

Agenda Item #	Page #

File: OZ-8114
Planner: C. Smith

TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER
SUBJECT:	APPLICATION BY: FINCORE GROUP 56 - 82 WELLINGTON ST, 283 - 323 SOUTH STREET AND 69 - 77 WATERLOO STREET MEETING ON MAY 13, 2014

RECOMMENDATION

That, on the recommendation of the Managing Director, Planning and City Planner, the following report on the decision by the Ontario Municipal Board relating to the appeal by Jeffery Brick on behalf of Upper Thames River Conservation Authority and submitted by Fred Tranquilli on behalf of Stan Worbel, Ann Worbel, Ed Dziadura and Peter Dziadura relating to an application for an amendment to the Official Plan and Zoning By-law No. OZ-8114 by Municipal Council concerning, 56 - 82 Wellington St, 283 - 323 South Street and 69 - 77 Waterloo Street **BE RECEIVED** for information.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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February 26, 2013: Planning and Environment Committee- Proposed Official Plan and Zoning By-law amendment (referred back to staff at the applicant's request).

June 18, 2013: Referred to the June 20, 2013 meeting of the Planning and Environment Committee for further consideration; it being noted that the Civic Administration is to investigate and report back on the possibility of creating two amendments to the Zoning By-law Z-1 for each of Phase 1 and Phase 2 of the proposed development.

June 20, 2013: Planning and Environment Committee- Proposed separate Official Plan and Zoning By-law amendments for Phase 1 and Phase 2 of the proposed development. Deferred to June 24, 2013 Special Meeting Planning and Environment Committee.

June 24, 2013: Special Planning and Environment Committee- On the direction of the Municipal Council the Official Plan and Zoning By-law be amended to allowed for Phase 1 and Phase 2 of the proposed development.

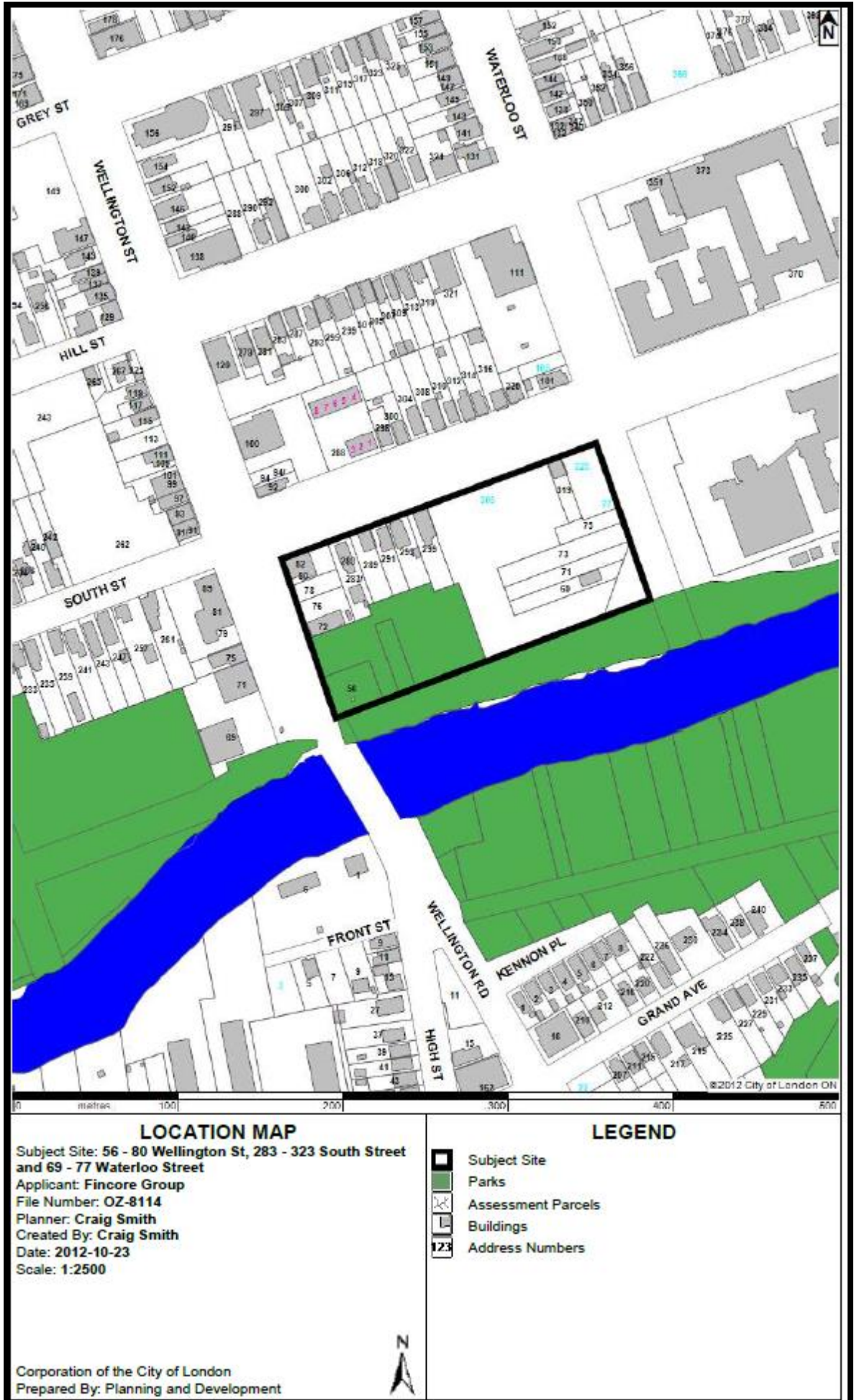
November 12, 2013- report advising the Ontario Municipal Board that the Municipal Council had reviewed its decision made at its session held on June 24, 2013 relating to this matter and sees no reason to alter it.

BACKGROUND

The attached Ontario Municipal Board decision relates to the application made by the Fincore Group on October 10, 2012, to allow for Official Plan and Zoning By-law amendments to allow for the development of:

- a 26-storey (94m tall) mixed use building on the southeast corner of Wellington Street and South Street with 19-storeys of residential apartment use, 6-storeys, 4,650 m2 gross floor area of medical/dental clinic and independent health facility use; and, 929m2 of

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Agenda Item #	Page #

File: OZ-8114
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- ground floor commercial retail uses in the Business District Commercial lands located along the Wellington Street corridor; and
- an 18-storey (67m tall) residential building on the southwest corner of Waterloo Street and South Street with senior citizen apartments and nursing home care, 65 stacked townhouse dwelling units (15m tall) along South Street with a maximum of 1000m2 of convenience commercial uses at ground level and a church use in the lands designated High Density Residential located on the easterly portion of the property.

Council supported the Planning Staff recommendation and the requested Official Plan and Zoning By-law amendment was approved by Council on June 24, 2013.

On July 26, 2013, an appeal was submitted by Fred Tranquilli on behalf of Stan Worbel, Ann Worbel, Ed Dziadura and Peter Dziadura and on July 29, 2013, an appeal was submitted by Jeffery Brick on behalf of the Upper Thames River Conservation Authority opposing the Municipal Council's decision to allow the requested amendments.

An OMB prehearing conference was scheduled for February 7, 2014. Prior to the commencement of the prehearing conference, the Board was informed that a Settlement between and among the Parties had been reached. The Settlement included:

- a) Withdrawal of the appeals against OPA 551 and OPA 552
- b) Modifications to By-laws Z-1-132208 and Z-1-132209, which amend By-law Z-1.

The OMB decision based upon the agreed settlement dismissed the appeal against OPA 551 and 552 and permitted the amendments to Zoning By-laws Z.-1-132208 and Z.-1.-132209 as modified. A copy of the OMB decision is attached as Appendix 1 to this report.

PREPARED BY:	REVIEWED BY:
C. SMITH SENIOR PLANNER, DEVELOPMENT SERVICES	MICHAEL TOMAZINCIC, MCIP, RPP MANAGER, CURRENT PLANNING
SUBMITTED BY:	RECOMMENDED BY:
JIM YANCHULA, MCIP, RPP MANAGER, URBAN REGENERATION	JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER

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Agenda Item #	Page #

File: OZ-8114
Planner: C. Smith

<p>ISSUE DATE:</p> <p>March 18, 2014</p>



PL130814

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant (jointly):	Stan Wrobel, Ann Wrobel, Ed Dziadura, Peter Dziadura
Subject:	Proposed Official Plan Amendment No. OPA 551
Municipality:	City of London
OMB Case No.:	PL130814
OMB File No.:	PL130814

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Upper Thames River Conservation Authority
Appellant (jointly):	Stan Wrobel, Ann Wrobel, Ed Dziadura, Peter Dziadura
Subject:	By-law No. Z-1-132208
Municipality:	City of London
OMB Case No.:	PL130814
OMB File No.:	PL130815

APPEARANCES:

Parties

Counsel

Fincore Group	Alan R. Patton
City of London	James Barber Nicole R. Hall
Upper Thames River Conservation Area	Grant Inglis
Stan Wrobel, Ann Wrobel, Ed Dziadura and Peter Dziadura	Fred Tranquilli

Agenda Item #	Page #

File: OZ-8114
Planner: C. Smith

- 2 -

PL130814

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. HEFFERON ON
FEBRUARY 7, 2014 AND ORDER OF THE BOARD**

[1] On July 9, 2013, the Council of the City of London ("City") approved amendments No. 551 and No. 552 to the City of London Official Plan along with amendments Z-1-132208 and Z-1-132209 to the City's comprehensive Zoning By-law No. Z-1, as amended. These amendments would have permitted Fincore Group ("applicant") to build a mixed use development in two phases on lands bounded by Wellington Street, South Street, Waterloo Street and the open space lands abutting the south branch of the Thames River ("subject lands").

[2] The proposed two-phase development includes two multi-storey residential buildings with retirement lodges and nursing home care units, medical clinics, as well as stacked townhouses and convenience commercial retail.

[3] Stan Wrobel, Ann Wrobel, Ed Dziadura and Peter Dziadura ("appellants") appealed the City's decision to the Ontario Municipal Board ("Board").

MATTER BEFORE THE BOARD

[4] At the subject appeal hearing, four matters were before the Board:

1. City of London Official Plan Amendment No. 551 ("OPA 551")
2. City of London Official Plan Amendment No. 552 ("OPA 552")
3. City of London Zoning By-law Amendment Z-1-132208
4. City of London Zoning by-law Amendment Z-1-132209

SETTLEMENT

[5] Prior to the commencement of the subject hearing, the Board was informed that a Settlement between and among the Parties had been reached. The Settlement includes:

- a) Withdrawal of the appeals against OPA 551 and OPA 552
- b) Modifications to By-laws Z-1-132208 and Z-1-132209, which amend By-law Z-1, as amended.

Agenda Item #	Page #

File: OZ-8114
Planner: C. Smith

EVIDENCE AND ANALYSIS

[6] At the request of the Board, Alan R. Patton, counsel for the applicant, presented a brief overview of the Settlement and the proposed development. His overview was not contradicted and was un-opposed.

[7] He indicated that the Upper Thames River Conservation Area ("UTRCA") issues with the proposed development concerned protection of UTRCA lands closest to the Thames River immediately north of the subject lands had been resolved. The subject UTRCA lands are shown in red and yellow hatching on Exhibit 1, Tab F, pg. 25.

[8] The proposed Settlement is expressed as a series of modifications to the earlier adopted drafts of By-laws Z-1-132208 and Z-1-132209, which amend By-law Z-1, as amended, regarding Phases I and II of the proposed development respectively. Referring to the affidavit evidence of Harry Froussios, a qualified land use planner, Mr. Patton advised that the proposed modifications to By-law Z-1-132208 protect the UTRCA lands from development. Mr. Froussios' affidavit evidence was entered into the evidence as Exhibit 2, Tab 2 (with Exhibits A to G). Grant Inglis, counsel for the UTRCA, indicated that his client concurred with Mr. Froussios' assessment and the proposed Settlement respecting the UTRCA lands.

[9] As Mr. Froussios' evidence was un-opposed and un-contradicted, the Board finds that the proposed Settlement respecting the UTRCA lands represents good planning and is in the public interest.

[10] Mr. Patton further advised that Phase I of the Fincore Group's development is proposed for the lands located at the southeast corner of Wellington and South Streets as shown by the amendment to Schedule A of Zoning By-law Z-1, Exhibit 1, Tab D, pg. 19. The proposed Phase 1 lands are marked in red hatching and include the UTRCA lands zoned OS2 and OS4, which are intended to be retained as public open space.

[11] The proposed Phase II lands are also shown in the amendment to Schedule A of Zoning By-law Z-1. This amendment to Schedule A was entered into the evidence as Exhibit 1, Tab E, pg. 23. The proposed Phase II lands are shown in red hatching on Exhibit 1, Tab E, pg. 23. The applications include the UTRCA lands, zoned OS 2 and OS 4, which are intended to be retained as public open space.

Agenda Item #	Page #

File: OZ-8114
Planner: C. Smith

[12] The City's lands, marked B and C, together with the appellants' lands, and are mostly enclosed by the City's lands, as shown in the diagram at Exhibit 1, Tab F, pg. 25, are the intended location of the proposed Phase II of the development.

ZONING

[13] The zoning adopted by the City in July 2013 in By-law Z-1-132208 and By-law Z-1-132209 included both the proposed Phase I and Phase II lands.

[14] The Phase I lands comprising 291 – 299 South Street and 56 – 82 Wellington Street are shown in the amendment to Schedule A of By-law No. Z-1, as amended, appended to By-law Z-1-132208 and entered into the evidence as Exhibit 3. The current zoning categories applied to the proposed Phase I lands comprise various commercial, neighbourhood facilities and residential zoning categories.

[15] Under the Settlement, these proposed Phase I lands are to be re-zoned to a variety of OS-2 (open space), and Residential/Holding Business District Special Provision/Residential/Regional Facility zones. The exact zoning proposed is provided in the modified By-law Z-1-132208. The land for the proposed Phase I does not include the appellants' lands.

[16] The proposed Phase II lands include, however, both the appellants' lands and the City's lands.

[17] Under the terms of the Settlement between the Parties, a compound zoning was put on the appellants' lands via the above modifications to By-law Z-1-132209. The appellants' lands may be used for the proposed Phase II. The appellants' lands, which are municipally known as 69 - 77 Waterloo Street and 303 – 323 South Street, are coloured yellow with black dots in Exhibit 1, Tab G, pg. 27. The appellants' lands are shown on the amendment to Schedule A of Zoning By-law No. Z-1. The amendment to Schedule A is appended to By-law Z-1-132209, as modified (Exhibit 4).

[18] Under the terms of the Settlement, By-law Z-1-132209, as modified, which amends By-law Z-1, as amended, changes the zoning on the appellants' lands. By-law Z-1-132209, as modified, was entered to the evidence as Exhibit 4.

Agenda Item #	Page #

File: OZ-8114
Planner: C. Smith

[19] The proposed modification to By-law Z-1-132209, as modified, maintains the existing zoning on the appellants' lands while adding the potential zoning shown in the modified By-law Z-1-132209. The intended effect of the compound zoning on the appellants' lands is that the required zoning will already be in place should these lands be required for proposed Phase II of the development. Until that time, the appellants' lands will retain their current zoning.

[20] Mr. Froussios, a qualified land use planner, testified by affidavit that the effect of the requested compound zoning is to provide a commitment to current and future owners of the appellants' lands respecting possible future zoning on these lands. The compound zoning will enhance the future zoning permissions on these lands while not affecting their current zoning. He further testified that these proposed modifications allow the lands to be developed for (a) the existing permitted uses with the existing holding provisions, where applicable; (b) the new range of permitted uses and intensities, subject to the holding provisions; or (c) the range of permitted uses with holding provisions and bonus provisions. Mr. Froussios testified that the modifications also correct some "minor clerical errors" in the zoning symbols used. His evidence was not contested.

[21] The Board also qualified James Allan Yanchula, who is a registered professional planner, to give opinion evidence on land use planning. Mr. Yanchula testified that the proposed modifications to By-law Z-1-132208 and By-law Z-1-132209 are consistent with Provincial planning, conform to the provisions of the City of London Official Plan, represent good planning and are in the public interest.

CONCLUSION

[22] On the *viva voce* evidence of Mr. Yanchula and affidavit evidence of Mr. Froussios, the Board finds that the proposed modifications to By-laws Z-1-132208 and Z-1-132209 amending Zoning By-law No. Z-1, as amended, are consistent with Provincial planning, conform to the City's Official Plan and represent good planning.

Agenda Item #	Page #

File: OZ-8114
Planner: C. Smith

ORDER

[23] The Board Orders the appeals against City of London OPA 551 and OPA 552 are dismissed.

[24] The Board further Orders the appeal against By-law Z-1-132208, which amends City of London Zoning By-law No. Z-1, as amended, is allowed in part. By-law Z-1-132208 is hereby modified in accordance with Exhibit 3.

[25] The Board further orders the appeal against By-law Z-1-132209, which amends City of London Zoning By-law No. Z-1, as amended, is allowed in part. By-law Z-1-132209 is hereby modified in accordance with Exhibit 4.

"C. Hefferon"

C. HEFFERON
MEMBER