
HALDIMAND COUNTY

Report PDD-01-2023 Official Plan and Zoning By-law Amendment to Permit Seasonal Development on a Private Lane - McMullen

For Consideration by Council in Committee on May 2, 2023



OBJECTIVE:

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

RECOMMENDATIONS:

1. THAT Report PDD-01-2023 Official Plan and Zoning By-law Amendment to Permit Seasonal Development on a Private Lane - McMullen be received;
2. AND THAT application PLOP/ZB-2022-153 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-01-2023;
3. AND THAT application PLOB/ZB-2022-153 to amend the Haldimand County Zoning By-law HC 1-2020 by adding a special provision to the 'Agricultural (A)' Zone of the subject lands to permit a seasonal dwelling and related accessory building on the subject lands, be approved;
4. AND THAT the Official Plan Amendment By-law; Zoning By-law; and Holding Provision Removal By-law attached to Report PDD-01-2023 be presented for enactment;
5. AND THAT the application is considered to be consistent with the Provincial Policy Statement, 2020, A Place to Grow, 2020 and other matters of Provincial Interest;
6. AND THAT the 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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Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

The applicants have submitted a combined Official Plan and Zoning By-law Amendment application to facilitate the construction of a seasonal dwelling and related accessory building on an existing lot of record. Specifically, the application is seeking relief to permit the development of a lot with no frontage on an open municipally maintained road. The subject lands are designated 'Agriculture' in the Haldimand County Official Plan and zoned 'Lakeshore Residential (RL)' in the Zoning By-law HC 1-

2020. The subject lands are located along the north shore of Lake Erie, west of the Johnson Road lakeshore node, and known municipally as 4 Dearden Lane.

Planning staff are of the opinion that this proposal is in conformity with the Provincial Policy Statement 2020, complies with the Provincial Growth Plan 2020, and maintains the general intent and purpose of the Haldimand County Official Plan and Zoning By-law. Planning staff recommend approval of the amendment for the reasons outlined in this report. Planning staff recommend that a Holding (H) provision be affixed to the zoning of the subject lands to ensure that the property owner enters into a Limited Servicing Agreement with the County prior to obtaining building permits.

BACKGROUND:

The subject application was submitted to facilitate the development of an existing lot of record along Lake Erie, but not located within a Lakeshore Node. A pre-consultation meeting was held in October 2021 to discuss the proposed development and outline the requirements for a complete application. A boundary adjustment application (PLB-2023-008) was approved by Committee of Adjustment at the March 28, 2023 meeting. The boundary adjustment provided direct access to the private road of Dearden Lane, where access was historically available to the subject property by way of an easement of the adjusted lands.

The site is located on the south side of Dearden Lane, west of the Johnson Road Lakeshore Node. The lands are legally described as Concession 5 SDR, Part Lot 18 South Dover Road being Parts 8 and 9 plan 18R5416, Geographic Township of Dunn and known municipally as 4 Dearden Lane. A general location map can be found in Attachment 1; with the overall configuration shown in Attachment 2 (Owner's Sketch). Planning staff supports this amendment application and has not received any concerns through the circulation of this proposal.

The subject lands are approximately 0.25 hectares (0.61 acres) in size with existing seasonal residential uses on either side to the east and west, and agricultural uses to the north. Lake Erie is located directly to the south. Given the lack of frontage on an improved public road it is Planning staff's opinion that a year-round single-family dwelling, agriculture related and on-farm diversified uses are not appropriate for the subject lands. Further, the limited size of the lot limits any agricultural production on the lot.

ANALYSIS:

Planning staff have determined the key planning issues related to this application. They are as follows:

Provincial Policy Statement, 2020

The Provincial Policy Statement, 2020 (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 a 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.

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 of key provincial interests, 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 of all local (municipal) land use planning issues and matters.

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 specific communities, 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 the 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 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. The Official Plan and Zoning By-law permit the development of seasonal vacation home dwellings on private roads in specific cases – not including lands in the prime agricultural areas. This is a specific local planning matter that the PPS does not address.

Lastly, the PPS prohibits development and site alteration on land containing archaeological resources or areas of archaeological potential unless significant resources have been conserved. The subject lands proximity to Lake Erie qualifies it as an area of high archaeological potential. As part of the application a Stage 1 and Stage 2 Archaeological Assessment was completed and submitted. The report, completed by a licensed archaeologist, concluded that no further archaeological investigation is required. The materials were also submitted to the Ministry of Tourism, Culture and Sport (MTCS). The County has been notified by MTCS that the assessment has been entered in the Public Register for Archaeological Reports.

Overall, it is the opinion of Planning staff that the subject application is consistent with the PPS.

Growth Plan for the Greater Golden Horseshoe, 2020

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 of private roads. Instead, the Growth Plan deals with higher level land use planning matters across the Province such a curbing sprawl, encouraging intensification, balancing land uses, planning for infrastructure, protecting finite resources, etc. as the Greater Golden Horseshoe dramatically grows and changes in the long-term.

It is the opinion of Planning staff that the subject application is consistent with the Growth Plan.

Haldimand County Official Plan

The Haldimand County Official Plan (OP) creates the long-term framework for guiding land use changes in the County 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 a prime agricultural area of the County. The OP states 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 applications) on agriculturally designated lots provided the servicing policies are satisfied (i.e. the lots have access and frontage on an open public road; the lot is capable

of accommodating a water supply system and on-site sanitary sewage system designed and installed per the Ontario Building Code; and the site has 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 any engineering oversight and are not constructed or maintained to the standard of a municipal road, are held in private ownership and have no formal oversight. Further, development of year-round dwellings can lead to property and life safety concerns (when access is not feasible during inclement weather – i.e. winter), liability on the County and pressure for assumption and upgrades in the area. Given that the subject lands do not front on an open public road, a new single detached dwelling is prohibited on the subject lands. Further, a seasonal dwelling is not a permitted use in the 'Agriculture' designation.

The applicants are requesting to 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 lands. The application is also seeking an amendment to the Zoning By-law to ensure conformity with the proposed OP special policy. The amendment to the zoning will be discussed in detail in the next section.

It is important to recognize that the construction of a seasonal residence is permitted as of right in the County's Lakeshore Nodes, provided the proposal satisfies all the general and zone provisions (including frontage on an improved street). In cases where vacant lots of record are located within a Lakeshore Node, fronting onto a private road, proposals for the construction of seasonal residences are evaluated on a case-by-case basis through Zoning By-law Amendment applications. This application requires an amendment to the Official Plan as it is not located within a Lakeshore Node. When evaluating applications within a Lakeshore Node staff are trying to ensure emergency services can be provided during the warmer months, the lot is an appropriate size to accommodate a seasonal residence, the lot can accommodate private on-site services and the lots can be appropriately graded. While the subject lot is not with a Lakeshore Node, these same tests are to be applied in considering the application.

In this case, the applicants are requesting to construct a seasonal residence on the subject lands which are located in a prime agricultural area of the County and are designated 'Agriculture'. The lands have an area of 0.25 hectares (0.61 acres) and are currently vacant. The immediately surrounding parcels are developed and subject to a previous amendment to the OP (DUN.28) permitting those lands to be developed without frontage on a municipally maintained road. Further to the east is the Lakeshore Node of Johnson Road, where seasonal dwellings would be permitted as of right or if on a private road through a Zoning By-law Amendment if appropriate.

While a seasonal dwelling is not permitted in the 'Agriculture' designation, staff are in a position to support the site-specific amendment given there is a cluster of existing similar uses in the vicinity; it is an existing lot of record; the amendment will not lead to additional development/pressure for development in the area; and, the seasonal nature of the proposal addresses concerns related to safety and public well being.

While a special policy is being proposed for the subject lands the designation will continue to be 'Agriculture' as it is on lands that immediately surround the property. This designation recognizes the need to protect and maintain agricultural activities as the primary use in the prime agricultural area and will not permit future lot creation or increase the development opportunities on the subject land beyond those of the immediate neighbours.

Planning staff have circulated the application to Emergency Services who have reviewed the materials and provided comments regarding seasonal access to the property in the event of an emergency. The close proximity to an improved municipally maintained road and the existing development in the area creates a scenario where typical concerns related to provision of emergency response along private roads can be mitigated. Comments received from Emergency Services indicate no concerns with the development as proposed.

The subject lands are an existing lot of record with suitable area to be developed with a seasonal dwelling and accommodate on-site private water and sanitary services. Further, as a condition of consent for the related boundary adjustment application a grading plan is required to ensure proper grading and drainage prior to the lot being developed.

It is the opinion of Planning staff that the proposal conforms to the overall intent and purpose of the objectives and policies of the OP. Planning staff have included and Official Plan By-law as Attachment 3 to this report.

Haldimand County Zoning By-law HC 1-2020

The subject lands are zone “Lakeshore Residential (RL)” in the Haldimand County Zoning By-law. The RL zone permits the development of a vacation home dwelling and related accessory buildings. The RL zone requires a minimum area of 925 square metres and a minimum frontage of 18 metres. The subject lands have an area of 2,468.6 square metres (0.61 acres) and 12.19 metres of frontage on Dearden Lane (a private road). Direct access and frontage to Dearden Lane was established through the recent boundary adjustment application (PLB-2023-008) conditionally approved in March, 2023.

In addition to the reduced frontage indicated above, section 4.23 of the Zoning By-law requires frontage on an *improved street*. The zoning by-law defines improved street as, “street as defined herein which has been constructed and is maintained in such a manner so as to facilitate its year-round use by automotive traffic and is intended to provide automotive access to abutting land”. It has been determined by staff that Dearden Lane does not meet the standard of an improved street. Minimum lot frontage provision ensure development and driveways are appropriately spaced along a road way while also ensuring lots are wide enough to be appropriately developed. Dearden Lane is a narrow low speed private road that functions similarly to a shared driveway and staff are satisfied the reduced lot frontage will not result in traffic safety concerns. Further the frontage is not congruent with the total width of the lot and staff are satisfied the lot is sufficiently wide enough to accommodate a vacation home.

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 subject lands exceed the minimum required lot area for the ‘RL’ zone and Planning staff are satisfied a sufficient development envelope exists on the subject lands to accommodate a vacation home and private on-site services.

For the reasons discussed above, it is Planning staff’s opinion that the submitted application is appropriate. Staff recommend the existing ‘RL’ zone remain in place with the addition of a special provision permitting a minimum lot frontage of 12.19 metres and providing relief from section 4.23 such that frontage not be required on an improved street. A Holding (H) provision will also be attached to the zoning, to be removed at such a time a Limited Servicing Agreement is entered into with the County. The Limited Servicing Agreement ensures that the current and any future owners of the lot understand that the property fronts onto a private road that is not maintained by the County. As the road is not maintained by the County various services are not provided (i.e. snow plowing) or cannot be guaranteed in all conditions (i.e. emergency services). The inability to provide or guarantee these services which most residents rely on is why the Official Plan and Zoning By-law limit development on private roads and Planning applications are required to evaluate each proposal on a case-by-case basis.

FINANCIAL/LEGAL IMPLICATIONS:

Not applicable.

STAKEHOLDER IMPACTS:

Canada Post: Please be advised that Canada Post does not have any comments on the creation of 1 lot. Should the residential lot be permanent and require mail delivery, please have the customer register at the Dunnville Post office.

Grand River Conservation Authority (GRCA): No objections to the application as proposed. A permit from the GRCA was previously issued to permit development of the lands.

Forestry Operations: No concerns with the application as proposed.

Emergency Services: This parcel is landlocked and our concern would be access. From reading Landpro letter, I believe there is access via agreement on deed for access on Dearden Lane. If this is the case, we would have no concerns.

Planning Staff Comment: Legal access over Dearden Lane to the subject lands has been confirmed by the agent.

Development and Design Technologist: No concerns with the subject application. Review of the submitted grading and drainage plan as required as a condition of consent is ongoing.

REPORT IMPACTS:

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

REFERENCES:

None.

ATTACHMENTS:

1. Location Map.
2. Owner's Sketch.
3. Draft Official Plan Amendment By-law.
4. Draft Zoning By-law Amendment.
5. Draft Holding (H) Provision Removal.