



**Community Planning and Development Department**

Wednesday, June 19, 2024

**Subject:** Update on Sons and Daughters Winery Planning Applications

**Recommendation:**

**BE IT RESOLVED THAT Council receive Report #2024-0144 Update on Sons and Daughters Winery Planning Applications, for information.**

**Background:**

Staff is providing this information report to Council so that it is fully apprised of the status of the applications.

Recently correspondence has been received by the Town, from the applicants expressing their concerns with the process and the time involved in getting the applications reviewed and approved.

For those who may not be familiar with the planning regime as it applies to new commercial businesses, it can seem to be a slow process. Staff take every application seriously and work to their best abilities in dealing with all the applications as they are submitted.

No doubt Council understands that the Official Plan, Zoning By-law and Site Plan Control By-law implemented by the municipality are paramount to ensuring compatible land uses and minimizing conflict between neighbouring properties. Staff has the duty to implement the policies and regulations adopted by Council for the wise use of lands within the town. Staff ensure that the rules are applied fairly and consistently with all applications that come before Community Planning and Development.

With these policies and bylaws, Staff have to ensure their proper application to not only protect the community at large, but to also protect the municipal corporation from any liabilities it could face, for not systematically applying the rules to all parties equitably.

Staff feel that the report should address the concerns and reassure Council that the timelines being experienced are neither surprising or unexpected for a file of this complexity and are in fact surpassing legislated time frames.

The process to date is detailed below.

## **2022 Pre-consultation Meeting**

The Town's Official Plan contains policies which require pre-consultation meetings for most development applications.

### ***E3 COMPLETE APPLICATION REQUIREMENTS***

*Council and/or its delegate shall not declare any application made under the Planning Act to be complete until Council is provided with information, studies or drawings specified in this Plan that are necessary to inform the public and make a decision on the application. Until an application is submitted that addresses pre-consultation and complete application requirements as specified below, Council will deem such applications to be incomplete.*

The purpose of a pre-consultation is to provide the applicant with the submission requirements for complete applications to ensure staff and other commenting agencies have the information needed for timely and effective processing of the applications. It also provides clarity for the applicant about the requirements in order to move a development forward.

A pre-consultation meeting held on April 7, 2022, to convert the existing agricultural building into a winery. The pre-consultation meeting notes indicate that an Official Plan amendment was required in addition to a zoning bylaw amendment, site plan approval and building permit for change of use. The notes also indicate that a site visit was required with Niagara Peninsula Conservation Authority (NPCA) and Niagara Region environmental staff to understand the natural heritage features, and valley land/watercourse in order to clarify any study requirements. The applicants attended the meeting without an agent present.

## **2023 Incomplete Zoning By-law Amendment Application Submission**

Following the pre-consultation meeting on April 7, 2022, there was no contact with the applicants or an agent working on their behalf with regard to the project until April 11, 2023, when an email submission was received from the applicant's Planner submitting a zoning by-law amendment application. A pre-consultation meeting is valid for approximately one year if the development proposal is unchanged.

- April 11, 2023, an email submission is received from the engaged Planner for a zoning by-law amendment application. Cheques for application/review fees are received on April 12, 2023. Staff reply on April 14, 2023, to the applicant's Planner indicating that the submission had been circulated and was under review and that a determination of completeness/comments would be provided by May 13, 2023 (30-day requirement under the Planning Act).

- April 14, 2023-May 12, 2023, review and comment. Internal discussions between Town, Regional and NPCA staff to coordinate comments to ensure the comments were not conflicting and clear.
- May 12, 2023, email sent by Town staff to the applicant's Planner indicating that the submission **was incomplete**. It did not include the materials identified in the pre-consultation meeting notes including the required Official Plan amendment which had been identified as required in 2022. The application had changed to include a 2-storey special event space with access from Highway 20 which was not discussed at the pre-consultation meeting (among other changes). Further, the site visit did not take place with Niagara Region environmental and NPCA staff to allow them to confirm their requirements relating to the natural heritage features and the valley land/watercourse on the property. Town Staff recommended another pre-consultation meeting to discuss the changed development and to clarify the outstanding items.
- May 29, 2023, Town Staff met with Niagara Region, the owners and their Planners, to discuss the items identified in the May 12, 2023, email. Town staff waived the requirement for an additional pre-consultation meeting following the discussion to assist with timelines. It is noted that a site visit should be scheduled with Niagara Region, NPCA and Town staff to understand the location of the valley land/watercourse and natural heritage features on site in relation to the proposed winery and associated septic system, parking area, outdoor hospitality area, etc.
- June 29, 2023, Town staff receive an email from the proponents' Planner indicating that the application is being revised to remove the two-storey event space providing revised materials and requesting the site visit to be scheduled.
- July 12, 2023, the site visit takes place with Town, Niagara Region and NPCA staff, the property owners, their Planner and Mayor Junkin. NPCA indicates they will provide confirmation of their requirements in writing following the meeting. Niagara Region environmental staff request a revision to the Planning Justification Report to address Greenbelt Natural Heritage policies and indicate that landscape buffer planting will be required. Study requirements are scoped to the landscape buffer planting plan at the site plan approval stage in lieu of a full Environmental Impact Study. This determination is provided verbally and by email on July 13, 2023, from Niagara Region environmental staff. NPCA follows up in writing on July 14, 2023, advising that the slope is regulated by them and indicating that the location of the proposed parking area and the intensified use of the existing driveway and agricultural storage building is closer than permitted to the slope and a Slope Stability Study is required.

At the site visit on July 12, 2023, the property owners ask if they can move ahead with their septic permit for the winery. The winery use is not permitted at the time by the zoning and therefore, permits cannot be issued relating to the winery.

Following the site visit, Town staff work with Regional private servicing staff find a solution and a permit for an oversized septic system for the agricultural building that will accommodate future winery is obtained to allow the property owners to move forward.

- July 17, 2023, Town Staff provide an email to the applicant's Planner indicating that the revised materials have been reviewed and further recommending that an Official Plan amendment application be provided with the Zoning By-law amendment application and outlining outstanding items (slope stability study, etc.) for complete application. At this time, the zoning by-law amendment application does not conform to the Official Plan. As such, Town staff would be unable to recommend approval of the Zoning By-law amendment application.
- July 31, 2023, the applicant's Planner sent an email to Niagara Region environmental staff providing requested material and agreeing to landscape buffer planting. The same day, Regional environmental staff confirm the submission adequately addresses the necessary environmental policies.
- August 3, 2023, a meeting occurred with the applicant's Planner, Town staff and NPCA to discuss the requirement for the Slope Stability Study and Official Plan conformity. NPCA confirms requirements by email following meeting.
- Following the meeting, the property owners contacted the Mayor and CAO about the need for an Official Plan Amendment. A Legal opinion was obtained from the Town Solicitor, confirming the requirement for an Official Plan Amendment. Town staff could process the zoning by-law amendment application; however, would be in the terrible position of not recommending approval because it doesn't conform to the Official Plan.
- September 27, 2023, Town staff receive an email from Patrick Maloney of Sullivan Mahoney LLP advising he had been retained to represent the property owners and requesting a meeting.
- Meeting takes place on October 3, 2023, with the property owners and their solicitor, Patrick Maloney, regarding an alternative proposal to applying for an Official Plan Amendment. At the meeting, Town Staff explain that this is not a legally viable option. Town staff encourage the property owners to apply for an Official Plan Amendment so that the applications can be move forward with support.
- October 4, 2023, Town staff receive an email from Patrick Maloney following up on the meeting and providing the request for an alternative to an Official Plan

amendment application in writing. Planning staff obtain further legal advice from the Town Solicitor confirming that an Official Plan amendment is required. Town Staff confirm with the property owners and their legal counsel that that an OPA is still required and that the alternative suggested is not legally viable in order for staff to be able to support the winery application.

### **2023 Zoning By-law Amendment & Official Plan Amendment Applications**

- November 6, 2023, Town staff receive an email from the applicant's new Planner providing the Official Plan amendment application which starts the 30-day review period for completeness in the *Planning Act*. Town staff immediately circulate the submission for review by Town departments and external commenting agencies.
- November 23, 2023, Town Staff request items that were required but not included in the submission. November 24, 2023, Town Staff advise that all required materials have been received except for the NPCA review fee (the applications are still not technically complete) but that Town Staff are scheduling the public meeting date for January 17, 2024 (next available date) with notices being sent out on December 15, 2023. Town Staff proceeded to push the application forward as there was an understanding that Senior Administration and Council are supportive of the winery to be approved.

The applications are considered complete on Day 17 of 30.

- January 17, 2024, the public meeting takes place.
- February 16, 2024, Planning staff are advised by the Building Division that a permit application had been received for a gazebo for the winery use. Staff advise the property owners that the current zoning still does not permit the winery use and that the gazebo should be shown on their site plan approval application. The property owners will need to wait for permit until the zoning and site plan approval are in place. The property owners advise they will withdraw permit application for the time being.
- February 21, 2024, Town staff's recommendation report is received and approved by Council. Town staff provided a link to the report for the applicants and their Planner's review in advance of the meeting.

The applications were placed before Council for decision on Day 89 of the 120-day time frame provided for by legislation.

- February 22, 2024, Town staff receive a phone call from the applicant's Planner indicating the Owners have concerns about a statement in the recommendation report that no food service is being requested as part of the

applications. The applicants did not formally identify the proposed food service, or a restaurant use in their applications nor application materials. Town Staff consult with the applicant's Planner by phone and request additional information by email noting that there are potential policy, zoning, private servicing and *Ontario Building Code* considerations with respect to the use. Town Staff request the information in an effort to identify and avoid potential issues and delays moving forward.

- February 22-28, 2024, information is provided by the applicant's Planner. February 29, 2024, Town Staff thank the applicant's Planner for the clarification/information and include the outdoor pizza oven into the By-law for Council ratification so that it will be explicit permission going forward and there will be no issues with interpretation in future. The draft by-law is provided to the property owners and their Planner for review. This was a last-minute request that was accommodated by Town Staff as quickly as possible.
- March 6, 2024, the by-law for the Official Plan and Zoning Bylaw amendments are ratified by Council.
- The Notice of Council's decision on the applications is sent out on March 8, 2024.
- The last day for filing appeals is March 28, 2024, and no appeals are filed.

### **Site Plan Application Submission Preparation**

- March 8-11, 2024, Town Staff respond to questions from the consultant about the site plan approval requirements.
- March 18, 2024, the property owners inquire about restarting gazebo building permit. March 19, 2024, Town Staff advised that following the appeal period, site plan approval and change of use permit required under the OBC for the winery. Please show the gazebo on the site plan approval application.
- April 11, 2024, Town Staff correspond with the applicant's Planner to confirm application and review fees and digital submission acceptable.
- April 11, 2024, Town Staff lead on vacation and set out of office notification at 5:00 pm.
- April 15, 2024, voicemail left on Town staff mailbox from the applicant's Planner disputing the Regional review fee (advised by Region through response to Town staff's April 11, 2024, email). The applicant's Planner indicates awareness the Town Staff member is away from the outgoing voicemail but to call.

### **Site Plan Approval Application**

- April 18, 2024, the applicant's Planner contacts the Planning Office with the application submission and indicates that it was provided to Town staff on April 11, 2024. The required application fees are paid on this day. Town staff confirmed receipt. Town Staff confirmed with IT Manager that no application submission was received to Staff's email or the Town's servers on April 11, 2024, as the applicant's Planner indicated. Should it have been sent, their Planner would have received an out of office reply.
- April 22, 2024, Town Staff send out request for comment on the site plan approval application to keep things moving in Town Planner's absence. Town Planner advised Town staff that an application may arrive during vacation absence and requested that the file be dealt with right away.
- May 7, 2024, Town staff receive email from the applicant's Planner requesting an update and advising there will be a new Planner for the applicants on the file. May 7, 2024, Town staff reply and advise the application has been circulated and is under review. Town staff recommend the applicants contact the Building Division to ensure readiness to apply for building permits immediately following site plan approval to avoid unnecessary delay.
- May 15, 2024, Town staff receive an email from an employee of Sons & Daughters winery requesting a status update. May 16, 2024, Town staff indicate that comments are still outstanding and that they will follow up on those outstanding hoping to have a conditional approval the following week. Town staff again encourage the applicants to contact the Building Division to get started on materials needed for building permit application (in an effort to assist with timing and facilitate a quick turnaround with Site Plan approval).
- May 15 – 24, 2024, Town Staff follow up with external agencies regarding outstanding comments, compile comments, etc.
- May 24, 2024, Town Staff call applicant's new Planner to provide a verbal update (including comments received thus far) and send email update to property owners advising that unfortunately, the Town is still awaiting comments from other agencies, but they had been promised by the following week at which time conditional site plan approval could be granted.
- May 29, 2024, Town staff follow up again on outstanding comments. May 31, 2024, all outstanding comments received from all parties. Conditional site plan approval granted.
  - Conditional Site Plan approval issued on day 42 of 60.

- June 3 & 4, 2024, with conditional site plan approval granted and zoning permission in place, Planning and Building staff have been working to facilitate the building permit application for the gazebo. This includes a preliminary review by Building staff to ensure that the applicants have a complete list of plan requirements for the building permit application so as to assist with the issuance of the permit.

### **Analysis:**

Upon review of the timeline provided by this report, Staff are confident that their work on the file has been diligent and timely.

It is a regular and common refrain to hear from developers that municipalities are too slow in dealing with planning applications and should find means to expedite the process. Planning applications require a two-way flow of information to be successful.

Essentially the application has been dealt with in just over one year **(and within 6 months of receipt of complete applications)**, and while some technical issues remain for the final approval of the site plan, which is necessary before building permits can be issued, the file keeps moving forward.

Staff are excited about the future of the winery for the Town and will continue to respond to the application that is in front of it until satisfactory completion.

Staff are acutely aware that the Mayor and the CAO are championing this application as they see a winery in Pelham as being a welcome addition to the Town's landscape, a positive step that could open the door to similar investments and opportunities for the Town and the community. Staff echo this sentiment, but remain committed to the assigned task of ensuring that the Town's regulatory framework is complied with in a fair and consistent manner.

It is worth noting that the winery has been operational. Wine has been produced in the building and sold to the general public. The Town's Recreation, Culture and Wellness Department considers the Sons & Daughters Winery to be an important and valued community partner. The winery fully participates in the Pelham Farmers' Market and their products are sold at the Thursday night concert series, at SummerFest and in the MCC.

### **Financial Considerations:**

There are no direct financial implications associated with this report that is for Council's information.



## **Alternatives Reviewed**

There were no alternatives to consider as this is an information report to Council on a specific development within the Town.

## **Strategic Plan Relationship: Community Development and Growth**

As noted, the establishment of a winery within the Town opens to the door to similar type developments and investments for the Town. Developments such as this will support and encourage Pelham as a destination, bringing potential tourist dollars to the community. This does not only support the venture directly but supports other business in the community in an indirect capacity. This will add to the benefits that the Town has started to see with the Tulip Trail for the community.

This type of investment in the Town creates additional assessment to the tax base and potentially creates new employment opportunities.

## **Consultation:**

Planning Staff

Chief Administrative Officer

## **Other Pertinent Reports/Attachments: N/A**

## **Prepared and Recommended by:**

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