



February 14, 2024

Bruce County Council
30 Park Street
Walkerton, ON
N0G 2V0

Warden Peabody and Council:

RE: Follow up Opinion on Application of Minimum Distance Separation (MDS) Setbacks proposed 12 Lot Subdivision development at Parts 18 and 19 (Amabel) in Town of South Bruce Peninsula at Chesley Lake, Our File 23340A

Further to direction from Bruce County Council at the December 14, 2023 Council meeting for additional information regarding Minimum Distance Separation (MDS) as it applies to the above noted plan of Subdivision and the unoccupied agricultural building located at 392 Blind Line, MHBC is pleased to provide a professional opinion based on the supplemental information provided to our office. The following is also provided as a follow-up and update to my previous opinion summarized in my letter dated, November 2, 2023 and attached hereto for your ease of reference.

Background

Barry's Construction and Insulation Ltd. submitted an application to the County of Bruce for a 12 lot development with lot sizes ranging from 1.3 acres to 4.4 acres. The lots are to be serviced with municipal water and private septic systems.

The application was presented to South Bruce Peninsula Council and Bruce County Council on September 19, 2023 and September 21, 2023 respectively. At both meetings, Council voted to defer the Staff recommendation to approve in order to receive additional information regarding MDS setbacks.

Follow up reports with additional MDS information were presented to South Bruce Peninsula Council and Bruce County Council on December 5, 2023 and December 14, 2023 respectively. Subsequently, the local Council approved the Zoning By-Law, which included MDS relief and also adopted the Local Official Plan amendment. Bruce County Council deferred the recommendation in order to review additional information related to MDS submitted by the owner of 392 Blind Line.

It is our understanding that a site visit to 392 Blind Line was conducted on January 19, 2024 by Bruce County Staff to review the existing unoccupied agricultural building on the property. Additionally, a site survey was completed by my client to verify the measurements to the proposed development.

PPS (2020) Conformity

The Provincial Policy Statement (PPS) is a legislative policy document that provides policy direction on matters of provincial interest related to land use planning and development including the application of MDS when considering lot creation or barn expansion in an agricultural area. PPS policy 1.1.5.8 states that new land uses in rural areas, including the creation of lots or new expanding livestock facilities, shall comply with the minimum distance separation formulae.

The PPS defines Minimum Distance Separation formulae as:

formulae and guidelines developed by the Province, as amended from time to time, to separate uses so as to reduce incompatibility concerns about odour from livestock facilities.

The province issued Minimum Distance Separation (MDS) Document, Formulae and Guidelines for Livestock Facilities and Anaerobic Digester Odour Setbacks, Publication 853 (herein after referred to as the 'MDS Guidelines') in 2016, which came into effect on March 1, 2017. This document implements the provincial policy and is intended to prevent land use conflicts and minimize nuisance complaints from odour. It is intended to be read in its entirety and all relevant Implementation Guidelines are to be applied to each situation as if they are specifically cross-referenced with each other.

County of Bruce Official Plan (adopted May 20, 1997 and last revised June 21st, 2010)

The property at 392 Blind Line is designated Rural in the Bruce County Official Plan. Policy 5.6.1.1 states that the Rural designation covers those lands that are for the most part undeveloped by urban type uses; the rural areas of the County are often appreciated for their pastoral sense of open space. However, the Rural designation in fact contains a mix of land uses and economic activities which include natural resource uses such as farming, forestry and aggregate extraction and tourism based activities such as nature appreciation and outdoor recreational uses.

Policy 5.6.1.2 goes on to state that the intent of the Rural designation is to balance rural development pressures with the need to preserve and protect the rural landscape. Economic activities in the Rural designation shall be those that take advantage of the natural attributes of the Rural area but, at the same time, conserve and protect the rural landscape for the enjoyment of future generations. New developments shall be low in scale and intensity, with particular attention being paid to the protection of the environment and increased service demands placed on rural municipalities.

Additionally, rural areas include those areas of Class 4, 5, 6 and 7 soils as defined by the Canada Land Inventory Soil Capability Classification for Agricultural Capability that are greater than 80 hectares in size and pockets of Class 1, 2 or 3 soils that are smaller than 80 hectares in size. As a result, this designation may include a combination of higher capability and lower capability soils. The designation has been determined based upon the 80 hectare majority of the predominant soil type.

The policy goes on to state that these areas have been identified as generally non-prime agricultural soils in Bruce County, based upon the Canada Land Inventory mapping. It is intended that a local municipality may develop a local strategy for identifying rural areas through an Amendment to this Plan, or by the preparation of a Local Official Plan.

Policy 5.6.4 outlines the following permitted uses in a rural area:

- i. Agricultural uses in accordance with Section 5.5.2 [Permitted Uses (Agricultural Areas)];
- ii. Farm Related Commercial and Industrial Uses in accordance with Section 5.5.9 [Farm Related Commercial and Industrial Uses (Agricultural Areas)];
- iii. Institutional Uses in accordance with Section 5.5.10 [Institutional Uses (Agricultural Areas)];
- iv. Home Industries and Home Occupations in accordance with Section 5.6.4.2 [Home Industries and Home Occupations (Rural Area)];
- v. Rural Industrial uses in accordance with Section 5.6.6 [Rural Industrial (Rural Area)];
- vi. Rural Commercial Uses in accordance with Section 5.6.7 [Rural Commercial (Rural Area)];
- vii. Non-Farm Residential use, including Additional Residential Units in accordance with 4.4.4.1 (xi) and Section 5.5.12; and,
- viii. Seasonal Residential Use.

Despite the Rural land use designation of properties containing barns, PPS Section 1.1.5.8 requires **that new land uses, including the creation of lots, and new or expanding livestock facilities, shall comply with the minimum distance separation formulae.** This is implemented through policy 5.5.11 in the County Official Plan which states:

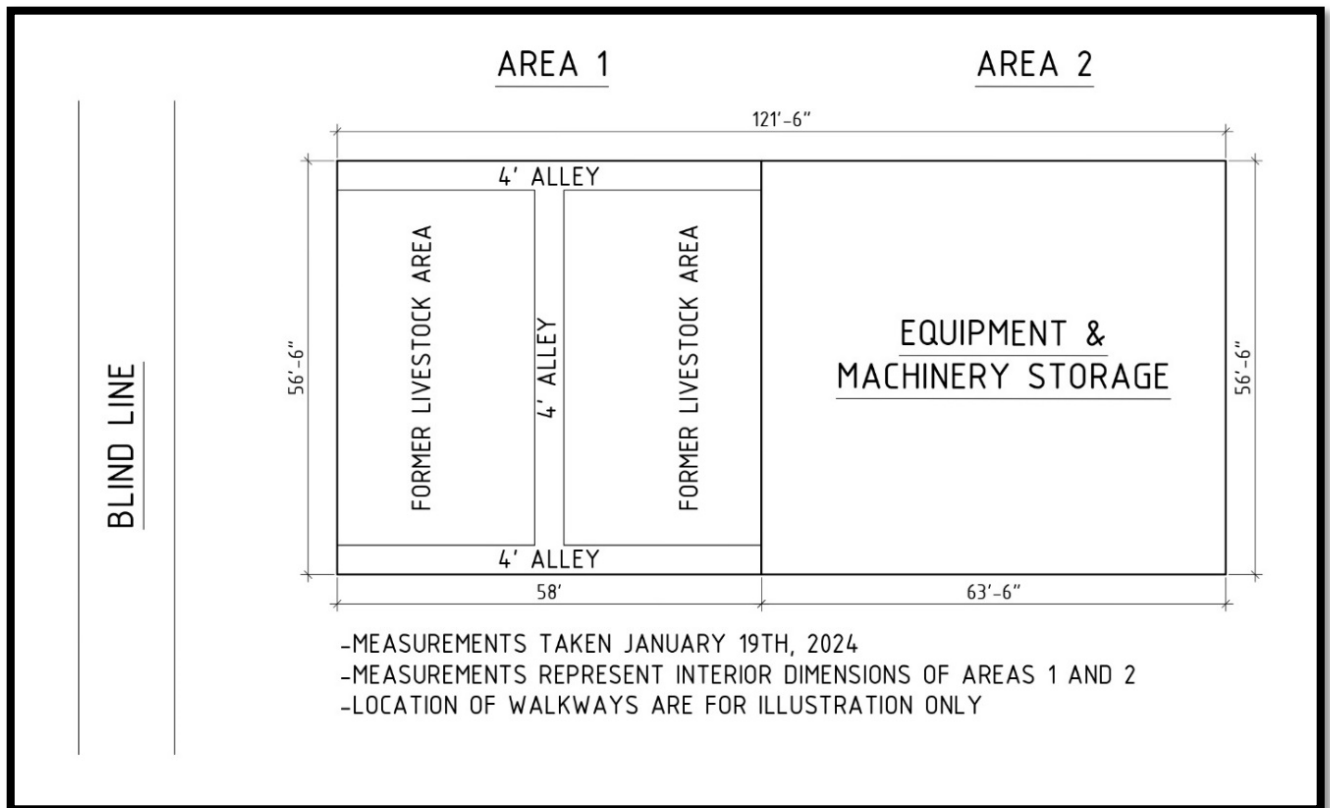
1. New land uses, including the expansion of existing or the establishment of any non-agricultural uses including the creation of lots, and new or expanding livestock facilities shall comply with the Provincial Minimum Distance Separation Formulae (as amended from time to time).
2. The Municipal Comprehensive Zoning By-Law shall incorporate the Provincial Minimum Distance Separation (MDS) Formulae (as amended from time to time).
3. A Minor Variance or Zoning Amendment to allow for a reduction in the Provincial Minimum Distance Separation requirements shall consider at a minimum the following: (i) does the reduction have regard for the intent of the Official Plan; (ii) does the reduction have regard for the intent of the Zoning By-Law; (iii) is the reduction minor in nature; (iv) is the reduction desirable and appropriate for the area; and (v) can any potential environmental impacts be appropriately mitigated.

MDS Conformity

At the December 14, 2023 County Council meeting, Bruce County staff, in accordance with the MDS guidelines, presented an MDS setback calculation that was based on the information provided by the owners of the property. This calculation included 80 swine and resulted in a setback of 388m which was the value indicated by the property owners in their correspondence to the County dated September 8, 2023.

Just prior to the December 14, 2023 County Council meeting, the owners of 392 Blind Line provided revised information relating to the number and type of livestock that could potentially be (but not currently existing) housed in the existing unoccupied agricultural building. The new information appears to be based on the owner including the existing Equipment and Machinery Storage area into the MDS calculation.

As noted above, a site visit was conducted by County Staff and a representative of the applicant in order to review the unoccupied structure. During the site visit, measurements were taken of the inside of the building in order to determine accurate area calculations. The building measurements are shown in the below Figure for reference.



As shown in above Figure, the building is separated into two distinct areas,

- Area 1 - This area currently contains agricultural penning, alleys and floor troughs.
 - The interior measurement for this area was recorded as 56.5' x 58' (3,277 square feet)
 - This area includes several 4' wide alleys that would be excluded from the MDS calculation as per the definition for the occupied portion.
- Area 2 – This insulated area currently includes machinery and equipment storage for tractors, combines and other farm implements. There are three large overhead doors and one large sliding door for equipment access and high ceilings to accommodate the large machinery. There are no floor drains or troughs present.
 - The interior measurement for this area was recorded as 56.5' x 63' (3,559.5 square feet)

Due to the characteristics of Area 1, this portion of the unoccupied building should be included in the calculation for an MDS setback. Based on the field measurement the contributing area would be calculated as 3277ft² (304.4m²) for the total area less 462ft² (42.9m²) for the alleys for a net attributable portion of 2815ft² (261.5m²).

It is my opinion that Area 2 should be excluded from the MDS calculation. The definition for Livestock Occupied Portion is:

*Areas of a livestock barn where livestock spend the majority of their time, allowing substantial amounts of manure to accumulate. This **DOES NOT** include areas such as: alleys, **equipment storages**, feed bins, feed storage/preparation areas, field shade shelters, assembly areas, loading chutes, **machinery sheds**, milking centres, milking parlour holding areas, offices, pastures, riding arenas, silos, tack rooms, utility rooms and washrooms. (**Areas emphasized**)*

It is clear from the attached photos that Area 2 has been constructed to accommodate equipment and machinery storage and is currently being used for equipment and machinery storage and should not be included in the MDS calculations. MDS Guideline #2 notes, *The information used to carry out an MDS I calculation **must reflect the circumstances at the time that the municipality deems the planning or building permit application to be complete*** and Guideline #16 states, *Even though information may be provided by the applicant or their agent, **ultimately, it is the responsibility of the municipality to determine if information used for an MDS I calculation is reasonably accurate and reflects existing conditions.***

Based on the above we provide the following MDS Calculation using Guideline #20, which reads as follows:

Design capacity for an MDS 1 calculation shall include all unoccupied livestock barns on a lot in accordance with this Implementation Guideline.

First and foremost, the number of livestock or the area of livestock housing of unoccupied livestock barns should be based on information supplied by the farm operator(s) and/or owners(s). Only after concerted, documented effort has been made to obtain information from the farm operator(s) and/or owner(s), but obtaining information was not possible, then the following default Factors apply to unoccupied livestock barns:

- Factor A=1.0
- Factor B is based on 1 Nutrient unit/20m² of area of livestock housing
- (NOTE: assume barn is only one storey high if using Aerial photography)
- Factor D=0.7

It should be noted that the intention for seeking information from the farm operator as noted in Guideline 20 is to confirm numbers of actual livestock being housed in the barn at the time of the development application and not seek 'hypothetical' or aspirational intentions of the livestock operator. In addition to the current use of the lands, the use of portions of the barn for equipment storage (as noted above) combined with past

activities on the lands (e.g. installation of tile drainage and a drying bin) would further suggest that the farm operation is moving towards a cash crop operation as opposed to a livestock operation.

Therefore, unless there are actual/definitive plans or existing livestock present in the barn, it is my opinion that MDS Guideline #20 is the appropriate application in this circumstance given the discrepancies in the amount and type of livestock the owner has reported and current conditions and use of the barn and farm. This calculation also gives a reasonable setback for the unoccupied livestock portion and meets the intent of the MDS Guidelines.

Opinion Summary

It is my opinion that sufficient information and review has been carried out in order to accurately and correctly calculate a reasonable MDS I setback for 392 Blind Line. Based on the submitted information and field verification, an MDS I Setback of 328m has been calculated and is appropriate.

As noted above, approvals from the local Municipality were received on December 5, 2023 for this application. On behalf of our client, we respectfully request that the County of Bruce Council also approve this application.

We trust the above helps clarify matters. Should you require any further information, please do not hesitate to contact the undersigned.

Yours truly,

MHBC

A handwritten signature in black ink, appearing to read 'P. Chauvin', written over the 'MHBC' logo.

Pierre J. Chauvin, BSc(Agr), MA, MCIP, RPP
Partner

Attach.

cc. *Stuart Doyle, Jennifer Burnett*