

Appendix A

July 29, 2024

Outline

The purpose of this report is to respond to the direction of council to staff as outlined in the following resolution with the policy references to support my cover letter dated July 29, 2024.

Resolution CR-2024-154

That Council refer resolution CR-2024-153 to planning and development staff for study of the proposal and report back to the first PCA meeting in September. (Planning and Community Affairs Committee September 16, 2024, 6:30 pm)

Does the Avenu Proposal Conform to the Scugog Township Official Plan?

The proposed development and Draft MZO Order do not conform to the following sections of the Township Official Plan:

- Section 4.1.3, Residential Density
- Sections 4.82 & 4.83, Hazard Lands Designation Provisions
- Section 7.2.3, Neighbourhood Parks Requirements
- Section 9.14, Density Bonusing

Section 9.5 of the OP requires “any Amendment to the existing By-law shall be in conformity with this Plan”. For the Township to:

- approve a rezoning application to permit the Proposed Draft (MZO) Order without the associated Official Plan Amendment, or
- support a request that the Minister permit the Proposed Draft MZO Order without the associated Official Plan Amendment,

the Township would be in breach of its own OP Policy 9.5.

Does the Avenu Proposal Conform to the Durham Region Official Plan?

As per Bill 23 and the Province’s proposal to amend O. Reg. 525/97, it is reasonable to assume that should the Township choose to request an MZO for the Avenu Development, the Township would be assuming the responsibility to confirm that the proposed MZO order complies with the Regional Official Plan.

Significant justification exists to argue that the proposed Avenu development and Draft MZO order do not comply with the environmental, affordable housing and servicing policies of the Durham Region Official Plan.

Holding Provisions and Section 37

If, in September, Council chooses to request an MZO process by proceeding with CR-2024-153, Council will be giving up its rights to use Holding Provisions and Section 37 to secure improvements, require agreements and control the implementation process.

Holding Provisions could include:

- Water supply improvements;
- Acceptable sanitary facilities;
- Acceptable transit shuttle services to downtown.

Section 37 Provisions/Agreements could include:

- The dedication of additional waterfront open space;
- The construction of the Waterfront Municipal Trail;
- funding in perpetuity to maintain and operate Transit intended to connect the site to downtown;
- funding in perpetuity to maintain and operate the required water supply improvements;
- funding in perpetuity to maintain and operate the required sanitary treatment facilities;
- funding in perpetuity to maintain and operate the advanced water recycling technology required to reduce potable water usage by 30%;
- Public Art;
- Affordable/Attainable Housing (as discussed in relation to the Regional Official Plan)

No Section 37 Bonus Provisions have been incorporated into the Proposed Draft MZO Order. Without the use of Holding Provisions and Section 37 Provisions/Agreements, planning vehicles will either not exist, or be limited in their abilities to secure the benefits being proposed by Avenu Properties Corp.

Details

Does the Avenu Proposal Conform to the Scugog Township Official Plan?

Density – Residential Designation

4.1.3

- a) Max density 50 units per net hectare
- n) i) new medium and high density residential development is located on and has direct access to a Collector or Arterial road as shown on Schedule C-1 (Simcoe St.)
- n) Schedule I identifies Priority Intensification Areas within the Port Perry Urban Area. **(The site is not a Priority Intensification Area)** Within these areas, intensification is encouraged to occur in a manner that is compatible with the existing development, yet at higher densities in order to provide for more efficient use of infrastructure and services and provide for affordable housing within the urban area.

Intensification is also encouraged within the remainder of the built up area shown on Schedule I. However, outside of the Priority Intensification Areas, intensification shall occur in a manner

that preserves and protects the character of existing Established Neighbourhoods in accordance with the criteria established in this section.

- p) A complete range of housing types shall be provided in the *Port Perry Urban Area*. The optimum housing unit mix is:
- 70 percent low density housing (single, semis, duplex);
 - 15 percent medium density housing (multiple unit, townhouse); and,
 - 15 percent high-density housing (apartments).

For the purpose of this Plan, low density shall be defined as 15 to 25 units per hectare, medium density shall be defined as 25 to 40 units per hectare and high density shall be defined as 40 to 50 units per hectare. The density should be based on net area, excluding roadways, parkland and environmentally protected, non-developable areas on a site.

Density Summary

- The site adjacent to Simcoe St is not included in the MZO request, so it can't be considered part of this development site.
- No lot or block areas are provided on the proposed Block Plan.
- Based on the approved 20-unit Draft Plan of Subdivision, the net area for density calculation is 11.475 ha. This could be reduced pending resolution of the Environmental Protection Zone.
- Based on 11.475 net ha, no Simcoe St frontage so no medium & high density residential, and the maximum allowable density, a maximum of between 172 & 287 single, semis, duplex units would be allowed, subject to layout and meeting lot zoning requirements.
- 600 units are not allowed on this site by the Township OP Density policies.

Hazard Lands Designation

4.8.2 Permitted Uses

- a) Passive recreational parks and trails requiring minimal alteration to the natural landscape.
- b) No buildings or structures, with the exception of essential structural works required for flood and/or erosion or sediment control.

4.8.3 General Development Policies

- a) The boundaries of the *Hazard Lands* designation are intended to reflect the limits of flooding of streams and lakes (including Lake Scugog), wetlands, steep slopes, erosion areas, meander belts and unstable/organic soils. Precise boundaries will be established through a survey identifying the appropriate elevation wherever development occurs adjacent to lands designated *Hazard Lands*.
- b) The Township will consult the Conservation Authority where development occurs adjacent to any lands designated *Hazard Lands*.

- c) Where development occurs adjacent to *Hazard Lands*, the development shall be designed and constructed to preserve the natural function and flow characteristics of the adjacent waterway.
- d) Lands designated *Hazard Lands* shall not be accepted as parkland dedication in the development process. However, the Township will encourage the transfer of these lands to a public authority.

Hazard Lands Summary

- Hazard Lands are shown along the shoreline of the Application Lands, and almost all lands within the Adjacent Lands.
- Hazard Land Mapping is reflected in the location of the Environmental Protection EP zone in By-law 14-14 Schedule B Map 1, and was updated by 30 m Setback from Provincially Significant Wetlands lie in Attachment 2 of the GHD Natural Heritage Letter, provided in support of the MZO request.
- Both lines extend under development lands shown in Avenu's Concept Site Plan and Block Plan, even reducing the net lands shown in the 2004 Draft Plan of Subdivision
- Significant buildings and structures, which don't conform to the permitted uses, are proposed within the Hazard Lands.

Parks Requirements

7.2.3 Neighbourhood Parks

- b) *Size – Neighbourhood Parks* shall be adequately sized to provide a variety of passive and active recreational activities meeting the needs of the surrounding area. These parks shall be provided at a standard of 1.0 hectares per 1000 persons.

Parkland Summary

- The WSP Wastewater Recycling Report, provided in support of the MZO request, assumes a person equivalent of 2.2 people per unit. As such and based on the 600 unit permission requested in the MZO draft order, it is fair to assume a final population for the development of 1,320 people.
- Based on 1.0 hectares per 1000 persons, in keeping with the OP parkland requirement policies, the proposed development should provide 1.32 ha of public parkland, not on Hazard Lands, and as a further reduction in density as parkland is not included as net hectares for the purpose of calculating density.
- No public parkland dedication is proposed in Avenu's Site Plan or Block Plan.
- Open Space use is allowed in both zones contemplated by the Proposed Draft MZO Order, but no minimum parkland requirements are included and no parkland or open space is shown on the proposed zoning map.

Density Bonusing – Section 37 of the Planning Act

Section 9.14 of the OP permits density bonusing for increasing the maximum density and/or height permitted by this Plan for medium and high-density residential development. Even though the proposal includes the following items referenced to in Policy 9.14:

- Hazard/Environmental Protection lands which could be dedicated as additional open space;
- Community Recreational Facilities
- Transit intended to connect the site to downtown
- Public Art
- Affordable/Attainable Housing (as discussed in relation to the Regional Official Plan)
- Any other identified benefit, such as private sanitary services

No Section 37 Bonus Provisions have been incorporated into the Proposed Draft MZO Order.

Township Official Plan Conclusion

The proposed development and Draft MZO Order **do not conform** to the following sections of the Township Official Plan:

- **Section 4.1.3, Residential Density**
- **Sections 4.82 & 4.83, Hazard Lands Designation Provisions**
- **Section 7.2.3, Neighbourhood Parks Requirements**
- **Section 9.14, Density Bonusing**

Section 9.5 of the OP requires “any Amendment to the existing By-law shall be in conformity with this Plan”. For the Township to:

- approve a rezoning application to permit the Proposed Draft (MZO) Order without the associated Official Plan Amendment, or
- support a request that the Minister permit the Proposed Draft MZO Order without the associated Official Plan Amendment,

the Township would be in breach of its own OP Policy 9.5.

Does the Avenu Proposal Conform to the Durham Region Official Plan?

Environmental Areas

The in-place Durham Region Official Plan, approved in 2020, Map B1c shows some Key Natural Heritage and Hydrologic Features on both the Application Lands and Adjacent Lands.

KEY NATURAL HERITAGE AND HYDROLOGIC FEATURES

- 2.3.14 The general location of *key natural heritage and/or hydrologic features* are shown on Schedule 'B' – Map 'B1'. **The individual features and their associated *vegetation protection zones* are to be identified and shown in more detail in area municipal official plans and zoning by-laws.**

The location and extent of *key natural heritage and/or hydrologic features* may be further confirmed through appropriate studies such as a *watershed plan* or an environmental impact study in accordance with Policy 2.3.43.

Schedule B, Map 1 of the Scugog Zoning By-law 14-14 shows the Environmental Protection (EP) Zone on both the Application Lands and Adjacent Lands in much greater detail. Zoning By-law 14-14 states:

2.4 DETERMINING ZONE BOUNDARIES

2.4.1 General Application

When determining the boundary of any Zone as shown on any Schedule forming part of this By-law, the following provisions shall apply:

- (a) A boundary indicated as following a Highway, Road, Lane, railway Right-of-Way, utility corridor or Watercourse shall be the centreline of such Highway, Road, Lane, railway Right-of-Way, utility corridor or Watercourse;
- (b) A boundary indicated as substantially following Lot Lines shown on a Registered Plan of Subdivision, or the municipal boundaries of the Township shall follow such Lot Lines;
- (c) Where a boundary is indicated as running substantially parallel to a Street Line and the distance from the Street Line is not indicated, the boundary shall be deemed to be parallel to such a Street Line and the distance from the Street Line shall be determined according to the scale shown on the Schedule(s);
- (d) Where a Lot falls into two or more Zones, each portion of the Lot shall be used in accordance with the provisions of this By-law for the applicable Zone; and,
- (e) Where none of the above provisions apply, the Zone boundary shall be scaled from the Schedule(s).

In no case is a Zone boundary dividing a Lot into two or more Zone categories intended to function as a property boundary.

4.17 MULTIPLE ZONES ON ONE LOT

Where a Lot is divided into more than one Zone under the provisions of this By-law, each such portion of the said Lot shall be used in accordance with the Permitted Uses in Zone Provisions of this By-law for the applicable Zones established hereunder, as if it were a separate Lot.

The boundary of an Environmental Protection Zone shall be used as a Lot Line for the purpose of determining required Yards.

The 2020 in-place Durham Region Official Plan states:

2.3.15 *Development* or *site alteration* is **not permitted** in *key natural heritage and/or hydrologic features*, including any associated *vegetation protection zone*, **with the exception of:**

- a) forest, fish and wildlife management;
- b) conservation and flood or erosion control projects demonstrated to be necessary in the public interest and after all alternatives have been considered;
- c) infrastructure, subject to the policies of the Greenbelt Plan and this Plan;
- d) minor recreational uses such as trails, footbridges and picnic facilities, and existing uses;
- e) agriculture, in accordance with Policies 2.3.18 and 14.5.4; or
- f) aggregate extraction, in accordance with Policies 9D.2.9 and 9D.2.10.

Durham Region adopted an updated Official Plan in May 2023. It has yet to be approved by the Minister. Map 2a shows a Regional Natural Heritage System on both the Application and Adjacent Lands, the boundary of which very closely replicates the boundary of the Environmental Protection (EP) Zone on Scugog Zoning By-law 14-14. Map 2c shows a Provincially Significant Wetland with virtually the same boundary. Policies include:

- 7.4.27 Prohibit development and site alteration within provincially significant wetlands and wetlands within provincial natural heritage system areas, in accordance with Policies 7.4.10 to 7.4.18.
- 7.4.28 Prohibit development and site alteration within 120 metres of wetlands, unless an approved environmental impact study and wetland water balance risk evaluation demonstrates that there will be no negative impact on the wetland or its ecological functions. Development and site alteration may be permitted within the vegetation protection zone, in accordance with Policies 7.4.10 to 7.4.18.

Environmental Areas Summary

- Both the in-force and recently approved Durham Official Plans show boundaries for *key natural heritage and/or hydrologic features, Regional Natural Heritage System* and *Provincially Significant Wetland* that mimic the *Environmental Protection Zone* in Scugog Zoning By-law 14-14, and prohibit all but the most minor environmental interventions.
- These lines extend under development lands shown in Avenu’s Concept Site Plan and Block Plan, even reducing the net lands shown in the 2004 Draft Plan of Subdivision
- Significant buildings and structures, which don’t conform to the permitted uses, are proposed within these Lands.
- The proposed development and Draft MZO Order do not conform to the listed environmental policies of both the in force and recently adopted versions of Durham Region’s Official Plan.

Affordable Housing

Section 4 of the in-force Regional Official Plan states:

- 4.2.4 Regional Council shall require at least 25% of all new residential units produced within each area municipality, to be *affordable to low and moderate income households*.

Definition:

Affordable [Housing]: means:

- a) in the case of ownership housing, the least expensive of:
 - i) housing for which the purchase price results in annual accommodation costs which do not exceed 30% of gross annual household income for *low and moderate income households*; or
 - ii) housing for which the purchase price is at least 10% below the average purchase price of a resale unit in the Region; and
- b) in the case of rental housing, the least expensive of:

- i) a unit for which the rent does not exceed 30% of gross annual household income for *low and moderate income households*; or
- ii) a unit for which the rent is at or below the average market rent of a unit in the Region.

Section 3 of the recently adopted Durham Region Official Plan states:

It is the policy of Council to:

- 3.1.1 Develop and implement a housing and homelessness plan that supports the goals of ending homelessness, providing affordable rent for everyone, greater housing choice, and strong and vibrant neighbourhoods through the following actions:
 - a) increase the privately funded [affordable rental housing](#) supply;
 - b) increase government-funded [affordable rental housing](#) supply;
 - c) diversify [housing options](#) by type, size and tenure;

Affordable Housing: means:

- a) in the case of ownership housing, the least expensive of:
 - i) housing for which the purchase price results in annual accommodation costs which do not exceed 30% of gross annual household income for [low and moderate income households](#); or
 - ii) housing for which the purchase price is at least 10% below the average purchase price of a resale unit in the Region; and
- b) in the case of [rental housing](#), the least expensive of:
 - i) a unit for which the rent does not exceed 30% of gross annual household income for [low and moderate income households](#); or
 - ii) a unit for which the rent is at or below the average market rent of a unit in the Region.

Low and Moderate Income Households: means:

- a) in the case of ownership housing, households with incomes in the lowest 60% of the income distribution for the Region; or
- b) in the case of [rental housing](#), households with incomes in the lowest 60% of the income distribution for renter households for the Region.

3.1.18 Require an Affordability and Accessibility Analysis as part of a Planning Justification Report for all major residential [development](#) applications, which include 100 units or more, that:

- a) justifies how the [development](#) application will contribute to achieving [affordable housing](#) targets;

- b) identifies opportunities to include a variety of [special needs housing options](#) to accommodate seniors and persons with disabilities; and
- c) identifies how residents would be able to access health care, social services and other amenities in their community.

It is the policy of Council to:

3.1.20 [Require that at least 25% of all new residential units produced throughout the region to be affordable to low and moderate income households.](#)

Affordable Housing Summary

Both the in-force and recently approved Durham Official Plans require 25% of units in the proposed development to be affordable. The proposed development and Draft MZO Order do not:

- Show any affordable housing;
- Commit to how any affordable housing could be secured.

While the submitted Planning Report acknowledges Regional policies related to affordable housing, the report does not:

- Identify affordable units within the proposed development;
- Show the required calculations to determine rents or purchase prices which comply with the affordable housing requirements

The proposed development and Draft MZO Order do not conform to the affordable housing policies of both the in-force and recently adopted Durham Region Official Plans.

Private Services

The Civil Engineering report, prepared by SCS in support of this MZO request stated that:

[“The subject site was previously approved to be serviced via an extension of watermain along Simcoe Street, Castle Harbour Drive and the internal local roadways. The Region had previously agreed to service the subject site with a long dead end watermain due to the small number of homes being proposed.”](#)

The 20 approved lots ranged in size from 0.424 to 0.805 ha (1.05 to 1.99 acres). These large lots were intended to have individual private septic systems. No communal private sanitary services were anticipated at that time. To reflect this, Sch A, Map A3 of the in-force Regional OP labelled the Application Lands as:

“Areas Developable on Municipal Water Systems and Private Waste Disposal Systems”

Policies of the in-force Regional Official Plan state:

WATER AND SEWERAGE SERVICES

5.3.17 Notwithstanding Section 8, limited infilling or minor expansion to existing *development* may take place in Urban Areas with private drilled wells and/or **private sewage disposal systems**, in accordance with the provisions of this Plan, prior to the availability of municipal services, provided that:

- a) a **satisfactory agreement** has been entered into with the Region, including the **requirement for future connection** to the Regional water supply and **sanitary sewer system**;
- b) the proposed use does not **require excessive use of water** and appropriate **provisions have been included in the zoning by-law** to that effect;
- c) the proposed use complies with the standards of the Region and the Ministry of the Environment, Conservation and Parks;
- d) consideration is given to designing the *development* in such a way as to allow for further subdivision of the land upon provision of full Regional services; and
- e) for *development* on partial services, the *development* is **within the reserve sewage and water treatment system capacity**.

5.3.18 In **Urban Areas**, draft approval of a plan of subdivision may be **granted in circumstances where full municipal services are not immediately available**, provided that the draft approval does not **over-commit servicing capacity identified through a servicing master plan** or an approved Environmental Assessment, and the lands are appropriately designated for *development*.

Servicing capacity for *development* will only be **allocated** by the Region, in consultation with the area municipality, at the time a **development agreement is executed with the Region** and the appropriate **financial securities are in place**, in accordance with the Regional Development Control Program.

Policies of the recently adopted Regional Official Plan state:

It is the policy of Council to:

4.1.26 Recognize there are **locations within the Urban Area in which the provision of municipal water and/or sewage services is not technically or financially feasible**, or may be in process but not yet completed, including but not limited to the areas identified on Figure 5 (***Which includes the Application Lands, but not the Adjacent Lands***). In such circumstances, **development on the basis of individual on-site sewage services and individual on-site water services or partial municipal services** may be considered, subject to the following:

- a. **prior** to any **development** on partial or full private services, the **feasibility of providing full municipal services must first be assessed**, including consideration of any additional capacity resulting from municipal water supply or municipal sanitary sewage plant expansions, and/or other servicing alternatives, such as communal systems; and
- b. any **development** on the basis of partial municipal services or full private services shall be in accordance with the relevant provisions of Policies 6.5.6 to 6.5.15, and **subject to a regional agreement that the development will be connected by the landowner as soon as Regional services are available**. (***Section 6.5 relates to Rural Settlements - Hamlets. It appears that there are no references to Urban Settlements on Private Services***)

- 4.1.33 Prioritize works that implement [development](#) which will not place a financial burden on the Region in the consideration of the expansion of capital works within designated Urban Areas.
- 4.1.34 Not support the provision of any Regional [infrastructure](#) and services to a [development](#) application that would cause significant or undue financial, environmental or other hardship for the Region.
- 4.1.36 Agree to draft approval of a plan of subdivision in Urban Areas in circumstances where full municipal services are not immediately available, provided that the draft approval does not over-commit servicing capacity identified through a servicing master plan or an approved Environmental Assessment, the lands are appropriately designated for [development](#), and other Regional conditions have been satisfied.
- 4.1.37 Allocate servicing capacity for [development](#) addressed in Policy 4.1.36, in consultation with the area municipality, at the time a [development](#) agreement is executed with the Region and the appropriate financial securities are in place.

Private Systems

It is the policy of Council to:

- 4.1.40 Permit limited infilling or minor expansion to existing [development in Urban Areas](#) to proceed on private drilled wells and/or [private sewage disposal systems](#), in accordance with the provisions of this Plan and notwithstanding the policies in Section 5.1, prior to the availability of municipal services, provided that:
 - a) a satisfactory agreement has been entered into with the Region, including the requirement for future connection to the regional water supply and [sanitary sewer system at the landowner's expense](#);
 - b) the proposed use does not require excessive use of water and appropriate provisions have been included in the zoning by-law to that effect;
 - c) the proposed use complies with the standards of the Region and the Ministry of the Environment, Conservation and Parks;
 - d) consideration is given to designing the [development](#) in such a way as to allow for further subdivision of the land upon provision of full regional services; and
 - e) for [development on partial water and/or sewage services](#), the [development is within the reserve sewage and water treatment system capacity](#).
- 4.1.43 Work with area municipalities to assess the long-term impacts of individual on-site [sewage services](#) and individual on-site [water services](#) on the environmental health and the desired character of Rural Settlement Areas and the feasibility of other forms of servicing.

As per The SCS Civil Engineering report, prepared by SCS in support of this MZO request, the proposed development needs to include:

- “Due to the number of units in the proposed development, the Region would require a second water feed to service the subject site. To achieve this, two existing watermain extensions are required. It is proposed to extend the existing watermain on Simcoe Street through the West

Block and the existing watermain on Scugog Line 8 along Castle Harbour Drive. The two watermain extensions will ultimately connect in front of the East Block to form a looped system.” *(The West Block is not part of this MZO request, and as such, there is no ability to secure a second watermain access through this Block.)*

- “In 2018, a Class EA study for a new water supply and storage facility to service the Port Perry Urban Area was completed by the Region to accommodate the projected 2031 population. The recommendations in the Class EA study were included in the Region of Durham 2023 Development Charge Background Study. The proposed water supply and storage expansion identified in the EA study will not be sufficient to service the projected 2051 population or any future projections.”
- “The (Development) project is anticipated to be constructed with advanced water recycling technology from the sanitary treatment plant that can potentially reduce potable water usage by 30%” *(The Draft MZO order puts nothing in place to require this 30% reduction in potable water useage.)*

The Wastewater Treatment Report, prepared by WSP in support of the MZO request, states:

- “The content and opinions contained in the present report are based on the observations and/or information available to WSP at the time of preparation. If a third party makes use of, relies on, or makes decisions in accordance with this report, said third party is solely responsible for such use, reliance or decisions. WSP does not accept responsibility for damages, if any, suffered by any third party as a result of decisions made or actions taken by said third party based on this report. This limitations statement is considered an integral part of this report.” *(Therefore, if the Township relies upon this report to recommend the Minister proceed with the proposed MZO order, all liability for that recommendation is held by the Township)*
- “In ensuring human safety regarding potential contact with reused water, employing a Canadian technology multibarrier approach for risk management is imperative. This approach involves employing physical-chemical wastewater treatment methods. The typical treatment process involves equalization tank, trash trap, and the screening of raw sewage, followed by biological treatment in successive reactor zones to promote nitrogen reduction, often facilitated by submerged membranes. Additionally, phosphorus reduction can be achieved through chemical precipitation. The equalization tank will be sized for a capacity of 300m3 to meet the cumulative 24-hour flow requirement. In addition to footprint required for the UV and Chlorine disinfection and treated water storage, the estimated footprint of the proposed treatment system is approximately 850 square meters.”
- *(No vehicle has been included as part of the proposed MZO order to ensure this type of facility is incorporated into the development. No vehicle has been provided to ensure that the ongoing operation of this facility in perpetuity remains the responsibility of the communal development)*

Private Services Summary

Understanding the approved 2004 development, and reading the combined Regional policies together, it can be understood that:

- The municipal water supply was intended to serve a very small subdivision;
- The approval for private sanitary services was intended for individual septic systems on large lots;
- The policies are structured around private sanitary services with individual septic systems on individual lots. There is only 1 policy that contemplates combined private services in a rural area.
- No provisions have been included in the draft MZO order to require that satisfactory agreement has been entered into with the Region, including the requirement for future connection to the Regional water supply and sanitary sewer system;
- No holding provisions have been included in the draft MZO order to ensure that the proposed use does not require excessive use of water. No appropriate provisions have been included in the draft MZO zoning by-law to that effect;
- No holding provisions have been included in the draft MZO order to ensure that the proposed use complies with the standards of the Region and the Ministry of the Environment, Conservation and Parks;
- No holding provisions have been included in the draft MZO order to ensure that consideration is given to designing the *development* in such a way as to allow for further subdivision of the land upon provision of full Regional services
- No holding provisions have been included in the draft MZO order to ensure that for *development* on partial services, the *development* is within the reserve sewage and water treatment system capacity;
- No holding provisions have been included in the draft MZO order to ensure that the West Block is included in the MZO order, and that a second watermain be provided through that block;
- No study has been done to show what needs to take place to ensure that the proposed water supply and storage expansion identified in the EA study will be enhance to be sufficient to service the projected 2051 population or any future projections. No provisions have been incorporated into the MZO order to ensure that the developer/purchasers cover whatever capital costs are necessary to implement these required enhancements;
- No provisions have been included in the Draft MZO order to require the 30% reduction in potable water useage, which forms the basis for all other assumptions;
- No vehicle has been included as part of the proposed MZO order to ensure that the 850 m² treatment facility is incorporated into the development. No vehicle has been provided to ensure that the ongoing operation of this facility in perpetuity remains the responsibility of the communal development.

As such, it is reasonable to argue that the proposed private sanitary service, and the proposed expansion of supply water service through lands which do not form part of the proposed MZO, order do not meet the intent of the above listed Regional Official Plan policies.

Durham Region Official Plan Compliance Conclusion

From Aird & Berlis:

“Bill 23 created the concept of an “upper-tier municipality without planning responsibilities” and defined it to include the County of Simcoe as well as the Regional Municipalities of Durham, Halton, Niagara, Peel, Waterloo and York. ... Under the in-force legislation, the upper-tier municipalities of Peel, Halton and York will no longer have planning responsibilities as of July 1, 2024. Simcoe County and the regions

of Durham, Niagara and Waterloo will continue to be listed as “upper-tier municipalities without planning responsibilities,” but the in-force date for their loss of planning responsibilities remains to be determined. ... The Province proposes to amend O. Reg. 525/97 to exempt most official plan amendments of the lower-tier municipalities adopted on or after July 1, 2024, from the need for the Minister’s approval. The Province has further indicated that on and after July 1, 2024, site-specific official plan amendments previously exempted by the upper-tier municipality from its need for approval will be reviewed and adopted by the lower-tier municipality without an additional level of approval.”

Subject to legal confirmation, it is reasonable to assume that should the Township choose to request an MZO for the Avenu Development, the Township would be assuming the responsibility to confirm that the proposed MZO order complies with the Regional Official Plan.

It is reasonable to argue that the proposed Avenu development and Draft MZO order do not comply with the (above referenced) environmental, affordable housing and servicing policies of the Durham Region Official Plan.

Holding Provisions and Section 37

If, in September, Council chooses to request an MZO process by proceeding with CR-2024-153, Council will be giving up its rights to use Holding Provisions and Section 37 to secure improvements, require agreements and control the implementation process.

Holding Provisions

- Withholding density until water supply improvements have been either financially secured or constructed;
- Withholding density until acceptable sanitary facilities have been either financially secured or constructed;
- Withholding density until acceptable transit shuttle services have been either financially secured or provided/constructed.

Section 37 Provisions/Agreements

- The dedication of Hazard/Environmental Protection lands as additional waterfront open space;
- The construction of Community Recreational Facilities such as the Waterfront Municipal Trail, as shown on Township OP Schedule B-1
- Secure purchaser notification and agreements to ensure funding in perpetuity to maintain and operate Transit intended to connect the site to downtown
- Secure purchaser notification and agreements to ensure funding in perpetuity to maintain and operate the required water supply improvements
- Secure purchaser notification and agreements to ensure funding in perpetuity to maintain and operate the required sanitary treatment facilities
- Secure purchaser notification and agreements to ensure funding in perpetuity to maintain and operate the advanced water recycling technology required to reduce potable water usage by 30%
- Secure Public Art, as shown in the Avenu Concept Plan

- Secure purchaser notification and agreements to ensure funding in perpetuity to construct, maintain and operate Affordable/Attainable Housing (as discussed in relation to the Regional Official Plan)

No Section 37 Bonus Provisions have been incorporated into the Proposed Draft MZO Order. Without the use of Holding Provisions and Section 37 Provisions/Agreements, planning vehicles will either not exist, or be limited in their abilities to secure the benefits being proposed by Avenu Properties Corp.

Under an MZO Process

An MZO is regulated, in part, through Section 47 of the Planning Act. Zoning order requests are made or refused at the discretion of the minister. The minister may consider requests submitted by parties such as ministries, municipalities, organizations, businesses, or individuals. If there is a conflict between a zoning order and a municipal zoning by-law, the zoning order prevails to the extent of the conflict. The *Planning Act* does not provide for a right to appeal the minister's decision to make a zoning order, to the Ontario Land Tribunal.

It's important to remember that by changing to an MZO, the process to determine the density, scope and scale and design of development, transportation requirements, community benefits (if any), regulations over communal infrastructure, location size and policies for the Environmental Protection Zone, falls solely to the approval of the Minister of Municipal Affairs and Housing with no requirement to comply with local or regional Official Plans or other documents. Any consultation with the Township, Region, Conservation Authority, Stewards, etc. will be at the sole discretion of the Minister, and all abilities to appeal through normal planning processes will be removed.

Consultations with legal counsel could be undertaken to determine other options beyond the Planning Act. One option to consider would be an application for a Judicial Review (JR) of the Township's Decision to ask for an MZO. This would need to be filed within 1 month of Council making this decision, and would be limited to the scope of the decision.

Avenu could still file its own request for an MZO and use the Council Decision to show support.

Under the Current Process

Bill 185 limits 3rd party appeal rights for OPAs and Rezoning to "public bodies" and "specified persons" who attended and made written or oral submissions.

From the Planning Act:

Section 17 (24) Official Plan Approval

Right to appeal

(24) If the plan is exempt from approval, any of the following may, not later than 20 days after the day that the giving of notice under subsection (23) is completed, appeal all or part of the decision of council to adopt all or part of the plan to the Tribunal by filing a notice of appeal with the clerk of the municipality:

1. A specified person who, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council.

- 1.1 A public body that, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council.
- 1.2 The registered owner of any land to which the plan would apply, if, before the plan was adopted, the owner made oral submissions at a public meeting or written submissions to the council.
2. The Minister.
3. The appropriate approval authority.
4. In the case of a request to amend the plan, the person or public body that made the request. 2006, c. 23, s. 9 (4); 2017, c. 23, Sched. 5, s. 80; 2024, c. 16, Sched. 12, s. 3 (1).

Etc.

Section 17 (36) Official Plan Amendment Approval

Appeal to Tribunal

(36) Any of the following may, not later than 20 days after the day that the giving of notice under subsection (35) is completed, appeal all or part of the decision of the approval authority to the Tribunal by filing a notice of appeal with the approval authority:

1. A specified person who, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council.
- 1.1 A public body that, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council.
- 1.2 The registered owner of any land to which the plan would apply, if, before the plan was adopted, the owner made oral submissions at a public meeting or written submissions to the council.
2. The Minister.
3. In the case of a request to amend the plan, the person or public body that made the request. 2006, c. 23, s. 9 (6); 2017, c. 23, Sched. 5, s. 80; 2024, c. 16, Sched. 12, s. 3 (3).

Etc.

Section 34 (19) Rezoning

Appeal to Tribunal

(19) Not later than 20 days after the day that the giving of notice as required by subsection (18) is completed, any of the following may appeal to the Tribunal by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee charged by the Tribunal:

1. The applicant.
2. A specified person who, before the by-law was passed, made oral submissions at a public meeting or written submissions to the council.
- 2.1 A public body that, before the by-law was passed, made oral submissions at a public meeting or written submissions to the council.
- 2.2 The registered owner of any land to which the by-law would apply, if, before the by-law was passed, the owner made oral submissions at a public meeting or written submissions to the council.
3. The Minister. 2006, c. 23, s. 15 (10); 2017, c. 23, Sched. 3, s. 10 (4); 2019, c. 9, Sched. 12, s. 6 (4); 2021, c. 4, Sched. 6, s. 80 (1); 2024, c. 16, Sched. 12, s. 5 (7).

Etc.

“public body” means a municipality, a local board, a hospital as defined in section 1 of the *Public Hospitals Act*, a ministry, department, board, commission, agency or official of a provincial or federal government or a First Nation; (“organisme public”)

“local board” means any school board, public utility commission, transportation commission, public library board, board of park management, board of health, police service board, planning board or any other board, commission, committee, body or local authority established or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes of a municipality or of two or more municipalities or portions thereof; (“conseil local”)

“specified person” means,

- (a) a corporation operating an electric utility in the local municipality or planning area to which the relevant planning matter would apply,
- (b) Ontario Power Generation Inc.,
- (c) Hydro One Inc.,
- (d) a company operating a natural gas utility in the local municipality or planning area to which the relevant planning matter would apply,
- (e) a company operating an oil or natural gas pipeline in the local municipality or planning area to which the relevant planning matter would apply,
- (f) a person required to prepare a risk and safety management plan in respect of an operation under Ontario Regulation 211/01 (Propane Storage and Handling) made under the *Technical Standards and Safety Act, 2000*, if any part of the distance established as the hazard distance applicable to the operation and referenced in the risk and safety management plan is within the area to which the relevant planning matter would apply,
- (g) a company operating a railway line any part of which is located within 300 metres of any part of the area to which the relevant planning matter would apply,
- (h) a company operating as a telecommunication infrastructure provider in the area to which the relevant planning matter would apply; (“personne précisée”)
- (i) NAV Canada,
- (j) the owner or operator of an airport as defined in subsection 3 (1) of the *Aeronautics Act (Canada)* if a zoning regulation under section 5.4 of that Act has been made with respect to lands adjacent to or in the vicinity of the airport and if any part of those lands is within the area to which the relevant planning matter would apply,
- (k) a licensee or permittee in respect of a site, as those terms are defined in subsection 1 (1) of the *Aggregate Resources Act*, if any part of the site is within 300 metres of any part of the area to which the relevant planning matter would apply,
- (l) the holder of an environmental compliance approval to engage in an activity mentioned in subsection 9 (1) of the *Environmental Protection Act* if any of the lands on which the activity is undertaken are within an area of employment and are within 300 metres of any part of the area to which the relevant planning matter would apply, but only if the holder of the approval intends to appeal the relevant decision or conditions, as the case may be, on the basis of inconsistency with land use compatibility policies in any policy statements issued under section 3 of this Act,
- (m) a person who has registered an activity on the Environmental Activity and Sector Registry that would, but for being prescribed for the purposes of subsection 20.21 (1) of the *Environmental Protection Act*, require an environmental compliance approval in accordance with subsection 9 (1) of that Act if any of the lands on which the activity is undertaken are within an area of employment and are within 300 metres of any part of the area to which the relevant planning matter would apply, but only if the person intends to appeal the relevant decision or conditions, as the case may be, on the basis of inconsistency with land use compatibility policies in any policy statements issued under section 3 of this Act, or
- (n) the owner of any land described in clause (k), (l) or (m);