Report PDR-CW-02-18

To: Warden Halliday and Members of Grey County Council
From: Scott Taylor, Senior Planner
Meeting Date: December 14, 2017
Subject: Final Report on Spaleta Official Plan Amendment 42-05-280-OPA-137
Status: Recommendation adopted by Committee as presented per Resolution CW05-18; Endorsed by County Council January 11, 2018 per Resolution CC11-18;

Recommendation

Whereas all written and oral submissions received on the applications were considered; the effect of which helped to make an informed recommendation and decision;

1. Now Therefore Be It Resolved That Report PDR-CW-02-18 be received regarding proposed Official Plan Amendment 137 to the County of Grey Official Plan to consider site specific exceptions on a Rural lot to allow for a seasonal dwelling on a road without year-round maintenance; and

2. That the proposed Official Plan Amendment 137 be refused and that the lands not be re-designated from the ‘Rural’ designation to the ‘Rural with Exceptions’ designation on Part of Lot 29, Concession 2 West of the Garafraxa Road, geographic Township of Bentinck, Municipality of West Grey.

Background

The County of Grey received an application from John Spaleta to amend the County of Grey Official Plan to consider an exception to the ‘Rural’ designation to allow for the construction of a new seasonal dwelling on a municipal road that does not have year-round maintenance. The subject lands are located at Part of Lot 29, Concession 2 West of the Garafraxa Road (WGR), geographic Township of Bentinck, Municipality of West Grey, civic address 442830 12th Sideroad WGR. Mr. Spaleta’s land holding is comprised of three parcels of land, two of which are south of 12th Sideroad WGR, which
would constitute the proposed building lot of approximately 1.3 hectares. Should the development be approved, the two parcels on the south side of the road would be merged on title.

An associated zoning by-law amendment application was refused by the Municipality of West Grey on November 20, 2017.

Merit Report PDR-PCD-42-16 was presented to the Planning and Community Development Committee for this application on November 10, 2016. A link to this Report has been included in the Attachments section of this report.

The subject lands are located approximately 1.1 kilometres west of Highway 6 on 12th Sideroad WGR, which does not have year-round maintenance. To the north of the subject properties is McCormick Lake, which is approximately 2.6 kilometres north of the Rocky Saugeen River. Surrounding the subject lands are a mixture of forested properties, the lake, farmlands, and some existing seasonal residences. An airphoto showing the subject lands and surrounding properties has been included as Map 1 below.

Map 1: Airphoto of the Subject Property and Surrounding Lands

Cuesta Planning Consultants Inc. have submitted a Planning Report, and AWS Environmental Consulting Inc. have submitted an Environmental Impact Study (EIS) in support of the proposed development. Copies of all reports and background materials can be found at the below link.

[Link to Spaleta Background Materials]
The County and the Municipality held a joint public meeting for the official plan and zoning amendment applications on January 16, 2017.

A series of photographs of 12th Sideroad WGR have been included in Table 1 below.

**Table 1: Photographs of 12th Sideroad WGR**

![Widened section of 12th Sideroad WGR looking east towards Highway 6](image)

![A car on 12th Sideroad WGR](image)
### Table 1: Photographs of 12th Sideroad WGR

<table>
<thead>
<tr>
<th>Image Description</th>
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<tr>
<td>The curve on 12th Sideroad WGR heading west towards McCormick Lake</td>
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<tr>
<td>A west view uphill on 12th Sideroad WGR west of the Subject Lands</td>
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<tr>
<td>A west view downhill on 12th Sideroad WGR further west of the Subject Lands</td>
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Table 1: Photographs of 12th Sideroad WGR

An east view from the intersection 12th Sideroad WGR and Concession 2 WGR

Public and Agency Comments Received

As part of the planning application process, the following written and oral comments were received by members of the public.

Brian Hatch and Gillian Crawford

In correspondence dated December 20, 2016, Mr. Hatch and Ms. Crawford noted that they ‘are both very much in support of the amendments stating an additional dwelling will add to the safety of the existing cottagers and help deter vandalism and break-ins.

They also stated they have been speaking to their neighbour, Barry Graham who is also in support for approval of the amendments.’

Following the refusal of the zoning amendment, Mr. Hatch has also posed some follow-up questions to West Grey regarding their notice and rationale.

Mary and John Lawrence

In correspondence dated January 6, 2017, the Lawrences noted that they oppose the applications for the following reasons:

‘We feel it is not an appropriate area to designate for growth in Grey County and contravenes the Official Plan and ‘Rural’ designation which is in place to protect the natural environment and watershed areas like McCormick Lake.

The cumulative effects of more seasonal development close to McCormick Lake is very concerning from all perspectives with respect to traffic, environmental impact, lake and watershed health, impact on well water and the rural nature of 12th Sideroad WGR.'
We support the seasonal designation of 12th Sideroad WGR that is not maintained year round.

We do not support amendments to the existing West Grey By-law Rural A2 zone which would allow seasonal dwellings on 12th Sideroad WGR for the reasons stated.’

**Verbal Comments at the Public Meeting**

Wayne Sickle noted that McCormick Lake is a beautiful lake that is shallow, has fish, loons, and ducks. Currently traffic on this road is seasonal and the road has at least 20 properties paying taxes to West Grey for that area. He hopes the road can be upgraded and Mr. Spaleta can proceed with his plan. Mr. Sickle also commented on some recent property improvements he had made.

Mary Lawrence of West Grey asked if the three cottages that are currently there were built before 1999, and if there had been any prior amendments.

John Lawrence of West Grey stated they are content with the development, but do not want to pay for Sideroad upgrades or have the road turned into a fulltime road.

Written comments were also received from the following agencies.

**Bluewater District School Board (BWSB)**

In an email dated November 21, 2016 the BWSDB noted that; *“the School Board does not have any comments at this time.”*

**Historic Saugeen Metis (HSM)**

In an email dated November 28, 2016 HSM Lands, Resources, and Consultation Department noted that they have;

> “reviewed the relevant documents and have no objection or opposition to the proposed development, land resignation, rezoning, land severance, Official Plan and/or Zoning By-law Amendments.”

**Saugeen Conservation Authority (SVCA)**

In a letter dated January 6, 2017 the SVCA noted;

> “All of the plan review functions listed in the Memorandum of Agreement between the Authority and the Municipality of West Grey relating to Plan Review have been assessed by SVCA staff with respect to this proposal. The proposed amendments are acceptable to SVCA staff; however, we are recommending the Natural Environment zone for the property be revised.”
West Grey Fire Service

In correspondence dated September 12, 2016, the West Grey Fire Service offered the following comments:

“West Grey Fire Services access Sideroad 12 from either Highway 6 or Concession 2 WGR depending on what side of the lake the emergency is on in order to avoid the section of road known as corduroy, the swampy area to the south end of the lake. Although this road has been graveled it is believed that the base is corduroy and in times of high moisture the road becomes very soft and may fail under the weight of a fully loaded fire truck. Generally firefighters would stop and carry emergency equipment to the scene, if that scene was within the area of the corduroy road usually using a pickup truck. If it was dry then a lighter fire truck could be used assuming the area was dry from lack of moisture, this would be the decision of the officer in charge at the time of the incident.

Most recently in September of 2016 there was a combine fire on Conc. 12 and at that time the trucks were deployed and staged one on Highway 6 and one on Conc. 2 while the chief entered with his pickup to determine the exact location of the fire. The fire was found west of the lake so all vehicles entered from Conc. 2 WGR. Two Elmwood tankers were also requested and they staged on Conc. 2 WGR until required.

Looking at the driveway in the property in question, it is too soft, too steep and wet to support a fire truck. This driveway would have to be reconstructed to accommodate a heavy vehicle.

During the winter months this road is 100% unprotected, that is “no fire protection” is available, as the road is not maintained in the winter. Access would be made using the Police/Fire Snowmobile and this would be for medical emergencies or investigation of fire only.

Presently on Conc. 12 there area about four cottages and several trailers of which are inaccessible by the fire service for part of the year.”

West Grey Director the Infrastructure and Public Works

In a report dated January 9, 2017 West Grey Director the Infrastructure and Public Works noted;

“Director the Infrastructure and Public Works suggests that the road be upgraded before allowing any further development of any properties on the 12th Sideroad in the vicinity of McCormick Lake to avoid any potential litigation with respect to the current unmaintained status of the 12th Sideroad WGR.”
West Grey Planner

In a report dated January 16, 2017, the Municipality of West Grey Planner noted;

“The Municipality does not support development on lands fronting onto a seasonal road, which is why the Zoning By-law prohibits development of this nature. The Municipality has concerns from a safety perspective as well as from a liability point of view, as stated in the letters submitted to the Committee from the Director of Infrastructure and Public Works and the Fire Chief respectively.

Development has occurred on some of the other lots in the immediate vicinity in the past; however no such development has been permitted since the Municipality of West Grey was established through restructuring in 1999.

The owner’s consultant was advised of the Municipality’s position on this matter prior to having the EIS conducted and filing the applications with the Municipality and the County.

Based on the foregoing, the Planning Committee is advised not to approve the Zoning By-law Amendment.”

West Grey Clerk

In an email dated March 8, 2017 to the applicant’s agent, the Municipality of West Grey Clerk noted;

“The Municipality of West Grey Council is willing to provide year round maintenance of the subject road that would facilitate the issuance of a building permit for a single detached dwelling for your client, contingent upon Mr. Spaleta paying the full cost to upgrade the road to a year round maintained municipal road standard, as well as paying associated costs such as an Environmental Assessment and legal fees for drafting of an Agreement to this effect.”

Further Comments Received

As was noted in the Background section to this report, the Municipality refused the zoning amendment application on November 20, 2017. At the time of writing this Report, it was not yet known if West Grey’s decision was appealed or not.

During the processing of this application, the County also consulted with our solicitor to get a legal opinion on applications of this nature. This opinion is considered privileged information, and will require going ‘In Camera’ for any discussion of the contents. This legal opinion has not been shared with the public or the proponent.
Analysis of Planning Issues

Planning authorities must have regard to matters of Provincial Interest in the *Planning Act*, and be consistent with the Provincial Policy Statement (PPS). Decisions must also conform to the County of Grey Official Plan and any Municipal Official Plans that are in force and effect. The Municipality of West Grey does have an Official Plan, but it only applies to Durham and Neustadt, and is therefore not applicable to the proposed official plan amendment application.

**General Comments on Planning and Context**

Prior to the formal analysis of planning legislation and policy, planning staff wish to offer some general comments that provide some context to this type of application.

The nature of land use planning is balancing interests for the long-term sustainability of the land, and people using those lands. The protection of public health and safety is a key tenant of planning. Planners cannot recommend approval of new development, where the safety of the future residents or users cannot be guaranteed.

Another key element of planning involves ensuring the infrastructure is in place to support development in an efficient fashion, and avoiding the uneconomical expansion of this infrastructure. All levels of government face budget constraints, and municipalities are facing infrastructure deficits that makes the long-term costs and maintenance of some municipal infrastructure tough to sustain. Prior to approving development, municipalities need to consider both the potential benefits of the development, but also the impact on infrastructure and service needs.

There are a number of seasonally maintained or private roads across Grey County. These roads are not County Roads; rather they are either municipal or privately owned roads. Existing development on these roads is commonplace in many parts of the County, particularly in shoreline areas. In some cases, the development of existing lots can be supported, while new lot creation is not possible. Many municipalities in Grey have policies that can support some new development on such roads, where certain criteria can be met. Where municipalities support such development, it usually requires a site plan agreement registered on the property acknowledging the limited road service and maintenance to the property. County staff have supported such development where ‘safe access to the site is ensured for emergency purposes’. Should safety concerns arise on an application, County staff could not support the development until the safety issues have been addressed.

In the case of proposed Amendment 137, the proponent has noted that they are willing to enter into an agreement acknowledging that the road is seasonally maintained, and accepting the risks that come with that. While this type of arrangement has worked in
many other parts of the County, one still has to consider public safety. The comments from West Grey’s Fire Service and Director of Infrastructure and Public Works have raised safety concerns with the proposed development. County staff are not supportive of simply acknowledging the safety risk in this instance, and would rather see any risks mitigated.

The County processed a somewhat similar application (Iesalnieks – Kirsteins) in 2011, to allow new development on a private road in Grey Highlands. In this case, the proponent was looking to create a new lot with access off a private road. Grey Sauble Conservation Authority and the Niagara Escarpment Commission raised concerns with the lot, based on the inability to guarantee safe year-round access. The County refused the Municipal Official Plan Amendment application, and it was later appealed to the Ontario Municipal Board. A link to the County Staff Report PDR-PCD-22-11 has been included in the Attachments section of this report. A revised proposal later went to a Consolidated Hearing where the proposal was also refused based on lack of safe access.

Staff would note a few key differences between the Iesalnieks – Kirsteins amendment and proposed County Amendment 137. In the Iesalnieks – Kirsteins amendment they were looking at creating a new lot off of a private road. However, in proposed Amendment 137 they are looking at development on an existing lot on a seasonally maintained municipal road. That said, the principle of safe access is very similar in both instances.

The Planning Act

Section 2 of the Planning Act provides matters of provincial interest which planning authorities must have regard for in rendering any decision under the Act. Most notable to this proposed official plan amendment are the following clauses, with some staff comments below.

a) the protection of ecological systems, including natural areas, features and functions;

An Environmental Impact Study was completed for this application, which recommended mitigation measures and a development envelope on the subject lands. The SVCA have signed off on the EIS for this development.

f) the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems;
The proposed development will be serviced via private well and septic system. No concerns have been raised with respect to the ability to provide these private services on the subject lands.

The key concern for this application is the transportation network. The proposed dwelling would only have access via 12th Sideroad WGR, which is a seasonally maintained road. Access during the winter months could only be provided via foot or snowmobile. The West Grey Fire Service and Director of Infrastructure and Public Works have also noted that access in other months of the year may also be restricted, depending on the type of equipment being used, i.e. a large fire truck may have difficulty accessing the site on soft sections of the road.

The proponent has proposed to address these access concerns by signing an agreement acknowledging the limited service conditions of the road. The proponent has also agreed to upgrade the road in front of their property, and include a fire truck turnaround space within their driveway. The proponent has never provided an engineering opinion or report that would refute or mitigate the concerns of the West Grey Fire Service and Director of Infrastructure and Public Works.

County and West Grey staff still remain concerned with respect to safety of this proposal, and the potential for liability should an accident happen. West Grey offered to maintain the road, should the proponent (and/or their neighbours) be willing to upgrade the road to a year round maintained municipal road standard. The proponent has refused this offer based on the financial costs of doing so.

West Grey also remains concerned that allowing for new development on seasonally maintained or private roads could lead to more requests to upgrade, service, or assume these roads on a year-round basis. The costs of upgrading and servicing such roads would be quite expensive, when compared to the limited development potential in these Rural and Agricultural areas.

The proponent has also noted that there is existing development on 12th Sideroad WGR. In response to this, West Grey staff noted; ‘that in the mid 1990’s, there were two applications before Bentinck Council for approval of seasonal dwellings. The zoning by-laws were passed against the recommendations of the Township’s lawyer, clerk, and building official. Since amalgamation West Grey has not supported this type of development, and the proponent’s agent was made aware of this prior to filing the applications.’

h) the orderly development of safe and healthy communities;
Similar to the comments above, new development is generally focused in settlement areas across the County. Rural and recreational development is permitted and supported, where it can be sustained by the rural infrastructure. In this instance, the proposed development cannot be safely supported by the existing road network, and upgrading this road network does not appear to be financially viable.

\(l\) the protection of the financial and economic well-being of the Province and its municipalities;

As noted above, upgrading and servicing seasonally maintained roads across Rural and Agricultural areas would be quite expensive, when compared to the limited development potential in these Rural and Agricultural areas.

\(o\) the protection of public health and safety;

Based on the comments received, the protection of public health and safety cannot be ensured through these development applications, and therefore cannot be supported.

\(p\) the appropriate location of growth and development;

While County staff recognize that the proposed development is on an existing lot, the development is not supportable based on the safety concerns identified. County staff empathize with the owners of these lands, as they are currently unable to build upon them. Should this road be upgraded in the future development may be feasible, but at present, the safety concerns have not been satisfactorily addressed.

The proposed development does not have regard for matters of Provincial interest under the Planning Act.

**Provincial Policy Statement (PPS) 2014**

Many of the policies within the PPS overlap with the discussion above on the Planning Act. Section 1.1.5 of the PPS speaks to rural lands in municipalities. The following three subsections of the PPS are applicable to proposed Amendment 137.

“1.1.5.3 Recreational, tourism and other economic opportunities should be promoted.

1.1.5.4 Development that is compatible with the rural landscape and can be sustained by rural service levels should be promoted.
1.1.5.5 Development shall be appropriate to the infrastructure which is planned or available, and avoid the need for the unjustified and/or uneconomical expansion of this infrastructure.”

As noted in the discussion on the Planning Act, development of this nature can be supported, where it can be properly serviced by rural service levels. In this case, it does not appear that safe access can be provided, and allowing development here could necessitate need for the unjustified and/or uneconomical expansion of this infrastructure. Section 1.6.1 of the PPS also speaks to the importance of planning for infrastructure that is financially viable over its life cycle. Section 1.6.7 of the PPS further speaks to the need for safe and efficient transportation systems.

Section 1.4 of the PPS speaks to providing a range of housing opportunities across the Province. Providing a new seasonal recreational dwelling would contribute to West Grey’s overall housing complement.

Section 2.1 of the PPS provides for the long-term protection of natural heritage features across the Province. As noted earlier in this Report, a satisfactory EIS was completed in support of the development.

Section 3.1 of the PPS directs development away from areas of natural hazard. While Hazard Lands have not been designated on the proposed development lands, the access to the site appears to be hazardous at certain times of the year based on either snow or soft road conditions. Section 3.1.7(b) and (c) of the PPS are particularly relevant to this application;

“b) vehicles and people have a way of safely entering and exiting the area during times of flooding, erosion and other emergencies;

c) new hazards are not created and existing hazards are not aggravated”

Safe vehicular access to this site cannot be ensured during times of emergency. Allowing for further development on this road would increase the probability of an accident or emergency occurring in this area.

The proposed development addresses a number of policies within the PPS, but is not consistent with the PPS as a whole.

**County of Grey Official Plan**

Many of the policies of the County Plan overlap with the discussion above on the Planning Act and the PPS. The subject lands are designated as ‘Rural’ in the County Official Plan. Section 2.3.2 of the Plan does permit new residential dwelling units in the Rural designation. Section 2.3.3(1)(e) of the Plan states;
“That access to the site is from a public highway of reasonable construction and open and maintained on a year round basis and is appropriate for the use proposed. Access must not result in traffic hazards due to poor sight lines or proximity to the intersection and must conform to Section 5, Transportation and Utilities.”

The need for this official plan amendment has been triggered by the above-referenced policy which requires year round access. Section 5 of the Plan contains similar transportation policies, which cannot be met by this application based on the safety concerns.

Appendix B to the Plan also maps ‘Significant Woodlands’ on the subject lands. The EIS completed satisfactorily addresses section 2.8.4 of the County Plan in this regard.

Section 6.3 of the Plan outlines the criteria that need to be addressed before considering an amendment to the Plan. Section 6.3(a) of the Plan speaks to the need for the change. In this case, the proponent’s need for the change stems from the fact that the property is currently undevelopable, and therefore they need the Plan to be changed in order to support any development. Section 6.3(e) of the Plan states;

“The impact of the proposed change on the local Municipalities’ ability to achieve the principles and policies expressed in their Official Plans, or on other local Municipal policies, programs or interests;”

Allowing for development in this location could necessitate need for the unjustified and/or uneconomical expansion of the road infrastructure.

The proposed development addresses a number of policies within the County Plan, but does not conform to the overall goals and objectives of the Plan.

Based on the safety concerns, and the guidance provided by Provincial legislation and policy, as well as County Official Plan policy, staff are recommending refusal of Amendment 137. Should 12th Sideroad WGR be upgraded in the future development may be feasible on the subject lands.

Financial/Staffing/Legal/Information Technology Considerations

To date, there are no financial, staffing or legal considerations associated with the proposed official plan amendment, beyond those normally encountered in processing an amendment. As noted earlier in this report a legal opinion was sought on this application. The County has collected the requisite application fee and peer review deposit for this application.
However, it should be noted that if the County refuses Amendment 137, there is a strong possibility that the application could get appealed. Should the application be appealed to the Ontario Municipal Board (OMB), additional financial, legal, or staff resources may be required. As per the County’s OMB Attendance Report (PDR-PCD-08-13), the County would be required to defend its position at the OMB, should it refuse the application. A copy of the OMB Attendance Report has been linked to in the Attachments section of this Report. At this point, it is difficult to predict the staffing time, or legal costs, associated with the OMB process on proposed Amendment 137. Should Council choose to approve the application, then an appeal would not need to be defended by the County. The Municipality of West Grey has already refused the zoning amendment, and at the time of writing this report, the deadline for submitting appeals had not yet passed.

Link to Strategic Goals/Priorities

Goal 1 of the County Strategic Plan is to ‘Grow the Grey County Economy’ and Goal 2 is to ‘Support Healthy, Connected Communities’. A new proposed seasonal dwelling would contribute to Grey County’s economy and possibly bring more seasonal visitors. However, this growth does not ‘out-weigh’ the safety risks associated with the proposed development.

Attachments

Merit Report PDR-PCD-42-16

42-05-280-OPA-137 Public Meeting Minutes

PDR-PCD-22-11 Grey Highlands Official Plan Amendment 42-08-39-OPA-17

Iesalnieks - Kirsteins

PDR-PCD-08-13 Ontario Municipal Board Attendance Report

Respectfully submitted by,

Scott Taylor, MCIP, RPP
Senior Planner

Director Sign Off: Randy Scherzer