

THE MUNICIPALITY OF LAMBTON SHORES

Report COA 02-2025

Committee Meeting Date: January 22, 2025

TO: Chair Robinson and Members of Committee of Adjustment
FROM: Will Nywening, Senior Planner
RE: Consent Application B-01/2025 – 9966-9970 Huron Drive, Beach O’Pines – Sharon Monteith, James Monteith, Jane Monteith, Scott Huard (Agent: George Murray Shipley Bell, LLP per Peter Norris)

RECOMMENDATION:

THAT Consent Application B-01/2025, requesting permission to sever lands known as 9966-9970 Huron Drive into two lots, each with 70 feet frontage, be refused.

Application

The applicant seeks consent to sever an existing parcel with 140 feet (42.67m) frontage, 165+ feet (50.3m) depth, and 0.535+ acres (0.216 hectares) into two parcels with equal frontage. Both resulting parcels would have frontage of 70 feet (21.3m), depth of 165+ feet (50.3m), and lot area of 0.267+ acres (0.108 hectares). The more southwesterly of the resultant parcels would contain what is described as an existing 59.6m² (641 ft²) cottage. The northeasterly parcel would be vacant. Both parcels would be “through lots” with frontage on both Huron Drive and Huron Place. In this respect the four applicants propose to split the ownership (two own one and two own the other) and construct a dwelling on each of the new lots (the existing cottage being replaced).

Comments

Planning Designations: The subject lands are designated “Grand Bend Residential” in the Lambton Shores Official Plan and “Residential-6 (R6) Zone” in Zoning By-law 1 of 2003. Single detached dwellings are permitted uses in these designations. The Official Plan also identifies the subject lands as being located within a “Significant Woodlot”. The Grand Bend Residential and Significant Woodlot designations of the OP have natural heritage considerations and specific policies regarding severances, noted below.

Missing Information: On October 11, 2024 and again November 5, 2024, Staff advised the applicants that Staff would not be able to support the application, but that if the applicant wished to proceed, the application would need to be accompanied by a hydrogeotechnical report and an environmental impact study (EIS).

The applicant proceeded to submit the application without a hydrogeological report or EIS. On January 6, 2025 Staff gave the applicant further opportunity to delay the

application from going to the Committee until these studies were completed, but the applicant did not respond.

Lot Merger: The proposed severance would recreate two lots that existed when the Beach O’Pines development was originally created: 9966 Huron Drive on the southwest with a cottage and 9970 Huron Drive on the northeast, vacant. MPAC combined the roll numbers on November 10, 2022. Prior to that date, the Land Registry Office (LRO) would have identified that the parcels were legally merged under the provisions of the *Planning Act*, merged the Property Identification Numbers (PINs), and advised MPAC. The owners were advised of the roll number merger by the Municipality on July 28, 2023, which they indicate is their first coming to know the lots are not separately conveyable.

The applicants have provided documentation of previous conveyances of the subject lands. Staff has not included this in the agenda package due to the volume of information. The email that accompanied the application is included at the end of this report and provides a summary. One James C. Monteith acquired 9970 Huron Drive (the vacant lot) October 29, 1937. He acquired 9966 Huron Drive (the cottage lot) on January 21, 1941. It is Staff’s understanding that since 1941, both parcels have always been owned in the same interest and conveyed as a package to subsequent owners. On July 12, 1962 they were conveyed from James C. Monteith to (his children?) W & M Monteith and subsequently they were conveyed to the present owners (James C. Monteith’s grandchildren?).

The legislation that prevents these former lots from being separately conveyed is found at Section 50(3) of the *Planning Act* R.S.O. 1990. Subject to several exceptions that do not apply here, it prohibits land being sold separately from abutting land held in the same interest. These restrictions however, already existed in previous versions of the *Planning Act*, definitely by 1970 and perhaps as early as 1960.

Based on the foregoing, the LRO and MPAC may not have formally identified it until recently, and the present owners may not have been aware of it, but these former lots have been legally merged since the subdivision control restrictions came into the *Planning Act* in 1960-61 or 1970 – 54 to 64 years and one or two owners in the past.

This situation is not unique. This is a new lot, not a technical severance (the definition of technical in the PPS states as much). Circumstances are significantly different from when the lots were separately conveyable, especially with respect to understanding of groundwater impacts from private sewage disposal and natural heritage concerns. There are many existing lots that would not meet today’s standards, but they do not serve as justification to (re)create or add to situations ignoring standards and potential environmental impacts.

Natural Heritage: Most of the subject lands is covered in natural vegetation, the area is known for containing species at risk (SAR) protected under the *Endangered Species Act* (ESA), and the lot is identified as being within a “Significant Woodlot”. The

Provincial Planning Statement and local planning documents require that new development (including lot creation) in Significant Woodlots be subject to assessing natural heritage features and functions, impacts, and the potential and appropriateness of mitigating any negative impacts – i.e. an EIS. The scope of the EIS should reflect the nature of the development and be determined in consultation between the applicant's natural heritage consultant and the Municipality. At minimum, it should include an assessment of SAR under the *ESA*, which applies even to development that does not need *Planning Act* approvals.

The applicants have elected to submit the application without completing an EIS. Their application states:

The subject property is large enough to be severed into two lots. In fact, the subject property was previously two separate lots: one lot being owned by Mary E. Barclay as described in BQ16347 and the other being owned by James Monteith as described in BQ16850. As such, severance will not be detrimental to the trees and natural vegetation on the subject property.

In Staff's opinion, the above provides no rationale that addresses natural heritage policies. In the absence of an EIS, it is not possible to assess the natural heritage features, their functions, the impacts of the development on them, and the need or feasibility of mitigation. There may not even be a building envelope on the proposed vacant lot if SAR plants (common to the area) are present on site.

The specific policies of the Grand Bend Residential designation re-inforce the generic natural heritage policies of the Official Plan and have already determined that severances will not be permitted in this area. Section 5.7.1 of the Official Plan explains the purpose of the "Grand Bend Residential" designation, with respect to natural heritage:

An important objective of the Official Plan is to prevent the further degradation of the existing nationally significant dune succession/oak savannah ecosystem stretching along the lakeshore from Grand Bend to Kettle Point. The "Grand Bend Residential" designation is a special designation applying to the existing Plans of Subdivision developed on the ecosystem. This ecosystem provides habitat for provincially and nationally significant flora and fauna and includes many Species at Risk (SAR). Important objectives of the Official Plan are to protect the remaining tree cover and prevent further adverse impacts on the ecosystem, the Old Ausable Channel, Parkhill Creek and Pinery Provincial Park.

The very first policy applicable to the "Grand Bend Residential" designation (Section 5.7.1.2) prohibits severances:

Severances of existing lots into smaller lots is not permitted to preserve existing trees and natural vegetation.

The proposed severance would be directly contrary to this key policy of this area-specific Official Plan designation.

Lot Size: The application states the opinion that:

The subject property is large enough to be severed into two lots. In fact, the subject property was previously two separate lots... the severance is consistent with efficient use of public services.

However, the R6 Zone has a minimum required lot area of 4000m² (approximately 1 acre). While community character is an important aspect of proposed lot sizes, the 4000m² figure is based on private sewage disposal requirements. Community character is not an issue with the proposed lot sizes, in Staff's opinion. The proposed lots are comparable in size to neighbouring lots. The servicing of the site is however an issue as noted under the next section.

Private Sewage Disposal: The more important issue with the proposed lot sizes is respecting private sewage disposal. There are no municipal sanitary sewers available in this area and the proposed lots must rely on private sewage disposal. New lots must meet Ministry reasonable use guidelines respecting nutrient loading to soils and groundwater. Residential intensification must be appropriately serviced.

In areas of sand soils, a 4000m² (1 acre) is almost always large enough to meet Ministry requirements. This neighbourhood is in sand soils, and the R6 Zone's 4000m² minimum lot area is set accordingly. For proposed lots smaller than this, a minor variance and hydrogeotechnical report are required (generally as a prerequisite to making an application), which looks at the site's particular soil and groundwater characteristics to determine if the lot is large enough to accommodate a septic system that will meet Ministry requirements for nutrient loading, and/or make recommendations for the type of system (often tertiary) or other system specifications needed, and/or to set restrictions on the size of house permitted.

County Building Services has provided formal comments, attached to the agenda. They indicate they cannot support the approval of the applications without the prior completion of a hydrogeotechnical report to their satisfaction, showing compliance with the Ministry Reasonable Use guidelines. Based on experience however, Staff is very doubtful whether the Ministry requirements can be met in this area for lots of only about one quarter of an acre.

The cover email to the applicant's submission states:

...the applicant intends to conduct a sewage impact assessment study and replace the existing septic system contingent on the outcome of this application.

Hydrogeotechnical reports should however be submitted and available to Staff and the Committee to review as information to assist in deciding whether the severance should be approved in the first place, not completed after the lots have been approved. Approval should not be given in principle, on condition of completing a hydro-

geotechnical report after the fact, especially when it is doubtful whether that condition can be met.

Access: Section 19.8.1 of the Lambton Shores Official Plan requires that:

The proposed lots must front onto or have access to an existing improved and maintained public road...

Huron Drive and other streets in this subdivision are not Municipal roads. The streets belong to the Beach O’Pines Association. What service is provided by the Municipality is provided by easements the Municipality has been granted by the association. This policy is not met.

Public Input: A letter of support has been received from the owners of the residential lot abutting to the southwest (9962 Huron Drive). It is attached to the end of this report. As noted above, Staff’s concerns are not related to consistency with the residential character of the area.

Summary: These former lots have been legally merged for over 50 years and one or two owners in the past. It is Staff’s opinion that the proposed consent needs to comply with current policy and standards notwithstanding that they may have been separate lots or that previous owners may have been unaware of legislation governing the conveyance of land.

In Staff’s opinion the application should be refused. The proposed consent contradicts the no severance policy in the Official Plan policies drafted specifically for this area, and the lots lack frontage on a municipal road. A severance would contradict these policies even if satisfactory hydrogeotechnical report and environmental impact study were completed, so deferral should not be considered.

If Committee wishes to further entertain the application, notwithstanding the area-specific no-severance policy and lack of frontage on a public street, a decision should be deferred pending the completion of satisfactory hydrogeotechnical and environmental impact studies and Staff preparing a further report once this information is available.

Subject Lands



Subject Lands



Letter of Support from Owners of 9962 Huron Drive

Attention
Jennifer Turk

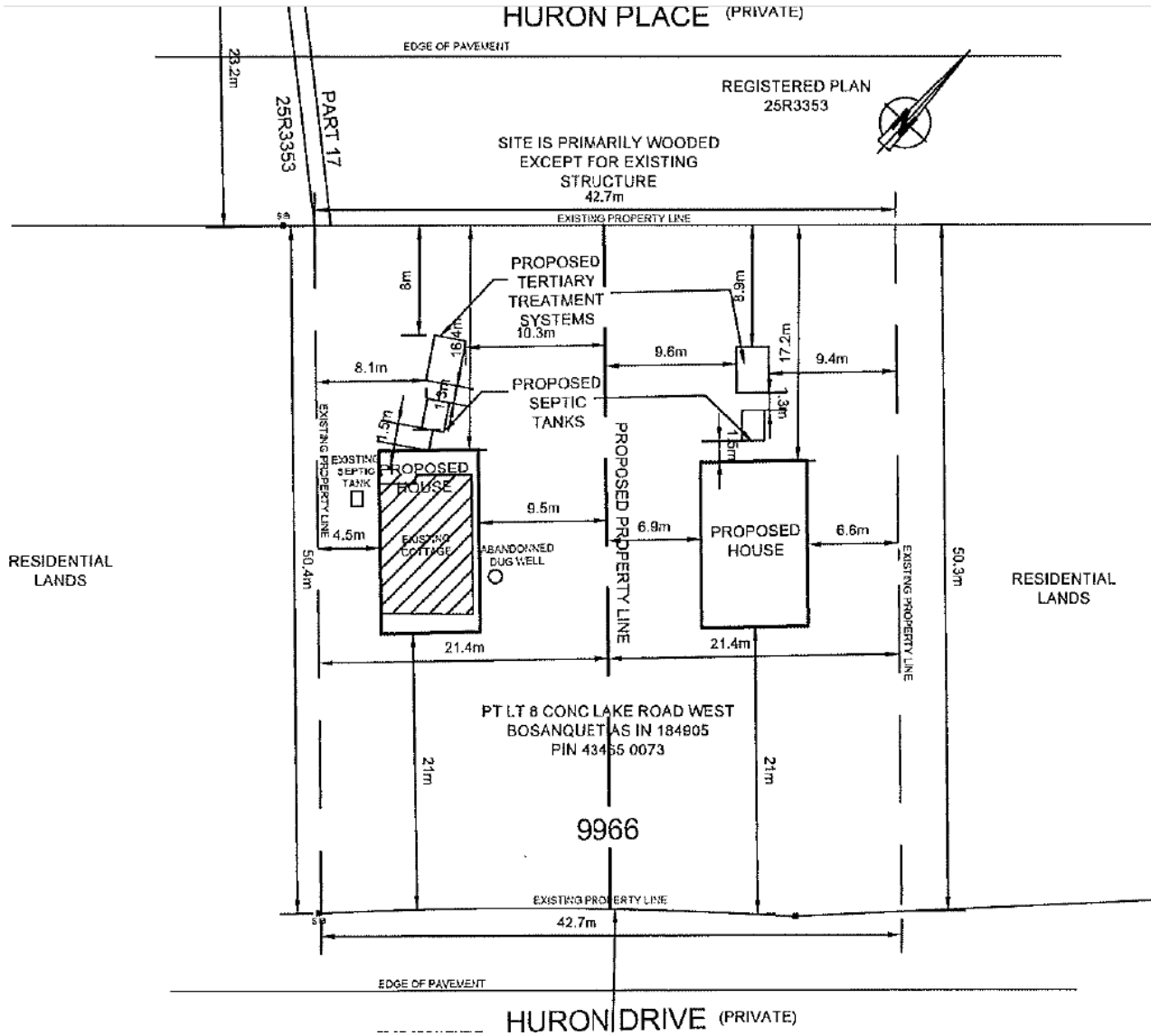
Dear Mrs Turk

This email is regarding your letter we received today For the application B01-2025 For 9966 Huron Drive
Beach o Pine's

We would like to let you know that we have no objection regarding this planning We believe it will be a better future for our direct neighbours As we have seen how big the "cottages "have been build in Beach O Pine's, the Montheith's only want to build small cottages so we are all for this.

Sincerely
Saunder and Will Geerts
9962 Huron Drive
Beach O Pines
Grand Bend

Applicant's Site Sketch of Proposed Lots



Cover Email to the Application Submission

From: Josh Iacobelli [mailto:jiacobelli@sarnialaw.com]

Sent: November 4, 2024 12:36 PM

To: Will Nywening <wnywening@lambtonshores.ca>; Ken Bulgin <kbulgin@lambtonshores.ca>

Cc: Peter Norris <PNorris@sarnialaw.com>

Subject: Re: Consent Application for Severance; 9966 Huron Drive (the "Subject Property")

Hello Will and Ken,

Please see the attached consent application regarding severance of 9966 Huron Drive. As a preface, the Applicant has advised that the septic system information and diagram have not been completed, as the applicant intends to conduct a sewage impact assessment study and replace the existing septic system contingent on the outcome of this application.

Per your last email, I have included various instruments which demonstrate how the two separate lots came to be one lot. Per Instrument BQ16347, Mary E. Barclay purchased the southwestern portion of the lot which now has a cottage placed upon it (the "Cottage Lot") in 1933. Per Instrument BQ16850, James Clarence Monteith purchased the vacant northeastern portion of the lot (the "Vacant Lot") in 1937 (the legal description of the Vacant Lot is contained in Instrument BQ16339). As demonstrated via the historical books, the Cottage Lot was then granted to James Clarence Monteith upon the passing of Mary E. Barclay. Importantly, the legal description of each lot is apparent with the legal description of the property contained in L184905. From there, the Cottage Lot and the Vacant Lot were passed down to the applicant's parents and eventually to the Applicant.

Moreover, we have been advised by the Applicant that the Cottage Lot and the Vacant Lot each had separate Assessment Roll Numbers up until November of 2022 (as evidenced by the attached letter). These separate assessment numbers are also evidenced in Lambton GIS, wherein the original line delineating the Subject Property as two separate parcels of land is still visible (please see attached screenshot). By mapping out the metes and bounds description of both the Cottage Lot and Vacant Lot, it is apparent that said delineating line divides the Cottage Lot and the Vacant Lot. It is also worth noting that said delineating line is congruent with the consent sketch attached to the application.

Please do not hesitate to contact our office should you have any further questions

Best regards,

Joshua R. Iacobelli, J.D.

Articling Student

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