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File Number: 357

Planning and Environment Committee
City Hall,
London, Ontario

Dear Sirs/Mesdames:

RE: Southwinds Drive Potential Subdivision Extension

The Planning Committee and Council now have a recommendation from the Senior Planner, Development Planning, with respect to the property at 3804 Southwinds Drive. Although the report generally is supportive of this development proposal, it does so in part by making a number of false generalizations, some of which we propose to draw to your attention.

In terms of its purported compliance with the Provincial Policy Statement, we note that the PPS prohibits the development of individual on-site sewage services and water services for developments in excess of 5 lots unless the services are solely for uses permitted by Policy 1.1.4.1(a) and the site is suitable for the long term provision services. Policy 1.1.4.1(a) permits uses and activities that relate to the management or use of resources and resource-based recreational activities - neither of which would apply to this development. The Policy does permit "limited residential development and other rural land uses", but this is not a "rural land use". This proposed development does not even qualify as a rural area as defined in the PPS. Rural areas, as defined, means land in the rural area located outside settlement areas and **which are outside prime agricultural areas**. A look at this property on the City's own mapping shows that, with the exception of the existing subdivision which undoubtedly came into being

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under a different regulatory regime, since it has been there in excess of 40 years, these lands are in the centre of a prime agricultural area. All the lands around this proposed development are currently and will continue to be, farmed so long as the City does not encroach into them any more than is necessary. Respectfully, this development is not necessary, and does not, in our view, comply with the PPS, as it is required to.

The lands are also outside the urban growth boundary. Staff points to Special Policy Section 10.1.3 of the Official Plan as being an answer to that problem. However, the requirements of that Policy are that the subdivision “shall consist of large rural residential lots comparable to those in the area”. Even with the reduction from the original planned 22 down to 17, the lots in the proposed subdivision are less than half the size of the lots in the area. At the extreme south end of the existing subdivision, there are some lots that may be only 3/4 of an acre in size. The remainder, however, are all roughly two acres in size. That is considerably larger than what is proposed for this development, meaning the proposal does not fall within Special Policy Section 10.1.3 of the Official Plan. As a result, we say that the proposed development does not comply with London’s own Official Plan.

The City is proposing, with respect to fire protection, to have a clause registered on title advising homeowners of the potential for a delayed response time for firefighting services. This particular aspect of the proposal is extremely problematic. Firstly, unless the comment with respect to fire service timeliness is buried in the City’s standard subdivision agreement (where it will be lost and not conveyed to purchasers in all likelihood), since it is not a matter of title, the City is unlikely to be able to register it. Since the conversion from Registry to Land Titles, only matters that go to the root of title (i.e. to ownership of the land) are permitted to be registered, as a general rule.

Even more problematic, simply registering such a caution on title will not absolve

the municipality of liability in the event of property damage or death due to fire. It is simply completely inadequate for that purpose.

What the City is also doing, by requiring that all lots in the subdivision be subject to that caution, especially the four at the most southerly side, abutting my clients' property at 3915 Southwinds Drive, is announcing to them, even though they are paying in their municipal taxes for fire service, they don't really have any either. You may expect that there will be consequences of that acknowledgment.

My clients have repeatedly pointed out that, when one house was built across the road from them, numerous wells in the subdivision went dry. No one has explained how that problem is going to be addressed, except to indicate that these are required to be deep drilled wells. They still cut through the same aquifer. This would be the aquifer that is inadequate to provide sufficient fire protection service, also.

My clients have also repeatedly pointed out that the existing berm that lines the northerly perimeter of their property does not extend far enough to the west. Every attempt they have made to plant trees in that vicinity to screen them from their neighbours has failed due to the flooding which comes from the subject lands across their front lawn, where their septic system is located. It kills the trees, and it has, for a mercy, not yet blown out their septic system, but increased run-off from the lands in question, which can only be the consequence of putting in roads and developing those lands, makes the likelihood of a blow-out of their septic system much more likely.

We note that the City's peer reviewer recommended that a warning be registered on title indicating the location of the proposed sewage facilities and prohibiting the construction of structures which might affect the operation of the system. The reality is that, again that is not a matter of title, so it is unlikely to be able to be registered unless

it is buried somewhere in the depths of a subdivision agreement, which no homeowner ever reads, and, even if that is the mechanism chosen, subsequent owners are very unlikely to adhere to such provisions. Experience has shown, in many subdivision agreements within the City of London, that the conditions imposed on the original developer and in connection with the development are not adhered to or enforced several years down the road.

In summary, and without going into detail with respect to every line of the planning report, the concerns expressed by Elizabeth McKinnon and Doug Dittmer, and by Donald S. Bryant of MacKenzie Lake on their behalf remain largely unaddressed. We would ask the Planning Committee not to imperil the water supply of the current residents or put further pressure on the fire service availability of the current residents. Acknowledge that this subdivision is simply not necessary or an appropriate use of the land, which is prime agricultural land, which the PPS and the City's own OP strive to protect. We ask you not to approve or recommend to Council the approval of this development.

Yours very truly,

Valerie M'Garry
VM'G/hp

cc: *Elizabeth McKinnon and Doug Dittmer*