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File: OMB-Z-8167
Planner: C. Smith

TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE
FROM:	G. KOTSIFAS, P.ENG. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES & CHIEF BUILDING OFFICIAL
SUBJECT:	APPLICATION BY: SUSAN DEJONG c/o the TRIDON GROUP LTD. 161 WINDERMERE ROAD MEETING ON MARCH 2, 2015

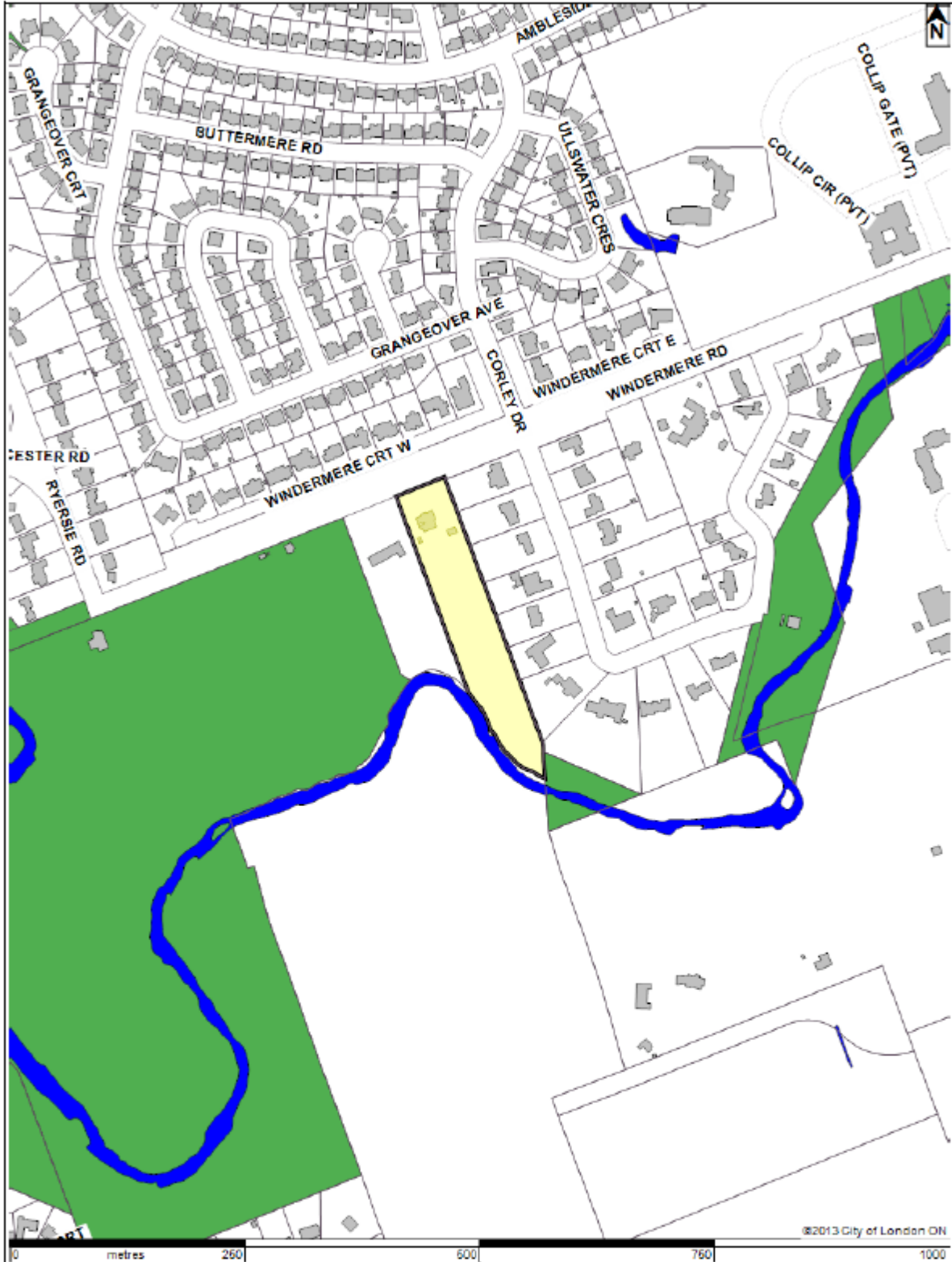
RECOMMENDATION

That, on the recommendation of the Senior Planner, Development Services, the following actions be taken with respect to the application of Susan Dejong c/o Tridon Group Ltd. relating to the property located at 161 Windermere Road:

- (a) Municipal Council **BE ADVISED** that this Zoning By-law amendment application (Z-8167) has been appealed to the Ontario Municipal Board by Fred Tranquilli of Lerner's LLP on behalf of the applicant on the basis of non-decision by Council within 120 days;
- (b) The Ontario Municipal Board **BE ADVISED** that Municipal Council **RECOMMENDS** that the Zoning By-law No. Z.-1 **BE AMENDED** as attached as Appendix "A", in conformity with the Official Plan, **FROM** a Residential R1 (R1-9) Zone which permits single detached dwellings on lots with a minimum lot frontage of 18 m and a minimum lot area of 690 m² **TO** an Open Space (OS5) Zone which permits conservation lands and passive recreational uses, and a Holding Residential R6 Special Provision(h*h-5*h-35*h-41*R6-1 ()) Zone which permits cluster housing in the form of single detached dwellings with a maximum five (5) units with holding provisions to ensure that a development agreement is entered into with the City, a public site plan meeting be held when the site plan is brought forward, that the building as identified by the City as historically significant actively pursues designation under the Ontario Heritage Act, and measures are implemented to ensure the natural feature is not negatively impacted;
- (c) The Ontario Municipal Board **BE ADVISED** that Municipal Council **RECOMMENDS** that the request to amend Zoning By-law No. Z.-1 to change the zoning of the subject property **FROM** a Residential R1 (R1-9) Zone and an Open Space (OS5) Zone **TO** a Residential R6 (R6-4) Zone which permits cluster housing in the form of single detached dwellings, semi-detached dwellings and duplexes at a maximum density of 30 units per hectare (12 units per acre) and an Open Space Special Provision (OS5 ()) Zone to permit passive recreational structures (such as a gazebo, benches, chairs, fire/bbq pit, etc.) within these lands **BE REFUSED** for the following reasons:
 - This permits an intensity and form of development that is not in keeping with the abutting existing residential uses;
 - Activities requested in the Open Space Special Provision zone will not protect the Medway Valley Heritage Forest Environmentally Significant Area; and
- (d) That the City Solicitor **BE DIRECTED** to provide legal and planning or expert witness representation at the Ontario Municipal Board hearing in support of Municipal Council's position.

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LOCATION MAP

Subject Site: 161 Windermere Road
 Applicant: De Jong Suzanne
 File Number: Z-8167
 Planner: Allister MacLean
 Created By: Allister MacLean
 Date: 2013-04-09
 Scale: 1:5000

LEGEND

- Subject Site
- Parks
- Assessment Parcels
- Buildings
- 123 Address Numbers



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EXECUTIVE SUMMARY

This report notes that the zoning by-law amendment application (Z-8167) has been appealed to the Ontario Municipal Board by Fred Tranquilli of Lerner LLP on the basis of Council’s non-decision within 120 days of receipt of the complete application. Throughout the processing of this planning application, Staff expended considerable time working with the applicant to resolve technical issues and address planning related concerns which led to the 120-day timeline being exceeded. The application was presented at a public participation meeting on November 18, 2014 before the Planning and Environment Committee. Numerous stakeholders including area residents, the Upper Thames River Conservation Authority and community groups were in attendance.

The Planning and Environment Committee at the time had concern that many issues were unresolved and they were not prepared to recommend a decision to Council. The Planning and Environment Committee recommended that the application be referred back to Staff for additional information and to report back at a future meeting of the Planning and Environment Committee.

The intent of this report is:

1. to advise Council that the application has been appealed for non-decision within the 120 day period of the acceptance of a complete application as prescribed by the *Planning Act*;
2. to advise Council that even though the application has been appealed, a position from Municipal Council is required in order to provide direction to the City Solicitors Office on the upcoming appeal;
3. to provide comments addressing Council’s list of concerns based on the information available at the time of their referral; and
4. for Council to direct the City Solicitor to appear and retain expert witnesses in support of Council’s position as needed.

The Planning Act

Section 34 (Zoning by-laws) (11) of the *Planning Act* states: *Appeal to O.M.B.*

Where an application to the council for an amendment to a by-law passed under this section or a predecessor of this section is refused or the council refuses or neglects to make a decision on it within 120 days after the receipt by the clerk of the application, any of the following may appeal to the Municipal Board by filing a notice of appeal with the clerk of the municipality:

1. *The applicant.*
2. *The Minister.*

The applicant has appealed the requested amendment to the Zoning By-law. The jurisdiction for a decision and the forum for public participation now resides with the Ontario Municipal Board. For the Board to consider Council’s direction, Council may wish to advise the Ontario Municipal Board that:

1. it agrees with staff’s recommendation;
2. refuses staff’s recommendation; or
3. provide any other direction that Council wishes.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

39CD-14501/Z-8167- November 18, 2014, Planning and Environment Committee Public

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Participation Meeting – (Staff report attached as Schedule 1)

November 25, 2015 Council

On November 25, 2014 Council recommended: *That the application of Tridon Group Ltd., relating to the property located at 161 Windermere Road, **BE REFERRED** back to the Civic Administration, to address the following concerns raised at the public participation meeting and to report back at a future meeting of the Planning and Environment Committee:*

- a) *whether or not the surface water seeps have been properly identified;*
- b) *the outstanding approval requirement, from the Ministry of Natural Resources, relating to the Queensnake;*
- c) *the concerns relating to erosion;*
- d) *the adequateness of the proposed stormwater management system;*
- e) *the adequateness of the sanitary sewer services;*
- f) *land use planning concerns;*
- g) *land title issues;*
- h) *water drainage issues; and,*
- i) *the concerns expressed by the City of London Environmental and Ecological Planning Advisory Committee;*

PURPOSE AND EFFECT OF RECOMMENDED ACTION

The recommendation in clause (a) serves to advise Municipal Council that the Zoning By-law amendment applications have been appealed to the Ontario Municipal Board (OMB) on the basis of non-decision within 120 days.

The recommendation outlined in clause (b) is intended to advise the Ontario Municipal Board that Council recommends the amendment to facilitate residential intensification and redevelopment of the site in an appropriate form.

The recommendation in clause (c) is intended to advise the Ontario Municipal Board that Council recommends refusal of the applicants proposed amendment to facilitate an inappropriate form of residential intensification and to allow for non-passive residential uses in an Open Space designation.

APPLICATION TIMELINE/MILESTONES
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1. **April 4, 2013** – City receives “Complete” application for a Zoning By-law amendment for 161 Windermere from Suzanne Dejong c/o Tridon Management Group. (Z-8176).
2. **April 21, 2013** – Notice of Application is published in Londoner, circulated to required public agencies, and mailed to all property owners within 120 metres of subject lands.
3. **May 3, 2013** – Preliminary commenting period expires – technical issues raised by the Upper Thames River Conservation Authority and the City of London Ecologist regarding submitted Environmental Impact Study and Slope Stability Assessment including Hydrogeo and Geotechnical studies.
4. **September 5, 2013**- Meeting with Upper Thames River Conservation Authority, City Staff and Applicant to discuss additional required materials for Slope Stability Assessment.
5. **September 27, 2013**- Site visit with UTRCA, City Staff and Applicant
6. **February 7, 2014**- City receives “Complete” application for draft plan of Vacant Land Condominium which includes a revised Environmental Impact Study.

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7. **February 12, 2014-** Neighbourhood open house held by applicant at Masonville Library.
8. **September 25, 2014-** Meeting with Upper Thames River Conservation Authority, City Staff and Applicant to discuss submitted materials for Hydrogeo and Geotechnical studies including “seeps” located on site.
9. **November 18, 2014-** Public Participation meeting held before the City of London Planning and Environment Committee.
10. **November 25, 2014-** Council refers the application back to the Civic Administration, to address concerns raised at the public participation meeting and to report back at a future meeting of the Planning and Environment Committee

FURTHER INFORMATION

Attached as “Schedule 1” is staff’s November 18, 2014 report to the Planning and Environment Committee. The report provided information to the Planning and Environment Committee regarding the application for a plan of vacant land condominium and zoning by-law amendment applications received from Susan Dejong c/o Tridon Group Ltd. The requested amendments would facilitate the development of five (5) vacant land single detached dwellings at 161 Windermere Road (four (4) new dwellings and the existing single detached dwelling). The property at 161 Windermere road is located adjacent to the Medway Valley Heritage Forest an Environmentally Significant Area (ESA), on the south.

Council directed Civic Administration to report back at a future meeting of the Planning and Environment Committee to address the below listed items. Staff have carried out a review of these items and provides the following comments:

a) *whether or not the surface water seeps have been properly identified;*

Five (5) seeps were identified in the AECOM’s Environmental Impact Study and are located outside of the proposed development limit. The development limit was accepted by the City of London Environment and Parks Planning division and Upper Thames River Conservation Authority. Concern was raised that the proposed development may impact the function of the seeps. The City’s Stormwater Division has reviewed the hydrogeological report and is satisfied that the Environmental Significant Area limit as delineated in the accepted Environmental Impact Study by AECOM dated January 24, 2014 will not impact the existing conditions. A holding provision (h-35) was recommended with the Residential R6 Special Provision (R6-1 (_)) Zone to ensure that further reports will be submitted and any mitigation measure implemented through the Site Plan process.

b) *the outstanding approval requirement, from the Ministry of Natural Resources, relating to the Queensnake;*

On November 19, 2014, the City received an email from the Ministry of Natural Resources stating:

The Ministry of Natural Resources and Forestry (MNRF) reviewed the attached letter to Tridon Properties Ltd., dated October 9, 2014. We understand that it was prepared in response to MNRF comments provided on October 3, 2014 regarding the development proposed at 161 Windemere Road in the City of London.

Based on our review of the additional information provided, MNRF has no further concerns with respect to Queensnake.

c) *the concerns relating to erosion;*

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The applicant submitted a revised geotechnical report dated July 23, 2013 – Slope Stability Assessment 161 Windermere Road, London, Ontario prepared by exp Engineering. UTRCA and City staff reviewed the study and accepted the reports recommendation for the location of the top of slope. The staple slope is contained within the Environmentally Significant Area boundary as established through the revised Environmental Impact Study. The proposed development is located wholly outside of the delineated top of staple slope.

d) the adequateness of the proposed stormwater management system;

Through the SWM report and the revised SWM report submitted by Eng Plus on behalf of the applicant the City's Stormwater Division was satisfied that the SWM system will not result in a net change in the existing condition. Holding provisions were proposed to be included to the proposed zone to ensure that SWM will be addressed through the Site Plan process.

e) the adequateness of the sanitary sewer services;

The site will be required to connect to the 200mm diameter sanitary sewer on Windermere Court West, which has capacity to convey the additional flows. This issue will be addressed in greater detail as part of the Site Plan Approval process.

f) land use planning concerns;

In the November 18, 2014 Staff report (attached Schedule 1) all planning matters were addressed. It is Staff's opinion that the proposed recommendation is consistent with the *Planning Act*, the Provincial Policy Statement and the City of London Official Plan.

g) land title issues;

Land title issues are not a matter that can be addressed through Zoning, Site Plan Approval or condominium conditions.

h) water drainage issues;

The City of London Drainage By-law WM-4 requires that the proposed grading and drainage of this development not impact adjacent properties. All grading and drainage issues will be addressed by the applicants consulting engineer to the satisfaction of the City through the Site Plan Approval process

i) the concerns expressed by the City of London Environmental and Ecological Planning Advisory Committee;

The City and UTRCA have reviewed the applicants January 24, 2014 Environmental Impact Study and addendums and through this process the development limit and protection of the Medway Valley Heritage Forest Environmentally Significant Area was accepted. In the November 18, 2014 Staff report (attached Schedule 1) all matters relating to the development limit and the protection of the Medway Valley Heritage Forest Environmentally Significant Area have been addressed. Further, it is Staff's opinion that the proposed holding provisions will address the concerns raised by the City of London Environmental and Ecological Planning Advisory Committee.

Staff has reviewed its November 18th 2015, recommendation relating to this matter and sees no reason to alter it.

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CONCLUSION

The property owner has appealed to the Ontario Municipal Board the application to amend the zoning on the lands at 161 Windermere Road on the basis of non-decision within 120 days of receipt of the complete application by the City. The jurisdiction for a decision and the forum for public participation now resides with the Ontario Municipal Board. Recommendation of Council is required to provide Legal staff with direction regarding the proposed amendment.

RECOMMENDED BY:	REVIEWED BY:
C. SMITH SENIOR PLANNER, DEVELOPMENT SERVICES	ALLISTER MACLEAN MANAGER, DEVELOPMENT PLANNING
CONCURRED BY:	SUBMITTED BY:
TERRY GRAWAY MANAGER, DEVELOPMENT SERVICES & PLANNING LIAISON	G. KOTSIFAS, P.ENG MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES & CHIEF BUILDING OFFICIAL

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APPENDIX "A"

Bill No. (number to be inserted by Clerk's Office)
2015

By-law No. Z.-1-_____

A by-law to amend By-law No. Z.-1 to rezone an area of land located at 161 Windermere Road.

WHEREAS Tridon Group Inc has applied to rezone an area of land located at 161 Windermere Road, as shown on the map attached to this by-law, as set out below;

AND WHEREAS this rezoning conforms to the Official Plan;

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

Schedule "A" to By-law No. Z.-1 is amended by changing the zoning applicable to lands located at 161 Windermere Road , as shown on the attached map, from a Residential R1 (R1-9) Zone to an Open Space (OS5) Zone and a Holding Residential R6 Special Provision(h*h-5*h-35*h-41*R6-1 ()) Zone.

1) Section Number 10.4 of the Residential R6 (R6-1) Zone is amended by adding the following Special Provision:

-) R6-1 ()
 - a) Regulations
 - i) Number of Cluster 5 units
Single Detached
Dwellings
(Maximum)

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 section 34 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 section.

PASSED in Open Council on .

Matt Brown
Mayor

Catharine Saunders
City Clerk

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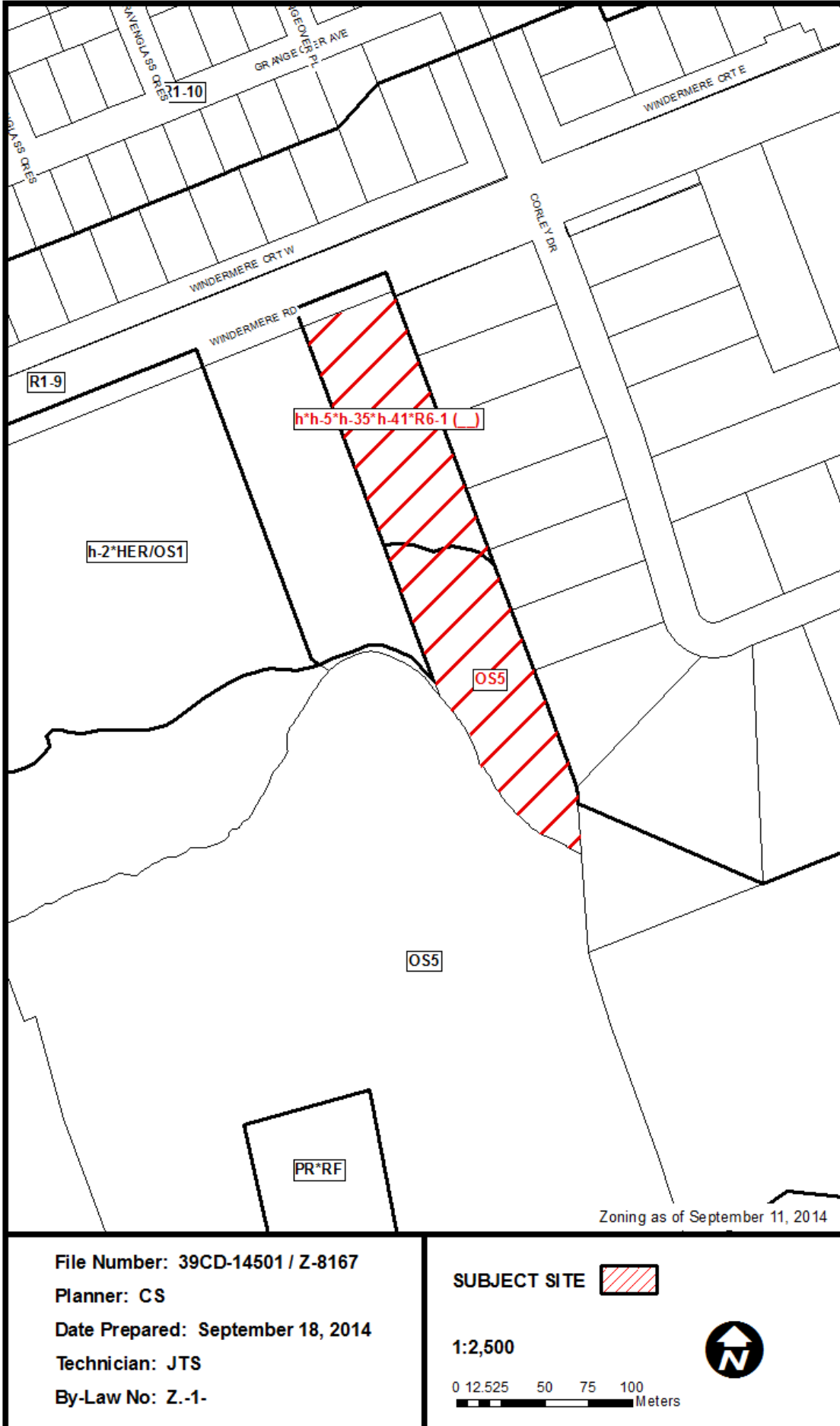
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First Reading -
Second Reading -
Third Reading -

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File: OMB-Z-8167
Planner: C. Smith

AMENDMENT TO SCHEDULE "A" (BY-LAW NO. Z.-1)



Zoning as of September 11, 2014

File Number: 39CD-14501 / Z-8167
 Planner: CS
 Date Prepared: September 18, 2014
 Technician: JTS
 By-Law No: Z.-1-

SUBJECT SITE

1:2,500

0 12.525 50 75 100
 Meters



Geocubes

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Planner: C. Smith

Schedule 1