Committee Report

To: Warden Mitch Twolan
   Members of the Planning and Development Committee

From: Kara Van Myall
      Director of Planning and Development

Date: December 19, 2019

Re: Bruce County OPA 250 - Process Review

Staff Recommendation:
That Bruce County Official Plan Amendment 250 - Process Review be approved; and,

That the appropriate by-law be forwarded to County Council for adoption.

Executive Summary:
This amendment has arisen from Committee’s direction to staff to initiate policy changes related to three issues:

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<th>Issue</th>
<th>Opportunity (Recommendations)</th>
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<td>Conditions and information requirements for re-creating merged township lots</td>
<td>Clarify that township lot consents are not considered to be new lots or intended to be subject to information requirements or conditions related to future uses unless proposed by the application.</td>
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<td>Recreating small developed lots that have accidentally merged</td>
<td>Permit merged developed lots to be severed, use conditions to maintain or improve wastewater</td>
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<td>Lot additions for existing undersized lots</td>
<td>Clearly permit lot additions and boundary adjustments in all designations, including where required to improve existing deficiencies; remove requirement to rezone retained lot in Agricultural areas</td>
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The amendment initiation report and detailed planning analysis is attached as an appendix.
This report is focused on the agency and public comments arising from the statutory circulation of the proposed amendment which required analysis or resulted in minor changes to the amendment. Agency and Public comments are attached.

The application is consistent with the Provincial Policy Statement, conforms to the intent and purpose of the County Official Plan and is good planning.

The staff recommendation is subject to comments received after writing this report and matters that may arise at the public meeting.
A. Planning Analysis of Agency Comments Received

1. Conservation Authority Comments

Grey Sauble Conservation Authority (GSCA):

- No objection, recommend that lots zoned entirely Environmental Hazard (EH) or Environmental Protection (EP) require a zoning amendment to re-assess natural hazards to ensure the lot can accommodate appropriate development.

Saugeen Valley Conservation Authority (SVCA):

- No objection, expressed concern that the amendments may negate natural hazard and/or natural heritage policies of the OP; recommended adding to policies for merged lots with more than one use and for lot additions that

  “Existing or proposed new development/use is in conformance with section 4.3 (The Environment) and section 5.8 (Hazard Land Area) policies of this Plan.”

Maitland Valley Conservation Authority:

- Endorsed GSCA and SVCA comments

Analysis of Conservation Authority Comments:

Staff analyzed these comments based on the three areas of the amendment: Township Lots; merging undersized developed lots; and lot additions

Township Lots:
Existing policies do not require consideration of underlying zoning or environmental features. Environmental Protection or Environmental Hazard zones include permitted uses which, the township lot scale, may be considered suitable purposes for land despite buildings not being permitted. Re-creation of merged lots is limited to existing legal non-conforming development. Hazard boundaries are generally reviewed by Conservation Authorities as part of an application circulation process.

Merged developed lots:
The amendment focuses on separating lots with legal non-conforming uses, and on limiting further intensification where appropriate. Environmental impacts have generally occurred in association with the existing use, and hazard zoning and provisions continue to apply to new development.

Lot additions:
The amendment focuses on smaller lots and minor boundary adjustments. Environmental and Hazard Land Area policies should continue to apply to these areas, for example to avoid a lot addition that impacts the viability of a lot that is being reduced in size.
Changes to BCOPA 250 arising from Conservation Authority Comments:

- Removed general statement “In the event of conflict between these policies and other policies of the Plan, these policies prevail”
- Added semicolons (; and) to clarify that all of the listed criteria must be met for severance of merged undersized lots.
- Added “Notwithstanding servicing or lot area policies” to two of the lot addition policies that relate to servicing and lot area considerations.

2. Drinking Water Source Protection Office comments:

“As per the Approved Source Protection Plan for the Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Region, there is policy regarding any new lots and how they are serviced in Wellhead Protection Area - A or B with a vulnerability score of 10 (where the activity would be a significant drinking water threat). Please see policy text below.

Policy 02-05 Sewer Requirement for New Lots The policy applies in all vulnerable areas where the establishment, operation or maintenance of a septic system would be a significant drinking water threat (future activity). New lots created either through severance or subdivision under the Planning Act shall only be permitted by the planning approval authority where the lots will be serviced by a municipal sewage system or where an on-site septic system could be located outside of a vulnerable area with a vulnerability score of 10.

Based on this policy, existing lots, as identified in the Official Plan (OP), are permitted to install septic systems within these vulnerable source protection areas. However, there is a potential issue with the proposed OP amendments where a new lot is created through a severance in these zones the above policies and restrictions apply. In this case, the policy states that if a new lot is created through severance, then the septic system would need to be located outside of the vulnerable area or a connection made to municipal sewage systems.”

Analysis of Drinking Water Source Protection Comments:

The intent of this policy is to avoid new development and septic systems in areas where they could pose a risk to drinking water systems. The purpose of the amendment is to re-create lots where the development is already existing. A change to the amendment can address this concern without impacting the intent of the source protection plan.

Changes to BCOPA 250 arising from Source Water Protection Comments:

- Revised the policy to permit lots to be “re-created” vs. being described as “new lots.” The Source Protection Risk Management Official confirmed that this addressed their concern.
3. Town of South Bruce Peninsula Comments:

The Building Division suggested a clause related to severance could be amended to replace “additional plumbing fixtures” with “greater than 20 (twenty) fixture units” as the Ontario Building Code does not require an increase in the daily sewage flow if less than 20 fixture units.

Analysis of South Bruce Peninsula Comments:

Implementation of the intensification control on re-created undersized developed lots would be the responsibility of Municipal building departments. This is an appropriate suggestion that provides some additional flexibility to landowners and is aligned with other regulations that address effluent.

Change to BCOPA 250 arising from South Bruce Peninsula Comments:

- Replaced “additional plumbing fixtures” with “increase of total plumbing fixtures beyond 20 (twenty) fixture units”

4. Ministry of Municipal Affairs and Housing (MMAH) Comments

MMAH Comments related to three topics:

i) Severance of lots that previously merged on title is considered lot creation and development for purposes of the PPS, and that the PPS may limit or prohibit lot creation in circumstances (for example lot creation policies of Section 2.3.4.1 of the PPS).

ii) The size of the proposed lots will continue to be subject to nitrate studies, as per MOE’s August 1996 Guideline D-5-4, which requires that nitrate studies be prepared in relation to proposed private wastewater servicing.

iii) Suggest that the county instead consider the matter of lot merger consent policies as part of 5-year review of the Bruce County Official Plan.

Analysis of MMAH Comments

We reviewed the intent of the amendment and existing policy with ministry staff, noting

i) The existing policy of the County Official Plan permits re-creation of the original township lot fabric subject to lot area (generally 40 ha) and frontage on a road requirement of the Plan. BCOPA 250 does not change this policy, and instead specifically limits information requirements for these types of applications. It is possible that merged developed lots may be located in the agricultural designation. Although severance of a second dwelling on a lot arising from a merging on title may not be, strictly speaking, a farm consolidation, it would be surplus nonetheless and PPS direction to prohibit a residential use on the retained lot would be impractical where a dwelling already exists.
ii) Based on the Application criteria (section 3) of the D5-4 Guideline, the exemption of undersized merged lots with existing development on private services from the D5-4 Guideline is appropriate based on:

- Development reliant on on-site sewage systems is not proposed, it already exists;
- The Guideline is not intended to apply to existing individual residential sewage systems; and
- The Guideline encourages Municipalities to implement the provisions of the Guideline but does not require Municipalities to implement the Guideline.

iii) BCOPA 250 provides an opportunity to test policy against a number of anticipated applications and to consider revisions to these policies if needed in the Official Plan arising from the 5-year review.

B. Planning Analysis of Public Comments Received:

1. Don Scott (Cuesta Planning Consultants):

- Draft amendment seems appropriate.
- Imposition of a development agreement as a condition of consent is reasonable. A holding provision on the rezoning would achieve the same result and may be easier to track.
- Requirements that the second dwelling on the lot must result from merging is generally appropriate however a second dwelling resulting from receiving a municipal building permit may also need to be considered favourably. Examples cited that should not be eligible for consent are appropriate, however, if municipality creates the zoning conflict, consideration for a consent should be considered favourably.
- Assumes two files pending the decision can be filed by the end of the year.

Analysis of Mr. Scott’s comments:

We had not initially considered the holding provision as issues with lot size can be addressed through a “minor variance” application. Minor Variances are generally simpler, faster and at lower cost to applicants. However, a holding provision can also work and is appropriate to include in the amendment.

These amendments are focused on addressing legal non-conforming development. Staff do not have data to understand the scope of the issue with permits issued that contravene the by-law. This amendment process did not afford an opportunity to develop policy that would address that issue without evaluating potential creating new issues. Staff recommend maintaining the scope of BCOPA 250 on the issues that were identified in the initiation report and referring this question to the 5-year review discussion.

Change to BCOPA 250 arising from Mr. Scott’s Comments:

- Added option for a holding provision to address intensification on re-created merged lots.
2. Don Tedford:

- Recommended reaching out to Sidney Troister (lawyer for land and real estate law) and attached presentations by Mr. Troister related to abutting lands and to Bill 88, a proposal to amend the Planning Act.

Analysis of Mr. Tedford’s Comments:

Staff reached out to Mr. Troister who noted issues with re-creating lots that have unintentionally merged, and efforts proposed through Bill 88 to address these issues.

Bill 88 is a private members bill that has received first reading. It is intended to address several common issues arising from Planning Act rules for transfer of land. It would address many but not all of the situations where BCOPA 250 would apply. If it is implemented, the policy approach outlined in BCOPA 250 could be perhaps required less often. The BCOPA 250 policies can be reviewed for effectiveness (or necessity) through the 5-year review if the Planning Act changes to make all or part of this policy approach redundant. There may be an opportunity for staff to prepare comments regarding Bill 88 for the Committee to consider forwarding to the Province.

3. David Hoover, Amos Knorr, and Ed Knorr:

- David Hoover submitted comments related to severance of a 152.5-acre lot in Huron Kinloss into a 100-acre lot and a 50-acre lot, noting Mennonite lifestyle and agricultural practices.
- Amos Knorr submitted comments regarding high cost to buy 100-acre farms and hardship for operations using horses and requested opportunities for smaller farms, including through lot additions of 10-20 acres to smaller lots that have been severed from farms.
- Ed Knorr submitted comments regarding land cost and a potential severance scenario for his property into 3 smaller agricultural lots.

Analysis of Comments from Mr. Hoover, Mr. Knorr, Mr. Knorr

BCOPA 250 does not amend minimum lot sizes or lot addition policies for lands in the Agricultural designation. These comments are relevant to the discussions around minimum lot size for farm parcels and the broader Plan the Bruce: Agriculture discussion papers and have been referred to these topics.

C. Summary of Planning Analysis and Comments:

Agency and public circulation yielded some changes to BCOPA 250:

The General statement “In the event of conflict between these policies and other policies of the Plan, these policies prevail” was removed. This better supports the overall Official Plan; other changes noted below maintain the specific policy direction that is intended by the amendment.
Policies for re-creating merged undersized lots were amended to:

- Add semicolons (; and) to clarify that all of the listed criteria must be met for severance of merged undersized lots;
- Permit lots to be “re-created” vs. being described as “new lots” to address source protection office concerns.
- Include option for a holding provision to address intensification to provide greater flexibility;
- Apply a maximum total of 20 (twenty) fixture units to align with the Building Code;

Policies for lot additions were revised to:

- Add “Notwithstanding servicing or lot area policies” to two of the lot addition policies that relate to servicing and lot area considerations. This change works together with the deletion of the general statement that the BCOPA policies prevail.

The revised amendment reflects a considered professional planning opinion in respect of the fundamental considerations of comments received through the circulation.

The changes to the proposed amendment do not affect the merits, purpose, or effect of the amendments as discussed in the Initiation Report and Detailed Planning Analysis and therefore, support the implementation of the amendment.

D. Procedural Matters:

Section 17 of the Planning Act requires council to ensure that adequate information and material, including the current proposed plan amendment, is made available to the public at least 20 days before the public meeting.

The attached amendment was posted on the Bruce County website on the morning of November 29, 2019, meeting this requirement.

The Act requires that the notice of decision explain the effect of submissions on the decision. Further public consultation is not required.

Financial/Staffing/Legal/IT Considerations:

Potential Appeal to Local Planning Appeals Tribunal.

Written by:
Jakob Van Dorp, RPP,
Senior Planner, Planning and Development
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<th>Policy</th>
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<td><strong>Building Strong Communities</strong></td>
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<td>Managing &amp; Directing Land Use to Achieve Efficient Development &amp; Land Use Patterns</td>
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<td>Settlement Areas</td>
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<td>Rural Areas in Municipalities</td>
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<td>Sewage and Water</td>
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<td>Lot Creation and Lot Adjustments</td>
<td>Clarifies information requirements for large severances and severance of surplus dwellings arising from lots merging.</td>
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<td>Wayside Pits/Quarries, Portable Asphalt Plants / Concrete Plants</td>
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