

# Municipality of Lakeshore Committee of Adjustment Report

## Growth & Sustainability

## Community Planning



**To:** Chair and Members of Committee of Adjustment

**From:** Jonathan Derworiz, MCIP, RPP, Planning Consultant

**Date:** September 11, 2024

**Subject:** Consent Applications B-04-2024, B-06-2024, and B-07-2024, Tilbury Battery Storage, Applicant – Angela Wang, Stantec, on behalf of Boralex Inc.

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### Recommendation

Approve consent application B-04-2024 to permit registration of a 25-year lease agreement with two additional renewal terms (10 and 8, respectively) subject to the following conditions:

- 1) That the applicant obtains a proper survey and Reference Plan from an Ontario Land Surveyor for the lands subject to the application, to the satisfaction of the Municipality of Lakeshore;
- 2) That municipal taxes be paid in full prior to the release of the certificate for the registration documents;
- 3) That the registration documents be sent to the Secretary-Treasurer of the Committee of Adjustment;
- 4) All conditions shall be met in accordance with Section 53(41) of the Planning Act, R.S.O. 1990 by September 19, 2026. Failure to fulfill the conditions by this date will result in the applications being deemed to be refused.

Approve consent application B-06-2024 to permit registration of a 25-year lease agreement with an option to renew for 10 years subject to the following conditions:

- 1) That the applicant obtains a proper survey and Reference Plan from an Ontario Land Surveyor for the lands subject to the application, to the satisfaction of the Municipality of Lakeshore;
- 2) That municipal taxes be paid in full prior to the release of the certificate for the registration documents;
- 3) That the registration documents be sent to the Secretary-Treasurer of the Committee of Adjustment;
- 4) All conditions shall be met in accordance with Section 53(41) of the Planning Act, R.S.O. 1990 by September 19, 2026. Failure to fulfill the conditions by this date will result in the applications being deemed to be refused.

Approve consent application B-07-2024 to permit registration of a 25-year lease

agreement with an option to renew for 10 years subject to the following conditions:

- 1) That the applicant obtains a proper survey and Reference Plan from an Ontario Land Surveyor for the lands subject to application, to the satisfaction of the Municipality of Lakeshore;
- 2) That municipal taxes be paid in full prior to the release of the certificate for the registration documents;
- 3) That the registration documents be sent to the Secretary-Treasurer of the Committee of Adjustment;
- 4) All conditions shall be met in accordance with Section 53(41) of the Planning Act, R.S.O. 1990 by September 19, 2026. Failure to fulfill the conditions by this date will result in the applications being deemed to be

## **Background**

Three separate consent applications have been submitted to the Municipality of Lakeshore by Angela Wang, Stantec, on behalf of Boralex Inc. The purpose of these applications is to permit leases greater than 21 years for the sites municipally known as 0 Creekside Rd, 2825 Essex Kent Rd, and 0 Essex Kent Rd to facilitate use of, and access to, 0 Creekside Road as a battery energy storage system (BESS).

### **0 Creekside Rd**

The applicant is proposing to use 0 Creekside Rd as a battery energy storage system (BESS) facility, for which a Zoning By-law Amendment was approved for the site on February 27, 2024 (ZBA-02-2024). This Zoning By-law Amendment permits the site to be used as an Agriculture Exception 118 (A-118) Zone. The applicant is proposing to lease the site for a 25-year initial term, with two additional terms of 10 years and 8 years, respectively.

### **2825 Essex Kent Rd**

2825 Essex Kent Rd is zoned Rural Commercial/Employment Zone Exception 27 (CR-27) Zone. The applicant is proposing to use a portion of 2825 Essex Kent Rd as an access road to the proposed BESS facility. This proposed use will provide the BESS facility with access to Essex Kent Rd. The applicant is proposing to lease the area of the lands around the proposed access road for a 25-year initial term, with an option to extend for an additional 10 years.

### **0 Essex Kent Rd**

0 Essex Kent Rd is zoned Agriculture (A) Zone. The applicant is proposing to use a small portion of the lands (southernmost portion) as an access road to the proposed BESS facility. The applicant is proposing to lease this small portion of the lands for a 25-year initial term, with an option to extend for an additional 10 years.

File Number	B-04-2024	B-06-2024	B-07-2024
<b>Subject Land:</b>	0 Creekside Rd – Part Lot 21-22 Concession 2	2825 Essex Kent Rd	0 Essex Kent Rd
<b>Legal Description:</b>	Con 2 Pt Lots 21 & 22 Reg 53.00ac Fr D	Tilbury North Con 2 Pt Lot 22 Rp 12r4334 Parts 1 To 11 Rp 12r5575 Part 1 Reg 13.52ac 500.00fr D	Con 2 E Pt Lot 22 Reg 75.76ac Fr D
<b>Proposed Lease Term:</b>	To be leased for 25-year initial term with two additional terms (10 and 8, respectively).	Area around the proposed access road to be leased for a 25-year initial term with an option to extend for an additional 10 years.	A small portion being leased for a 25-year initial term with an option to extend for an additional 10 years.
<b>Use:</b>	Existing: Vacant agricultural land, solar panels Proposed: Battery energy storage facility	Existing: industrial uses - L&M Machine & Automation Proposed: Access road for BESS facility	Existing: vacant agricultural lands Proposed: access road to the proposed BESS facility on small portion of the lands
<b>Existing Zoning:</b>	Agriculture Exception 118 (A-118) Zone	Rural Commercial/Employment Zone Exception 27 (CR-27) Zone	Agriculture (A) Zone
<b>Official Plan:</b>	Agricultural		
<b>Neighbouring Land Uses:</b>	North: Agricultural East: Agricultural and Commercial. West: Agricultural South: Agricultural		

## Comments

### ***Planning Act***

Section 50 of the *Planning Act* governs the subdivision of land in Ontario. According to Section 50(3)(f), a conveyance of land for a period of 21-years or more may proceed without requiring the approval of a plan of subdivision if a consent is given to convey, mortgage or charge the land, or grant, assign or exercise a power of appointment in respect of the land or enter into an agreement in respect of the land. The purpose of the proposed Consent Applications is to allow access and use of the subject lands for greater than 21 years.

Section 50(15) of the *Planning Act* provides specific circumstances under which consent may be granted for abutting lands. This subsection allows for the renewal of leases,

mortgages, or other agreements affecting abutting parcels of land for a term of 21 years or more, without requiring the approval of a plan of subdivision. In this context, the proposed Consent Applications meet the criteria set out in Section 50(15) because it involves abutting lands, thereby conforming with Ontario's Planning Act.

Section 51(24) of the *Planning Act* sets out the criteria for land division within the Province of Ontario. In evaluating such requests, the Committee must be satisfied that the proposed Consent Applications meet not only the criteria set out under Section 51(24), but also any municipal requirements identified in local legislation.

### **Provincial Policy Statement**

The *Provincial Policy Statement* policies most directly relevant to Consent Applications in agricultural areas are found in Section 2.3.1, 2.3.3, and 2.3.4. These sections specifically address conditions under which consent can occur in agricultural areas, focusing on minimized fragmentation and maintaining the long-term agricultural use of the land. Section 2.3.4.2 permits lot adjustments in prime agricultural areas for legal or technical reasons, including severances (consent) for purposes such as easements, corrections of deeds, quit claims, and minor boundary adjustments, which do not result in the creation of a new lot.

The policies would primarily concern ensuring that the Battery Energy Storage Facility and access roads minimize impact on agricultural operations in the area, to protect agricultural lands and promote sustainable development.

The three sites in subject satisfy the requirements for Non-Agricultural Uses in Prime Agricultural Areas, as set out in Section 2.3.6. Section 2.3.6.1 provides the requirements for which non-agricultural uses may be permitted in prime agricultural areas. Based on Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) Guidelines, the Minimum Distance Separation Formulae does not apply, as the proposed infrastructure use is not expected to impact existing livestock facilities. Furthermore, there are limited opportunities to avoid prime agricultural lands, given that 90% of the land within Essex County is considered prime agricultural land.

Section 1.6.11 recognizes that Planning authorities should provide opportunities to develop an energy supply. The subject site and proposed use would support current and projected energy needs.

Section 1.7.1 notes that long-term economic prosperity should be supported by j) providing opportunities for increased energy supply. The Province recognizes the need for energy storage projects to help support the Ontario electricity grid during periods of peak demand.

### **County of Essex Official Plan**

The County of Essex Official Plan emphasizes the protection of agricultural land, with Policy 3.3.3.3 mandating that consents must be compatible with surrounding land uses and maintain the rural character of the area.

The County of Essex Official Plan recognizes 0 Creekside Rd as “Agricultural” per Schedule “A1”. The Official Plan notes in Section 3.3.1 that, “because this County is rich in natural resources, it is also acknowledged that there is a need to permit other types of land use in the “Agricultural” designation.” It is understood that lands designated Prime Agricultural are to be protected for agricultural purposes to ensure continued long-term viability (3.3.2.a). The proposed use will have little to no impact on surrounding agricultural uses and is limited to approximately 30% of the overall site area. Furthermore, after the 22-year contract with the Independent Electricity System Operator (“IESO”) ends, the development area can be restored and farmed.

Through the approved Zoning By-law Amendment, the lands generally conform to the policies of the County of Essex Official Plan.

### **Lakeshore Official Plan**

The Municipality of Lakeshore Official Plan, Section 6.2.3, contains the criteria for granting a consent to sever on lands designated Agricultural Designation in the Municipality. Section 6.2.3 e) allows for consent to sever for “lot adjustments for legal or technical reasons, such as easements, corrections of deeds, quit claims, and minor boundary adjustments, and in accordance with Sections 50(3) and (5) of the Planning Act, which do not result in the creation of a new residential or non-farm lot.”

On January 10, 2023, a memo regarding IESO Municipal Support Resolutions for Battery Energy Storage Systems Facilities was presented to Council by Staff. This memo outlined Staff’s interpretation of applicable Official Plan policies and the general approach to evaluating battery storage uses. As per this memo, “Lakeshore’s Official Plan does not specifically recognize these types of energy storage facilities, as the proposals are a new type of technology. The Ministry of Environment Conservation and Parks (MECP) has advised staff that they will be taking the projects through the Class Environmental Assessment (Class EA) process for Minor Transmission projects or Generation Facilities.”

Staff note that the applicant is currently undergoing the requisite EA process which fulfills the requirements of the Official Plan, Section 7.5 h) which states: “Electricity generation facilities and transmission and distribution systems shall be permitted in all land use designations, subject to the applicable Environmental Assessment process, and any other applicable legislation and/or regulations.”

Through the approved Zoning By-law Amendment, the lands generally conform with Lakeshore Official Plan.

### **Zoning By-law**

The lands at 2825 Essex Kent Rd are zoned “Rural Commercial/Employment Zone Exception 27 (CR-27)”, while the lands at 0 Essex Kent Rd are zoned “Agriculture (A)”. The applicant is proposing to use a portion of both lands as an access road for the proposed BESS facility. Since the consent applications for these two lots will not result in the construction or erection of any buildings or structures, the two lots will not be affected by the Zoning By-Law.

Through the approval of Zoning By-law Amendment Application ZBA-02-2024, the subject lands at 0 Creekside Rd are zoned “Agriculture (A-118)”. As such, the lands are subject to a site-specific zone exception to allow the proposed battery energy storage facility under the permitted use of “Utility Yard”.

Battery energy storage system facilities are considered as a “Utility Yard” in the Zoning By-law. As per the Zoning By-law, Utility Yard shall mean: “any above-ground structures or facilities, other than buildings, unless such buildings are used as storage incidental to the operation of such structures or facilities, owned by a governmental entity, a non-profit organization, a corporation, or any entity defined as a public utility for any purpose and used in connection with the production, generation, transmission, delivery, collection, or storage of water, sewage, electricity, gas oil, or electronic signals.”

### **Site Plan Control**

The proposed development(s) will be subject to site plan control. The Site Plan for the proposed battery storage facility at the Subject Site is currently underway (File SPC-07-2024).

Through the site plan review process, requirements such as the prescribed sound control measures (site design and layout) will be implemented. As requested by Council at the February 27, 2024, meeting, a report detailing screening, emergency services, and site decommissioning, will be prepared by staff and presented to Council.

### **Correspondence from External and Internal Agencies**

All Applications:

- Hydro One Networks - Please be advised that Hydro One Networks Inc. (“HONI”) has completed a preliminary review of above noted consent to sever application. As the subject property is abutting and/or bisected by a HONI high voltage transmission corridor (the “transmission corridor”), HONI has no objection in principle to proposed severance, provided HONI’s easement rights are protected and maintained.

Please be advised that any placement of permanent structures, facilities or landscaping within transmission corridor is prohibited without the prior written approval of HONI.

If in the future the owner proceeds with a site plan, plan of subdivision and/or plan of condominium application, the owner must make arrangements satisfactory to HONI for lot grading and drainage, and any proposed uses on the transmission

corridor. The costs of any relocations or revisions to HONI facilities which are necessary to accommodate this proposal will become the responsibility of developer.

Our preliminary review only considers issues affecting HONI's transmission facilities and transmission corridor lands. For any proposals affecting distribution facilities (low voltage), the developer should consult the local distribution supplier.

**B-04-2024:**

- Operations has reviewed B-04-2024 – 0 Creekside Road application and offer the following comments: It is recommended that the subject property obtain access agreements and are required to be registered on title of both the subject property and the adjacent parcel to which access is obtained.
- Drainage: The owner/s are aware of what they can release into the municipal drain as they have been working with Engineering on release rates. The drain does not require cleaning as we first originally thought.
- Fire is working closely with the applicant on any fire related requirements.
- County of Essex - Please be advised that the County has reviewed the aforementioned application and the comments provided are engineering-related only. This application has not been reviewed from a planning perspective. Based on the location of the subject property, the County has no objections. We are requesting a copy of the Decision of the aforementioned application. Should this application be approved we are requesting a copy of the revised survey plan of the subject lands in order to update our mapping records. Thank you for your assistance and cooperation in this matter.
- Lower Thames Valley Conservation Authority - Please be advised that staff have undertaken a file search with respects to the above noted property and its relation to the Conservation Authority's "Prohibited Activities, Exemptions and Permits" regulations, O.Reg. 41/24 under the Conservation Authorities Act. The Conservation Authority is responsible for addressing the Natural Hazard Section of the Provincial Planning Policy Statement as well as administering the Conservation Authorities Act and its associated Prohibited Activities, Exemptions and Permits regulation (O. Reg. 41/24).

After reviewing our files and mapping, staff would have no objections to the proposed severance as submitted to this office on July 31, 2024. However, the property is subject to the Authority's regulations. The issue of concern in this area is the 2nd Concession Drain East of Trembley Creek, flooding and erosion.

An application from this office is required prior to any works/construction taking place within the regulated area, this includes site alteration, fill placement / excavation, structures, etc. The lands are subject to flooding under regulatory storm conditions. Any proposed structure will be required to be flood proofed to a minimum elevation of 177.7 m (CGVD28:78) for the lowest openings into any proposed structures. Setbacks from the 2nd Concession Drain East of Trembley Creek located along Creekside Road will also be required to any proposed structure.

**B-06-2024:**

- Operations has reviewed B-06-2024 – 2825 Essex Kent Road application and offer the following comments: It is recommended that the subject property obtain access agreements and are required to be registered on title of both the subject property and the adjacent parcel to which access is obtained.
- County of Essex - Please be advised that the County has reviewed the aforementioned application and the comments provided are engineering-related only. This application has not been reviewed from a planning perspective. The subject lands have frontage on County Road 1. The County has no objections as it pertains to this application. The Applicant will be required to comply with the following County Road regulation:
  - o County By-Law Number 2481 – A By-Law to Provide for the Protection of Highways and to Provide for the Installation of Entrance Ways.
  - o County By-Law Number 2480 – A By-Law of the Corporation of the County of Essex to Regulate the Location of Buildings and Structures on Land Adjacent to County Roads.

The minimum setback for any proposed structures on this property must be 85 feet from the centre of the original ROW of County Road 1. Permits are necessary for any changes to existing entrances and structures, or the construction of new entrances or structures. We are requesting a copy of the Decision of the aforementioned application. Should this application be approved we are requesting a copy of the revised survey plan of the subject lands in order to update our mapping records. Thank you for your assistance and cooperation in this matter.

- Lower Thames Valley Conservation Authority - Please be advised that staff have undertaken a file search with respects to the above noted property and its relation to the Conservation Authority's "Prohibited Activities, Exemptions and Permits" regulations, O.Reg. 41/24 under the Conservation Authorities Act. The Conservation Authority is responsible for addressing the Natural Hazard Section of the Provincial Planning Policy Statement as well as administering the Conservation Authorities Act and its associated Prohibited Activities, Exemptions and Permits regulation (O. Reg. 41/24).

After reviewing our files and mapping, staff would have no objections to the proposed severance as submitted to this office on July 31, 2024. However, the property is subject to the Authority's regulations. The issue of concern in this area is flooding.

An application from this office is required prior to any works/construction taking place within the regulated area, this includes site alteration, fill placement / excavation, structures, etc. The lands are subject to flooding under regulatory storm conditions. Any proposed structure will be required to be flood proofed to a minimum elevation of 177.7 m (CGVD28:78) for the lowest openings into any proposed structures.

#### B-07-2024:

- Operations has reviewed the B-07-2024 – 0 Essex Kent Road application and offer the following comments: It is recommended that the subject property obtain access agreements and are required to be registered on title of both the subject property and the adjacent parcel to which access is obtained.



- County of Essex - Please be advised that the County has reviewed the aforementioned application and the comments provided are engineering-related only. This application has not been reviewed from a planning perspective. Based on the location of the leased land, the County has no objections. We are requesting a copy of the Decision of the aforementioned application. Should this application be approved we are requesting a copy of the revised survey plan of the subject lands in order to update our mapping records. Thank you for your assistance and cooperation in this matter.
- Lower Thames Valley Conservation Authority - Please be advised that staff have undertaken a file search with respects to the above noted property and its relation to the Conservation Authority's "Prohibited Activities, Exemptions and Permits" regulations, O.Reg. 41/24 under the Conservation Authorities Act. The Conservation Authority is responsible for addressing the Natural Hazard Section of the Provincial Planning Policy Statement as well as administering the Conservation Authorities Act and its associated Prohibited Activities, Exemptions and Permits regulation (O. Reg. 41/24).  
After reviewing our files and mapping, staff would have no objections to the proposed severance as submitted to this office on July 31, 2024. However, the property is subject to the Authority's regulations. The issue of concern in this area is flooding.  
An application from this office is required prior to any works/construction taking place within the regulated area, this includes site alteration, fill placement / excavation, structures, etc. The lands are subject to flooding under regulatory storm conditions. Any proposed structure will be required to be flood proofed to a minimum elevation of 177.7 m (CGVD28:78) for the lowest openings into any proposed structures.

### **Public Notice Circulation**

Notice of Public Meeting and information regarding the requested consent applications were sent to all property owners within 60 m of the subject land. Signage detailing the applications were also posted on site. At the time of writing, no written comments were received.

### **Conclusion**

Administration recommends that Council approve the Consent Applications for B-04-2024, B-06-2024, and B-07-2024, as the request to permit leases greater than 21 years generally conforms to the Planning Act, Provincial Policy Statement, County of Essex Official Plan, Lakeshore Official Plan and Lakeshore Zoning By-law.

### **Financial Impacts**

There are no adverse financial budget impacts resulting from the recommendation.

### **Attachments:**

Appendix A – Key Plan  
Appendix B – Site Plan  
Appendix C – Operations Comments  
Appendix D – LTVCA Comments

## Report Approval Details

Document Title:	B-04-06-07-2024 Consents Report.docx
Attachments:	- Appendix A - Key Plan.pdf - Appendix B - Site Plans.pdf
Final Approval Date:	Sep 11, 2024

This report and all of its attachments were approved and signed as outlined below:

**Urvi Prajapati - Sep 10, 2024 - 5:12 PM**

**Ryan Donally - Sep 11, 2024 - 11:34 AM**

**Tammie Ryall - Sep 11, 2024 - 9:55 PM**