

## THE MUNICIPALITY OF LAMBTON SHORES

**Report PL 33-2024**

**Council Meeting Date: December 3, 2024**

**TO:** Mayor Cook and Members of Council

**FROM:** Will Nywening, Senior Planner

**RE:** OPA Application OPA-04-2024 & ZBA Application Z-18-2024 – 6324, 6330, and 6332 Townsend Line and 88 King St East – Delmart Holdings (Agent: Zelinka Priamo Ltd.)

### **RECOMMENDATION:**

**THAT** Report PL 33-2024, relating to Official Plan and Zoning By-Law Amendment Applications, submitted by Delmart Holdings, be received;

**THAT** Official Plan Amendment Application OPA-04-2024, submitted by Delmart Holdings, requesting an amendment to the Lambton Shores Official Plan to permit retail stores, including a retail store under 500m<sup>2</sup> in floor area on lands identified as 6324-6332 Townsend Line and 88 King St East, be approved;

**THAT** Zoning By-Law Amendment Application Z-18-2024, submitted by Delmart Holdings, requesting an amendment to Zoning By-Law 1 of 2003 to rezone lands identified as 6324-6332 Townsend Line and 88 King St East to permit retail stores and to allow a fence in lieu of a planting strip, be approved, subject to inclusion of minimum floor area provisions;

**THAT** By-Law 95 of 2024 to adopt Amendment No. 12 to the Lambton Shores Official Plan be approved; and

**THAT** By-Law 94 of 2024 to implement the zoning by-law amendment be approved.

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### **SUMMARY**

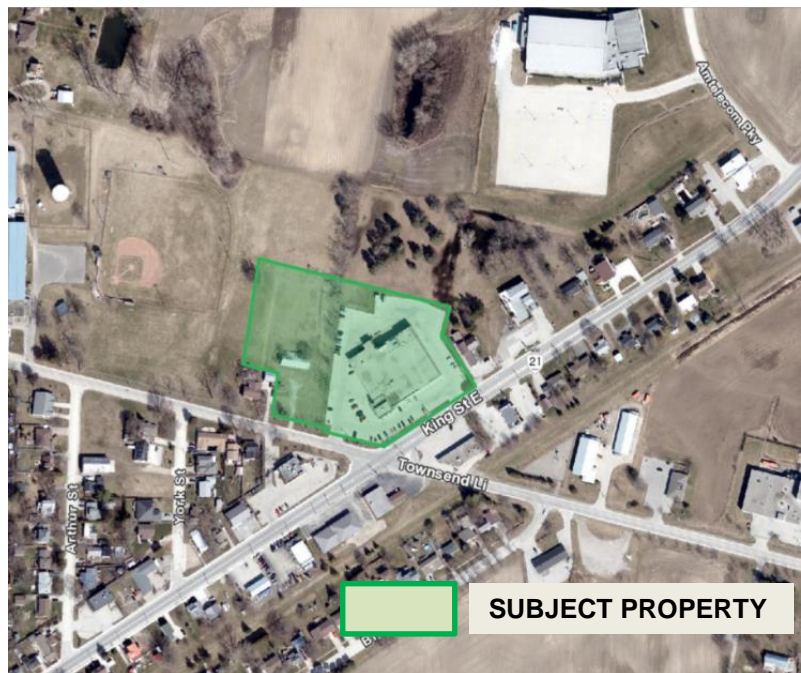
This report relates to Official Plan and Zoning Amendment applications, submitted by Delmart Holdings, affecting lands known as 6324-6332 Townsend Line and 88 King St East, Forest. The applicant proposes to amend the Official Plan by adding a special policy to the “Highway Commercial” designation provisions to permit retail stores, including retail stores under 500m<sup>2</sup> in floor area, on the property. The applicant also proposes to amend Zoning By-law 1 of 2003 by changing the zone designation on the property from the “Commercial-2 (C2-12) Zone” to a site-specific zone permitting retail stores and allowing

use of a fence in lieu of a planting strip. In this respect, the applicant proposes to construct a building containing a quick serve restaurant and restores stores of 374m<sup>2</sup> and 954m<sup>2</sup>, whereas the existing C2 Zone and “Highway Commercial” designation do not permit new retail stores as-of-right.

## **BACKGROUND**

**Property Description:** The subject lands are located at the northwest corner of Townsend Line and King St East. They consist of 3 roll numbers and 4 Municipal addresses, all under control of the same owner, and intended to be developed as a single entity. The east side of the property contains the existing Foodland grocery store. The west side contains vacant land and a number of old buildings that would be removed as part of the development. There are existing road entrances to Townsend Line and King St East.

Highway commercial uses are located on lands to the south and east, across Townsend Line and King St East. Lands immediately to the northeast are being used as a single detached dwelling with commercial space. The applicant owns the vacant lands immediately to the north, which are designated for commercial use, although Staff has had discussions with the owner regarding their potential for residential use. Further north is the Shores Recreation Centre and the site of the proposed new LKDSB K to 12 school. Immediately west is what will be the driveway to that new school.

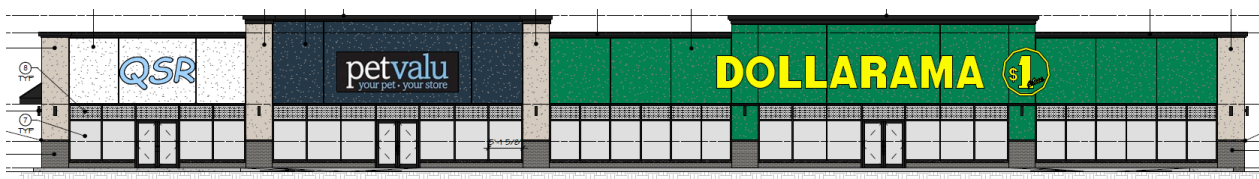
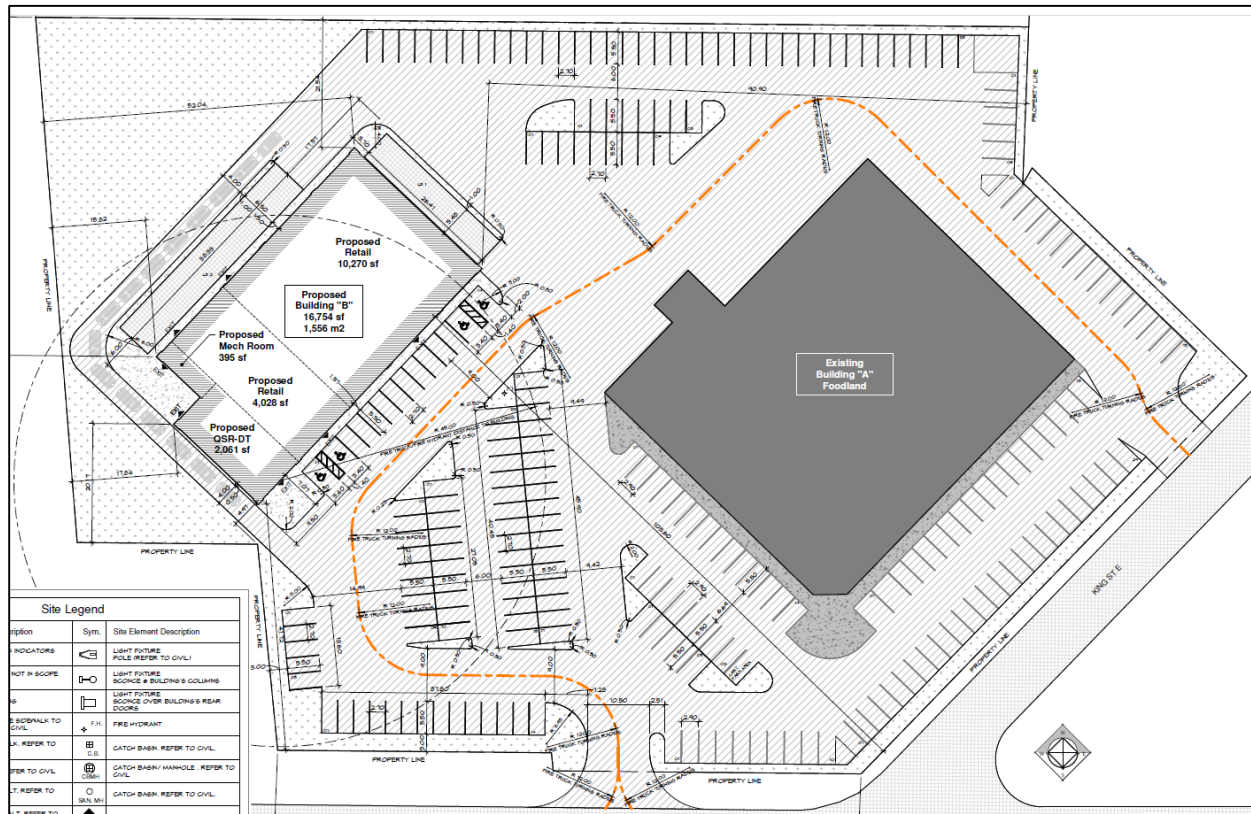


Further west are the Municipal baseball diamonds. To the southwest, the site abuts the side and rear lot lines of a residential lot containing an existing single detached dwelling and detached accessory building. Further to the southwest, across Townsend Line are existing residential areas.

Townsend Line on the south of the property is a County of Lambton road. King St East is a Provincial Highway under the control of the Municipality as a “connecting link”.

**Proposed Development:** The applicant proposes to construct a new commercial building of 1556m<sup>2</sup>, separate from the existing grocery store, in the vacant area on the west side of the property, removing a number of existing structures to do so. The building would contain a 191m<sup>2</sup> “quick serve” restaurant, a 374m<sup>2</sup> retail store (Pet Value), and a 954m<sup>2</sup> retail store (Dollarama). The concept submitted in support of the application would add

85 parking spaces to the site for a total of 239. The new building would include a loading area at its rear and a drive-thru lane circling the rear of the building and located a few inches from the corner of the abutting residential lot. The images below from the applicant's submission show the development concept.



**County Policy:** The subject lands are designated “Urban Centre” in the County Official Plan, the highest order of settlement area, where the greatest variety of services and land uses is promoted. The County OP includes goals and policies that speak to a balance between revitalization of commercial areas generally and protection of downtown commercial areas specifically:

### 3.4 Mainstreets and Commercial Areas

**Goal:** To protect, improve and revitalize existing mainstreets and commercial areas in Centres and Settlements throughout the County.

**Policies:**

3.4.8 *The role of existing highway commercial areas has traditionally been to serve the traveling public. In recent years, this role has changed to include a greater emphasis on uses that serve the local community. Where this changing role has led to a decline of commercial businesses, reuse of these areas should be planned to encourage a broader range of compatible uses that will serve nearby residents, and to ensure the continued viability of these commercial areas. While a limited amount of retail activity may be considered, these areas are not intended to accommodate uses that are more appropriately located on mainstreets or within downtowns and high order commercial areas...*

Lambton Shores Policy: In the Lambton Shores Official Plan, the subject lands are designated “Highway Commercial”, as are lands immediately to the south, east and north. The future school driveway and the Municipal baseball diamonds to the west are “Open Space”. The residential lot abutting on the southwest and residential area further southwest are “Residential”.

Further to the County OP, the Lambton Shores OP contains specific policies with respect to the protection of downtown commercial areas:

#### 6.1 Downtown Commercial

##### 6.1.2 Policies

*All downtowns should be intensively used and oriented to enable pedestrian rather than car traffic. It is the municipality’s goal to achieve a high occupancy rate in its downtowns. To achieve this goal, Section 6.4, of the Plan does not permit new retail stores, merchandise service shops, financial institutions and offices to locate in Highway Commercial areas until a 90 % occupancy rate is achieved in the downtowns.*

#### 6.4 Highway Commercial

##### 6.4.1 Permitted Uses

*Permitted uses in “Highway Commercial” areas include:*

- *Existing retail stores, personal service shops, merchandise service shops, offices and financial institutions. New uses of this type must be located downtown and will only be considered in the highway commercial designation if the Downtown areas are healthy and vibrant and 90 % of the available floor space in the downtown is occupied.*
- Restaurants and drive-in restaurants.

#### 6.4.2 Policies

- *No new retail stores, personal service shops, merchandise service shops, offices and financial institutions with less than 500 m<sup>2</sup> of floor area are permitted in the Highway Commercial area. To ensure a healthy and vibrant downtown all uses of this type will be directed to downtowns and will not be permitted to locate in a highway commercial area until 90% of the floor space in the downtown is occupied.*
- *Highway Commercial areas in Forest will not be expanded until vacancy rates in the downtown increase to 90% occupancy.*
- *Major new uses require a market analysis showing that the use is economically viable over the long-term and will have no adverse impacts on existing commercial areas and uses, especially the downtown. The analysis must be prepared by a properly qualified individual and will be peer reviewed at the request of Lambton Shores at no cost to the Municipality.*

With respect to the Municipality's Business Retention and Expansion Report, the Municipality's Economic Development Coordinator also commented:

***Business Attraction:*** *The importance of Business attraction was identified in the Lambton Shores BR&E report (2017) Pillar 4: There was a common theme during the business consultations that in order for existing businesses to thrive, effort also needs to be made on attracting business and diversifying services available to residents, visitors and businesses alike.*

The property contains no identified natural heritage features or functions, nor any natural hazard areas.

Zoning: The property is designated "Commercial-2 (C2) Zone" in Zoning By-law 1 of 2003. The C2 Zone generally corresponds with areas designated "Highway Commercial" in the Official Plan. Restaurants are an as-of-right permitted use in the C2 Zone. Retail stores are generally not however, consistent with the noted Official Plan policies (retail stores are allowed as-of-right in the C2 Zone only in the Grand Bend area – e.g. along Ontario St North and South).

The property on the opposite corner of the intersection (89 King St East) is zoned "Exception 1 to the Commercial-2 (C2-1) Zone". Having regard to the Official Plan's restrictions on uses outside of the downtown area, which includes financial institutions, the C2-1 Zone permits a bank, but limits it to 70m<sup>2</sup> of the building and prohibits any teller services.

Section 3.20 of the Zoning By-law requires a 3m wide planting strip of a hedge or trees along the lot lines abutting the residential lot to the southwest of the subject lands, as the abutting lot is zoned residential.

Required Amendments: Restaurant uses are permitted in both the Official Plan's "Highway Commercial" and the Zoning By-law's C2 Zone designations. The proposed development concept requires several amendments to the planning documents with respect to the proposed building however:

1. The current C2 Zone does not permit retail stores on the subject lands.

The applicants propose a 374m<sup>2</sup> retail store (Pet Value) and a 954m<sup>2</sup> retail store (Dollarama).

The applicant proposes a site specific zone permitting retail stores.

2. Section 3.20 of the Zoning By-law requires a 3m wide planting strip where the interior side lot line of a property used for non-residential purposes abuts a residential zone.

The concept plan shows the proposed drive-thru lane passing within a few inches of the back corner of the residentially zoned property known as 6318 Townsend Line. The concept plan proposes to construct a solid board fence in lieu of the 3m planting strip.

The applicants propose that the requested site specific zone include a special provision to permit fencing in lieu of a planting strip.

3. The Highway Commercial policies at Section 6.4.2 of the Lambton Shores Official Plan permit retail stores only where demonstrated there will be no adverse impacts to the downtown, but prohibit retail uses of less than 500m<sup>2</sup> (5382 ft<sup>2</sup>) in any case.

The proposed development includes a 374m<sup>2</sup> (4028 ft<sup>2</sup>) retail store (Pet Value).

The applicants propose a special policy to allow retail stores, including retail stores less than 500m<sup>2</sup> in floor area.

Supporting Materials: The applicant has submitted the following materials in support of the requested amendments to the Official Plan and Zoning By-law. \*Items marked with an asterisk are included for reference in the agenda:

- Cover Letter\*
- Official Plan Amendment Application Form\*
- Zoning By-law Amendment Application Form\*
- Architectural Package (Site Plan and Rendering)\*
- Planning Justification Report\*
- Retail Market Impact Study\*
- Retail Market Impact Study Addendum\*
- Archaeological Assessment



- Functional Servicing Report
- Plan of Survey
- Transportation Impact Study

Public Consultation: Notification of the proposed amendments was provided as required by the *Planning Act* - by posting on the site and direct notification to property owners within 120m. In addition, notice was posted on the Municipal web site and direct notice was sent to the Forest Business Improvement Association.

Canada Post (attached) and the St Clair Region Conservation Authority (not attached) provided formal comments indicating no concerns.

County of Lambton Public Works Department provided formal comments (attached) indicating concerns with the site's access and that it would discuss its concerns further at the site plan approval stage of approvals. Townsend Line is a County Road.

Future Approvals: The County of Lambton is the "approval authority" under the *Planning Act* for amendments to the Lambton Shores Official Plan. Should Council approve the amendments, the Official Plan amendment will be forwarded to the County for review for conformity with the Provincial Policy Statement 2024 and the County Official Plan and will come into effect following County approval. The zoning amendment will not come into effect until the Official Plan amendment comes into effect.

The images provided are concepts. The final layout and servicing details will be subject to a future site plan approval application, which would come back to Council for further approval, should the Official Plan and Zoning amendments be approved by Council. The site plan approval will look more closely at things like servicing, site layout, and site access. Initial review of the concept however by Staff has identified nothing from a servicing or technical standpoint that would prevent the proposed development.

## **DISCUSSION**

Planning Justification Report: the applicant has produced a PJR (attached) in support of the proposed amendments. It includes a detailed description of the proposed development and analysis of relevant planning matters. Staff generally agrees with the PJR's conclusions in respect to its support of the proposed amendments.

Archaeological Assessment: (not attached) was completed because of the site's proximity to known archeological sites. One artefact was found, which did not constitute an archaeological "site". The reports recommends no further assessment.

Parking: There is ample parking. Staff estimates the proposed development as presented would result in the site having a surplus of at least 72 parking spaces. There is, in addition, room for 15 vehicles in the drive-thru queue.

Existing uses of the site require 82 parking spaces, with 154 parking spaces provided, for an existing surplus of 72 spaces. Proposed uses would require at most an additional 85 spaces, with exactly that many added. Overall parking requirements would be 167 parking spaces, with 239 provided, for a surplus of 72 spaces. Details of parking calculation assumptions are:

- Existing grocery store:  $3035\text{m}^2 @ 1/37\text{m}^2 = 82$  parking spaces
- New retail stores:  $954 + 374 = 1328\text{m}^2 @ 1/37\text{m}^2 = 36$  parking spaces
- New restaurant:  $191\text{m}^2 @ 1/4\text{m}^2$  of public area = 50 parking spaces

The application's estimate  $4591\text{m}^2$  lot coverage less the  $1556\text{m}^2$  floor area of the new building noted on the plans gives a floor area of  $3035\text{ft}^2$  for the existing grocery store. These calculations assume the entire restaurant will be public seating/waiting area, which it obviously will not be. They also use the conservative rate of  $1/37\text{m}^2$  for the retail stores and grocery store, whereas one might argue the rate of  $1/28\text{m}^2$  for a shopping center could be used for one or both.

Planting Strip: The residential lot at 6318 Townsend Line is isolated from other residential uses and the "odd-man-out" in an area otherwise planned for non-residential uses. The proposed drive-thru abuts this lot only at its rear corner, where a large accessory building on the lot shields the balance of the residential use from the closest points of the drive-thru. The balance of the drive-thru is located much further from the residential lot. In Staff's opinion, a fence is a suitable substitute for a planting strip. Through the site plan agreement, the applicant and Staff can discuss appropriate screening and buffering from this residential lot, whether fencing or a planting strip or a combination of each.

Retail Study: The Official Plan specifically requires the following as a condition of permitting new retail uses in the Highway Commercial designation:

- Show available floor area in downtown has an occupancy rate of 90% minimum.
- Show major new uses are economically viable over the long-term.
- Show major new uses will have no adverse impacts on existing commercial areas, especially downtown.

The applicant retained Tate Research to conduct a "Retail Market Demand and Impact Assessment" to address these requirement and also to justify the request for an exemption from the Official Plan's prohibition of retail stores of less than  $500\text{m}^2$  at section 6.4.2 of the Official Plan.

Highlights of the report:

- Occupancy rate of available floor area was greater than 91% as of a March 2024 inventory.
- There are four separate store categories, each with over  $20,000\text{ft}^2$  of collective space in the downtown, suggesting there are additional store categories other than "general merchandise" that act as anchors in the downtown.



- In addition to the Red Apple, the banks, Prouts Building Centre, the LCBO, and the pharmacy serve as anchors in the downtown.
- There are no suitable existing spaces available in the downtown for the proposed 374m<sup>2</sup> (4028 ft<sup>2</sup>) Pet Value or the 954m<sup>2</sup> (10,270 ft<sup>2</sup>) Dollarama.
- The Pet Value would not directly compete with any existing businesses.
- The Dollar Haven & Discount (2400 ft<sup>2</sup>) and the Red Apple (11,300 ft<sup>2</sup>) stores in the downtown are comparable to the proposed Dollarama, but “there is differentiation in terms of location, merchandise mix, size, and price point between the Dollarama and existing General Merchandise stores in Downtown Forest”.
- The >1km separation between the Dollarama and downtown allow the downtown stores to “serve a localized market”.
- Forecasted growth in population and commercial space needs can accommodate the proposed additional commercial space.
- The proposed retail uses are “forecast to be economically viable” and “forecast to have no adverse impacts on the planned function of existing commercial areas, including Downtown Forest”.

The report was reviewed by Planning Staff, the Economic Development Coordinator, and the Chief Administrative Officer. The report’s methodology and conclusions are generally acceptable in Staff’s opinion, and no peer review has been completed.

The conclusions of this report are specific to the subject lands and the retail stores proposed. The report does not necessarily support permitting additional retail stores outside of the downtown.

Future Flexibility: The justification for new retail stores in the Retail Study was specific to the retail stores proposed. Business models and ownership should be expected (and to some extent permitted) to change over time, however Staff is concerned that simply adding “retail stores” as a permitted use would give broader permission for retail uses in the long-term that could adversely impact the downtown. Staff does not think it prudent to define new sub-categories of retail stores or zone for specific store brands. Staff does however suggest restrictions on size and number of retail stores permitted on the subject lands.

Staff have discussed this issue with the applicant’s planning consultant who has suggested placing a 1556m<sup>2</sup> cap (the floor area of the proposed new building) on the total retail store space permitted on the site. This would make a larger or additional retail store buildings conditional upon further rezoning and allow further assessment of potential impacts to the downtown. Staff agrees with the suggestion to include a maximum retail store area.

In Staff’s opinion, there should also be a minimum floor area requirement for individual retail store units within the new building. The applicant’s planning consultant has advised that they disagree with such an approach. As Staff understands it, the concern is that this removes too much flexibility in the ability to find or change tenants. In particular, it may prevent conversion of the proposed 191m<sup>2</sup> restaurant space to a retail store in future. The

consultant provided an addendum (attached) dated November 27, 2024 recommending for a maximum retail store floor area but against any minimum floor area requirement. The addendum indicates that the proposed building makes up a relatively small floor area in comparison to the total floor area of the downtown that the author believes will not adversely impact the downtown.

In Staff's opinion this does not adequately address the Official Plan policy that prohibits retail stores of less than 500m<sup>2</sup> outside of the downtown. The intent is to have smaller, specialty retail shops clustered in the downtown. The Retail Study justification for a retail store smaller than 500m<sup>2</sup> was based on one specific retail use (a 374m<sup>2</sup> Pet Value). Staff can agree that some flexibility should be permitted to allow long-term change in the tenant of that unit, but to allow additional smaller units as-of-right without specific justification erodes the intent of the Official Plan and does not explain why similar permissions for small retail units should not be permitted on other properties in the Highway Commercial area – something that could erode the integrity of the downtown.

Staff recommends (1) that the special policy in the Official Plan permit only one retail store of less than 500m<sup>2</sup> and (2a) that the site-specific zone provisions include a maximum combined floor area of 1600m<sup>2</sup> for retail stores on the subject lands and (2b) include a restriction that only one individual retail store unit may be less than 500m<sup>2</sup> in floor area.

Staff notes that the C2 Zone includes a wide variety of permitted uses aside from retail stores. In addition to restaurants, permitted uses include bake shops, laundromats, offices, personal service establishments (like dog groomers), service and repair shops, and others that provide a variety of potential uses to accommodate long-term changes in tenants. The owner also has the ability to present future applications for amendments that will allow assessment of potential affects to the downtown.

There is precedent in imposing restrictions in the Highway Commercial designation. Policies also prohibit financial institutions in the Highway Commercial area for the protection of downtown anchors. When a bank was permitted at 89 King St East, the opposite corner from the subject lands, the site-specific C2-1 Zone that was created there restricts the floor area and prohibits teller services.

Draft Amendments: The proposed Official Plan amendment would be amendment No. 12 to the Lambton Shores Official Plan. The PJR requests a special policy permitting “new retail stores on the subject lands, including retail stores under 500m<sup>2</sup> of floor area”. In subsequent communication, the applicant's planning consultant has suggested replacing “retail stores” (plural) with “a retail store” (ambiguous?). Staff however suggests the wording “one retail store”.

Staff has drafted OPA No. 12 to add a special policy to the permitted uses at Section 6.4.1 of the Highway Commercial policies that would allow new retail uses on this property, but permit only one of them to be less than 500m<sup>2</sup> in floor area – e.g. the proposed 374m<sup>2</sup> Pet Value. The proposed new item under “permitted uses”:

*New retail stores, including one retail store under 500m<sup>2</sup> on lands located within Part Lots 36 and 37 in the South Boundary Concession, composed of reference plans 25R3340 Part 1, 25R3657 Part 1, and 25R5601 Parts 8 to 10, known as 6324, 6330, and 6332 Townsend Line and 88 King St East, Forest.*

As Staff has drafted it, the Zoning By-law amendment would put the subject lands into a new site-specific “Exception 12 to the Commercial-2 (C2-12) Zone”. It would also add provisions to the text of the by-law to establish the special provisions of the new C2-12 Zone. Like the OPA, Staff recommends that the new C2-12 have minimum size requirements for the retail stores. As drafted by Staff, the C2-12 Zone would:

- Make retail stores a permitted use on this property.
- Set a maximum combined retail store floor area of 1600m<sup>2</sup> (proposed building is 1556m<sup>2</sup>).
- Permit only one retail store unit to be less than 500m<sup>2</sup> (5382 ft<sup>2</sup>). (This would accommodate the proposed 374m<sup>2</sup> and 954m<sup>2</sup> (4028 and 10,270 ft<sup>2</sup>) retail stores and not apply to the proposed 191m<sup>2</sup> (2061 ft<sup>2</sup>) restaurant unit.)
- Permit a 1.8m high opaque fence or wall in lieu of a planting strip, where the lands abut 6318 Townsend Line.

The draft official plan amendment and zoning by-law amendments are included in the by-laws section of Council’s agenda. The minimum floor area requirements would not apply to restaurants, which are permitted as-of-right.

Planning Opinion: Applicable policies intend to strike a balance between adding to the diversity of businesses within the area while protecting the health, vibrancy, and function of the downtown commercial core. The applicant has completed a retail study that forecasts that retail stores can be permitted at this site without adverse impacts to downtown Forest. The retail study was based on very specific proposed retail uses however. In Staff’s opinion, the proposed amendment to the Official Plan represents good planning and meets the intent of the County and Lambton Shores Official Plans respecting this balance provided floor area restrictions are imposed.

Respecting the proposed Zoning amendment and adding retail stores as a permitted use, the same applies. It is Staff’s opinion that the proposed zoning amendment represents good planning and conforms to the Official Plan provided maximum and minimum floor area restrictions are imposed. Respecting the special provision to allow the use of a fence in lieu of a planting strip, it is Staff’s opinion this is appropriate given the shielding an existing accessory building provides to the spot where the drive-thru is located closest to the residential lot and given the ability to look more closely at appropriate screening and buffering through site plan control.

Based on the foregoing, it is staff’s opinion that the proposed Official Plan and Zoning amendments, as drafted, conform to the PPS and County and Lambton Shores Official Plans, are appropriate, and represents good planning, subject to imposing minimum and

maximum size requirements on retail stores. Staff can support the amendments as drafted.

### **ALTERNATIVES TO CONSIDER**

Staff recommends that the language of the Official Plan special provision read “one retail store”. The applicant’s agent requests it read “a retail store”.

Staff recommends that that the site-specific zone provisions include the restriction that, “No more than one individual Retail Store unit may have a Gross Floor Area of less than 500m<sup>2</sup>.” The applicant’s agents request that no minimum size restriction be imposed.

Staff does not support these requests for the reasons noted in this report.

### **RECOMMENDED ACTIONS**

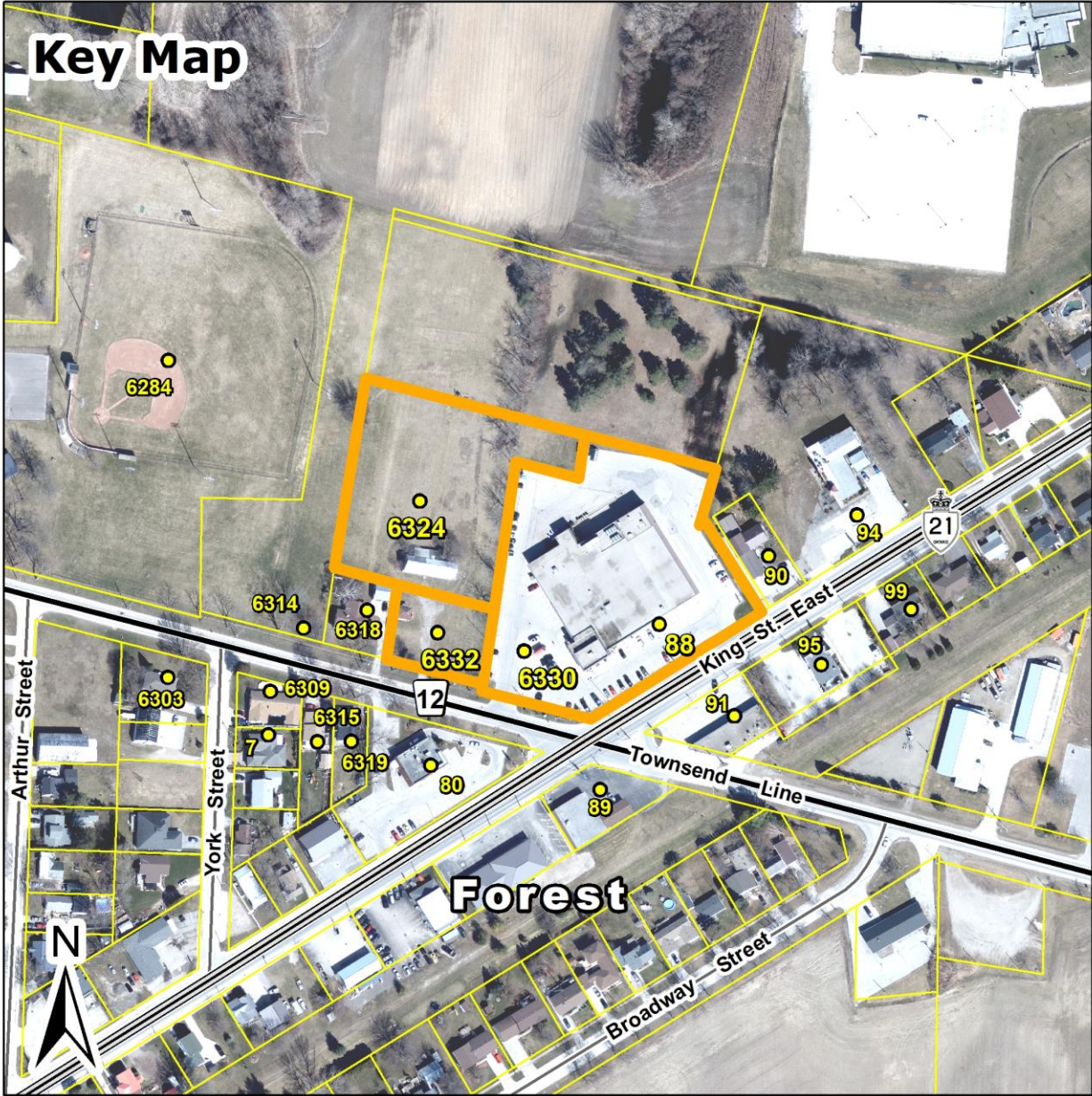
Staff recommend that Report PL 33-2024 be received, that the official plan and zoning by-law amendment applications be approved subject to the inclusion of minimum floor area requirements for the retail stores, and that the implementing by-laws be passed.

### **FINANCIAL IMPACT**

The applicant has paid the Municipality \$2250 and \$1300 application fees for the official plan and zoning amendments, respectively.

### **CONSULTATION**

The applicant and applicant’s agent  
Steve McAuley, Chief Administrative Officer  
Natalie Core, Economic Development Coordinator  
Nick Verhoeven & Sam Shannon, Public Works Department  
James Marshall, Fire Chief, Fire and Emergency Services



**SUBJECT PROPERTIES**