

Grainboys Holdings Inc. Proposed Grain Milling and Blending Facility: Failures Under the Oak Ridges Moraine Conservation Plan

Submitted by: Conrad Richter, owner of 357 Regional Road 47 and president of Richters Herbs

Subject property: 351 Regional Highway 47

Applicant: Grainboys Holdings Inc.

File no.: ZBA 2018-07

The *Planning Justification Report* prepared by Zelinka Priamo Ltd for the applicant sets out the regulatory rationale for proposing a grain processing mill on the subject property at 351 Regional Road 47, Goodwood. The site is located in lands designated as Countryside Areas under the *Oak Ridges Moraine Conservation Plan 2017*¹ (ORMCP). The Zelinka report attempts to fit the proposed project under one or more of the uses permitted in Countryside Areas under ORMCP s 13(3). The company asserts that the proposed grain-processing mill fits under small-scale commercial, industrial, and institutional uses of ss 40(1) and 13(3)¹⁴. It also asserts the proposed mill fits under agriculture-related uses of s 13(3)¹³.

We have previously commented on the proposal², responded to the company's public comments³ and presented an oral presentation before Uxbridge Town Council.⁴ In this submission we frame our comments directly in the context of the applicable provincial plan, the ORMCP.

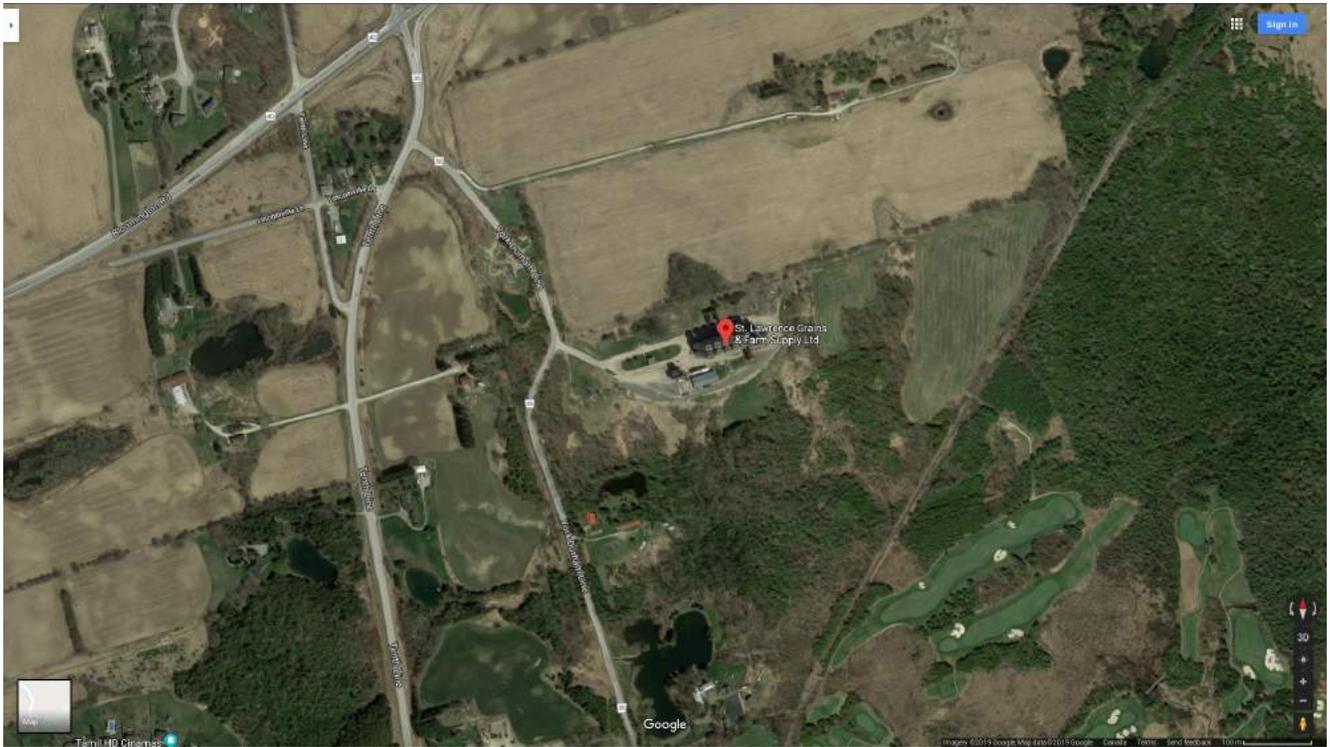
Major development, not small-scale

The proposed project is 3,700 m² of grain processing and office space, plus an additional 700 m² of surge bins (or silos), for a combined footprint of 4,400 m²⁵. This far exceeds the ORMCP threshold of "major developments" defined as a building or buildings with "a ground floor space of 500 m² or more". Large-scale industrial developments are not permitted on Countryside Properties. Unless the company can show that its proposal is "small-scale", this major development is a not permitted use on the subject property.

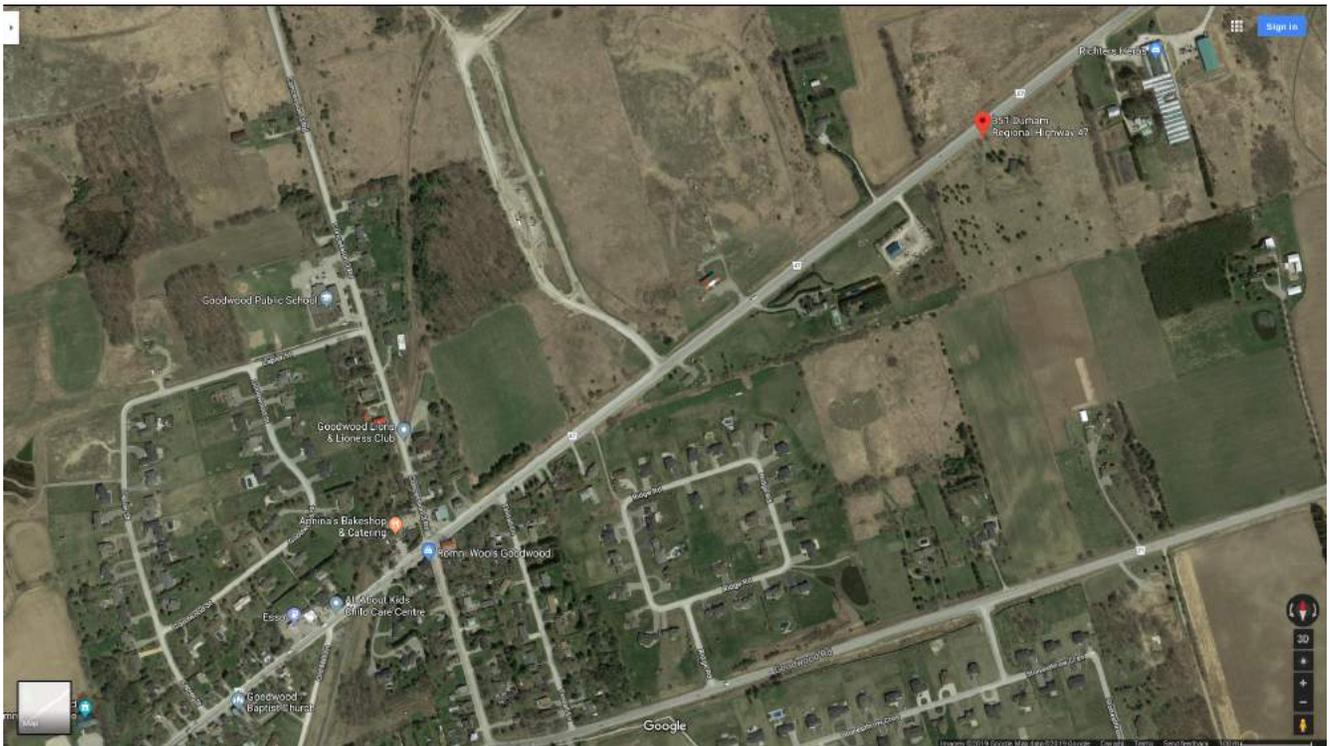
However the company argues that the proposal is “small scale in the context of buildings and structures associates with agriculture throughout prime agricultural areas and rural areas in Ontario.”⁶ To justify its “small-scale” claim, it compares its proposal to buildings on two properties in Uxbridge Township, both of which predate the Oak Ridges Moraine Conservation Act (ORMCA), namely Lockie Farms Grain Elevator in Zephyr (founded 1977) and St Lawrence Grains and Farm Supply at 3199 York Durham Line 30 (founded 1999). Both are clearly agriculture-related as they purchase grains from local farm operations. But the company’s use of these two properties in its comparison is invalid because structures on the properties predate the ORMCA. The ORMCA was enacted to protect farmland and to stop the uncontrolled development of farmland that occurred in the era before it was enacted. Further, a comparison to the buildings on the properties of these businesses does not diminish the fact that the project is a major development as defined by the ORMCP.

Both of these properties are in rural areas far from rural settlements. Google satellite images of the properties (shown below) reveal that no rural settlement area is within 500 m of either property.





However, the proposed grain mill will be within 280 m of the rural settlement of Goodwood, and it will be within 1 km of about half the population of Goodwood and a public school (below).



In the context of the nearby rural settlement in Goodwood, in which there is no building higher than two stories, the proposed project's 4-6 story (15-18 m) high silos and tower⁷ will clearly dominate sightlines in Goodwood and area around it. The heights, the floor area, the impervious surface area, and the extent of terrain modification all suggest that this is not a "small-scale" use of the land.

The company also compared its proposed mill to our Richters Herbs business (the "abutting greenhouses"⁸). Our business moved to its present location at 357 Regional Road 47 in 1975, again predating the ORMCA. In any case our business clearly fits agricultural uses under s 14(3)3 of the ORMCP, since we grow crops, namely herb plants and seeds. To compare the scale of our greenhouse business with the proposed mill, does not magically transform a major development into a "small-scale" operation.

The proposed project is a major development, and not small-scale, and does not fit under the permitted small-scale commercial, industrial and institutional uses of the ORMCP (s 13(3)14).

Not supportive of local agriculture

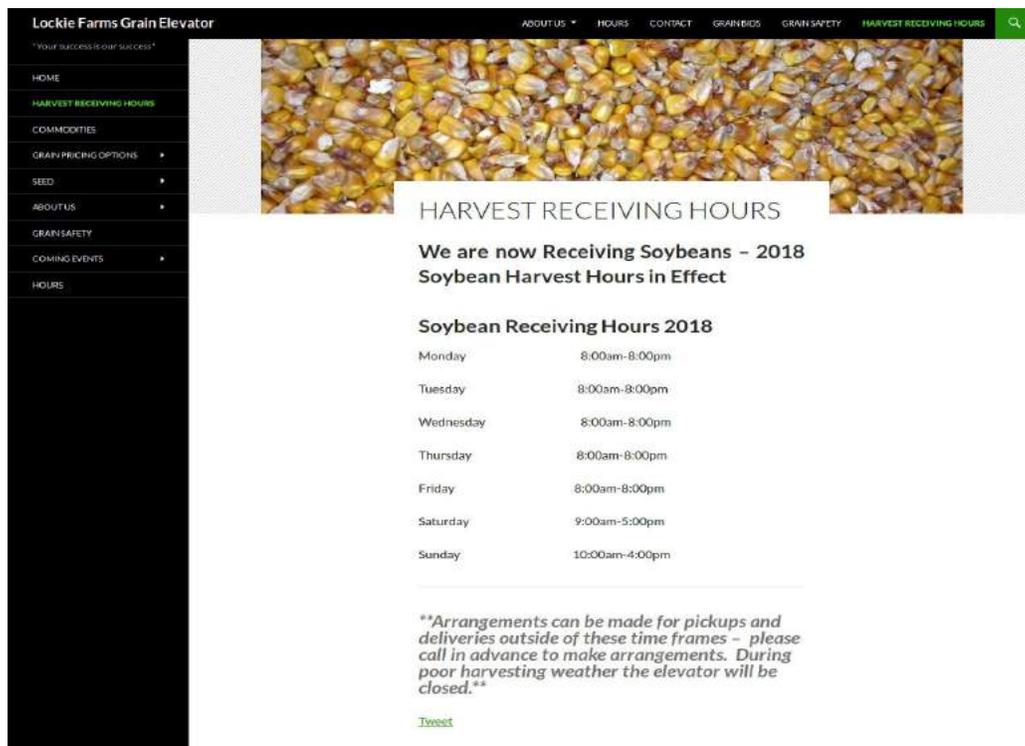
The company states that the "proposed use of the site directly supports agriculture".⁹ Assuming that the proposed project fits as a small-scale industrial use (disputed above), the company seeks to show that the project satisfies ORMCP s 40(1)(a) which requires that small-scale industrial uses are "supportive of, complementary to or essential to uses that are permitted in Countryside Areas." Presumably the company is suggesting that its proposed grain-processing mill will be supportive of agriculture because local farmers in Uxbridge Township and Durham Region will supply it with grain just as local farmers supply grain to the Lockie Farms and St Lawrence operations. However, the company states that "[n]o grain is delivered directly from field"¹⁰ to the existing Aurora operation and has not demonstrated that it has even one contract with a local farmer for the supply of grain currently. Its grain is either imported from outside Canada or from outside the province, or it is from intermediaries in Ontario that may get grain from anywhere. Its reliance on imported grain must be significant because, according to Industry Canada, the company is a major Canadian importer of six commodity classes including millet, poppy seeds, sesame, and sunflower seeds, and is a major Canadian importer from Bulgaria¹¹. Despite the existence of publicly available records on the Industry Canada website, the company has pointedly omitted any mention of its grain imports in its *Planning Justification Report*. Only when challenged via written comments¹² and at a meeting held in Goodwood on January 7 2019, did the company reveal

that grains and seeds are imported from the United States, the Netherlands, Turkey, and Peru¹³ (it has not yet publicly acknowledged Bulgaria).

It appears that the company has deliberately hidden, and then downplayed, the extent of its imports of grains and seeds, in order to bolster its argument that its proposed mill will be supportive of the local agriculture use in Countryside Areas.

Under “agriculture-related uses” as defined in the ORMCP, commercial and industrial uses must be “directly related to, and compatible with, farm operations in the surrounding area”, they must “benefit from being in close proximity to farm operations”, and they must “provide products or services, or both, directly to farm operations as a primary activity”. If the company cannot demonstrate that it is buying from *local* farm operations, and instead is buying its grain and seeds from overseas, the U.S. western Canada, or even Ontario outside of the immediate area, then it does not satisfy the “directly related to, and compatible with, farm operations in the surrounding area” requirement.

The two grain operations that the company compared itself to, Lockie Farms and St Lawrence, both purchase only grains that are produced locally. The Lockie Farms website has a “Harvest Receiving Hours” page¹⁴:



Lockie Farms buys corn, soybean, barley and wheat exclusively — crops grown in Durham Region in abundance. Similarly, St. Lawrence buys corn, soybean and wheat exclusively. It is not difficult to establish that the business model of these two companies is local: serving local farm operations. The same cannot be said for the applicant and its Port Royal Mills operation in Aurora. There is no evidence the company engages with and buys grains from local farm operations. And the company has not demonstrated that it buys from any local farm operation.

The company has not satisfied the requirement that its proposal will support local agriculture in Countryside Areas, as required by the ORMCP (s 40(1)(a)).

Hinders farm operations

As we have seen, the company contends that its proposal fits a small-scale industrial use under the ORMCP. But it also relies on an argument that the project fits agriculture-related uses under the ORMCP. To rely on this argument it must show that “farm-related commercial and industrial uses... [a]re directly related to, and compatible with, farm operations in the surrounding area and do not hinder those farm operations” (ORMCP¹⁵).

We assess that the proposed mill will hinder farm operations. It will damage nearby farms because it will introduce prohibited noxious weeds on rural land via weed-infested food grains and seeds imported from countries where weed control is inadequate. In Canada, grains and seeds intended for food use are not regulated for weed seeds, and importers are not required to monitor the weed seed content of their imported grains and seeds. In a study published by the Canadian Food Inspection Agency (CFIA) looking at the presence of weed seeds in imported grains and seeds, 20% of samples taken over a nine year period contained weed seeds, and 7% contained prohibited noxious weed seeds. The CFIA concluded that weed seeds in imported food grains and seeds can unintentionally spill and germinate “around mills, bins and farm properties,” and it added that this pathway risk “should not be ignored.”

In contrast to the absence of regulatory oversight of weed seeds in the food grains industry, under the federal Weed Seeds Order and Seeds Regulations, agricultural and horticultural seeds intended for planting “shall not contain prohibited noxious weed seeds.” This zero tolerance means any seed lot that contains even just a single prohibited noxious weed seed must be destroyed. Under the Plant Protection Act, plants offered for sale in Canada must be free of prohibited noxious weeds, and plants shipped to the U.S. under the CFIA-USDA Greenhouse Certification Program, under the Nursery Certification Program, and other similar programs, must likewise be free of prohibited noxious weeds. If plants are infested with prohibited noxious weeds they must be destroyed, at the loss of the grower.

Richters Herbs is a grower of herb plants and seeds operating on a property adjacent the subject property. It is a participant in the CFIA-USDA Greenhouse Certification Program and in the USDA Phytosanitary Certification Program (among others). An infestation of prohibited noxious weeds spreading from the proposed mill property would force the company to stop sales of its plants and seeds resulting in a loss of 80% of its revenue.

If we accept the company’s 10% figure for its imports of grains and seeds¹⁶, we can calculate that the company will process at least 1,000 tonnes (10% of 10,000 t/y) of imported food grains and seeds annually. According to the CFIA, 7% of samples taken from these grains and seeds are likely to contain prohibited noxious weeds. This means each year the equivalent of 70 tonnes of grains will be infested with prohibited noxious weeds. This presents a significant opportunity for prohibited noxious weeds to spill on rural land and establish hard-to-control infestations.

In its response to public comments on prohibited noxious weeds, the company argued that the Ontario Weed Control Act mandates that property owners be compelled to destroy noxious weeds by municipal and regional weed inspectors. In practice, the ability of weed inspectors to surveil private properties is limited by a lack of resources and time. This was confirmed in interviews of the chief weed inspector for the province, Mike Cowbrough, and of the two area weed inspectors for Durham Region, David Hagler and Brent Drew. All three agreed that the Weed Control Act is reactive and complaints-based, and cannot be relied upon to prevent new outbreaks of noxious weeds.

Infestations of certain prohibited noxious weeds such as the parasitic dodder plant (*Cuscuta* spp.) are covert and cannot easily be detected in mixed vegetation during routine roadside surveillance operations by weed inspectors. By the time a neighbouring property owner is aware of a dodder infestation on his or her property, the infestation will be widespread and difficult and costly to control. Dodder seeds remain viable in soil for up to ten years and effective control requires repeated application of herbicides and years of follow up surveillance. The direct cost of eradication measures is high.

From a policy perspective, we have recommended that operations handling large quantities of imported food grains should be restricted to industrial parks where the risk of weed infestation due to accidental and unintentional spillage is minimized. Such operations should not be permitted on rural lands.

The proposed project will hinder farm operations and as such is not a permitted use under the ORMCP definition of “agriculture-related uses”.

Harms lands suitable for a viable farm

The company claims that the “small area and poor soils of the site cannot support a viable farm unit”.¹⁷ Although there was no farm operation on the subject property when the company purchased it, there are viable farm operations immediately adjacent to it, on lands approximately the same size. The 4 ha Richters Herbs property at 357 Regional Road 47 is smaller than the 5.2 ha subject property.¹⁸ When the Richters property was purchased in 1974, it was not operating as a farm; rather, it was used by the former owner exclusively as a residence. Richters has operated on the property since 1975, growing herbs in fields, coldframes and greenhouses.

The property to the south, immediately adjacent the subject property, located on Regional Road 21, is an organic farm growing fresh vegetables in fields and in a greenhouse. The property to the east of the organic farm is another farm that has been operating for more than 40 years. A Google Maps satellite picture¹⁹ of the area reveals that there are yet other farms operating in the immediate area around the subject property at 351 Regional Road 47.



The company’s claim that the soils on the subject lands are poor is disputed. The company’s Geotechnical Investigation Report states: “The topsoil ranged in thickness from approximately 150 to 250 mm. This soil was observed to be in a moist, loose state, with sandy silt, highly organic content.”²⁰ While such soils may not be ideal for some crops such as corn, they are perfect for herbs. After Richters Herbs moved its operation from Markham Township to its present location, where soils are sandy, herbs such as french tarragon and greek oregano reliably survive winter because the sandy soils drain so well. These herbs do not winter in the heavier clay soils in Markham, despite lower elevation and less extreme winter temperatures.

Under the ORMCP the purpose for Countryside Areas is “to encourage agricultural and other rural uses that support the Plan’s objectives” including “promoting and protecting agricultural and other rural land uses and normal farm practices” (ORMCP s 13(1)(b)). However, the proposed project will harm

agricultural land that could support a viable herb or vegetable farm. It will modify the terrain of 48% of the subject lands and 19.9% of the total site area will be impervious surface.²¹ This will result in the permanent loss of the entire 5.2 ha property from the agricultural lands base of the area since the undisturbed portion will not be farmed.

The proposed project does not promote and protect agricultural land use (ORMCP s 13(1)(b)).

- 1 Ministry of Municipal Affairs and Housing (n.d). Oak Ridges Moraine Conservation Plan 2017. Accessed at <http://www.mah.gov.on.ca/AssetFactory.aspx?did=18548>.
- 2 Richter C (2018, June 25). Comments on an Application for a Zoning By-law Amendment for a Proposed Grain Milling and Blending Facility. Uxbridge Township Agenda, June 25, 2018, pp. 282-298. Retrieved from https://town.uxbridge.on.ca/sites/default/files/council_agendas/June%2025%202018%20-%20Council%20Agenda.pdf.
- 3 Richter C (2019, January 21). Response to Public Comments from Zelinka Priamo Ltd on Behalf of Grain Boys Holdings Inc. Uxbridge Township Agenda, January 21, 2019.
- 4 Richter C (2019). An Unacceptable Risk on Rural Land? Presentation before Uxbridge Town Council, January 7, 2019.
- 5 Grainboys Holdings Inc. (2018, April 27). Zoning By-law Amendment Application, p. 3. Retrieved from https://town.uxbridge.on.ca/sites/default/files/documents/Zoning%20Amendment%20Application_0.pdf.
- 6 Zelinka Priamo Ltd (2018, April). Planning Justification Report: 351 Regional Road 47, Township of Uxbridge, Regional Municipality of Durham, p.3. Retrieved from <http://town.uxbridge.on.ca/sites/default/files/documents/Planning%20Justification%20Report.pdf>.
- 7 Grainboys Holdings Inc., Zoning By-law Amendment Application, p. 3.
- 8 Zelinko Priamo, Planning Justification Report, p. 11.
- 9 Zelinko Priamo, Planning Justification Report, p. 11.
- 10 Zelinko Priamo, Planning Justification Report, p. 1.
- 11 Industry Canada (n.d.). Canadian Importers Database (CID). Retrieved from <https://www.ic.gc.ca/app/scr/ic/sbms/cid/searchProduct.html?lang=eng>.
- 12 Richter C, Comments on an Application for a Zoning By-law Amendment for a Proposed Grain Milling and Blending Facility, pp. 8-10.
- 13 Richter C, Response to Public Comments from Zelinka Priamo Ltd on Behalf of Grain Boys Holdings Inc., pp. 2-3.
- 14 Lockie Farms Grain Elevator (n.d.). Website. Accessed at <http://www.lockiefarms.com/harvest-rec-hours>.
- 15 Ministry of Municipal Affairs and Housing, Oak Ridges Moraine Conservation Plan 2017, p. 13.
- 16 Zelinka Priamo Ltd (2018, August 13). Re: Zoning By-law Amendment Application ZBA 2018-07 Grain Boys Holdings Inc. (Related items of correspondence were on the September 10, 2018 Council Agenda). Uxbridge Township Agenda, January 7, 2019, pp. 94-102. Retrieved from https://town.uxbridge.on.ca/sites/default/files/council_agendas/January%207%20-%20Committee%20Agenda.pdf.
- 17 Zelinko Priamo, Planning Justification Report, p. 11.
- 18 Grainboys Holdings Inc., Zoning By-law Amendment Application, p. 2.
- 19 Google Maps, accessed January 15, 2019.
- 20 GHD (2016, September 22). Geotechnical Investigation Report: New Port Royal Mill Facility, 351 Durham Regional Highway 47, Uxbridge, Ontario, p.3. Retrieved from <https://town.uxbridge.on.ca/sites/default/files/documents/Geotechnical%20Investigation%20Report.pdf>.
- 21 Zelinko Priamo, Planning Justification Report, p.15.