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The Corporation of the Town of Niagara-on-the-Lake Information Report to Council

SUBJECT: Minister's Zoning Order (MZO) Request – The Reservoir (East of Niagara Stone Road, South of Walker Road)

DATE: 2024-04-30

REPORT #: CDS-24-067

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DEPARTMENT: Community & Development Services

BACKGROUND INFORMATION

On Council's agenda for April 30, 2024 is a presentation from Arcadis, on behalf of Sleek Developments Inc., requesting a Council resolution in support of a request for a Minister's Zoning Order ("MZO") for lands municipally known as 1287, 1301 and 1313 Niagara Stone Road, as well as an unaddressed parcel to the south of Walker Road. The location of the subject lands is attached as **Map 1** of **Appendix I** to this report.

The MZO request seeks to permit residential development on the subject lands, which are currently designated and zoned for industrial/employment uses and within an identified employment area. The MZO proposes a minimum of 103 dwelling units in the "Residential Multiple (RM1) Zone" and a minimum of 150 apartment dwelling units in the "Residential Multiple (RM2) Zone." The proposed residential development is based on a conceptual plan for 98 townhouse units and 26 single detached units in the RM1 zone and 165 units within apartment buildings and/or an apartment building geared for seniors in the RM2 zone (**Appendix III**). The request is accompanied by site-specific provisions for each zone category.

Minister's Zoning Order Process

The *Planning Act*, under Section 47, permits the Minister of Municipal Affairs and Housing (the "MMAH") to grant an MZO for the purposes of regulating the use of land, buildings and structures anywhere in Ontario, similar to a local zoning by-law. An MZO may be required in situations where development projects cannot comply with the requirements of Provincial, Regional or Local planning policy. The MMAH reviews applications for MZOs, and issues decisions on MZOs and these decisions are not eligible for appeal to the Ontario Land Tribunal. If there is a conflict between an MZO and a local zoning by-law, the MZO prevails.

The proposed development does not comply with Provincial, Regional or Local planning policies for the conversion of land within an employment area to non-employment uses and, accordingly, the applicant is seeking support from Council to request an MZO to allow

residential use on the subject lands.

On April 10, 2024, the MMAH released a new process for considering an MZO. The MMAH will consider requests for zoning orders that are supported by a lower-tier municipality (e.g., through a municipal council resolution). The following information is required to accompany a request for an MZO to the MMAH, and is to be provided by the applicant:

- Description of the project and how it would support governmental objectives;
- Map and description of the subject lands;
- Copy of the draft zoning order;
- Description of consultation with the public and engagement with Indigenous communities;
- For municipally supported MZO requests, evidence of municipal support for the proposed project and information related to land ownership and name of the requester;
- Rationale on why the project requires ministerial zoning relief rather than following municipal planning processes;
- Description of any licenses, permits, approved, permissions or other matters that would be required for the project after a zoning order is made;
- Justification for the exemption of the application of provincial and local land use policies to downstream approvals, where requested;
- Anticipated timelines to apply for downstream approvals (for example, site plan, plan of subdivision, building permit);
- Anticipated timing for project completion;
- Justification for the use of any enhanced authorities, where requested;
- Information related to how and when servicing (water/wastewater) will be addressed; and,
- A commitment that if a zoning is made, the landowner will notify the minister 30 days in advance of the land of any land it applies to.

In alignment with standard application processing procedures, the applicant initiated a pre-consultation meeting in March 2023 to understand the required studies and information required to support their proposal. Since the pre-consultation meeting, the applicant has consulted with Town and Agency staff, including Niagara Region and the Niagara Peninsula Conservation Authority, as part of their due diligence to ensure that the MZO provisions, should it be approved, can be appropriately implemented.

The applicant also undertook community engagement through virtual open house meetings in January 2024, to provide an overview of the proposed development of the subject lands and to receive questions from members of the public. Notice of the open house meetings, including details to participate in the meetings, was circulated to residents within 120 metres of the subject lands. A council update email was provided inform to Councillors.

Given the MZO submission requirements list above, the applicant is requesting a resolution from Council to support their request for an MZO to allow for the conversion of the employment area to non-employment (residential) uses. If approved by MMAH, the MZO would permit residential development on the subject lands and replace the Town's zoning standards for the subject lands. Further, should the MZO be approved, the applicant will need to receive future Town approval of subsequent *Planning Act* applications, such as Draft Plan of Subdivision, Draft Plan of Condominium, and Site Plan Approval.

The requested MZO is attached as **Appendix II** to this report and would implement the conceptual plan attached as **Appendix III** to this report.

Subject Lands

The subject lands are located on the east side of Niagara Stone Road, and south of Henegan Road and Walker Road. The land currently contains three single-detached dwellings fronting Niagara Stone Road and are otherwise vacant. The land has a combined area of 6.485 hectares and is adjacent to the Virgil Business Park (to the north).

Policy Consideration

The following sections highlight applicable Provincial, Regional and Town planning policies. The area of proposed development on the subject lands is designated as a settlement area in the Provincial Policy Statement (the “PPS”), and Delineated Built-up Area (applicable to 1287 and 1301 Niagara Stone Road) and Designated Greenfield Area (applicable to 1313 Niagara Stone Road) in A Place to Grow: Growth Plan for the Greater Golden Horseshoe (the “Growth Plan”). Similar to the Growth Plan, the Niagara Official Plan (the “NOP”) identifies the subject lands as “Delineated Built-up Area” and “Designated Greenfield Area;” however, also designates the lands at 1313 Niagara Stone Road and the rear of 1287 Niagara Stone Road as within a “Dynamic Employment Area.” Given this employment area designation, the lands are also considered as “employment areas” under the PPS and Growth Plan.

The area of proposed development on the subject lands is also designated under the Town Official Plan (the “Town OP”) and Zoning By-law 4316-09, as amended. The applicable designations and zoning are provided in the table below.

Address	Town OP Designation	Zoning
1287 Niagara Stone Road	Low Density Residential, General Industrial, Built-up Area	Residential (R1) Zone, Enterprise (E) Zone
1301 Niagara Stone Road	Low Density Residential, Built-up Area	Residential (R1) Zone
1313 Niagara Stone Road	Low Density Residential, Built-up Area	Residential (R1) Zone
Unaddressed Parcel, east of Niagara Stone Road and south of Walker Road	Low Density Residential, General Industrial, Greenfield Area	Residential (R1) Zone, Enterprise (E) Zone

The location of the subject lands, as well as the current in force and effect, Town OP designation and Zoning, are found on **Map 2** and **Map 3** of **Appendix I** to this report.

The subject lands are adjacent to agricultural and conservation lands to the south, industrial to

the north, the Virgil reservoir and environmental lands to the east and residential and Crossroads Public School to the west.

The relevant policies have been attached in **Appendix IV** to this report.

Technical Review

The MZO request was circulated to Town departments, Niagara Region and the Niagara Peninsula Conservation Authority (the “NPCA”), for review and comment. The intent of this circulation was to determine the feasibility of the proposed development.

Town and Agency Staff reviewed the following materials provided by the applicant in support of the MZO request:

- Land Use Compatibility Study (Air Quality and Noise), dated August 10, 2023
- Conceptual Site Plan, dated September 20, 2023
- Draft Minister’s Zoning Order, dated January 16, 2024
- Employment Land Conversion Study, dated February 21, 2017
- Functional Servicing Report, dated May 2023
- Stage 1-2 Archaeological Assessments and associated Ministry Clearance Letters
- Noise Impact Study, dated August 10, 2023
- Phase 1 Environmental Site Assessment, dated September 19, 2023
- Planning Justification Report, dated January 16, 2024
- Transportation Impact Study, dated September 2023

The following provides a summary of the review of the technical study/report recommendations and any comments received through the circulation. As summarized below and reflected in the comments attached as **Appendix V**, Town and Agency Staff considers the proposal to be technically feasible. Through future *Planning Act* application processes, including a Draft Plan of Subdivision and/or Condominium, and Site Plan Approval, certain studies may require revisions/updates, and additional studies may be required. A list of requirements, to be revised/updated and/or submitted as part of future *Planning Act* applications, has been outlined at the end of this report.

Employment Land Conversion

Provincial policy requires municipalities to plan for, protect and preserve employment areas for current and future uses. Employment areas are intended to provide for an appropriate mix and range of employment uses, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses.

The Town has two (2) employment areas delineated by the Region: Virgil Business Park and the Glendale Momentum District. The NOP identifies the Virgil Business Park as a Dynamic Employment Area. Dynamic employment areas are clusters of traditional and lighter industrial uses with a broader mix of employment uses including office parks and institutional uses that can function without limiting the viability of one another.

The Growth Plan directs the Town to plan for and protect employment areas within settlement (urban) areas. According to the policies, employment areas should not be converted to more sensitive uses (i.e., residential) and an appropriate interface between employment areas and

adjacent non-employment areas must be provided to maintain land use compatibility. Employment conversion of lands within employment areas to non-employment uses may only be permitted through a municipal comprehensive review (MCR), subject to criteria, as follows:

- There is a need for the conversion;
- The lands are not required over the horizon of this Plan (to 2051) for the employment purposes for which they are designated;
- The municipality will maintain sufficient employment lands to accommodate forecasted employment growth to the horizon of this Plan (to 2051);
- The proposed uses would not adversely affect the overall viability of the employment area or the achievement of the minimum intensification and density targets in this Plan, as well as the other policies of this Plan; and
- There are existing or planned infrastructure and public service facilities to accommodate the proposed uses.

The Region completed the required MCR as part of the adoption of the NOP in 2022. During the MCR, the applicant of the subject lands requested to convert the subject lands from an employment area to allow for residential permissions. The Region considered this request, amongst others through its review and ultimately denied it. The Region's report concluded that the lands should be protected for employment to ensure stability and predictability for existing and future businesses in the area.

The MCR also determined that the Town has a sufficient supply of designated employment lands to accommodate its employment forecasts to 2051. The Town was found to have a surplus of 10.0 hectares of employment lands to accommodate its employment density target.

The subject lands are largely designated as "General Industrial" in the Town OP. These lands are intended to provide and expand employment opportunities in the Town. Permitted uses within the "General Industrial" designation include general manufacturing, fabrication, assembly and processing of raw materials, warehousing, servicing and maintenance operations, public utilities, communications and transportation facilities, and research and development laboratories. Should the proposed MZO be approved by the MMAH, the policies and permitted uses of the "General Industrial" designation, and the Town OP, would cease to apply to the subject lands, as applicable. The permitted uses on the subject lands would wholly be established by the MZO.

The applicant is proposing to proceed through the MZO process due to the above noted policies.

Land Use Compatibility

The PPS requires that major facilities, including employment uses, and sensitive land uses, including residential uses, shall be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term operational and economic viability of major facilities. Where avoidance is not possible, the Town shall protect the long-term viability of existing or planned industrial, manufacturing or other uses that are vulnerable to encroachment by ensuring that the planning and development of proposed adjacent sensitive land uses are only permitted if the following are demonstrated:

- a) There is an identified need for the proposed use;
- b) Alternative locations for the proposed use have been evaluated and there are no reasonable alternative locations;
- c) Adverse effects to the proposed sensitive land use are minimized and mitigated; and
- d) Potential impacts to industrial, manufacturing or other uses are minimized and mitigated.

The NOP states that the Region and Town shall discourage any redevelopment of employment land that may restrict the ability for nearby or planned employment uses to expand or operate.

The Ministry of the Environment, Conservation and Parks (MECP) Land Use Planning Policy Guideline D-1 (Land Use Compatibility Guidelines) and Guideline D-6 (Compatibility between Industrial Facilities and Sensitive Land Uses) apply to the introduction of residential uses in proximity to employment uses. The Guidelines indicate that industrial land uses and sensitive land uses are normally incompatible due to possible adverse effects on sensitive land uses created by nearby industrial operations. The Guidelines further indicate that sensitive land uses should not be permitted closer than the specified minimum separation distance, unless impacts from industrial activities can be mitigated to the level of “trivial impact” (i.e., no adverse effects). Based on the existing uses within the Virgil Business Park, the minimum separation distance could be up to 70 metres.

The submitted Land Use Compatibility Study (Air Quality and Noise), dated August 10, 2023, concluded the following:

- Recommend the provision of residential units with carbon filtered fresh air or the replacement of fresh air intakes as far as possible and facing away from the Virgil Business Park;
- With the use of feasible mitigation measures, the proposed development will not affect the compliance of local industrial facilities with applicable Provincial environmental policies, regulations, approvals, authorizations, and guidelines.
- The conversion of the subject lands are:
 - Not likely to result in an increased risk of complaint and nuisance claims;
 - Not likely to result in operational constraints for the surrounding industries, commercial operations and institutional buildings;
 - Not likely to result in constraints on surrounding industries to reasonably expand, intensify or introduce changes to their operations; and.
 - Not likely to result in constraints for new industries to reasonably be established in the surrounding Enterprise area.

The submitted Noise Impact Study, dated August 10, 2023, recommended the installation of a range of mitigation measures for existing industrial uses within the Virgil Business Park, to be installed at-source. Such mitigation measures include acoustic silencers and an acoustic barrier to mitigate noise from stationary sources at the industrial facilities for the north. Details related to the mitigation measures, including consultation with the industry, would need to be undertaken by the applicant if the MZO is approved and as part of any future planning applications. Noise control measures are also proposed for the future residential development, including the installation of air conditioning, the installation of forced air heating, warning clauses related to potential noise from transportation and commercial/industrial uses, and the construction of a noise barrier along the perimeter of the outdoor living areas associated with units 1-5.

Niagara Region requests that the studies be peer reviewed to ensure that there will be no adverse impacts to future residents of the proposed development, and that the proposed development will not restrict the ability of existing/future industrial uses in the area to operate and expand. The requested peer review of the Land Use Compatibility Study and Noise Study may be completed through future *Planning Act* applications.

Transportation

Access to the subject lands is proposed from Niagara Stone Road, a future connection to Walker Road and through an extension to a municipal right-of-way (Concession 5 Road) connecting to Line 3 Road. The applicant proposes to improve Concession 5 Road allowance as part of the development, extending it to Line 3 Road. The proposal also considers as an emergency access connection through an existing Town-owned parcel on Walker Road (13 Walker Road).

The applicant has provided a Transportation Impact Study (the "TIS"), dated August 2023, to analyze the projected traffic generated from the development, as well as to provide recommendations for necessary road or intersection improvements. The TIS notes that the development will generate approximately 126-144 new vehicle trips during the weekday AM and PM peak hours. The detailed traffic analysis was conducted based on existing traffic conditions and 2032 background and total traffic conditions (5-years post-build-out).

Based on the findings of the TIS, the Study recommends the following:

- A 15-metre westbound auxiliary left-turn lane on Niagara Stone Road at the private road entrance; and,
- Given spacing constraints to add a westbound left-turn lane for Niagara Stone Road at the private road entrance, the existing eastbound left-turn lane serving the Crossroads School east driveway is recommended to be altered to meet the design requirements for a 50-kilometre design speed.

According to the TIS, a maximum traffic volume of 20 vehicles will be generated at PM Peak Hour usage along the proposed opening of the Concession 5 Road. Town review comments do not support the opening of Concession 5 Road to Line 3 Road, as projected traffic generated does not justify the Town's future assumption of the road, nor the associated ongoing maintenance and improvement of approximately 0.5 kilometres of roadway.

Town review comments offers no objection to the proposed improvements to Concession 5 Road between Walker Road and the subject development. The applicant would be responsible for 100% of the costs associated with all road improvements. These requirements can be dealt with through future applications.

The application is also proposing an emergency access connection through an existing Town-owned parcel fronting on Walker Road (13 Walker Road). The Town currently utilizes this space as a storage yard for various assets and is not anticipating the relocation of such assets in the future. Further details clarifying the planned use and/or construction of this access would be requested through future *Planning Act* applications.

Niagara Region comments do not support the proposed changes Niagara Stone Road (Regional Road 55) in this location. Given the left turn lane warrant analysis results, Regional staff will require that the proposed access be moved further to the southwest to avoid conflict

with the school's turning lane.

It is noted that the proposal can technically function, but improvements are needed. Additional information through an updated TIS will be required and such revisions and the review of additional details may be addressed through future *Planning Act* applications.

Archaeology

Policies of the PPS, NOP and Town OP require that development shall not be permitted on lands containing areas of archaeological potential unless significant archaeological resources have been conserved.

The submitted Stage 1-2 Archaeological Assessments for the subject lands have been reviewed and Ministry's clearance letter received. The assessments included a review of the entirety of the subject lands, with the exception of the proposed road connection to Line 3 Road. The assessments did not result in the identification or documentation of any archaeological resources, and no further archaeological assessments have been warranted by the licensed archaeologist on the subject lands. The Town and Region will require the submission of the final reports that were provided to the Ministry through future *Planning Act* applications.

Servicing

Municipal sewage services and municipal water services are the preferred form of servicing for lands within urban settlement areas. Further, planning for stormwater management shall be integrated with planning for sewage and water services, to ensure that systems are optimized, feasible and financially viable over the long term.

A Functional Servicing Report, dated May 2023, was provided with the MZO request for review. The objectives of the report were to identify domestic and fire protection water service, sanitary servicing, and stormwater management needs for the site.

With regard to water, there are existing watermains in the area located on Niagara Stone Road, and Walker Road. Proposed watermain connections are available to both Niagara Stone Road and Walker Road. The Town will require that the water servicing to the site be limited to one water service. Additional information is required as part of the future application process, including the completion of the necessary flow testing and/or other means as deemed necessary by the Town, to confirm capacity to service the proposed development.

With regard to sanitary, the Report proposes to service the development through the existing municipal sanitary sewer located on Niagara Stone Road and indicates that sufficient downstream capacity exists for the proposed development.

With regard to stormwater management, the existing stormwater on the subject lands flows northerly to the existing ditches along the northern limit of the lands and on the east road allowance, which outlets to the Virgil Reservoir. The proposed development would outlet stormwater to the Virgil Reservoir through a proposed stormwater sewer running within the easterly road allowance. Details related to the stormwater outletting to the Virgil Reservoir, such as any improvements to the existing outlet, and new outlet, will need to be addressed, as well as an upgrade to a portion of the existing Walker Road storm sewer to accommodate the proposed flows.

Given the above, Town, Regional and Niagara Peninsula Conservation Authority (the “NPCA”) require further details regarding the servicing approach for the subject lands through future *Planning Act* applications.

Environment

The PPS, Growth Plan, Greenbelt Plan, NOP, and Town OP recognize the importance of environmental features and corridors and require the protection of natural features and areas for the long-term. The subject property is impacted by the Region’s Natural Environment System, consisting of Significant Woodland, Other Woodland, and a wildlife linkage/corridor. The NOP requires the preparation of an Environmental Impact Study (EIS) if development is proposed within 120 metres of Significant Woodland or 50 metres of Other Woodland and/or wildlife linkage. The adjacent Virgil Reservoir lands are also encumbered by a Provincially Significant Wetland.

The NPCA requires the submission of an EIS and potentially a water balance study, should the Town consider opening the road allowance (extension of Concession 5 Road, connecting to Line 3 Road and Walker Road) as part of the development. Similarly, the Region requires the submission of an EIS to support the development of the proposal on the subject lands due to proximity to woodland and wildlife linkage features. The completion of the EIS will ensure that all features and applicable buffers are considered and maintained appropriately to ensure the long-term protection of the natural heritage system.

Given the above, Town, Regional and Niagara Peninsula Conservation Authority (the “NPCA”) will require further details regarding the evaluation and protection measures for the environmental areas on and adjacent to the subject lands, which may be addressed through future *Planning Act* applications.

Site Condition

The PPS requires that sites with contaminants in land or water be assessed and remediated as necessary prior to any activity on the site associated with the proposed use, such that there will be no adverse effects. Further, an environmental site assessment and the submission of a Record of Site Condition is required when converting lands to a more sensitive use (i.e., industrial or commercial to residential).

A Phase 1 Environmental Site Assessment, dated September 19, 2023, was provided. The Assessment concluded that there are no areas of potential environmental concern on the subject lands and, accordingly, no further investigations are required.

The Proposed MZO

The proposed MZO seeks permissions to facilitate residential development on the subject lands, committing to a minimum of 103 dwelling units in the RM1 zone and a minimum of 150 apartment dwelling units in the RM2 zone. The residential units are to be provided through a range of built form, including single-detached dwellings, semi-detached dwellings, townhouse dwellings, apartment buildings, and an apartment for senior citizens.

The conceptual plan (**Appendix III**) proposes single detached dwellings along the southern boundary and townhouse dwellings to the north and east. To the west, the plan proposes three six-storey (22 metre) apartment buildings. Site-specific provisions have been requested to facilitate the development, including lot coverage and area, setbacks, height, landscaped open

space, buffering, and parking space dimensions.

The MZO request has been submitted to facilitate the conversion of the lands from employment to residential outside of the Region's MCR process. Accordingly, the applicant is seeking Town Council's endorsement to proceed with a formal request to MMAH to facilitate the conversion of the subject lands which would permit the proposed residential development.

NEXT STEP / CONCLUSION

The intent of this report is to provide information to Council to assist with their consideration of the MZO request for lands at 1287, 1301 and 1313 Niagara Stone Road, as well as an unaddressed parcel to the south of Walker Road, to allow for residential development. Council may choose to:

- Option 1: Endorse the MZO, as proposed from the owner;
- Option 2: Endorse the MZO with modifications; or,
- Option 3: Not endorse the MZO.

Should Council choose Option 1 or 2, the applicant will proceed to apply to MMAH for approval. If MMAH approves the MZO, the provisions in **Appendix II** would apply to the subject lands and allow for future residential development, subject to future Planning applications. Requirements for these future applications are outlined in the next section of this report.

Should Council choose Option 3, the applicant will not be able to apply to the MMAH, as endorsement of the proposal from a local municipal Council is required as part of the application process.

Considerations for Future Planning Applications

As identified throughout this report, the following information will be required to support the submission of future planning applications for the subject lands:

- Peer Review of the submitted Land Use Compatibility Study and Noise Impact Study, to ensure that compatibility can be achieved between the existing and permitted employment uses within the Virgil Business Park and the proposed residential development.;
- Environmental Impact Study, to be scoped by Niagara Region and the Niagara Peninsula Conservation Authority, to evaluate any impacts of the proposed development on the adjacent Significant Woodland, Other Woodland, Wildlife Linkage/Corridor and Provincially Significant Wetland;
- Agricultural Impact Assessment, to support the proposed extension of Concession 5 Road;
- Stage 1-2 Archaeological Assessment Reports submitted to the Town for our records;
- Revised Traffic Impact Study related to right-of-way improvements on Niagara Stone Road, and the proposed roadway within the unopened road allowance (Concession 5 Road);
- Revised Functional Servicing Report, related to capacity of water and sanitary service capacity, and stormwater management matters;
- Arborist Report and Tree Inventory, related to potential removals/impacts to trees on

- private property and within the municipal right-of-way;
- Draft Plan of Subdivision and/or Condominium plans;
- Various detailed plans, including:
 - Site Plan;
 - Servicing Plan;
 - Grading Plan;
 - Landscape Plan;
 - Lighting & Photometrics Plan; and
 - Streetscape Plan.

At the time of future Draft Plan of Subdivision, Draft Plan of Condominium and/or Site Plan Approval applications, the applicant will be required to follow the typical approval process, including any necessary public engagement, as well as Town and Agency staff review.

ATTACHMENTS

- **Appendix I** – Maps
- **Appendix II** – Draft Minister's Zoning Order
- **Appendix III** – Conceptual Plan
- **Appendix IV** – Planning Legislation and Policies
- **Appendix V** – Agency and Town Comments