

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



**ISSUE DATE:** December 04, 2019

**CASE NO(S):** PL190170  
PL190171

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(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Heather Merritt  
Subject: Application amend Zoning By-law No. 2005-005- Refusal of Application by Municipality of Middlesex Centre  
Existing Zoning: Agricultural (A1)  
Proposed Zoning: Surplus Residence (SR); Agricultural-No Residence (A3)  
Purpose: To permit the rezoning of the subject property in order recognize its residential use following severance  
Property Address/Description: 13487 Fourteen Mile Road  
Municipality: Middlesex Centre  
Municipality File No.: ZBA-28-18  
OMB Case No.: PL190170  
OMB File No.: PL190170  
OMB Case Name: Merritt v. Middlesex Centre (Township)

**PROCEEDING COMMENCED UNDER** subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Heather Merritt  
Subject: Consent  
Property Address/Description: 13487 Fourteen Mile Road  
Municipality: Middlesex Centre  
Municipal File No.: B-25-18  
LPAT Case No.: PL190171  
LPAT File No.: PL190171  
LPAT Case Name: Merritt v. Middlesex Centre (Municipality)

**Heard:** October 2, 2019 by telephone conference call

**APPEARANCES:****Parties****Counsel**

Heather Merritt

A. Baroudi

JTW Farms Inc.

G. Sinker

Middlesex Centre

W. Meagher

**MEMORANDUM OF ORAL DECISION DELIVERED BY M.A. SILLS ON  
OCTOBER 2, 2019 AND ORDER OF THE TRIBUNAL**

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[1] This was a Settlement hearing by telephone conference call in the matter of appeals by Heather Merritt (the “Applicant”) from the refusal by the municipal Council of the Municipality of Middlesex Centre of a Consent application, and an application for a zoning by-law amendment (“ZBA”) for the lands legally described as Part Lot 23, Concession 13 (Geographic Township of London) in the Municipality of Middlesex Centre (the “Municipality”), County of Middlesex (the “Country”), and municipally known as 13487 Fourteen Mile Road (the “subject lands”).

[2] The subject lands are designated “Agricultural Areas” by the County Official Plan (the “COP”) and “Agriculture” by the Middlesex Centre Official Plan (the “MCOP”), and zoned Agricultural (A1) Zone by Zoning By-law No. 2005-005 (the “ZBL”).

[3] The subject lands form a 20.23 hectare (“ha”) rectangular-shaped parcel, approximately 710.7 metres (“m”) in depth and having approximately 305.6 m of frontage along the south side of Fourteen Mile Road between Hyde Park Road and Wonderland Road.

[4] JTW Farms Inc. (“JTW”) has made an offer to purchase the lands and proposes to consolidate the holdings into the JTW farming operation, and to sever the residence surplus to the needs of the farming operation. Consents to sever the residence surplus to the needs of JTW and to create an easement in favour of the surplus lot as well as a

zoning amendment are required to implement the farm consolidation.

[5] On November 28, 2018, a Consent application and an application for a ZBA was submitted by counsel for JTW, George Sinker, on behalf of the Applicant for the purpose of severing a 1.65 ha portion of the subject lands containing an existing single detached dwelling and associated amenity space from the surrounding farmland (retained parcel) in order to create a residence surplus to a farming operation.

[6] Both the Consent and rezoning applications were refused and subsequently appealed to the Local Planning Appeal Tribunal.

[7] Following from the refusal of the applications the Applicant and the Municipality engaged in discussions which led to the Applicant submitting a revised severance proposal. The revised proposal, which reduces the area of the severed parcel to 1.43 ha (from 1.65 ha) and maintains the prevailing prominent amenity features including existing ponds, was accepted by the municipal Council on August 14, 2019, subject to certain Consent conditions and with the understanding that the proposed easement to provide water from the retained lot to the severed lot would not be permitted.

[8] The Municipality subsequently prepared a draft ZBA that effectively rezoned the severed (surplus residence) lands from Agricultural (A1) Zone to Surplus Residence (SR) Zone, and the retained lands from Agricultural (A1) Zone to Agricultural - No Residences (A3) Zone. The purpose of the rezoning of the severed parcel is to recognize its residential use and to prohibit livestock. The purpose of the rezoning of the retained parcel is to prohibit a residential dwelling from being developed on the parcel.

[9] Land use planning evidence and opinion in support of the revised Consent application and the proposed ZBA, as supported by the Applicant and the Municipality, was provided by Harry Froussios. Mr. Froussios is a registered professional planner

and a Member of the Canadian Institute of Planners.

[10] Mr. Froussios provided an Affidavit outlining his planning rationale and proffered oral evidence to support his conclusions that the revised applications are consistent with the Provincial Policy Statement, 2014 (the "PPS") and conform to the COP and the MCOP.

[11] In the first instance, s. 2.3.4.1 of the PPS permits "a residence surplus to a farm operation as a result of farm consolidation", subject to certain conditions, including that the new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services. This policy further stipulates "that new residential dwellings are prohibited on any remnant parcel of farmland created by the severance".

[12] The proposed SR Zone to be applied to the severed lands contains a minimum lot area requirement of 2,000 square metres; there is no maximum lot area requirement.

[13] The use of the proposed severed lands includes the existing residence; garage; pool; landscaping, including the ponds; well; septic tank and tile field; winding driveway; and is effectively separated from the agricultural portion of the property by fencing and mature landscaped screening. These lands have not been in agricultural use for decades and are not required for agricultural purposes. The residential use currently being maintained on the proposed severed parcel has been in existence since 1997 with no known adverse impacts to surrounding lands.

[14] The proposed Agricultural-No Residence (A3) Zone serves to prohibit the development of any new residential dwellings on the remnant parcel, consistent with policy 2.3.4.1c) 2.

[15] The most relevant policies of the COP are set out in s. 3.3.2 and s. 4.5.3.2 General Policies, s. 3.3 and s. 4.5.3.4 Agricultural Areas and s. 4.5.3 Consent. In this

case, the proposed remnant parcel is intended for agricultural uses and will be added to an existing nearby established farm operation. In that regard, the proposal preserves lands in agricultural production and strengthens the economic viability of an existing farm operation (s. 3.3.2).

[16] The proposed severed and retained parcels are of adequate size for the intended uses and both have access to Fourteen Mile Road. Fourteen Mile Road is a local road that is maintained year-round and can accommodate farm and other traffic. There are no issues with respect to traffic, access or servicing anticipated (s. 4.5.3.2). The subject lands are flat, no new buildings are being proposed, the on-site servicing is functioning adequately, and there are no obstructions to visibility onto Fourteen Mile Road.

[17] The existing residence was constructed in 1997. The subject lands are flat and the existing septic system functions adequately; the site conditions are suitable for the long-term provision of on-site sewage services, as required by the PPS, the COP and the MCOP. The subject lands have an adequate potable water supply that has served the existing residence since it was constructed.

[18] There are no active sand, gravel or quarry operations or open pit mining operations within 300 m of the subject lands and there is compliance with the Minimum Distance Separation Formula (MDS 1).

[19] The subject lands are designated Agricultural by the MCOP and are located outside of a Settlement Area. The existing buildings and the agricultural use of the lands are permitted in this designation.

[20] The MCOP stipulates that "Severances shall only be granted if a plan of subdivision is not necessary for the proper and orderly development of the land" (s. 10.3.1 a). In this case, a plan of subdivision is not necessary for the orderly development of the land.

[21] In sum, the COP and the MCOP establishes that “Consent to sever a residence surplus to a farming operation as a result of farm consolidation may be permitted”, provided that certain conditions are satisfied (s. 10.3.2 d). The proposal effects a farm consolidation and JTW has demonstrated that the residence is surplus to its needs. The existing residence has been continuously occupied since 1997 and is habitable. The severance does not result in the loss of agricultural lands and there are no environmental features on the proposed surplus and remnants parcels. There are no natural or build heritage features, nor any natural hazard areas on the subject lands. The existing accesses to the surplus and remnant parcels provide safe ingress/egress and no new entrances are required or proposed. No livestock buildings currently exist, and none are being proposed. An existing storage/driveshed is not capable of housing livestock.

[22] In conclusion, it is Mr. Froussios’s professional opinion that the revised severance application and the implementing ZBA are consistent with the applicable policies of the PPS and conform with the relevant policies of the COP and the MCOP. The revised applications represent good land use planning, are appropriate and should be approved.

## **ANALYSIS AND FINDINGS**

[23] The Tribunal accepts and adopts the uncontested planning evidence of Mr. Froussios to find that the Consent application meets the criteria established in s. 51(24) of the *Planning Act* (“Act”), and pursuant to s. 53(1) of the Act, a plan of subdivision is not required. The proposal has due regard to matters of provincial interest and the public interest has been duly regarded.

[24] The Tribunal finds that the proposal furthers the policies aimed at the protection and preservation of lands for agricultural purposes, enhances the economic viability of an existing farm operation and aligns with the principles of good land use planning. The proposed ZBAs implements the severance proposal and appropriately maintains the

policy direction of the PPS, the COP and the MCOP.

## **ORDER**

[25] The Tribunal orders that the appeals are allowed in part, and the provisional consent is to be given subject to the fulfillment of the conditions enumerated in Attachment 1 to this order; and further,

[26] The Tribunal orders that Zoning By-law No. 2005-005 is hereby amended in the manner set out in Attachment 2 to this Order. The Tribunal authorizes the Municipal Clerk to assign a number to this by-law for record keeping purposes.

*“M.A. Sills”*

M.A. SILLS  
VICE-CHAIR

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

### **Local Planning Appeal Tribunal**

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

# ATTACHMENT 1

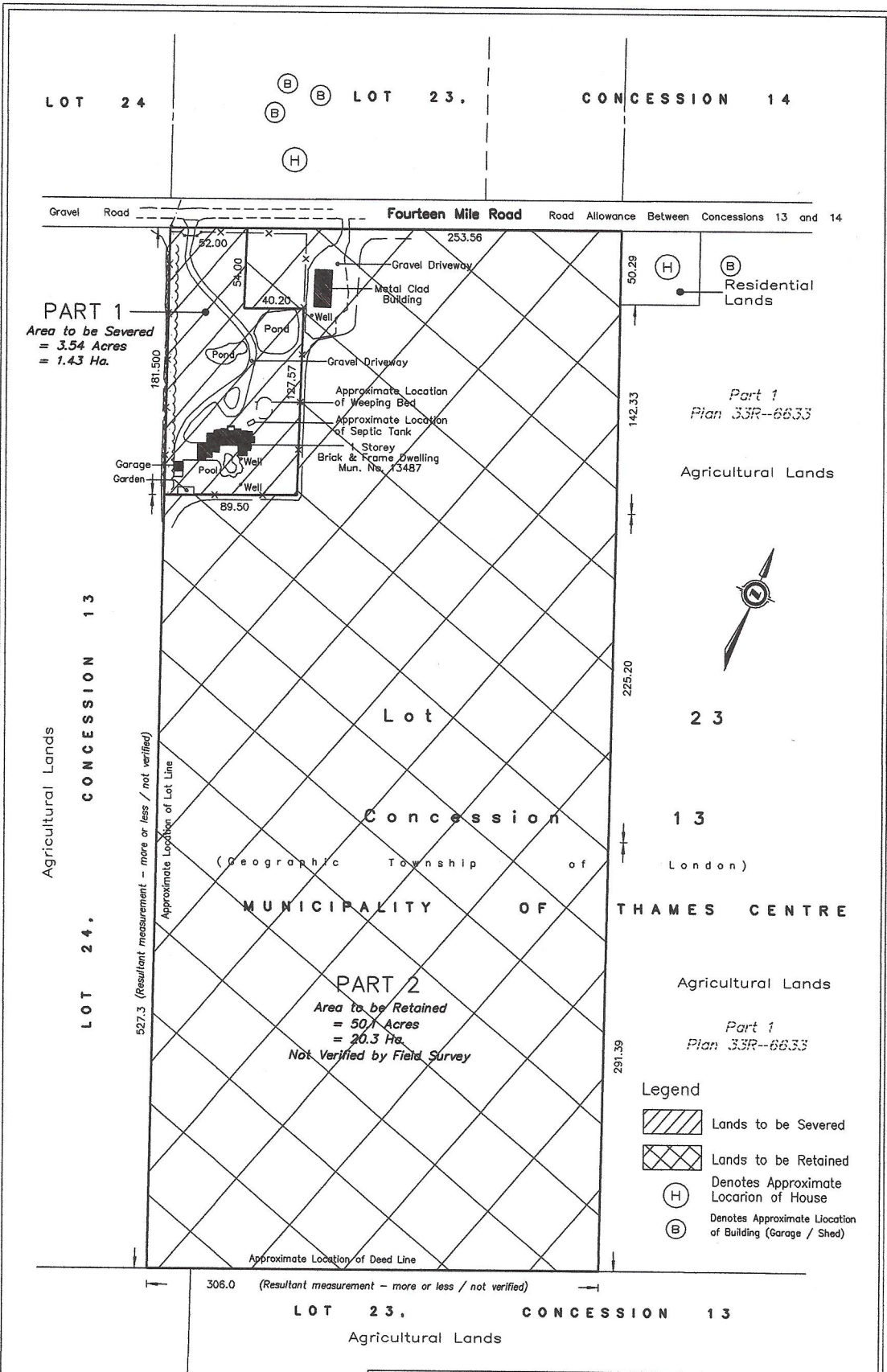
## CONSENT CONDITIONS

1. That the Certificate of Consent under Section 53(42) of the *Planning Act* shall be given within one year of the date of the notice of the decision. The request for the Certificate of Consent shall be accompanied by a written submission that details how each of the conditions of severance has been fulfilled.
2. That the fee for the Certificate of Consent be paid in accordance with the Municipality's Fees and Charges By-law.
3. That a draft reference plan be prepared by an Ontario Land Surveyor for the purposes of facilitating the transaction of the consent and that this plan be approved by the Municipality prior to being deposited with the Land Registry Office.
4. That the Owners' solicitor provide a Transfer in Preparation to the Municipality, together with a deposited reference plan and a Schedule describing the land to be transferred, for the purposes of the issuance of a Certificate of Consent.
5. That the Owners' solicitor submit an undertaking in a form satisfactory to the Municipality to register an electronic transfer of title consistent with the Consent decision.
  1. That, if necessary, a revised assessment schedule in accordance with the Drainage Act, as amended, be commissioned and paid for by the Owner.
  2. That a Zoning By-law Amendment that recognizes the residential use of the severed residential parcel of Consent B-25/18 and prohibits new dwellings on the retained farm parcel of Consent B-25/18 be in full force and effect.
  3. That the Owner enter into a severance agreement with the Municipality in order to provide notice of these conditions and advise future owners of the severed lot of Consent B-26/18 of normal farm practices occurring in the area as outlined in the Farming and Food Production Protection Act, 1998, as amended or replaced. This agreement shall be registered prior to issuing the certificate of consent. The following requirement shall be included in the severance agreement:

The Owner shall include in any Agreement of Purchase and Sale of the severed lot a warning specifically notifying future owners that normal farm practices, as outlined in the Farming and Food Production Protection Act, 1998, as amended or replaced, are engaged in and occur in the area of the property and shall require the purchaser, as a condition of any aforementioned Agreement of Purchase and Sale, to acknowledge and accept that normal farm practices, as outlined in the Farming and Food Production Protection Act, 1998, as amended or replaced, are engaged in and occur in the area of the property.
  4. That any outstanding property taxes for the severed and retained lots of Consents B-25/18 be paid in full.
  5. That the Owner confirm the location of the septic system and well to the satisfaction of the Municipality, and that a contingency area is available, all of the above shall be adequately located on the residential parcel.
  6. That the residence on the severed residential parcel is deemed habitable by the Chief Building Official.
  7. That the Owner be required to install a separate hydro meter to the accessory building on the agricultural parcel to the satisfaction of the Municipality and Hydro One.



8. That the owner of the severed residential parcel arrange for a private agreement for a term less than 21 years with the owner of the retained farm parcel concerning the use/maintenance of the well servicing the pond on the severed residential parcel; or the owner of the severed residential parcel service the pond from the residential parcel.
9. That the well on the retained farm parcel shall not be used in association with farm parcel uses.
10. That an entrance permit be obtained from the Municipality for the entrance to the retained parcel and that an address sign be erected at the entrance to this property. All costs associated with this shall be borne by the Owner.
11. That the Owner dedicate land up to 10 metres from the centerline of construction of Fourteen Mile Road along the severed and retained lot to the Municipality of Middlesex Centre if the right-of-way is not already to that width. All costs associated with the conveyance shall be borne by the Owner.
12. That the retained farm parcel to be conveyed be transferred to JTW Farms Inc. to ensure the consolidation with their farming operation.



**Sketch Note:**  
This Sketch was prepared from a compilation of survey notes and records, survey plans, title search documents, and aerial imagery resulting in approximate dimensions and areas. A field survey may result in different values.

		<b>ARCHIBALD, GRAY &amp; McKAY LTD.</b> 3514 WHITE OAK ROAD, LONDON, ON, N6E 2Z9 PHONE 519-685-5300      FAX 519-685-5303 EMAIL info@agm.on.ca      WEB www.agm.on.ca	
		<b>PLAN • SURVEY • ENGINEER</b>	
DRAWN BY: GM	DIGITAL FILE: LT1821SK2.DWG	PLAN No:	
CHECKED BY: D.D.C.	COGO FILE: LT1821SK2.MZ	4-A-4831-2	
PLOT DATE: SEPT 23 2019	FILE No: LT-13-23-1		

**Zoning By-law Amendment**

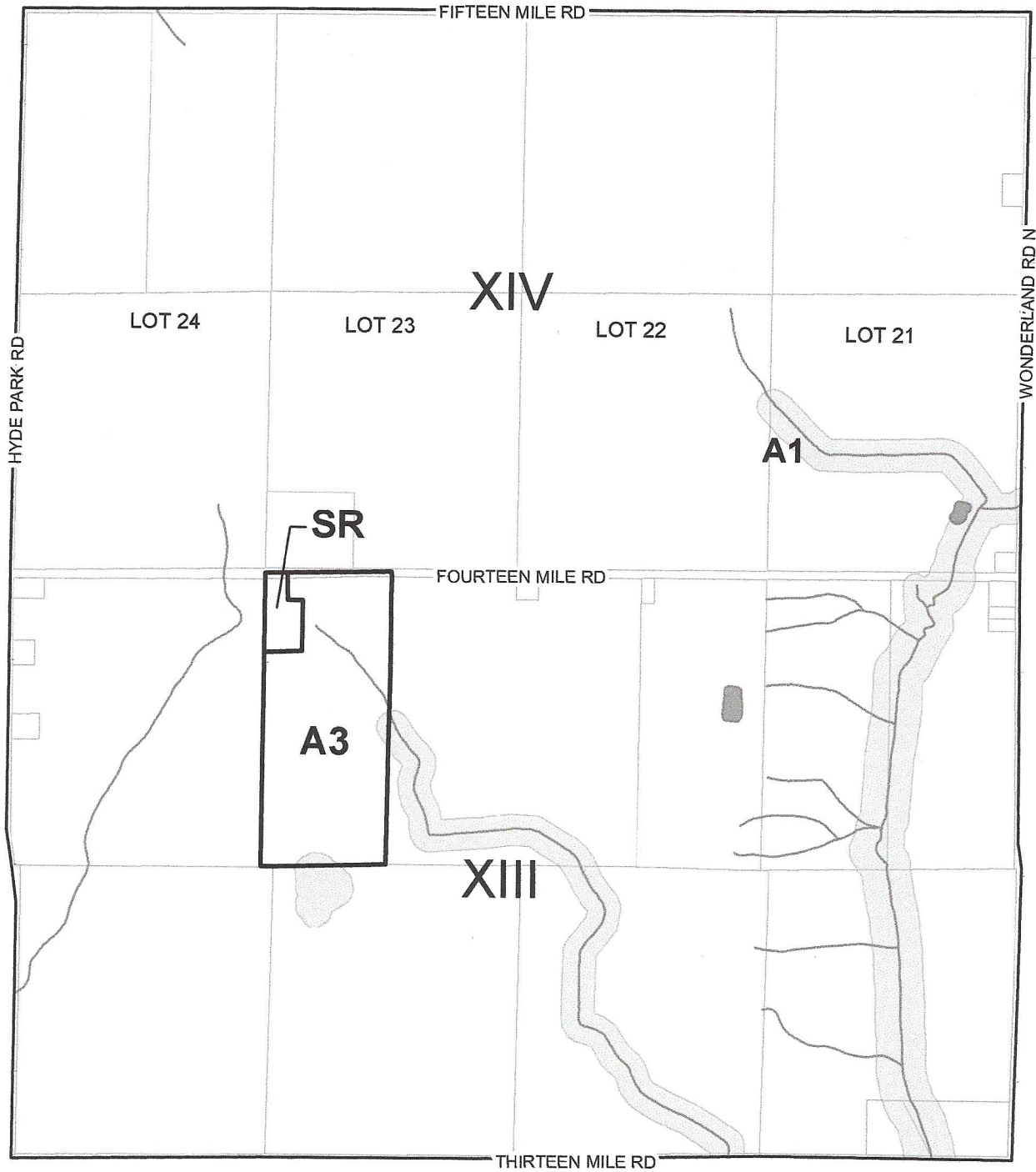
That Zoning Map Schedule 'A', Key Map 23 to the Middlesex Centre Comprehensive Zoning By-law 2005-005, is hereby amended by changing from the Agricultural (A1) zone to the Surplus Residence (SR) zone, that land drawn in heavy solid lines and identified as Surplus Residence (SR) on **Appendix 'A'** attached hereto, being PT LT 23, CONCESSION 13, DESIGNATED AS PART 1 AS IN PLAN 33R-XXXX; FORMERLY IN THE GEOGRAPHIC TOWNSHIP OF LONDON, NOW IN THE MUNICIPALITY OF MIDDLESEX CENTRE, COUNTY OF MIDDLESEX; BEING PART OF PIN 08140-0005(LT) AND MUNICIPALLY KNOWN AS 13487 FOURTEEN MILE ROAD.

2. That Zoning Map Schedule 'A', Key Map 23 to the Middlesex Centre Comprehensive Zoning By-law 2005-005, is hereby amended by changing from the Agricultural (A1) to Agricultural – No Residences (A3) zone, that land drawn in heavy solid lines and identified as Agricultural – No Residences (A3) on **Appendix 'B'** attached hereto, being PT LT 23, CONCESSION 13, DESIGNATED AS PART 2 AS IN PLAN 33R-XXXX; FORMERLY IN THE GEOGRAPHIC TOWNSHIP OF LONDON, NOW IN THE MUNICIPALITY OF MIDDLESEX CENTRE, COUNTY OF MIDDLESEX; BEING PART OF PIN 08140-0005(LT).



# MUNICIPALITY OF MIDDLESEX CENTRE

## Appendix "A"



SCHEDULE A  
**KEY MAP: 23**

NOTE: Schedules should be read in conjunction with applicable provisions of the Zoning By-Law.

SCALE 1:15,000

