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# HALDIMAND COUNTY

## Report PDD-35-2021 Official Plan and Zoning By-law Amendment to Permit Seasonal Dwelling on Private Road – Curley and Moore

For Consideration by Council in Committee on June 22, 2021

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### OBJECTIVE:

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

### RECOMMENDATIONS:

1. THAT Report PDD-35-2021 Official Plan and Zoning By-law Amendment to Permit Seasonal Dwelling on Private Road – Curley and Moore, be received;
2. AND THAT Report PDD-26-2021 Official Plan and Zoning Amendment to Permit House on a Private Road – Curley and Moore, be received;
3. AND THAT amended application PLOP-HA-2020-191 to amend the Haldimand County Official Plan by adding a special policy to the 'Agriculture' designation of the subject lands to permit a seasonal dwelling and related accessory building on the subject lands be approved for the reasons outlined in Report PDD-35-2021;
4. AND THAT amended application PLZ-HA-2020-192 to amend the Haldimand County Zoning By-law HC 1-2020 by adding a special provision to the 'Agriculture (A)' Zone of the subject lands to permit a seasonal dwelling and related accessory building on the subject lands and to remove certain uses be approved for the reasons outlined in Report PDD-35-2021;
5. AND THAT the by-laws attached to Report PDD-35-2021 be presented for enactment;
6. AND THAT the amended application is considered to be consistent with the Provincial Policy Statement (2020), A Place to Grow (2020), and other matters of Provincial Interest;
7. AND THAT the amended application is considered to conform to the overall intent and purpose of the objectives and policies of the Haldimand County Official Plan.

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**Respectfully submitted:** Mike Evers, MCIP, RPP, BES, General Manager of Community & Development Services

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

### EXECUTIVE SUMMARY:

The applicants originally submitted a combined Official Plan and Zoning By-law Amendment application to permit a year-round dwelling to be constructed on the subject lands, which fronts onto a private road. At the April 20, 2021 Council in Committee meeting, Council deferred the application at the applicants'

request to permit the applicants time to revise their application. Subsequently, the applicants submitted a revised application to construct a seasonal dwelling on the subject lands. The revised application is consistent and conforms to Provincial policy frameworks. The revised application also satisfies the intent and purpose of the Haldimand County Official Plan, including matters of life and property safety and technical matters. As such, Planning staff recommend approval of the revised application and passage of the attached By-laws. As part of the By-laws, Planning staff recommend that a Holding (H) Provision be affixed to the zoning of the subject lands to ensure that the applicants enter into an agreement with the adjacent wind turbine company and a limited servicing agreement with the County prior to obtaining building permits.

## **BACKGROUND:**

### **Previous Application:**

On December 8, 2020 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), to permit the construction of a year-round dwelling on the subject lands (Attachment 1), which fronts onto a private road (Hoto Line). The subject lands are not municipally addressed. The agent submitted the application because the applicants wanted to construct a year-round dwelling on the subject lands and the Haldimand County Official Plan and Haldimand County Zoning By-law HC 1-2020 do not permit a year-round dwelling to be constructed on a lot fronting onto a private road.

Prior to application submission and through the application process, many discussions took place between the applicants and Planning staff, and staff communicated that there was no policy support for the application as presented. The applicants also requested to be exempt from the pre-consultation process to which Planning staff agreed because the proposal was not technical in nature (i.e. it did not require a plan of subdivision or site plan application) and due to the extensive dialogue that had occurred between Planning staff and the applicants. Notwithstanding Planning staff's opinion and information, the applicants decided to submit the application for consideration.

Planning staff brought the application forward via Report PDD-26-2021 to the April 20, 2021 Council in Committee meeting for a public meeting and Council's consideration. Prior to the meeting, Planning staff received six (6) letters of objection from seven (7) residents and two (2) letters of support from nine (9) residents. During the meeting, the County received two (2) voicemails of support and four (4) emails of objection. All of the participants previously provided comments ahead of the meeting, such that the number of residents in objection and support remained unchanged.

Planning staff recommended refusal of the application through the previous staff report and at the meeting for the following reasons:

1. The Haldimand County Official Plan and Haldimand County Zoning By-law HC 1-2020 specifically prohibit year round development on private roads across the County. There are many vacant lots of record fronting onto private roads within the prime agricultural area and Lakeshore Nodes of the County, which the Official Plan 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. In fact, this is a predominately seasonal area and the subject lands are located a relatively far distance (1 kilometre or 0.6 miles) from a municipal road (North Shore Drive).
2. The provision of emergency services cannot be guaranteed year-round for the subject lands. While the applicants may have some ability to plow the road, it is not appropriate to plan for personal circumstance.

During the meeting, the agent requested that the application be deferred. Council voted to defer the application to the June 1, 2021 Council in Committee meeting, pending the application being amended to incorporate a seasonal dwelling rather than a year-round dwelling.

It is important to recognize that Planning staff did not offer a seasonal dwelling as a solution (due to the designation, location, and characteristics of the subject lands) prior to or during the application review process or evaluate options for a seasonal dwelling in the previous staff report. Also, the original application was for a single detached (year-round) dwelling such that this was the focus of the previous staff report.

### **Follow-Up Meeting:**

On April 28, 2021, Planning staff met with the agent, applicants, and ward Councillor to discuss the application. Planning staff identified that a request to change the application from construction of a year-round dwelling to a seasonal dwelling would be required. Planning staff encouraged the agent and applicant to provide additional planning justification (Attachments 2 and 3) to support the amended application and that the application be brought forward at the June 22, 2021 Council in Committee meeting (instead of the June 1<sup>st</sup> meeting) to allow for preparation and fulsome review of the additional planning justification. With regards to planning justification, Planning staff identified the following items to be most significant to the amended application that the applicants and agent needed to address:

1. Land use planning policies (agricultural, resort residential, and legal non-conforming use policies);
2. The provision of emergency services for seasonal use of the subject lands; and
3. Mitigating against year-round use of the subject lands (considering its size and characteristics).

Planning staff provided additional comments for each item listed above. This will be discussed further in the Analysis section below.

### **Amended Application:**

On May 7, 2021 the agent, on behalf of the applicants, submitted a request to amend the combined Official Plan and Zoning By-law Amendment application to permit the construction of a seasonal dwelling on a private road in the prime agricultural area of the County. To support the amended application, the agent also provided an addendum (Attachment 2) and follow-up email (Attachment 3) to his original planning justification report.

It is important to note that a combined Official Plan and Zoning By-law Amendment application are still required for the amended proposal because the subject lands are located in the prime agricultural area of the County; a seasonal dwelling is not a permitted use in the prime agricultural area of the County and development of a year-round or seasonal dwelling fronting onto a private road is not permitted in the County.

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 (0.6 miles) 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. 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 (11 being seasonal residences) front onto Erie Heights Lines.

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

## **ANALYSIS:**

The following section will provide a response to Council questions raised during the April 20<sup>th</sup> Council in Committee meeting and discussion on the key planning considerations that apply to the amended application.

### **Responses to Council Questions:**

During the April 20<sup>th</sup> Council in Committee meeting, Council asked the following questions:

1. How was this lot created?

**Planning Comment:** Planning staff investigated the creation of the subject lands with other staff (Legal and Support Services, Finance, and GIS staff). Reference plan 18R-7104 for the subject lands was deposited to the Land Registry Office (LRO) on September 9, 2013. The roll number was subsequently created in the Municipal Property Assessment Corporation in early 2014.

See Attachment 1. The subject lands and 17 Hoto Line are divided by a contiguous property such that 17 Hoto Line and the subject lands are separate conveyable lots. It is possible that the owner of 17 Hoto Line recently became aware that the lots were separate and conveyable (through research with his/her lawyer or through a sale process) and sold the subject lands.

It is staff's understanding that the subject lands were not created through the municipal consent (severance) process. The subject lands are a lot of record.

Further severance in this area is not permitted under current policy because this area is designated 'Agriculture' and Provincial policy prohibits new residential severances in prime agricultural areas. Also, the Haldimand County Official Plan prohibits new severances on private, seasonal roads.

2. What are the number of seasonal vs. year round dwellings in this area?

**Planning Comment:** Planning staff investigated the property addresses against the mailing addresses for the properties along Erie Heights Line and Hoto Line. Of the thirteen (13) built out lots on Erie Heights Line, two (2) of the property addresses match with the mailing addresses for the properties. The remaining eleven (11) parcels have another primary mailing address elsewhere which typically indicates the dwelling is seasonal in nature. There are a number of unbuilt lots along Erie Heights Line with no current plans for development. One (1) of the two (2) built out lots on Hoto Line has the same property and mailing address. The subject lands are the only other existing unbuilt lot along Hoto Line. Overall, the neighbourhood is accessed by a private road and is primarily seasonal in nature.

### **Provincial Policy:**

The Provincial Policy Statement (2020) (PPS) and A Place to Grow: Growth plan for the Greater Golden Horseshoe (2020) apply to land use planning decision in Haldimand County. The *Planning Act* directs

that decisions affecting planning matters “shall be consistent” with the policies of the PPS. Similarly, the *Place to Grow Act* requires decisions affecting planning matters to conform to the Growth Plan.

Planning staff circulated the amended application to the Province. The Province responded that they do not have any comments. As such, the amended application continues to be consistent with the PPS and conforms to the Growth Plan.

## **County Policy:**

### ***Haldimand County Official Plan***

That 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’ in the OP 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 and agriculturally related uses. A single detached dwelling is permitted as of right (i.e. without the need for a planning application) on agriculturally designated lots provided the servicing policies are satisfied (i.e. the lots have access and frontage on an open public road; the lots are capable of accommodating a water supply system and an on-site sanitary sewage system designed and installed as per the *Ontario Building Code*; and the sites have appropriate drainage patterns). The OP prohibits further development of year-round residences on lots fronting onto private roads because private roads were historically created without engineering oversight and are not constructed to the standard of a municipal road, are held in private ownership and have no formal oversight, and are not maintained or plowed by the County. Further development of year-round dwellings can lead to property and life safety concerns, liability on the County, and pressure for assumption and upgrades in the area. Given that the subject lands do not front onto an open public road, a new single detached dwelling is prohibited on the subject lands. A seasonal dwelling is also not a permitted use in the ‘Agriculture’ designation.

Through the amended application, the applicants are requesting to:

1. Amend the OP to add a special policy to the designation of the subject lands to permit a seasonal dwelling and related accessory building on the subject lands (which are designated ‘Agriculture’ and front onto a private road); and
2. Amend the Haldimand County Zoning By-law HC 1-2020 to add a special provision to the zoning of the subject lands to permit a seasonal dwelling and related accessory building on the subject lands (which are zoned ‘Agriculture (A)’ Zone and front onto a private road).

It is important to recognize that the construction of a seasonal residence is permitted as of right within the Lakeshore Nodes of the County provided the proposal satisfies all general and zone provisions (including frontage on an improved street). In cases where vacant lots of record are located within the delineated Lakeshore Nodes of the County fronting onto private roads, proposals for the construction of seasonal residences are evaluated on a case-by-case basis through Zoning By-law Amendment applications. This application is unique to the typical applications the County receives.

The County frequently processes seasonal residential development proposals on private roads via Zoning By-law Amendment applications for properties that are located within the County’s delineated Lakeshore Nodes (existing clusters of extensive of cottage development, where there is Official Plan support for seasonal residences), are designated ‘Resort Residential’ in the OP, are 0.4 hectare (1 acre) or less in size, and are located on short private road systems. On a case-by-case basis, Planning staff evaluate these types of proposals to ensure, among other items, that the provision of emergency services can be provided during the warmer months, that the lots are an appropriate size for the proposed seasonal residences, that the lots can be privately serviced, and that the lots can be

appropriately graded. Planning staff bring these Zoning By-law Amendment applications along with recommendations to Council for their consideration and decision.

In this case, the applicants are requesting to construct a seasonal residence on the subject lands, which are located in the prime agricultural area of the County and are designated 'Agriculture'. The lands have an area of 4.76 hectares (11.75 acres) and are currently farmed. The combined Official Plan and Zoning By-law Amendment application is required because unlike in the 'Resort Residential' designation and Lakeshore Node policies, a seasonal residence is not permitted as of right in the 'Agriculture' designation and prime agricultural area of the County. Further, a seasonal dwelling is not permitted to front onto a private road in the prime agricultural area of the County subject to a standalone Zoning By-law Amendment application.

The area to the south along Erie Heights Line (which includes 11 seasonal dwellings and 2 year-round dwellings) is also designated 'Agriculture' and is considered to be a historic, cottage area. Since this area is not designated as a Lakeshore Node and is located on a private road system, further lot creation and growth is not permitted in this area under Provincial and County policy frameworks.

Further, the OP states that in considering a site specific application to amend the Official Plan, the County may require the applicant to provide a justification report having regard to the following:

- a. conformity with the overall intent and purpose of the objectives and policies of this Plan;
- b. the suitability of the lands affected by the amendment for the use proposed and compatibility with surrounding lands and uses;
- c. the impact on municipal services, infrastructure and finances; and
- d. comments received from the public, County Departments and other agencies.

To assist the agent with justifying the amended application with respect to this criteria, Planning staff identified the following items to be most significant to the amended application:

1. Land use planning policies (agricultural, resort residential, and legal non-conforming use policies);

**Planning Comment:** Planning staff have included a policy chart as Attachment 4 to this report. The policy chart includes the County's agriculture, lakeshore, servicing, and implementation/interpretation OP policies in the first column. In the second column, Planning staff provide comments on how the proposal conforms or does not conform to each of the applicable OP policies. The agent's planning justification report addendum is included as Attachment 2 to this report. A follow-up email is included as Attachment 3 to this report. Planning staff have included a response chart as Attachment 5 to this report. In the first column, each paragraph of the planning addendum is included. In the second column, Planning staff's response and comments are included.

To summarize these attachments, the subject lands are designated 'Agriculture'. County policy does not permit a single detached dwelling on the subject lands because the subject lands front onto a private road. A seasonal dwelling is not permitted in the 'Agriculture' designation and is not permitted on a lot fronting onto a private road. However, staff are in position to support the site specific amendments given that: there is a cluster of existing similar uses in the vicinity; it is an existing lot; there is very limited possibility of it leading to further development/pressure for development in the area; and, the seasonal nature of the revised proposal addresses safety and public well-being concerns. These are examined in more details in the analysis below.

The County has urban, hamlet, industrial, lakeshore (including Lakeshore Nodes), and prime agricultural areas. The County's agricultural policies state that generally, new non-agricultural uses shall be located in urban areas, hamlets, industrially designated areas and resort residential nodes. It is Planning staff's opinion that the proposal to add a seasonal dwelling to a farmed parcel of land in the prime agricultural area is generally not considered to be an

agricultural use. Planning staff generally interpret this policy to mean that seasonal dwellings are directed to the delineated Lakeshore Nodes of the County, among existing seasonal dwellings.

However, the subject lands are an existing lot of record; a year-round dwelling would be permitted on the subject lands if the property had frontage on an improved, public road. However, because the frontage does not exist, a dwelling is not permitted. Also, farming is a seasonal land use (spring planting, summer growing season, fall harvest). As such, it is Planning staff's opinion that the proposal to add a seasonal dwelling to the subject lands is not detrimental to the prime agricultural area and may encourage continued farming of the subject lands in the warmer months when the provision of emergency services can be offered. At the same time, a seasonal dwelling fronting onto a long private road is more appropriate than a year-round dwelling during the winter months.

Provincial and County policies require that the subject lands remain in the 'Agricultural' designation to protect these agricultural lands in the long-term from other land uses. A special policy can be applied to the subject lands to permit one seasonal dwelling and related accessory buildings on the subject lands. The subject lands cannot be designated through this site specific application to the 'Resort Residential' designation to create a Lakeshore Node. The 'Agricultural' designation and servicing policies of the OP will prohibit future severances and development in this area, thereby protecting the agricultural use of the subject lands from further development. At the same time, this will prevent further lot creation along the private road. Altogether, the amended application satisfies the general intent and purpose of the agricultural policies and will not lead to further development in this area.

Further, the subject lands are located close to Lake Erie. The OP provides statements and policy direction on development within the Lakeshore Area. The Lakeshore Area is purposely not delineated in the OP schedules because it contains a variety of land uses ranging from agriculture, residences and recreation to heavy industry, and varies along the lakeshore. While the subject lands are designated 'Agriculture' and are located within the prime agricultural area, they are also considered to be within the Lakeshore Area given their proximity to Lake Erie. The location of the subject lands within proximity to Lake Erie further supports seasonal use (living and farming) of the subject lands.

The Lakeshore policies state that the County supports the preservation of the open nature of the lakeshore by limiting development to designated area or nodes. The lakeshore policies state that scenic roads, public vistas, and landscapes along the lakeshore will be identified and protected. The lakeshore policies also state that in areas for recreation, public open space and recreation shall be encouraged along the Lakeshore. The recreational resources of the lakeshore should be protected and enhanced. Planning staff interpret these policies to mean that seasonal development (including new seasonal dwellings) is generally directed to Lakeshore Nodes to protect the features, landscape, and enjoyment associated with the lakeshore. Further lot creation outside of Lakeshore Nodes is not supported as it could impact the landscape of the lakeshore. However, the subject lands are an existing lot of record in the prime agricultural area and lakeshore area. Further lot creation is not permitted in the prime agricultural area (including this area). Also, Lake Erie is not visible from the intersection of Hoto Line and North Shore Drive; Hoto Line is approximately 1.3 kilometres (0.80 miles) long. The subject lands are located 1 kilometre (0.6 miles) into Hoto Line. Permitting a cottage on the subject lands will not affect a scenic road, public vista, or landscape along a public road adjacent to the lakeshore. Also, it is not appropriate to encourage public open space and recreation in this area, given that Hoto Line is a long, privately owned road. As such, the spirit and intent of the Lakeshore policies is maintained.

The Lakeshore policies also provide direction on development and lot creation within Lakeshore Nodes. The subject lands are not located within a Lakeshore Node. It is Planning staff's opinion that while new seasonal dwellings are generally directed to Lakeshore Nodes, the amended application satisfies the overall intent and purpose of the lakeshore policies.

2. The provision of emergency services for seasonal use of the subject lands; and

**Planning Comment:** Planning staff met with Emergency Services staff to discuss the amended application. Emergency Services staff visited Hoto Line again through the application review process. Emergency Services staff are satisfied with the amended application provided the seasonal residence is only occupied April 1 to October 31 in the same calendar year, and the applicants and neighbours complete road work and brush cutting for essential emergency services as needed.

3. Mitigating against year-round use of the subject lands (considering its size and characteristics).

**Planning Comment:** As discussed above, the amended application is unique in that the subject lands are located in the prime agricultural area of the County, are currently farmed, are relatively large, and present as a farm. Generally, seasonal properties in the County are small and clustered with existing seasonal properties. Due to the location, size, characteristics, and original application for a year-round dwelling on the subject lands, Planning staff requested that the applicants' agent provide comments on how the County could permit seasonal use of the subject lands without encouraging eventual, illegal year-round use of the subject lands which would be a safety concern (during winter months) and could lead to neighbourhood disputes (this should be avoided altogether). Overall, Planning staff wanted to evaluate the risk that approving the amended application could encourage illegal use given the unique factors associated with the application.

The agent's comments are included as Attachment 3 to this report. To summarize, the agent's opinion is that the size of the subject lands is irrelevant, that requiring frontage on a lake as a prerequisite to permitting a seasonal dwelling is not an appropriate criterion, farming is an inherently seasonal land use, and it is up to the County to enforce land use violations. Planning staff generally agree with the agent's rationale.

Further, Planning staff contacted the County's Solicitor to discuss whether the County could legally limit the months that the proposed seasonal dwelling could be inhabited from April 1 to October 31 in the same calendar year, to ensure that, if the amended application is approved, it is explicitly clear (given the characteristics of the subject lands and area, including frontage on a long private road) that the seasonal dwelling can only be inhabited during the warmer months. As noted above, this is in part to satisfy the requirements of the County's Emergency Services Division. This can legally be included within the site specific By-laws for the subject lands; this will legally define the seasonal use (months of permitted occupation) of the subject lands which will be available to future purchasers for review and will provide legal "teeth" to the County to ensure compliance with the site specific By-laws.

The agent also notes in the planning addendum that permitting one additional seasonal dwelling on the subject lands will not significantly increase request to assume the road or provide municipal services. There are few existing lots in this area that can be developed (subject to planning applications) and new lot creation is not permitted in this area.

It is Planning staff's opinion that the agent has satisfactorily justified the amended application and that the amended application conforms to the overall intent and purpose of the objectives and policies of the OP. Planning staff have included an Official Plan By-law as Attachment 6 to this report. Planning staff recommend passage of this By-law.

### ***Haldimand County Zoning By-law HC 1-2020***



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. At the time the wind turbine was proposed and approved on 17 Hoto Line (in 2007), it had not been determined that 17 Hoto Line and the subject lands were two separate conveyable lots.

The 'Agriculture (A)' Zone permits a single detached dwelling and related accessory structure subject to satisfying all general and zone provisions (including frontage on an improved, public, or condominium common element road). Given the subject lands do not have such frontage, a single family dwelling and related accessory structures are not permitted. The 'A' Zone also permits a number of accessory residential uses, agricultural uses, and compatible commercial uses.

The Zoning By-law defines "vacation home" as a dwelling containing only one dwelling unit which is used as a secondary place of residence, on an occasional basis for vacation, recreation relaxation purposes and where the owner or occupant of the dwelling has a principal place of residence elsewhere. The Zoning By-law only permits a vacation home in the 'Lakeshore Residential (RL)' Zone (typically associated with Lakeshore Nodes or historic cottage properties). New vacation dwellings can be constructed as of right in the 'RL' Zone provided the proposal satisfies all general and zone provisions (including frontage on a private road). Given that the subject lands are zoned 'Agriculture (A)' Zone and front onto a private road, a vacation home is not permitted.

For the reasons discussed in the Haldimand County Official Plan section above, it is Planning staff's opinion that the amended application is appropriate. Planning staff recommend that the 'A' Zone remain in place for the subject lands to protect the traditional farming uses of the property and that a special provision be applied to:

1. Permit a seasonal vacation home and related accessory buildings on the subject lands;
2. Define a seasonal vacation home as a dwelling containing only one dwelling unit which is used as a seasonal place of residence on an occasional basis from April 1 to October 31 in the same calendar year for recreation and relaxation purposes to ensure appropriate use of the subject lands;
3. Remove special provision 37.294 from the subject lands, which permitted the windmill and continues to apply to 17 Hoto Line where there is a windmill;
4. Remove the following uses from the subject lands, as they are not considered appropriate on a long, private road: bed and breakfast establishment, single detached dwelling, secondary suite, home-based businesses, on-farm diversified uses, agriculture-related processing, bunk house, cannabis production facility, farm produce outlet, farm stand, animal hospital, animal kennel, commercial greenhouse, and recreational vehicle storage. The remaining uses will include agriculture use and forestry use, plus a vacation home and related accessory buildings.

Further, through the public consultation process relating to the original application, a resident raised concern relating to the proximity of the proposed dwelling and the existing wind turbines at 17 Hoto Line and 93 Farr Road. The application has been amended and the proposed seasonal dwelling will be approximately 650 metres from the closest wind turbine (17 Hoto Line). When the wind turbines were proposed in 2007, the County had land use jurisdiction to permit wind turbines via site specific Zoning By-laws and site them via site plan control. This approval has since moved to the Province. Regardless, in 2007, they were permitted to be 300 metres from existing dwellings. However, Planning staff contacted the Ministry of Environment and Climate Change (MECP) and subsequently the wind turbine company to ensure that the amended application posed no concern. The wind turbine company stated that Ontario Regulation (Ontario Reg. 359/09 subsection 54(1) 2.1) has been updated and states a minimum 550 metre setback is required from a wind turbine. The wind turbine company will not object to the proposed location of the seasonal dwelling on the subject lands (650 metres from the wind turbine) provided the applicants enter into the Landowner Acknowledgement Agreement (Attachment 7).

As such, Planning staff recommend that a Holding (H) provision be applied to the subject lands to require the applicant to enter into the Land Acknowledgement Agreement with the wind turbine company prior to obtaining building permits. Planning staff have included the Zoning By-law as Attachment 8 to this report. Planning staff have also included an H provision removal By-law (Attachment 9) to authorize the General Manager of Community & Development Services to remove the H provision when the conditions of the H provision have been satisfied. Planning staff recommend passage of these By-laws.

Planning staff also recommend that the H provision be applied to require the applicants to enter into a limited servicing agreement with the County as per the attached example from Kenora (Attachment 10), with necessary modifications. An authorizing by-law to permit the Mayor and Clerk to sign the limited servicing agreement has been included as Attachment 11.

### **Planning Opinion:**

Overall, it is Planning staff's opinion that the amended application has addressed concerns raised through the evaluation of the original application and additional questions relating to the amended proposal. It is Planning staff's opinion that the amended application is consistent and conforms to Provincial Policy. It is also Planning staff's opinion that the amended application conforms to the overall intent and purpose of the objectives and policies of the Official Plan. Planning staff recommends approval of the amended application and passing of the attached by-laws.

### **Public Consultation:**

With respect to the original application, seven (7) residents objected to the application and nine (9) residents supported the application. With respect to the objections, the following reasons were listed:

1. Concerns about this cottage neighbourhood on a private road system (laneway) 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. Rights to close the private road to allow only seasonal access.
3. There are no emergency services (policy, ambulance, and fire) provided off Hoto Line during the fall/winter season. The private road plugs up during the winter months.
4. The cottage association does not want to maintain road upgrades for emergency services.
5. Wind turbines are located in the area and the wind turbine company only maintains the road for scheduled repairs (not year-round).
6. Housing of livestock.
7. Questions regarding the proposed limited servicing agreement.
8. Allowing a year-round dwelling will set a precedent in the area and will conflict with the seasonal use of Erie Heights Line.
9. Concerns that County policy and By-laws specifically prohibit this proposal, and a request has been made in contravention after receiving non-support from staff.
10. That conversions of existing seasonal dwellings be reviewed.

The letters and voicemails for objection and support were included with the original staff report and played during the April 20 Council in Committee meeting.

It is Planning staff's opinion that the amended applications satisfies all the comments that apply to the proposal. With respect to housing of livestock, a barn is not permitted to be constructed without a Zoning By-law Amendment application given that the Zoning By-law does not permit any structures or buildings to be constructed unless they front onto a public or condominium road. Given the subject lands do not have such frontage, a barn is not permitted as of right. A barn has not be included as a permitted use in the attached By-laws (only a seasonal dwelling, related residential accessory building (garage or shed), agricultural use (growing of crops), and forestry use have been included) such that it continues to not be permitted. If the applicants were to make a request for a barn in the future, the applicants

would be required to submit a Zoning By-law Amendment application for Council's consideration. The Zoning By-law Amendment process includes the same public notification and consultation process. Also, housing of livestock is not permitted unless it satisfies the Provincial Minimum Distance Setback requirements.

An additional letter of support (from a resident that previously provided support for the original application) is included with this report as Attachment 12. An additional letter of objection (from a resident that previously objected to the original application) is included with this report as Attachment 13. The resident is concerned about how the application started as a proposal for a year-round dwelling and enforcement of year-round conversions in the neighbourhood. A subsequent letter of support (from some residents that previously provided support for the original application and some new residents that support the amended application) is included with this report as Attachment 14. The letter names nine (9) households or thirteen (13) residents. Of these residents, five (5) households or eight (8) residents supported the original application and continue to support the amended application. Three (3) households or five (5) residents have been added to the letter of support for the amended application.

## **FINANCIAL/LEGAL IMPLICATIONS:**

Not applicable.

## **STAKEHOLDER IMPACTS:**

The following Staff and Agencies were circulated on the amended application:

**Emergency Services** – Emergency Services has no objections to this application moving forward as a seasonal dwelling. Road work and cutting of brush from the road is essential for emergency services.

**Risk Management & Legal Services** – Recommend limited servicing agreement.

**Building Inspector** – No comments received.

**Ministry of Municipal Affairs and Housing (MMAH)** – We do not have any comments on this application.

**Engie Canada Inc. – Head of Renewable Operations Canada** – Based on your phone conversation May 7/20 with Tom Humprey, we understand that the proposed cottage location is 650-700m from the turbine (Mohawk Wind Farm T6, 57 Hoto Line). Ontario Reg. 359/09 subsection 54(1) 2.1 (<https://www.ontario.ca/document/technical-guide-renewable-energy-approvals/required-setback-wind-turbines>) states a minimum 550m setback is required from a wind turbine. Seeing as our approval has been sought we will not have an objection with the proposed location as long as the landowner enters into the Landowner Acknowledgement Agreement (attached), as discussed between you and Tom. We do however suggest that the cottage be placed at the maximum distance from the turbine. Please forward the agreement to the landowners and return it to me when it is signed. We will require an executed copy, and register on title as explained in the Agreement.

## **REPORT IMPACTS:**

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

## **ATTACHMENTS:**

1. Location Map.
2. Planning Addendum.
3. Follow-up Email.
4. Official Plan Policy Chart.
5. Response to Planning Addendum.
6. Official Plan By-law.
7. Mohawk Wind – Landowner Acknowledgement Agreement.
8. Zoning By-law.
9. Holding (H) Provision Removal.
10. Limited Servicing Agreement Example.
11. Authorizing By-law.
12. Letter of Support.
13. Letter of Objection.
14. Letter of Support 2.