

Municipality of Lakeshore – Report to Council

Growth and Sustainability

Community Planning



To: Mayor & Members of Council

From: Jonathan Derworiz, MCIP, RPP, Planning Consultant

Date: February 15, 2024

Subject: Zoning By-law Amendment File ZBA-02-2024, Tilbury Battery Storage, Applicant – Angela Wang, Stantec, on behalf of Boralex Inc.

Recommendation

Approve Zoning By-law Amendment Application ZBA-02-2024 to amend Zoning By-law 2-2012 over the lands municipally known as 0 Creekside Road and legally described as Part of Lots 21-22 Concession 2, Tilbury as in R1000035; subject to TN7842; Lakeshore Subject to an Easement In Gross Over Part 8 12R29203 as in CE1137507, being all of the Property Identifier Number 75074-0170(LT), and located on the south side of Creekside Road and west of Baptiste Road, to amend the Municipality of Lakeshore Zoning By-law from “Agriculture” (“A”) Zone to Agriculture (A-118) Zone; and

Direct the Clerk to read By-law 23-2024 during the Consideration of By-laws, all as presented at the February 27, 2024 Council meeting.

Background

An application to amend the Municipality of Lakeshore Zoning By-law 2-2012 (“Zoning By-law”) has been submitted by Angela Wang, Stantec, on behalf Boralex Inc., for the site identified as Part Lot 21-22 Concession 2, Tilbury (“Subject Site”) to permit a battery storage facility. The subject site is designated as Agriculture under the Lakeshore Official Plan and currently zoned Agriculture (A) under the Zoning By-law. The applicant is proposing to rezone the subject site to a site-specific A Zone to permit a battery energy storage system facility.

The site is currently being used for agricultural purposes. A 115kV Hydro One transmission line crosses through the southern portion of the site. There is a 203kV Hydro One line currently being constructed parallel to the 115kV line.

In support of the application to amend the Zoning By-law, the following technical studies have been submitted and reviewed:

1. Planning Justification Memo dated January 12, 2024, prepared by Stantec Consulting Ltd. This Memo provides a description of the subject lands, proposed use and policy context.
2. Stage 1 and 2 Archaeological Assessment (Battery Storage Area) dated March 16, 2023, prepared by Stantec Consulting Ltd. This Assessment was completed for the proposed Battery Storage Site as part of the required Class Environmental Assessment (“EA”) for the use. No archaeological resources were identified during the Stage 1 and 2 assessments of the subject site.
3. Stage 1 and 2 Archaeological Assessment (Site Access) dated January 9, 2024, prepared by Stantec Consulting Ltd. This Assessment was completed for the proposed access to Battery Storage Site as part of the required Class Environmental Assessment for the use. No archaeological resources were identified during the Stage 1 and 2 assessments of the subject site.
4. Cultural Heritage Screening Report dated April 4, 2023, prepared by Stantec Consulting Ltd. This Report was prepared as part of the required Class EA for the use. Its purpose is to identify known and potential built heritage resources or cultural heritage landscapes within the subject lands. The Report concluded that:
 - a. No properties are designated under Parts IV or V of the *Ontario Heritage Act* were found;
 - b. No properties are listed on the Municipality of Lakeshore or Municipality of Chatham-Kent heritage registrars;
 - c. No properties with 40-year-old buildings/structures with potential cultural heritage value or interest are present;
 - d. There is one potential cultural heritage landscape – Canadian Pacific Railway Line; and
 - e. Should site or use activities require new, at-grade direct impacts to the Railway Line, further studies should be undertaken.
5. Environmental Review and Constraints Analysis dated February 23, 2023, prepared by Natural Resource Solutions Inc. This Analysis summarizes the results of a desktop background review, site validation, Species at Risk (SAR) screening exercise, and the resulting constraints assessment that is associated with the proposed facility. No notable siting or development constraints that would be applicable to the Subject Property have been identified.
6. Sound Impact Assessment Memo dated October 16, 2023, prepared by Aercoustics Engineering Ltd. The Memo concludes that, with the prescribed sound control measures (site design and layout), the facility is predicted to meet applicable sound levels.
7. Phase 1 Environmental Site Assessment dated October 30, 2023, prepared by Stantec Consulting Ltd. The purpose of the Assessment is to determine if evidence of potential or actual environmental contamination exists in connection with the Site, as a result of current or past activities on the Site or neighbouring properties. The Assessment concluded that no evidence of environmental contamination associated with the current and/or historical operations of the site was revealed.
8. Site Plan dated January 4, 2024, last revised January 15, 2024, prepared by Stantec Consulting Ltd.

Subject Land: (Creekside Road)	Lot Area: 22 ha.
Neighbouring Land Uses:	North: Agricultural East: Agricultural and Commercial. West: Agricultural South: Agricultural
Official Plan:	Agricultural
Existing Zoning:	Agriculture (A) Zone

It is noted that at the September 12, 2023 Council meeting, Council passed a Municipal Support Resolution for the proposal (Motion 248-09-2023):

Whereas the Proponent, Tilbury Battery Storage Inc., is proposing to construct and operate a Long-Term Reliability Project Tilbury Battery Storage at the Project Site which is located on the Subject Lands described as 22100 Lakeshore Road 303, Lakeshore, N0P 1L0, CON 2 PT LOTS 21 & 22 REG 53.00AC FR D CON 2 E PT LOT 21 W PT LOT 22 18.36AC FR D in the Municipality of Lakeshore in accordance with the Independent Electricity System Operator’s (IESO) E - LT1 and LT1 Request for Proposals process;

And whereas the Long-Term Reliability Project will use the Technology which is Battery Energy Storage and the Project is expected to have a Maximum Contract Capacity of 80 MW;

Now therefore the Council of the Municipality of Lakeshore resolves that:

The Municipality of Lakeshore supports the development, construction and operation of the Long-Term Reliability Project on the Subject Lands; Council supports the Tilbury Battery Storage project by Tilbury Battery Storage Inc., a subsidiary of Boralex Inc.

This resolution's sole purpose is to enable the Proponent to receive the required E-LT1 obligations under any awarded E-LT1 or LT1 Contract and may not be used for any other form of approval in relation to a proposal or Long-Term Reliability Project, planning approval, to satisfy environmental requirements or the process, or for any other purpose; and

This approval is subject to individual Environmental Assessment reviews and land use planning review and approval pursuant to the *Planning Act*, all as presented at the September 12, 2023 Regular Council Meeting.

Comments

Provincial Policy Statement

The subject site satisfies the requirements for Non-Agricultural Uses in Prime Agricultural Areas, as set out in Section 2.3.6. Section 2.3.6.1 provides the requirements for which non-agricultural uses may be permitted in prime agricultural areas. Based on Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) Guidelines, the Minimum Distance Separation Formulae does not apply, as the proposed infrastructure use is not expected to impact existing livestock facilities. Furthermore, there are limited opportunities to avoid prime agricultural lands, given that 90 percent of the land within Essex County is considered prime agricultural land.

Section 1.6.11 recognizes that Planning authorities should provide opportunities to develop an energy supply. The subject site and proposed use would support current and projected energy needs.

Section 1.7.1 notes that long-term economic prosperity should be supported by j) providing opportunities for increased energy supply. The Province recognizes the need for energy storage projects to help support the Ontario electricity grid during periods of peak demand.

County of Essex Official Plan

The County of Essex Official Plan recognizes the subject site as “Agricultural” per Schedule “A1”. The Official Plan notes in Section 3.3.1 that, “because this County is rich in natural resources, it is also acknowledged that there is a need to permit other types of land use in the “Agricultural” designation.” It is understood that lands designated Prime Agricultural are to be protected for agricultural purposes to ensure continued long-term viability (3.3.2.a). The proposed use will have little to no impact on surrounding agricultural uses and is limited to approximately 30% of the overall site area. Furthermore, after the 22-year contract with the Independent Electricity System Operator (“IESO”) ends, the development area can be restored and farmed.

The proposed Zoning By-law Amendment generally conforms to the policies of the County of Essex Official Plan.

Lakeshore Official Plan

On January 10, 2023, a memo regarding IESO Municipal Support Resolutions for Battery Energy Storage Systems Facilities was presented to Council by Staff. This memo outlined Staff’s interpretation of applicable Official Plan policies and the general approach to evaluating battery storage uses. As per this memo, “Lakeshore’s Official Plan does not specifically recognize these types of energy storage facilities, as the proposals are a new type of technology. The Ministry of Environment Conservation and Parks (MECP) has advised staff that they will be taking the projects through the Class Environmental Assessment (Class EA) process for Minor Transmission projects or Generation Facilities.”

Staff note that the applicant is currently undergoing the requisite EA process which fulfills the requirements of the Official Plan, Section 7.5 h) which states: “Electricity generation facilities and transmission and distribution systems shall be permitted in all land use designations, subject to the applicable Environmental Assessment process, and any other applicable legislation and/or regulations.”

The proposed Zoning By-law Amendment generally conforms with Lakeshore Official Plan.

Zoning By-law

Battery energy storage system facilities are considered as a “Utility Yard” in the Zoning By-law. As per the Zoning By-law, Utility Yard shall mean: “any above-ground structures or facilities, other than buildings, unless such buildings are used as storage incidental to

the operation of such structures or facilities, owned by a governmental entity, a non-profit organization, a corporation, or any entity defined as a public utility for any purpose and used in connection with the production, generation, transmission, delivery, collection, or storage of water, sewage, electricity, gas oil, or electronic signals.”

The subject site is currently zoned Agriculture (A), which does not include a Utility Yard as a permitted use. The applicant is proposed a site-specific zone exception to allow the proposed battery energy storage facility.

Site Plan Control

The proposed development will be subject to site plan control. Through the site plan review process, requirements such as the the prescribed sound control measures (site design and layout) will be implemented.

Conclusion

Administration recommends that Council approve Zoning By-law Amendment ZBA-02-2024 as it generally conforms to the Provincial Policy Statement, County of Essex Official Plan, Lakeshore Official Plan and Lakeshore Zoning By-law.

Others Consulted

Notice was given to agencies and the general public as required under the provisions of the *Planning Act* and Regulations. As of the writing of this report, no written submissions have been received from members of the public.

Financial Impacts

There are no adverse financial budget impacts resulting from the recommendation.

Attachments

Appendix A – Key Plan

Appendix B – Preliminary Concept Plan

Report Approval Details

Document Title:	Zoning By-law Amendment ZBA-02-2024 Tilbury Battery Storage.docx
Attachments:	- Appendix A Key Map - 0 Creekside Rd.pdf - Appendix B_Preliminary Concept Plan.pdf
Final Approval Date:	Feb 22, 2024

This report and all of its attachments were approved and signed as outlined below:

Prepared by Jonathan Derworiz

Submitted by Ryan Donally and Tammie Ryall

Approved by Justin Rousseau and Truper McBride