

Jo-Ann (Bosak) Dick and Jackie Bosak



April 15, 2021

Haldimand County Council
53 Thorburn Street, South
Cayuga, Ontario
N0A 1E0

Attention: Jessica Easson - Planning Technician, Planning & Development

Subject: Application: PLOP-HA-2020-919 and PLZ-HA-2020-192

Dear Jessica Easson

We respectfully request the above noted application for the addition of a "special" policy in the Haldimand Country Official Plan (OP) and a "special" provision in the Zoning By-law is not approved by Council.

Historical Information:

My mother Jackie Bosak and I are the co-owners of 32 Erie Heights Line. Our property has been in the family for four generations and we want to see the fifth generation share the same summer experiences as the previous generations.

In the 1950's John and Julia Bosak owned 10 Hoto Line and Raymond and Olivia Minor family owned 17 Hoto Line, as such the two farms owned and maintained Hoto Line as a private road / laneway.

In the 1960's as properties were sold and cottages built on Erie Heights Line, an association was established to collect funds from cottage owners

to maintain Hoto Line, as cottage owners were granted road access to pass, however Hoto Line was deemed to be a private road / laneway.

Hoto Line is maintained by The Erie Heights Association. This was a positive ongoing benefit for all cottage owners and the resident farmers of 10 and 17 Hoto Line, however in the last few years a number of cottages were sold and new owners are now living year round on Erie Heights Line. The cost to maintain Hoto Line has doubled to allow three cottage owners year round access during the winter months. This was never the intention of Hoto Line, it was deemed private for summer seasonal use only. The majority of the properties on Erie Heights are not winterized for year round living.

Issue: Should the request for “special” amendments to the OP and zoning by-law be approved to allow a new build of a single-family dwelling and related accessory structure **OR** should the request for “special” amendments to the OP and zoning by-law be denied, as the vacant lot fronts onto a private road and a special provision has already been granted to permit a wind turbine, therefore should another special provision be granted for the same subject lands.

The applicant submits that they will:

- build a single detached dwelling
- build an accessory storage structure
- assist with plowing in winter
- assist with shared costs with road maintenance on a yearly basis
- not raise livestock

The application needs to be denied for the following reasons:

1. Erie Heights Association **will not** maintain Hoto Line should the application be approved. The Association was created 60 years ago for seasonal maintenance of Hoto Line. The cost to open the road and maintain during the off season is not within the budget of the Association. Hoto Line is a private road, granting road access to seasonal cottage owners, the road was never intended to be used for year round traffic and the Association will not support year round maintenance.

According to the *Oxford Learners Dictionary* a private road is a road that crosses the private property of a person or group of people and is owned by them. Private roads are usually open to the public for them to reach the house or houses that they lead to, **but they must be closed at least once a year in order to remain private.**¹ (emphasis added)

According to the *Road Access Act*, road access means a road located on land not owned by a municipality and not dedicated and accepted as, or otherwise deemed at law to be, a public highway, that serves as a motor vehicle access route to one or more parcels of land.²

In the 1960's a barrier was in place just after the Minor farm on Hoto Line to prevent access to Erie Heights Line during the fall / winter season at that time the road was closed from May 24th to Labour Day Weekend.

According to the *Oxford Learners Dictionary* a barrier is an object like a fence that prevents people from moving forward from one place to another.³

In 1978 the Road Access Act to address confrontations that may arise between neighbours who use private roads to reach their property and neighbours who own the private roads. The Act applies to prevent a property from being landlocked however the Court of Appeal also emphasized that the Act confers on users of an access road only a very limited, temporary right to use the road as follows:

"In the end, and in the narrow situations to which it does apply, it creates no proprietary right or interest in the land over which the access road passes. It provides an interim status to the access user whereby the access user is immunized from an action in trespass when travelling on the access road in a motor vehicle for purposes of access only (see Deluca; Cook's Road Maintenance). He or she may not walk on it, use it for their own purposes (except vehicular passage for access purposes only), play on it, or disrupt it. The access user cannot grant the use of the road to others. The access user cannot

¹ <https://www.oxfordlearnersdictionaries.com/us/definition/english/private-road?q=private+road>

² <https://www.ontario.ca/laws/statute/90r34>

³ <https://www.oxfordlearnersdictionaries.com/us/definition/english/barrier?q=barrier>

convey any right to the road on a sale of the parcel of land; *Whitmell v. Ritchie*, supra. **The Road Access Act does not affect property rights, but subjects them to the continued limited use of the road** unless and until the owner obtains, after proper notice and hearing, a court order closing the road on whatever conditions are imposed; *Cooks Road Maintenance*, at para. 45. And, if another access road is subsequently provided, the access user's continuing status under s. 2 ceases because alternate access would then exist."4 (emphasis added)

Hoto Line is a private road / laneway owned by Martin and Linda Miedema and Lawrence Schilstra however maintained by the Erie Heights Association. Cottage owners have the right to access their properties during the summer season unfortunately cottages have been sold and new owners have failed to conduct proper research and understanding of the access over a private road. Hoto Line is a temporary access only and the Miedema family has the right under the *Road Access Act* to limit the use of the road. I believe the Miedemas acted in good faith allowing cottage owner (25) access in the winter. Cottage 25 made a huge mistake assuming they could live on Erie Heights Line year round. Unfortunately, Hoto Line should not have been opened for access past October 31st. (Exhibit A)

2. The applicant and year round residents are putting emergency services such as police, ambulance and fire prevention at great risk during the fall, winter and early spring seasons. Hoto Line in the winter can be inaccessible, similar issues were noted by the Local Planning Appeal Tribunal in the *Boyce v Norfolk (County)*, 2018 CanLII 35095 decision as follows:

[40] The Tribunal notes that during the agency circulation process concerning the Hastings Drive Zoning Study, comments were received from Emergency Medical Services stating: "as always we continually struggle with access and egress problems to remote areas such as Hastings Drive especially during the winter months". And the Fire and Rescue Services stated: "Fire would not go down road if flooded due to the concern of the road being washed out. Would wait for roads and a front end loader to make sure road is passable and to remove any obstacles.5

4 <http://donaldlange.com/road-access-act-and-the-court-of-appeal/>

5 <https://www.canlii.org/en/on/onlpat/doc/2018/2018canlii35095/2018canlii35095.html?searchUrlHash=AAAAQANaGFzdGluZyBkcml2ZQAAAAAB&resultIndex=1>

3. I contacted the Ontario Provincial Police, they suggested I reach out to Toby Barrett, Member of Provincial Parliament. (Exhibit B)

4. Is it fair and reasonable to grant another special provision to the subject lands when a special provision has already been granted for the wind turbine? Furthermore, the distance from the wind turbine to the new build must be:

In Ontario, the minimum setback for new projects is 550 m from non-participants. There is no setback for participants. Older turbines are even closer than 550 m. Municipalities have no control over the setback in Ontario, unlike other jurisdictions. The setback is arbitrary, not "based on the most up-to-date science".⁶

5. The wildlife which includes deer, eagles, coyotes, fox, rabbits, to name a few, is at risk and will diminish with year round population.

6. Cottages numbers 05, 16, 25 on Erie Heights Line, are also single detached dwellings that **do not front on an open public road**. Two of the properties are considered hazardous, approving a new build within feet of hazardous zoning is a mistake and there is jurisprudence on lands subject to erosion hazards. Cottage 16 claims he only resides on Erie Heights Line from April to October. Council needs to consider that there is a history here and newcomers to the area should be following the existing rules, not seeking a special provision to meet their needs. This is not fair or reasonable for the long term cottage owners.

The erosion on Lake Erie and in this case specifically High Banks has had considerable erosion in the last couple of years, which makes us question why Council is considering a new build in the area. We the owners of 32 Erie Heights have lost easily 50 plus feet of property into Lake Erie since 1960. Newcomers to the area do not understand the devastation that Lake Erie can produce and that break walls are disrupting the cycle as follows:

Tim Byrne, director of watershed-management services at the Essex Region Conservation Authority, notes that erosion is part of the natural cycle of land loss

⁶ <https://ontario-wind-resistance.org/setbacks/>

The applicant should have researched the vacant lot accessed by a private laneway prior to their purchase, ultimately they chose to purchase property despite the fact that the location is not on a public road.

Based on the foregoing and the fact that a private road must be closed at least once a year, the application should fail. It is often said that new processes and procedures improve things however in many instances the old practices of our loved ones worked the best and without conflict.

Council has the power to make a decision that will have a huge impact on a number of issues. Our hope is that careful consideration is given to our submission, the outcome needs to be fair and reasonable without any conflict of interest based on relationships.

One should not be able to create a "special policy" and a "special provision" to a property to fit one's needs, when these actions will effect a number of properties and cause unrest for cottage owners that appreciate privacy, nature and a slice of heaven in Haldimand County that we had worked to preserve for generations and with the erosion, our time is limited.

We are hoping that the fifth generation will be able to enjoy their summers at the lake and that access will return to seasonal from May to October.

Respectfully,

Jo-Ann Dick *Jackie Bosak*

Jo-Ann Dick and Jackie Bosak

Exhibit A



Private Roads – Who's In Charge?

Related news items:

November 2019 – [Council weighs fairness of plowing selected cottage roads](#) (Timmins) Also, Timmins has a process for 'elevating' non-serviced roads to become serviced; download a copy of the 2016 [Charland & Bertrand Road Winter plowing report](#) (PDF, 14 pages)

November 2019 – If passed as part of the government's proposed Bill 132, "Better for People, Smarter for Business" Act, the Ministry of Transportation would set out specific requirements in the regulations for a municipality to permit off-road vehicles (ORV) on their roads. According to the Province, this will be done in consultation with industry, the ORV riding community, municipalities and enforcement services. [Read more.](#)

June 2017 – [Can I Allow a Friend to Use Shared Private Road in Cottage Country?](#) (Toronto Star)

March 2017 – [Snow Removal Pricing – what's legal and what's not](#)(Government of Canada)

FOCA's take:

Local committees or road groups are an important piece of the puzzle when it comes to private roads. Residents using these non-municipal routes to access their properties have a common interest and a shared commitment to the roads' condition, and safety. Ensuring uninterrupted access, fair use and sharing of the costs of these important community assets means planning ahead and ensuring everyone is included in the decision making.

Having up to date road-related bylaws can ensure there are clear rules about the process for deciding who makes decisions about the road, and who pays for what.

By agreeing to a decision-making process, everyone can be assured their interests are fairly represented. Done in advance, without a burning issue or personalities in the mix – gives everyone a common framework for decision-making and for resolving disputes.

Over the years, many cottage road associations have found that the easiest and fairest way to pay the annual cost of private road maintenance is for every property owner to pay equally.

One common problem arises when there are people that use the road differently and how to reflect this different value of the road to different users. Some will want to use the road year 'round; others only access the road seasonally.

The budget and maintenance impacts of seasonally maintained versus year-round use needs to be clearly communicated and the implications for every resident understood.

A good set of bylaws will recognize the implications of road maintenance, and snow plowing, and will specify exactly how money collected for the road is to be spent.

Do you have a solid and functional set of road bylaws? Share them with others by emailing them to FOCA (No names will be used).

NOTE: FOCA cannot provide specific advice on individual road problems, but can act as a sounding board and clearing house for general questions related to roads. Please email FOCA if we can be of any assistance, or to share your road success story.



What You Should Know About Private Roads

Category: [Real Estate Law](#)

By [Noah Potechin](#) of Merovitz Potechin LLP on Monday December 22, 2014.



Private roads are being used more frequently in recent years in Ontario. When a residential house is situated on a private road and a purchaser offers to buy that residential house, the purchaser should be aware of several associated realities.

Who owns private roads?

First, the house is not on a dedicated municipal road. That means that the municipality has not taken responsibility for the road. The road is owned by a collection of all of the owners of the houses on the private road. Each owner will own a share of the road. The owners may also own other common areas, such as open space and visitor parking areas.

The owners will usually collectively hire a property manager to maintain the road and any associated green space. That is just the first expense in a series of expenses that the purchaser may not have been fully aware of. The property manager creates a budget and charges a fee to each owner to cover the common expenses of that shared property.

Property management budget

The budget created by the property manager will include road, sidewalks and curb repairs as well as utilities associated with watering the common green space or electricity for powering lights. In addition to these relatively small expenses, there is also landscaping of green space, insurance, payment to board members, management fees, and a reserve fund. The largest expense, however, will typically be snow removal. The City snow plows will not be clearing the road in the winter because the city has not taken ownership of the road.

Buying a house on a private road

It is important for a [real estate lawyer](#) to search title to the house as well as to the common area. Sometimes an owner of a house did not also receive a transfer of a share of the common property. This will create a major problem. Legal access to the property is not available over the private road unless there is a grant of the common interest. Technically, such a homeowner is trespassing when crossing the private road.

One final point of caution is that, like condominium fees, association fees increase to cover replacement costs for the roads and other common areas. The fees seem quite low at first, but they increase, and over time, the owner will be expending thousands of dollars more than they would if the home was located on a municipally dedicated road.

When buying a residential home on a private road, it is important to hire a real estate lawyer who has experience with the added common land interest. The real estate lawyer should be able to advise the purchaser on all issues related to the home purchase and ensure that the people who are selling the house are able to [convey good and marketable title](#) to both the home and a share of the common property.

Exhibit B

Jo-Ann (Bosak) Dick
[REDACTED]
[REDACTED]
[REDACTED]

January 4, 2021

Member of Provincial Parliament for Haldimand / Norfolk County
39 Norfolk Street, North
Simcoe, ON N3Y 3N6

Attention: Toby Barrett

Subject: Hoto Line and Erie Heights Line

Dear Toby

I have a situation with respect to the private roads of Hoto Line and Erie Heights Line, Lowbanks and I need your help.

Background Information:

I own with my mother Jackie Bosak 32 Erie Heights Line. My mother Jackie has owned properties on Erie Heights Line for over 60 plus years. In the 1950's my grandparents owned 10 Hoto Line and 17 Hoto Line was owned by the Minor family, as such the two farms owned and maintained Hoto Line as a private road. In the 1960's as properties were sold and cottages built on Erie Heights Line, an association was established to collect funds from cottage owners to maintain Hoto Line, as cottage owners were granted access to pass, however Hoto Line was deemed to be a private road.

Hoto Line has been maintained by The Erie Heights Association, of which I am an active member. This was a positive ongoing benefit for all cottage owners and the resident farmers of 10 and 17 Hoto Line, however in the last few years a number of cottages were sold and new owners are now

living year round on Erie Heights Line. The cost to maintain Hoto Line has doubled for all cottage owners to allow three year round cottage owners access during the winter months. This was never the intention of Hoto Line, it was deemed private for seasonal use only.

I have reached out to Haldimand County (HC) on several occasions to inform them that new comers are living year round on Erie Heights Line. HC is turning a blind eye to the situation. I spoke with Ron Shirton, Ward 5 Councillor last summer and he basically said that the cottages are off a private road and no one is going to enforce anything out there, also said he would deny saying this. What kind of an answer is that?

The Haldimand by-law officer (Tim Doherty) in an email stated "under the new revised by-laws they can now apply to be a full season residence." Mr. Doherty has yet to provide me with the link to these revised by-laws. Presently, two cottage owners are on properties zoned as hazard land, no one has applied for a full season residence as I would be notified of their application.

New Development:

I was aware that the back 11 acres of 17 Hoto Line was sold. I recently received a notice from HC dated December 22, 2020, that application PLOP-HA-2020-919 and PLZ-HA-2020-192 has proposed the addition of a "special policy" in the Haldimand Country Official Plan (OP) and a "special provision" in the Zoning By-law to permit a year-round, single detached dwelling to be located on the subject land. Currently, the OP and Zoning By-law **do not permit** a new single detached dwelling to be located on a lot that fronts onto a private road.

Cottages numbers 05, 16, 25 on Erie Heights Line, are also single detached dwellings that do not front on an open public road, however they are allowed by Haldimand County to live year round off the private road Hoto Line. This is unfair, makes no sense and in a court of law would be considered unreasonable. There is a by-law which should be applicable to all parties. Some cottage owners have trailers, some build additional buildings, why does HC have by-law officers, if they refuse to enforce their by-laws?

This appears to me that if a property owner wants to do something, they just apply for a "special policy" and / or "special provision" for their property, this is wrong and will only result in conflict, among property owners.

In Conclusion:

The majority of the cottage owners appreciate the privacy during the summer months and the private road for walking and biking. The by-law is for a private road with seasonal access and the intended use needs to be established and enforced.

One last very important point is that there are no emergency services such as police, fire and ambulance provided off Hoto Line during the fall and winter seasons. The private road can become impassable at times and it saddens me that certain people are so selfish that they are willing to risk our essential workers during this pandemic to live on the lake.

My mother and I want to see eviction notices issued to the cottage owners of 05, 16, 25 on Erie Heights Line, as these are not their permanent residences and their dwellings do not front on an open public road.

Hoto Line is a private road with seasonal access from May to October only, as was intended all those years ago by my grandparents. People need to do their homework and research prior to purchasing property in rural communities.

Respectfully,

Jo-Ann Dick Jackie Bosak

Jo-Ann Dick and Jackie Bosak

From: **Barrett, Toby** <toby.barrett@pc.ola.org>
Date: Mon, Jan 4, 2021 at 8:54 PM
Subject: Re: Request your assistance
To: Joann Dick [REDACTED]

It's important that you make a presentation as then your case goes before all of council, not just one councillor. It also puts some pressure on council to act as the media is usually in attention or at least watching the agenda. If the media don't act when it goes before council, my advice would be to call them to put pressure on council.

I agree it's not an OPP matter, but a council matter.

As part of the planning process, the application must be approved by several agencies. These include the Grand River Conservation Authority and the Haldimand-Norfolk Health Unit. Both might have objections for some of the reasons you originally raised.

Even if council grants the zoning change, the matter is not over. You can then appeal to the LPAT, which was the former Ontario Municipal Board. This is an independent body that makes decisions on zoning when people disagree with the decisions of council. There are many cases where council decisions are overturned there. If it comes to this, a victory there could also result in an order to solve the existing problem.

Thanks

Jeff