

To: Warden and Members of County Council

From: Director of Community Planning

Potential Appeal of Decision of the Oxford County Land Division Committee regarding an Application for Consent

RECOMMENDATIONS

1. That County Council direct staff to appeal the decision of the Oxford County Land Division Committee to approve Application B23-39-3 (Mary Elizabeth Schell & Frank Longlade) to the Ontario Land Tribunal as the said decision does not conform with the relevant policies of the County Official Plan regarding the severance of surplus farm dwellings.

REPORT HIGHLIGHTS

- The purpose of this report is to obtain Council direction to appeal a decision of the Oxford County Land Division Committee (LDC) regarding an application for consent.

Implementation Points

If Council chooses to appeal the above-noted decision of the LDC, staff will file the appeal with the Secretary-Treasurer of the LDC and will proceed to prepare for a hearing before the Ontario Land Tribunal (OLT) at such time as the Tribunal schedules same.







Financial Impact

An appeal to the OLT will involve hiring a solicitor to represent the County at the hearing. Funds have been included in the 2023 Community Planning budget for a limited number of appeals and as such, no expenditure beyond the currently approved budget will be required. Planning evidence will be presented by County staff and no expenditure will be required outside of staff time to prepare for and attend the OLT hearing.

Communications

Should Council choose to appeal the decision of the LDC regarding this consent application, the appeal will be filed with the OLT and the LDC will be advised of the appeal by staff. Notice of the appeal will be provided to the applicant via the OLT in accordance with the Tribunal’s normal practices.

Strategic Plan (2020-2022)

					
<i>WORKS WELL TOGETHER</i>	<i>WELL CONNECTED</i>	<i>SHAPES THE FUTURE</i>	<i>INFORMS & ENGAGES</i>	<i>PERFORMS & DELIVERS</i>	<i>POSITIVE IMPACT</i>
		3.ii.			

DISCUSSION

Background

The LDC approved Consent Application B23-39-3 at its regular meeting of September 7, 2023 (decision attached). The subject lands are described as Part Lot 15, Concession 4 (East Oxford) in the Township of Norwich. The lands are located on the south side of Old Stage Road, west of Hwy 59 and are municipally known as 505194 Old Stage Road.

The application for consent proposes an agricultural lot addition and the retention of a lot containing an existing dwelling constructed in 2004 for non-farm rural residential purposes. It is proposed that approximately 19.8 ha (49 ac) of agricultural lands, containing one existing agricultural building (to be removed) will be severed from the subject lands and added to the vacant agricultural parcel to the immediate west. The lot to be enlarged is approximately 48.1 ha (119 ac) in area and once merged, the newly enlarged lot will be approximately 67.9 ha (167.9 ac) in area.

The lot to be retained will be approximately 0.8 ha (2 ac) in area and contains an existing single detached dwelling (as noted above) and is served by a private well and septic system. Surrounding land uses are mainly comprised of agricultural lands with a number of non-farm rural residential parcels in the immediate area.

Report No. CP 2023-270, which was considered by the LDC on September 7, 2023 is attached to this report for Council’s consideration.

Comments

2020 Provincial Policy Statement (PPS)

Section 2.3.4 (Lot Creation and Lot Adjustments) of the PPS discourages the creation of new lots in prime agricultural areas and provides only four instances where such lot creation may be permitted, as summarized below:

- For agricultural uses, provided the lots are of a sufficient size for the type of production common in the area and are sufficiently large enough to maintain flexibility in adapting the operation in the future;
- For agricultural-related uses;
- For a surplus farm residence resulting from a farm consolidation; and,
- For infrastructure facilities and corridors in lieu of an easement or right-of-way.

Official Plan

The subject lands are designated Agricultural Reserve according to the Township of Norwich Land Use Plan.

The Official Plan contains policies regarding the protection of prime agricultural areas for food and fibre production by, among other matters, minimizing conflict between agricultural and non-agricultural uses. Further, the Plan aims to prevent situations of land use conflict in the Agricultural Reserve designation by careful management of non-farm uses, including rural residential development.

To this end, the Official Plan identifies non-farm rural residential development as being incompatible with agriculture in that it can create conflicts with farming activities and as such, only limited non-farm rural residential uses within the Agricultural Reserve are permitted.

With a view to the strategic initiatives and objectives of the Official Plan, Section 3.1.5.4 outlines the process for evaluating non-farm rural residential development and includes a decision making framework that applies to both the severed and retained lands in the case of a consent to sever.

The above-noted process further includes specific policies that prohibit non-farm rural residential development. Regarding Consent Application B23-39-3, the applicable policies direct that the severance of the only farm dwelling on a lot is prohibited unless the proposal is to retain an only farm dwelling existing at the date of adoption of the Official Plan (December 13, 1995) through farm consolidation.

OPA No. 269 was adopted by County Council in May 2022, and proposes to amend the Official Plan primarily as it affects the County's Agricultural Reserve policies. This amendment was provided to the Province for approval in June 2022 and to date, has not been approved. However, while not yet approved by the Province, the Council-adopted policies contained in OPA 269 provide an updated framework (Section 3.1.5.3) for assessing the creation of rural residential lots.

The policies contained in OPA No. 269 are similar in their intent to the existing policies noted above. With respect to a proposal to create a lot for a residence surplus to a farming operation as a result of farm consolidation (as is proposed via Consent Application B23-39-3), such consent continues to require that the dwelling in question be a permanent, habitable dwelling that was constructed prior to December 13, 1995 where the dwelling is located on an agricultural lot that will be legally consolidated with an abutting agricultural lot, to form one larger agricultural lot under identical ownership.

While OPA No. 269 is not in effect at this time, the policies adopted by Council with respect to farm consolidation resulting in non-farm rural residential development remain similar and continue to require that such non-farm dwellings must have been constructed prior to December 1995. As noted previously, the dwelling on the retained lands resulting from Consent Application B23-39-3 was constructed in 2004.

Conclusions

In light of the foregoing, Planning staff are of the opinion that approval of the proposal does not conform to the current policies of the Official Plan as they relate to non-farm rural residential development in the Agricultural Reserve and the application is not supported by the policies contained in OPA No. 269, which was recently adopted by County Council.

As such, it is the position of this Office that the decision of the LDC regarding Consent Application B23-39-3 should be appealed to the Ontario Land Tribunal.

SIGNATURES

Report Author:

Original Signed By _____

Gordon K. Hough, RPP
Director of Community Planning

Approved for submission:

Original Signed By _____

Benjamin R. Addley
Interim Chief Administrative Officer

ATTACHMENTS

Attachment 1 – Report No. CP 2023-270 as presented to the LDC on September 7, 2023.
Attachment 2 – Decision of the LDC regarding Consent Application B23-39-3.