



Planning and Development Services

Prepared for: Council-in-Committee

Report: PDS-16-2024

Meeting Date: April 9, 2024

File: 350308-0077

1. Title

Request for Minister's Zoning Order – 1589 Nigh Road

2. Recommendations

That: Council receives for information purposes Report PDS-16-2024 regarding a request for Minister's Zoning Order for 1589 Nigh Road.

3. Relation to Council's Corporate Strategic Plan

Priority: Sustainable and managed growth

Initiative: 3.1 Manage Growth in a responsible manner.

4. List of Stakeholders

- 2538070 Ontario Limited (Bryce Ivanchuk) – Owner
- PLW Consulting (Leigh Whyte) – Agent
- External agencies (E.g., Niagara Region, NPCA, Public Utilities, etc.)
- Residents and Property Owners in the Town of Fort Erie

5. Purpose of Report

The purpose of this report is to make a recommendation to Council regarding the request for Council support for a Minister's Zoning Order for an Urban Boundary Expansion at 1589 Nigh Road. A Location Map of the subject lands is included as **Appendix 1**.

6. Analysis

6.1 Background

A Draft Plan of Subdivision application for the lands municipally known as 1589 Nigh Road was submitted to the Town of Fort Erie in March of 2008 and received draft approval from Town Council on January 16, 2012 for the development of 10 lots for single detached dwellings, two blocks for environmental protection, and a new public street, as detailed in **Appendix 2**. The subject lands have an area of 9.51 ha (23.5 acres) and are located outside of the urban boundary on the south side of Nigh Road, between Buffalo Road and Rosehill Road. The lots will be serviced with private septic systems and water cisterns. The complete history of the

subdivision is outlined in Staff Report [PDS-15-2024](#), regarding another requested extension to the planning application.

6.2 Urban Area Boundary Expansion

In addition to the requested extension, the Developer is also requesting support on a proposed Ministry Zoning Order (MZO) to expand the Town's urban area boundary to include the subject lands. The Developer's intent to include the lands in the Urban Area Boundary is to increase the housing density from 10 single detached dwellings to 150 single detached dwellings. According to the Developer, these units will be sold at an attainable price.

The typical process to expand an urban boundary would be through a Municipal Comprehensive Review. The Niagara Region completed a Land Needs Assessment (LNA) as part of a Municipal Comprehensive Review ahead of approving their 2022 Niagara Official Plan. Outside of a Municipal Comprehensive Review process, there are two mechanisms that could facilitate an urban boundary expansion. These mechanisms are the Community Infrastructure and Housing Accelerator (CIHA) and an MZO.

6.2.1 Community Infrastructure and Housing Accelerator (CIHA)

The CIHA is a means for the Minister of Municipal Affairs and Housing, at the request of a municipality, to issue an Order under Section 34.1 of the *Planning Act* that establishes site-specific zoning provisions to facilitate development. In addition to providing typical zoning by-law provisions such as permitted uses and standards for development, the Minister's Order may also provide inclusionary zoning provisions and any other conditions regarding the use of land or the erection, location or use of buildings or structures that are deemed reasonable. These conditions may be imposed on a municipality and/or a development proponent.

This type of Order is not permitted anywhere within the Greenbelt Plan area (including lands within the Niagara Escarpment, Oak Ridges Moraine, Protected Countryside, Glenorchy, and Urban River Valley Areas of the Greenbelt Plan).

While an Order under Section 34.1 of the *Planning Act* is issued by the Minister of Municipal Affairs and Housing, the municipality requesting the Order is required to:

- Issue notice of its intent to make the request and consult with the public in a manner deemed appropriate by the Town,
- Consult with and consider the interests of Indigenous communities,
- Pass a Council resolution to make the request,
- Provide the contents of the Order the municipality is seeking the Minister to issue (i.e., the draft zoning by-law), and
- Provide a certificate or attestation (signed by a land use planner or lawyer) that the draft zoning by-law, if approved, provides the necessary zoning relief to facilitate the proposed development.

The Minister then can make the following decisions:

- Issue, modify and issue, refuse to issue, or revoke (after issuing) an Order;

- Provide exemption from provincial plans, Provincial Policy Statement and/or municipal official plan(s); or
- Impose conditions, including the provision of affordable housing, on the Town and/or landowner, including requirement to enter into agreements registered on title.

The Minister's decision is final and not subject to appeal.

The Town is responsible for issuing notice of the Minister's decision and, if the decision is to issue an Order, the Town must make the Order available to the public until it is revoked.

The intent of issuing such an Order is to accelerate development by establishing zoning provisions that may or may not be consistent with Provincial Policy Statements, and/or in conformity with provincial plans and/or municipal official plans, and further remove any right of appeal with respect to the Minister's decision regarding the issuance of the Order.

In that regard, where the Minister does issue such an Order, the understanding is that building permits can be issued more expeditiously than they would where the development proponent would otherwise need to seek amendments to Provincial or municipal policies and/or plans, and/or have to defend a development application before the Ontario Land Tribunal. It is expected that the time saved would help the resultant housing and/or infrastructure to be more affordable than if the traditional planning process were used.

When making the Order, the Minister may impose any number and range of conditions. These conditions could include requirements for affordable housing, including setting threshold price/rent and affordability periods for such units, similar to Inclusionary Zoning. Agreements regarding the fulfillment of these conditions can be registered on title and imposed on subsequent property owners.

6.2.2 Challenges with the CIHA Process

Greater possibility for error owing to a hasty process

Despite the requirements for consultation with both the public and Indigenous communities, the requirement for a Council resolution, and a certificate/confirmation regarding the nature of the by-law, there is a concern that the speed at which this tool is being implemented may result in inadequately prepared zoning by-laws that are based on limited information.

Prioritizes provision of housing and/or infrastructure over other matters of provincial or local interests, which may have negative consequences

The approval of the development may have negative consequences since the Order is not required to be consistent with the PPS or conform with provincial plans or municipal official plans. The consequences may include permitting development in floodplains and increasing risk to health and safety, permitting development over provincially significant wetlands and other critical natural areas thereby reducing natural heritage protection, permitting unnecessary urban sprawl on prime agricultural lands resulting in loss of agricultural lands and negatively impacting the rural economy, or loss of employment lands thereby precluding large employers and economic opportunities for the community.

Loss of Council autonomy

Once a request is made to the Minister, the requesting municipality loses autonomy with respect to the requested Order, given that the Minister's discretion with respect to issuing such an Order to bring the by-law into effect includes:

- Not issuing the Order,
- Issuing the Order, or
- Modifying and issuing the Order.

As such, there is a risk that the resulting by-law may or may not satisfy all of the municipality's interests in relation to the ultimate development of the site. Furthermore, the Minister's decision is not subject to appeal, and the ability to revoke the resultant zoning by-law continues to be a decision only rendered by the Minister.

Lack of broader public transparency

When the Minister issues a decision with respect to the municipality's request, the municipality is responsible for issuing notice of the decision. If the decision is to issue an Order, only the municipality is responsible for making that decision available to the public until the decision is revoked. As such, there is no single source of information regarding when, where and for what purpose these Orders are being rendered; unlike how MZO's are recorded in the Ontario Gazette, E-laws, the Environmental Registry of Ontario, and the Ontario Regulations filed with the Registrar of Regulations, etc. Furthermore, aside from requiring the municipality to make the Order available on the municipality's website, there is no further guidance in terms of its availability and accessibility to the public.

6.2.3 Ministry Zoning Order (MZO)

Section 47 of the *Planning Act* gives the Minister of Municipal Affairs and Housing the authority to control the use of any land in the Province. MZO's can be used to protect a provincial interest or to help overcome potential barriers or delays to critical projects. If there is a conflict between an MZO and a municipal by-law, the MZO prevails. The municipal by-law remains in effect in all other respects.

The Minister of Municipal Affairs and Housing has publicly stated that Municipal Councils are expected to conduct due diligence before requesting an MZO. This includes:

- consulting in their communities
- engaging with the conservation authority responsible for regulating the lands on which the zoning order is requested
- engaging with potentially affected Indigenous communities

The Minister has publicly stated that a supporting Council resolution is expected to accompany Municipal Council requests for an MZO. This is to ensure that the public is aware of the request being made to the Minister for consideration of the MZO. As Council meetings are generally open to the public, this expectation aims to promote transparency and accountability.

There is no formal process for requesting an MZO, nor is there established criteria for approval, and the challenges that exist with the CIHA process exists with the MZO process as well.

6.2.4 Recommendation on the Requested Urban Boundary Expansion

In support of the 2022 Niagara Official Plan (NOP), the Region had completed a Land Needs Assessment (LNA) as part of a Municipal Comprehensive Review. Based on the results of the LNA, the Town of Fort Erie needed an additional 105 ha of community lands to be added to our urban area to meet projected community needs by 2051. As part of NOP, the Region approved boundary expansions that resulted in more than 105 ha of community lands being added to the urban areas.

The Province, as part of Bill 150 (Planning Statutes Law Amendment Act), removed approximately 20 ha of community lands (0-12016 Rosehill Road) from the Town's Urban Area Boundary. Even with the reduction of approximately 20 hectares of community lands from the Urban Area, the Town still had over 105 ha of community lands added to the Urban Area Boundary to meet projected lands needs until 2051.

The subject lands also do not have access to municipal services thereby requiring servicing to be extended. Therefore, the subject lands are not "shovel-ready."

Based on the information mentioned above, staff does not support the proposed Urban Area Boundary expansion. However, if Council chooses to support the Urban Area Boundary expansion, staff recommend that the CIHA process be utilized, as it is a more defined process, the Town gets to recommend what the zoning regulations for the subject development would be and it addresses the minimum information that the Minister of Municipal Affairs and Housing has advised to review for support of an MZO.

Also, staff recommend that public and agency consultation be completed prior to Council passing a resolution in support of the expansion, as per the requirements of both the CIHA and MZO processes.

7. Financial, Staffing and Accessibility (AODA) Implications

The Town does not have a fee to process a request for a Ministers Zoning Order, therefore all costs associated with the processing of the request will be borne by the Town.

8. Policies Affecting Proposal

On December 13, 2023 the Ministry of Municipal Affairs and Housing announced that the Province will be launching consultations regarding a new framework for zoning orders. At this time this consultation has not started. The Province has also advised that they will not consider or issue any other zoning order requests until the completion of the consultations.

9. Comments from Departments, Community and Corporate Partners

The request has not been circulated for comment.

10. Alternatives

- That Council direct Staff to explore adding the subject lands into the Urban Boundary as part of the next Municipal Comprehensive Review.

11. Communicating Results

No additional communication is required at this time. The applicant will be notified of Council's decision.

12. Conclusion

Planning Staff recommend that Council not support a Minister's Zoning Order to facilitate an Urban Boundary Expansion at 1589 Nigh Road.

13. Report Approval

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14. Attachments

Appendix 1 – Location Map

Appendix 2 – Nigh Road Draft Plan of Subdivision

Appendix 3 – New Conceptual Subdivision