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**Alanna Riley
OMB Report**

TO:	CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE
FROM:	G. KOTSIFAS, P.ENG. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL
SUBJECT:	NOTICE OF APPEAL TO THE ONTARIO MUNICIPAL BOARD SOUTHSIDE CONSTRUCTION OF COMPANIES 3804 SOUTH WINDS DRIVE

RECOMMENDATION

That, on the recommendation of the Senior Planner, in response to letters of appeal to the Ontario Municipal Board, dated February 10, 2014 submitted by Valerie M’Garry of Valerie M’Garry Law Office on behalf of Doug Dittmer and Elizabeth MacKinnon, and dated February 7, 2014 submitted by Stephen Gibson of McKenzie Lake Lawyers on behalf of James Waldie, and Joseph Liberatore, relating to 3804 South Winds Drive:

- a) the Ontario Municipal Board **BE ADVISED** that the Municipal Council has reviewed its decision relating to this mater and sees no reason to alter it; and
- b) the City Solicitor **BE DIRECTED** to represent Municipal Council’s interests in this matter and retain expert witnesses in support of Council’s position.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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January 26, 2010 - Report to Planning Committee on subdivision application (39T-09503), Official Plan and Zoning By-law amendment from Southside Construction of Companies (39T-09503) for property located at 3804 South Winds Drive.

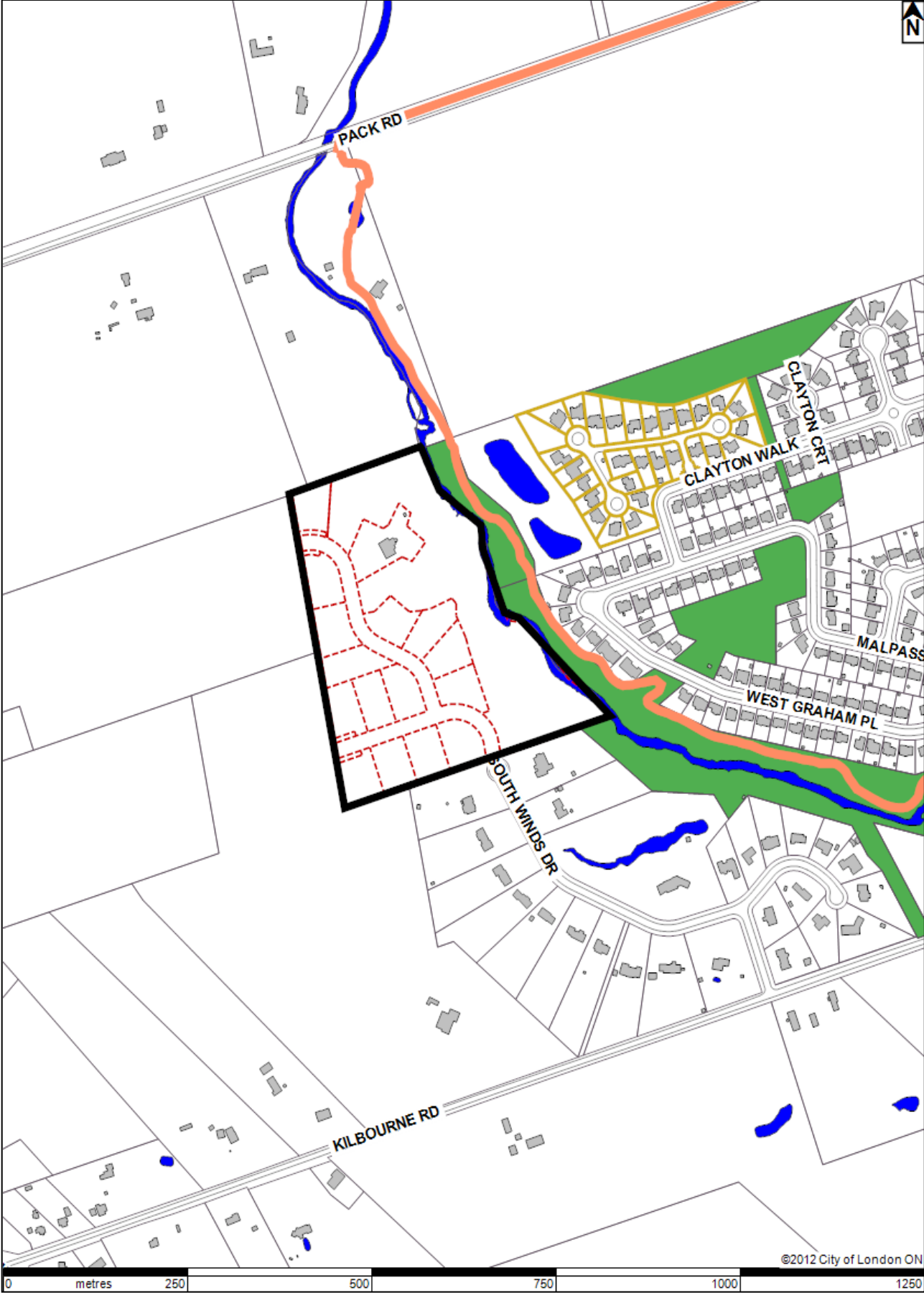
November 26, 2013 – Report to Planning and Environment Committee in response to revised applications submitted September 24, 2012.

PURPOSE AND EFFECT OF RECOMMENDED ACTION

The purpose and effect of the recommended action is to confirm Councils position on the applications and to direct the City Solicitor to represent Council’s interest in this matter before the Ontario Municipal Board.

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BACKGROUND

These applications for Draft Plan of Subdivision, Official Plan and Zoning By-law amendments were accepted on August 25, 2009.

Notices of the applications were liaised in September 2009. Comments were received in response to the proposal from both area residents and public sector agencies. A number of issues with the proposed plan of subdivision and supporting documents were raised; summarized and discussed in a report that was presented at a public participation meeting of Planning Committee on January 26, 2010. The comments that were received included a review commissioned by residents from the area to evaluate the hydrogeological assessment report filed with the application. This review concluded that the investigation fails to meet current industry standards for the assessment of water supplies for developments on individual private wells and, as such, is inadequate to support the draft plan submission.

The applicant submitted a revised plan of subdivision on September 24, 2012. The revised plan of subdivision reduced the number of residential lots from 22 to 17. The plan is to be served by two local streets (includes an extension of South Winds Drive) extending to the westerly property boundary and terminating with temporary turning circles, temporary road easement blocks, and 0.3 metre (1 foot) reserve blocks.

The Municipal Council considered this draft plan, Official Plan and Zoning By-law amendments and recommended they be approved subject to conditions.

At the public participation meeting of the Planning and Environment Committee, issues were raised with respect to the following:

- The quantity and quality of the water supply;
- The encroachment into Environmentally Significant Areas;
- The compliance with the Provincial Policy Statement; and
- Flooding concerns.

APPEALS

Three appeals were received in response to Councils' Draft Plan of Subdivision, Official Plan and Zoning By-law amendments.

The following is a summary of issues raised in the letters of appeal:

This development does not comply with the Provincial Policy Statement

This application was reviewed for consistency with the 2005 Provincial Policy Statement (PPS). It is staff's position that the draft plan of subdivision would provide for a healthy, livable and safe community. The plan provides for 17 large single detached dwelling lots. It also incorporates a park block, a park and open space block along Dingman Creek. An Environmental Impact Study (EIS) and water balance report were submitted as part of the complete application and the EIS determined there would be no direct or indirect impacts to the components of the natural heritage system. Conditions relating to stormwater management best practices and construction mitigation measures were added and implemented for the plan of subdivision. The PPS considers development on private services. Conditions through draft approval will ensure all private services are properly constructed. Section 1.6.4.4 of the PPS notes that individual on site sewage services may be used to service more than 5 lots.

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Development outside of the Urban Growth Boundary is premature

The Official Plan permits residential development outside of the Urban Growth Boundary in the Rural Settlement designation. The Rural Settlement designation, which applies to the subject lands, permits single detached dwellings on lots suitably sized to allow for the proper siting and functioning of individual on-site water supply and wastewater treatment systems.

Does not meet Policy 9.3 of the Official Plan

Section 9.3 of the Official Plan notes that lands that designated Rural Settlement permit single detached dwellings on lots suitably sized to allow for the proper siting and functioning of individual on-site water supply and wastewater treatment systems.

The proposed draft plan, as red-line amended completes the remaining Rural Settlement designated lands in this area. Issues relating to lot sizes and ability of the proposed lots to accommodate water and on site wastewater treatment systems have been addressed through staffs report to PEC on these applications. The development proposal has been reviewed in conjunction with Section 9.3 of the Official Plan and it is staffs position that the proposal development meets the intent of the Official Plan and represents sound land use planning.

Impacts development with have on the quality and quantity of groundwater

This plan of subdivision is proposed to be developed on private services. According to a geotechnical study certified by a licensed professional engineer, the subject property is capable of supporting the development of at least 17 lots. The study confirms that the installation of private water wells and septic beds for the proposed development, in accordance with the specifications of the geotechnical engineer, should not impact the quality and quantity of the ground water aquifer/supply in the surrounding area. Conditions have been included as part of draft approval to ensure that this is implemented at the detailed design stage, and during construction of the development.

As part of the Design Studies submission(post draft approval), the Owner will be required to submit a hydrogeological/geotechnical engineering report which meets the requirements of the Ministry of Environment’s (MOE) Procedure D-5-4: Individual On-Site Sewage Systems; Water Quality Impact Risk Assessment.

Hydrogeological, Hydraulic and Sewage Impacts concerns not addressed

The City retained a consultant to undertake a peer review of the applicant’s hydrogeological assessment study. The peer review was conducted on behalf of the City by Terraprobe Inc. Final comments provided by the Peer Reviewer on February 1, 2013 concluded that:

Based on a review of the current plan of subdivision (17 lots) it is our opinion that each of the lots is of sufficient size to permit construction of a conventional filter bed system. This eliminates our concern regarding Recommendation 6 in our letter of April 20, 2012. However, we continue to recommend that the City of London provide conditions to ensure that the wells and tile field are properly sited and maintained. These conditions are provided below:

- *Water wells drilled in the development must be deep cased wells. The drilling of shallow water wells must be prohibited.*

- *Tertiary treatment systems must be provided for all lots. The systems must produce effluent with a nitrate concentration of 12 mg/L or less.*

- *As required under the Ontario Building Code, the property owner must at all times have a contract with a certified maintenance contractor to ensure the proper maintenance and*

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operation of the tertiary treatment system. This requirement must be registered on title of the property so that all subsequent property owners are aware of this requirement.

- *A warning should be registered on the title of each property indicating the location of the proposed sewage facilities and prohibiting the construction of structures, extensive landscaping, fences, or other pertinences which may affect the operation of the system.*

The conditions recommended by the peer reviewer were included as conditions of draft approval and will be implemented through special provisions through the subdivision agreement. Holding provisions will ensure all requirements relating to private wells and septic systems will be addressed to the satisfaction of the City.

Problems with runoff and flooding from these lands

A key component of managing the stormwater drainage for this site is the selection of a storm outlet location. Through conditions of draft approval and detailed design studies, a proper location and configuration for the SWM outlet will be determined that will minimize drainage and erosion issues on these and abutting lands.

Requirements for design and construction of the proposed Stormwater Management (SWM) BMP measures and storm/drainage servicing for the subject lands shall take into account the Stormwater Management (SWM) targets and criteria identified in the Dingman Creek Subwatershed Study update (2005); the approved servicing report for the proposed design of SWM BMP measures and storm/drainage system for the subject lands; the City’s Waste Discharge and Drainage By-laws, lot grading standards, polices, requirements, and practices; and any other standards and requirements of the City, MOE, or other applicable SWM review agencies.

The details of the impact of the SWM system and outlet will be assessed in an addendum to the EIS which are required at the Design Studies stage. This addendum will be reviewed by City staff and the UTRCA to ensure that there a limited impacts. A holding provision was recommended to ensure the proposed stormwater management system serving this subdivision is constructed and operational to the satisfaction of the City.

No provision for any kind of vegetative or other screening between the lands

Issues relating to screening and vegetation for single detached dwellings is typically left to the discretion of the homeowner. The City typically addresses vegetation and screening for multi-family and commercial/industrial projects through the site plan approval process – not for single detached dwellings in low density residential subdivisions.

Lots are insufficient in size for proper sanitary servicing

The proposed lot sizes are comparable in size to the lots on South Winds Court to the south. The proposed lots and the lots on South Winds Court are approximately 3,000m² in size. Other lots in the area range from 900 m² (on Graham Place) to 7000 m² South Winds Drive.

The hydrogeological study and subsequent peer review that was conducted by Terraprobe concluded that:

Based on a review of the current plan of subdivision (17 lots) it is our opinion that each of the lots is of sufficient size to permit construction of a conventional filter bed system.

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The minimum proposed lot area of 3,000m² for this draft plan is within the range of lot sizes in this area and is considered adequate to accommodate on-site water and septic systems.

Inadequate fire protection for the development

It was acknowledged that there is an issue for all developments outside of the Urban Growth Area which have no ability to connect to municipal services. An EMS station was constructed in 2010 at the intersection of Colonel Talbot Road and Raleigh Boulevard to serve the surrounding area including the subject site.

The proposed zoning does not represent good planning

The lands were zoned Residential R1-14. The R1-14 Zone provides regulations for large rural lots for lands designated Rural Settlement in the Official Plan. The intent is to have larger lots in keeping with lots abutting the subdivision to the south, and to provide for lot sizes which are sufficient to accommodate private services. Appropriate holding provisions have been recommended to address specific issues and to ensure that the development proceeds in an orderly fashion. It is staffs opinion that the zoning does represent good land use planning.

The letters of appeal are attached. The OMB hearing has not yet been scheduled.

RECOMMENDED BY:	REVIEWED BY:
ALANNA RILEY, MCIP, RPP SENIOR PLANNER-DEVELOPMENT PLANNING	ALLISTER MACLEAN MANAGER - DEVELOPMENT PLANNING
REVIEWED BY:	SUBMITTED BY:
TERRY GRAWAY MANAGER-DEVELOPMENT SERVICES AND PLANNING LIAISON	G. KOTSIFAS, P.ENG. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL

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"Attach"