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Planner: B.PAGE

TO:	CHAIR AND MEMBERS PLANNING ENVIRONMENT COMMITTEE MEETING ON MARCH 19, 2013
FROM:	J. M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER
SUBJECT:	9345 ELVIAGE DRIVE – INFORMATION REPORT

RECOMMENDATION

The following is an information report to **BE RECEIVED** by the Planning and Environment Committee in response to a delegation by Michele Doornbosch on behalf of Kaizen Homes regarding lands at 9345 Elviage Road.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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None

BACKGROUND

Land Use History

The subject lands were annexed by the City of London in 1993 from Delaware Township. At that time, the lands were designated Rural (Agriculture) under the Delaware Township Official Plan and zoned Agriculture (AG) and Hazard Land (HL) under the Township By-law #8-1984. The Agriculture (AG) Zone permitted accessory single family dwellings in association with an agricultural use but where subject to setbacks from watercourses and animal operations. The zone also permitted passive recreation and conservation uses. The Hazard Land (HL) Zone permitted agriculture and conservation uses. The designation remained on the land until 1997 and the zones remained in force until 2005 when Council approved the Annexed Area Zoning By-law.

In 1997, the subject lands were designated Environmental Review and Open Space under OPA 88 on Schedule A – Land Use and identified as a Class 1-3 wetland, an ESA and potential ESA on Schedule B – Flood Plain and Environmental Features.

The adjacent parcel to the west was also re-designated at this time. In 1997, both property owners appealed the land use designations. As a result of the OMB hearing only a small portion of the site on the adjacent lands, the table lands designated Agriculture were permitted for residential development. Subsequent to the hearing, the adjacent lands underwent a review to determine the extent of the natural heritage system and applied a residential zone to permit the severance of the land into 3 residential lots. The subject site was considered at the OMB and the OS/ER land use designations as applied through OPA 88 remained.

In 2004, contrary to the tree cutting by-law, trees were removed along the east portion of the property to construct a driveway with the intension of developing two residential dwellings. After ceasing the work, staff met with the owner and advised him of the infraction. Staff advised the owner that any additional work will first require the completion of an EIS (to the satisfaction of the City) that demonstrates how the proposed development will have no negative impact on the natural features and ecological functions for which the area has been identified. In addition appropriate permits would need to be obtained from the Upper Thames River Conservation Authority.

Agenda Item #	Page #

Planner: B.PAGE

On June 27, 2005 Council approved the Annexed Area Zoning By-law which deleted the five township zoning by-laws and applied Zoning By-law Z.-1 (the City of London Zoning By-law) to the annexed lands. Through this process the subject lands were zoned Open Space (OS4) and Open Space (OS5) Environmental Review (ER) with a small portion in the middle of the site zoned Holding Agricultural (h-2.AG2). In July 2005, the third owner of the property appealed the proposed zoning amendments to the Ontario Municipal Board with the intension of developing a portion of the lands for a residential dwelling. In July 2006, the owner withdrew their appeal at the OMB.

Current Owner’s History

In 2006, inquiries were made to the Planning and Development Department. The Department advised:

“The property is an Environmentally Significant Area (ESA) with a Provincially Significant Wetland (PSW. The wetland is a fen which crosses the top of the property near Elviage Drive, thus posing a significant constraint to creating an access road, as no development is allowed within a PSW in accordance with Provincial Policy. The City also does not permit development within an ESA. The area also has significant slope hazards and watercourse features.

There is virtually no developable land on this property, except for a small piece of agricultural land which is only accessible from the lands to the east and subject to stringent EIS requirements to demonstrate no negative impacts to the PSW and the ESA”.

Notwithstanding this information, in September 2008, Biologic on behalf of Kaizen Homes submitted an Issues Scoping Report for the review of the environmental features on the site. In October 2008, Parks Planning staff advised the applicant they were not satisfied with the work program submitted and offered the following points:

- The consultant has failed to identify and complete an assessment of the Environmental Review areas of the vegetation patch as part of the Lower Dingman Creek Environmentally Significant Area (ESA).
- Road and driveway access from Elviage Road is not possible to develop without resulting in significant negative impacts to features and functions for which the area has been identified.
- While we agree that it may be possible for a single family residential home to be constructed in the vicinity of community 10 and 5a (above the top of slope), there is no viable access to these areas except through the agricultural fields of the adjacent property. Without a viable access, this proposal is not supported and an Environmental Impact Study for the development proposal in Figure 10 will not be approved.

A further meeting was held with staff, the applicant and the applicant's agent in December 2008 regarding the feasibility and scope of the Environmental Impact Study for proposed development on these lands. At the meeting, staff re-iterated the City and UTRCA’s position regarding the limited feasibility of development on this parcel of land, in particular as it relates to the physical constraints of a future access from Elviage Drive to a small potentially developable portion the parcel zoned ER. Specifically:

- The ravine that would need to be crossed is steep and supports an unusual fen wetland designated as Provincially Significant by the Ministry of Natural Resources.
- This wetland has been mapped as two pockets separated by a narrow opening less than 30 meters wide.
- The surrounding natural features include watercourses within valleylands identified as an Environmentally Significant Area and potential ESA.
- Shallow or near-surface groundwater associated with the wetland extends through the area and supports the wetland features.
- The entire area is regulated by the UTRCA, requiring a Section 28 permit.

Agenda Item #	Page #

Planner: B.PAGE

Despite these significant constraints, and the very limited chance of receiving approvals to proceed, the applicant requested the opportunity to explore the potential of overcoming the constraints with an engineered solution that would not result in significant impacts to the identified features and ecological functions. As such staff and the UTRCA compiled the following technical work that would need to be completed prior to any approvals. If Provincial and UTRCA approvals are feasible, the City requirements include:

1. The boundaries of the wetland must be evaluated and staked in the field between May and July when indicator plants are growing. The MNR must be consulted and invited to participate in this exercise and review of the EIS as they are the provincial agency responsible for wetlands. MNR sign-off is required prior to proceeding with any further steps as it is unlikely that provincial agencies will support any disturbance of the wetland area and adjacent lands.
2. The Council approved guidelines for Environmentally Significant Areas Identification and Boundary Delineation must be applied to all areas of existing vegetation to formalize the ESA designation on these lands.
3. Appropriate ecological buffers and development setbacks must be determined through application of the Council approved Guidelines for Setbacks and Buffers.
4. Construction of the proposed road access will likely result in direct loss of features and functions identified as ESA as well as potential loss of Provincially Significant Wetlands. The EIS will have to demonstrate how this meets Official Plan Environmental Policies and the Provincial Policy Statement for no negative impact.
5. Life science data collection covering the spring and summer seasons will be required to document species of plants and wildlife potentially affected by the development proposal.
6. A geotechnical study is required to determine slope stability in the ravine crossing location, the stable slopes along the ravine and top-of-bank in the vicinity of the development parcel.
7. A hydrogeological study must be completed to the satisfaction of the City of London, with particular attention paid to the shallow surface flow and hydrological linkages that exist between the wetland units. Protection of this linkage is important for the protection and integrity of the wetland.

The applicant submitted a scoped EIS in September 2012 for staff to review prior to a zoning by-law amendment. On November 21, 2012, the City's ecologist provided comments on the EIS and the development potential on the site. In December 2012, a letter from the Planning Division was sent to the owner outlining the severity of issues facing any proposal for development of these lands. It is attached for your reference.

Lot of Record

The issue of a "Lot of Record" has been expressed many times with this site. The Planning Division sought legal advice on this matter. The City's Legal Department advises that an "existing lot of record" has no bearing on whether the parcel of land can be developed or not.

Section 1.2 of the City's Zoning By-law (Z.-1) states:

Compliance with Zoning By-law

No person shall, within the lands to which this by-law applies, use any land or erect or use any building or structure in whole or in part, except in conformity with the provisions of this by-law.

The subject lands are zoned Open Space 4 (OS4) and Open Space 5 (OS5) which does not permit residential development. The OS4 zone is intended to be applied to hazard lands; specifically the floodway, steep slopes and lands that may be subject to erosion. Development within the OS4 Zone is regulated by the conservation authority and limited to low impact recreational facilities that do not normally include structures or buildings. The OS5 zone is applied to the City's most significant natural features and functions that have been identified on Schedules B and B-1 in the Official Plan. In order to protect these areas of significance, permitted activities are limited to passive recreational uses and conservation uses. In both instances, residential development is not permitted.

Agenda Item # Page #

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Planner: B.PAGE

The applicant has identified a small portion of Environmental Review (ER) and h-2 Agriculture (AG2) lands that could facilitate the construction of a residential dwelling. Unfortunately, this portion of the site is inaccessible from the street without crossing the OS4 and OS5 zoned lands.

The current property owner has been advised on numerous occasions that the area is highly constrained and unable to support any form of development that involves the OS zones, approximately 98% of this parcel. The subject lands have been appealed twice to the OMB, but the OS designation and OS Zone were confirmed. Staff have expended a great deal of time and effort responding to inquiries and reviewed multiple submissions to assist the land owner as best possible, considering the obvious environmental significance of these lands

PREPARED BY:	SUBMITTED BY:
B.PAGE SR. PLANNER, ENVIRONMENTAL AND PARKS PLANNING	A. MACPHERSON MANAGER, ENVIRONMENTAL AND PARKS PLANNING
RECOMMENDED BY:	
J. M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER	

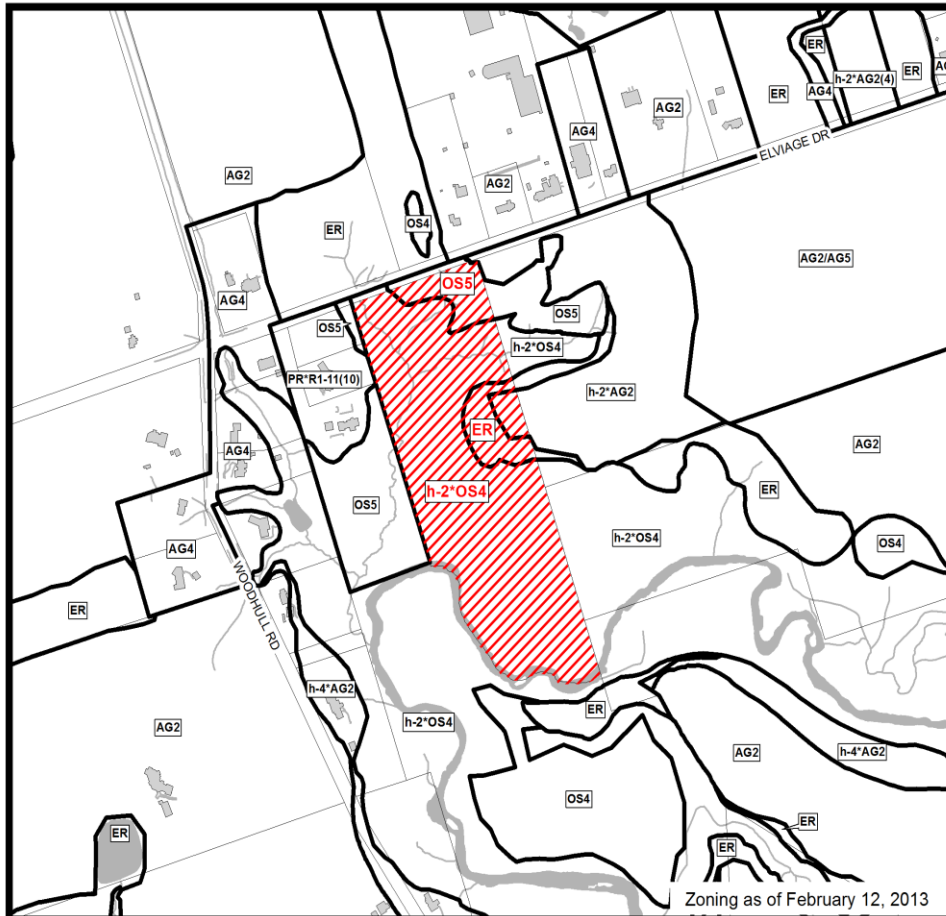
March 8, 2013
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APPENDIX A



COUNCIL APPROVED ZONING FOR THE SUBJECT SITE: OS5, h-2*OS4, ER, & h-2*AG2,

1) **LEGEND FOR ZONING BY-LAW Z-1**

- R1 - SINGLE DETACHED DWELLINGS
- R2 - SINGLE AND TWO UNIT DWELLINGS
- R3 - SINGLE TO FOUR UNIT DWELLINGS
- R4 - STREET TOWNHOUSE
- R5 - CLUSTER TOWNHOUSE
- R6 - CLUSTER HOUSING ALL FORMS
- R7 - SENIOR'S HOUSING
- R8 - MEDIUM DENSITY/LOW RISE APTS.
- R9 - MEDIUM TO HIGH DENSITY APTS.
- R10 - HIGH DENSITY APARTMENTS
- R11 - LODGING HOUSE

- DA - DOWNTOWN AREA
- RSA - REGIONAL SHOPPING AREA
- CSA - COMMUNITY SHOPPING AREA
- NSA - NEIGHBOURHOOD SHOPPING AREA
- BDC - BUSINESS DISTRICT COMMERCIAL
- AC - ARTERIAL COMMERCIAL
- HS - HIGHWAY SERVICE COMMERCIAL
- RSC - RESTRICTED SERVICE COMMERCIAL
- CC - CONVENIENCE COMMERCIAL
- SS - AUTOMOBILE SERVICE STATION
- ASA - ASSOCIATED SHOPPING AREA COMMERCIAL

- OR - OFFICE/RESIDENTIAL
- OC - OFFICE CONVERSION
- RO - RESTRICTED OFFICE
- OF - OFFICE

- RF - REGIONAL FACILITY
- CF - COMMUNITY FACILITY
- NF - NEIGHBOURHOOD FACILITY
- HER - HERITAGE
- DC - DAY CARE

- OS - OPEN SPACE
- CR - COMMERCIAL RECREATION
- ER - ENVIRONMENTAL REVIEW

- OB - OFFICE BUSINESS PARK
- LI - LIGHT INDUSTRIAL
- GI - GENERAL INDUSTRIAL
- HI - HEAVY INDUSTRIAL
- EX - RESOURCE EXTRACTIVE
- UR - URBAN RESERVE

- AG - AGRICULTURAL
- AGC - AGRICULTURAL COMMERCIAL
- RRC - RURAL SETTLEMENT COMMERCIAL
- TGS - TEMPORARY GARDEN SUITE
- RT - RAIL TRANSPORTATION

- "h" - HOLDING SYMBOL
- "d" - DENSITY SYMBOL
- "H" - HEIGHT SYMBOL
- "B" - BONUS SYMBOL
- "T" - TEMPORARY USE SYMBOL

2) ANNEXED AREA APPEALED AREAS

CITY OF LONDON
PLANNING, ENVIRONMENTAL AND ENGINEERING SERVICES

ZONING BY-LAW NO. Z-1
SCHEDULE A



THIS MAP IS AN UNOFFICIAL EXTRACT FROM THE ZONING BY-LAW WITH ADDED NOTATIONS

FILE NO:
n/a BP

MAP PREPARED:
2013/03/05 CK

1:6,800
0 30 60 120 180 240
 Meters

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LOCATION MAP

