

Municipality of Lakeshore - Report to Council

Community & Development Services

Development Services



To: Mayor & Members of Council

From: Aaron Hair, Planner III

Date: January 15, 2021

Subject: Zoning By-law Amendment ZBA-20-2020 - Manning Developments

Recommendation

Defer Zoning By-law Amendment Application ZBA-20-2020 (By-law 9-2021, Municipality of Lakeshore Zoning By-law 2-2012, as amended), to rezone the "Subject Property", located at 1654 Manning Road, from "Mixed Use Zone (MU)" to "Mixed Use Zone Exception 35 (MU-35)(H25)" until April or May of 2021.

Background

The proposed site plan application affects a 1.3 ha (3.24 acre) parcel of land located east of County Road 19 (Manning Road) and north of Amy Croft Drive, as shown on the Key Map (Appendix A).

The applicant has applied for Zoning By-law Amendment and Site Plan Control for an 8 Storey Apartment Building, consisting of a 155 condo units and 10 Townhouses (including a semi-detached dwelling), and the associated, parking, civil and landscaping (Appendix B and C). The existing Mixed Use Zone does allow for these uses (excluding the semi-detached dwelling), but not at the scale (height and gross floor area) the developer is requesting. That is why the developer has applied for a zone exception.

A new holding provision for the subject lands is also being proposed to be placed on the lands, and removal will be subject to: site plan agreement approval; condominium agreement approval; final condominium approval by the County; that the Denis St. Pierre Sanitary Treatment Plant expansion has been tendered; and that the sanitary conveyance system is sized appropriately to accommodate the proposed development. (Appendix F, draft By-law).

Subject Land: (1654 Manning Road)	Lot Area — 1.3 ha (3.24 acre) Existing Use — vacant land, formerly driving range and mini golf Proposed Use – 8 storey apartment building and 10 townhouses (including a semi-detached dwelling)
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	Access — access off of a private road and the future Lanoue Street. Services — municipal water, municipal sewage <i>Note: the existing sanitary system cannot accommodate the proposed development from a treatment and conveyance perspective.</i>
Neighbouring Land Uses:	mix of commercial, light employment, and residential land uses, and Railway Right of-Way
Official Plan:	Mixed Use
Existing Zoning:	MU – Mixed Use <i>Note: a small portion of the subject property is zoned General Employment (M1, & M1-3), these lands will become part of the future Lanoue Street extension.</i>

Comments

Provincial Policy Statement

The proposed development is consistent with the policies of the 2020 Provincial Policy Statement (PPS), including the following:

- Promoting efficient development and land use patterns which sustain the financial well-being of the Province and municipalities over the long term (Section 1.1.1 a);
- Section 1.1.1, that healthy, liveable and safe communities are sustained by b) Accommodating an appropriate range and mix of residential (including second units, affordable housing and housing for older persons), employment (including industrial, commercial and institutional uses), recreational and open space uses to meet long-term needs;
- Providing for a focus of growth in Settlement Areas by promoting their vitality and regeneration (Section 1.1.3.1);
- Providing land use patterns based on (Section 1.1.3.2):
 - a) densities and a mix of land uses which:
 - 1. efficiently use land and resources;
 - 2. are appropriate for, and efficiently use, the infrastructure and public service facilities which are planned or available, and avoid the need for their unjustified and/or uneconomical expansion;
 - b) a range of uses and opportunities for intensification and redevelopment (as identified by the Planning authorities);
- Promoting opportunities for intensification and redevelopment, taking into account the availability of suitable existing and planned infrastructure and public service facilities (Section 1.1.3.3);

- Providing a range and mix of housing types and densities to meet the projected requirements of current and future residents (Section 1.4.1);
- Promoting densities for new housing that support the use of alternative transportation modes and public transit, where it exists or is planned for (Section 1.4.3d); Planning public streets, spaces and facilities which meet the needs of pedestrians and facilitate community connectivity (Section 1.5.1a);
- Promoting intensification and redevelopment within settlement areas on existing municipal sewage and water services (Section 1.6.6.2).

Section 1.6.6.7 Stormwater Management (PPS, 2020)

ERCA has concerns with the potential impact of the quality and quantity of stormwater runoff in the downstream watercourse due to the proposed development on this site. ERCA recommends that stormwater quality and stormwater quantity will need to be addressed up to and including the 1:100 year storm event and be in accordance with the guidance provided by the Stormwater Management Planning and Guidance Manual, prepared by the Ministry of the Environment (MOE, March 2003) and the "Windsor-Essex Region Stormwater Management Standards Manual".

They further recommend that the stormwater management analysis be completed to the satisfaction of the Municipality and in line with the requirements set-up as prescribed by the regional facility.

Natural Heritage Policies of the PPS

ERCA noted that the subject property is adjacent to (within 120m) of a natural heritage feature that may meet the criteria for significance under the PPS. Section 2.1.8 of the PPS, 2020 states – "Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.4, 2.1.5 and 2.1.6 unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions."

Notwithstanding the above noted references to the PPS policies, ERCA noted that the proposed development is either adequately setback and/or physically separated from the natural heritage feature by existing development or infrastructure. Therefore, they do not anticipate any negative impacts associated with the proposal. Based on their review, they have no objection to the application with respect to the natural heritage policies of the PPS.

Noise

A Noise Feasibility Study was completed by HGC Engineering for the development area. According to the report residential development should include either setbacks or features to mitigate noise impacts on future residents. The noise study includes assessment of noise impact from surface transportation (road and rail). The nearby surface transportation sources are Amy Croft Drive, Manning Road and Lanoue Street and the CN rail spur line. Section 5 of the report has recommendations for acoustic barrier

requirements, ventilation requirements, upgraded building façade construction, and warning clauses to achieve the noise criteria. These recommendations can be incorporated into a site plan and/or condominium agreement, where appropriate.

Traffic

A Traffic Impact & Parking Justification Study was prepared by Paradigm Traffic Solutions Ltd. to examine traffic implications of the proposed developments on traffic operations in the area. According to the study the traffic generated by the subject development will have negligible impact on the surrounding road network. It should be noted that the study does identify that several of the existing intersections are already exceeding their acceptable level of service.

Servicing

At the pre-application consultation meeting, the proponent was advised that the existing conveyance system and supporting infrastructure is not sized to accommodate the additional flows generated by the proposal. Past planning review of this site anticipated commercial development on the property which generates less sewage than the sewage generated from a high density residential development.

The original Functional Servicing Study (September 30, 2020) was submitted to Lakeshore for review and comment, which proposes a method of handling sanitary that is not contemplated within the Official Plan or the Lakeshore Development Manual. As such the Municipality engaged Stantec Consulting to review the proposal and to advise the Municipality of any concerns and/or risks with allowing the proposed system. The proposed system would be located on the subject lands and work similar to a holding tank, but instead of having to be vacuumed out like a holding tank, it would be discharged into the Municipality's sanitary system during non-peak times at a controlled rate. On behalf of the Municipality, Stantec investigated the risks of accepting this type of private system and their comments are incorporated into the EIS comments (Appendix D – Engineering Memo). The EIS comments indicate the risks involved in using the proposed holding tank and it is not recommended for either a short term or long term solution, based on technical reasons.

The Functional Servicing Report was revised twice - October 30, 2020 and November 9, 2020. These versions of the Functional Servicing Report take out the reference to the holding tank and state that the Municipality must find a solution to the sewage conveyancing issue. Lakeshore has engaged Jacobs Consulting to undertake this review. The Report is expected at the end of March 2021.

It is noted that the Denis St. Pierre Water Pollution Control Plant (sanitary treatment facility) will not have the capacity to treat the effluent until the expansion of the plant has occurred. It is anticipated that the timing of the expansion (plant operational in the spring of 2023) will coincide with the timing of the completion and occupation of the apartment building. If the application is approved, a holding provision is proposed which addresses the timing of the development with the capacity of the sewage treatment plant.

Environmental Assessment

Pursuant to the Environmental Protection Act, a Phase 1 and Phase 2 EA was submitted to the Municipality and the Ministry of Environment and Climate Change. Based on the findings of Amec Foster Wheeler's Phase Two ESA at the time of reporting, no further environmental site assessment work was warranted. The Record of Site Condition (RSC) number 224719 has been filed in the Environmental Site Registry on July 17, 2018.

County of Essex Official Plan

The subject site is located within an urban, settlement area in the County of Essex Official Plan and is considered part of the "built boundary" of the Municipality of Lakeshore. Accordingly, the proposed development constitutes intensification of an under-utilized site within the existing built-up area of the municipality and would represent cost-effective development. The subject site is suitably located within an existing built up commercial corridor on a suitable road (Amy Croft Drive / Manning Road intersection) for the proposed use. The ability to adequately service the site to accommodate intensified development still needs to be determined.

Municipality of Lakeshore Official Plan

The site is designated Mixed Use in the Municipality's Official Plan. The Mixed Use Designation applies to lands within the Mixed Use Nodes, including the Lakeshore West Mixed Use Node, and certain lands with frontage along County Road 22, which are located within the County Road 22 Mixed Use Corridor. Commercial and retail establishments which are destination oriented or are intended to serve the travelling public will be permitted, including automobile service stations, vehicle sales and service, public garages, repair service and rental establishments, motels, hotels, restaurants, animal hospitals, commercial recreation uses, private clubs, funeral homes, day care centres, food stores, drug stores, personal service shops, hardware, automotive, highway commercial uses and residential uses, such as apartments and townhouses. The Mixed Use Official Plan policies are discussed in more detail below.

The servicing policies of the Official Plan do not support the use of a holding tank for sewage disposal. Section states:

Section 7.3.1.2 h)

"Holding tanks will not be permitted for new development. Holding tanks will only be permitted for existing development where the Town is satisfied that there is no other alternative to solving a deficiency with an existing septic system."

The proponent was advised that an Official Plan amendment would be needed for a holding tank solution. No application for an Official Plan amendment has been submitted, as at the time of submission of the zoning by-law application, the holding tank proposal was not included in the Functional Servicing Report.

The servicing policies also state that if there is no sewage capacity available, development should be deferred. The policy wording of "capacity" refers to both conveyancing and capacity at the sewage treatment plant.

Section 7.3.2 Servicing Allocation and Phasing

"The following will be the policy of the Town:

- (a) When unallocated servicing capacity does not exist for a proposed development, the Town will defer the processing of the planning application until capacity is available, or until a servicing agreement is in place to ensure that such capacity will be available to service the development within one year of the granting of the planning approval. Draft approved plans of subdivision may only proceed to registration if sufficient servicing capacity continues to exist."

Based on the policies of Section 7.3.2 of the Official Plan, the zoning by-law application should be deferred.

Zoning By-law

The subject property is zoned MU, Mixed Use Zone, in Zoning By-law 2-2012, as amended, which permits townhouses and apartments in accordance with the MU, Mixed Use Zone provisions. A Zoning By-law Amendment Application has been submitted to permit the following exceptions from Zoning By-law 2-2012, as amended:

	Current Regulations	By-Law	Proposed Regulations
Maximum Height	10.5m		32.2m as it relates to the apartment use;
Maximum gross floor area	3000m ²		19,331.45m ² as it relates to the apartment use
Setback on Private Streets	14.5m from centre line		12.40m from centre line for the apartment use
Setback on Private Streets	14.5m from centre line		10.m from centre line for all other permitted uses
Parking Requirements	Total 233 (1.25/unit + visitor @ 0.25/Unit)		Total 215 (1.39/unit including visitor)
Loading Spaces	3 Loading Spaces		2 Loading Spaces

9.15.35 Mixed Use Zone Exception 35 (MU-35) as shown on Map 3, Schedule "A" of this By-law.

a) Permitted Uses:

- i. An *Semi-Detached Dwelling* shall be an additional permitted use

b) Zone Regulations:

- i. A maximum height of 32.2 metres as it relates to the apartment use;

- ii. A maximum gross floor area of 19,331.45m² as it relates to the apartment use;
 - iii. Section 6.52, Setbacks on Streets shall be a minimum of 12.40 metre setback from the centre line of private roads for the apartment use;
 - iv. That the minimum required setback from the centre of the internal private road from 14.5 m to 10.0 m (exterior side yard) for all other permitted uses;
 - v. Section 6.41.1, Parking Requirements shall be a minimum of 215 parking spaces for the apartment use;
 - vi. Section 6.41.3(a), Loading Regulations shall be a minimum of 2 loading spaces.
- c) All other building requirements for apartments shall be in accordance with the requirements of the General Provisions and Mixed Use Zone.
(Appendix F, Draft By-law)

Holding removal will be subject to; site plan agreement approval, extension of Lanoue, stormwater management facility being operational, condominium agreement and final approval by the County.

The Mixed Use Designation in the Official Plan permits residential uses including triplex dwellings, fourplex dwellings, row or block townhouse dwellings, converted dwellings containing more than two dwelling units, walk-up apartments, hotels, motels and similar medium profile residential buildings, subject to the following criteria:

- i. the residential use is located within the Urban Area;
- ii. the density, height and character of the development will be compatible with adjacent uses;
- iii. the height and massing of the buildings at the edge of the medium density residential development will have regard to the height and massing of the buildings in any adjacent low density residential area and may be subject to additional setbacks, or landscaping to provide an appropriate transition;
- iv. the development will be encouraged to have direct access to an arterial or collector road, where possible and appropriate;
- v. the water mains and sanitary sewers will be capable of accommodating the development, or the proponent will commit to extending services at no cost to the Municipality;
- vi. the development is adequately serviced by parks and school facilities;

- vii. the development will be designed and landscaped, and buffering will be provided to ensure that the visual impact of the development on adjacent uses is minimized;

Although the required infrastructure is not in place yet, the inclusion of the holding provision requiring the new infrastructure be available before the removal of the H, would be consistent with the general intent of the Official Plan.

Conclusion

Administration recommends Council defer the zoning by-law application. This option would allow the developer to consider any potential comments or concerns raised at the public meeting, and would allow the Municipality time to further investigate the sewage conveyance issue. The sewage conveyance report (Jacobs) is anticipated to be completed at the end of March 2021, at such time the conveyance issue will be better understood. Administration recommends that consideration of this matter be brought back to Council in April or May of 2021. The approach to defer the application is in conformity with Section 7.3.2, Allocation and Phasing, of the Official Plan.

Should the holding tank solution be considered by Council, Administration notes, as stated above, that an Official Plan amendment would be required under Section 7.3.1.2 (h).

The proponent has requested that this amendment not wait, but proceed to the public meeting and Council for review (Attachment E). Therefore this application was scheduled for a public meeting under the *Planning Act* at the February 2 Council meeting to accommodate this request. This report has been completed in order to inform Council of the issues, and provide the rationale for the Recommendation of deferral.

It should be noted that a deferral does raise the risk that this matter may be appealed to the Local Planning Appeal Tribunal ("LPAT") because Council has not rendered a decision during the time required by the *Planning Act*. Should Council choose to defer the matter and the Applicant appeal the non-decision then the matter would go to the LPAT for a decision. Should this occur, Administration would prepare a report to Council, seeking instructions as to how to proceed in relation to the appeal.

Others Consulted

Notice was given to agencies and the general public as required under the provisions of the *Planning Act* and Regulations. As of the writing of this report, no comments were received from the public, other than comments related to participating in the public meeting, and no concerns were expressed from any agencies.

Financial Impacts

There are no budget impacts resulting from the recommendation.

Attachments:

Appendix A – Key Plan
Appendix B – Draft Site Plan
Appendix C – Elevation Drawings
Appendix D – Engineering Memo
Appendix E – Proponent's request for the February 2 meeting
Appendix F – By-law 9-2021
Appendix G – Alternatives under the *Planning Act*

Report Approval Details

Document Title:	Zoning By-law Amendment ZBA-20-2020 Manning Developments.docx
Attachments:	<ul style="list-style-type: none">- Appendix A – Key Plan.pdf- Appendix B – Draft Site Plan.pdf- Appendix C – Elevation Drawings.pdf- Appendix D – Engineering Memo.pdf- Appendix E – Proponent's request for the February 2 meeting.pdf- Appendix F - By-law 9-2021.docx- Appendix G – Alternatives under the Planning Act.docx
Final Approval Date:	Jan 28, 2021

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

Tammie Ryall

Rosanna Pellerito

Kristen Newman

Truper McBride