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File No.39CD-14501/Z-8157/SP15-009524
Planner: Craig Smith

TO:	CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE
FROM:	GEORGE KOTSIFAS, P. ENG. MANAGING DIRECTOR OF DEVELOPMENT AND COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL
SUBJECT:	TRIDON PROPERTIES LTD. 161 WINDERMERE ROAD ONTARIO MUNICIPAL BOARD DECISION MEETING ON JANUARY 9, 2017

RECOMMENDATION

That, on the recommendation of the Senior Planner, Development Services, the following report on the decision of the appeals to the Ontario Municipal Board as submitted by Suzanne deJong and Tridon Properties Ltd., relating to the applications for Vacant Land Condominium Approval, Zoning By-law Amendment and Site Plan Approval located at 161 Windermere Road **BE RECEIVED** for information.

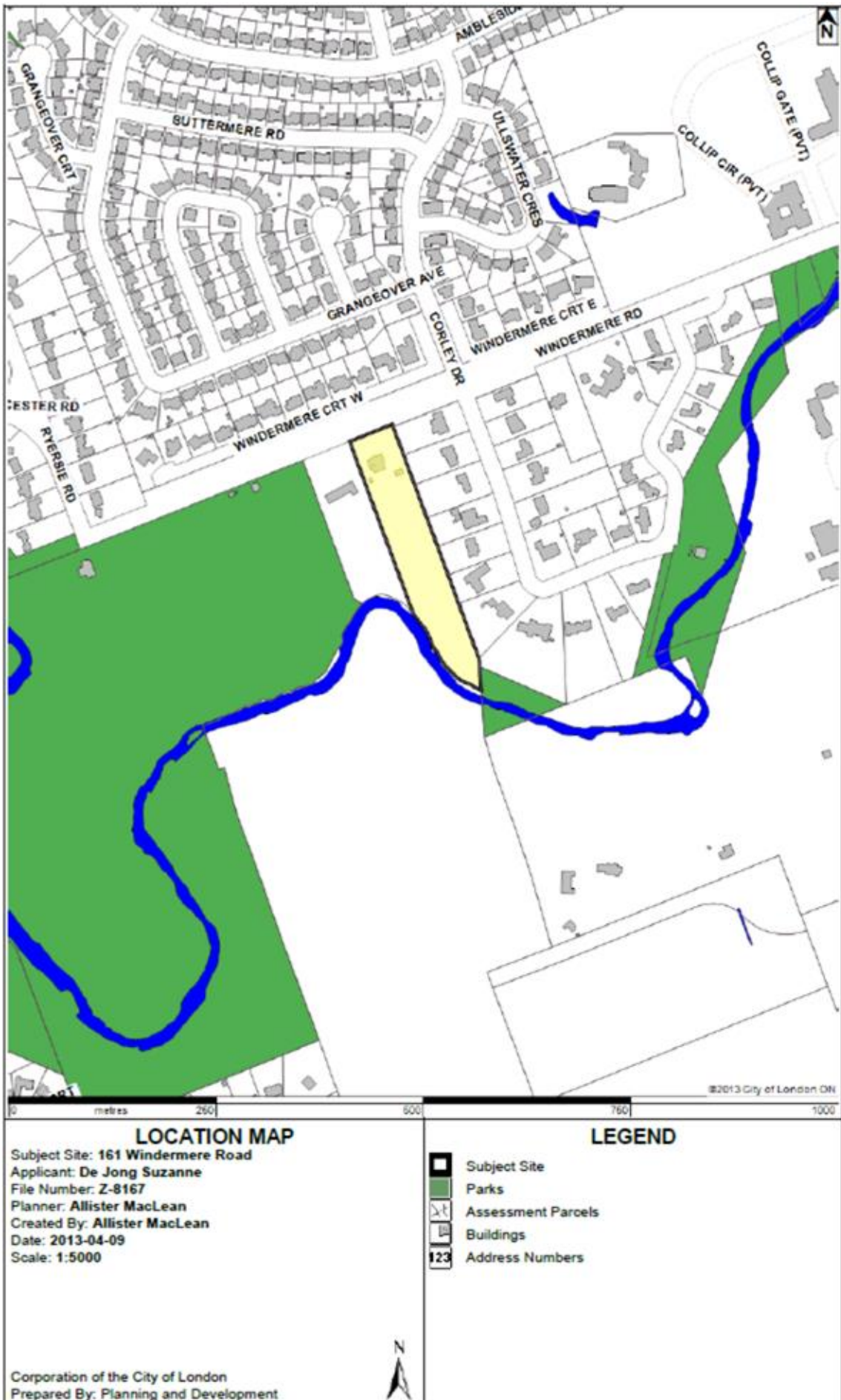
PREVIOUS REPORTS PERTINENT TO THIS MATTER
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September 21, 2015- Report to PEC relating to the appeal to the requested Vacant Land Condominium draft plan approval and Site Plan Approval.

March 2, 2015 - Report to PEC relating to the appeal to the requested Zoning By-law amendment

November 18, 2014 – Original report to PEC on zoning by-law amendment and vacant land condominium applications.

Location Map



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PURPOSE AND EFFECT OF RECOMMENDED ACTION

This is an information report. The effect of the decision of the OMB is to allow for five (5) single detached dwellings in the form of a vacant land condominium to be developed on these lands, as shown on the attached Ontario Municipal Board approved Vacant Land Condominium draft plan.

BACKGROUND

This application was presented at a public participation meeting on November 18, 2014 before the Planning and Environment Committee. At that time, numerous stakeholders including area residents, the Upper Thames Conservation Authority and community groups were in attendance. As a result of issues raised at the public participation meeting, the application was recommended for referral back to Staff for additional information and further report to the Planning and Environment Committee.

In December 2014, on the basis of Council's non-decision within 120 days of receipt of the complete application, the applicant appealed the proposed Zoning By-law amendment application (Z-8167) to the Ontario Municipal Board.

By way of Council Resolution dated March 10, 2015, the City Solicitor was directed to provide legal and planning or expert witness representation at the Ontario Municipal Board hearing of the zoning appeal in support of the position of Municipal Council.

On May 7, 2015, Tridon filed with the Ontario Municipal Board an appeal of its Vacant Land Condominium application (39CD-14501), on the basis of the Approval Authority's non-decision decision within 180 days of receipt of the complete application.

On August 5, 2015, Tridon filed an appeal of site plan with the Ontario Municipal Board given that no decision had been rendered by the Approval Authority within the prescribed 30 day time frame.

By way of Council Resolution dated September 30, 2015, the City Solicitor was directed to provide legal and planning or expert witness representation at the Ontario Municipal Board hearing of the Vacant Land Condominium and Site Plan appeals in support of the position of Municipal Council.

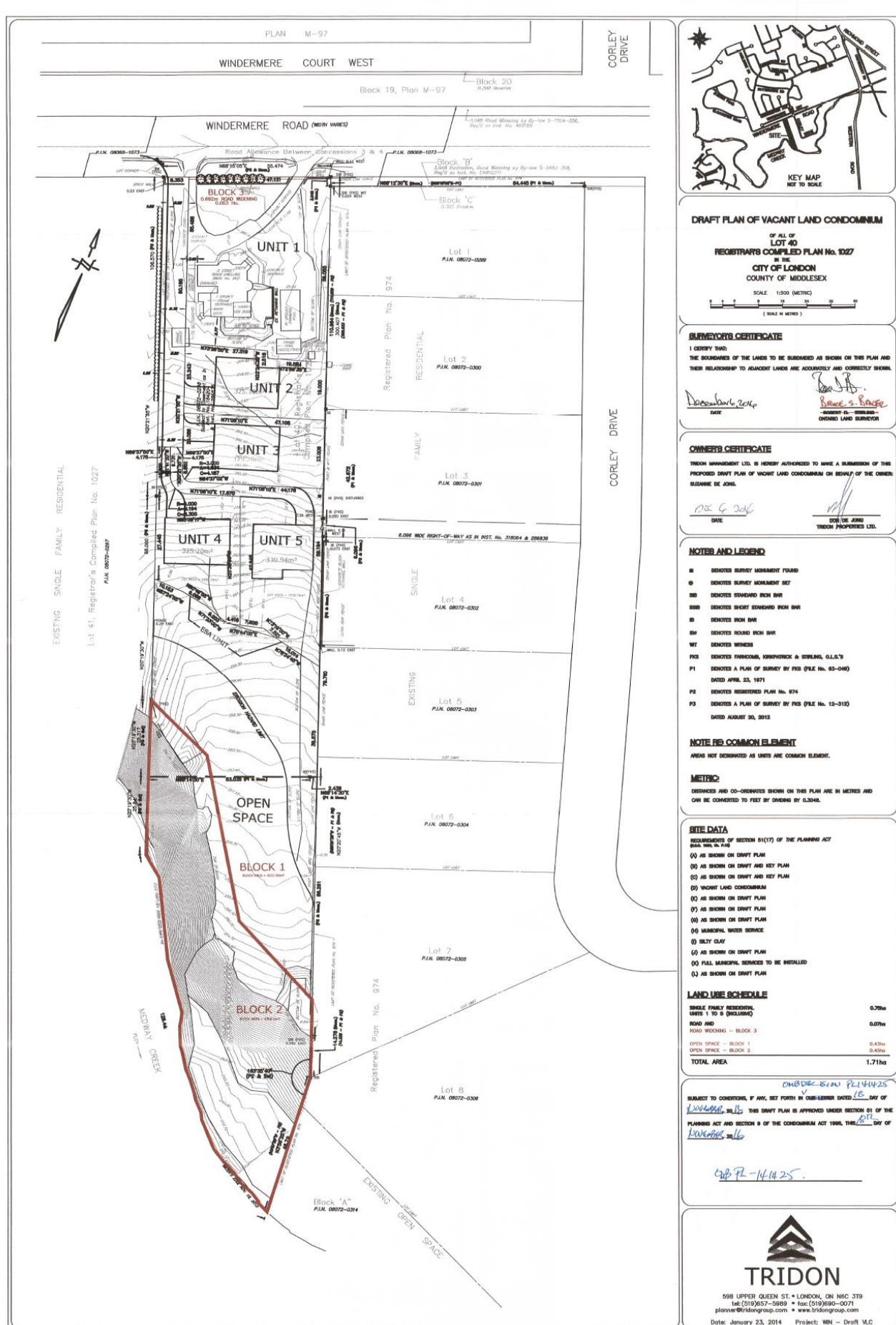
The Ontario Municipal Board then joined all three appeals together. The OMB hearing was held on September 6-8, 2016. On November 18, 2016 the Ontario Municipal Board issued its decision to approve Zoning, Draft Site Plan Approval and Draft Vacant Land Condominium Approval that allows the lands to be developed with five (5) single detached dwellings subject to the completion of conditions as directed by the Board (Attached Appendix 1).

As per Section 51 (34) of the Planning Act, the draft approval lapse date is November 18, 2019.

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Ontario Municipal Board Draft Approved Plan of Vacant Land Condominium



DRAFT PLAN OF VACANT LAND CONDOMINIUM
OF ALL OF
LOT 40
REGISTERED COMPILED PLAN No. 1027
IN THE
CITY OF LONDON
COUNTY OF MIDDLESEX

SCALE: 1:500 (METRIC)
(SCALE IN METERS)

SURVEYOR'S CERTIFICATE
I CERTIFY THAT:
THE BOUNDARIES OF THE LANDS TO BE SUBDIVIDED AS SHOWN ON THIS PLAN AND THEIR RELATIONSHIP TO ADJACENT LANDS ARE ACCURATELY AND CORRECTLY SHOWN.

December 2014
DATE

Rose & Rose
ROSE & ROSE
ONONDAGA LAND SURVEYOR

OWNER'S CERTIFICATE
TRIDON MANAGEMENT LTD. IS HEREBY AUTHORIZED TO MAKE A SUBMISSION OF THIS PROPOSED DRAFT PLAN OF VACANT LAND CONDOMINIUM ON BEHALF OF THE OWNER, BLOOMING DE CONVA.

Dec 6 2014
DATE

Dec 6 2014
DATE (DE JURE)
TRIDON PROPERTIES LTD.

- NOTES AND LEGEND**
- DENOTES SURVEY MONUMENT FOUND
 - DENOTES SURVEY MONUMENT SET
 - ▬ DENOTES STANDARD IRON BAR
 - ▬▬ DENOTES SHORT STANDARD IRON BAR
 - ▬ DENOTES IRON BAR
 - ▬▬ DENOTES ROUND IRON BAR
 - WT DENOTES WEIGHTS
 - PCS DENOTES PINECONES, KENYONTRONK & STRALAN, G.L.S.'S
 - P1 DENOTES A PLAN OF SURVEY BY FCS (FILE No. 63-046) DATED APRIL 23, 1971
 - P2 DENOTES REGISTERED PLAN No. 974 DATED AUGUST 20, 2012
 - P3 DENOTES A PLAN OF SURVEY BY FCS (FILE No. 12-312) DATED AUGUST 20, 2012

NOTE RE COMMON ELEMENT
AREAS NOT DESIGNATED AS UNITS ARE COMMON ELEMENT.

METRIC
DIMENSIONS AND CO-ORDINATES SHOWN ON THIS PLAN ARE IN METERS AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.

- SITE DATA**
REQUIREMENTS OF SECTION 51(17) OF THE PLANNING ACT
- (A) AS SHOWN ON DRAFT PLAN
 - (B) AS SHOWN ON DRAFT AND KEY PLAN
 - (C) AS SHOWN ON DRAFT AND KEY PLAN
 - (D) VACANT LAND CONDOMINIUM
 - (E) AS SHOWN ON DRAFT PLAN
 - (F) AS SHOWN ON DRAFT PLAN
 - (G) AS SHOWN ON DRAFT PLAN
 - (H) MANHOLE WATER SERVICE
 - (I) SILTY CLAY
 - (J) AS SHOWN ON DRAFT PLAN
 - (K) FULL MANHOLE SERVICES TO BE INSTALLED
 - (L) AS SHOWN ON DRAFT PLAN

LAND USE SCHEDULE

SINGLE FAMILY RESIDENTIAL UNITS 1 TO 5 (INCLUDING)	0.75ha
ROAD AND ROAD RESERVING - BLOCK 3	0.07ha
OPEN SPACE - BLOCK 1	0.43ha
OPEN SPACE - BLOCK 2	0.48ha
TOTAL AREA	1.71ha

SUBJECT TO CONDITIONS, IF ANY, SET FORTH IN COUNCIL ORDER DATED 16 DAY OF November 2014. THIS DRAFT PLAN IS APPROVED UNDER SECTION 51 OF THE PLANNING ACT AND SECTION 6 OF THE CONDOMINIUM ACT 1998, THE 16 DAY OF November 2014.

CP PL-141125

TRIDON

598 UPPER QUEEN ST. • LONDON, ON N6C 3T9
Tel: (519) 857-5989 • fax: (519) 890-0071
planner@tridongroup.com • www.tridongroup.com

Date: January 23, 2014 Project: WIN - Draft V.L.C.

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RECOMMENDED BY:	REVIEWED BY:
C. SMITH SENIOR PLANNER DEVELOPMENT SERVICES	ALLISTER MACLEAN, MANAGER DEVELOPMENT PLANNING
ALSO REVIEWED BY:	SUBMITTED BY:
TERRY GRAWAY MCIP, RPP. MANAGER DEVELOPMENT SERVICES	GEORGE KOTSIFAS, P.ENG. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL

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Appendix 1

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 18, 2016

CASE NO(S): PL141425

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Tridon Management Ltd.
Subject:	Application to amend Zoning By-law No. (Z.-1.) - Neglect of City of London to make a decision
Existing Zoning:	Residential R1 (R1-9) Zone; Open Space (OS4) Zone
Proposed Zoning:	Residential R6 (R6-4) Zone; Open Space (OS5 (3)) Zone
Purpose:	To permit a draft plan of vacant land condominium, which consists of 5 detached residential units and a common element for the internal driveway and services
Property Address/Description:	161 Windermere Road
Municipality:	City of London
Municipality File No.:	Z-8167 (39CD-14501)
OMB Case No.:	PL141425
OMB File No.:	PL141425
OMB Case Name:	Tridon Management Ltd. v. London (City)

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Tridon Properties Ltd.
Subject:	Proposed Plan of Subdivision - Failure of the City of London to make a decision
Purpose:	To permit a draft plan of vacant land condominium, which consists of 5 detached residential units and a common element for the internal driveway and services
Property Address/Description:	161 Windermere Road
Municipality:	City of London
Municipality File No.:	39CD-14501
OMB Case No.:	PL141425
OMB File No.:	PL150398

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File No.39CD-14501/Z-8157/SP15-009524
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PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Referred by:	Tridon Management Ltd.
Subject:	Site Plan
Property Address/Description:	161 Windermere Road
Municipality:	City of London
OMB Case No.:	PL141425
OMB File No.:	PL150688

Board Rule 107 states:

107. **Effective Date of Board Decision** A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

Heard: September 6 to 8, 2016 in London, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
Tridon Management Ltd. and Tridon Properties Ltd.	S. Snider S. Kaufman
City of London	N. Hall

DECISION DELIVERED BY M. CARTER-WHITNEY AND ORDER OF THE BOARD

[1] Tridon Management Ltd. and Tridon Properties Ltd. (“Applicants”) applied to the City of London (“City”) for a zoning by-law amendment (“ZBLA”), draft plan of vacant land condominium and site plan for a property at 161 Windermere Road (“subject lands”) to permit the development of five detached residential units, an open space area and a common element for the internal driveway and services. After the City failed to make a decision on the subject applications within the prescribed time periods, the Applicants filed appeals to the Ontario Municipal Board (“Board”).

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[2] At the commencement of the hearing, the parties advised the Board that they had reached an agreement on all but one issue in this matter, concerning access to a portion of the subject lands that are proposed to be designated an Environmentally Significant Area ("ESA") under the City's Official Plan ("OP"). By the second day of the hearing, the parties had reached an agreement on that outstanding issue.

[3] The Board heard evidence in support of the settlement agreement from Eric Saulesleja on behalf of the Applicants and Craig Smith on behalf of the City, both of whom were qualified to provide land use planning opinion evidence. The Board also heard from Dr. Gary Epp, who was qualified to give opinion evidence in the area of ecology on behalf of the Applicants. Finally, the Board heard the testimony of Lisa Bilty, a participant in the matter who lives adjacent to the subject lands and opposes the proposed development.

[4] The subject lands are approximately 1.71 hectares ("ha") in area, of which about 0.89 ha are outside of the ESA and have the potential to be developed. The lands slope down from the north to the top of a steep slope that descends to the southern boundary of the subject lands at the Medway Creek. In the northern portion of the subject lands, near Windermere Road, there is an existing two-storey single detached house with a detached garage, pool shed and swimming pool. The City Council has designated the existing house under the *Ontario Heritage Act*. Mr. Saulesleja described the area of the subject lands above the top of banks as a manicured lawn with mature trees interspersed throughout. Ms. Bilty noted that there were more trees in that area until the fall of 2012, when a previous developer purchased the subject lands and cleared undergrowth and trees. Dr. Epp testified, however, that there was no evidence of the removal of sizeable trees and he believed that the lawn had been manicured for quite some time.

[5] There are a number of residential properties to the east, including Ms. Bilty's home, whose rear yards back on to the subject lands. To the west of the subject lands, there is a single detached residential dwelling. There is a residential neighbourhood

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north of Windermere Road, which is designated as a secondary collector road in the City's OP.

[6] The subject lands are designated Low Density Residential and Open Space in the City's OP. The proposed development does not require an amendment of the OP. The subject lands are zoned Residential R1 (R1-9), which permits single detached dwellings on lots with a minimum lot frontage of 18 metres ("m") and a minimum lot area of 690 square metres. As noted above, the proposal requires a ZBLA. The proposed ZBLA was filed with the Board as Exhibit 6, which is attached to this Order as Attachment 1.

[7] The Applicants propose to develop a vacant land condominium development of five single detached cluster dwelling units, incorporating the existing dwelling on the subject lands as one unit along with the construction of four new single detached dwellings to be served by a condominium road that would run along the western property line. Dr. Epp's Environmental Impact Study ("EIS") has identified the southern portion of the subject lands to be part of the Medway Valley Heritage Forest ESA. As a result, part of the subject lands is proposed to be rezoned to an Open Space (OS5) Special Provision (OS5(3)) Zone. The portion of the subject lands to be developed would be zoned to a site-specific Residential R6 Special Provision R6-1 Zone. It is proposed that the Applicants will dedicate a block of lands to the City to satisfy the required parkland dedication (Block 2) while retaining a private open space block (Block 1) in the ownership of the proposed condominium corporation. A proposed easement would provide the City with access to Block 2 through the subject lands.

[8] The Board heard evidence concerning the applications for the ZBLA, draft plan of vacant land condominium and site plan, and the process these applications went through at the City, including public consultation. The Applicants initially applied to develop six units but that proposal was revised to the five units before the Board at the hearing. In addition to the EIS noted above, a number of other technical reports and studies were undertaken, including an archaeological study, geotechnical study, a slope stability assessment report, a tree assessment and planting plan, a hydrogeological and

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water balance assessment, and a stormwater management plan report. Based in part on these reports, conditions (filed as Exhibit 24) are proposed to the site plan (filed as Exhibit 26) and conditions (filed as Exhibit 25) are proposed to the draft plan of vacant land condominium (filed as Exhibit 28).

[9] Ms. Bilty testified on behalf of a number of her neighbours, as well as herself and her family. She raised a number of concerns, including neighbourhood character, the environmental significance of the subject lands, seeps, stormwater management, erosion and species at risk. She also spoke to holding provisions on the proposed ZBLA and site planning issues.

[10] Ms. Bilty stated that the subject lands are a unique property in the City and raised concerns about the precedent that would be set for other estate lot neighbourhoods by creating a smaller subdivision on an estate lot. She said that the number of dwellings proposed is too many for the subject lands, preferring that no more than two additional homes be permitted. Ms. Bilty noted the existence of large estate lot communities to the east and west of the subject lands and described this as the character of the area.

[11] In response, both Mr. Saulesleja and Mr. Smith were of the opinion that the preservation of the existing heritage dwelling would ensure compatibility with the streetscape and that the proposed development would have no adverse impacts on neighbourhood character. Mr. Saulesleja testified that the subject lands are in an area of single detached residential developments and, while the proposed lots would be slightly smaller than abutting properties, they would not be out of character. He noted instances in the immediate community where there are smaller lots adjacent to much larger lots. Mr. Saulesleja also stated that the proposed preservation of trees would be in keeping with the open space natural heritage areas of the Medway Creek Valley.

[12] It was Ms. Bilty's evidence that virtually all of the subject lands had been included within the boundary of the Medway Valley Heritage Forest ESA in a 2012 consultants' report prepared for the City. She said that she supported the current

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proposal that the southerly portion of the subject lands be dedicated as an ESA, and recommended that access to that portion of the property be restricted for the proposed condominium residents by installing a fence with no gate, in order to ensure that the ESA is protected from harmful recreational uses. She stated that only the City should have access to the ESA lands. Ms. Bilyd further stated that the entire portion of the ESA area should be dedicated to the City so that it controls the full area, rather than the condominium corporation having partial control.

[13] Mr. Smith stated that the intent of the 2012 consultants' report was an evaluation of the ESA at a large-scale level, and that the City's Parks Planning department agreed with Dr. Epp's more specific evaluation of the location of the ESA boundary in relation to the proposed development. Dr. Epp provided his opinion that the proposed development would not have a net negative impact on the natural environment, features or functions, with the implementation of the recommendations of the EIS report and addendum through the proposed conditions. He further explained that there would be a net environmental benefit as a result of the proposal with respect to: a greater level of protection for the ESA as the subject lands are currently entirely zoned residential; the restoration of portions of the subject lands with native plantings and tree shrubs; and future stewardship through the prohibitions recommended to be included in the condominium by-laws.

[14] Dr. Epp also spoke to the issue of whether the residents of the proposed condominiums should have access to the portion of the private open space Block 1 lands that are proposed to remain within the ownership of the condominium corporation. In his opinion, the proposal for access now before the Board is appropriate due to the prohibitions proposed for the condominium by-laws. Dr. Epp stated that the proposed permitted uses would include a passive trail to be delineated by a qualified ecologist and approved through consultation with the City's Parks Planning department. He noted that the intent is to provide a loop trail for residents within the area that is presently a manicured lawn. It is not an environmentally sensitive area but is intended for restoration plantings, and the trail will not allow residents to wander into the natural ESA area. Dr. Epp highlighted the recommendations in the Proposed Site Plan and Planting

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Plan (filed as Exhibit 26) for the planting and seeding of native trees to be dispersed among existing trees in the area to maximize the future canopy cover and provide a barrier from approaching the edge of the cliff.

[15] Concerning the issue of access, Mr. Saulesleja testified that s. 15.3.2 of the City's OP sets out the permitted uses for Natural Heritage Areas Designated as Open Space, which include ESAs (s. 15.3.1.i) (b)). These permitted uses include, at s. 15.3.2. ii)(b), recreational uses associated with the passive enjoyment of natural features including pathways and trails provided that such uses are designed, constructed and managed to minimize their impact on the natural heritage areas. Therefore, it is Mr. Saulesleja's opinion that the proposed passive recreational uses and trail are in conformity with the OP.

[16] Ms. Bily expressed concern that large trees on the subject lands, near the road and neighbouring properties, would be damaged or destroyed as a result of the proposed development. She sought appropriate buffers from the proposed building lot that would be wide enough to ensure protection of the trees. In response, Mr. Saulesleja stated that an assessment of the trees along the property line at the west of the subject lands had indicated they were set back far enough to ensure that they would not be adversely impacted. He further noted site plan conditions stating that, in the event of any harm, trees on or off of the site would be replaced with five inch calliper trees and that tree preservation fencing would be provided during construction of the new residential units.

[17] Ms. Bily also requested that setbacks of 6 m be required, stating that they would be in keeping with the large spaces between properties in the neighbourhood. In response, Mr. Smith and Mr. Saulesleja both provided the opinion that the proposed 3 m setbacks are appropriate. Mr. Smith stated that 3 m setbacks are permitted in the R0 zone where the wall of an end unit facing the rear yard and/or interior side yards contains windows to habitable rooms on the ground floor only and no access points to the dwelling unit along the wall facing the rear yard or interior side yard. He stated that the proposed 3 m setbacks would only allow for a passive side yard onto the adjacent

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existing rear yards. Mr. Saulesleja further noted that a proposed privacy fence and plantings trees on the property line would address the issue of privacy for the existing homes.

[18] Another concern raised by Ms. Bilty relates to seeps or springs on the subject lands. She stated that five seeps have been identified in the ESA portion of the site, and expressed concern that extensive testing of the seeps had not been done and the proposed development could have an impact on the seeps. Ms. Bilty said that it is important to ensure the necessary infiltration of water is maintained so that the groundwater seeps continue to exist, and questioned whether the condominium corporation would be able to undertake effective groundwater management. Dr. Epp, in his witness statement, provided his opinion that the proposed development would not adversely affect the features and functions of the seepage areas, based on the hydrogeological assessment conclusions that, with the implementation of infiltration measures, the groundwater source to the seepage areas will be maintained.

[19] Ms. Bilty also testified about a number of concerns with respect to stormwater management due to the presence of underground aquifers in the area. She said that she and her neighbours have dealt with wet back yards and flooded basements. While acknowledging that stormwater measures are proposed, Ms. Bilty remains concerned that the development will cause an increase in water run-off towards the adjacent properties to the east of the subject lands and towards the cliff, resulting in increased cliff erosion. She is not confident that there will be adequate post-construction monitoring by the City, or that the condominium corporation will adequately maintain the stormwater systems. Dr. Epp, however, stated that he has reviewed the various iterations of the stormwater management plans and is satisfied the current proposed stormwater management plan addresses the recommendations in his EIS reports to ensure that there will be no surface erosion or unnecessary stormwater flows into the ESA.

[20] Another concern related to whether the Queensnake, a species at risk, is present in the ESA. Ms. Bilty said her son had found a Queensnake in Medway Creek in 2013,

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noting that Queensnakes had not been seen in the Creek for decades prior to that. She expressed concerns about the potential for adverse impacts on the Queensnake population. Dr. Epp, in his responding witness statement, stated that no suitable habitat for the Queensnake had been found within the subject lands portion of the Medway Creek riparian zone. He further stated that the Ministry of Natural Resources and Forestry had confirmed on November 19, 2014 that it has no further concerns with respect to the Queensnake.

[21] Ms. Bilty also raised a number of additional concerns that included: the need for an appropriately sized condominium road to allow for fire and emergency vehicle access and turnaround; the details of proposed vegetative screening and fencing; the proposal for garbage and recycling collection; and the potential impacts of an increase in traffic on Windermere Road. In response, Mr. Saulesleja noted a site plan condition with respect to fire route design and signage and stated that the proposed driveway alignment would require City approval. A further site plan condition requires the Applicants to prepare a Traffic Management Plan and obtain acceptance of it from the City. Mr. Saulesleja said that a privacy fence is proposed on the boundary with the properties to the east, in addition to maintaining plantings of trees. He stated that garbage and recycling would be dealt with appropriately and put out for pick-up at the entrance to the development and not on the condominium road.

[22] Ms. Bilty further stated that the proposed holding provisions should be retained in the ZBLA. Holding provisions were originally proposed with respect to municipal servicing, a public site plan review, an agreement to ensure no negative impacts on the environmentally sensitive area, and heritage designation. In the opinion of both Mr. Saulesleja and Mr. Smith, the holding provisions are no longer necessary. They noted that: the proposed conditions of site plan and condominium contain provisions requiring a development agreement; the house on the subject lands has been designated under the *Ontario Heritage Act*; the City is now satisfied with the proposal for servicing; and reports such as the EIS and the Hydrogeological Study and Water Balance Report have been prepared and accepted by the City, and there is no indication of adverse impacts on the ESA. Regarding the provision concerning a public site plan review, the planners

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further commented that the Board is now seized with the approval of the site plan and members of the public have been engaged in the hearing process.

[23] In addition to responding to the concerns raised by Ms. Bilty, Mr. Saulesleja provided an overview of the applicable provincial and municipal policies. He stated that the proposed development would be consistent with the Provincial Policy Statement, 2014 ("PPS"), noting in particular that it would provide for intensification, compact built form and the efficient use of land and resources within the urban boundary as the subject lands can be serviced by existing municipal water and sewer infrastructure on Windermere Road. Relying on the evidence of Dr. Epp, Mr. Saulesleja further stated that the proposed development would be consistent with the natural heritage policies at s. 2.1 of the PPS due to the protection of natural features to be afforded by the designation of the ESA lands.

[24] Mr. Saulesleja also provided his opinion that the proposed development would conform to the relevant policies of the City's OP, testifying that the existing and proposed dwellings are permitted uses for the Low Density Residential designation at s. 3.2 of the OP and the proposed density of 6.7 units/ha is well within the permitted density provided for in s. 3.2.2 i). He directed the Board to the Residential Intensification policies for the Low Density Residential designation and stated that the proposed development is in conformity. Mr. Saulesleja further stated that the uses proposed for the lands identified as ESA conform to the applicable OP policies.

[25] Mr. Saulesleja was also satisfied that the proposed conditions of site plan approval and vacant land condominium are appropriate and reasonable within the meaning of the *Planning Act*.

[26] After carefully considering all of the evidence, the Board accepts the expert land use planning and ecological evidence of the witnesses for the Applicants and the City. The Board is satisfied that the different concerns expressed by Ms. Bilty have been addressed in the proposed development, following extensive studies, public consultation and revisions to the proposal. The various conditions attached to the site

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plan and vacant land condominium specifically address the range of concerns that Ms. Bilty put forward on behalf of the neighbourhood residents. In particular, the Board finds that it is reasonable and appropriate that the condominium residents be permitted access to the Block 1 lands that remain within the ownership of the condominium corporation for the proposed passive recreational uses and trail.

[27] On this basis, the Board finds that the proposed development, subject to the site plan and vacant land condominium conditions proposed, is consistent with the PPS and conforms to the City's OP. Regarding the holding provisions initially proposed for the ZBLA, the Board accepts the evidence of Mr. Smith and Mr. Saulesleja that the intent of these provisions has been satisfied and there is no need to include them in the ZBLA now before the Board. Therefore, the Board approves the ZBLA, draft plan of vacant land condominium and site plan with the aforementioned conditions.

[28] At the conclusion of the hearing, the parties undertook to finalize the proposed conditions filed as Exhibits 24 and 25 and provide them to the Board. By correspondence dated September 27, 2016, Counsel for the Applicants provided to the Board their proposed final conditions, stating that they had already provided them to the City on September 16, 2016 in response to the City's proposed revisions. Counsel for the Applicants stated that, after not receiving any responding comments, they advised the City that they would be forwarding the revised conditions to the Board by September 27, 2016, and still did not receive a response from the City. Counsel for the Applicants requested that, should the Board approve the proposed instruments, it proceed to issue its decision with the revised conditions in the interests of finality and timeliness.

[29] Given that the City has not contacted the Board with any objections to the Applicant's proposed conditions, the Board includes the revised conditions as attachments to this Order.

ORDER

[30] The Board orders that:

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1. The appeals are allowed.
2. Zoning By-law Z.-1 is hereby amended in the manner set out in Attachment 1 to this Order. The Board authorizes the municipal clerk to assign a number to this by-law for record keeping purposes.
3. The site plan, filed as Exhibit 26, is approved subject to the fulfillment of the conditions set out in Attachment 2 to this Order.
4. The draft plan of vacant land condominium, filed as Exhibit 28, is approved subject to the fulfillment of the conditions set out in Attachment 3 to this Order.
5. Pursuant to subsection 51(56.1) of the *Planning Act*, the City of London shall have the authority to clear the conditions of draft plan approval and to administer final approval of the plan of subdivision for the purposes of subsection 51(58) of the *Planning Act*. In the event that there are any difficulties implementing any of the conditions of draft plan approval, or if any changes are required to be made to the draft plan, the Board may be spoken to.

"M. Carter-Whitney"

M. CARTER-WHITNEY
MEMBER

If there is an attachment referred to in this document,
please visit www.elfto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elfto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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File No.39CD-14501/Z-8157/SP15-009524
Planner: Craig Smith

ATTACHMENT 1

Bill No. _____ 2016

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 Ontario Municipal Board 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 Special Provision (OS5(3)) Zone and a Residential R6 Special Provision 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.

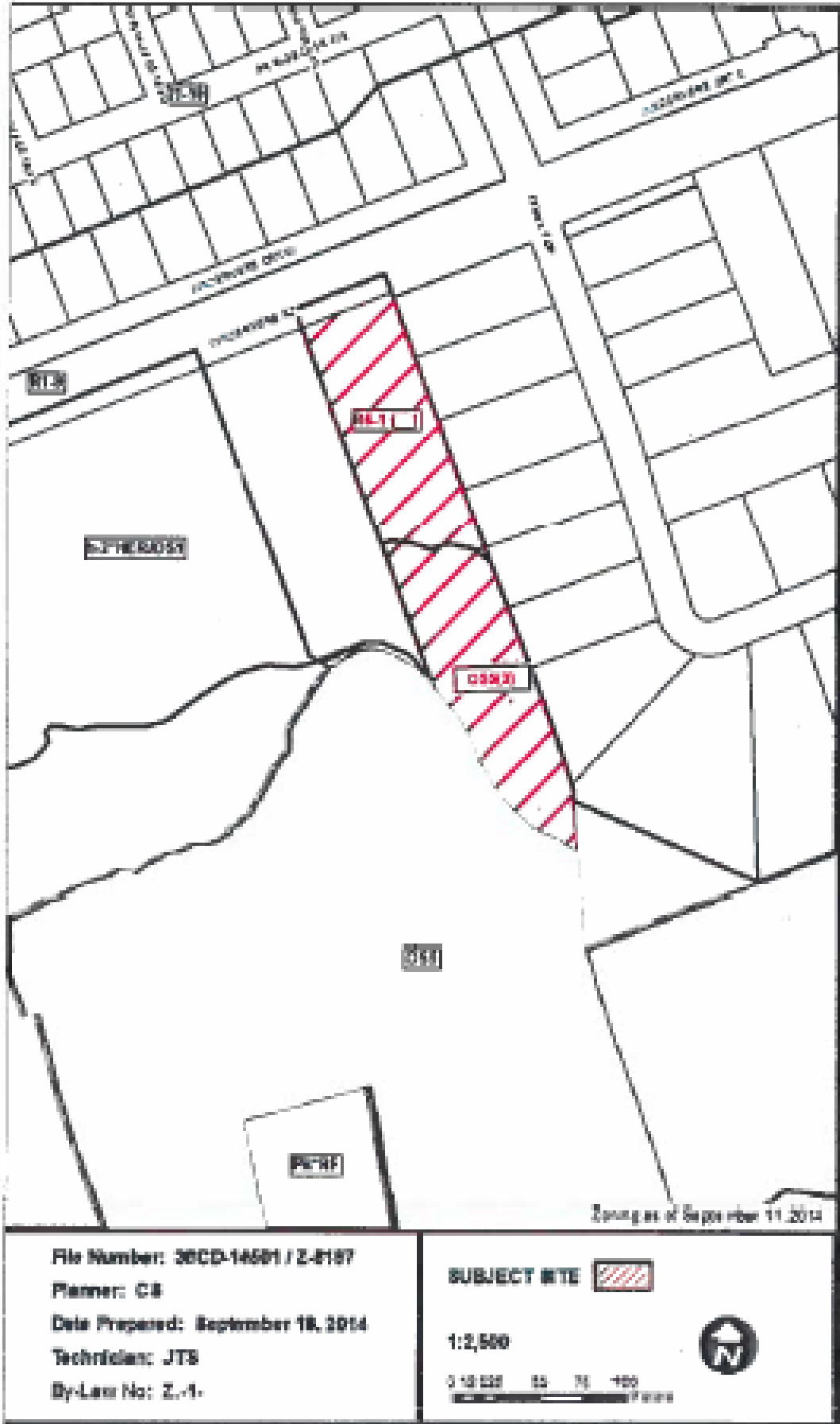
This By-law shall come into force and be deemed to come into force in accordance with section 34 of the Planning Act, R.S.O. 1990, c. P.13, either upon the date of the passage of this by-law or as otherwise provided by the said section.

PASSED _____, 2016.

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 Planner: Craig Smith

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



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Planner: Craig Smith

ATTACHMENT 2

Conditions of Site Plan Approval 161 Windermere Road, London Ontario SP15-009524

The following are the Conditions of Site Plan Approval:

- (a) The Owner shall enter into a site plan agreement with the City and have it registered on title.
- (b) The Owner agrees to obtain written approval from the Upper Thames River Conservation Authority prior to undertaking any site alteration or development within any regulated area.
- (c) The Owner shall obtain issuance of an Environmental Compliance Approval from the Ministry of the Environment and Climate Change for the proposed storm water management system.
- (d) The Owner shall dedicate a 0.69 m strip of land to the City of London to accommodate the widening of Windermere Road.
- (e) The Owner shall enter into a modified boulevard use agreement for the existing retaining wall on the lands to be widened on Windermere Road.
- (f) The Owner agrees to prepare and obtain acceptance from the City of a Traffic Management Plan (TMP) for all works in the Windermere Road allowance.
- (g) The Owner shall provide to the City a final version of the Digital Site Plan tied to NAD 83 UTM.
- (h) The Owner agree to the implementation of the recommendations set out in the AECOM Environmental Impact Study (January 24, 2014) and Recommendations 1 to 9, recommendation 11 save and except the last sentence, and recommendations 12 to 19 of Attachment B to the AECOM Environmental Impact Study Addendum (August 7, 2014), prepared by AECOM.
- (i) The owner shall provide current estimates by their engineer for the costs to complete onsite surface works.
- (j) Performance security is to be provided in the amount determined by Development Services based on the estimates provided by the engineer.

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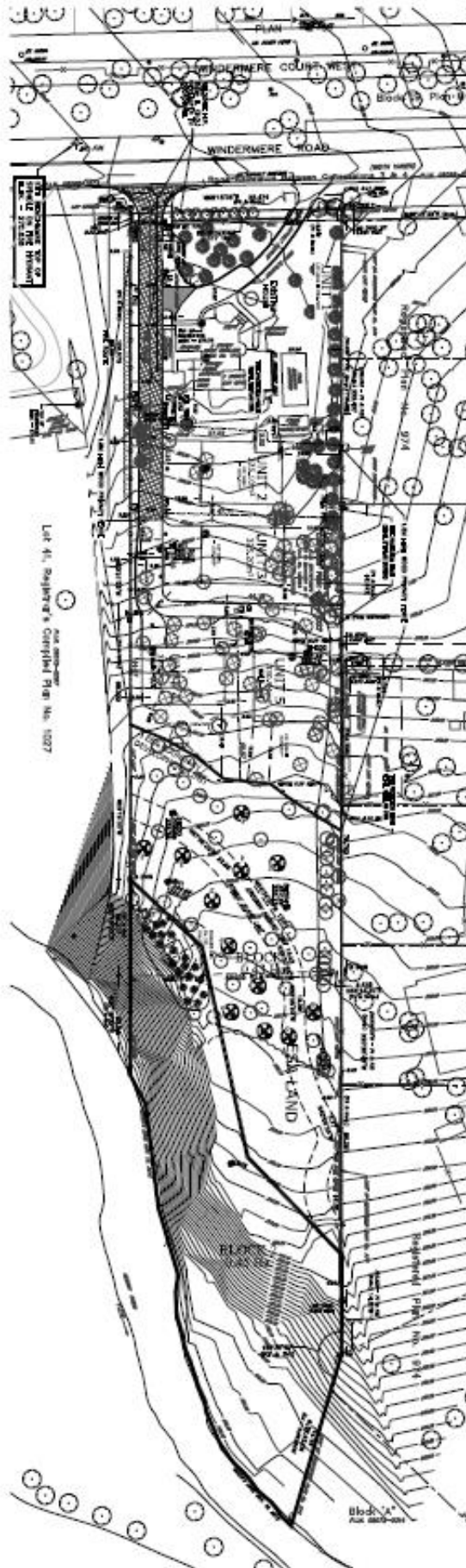
- (k) Acceptance of the Fire Route design and signage by Development Services.
- (l) The Owner agrees that individual building plans for Units 2 to 5, including driveway alignment and configuration, will be subject to review and approval by the City.
- (m) The lands shall be delineated as follows:
 - a. The ESA boundary shall be delineated with a decorative fence (approximately 1 m in height) that may have an opening (with or without gate) for access to a passive trail, such trail to be located by an ecologist consistent with the City of London Guidelines for Management Zones and Trails in ESAs May 2016 and as approved by City Environmental and Parks Planning. The location of the trail shall be included as a schedule to the Development Agreement.
 - b. The property line between Block 1 and Block 2 on attached Schedule A shall be delineated with monuments or similar demarcation as approved by the City Parks Planning.
- (n) Prior to final approval, zoning which permits cluster single detached dwellings shall be in full force and effect.
- (o) The Owner agrees to the implementation of the recommendations set out in the Hydrogeological and Water Balance Assessment Report, June 2016, prepared by exp Services Inc.
- (p) The Owner shall provide 0.45 ha of land to the City in accordance with "Block 2" on Schedule "A" in satisfaction of parkland dedications requirements.

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SCHEDULE A



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Planner: Craig Smith

ATTACHMENT 3

The Approval Authority's conditions and amendments to final approval for registration of this plan of condominium, File No. 39CD-14501, are as follows:

No.	Conditions
-----	------------

ALL CONDOMINIUM TYPES - REQUIRED CONDITIONS

- 1) That this approval applies to the draft plan submitted by Tridon Management Ltd. on behalf of Suzanne de Jong, prepared by Tridon Management Ltd., January 23, 2014, File No. 39CD-14501 drawing no. WIN-Draft VLC, Certified by Robert D. Sterling O.L.S., and amended by the Ontario Municipal Board (revised in red) on September 7, 2016 which shows a 5 unit development located at all of Lot 40, Registrar's Compiled Plan No. 1027, in the City of London, County of Middlesex.
- 2) This draft approval is for a Vacant Land Condominium under Part XII (Vacant Land) of the Condominium Act, 1998.
- 3) The development is to be registered as one Condominium Corporation.
- 4) That this approval of the draft plan applies for a period of three (3) years, and if final approval is not given within that time, the draft approval shall lapse, except in the case where an extension has been granted by the Approval Authority.
- 5) The Owner shall submit a digital file of the plan to be registered in a format compiled to the satisfaction of the City of London and referenced to the NAD83 UTM horizontal control network for the City of London mapping program.
- 6) The Owner shall submit a plan showing the legal descriptions that will be in place upon registration of the condominium, along with the door point numbers to be displayed on the exterior of each unit in the entire development, all to the satisfaction of the City of London.
- 7) The Owner shall pay in full, all financial obligations/encumbrances on the said lands, including property taxes and local improvement charges, all to the satisfaction of the City of London.
- 8) Prior to final approval for the registration of any condominium corporation within the development by the Approval Authority, the City of London, is to be advised in writing that:
 - i. Site works in the common elements are substantially complete, and the Owner's consulting engineer has submitted a final lot grading certificate for the common elements which had been accepted by the City;
 - ii. the fire route and fire route signs have been installed to the satisfaction of the City.

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- iii. the Applicant has entered into a Development Agreement for the site and has registered the agreement on title; and
 - iv. all obligations of the Owner, pursuant to the development agreement with the City shall be substantially complete.
- 9) Prior to final approval for the registration of the development as a condominium corporation by the Approval Authority, the City of London, shall be satisfied that the proposed plan of condominium showing any "as constructed" buildings and structures has been submitted and accepted by the City as in compliance with Subsection 155 (1) of the Condominium Act, 1998.
- 10) The Owner shall submit the proposed Condominium Declaration to be registered on title, in which:
- i) the description of the Common Elements includes the water lines and appurtenances, sanitary sewer lines and appurtenances and storm sewers and appurtenances which are not solely related to the unit on which they are located, and all perimeter fencing including the brick fencing located along Windermere Road in the City of London right of way;
 - ii) appropriate provisions set out that the Condominium Corporation is responsible for the repairs and maintenance of the above noted structures and facilities.
 - iii) appropriate provisions set out the responsibility for maintaining, repairing, and replacing services which serve:
 - a) more than one unit, whether or not those services are within the common elements or within a unit;
 - b) the owner's unit only, that are located within the owner's unit or another unit; and,
 - c) the owner's unit only, that are located within the common elements.
 - iv) appropriate provisions provide for protection of, and prohibitions for use of, lands within the ESA which include:
 - a) Restricting access to the Environmentally Significant Area (ESA) lands to residents of the condominium units.
 - b) Restricting the use of the ESA lands to passive activities such as walking along designated passive trails, nature appreciation, and conservation practices.
 - c) Prohibiting the clearing of vegetation, the deposition of waste (including green waste), vehicular access of any sort (including bicycles), the construction of structures, access by pets, feeding of wildlife, creation of fire pits, or similar structures, and excessive trampling of natural areas or areas where restoration efforts are being conducted.

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- d) Restricting access in the ESA to areas along a designated passive trail to be located by a professional ecologist consistent with the City of London Guidelines for Management Zones and Trails in ESAs May 2018 and as approved by City Environmental and Parks Planning.
- 11) Prior to final approval, zoning which permits cluster single detached dwellings be in full force and effect.
 - 12) The Declaration and Description shall include an appropriate provision notifying all purchases of units/homes within this development that the property abuts the Medway Valley Heritage Forest and that all owners shall be informed of the information contained in the City's "Living Next to Natural Areas" brochure. These brochures can be obtained from the Planning Division - Parks Planning and Design Section.
 - 13) Prior to final approval, the Owner shall have its qualified professional engineer provide certification that all facilities and services (including landscaping and grading) shown in the declaration and description to be included in the common elements have been completed, installed and provided in accordance with the requirements of the Condominium Act, 1998, all to the satisfaction of the City of London.

Should all facilities and services (including landscaping and grading) not be installed and provided prior to final approval, the Owner shall have its professional engineer provide a written, detailed estimate of 100% of the cost to install and provide the facilities and services shown in the declaration and description to be included in the common elements, to the satisfaction of the City of London. Security shall be provided in a form satisfactory to the City, in the amount of 125% of the calculated cost of the required works. Should security already being held by the City under the authority of Section 41 of the Planning Act be partially or fully sufficient in form and amount to meet this requirement, the Condominium security requirement may be reduced or waived by the City.

Should security be provided, the owner shall enter into a condominium agreement with the City and register the agreement on title prior to final approval. The agreement shall include the withholding of a nominal amount of security until such time as the items described in clause 158(3) (b) of the Act have been included in an amendment to the description as required by Section 158(1) of the Condominium Act.
 - 14) That the approval of the draft plan applies to the development of five (5) single detached dwellings, only.
 - 15) Prior to final approval, the Owner shall grant to the City a pedestrian easement to the satisfaction of the City for the purposes of accessing Block 2 for stewardship, maintenance and management of the ESA, such access to be granted upon the giving of 24 hours' notice by the City to the Owner.
 - 16) That the Owner agree to develop the land in accordance with the approved Site Plan.
 - 17) Prior to final approval, for the purposes of satisfying any of the conditions of draft approval herein contained, the Owner shall file with the Approval Authority a complete submission consisting of all required clearances, fees, and final plans, and to advise the

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Approval Authority in writing how each of the conditions of draft approval has been, or will be, satisfied. The Owner acknowledges that, in the event that the final approval package does not include the complete information required by the Approval Authority, such submission will be returned to the Owner without detailed review by the City.

- 18) Prior to final approval the Approval Authority is to be advised, in writing, by Union Gas, that its requirements with respect to easements and rights of way for services have been met.
- 19) Prior to final approval the Approval Authority is to be advised, in writing, by London Hydro, that its requirements with respect to easements and rights of way have been met.
- 20) The following clauses shall be included in the Declaration for all Units within this development:

"Canada Post advises future residents that home/business mail delivery will be from a designated Centralized Mail Box. The Centralized Mail Box is located adjacent to (insert location)."

and,

"If it is determined by the Ministry of the Environment (MOE) that the water service for the site is a regulated drinking water system, then the Condominium Corporation may be required to meet the regulations under the Safe Water Drinking Act and the associated regulation O. Reg. 170/03".