November 17, 2022

# C4 SECOND 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 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

### Background:

The subject application was first before the Commission at the June 20, 2019 meeting. The decision was deferred at that time to allow the applicants additional time to prepare. The application was subsequently put on hold at the request of the applicants due to COVID-19 and the switch to virtual meetings. The application returned to the Commission for a decision at the October 20, 2022 meeting. The original staff report and addendum staff report are attached in the appendices.

Staff had recommended refusal of the application, as the business does not meet the definition of any permitted use within the Niagara Escarpment Plan, 2017 (NEP) and is not consistent with the agricultural policies in the Provincial Policy Statement, 2020. There are agency objections from the Town of Milton and Region of Halton, as the use does not conform to the Town and Region’s Officials Plans. The NEC has also received a complaint from a neighbour about the business.

The Commission passed a motion to support the Development Permit Application at the October 2022 meeting, subject to conditions of approval to be drafted by staff and presented to the Commission at a later date. It was the Commission’s interpretation that the business use could be considered as a home industry.

### Discussion:

Staff has not changed its professional planning advice to the Commission that the proposal does not meet the permitted uses in Part 1 of the Niagara Escarpment Plan (NEP). An assessment of Part 2 of the NEP was not previously completed, as the use was not considered a permitted use under the NEP. As noted, the Commission has interpreted the grass cutting and snow plowing business as a home industry. Staff are still of the opinion that the business use does not meet the definition of a home industry, as the use is not accessory to the single dwelling or an agricultural use on the property. However, staff will refer to the use as a home industry in this report and the conditions of approval following the Commission’s interpretation.

Staff has reviewed the applicable Development Criteria under Part 2.2.10 of the NEP. Many of these criteria have been incorporated as conditions of approval, including limits to the total area devoted to the use, requirements that the home industry is operated by residents of the household, and a prohibition on outdoor storage. However, the proposal conflicts with Part 2.2.10 j of the NEP, which states that municipal official plan policies and standards (e.g., lot size, parking, floor area, retail space) must be met. The use is not permitted by the Town of Milton or Region of Halton Official Plans and as such this criterion cannot be met. Nonconformity with these plans could pose future challenges if additional approvals are required, such as a business license, site plan approval, or official plan amendments.

Draft conditions of approval are included to address the environmental constraints on the property. Without an accurate, scaled site plan, there are still some uncertainties with the potential impact to the adjacent watercourse and woodland. To address this uncertainty, a condition has been included that requires all development, the watercourse, the woodland, and the setbacks of development to these features to be accurately identified on the site plan. Another condition requires the parking areas to be setback a minimum of 10 metres from the features. If this setback is not met, either an Environmental Impact Study or Restoration Plan would be required. This condition is to ensure that the Part 2.7 (Natural Heritage) and Part 2.6 (Water Resources) development criteria are met in addition to Part 2.2.1 of the NEP, which states that the Escarpment environmental shall be restored, protected and where possible enhanced for the long term.

On the direction of the Commission from the October 2022 meeting, staff has drafted the attached conditions of approval to mitigate the extent to which the development conflicts with the policies of the NEP. Notwithstanding the fulfillment of these conditions, the development would not be in full compliance with the provisions of the NEP. Of particular note, the conditions are unable to address the conflict with Part 2.2.10.j, which requires that the proposal comply with municipal policies and standards.

### Prepared by:

Original signed by:

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Cheryl Tansony

Senior Planner

### Approved by:

Original signed by:

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*for* Kim Peters, MCIP, RPP

Manager

### Attachments:

Appendix 1 – Conditions of Approval

Appendix 2 – Original Staff Report, June 2019

Appendix 3 – Addendum Staff Report, October 2022

## APPENDIX 1

1. Development shall occur in accordance with the Terms and Conditions of the Development Permit.
2. The Development Permit shall expire three (3) years from the date it has been issued or once the development has been completed in accordance with the Development Permit.
3. No site alteration, vegetation removal or construction is permitted in conjunction with the Development Permit, unless it is recommended as mitigation within an Environmental Impact Study.
4. The Development Permit is not transferable to a new property owner.
5. The home industry shall be operated by residents of the household on the property. A maximum of 3 additional employees is permitted.
6. The total area devoted to the home industry on the property, including interior storage within the two accessory buildings and parking, shall not exceed 125 square metres.
7. There shall be no outdoor storage on the property.
8. There shall be no storage of landscaping materials, waste, or road salt on the property.
9. Employee vehicles may only be parked temporarily during business hours.
10. Retail sales shall not be permitted.
11. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, an accurate and detailed **Final Site Plan** prepared by a qualified professional shall be submitted for Niagara Escarpment Commission approval. The following stipulations shall be included directly on the Plan:
12. The Final Site Plan shall be prepared by a qualified professional;
13. All drawings submitted must be drawn to scale (bar scale shown), reference the application number and address of the proposal, be dated (revisions as well), and include the name of the relevant individual or consultant who prepared the drawing;
14. Outline of the approved development envelope / extent of all disturbed areas;
15. Location of all existing and proposed structures, parking area, sewage disposal system, well/cistern, driveway, exterior lighting, etc. showing setbacks from the property lines.

Condition 11 continued:

1. Surveyed location of the watercourse bank and dripline of the wooded area and the setback of these features to the parking area.
2. Summary table showing the total area devoted the home industry use, including each accessory building and parking area.

Development shall proceed in accordance with the details of the approved Final Site Plan.

1. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission,** the landowner shall submit for the approval of the Niagara Escarpment Commission, **Final Floor Plans**for the existing and proposed development, including the total area devoted to each use. Development shall proceed in accordance with the details of the approved Final Floor Plans.
2. All parking areas shall be setback a minimum of 10 metres from the wooded area and creek. If this setback is not met, one of the following conditions will apply:
   1. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, an **Environmental Impact Study** shall be submitted for the approval of the Niagara Escarpment Commission; OR
   2. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, a **Restoration Plan** shall be submitted for the approval of the Niagara Escarpment Commission showing the restoration of all parking areas within 10 metres of the wooded area and creek.
3. Conditions 11, 12, and 13 must be fulfilled within eighteen (18) months (1.5 years)from the date of confirmation of the Commission’s decision or this conditional approval shall lapse and a Development Permit will not be issued.

**ADVISORY NOTES**

1. A Development Permit does not relieve the permit holder of any other permission (e.g., Ontario Building Code, *Conservation Authorities Act, Endangered Species Act,* Town of Milton Open Air By-law, etc.). A Niagara Escarpment Commission Development Permit is required prior to the issuance of any other permission.
2. Should deeply buried archaeological remains/resources be found on the property during construction activities, the Heritage Operations Unit of the Ontario Ministry of Tourism, Culture and Sport (MTCS) shall be notified immediately. In the event that human remains are encountered during construction, the owner shall immediately notify the police or coroner, the Registrar of Cemeteries of the Ministry of Small Business and Consumer Services, and Ministry of Tourism, Culture and Sport.

Advisory Notes continued:

1. This Development Permit does not authorize the use of signage for advertising or any other purpose, unless such signage was approved under this Permit, is required by law (e.g., Ontario Building Code, municipal by-law) or is exempt under Section 5.35 or 5.36 of Ontario Regulation 828/90. Please consult the Niagara Escarpment Commission should you wish to erect signage on your property.