

# THE MUNICIPALITY OF LAMBTON SHORES

Report PL 01-2024

Council Meeting Date: January 16, 2024

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

**FROM:** Will Nywening, Senior Planner

**RE:** ZBA Application ZO-01/2024 – 2 Allen St, Thedford – Karl and June Elliott

## **RECOMMENDATION:**

**THAT** Report PL 01-2024, relating to a Zoning By-Law Amendment Application submitted by Karl and June Elliott, be received; and

**THAT** ZBA Application ZO-01/2024, submitted by Karl and June Elliott, requesting an amendment to Zoning By-Law 1 of 2003 to rezone 2 Allen St, Thedford, to permit 2 dwellings, be denied.

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## **SUMMARY**

This report relates to the Zoning Amendment application submitted by Karl and June Elliott, affecting lands known as 2 Allen St, Thedford. The applicant proposes to rezone the property to a new site-specific Agriculture-1 Zone permitting two dwellings. In this respect, the applicant has constructed a new house on the property pursuant to a temporary use agreement with the Municipality that allowed the existing house to remain and be occupied until the new house was built, but the applicants now wish to retain rather than remove the older house.

## **BACKGROUND**

**Site Description:** The subject lands are listed by MPAC as 48.85 acres (19.8 hectares). There are two houses. One house was built recently under an April 28, 2022 building permit. The other is a much older farm house. There is an older livestock facility (beef feedlot and pasture). The lot contains approximately 1.5 acres of woodlot in the northwest corner. The balance of the land is cash-cropped or pastured.

**Provincial Policy Statement:** Section 2.3.3.1 of the 2020 PPS permits agricultural uses in prime agricultural areas, defined as follows:

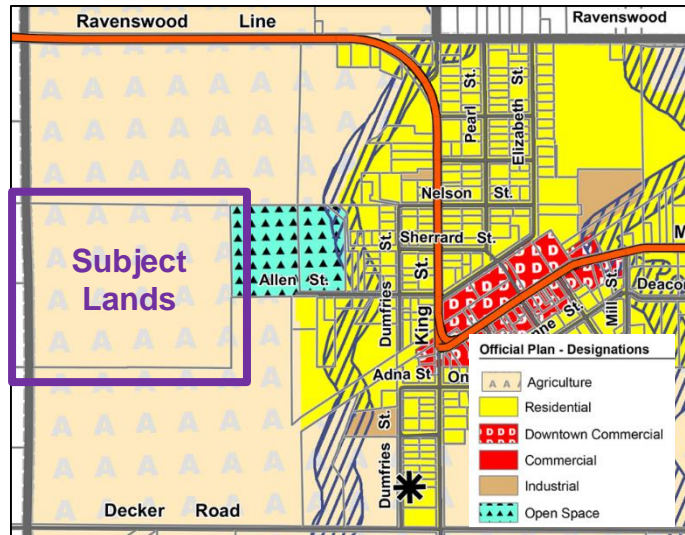
*Agricultural uses: means the growing of crops, including nursery, biomass, and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including, but not limited to livestock facilities, manure storages, value-retaining facilities, and accommodation for full-time farm labour when the size and nature of the operation requires additional employment [emphasis added].*

County Official Plan: The subject parcel is designated “Agricultural Area” in the Lambton County Official Plan. It abuts the Thedford “Urban Settlement Area”.

Section 4.1.6 of the County Official Plan permits Agricultural Uses including “accommodations for full-time farm labour”:

- 4.1.6 *The primary land use activity in the Agricultural Area will be agricultural uses of all sizes, types, and intensities. Agricultural uses include the growing of crops, including nursery, biomass, and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures including, but not limited to accessory farm dwellings, livestock facilities, manure storages, crop storage facilities, value-retaining facilities, and accommodation for full-time farm labour when the size and nature of the operation requires additional employment [emphasis added].*

Local Official Plan: On Schedule “A” to the Lambton Shores Official Plan (see inset to right), the lands are designated “Agriculture”, as are most of the surrounding properties. The portion of the Thedford “Urban Settlement Area” that the subject lands abut is the Municipal property containing the Legacy Centre, which is designated “Open Space” in the Local Official Plan. On a separate schedule, the Official Plan also identifies the wooded portion of the subject lands as part of a “Significant Woodlot”.



Section 4.2 of the Local Official Plan states the following:

#### **4.2 Permitted Uses**

*The following uses are permitted on lands designated for “Agriculture”:*

- *agricultural uses, including the growing of crops, including nursery and horticultural crops, biomass, raising of livestock and other animals for food, fur and fibre, including poultry and fish, apiaries, agro-forestry, conservation, maple syrup production and associated on-farm buildings and structures. All types, sizes and intensities of agricultural uses and normal farm practices<sup>3</sup> shall be promoted and protected;*
- *farm residences and accommodation for full-time farm labour (when justified by the size and nature of the operation) are permitted. The severance of new lots for additional on-farm residences, including accommodation for farm labour is not permitted [emphasis added].*

Zoning By-Law: In Zoning By-Law 1 of 2003, the subject lands and all but one of the surrounding properties are designated “Agriculture-1 (A1) Zone”. The abutting Legacy Centre property is in the “Open Space-2 (OS2) Zone”.

The Permitted Uses of the A1 Zone, at Section 5.1 a) of the Zoning By-Law, permit “Agriculture, including one (1) Farm Dwelling”.

Section 3.9.1 of the Zoning By-law contains lot development requirements:

**3.9.1 Frontage on a Street**

*No Lot shall be used and no Building on a Lot erected or used unless the Lot fronts on a Street which is opened and publicly maintained on a year round basis... [emphasis added].*

Temporary Use Agreement: Council passed By-Law 7 of 2022 on February 1, 2022 to authorize a temporary use agreement with the property owners to allow an existing house to remain until a new house was constructed. The agreement executed by the property owners is attached to this report, along with the associated Staff Report PL 01-2022.

Such agreements are done routinely in the agricultural area to allow farmers to reside in an existing house until the new house is ready for occupancy. The agreement in this case required the old house to be demolished within 24 months of the agreement’s execution or within 6 months of the new house being permitted occupancy, whichever came first. A building permit was issued April 28, 2022 for a new house with conditional occupancy granted December 15, 2022, making June 15, 2023 the deadline for removal of the older house.

The property owners have not removed the older house and are in default of the temporary use agreement. The property is now non-conforming with respect to the Zoning By-Law and the limit of one dwelling in the A1 Zone. The building permit cannot be closed out until the situation is rectified. To rectify the situation, the property owners have applied for a rezoning to permit two dwellings as an alternative to its removal.

Lack of Frontage: The subject lands have no legal frontage on a street. The subject property’s driveway is located on (what we understand to be) a formal easement over a parcel of land owned by the Municipality. This parcel is one of two municipally-owned parcels on which the Legacy Centre is located. The subject lands’ driveway extends approximately 130m from the end of what is constructed to the standard of a municipal street and approximately 170m west of the actual Allen St road allowance.

The Zoning By-Law (s. 3.9.1 quoted above) does not permit new development on a parcel without frontage. The building permit was issued for the applicant’s new dwelling however, as the older dwelling being on a parcel without frontage was an existing legal non-conforming situation and (with an agreement in place to remove the older house) there would be no increase in the number of dwellings and no increase in non-conformity.

Site Services: The entire property is serviced at the property line by a single water metre pit/water service. The older house is connected to a private septic system. Ontario Building Code requires that houses connect to a municipal sanitary sewer system where one is available, so the newer house has tied into the Municipal sewers through a grinder pump system.

Development Charges: When the building permit was issued April 28, 2022 the development charge for a new single detached dwelling was \$11,918.11 (the subject lands are located outside "Schedule E"). No development charge was paid however as there was an agreement in place for the removal of the older house and the development charges by-law exempted replacement dwellings from development charges.

## **DISCUSSION**

Because this rezoning request is coming now, rather than before the building permit for the new house was requested, the applicants are in default of the temporary use agreement signed with the Municipality and the property is in a state of zoning non-conformity.

The property is unique in its proximity to Thedford and the fact that it is accessible only through the Village. It is clearly a farm property however, there has to be a boundary between urban and agricultural, this boundary is defined by the Official Plan, and the subject lands are subject to the Prime Agricultural Area policies of the PPS and the Agricultural policies of the County and Local Official Plans. There is no policy basis to apply a separate set of Agricultural standards based on proximity to urban boundaries.

Agricultural areas are prioritized for agricultural activities, not accommodating housing demand. Non-farm uses, especially residential, introduce potential land use conflicts with the primary intended agricultural use and are therefore limited in principle. Recent provincial legislation permitting up to two additional dwellings per lot does not apply to agricultural lands. The A1 Zone permits only one dwelling per farm property, consistent with a general policy to limit non-farm development, especially residential, to a minimum on agricultural lands.

With reference to the above-noted permitted use policies for agricultural areas in the PPS and County and Local Official Plans, additional dwellings may only be permitted where intended to house persons employed on the farm. Further, the employment must be full-time employment and justified (or required) by the size and nature of the operation. Migrant labour housing for greenhouse operations is one example. Another would be a single detached dwelling for a large dairy operation where milking operations employee multiple families or require full-time farm labourers on a daily basis. In Staff's experience, even where the size and nature of a farm operation justify additional housing, most farm operators prefer to place additional single detached dwellings on separate farm properties.

Staff met with the applicants on November 30, 2023 to discuss the application and to better understand the nature of the farming operation, and the applicants have also provided written submissions that are included in Council's agenda.

It is Staff's understanding that the applicants have several farm parcels in addition to the subject lands including property in Bruce County. The applicants purchase 150-200 beef cattle yearly (each fall) to finish as "short-keeps". These are over-wintered on the subject lands. In the spring the majority of the animals are shipped to Bruce County or other properties to be finished on pasture and sold in the fall.

The subject lands are themselves approximately 50 acres.

The livestock operation on this lot is older and small-scale compared to more recently built beef operations. Many similar operations have long gone out of use or had substantial investments made to modernize and expand. This operation cannot be expanded or even replaced in its present location. The barn is located approximately 100m from the Legacy Centre property line (an OS2 Zone and a "Type B" Use), but the Minimum Distance Separation II requirement for a 200 head shortkeep beef operation is 178m to a Type B Land Use just to replace what is there (without any expansion).

In Staff's experience working in the farming community for a considerable length of time, a 50 acre parcel and a beef operation of this scale and nature is not the type of operation that necessitates or supports multiple households with full-time employment.

The application materials note that the applicants have two sons that assist with the farm operation and that the applicants wish to retain the older house for their sons' use. It is Staff's understanding however that the farming operation does not provide these sons with the full-time employment required by the Provincial, County, and Local policies to justify additional housing. Also, the livestock aspect of this farming operation is scattered over a number of properties, so the housing needs of those employed by the operation do not necessarily need to be concentrated on one property.

Permission for a second dwelling would increase the existing non-conformity with the zoning by-law with respect to development on lots without frontage on a municipal street.

Planning Opinion: The PPS, County Official Plan, and Local Official Plan are consistent in their requirements for additional dwellings on agricultural parcels. Additional dwellings must be for the purpose of housing people or households employed by the farm operation. In addition however, they must be full-time employees and the nature of the farming operation must be one that requires additional housing for on-farm labourers. In this situation the proposed occupants of the house in question do not appear to be employed full-time by the farm operation and Staff does see the scale and nature of this farming operation as one that necessitates additional on-site housing. Also, an increase in the number of dwellings intensifies the use of a property without frontage on a public street, contrary to Section 3.9.1 of the Zoning By-law.

In Staff's opinion the proposed zoning amendment does not conform to applicable Planning policies and access requirements, is not appropriate, and does not represent good planning. Staff cannot support the amendment and recommends that it be declined.

### **ALTERNATIVES TO CONSIDER**

Staff's recommendation is that the application be declined, so Staff has not drafted an amending by-law.

If Council does wish to approve the application, it should direct Staff to prepare an amending by-law that would change the existing A1 Zone to an A1 Zone Exception permitting two dwellings.

Zoning cannot be passed with conditions however, so Council should defer any formal approval of the application and defer any amending by-law until the applicants have:

- Paid the Development Charge that would have applied to the building permit issued in 2022,
- Obtained a plumbing permit to connect the older house to the sanitary system, and
- Either installed the sanitary connection or provided a security deposit sufficient to cover the cost.

Further, the applicants have been in default of the temporary use agreement since June 15, 2023, only making the application to rezone on December 6, 2023. If Council is inclined to consider the application, Staff recommends that the applicants be given a relatively short deadline to complete these conditions.

### **RECOMMENDED ACTIONS**

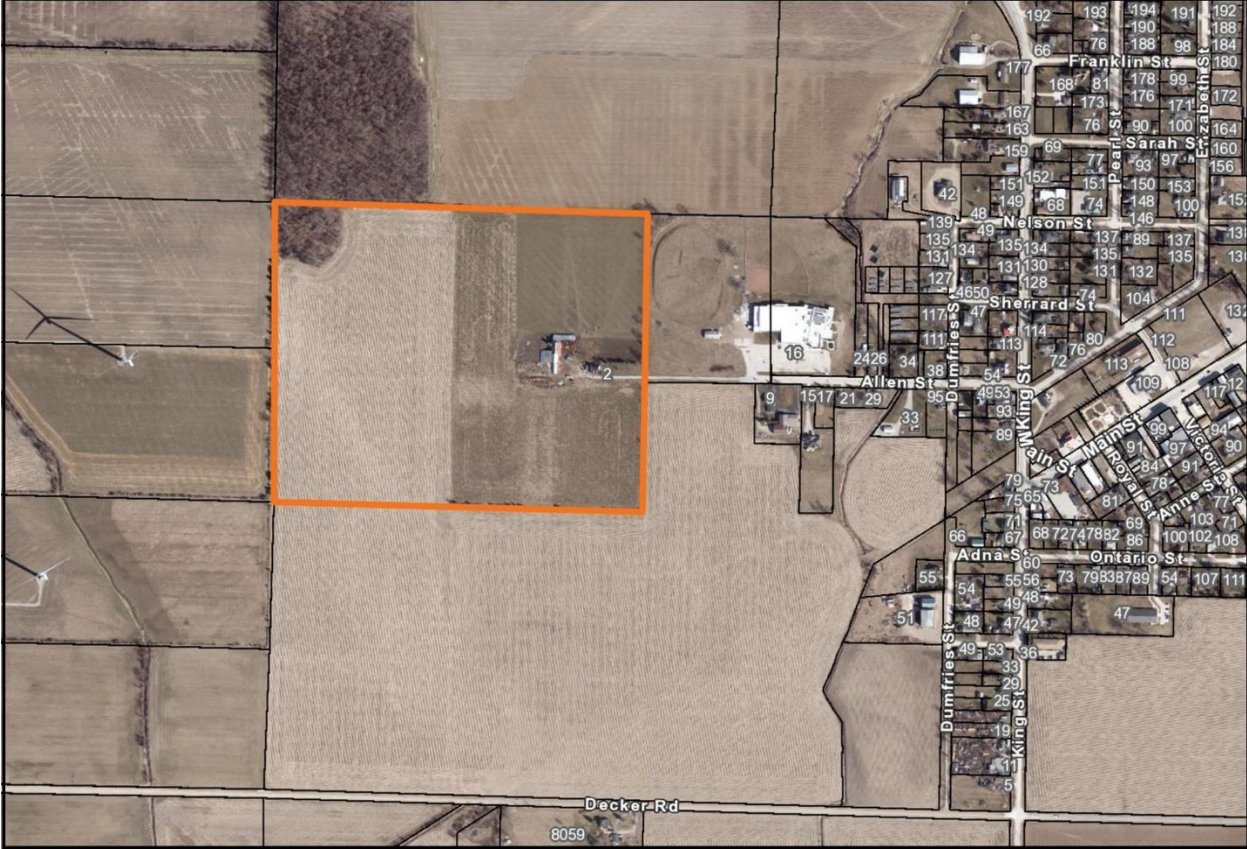
Staff recommend that Report PL 01-2024 be received and Zoning By-law Amendment Application ZO-01/2024 be declined.

### **FINANCIAL IMPACT**

The applicant has paid the Municipality a \$1300 application fee for rezoning.

### **CONSULTATION**

The applicants  
Municipality of Lambton Shores Staff: Steve McAuley, Chief Administrative Officer; Randy Lovie, Chief Building Official and other Building Services Staff; Public Works Department Staff; Janet Ferguson, Director of Finance



**Subject Lands**