
HALDIMAND COUNTY

Report PDD-26-2021 Official Plan and Zoning Amendment to Permit House on a Private Road – Curley and Moore



For Consideration by Council in Committee on April 20, 2021

OBJECTIVE:

To present the key planning considerations related to a combined Official Plan and Zoning By-law Amendment application to permit a year-round dwelling to be constructed on a vacant lot of record fronting onto a private road in the prime agricultural area of the County.

RECOMMENDATIONS:

1. THAT Report PDD-26-2021 Official Plan and Zoning Amendment to Permit House on a Private Road – Curley and Moore be received;
2. AND THAT application PLOP-HA-2020-191 to amend the Haldimand County Official Plan by adding a special policy to the designation of the subject lands to permit a year-round dwelling and related accessory building on the subject lands be refused for the reasons outlined in Report PDD-26-2021;
3. AND THAT application PLZ-HA-2020-192 to amend the Haldimand County Zoning By-law HC 1-2020 by adding a special provision to the zoning of the subject lands to permit a year-round dwelling and related accessory building on the subject lands be refused for the reasons outlined in Report PDD-26-2021;
4. AND THAT the proposal is deemed not to conform to the purpose and intent of the Haldimand County Official Plan and Haldimand County Zoning By-law HC 1-2020;
5. AND THAT the by-laws attached to Report PDD-26-2021 not be passed.

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Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

The applicants submitted a combined Official Plan and Zoning By-law Amendment application to amend the Haldimand County Official Plan and Haldimand County Zoning By-law HC 1-2020 to permit a year-round dwelling to be constructed on the subject lands which are located on a private road (Hoto Line). The subject lands are currently vacant and do not have an assigned municipal address. The Official Plan and Zoning By-law prohibit year-round dwellings in all areas of the County on lots fronting onto private roads (other than condominium roads) for life and property safety, liability, and financial reasons. Planning staff recommend that this application be refused and the attached by-laws not be passed. However, if Council wants to approve this application, Planning staff recommend that the

applicants be required to enter into a limited servicing agreement with the County, provide a certificate of insurance on an annual basis to the County, and erect private road signage along Hoto Line.

BACKGROUND:

Miles Weekes, Planner at A.J. Clarke & Associates Ltd., submitted a combined Official Plan and Zoning By-law Amendment application on behalf of Miranda Curley and Justin Moore, applicants, in late 2020 to permit the construction of a year-round dwelling on a property having no municipal address but described as Concession Broken Front, Part Lot 14, Geographic Township of Sherbrooke which fronts onto a private road known as Hoto Line (Attachments 1 and 2).

The Haldimand County Official Plan and Haldimand County Zoning By-law HC 1-2020 prohibit development on lots fronting onto private roads, which necessitates this application. The applicants are requesting to:

- 1) Amend the Haldimand County Official Plan to add a special policy to the designation of the subject lands to permit a year-round, single family dwelling and related accessory building on the subject lands; and
- 2) Amend the Town of Haldimand Zoning By-law HC 1-2020 to add a special provision to the zoning of the subject lands to permit a year-round, single family dwelling and related accessory building on the subject lands.

Approval of this application is required in order for the applicants to obtain building permits.

Location and Description:

The subject lands are located in the prime agricultural area of the County (Attachment 1). The subject lands front onto the east side of Hoto Line (a private road) and do not have a municipal address. The subject lands have 214 metres (702 feet) of frontage on Hoto Line and are 4.76 hectares (11.75 acres) in size. The subject lands are currently vacant.

The subject lands are located approximately one (1) kilometre south from the intersection of Hoto Line and North Shore Drive (an improved, County road). To access the subject lands, a person must drive one (1) kilometre (0.6 miles) south down Hoto Line.

Hoto Line runs north-south and is approximately 1.3 kilometres (0.8 miles) in length (Attachment 1). At the north limit, Hoto Line intersects with North Shore Drive. At the south limit, Hoto Line intersects with Erie Heights Line (a private road). Erie Heights Line travels east-west parallel to Lake Erie and is approximately 400 metres/0.4 kilometres (1,312 feet) in length. Not all of Erie Heights Line is constructed. There is no secondary access to this area as Erie Heights Line is not constructed to Derner Line (a private road) further to the west of Erie Heights Line. Two (2) year-round dwellings front onto North Shore Drive but are accessed via Hoto Line and thirteen (13) dwellings (most being seasonal residences) front onto Erie Heights Line.

Surrounding land uses include agriculture and windmills to the north, agriculture to the east and west, and existing seasonal residential to the south.

ANALYSIS:

The following planning considerations apply to this proposal:

Provincial Policy:

Provincial Policy Statement (2020):

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The *Planning Act* directs that decisions affecting planning matters “shall be consistent” with the policies of the PPS.

The subject lands are designated ‘Agriculture’ in the Haldimand County Official Plan (OP) and are located in the prime agricultural area of the County. The PPS requires municipalities to protect prime agricultural areas for long-term use for agriculture. In the prime agricultural areas, permitted uses and activities are: agricultural uses, agriculture-related uses, and on-farm diversified uses. In prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards (including minimum distance separations (MDS)).

The subject lands are 4.76 hectares (11.75 acres) in size and are currently vacant and surrounded by farmland on the north, east, and west. Given the lack of improved, public road frontage, it is Planning staff’s opinion that a single family dwelling, agriculture-related, and on-farm diversified uses are not appropriate uses for the subject lands. As part of the application package, the agent conducted a MDS calculation and identifies that there will be no conflicts between existing livestock operations and the proposed dwelling.

Further, it is important to recognize that the PPS does not provide direction on all land use planning matters; the PPS recognizes that Ontario is a vast province with diverse urban, rural and northern communities which may face different challenges. The PPS provides direction on key provincial interests (promoting complete, efficient and vibrant communities; protecting natural, agricultural, and cultural resources; avoiding hazard lands, etc.) that must be consistently applied across the Province to ensure the collective, public good and quality of life are maintained or improved upon. The PPS does not provide direction on all local (municipal) land use planning issues and matters. The PPS recognizes that it may be complemented by locally-generated policies regarding matters of municipal interest.

The PPS does not provide policy direction relating to development on private roads in prime agricultural and lakeshore areas because not every municipality has existing, private road systems; this is a local (County) land use planning matter that the Haldimand County Official Plan addresses. However, the PPS states that the policies of the PPS represent minimum standards. Within the framework of the provincial policy-led planning system, planning authorities and decision-makers (Council) may go beyond these minimum standards to address matters of importance to a specific community (such as development fronting onto private roads in the County), unless doing so would conflict with any policy of the PPS. The PPS states that provincial plans and municipal official plans provide a framework for comprehensive, integrated, place-based and long-term planning that supports and integrates the principles of strong communities, a clean and healthy environment and economic growth, for the long-term.

As it will be discussed within this report, the Haldimand County Official Plan and Haldimand County Zoning By-law HC 1-2020 prohibit year-round development fronting onto private roads for life and property safety, and liability reasons. Further development on private roads can also generate future requests and pressure for municipal road upgrades and waste collection which has financial implications. This is a local planning matter that the PPS does not address. However, the Province approved the County’s Official Plan in 2009 following Council’s adoption in 2006. By approving the County’s OP in 2009, the Province endorsed this local policy and continues to endorse it based on discussions held during the application review process.

Lastly, the PPS prohibits development and site alteration on lands containing archaeological resources or areas of archaeological potential unless significant resources have been conserved. To assist with determining if a property has archaeological potential, the Ministry of Heritage, Sport, Tourism and

Culture Industries (MHSTCI) created a checklist for non-specialists. According to the checklist, if there is present or past water sources within 300 metres (984 feet) of a property or project area, an archaeological assessment is required because 80-90% of archaeological sites are found within 300 metres (984 feet) of water bodies (including lakes, rivers, stream, and creeks). As part of the application package, the applicants submitted a Stage 1 – 3 Archaeological Assessment prepared by Earthworks Archaeological Services Inc., which the MHTSCI has accepted. There are no policy issues with this aspect of the application as a result.

Overall, it is Planning staff's opinion that the proposal is consistent with the PPS.

Growth Plan for the Greater Golden Horseshoe:

The purpose of the Growth Plan is to address challenges related to the magnitude of forecasted growth and changes in the Greater Golden Horseshoe over the next thirty (30) years. Planning decisions must conform to the Growth Plan.

Similar to the PPS, the Growth Plan does not provide policy direction relating to development on private roads. Instead, the Growth Plan deals with higher level land use planning matters across the Province such as curbing urban sprawl, encouraging intensification, balancing land uses, planning for infrastructure, protecting finite resources (including agricultural lands), etc. as the Greater Golden Horseshoe dramatically grows and changes in the long-term.

With respect to agriculture, the Growth Plan requires prime agricultural areas to be designated and protected for long-term use for agriculture. The retention of existing lots of record for agricultural uses is encouraged, and the use of these lots for non-agricultural uses is discouraged. The subject lands could be used as cropland. Regardless, it is Planning staff's opinion that the proposal conforms to the Growth Plan.

County Policy:

Haldimand County Official Plan:

The Haldimand County Official Plan (OP) creates the long-term framework for guiding land use changes in the County to 2026 by protecting and managing the natural environment, directing and influencing growth patterns, and facilitating the vision of the County as expressed through its residents. The OP also provides the avenue through which Provincial Policy is implemented into the local context.

The subject lands are designated 'Agriculture' and are located in the prime agricultural area of the County. The OP states that the predominant use of lands within areas designated 'Agriculture' shall be for agriculture. A single detached dwelling may be permitted on an existing lot of record or on a lot created by consent in accordance with the policies of the OP.

The servicing policies of the OP state that a single detached dwelling may be erected upon any legally existing vacant lot of record provided (emphasis added):

- a) The lot has access **and** frontage on an open public road;
- b) The lot is capable of accommodating a water supply system and an on-site sanitary sewage system designed and installed as per the *Ontario Building Code*; and
- c) The site has appropriate drainage patterns.

Through the OP, the County can permit and prohibit certain land uses to ensure future development is appropriate and safe. The crux of the planning matter in this application is life and property safety, and County liability as it pertains to suitable year round road access. The purpose of the OP policy requiring lots to have public road access and frontage is to ensure that all new, year-round development has frontage onto a Provincial or County road that is maintained to an acceptable standard. New, year-round development is not permitted on private roads because general access, regular road maintenance, road clearing, and snow plowing is not provided by the Province or County and cannot

be guaranteed. The provision of emergency services, especially during the winter months and inclement weather, also cannot be guaranteed on private roads because private roads typically do not provide suitable access for emergency vehicles. Prohibiting new year-round dwellings on existing lots and lot severances fronting onto private roads ensures new development is appropriately serviced (with general maintenance and snowplowing), prohibits a potentially dangerous situation where emergency services cannot reach the homeowners or their property during inclement weather, and reduces the liability of the County. Also, private road systems were created prior to planning regulation and are typically not held in collective ownership where maintenance (general and snowplowing) is funded and organized within a defined, legal system (such as within a condominium corporation). Permitting additional development on private road systems outside of a condominium corporation can also lead to neighbour disputes relating to maintenance of the private road system. It can also place pressure on the County to upgrade the private road system in the future.

Further, the subject lands front onto an existing private road system that provides access to existing lots adjacent to the lakeshore. The subject lands are located close to the lakeshore. The OP contains additional policy direction relating to lakeshore development on private roads. The intent of the lakeshore development policies is to, among other items, prevent development on private roads until additional County-wide review is completed to determine acceptability of further lakeshore development along private road systems.

This review which also would have looked at Lakeshore Node boundaries (cottage and year-round settlement area) was intended to be completed in 2007 but did not occur. It is not clear if the study was proposed to deal with year-round development on private roads. In the interim, the subject lands and surrounding area are located within the prime agricultural area of the County rather than within an identified Lakeshore Node and the lakeshore policies state that new development identified for year-round use must have frontage on an open improved public road. This policy is consistent with the servicing policies (for the entire County), which states year-round development must have frontage on an improved, public road.

Also, it is important to recognize that the County does permit new seasonal development on lots of record fronting onto existing private roads within defined Lakeshore Node boundaries on a case-by-case basis through a Zoning By-law Amendment application provided the development is functional and emergency services can access and exit the area. The reason being, emergency access is less of a concern during the warmer months. However, new year round development within Lakeshore Nodes is only permitted on public roads of a certain standard where regular maintenance is provided by the County or Province.

Notwithstanding, the applicants are proposing to construct a year-round dwelling fronting onto the private road in the prime agricultural area and are proposing to assist with plowing the road (see the Attachment 3). To accomplish this, the applicants are requesting to add a special policy to the designation of the subject lands within the OP to permit a year-round dwelling to be constructed fronting onto a private road. As part of the application submission, the agent provided a Planning Justification Report (PJR) (Attachment 4). Through the PJR, the agent justifies that the proposal to construct a new year-round dwelling fronting onto a private road is appropriate because:

1. There is no reasonable opportunity to obtain frontage along a public road for the subject lands;

Planning Comment: The OP prohibits new, year-round dwellings on private roads because permitting new, year-round dwellings on private roads can lead to life and property safety issues as well as liability issues. There are many lots in the County which do not have public road frontage where a new, year-round dwelling is prohibited. In this case, the lots can be used for agricultural purposes only (provided they are located in the prime agricultural area) or seasonal residential purposes (provided they are located within a Lakeshore Node and are assessed through a Zoning By-law Amendment application).

In this case, the subject lands are located approximately one (1) kilometre south of the intersection of North Shore Drive (a public road) and Hoto Line. Through the circulation process, Emergency Services commented that year round access for Emergency Services on the private roads system (Hoto Line and Erie Heights Line) with maintenance to withstand Emergency Services vehicles is required. If the private road system is not upgraded and plowed, Emergency Services may not be able to get to the residents or they may have to request that Roads Operation plow the private road. Prior to application submission, the applicants were told that to address the safety issues associated with year-round development on the subject lands in accordance with current County policy, they would be required to upgrade the private road to municipal standards and provide an emergency turnaround. Additional requirements, including secondary emergency access would need to be contemplated and discussed. The applicants decided not to entertain this requirement due to cost and complexities and to submit this application to request relief from this requirement. It is important to note that additional lot creation is not permitted in this area as the lands along Hoto Line are located outside of a Lakeshore Node.

The OP and Zoning By-law policies were put in place to specifically prohibit this circumstance – the construction of a year round dwelling on a long, unimproved private road system without oversight of a condominium corporation and secondary emergency access. The fact that the subject lands do not have frontage onto a public road and cannot obtain it due to the location of the subject lands relative to North Shore Drive, is not reason to approve this application.

2. McCarthy & Fowler have confirmed that the subject lands have legal access to North Shore Drive (a public road) via Hoto Line;

Planning Comment: No concerns.

3. Emergency Services can access the site in case of emergency;

Planning Comment: Emergency Services is concerned about the width and condition of the private road and snow plowing during the winter. The County does not have a by-law or system in place to ensure existing, private (seasonal) roads are continually maintained or plowed. Further concerns about emergency turn-arounds and secondary emergency access in this area have been identified. More specifically, the Haldimand County Design Criteria (engineering document) requires a secondary emergency access to be provided in cases where a cul-de-sac exceeds 106 metres (348 feet) in length to ensure emergency services can access the area at all times. In this case, the private road is a much longer, single access, private road that is not built to municipal standards.

4. Hoto Line serves two existing, year-round single detached dwellings along Hoto Line and seasonal residences along Erie Heights Line;

Planning Comment: 10 Hoto Line is located to the southwest of the intersection of North Shore Drive and Hoto Line (see Attachment 1). The dwelling at 10 Hoto Line has frontage and access to North Shore Drive. The driveway is located behind the dwelling, approximately 50 metres (165 feet) from the intersection and is accessed via Hoto Line. The dwelling is located close to North Shore Drive. The dwelling at 10 Hoto Line is existing and was constructed in the late 1800s prior to planning regulation.

17 Hoto Line is located south of North Shore Drive and east of Hoto Line (Attachment 1). The dwelling at 17 Hoto Line has frontage and access to North Shore Drive via Hoto Line. The driveway is located approximately 210 metres (690 feet) from the intersection. The dwelling at 17 Hoto Line is existing and was constructed in the late 1800s prior to planning regulation. Also, there could be opportunity to construct a driveway off North Shore Drive in the future.

There are 13 dwellings (most being seasonal in nature) located along Erie Heights Line to the south of Hoto Line. A few residents submitted letters of objection (Attachments 5 to 9) which state that this is a seasonal area and some of the cottages along Erie Heights Line have recently been converted to year-round dwellings. This is a historical area that was created and partially developed prior to land use planning regulations coming into effect. The residents in this area would be required to prove they have legal non-conforming (“grandfathered”) status for year-round living to live in the cottages year-round. Seven (7) residents object to year-round living in this area and object to the cottage association being responsible for plowing the private road (Attachments 5 to 9). It is important to note that the private road is not constructed for year-round use and is not held in collective ownership through a condominium corporation where maintenance is guaranteed. A letter of support on behalf of five (5) households (8 residents) was also submitted (Attachment 10). A second letter of support was provided from one (1) resident (Attachment 11).

5. The neighbouring property owners coordinate re-gravel and clear snow build-up using privately owned tractors; and

Planning Comment: A few residents object to the road being maintained year round and the cottage association being responsible for plowing the private road (Attachments 5 to 9). The private road is not owned as a common element, and there is no legal mechanism (agreements, by-laws, etc.) to require the residents to maintain and plow the private road.

6. The applicants have coordinated with the neighbouring property owners along Hoto Line to ensure Hoto Line is maintained year-round.

Planning Comment: At the time of writing this report, seven (7) residents submitted letters (Attachments 5 to 9) stating that they have concerns about this area becoming a year-round area, the provision of emergency services, and maintenance of the private road. A letter of support from five households was also submitted (Attachment 10). A second letter of support was also submitted (Attachment 11).

The agent also provided a follow-up letter to the staffs’ and neighbours’ comments (Attachment 12). After reviewing the follow-up letter, it is still Planning staff’s opinion that the OP has strong policy direction to prohibit proposals to construct year-round dwellings on private roads. Emergency Services has concerns about the condition and maintenance of the road. The private road system is not constructed to municipal standards, does not provide an emergency turnaround, and does not have a secondary emergency access. Also, there is no legal mechanism (agreements, by-laws, etc.) to ensure the road is maintained and plowed to County standards, unless:

1. The applicants upgrade the private road system to municipal standards and the County agrees to assume the new municipal road. In this case, this application would not be required; or,
2. The applicants upgrade the private road system to municipal standards for a condominium development and a condominium corporation is formed and agrees to plow the road.

Further, while the applicants may have some ability to plow the private road, there is no guarantee that they can continuously plow the private road and the subject lands will eventually change hands and the next owners may not have the same ability. If this application is approved, it will put pressure on the County in the future to upgrade and maintain the road as the County would have permitted the year-round dwelling in the first place. It is Planning staff’s opinion that the policy should be maintained or reviewed on a larger scale to determine if and how the County could permit new year-round development on private roads as there are many existing, undeveloped lots along the lakeshore that front onto private roads within the County and it is important to understand the implications of permitting year-round development on all private roads in the County.

Notwithstanding, as part of the application review process, County Planning staff asked the Province for a list of municipalities that permit development on lots of records fronting onto private roads and for their land use planning policies to provide Council with full information and options. The Province provided three examples – Kenora, The Town of Baldwin, and Grey County, Ontario.

The City of Kenora permits new development and lot creation on private roads provided environment, public health, and safety concerns are considered (see Attachment 13 for the City of Kenora Official Plan policies) and requires property owners to enter into an agreement relating to limited services with the City (see Attachment 14 for an example of their agreement). The Township of Baldwin permits new lot creation or development on existing lots fronting onto private roads but may require upgrading and maintenance to an acceptable municipal standard and signs to be installed indicating that the road is used at the risk of the user (see Attachment 15 for the Town of Baldwin Official Plan policies). The Township exempts itself from any legal obligation to maintain or repair private roads. Grey County permits development on existing lots of record on private roads or seasonally maintained roads subject to criteria (the use is permitted in the implementing zoning by-law; the lot and buildings and structures comply to the zoning by-law; the appropriate approvals for sanitary sewage and water supply are available; the property owners enter into a site plan or other agreement with the local municipality relating to the private road system; legal responsibility does not fall on the municipality; and the County will not assume the road) (see Attachment 16 for the Grey County Official Plan policies).

As part of the application review process, Planning staff provided Haldimand County's OP policies, the example Official Plan policies above, and Kenora's private road agreement to Sullivan Mahoney LLP, the County's legal Counsel, for review. According to the County's legal Counsel, there is strong policy rationale directing against approving this application. However, if Council wants to approve this application, Council should require the following to protect the County from liability due to restricted access to the road by Emergency Services:

1. An agreement similar to the Kenora, ON agreement (Attachment 14);

Planning Comment: While the Kenora agreement is implemented for new lot creation on private roads, it can also be used (with modifications) to permit development on existing lots of record fronting onto private roads.

2. The property owners to have liability insurance with the certificate to be provided to the County on an annual basis; and

Planning Comment: Item 1 above (the agreement) provides a defence to the County but does not prevent the County from being sued. If the County was sued, the County would claim over as against the property owner. To ensure the property owner is able to pay the County to address any issue, sufficient insurance should be required. The agreement would require future successor owners to obtain sufficient insurance and provide the certificate to the County.

3. The property owners to erect appropriate private road signage.

Planning Comment: Private road signage should be erected to ensure the public is aware that the road is not municipally owned or maintained. This will provide defence to the County.

Through discussion with the Province, the Province stated that there are historic private roads with occasional residential development in Bruce and Grey Counties but it is fraught with neighbour disputes and is not an ideal practice. Also, the County's legal Counsel stated that the agreement, insurance, and signage does provide some security to the County but it is complicated and not ideal. The County's Risk Management team is not in favour of allowing year-round development on the private road (see Risk Management comments in the Stakeholders Impact section of this report).

Overall, Planning staff recommend that this application be refused as the application does not conform the County's OP, is not considered to be a best practice, and contemplating year-round development

should be reviewed on a larger scale rather than at the individual property level given the subject lands do not constitute a unique circumstance and there are other existing properties in the agricultural and lakeshore area that front onto private roads. However, Planning staff have prepared an Official Plan Amendment by-law should Council want to approve this application (Attachment 17). Planning staff have also prepared the related Zoning By-law, which will be discussed in the following section of this report (Attachment 18). If Council wants to approve this application, Planning staff recommend that a Holding (H) Provision be affixed to the zoning of the subject lands (via the Zoning By-law – Attachment 18) to allow for the re-designation and rezoning but to prohibit a building permit from being issued until the agreement is prepared and executed; property insurance is agreed upon and provided; and the property owners erect appropriate signage (to be approved by the County). Once these conditions of the H Provision have been fulfilled, the H Provision can be removed “in house” by the General Manager of Community & Development Services. If Council is unsatisfied with the By-laws (including H Provision conditions), Planning staff can amend them prior to the following Council meeting.

Haldimand County Zoning By-law HC 1-2020:

The OP sets out the County’s general policies for future land use. The Haldimand County Zoning By-law HC 1-2020 puts the OP into effect and legally controls the use of land in the County by stating how land may be used; where buildings and other structures can be located; the types of buildings that are permitted and how they can be used; the lot sizes and dimensions, parking requirements, building heights and setbacks from the street. If the proposal does not comply with the Zoning By-law, a building permit cannot be issued.

The subject lands are zoned ‘Agriculture (A)’ Zone and are subject to a special provision, together with the lot to the north (17 Hoto Line), which permits a wind turbine. The ‘Agriculture (A)’ Zone permits a single detached dwelling and related residential accessory structures subject to satisfying the provisions in the Zoning By-law. The required lot frontage to develop in the ‘A’ Zone is 30 metres on an improved, public, or condominium common element road.

To implement the Official Plan, the Zoning By-law states:

No building or structure shall be erected, altered or enlarged on any lot in any zone unless it meets one of the following requirements:

- a) the lot has the minimum required lot frontage on an improved street;
- b) the lot will have frontage on a future public street that is currently being constructed pursuant to a Subdivision Agreement or other Development Agreement with a public agency;
- c) the lot is legally tied to a common element condominium having frontage on a condominium common element road that provides direct access to a public street or which connects with another condominium common element road having access to a public street; and
- d) the lot is legally tied to a common element condominium having frontage on a future condominium common element road that is currently being constructed pursuant to a Condominium Agreement or other Development Agreement with a public agency that provides direct access to a public road or which connects with another condominium element road having access to a public street.

For existing lots of records, the Zoning By-law also states (emphasis added):

Where an existing lot, other than a lot located on a private lane, having lesser lot area, lot frontage or lot depth than that required herein is or has been legally held under distinct and separate ownership from abutting lots continuously from the date of the passing of this by-law, then the said lot shall be deemed to conform to the requirements of this by-law with respect to lot area, lot frontage or lot depth, and the provisions hereof respecting lot area, lot frontage and lot depth shall not apply to prevent the use of such lot, or the erection, alteration or use of a building or structure thereon in accordance with all other provisions thereof.

Lastly, the Zoning By-law only permits the conversion of a vacation home dwelling (cottage) to year-round occupancy provided, among other items, the lot has frontage on an improved (i.e. municipal) street; soft services, including waste collection and winter control, are provided to the lot; and emergency access for County fire and paramedic services is available at all times as confirmed by the Fire Chief.

Overall, the Zoning By-law consistently prohibits a year-round dwelling fronting onto a private road to implement the OP policies (relating to life and property safety, liability, and financial implications). The applicants are requesting to add a special provision to the zoning of the subject lands to permit a year round dwelling to be constructed fronting onto a private road. Planning staff recommend that this application be refused as the application does not conform the County's OP, is not considered to be a best practice, and contemplating year-round development on private roads should be reviewed on a larger scale rather than at the individual property level.

However, Planning staff have prepared the Zoning by-law (Attachment 18) should Council want to approve this application. As stated in the OP section above, if Council wants to approve this application, Planning staff recommend that a Holding (H) Provision be affixed to the zoning of the subject lands (via the Zoning By-law – Attachment 18) to ensure appropriate conditions are put in place to ensure the current and future property owners are aware of servicing and emergency services limitations in this area due to the private road frontage and to reduce the County's liability. Once the conditions of the H Provision are fulfilled, the applicants would provide proof of fulfillment to Planning staff, who would recommend to the General Manager of Community & Development Services that the H Provision be removed from the zoning of the property. This process is completed "in house", recognizing that the conditions are legal and technical in nature, and does not require another trip to Council. The H Provision Removal By-law to authorize the General Manager to remove the H Provision has been included with this report as Attachment 19.

Planning Opinion:

The crux of this planning issue is life and property safety, as well as County liability and long term demands for increased service and impacts on taxpayers. The Haldimand County OP and Haldimand County Zoning By-law HC 1-2020 (implementing legal instrument) prohibit year-round development on private roads. Planning staff recommend that this application be refused and that the attached by-laws not be passed because emergency services cannot be guaranteed year-round for the subject lands (current or future property owners). Also, there are many vacant lots of record fronting onto private roads within the prime agricultural area and lakeshore nodes, which the OP and Zoning By-law prohibit from being developed for year-round purposes. The subject lands do not constitute a unique or "one-off" situation where a variance to these policies should be contemplated. Also, it is not appropriate to plan for personal circumstance (current property owners' ability to snow plow) as property eventually changes hands. The OP and Zoning By-law policies were put in place to specifically prohibit this circumstance – the construction of a year round dwelling on a long, unimproved private road system without construction to a municipal standard, condominium corporation oversight, and secondary emergency access.

Public Consultation:

At the time of writing this report, Planning staff received four (4) letters from four (4) households (five (5) residents) of objection (Attachments 5 to 9). Planning staff also received one (1) letter of support from five (5) households (8 residents) (Attachment 10). A second letter of support was received from one (1) resident (Attachment 11).

With respect to the letters of objection, the objections include:

1. Concerns about cottage neighbourhood on private road system becoming a year-round neighbourhood, including concerns about privacy, use of private road, and implications for costs for the local cottage association to maintain the private road.
2. There are no emergency services (police, ambulance, and fire) provided off Hoto Line during the fall/winter season. The private road plugs up during the winter months.
3. Cottage association does not want to maintain road upgrades for emergency services.
4. Housing of livestock.

With respect to the letter of support, the residents do not anticipate the development to have an adverse effect on their properties and trust any road damage caused by construction will be remedied.

The agent provided a response to the letters of objection in his response letter (Attachment 12). The agent states that the applicants intend to work with the community to maintain and improve the road and to plow the road. They do not intend to farm the land, which could include bringing heavy machinery down Hoto Line. Leaving the subject lands vacant is not logical or practical. The property has rights to use the private road year-round regardless of land use. Further lot creation is prohibited in this area. All of these items are addressed in this report.

Further, the agent mailed out their own notice inviting comments and discussion and information about the applicants on February 19, 2021. The required public notices were mailed out in accordance with the *Planning Act*.

FINANCIAL/LEGAL IMPLICATIONS:

The purpose of the Haldimand County OP and Zoning By-law prohibiting new development on existing private road systems is to protect life and property safety and to protect the liability of the County. The purpose is also to protect the County from future servicing upgrade requests which have a financial implication. If Council wants to pass this application, the County's legal Counsel recommends that the property owners be required to enter into an agreement related to limited services with the County; provide insurance to the County on an annual basis; and erect private road signage.

STAKEHOLDER IMPACTS:

Bell Canada – No comments received.

Canada Post Corporation – Please be advised that Canada Post does not have any comments on this application for 1 residential house to be built on this property. Should they require mail delivery, please have them contact our Customer Service department at 1-800-267-1177 or the Dunnville Post Office at 905-774-6545.

Ministry of Municipal Affairs and Housing (MMAH) – MMAH and partner ministries do not have any formal comments on this application.

Trans-Northern Pipeline Inc. (TNPI) – TNPI has no comments as the development is over 40km away from the TNPI pipeline. As with any development, please ensure the developer submits an Ontario One Call request to ensure the field also clears the proposed development.

CP Rail – Given the setback of the proposed development, CP has no further comments regarding this application.

CN Rail – No Comments received.

Mississauagas of the Credit First Nation – No comments received.

Six Nations Council – No comments received.

Hydro One (High Voltage) – No comment.

Hydro One (Local) – No comment.

Union Gas – No comment.

Emergency Services/Fire Department – Year-round access for Emergency Services on private road (Hoto Line and Erie Heights Line) with maintenance done to withstand Emergency Services Vehicles (fire trucks and ambulances) required.

Planning Comment: The road would need to be upgraded to municipal standards, include an emergency turnaround, and secondary emergency access in accordance with the Haldimand County engineering (Design Criteria). Snow plowing would need to be guaranteed via the Municipality or via a condominium corporation.

Public Works – Environmental Operations – Solid Waste Management – Solid Waste is collected on the public right of way all year round, at the intersection of North Shore Drive and Hoto Line.

Planning and Development (Development and Design) – No formal comments provided. Development and Design Technologist agrees with Emergency Services comments.

Forestry Operations – Forestry doesn't have any concerns with the proposed zoning amendment since there will be no impacts on the Woodlands located on the adjacent property to the east or County owned trees.

Finance – Development Charges will apply at the rate in affect at the time of building permit issuance.

Building & Municipal Enforcement Division –

1. This is a part 9 building so it does not have to conform to the access route stipulated in part 3 (listed below) of the *Ontario Building Code*, but it may provide guidance:

3.2.5.6. Access Route Design

- (1) A portion of a roadway or yard provided as a required access route for fire department use shall,
 - (a) have a clear width not less than 6 m, unless it can be shown that lesser widths are satisfactory,
 - (b) have a centreline radius not less than 12 m,
 - (c) have an overhead clearance not less than 5 m,
 - (d) have a change of gradient not more than 1 in 12.5 over a minimum distance of 15 m,
 - (e) be designed to support the expected loads imposed by firefighting equipment and be surfaced with concrete, asphalt or other material designed to permit accessibility under all climatic conditions,
 - (f) have turnaround facilities for any dead-end portion of the access route more than 90 m long, and
 - (g) be connected with a public thoroughfare.

The County, through its (engineering) Design Criteria, may have design guidelines for road construction that are quite similar to what is required under the part 3 access route for the road design.

Under part 9 of the *Ontario Building Code* it states the following:

9.10.20.3. Fire Department Access to buildings

- (1) Access for fire department equipment shall be provided to each building by means of a street, private roadway or yard.
- (2) Where access to a building as required in Sentence (1) is provided by means of a roadway or yard, the design and location of such roadway or yard shall take into account connection with public thoroughfares, weight of firefighting equipment, width of roadway, radius of curves, overhead clearance, location of fire hydrants, location of fire department connections and vehicular parking.

While provided with an outline of what should be considered, this section does not give clear standards or specifications to be used.

2. The property is zoned 'A' Zone with unevaluated wetland on the property. Special provision 37.294 applies to the property which allows a wind turbine. A wind turbine does not appear to be on the property.
3. A single detached dwelling is a permitted use.
4. The property is located on a private lane. The property does not meet the minimum frontage for the 'A' Zone or 4.23 (Frontage on an Improved Street). Variance required.
5. The septic design appears to meet all clearances and is a Class 4 system, as required.
6. They are applying for full-time use of the property. They would not meet the provisions of Section 4.14 Conversion of a Vacation Home to Permanent Occupancy as the property does not have frontage on an improved street; winter control is not provided; requires emergency access to be available at all times (Emergency Services to comment); and waste collection must be provided (Solid Waste to confirm).

Municipal Property Assessment Corporation (MPAC) – No comments received.

Niagara Peninsula Conservation Authority (NPCA) – The NPCA will have no objections to the proposed development, as it is located more than 30 metres from the Unevaluated Wetlands located to the east. Any additional proposed development or site alteration on the subject property that is proposed further to the east (closer to the Unevaluated Wetlands), shall be circulated to the NPCA for review and approval.

An NPCA regulated Watercourse traverses Hoto Line. Please note that development or site alteration within 15 metres of a watercourse requires a work permit from the NPCA, and possibly studies to be provided to the NPCA depending on the scope, nature and location of what is being proposed.

This watercourse appears to be a tributary to Low Banks Drain and may fall within a floodplain hazard. As such, development in these general areas may be subject to the Authority's "Regulation of Development, Interference with Wetlands and Alterations to Shoreline and Watercourses" (O. Reg. 155/06). In accordance with this regulation, development and site alterations are not permitted within a floodplain hazard. The NPCA currently does not have floodplain mapping for this section of the watercourse. Given the size of the upstream drainage area for this section of the watercourse, floodplain mapping may be required to be generated (at the landowner's expense) should any new development or site alterations be proposed in close proximity to this watercourse. This would be to ensure no new development or site alterations that could have a negative impact to the floodplain are located within the flood hazard.

Haldimand-Norfolk Health Unit – No comment received.

Property Coordinator – I've reviewed the documentation and have no comments.

Risk Management & Legal Services – Risk Management would not be in favour of allowing year round development on a private road, given that the ownership of the road appears to be allocated to multiple owners, and it would encourage other property owners who are serviced by the private road to consider year round development as a result of a potential approval. Approval of this application for development could or would encourage year round use and could imply that the joint owners have a shared responsibility to maintain the private roadway in the winter months.

If approved, we would strongly encourage that any agreement the applicant is required to sign will mutually indemnify not only the County from any legal responsibility and liability, but the shared owners of the private road, so as to make clear that the responsibility of maintenance and/or access (on a year round basis) is not theirs, nor the County's to provide. Further, there should be a stipulation that any prospective future buyers of the subject property would be provided with a 'buyer beware' advisory prior to purchase, in order to make one aware of any and all obligations listed in agreement (that is registered on title).

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Location Map
2. Concept Plan
3. Applicant's Hoto Line Maintenance Letter
4. Planning Justification Report
5. Letter of Objection 1
6. Letter of Objection 2
7. Letter of Objection 3
8. Letter of Objection 4
9. Letter of Objection 5
10. Letter of Support 1
11. Letter of Support 2
12. Agent's Response Letter
13. Kenora Official Plan Policies
14. Kenora Agreement
15. Township of Baldwin Official Plan Policies
16. Grey County Official Plan Policies
17. Official Plan Amendment By-law
18. Zoning By-law
19. Holding Provision Removal By-law