

To: SPECIAL COUNCIL

Meeting Date: 6/7/2022

Subject: Recommendation Report – Temporary Use By-law Amendment
– 1500 Kossuth Rd

Submitted By: Lisa Prime, Chief Planner

Prepared By: Bryan Cooper, Senior Planner

Report No.: 22-086-CD

File No.: R02/22

Wards Affected: Ward 1

RECOMMENDATION(S):

THAT Report 22-086-CD be received;

AND THAT Council not enact a temporary use zoning by-law amendment for a commercial-recreational use (outdoor paintball operation) at 1500 Kossuth Rd.

EXECUTIVE SUMMARY:

Purpose

This report is for Council's consideration of a staff recommendation for a City initiated temporary use zoning by-law amendment at 1500 Kossuth Rd. The proposed amendment is for a commercial-recreational use (outdoor paintball use).

Key Findings

- Staff is recommending that Council not enact the temporary use zoning by-law amendment since the use is inconsistent with the Provincial Policy Statement, 2020 and does not conform to the Region of Waterloo Official Plan and City of Cambridge Official Plan.
- Section 3(5)(a) of the Planning Act requires that decisions of Council must be consistent with the Provincial Policy Statement, 2020. Section 24(1) of the Planning Act requires that municipal by-laws must conform to Official Plans.
- Comments in this report pertain to the proposed commercial-recreational use of the land and not the individual operator.

Financial Implications

On May 17, 2022 Council passed a resolution to waive the \$12,000 Planning application fee associated with the processing of this amendment.

STRATEGIC ALIGNMENT:

- ☐ Strategic Action; or
- ☒ Core Service

Objective(s): Not Applicable

Strategic Action: Not Applicable

Program: Not Applicable

Core Service: Official Plan and Zoning By-law Amendments

BACKGROUND:

On April 19, 2022, Council directed staff to hold a statutory public meeting under the Planning Act to consider a temporary use zoning by-law amendment for 1500 Kossuth Rd. for a proposed outdoor paintball use to be operated by Flag Raiders. Flag Raiders is not the proponent of this amendment since it is a City initiated proposal. Flag Raiders has made a separate request to Council for a Minister's Zoning Order (MZO) for this use on the subject lands.

The statutory public meeting for the temporary use zoning by-law amendment was held on May 17, 2022.

A summary of public comments received at the public meeting and through correspondence is found in Appendix A, which also includes copies of public submissions received.

A portion of the subject property has historically been used for a paintball operation by Flag Raiders through a temporary use zoning by-law amendment in 2001 and 2004.

Council refused a further temporary use zoning by-law amendment in 2007. This decision was appealed to the Ontario Municipal Board, now Ontario Land Tribunal (OLT). At the hearing the owner amended the extension request from three years to three months because an alternative location was found. Although the Tribunal allowed the appeal for a three month period, it noted that it would dismiss the appeal had it been for a three year period since the use was not in accordance with the City of Cambridge or Region of Waterloo Official Plans. Appendix B is a copy of the Tribunal's decision.

Appendix C is a concept plan showing how the site could operate, which staff understand is generally consistent with the previous operation on site. This concept plan was submitted as part of the MZO request and is included in this staff report for information.

Existing/Surrounding Land Uses:

The subject lands are located on the south side of Kossuth Rd. The lands are approximately 24 hectares in area and are zoned Agricultural (A1) and Open Space (OS1) in Zoning By-law 150-85. Staff understand that the frontage of the property is farmed and that the paintball use would be located in the cleared western portion of the site, which is where the use formerly operated. The balance of the lands are environmental and traversed by tributaries of Chilligo/Ellis Creek, floodplain, and portions of the Ellis Creek Provincially Significant Wetland (PSW) complex. As a result, the lands fall within the Grand River Conservation Authority (GRCA) regulatory limit.

North of the property is the Township of Woolwich. South of the subject property are lands zoned OS1. East and west of the subject property are lands zoned A1 and OS1.

An aerial of the property is shown below:



ANALYSIS:

City staff has completed a policy analysis of the proposed commercial-recreational use (outdoor paintball operation) at 1500 Kossuth Rd.

The use is not permitted in the current land use policy framework. In order to permit the proposed use, a Regional Official Plan Amendment (ROPA), City of Cambridge Official Plan Amendment (OPA) and Zoning By-law Amendment (ZBA) are required. Staff will

evaluate any owner-initiated Planning application for the subject property revising the Regional and City Official Plans.

Section 39 of the Planning Act enables Council to enact a temporary use zoning by-law to authorize the temporary use of land, buildings or structures for any purpose otherwise prohibited by the zoning by-law for a period of three years. Despite this permission, as required by section 24(1) of the Planning Act, any by-law passed by Council still must conform to the City's Official Plan. The proposed use does not conform to the City of Cambridge Official Plan and therefore staff is recommending refusal of the temporary use zoning by-law amendment.

The Region of Waterloo has noted that the use does not conform to the Regional Official Plan.

Technical review staff such as City development engineering and environmental planning, and the GRCA have noted that supporting information such as a grading plan, stormwater management details and an Environmental Impact Study (EIS) is required in order to review a Planning application. No such details are available for this proposal at this time. If the landowner files a ROPA, OPA and ZBA, these supporting documents would be required for review by the City, Region and GRCA.

A policy analysis is included in the Existing Policy/By-law(s) section of this report.

Based on discussion at the May 17, 2022 Council meeting, Planning staff have reviewed how other paintball operations are permitted in other municipalities. The following is a summary of information available online and reviewed by staff:

Town of Wasaga Beach:

Wasaga Adventure Park/Wasaga Beach Paintball is located at 3699 Vigo Road. The lands are designated as Service Commercial in the Town's Official Plan. The lands are subject to a site-specific OPA to permit a paintball use. The lands are not identified as Prime Agricultural in the Official Plan.

Municipality of Thames Centre:

Flagswipe Paintball Outdoor Field was located at 3998 Gladstone Drive in Thames Centre. Based on information online, this paintball field is no longer in operation. The lands were subject to a site-specific OPA to permit an outdoor paintball operation as a secondary use to the ongoing agricultural use on the property. The OPA was conditional upon an amendment to the Zoning By-law and site plan approval.

Municipality of Southwest Middlesex:

Adrenaline Paintball is located at 6457 Riverside Dr. in the municipality of Southwest Middlesex. The use is designated Agricultural in the Official Plan and zoned Agricultural and Open Space with a site-specific amendment to permit paintball on a portion of the subject lands. Based on the mapping available online, the paintball use is a small portion of the property relative to the balance of the lands that are zoned for agricultural uses.

EXISTING POLICY / BY-LAW(S):

Provincial Policy Statement, 2020 (PPS, 2020)

As required by section 3(5)(a) of the Planning Act, municipal Council decisions must be consistent with the PPS, 2020.

The subject lands are identified as Prime Agricultural. The following uses are permitted in the PPS, 2020:

- Agricultural Uses
- Agricultural related uses
- On-farm diversified uses

A commercial-recreational use is not an agricultural use or an agricultural related use.

In order for a use to be permitted as an “on-farm diversified use”, the use must be secondary to the principal agricultural operation. Based on the proponent’s concept plan (Appendix C) which was submitted as part of a Minister Zoning Order (MZO) request, the land area for the proposed paintball operation is 65,503 m² while the existing agricultural use is only 37,216 m². The commercial-recreational use is not considered by staff to be secondary to the agricultural use of the land.

The PPS, 2020 permits limited non-agricultural uses, provided certain criteria are met. One criteria is that there is an identified need within the planning horizon (25 years) to accommodate the proposed use. Another criteria requires that alternative locations for the proposed use have been evaluated and that there are no reasonable alternative locations which avoid prime agricultural areas; and that there is no reasonable alternative location in prime agricultural areas with lower priority agricultural uses. Staff have not been provided with supporting information that confirms that there are no reasonable alternative locations that avoid prime agricultural areas.

Region of Waterloo Official Plan

The property is designated Prime Agricultural in the Regional Official Plan (ROP). Environmental areas are identified as Core Environmental Features.

Permitted uses in the Prime Agricultural areas are:

- Agricultural uses
- Agriculture-related uses – farm related commercial and industrial uses
- Secondary uses – such as home occupation and agri-tourism uses that provide value-added agricultural products.

The proposed commercial-recreational use is not an Agricultural or Agriculture-related use. The use does not provide value-added agricultural products and is not secondary to an agricultural use. The use does not conform to the ROP.

City of Cambridge Official Plan:

The lands are designated Prime Agricultural and Natural Open Space in the City's Official Plan (OP). Permitted uses in the Prime Agricultural designation are the same as the above in the ROP. The use does not conform to the OP.

As noted above, under section 3(5)(a) of the Planning Act, Council decisions must be consistent with the PPS, 2020. Section 24(1) of the Planning Act requires that municipal by-laws must conform to the Official Plan. The proposed commercial-recreational use is inconsistent with the PPS, 2020 and does not conform to the ROP and the City's OP.

FINANCIAL IMPACT:

On May 17, 2022 Council passed a resolution to waive the \$12,000 Planning application fee associated with the processing of this application.

PUBLIC VALUE:

Public involvement was invited virtually in accordance with the Planning Act. Public submissions received have been considered in the preparation of this report and are included in Appendix A.

ADVISORY COMMITTEE INPUT:

Not applicable.

PUBLIC INPUT:

A statutory public meeting was held on May 17, 2022.

Appendix A contains a summary of comments received and copies of the written submissions.

Public input has been considered in the preparation of this report.

INTERNAL / EXTERNAL CONSULTATION:

Appendix D contains comments received from staff and agencies. The following is a summary of the main comments received:

City of Cambridge:

Development Engineering:

- Development Engineering staff have advised that in order to complete a review of this proposal a grading plan and stormwater management brief/report would be required to be reviewed. The City is not in receipt of any details regarding the grading or stormwater management measures for this use.

Senior Planner Environment:

- The lands include and are adjacent to a Provincially Significant Wetland and Woodlands that are designated by the Region and City's Official Plan. An Environmental Impact Statement (EIS) is required to be prepared in support of this proposal to the satisfaction of the City, Region and Grand Conservation Authority.

Agencies:

Region of Waterloo:

- The Region has noted that the lands are designated Prime Agricultural in the Region of Waterloo and City of Cambridge Official Plans. Regional staff do not support the proposed amendment since the proposed recreational use is in a Prime Agricultural area and does not conform to the Regional Official Plan.

Grand River Conservation Authority (GRCA):

- The subject property is traversed by tributaries of Chilligo/Ellis Creek, floodplain and contains portions of the Ellis Creek Provincially Significant Wetland complex. The majority of the property is regulated by the GRCA.
- GRCA is not in a position to recommend approval of the application at this time. A detailed site plan/grading plan, scoped environmental impact study, and functional servicing/stormwater management report are required to review.

CONCLUSION:

This report is for Council's consideration of a staff recommendation for a City initiated temporary use zoning by-law amendment at 1500 Kossuth Rd for a commercial-recreational use (outdoor paintball operation). Staff is recommending that Council not enact a temporary use zoning by-law amendment since the use is inconsistent with the

PPS, 2020 and does not conform to the Regional Official Plan and City of Cambridge Official Plan.

REPORT IMPACTS:

Agreement: **No**

By-law: **No**

Budget Amendment: **No**

Policy: **No**

APPROVALS:

This report has gone through the appropriate workflow and has been reviewed and or approved by the following as required:

Director

Deputy City Manager

Chief Financial Officer

City Solicitor

City Manager

ATTACHMENTS:

22-086-CD Appendix A – Public Submissions

22-086-CD Appendix B – Previous Ontario Municipal Board Decision

22-086-CD Appendix C – Concept Plan

22-086-CD Appendix D – Staff and Agency Comments

22-056-CD Appendix A – Public Submissions

A number of public submissions have been received through the review of this proposal, copies of which are included in this Appendix. A number of members of the public spoke at the May 17, 2022 statutory public meeting in support and against the establishment of the paintball use at 1500 Kossuth Rd.

Comments in support of the use include (but are not limited to) that the operator (Flag Raiders) is a positive local business, 1500 Kossuth Rd. is an ideal location, positive local economic benefits, and that paintball is a positive social and family friendly activity.

Comments against the establishment of the use include (but are not limited to) noise/nuisance impacts associated with the use and nearby residential/agricultural uses, environmental concerns, and that the use does not conform with land use planning legislation and policy that is in effect.

Staff have considered the comments received from the public on this proposal. A main consideration in the review of this proposal is whether the proposed temporary use zoning by-law amendment meets the objectives of the land use planning framework that is in place, as required by the Planning Act. As noted in previous sections of this report, the proposed use does not conform to the City of Cambridge or Region of Waterloo Official Plan, and therefore cannot be supported by staff. If the landowner files the required amendments to the Region and City of Cambridge Official Plans and Zoning By-law, the noted public submissions would need to be further evaluated and assessed. In particular matters related to land use compatibility and mitigating impacts on the natural environment would need to be considered further.

The following is a summary table of comments received on this proposal. This summary is not exhaustive and it is noted that a number of the comments have been repeated by more than one member of the public.

Comment
The use in the past has been noisy and disruptive causing a nuisance and stress.
Area is an agricultural and residential area and not an appropriate location for the use. Use should be located in more appropriate areas away from residences and environmental areas.
Paintball use has had an impact on birds, wildlife etc.
Property devaluation as a result of re-establishment of the use.
Support Flag Raiders returning; safe and family-oriented business.
Closure has resulted in less tourism to the Region.
Central location of 1500 Kossuth Rd. is ideal – close to highways, Pearson and Waterloo airports.
Positive tourism impact.

Desire to headquarter paintball teams for training and development at this site.
Local economic benefit for having a paintball facility in the City – participants visit local restaurants, businesses and hotels after playing.
Minimal to non-existent environmental impact.
Paintball is an accessible sport for all ages and ability; fosters social connections and positive mental health.
Small businesses have struggled during COVID.
1500 Kossuth Rd. location is the best paintball field; Flag Raiders has the best staff.
Flag Raiders is a positive business in the community.
Proposed location for the paintball use is not on farmable land; too many hills, ditches and small size make it not feasible for farming.
Positive physical health benefits from playing paintball.
No concerns with noise, garbage or trespassing. Nearby airport is more disruptive.
Paintball does not conform to this residential/agricultural area and is not permitted.
Use violates the City's noise by-law.
Ontario Municipal Board (now Ontario Land Tribunal) upheld Council's refusal of a previous Temporary Use Zoning By-law Amendment.
Loss of prime agricultural land.
1500 Kossuth includes provincially significant wetlands; concerned with impact on the natural environment.
There are alternative sites that are zoned for this type of use.
Proposed use would negatively impact rural economy.
Air soft pellets do not biodegrade; there are pellets that remain from 2008.
Paintball is considered a war game and is inappropriate.
The temporary use zoning by-law amendment should be refused since it does not conform to the Region's or City's Official Plans, is not consistent with the Provincial Policy Statement and does not constitute good planning and meet the tests under the Planning Act.
The adjoining Ellis Creek Wetlands score high in having significant habitat for a variety of wildlife including threatened species and have a significant groundwater recharge function.
The application is not supported with an environmental impact statement which is required in order to evaluate the application and determine buffer limits.
Provincial policies require a 120 m buffer to the wetland and the only permitted use in the wetland is agricultural.
Prime agricultural land can only be removed for settlement areas and the use will not meet minimum distance separation requirements.
Land was productive farmland prior to alteration for the paintball use; land should have been rehabilitated.
The proposed paintball use is a larger operation than what previously occurred on site.

22-056-CD Appendix B – Previous Ontario Municipal Board Decision

22-056-CD Appendix C – Concept Plan



22-056-CD Appendix D – Staff and Agency Comments

City of Cambridge:

Engineering – see attached

Economic Development – no comments

Fire Department – no comments

Senior Planner – Environment – see attached

Parks and Recreation Division – no comments

Transportation Division – no comments

Senior Planner – Heritage – no comments

Agencies:

Grandbridge Energy – no objection

Waterloo Region District School Board – no comments

Waterloo Catholic District School Board – no comments

Region of Waterloo – see attached

Grand River Conservation Authority – see attached

Township of Woolwich – see attached