



Staff Report to Council - for Direction

Title: C-2022-016 and S-2022-030 Barry's Construction and Insulation Ltd.

From: Jack Van Dorp, Director of Planning and Development

Date: December 14, 2023

Staff Recommendation:

That Bruce County Official Plan Amendment Application C-2022-016 for lands described as Part Lots 18 & 19, Concession 2 (Amabel) in the Township of South Bruce Peninsula, be approved; and,

That staff be authorized to grant draft approval to Plan of Subdivision file S-2022-030.

Report Summary:

The proposed development is a 12-lot subdivision on partial municipal services (piped water) along an existing road at Chesley Lake in the Town of South Bruce Peninsula. The subject lands are 2 parcels separated by Foreman Drive. To facilitate the development, an application to amend the Bruce County Official Plan proposes to redesignate a portion of the 2 properties from Rural and Hazard to Inland Lake Development Area, with other areas remaining in the Rural and Hazard designations.

A related application to amend the South Bruce Peninsula Official Plan proposes to redesignate a portion of the property from Rural to Shoreline Development. An application to rezone the property from RU1 - Rural to R2 - Resort Residential also includes a request for relief to the frontage provision in the R2 zone to permit 15 metres frontage, relief to the MDS setback for Lots 10 and 11; and relief to the minimum lot size for a lot within the RU1 zone from 40 ha to 19.8 ha.

A Public Meeting to consider Bruce County Official Plan amendment application C-2022-016 was held September 21, 2023, with the decision deferred pending the clarification of Minimum Distance Separation (MDS) calculations for a livestock facility located at 392 Blind Line. At the Public Meeting the owner provided confirmation that the barn was a viable livestock facility, necessitating an MDS calculation to assess a development setback. This report provides a discussion of the MDS setback to the livestock facility and should be considered along with the staff report presented at the September 21, 2023, Planning and Development Committee Meeting.

Background Discussion:

At the September 21, 2023, Public Meeting, four residents addressed the Committee to voice concerns with the proposed development. Larry and Nancy Skinner, the owners of 392 Blind Line stated that the barn on their property, while vacant at the time of this application, is a viable livestock facility and the manure storage facility contains imported manure that is spread on neighboring fields. Given that the barn has not been converted for storage only use, an MDS I calculation is required as part of this application.

Using information provided by the owners, staff calculated the MDS setback distance in accordance with MDS Guideline #20 which yielded a 388 m setback distance from the livestock occupied portion of the barn to the property line of the parcels being redesignated. MDS Guideline #20 requires that MDS setbacks are calculated for an unoccupied livestock barn using the information provided by the farm operator or owner.

MDS Guideline #20 also contains a default factor that can be used when information cannot be obtained from the farm operator or owner. Staff also applied the default factor calculation that applies to unoccupied livestock barns which resulted in a 370 m setback distance based on a potential livestock area of 400 m² inside the barn representing 60% of the total barn area. Assessment information for this property indicates milking centres dating to 1975 and 2017 but does not provide area measurements for that use inside the barn. (Please note: the total area of the barn was measured from an air photo using GIS tools and the outside perimeter of the barn's roof and visual observation).

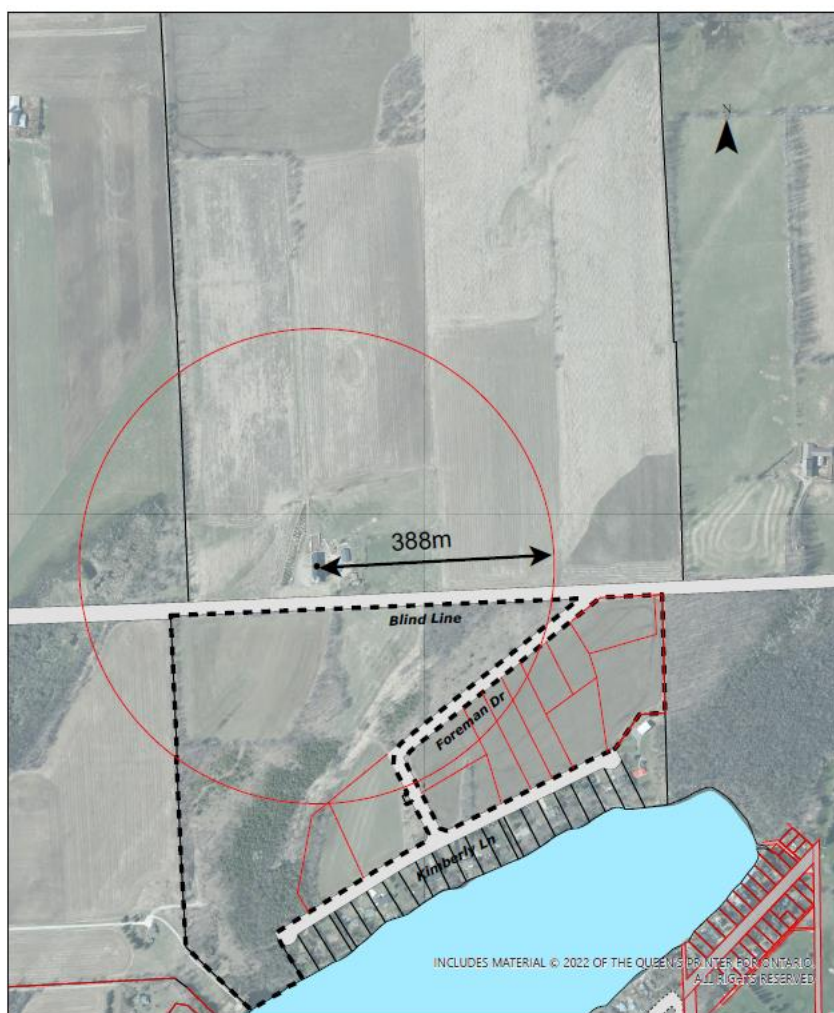
A third calculation was completed to assess potential impact on the farm property. Using the livestock type, number and manure type and storage provided by the owner, an MDS II calculation was completed. MDS II calculations are required at the time of a new or expanding livestock facility. The resulting setback distance is 330 m to the area zoned or designated to permit residential uses (Guideline #40). Using the GIS measuring tool, the distance between the livestock occupied portion of the barn and the area proposed to be zoned and designated for residential use, is 330 m. Staff note that the GIS tool provides a gross measure of the distance and is used as a general assessment tool. Confirmation of the exact distance between the livestock barn and the new zone or designation boundaries would need to be provided by an Ontario Land Surveyor.

With a proposed plan of subdivision, MDS I calculations are required for all livestock facilities within 1500m. Staff investigated a total of eight livestock facilities and completed calculations for seven of them and applied MDS Guideline #12 to one. Guideline #12 permits a reduced setback if necessary where there are more than four existing dwellings between the livestock facility and the proposed redesignated property. The proposed development does not fall within the setback distances to six of these livestock facilities. Therefore, these properties are not discussed in this report.

Six of the proposed lots fall within the most conservative MDS setback arc from 392 Blind Line as indicated in the image below. Note: The building contains a storage area and a livestock facility, and the measurement is from the livestock occupied portion of the barn, which is the rear portion of the building, in accordance with MDS Guideline #40.

Livestock and storage barn located at 392 Blind Line.





As noted in the September 21, 2023, staff report, two of the proposed lots fall within the 442 m MDS setback arc to the livestock facility located at 316 Blind Line. The application requested relief to the setback for these two lots.

As such, there 8 of the 12 lots would require reduced MDS setbacks in order for the proposed development to proceed.

Section 8.2 of the MDS Guideline Document addresses considerations for reducing MDS setbacks. The guideline cautions that reducing the MDS setbacks can increase the potential for land use conflicts. It also considers the intent of municipal official plans and zoning by-laws where there are different goals for prime agricultural areas than rural lands and states that,

“The intent of municipal official plans and zoning bylaws in *prime agricultural areas* will generally be consistent with the goals of complying with the *Minimum Distance Separation Formulae* and promoting and protecting agriculture in *prime agricultural areas* (various policies in section 2.3 of the PPS). Therefore, any proposal to reduce MSDS setbacks should be considered in light of this same general intent.

For *rural lands*, municipal official plans and zoning bylaws may have a broader and more diverse set of goals and objectives, but should still reflect the general requirement to

comply with the *Minimum Distance Separation Formulae* and it should promote and protect *agricultural uses* (various policies in section 1.1.5 of the PPS).” (MDS Guideline pg. 99)

The lands in the vicinity of Chesley Lake are rural lands and the County Official Plan considers a wider range of uses, including limited residential uses, for the Rural designation.

Reducing the MDS Setback

In assessing the request to reduce the MDS setback, the MDS Guideline Document suggests that tests similar to the 4 tests of a minor variance can be applied to determine if the setback should be reduced. These criteria are also reflected in the County Official Plan that includes a further test to assess if any potential impacts can be appropriately mitigated.

1. Does the reduction in the MDS Setback keep with the intent of the official plan?

The official plan identifies permitted uses in the Rural designation to include non-farm residential uses and Estate Residential Subdivisions subject to a Plan amendment. The lands in this area are not identified as prime agricultural lands which have stricter policies to protect the lands from conflicting development. Section 5.6.8 of the BCOP permits the consideration of a reduction in the MDS requirements subject to meeting the tests discussed in this section of the report.

2. Does the reduction in the MDS setback keep with the intent of the zoning bylaw?

The zoning by-law assumes that all lots are created equal and implements standard zone provisions for development. Both the current RU1 -Rural zone and the proposed R2 Resort Residential zone permit single detached dwellings and uses accessory thereto. In Section 6.22.1 the by-law addresses MDS I for New Non-Farm Uses, stating,

“Despite any other yard or setback provisions of this By-law to the contrary, no residential, institutional, commercial, industrial agriculturally related or recreational use, permitted within the appropriate Zones, shall be erected or altered unless it complies with the Provincial Minimum Distance Separation (MDS I), calculated in accordance with the MDS formula as published or amended by the Ontario Ministry of Agriculture Food and Rural Affairs from time-to-time The above provisions shall not apply to lots existing as of the date of the passing of this By-law that are less than 4 ha in area. (By-law 67-2013, Z-07-2013.58)”

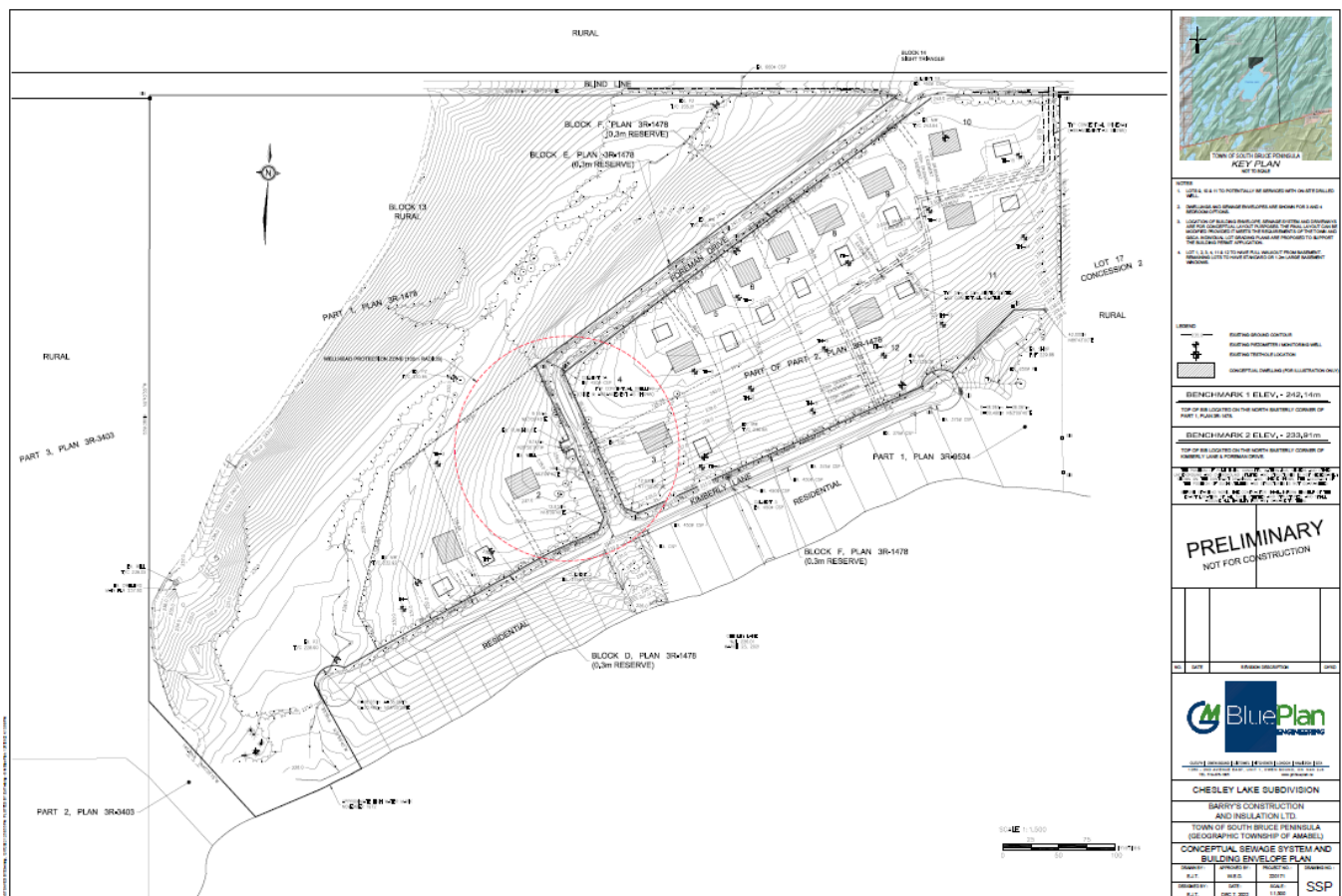
Section 34 of the Planning Act provides for a zoning by-law to be amended to permit uses and development that are not permitted as-of-right. Given that the reduction in the MDS setback to the livestock facility at 392 Blind Line results in an approximate 58 m deficiency, measured to the area being redesignated and rezoned, an amendment to the by-law would not offend the intent of the by-law. The actual development envelopes are further outside the setback arc and can be incorporated into the site-specific zoning amendment to ensure that the dwellings are located as far from the livestock facility as possible given the slope related constraints on the property.

The setback for the two lots closest to 316 Blind Line would be 442 m with relief requested at 410 m and 385 m, which staff note is the development envelope area and not the boundary of the lot being rezoned per the Guideline. The reduction in the setback is warranted given the drainage patterns on the east side of the property and the land sloping toward Kimberly Lane. The physical traits of the land determined a development envelope for each of these lots.

3. Is the reduction in the MDS setback desirable and appropriate for the area?

The area is populated by cottages and single-detached dwellings around Chesley Lake. The proposed subdivision is adjacent to existing residential development and will utilize the available municipal water system. The proposed lots will be accessed by a year-round maintained road and be serviced with garbage pick-up and utilities. There is a municipal park which provides a recreational opportunity at the shore of the lake.

The setback arc is measured to the area of the lot being rezoned and redesignated. Of the eight lots that fall within the setback, 7 dwellings could potentially be located outside of the MDS setback arc, however this would place the development nearer the slope which may increase cost to address drainage. One dwelling has no alternative outside the setback arc due to required setbacks from the Foreman Municipal well head. The reduction in the setback will still permit a balanced, well-spaced residential development as delineated in the Conceptual Sewage System and Building Envelope Plan below.



The Conceptual Sewage System and Building Envelope Plan was provided by the Developer's engineer and locates the dwellings and septic systems nearer to Foreman Drive where there is more level ground. When factoring in the required front yard setback, the nearest dwelling could be 340 m from the livestock-occupied portion of the barn. Some of the building and sewage envelopes are conceptual, meaning that they can be moved where necessary to best address constraints on the lots.

4. Is the reduction in the MDS setback minor in nature?

The intent of the MDS Guidelines is to prevent land use conflicts and minimize nuisance complaints related to the odor from livestock and manure storage on neighboring farms. MDS is not intended to address odor related to manure being spread on fields, dust, noise, or smoke etc. related to agricultural operations.

The applicable MDS I setback for the proposed development is 388 m. An MDS II setback generated using the same information provided by the owner results in a 330 m setback to the subdivision from the barn. A reduction in the MDS I setback to 330 metres can be considered minor given that the setback for a livestock facility based on the inputs provided by Mr. Skinner for his farm, is 330m from the subdivision and does not extend into the redesignated and rezoned lands of the proposed subdivision; this means that the proposed subdivision does not appear to limit the viability of the existing barn to house livestock.

The building setback would be subject to the provisions of the zoning by-law which require a 7.5 m front yard setback. The Developer is agreeable to increasing this requirement to be 10 m front yard setback and this will be presented to the Town of South Bruce Peninsula Council for their consideration at the December 5, 2023 Council meeting.

5. Can any potential environmental impacts be appropriately mitigated?

An Environmental Impact Assessment (EIS) was conducted to support and direct development outside of any environmentally sensitive areas. The site design was completed after the EIS was reviewed and locates septic systems outside of the well head protection area. A nitrate and servicing study were completed to support the development and general sewage and building envelopes were designed away from any environmental features or slope hazards.

Comments from the Public Meeting

In addition to verbal comments provided by Larry and Nancy Skinner related to MDS requirements, area traffic was also identified as a growing concern. The proposed development was reviewed by Town and County Transportation staff and no traffic impact study was required for these applications. Requests for traffic calming measures such as a reduction in the posted speed limit can be made to the Town's Roads Department.

Questions related to prior refusal of development applications were raised and briefly discussed. County staff note that each application is evaluated on its own merit against the applicable policy in effect at the time of application and there may be multiple reasons an application is refused. Staff do not have access to the prior applications to follow up further on this.

Questions related to the health of Chesley Lake and the impact of the proposed development on the Lake were addressed by the Developer's Engineers.

Written comments were provided by David Jutzi after the report submission deadline and prior to the County Council meeting on September 21, 2023. Mr. Jutzi's comments are attached for Council's review.

Written comments were also received from the Town of South Bruce Peninsula staff noting they support the connection of the lots to the municipal water system. (June 27, 2023).

A response letter to the MDS concerns was submitted by one of the Developer's Planning Consultants. That letter is attached for Council's consideration.

Conclusion and Recommendation

As reviewed in this report and the September 21, 2023, report, the County and Town policies generally support the proposed development. The reduction in the MDS I setback can be addressed through the site-specific zoning by-law amendment considered by the Town of South Bruce Peninsula Council. Staff recommended to the local Council that in addition to the setback relief applied for from 316 Blind Line, being proposed for Lots 10 & 11, that the MDS setback from 392 Blind Line to the proposed area to be rezoned, be reduced from 388 m to 330 m as provided for in Section 5.6.8.3 of the County Official Plan. The 330 m setback would be to the lot line and a 10 m front yard setback would apply.

Financial/Staffing/Legal/IT Considerations:

Potential Appeal to Local Planning Appeal Tribunal.

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Departmental Approval:

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Approved for Submission:

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