

Municipality of Lakeshore Committee of Adjustment Report

Growth & Sustainability

Community Planning



To: Chair & Members of Committee of Adjustment

From: Ian Search, BES, Planner I

Date: May 9, 2023

Subject: Consent Application B/11/2023 – 0 Main Street (Comber), Roll: 900-18600

Recommendation

Deny Consent Application B/11/2023 as the proposal is inconsistent with the Provincial Policy Statement and does not currently conform to the Lakeshore Official Plan and County of Essex Official plan.

Purpose

The Municipality of Lakeshore has received a consent (severance) application for the creation of one lot at a property on the west side of Main Street in Comber, located at the southwest corner of Main Street and Knapp Road (Appendix A). The application states that the lot is being created to support a future hotel and possible medical centre.

The subject property is designated “Employment” and “Residential” in the Lakeshore Official Plan and is part of Site-Specific Policy Area 6.11.3.1. The subject property is zoned “Business Park Zone Exception 1 (M2-1)” with a “h2” holding symbol in the Lakeshore Zoning By-law 2-2012. The “h2” holding symbol restricts the existing uses on the property as the only permitted uses until conditions for removal of the holding symbol have been completed and the holding symbol lifted from the zone. Condition for removal of the holding symbol is that site plan approval has been granted by the Municipality and a site plan agreement has been entered into, pursuant to provisions of the Planning Act.

The proposed severed lot will have an approximate area of 16,920.61 m² (4.18 acres) and an approximate frontage of 106.7 metres of frontage along Knapp Road, and approximately 101 metres of irregular frontage along Main Street. The severed lot is indicated as Part 1, 2 and 3 (together) on the draft survey provided. The retained land will maintain frontage along Knapp Road and will have an approximate area of 38.07 acres following the severance.

Summary

Surrounding Land Uses

North: Vacant land zoned for employment use (across Knapp Road)
East: Residential, minor institutional, vacant service commercial land
West: Vacant land zoned for employment use
South: Residential and the Canada Southern Railway lands

Provincial Policy Statement (PPS)

Section 3 of the Planning Act requires that decisions affecting planning matters “shall be consistent with” policy statements issued under the Act. Under the Legislative Authority section of the PPS, it states that “comments, submissions or advice that affect a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister or ministry, board, commission or agency of the government “shall be consistent with” this Provincial Policy Statement”.

The subject property is in the Community of Comber which is a fully serviced community. Policy 1.6.6.6 only allows planning authorities to permit lot creation if there is confirmation of sufficient reserve sewage system capacity and reserve water system capacity within municipal sewage services and municipal water services. Lakeshore’s Engineering and Infrastructure Division provided the following comments on the proposed development with respect to servicing capacity:

- Lakeshore currently does not have any sanitary treatment capacity at the Comber Lagoons to service any development applications in Comber. This information was presented to Lakeshore Council on September 13, 2022. Therefore, Engineering cannot support the severance/proposal at this time.
- Lakeshore is currently working on a Water & Wastewater Masterplan Update (WWWMP) to identify viable projects to provide Comber (and other areas in the Municipality with sanitary treatment & conveyance constraints) with additional capacity to accommodate development and re-development. This update is anticipated to be completed in 2024. All design and construction of any recommended projects in the WWWWMP Update will require Lakeshore Council endorsement to proceed and an approved funding model (timelines unknown).
- A pre-consult meeting was held on with Lakeshore and the applicant for a hotel proposal on the subject lands. Lakeshore Engineering & Infrastructure Division requested the Applicant to provide average water usage for a similar facility for Lakeshore to confirm if potable water capacity exists for the proposal. This has not been provided since the pre-consult meeting and therefore it is undetermined if there is potable water capacity available for the proposed development.

Comments from this department indicate that sanitary treatment is currently unavailable, but there is a Water & Wastewater Masterplan Update currently in progress to identify

feasible projects to provide additional capacity. While the update is anticipated to be completed in 2024, timelines are unknown for endorsement and approved funding models. The lot creation should not proceed at this time without known timelines and confirmation of capacity. Also, the applicant has yet to provide average water usage for a similar proposed use so that Lakeshore can confirm if potable water capacity exists for the proposal.

County of Essex Official Plan

The County of Essex Official Plan contains policies under Section 2.10 Sewage and Water Systems that reflect the servicing policies under the Provincial Policy Statement. That section further states that “The local municipality must confirm the availability of the required servicing capacity prior to development being approved”. Development includes the creation of a new lot under Appendix 1, Glossary of Terms.

Official Plan

Most of the subject property is located within the Comber Employment Area, but the southern half of the proposed severed lot is part of the Comber Urban Area. Table 7.1 of the Official Plan identifies municipal water and municipal sewage as the servicing requirement for both Settlement Areas. The entirety of the property is therefore subject to policy 7.3.1.1 Municipal Water & Sewage Services, which states, “The Town will ensure that both municipal water supply and sewage systems perform within permitted operating standards.” and “...limitations on the capacity or operating performance of the municipal potable water and sewage systems will be a constraint to further development”. Development includes the creation of a new lot under the PPS. Moreover, Section 7.3.2 Servicing Allocation & Phasing states “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...”.

The subject land is part of the Comber Employment Area Site Specific Policy Area 6.11.3.1 Part A (Appendix B). This section of the Official Plan contemplates recreational and entertainment-based activities such as a motor speedway to be developed on the lands. It also includes policy for the development of complimentary uses, such as hotels. The section requires a holding symbol to be placed on the zoning of the lands that is not to be removed until such time as “a complete servicing strategy and site plan is presented to and approved by the Municipality and site plan and servicing agreements are entered into”. Municipal servicing matters to be addressed to the satisfaction of the Municipality include sanitary sewage treatment, potable water supply, stormwater management, and vehicular traffic access. Agriculture will be the only permitted use until the holding classification is removed. These policies reinforce Section 7.3 by requiring a complete servicing strategy for the specific lands that addresses the provision of municipal servicing matters to the satisfaction of the Municipality including sanitary sewage treatment and potable water supply.

Section 4.2.1 Community Design requires measures to ensure that land use compatibility is addressed with adjacent land uses during the development process.

This includes adequate separation buffering or screening. Moreover, Section 8.3.5.2 Consents states that “the lot area and frontage of both the lot to be retained and the lot to be severed will be adequate for existing and proposed uses and will allow for the development of a use which is compatible with adjacent uses by providing for sufficient setbacks from neighbouring uses and, where required, the provision of appropriate buffering”.

It is indicated in the application that the severed lot will support a “hotel and possible medical centre” – adequate buffering from the low-density residential lots located south of the parcel will be required through the site plan control process. Other constraints to the development of the parcel include parking requirements for the uses, 15 metre front and rear yard setback, 10 metre side yard setback, sight triangle, and any required road/land conveyances identified by departments and/or agencies.

It would be best practice to impose site plan approval as a condition of consent approval so that the Municipality can review plans with respect to the development of the severed lot prior to stamping a deed for a new lot creation. That way the proposed lot configuration can be assessed in consideration of the proposed uses. Indeed, the Official Plan permits the Municipality to require site plan approval as a condition of approval for consent. However, such conditional approval will only make sense after sanitary and potable water capacity has been confirmed and the development is able to proceed under a predicted timeline. This is another reason why the application should be denied at this time.

Zoning:

The entirety of the subject land, including the proposed severed lot, is zoned M2-1(h2). It provides minimum frontage and area requirements that the proposed severed and retained lot will satisfy.

The h2 holding symbol only permits existing uses on the subject property until the holding symbol is lifted. The condition to remove the holding symbol is “that site plan approval has been granted by the Town and a site plan agreement has been entered into, pursuant to the provisions of the Planning Act”. It is noted that the holding symbol does not include current servicing capacity constraints in its conditions. Ideally, the holding symbol should be amended to reflect this constraint and the requirement for servicing capacity prior to development.

The applicant has stated in their application that the intention is for the severed lot to support a “hotel and possible medical centre”. The M2-1(h2) zone permits a hotel, but it does not permit a “medical centre”. The Zoning By-law provides a definition of a Medical Office which is an Institutional Use in the By-law. Not only does the Zoning By-law not permit Medical Office within the zone exception, but institutional uses are also explicitly prohibited within land designated Employment under the Official Plan (Section 6.11.1).

Conclusion

The proposed consent application is inconsistent with the Provincial Policy Statement (PPS) and does not currently conform to the Lakeshore Official Plan and County of Essex Official plan.

Correspondence from external and internal agencies

External and Internal Agencies

The application was circulated to various external and internal agencies, comments received from them are summarized below.

The Ministry of Transportation (MTO) commented that there shall be no direct access to Highway 77 from the severed lot; all access shall be from Knapp Road. MTO requires all buildings, structures and features integral to the site to be located a minimum of 14 metres from the highway property limit. Access on Knapp Road shall be setback a minimum of 85 metres from the end of rounding of the intersection of Highway 77 and Knapp Road. The full set of comments from this agency is provided in appendix. The balance of their comments would be dealt with through a future site plan control process including such items as encroachment requests, storm water management, traffic impact study, and their request for the review of other development plans.

The full set of comments from the Engineering and Infrastructure Division can be found in Appendix E. In addition to the comments previously addressed, some of their additional comments include:

- Currently, there is a water main owned by Lakeshore within the subject property. This water main will need to be redirected prior to any development occurring on the subject property.
- The north portion of Emerson Avenue ends abutting the south property line of the subject property. The applicant must convey a portion of the subject lands to create a cul-de-sac (12m radius, 20m right-of-way) at the north end of Emerson Avenue to complete the road to the satisfaction of Lakeshore Engineering. The cul-de-sac will required to be constructed as part of any future development proposals on the subject property.
- A traffic impact study will be required for any proposed developments on the subject property.

Essex Region Conservation Authority (ERCA) was circulated the development proposal and commented that they request to be included in the circulation of the Site Plan Control application. They reserve to comment further on storm water management concerns until they have had an opportunity to review the specific details of the proposal through the site plan approval stage.

Hydro One stated that they have no comments or concerns at this time. Their preliminary review considers issues affecting Hydro One's 'High Voltage Facilities and Corridor Lands' only. This agency will be circulated during a future site plan control process for any further comment.

Lakeshore's Fire Department has also raised questions over the potable water capacity from their perspective. They are seeking confirmation that the potable water supply in Comber is adequate for firefighting needs of this anticipated building size and height.

Public Notice Circulation

Notice of Public Meeting and information regarding the requested consent application was sent to all property owners within 60 metres of the subject property. At the time of writing, no written comments were received.

Attachment(s):

Appendix A – Aerial Map
Appendix B – Specific Policy Area
Appendix C – Drawings
Appendix D – MTO
Appendix E – Engineering Comments
Appendix F – ERCA
Appendix G – Fire Department Comments

Prepared by:



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Planner I

Report Approval Details

Document Title:	B-11-2023 Report.docx
Attachments:	<ul style="list-style-type: none">- Appendix A - Aerial Map.pdf- Appendix B - Specific Policy Area.pdf- Appendix C - Drawings.pdf- Appendix D - MTO.pdf- Appendix E - Engineering.pdf- Appendix F - ERCA.pdf- Appendix G - Fire Department.pdf
Final Approval Date:	May 12, 2023

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

Kristina Brcic - May 12, 2023 - 9:44 AM