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File No: Z-7973
Planner: A. MacLean

TO:	CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE
FROM:	D.N. STANLAKE DIRECTOR OF DEVELOPMENT PLANNING D. AILLES MANAGING DIRECTOR OF THE DEVELOPMENT APPROVALS BUSINESS UNIT
SUBJECT:	APPLICATION BY: CITY OF LONDON HOLDING PROVISIONS SECTION 3.8 OF ZONING BY-LAW Z-1 PUBLIC PARTICIPATION MEETING ON JANUARY 16, 2012

RECOMMENDATION

That, on the recommendation of the Managing Director of the Development Approvals Business Unit and the Director, Development Planning, based on the City initiated application relating to Section 3 of the Z-1 Zoning By-law, the attached proposed by-law **BE INTRODUCED** at the Municipal Council meeting on January 30, 2012 to amend Zoning By-law No. Z.-1, In conformity with the Official Plan, to amend:

- a) Section 3.8 "Holding Zones" to permit conditional permits for model homes to be issued in conformity with Section 4.5 (2) of the Z-1 Zoning By-law prior to the removal of "h" holding provision;
- b) Section 4.5 2) to clarify that site servicing may be permitted for model homes subject to any requirements of the Chief Building Official and to clarify the number of model home permits which may be considered; and,
- c) the "h-100" holding provision to provide additional clarity to the Chief Building Official on the number of units which may be constructed prior to the removal of this holding provision.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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None.

PURPOSE AND EFFECT OF RECOMMENDED ACTION

Over time, changes in the Building Code Act and the application of holding provisions have effectively taken away opportunities for builders to obtain model home permits and the time required to lift the holding provisions has applied pressure on the Chief Building Official for the issuance of numerous conditional building permits.

The recommended action will permit developers to obtain conditional building permits for model homes once their subdivision agreement has been executed and prior to lifting the general "h"

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holding provision which is in keeping with the original spirit and timing of model home permits. The proposed amendment to the h-100 holding provision will provide additional clarity to the Chief Building Official as to the number of permits which may be issued prior to the removal of this holding provision.

RATIONALE

1. The proposed changes conform to the 2005 Provincial Policy Statement in that the recommended changes will still ensure that the necessary infrastructure is or will be available to meet current and projected needs. The changes will also assist in managing and promoting growth in the community.
2. The proposed changes conform to the Official Plan in that secured agreements will be in place to provide the necessary servicing features or the municipal works will be in place prior to the issuance of conditional permits.
3. The proposed amendments meet the original intent of the Z-1 Zoning By-law provisions as it relates to the ability to obtain model home permits before the holding provision is removed;
4. The changes will bring efficiency to developers and their builders in meeting construction timelines.
5. The amendments do not compromise the City's obligation to provide development on full services as the City would be in possession of an executed subdivision agreement with full security.
6. The proposed amendment to the "h" holding provision will provide builders with the ability to obtain model home building permits only. This does not permit occupancy of the model home.
7. Any model home building permit can be revoked at any time if the conditions of the agreement have not been fulfilled.
8. Changes to the h-100 holding provision will provide the opportunity for up to 80 building permits to be issued (conditional/full building permits) before the holding provision is removed.

BACKGROUND

In recent years there has been pressure from the development industry to address the issue of timing required to remove the general "h" holding provision which requires that developers enter into a subdivision agreement with the City. Staff are not in a position to remove the general "h" holding provision until such time as a subdivision agreement is executed and this results in at least a month in delay for the developer/builder to receive approval and obtain conditional building permits for model homes. The delay cause's pressure for builders wishing to obtain model home permits as soon as water service is available and road access is available. This report will review this issue to determine what options are available to address developers' concerns.

Date Application Accepted: October 19, 2011

REQUESTED ACTION: The purpose and effect of this zoning change is to amend the general h. and the h-100 holding symbols to allow builders the opportunity to apply for and obtain model home building permits prior to lifting these holding provisions.

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PLANNING HISTORY

In 1993 the Z-1 Zoning By-law was approved. This By-law replaced all previous By-laws (CP953-42, CP954-43, CP1000, etc.) and provided one By-law for the entire pre-annexed City. The Z-1 Zoning By-law contains holding provisions in accordance with the *Planning Act*. Lands subject to these provisions are identified by the holding symbol "h" preceding the zone symbol. The use of land, buildings, or structures, as specified in the zone, is permitted only after the holding symbol is removed.

Holding provisions are used to ensure that necessary servicing features or municipal works are in place prior to development; to protect environmentally significant areas or specific natural features from adverse impacts; to ensure that development takes a form compatible with adjacent land uses; to ensure that the necessary agreements are entered into for the orderly development of lands and to address many other site specific development issues. Holding provisions are applied only where there is a need for additional conditions that cannot be applied on a pre-zoning basis, or through the Site Plan Control By-law.

The Zoning By-law is amended to remove the holding symbol when Council determines that the conditions relating to the holding provision have been met. Such conditions may include, but are not limited to, the satisfying of certain financial and servicing requirements of the municipality, and the signing of site plan or subdivision agreements, or any other necessary agreements under the provisions of the Planning Act.

A notice of Council's intent to remove the holding symbol is given in accordance with the requirements of the Planning Act and associated Regulations. A meeting is held at the Planning and Environment Committee to address the request for removal of the holding symbol. Interim uses permitted in a holding zone are typically limited to existing uses that will be compatible with the ultimate use of the land, and certain other uses that may also be compatible. Since 1993 the Holding Provision Section of the Z-1 Zoning By-law has grown to 137 specific holding provisions that deal with site specific development needs. It should also be noted that some of these holding provisions allow for limited development (identified as "interim uses") to occur without the removal of the holding provision.

SIGNIFICANT DEPARTMENT/AGENCY COMMENTS

The proposed changes were circulated to internal departments and external agencies and no major concerns were identified.

PUBLIC LIAISON:	On Saturday October 29, 2011 notice of this application was published in the Living in the City Section of the London Free Press.	Two replies
<p>Nature of Liaison: Change Section 3.8 of Zoning By-law Z.-1 to amend the h. and h-100 Holding Provisions to allow for model home permits to be issued (in accordance with Section 4.5(2) of Zoning By-law Z-1) prior to the lifting of these holding provisions. These holding provisions were created to ensure that the owner enters into a subdivision agreement with the City for the adequate provision of municipal services(h.) and to ensure no more than 80 units be developed until a looped watermain system is constructed and there is a second public access available to the satisfaction of the City Engineer(h-100).</p>		
<p>Responses: In support of the application. Request that the City try to reduce the use of holding provisions. Requests that the removal of holding provisions be delegated to staff.</p>		

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ANALYSIS

In order to determine what options are available to address this issue of timing to remove holding provisions, it is necessary to review our current practice in applying holding provisions and to review the relevant sections of the Z-1 Zoning By-law which deal with holding provisions as they relate to subdivision development.

APPLICATION OF HOLDING PROVISIONS IN THE SUBDIVISION APPROVAL PROCESS

The processing of new subdivision applications usually involves amendments to the zoning of these parcels so that appropriate regulations are applied to implement the proposed lot fabric. Typically the general h. holding provision is applied to these subdivisions to ensure that a subdivision agreement is entered into with the City for the adequate provision of municipal services and to address other conditions of draft approval prior to the issuance of conditional building permits for model homes. In more recent years an additional holding provision (h-100) has also been applied to address the need for water looping and a second public access when more than 80 units are developed in the subdivision.

To remove a holding provision an applicant must make an application to the City as the removal of holding provisions is a change to the Zoning. The application is published in the "Living in the City" section of the London Free Press and circulated to the appropriate Department(s) for review and comment. Also, if a member of the public requests notice of the removal of holding provision at the time the Zoning by-law was approved, they are also notified. The removal of holding provisions is different than a zone change for land use in that the decision (or non-decision) by Council to remove the holding provision can only be appealed to the Ontario Municipal Board by the applicant. Under the current regulations, building permits cannot be issued while the holding provision is in place unless the interim uses are permitted.

In the case of the general h. holding provision, once the subdivision agreement has been executed, staff prepare a report to the Planning and Environment Committee recommending that this provision be lifted. Once the By-law is passed by Council the holding provision no longer encumbers the property and the issuance of model home permits, before the registration of the plan of subdivision, can be considered by the Building Division. It should be noted that the issuance of conditional permits is at the sole discretion of the Chief Building Official.

ISSUE 1 – MODEL HOME PERMITS

RELEVANT Z-1 BY-LAW SECTIONS RELATING TO HOLDING PROVISIONS

A conditional permit is required to construct a model home. Among other items (as listed in Appendix A of this report), model homes are to have water supply for fire fighting, no connection to services, no occupancy and access roads(to at least granular B) for emergency service access.

There is an apparent conflict within the Z-1 Zoning By-law relating to the use of holding provisions and practices in issuing model home permits which came about as a result of changes to the Building Code Act. In addition, there is a need to rationalize the matter that under the Building Code Act, subdivision agreements are not considered to be applicable law whereas Zoning By-laws are.

Section 3.8 (1) states:

*"Where the symbol "h" appears on a zoning map as a prefix to a single zone or a compound zone applying to certain lands, notwithstanding the provisions of that zone or zones, **unless this By-law has been amended to remove the relevant "h" symbol, those lands shall not be developed or used except in compliance with the***

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provisions of the applicable zone for existing uses, or for such other uses set out in the relevant Holding Zone Provisions below. The relevant Holding Zone Provisions are denoted by the number (if any) immediately following the symbol "h" on the zoning map.

Section 3.8 (2) h. of By-law Z-1 states:

"Purpose: To ensure the orderly development of lands and the adequate provision of municipal services, the "h" symbol shall not be deleted until a subdivision agreement or development agreement is entered into for the lands in question with the City of London.

Permitted Interim Uses: Existing uses."

Based on the above, developers/builders are unable to obtain building permits (conditional or otherwise) for any of their lands that are zoned with the h. holding provision as the "existing use" is typically vacant land or agricultural land. As previously noted, the delay (which may be upwards of a month or more) occurs as a result of the requirement to have an executed subdivision agreement prior to bringing a report forward to Committee and Council to lift the holding provision. This delay in obtaining permits for model homes is especially an issue during the summer months due to the fact that there are limited Committee and Council meetings at this time and many builders are interested in proceeding with model home construction to market their product.

Section 4.5(2) – Model Homes of By-law Z-1 states:

"Model homes shall be permitted in all R1, R2, R3, R4, R5, and R6 (excluding apartment buildings) Zones subject to the following:

- (a) ***the lands on which the model homes are to be constructed have received draft plan approval under the Planning Act and the subdivision agreement has been executed;***
- (b) ***the model homes shall comply with the provisions and regulations of this By-law upon registration of the plan of subdivision; and,***
- (c) ***the number of model homes for any draft approved plan of subdivision shall not exceed the lesser of ten (10) dwelling units or ten per cent (10%) of the total number of lots".***

This section of the Z-1 Zoning By-law infers that model home permits may be issued subject to lands receiving draft approval, an executed subdivision agreement, compliance with the provisions of the applicable zones, and with a cap of 10% of the total number of lots to a maximum of 10 lots (within the phase limits of the executed subdivision agreement). It is staff's contention that the original intent of the By-law was to allow for model home permits to be issued if these criteria were met, however the regulations of the "h" holding provision (see previous section in bold italics) does not allow for model home building permits to be issued until the "h" holding provision is lifted.

Section 4.15 1) – Service requirements of By-law Z-1 states

Notwithstanding any other provisions of this By-Law, including Section 4.15(2), Individual Sanitary Facilities, no land shall be used nor any buildings or structures erected or used unless, pursuant to an agreement made or condition imposed under Sections 41, 45, 50 or 53 of the Planning Act, R.S.O. 1990, c. P.13, or Section 50 of the Condominium Act, R.S.O. 1990, c. C.26, dealing with the provision of any of the municipal services as are

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set out in this By-Law, the municipal services to be provided are available to service the land, buildings or structures, as the case may be.

After the plan of subdivision is registered, Development Approvals Business Unit staff carry out an inspection of the services which have been installed to determine if it is appropriate to issue full building permits. If there are sufficient services available, a Certificate of Conditional Approval is issued and this allows Building Division staff to issue full building permits.

How can these issues be addressed?

To address these conflicts to allow for model home permits and site servicing to be issued prior to lifting the holding provision, the following changes are required to Section 3.8 (2) and Section 4.5(2) of the By-law:

Proposed amendment to Section 3.8(2)

Purpose: To ensure the orderly development of lands and the adequate provision of municipal services, the "h" symbol shall not be deleted until a subdivision agreement or development agreement is entered into for the lands in question with the City of London.

Permitted Interim Uses: Existing uses and/or Model Homes in accordance with Section 4.5(2) of this By-law.

Proposed amendment to Section 4.5(2)

"Model homes shall be permitted in all R1, R2, R3, R4, R5, and R6 (excluding apartment buildings) Zones subject to the following:

- (a) *the lands on which the model homes are to be constructed have received draft plan approval under the Planning Act and the subdivision agreement has been executed;*
- (b) *site servicing may be permitted for model homes in accordance with the requirements of the Chief Building Official prior to the registration of the plan of subdivision;*
- (c) *the model homes shall comply with the provisions and regulations of this By-law upon registration of the plan of subdivision; and,*
- (d) *the number of model homes for any draft approved plan of subdivision shall not exceed the lesser of ten (10) dwelling units or ten per cent (10%) of the total number of lots.*

These amendments to the By-law:

- meets its original intent as it relates to the builders' ability to obtain model home permits before the plan of subdivision is registered;
- assists developers and their builders in meeting construction timelines;
- still meets the City's obligation for providing development on full services as the City would be in possession of an executed subdivision agreement with full security;
- it provides builders with the ability to obtain model home building permits only which does not permit occupancy of the model homes;
- provides developers with the ability to obtain site servicing permits where required for

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servicing works on private lands.

A further amendment to Section 4.5(2) is proposed to provide additional clarity on the total number of model home permits which may be issued:

“Model homes shall be permitted in all R1, R2, R3, R4, R5, and R6 (excluding apartment buildings) Zones subject to the following:

- (a) the lands on which the model homes are to be constructed have received draft plan approval under the Planning Act and the subdivision agreement has been executed;*
- (b) the model homes shall comply with the provisions and regulations of this By-law upon registration of the plan of subdivision; and,*
- (c) the number of model homes for any ~~phase of a~~ draft approved plan of subdivision shall not exceed the lesser of ten (10) dwelling units or ten per cent (10%) of the total number of lots ~~of the phase~~”.*

This amendment ensures that the “10% or maximum of 10 units” relates to the phase rather than the entire draft plan.

How is Servicing Addressed as Part of the Model Home Permit Process?

As part of the review process for model home permits, the Building Division reviews each application to ensure that items such as an executed subdivision agreement is in place, there is sufficient capacity in the pollution control plant; water supply for fire fighting is available; services are available for each lot; access roads for fire fighting to each lot are at least granular “B” condition; and many other items must be in place prior to issuing a conditional permit. Appendix A to this report contains the checklist which is used by the Building Division as part of their review for model home permits. The builder also agrees (through the execution of a conditional permit agreement with the City) that there will be no occupancy of the building and that sanitary and storm sewers will not to be used.

ISSUE 2 – REQUIREMENT FOR LOOPING WATER SERVICES AND THE PROVISION FOR A SECOND PUBLIC ACCESS

H-100 Holding Provision

More recently the following new holding provision has been applied to subdivisions requiring that water looping and a second public access be required prior to the issuance of the 81st building permit.

Purpose: To ensure there is adequate water service and appropriate access, no more than 80 units may be developed until a looped watermain system is constructed and there is a second public access available to the satisfaction of the City Engineer, prior to the removal of the h-100 symbol.

The intent of this holding provision is to allow for building permits to be issued for up to 80 residential units without the need to remove this holding provision. To provide more clarity to the Chief Building Official it is recommended that the following text be added to this holding provision:

Purpose: To ensure there is adequate water service and appropriate access, ~~no more than 80 units may be developed until a looped watermain system~~ ~~must be~~ is constructed and ~~there is a second public access~~ ~~must be~~ available to the satisfaction of the City Engineer, prior to the removal of the h-100 symbol.

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Permitted Interim Uses: A maximum of 80 residential units



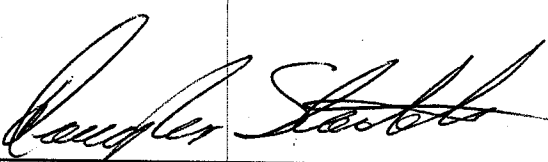
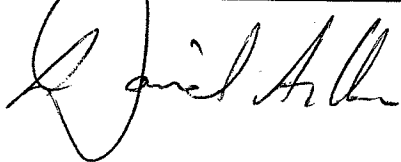
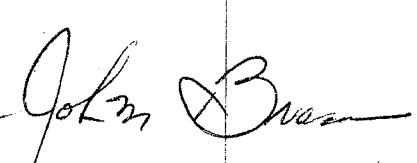

This additional text would provide clarity for the Chief Building Official so that up to 80 permits may be issued prior to lifting the h-100 holding provision. It should be noted that this would require the Building Division staff to closely monitor permit activity to ensure that this maximum 80 residential unit limit is adhered to prior to removal of this holding provision.

Additional Comments on this Application

Comments received during the circulation of this proposed By-law change is to delegate the removal of holding provisions to staff in order to expedite this process. Since the removal of a holding provision is carried out by an amendment to the Zoning By-law, Council does not have the authority (under the Planning Act) to delegate this action to Administration. The proposed amendments provide flexibility for the Chief Building Official to issue permits for model homes before the "h" is removed.

CONCLUSION

The proposed changes to the Z-1 Zoning By-law are intended to address the issues raised by the development industry concerning their ability to obtain model home permits in a timely fashion. The recommended amendments will ultimately streamline the approvals process for subdivision developers in the City. The proposed minor changes to the "h" and "h-100" Holding Provisions represent good land use planning.

PREPARED BY:	SUBMITTED BY:
	
ALLISTER MACLEAN SENIOR PLANNER	BRUCE HENRY MANAGER – DEVELOPMENT PLANNING
RECOMMENDED BY:	RECOMMENDED BY:
	
D.N. STANLAKE DIRECTOR-DEVELOPMENT PLANNING	DAVID AILLES MANAGING DIRECTOR – DEVELOPMENT APPROVALS BUSINESS UNIT
CONCURRED BY:	CONCURRED BY:
	
J. BRAAM CITY ENGINEER	J. M. FLEMING CITY PLANNER

January 6, 2012
 AM/am
 "Attach."

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Appendix A

MODEL HOME CONDITIONAL PERMITS

SUBDIVISION: _____ Lot(s): _____

Items Required to Comply with Council Policy

Date Rec'd.

- | | |
|---|-------|
| 1. Copy of the executed subdivision agreement by owner. | _____ |
| 2. Letter from owner acknowledging items in agreement they are responsible for, example:
a. Grading Engineer for subdivision;
b. Pollution Plant Capacity restriction in agreement;
c. Model Home No Occupancy;
d. Plan indicating the lots model homes request is for and proposed lot numbers;
e. Security;
f. Roads are to be maintained;
g. Street signs are installed. | _____ |
| 3. Letter from subdivision engineer confirming all prior to construction and "prior to" building permit items in subdivision agreement, if they affect requested lots, are complied with. | _____ |
| 4. Letter from subdivision engineer concerning:
a. Water supply for fire fighting within 300' of each requested lot;
b. Services are available for each lot;
c. Access roads for fire fighting to each lot at least granular "B" condition;
d. Estimate of construct of works remaining to completion for these lots (paving, sodding, etc.);
e. Tree preservation requirements if applicable/noise vibration. | _____ |
| 5. Geotechnical report for building foundations from soils and methane consultant. | _____ |
| 6. Owner to provide security in amount indicted in 4d above (letter of credit or certified cheque). | _____ |
| 7. Conditional permit agreement by owner. | _____ |
| 8. Conditional permit agreement by contractor. | _____ |
| 9. \$2,000.00 security for each dwelling unit (letter of credit or certified cheque) by owner or contractor. | _____ |
| 10. \$120.00 conditional permit fee for each permit application. | |
| 11. Applicant to indicate on application under description : "Model Home". | |

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Responses to Public Liaison Letter and Publication in "Living in the City"

Telephone

Written

Jim Kennedy

London Development Institute

In support of the application. Request that the City try to reduce the use of holding provisions. Requests that the removal of holding provisions be delegated to staff.

Maureen Zunti

Sifton Properties Ltd.

In support of proposed amendments. Requests that the removal of holding provisions be delegated to staff.

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Bill No. (number to be inserted by Clerk's Office)
insert year

By-law No. Z.-1-_____

A by-law to amend Section 3 of By-law No. Z.-1.

WHEREAS the City of London has determined amendments to Section 3 of By-law Z-1, as set out below are required;

AND WHEREAS this rezoning conforms to the Official Plan;

THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1) Section Number 3 of By-law No. Z.-1 is amended as follows:

- a) Section 3.8
 - 2) Holding Zone Provisions

Subsection a) h. is amended by deleting "Permitted Interim Uses. Existing Uses" and replacing it with the following:

Permitted Interim Uses: Existing uses and/or Model Homes in accordance with Section 4.5(2) of this By-law.

- b) Section 3.8
 - 2) Holding Zone Provisions

Subsection www) h-100 is amended by deleting and replacing it with the following:

h-100 Purpose: To ensure there is adequate water service and appropriate access, a looped watermain system must be constructed and a second public access must be available to the satisfaction of the City Engineer, prior to the removal of the h-100 symbol.

Permitted Interim Uses: A maximum of 80 residential units

c) Section 4.5(2) is amended by deleting and replacing with the following:

- (b) site servicing may be permitted for model homes in accordance with the requirements of the Chief Building Official prior to the registration of the plan of subdivision;
- (c) the number of model homes for any phase of a draft approved plan of subdivision shall not exceed the lesser of ten (10) dwelling units or ten per cent (10%) of the total number of lots of the phase; and .
- (d) the number of model homes for any draft approved plan of subdivision shall not exceed the lesser of ten (10) dwelling units or ten per cent (10%) of the total number of lots.

The inclusion in this By-law of imperial measure along with metric measure is for the purpose of convenience only and the metric measure governs in case of any discrepancy between the two measures.

This By-law shall come into force and be deemed to come into force in accordance with subsection 34(21) of the *Planning Act, R.S.O. 1990, c. P.13*, either upon the date of the passage of this by-law or as otherwise provided by the said subsection.

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PASSED in Open Council on January 31, 2011.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First Reading - January 31, 2011
Second Reading - January 31, 2011
Third Reading - January 31, 2011