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39T-12503/OZ-8052
Alanna Riley

TO:	CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE
FROM:	GEORGE KOTSIFAS P.ENG. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES & CHIEF BUILDING OFFICIAL
SUBJECT:	APEALS TO THE ONTARIO MUNICIPAL BOARD APPELLANT: COLONEL TALBOT DEVELOPMENTS INC. LOCATION: 3924 AND 4128 COLONEL TALBOT ROAD PUBLIC MEETING ON MAY 7, 2013

RECOMMENDATION

That, on the recommendation of the Manager of Development Services and Planning Liaison, the following actions **BE TAKEN** with respect to the appeals by Colonel Talbot Developments Inc. on the neglect by Council to make a decision on the Official Plan and Zoning By-law amendment applications, and failure of the Approval Authority to make a decision on an application for subdivision approval concerning lands located at 3924 and 4138 Colonel Talbot Road:

- a) the Ontario Municipal Board **BE ADVISED** that London Municipal Council has reviewed the appeals and determined that a decision to approve the Official Plan, Zoning By-law amendment and draft plan of subdivision applications at this time would be premature, and would not be in the public interest for the following reasons:
 - i) The subject lands are located within the area affected by the Southwest Area Plan (OPA 541), which is currently under appeal. Land uses, road alignments and conditions of draft approval cannot be finalized for this plan of subdivision until such time as the land use policies and servicing requirements for the Southwest Area Plan are confirmed.
 - ii) Conditions of draft approval cannot be formulated for sanitary servicing since there is no sanitary servicing available to service the proposed plan of subdivision. The Development Charge By-law (By-law C.P.-1473-212) and Growth Management Implementation Strategy that are currently in effect do not provide for financing to service the required sanitary works within the 20 year planning period.
 - iii) Conditions of draft approval cannot be formulated for stormwater management because a storm/drainage and stormwater management (SWM) servicing Municipal Class Environmental Assessment (EA) is required prior to consideration of this application, to confirm stormwater management requirements for this development and external lands. The Development Charge By-law (By-law C.P.-1473-212) and Growth Management Implementation Strategy that are currently in effect do not provide for financing to service the required storm/drainage and SWM works within the 20 year planning period.
 - iv) Collector road alignments and conditions of draft approval cannot be finalized for the proposed plan of subdivision until such time as the connecting alignments in the Southwest Area Plan have been confirmed. The collector road alignments in the proposed plan of subdivision are inconsistent with the collector road alignments in the Southwest Area Plan and the Traffic Impact Statement submitted with the revised plan of subdivision application does not satisfy requirements in the Official Plan Traffic Assessment Guidelines.
 - v) The proposed plan of subdivision is not consistent with the Natural Heritage policies in Section 15 of the Official Plan or the Natural Heritage features delineated in the Southwest Area Plan and the Subject Lands Status Report/Scoped EIS submitted with

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the revised application has not been prepared in accordance with the requirements in Section 15.5 of the Official Plan. Also, the proposed plan of subdivision does not include the pathway corridor alignments as identified in the Bicycle Master Plan.

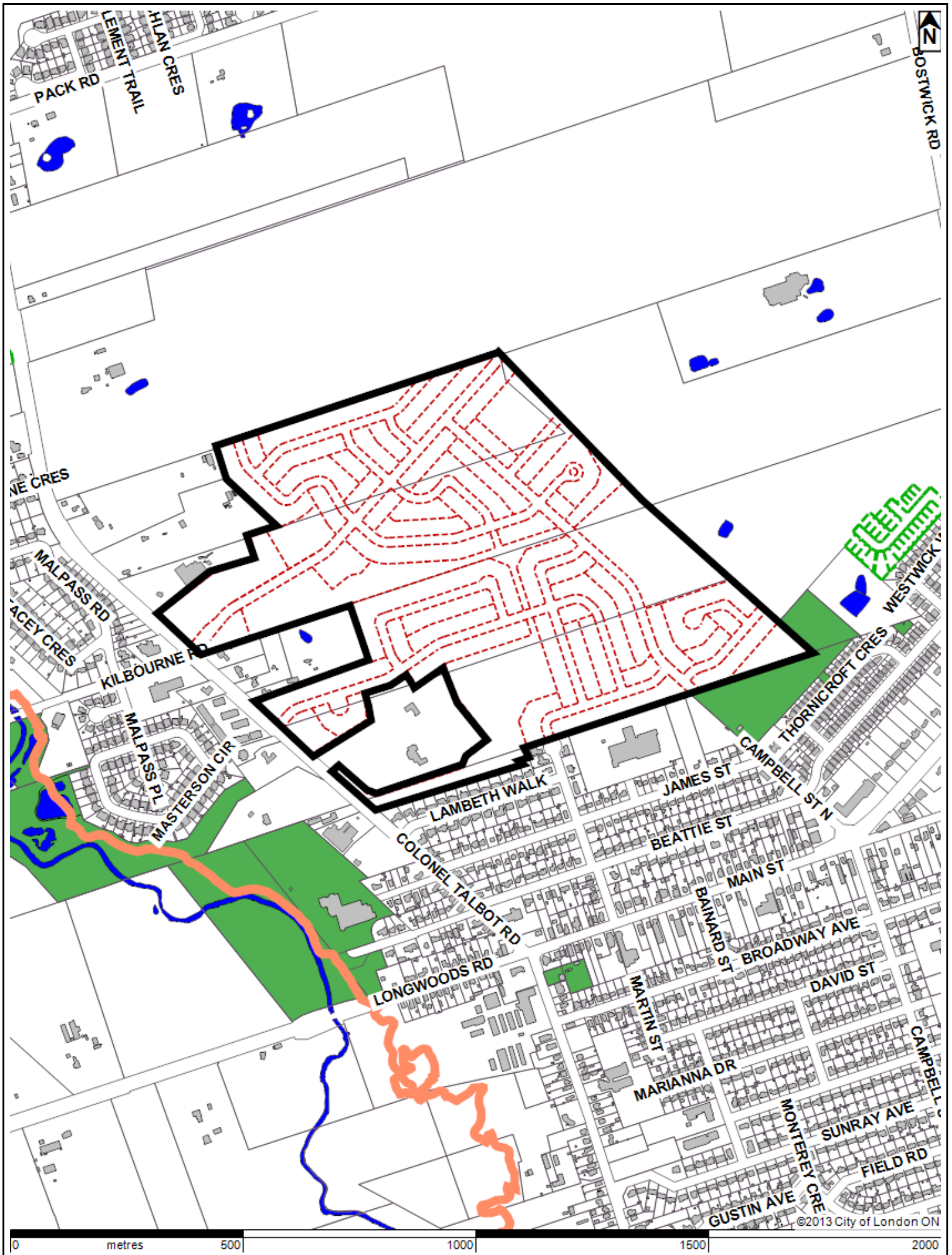
- vi) Based on the deficiencies identified with the proposed plan of subdivision, and the current status of the Southwest Area Plan, the proposed plan of subdivision is not consistent with the provisions in Section 1.6 and 2.1 of the Provincial Policy Statement, and Section 2 of the *Planning Act*.
- b) the Ontario Municipal Board **BE REQUESTED** to consider the appeals from Colonel Talbot Developments Inc. for the lands located at 3924 and 4138 Colonel Talbot Road at a consolidated hearing, together with the appeals on the Southwest Area Plan (Official Plan Amendment 541); and
- c) the City Solicitor and Managing Director of Development & Compliance Services and Chief Building Official **BE DIRECTED** to provide legal and planning representation at the Ontario Municipal Board hearing to support the position of London Municipal Council.

PURPOSE AND EFFECT OF RECOMMENDED ACTION

This report has been prepared to establish a Municipal Council position in response to appeals from Colonel Talbot Developments Inc. on the neglect by Council to make a decision on Official Plan and Zoning By-law amendment applications; and failure of the Approval Authority to make a decision on an application for subdivision approval. The position of Municipal Council will be supported through legal and planning representation before the Ontario Municipal Board.

Since a public meeting has not previously been held with respect to the plan of subdivision Official Plan and Zoning By-law amendment applications, this matter has been advertised to provide an opportunity for input from members of the public; however, since the application is under appeal to the Ontario Municipal Board, this is not a statutory public meeting under the *Planning Act*. Any comments received at the public meeting will be provided to the Ontario Municipal Board, together with the position of Municipal Council.

As a result of the appeal the jurisdiction of the Approval Authority and Municipal Council to make decisions has been removed and the matter is now before the Board. Notwithstanding this, the appellant has proposed mediation and further dialogue with the City in an effort to scope the issues and identify potential areas of agreement prior to the hearing. While there is no basis for settlement, Council and other parties can be requested to clarify or amend their positions if substantive areas of agreement have been identified prior to the hearing.



LOCATION MAP

Location: **3924 & 4138 Col. Talbot Road**
 Applicant: **Col. Developments Inc.**
 File No: **39T-12503**






Planner: **Alanna Riley**
 Created By: **TG**

Date: **2013-04-20**
 Scale: **1:10100**

Corporation of the City of London
 Prepared By: **Planning and Development**



LEGEND

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

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BACKGROUND

Application Accepted: May 2, 2012
Revised Application: Dec. 24, 2012

Applicant: Colonel Talbot Developments Inc.
Agent: Stephen Stapleton

REQUESTED ACTION (Revised Application):

Consideration of a Draft Residential Plan of Subdivision showing 49 blocks for single detached residential lots, 7 blocks for medium density residential development, 1 block for stormwater management & 3 park blocks, served by 18 new internal roads and an extension of South Routledge Road.

Possible Amendment(s) to the Official Plan:

- changing the designation of lands on Schedule "A" - Land Use, From Low Density Residential to Multi-Family Medium Density Residential; From Low Density Residential to Open Space; and, From Environmental Review and Open Space to Low Density Residential;
- amending Schedule "B1" - Natural Heritage Features, by removing the "Unevaluated Vegetation Patches" delineation from the lands that are designated Low Density Residential on Schedule "A" ; and
- amending Schedule "C" – Transportation Corridors, by adding two new "Secondary Collector" roads extending east from Kilbourne Road and north from Campbell Street.

Possible Amendment to Zoning By-law Z.-1: changing the zoning from an Urban Reserve (UR3) Zone, an Urban Reserve (UR4) Zone, an Open Space (OS1) Zone, an Open Space (OS4) Zone, and Environmental Review (ER) Zone to:

- Residential R1 (R1-3), (R1-4), (R1-5) and (R1-13) Zones to permit single detached dwellings on lots with varying sizes and frontages;
- a Residential R1/Residential R4 (R1-3/R4-6) Zone, to permit single detached dwellings and street townhouse dwellings;
- a Residential R1/Residential R4 (R1-13/R4-6) Zone, to permit single detached dwellings and street townhouse dwellings;
- a Residential R5/Residential R6/Neighbourhood Facility/Community Facility (R5-3/R6-5/NF1/CF1) Zone, to permit townhouse & stacked townhouse dwellings, cluster single detached, semi-detached and duplex dwellings churches, elementary schools, secondary schools, community centres, day care centres, libraries, private schools, fire stations, private clubs, police stations, post office depots, and, group homes type 2;
- a Residential R5/Residential R6/ Residential R7(R5-3/R6-5/ R7(10).H12.D60) Zone, to permit townhouse & stacked townhouse dwellings; cluster single detached, semi-detached and duplex dwellings; senior citizen apartment buildings, handicapped persons apartment buildings, nursing homes, retirement lodges, continuum-of-care facilities and emergency care establishments;
- a Residential R5/Residential R7/Residential R9 (R6-5/R7(10).H12.D60/R9-7.H45.D300) Zone, to permit cluster single detached, semi-detached and duplex dwellings; senior citizen apartment buildings, handicapped persons apartment buildings, nursing homes, retirement lodges, continuum-of-care facilities, emergency care establishments; and apartment buildings, lodging houses class 2, senior citizen apartment buildings, handicapped persons apartment buildings, continuum-of-care facilities;
- a Residential R5/Residential R7/Residential R9/ Office (R6-5/R7(10).H12.D60/R9-7.H45.D300/OF) Zone, to permit cluster single detached, semi-detached and duplex dwellings; senior citizen apartment buildings, handicapped persons apartment buildings, nursing homes, retirement lodges, continuum-of-care facilities, emergency care establishments; apartment buildings; and professional offices;
- an Open Space (OS2) Zone, to permit conservation lands & works, golf courses, campgrounds, public & private parks, recreational buildings, commercial recreational establishments, community centres, institutions, private outdoor recreation clubs, public swimming pools, sports fields, playgrounds, and tennis courts; and
- an Open Space (OS4) Zone to permit conservation works, private parks, public parks and sports fields without structures.

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PLANNING CONTEXT

The subject lands include several adjacent properties comprising a total area of 64.77 hectares, with intermittent frontages along the east side of Colonel Talbot Road. The topography is gently sloping (northeast to southwest), with two catchment areas. The majority of the land drains southwest, eventually outletting to the Anguish Drain and Dingman Creek.

Most of the subject property is currently designated Low Density Residential on Schedule "A" the Official Plan (Land Use). The Anguish Drain corridor and adjacent woodland patches are designated Open Space and Environmental Review. On Schedule "B1" (Natural Heritage Features), the westerly portion of the site is identified as a Groundwater Recharge area. Lands within and adjacent to the Anguish Drain corridor are identified as "Significant Corridor" and "Unevaluated Corridor". Adjacent lands are also identified as "Unevaluated Wetland" and "Unevaluated Vegetation Patch". There are no arterial primary collector or secondary collector roads identified on Schedule "C" (Transportation Corridors), within the boundaries of the subject property.

The existing Official Plan designations and map delineations will continue to apply to the subject lands until such time as a decision on the OPA 541 (Southwest Area Plan) appeals has been issued by the Ontario Municipal Board.

The Colonel Talbot Developments plan of subdivision application was accepted as a "complete application" on May 2, 2012 since the subject lands are designated Low Density Residential and the application was accompanied by the necessary supporting documentation including a final proposal report; a subdivision phasing plan; a sub-area concept plan; a planning report and urban design brief; a servicing report; a conceptual SWM report; a transportation impact statement; a subject lands status report & scoped EIS; a site assessment report; and an archaeological report.

Southwest Area Plan:

The site is located within the area encompassed by the Southwest Area Plan (SWAP), which was adopted by Council as OPA 541 on November 20, 2012. The Southwest Area Plan is not in full force and effect as several appeals have been filed and the outcome of these appeals will ultimately be determined through decisions issued by the Ontario Municipal Board. While there were no site specific appeals filed with respect to the subject lands, the entire Secondary Plan is under appeal and under the jurisdiction of the Board.

The Southwest Area Plan proposes to designate the subject lands Low Density Residential, Medium Density Residential and Open Space. The SWAP also identifies a Significant Woodland/Wetland patch in the south-central part of the subdivision (Patch 10051), based on recommendations in the Natural Heritage Strategy.

On the Transportation Map (Schedule "C") SWAP proposes a northerly extension of Campbell Street through the site as a Secondary Collector Road alignment; and, an easterly extension of Kilbourne Road as a Primary Collector Road alignment.

A revised plan of subdivision application was received from Colonel Talbot Developments Inc. on December 13, 2012. This revised application included an updated servicing report, conceptual SWM report and transportation impact study, as well as an updated EIS. The revised application noted that some changes were made in response to the circulation of the Southwest Area Plan. Notice of the revised application was circulated to municipal review agencies and members of the public in January 2013.

Basis for the Appeals:

Letters submitted by the applicant's solicitor on January 28, 2013 (attached as Appendix "A") noted the following reasons for the appeals:

1. the neglect of the Council of the Corporation of the City of London to make a decision with respect to a Zoning By-law Amendment application;

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2. the neglect of the Council of the Corporation of the City of London to make a decision with respect to an Official Plan Amendment application; and
3. the failure of the Approval Authority to make a decision pursuant to Section 51(31) of the Planning Act within 180 days after submission of the application for subdivision approval.

As a result of the appeals, the Official Plan/Zoning By-law amendment and plan of subdivision applications are now under the jurisdiction of the Ontario Municipal Board. While a hearing date has not yet been scheduled, all relevant documentation and comments received on the applications has been provided to the Board. While Council and the Approval Authority no longer have jurisdiction as a result of the appeals, the applicant has expressed interest in scoping the issues and identifying areas of agreement prior to the hearing.

SIGNIFICANT ISSUES

Comments have been received from municipal departments, public review agencies and members of the public in response to the notice of application for the initial and revised applications. While some of the comments are detailed and technical in nature, they have been summarized below for the purpose of establishing a position in response to the appeals.

Southwest Area Plan:

Approval of the Colonel Talbot Developments Inc. applications is premature because the Southwest Area Plan (SWAP) is not yet in force and effect. The proposed plan of subdivision will not be in conformity with SWAP if it is approved as adopted by Council. Areas where the proposed subdivision is not consistent with SWAP include the land use pattern (Open Space and Medium Density Residential Designations), natural heritage features and planned transportation corridors.

The future land use, servicing and environmental components of the subdivision must be consistent and integrated with the comprehensive Southwest Area Plan to ensure compatible land use patterns, adequate servicing and co-ordinated development phasing. It is therefore recommended that the appeals relating to the Colonel Talbot Subdivision be considered by the OMB together with the appeals for the Southwest Area Plan.

It is also important to note that the installation and timing of municipal servicing infrastructure will be determined by the outcome of the Development Charges By-law review currently underway; and by the Growth Management Implementation Strategy, which will establish timelines for the municipal servicing infrastructure that is critical to the proposed plan of subdivision.

Roads & Transportation:

The collector roads in this proposed draft plan of subdivision are inconsistent with the Council adopted SWAP, as follows:

1. Street 'A' in the draft plan is classified as a secondary collector; however, this is inconsistent with the classification as a primary collector in the SWAP and OPA.
2. The alignment of Street 'A' in this draft plan is inconsistent with SWAP and the OPA.
3. The alignment and extent of Street 'H' is inconsistent with SWAP and the OPA.

The revised Traffic Impact Statement submitted with this application is insufficient and does not satisfy the requirements of the Traffic Assessment Guidelines within the policies of the City's Official Plan for developments of this type.

No Environmental Assessment (EA) has been undertaken, prior to or in conjunction with this application, to address a proposed municipal road and municipal servicing on lands external to this proposed draft plan between Street 'H' in this draft plan and the existing termination of Campbell Street North, to service this proposed draft plan of subdivision as a secondary collector road.

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No land or easements have been established for the proposed municipal road and municipal services over lands external to the proposed draft plan (not owned by the applicant) between Street 'H' in this proposed draft plan and Campbell Street North.

The SWAP and OPA identified a proposed secondary collector road over external lands between Street "H" in the proposed draft plan and the existing termination of Campbell Street North; however, an Environmental Assessment was not undertaken in conjunction with the SWAP or this application. Since this proposed draft plan of subdivision is dependent on that proposed secondary collector road and municipal servicing over external lands south of this plan an EA is required to address the proposed municipal road and services.

Stormwater Management:

In accordance with the Municipal Class Environmental Assessment parent document issued under the Environmental Assessment Act, prior to the acceptance of any proposed location of storm/drainage and SWM servicing for the proposed subdivision lands, the City requires a storm/drainage and SWM servicing Municipal Class Environmental Assessment (EA) for reasons including the following:

1. The storm/drainage and SWM for the subject lands is required as external lands drain through the subject development;
2. The land use change within the subject property may have an adverse effect to the downstream existing tributary receiving system; and
3. The watercourse/outlet channel may be realigned. In accordance with Municipal Class EA (Municipal Engineers Association, October 2000, as amended in 2007 & 2011) the realignment of a watercourse is a Scheduled "B" activity and therefore requires Municipal Class EA accepted by all approval agencies prior to the proposed work being undertaken. It is also noted that in accordance with London City Council Approved City of London Design Specifications and Requirements and Ministry of the Environment Stormwater Management Planning and Design Manual (2003) water quality stormwater management facilities must be located offline.

With respect to proposed storm/drainage and SWM servicing approach presented in the EIS and Subject Lands Status Report (SLSR):

1. No SWM facility is identified for the subject lands in the DC Background Study and approved 2009 DC By-law. Accordingly, the timing associated with the Municipal Class EA and future storm/drainage and SWM works is undetermined and therefore it may be premature to proceed with Draft Plan Approval until timing of servicing works is certain. The incorporation of this servicing cost may be included in the future 2014 DC subject to the recommendation of Development Finance and Council approval.
2. The proposed storm/drainage and SWM outlet for the subject lands is the Anguish Municipal Drain and with the designation of the Anguish Municipal Drain under the Drainage Act, the designation is required to be revoked and to be designated under the Ontario Water Resources Act.
3. The location of the proposed SWM facility must be confirmed by a Municipal Class EA prior to the EIS being accepted and approved it being noted that the proposed SWM facility is located within an unevaluated vegetation patch and potentially within a significant river, stream and ravine corridor according the Schedule B1 of the Official Plan. Therefore, in accordance with Section 15.3.3 of the Official Plan new infrastructure shall only be permitted within the Natural Heritage System where it has been clearly demonstrated through an environmental assessment process under the Environmental Assessment Act that is the preferred location for the infrastructure, and all the alternatives have been evaluated with regard for the relevant policies of the Official Plan. Where the preferred alternative is located within or adjacent to the Natural Heritage System, an EIS, approved by the City, shall be completed to further assess potential impacts, identify mitigation requirements, and determine appropriate compensation where impacts cannot be mitigated.

Until such time as the EA is completed the EIS and Subject Lands Status Report cannot be supported with respect to the location or description of the proposed storm/drainage and stormwater management servicing. The timing associated with the Municipal Class EA and future storm/drainage and SWM works is undetermined at this time. It is premature to proceed with draft plan approval until timing and funding of these servicing works is certain.

Sanitary Servicing:

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There is currently no sanitary servicing available to service the proposed draft plan of subdivision. Until the necessary Environmental Assessment studies and ongoing Southwest Area Sanitary Master Servicing Plan are completed, the timing and the availability of sanitary servicing for this proposed draft plan is not known. In addition, the current (2009) Development Charge Background Study and Growth Management Implementation Strategy do not provide for the financing of sanitary servicing to address this draft plan within the 20 year growth window.

The revised Servicing Report (Stantec, December 2012) of the Final Proposal Report is based on a number of assumptions with respect to sanitary servicing which have not been resolved to date. The report identifies that the City is considering converting the existing Southland Pollution Control Plant to a sanitary pumping station with a sanitary forcemain which would direct flows to the Wonderland Pumping Station which may provide for a future sanitary outlet for this proposed draft plan of subdivision. This proposed project is subject to an Environmental Assessment which has been initiated by the City but has not been completed.

Parks & Environmental Protection:

Official Plan – Schedule A of the Official Plan designates the subject lands Low Density Residential, Open Space and Environmental Review. The Open Space designation generally reflects lands abutting the Anguish Creek from midpoint of the site flowing west to Colonel Talbot Road. Lands designated Environmental Review includes the proposed SWM facility site, a portion of the Anguish Creek and a portion of the eastern boundary.

Schedule B1 – Natural Heritage Features identifies Patch 10051 and a portion of Patch 10070 as two unevaluated vegetation patches. In addition, Schedule B identifies portions of the Anguish Creek as unevaluated corridors, unevaluated wetlands, flood plain and significant stream corridors.

According to Section 15.5.2 of the Official Plan a Subject Land Status Report (SLSR) will be required to better define the natural heritage features and delineate the boundaries. An Environmental Impact Study (EIS), in accordance with Section 15.5 of the Official Plan, will evaluate and address potential impacts on adjacent vegetation patches, watercourse course features, wetlands and groundwater recharge areas. If, during the evaluation, additional natural heritage features are discovered that are not reflected on Schedules A or B1, they are also to be identified and evaluated as to their function and significance as per 15.4.14 and 15.4.15 of the Official Plan.

The Bicycle Master Plan, Council approved and recognized under Section 19.2 of the Official Plan identifies a north-south pedestrian corridor through these lands. The Bicycle Master Plan has been further refined through the background work and preparation of the SWAP report. Stronger pedestrian linkages are presented in the SWAP report which includes an east-west pedestrian corridor.

Natural Heritage Recommendations of SWAP

The Natural Heritage Policies (20.5.3.6) in the Secondary Plan for the SWAP (City of London, June 2012 – Attachment C) were developed through a comprehensive Natural Heritage Study with recommendations from that study to be incorporated into proposed amendments to Official Plan Schedules A and B-1, as well as the Schedules in the Southwest Area Secondary Plan in the Supplementary Information section (20.5.18). Through these studies it was determined that the unevaluated patches within the boundaries of this subdivision application were significant components of the natural heritage system, identified as:

- Patch 10051 – Significant Woodland
- Patch 10070 – Significant Woodland
- Anguish Creek Tributary [Drain] – Significant Stream Corridor and unevaluated stream corridor

At an Area Plan stage, the boundaries of natural heritage features are drawn to the outer edge of identified vegetation patches, and 30 m on either side of the water line of the creek. These are portrayed on Official Plan Schedules at a scale of 1:30,000. It is recognized that three-season inventories were not completed for these two patches as part of the SWAP and therefore a requirement of any future Subject Lands Status Report (SLSR) or EIS would be to confirm the evaluations of significance made at the landscape level, and identify features and functions of significance at the community and species levels.

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Environmental Impact Study:

Overall, the EIS (BioLogic, 2012) does not demonstrate that there will be no negative impacts on the natural features or ecological functions for which the area has been identified as per Official Plan 15.3.2. and the Provincial Policy Statement (2005). The boundaries of the significant features proposed in the EIS are not consistent with the City of London delineation guidelines for ecological boundaries. Natural Heritage features and functions will be defined and confirmed in the SWAP, which has been adopted and is currently under appeal.

Pathway Corridors:

Section 51(25) of the *Planning Act*, R.S.O. 1990, Chapter P.13 and Section 17(7) of the Council Policy Manual provides opportunity for the City to acquire, without cost, pedestrian corridors from plans of subdivision. Council has defined a pedestrian corridor as having a minimum width of 5 metres. Any land included above the 5 meters will be credited toward the parkland dedication contribution to the plan. Consistent with the approved recommendations of the Bicycle Master Plan and the Council endorsed Southwest Area Plan the following pedestrian corridors should be included in the plan of subdivision.

1. A north south corridor within Block 62 from Lambeth Optimist Park to Street K locating the pedestrian corridor outside of the woodlot or other natural heritage features. The block may need to be enlarged.
2. An east-west connection from Colonel Talbot Road to the eastern boundary of the site adjacent to the Anguish Creek and the re-alignment of the Anguish Creek through Blocks 61, 62, 63 and 64. Modifications to the blocks may be required to provide sufficient land for the creek, the required buffer and the pedestrian corridor.

Other Parks Requirements:

Other issues have been identified with the design of the proposed plan of subdivision including parkland dedication, open space linkages, pathway corridors, local park blocks and fencing adjacent to open space lands. These requirements can be implemented through conditions of draft approval.

Municipal Infrastructure Financing:

The City is undertaking the Southwest Area Sanitary Servicing Master Plan which is scheduled for completion by the end of 2013. The financing and timing of construction and cost estimates/splits of the recommended works will not be established until the passing of an updated Development Charges By-law in 2014. The current 2009 Development Charge Background Study and Growth Management Implementation Strategy do not provide for sanitary servicing financing to address this draft plan within the 20 year growth window.

No SWM facility is identified for the subject lands in the current 2009 Development Charge Background Study or Growth Management Implementation Strategy. Accordingly, the timing associated with the Municipal Class EA and future storm/drainage and SWM works is undetermined at this time; therefore, it is premature to proceed with draft plan approval until the timing and funding of these servicing works is defined.

Transportation works are not identified for the subject lands in the current 2009 Development Charge Background Study or Growth Management Implementation Strategy within the 20 year growth window. Accordingly, the timing and funding associated with the transportation works is undetermined at this time; therefore, it is premature to proceed with draft plan approval until timing and funding of these works is defined.

Environmental Ecological Planning Advisory Committee (EEPAC):

Recommendations endorsed by EEPAC on March 21, 2013 in response to the Subject Lands Status Report and EIS (BioLogic, December, 2012):

1. Improved mapping should be required
2. The location of the SWM facility be the subject of an environmental assessment under the Act to determine if there is no alternative to placing infrastructure in a component of the Natural Heritage System.
3. The impact of the SWM facility on the watercourse within Community 4 should be specified and mitigated.
4. If the SWM facility ultimately destroys some or most of Community 3, compensation should be made in the following form:

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- a) Retain Community 1 in its entirety (excluding the narrow hedgerow)
- b) Naturalize the 'bay' between the preserved portion of community 4 and the entirety of community 1.
5. Community 10 is part of the significant woodland patch 10070. It should be treated as such and designated and zoned OS. It has a canopy height of >25m, contains dominant species red oak (providing important mast supply) and has a canopy cover of >60%.
6. The report incorrectly applies Boundary Delineation Guideline # 5 for Community 10. It is proximal enough to the portion of Patch 10070 that is on land owned by others to qualify for inclusion within the Significant Woodland.
7. The report clearly spells out who is responsible for the restoration of the illegally cleared sections of the Patch. If the landowner, then a management plan should be submitted now for approval as a condition of a complete application and implementation started as a condition of change in land use. If the City is responsible, the City shall commence restoration this spring and permission shall be granted by the landowner for such activities on its land.
8. If the water flow patterns as indicated in Figure 10 are to be altered, impacts on Woodlands 10069 and 10070 must be identified and avoided.
9. Linkages should be planned for nearby woodlands to provide corridors that make ecological sense regardless of property ownership.
10. The report should clarify the location and width of the proposed corridor and indicate who would be responsible for funding the work necessary to create the corridor, as well as when the work could begin.
11. The corridor would have higher ecological function and value if it was located along the existing water flow path. This would not only include a hydrological function within the corridor but would avoid any potential hydrological impacts on Woodland 10069 and 10070 by not affecting the existing flow patterns.
12. EEPAC requests an update from staff regarding restoration of the 'illegal' clear cut areas of patch 10070, including: the quantity of area cut; quantity of area required to be restored; who is responsible for executing restoration; who is responsible for ensuring restoration is executed; quantity of area that has been successfully restored; plans to accomplish any outstanding restoration works; and any monitoring or maintenance plans in place to ensure restoration remains successful in the future.
13. A detailed Management Strategy be prepared including costs and responsibilities as part of what is required to consider this EIS complete.
14. City staff investigate how best to control the creation of gates in fences through either by-law enforcement or requiring a building permit for such work, or through notification to contractors.
15. Each homebuilder be asked to hold a session for all new homeowners from time to time during build out, attended by EEPAC or city staff members so that the brochure can be reviewed and the importance of protecting the NHS be explained.
16. EEPAC or City staff meet with the Real Estate Board to discuss ways to better educate real estate agents where a re-sale home abuts a component of the NHS and how such lots have an enhanced value.

Upper Thames River Conservation Authority (UTRCA):

The Subject Lands Status Report and EIS (BioLogic, December 2012) did not indicate how the Authority's comments (on the initial application) have been addressed. The EIS has not demonstrated that the proposed development will not have a negative impact on the natural heritage system and its ecological function. No response has been received to the Authority's comments on the Talbot Road Subdivision Conceptual SWM Report (Stantec, July 2011). The SWM facility being proposed for this development is not consistent with UTRCA policy and, as such, we will likely not be able to issue the necessary Section 28 approvals for the facility. Based on our outstanding concerns, the UTRCA is not in a position to offer conditions for draft plan approval. We recommend this application be deferred in order to provide the applicant with an opportunity to address our concerns or, alternatively, that it be refused.

Public Comments:

Comments have been received from the public in response to the notices that were liaised for the initial and revised plans of subdivision. Comments were received from five area residents in response to the revised plan and can be generally summarized, as follows:

- Do not support the extension of South Routledge Road north (from Lambeth Walk) to service this subdivision. This will facilitate "cut through" traffic from the subdivision. An alternative to consider would be to bulb-off South Routledge.
- Add a bikeway trail to connect existing Optimist Park to any new proposed parks in the

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subdivision with a green bikeway trail, to ensure that children and families can safely bike between parks and neighbourhoods.

- We own property at 4040 Colonel Talbot Rd. and the proposed easterly extension of Kilbourne Road through the subdivision does not provide us with any frontage. This extension should be realigned along our northerly property boundary.
- The 12 metre wide lots proposed along the extension of South Routledge are too small and will negatively impact the value of existing properties on South Routledge and Lambeth Walk.
- The plan doesn't include an assessment of the woods that will be affected by the northerly extension of South Routledge. An assessment should be undertaken of this wooded area.
- The proposal lacks green space, parkland and recreational areas.
- The only public school in Lambeth is already at maximum capacity, with limited parking area and no sidewalks. The additional residential development will exacerbate this situation.

Official Plan:

While the subject lands are currently designated Low Density Residential, there are no collector roads established within or connecting to the property and the proposed plan is not consistent with the Natural Heritage policies in Section 15 of the Official Plan. Environmental Impact Studies are required to be completed in accordance with Section 15.5.1ii), in consultation with relevant public agencies, prior to the approval of an Official Plan amendment, Zoning By-law amendment and subdivision application.

The Growth Financing policies in Section 2.6.3. and the Growth Servicing policies in Section 2.6.4. of the Official Plan support the efficient use of services and the recovery of growth related capital costs with revenues generated from new development. This would be implemented through designated Development Charges and municipal infrastructure that is identified in the Growth Management Implementation Strategy. These matters are currently under review and will not be finalized until 2014.

Section 19.6 of the Official Plan provides policies to guide the review and evaluation for plans of subdivision. These policies include criteria which require the plan to be consistent with the objectives and policies of the Official Plan and any applicable area study. Also, plans of subdivision are required to be serviced with available uncommitted population equivalent reserve capacity in the water and sewage treatment systems, and without requiring an undue financial commitment from the City. Plans of subdivision must be adequately serviced with and make suitable provision for municipal services including, but not limited to public streets, water, storm and sanitary sewers, waste collection and disposal, public utilities, fire and police protection, parks, schools and other community facilities. The plan of subdivision is to be designed such that it can be integrated with adjacent lands and, if applicable, to meet the objectives of the City's guideline documents.

The proposed plan of subdivision does not satisfy the criteria for municipal servicing infrastructure and is not designed such that it can be integrated with adjacent lands that are subject to policies in the Southwest Area Plan. The proposed plan cannot be accommodated by the planned municipal infrastructure and servicing works in the Growth Management Implementation Strategy.

Provincial Policy Statement:

Under Section 2 of the *Planning Act*, decisions of municipal councils and approval authorities must be consistent with the policy statements issues under subsection (1) that are in effect on the date of the decision. A decision to approve the proposed plan of subdivision would not be consistent with the Provincial Policy Statement (PPS) and therefore cannot be supported by Council at this time.

Section 1.6 of the PPS includes policies that require infrastructure and public service facilities to be provided in a co-ordinated, efficient and cost-effective manner to accommodate projected needs, as well as the optimization of existing infrastructure and facilities. Transportation and infrastructure corridors are required to be integrated and used in an efficient manner. The proposed plan cannot be considered outside the context of the Southwest Area Plan, which will establish the planning context for surrounding land uses, servicing and transportation corridors. The Development Charges Study and Growth Management Implementation Strategy will confirm financing and timing for municipal infrastructure that is critical to service this plan of subdivision. Environmental Assessments are also required to be completed and conditions of draft approval cannot be formulated until such time as these critical processes have been completed.

Section 2.1 of the PPS requires the long term protection of natural heritage features and areas. The plan of subdivision, as proposed, does not protect the natural heritage features and functions that have been identified as significant in the Southwest Area Plan and the Subject Lands Status Report/EIS submitted with the application. The PPS clearly states that development and site alteration shall not be permitted in areas of natural heritage significance unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions. This requirement has not been satisfied and the proposed plan of subdivision cannot be approved in its current form.

SUMMARY AND CONCLUSION

The appeals from Colonel Talbot Developments Inc. are in response to the failure of Municipal Council and the Approval Authority to make decisions on applications for Official Plan and Zoning By-law amendments, and draft plan of subdivision approval within the statutory periods prescribed in the Planning Act. As a result of the appeals, the authority to decide on the applications now rests with the Ontario Municipal Board.

A review of comments received on the proposed plan of subdivision confirm that approval of the application in its current form would not be in conformity with the Official Plan, or consistent with the Provincial Policy Statement. Based on current servicing constraints and municipal infrastructure plans, approval of the proposed subdivision would be premature and not in the public interest. Since the land use policies, environmental features and transportation alignments that are relevant to the proposed subdivision will be established by the Southwest Area Plan, appeals on both matters should be heard together by the Ontario Municipal Board.

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

Agenda Item #

Page #

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**39T-12503/OZ-8052
Alanna Riley**

<p>Appendix "A"</p>

Appeals from Colonel Talbot Developments Inc.

Part 5: Language and Accessibility

Please choose preferred language: X English French

We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible.

Part 6: Appeal Specific Information

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

(Please print)

Neglect to make a decision, Municipal File No. 39T-12503.
Subdivision application accepted as complete by the City of London on May 3, 2012.

2. Outline the nature of your appeal and the reasons for your appeal. Be specific and provide land-use planning reasons (for example: the specific provisions, sections and/or policies of the Official Plan or By-law which are the subject of your appeal - if applicable). **If more space is required, please continue in Part 9 or attach a separate page.

(Please print)

Neglect to make a decision. The proposed plan of subdivision conforms to all applicable requirements. The application was complete at the time of submission.

Notice of the application was circulated in June, 2012. No public meeting has been held.
Proposal to subdivide 64.6 hectare lot for mixed residential use with range of densities, open space and public uses. Consistent with PPS. The subdivision would conform to the Official Plan and the Zoning By-law as these are to be amended on the basis of the proposal under appeal.

THE FOLLOWING SECTIONS (a&b) APPLY ONLY TO APPEALS OF ZONING BY-LAW AMENDMENTS UNDER SECTION 34(11) OF THE PLANNING ACT.

a) DATE APPLICATION SUBMITTED TO MUNICIPALITY: _____
(If application submitted before January 1, 2007 please use the O1 'pre-Bill 51' form.)

b) Provide a brief explanatory note regarding the proposal, which includes the existing zoning category, desired zoning category, the purpose of the desired zoning by-law change, and a description of the lands under appeal:
**If more space is required, please continue in Part 9 or attach a separate page.

[Empty box for explanatory note]

Part 7: Related Matters (if known)

Are there other appeals not yet filed with the Municipality? YES X NO

Are there other planning matters related to this appeal? YES X NO
(For example: A consent application connected to a variance application)

If yes, please provide OMB Reference Number(s) and/or Municipal File Number(s) in the box below:

(Please print)

Concurrent appeals are being filed by Colonel Talbot Developments Inc. against the City of London's neglect to make a decision with respect to its Official Plan Amendment Application and Zoning By-law Amendment Applications (OZ-8052).

Part 3: Appellant Information

First Name: _____ Last Name: _____

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)
Colonel Talbot Developments Inc., c/o Barry R. Card, Barrister and Solicitor

Professional Title (if applicable): _____

E-mail Address: cardlaw@rogers.com
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 519-433-5117 Alternate Telephone #: _____

Fax #: 519-963-0285

Mailing Address: 568 Ridgewood Crescent _____ London
Street Address Apt/Suite/Unit# City/Town

Ontario _____ N6J 3J2
Province Country (if not Canada) Postal Code

Signature of Appellant: Barry R. Card / OMB _____ Date: Jan 28, 2013
(Signature not required if the appeal is submitted by a law office.)

Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.

Part 4: Representative Information (if applicable)

I hereby authorize the named company and/or individual(s) to represent me:

First Name: _____ Last Name: _____

Company Name: _____

Professional Title: _____

E-mail Address: _____
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: _____ Alternate Telephone #: _____

Fax #: _____

Mailing Address: _____
Street Address Apt/Suite/Unit# City/Town

_____ Province Country (if not Canada) Postal Code

Signature of Appellant: _____ Date: _____

Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.



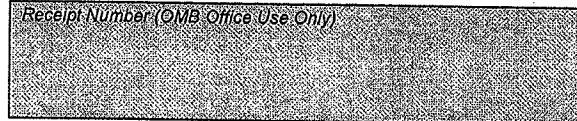
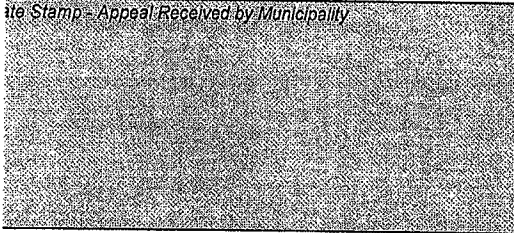
Environment and Land Tribunals Ontario
Ontario Municipal Board
 655 Bay Street, Suite 1500 Toronto, Ontario M5G 1E5
 TEL: (416) 212-6349 or Toll Free: 1-866-448-2248
 FAX: (416) 326-5370
 www.elto.gov.on.ca

**APPELLANT FORM (A1)
 PLANNING ACT**

FORM

SUBMIT COMPLETED

**TO
 MUNICIPALITY/APPROVAL
 AUTHORITY**



Part 1: Appeal Type (Please check only one box)

SUBJECT OF APPEAL	TYPE OF APPEAL	PLANNING ACT REFERENCE (SECTION)
Minor Variance	<input type="checkbox"/> Appeal a decision	45(12)
Consent/Severance	<input type="checkbox"/> Appeal a decision	53(19)
	<input type="checkbox"/> Appeal conditions imposed	
	<input type="checkbox"/> Appeal changed conditions	53(27)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	53(14)
Zoning By-law or Zoning By-law Amendment	<input type="checkbox"/> Appeal the passing of a Zoning By-law	34(19)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days	34(11)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality	
Interim Control By-law	<input type="checkbox"/> Appeal the passing of an Interim Control By-law	38(4)
Official Plan or Official Plan Amendment	<input type="checkbox"/> Appeal a decision	17(24) or 17(36)
	<input type="checkbox"/> Failed to make a decision on the plan within 180 days	17(40)
	<input type="checkbox"/> Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days	22(7)
	<input type="checkbox"/> Application for an amendment to the Official Plan – refused by the municipality	
Plan of Subdivision	<input type="checkbox"/> Appeal a decision	51(39)
	<input type="checkbox"/> Appeal conditions imposed	51(43) or 51(48)
	<input checked="" type="checkbox"/> Failed to make a decision on the application within 180 days	51(34)

Part 2: Location Information

3924 and 4138 Colonel Talbot Road (Lambeth)
 Address and/or Legal Description of property subject to the appeal:
 Municipality/Upper tier: City of London

January 28, 2013

Please prepare a record consisting of the documents listed in Section 8 of O.Reg. 196/96 and forward this along with our appeal to the Ontario Municipal Board as per Section 51(35) of the *Planning Act*.

Yours very truly,

A handwritten signature in black ink that reads "Barry Card" followed by a stylized flourish.

Barry R. Card

BRC:jmh

Encls.

cc: Colonel Talbot Developments Inc.

Barry R. Card

BARRISTER & SOLICITOR

Certified Specialist - Municipal Law; Local Government/ Land Use Planning & Development Law

568 RIDGEWOOD CRESCENT
LONDON, ONTARIO N6J 3J2

TELEPHONE (519) 433-5117 • FACSIMILE (519) 963-0285

Internet Address: cardlaw@rogers.com

January 28, 2013

DELIVERED

Subdivision *Approval Authority*
The Corporation of the City of London
Planning and Development Department
1st Floor
204/206 Dundas Street
London, Ontario
N6A 1G7

ATTENTION: Mr. John M. Fleming
Managing Director, Planning & Development

Dear Mr. Fleming:

Re: Colonel Talbot Developments Inc.
Application for Subdivision Approval
3924 and 4138 Colonel Talbot Road (Lambeth)
Appeal to Ontario Municipal Board
Planning Act, Section 51(34)

I am the solicitor for Colonel Talbot Developments Inc. On behalf of my client, I hereby appeal to the Ontario Municipal Board with respect to the failure of the Approval Authority to make a decision pursuant to Section 51(31) of the *Planning Act* within 180 days after submission of my client's application for subdivision approval.

Please find enclosed the following:

1. Appellant Form;
2. Certified cheque for the appeal fee.

Barry R. Card

BARRISTER & SOLICITOR

Certified Specialist - Municipal Law: Local Government/ Land Use Planning & Development Law

568 RIDGEWOOD CRESCENT
LONDON, ONTARIO N6J 3J2
TELEPHONE (519) 433-5117 • FACSIMILE (519) 963-0285

Internet Address: cardlaw@rogers.com

January 28, 2013

DELIVERED

C. Saunders, City Clerk
The Corporation of the City of London
City Hall, 3rd Floor
300 Dufferin Avenue
London, Ontario
N6A 4L9

Dear Ms. Saunders:

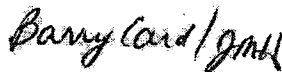
**Re: Appeals to Ontario Municipal Board
Application for OPA and ZBA
3924 and 4138 Colonel Talbot Road (Lambeth)
Colonel Talbot Developments Inc.**

I am the solicitor for Colonel Talbot Developments Inc. On behalf of my client, I hereby appeal to the Ontario Municipal Board with respect to:

1. the neglect of the Council of the Corporation of the City of London to make a decision with respect to a Zoning By-law Amendment application with respect to the above-noted property. Our Appeal Form and certified cheque for the s. 34(11) appeal are enclosed.
2. the neglect of the Council of the Corporation of the City of London to make a decision with respect to an Official Plan Amendment application with respect to the above-noted property. Our Appeal Form and certified cheque for the s. 22(7) appeal are enclosed.

Please forward the necessary material to the Ontario Municipal Board.

Yours very truly,



Barry R. Card

BRC:jmh:Encls.

cc: Colonel Talbot Developments Inc.

Part 8: Scheduling Information

How many days do you estimate are needed for hearing this appeal? half day 1 day 2 days 3 days
 4 days 1 week More than 1 week – please specify number of days: 2 weeks

How many expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?
4

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.):
land use planner; 2 engineers; ecologist

Do you believe this matter would benefit from mediation? YES NO
(Mediation is generally scheduled only when all parties agree to participate)

Do you believe this matter would benefit from a prehearing conference? YES NO
(Prehearing conferences are generally not scheduled for variances or consents)

If yes, why? to identify issues, parties and procedural matters

Part 9: Other Applicable Information ** Attach a separate page if more space is required.

Part 10: Required Fee

Total Fee Submitted: \$ 125.00

Payment Method: Certified cheque Money Order Solicitor's general or trust account cheque

- The payment must be in Canadian funds, payable to the Minister of Finance.
- Do not send cash.
- PLEASE ATTACH THE CERTIFIED CHEQUE/MONEY ORDER TO THE FRONT OF THIS FORM.