

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: July 25, 2018

CASE NO(S): PL170178

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Deborah and Oswin Mathias
Subject:	Request to amend the Official Plan - Refusal of request by the Municipality of Clarington
Existing Designation:	Rural Areas and Environmental Protection
Proposed Designation:	Site specific
Purpose:	To permit an agri-tourism use
Property Address/Description:	3582 Morgans Road
Municipality:	Municipality of Clarington
Approval Authority File No.:	COPA 2015-0005
OMB Case No.:	PL170178
OMB File No.:	PL170178
OMB Case Name:	Mathias v. Clarington (Municipality)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Deborah and Oswin Mathias
Subject:	Application to amend Zoning By-law No. 84-63 - Refusal of Application by the Municipality of Clarington
Existing Zoning:	Agricultural (A) and Environmental Protection (EP)
Proposed Zoning:	Site specific
Purpose:	To permit an agri-tourism use
Property Address/Description:	3582 Morgans Road
Municipality:	Municipality of Clarington
Municipality File No.:	2017-009
OMB Case No.:	PL170178
OMB File No.:	PL170179

Heard: April 23 -27, 2018 in Bowmanville, Ontario

APPEARANCES:

Parties

Counsel

Municipality of Clarington

N. Macos
S. Chin (student-at-law)

Deborah and Oswin Mathias

D. Donnelly
A. Whyte (student-at-law)
S. Gray (student-at-law)

**DECISION DELIVERED BY THOMAS HODGINS AND ORDER OF THE
TRIBUNAL**

INTRODUCTION

Disposition

[1] After considering the evidence and submissions, the Tribunal:

- A. dismisses the appeal of the refusal of the Official Plan Amendment (“OPA”) as an OPA is no longer required;
- B. refuses the request for a zoning change to permit the seasonal special event venue accessory to a farm on the Site; and
- C. allows in part the appeal of Zoning By-law Number 2017-009 (“ZBL 2017-009”) by approving said By-law subject to a three-part modification.

[2] Relevant matters from the hearing and the Tribunal’s reasons are set out in this Decision and Order.

.Background

[3] In 2015 Deborah and Oswin Mathias (“Applicants”), who own a small farm at 3582 Morgans Road (“Site”) in Clarington, applied to Clarington for an OPA to the 1996 Clarington Official Plan (“1996 COP”) to permit agri-tourism uses including on-farm special events and for an amendment to Comprehensive Zoning By-law 84-63 to permit said agri-tourism/special events and the processing of meat raised on the Site (meat smoking, barbeque, sausage making) and the sale of meat products.

[4] In January, 2017 Clarington Council:

- A. refused to adopt an OPA to allow a seasonal event venue as an accessory on-farm diversified use;
- B. refused to adopt an amendment to the Comprehensive Zoning By-law to permit a seasonal special event venue accessory to a farm; and
- C. adopted ZBL 2017-009 to permit meat processing accessory to a farm but not including an abattoir on the Site, to rezone a part of the Site associated with the Graham Creek valley to the EP (Environmental Protection) Zone and to apply a holding (“H”) provision to the part of the Site that allows meat processing. A copy of ZBL 2017-009 appears as Attachment 1.

[5] The Applicants appealed Council’s refusal of the OPA and the adoption of ZBL 2017-009 to the Board. ZBL 2017-009 was appealed because it does not include permission for a seasonal special event venue accessory to a farm on the Site.

[6] Clarington’s Director of Planning Services, in a Staff Report dated January 9, 2017, recommended that the Planning and Development Committee approve the subject applications by adopting the OPA which appears as Attachment 2 and the ZBL which appears as Attachment 3. In the balance of this Decision, the OPA in Attachment

2 is referred to as the “SROPA” (the Staff Recommended Official Plan Amendment) and the ZBL in Attachment 3 is referred to as the “SRZBL” (the Staff Recommended Zoning By-law).

Applicants’ Request

[7] David Donnelly, on behalf of the Applicants, requested that the Tribunal:

- A. grant the appeal and approve the SROPA;
- B. grant the appeal and approve the SRZBL save and except the inclusion of the H provision; the Applicants are agreeable to negotiating and executing a site plan agreement, which is delegated to staff, but want to avoid Council’s involvement in the site plan process via having to lift the H; and
- C. hold its Decision until it is determined whether OPA 107 is in effect and, if it is, approve the SRZBL without the SROPA.

[8] As well, the Tribunal understands from the hearing that the Applicants want ZBL 2017-009 approved by the Tribunal, with the exception of the H provision, in order to, amongst other matters, permit the meat processing use on the Site in the event the Tribunal does not allow the special event venue.

Clarington’s Request

[9] Nicholas Macos, on behalf of Clarington, requested that the Tribunal:

- A. dismiss the appeals and support the decision of Council; or
- B. in the alternative refer the applications back to Council to “... confirm the restrictions on the proposed use to be set out in the zoning by-law

including definition of and limits on area of use, frequency of use and limits on sound.”

Three Issues

[10] Based on the foregoing, there are three issues for the Tribunal’s determination in these appeals:

1. Is an OPA required to permit a seasonal event venue as an accessory on-farm diversified use on the Site and, if yes, is the SROPA appropriate?
2. Is the SRZBL appropriate and is it consistent with and/or in conformity with the applicable policy planning framework?
3. In the event the SRZBL is not acceptable, is ZBL 2017-009 appropriate and is it consistent with and/or in conformity with the applicable policy planning framework?

EVIDENCE AND SUBMISSIONS

General

[11] In support of the Applicants’ position, Mr. Donnelly called four witnesses:

- A. Deborah Mathias, an owner and operator of the farm on the Site;
- B. David Crome, Clarington’s Director of Planning Services, who appeared under summons and who was qualified to provide independent expert opinion evidence in land use planning;
- C. Robert Clark, a consultant who was qualified to provide independent expert opinion evidence in agrology and land use planning; and

- D. John E. Coulter, a consultant who was qualified to provide independent expert opinion evidence in acoustical engineering and vibration.

[12] In support of Clarington's position, Mr. Macos called two witnesses:

- A. Michael Hoffman, a consultant who was qualified to provide independent expert opinion evidence in agronomy, planning policy and agrology related policy: and
- B Mark Dorfman, a consultant who was qualified to provide independent expert opinion evidence in land use planning.

[13] The Tribunal also heard from six Participants.

The Site

[14] The Site fronts onto Morgans Road (a paved two-lane road with a rural cross section and ditches) in the south-eastern portion of Clarington, north of Highway 401. The Site is about 16.2 hectares ("ha") in total size. Approximately 10 ha of the Site are tillable and about 6 ha are unusable for farming as a result of being forested and/or associated with Graham Creek which runs diagonally across the north-east part of the Site. The Site includes the Applicants' home, a bank barn, a large open-ended Quonset Hut, a pole barn, a garage, pastures, ponds and other typical farm features as can be seen on the conceptual site plan provided as Attachment 4. The Site is privately serviced with septic and water well systems. The Applicants raise livestock on the Site and have 10 beef cows and about 40 ewes. Ms. Mathias describes the farm as small in scale and said that they raise and sell beef and lamb and, on occasion, goats, hogs, eggs and chickens. Meat is butchered, inspected and stamped off site at a licenced facility.

The Context

[15] To the south of the Site is an existing agricultural field and rural residential dwellings. To the north is Graham Creek and an extensive wooded area and beyond that a rural residential dwelling. An existing agricultural field abuts to the west. To the east, across Morgans Road, are Graham Creek and a wooded area, an existing rural residential dwelling and an existing auto wrecking facility located about 250 metres (“m”) from the Site on Cowanville Road.

The Proposal

[16] As noted, the Applicants want the Tribunal to approve two specific uses on the Site:

- A. meat processing accessory to a farm but not including an abattoir; this use is described by Ms. Mathias as a smokehouse and kitchen facility for the art of charcuterie to further add value to meat sales as an on-farm diversified use; the Staff Report references meat smoking, barbeque and sausage making and says that 61 square metres (“sq m”) of the 241 sq m bank barn will be dedicated to meat preparation and sales; sales will focus on the primary cuts of beef; and
- B. a seasonal special event venue accessory to a farm with associated regulations as set out in the SRZBL.

[17] The special event venue is to have the following key characteristics based on the collective evidence and submissions of Ms. Mathias and Messrs. Crome and Clark:

- A. General Concept: will be centred on the farm’s produce, animal raising practices and the uniqueness of the farm experience; will offer a BBQ centred event hosting experience; pasture and wildflower raised meat from the Site, primarily the secondary cuts of beef, will be served at the

special events; other products which are required to “round-out” a special event, such as vegetables, will be locally sourced;

- B. Types of Events: will range from corporate and family gatherings to presentations and displays of local interest; other possibilities include local food fairs, family gatherings, local business fairs, community forums and gatherings and special celebrations for sporting teams; weddings are only one of the potential events that could take place; the event can include catered meals, workshops, socializing and music for listening and dancing;
- C. Number of Events: 32 events per year were referenced in much of the evidence; however, no cap on the maximum number of events to be held per year was identified or committed to;
- D. Seasonality: a period from mid-May to November was referenced in the evidence; however, no definition of the term “seasonal” was identified or committed to;
- E. Site Design and Facilities: will be laid out generally according to the conceptual site plan in Attachment 4; events will take place in the existing buildings, primarily the Quonset Hut, and in natural outdoor settings; the Quonset Hut is 205 sq m in size; a new driveway is to be built opposite the intersection with Cowanville Road;
- F. Water Supply: will be from a private well system; a Hydrogeological Assessment Report indicates that sufficient groundwater is available from the existing well to accommodate the proposed uses;
- G. Kitchen Facilities: will initially utilize mobile culinary facilities for food preparation and cooking; Mr. Clark indicates that the portable unit can be converted to a permanent accessory structure with a septic system when

warranted; the Hydrogeological Assessment Report indicates that the Site is suitable for the construction of a septic system with a raised bed;

- H. Washroom Facilities: will initially utilize mobile portable washroom facilities; Mr. Clark indicates that the portable washroom facilities can be converted to a permanent accessory structure with a septic system when warranted;
- I. Occupancy/Capacity: there were several references made to the occupancy/capacity of the proposed special event venue:
 - 1) Ms. Mathias said that the average size of a wedding is 129 guests and that this is “all she can handle”;
 - 2) Mr. Clark said the expected occupancy is 195 persons based on the parking to be provided but notes in his Reply Witness Statement that there is space available for overflow parking and in the Agreed Statement of Facts (“ASOF”) that lessees of the event facility could arrange transportation to deal with any insufficient parking issues (this suggests to the Tribunal the possible use of multi-person vehicles such as vans, limousines and buses and the possibility of additional occupancy/capacity);
 - 3) Mr. Clark said the Site will have a capacity of 233 persons per event when the intended permanent septic system is installed; and
 - 4) Mr. Crome in the Staff Report advises there will be up to 233 patrons.
- J) Parking: 65 grass covered spaces adjacent to the new driveway; Messrs. Clark, Dorfman and Hoffman agree in the ASOF that there is insufficient parking for 233 guests plus staff; Mr. Clark indicates that this limitation

would become part of the lease agreement and that the lessee would have to arrange transportation to deal with this limitation (this again suggests to the Tribunal the possible use of multi-person vehicles such as vans , limousines and buses to transport guests to the Site).

The ZBLs

The SRZBL

[18] Messrs. Crome and Clark recommend the SRZBL (see Attachment 3) to the Tribunal for approval. An examination of the SRZBL shows that it proposes to amend Clarington's Comprehensive Zoning By-law to:

- A. change the zoning of a portion of the Site from A to (H)A-91;
- B. change the zoning of a portion of the site from A to EP;
- C. permit meat processing accessory to a farm but not including an abattoir on the Site as an exception in the A-91 Zone;
- D. permit a seasonal special event venue accessory to a farm on the Site as an exception in the A-91 Zone;
- E. apply three regulations to the seasonal special event venue - a cap on the maximum total area of the lot to be used for this use (2.5%), a cap on the maximum total floor area (340 sq m) to be used for this use and a cap on the maximum number of parking spaces (65); and
- F. place a Holding ("H") symbol on the lands zoned A-91 and on which the meat processing and special event venue are to be allowed.

[19] The Tribunal was not advised why the SRZBL permits "a seasonal special event

venue accessory to a farm” and not the ‘Agri-tourism use’ that is defined in the Comprehensive Zoning By-law and which was used in the re-zoning that allowed another event use in Clarington known as Events by Grace.

[20] The SRZBL does not indicate the conditions or prerequisites to be fulfilled prior to the lifting of the Holding (H) symbol but Recommendation 4 in the Staff Report states: “That a Zoning By-law Amendment to remove the ‘Holding (H)’ be forwarded to Council at such time as the applicants have entered into a development agreement for the agri-tourism use on the subject lands.” The Staff Report also indicates that “The applicant will require site plan approval through which Staff will review the proposed development and contain (sic) provisions that noise is limited as much as possible and, if necessary, monitored at the applicant’s expense, parking areas are well-screened, any entrance lighting is directed away from neighbouring properties, the floor area used for the events is limited and the uses are secondary and accessory to the primary agricultural use of the property.”

[21] There was no evidence that the SRZBL needed to be altered in the event the SROPA was not required.

[22] Messrs. Hoffman and Dorfman do not support the SRZBL because it includes permission for the special event venue. They feel that the special event venue, as set out in the SRZBL, is inappropriate in this location for a number of reasons, including its potential scale.

ZBL 2017-009

[23] ZBL 2017-009 (see Attachment 1) does all of the things the SRZBL does, save and except permit a seasonal special event venue accessory to a farm on the Site.

[24] The Tribunal was not provided with any evidence on the conditions or prerequisites to be satisfied prior to the lifting of the H in ZBL 2017-009.

[25] No Witness or Participant had any objection to the matters dealt with in ZBL 2017-009.

Provincial and Regional Policy Framework

General

[26] Any decision by the Tribunal to approve the SRZBL or ZBL 2017-009 must, in accordance with the Act, have regard to matters of Provincial interest as set out in s. 2 of the Act, be consistent with the Provincial Policy Statement (“PPS”) and conform to, or not conflict with, any applicable Provincial Plan. Any ZBL approved by the Tribunal in this case is also to conform to the Durham Region Official Plan (“DROP”).

Matters of Provincial Interest

[27] The Tribunal considers the following matters of Provincial interest to be of particular note in this proceeding: the protection of ecological systems, including natural areas, features and functions; the protection of agricultural resources of the Province; the orderly development of safe and healthy communities; and the appropriate location of growth and development. Messrs. Crome, Clark and Hoffman did not provide evidence in respect to Provincial interests. Mr. Dorfman said that the special event venue is not in the Provincial interest.

PPS

[28] In their Joint Document Book, the Parties submitted excerpts from the applicable PPS plus excerpts from two related documents: An Introduction to the Provincial Policy Statement, 2014: Rural Ontario (August, 2016) and Guidelines on Permitted Uses in Ontario’s Prime Agricultural Areas (2016). The Introduction document was not published at the time the Applicants applied to Clarington and it is not relied upon in this Decision. The Guideline is required to be considered by the Tribunal as a result of a policy in the Greenbelt Plan, 2017 and is discussed later in the Greenbelt section of this Decision.

[29] Messrs. Crome, Clark and Dorfman agree that the Site is within a Rural Area and is considered Rural Land for the purposes of the PPS. Although there was some evidence from Mr. Hoffman that the Site includes prime agricultural land there was no compelling evidence to suggest that the Site should not be treated as Rural Land in a Rural Area for the purposes of the PPS.

[30] The PPS defines “agricultural uses”, “agri-tourism uses” and “on farm diversified uses” and these definitions are reproduced in Attachment 5.

[31] Messrs. Crome and Clark believe that the special event venue, as set out in the SRZBL, is an on-farm diversified use/agri-tourism and is permitted on the Site consistent with by the PPS. Messrs. Hoffman and Dorfman do not agree. They do not believe that the special event venue, as set out in the SRZBL, is an on-farm diversified use/agri-tourism. Mr. Hoffman objects to the special event use on prime agricultural land. Mr. Dorfman feels that the PPS directs such a use to a settlement area not a rural area. Even if the special event use is deemed to be an on-farm diversified use/agri-tourism, Mr. Dorfman still believes it is not permitted on the Site consistent with the PPS largely because of its potential scale.

[32] The Tribunal finds that a seasonal special event venue, at face value, can be considered an on-farm diversified use/agri-tourism consistent with the PPS. The Tribunal also finds that meat processing accessory to a farm produces value-added agricultural products and, at face value, can also be considered an on-farm diversified use consistent with the PPS.

[33] Based on the above-noted findings, the policies in the PPS of most interest to the Tribunal are those that deal with on-farm diversified uses and agri-tourism uses in Rural Areas and on Rural Lands. In this regard, Policies 1.1.4.1, 1.1.5.4, 1.1.5.7., 1.1.5.8 and 1.7.1 are identified and appear in Attachment 5.

[34] It is important to note, as well, that the PPS requires the protection of natural features and areas and cultural heritage resources, like archeological features.

Growth Plan, 2017

[35] Messrs. Clark, Hoffman and Dorfman agree that the Growth Plan for the Greater Golden Horseshoe, 2017 (“Growth Plan”) is an applicable Provincial Plan to this proceeding. Messrs. Crome and Hoffman provided limited, if any, evidence on the Growth Plan.

[36] Messrs. Clark and Dorfman also agree that the Growth Plan considers the Site as rural land in a rural area outside of a settlement area and that Policy 2.2.9.3 of the Growth Plan, which is reproduced in Appendix 5, is applicable. Mr. Dorfman also notes a Greenbelt Area notation in the Growth Plan. Both planners also referenced the Agricultural System policies of the Growth Plan. Mr. Clark believes that the special event venue set out in the SRZBL meets all of the criteria in Policy 2.2.9.3, is compatible with the area and complies with the Growth Plan. Mr. Dorfman is of the opinion that the event venue is a commercial/non-agricultural use not permitted on the Site by the Growth Plan. He feels that the Growth Plan calls for this type of use, at its potential scale, to be located in a settlement area. Even if the special event use is considered to be an on-farm diversified use/agri-tourism, Mr. Dorfman believes it is not permitted because of its potential scale and because it will not be compatible with the area and will negatively affect agricultural uses.

[37] The Growth Plan also requires the protection of natural features and areas and cultural heritage resources, like archeological features. There was no evidence to suggest that the meat processing use did not comply with the Growth Plan.

Greenbelt Plan, 2017 and Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas, 2016

[38] Messrs. Crome, Clark, Hoffman and Dorfman agree that the Greenbelt Plan 2017 (“GBP”) is an applicable Provincial Plan for this proceeding.

[39] The GBP requires the protection of natural heritage features, areas and functions and cultural heritage resources, like archeological features.

[40] Messrs. Crome and Clark advise that the Site is Rural Land within the Agricultural System of the Protected Countryside in the GBP. Mr. Dorfman submitted that the Site is within the Natural Heritage System of the Protected Countryside. Mr. Hoffman did not provide any substantial evidence on the GBP.

[41] The Tribunal considers the Site as Rural Land within the Agricultural System of the Protected Countryside pursuant to the GBP and finds that a seasonal special event use on a farm can, at face value, be an on-farm diversified use/agri-tourism according to the GBP. Messrs. Clark, Hoffman and Dorfman agree in the ASOF that there are no agri-tourism policies in the GBP. The Tribunal takes issue with this statement as agri-tourism is included in the definition of an on-farm diversified use in the GBP and, accordingly, the policies for on-farm diversified uses apply to agri-tourism.

[42] On-farm diversified uses are defined in the GBP in accordance with the PPS and are supported and permitted on Rural Land. Policy 3.1.4.2. of the GBP states, in part, that “Normal farm practices and a full range of agricultural uses, agriculture-related uses and on-farm diversified uses are supported and permitted. Proposed agriculture – related uses and on-farm diversified uses should be compatible with and should not hinder surrounding agricultural operations. Criteria for all these uses shall be based on provincial Guidelines on Permitted Uses in Ontario’s Prime Agricultural Areas.” The latter document is referred to as the “Guidelines”.

[43] The Guidelines focus on land uses permitted in prime agricultural areas but also have relevance on rural lands and state that permitted uses on rural lands are more permissive than in prime agricultural areas. For the purposes of the Guidelines, the Tribunal considers the Site as rural land.

[44] The Guidelines advise that five criteria must be met in order for a use to qualify as an on-farm diversified use on prime agricultural land and the sections from the Guidelines on these criteria are reproduced in Attachment 5.

[45] Messrs. Crome and Clark are of the opinion that the seasonal special event

venue, as set out in the SRZBL and to be governed by a development agreement, complies with the GBP and satisfies all of the criteria in the Guidelines. Messrs. Hoffman and Dorfman do not agree. Mr. Dorfman advises that the proposed special event venue is a non-agricultural use that should not be located in the Protected Countryside pursuant to the GBP. In the event the special event use is considered an on-farm diversified use/agri-tourism, Mr. Dorfman still believes the use is not permitted by the GBP. Mr. Hoffman believes that the proposed special event venue does not meet the criteria in the Guidelines largely because of its scale and as such fails to comply with the GBP and the Guidelines.

[46] There was no evidence which indicated that the proposed meat processing use did not satisfy the above noted criteria in the Guidelines and did not comply with the GBP.

Durham Region Official Plan

[47] The Durham Region Official Plan (“DROP”) designates the Site as Major Open Space Areas of the Greenlands System. The predominant use of Major Open Space Areas is for conservation and a full range of agricultural, agriculture-related and secondary uses.

[48] In the Staff Report, the following is included as the Region of Durham’s (“Region”) comments on the subject applications:

The Durham Region Planning Department has indicated that special events and farm tours appear to meet the definition of a secondary agricultural use as an agri-tourism use provided they operate on a part time basis, are seasonally based, are based on the existing farm operation; use only meat produced on the farm and other food sourced from local area farms. Subject to the limitations in scale presented in the application, the application appears to conform to the Regional Official Plan. Any increase in the existing nature and scale of the uses proposed would be contrary to the Regional Official Plan.

[49] Both Messrs. Crome and Clark advise that the seasonal special event use, as set out in the SRZBL, is a secondary agricultural use that complies with the DROP. Mr.

Clark also said that it conforms to the DROP as a non-agricultural use.

[50] Mr. Hoffman did not address the DROP in any detail.

[51] Mr. Dorfman feels that the proposed special event venue, by nature and scale, is a non-agricultural use that is not permitted in a Major Open Space Area as it does not meet the criteria for such uses in the DROP and, as such, the SRZBL does not comply with the DROP.

Participants

[52] Four Participants (Mary-Anne Muizelaar, Beth Meszaros, Annette Weykamp and Rhomey Manns) spoke in opposition to the event venue being permitted on the Site. Collectively, their key concerns are: the undefined, unlimited and unregulated nature of the event use; the wedding venue will not be secondary to the farm but, rather, will be the dominant use on the Site; traffic and road safety issues; trespass from event patrons onto other properties in the area; noise impacts from the events on surrounding properties; potential negative impacts to wells in the area; general incompatibility with the rural area; and the lack of a monitoring or enforcement framework to ensure that events comply with the required regulations and by-laws. Inconsistency with the PPS was another stated objection. No Participant stated any concern with occasional events on the Site or with the proposed meat processing use.

[53] Two Participants appeared in support of the Applicants and their request for additional uses on the Site. Mark Torrey spoke on behalf of the Ontario Federation of Agriculture (“OFA”). The OFA believes that value-added on-farm diversified uses should be encouraged through policies that enable innovation and additional revenue streams for farm businesses that enhance the viability of farmers. The OFA feels that the venue proposed by the Applicants aligns with the PPS, GBP and OFA’s Land Use Policy. Steve Lawrence appeared on behalf of the Durham Farm Fresh Marketing Association (“DFF”) a not-for-profit membership based organization that helps “...local producers, and others committed to local food, market their local products to our local community.”

DFF supports the Applicants' proposal and does not feel that the new on-site activities will conflict with agricultural production. DFF also believes that the Applicants' proposal will heighten the profile of local farm products and experiences and increase opportunities for more farms in the Region.

ANALYSIS AND FINDINGS

Technical Issues

[54] The evidence indicates that there are no significant technical issues associated with the applications. The Staff Report indicates that Clarington's Engineering Department is satisfied with the new driveway proposal, the ability of Morgans Road to accommodate the expected volume of traffic to be generated from the proposed uses and did not require a traffic study as part of this application. Clarington's Building Division and Emergency and Fire Services Department can deal with their requirements during any site plan approval or building permit processes. The Municipality's Operations Department, the Durham Region Health Department and the Ganaraska Region Conservation Authority have no objections. A Stage 1 Archeological Assessment was submitted which indicates that the Site has a high archeological potential. There was no evidence to suggest that archeological resources, which are to be protected pursuant to Provincial and Regional policy, could not be addressed as part of any site plan approval or building permit process that involves the disturbance of the ground. The Hydrogeological Assessment Report concludes that water and sewage facilities can be accommodated. Mr. Macos did not produce any technical evidence to rebut the foregoing and the Participants did not persuade the Tribunal that there were technical concerns.

[55] Based on Mr. Coulter's evidence, the Tribunal is satisfied that a seasonal special event venue on the Site can employ certain reasonable noise mitigation measures that will allow it to operate within the applicable noise standard. He advised that the mitigation measures can be addressed as part of any site plan control process and Mr. Donnelly advises, in his Written Closing Submission, that the Applicants have accepted

the mitigation measures proposed by Mr. Coulter. Mr. Coulter also advised that event traffic would not engender sufficient noise to be a concern under the applicable standard. Mr. Coulter told the Tribunal that his findings apply to special events occurring on the Site at any frequency. Mr. Macos did not call an acoustical/sound expert and neither Clarington nor the Participants raised any doubt in the Tribunal's mind that Mr. Coulter's evidence and opinions should not be accepted and relied upon.

Issue 1: Is an OPA Required?

[56] The Tribunal finds that an OPA is no longer required to permit the use specified in the SROPA - a seasonal event venue as an accessory on-farm diversified use. The Tribunal's rationale for this finding is set out below.

[57] On September 3, 2015, when the Applicants submitted their OPA application, the 1996 COP was in effect and it did not permit a seasonal event venue on the Site.

[58] On November 1, 2016 Clarington Council adopted OPA 107 which, amongst other matters:

- A. brings the 1996 COP into conformity with the DROP and various Provincial policies;
- B. re-designates the Site Rural Area and Environmental Protection;
- C. permits on-farm diversified uses, including agri-tourism uses, in Rural Areas subject to a zoning by-law amendment and certain conditions; and
- D. defines an on-farm diversified use and agri-tourism (these definitions are included in Attachment 5).

[59] On June 7, 2017 the Region approved much of OPA 107 and its decision was appealed, on a site specific basis by a number of parties, to the Board. The Applicants

are not one of the appellants and the Site is not subject to any of the site specific appeals.

[60] On March 19, 2018 this Member, by Oral Decision, approved OPA 107 save and except those parts subject to the site specific appeals. This was followed by a written Memorandum of Oral Decision and Order, issued on May 9, 2018, which put OPA 107 into force effective July 10, 2017. The Tribunal's Decision was made with the support of Clarington, the Region and the site specific appellants to OPA 107.

[61] At the time of this hearing, then, OPA 107 was in force.

[62] Mr. Crome is of the opinion that a special event venue can be considered as agri-tourism and that OPA 107 permits agri-tourism on the Site as an on-farm diversified use subject to a zoning by-law amendment and compliance with certain other provisions. In addition, Mr. Clark testified that the event venue is agri-tourism. The Clarington Agricultural Advisory Committee also considers special events agri-tourism provided they are scoped and compatible.

[63] The Tribunal finds that the seasonal event venue identified in the SROPA can be considered an on-farm diversified use/agri-tourism permitted by OPA 107 and that the SROPA is no longer required. This finding is supported collectively by the above-noted opinions of Messrs. Crome and Clark and the Clarington Agricultural Advisory Committee, a review of applicable Provincial policy and an examination of the definitions in the COP as amended by OPA 107 in conjunction with Clarington's definition of Agri-tourism in its Comprehensive Zoning By-law which is:

Agri-tourism: shall mean an activity or use that is accessory to a farm operation, and which promotes and educates the public about farming and agricultural activities. Such activities shall have a direct relationship to the agricultural activities on the farm, and may include farm/educational tours, observation and participation in agricultural activities. **It may also include seasonal events and social events (charity events and wedding receptions) that benefit from the farm/rural setting.** (Emphasis added).

[64] On the issue of whether the event use is an on-farm diversified use/agri-tourism permitted by OPA 107, the Tribunal prefers the evidence of Messrs. Crome and Clark to that of Messrs. Hoffman and Dorfman. The Tribunal notes that the latter opinions are largely based on the possible scale of the proposed event venue – an issue the Tribunal has considerable sympathy for and which, in the Tribunal’s opinion, is best dealt with as part of the request for the approval of the SRZBL. At face value, however, the use specified in the SROPA can be considered to be permitted by OPA 107.

[65] The Tribunal further finds that the Applicants are not prejudiced in any way by the finding that the SROPA is not required. The SROPA does not contain any special site specific provisions or concessions which need to be preserved in the interest of the Applicants’ case for the approval of the SRZBL. The SROPA is quite straightforward and simply adds to the Site an additional permitted use (a seasonal event venue as an accessory on-farm diversified use) subject to site plan control and a size restriction (2.5% of the subject lands). The Tribunal was not advised that the site plan control or size restriction provisions in the SROPA need to be preserved for the Applicants in the event the Tribunal determined that an OPA for the event venue is no longer required. Further, the Tribunal’s Decision does not rely on the “new” performance policies for on-farm diversified/agri-tourism uses in OPA 107.

Issue 2: Is the SRZBL Appropriate and Consistent/Compliant?

[66] The Tribunal finds that not all parts of the SRZBL are appropriate and consistent/compliant with Provincial and Regional policy and, accordingly, will not approve the SRZBL.

[67] The Tribunal finds that those parts of the SRZBL which are intended to permit meat processing accessory to a farm and to rezone certain lands to the EP Zone are supportable and will allow these by modifying and approving ZBL 2017-009 as set out later in this Decision.

[68] The Tribunal further finds that a seasonal special event venue, including one

which accommodates weddings, can be permitted on the Site as an on-farm diversified use/agri-tourism in accordance with the applicable Provincial policy framework provided it is appropriately defined and scoped. However, the Tribunal is not satisfied with the definition and scoping of the event venue as set out in the SRZBL. It is not sufficient to advance the event venue in a manner that is consistent with or in conformity with Provincial policy. Also, the Tribunal is not satisfied that the SRZBL addresses the issues identified by the Region in respect to compliance with the DROP.

[69] The SRZBL allows an undefined number of seasonal special events with an unrestricted number of guests on the Site seven days a week, 365 days a year provided the events are “accessory” to the farm, do not occur on more than 2.5% of the Site, do not utilize a building of more than 340 sq m in floor area and are not served by more than 65 parking spaces.

[70] The word “seasonal” in the SRZBL is not defined and can be interpreted any number of ways. For instance, it could mean year round events tailored to the applicable season in which the event is taking place (e.g. Thanksgiving, Christmas, etc.) or it could mean spring through fall, etc.

[71] The word “special” is not defined in the SRZBL but suggests something out of the ordinary and occasional and is inconsistent with the balance of the SRZBL which permits a wide variety of events on a recurring basis at any time. There is nothing in the SRZBL which addresses or scopes the frequency or timing of events. The types of possible events are varied and are not necessarily tied to a weekend, a particular time of day or season and allow the Site to be marketed for availability throughout the week and throughout the year to different types of events and client groups without limits on frequency or timing.

[72] The term “accessory” in the SRZBL is defined in the Comprehensive Zoning By-law as “... a use established during or after the establishment of the main use which is customarily incidental and subordinate to, and exclusively devoted to, the main use of the lot, and located on the same lot as such main use”. This term cannot, without

extreme difficulty, be used to appropriately scope and regulate the event venue and to undertake, as necessary, enforcement. The Tribunal prefers the concept of “secondary” as referenced in Provincial and Regional policy and notes the ability, perhaps the obligation, of a municipality to define “secondary” in a meaningful way for uses such as an on-farm diversified use/agri-tourism and to not simply invoke the use of the generic “accessory” definition for these types of uses that are clearly meant to be relatively limited in an understandable and enforceable way. Mr. Crome said the word “accessory” ensures that if the farm use ceases so would the special event venue. The Tribunal prefers a more appropriately defined relationship on the issue of secondary than one which simply says “if the farm exists, the special event venue can exist.”

[73] The lot area and floor area regulations in the SRZBL are ineffective in controlling the number of guests given the availability of an extensive outdoor area and its ability to accommodate large numbers of people.

[74] The parking restriction in the SRZBL is effective in controlling the number of parking spaces established on the Site but is ineffective in controlling the size of an event given the possible use of multi-person vehicles such as buses, limousines and vans to deliver guests to the Site.

[75] It was stated that the occupancy/capacity of the event venue would be restricted to 233 persons by virtue of the size of the future planned septic system. There is no regulation, however, in the SRZBL which caps the capacity and the septic system could be increased in capacity or augmented by mobile washrooms. Initially, mobile washroom facilities could be brought to the site of sufficient capacity to accommodate an unrestricted number of guests in the absence of a permanent septic system.

[76] It was also suggested that the limited amount of livestock raised on the Site would control the frequency and size of events. There is nothing in the SRZBL which addresses this link and there was no evidence or commitment suggesting that this link would be included as part of any regulatory framework. Mr. Donnelly, in cross examination of Mr. Hoffman, even raised the ability of the Applicants to introduce

chickens as a farm raised food source for the events.

[77] Put concisely, the type of loosely regulated event venue set out in the SRZBL does not align with the Provincial and Regional policy planning framework for rural-type areas. The SRZBL does not make sufficient effort to advance an event venue that is required to be secondary to the farm and fit within the rural area. Allowing an unrestricted number of events at a significant scale does not adequately protect the agricultural use on the Site or agricultural uses in the area and is not sufficiently respectful of Provincial and Regional policy which requires that on-farm diversified uses/agri-tourism be secondary to the principal use of the Site for agriculture. A large number of events will, in the Tribunal's opinion, allow and encourage this small farm to restrict its agricultural operations during both the potentially significant event times (for instance, to limit the operation of farm machinery to avoid noise, the raising of dust and safety/liability issues, etc.) and significant non-event times (for instance, to avoid having manure dropped on a large part of the Site in advance of the showing of the venue to potential lessees, in advance of events and during the set-up of events which Mr. Clarke said will occur on the morning of event days). The SRZBL allows an event venue that can become the dominant use of the Site, overwhelm and disrupt the operation of the farm, change the nature of this rural area/community and create land use conflict. The SRZBL would also set an unwarranted precedent – imagine every farm in the rural area of Clarington being allowed such a large and loosely regulated event venue. In this regard, the SRZBL is not in the public interest.

[78] With respect to its examination of the loosely regulated nature of the special event venue in the SRZBL, the Tribunal was struck by the following from Mary-Ann Muizelaar's Participant Statement:

It is the permanent limitlessness of this application that will forever expropriate my rural lifestyle. I have no marker to measure unlimited, I cannot prepare for unlimited and I cannot visualize the impact of unlimited on our community... This application is unlimited in time allowance, unlimited in event allowance, and unlimited in patron allowance... Applications approved without specific limits set by measurable numbers and times disregards the disruption to the long established rural life style and that of the local residents.

[79] Given the number, nature and size of events permitted, the SRZBL does not have sufficient regard to matters of Provincial interest as set out in s. 2 of the Act. Although the Provincial interest is expressed in broad terms, the Tribunal finds that the SRZBL does not have sufficient regard to the orderly development of safe and healthy communities and the appropriate location of growth and development. A large event venue capable of being used frequently and year round is not appropriate on the Site. The proposed event venue must be better defined and scoped in order to have appropriate regard to matters of Provincial interest.

[80] The SRZBL is not consistent with the PPS which requires that on-farm diversified uses/agri-tourism be secondary to the principal agricultural use of the property and be compatible with the rural landscape. The SRZBL permits an uncontrolled number of special events with an unlimited capacity year round on the Site and this is not consistent with the intent of the PPS that such uses be secondary to the principal agricultural use and fit harmoniously within the host rural area.

[81] The SRZBL does not conform to the Growth Plan as it allows an event venue as an on-farm diversified use/agri-tourism that is not adequately defined and scoped to ensure that it is, and will remain, secondary to the principal agricultural use of the Site, will not adversely affect the protection of agricultural uses and is compatible with the rural landscape and surrounding local land uses.

[82] The SRZBL does not conform to the GBP and the Guidelines it invokes. The SRZBL does not define and scope the event venue sufficiently to ensure that it will be and remain secondary to the principal agricultural use on the property, be compatible with the area and not hinder surrounding agricultural operations. Effective and clear temporal considerations, consistent with the Guidelines, are not included in the SRZBL and the Guidelines suggest that events are to be intermittent and permitted on an interim basis and not on a large scale, repeated or permanent basis.

[83] The Tribunal was advised that the Region has no objection to the proposed special event use. Based on the comment from the Region in the Staff Report, as

presented earlier, this appears to be an over simplification of the Region's position. In this regard, the Tribunal was not provided with a copy of the application, as referenced in the Region's comments, and accordingly cannot assess the "limitations in scale presented in the application" with the limitations included the SRZBL. Comments such as those reported from the Region are typically provided to a lower tier municipality in response to the circulation of an application by the lower tier municipality and prior to the drafting of a staff report with a recommendation on the application or the drafting of an implementing zoning by-law. The Tribunal was provided with no evidence from the Region, in writing or otherwise, which confirmed that it had ultimately reviewed the SRZBL and considered it to conform. A comparison of the SRZBL to the Region's comments suggests to the Tribunal a significant conformity issue. In the absence of compelling evidence to the contrary, the Tribunal is not satisfied that the SRZBL conforms to the DROP.

[84] The Tribunal considers post ZBL controls to be an important consideration and can be used to ensure compliance with certain critical policy documents and to advance good planning. The Tribunal does not believe, in this case, that the shortcomings in the SRZBL related to the definition and scoping of the event venue are intended to be addressed, or can be addressed, in a site plan agreement or development agreement based on the examples submitted to the Tribunal in this proceeding and the evidence presented.

Issue 3: Is ZBL 2017-009 appropriate and consistent/compliant?

[85] Based on the evidence and submissions, the Tribunal finds that ZBL 2017-009 is appropriate and will approve it subject to a three-part modification as set out in the Order. The approval of ZBL 2017-009 will permit the meat processing use and rezone a portion of the Site to the EP Zone.

[86] The Tribunal did not receive any oral evidence on the floor space to be devoted to the meat processing use. However, the Staff Report indicates in Paragraph 11.9 that it is 61 sq m. The Tribunal feels that the addition of a floor space cap for the meat

processing use and a requirement that the meat processed be raised on the farm is good form and appropriately acknowledges in a proactive, positive manner the intent of the Provincial and Regional policy planning framework to scope these types of uses and is consistent with the evidence of intent as presented to the Tribunal at this hearing.

[87] The pre-requisite for lifting the H is not set out in ZBL 2017-009 and the Tribunal did not receive any evidence on the applicable pre-requisite(s). The Tribunal will remove the H from ZBL 2017-009 for this reason. Further, the small meat processing use in an existing building can be accommodated without the need for site plan control.

[88] ZBL 2017-009 provides additional protection for the Graham Creek valley and adjacent lands by rezoning portions of the Site from the Agriculture (A) Zone to the Environmental Protection (EP) Zone. This aligns with the relevant policy planning framework.

[89] Clarington Council approved ZBL 2017-009 and no Witness or Participant had any objection to the addition of meat processing accessory to a farm as a permitted use on the Site or to the rezoning of additional lands into the EP Zone.

Other Considerations

[90] The Tribunal is satisfied that its Decision has appropriate regard for Provincial interests, is consistent with the PPS and conforms to the applicable Provincial Plans.

[91] In making its Decision, the Tribunal had regard to the relevant Council decision(s) and the material and information Council considered in making its decision(s) as provided.

[92] Rural areas are a critical part of the agricultural system and way of life in Ontario. Although they are not prime agricultural areas, they are important and subject to relevant and thoughtful Provincial policy and protection. On-farm diversified uses/agri-tourism in rural areas are appropriate but, as noted at the hearing, do not get a “free

pass” simply because they are on a farm and will help a farmer(s). They must align with Provincial policy and, in this case, the SRZBL proposing to allow the on-farm diversified use/agri-tourism does not do that.

[93] The Tribunal considered affording the Applicants an opportunity to provide additional evidence and/or submissions on how the SRZBL could be modified with additional regulations to address the Tribunal’s concerns and/or to propose restrictions to be included in a site plan agreement or other agreement, along with a reply opportunity by Clarington. The Tribunal ultimately concluded that the public interest was best served by requiring that any proposed new regulations or related matters be considered as part of a public process involving Clarington Council and the public.

[94] The Tribunal also notes that it could have approached this matter in two ways both of which would have resulted in the refusal of the event venue in the SRZBL. It could have deemed the event use in the SRZBL a non-agricultural use because of its potential size and scope – too big to be an on-farm diversified use/agri-tourism - or it could, as it did, accept that a seasonal special event venue can be an on-farm diversified use/agri-tourism and then deal with the size and scope issue. Messrs. Hoffman and Dorfman may have preferred the former approach but the Tribunal chose the latter because it better recognizes the Provincial and Regional policy direction that a seasonal special event venue can be permitted on the Site to assist with the viability of the farm subject to proper definition and scoping. Despite the alternative approach taken by the Tribunal, the evidence of Messrs. Hoffman and Dorfman in respect to the importance of scope and scale was helpful and compelling.

[95] The Tribunal suggests that an applicant or a municipality might benefit from approaching a matter such as this with a chart that identifies the manner in which an event venue on a farm is to be collectively defined, regulated and scoped by: 1) provisions in a ZBL; 2) provisions in a typical site plan agreement and/or other agreement that is mutually negotiated, enforceable and which extends beyond the items in a typical site plan agreement; and 3) provisions in existing or proposed general

municipal by-laws which deal with such issues as noise, licensing, hours of operation, etc.

[96] The Parties each submitted previous decisions on cases in support of their positions. While each case before the Tribunal is evaluated on its own merits, the Tribunal reviewed the submitted cases in advance of reaching its Decision on this case.

ORDER

[97] The Tribunal orders as follows;

- A. the appeal of the refusal of the OPA is dismissed;
- B. the zoning appeal is granted in part and ZBL 2017-009 is approved subject to a three-part modification: the addition of a regulation which caps the floor space devoted to meat processing accessory to a farm at 61 sq m, the addition of a regulation that restricts the meat processing use to meat raised on the farm, and the deletion of the Holding "H" symbol; Clarington is to modify, in a timely manner, ZBL 2017-009 in accordance with this Order and the modified ZBL 2017-009 will have an effective date coincident with the date of issuance of this Order; and
- C. This Member may be spoken to should any matters arise respecting the implementation of this Order.

"Thomas Hodgins"

THOMAS HODGINS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario

Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

3017
Appeal of ZBA

Planning Act, R.S.O. 1990

Notice of the Adoption of a Zoning By-Law

Property: 3582 Morgans Road, Part Lot 17, Concession 3, Former Township of Clarke

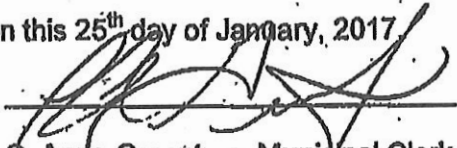
TAKE NOTICE that taking into consideration any oral and written submissions, the Council of the Municipality of Clarington passed By-law 2017-009 on January 16, 2017.

For an explanation of the effect of the oral and written submissions, see Staff Report PSD-007-17 and the minutes of the Planning & Development Committee meeting of January 9, 2017. The purpose and effect of By-law 2017-009 is to permit meat processing accessory to a farm but not including an abattoir. A copy of the by-law and a key map showing the location of the lands to which the by-law applies are attached.

Any person, corporation, or agency may appeal the By-law to the Ontario Municipal Board by filing with the Clerk of the Municipality of Clarington, not later than February 14, 2017, a notice of appeal which describes the objection to the By-law and the reasons for the objection, together with a certified cheque or money order in the amount of \$300.00 made payable to the "Minister of Finance".

Further information is available by contacting Dave Addington of the Planning Services Department at 905-623-3379, extension 2419.

Dated at the Municipality of Clarington this 25th day of January, 2017.


C. Anne Greentree, Municipal Clerk
Municipality of Clarington

FILE NO. D14.ZBA-2015-0015

- NOTE:**
1. The Planning Act provides for appeals to be filed by "persons". Groups or associations, such as residents or ratepayers groups which do not have incorporated status, may not be considered "persons" for purposes of the Act. Groups wishing to appeal this decision should do so in the name or names of individual group members, and not in the name of the group.
 2. No person or public body shall be added as a party to the hearing of an appeal unless, the person or public body made oral submissions at a public meeting or written submissions to the council before the by-law was passed, or in the opinion of the Ontario Municipal Board, there are reasonable grounds to add the person or public body as a party.

Corporation of the Municipality of Clarington

By-law Number 2017-009

being a By-law to amend By-law 84-63, the Comprehensive Zoning By-law for the Corporation of the Municipality of Clarington.

Whereas the Council of the Corporation of the Municipality of Clarington deems it advisable to amend By-law 84-63, as amended, of the Corporation of the Municipality of Clarington for ZBA2015-0015; and

Now Therefore Be It Resolved That, the Council of the Corporation of the Municipality of Clarington enacts as follows:

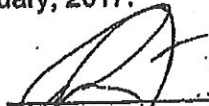
1. By-law 84-63 is amended as set out in Sections 2 through 4 of this By-law.
2. Section 6.4 "SPECIAL EXCEPTIONS – AGRICULTURAL ZONE (A) ZONE" is hereby further amended by adding thereto the following new Special Exception:

"SECTION 6.4.91 AGRICULTURAL EXCEPTION (A-91) ZONE

a. Notwithstanding Sections 6.1, those lands zoned "A-91" on the Schedules to this By-law, may in addition to other uses permitted in the Agricultural (A) Zone, be used for:

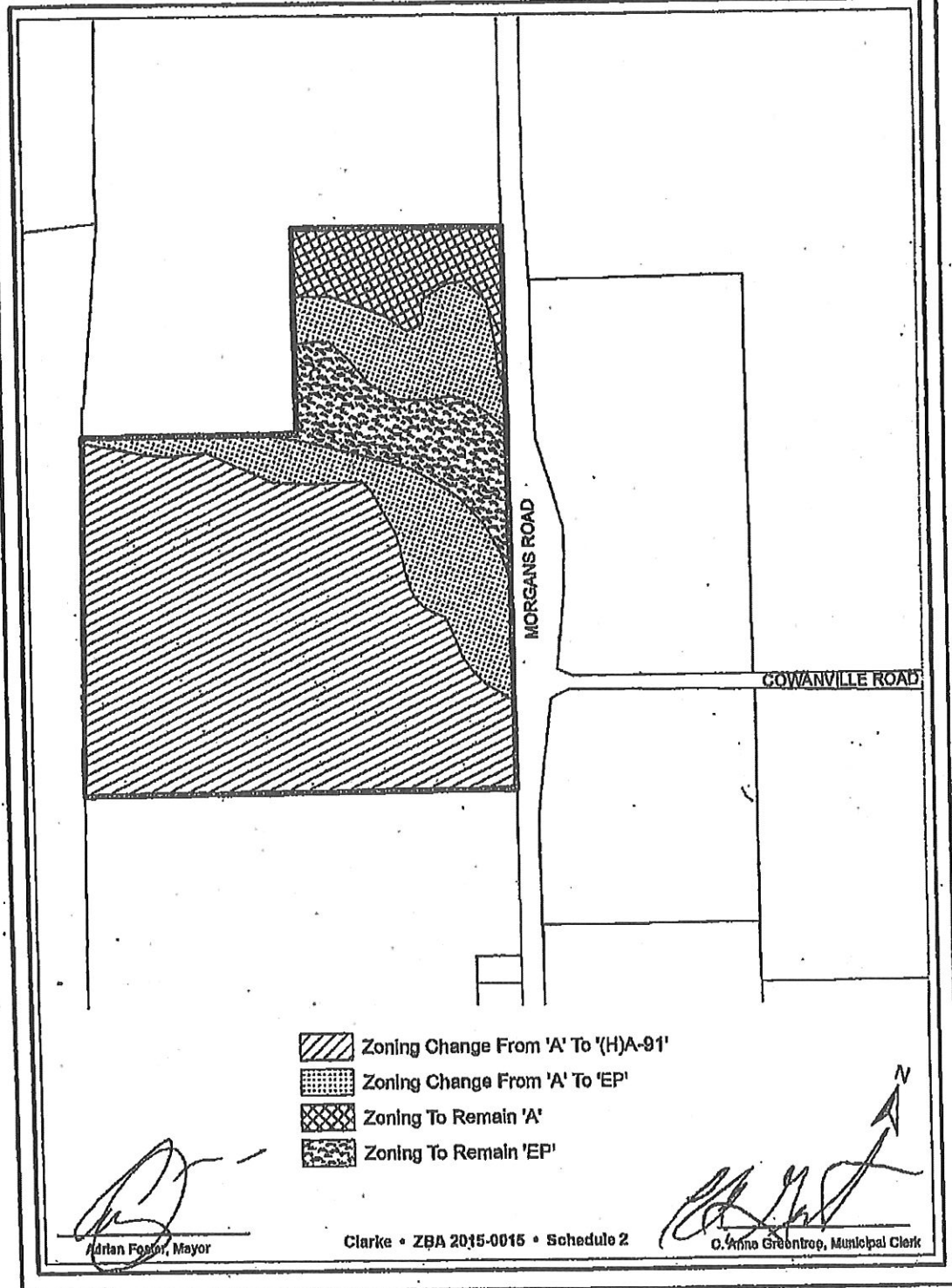
i) meat processing accessory to a farm but not including an abattoir
3. Schedule '2' to By-law 84-63, as amended, is hereby further amended by changing the zone designation from "Agricultural (A) Zone" to "Holding – Agricultural Exception ((H) A-91) Zone".
4. Schedule 'A' attached hereto shall form part of this By-law.
5. This By-law shall come into effect on the date of the passing hereof, subject to the provisions of Section 34 and 36 of the Planning Act.

By-Law passed in open session this 16th day of January, 2017.


Adrian Foster, Mayor


Cl Anne Greentree, Municipal Clerk

This is Schedule "A" to By-law 2017-009 , passed this 18 day of January , 2017 A.D.



ATTACHMENT 2

AMENDMENT NO. 108 TO THE MUNICIPALITY OF CLARINGTON OFFICIAL PLAN

- PURPOSE:** To amend the Municipality of Clarington Official Plan to permit agri-tourism uses as an accessory use to a farm operation on the subject property, municipally known as 3582 Morgans Road, Clarke.
- BASIS:** The amendment is based on an application submitted by Clark Consulting Services on behalf of the owner Deborah and Oswin Mathias to permit agri-tourism uses as an accessory use to a farm operation.
- ACTUAL AMENDMENT:** The Clarington Official Plan is hereby amended by adding a new policy to Exceptions, Section 23.17.18 as follows:
- “ 23.17.18 A seasonal event venue is permitted as an accessory on-farm diversified use on the subject property identified by assessment roll number 1817-030-030-16520 and municipally known as 3582 Morgans Road, subject to Site Plan Control and provided that such use occupies no more than approximately 2.5% of the subject lands.”
- IMPLEMENTATION:** The provisions set forth in the Municipality of Clarington Official Plan as amended, regarding the implementation of the Plan, shall apply in regard to this Amendment.
- INTERPRETATION:** The provisions set forth in the Municipality of Clarington Official Plan as amended, regarding the interpretation of the Plan, shall apply in regard to the Amendment.

Corporation of the Municipality of Clarington

By-law Number 2017_____

being a By-law to adopt Amendment No.108 to the Clarington Official Plan

Whereas Section 17 (22) of the Planning Act R.S.O. 1990, as amended, authorizes the Municipality of Clarington to pass by-laws for the adoption or repeal of Official Plans and Amendments thereto (COPA2015-0005);

And Whereas the Council of the Corporation of the Municipality of Clarington deems it advisable to amend the Clarington Official Plan to permit the development of agri-tourism uses as an accessory use to a farm operation at 3582 Morgans Road, Former Township of Clarke;

Now Therefore Be It Resolved That, the Council of the Corporation of the Municipality of Clarington enacts as follows:

1. That Amendment Number 108 to the Clarington Official Plan being the attached Explanatory Text is hereby adopted.
2. This By-law shall come into force and take effect on the date of the passing hereof.

By-law passed in open session this _____ day of _____, 2017.

Adrian Foster, Mayor

C. Anne Greentree, Municipal Clerk

ATTACHMENT 3

Corporation of the Municipality of Clarington

By-law Number 2017-_____

being a By-law to amend By-law 84-63, the Comprehensive Zoning By-law for the Corporation of the Municipality of Clarington

Whereas the Council of the Corporation of the Municipality of Clarington deems it advisable to amend By-law 84-63, as amended, of the Corporation of the Municipality of Clarington for ZBA2015-0015; and

Now Therefore Be It Resolved That, the Council of the Corporation of the Municipality of Clarington enacts as follows:

1. By-law 84-63 is amended as set out in Sections 2 through 4 of this By-law.
2. Section 6.4 “SPECIAL EXCEPTIONS – AGRICULTURAL ZONE (A) ZONE” is hereby further amended by adding thereto the following new Special Exception:

“SECTION 6.4.91 AGRICULTURAL EXCEPTION (A-91) ZONE

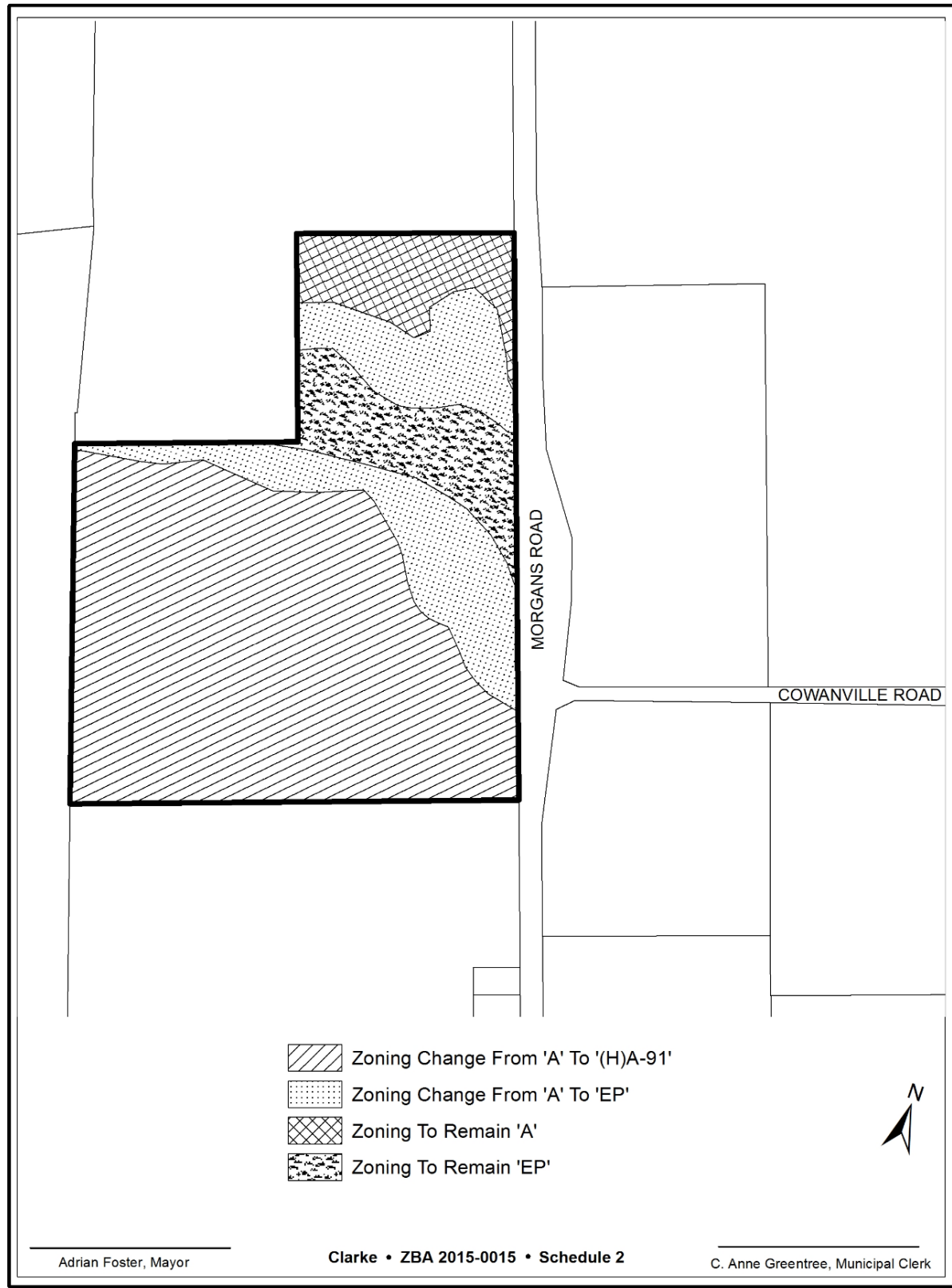
- a. Notwithstanding Sections 6.1, those lands zoned “A-91” on the Schedules to this By-law, may in addition to other uses permitted in the Agricultural (A) Zone, be used for:
 - i) meat processing accessory to a farm but not including an abattoir
 - ii) a seasonal special event venue accessory to a farm
- b. Regulations for Event Venue uses:
 - i) Total Area of the Lot (maximum) 2.5%
 - ii) Total Floor Area (maximum) 340 square metres
 - iii) Number of parking spaces (maximum) 65
3. Schedule ‘2’ to By-law 84-63, as amended, is hereby further amended by changing the zone designation from "Agricultural (A) Zone" to "Holding – Agricultural Exception ((H)A-91) Zone”.
4. Schedule ‘A’ attached hereto shall form part of this By-law.
5. This By-law shall come into effect on the date of the passing hereof, subject to the provisions of Section 34 and 36 of the Planning Act.

By-Law passed in open session this _____ day of _____, 2017.

Adrian Foster, Mayor

C. Anne Greentree, Municipal Clerk

This is Schedule "A" to By-law 2017- , passed this day of , 2017 A.D.



ATTACHMENT 4

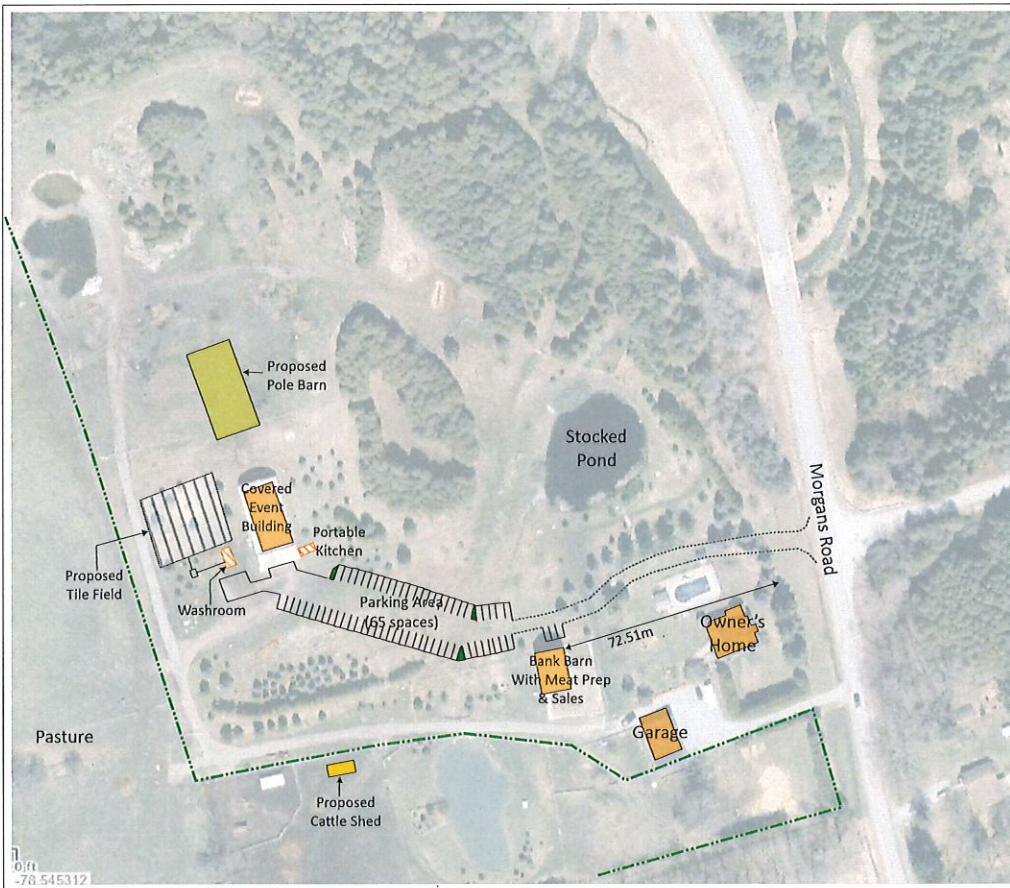


Figure 4 - Conceptual Site Plan

Property Address:

3582 Morgans Road
Newcastle, Ontario

Legend:

Fence ---
Proposed Driveway ---

List of Structures:

Owner's Home
Garage
Bank Barn With Meat Prep & Sales
Covered Event Building
Portable Kitchen
Portable Washroom

Lot Dimensions:

Lot Area: 40 acres
Lot Frontage: 502.47 metres

Prepared By:

Clark Consulting Services

Date:

January 16, 2014

Revised Date:

February 23, 2016

June 2016

January 2017

March 2018

Update:

Base Maps Prepared By: VELD architect



Provincial Policy Statement, 2014

1.1.4 Rural Areas in Municipalities

Rural areas are important to the economic success of the Province and our quality of life. Rural areas are a system of lands that may include rural settlement areas, rural lands, prime agricultural areas, natural heritage features and areas, and other resource areas. Rural areas and urban areas are interdependent in terms of markets, resources and amenities. It is important to leverage rural assets and amenities and protect the environment as a foundation for a sustainable economy.

Ontario's rural areas have diverse population levels, natural resources, geographies and physical characteristics, and economies. Across rural Ontario, local circumstances vary by region. For example, northern Ontario's natural environment and vast geography offer different opportunities than the predominately agricultural areas of southern regions of the Province.

1.1.4.1 Healthy, integrated and viable *rural areas* should be supported by:

- a. building upon rural character, and leveraging rural amenities and assets;
- b. promoting regeneration, including the redevelopment of *brownfield sites*;
- c. accomodating and appropriate range and mix of housing in rural *settlement areas*;
- d. encouraging the conservation and redevelopment of existing rural housing stock on *rural lands*;
- e. using rural *infrastructure* and *public service facilities* efficiently;
- f. promoting diversification of the economic base and employment opportunities through goods and services, including value-added products and the sustainable management of resources;
- g. providing opportunities for sustainable and diversified tourism, including leveraging historical, cultural, and natural assets;
- h. conserving biodiversity and considering the ecological benefits provided by nature; and
- i. providing opportunities for economic activities in *prime agricultural areas*, in accordance with policy 2.3.

1.1.5.4 Development that is compatible with the rural landscape and can be sustained by rural service levels should be promoted.

1.1.5.7 Opportunities to support a diversified rural economy should be promoted by protecting agricultural and other resource-related uses and directing non-related development to areas where it will minimize constraints on these uses.

1.1.5.8 *Agricultural uses, agriculture-related uses, on-farm diversified uses and normal farm practices* should be promoted and protected in accordance with provincial standards.

1.7 Long-Term Economic Prosperity

1.7.1 Long-term economic prosperity should be supported by:

- a. promoting opportunities for economic development and community investment-readiness;
- b. optimizing the long-term availability and use of land, resources, *infrastructure*, electricity generation facilities and transmission and distribution systems, and *public service facilities*;
- c. maintaining and, where possible, enhancing the vitality and viability of downtowns and mainstreets;
- d. encouraging a sense of place, by promoting well-designed built form and cultural planning, and by conserving features that help define character, including *built heritage resources* and *cultural heritage landscapes*;
- e. promoting the redevelopment of *brownfield sites*;
- f. providing for an efficient, cost-effective, reliable *multimodal transportation system* that is integrated with adjacent systems and those of other jurisdictions, and is appropriate to address projected needs to support the movement of goods and people;
- g. providing opportunities for sustainable tourism development;
- h. providing opportunities to support local food, and promoting the sustainability of agri-food and agri-product businesses by protecting agricultural resources, and minimizing land use conflicts;
- i. promoting energy conservation and providing opportunities for development of *renewable energy systems* and *alternative energy systems*, including district energy;
- j. minimizing negative impacts from a changing climate and considering the ecological benefits provided by nature; and
- k. encouraging efficient and coordinated communications and telecommunications infrastructure.

6.0 Definitions

Agricultural uses:

means the growing of crops, including nursery, biomass, and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including, but not limited to livestock facilities, manure storages, value-retaining facilities, and accommodation for full-time farm labour when the size and nature of the operation requires additional employment.

Agri-Tourism uses:

means those farm-related tourism uses, including limited accommodation such as a bed and breakfast, that promote the enjoyment, education or activities related to the farm operation.

On-farm diversified uses:

means uses that are secondary to the principal agricultural use of the property, and are limited in area. *On-farm diversified uses* include, but are not limited to, home occupations, home industries, *agri-tourism uses*, and uses that produce value-added agricultural products.

Growth Plan for the Greater Golden Horseshoe (2017)

2.2.9 Rural Areas

- 3. Subject to the policies in Section 4, *development* outside of *settlement areas* may be permitted on *rural lands* for:
 - a) the management or use of resources;
 - b) resource-based recreational uses; and
 - c) other rural land uses that are not appropriate in *settlement areas* provided they:

- i. are compatible with the rural landscape and surrounding local land uses;
- ii. will be sustained by rural service levels; and
- iii. will not adversely affect the protection of *agricultural uses* and other resource-based uses such as *mineral aggregate operations*.

Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas

2.3.1 PPS Criteria for On-Farm Diversified Uses

All of the following criteria must be met to qualify as *on-farm diversified uses*, in accordance with the PPS.

1. Located on a farm.

(from the label "*on-farm*" *diversified uses* and from the definition's requirement that the use be secondary to the principal "*agricultural use*" of the property)

On-farm diversified uses must be located on a farm property that is actively in *agricultural use*. The *on-farm diversified uses* provisions in the PPS do not apply to small residential lots in the *prime agricultural area*.

As noted in Section 2.1 of these guidelines, *agricultural uses* occur on a farm with the expectation of gain or reward. This does not include production primarily for use or consumption by members of the household of the owner or operator of the agricultural operation, for purposes of pastime or recreation, or in a park, on a property used primarily for residential purposes or in a garden located in a public space. The planning authority may require evidence that the property is actively farmed. For example, proof may be required that shows the property qualifies for the Farm Property Class under the *Assessment Act, 1990*.

2. Secondary to the principal agricultural use of the property.

(from the PPS definition of *on-farm diversified uses*)

While the PPS definition of *on-farm diversified uses* allows for a wide range of on-farm economic opportunities, it also requires those uses be secondary to the principal *agricultural use* of the property. In other words, *agricultural uses* must remain the dominant use of the property. This is measured in spatial and temporal terms. Spatially, the use must be secondary relative to the *agricultural use* of the property. The spatial limits are addressed below under the "limited in area" criterion.

Temporal considerations apply to uses that are temporary or intermittent, such as events. Given that *on-farm diversified uses* (and *agriculture-related uses*) must be compatible with surrounding agricultural operations, the frequency and timing of any events must not interfere with cropping cycles or other *agricultural uses* on the farm or in the surrounding area.

Even temporary uses must meet all criteria for *on-farm diversified uses*. Acceptable uses must be compatible with and able to coexist with surrounding agricultural operations, and:

- permanently displace little-to-no agricultural land, within the limits discussed under the "limited in area" criterion
- do not require site grading and/or drainage unless it improves conditions for agricultural production
- are one-time uses or held infrequently when impacts to agriculture are minimal
- any land used for a temporary use must be immediately returned to agriculture

- a harvestable crop is produced on the land the year in which the temporary use is implemented (if applicable)
- meet compatibility requirements (e.g., do not require significant emergency, water and wastewater services; maintain reasonable noise and traffic levels in the area)
- impacts to the site itself and surrounding agricultural operations are mitigated (e.g., compaction, drainage, trespassing)

If all criteria are met, events may be accommodated through a temporary use zoning by-law under the *Planning Act, 1990*, provided no permanent alterations are proposed to the land or structures (e.g., stages, washrooms or pavilions). The temporary zoning must be structured in a way that the farmland is returned to agriculture immediately following the event (e.g., detailed provisions to avoid soil compaction, timing events to avoid impacts on cropping systems). The intention is that these uses are permitted only on an interim basis.

The Municipal Act, 2001, authorizes municipalities to pass by-laws, issue permits and impose conditions on events. These by-laws may require site plans, traffic plans, emergency plans and security plans. These by-laws can help ensure uses are reasonable without the need for other approvals.

Large-scale, repeated or permanent events are not *on-farm diversified uses* and should be directed to existing facilities such as fairgrounds, parks, community centres and halls, *settlement areas or rural lands*. Guidelines on new venues in *prime agricultural areas* are provided in Section 3.2 Limited Non-Agricultural Uses.

3. Limited in area.

(from the PPS definition of *on-farm diversified uses*)

While PPS policies enable a wide variety of on-farm economic opportunities, the PPS also requires those uses are limited in area. This criterion is intended to:

- minimize the amount of land taken out of agricultural production, if any
- ensure agriculture remains the main land use in *prime agricultural areas*
- limit off-site impacts (e.g., traffic, changes to the agricultural-rural character) to ensure compatibility with surrounding agricultural operations

Many municipalities limit the scale of *on-farm diversified uses* by limiting the number or place of residence of employees, number of businesses, percentage of products sold that are produced on the farm or floor area of buildings and outdoor storage. However, these factors do not have a direct bearing on the amount of farmland displaced or fully account for all the land occupied by the uses. A preferred approach is to base “limited in area” on the total footprint of the uses, on a lot coverage ratio basis.

Guidance on the “limited in area” criterion is based on a review of existing municipal approaches in Ontario, observations and experiences of OMAFRA staff across the province, benchmarking against existing diverse farms, development of scenarios and stakeholder input. Realistic scenarios to predict how much land could be used for *on-farm diversified uses* on small, medium and large farms are provided in Appendix 2. Appendix 3 offers an example of an existing, diversified farm with a combination of permitted uses, illustrating how the *on-farm diversified uses* portion of the property is calculated.

The approach to the “limited in area” criterion is intended to:

- achieve the balance between farmland protection required by the PPS and economic opportunities for farmers

- improve consistency among municipalities in terms of the land area that could be used for such uses
- level the playing field for different types of *on-farm diversified uses*
- provide flexibility as *on-farm diversified uses* and owners change
- simplify implementation

The “limited in area” requirement should be based on the total land area that is unavailable for agricultural production as a result of the *on-farm diversified use* (i.e., the footprint occupied by the use, expressed as a percentage of lot coverage). The area calculation should account for all aspects related to an *on-farm diversified use* such as buildings, outdoor storage, landscaped areas, berms, well and septic systems, parking and new access roads. The lot coverage ratio should be based on the size of the individual parcel of land where the use is located, not the total area of a farm operation which could include several parcels. The rationale for using a lot coverage ratio is built on the premise that a large property is generally able to accommodate a larger *on-farm diversified use* than a small property while meeting compatibility requirements.

Where available, uses should be within existing agricultural buildings or structures no longer needed to support agricultural production. Reusing existing buildings or structures can help to:

- reduce the amount of farmland consumed
- maintain the agricultural/rural character of the area
- ensure existing buildings are kept in good repair or improved

As farmers expand and modernize their agricultural operations, they often prefer to build new structures based on current standards rather than retrofit older buildings. This can result in surplus buildings that could be repurposed. It is recommended that for “limited in area” calculations, the area of existing buildings used for *on-farm diversified uses* be discounted at an appropriate rate (e.g., 50%). Be aware that a change in the use of a building may result in a change in building code requirements (Section 2.5.7).

If an *on-farm diversified use* occupies the same footprint as a demolished building, the land area for the use may be similarly discounted. This recognizes that it is unlikely that land under a demolished building will be returned to an *agricultural use*. However, preference should be given to reuse of existing buildings where possible.

It is recommended that the area of existing laneways not be included in area calculations. This will encourage *on-farm diversified uses* to locate within existing farm building clusters and minimize impacts on agricultural production.

If an existing barn (or a barn destroyed by fire,) is restored for an *on-farm diversified use* with the same footprint as the existing barn, only 50% of the building’s footprint is counted in the area calculations. Likewise, the footprint of a home occupation in an existing residence or outbuilding may be calculated at 50% of the area of the office. However, 100% of the area needed for parking and outdoor storage would be included. Existing laneways are not counted in the area calculations but 100% of the area for new laneways would be included.

These guidelines recommend that “limited in area” be relative to the size of the farm property on which the *on-farm diversified use* is located. The size of the entire farm property, including land subject to an easement, and not just the portion of a farm that is in *agricultural use*, should be considered. For example, a use occupying 1 ha on a 50 ha farm may be “limited in area,” while a 1 ha use on a 15 ha farm may not be. These guidelines recommend that the standard for the acceptable area occupied by an *on-farm diversified use* is up to 2% of a farm parcel to a maximum of 1 ha (10,000 m²). The examples of *on-farm diversified uses* in Appendix 2 show the variety of uses that could be placed on different-sized parcels of land, while staying within the recommended maximum lot coverage of 2%.

In the case of *on-farm diversified uses* that are intermittent, such as events, “limited in area” may mean an area greater than the general recommendations above (Section 2.3.1.1). When calculating the area for *agri-tourism uses* such as wagon rides or corn mazes, lands producing a harvestable crop are *agricultural uses* that are not included in area calculations. However, areas such as playgrounds and loading areas for hayrides should be included.

If more than one *on-farm diversified use* is proposed on a single property, the combined area of all *on-farm diversified uses* should be within the above area and lot coverage guidelines.

If the area of a proposed *on-farm diversified use* exceeds the recommended area thresholds in these guidelines, give consideration to PPS Policy 2.3.6 on non-agricultural uses in the *prime agricultural areas*. *On-farm diversified uses* that are proposed to grow beyond the area limits, either incrementally or otherwise, are not supported.

Since the PPS requires *settlement areas* to be the focus of growth and *development*, large-scale industrial and commercial buildings appropriate in *settlement areas* (due to servicing, accessibility, etc.) are not permitted in *prime agricultural areas*. It is recommended that the gross floor area of buildings for *on-farm diversified uses* be capped at a scale appropriate to *prime agricultural areas*. Municipalities may set the building size cap based on a maximum lot coverage ratio (i.e., proportion of the 2% of the property that may be used for *on-farm diversified uses* to be covered by buildings).⁵ Alternatively, municipalities may define maximum gross floor area limits numerically (e.g., maximum gross floor area for properties 15–20 ha is 600 m², and so on for different sized properties). Regardless of how the cap is set, the area of existing buildings, should not be discounted when calculating the gross floor area of buildings for *on-farm diversified uses*.

Recommended Area Calculations for On-farm Diversified Uses

- existing laneways shared between agricultural uses and on-farm diversified uses are not counted
- area of existing buildings or structures, built prior to April 30, 2014, occupied by on-farm diversified uses is discounted (e.g. 50 %)
- area of new buildings, structures, setbacks, outdoor storage, landscaped areas, berms, laneways, parking, etc. are counted at 100%
- on-farm diversified uses may occupy no more than 2% of the property on which the uses are located, to a maximum of 1 ha
- the gross floor area of buildings used for on-farm diversified uses is limited (e.g. 20% of the 2%)

4. Includes, but is not limited to, home occupations, home industries, agri-tourism uses and uses that produce value-added agricultural products.

(from the PPS definition of *on-farm diversified uses*)

The PPS definition provides a number of examples of *on-farm diversified uses*. Beyond these examples, other uses may also be suitable, subject to meeting all PPS criteria.

The PPS language related to uses that are not related to agriculture (i.e., home occupations, home industries), suggests that in *prime agricultural areas*, these operations must be at a reasonable scale, as discussed under the “secondary to...” and “limited in area” criteria.

Municipalities may wish to encourage *on-farm diversified uses* that relate to agriculture (e.g., *agri-tourism* and value-added uses) by streamlining approvals for these uses.

5. Shall be compatible with, and shall not hinder, surrounding agricultural operations.

(from PPS Policy 2.3.3.1)

Refer to the discussion of this policy under *agriculture-related uses* (Section 2.2) as it applies equally to *on-farm diversified uses*. Some uses that meet other *on-farm diversified uses* criteria may not meet the compatibility criterion. For example, uses that attract large numbers of people onto the farm for non-farm events or for recreational purposes could result in soil compaction on the farm itself, excessive noise and trespass issues that may be incompatible with surrounding agricultural operations. Commercial or industrial uses that have a large number of employees or attract a large number of customers may also not be compatible in the *prime agricultural area*. In addition, some uses may be better suited to *settlement areas* where municipal services are available (PPS Policy 1.6.6). Municipalities should consider how effectively any impacts can be mitigated before allowing different uses in *prime agricultural areas*.

Compatibility Considerations

- does not hinder surrounding agricultural operations
- appropriate to available rural services and infrastructure
- maintains the agricultural /rural character of the area
- meets all applicable environmental standards
- cumulative impact of multiple uses in prime agricultural areas is limited and does not undermine the agricultural nature of the area

Nano or micro-breweries and small distilleries may fit the definition of *on-farm diversified uses* if they are able to meet all PPS criteria for that category of uses. However, these uses should be appropriate to available rural water and wastewater services. High water use/effluent generation operations are generally inappropriate in *prime agricultural areas* and may require capacity beyond what is available on the site. The appropriate scale to qualify as an *on-farm diversified use* needs to be assessed on a case-by-case basis.

In *prime agricultural areas* with multiple *on-farm diversified uses* on several farms, the collective impact of these uses should be limited and not undermine the agricultural nature of the area or the health of the environment. Whether a proposed new *on-farm diversified use* is compatible depends on other uses in the area and how the area would be affected by all of these uses.

Municipality of Clarington Official Plan, 2017

24.2 Definitions

Agri-Tourism: means those farm-related tourism uses, such as farm tours, education courses, wineries, including limited accommodation such as a *bed and breakfast* and farm vacation homes that promote the enjoyment, education or activities related to the farm operation.

On-farm Diversified Uses: means uses that are secondary to the principal *agricultural use* of the property and are limited in area. Uses include, but are not limited to, farm gate sales and seasonal *farm produce outlets*, and uses that produce value added agricultural products from the farm operation.