

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: September 06, 2018

CASE NO(S): PL180051

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	John Van Duynhoven
Subject:	By-law No. 164-2017
Municipality:	City of St. Thomas
OMB Case No.:	PL180051
OMB File No.:	PL180051
OMB Case Name:	Van Duynhoven v. St. Thomas (City)

Heard: July 25, 2018, in St. Thomas, Ontario

APPEARANCES:

Parties

Counsel

Will Hayhoe (Performance
Communities Realty Inc.)

Alan Patton

John Van Duynhoven

Self-represented

City of St. Thomas

Analee Ferreira

DECISION DELIVERED BY H. JACKSON AND ORDER OF THE TRIBUNAL

[1] Will Hayhoe on behalf of Performance Communities Realty Inc. (the “Applicant”) applied to the City of St. Thomas (the “City”) to permit a 34-unit townhouse development

on the lands municipally known as 20 Tamarack Court (the “subject property”). The subject property is currently vacant.

[2] Council for the City passed Zoning By-law No. 164-2017 on December 4, 2017. The by-law amends the City’s Zoning By-law No. 50-88 by rezoning the subject property from Fifth Residential Zone (R5-39) to Fifth Residential Zone (R5-41), permitting the proposed residential development on the subject lands. The current zoning only permits a retirement home.

[3] Pursuant to s. 34(19) of the *Planning Act*, John Van Duynhoven (the “Appellant”) appealed Council’s decision, stating that the by-law does not comply with the Official Plan and fails to respect the rights of existing adjacent properties. In his appeal letter, the Appellant provided the following reasons for his appeal:

- The Official Plan requires that access is required to a major artery or collector road. The current road is a cul-de-sac.
- The property was originally zoned as an R3 density and only permitted for an R5 density for a senior’s home. Since the senior’s home isn’t being built, the zoning should revert back to an R3 and the new application should start the rezoning process over again.
- The Official Plan requires that the development have a positive impact on the adjacent properties.
- The application would join two cul-de-sacs creating a through traffic environment.
- Nearby residents purchased their properties as properties located on a cul-de-sac.
- Every resident on Sutherland Court signed an objection to the by-law in the form of a petition.

Appellant’s Position

[4] The Appellant called three local residents as witnesses to testify about their concerns regarding the proposed development. Susanne McGregor and her husband live at the south end of the cul-de-sac on Sutherland Court on a large lot that includes a large garage for storage of their cars. Their lot is directly adjacent to the proposed development. Ms. McGregor is concerned that by opening up the cul-de-sac for access to the new development there will be many more cars drive by her property and her quiet cul-de-sac will become a busy corner. She testified that she was not concerned

when she understood that a retirement home could be built on the subject property because she did not think the retirement home would result in a through street being constructed.

[5] Jeff Moyes testified that he built his house on his approximately 3 acre property about 35 years ago because the location suited him. His property is located on the north side at the end of the cul-de-sac on Sutherland Court. At the time he built his home he said the street was a quiet cul-de-sac surrounded by farmland yet still close to the City. He stated that though he understood that there would be development and possibly a senior's residence in the future, he always assumed the street would remain quiet. His main concerns are impact to his enjoyment of his property and the increase in traffic from the proposed development. He also expressed concern that lights from the through street may shine into his home. Mr. Moyes indicated that he does not know whether the new development will increase or decrease his property value.

[6] Lee Perri lives in a five year old house on Sutherland Court. He testified that he lived on a farm all his life prior to moving to this house. When selecting a new home, he wanted to be close to the edge of the City, and therefore he chose this house which is on a quiet cul-de-sac on a street adjacent to farmland. He stated he enjoys the low density housing in the neighbourhood. His grandchildren play on the street and there have been no issues to this point, with the exception that in his view the speed of traffic in the area seems to be increasing.

[7] The Appellant also sought to enter into evidence a document dated January 2008 that is an appendix to a supporting document in relation to Official Plan Amendment 66. The purpose of introducing this document was to bring to the Tribunal's attention other potential intensification sites in the City. Counsel for both the Applicant and the City objected to the introduction of this document on the basis that it is not relevant and it is not probative. The Tribunal reviewed the document and ruled it inadmissible on the basis that it is not relevant to the planning merits of the site specific application that is before the Tribunal in this hearing.

Planning Context

[8] The City called James McCoomb, Manager of the Planning Department for the City, to provide background evidence to set the stage for this planning application as well as to provide expert land use planning opinion evidence to support the City's position that the application conforms to the City's Official Plan and is consistent with the Provincial Policy Statement 2014 (the "PPS").

[9] As described by Mr. McCoomb, the subject property is in the Dalewood Development Area and is designated for residential uses. The surrounding lands consist of predominately relatively new single detached one to two storey dwellings, and some semi-detached dwellings. Immediately to the west of the subject property is a strip of land owned by the City, and beyond this are Conservation Authority lands. The local roads are Tamarack Court and Sutherland Court, both cul-de-sacs that connect to Pine Valley Drive, a major collector road. There are two notable properties in the vicinity; a large lot of about 3.5 hectares owned by Mr. Moyes to the north of the subject property; and, a moderately large property immediately adjacent to the subject property owned by Ms. McGregor. These two properties are at the end of Sutherland Court, at the termination of the cul-de-sac.

[10] A private application a number of years ago resulted in the lands being zoned to permit a senior's residence; however, no entity has come forward in the intervening years to develop a senior's residence.

[11] The application before the Tribunal in this hearing is for a 34-unit townhome complex at a density of 38 units per hectare, in the Medium Density range of 25 to 75 units per hectare. The townhomes are configured in blocks of 6 units, two storeys in height. There will be a total of 81 parking spaces which includes 2 per unit plus 13 spaces for visitors. This parking rate exceeds the by-law standard, according to Mr. McCoomb. He indicated that each unit has a garage and a double driveway.

[12] A new road is to be built for access to the development. It will be a through road that connects Tamarack Court and Sutherland Court. The elimination of the existing cul-de-sacs on Tamarack Court and Sutherland Court as a result of this through road is of great concern to the Appellant and the residents who testified at the hearing.

[13] Mr. McCoomb indicated that the City undertook mandatory consultation with the Applicant that resulted in the requirement for a Planning Justification Report and a Traffic Report. These reports and updates were provided in evidence in Exhibit 1, the joint document book prepared by the City and the Applicant.

[14] Mr. McCoomb took the Tribunal to a report he prepared for Council, dated August 10, 2017. The report contains the following excerpt:

The Applicant is seeking consideration for site specific variations to the standards of the R5 zone for rear yard (9 m required, 7 m proposed), interior side yard (3 m required, 2.5 m proposed) and exterior side yard (5 m required, 1.3 m proposed). Given the 7 m rear yard backs onto the open space land owned by the Conservation Authority, this request is considered reasonable.

Staff have advise (sic) the applicant that they are not supportive of the proposed 2.5 metre side yard and the 1.3 m exterior side yard reductions as they apply to Units 11 and 28 respectively

[15] A public meeting was held on October 10, 2017, where residents expressed concerns regarding the proposed development, mainly related to traffic, property values, and the compatibility of the development with the surrounding neighbourhood. In response to concerns raised by the residents and the Planning Department the Applicant adjusted the setbacks, prepared a revised planning report; and, prepared a revised traffic assessment report.

[16] Mr. McCoomb testified that the Planning Department was satisfied with the proposed revised setbacks and that the revised traffic assessment and revised planning report adequately addressed any outstanding concerns. He testified that he recommended to Council approval of the application.

[17] Mr. McCoomb went to the policies in the City's Official Plan for Medium Density Residential use, under s. 5.1.3.3. He went through the specific policies listed from i) to x), and testified that the development satisfies each of these. He also went to s. 5.1.3.6 policies for new residential development within an established neighbourhood on vacant sites, which he stated are also satisfied by this proposal. He testified that the proposal conforms to the Official Plan.

[18] With respect to the PPS, Mr. McCoomb stated that the townhouse proposal helps to achieve a mix of uses, in line with s. 1.1.1 b) of the PPS. There is no expansion of City services required to service this development, pursuant to s. 1.1.3.2 a) 2. As well, the intensification provided by this development meets policy 1.1.3.3; and the compact form achieves the policy direction provided in s. 1.1.3.4. Mr. McCoomb testified that this proposal also helps the City achieve its housing targets, as set out in s. 1.4.1, and 1.4.3. In his opinion, the development is consistent with the applicable policies of the 2014 PPS.

[19] Mr. McCoomb indicated that the Planning Department did not address the residents' concerns regarding the impact to property value, as this is not a land use planning matter. The Tribunal concurs that the suggestion of impacts upon property values is indeed not a land use planning matter to be considered.

[20] Under cross-examination by the Appellant, Mr. McCoomb was questioned about whether this proposal would have been approved if it did not already have the R5 zoning that was in place to permit the senior's residence. Mr. McCoomb stated that in his view, the current proposal would have been looked upon favourably by the Planning Department, as the City's residential policies support a vast range of residential types and densities and that the Planning Department is receptive to providing minor relief to the required setbacks in order to encourage infill and intensification where it can be accommodated. He also testified that the current proposal is compatible with the surrounding residential neighbourhood; and, there is no impact to the surrounding neighbourhood or to the Appellant's property resulting from this proposed development.

[21] The Applicant's land use planning expert, Harry Froussios, testified that he agreed with Mr. McCoomb's evidence and opinions. He indicated that the application will still require site plan approval, and at that time issues such as the impact of the lighting of the development on adjacent properties and buffering to adjacent properties can be addressed.

[22] The Applicant called Frank Berry, an expert in traffic engineering, to provide his opinion regarding the impacts of this development on local traffic. He testified that he studied the existing traffic, plus the increase in traffic resulting from this development, projected five years into the future at the peak hours of 7 to 9 a.m. and 4 to 6 p.m. He testified that the traffic analysis showed that the level of service at the three surrounding intersections would be at level A or B, which is classified as 'good'.

[23] Mr. Berry testified that for safety reasons it is important that the cul-de-sacs be eliminated and that the connection between Tamarack Court and Sutherland Court be established. He stated that from a traffic perspective it is desirable that there be more than one point of entrance or egress so that emergency vehicles have adequate access to the homes in the new development.

[24] He also testified that the traffic that comes into the neighbourhood from Ron McNeil Line (that has a posted speed limit of 80 kilometres per hour) would slow down considerably in order to make the turn onto Pine Valley Drive. By slowing down, this allows traffic exiting from Sutherland Court sufficient time to turn onto Pine Valley Drive without conflict. This issue was expressed as a concern by the Appellant.

ANALYSIS AND FINDINGS

[25] At the commencement of this proceeding, Mr. Van Duynhoven elected to call his neighbours as witnesses and to cross-examine the City and the Applicant's expert witnesses. The Tribunal has reviewed the statements made by the residents at the public meeting when this matter was being considered by Council. This includes the document provided by John and Helene Van Duynhoven, entered into evidence as

Exhibit 1, Tab 9, wherein Mr. Van Duynhoven sets out the reasons for his opposition to the proposal.

[26] The Tribunal heard conjecture and apprehensions from the witnesses in opposition to this development, but no evidence that rises to the level of a legitimate planning concern, even within the written documentation provided in evidence in Exhibit 1.

[27] The Tribunal has heard expert evidence from two land use planners and a traffic engineer that supports the merits of this proposed infill development. The proposed intensification is within an urban area on full services, and is in line with the intensification policies of the PPS. There was no challenge to the expert evidence through the cross-examination. The evidence of the experts is that there is no unacceptable adverse impact to the Appellant or the surrounding residents that would arise from this infill development.

[28] On the basis of the evidence, the Tribunal finds that the Official Plan policies in relation to Medium Density Residential use and infill development are met by this proposal. The development will require a site plan application where the issues of appropriate buffer and lighting can be addressed. The traffic engineer has indicated that the increase in traffic at the peak hours will still maintain the level of service at a 'good' level which the Tribunal finds to be acceptable.

[29] The Tribunal accepts the expert evidence provided in this hearing and finds that the application and zoning by-law as proposed conforms to the Official Plan and is consistent with the PPS. The Tribunal finds that the proposed development represents sound land use planning.

[30] Pursuant to s. 2.1 of the *Planning Act*, the Tribunal must have regard to the decision of Council when coming to a decision with respect to the matter before the Tribunal. In this matter, the evidence is that Council heard the concerns expressed by

the residents in opposition to this application, but nevertheless decided to approve the application. The Tribunal sees no reason to vary from that decision.

ORDER

[31] The Tribunal dismisses the appeal. Zoning By-law No.164-2017 is approved, and is appended here as Attachment 1.

"H. Jackson"

H. JACKSON
MEMBER

If there is an attachment referred to in this document
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

CITY OF ST. THOMAS

BY-LAW NO. 164-2017

A By-law to amend By-law 50-88

THE COUNCIL OF THE CORPORATION OF THE CITY OF ST. THOMAS ENACTS AS FOLLOWS:

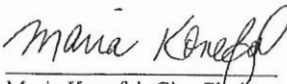
1. Zoning Map 31 to By-law 50-88 as amended is further amended by zoning the lands shown outlined in heavy solid lines on Schedule "A" hereto as "R5-41", and such Schedule shall be added to and form part of By-law 50-88 as amended and shall be known as "Special Zoning Map 31-14" to By-law 50-88 as amended.
2. By-law 50-88 as amended is further amended by adding to subsection 9.5 the following paragraph:

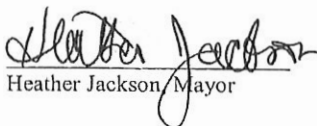
"9.5.41 Special Zone

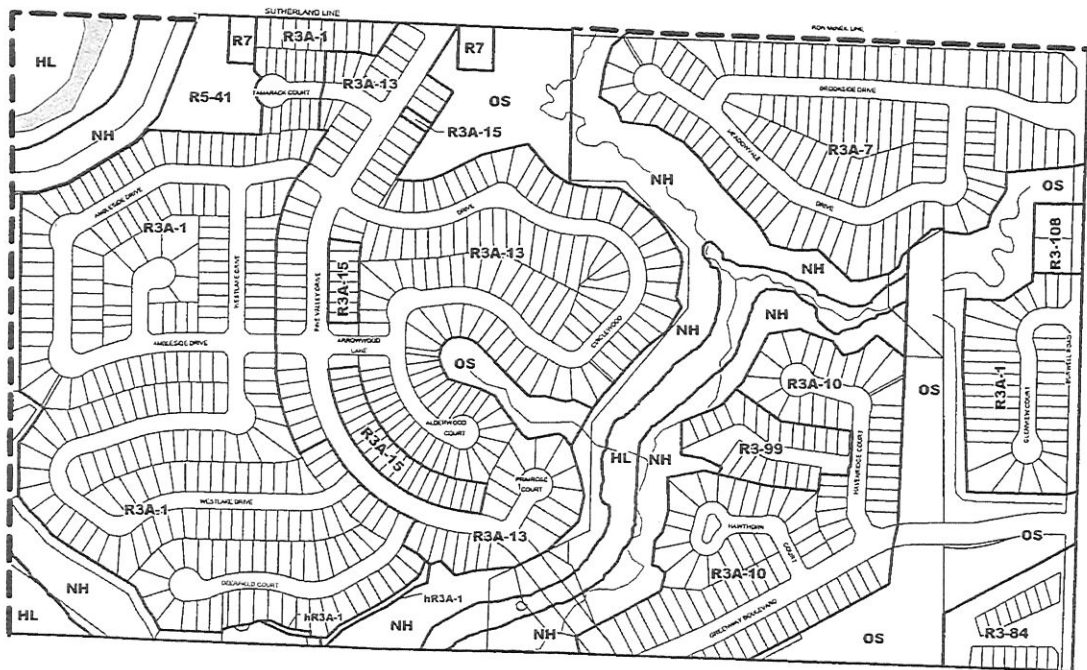
 - (a) Area Affected
R5-41 as shown on Special Zoning Map 31-14.
 - (b) Only Permitted Uses
Townhouse dwelling
Uses accessory to the foregoing.
 - (c) Only Permitted Buildings and Structures
Buildings and structures for the uses permitted by 9.5.41(b).
 - (d) Maximum Number of Dwelling Units
34
 - (e) Minimum Rear Yard
7.0 metres.
 - (f) Minimum Exterior Side Yard
2.15 metres.
 - (g) Projections into Yards
Notwithstanding the provisions of Subsection 4.2.2 of this By-law:
 - (i) A deck, which is covered or uncovered, and not wholly or partially enclosed, may project into the required rear yard to a maximum of 4 metres.
 - (ii) A covered porch may project into the required interior side yard to a maximum of 0.5 metres
 - (h) Exception
The provisions of Items 10 and 11(b) to Column 3 of Table 1 to subsection 9.4 shall not apply to the area affected."
3. In anticipation of the eventual consolidation of By-law 50-88 and all amendments to such By-law, including this amendment, Schedule "B" to this Bylaw is hereby adopted, such Schedule being Zoning Map 31 to By-law 50-88 amended to include the changes made in such Zoning Map by all amendments to By-law 50-88 to date, including this amendment.

READ a First and Second time this 4th day of December, 2017.

READ a Third time and FINALLY PASSED this 4th day of December, 2017.


 Maria Konefal, City Clerk


 Heather Jackson, Mayor



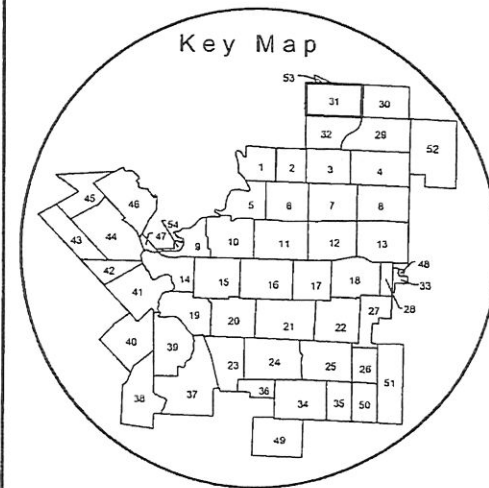
This is Schedule "B"
to By-Law 164-2017
Passed this 4th Day
of December, 2017.

Maria Konefal

Maria Konefal, City Clerk

Heather Jackson

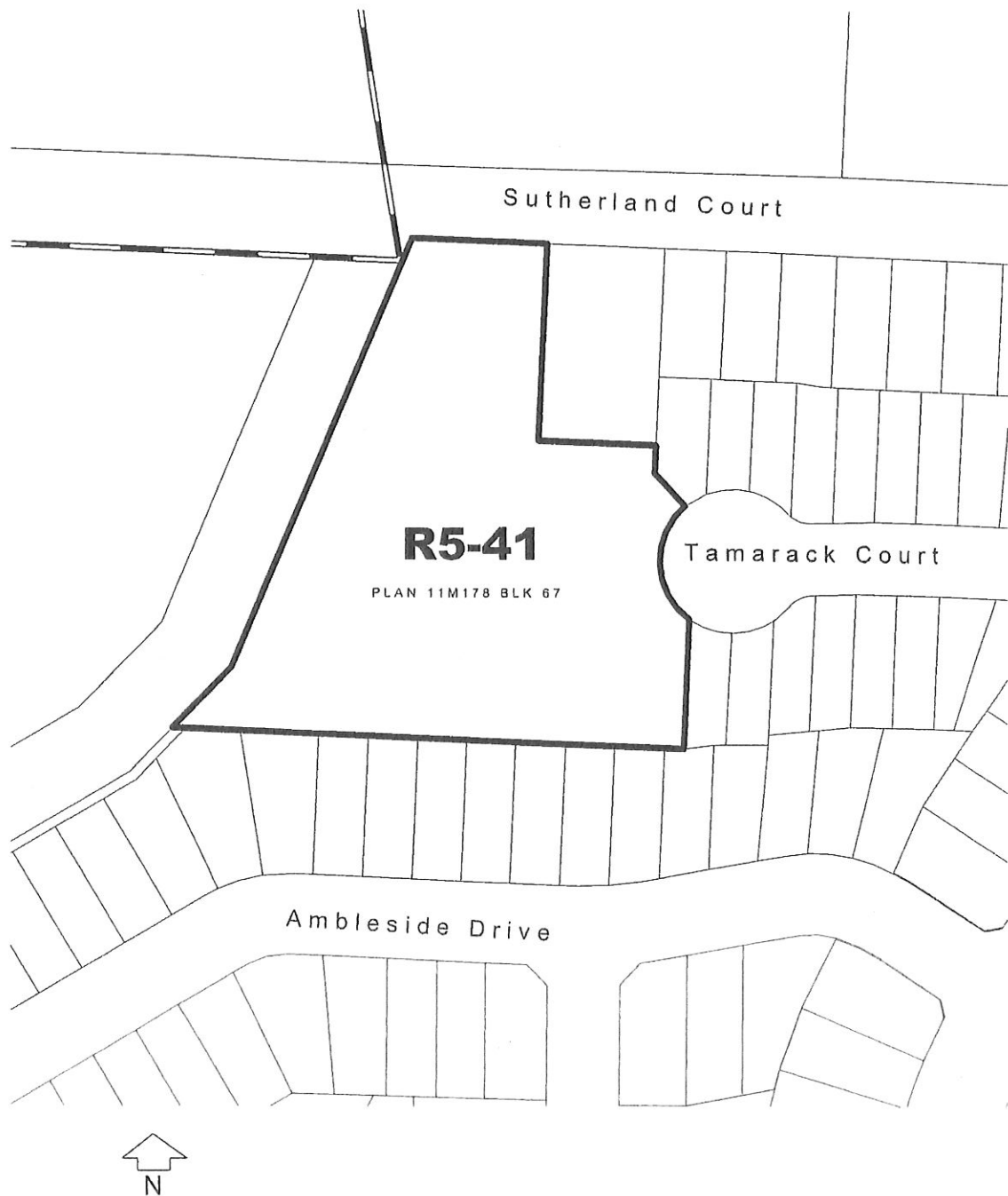
Heather Jackson, Mayor



0 100 200
Metres

Zoning Map 31

Special Zoning Map 31-14



This is Schedule "A" to By-Law 164-2017
Passed this 4th Day of December, 2017.

Maria Konefal

Maria Konefal, City Clerk

Heather Jackson

Heather Jackson, Mayor