business does not meet any of the definitions and/or associated criteria for permitted uses within the RNHS. The use is commercial in nature, includes outdoor storage of work machinery and vehicles, does not appear to primarily serve the rural or farming community, and an essential component of the work is conducted offsite. The applicant has not demonstrated that the existing small-scale chicken farm or any other activities on the property meet the definition of a commercial farm in the Regional Official Plan.

Additionally, there are technical concerns with the use that have not been satisfactorily addressed. The subject lands contain and are adjacent to key natural heritage features and as such, the Region’s Environmental Impact Assessment (EIA) requirements would be triggered. Regional staff would require a minimum of a 10 m setback from the dripline of the woodlands or an EIA would be required. There may be an opportunity to protect natural hazard and heritage features and impose appropriate setbacks. Further site assessment and potential environmental work through an EIA would be required to ensure policy is met.

#### Town of Milton

The Town of Milton has not submitted any additional comments since the last report and meeting. The attached original staff report discusses the Town of Milton’s comments in detail. Town of Milton staff object to the landscaping and snow plow business, as it is not a permitted use in the Town of Milton Official Plan and staff have concerns regarding the impact on environmental features.

#### Conservation Halton

The attached original staff report discusses Conservation Halton’s comments. The property contains a watercourse and associated flooding and erosion hazard, however the structures are existing and as such staff have no objection.

#### Ministry of Natural Resources and Forestry (MNRF)

The attached original staff report discusses MNRF’s comments, which present concerns with proximity to the creek and potential species at risk vegetation.

### Discussion:

NEC staff has not changed its recommendation to the Commission as a result of the updated letter provided by the applicant, Halton Region’s comments, and the updated Provincial Policy Statement. Both the Region of Halton and Town of Milton do not consider the grass cutting and snow plowing business as a permitted use under their Official Plans and note technical concerns due to the proximity to key natural heritage features. As per the Regional Official Plan, home industries, small-scale businesses, and horticultural trade uses are only permitted in conjunction with a commercial farm, provided that the use is secondary to a farming operation and all other criteria are met. Town staff would consider the use as a horticultural trade use, which is only permitted on a commercial farm.

The business does not meet the definition of any permitted use within the Escarpment Rural Area designation. The business cannot be considered an agricultural use, agricultural-related use, or on-farm diversified use, as it is not directly connected with farming operations on the property or in the area. While the Regional Official Plan has a restriction on home industries only being located on a commercial farm, the NEP does not have this restriction. A home industry may be accessory to a either a single dwelling or agricultural use under the NEP. However, the majority of the business is conducted off-site and therefore is not considered accessory to the single dwelling and not a home industry. Concerns have been raised that the activities that are conducted on site are not compatible with the surrounding rural residential area.

NEC staff continue to recommend that the application be refused. The grass cutting and snow plow business is not a permitted use in the Niagara Escarpment Plan within the Escarpment Rural Area designation, nor under the Town of Milton Official Plan or Halton Region Official Plan. Since the business is not a permitted use, the Development Criteria in Part 2 of the NEP are not applicable. However, staff note that a number of technical concerns would need to be addressed. Furthermore, the business is not supported by Section 2.3 of the PPS, which limits permitted uses in prime agricultural areas.

### Recommendation:

The application be refused for the following reasons:

1. The proposal is not a permitted in the Escarpment Rural Area designation of the Niagara Escarpment Plan.
2. The proposal does not conform to the Region of the Halton Official Plan nor the Town of Milton Official Plan. The proposed is not supported by either of these consulted agencies.
3. The proposal is not supported by policies in Section 2.3 for Agriculture in the Provincial Policy Statement.

### Prepared by:

*Original signed by:*

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Cheryl Tansony

Senior Planner

### Approved by:

*Original signed by:*

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Kim Peters, MCIP, RPP

Manager

### Attachments:

Appendix 1 – Original Staff Report, June 2019

Appendix 2 – Letters from applicant and neighbours

Appendix 3 – Region of Halton comment letter

## APPENDICES 1, 2 AND 3 AVAILABLE IN SEPARATE DOCUMENTS