

Report to/Rapport au :

**Agriculture and Rural Affairs Committee
Comité de l'agriculture et des affaires rurales**

and Council / et au Conseil

**September 6, 2012
6 septembre 2012**

Submitted by/Soumis par : Nancy Schepers, Deputy City Manager/Directrice municipale adjointe, Planning and Infrastructure/Urbanisme et Infrastructure

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Osgoode Ward (20)

Ref N°: ACS2012-PAI-PGM-0161

SUBJECT: ZONING AND ROAD CLOSING - 5780 FLAG STATION ROAD

OBJET: ZONAGE ET FERMETURE DE RUE - 5780, CHEMIN FLAG STATION

REPORT RECOMMENDATIONS

That the Agriculture and Rural Affairs recommend Council:

- 1. Refuse a proposal to close portions of Flag Station Road and part of the unnamed Concession 2 road allowance leading to and abutting 5780 Flag Station Road;**
- 2. Authorize staff to enter into a License of Occupation for a nominal amount of one dollar and one dollar payable annually to allow the owner of 5780 Flag Station Road to use the unmaintained portion of Flag Station Road and the Concession 2 road allowance as a private driveway to access their property;**
- 3. Approve an amendment to Zoning By-law 2008-250 to change the zoning of 5780 Flag Station Road from Rural Countryside to Rural Countryside Exception [XXXr] as detailed in Document 2 and as shown in Document 1; and**
- 4. That the implementing by-law not proceed to Council until such time as the owners of 5780 Flag Station Road enter into the License of Occupation for access to the property.**

RECOMMANDATIONS DU RAPPORT

Que le Comité de l'agriculture et des affaires rurales recommande ce qui suit au Conseil :

- 1. refuser une demande visant à fermer des tronçons du chemin Flag Station et une partie de l'emprise routière sans nom, concession 2, menant au 5780, chemin Flag Station et aux terrains adjacents;**
- 2. autoriser le personnel à conclure une entente de permis d'occupation, pour un montant nominal d'un dollar et un dollar à payer annuellement, afin de permettre au propriétaire du 5780, chemin Flag Station d'utiliser la partie non entretenue du chemin Flag Station et l'emprise routière de la concession 2 comme entrée privée donnant accès à sa propriété;**
- 3. approuver une modification au Règlement de zonage 2008-250, en vue de faire passer le zonage du 5780, chemin Flag Station de Zone d'espace rural à Zone d'espace rural assortie d'une exception [XXXr], tel qu'exposé en détail dans le document 2 et illustré dans le document 1; et**
- 4. que le règlement d'application ne soit présenté au Conseil que lorsque le propriétaire du 5780, chemin Flag Station aura conclu une entente de permis d'occupation pour accéder à la propriété.**

BACKGROUND

The property located at 5780 Flag Station Road, in Lot 15 Concession 2, had until about 40 years ago, been occupied by a house and farm building(s). The current owners purchased the property with the intent of building their home on it. The lot is about 20 hectares in size and is zoned Rural Countryside and Environmental Protection. The zoning requires that for a detached dwelling in the Rural Countryside zone the lot must also have full lot width abutting open maintained public roads, which are 50 metres for the residential use and 60 metres for equestrian and agricultural uses. The lot does not have frontage on an open and maintained public road as the second concession, Herberts Corners and Flag Station Road are not maintained to and in front of the property. Herberts Corners Road and Flag Station Road were at one point in time, open and maintained year round as was a portion of the unnamed second concession road allowance. The information is anecdotal as well as evident in some documentation available. For example, the 1879 Carleton County Atlas, as posted on line by McGill University, shows those road allowances as being used and a house located on the subject land, owned at that time by a Thomas Plunket. Foundations still exist on site for the house and barn. As these roads remained open but maintenance ceased when the last house was no longer occupied, the rights associated with the use as a public road remain in effect.

The properties to the north and south of the proposed portion of the Flag Station Road closing are rural residences with agricultural uses. The lands subject to the rezoning

and those to the north and south of that lot are vacant lands that have grown up with trees and shrubs or have been reforested. The lands to the east, including the balance of the subject lands are Provincially Significant Wetlands. The proposal to close the road involved the closing of the easterly end of Flag Station Road and a portion of the Concession 2 road in former Osgoode. That closed portion would have been conveyed to the adjacent owner at the end of Flag Station Road, known as 5780 Flag Station. The proposed rezoning would recognize that the lot has frontage on an open but not maintained public road. The rezoning would permit a residence to be constructed at the 5780 Flag Station Road.

DISCUSSION

The recommended zoning amendment and the proposed refusal for the road closing and sale will achieve the property owner's objective to obtain a building permit as well as being a viable solution to the lack of a maintained public road access.

There are a number of potential options considered for addressing the issue of the road not being maintained:

- The typical position of the City is to require the applicants – in the case of new development – to construct the road to municipal standards. This option is an onerous financial obligation on a property owner who already have the right of access and use of their property.
- Alternatively, the City could build the road to standards and assume the maintenance for the road. There are budgetting and priority implications for proceeding with that option as well as the related time constraints that would be imposed on the current owners of 5780 Flag Station Road.
- There are a series of options that could involve leaving the road allowance open and looking at giving some rights of use to the owners of 5780 Flag Station Road. A zoning amendment would still be needed to recognize the lack of abutting access and frontage on a maintained public road.
- Another option was for the City to close and sell that portion of the road allowance to afford the owners access to their property and zone the property to recognize a reduced lot frontage. The major disadvantage with proceeding with the road closing is that there are a number of near by and adjacent land owners who would lose access to their properties via the unmaintained but open public road. There are approximately 15 property owners who rely on the portion of the road proposed to be closed for sole access to all or part of their property. A solution to that could be for the owners of the former road allowance to allow specific adjacent owners rights to use and cross their lands (being the former road allowance). Of additional concern with closing the road allowance is that if the City ever did need it opened the City would need to expropriate or purchase it back.

At the community meeting that was held, the impacted property owners present indicated their objection to the road closing, but supported the owners of 5780 Flag Station Road being able to build on their own property. Written objections were also received. As a result the option for closing the road has been eliminated. Alternatives

were subsequently sought. The most viable seems to be an alternative where the road remains open and unmaintained as a road by the City, but the Owners obtain a Licence of Occupation for use of the access over the road as their private driveway and they are responsible for maintaining the access. The Licence of Occupation would remain in effect until such time as the City builds and assumes maintenance of part of Flag Station Road. There are currently no plans for the City to construct the road.

Typically, the Licence of Occupation of road allowances entail some fees. In this case it is seen as onerous to charge anything more than a nominal amount and as a result an additional recommendation as part of this report will be to make the Licence of Occupation fees nominal – \$1.00 initially and \$1.00 annually. In order to ensure that the access issue is dealt with and the risks are minimized to the City, then the Zoning By-law should be brought forward to Council for enactment after the Licence agreement is entered into.

The existing lot has no frontage or width on an open and maintained public road, so the proposed zoning would be to a Rural Countryside exception zone. The exception would recognize that the property does not have access and frontage but still allow the range of permitted listed in the zone. The balance of 5780 Flag Station Road would remain zoned Environmental Protection to reflect and maintain the protection for the existing wetland.

In summary, the recommendation is to keep the road allowances open, to allow the owners of 5780 Flag Station Road to enter into a Licence of Occupation for a nominal amount of \$1.00 and then \$1.00 per year. The zoning would allow for the owners to build and use their property as per the permitted uses and other provisions of the zoning by-law. The zoning would proceed to Council only after the Licence of Occupation has been entered into.

RURAL IMPLICATIONS

The zoning will allow for a property that had a residence in the past to build a new house.

CONSULTATION

As part of the notification of complete application local Community Associations were notified, as were adjacent and potentially affected property owners. A community meeting was held and notice was sent to impacted and nearby property owners, and community groups. Document 3 contains the summary of the comments received.

COMMENTS BY THE WARD COUNCILLOR

The Ward Councillor has indicated that he supports the proposal that will allow for a building permit to be issued.

LEGAL IMPLICATIONS

Provided that an agreement is registered on title that requires the owners and their successors to maintain the portion of Flag Station Road that leads from the part currently maintained by the City to their property, there are no legal implications for the City.

RISK MANAGEMENT IMPLICATIONS

There are risk implications. These risks have been identified and explained in the report and are being managed by appropriate staff.

FINANCIAL IMPLICATIONS

The proposed License of Occupation fee will be one dollar initially and one dollar annually. Provided that an agreement is registered on title that requires the owners and their successors to maintain the portion of Flag Station Road that leads from the part currently maintained by the City to their property, there will be no ongoing maintenance costs for the City.

ACCESSIBILITY IMPACTS

There are no accessibility impacts either positive or negative with this report's recommendations.

ENVIRONMENTAL IMPLICATIONS

The environmental implications of this report are that a municipal road will not be constructed in the vicinity of wetland, thereby minimizing the current impacts.

TECHNOLOGY IMPLICATIONS

There are no technology implications associated with this report.

TERM OF COUNCIL PRIORITIES

The report recommendation seeks to maintain FS1 (Align strategic priorities to Council's tax and user fee targets) and FS2 (Develop processes and tools to ensure that tax dollars are spent wisely by making strategic choices and finding ways to improve the value we can deliver for the tax dollar), while considering ES2 (Increase the percentage of urban, suburban and rural areas covered by forest canopy to 20% by the end of 2014).

APPLICATION PROCESS TIMELINE STATUS

The application was not processed by the "On Time Decision Date" established for the processing of Zoning By-law amendments or road closing applications due to workload volumes and the complexity of the issues associated with access and risk associated with a road closing.

SUPPORTING DOCUMENTATION

Document 1 Location Map
Document 2 Details of Recommended Zoning
Document 3 Consultation Details

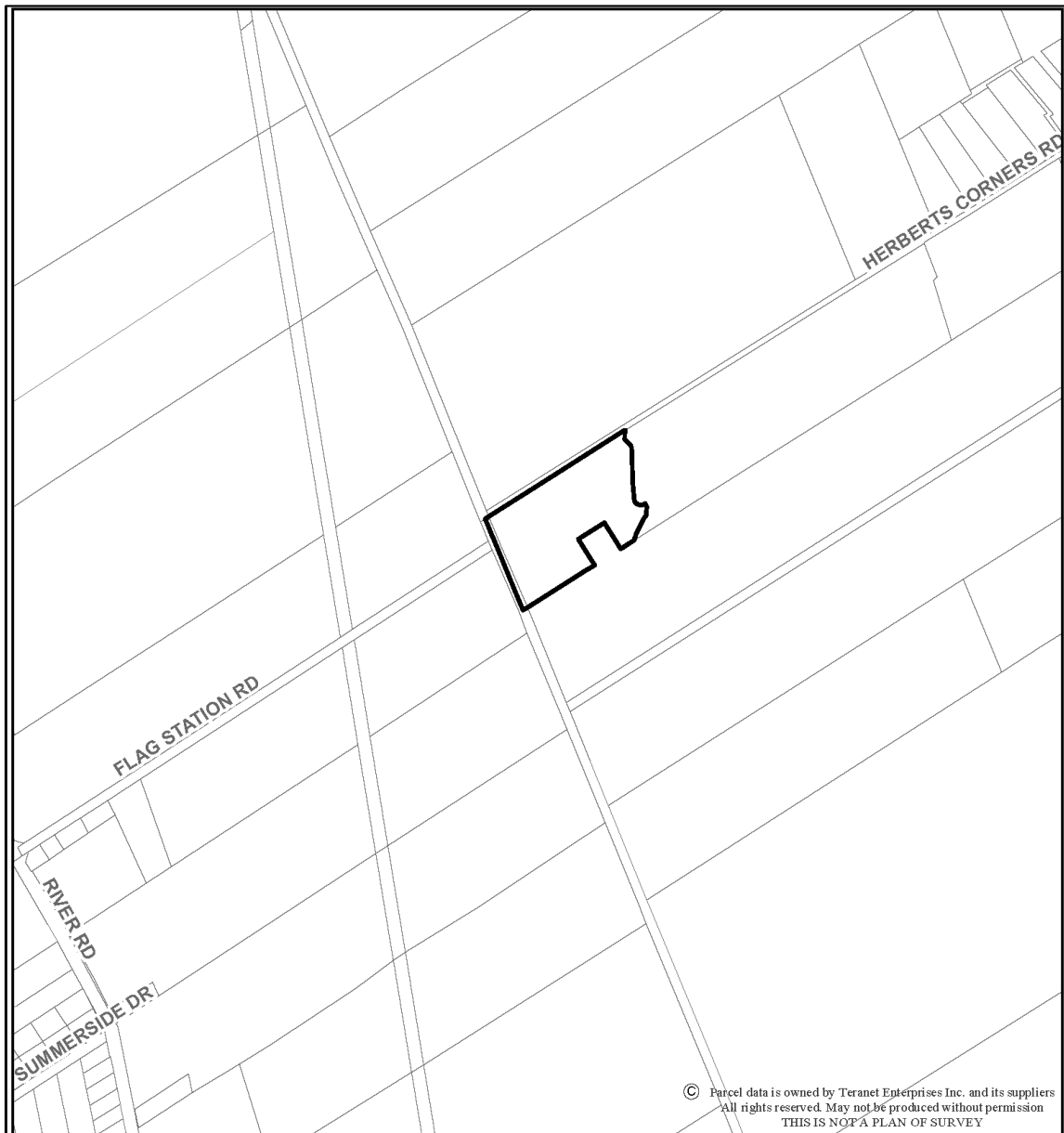
DISPOSITION

City Clerk and Solicitor Department, Legislative Services to notify the owner, applicant, OttawaScene Canada Signs, 1565 Chatelain Avenue, Ottawa, ON K1Z 8B5, Ghislain Lamarche, Program Manager, Assessment, Financial Services Branch (Mail Code: 26-76) of City Council's decision.

Infrastructure Services Department to enter into a Licence of Occupation with the owner of 5780 Flag Station Road.

Infrastructure Services to notify PGM of completion of the agreement and then, Planning and Growth Management to prepare the implementing By-law, forward to Legal Services and undertake the statutory notification.

Legal Services to forward the implementing By-law to City Council.



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D02-02-12-0040	12-1316
I:\CO\2012\ZONING\FlagStation5780	
2012 / 09 / 17	
REVISION DATE	DE RÉVISION

Location Map / Plan de révision
Zoning Key Plan / Schéma de zonage

 5780 rue Flag Station Road

042910041 Denotes Teranet-Polaris Parcel Identification Number

Échelle
 N.T.S.
 Mètres



Scale
 N.T.S.
 Metres

DETAILS OF RECOMMENDED ZONING

DOCUMENT 2

Proposed Changes to the Comprehensive Zoning By-law

1. Rezone the subject property, as shown in Document 1, RU to RU[XXXr].
2. Amend Section 239 – Exceptions of By-law 2008-250 to create an exception, RU[XXXr] that includes in Column II the text “ - RU[XXXr]” and in Column V the text similar in effect to the following:
“
 - Section 59 (1) does not apply.
 - Notwithstanding Section 100, a driveway may provide access from a parking space to an unmaintained road allowance.
 - The front lot line is deemed to be the most westerly lot line abutting the north south concession road between Concession 1 and 2 Township of Osgoode”.

CONSULTATION DETAILS

DOCUMENT 3

NOTIFICATION AND CONSULTATION PROCESS

Notification and public consultation was undertaken in accordance with the Public Notification and Public Consultation Policy approved by City Council for Zoning By-law amendments. A public meeting was held in the community for the zoning application and proposed road closing application.

PUBLIC COMMENTS

Public comments were received on the circulation of the zoning and road closing applications to owners within 120 metres of the subject lands, potentially affected by the road closing and registered Community Associations within the area.

SUMMARY OF PUBLIC INPUT and COMMUNITY INFORMATION AND COMMENTS SESSION HELD May 29, 2012 at the Osgoode Community Centre. Approximately 18 people were present.

A summary of the comments received is outlined below, along with responses.

Comment: The City should build the road and issue the permit to the owners. Or issue the building permit and then address the road concerns

Response: Staff are looking at a number of options but the timing for the City to construct the road could be years away.

Comment: Use the materials excavated from River Road to build Flag Station, and it does not have to be to anything other than the standard the existing road is built to and we need to provide a turning circle for the plows.

Response: The City is not in a position at this time to budget for any works on Flag Station Road.

Comment: Concern was expressed over the road closing limiting access to the multi-use pathway as well as the road allowances for cyclists, pedestrians, off-road vehicles.

Response: Access to the multi-use pathway (the former rail line) would still be available from the portion of Flag Station Road to remain open. The public use of the road allowance to be closed will be limited for recreation purposes.

Comment: Opposition was expressed over loss of access and use, and property rights with the road closing.

Response: Staff will examine other opportunities to maintain property access through options such as easements if the road closing option is pursued.