

TO: Mayor and Members of Council

FROM: Storey Samways Planning Ltd.

DATE: January 2, 2008

SUBJECT: Planning Services Report

GENERAL FILE INFORMATION AND KEY MAP:

Application: Combined Consent (File B-76/07) and Zoning By-law Amendment (File D-28 HA/56/07/C)

Hansen#: 4098

Applicant: Deane Collins & Fay Loyer

Location: 10965 River Line
Part of Lots 18 & 19,
Concession 1, R.T.S.
Pt. Rd Allowance, RP
24R4738 Pt 4 & RP 24R
8083 Parts 3 to 5

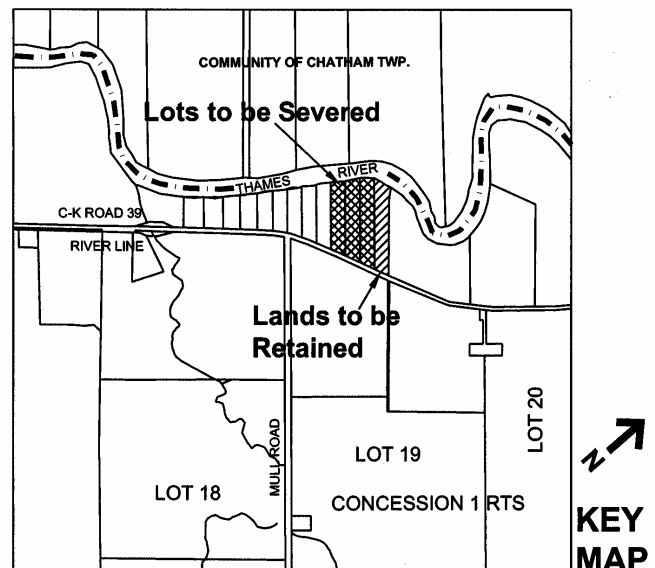
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Community: Harwich (South Kent)

RECOMMENDATIONS:

It is recommended that:

1. Council approve consent application B-76/07 in Part of Lots 18 & 19, Concession 1, R.T.S., in the Community of Harwich, to create three (3) new estate residential lots, subject to the following conditions
 - a) that the zoning by-law be amended to:
 - i) rezone the severed lots and retained lot to an appropriate residential classification;



- b) that the applicant deposit the cost of three new Municipal water connections with the Chatham-Kent P.U.C.;
 - c) that the creation of Parcels 1 and 2 be subject to the removal of the buildings shown on the survey sketch as “to be removed”;
 - d) that the applicant obtain access permits where required and if culverts are required they will be at the applicant’s expense;
 - e) that the necessary deed(s), transfer or charges be submitted in triplicate; signed and fully executed (no photo copies) prior to certification;
 - f) that the applicant complete an archaeological assessment and submit a letter of clearance from the Ministry of Culture to the Municipality.
2. Council approve the zoning amendment application D-28 HA/56/07/C and adopt the by-law to implement the consent.

DESCRIPTION OF PROPOSAL:

The subject land is an 11.7acre farm lot located on the northwest side of River Line , at the end of Mull Road. The property currently contains an existing single detached dwelling and detached garage. In 1997 and again in 2006 consent and zoning amendments were approved to create a total of eight lots on the west side of the property. The applicant is now proposing to develop the remaining acreage and create an additional four lots ranging in size from 2.5 acres to 3.2 acres. All of the lots have approximately the same frontage. It should be noted that a road widening was secured by the Municipality earlier in 2007 as part of a Municipal water line installation.

The subject lands are one of a limited number of properties on the north side of River Line between Communication Road and Kent Bridge Road which are designated Estate Residential and in Special Policy Area 20 (SPA 20) in the Harwich OP. Residential lot creation is permitted within these areas under conditions outlined in the Harwich OP and discussed in more detail under the Official Plan section of this report.

BACKGROUND:

Severed Parcel 1	Dimensions – 150.4’F x 665.46’D (along west lot line) Area – 2.5 acres Existing Use – farmland, detached garage and a portion of the existing single detached dwelling Services – a new municipal water connection and private septic system will be required Access – new access required
Severed Parcel 2	Dimensions – 150.4’F x 755.35’D (along west lot line) Area – 2.8 acres Existing Use – farmland and portion of existing single detached dwelling Services – municipal water, new private septic system will be required Access – existing access
Severed Parcel 3	Dimensions – 150.40’F x 804.69’D (along west lot line) Area – 3.0 acres Existing Use – farmland Services – a new municipal water connection and septic system will be required Access – new access required
Retained Parcel	Dimensions – 152.73’F x 901.04’D Area – 3.2 acres Existing Use – farmland Services – a new municipal water connection and septic system will be required Access – new access required
Official Plan	Estate Residential and within SPA 20 – under the Harwich OP, Recreational Residential under the new Chatham-Kent OP
Existing Zoning	“A2.1, Agricultural” within Defined Area 280

CONSULTATION:

At the time of writing, no unfavourable comments have been received from any of the agencies canvassed and the Technical Advisory Committee (TAC) supports the application. It was also noted that because a road widening had already been secured as part of Municipal water line installation no further land was required along the frontage of the proposed lots.

ANALYSIS:

Community Strategic Plan

The recommendations in this report do not support, negatively or positively, a specific objective of the Community Strategic Plan. It is a neutral issue.

Provincial Policy Statement

Section 3.1 Natural Hazards

3.1.1 Development shall generally be directed to areas outside of, hazardous lands adjacent to river, stream and small inland lake systems which are impacted by flooding hazards and/or erosion hazards.

The Lower Thames Valley Conservation Authority (LTVCA) is responsible for the review of applications with regard to issues of natural hazard. Their comments are attached as Appendix "A" and are summarized as follows:

- i) the Authority's waterway regulations apply and application must be made to the LTVCA prior to any works or construction on the subject lands;
- ii) the lands are subject to flooding and must be constructed with flood proofing in mind and a setback of 22 metres maintained from the top of the bank of the Thames River, and;
- iii) the Authority also acts as an agent for the Department of Fisheries and Oceans and application must be made to the LTVCA prior to any works or construction.

Comment: each of the above issues were considered and addressed as part of the amendment(s) which established the policies of SPA 20.

2.1 Natural Heritage

Policy 2.1.4 states that, *development and site alteration shall not be permitted in significant woodlands south and east of the Canadian Shield unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions.*

Policy 2.1.6 states that, *development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.3, 2.1.4 and 2.1.5 unless that ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological function.*

PPS defines significant in regard to woodlands as *an area which is ecologically important in terms of features such as species, composition, age of trees and stand history; functionally important due to its contribution to the broader landscape because of its location, size or due to the amount of forest cover in the planning area, or economically important due to site quality, species composition, or past management history.*

The Ministry of Natural Resources (MNR) Natural Heritage Reference Manual gives some more specific guidelines in the determination of what is a significant woodland. In a planning area with, “less than 5% of the land cover, woodlands 2 hectares in size or larger should be considered for significance.” The manual also outlines the specifics of adjacent lands. These are, “lands within which impacts must be considered and within which the compatibility of a development proposal must be addressed. The extent of adjacent lands may vary depending on such factors as potential changes in surface water hydrology, survivability of trees located near the woodland edge and disruption of wildlife movement patterns. Planning authorities may define adjacent lands using a variety of approaches depending on site-specific conditions. In all cases, these approaches should meet the overall objective of protecting significant woodlands from incompatible development. The Province recommends that adjacent lands are those lands within 50 metres of a significant woodland. This width is recommended since development within 50 metres of significant woodlands has a reasonable probability of affecting the ecological functions of the woodlands.”

Comment The application proposes to create a total of 4 estate residential lots adjacent to a linkage to a larger 6 to 7 ha (15 – 17 acre) natural heritage feature. The new Chatham-Kent OP, under the Natural Heritage mapping, has identified the woodland toward the rear of the lots on the subject property as significant based on the criteria outlined in PPS and the MNR Natural Heritage Reference Manual. As such development is permitted, on adjacent lands, if an EIS (Environmental Impact Statement) demonstrates no negative impacts on the natural feature or its ecological function. The limits of the wooded area were established using the most recent Chatham-Kent aerial mapping in comparison with the natural heritage mapping produced from MNR supplied data.

In this case it is my opinion that there is an alternative approach which will eliminate the need for an EIS to be completed. The subject lots have a considerable amount of depth. With this factor in mind the zoning amendment for the proposed lots imposes a minimum 50 metre setback where no development can take place between the existing wooded

area and all development, be it main or accessory uses including pools. This setback is established as a maximum setback from the front lot line. This provides for a static reference point rather than the edge of the wooded area. This will prevent an individual property owner from removing part of the wooded area to increase development area on the subject lands. This has the same affect as the recommended 50 metre setback guideline established by the Province in the determination of what are adjacent lands and is consistent with PPS. It is important to note that the setbacks imposed by the amending by-law have, in all cases, imposed a setback actually greater than 50 metres to insure a minimum buffer of 50 metres. However the MNR and Ministry of Municipal Affairs and Housing (MMAH) disagree with this approach noting that the creation of lots also constitutes development under PPS.

If the proposed lots were created and remained vacant for the next ten years there would be no impact to the adjacent linkage to the nearby significant woodland. I disagree that the creation of a lot line has impact on the natural heritage feature. The construction of dwellings and/or outbuildings is what has the potential to cause a negative impact. As a result we have taken appropriate measures to restrict building within 50 metres or more of the wooded area. The Province suggests that lands greater than 50 metres from a significant woodland will not be impacted. If development (buildings and structures) are kept 50 metres or greater from the significant woodland then there should be no negative impact. The Essex Region Conservation Authority (ERCA), which is the review authority for MNR in Essex County agrees with this approach as recent development abutting a significant valleyland has been approved with the stipulation that development (dwellings and outbuildings) must be located a minimum of 50 metres from the limit of the significant valleyland (also a natural heritage feature under PPS), or an EIS must be completed and demonstrate no negative impact if development is proposed closer than 50 metres.

An EIS was required on the abutting property to the east of the subject parcel but only because the option of the 50 metre setback was not available. Again the MNR Reference Manual states that "Planning authorities may define adjacent lands using a variety of approaches depending on site-specific conditions. In all cases, these approaches should meet the overall objective of protecting significant woodlands from incompatible development." It is my opinion that this approach will meet the overall objective of protecting the subject natural heritage feature linkage.

2.6 Cultural Heritage and Archaeology

Policy 2.6.2 states that, "development and site alteration shall only be permitted on lands containing archaeological resources or areas of archaeological potential if the significant archaeological resources have been conserved by removal and documentation, or by preservation on site. Where significant archaeological resources must be preserved on site, only development and site alteration which maintain the heritage integrity of the site may be permitted.

Comment An archaeological assessment is required as a condition of consent and a

letter of clearance from the Ministry of Culture must be submitted to the Municipality prior to final approval.

Official Plan

The subject lands are designated Estate Residential by the Harwich OP and within Special Policy Area 20. The application has been reviewed against the policies outlined in SPA 20 and conforms with all of the relevant conditions.

Zoning By-law

The current zoning of the subject parcel is "A2.1, Agricultural" and within Defined Area 280. The zoning used for the original four lots severed in 1997 was "R1.1, Estate Residential". The three severed lots and the retained parcel all meet the minimum lot area and frontage requirements of the "R1.1" zone. In order to address the Natural Heritage issues raised by the PPS it is recommended that the lots be zoned in such a way as to restrict any development within 50 metres of the farthest limit of the wooded area. This is accomplished by setting a maximum setback from the front lot line for each of the four lots depending on their individual total depths. The maximum setback from the front lot line for each lot is as follows:

- Parcel 1 – 62 metres
- Parcel 2 – 100 metres
- Parcel 3 – 120 metres
- Parcel 4 – 120 metres

Conclusion

I support these applications.

FINANCIAL IMPLICATIONS:

There is a nominal change in property taxes anticipated as a result of this application.

Prepared by:

Reviewed by:

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Storey Samways Planning Ltd.

Ralph Pugliese, MCIP, RPP, DPA
Director, Planning Services

Reviewed by:

Reviewed by:

Evelyn Bish, B.A.

Gerry Wolting, B. Math, CA

Dean Collins
B-76/07 and D-28 HA/56/07/C

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Acting General Manager
Community & Development Services

Acting Chief Administrative Officer

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Looking north across severed Parcels 1 and 2 and at the existing wooded area at the rear of all of the proposed lots

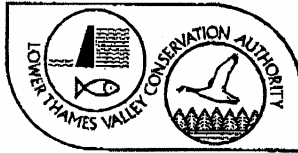


Looking north across severed Parcel 3



Looking north across severed Parcel 4

Appendix "A"



CHAIRMAN
Brian King
Municipality of Chatham-Kent

VICE-CHAIRMAN
Stan Lidster
Township of Southwold

The Thames - A Canadian Heritage River



The Canadian Heritage Rivers System



September 11, 2007

BY FAX ONLY - 2 PAGES

Storey Samways Planning Ltd.
330 Richmond Street, Suite 204
Chatham, Ontario
N7M 1P7

Attn: **Robert Brown**

Re: **Zoning Amendment HA/56/07/C
& Consent Application B-76/07
Part Lot 19, Concession 1 RTS
10965 River Line
Community of Harwich
Municipality of Chatham-Kent**

Please be advised that the above mentioned zoning amendment and severance application has been reviewed by this office. The Authority is responsible for addressing the Natural Hazard Section of the Provincial Planning Policy Statement as well as the Conservation Authority's Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation, R.S.O. 152/06 under the Conservation Authorities Act. After reviewing our files and mapping, staff has determined that the property in question is subject to the Authority's Development and Alterations to Shorelines and Watercourses portion of the regulations. An application from this office is required prior to any works/construction taking place within and/or adjacent to the Thames River. The issue of concern in this area is flooding and erosion.

The above noted lands are subject to flooding under regulatory storm conditions. Any proposed structure(s) must be flood proofed to a minimum elevation of 183.99 metres Canadian Geodetic Datum for the lowest opening into the structure(s) to protect against damages from flood waters. A setback from the Thames River will also be required to any proposed structure(s).

The Authority is also an acting agent for the Department of Fisheries and Oceans with regards to the Federal Fisheries Act. If any shoreline/in-water works are proposed, an application from this office will be required prior to any works/construction taking place within and/or adjacent to the water.

I trust this is satisfactory, but if you should have any questions, or require more information, please call the office.

Yours truly

Valerie Towsley
Resource Technician

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JERRY G. CAMPBELL - GENERAL MANAGER / SECRETARY-TREASURER