

December 16, 2024

**Delivered Via Email:**  
**[clerk@saugeenshores.ca](mailto:clerk@saugeenshores.ca)**;  
**[dawn.mittelholtz@saugeenshores.ca](mailto:dawn.mittelholtz@saugeenshores.ca)**

**Steven J. O'Melia**  
LSO Certified Specialist (Municipal Law)  
Direct Line: 519.593.3289  
Toronto Line: 416.595.8500  
[somelia@millerthomson.com](mailto:somelia@millerthomson.com)  
File: 0280162.0001

Deputy Mayor Huber & Members  
of Town Council  
c/o Dawn Mittelholtz, Clerk  
Town of Saugeen Shores  
600 Tomlinson Drive, PO Box 820  
Port Elgin ON N0H 2C0

Dear Deputy Mayor Huber & Members of Council:

**Re: Application for Zoning By-law Amendment by Carson's Supply  
5331 Bruce Road 3, Town of Saugeen Shores (the "Subject Property")  
Town File No.: Z-2023-056**

We are the solicitors for Dan and Marjorie O'Driscoll, who live in their retirement home at 5389 Bruce County Road 3, Port Elgin. The O'Driscolls' home immediately abuts the Subject Property, which is currently zoned and used for agricultural purposes. The applicant proposes to change that use to permit a **concrete manufacturing plant with outdoor storage and parking, and a polyvinyl chloride (PVC) extrusion manufacturing facility** to be established on agricultural lands. We had previously written to Council to express our clients' concerns with this application.

The proposal is being advanced by Carson's Supply to attempt to spread part of an existing heavy industrial manufacturing facility into another area of Saugeen Shores. The reports indicate that part of the reason for that proposed relocation is that the industrial use has been extremely disruptive to nearby residents at its existing location, which has led to numerous complaints. These complaints include noise, dust and traffic resulting from the nature of this industrial operation and the extended hours in which it takes place.

The industrial use has shown itself to be incompatible with nearby residents. It would be larger and more intense at this proposed new location. Allowing this industrial use to spread and intensify in proximity to other residents who currently reside in the undisturbed countryside does not make good planning sense. We ask that Council refuse the application. If the Applicant is confident that its reports and studies can withstand detailed review, it can refer the matter to the Ontario Land Tribunal for a full and fair hearing.

### **Concerns About the County OPA Meeting**

At the meeting held by Bruce County to consider the related Official Plan Amendment, the Applicant (through its agent) made the following representations and assurances to County Council:

1. That its operation will not exceed 30 cubic metres of concrete production per day; and
2. That all concrete manufacturing will be for the sole use of the applicant.

Both of these assurances were provided in support of the applicant's effort to obtain County approval. Neither assurance is included within the proposed zoning by-law, notwithstanding our request that it was proper to do so.

We respectfully suggest that Town Council should at a minimum require the applicant to stand behind the assurances that it made at the County Council meeting, by requiring the above two representations to be included within the zoning by-law. While the additions would not come close to fully addressing our client's concerns, they would be a small step in that direction.

### **Detailed Nature of Planning Concerns**

Our clients are concerned that the proposed expansion of this heavy industrial facility into an agricultural area would increase the burden of the demonstrated land use incompatibility by importing it into another area of the Town. Simply put, this industrial use has proven itself to be incompatible with residential uses, and should be relocated or expanded to a property which is well separated from people's homes. The Subject Property is within close proximity of more than twenty (20) residential dwellings in the surrounding agricultural area.

We have reviewed the planning justification report prepared by Cobide Engineering Inc. and other documents submitted with the applications, including the planning response dated July 12, 2024. They do not provide an adequate basis upon which these applications can or should be recommended or approved. Our clients' concerns include the following:

1. The proposal to permit a pre-cast concrete and PVC fabrication facility on lands immediately adjacent to our clients' home and more than twenty (20) other nearby homes would create obvious incompatibilities that cannot be adequately mitigated. The unavoidable difficulties presented by proximity to people's homes is recognized at page 6 of the applicant's own planning consultant report (emphasis added):

**"Pre-cast concrete fabrication is considered a "heavy industrial" use and creates dust and noise; and uses process waters to mix the concrete. Currently, there are minimal setbacks between Carson's Supply and the adjacent residential uses and there have been several complaints against the business from adjacent residential uses in the past."**

The setbacks proposed in the application will not come close to addressing these obvious concerns.

2. The application proposes to convert land that is currently designated, zoned and used for agricultural purposes to industrial purposes. This is inconsistent with provisions of the *Provincial Planning Statement, 2024* that protect and preserve agricultural lands. There is no good planning or policy reason to choose these lands for this use.
3. The Subject Property is presently farmed, and has been very productively used for agriculture for many decades. The applicant has not demonstrated why these particular lands should be removed from their prime agricultural designation and agricultural use, and has instead tried to minimize the clearly demonstrated and long-standing fertility of these lands. The County should not permit the removal of 13.5 hectares (33.4 acres) of agricultural lands in active production when there are other locations on which the proposed use can be located.



4. In addition to noise and dust concerns, the proposal would create a significant traffic increase in a rural/residential area that would not be compatible with the existing residences. We understand that the proposed facility would operate at all hours of the day and night, which would create incredibly disruptive impacts on the existing nearby residents who currently live in a quiet part of the agricultural countryside.
5. It has not been demonstrated (and no attempt has been made to show) that the noise and dust created by the applicant's proposed operations on the subject property would comply with Ministry of the Environment guidelines and not create unacceptable negative impacts on the nearby residents. Even if those requirements could be met, the guidelines are more directed to ensuring that new residential development will not unduly impact existing industrial facilities, and are not intended as a means to shoehorn industrial uses into an existing residential area.
6. There are other lands within the County that are already designated and/or zoned for this type of industrial use, including an industrial subdivision near the Bruce Power facility and the Brockton Industrial Park. Those long-planned industrial lands should be utilized for this purpose rather than greenfield agricultural areas. The applicant's claims for why it cannot go to one of those other locations do not withstand even simple scrutiny.
7. For example, the applicant has said that they cannot go to certain properties such as the Bruce Energy Industrial Subdivision because only Bruce Power-affiliated businesses are allowed at that location. We are aware that Seven Acres Cannabis operates its 440,000 square foot facility in that Industrial Park, which is inconsistent with the applicant's assertion. Other stated reasons for rejecting properly zoned alternative are similarly unsupported, and are not reasons to approve this application.
8. The fact that properly designated and zoned lands may be more expensive to acquire is not a valid reason to approve the type of agricultural land conversion that is being proposed. The fact that Council may wish to support this local business is not a valid reason to support this expansion proposal at this location. It is simply not the right place for this use.
9. The fact that the applicant has acquired the Subject Property should also have no bearing on Council's consideration of the lack of planning merits of this application. Planning should be a forward-looking process, whereas in this case it is clear that the applicant is attempting to reverse-engineer a significant rezoning of lands that it was able to acquire at agricultural prices.

In summary, the Subject Property is clearly not an appropriate location for this type of heavy industrial use. The Town would never have chosen it for this type of use, and it was not proposed for this use within the current County-wide Official Plan process. This heavy industrial use, which is already creating significant land use incompatibility problems at its existing location, should not be permitted to intensify and spread to another area in which similar or more severe incompatibilities are unavoidable.

#### **Additional Legal Consideration**

One important issue that has arisen since this application was filed is that third parties, including directly interested residents such as our clients and their residential neighbours, no longer have a right of appeal to the Ontario Land Tribunal if Council approves this application.



This is a recent development which has drawn wide criticism and may some day be revisited, but stands as the current state of the law.

Conversely, if Council refuses the application, the applicant would have a right of appeal and our clients and their neighbours would have a legal right to participate in that appeal hearing. This would present a fairer option that would allow the merits of the application to be properly tested before an expert Tribunal based on all of the evidence. We believe that our clients can prevail in a fair hearing that considers all applicable planning policies.

Accordingly, we submit that if any Member of Council has any doubt at all in their mind about whether rezoning the Subject Lands for heavy industrial use is a good idea, it is a fairer outcome to refuse the application. If the applicant chooses to pursue the appeal route despite the overwhelming planning reasons against it, our clients and their neighbours would have a fair opportunity to present their planning position and have the matter determined on its merits by the Planning Tribunal that the province has established for this purpose.

A Council approval will deny all rights to obviously affected residents of the Town.

Thank you for your consideration. We hereby request to be provided with a copy of Council's decision in this matter.

Yours truly,

MILLER THOMSON LLP

Steven J. O'Melia  
SJO/dms

c: Dan and Marjorie O'Driscoll (via email: [REDACTED])  
Coreena Smith, County of Bruce (via email: [CJSmith@brucecounty.on.ca](mailto:CJSmith@brucecounty.on.ca))  
Erick Boyd, RPP, MCIP, Manager, Community Planning & Development,  
Ministry of Municipal Affairs and Housing (via email: [Erick.boyd@ontario.ca](mailto:Erick.boyd@ontario.ca))  
Tyler Shantz, Senior Planner, Community Planning and Development,  
Ministry of Municipal Affairs and Housing (via email: [Tyler.Shantz@ontario.ca](mailto:Tyler.Shantz@ontario.ca))

