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# HALDIMAND COUNTY

## Report LSS-18-2023 County Owned Property on Highway 54, Caledonia For Consideration by Council in Committee on August 29, 2023

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### OBJECTIVE:

To provide Council with options to address squatters / trespassers on County-owned property along the Grand River, on Highway 54, Caledonia.

### RECOMMENDATIONS:

1. THAT Report LSS-18-2023 County Owned Property on Highway 54, Caledonia be received;
2. AND THAT staff proceed with Option 1 as outlined within Report LSS-18-2023, for the property legally described as PIN# 38153-0102 LT, One Chain Reserve Along the Grand River Seneca (AKA Tow Path) abutting Lot 30 Front Concession on Grand River Seneca; Haldimand County.

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**Approved:** Cathy Case, Interim Chief Administrative Officer

### EXECUTIVE SUMMARY:

Staff have become aware of an ongoing concern of squatters / trespassers that have been utilizing County-owned property that abuts the Grand River along Highway 54, Caledonia, just north of Mines Road. Complaints to the Building & Municipal Enforcement (BME) Division from neighbours have increased indicating that this location is being utilized for various recreational activities and gatherings. This land is not Parkland as defined by the Public Parks and Facilities By-law 1534/15; as the land has not been “set aside for Public Park purposes”.

Staff from related divisions have collaborated and are presenting five options for Council's consideration – option 1, preferred by staff, recommends restricting access and returning the lands to a natural vegetative state.

### BACKGROUND:

Haldimand County owns a parcel of land adjacent to the Grand River on Highway 54, slightly north of Mines Road (Attachment 1 – yellow hashmarks); legally described as PIN# 38153-0102 LT, One Chain Reserve Along the Grand River Seneca (AKA Tow Path) abutting Lot 30 Front Concession on Grand River Seneca; Haldimand County. The parcel is approximately 1.11 acres, with the property varying in size depending upon the ebb and flow of the Grand River. A survey would be required to further identify the actual parcel as there is no R-Plan or survey information to support or define the actual property boundaries.

It has come to the attention of staff that this parcel has been subject to squatters / trespassers who have used the property for such things as over-night camping, setting up/leaving BBQ's, picnic tables and fire pits; and installing boat docks for an unspecified amount of time. Additionally, some of the

trespassers have constructed access driveways gated with chains and posted no trespass signs. In recent years, the Building & Municipal Enforcement (BME) Division has received a growing number of complaints of the use of the land including garbage being left behind and parties with loud music going well into the early morning.

This property is not identified as a Public Park as defined by the Public Parks and Facilities By-law 1534/15 and therefore not maintained as a park by the County. As it is municipal property, members of the public do have the right to access lands; however, they do not have a right to make changes as they would their own property. Should it be necessary, the County has the right to restrict / limit access and usage types through a Council approved by-law, County posted no trespass signs, etc.

In its current state, there is also a liability exposure to the County greater than if the property were not being occupied.

Staff believe that some of the squatters / trespassers may have been using the land for several years, under the assumption they had legal access. Under the Real Property Limitations Act, adverse possession (commonly referred to as squatting) is an action that can be made if continuous and uninterrupted use exceeds 10 years prior to conversion of the Land Titles system; which occurred June 19, 2006. Per legal advice, although the squatters have accessed and utilized this property for an unspecified period of time, they have not been on the lands long enough to establish title by adverse possession. Even if a claim for adverse possession was made, the claim would be complicated due to land type and municipal ownership and likely fail because they were illegally occupying the lands; and any improvements have been made at their own risk.

The County has received an inquiry from a resident who has identified themselves as an occupier and has expressed interest in purchasing a portion of the property; although no formal application has been submitted.

The purpose of this report is to provide options for Council's consideration specific to this property, with the understanding that decisions or direction made by Council in regards to waterfront property (along the river or lakeshore) are made on a case by case basis and is not meant to be representative or indicative of setting a precedent.

## **ANALYSIS:**

Through consultation with staff, five options are being presented for Council's consideration and direction, with each outlining the necessary actions, potential risks, and benefits.

### **Option 1: Restrict Access, Post No Trespass Signs, Return to Natural State (Recommended Option)**

Allow property to return to a Natural Attribute as defined within the County Public Parks and Facilities By-law 534/15, meaning that the lands not be actively maintained and that they be returned to a natural state. Naturalization of embankments and lands along the Grand River have been attributed to assisting in assimilating the flow, nutrients and soil particles that enter Lake Erie, which can also contribute to the ecosystem.

#### Action Items:

- As it is not specifically known who has, or is utilizing this property, a public communication strategy and messaging will need to be developed to advise the public of this initiative.
- Site signage will need to be posted to advise the public of this initiative with requests for any personal items to be removed by a specified date. Timing of removal will need to balance ongoing liability exposure, with practical expectations relative to the season, noting that the highest activity of trespassing occurs during late spring, summer, and early fall.

- The County would be responsible for removal of any access points and installation of barriers to prevent vehicle traffic from accessing (i.e., planting trees is eco-conscious and an effective barrier).
- The County would post “No Trespass” signs or other signage as applicable along the property line to prohibit admission.
- Support from designated staff (such as Municipal By-law Enforcement Officers) to monitor the property and advise / provide notice to trespassers of this initiative.

#### Risks:

- Political - complaints from those who were / are using the property (albeit without permission) that they can no longer use.
- Legal - It is unknown the period of time that the public has utilized this property or by whom. There is a risk that users could make a claim for adverse possession, although the risk is minimal due to the legal requirements, case law and evidence that would need to be provided to prove adverse possession. There would be a cost to defending against such claims.
- It is undetermined the level of effort required to address the removal and monitoring of trespassers to enable the lands to return to a naturalized state.
- There is a risk that simply providing notice via communication strategy and posting of notice may not fully resolve the removal of items. Typically, a court order would be the next step to reinforce to trespassers a legal responsibility to vacate, and provide reasonable amount of time to dismantle and remove all structures from the lands. If a court action was brought forward, the County would also seek approval for the County to have legal authority to remove and dispose of any item (as seen fit by the County) that was not removed from the County lands within the specified period.
- Budget - Impacts cannot fully be identified at this time and is solely based upon estimations. Within this option, there would be no on-going maintenance costs once naturalization is initiated. Staffing costs would be related to developing and implementing a communication plan, staff monitoring which would all be recognized within existing day to day activities and budgets. There would be survey and associated legal costs to determine property lines. Any infrastructure or barriers (i.e., tree planting requirements) would be submitted as part of the normal budget approval process. Additional expenses would occur if a court action was required to remove trespassers and their unclaimed items, which may be possible to incorporate within the County’s existing operating budget.
- Environmental - Naturalization could result in the growth of invasive plants (Giant Hogweed) or unwanted species (i.e., ticks).

#### Benefits:

- Allow vegetation to go back to a natural state, no additional maintenance costs.
- Naturalization will assist in bank stabilization which benefits road infrastructure in this location.
- As the County retains ownership of the lands, liability exposure continues, although is significantly reduced. Under the Occupiers Liability Act, there is a Lesser Duty of Care as any person who enters premises that are adequately marked with no trespass signs and the owner has not expressly permitted entry, a trespasser assumes all risks and takes on their own liability.
- There is an assumption this would be acceptable usage by neighbours and other parties with interests in the health and well-being of the Grand River.

## **Option 2: Identify this area as a Public Park (Not Recommended)**

Council establish this parcel as a Public Park for the use of recreational purposes as defined within the Public Parks and Facilities By-law 1534/15.

### Action Items:

- As it is not specifically known who has, or is utilizing this property, a public communication strategy and messaging will need to be developed to advise the public of this initiative.
- Site signage will need to be posted to advise the public of this initiative with requests for any personal items to be removed by a specified date as noted in Option 1.
- Post signage subject to the Public Parks and Facilities By-law 1534/15 to identify the regulation of activities that are permitted / restricted.
- Review property to identify proper access points, designated parking area and identification of any other amenities (i.e., portable washroom, garbage containers, picnic tables, etc.) as well as capital improvements (parking area, signage, etc.).
- Zoning By-law Amendment would be required to identify lands as Open Space – however may also want to consider scoping permitted uses and exclusions (i.e., day use only, no campground, fairground or tent and trailer park).
- Removal of the multiple access points or other items that could pose a risk of liability exposure.
- Support from designated staff to respond to any complaints.
- Staff and Budget impacts – Staffing costs would be related to developing and implementing a communication plan, staff monitoring which would all be recognized within existing day to day activities and budgets. There would be survey and legal costs for registration of survey to determine property lines. Applicable operating and capital budgets would need to be determined once the park function and scope of use was defined and approved. It would also need to be defined as to what services would be kept in-house verses contracted out for ongoing maintenance of park and its amenities. Additional staffing for on-going maintenance may be an identified requirement.

### Risks:

- Political - complaints from those who were / are using the property (albeit without permission) that they no longer enjoy exclusive use.
- Liability - As a Public Park, this will require regular inspections, maintenance, etc., along with the accompanying higher level of duty of care under the Occupiers Liability Act; which is the same liability exposure as all other Public Parks.
- Financial – Currently, none of the County's long term planning tools have indicated the need for a park in this area. Any investments in these lands (parking area, structures, etc.) would be at risk of seasonal or major flooding events which could lead to damage and necessary repairs/replacements. Additionally, this action would take considerable time to complete, involve several divisions, and is not currently part of annual workplans.
- Staffing and Budget Impacts – subject to defined scope of the park usage, there would be an impact on the operating and tax levies to support this new initiative.

### Benefits:

- Additional parkland for use by the public as a whole along the Grand River.
- Use of property now falls within Public Parks and Facilities By-law 1534/15 to address complaints.

### **Option 3: Offer Land for Lease to Anyone or Just to Neighbours (Not Recommended)**

Identify this land as being available for lease through a public process which would provide exclusive use of the lands subject to any restrictions of property usage (i.e., overnight camping).

#### Actions:

- As it is not specifically known who has, or is utilizing this property, a public communication strategy and messaging will need to be developed to advise the public of this initiative.
- Site signage will need to be posted to advise the public of this initiative with requests for any personal items to be removed by a specified date as identified in Option 1.
- Publicly present this property as available for lease subject to parameters (i.e., lease term, what the property can be used for and not used for, etc.).
- Present offers for lease to Council for consideration. Subject to approval, enter into a lease agreement for specified term.
- Collection of lease revenue.

#### Risks:

- Political – may still receive public complaints that this land should not be leased or utilized for this purpose.
- There is an assumption that leasing of this property would be acceptable usage by neighbours and other parties with interests in the health and well-being of the Grand River.
- This action would take considerable time to complete, involve several divisions, and is not currently part of annual workplans.
- Generally, Haldimand is not in the business of being a landlord.
- Staffing and budget – Staffing costs would be related to developing and implementing a communication plan, staff monitoring which would all be recognized within existing day to day activities and budgets. There would be survey and legal costs for registration of survey to determine property lines. If leased, there would likely still require operating and/or capital budget considerations to prepare site for lease as well for continued ongoing ownership.

#### Benefits:

- Opportunity to obtain revenue to offset maintenance responsibilities and costs (i.e., grass cutting) as this would be the responsibility of the Tenant.
- Reduces the County's liability exposure as it relates to the structures and contents located on the lands, as the Tenant would be responsible for securing and maintaining insurance for the term of the lease. However, it is acknowledged that even with tenant responsibility, as a landlord the County is likely to be named in any potential lawsuit.

### **Option 4: Offer Land for Sale (Not Recommended)**

If it is determined that the County has no use for this land, deem surplus and dispose through a public process.

#### Actions:

- As it is not specifically known who has, or is utilizing this property, a public communication strategy and messaging will need to be developed to advise the public of this initiative.
- Site signage will need to be posted to advise the public of this initiative with requests for any personal items to be removed by a specified date as noted in Option 1.
- Would need to determine what would be the most advantageous process to obtain highest revenue (i.e., severances or sell as a whole) through public sale process including notification to abutting property owners and those immediately across the road on Hwy 54. Subject to

receiving offers to purchase, staff will provide a report to Council with recommendations or options as applicable, and to obtain necessary approvals.

**Risks:**

- Political – selling waterfront land or land that should be naturalized or used for the benefit of the public.
- This action would take considerable time to complete, involve several divisions, and is not currently part of annual workplans.
- There would be survey and associated legal costs to determine property lines and ensure parcel information is correctly registered on title.
- Although this land is regulated by the Grand River Conservation Authority, there is the potential for environmental impact to the river banks.
- Other parties with interests in the health and well-being of the Grand River may not support the selling of this land.

**Benefits:**

- County obtains one-time revenue
- Liability exposure is removed
- Obtain property taxes
- No further maintenance costs

**Option 5: Status Quo (Not Recommended)**

Do nothing and continue forward as is. Although this is an option, staff strongly advise that this is not a viable option. Under the Occupiers Liability Act, this adds a Duty of Care since now that the County is aware of the trespass issue it needs to address it. Not addressing this issue also alludes to the perception that complaints brought forward will not be resolved by the County.

Although five options have been presented, Option 1 is the preferred staff recommendation as it is fiscally responsible, addresses the issue of illegal occupiers / trespassers, is within the legal rights of the County as the land owner; and supports a positive environmental impact along the Grand River.

**FINANCIAL/LEGAL IMPLICATIONS:**

Based upon the direction provided by Council, staff will need to develop an appropriate strategy to address budget requirements which will be presented through a supplemental report and/or through the normal budget process. It is anticipated that the staff recommended option has the least potential financial impact to the County.

The County will retain legal liability for the property as outlined within each option which varies dependant upon the action taken. The only exception for this is in regards to Option 4 to sell the property.

**STAKEHOLDER IMPACTS:**

Regardless of the option selected, there will be staffing impacts. Cross divisional feedback and discussions have ensued in the development of this report with supplemental discussions to occur once Council direction is received.

## **REPORT IMPACTS:**

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

## **REFERENCES:**

1. [Public Parks and Facilities By-law 1534/15](#)

## **ATTACHMENTS:**

1. Location Map