



## **Special Council Meeting Agenda**

Monday, April 15, 2019 – 5:00 PM

County of Essex Civic Centre, Council Chambers

360 Fairview Avenue West, Essex, Ontario

### **1. Roll Call**

Present:

Mayor Larry Snively

Deputy Mayor Richard Meloche

Ward 1 Councillor Joe Garon

Ward 1 Councillor Morley Bowman

Ward 2 Councillor Kim Verbeek

Ward 3 Councillor Chris Vander Doelen

Ward 3 Councillor Steve Bjorkman

Ward 4 Councillor Sherry Bondy

Also Present:

Chris Nepszy, Chief Administrative Officer

Doug Sweet, Director, Community Services

Jeffrey Morrison, Director, Corporate Services/Treasurer

Jeff Watson, Policy Planner

Rita Jabbour, Planner

Shelley Brown, Deputy Clerk

This statutory public meeting is being held for the purpose of providing background information and the purpose of a proposed zoning amendment related to the properties within the South Pointe Lane Development subdivision for public consultation.

### **2. Declarations of Conflict of Interest**

### **3. Adoption of Published Agenda**

a) April 15, 2019 Special Council Meeting Agenda

Moved by

Seconded by

That the published agenda for the April 15, 2019 Special Council Meeting be adopted as presented.

#### **4. Reports from Administration**

a) Planning Report 2019-13

Re: South Pointe Lane Development Zoning Initiative (Ward 3)

Rizzo Nicola Drive between County Road 18 and 6<sup>th</sup> Concession Road

- Power Point Presentation by Jeff Watson Policy Planner

Moved by

Seconded by

That Planning Report 2019-13 entitled “South Pointe Lane Development Zoning Initiative” (Ward 3), as prepared by Jeff Watson, Policy Planner, and submitted by Chris Nepszy, Chief Administrative Officer, dated April 15, 2019, along with the PowerPoint presentation presented by Mr. Watson, be received.

#### **5. Public Presentations**

The Chair is to call for public delegations if any.

#### **6. Adjournment**

Moved by

Seconded by

That the meeting be adjourned at



**Report to Council**

Department: Planning

Date: April 15, 2019

Prepared by: Jeff Watson, Policy Planner

Submitted by: Chris Nepszy, P.Eng.  
CAO, Director, Infrastructure and Development

Report Number: Planning2019-13

Subject: South Pointe Lane Development Zoning Initiative  
  
Town of Essex and Essex Region Conservation  
Authority  
  
(Ward 3)

Number of Pages: 9

**RECOMMENDATION(S)**

It is recommended that:

1. Planning report Planning 2019-13, entitled “South Pointe Lane Development Zoning Initiative” (Ward 3) be received for the information of Council.

**REASON FOR REPORT**

To provide background information and the purpose of a proposed zoning amendment related to the properties within the South Pointe Lane Development subdivision for public consultation.

**COMMENTS**

The South Pointe Lane Development subdivision includes all lots on the east and west sides of Rizzo Nicola Drive and the east and west sides of Catherine Duransky Drive and Southpoint Drive.



See Appendix A for a larger air photo of the subject area

Background

Its origins go back to pre-amalgamation; development of the subdivision started in the mid 1990's. New construction was restricted by the need to protect dwellings from flood damage created by overflow from the local drains, particularly the McLean Drain that traverses diagonally through the subdivision. The area forms a bowl, a natural retention pond, and it accommodates drainage from surrounding farms. Storm water events could and can exceed the capacity of this drain. Consequently the placing of fill in the natural retention pond to permit new home construction and accessory buildings is essentially like placing stones in a fish bowl. Too many and the bowl overflows flooding the area. Due to flooding concerns, the Township of Colchester South refused the original application for rezoning.

In summary, through appeals to the Ontario Municipal Board, flood control measures were introduced by order of the Board, through the adoption of a development agreement, the South Pointe Lane Development Grade and Fill Plan, to ensure that the development and upstream properties were better protected from harm.

These measures were to be administered by the Town in association with the Essex Region Conservation Authority and the South Pointe Lane Homeowners Association (SLHA), through permitting and covenants on title. The SLHA retained an engineering consultant to model

flooding and to develop land fill and building regulations with input from various agencies such as the Windsor Essex County Health Unit, the Ministry of Environment and ERCA.

Subsequently, N. J. Peralta set out the parameters for development that were incorporated into the development agreement, as covenants registered on title, which sets out building and septic system envelopes and other regulatory restrictions. Essentially each lot has allowable fill limits creating islands around which storm water can flow without harming the structures and the necessary septic system on each lot. Regulations limit the coverage (Contact Area) of the dwelling to 299 square meters (3200 square feet) and prohibit or restrict accessory buildings. They also establish the Septic Bed Envelope, a raised area which must be located in the front of the dwelling, and accordingly, the setback of the dwelling from the street (40m/131 feet).

This agreement remains in effect today. There are 8 undeveloped lots and 37 developed lots. New home construction continues.

Under the Town's general zoning by-law, By-law 1037, the South Pointe Lane subdivision is zoned R1.3, rural residential, a general residential category that applies to many homes in our agricultural districts throughout the Town.

But it does not specifically set out the special provisions unique to this subdivision.

In order to alert potential home buyers and builders to these provisions, our zoning district maps have a notation overlaid on the zoning of this subdivision:

" \* See note in legend concerning this subdivision. "

In the legend of the map, the following clause is given:

"Cautionary note: \* denotes lands subject to restrictive covenants beyond the applicable provisions of the Zoning By-law. Consult the Town of Essex Building Department for further information."

As well, the R1.3 zoning district references other potentially applicable sections of the Zoning By-law as a cautionary measure generally.

Despite these efforts to alert the public, these cautions are not always seen or understood by real estate agents, potential homebuyers and builders until they seek a building permit, at which time monies and time may have been committed toward the construction of a new

home, or in the case of a current home buyer, toward a building addition or accessory building construction.

#### Proposed By-law Amendment

In order to better advise the public of the special regulations applicable to this subdivision, it is proposed that the South Pointe Lane Development subdivision lands centered on Rizzo Nicola Drive between CR18 and 6<sup>th</sup> Concession be rezoned to a special zoning district that incorporates the provisions of the land development and OMB covenants unique to this subdivision.

The proposed draft zoning district, R1.8, is attached as Appendix B to the report.

#### The Positive Impact of Tertiary Treatment Septic Systems

Recently the Town recognized the benefits of a tertiary treatment septic systems in the zoning by-law. Tertiary systems are mechanical systems that process waste within the holding tank, thereby requiring less land area devoted to a septic system weeping bed. As noted, part of the area of fill permitted is intended to accommodate a conventional septic bed. If the area of the septic bed can be reduced through the use of the tertiary treatment septic system, a greater portion of the permitted fill area can be utilized for other accessory uses, a benefit to the home owner. The proposed zoning district establishes the “Accessory Use Envelope”, the area of land that can be created through the reduction in the septic bed envelope. This envelope can be located in the rear yard and used for accessory buildings and other uses that are required to be or desirable above the minimum 1/100 year storm elevation.

#### Town of Essex Official Plan Provisions

The subject lands are designated “Agricultural” in the Official Plan (OP). Primary permitted uses are agricultural operations and associated uses, such as greenhouses and food processing facilities. Residential development is limited to farm accommodation, surplus dwellings and other existing dwellings and dwellings on lots of record. The South Pointe Lane development is on lots of record and therefore conforms to the permitted use provisions of the OP. All development must be serviced with potable water, stormwater management and sanitary sewage collection and treatment facilities satisfactory to the Town and such other statutory approval authority having jurisdiction over such matters. The development conforms with the sanitary sewage and treatment and stormwater management mandates of Subsections 8.5 and 8.6 of the OP.

## Provincial Policy Statement (PPS) Provisions

The PPS directs development away from natural and human-made hazards. Development and site alteration shall not be permitted within areas that would be rendered inaccessible to people and vehicles in times of flooding, unless it has been demonstrated that the site has safe access appropriate for the nature of the development and the natural hazard. Planning authorities shall also consider the potential impacts of climate change that may increase the risk associated with natural hazards.

Development and site alteration may be permitted where it is carried out in accordance with flood-proofing standards, protection standards and access standards, where vehicles and people have a way to safely enter and exit the area, where new hazards are not created and existing hazards are not aggravated and no adverse environmental impacts will result.

This subdivision predates many of the Provincial policies regulating the use of lands outside of designated settlement areas, particularly those governing the development of agricultural lands and lands that are prone to hazards such as flooding. However, the application of land use restrictions through the ERCA and Town permitting process and the restrictive covenants in effect by OMB order, were developed to mitigate potential risks.

The introduction of this new zoning district does not alter the range of permitted uses or add more restrictive provisions; rather, it incorporates the key regulations set out in various documents into one, for greater clarity. It does not negate any unstated obligations that are necessary for securing a building permit under such other applicable Acts, regulations or authorization.

## **FINANCIAL IMPACT**

N/A

## **LINK TO STRATEGIC PRIORITIES**

Promotes a healthy, safe and environmentally conscious community. Enhances the development of a focused strategy aimed at improving the physical state of the community and aimed at improving livability.









**Subsection 14.8    Residential District 1.8(R1.8)**

<b>LOW DENSITY RESIDENTIAL ZONING CATEGORY FOR SOUTH POINTE LANE DEVELOPMENT</b>	
<b>a) Permitted Uses</b>	
i.    Main use	One Single Detached Dwelling
ii.    Accessory use	Any use accessory to the main use
<b>b) Regulations</b>	
i.    Lot Width – Minimum	The greater of 37.8m (124f) or as lawfully existing
ii.    Lot Area – Minimum	The greater of 8300m2 (89,300f2) or as lawfully existing
iii.    Lot Coverage – Maximum	299m2 (3200f2) for the contact area; however, where an accessory use envelope is permitted, 70m2 (750f2) for the total of all permitted accessory buildings within the Accessory Use Envelope
iv.    Building Height – Maximum	10m (32f) for a main building and 2 storeys for an accessory building within the Contact Area 1 storey for an accessory building within the Accessory Use Envelope
v.    Front Yard Depth – Minimum	40m (131f)
vi.    Rear Yard Depth – Minimum	As set out in a written authorization issued by the Essex Region Conservation Authority
vii.    Side Yard Width – Minimum	10m (33f) on the side of the mandated drainage corridor Other side as set out in a written authorization issued by the Essex Region Conservation Authority

- viii. For the purpose of this subsection, the **Contact Area** means the maximum area of the lot that shall be occupied by the main building or main and accessory buildings, measured at ground level. The size and configuration of the contact area shall not be changed except as set out in a written authorization issued by the Essex Region Conservation Authority.
- ix. Each dwelling shall have storm water and sanitary facilities and electrical and potable water services approved by the Town or other authority having jurisdiction.
- x. Each septic system bed shall be located exclusively in the front yard but not within a utility corridor, driveway corridor or drainage easement. The size and configuration of the **Septic Bed Envelope**, in which the septic system bed is situated, shall be as set out in a written authorization issued by the Essex Region Conservation Authority. If the septic system utilized is a tertiary treatment septic system, the area of the Septic Bed Envelope may be reduced to 755m2 (8126f2) and the remainder of the permitted fill envelope may be used as an Accessory Use Envelope for the placement of accessory buildings and other accessory uses permitted by this By-law.
- xi. For the purpose of this subsection, **Accessory Use Envelope** means a portion of the lot, outside of the Contact Area, used exclusively for the placement of accessory buildings and other accessory uses that must be or are desired to be situated above the established minimum 1/100 year flood elevation. The configuration and maximum area of the accessory use envelope shall be as set out in a written authorization issued by the Essex Region Conservation Authority. The accessory use envelope shall be located in a rear yard.
- xii. An **Accessory Use Envelope** shall only be permitted on a lot serviced by a tertiary treatment septic system.
- xiii. Provisions of the following subsections shall apply in whole or in part to lands situated within any of the following restricted areas shown on the Zoning District Maps:
  - 1. Floodplain Development Control Area – see subsection 10.6

**c) Supplementary Regulations: See Sections**

- |                                  |  |
|----------------------------------|--|
| 7: Definitions                   | 10: Supplementary Building Regulations |
| 8: Supplementary Use Regulations | 11: Parking Space Regulations          |
| 9: Supplementary Lot Regulations | 12: Parking Area Regulations.          |



**Statutory Public Meeting**  
**April 15, 2019**  
**Town of Essex and the Essex Region Conservation Authority**  
**South Pointe Lane Development**



**Lands affected:** South Pointe Lane subdivision centered on Rizzo Nicola Drive between County Road 18 and 6<sup>th</sup> Concession Road

**Existing land use:** Low density residential

**Official Plan designation:** Agricultural

**Existing zoning:** R1.3, rural residential

**Zoning change proposed:** To establish a special zoning district for the subdivision.



## Lands Affected













**Uniquely situated within our agricultural area, this subdivision was established in the late 1980's with new housing construction starting in the mid 1990's. There are (from last count) 37 built up lots and 8 vacant lots.**













**The subdivision is zoned R1.3, Rural Residential, but development is subject to special flood-proofing and fill regulations established by OMB order, because of its location in a floodplain and the McLean Drain that diagonally bisects the subdivision.**



The Zoning District Maps of General Zoning By-law 1037 include a special notice to alert home and lot purchasers that special provisions outside of the zoning by-law apply.





## **Special Provisions:**

**Development of the subdivision is subject to the OMB regulations related to such matters as drainage, septic systems, driveways and the maximum amount of fill per lot.**

**The allowable size of the building and septic system envelopes (islands) was implemented through the establishment of the South Pointe Lane Development Grade and Fill Control Plan, registered on title for each lot.**

**All properties in the development must obtain authorization from ERCA prior to the issuance of building permits, any other construction or site alteration or such other regulated activities.**



**Each lot is permitted building and septic bed envelopes “fill islands” above the 100 year flood level to accommodate the dwelling and accessory buildings/uses and the septic system. The size of the house envelope and septic bed envelope is strictly regulated to prevent “overflowing the fish bowl” given the location of this subdivision in a natural basin.**



**This new house under construction illustrates the raised house envelope, identified in the draft by-law as the “Contact Area”, and septic bed envelope, identified as the “Septic Bed Envelope” for the home and the future septic bed required to be in the front yard.**



## **Zoning Issues:**

**The R1.3 zoning does not set out the development regulations of the OMB order incorporated into the development agreement registered on title.**

**While the Zoning District Maps do give notice of these special development regulations that is not always noted by prospective home or lot buyers, contractors, architects or real estate agents.**

**For greater clarity, a new zoning district, R1.8, specifically tailored to the South Pointe Lane subdivision will incorporate the OMB regulations.**

**The proposed R1.8 zoning district is set out in the accompanying report to Council.**

## **Benefits of the Proposed Zoning District (R1.8):**

**Besides being more transparent for purchasers and professionals, the proposed zoning district would add a bonusing provision for homeowners who utilize a tertiary treatment septic system (TTSS) instead of a conventional septic system.**

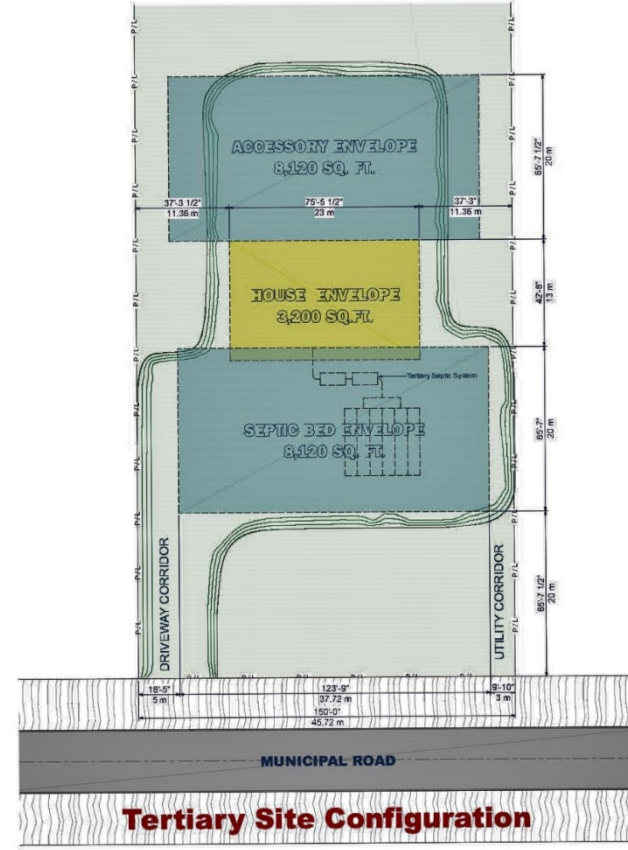
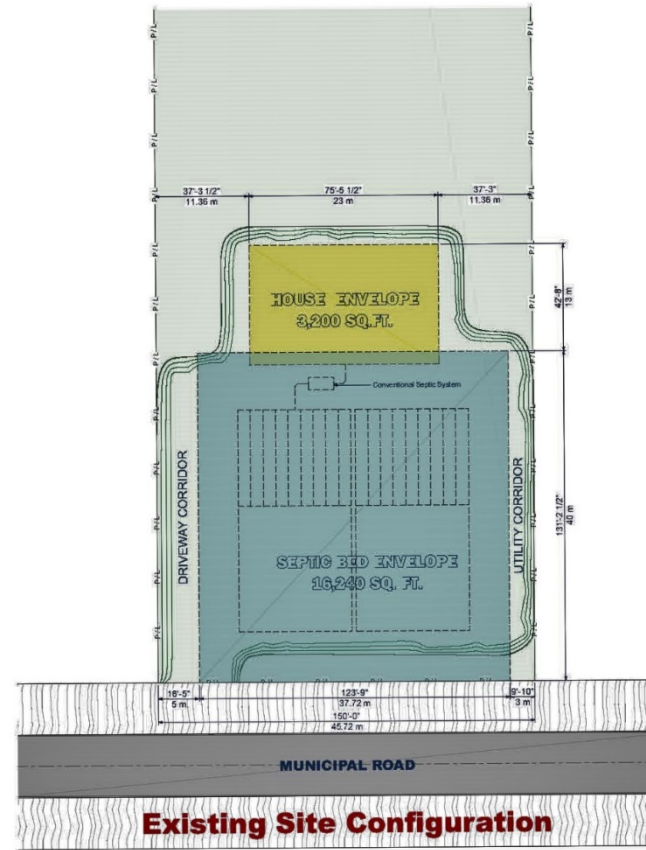
**A TTSS needs a significantly smaller septic bed area. As there is a set size for the fill island permitted for each lot, installing a TTSS would permit a portion of the allocated lands to be used for other purposes,**

**namely, those accessory uses that must be or are desired to be above the 100 year flood elevation. e.g. accessory garages, sheds and swimming pools,**

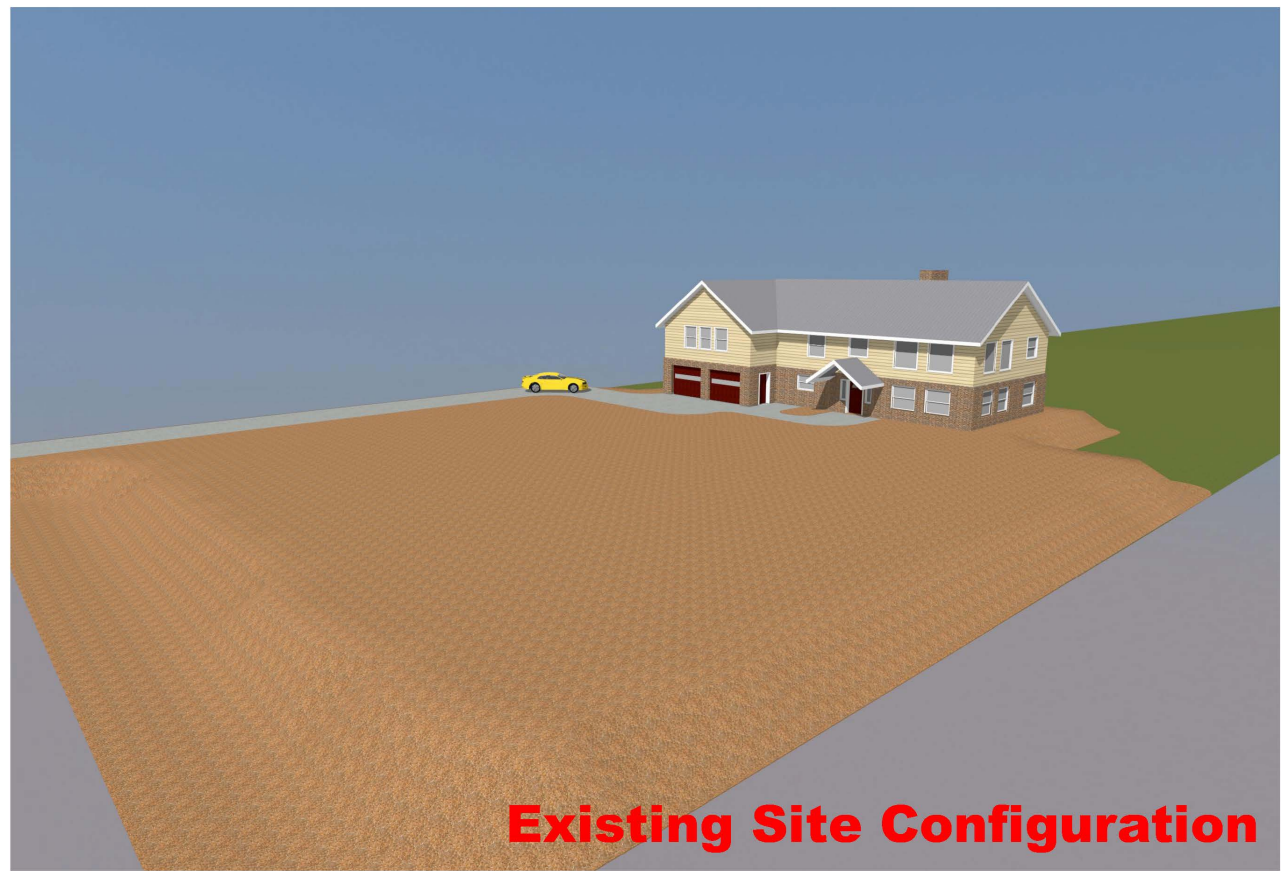
**by:**

- 1. permitting a current homeowner to reduce the septic system fill area and establish a fill area to the rear of the house, equal to the size of the “surplus” septic system fill area ;**
- 2. by permitting more flexibility in the layout for new homes and accessory use area envelopes on the remaining vacant lots.**









**Existing Site Configuration**



**Existing Site Configuration**



**Tertiary Site Configuration**

**In Summary the purpose of the new zoning district is to:**

**Merge the OMB regulations into the General Zoning By-law in a special zoning district for the South Pointe Lane subdivision for greater clarity and transparency;**

**Add the bonusing provision related to the use of a portion of the fill islands for accessory uses and structures when a tertiary treatment septic system is utilized on the lot.**



## **Next Steps:**

- 1. Subsequent to this public meeting, on May 6, or such other date determined by Council, Planning will submit a report to Council with specific recommendations with regard to this development.**
- 2. Should Council endorse this development proposal, a rezoning by-law will be presented to Council for approval.**
- 3. Notice of approval will be sent to all persons previously notified of the application for rezoning with an explanation of the effect of the rezoning by-law and the public appeal procedures.**
- 4. A 20 day public appeal period takes effect.**

# Questions?



March 27, 2019

Mr. Jeff Watson, Policy Planner  
Town of Essex  
33 Talbot Street South  
Essex, ON N8M 1A8

planning@erca.org  
P.519.776.5209  
F.519.776.8688  
360 Fairview Avenue West  
Suite 311, Essex, ON N8M 1Y6

Dear Mr. Watson:

RE: Zoning By-Law Amendment ZBA-04-19  
RIZZO NICOLA, SOUTHPOINT & CATHERINE DURANSKY DRIVES  
Municipal addresses from: 6005 to 6230 Rizzo Nicola, 6055 to 6085  
Southpoint Drive, and 6030 to 6070 Catherine Duransky Drive  
Town of Essex

The following is provided as a result of our review of Zoning By-Law Amendment ZBA-04-19. The purpose of this Amendment to Zoning By-law 1037 is to introduce a special residential zoning category to combine the current zoning provisions and the Ontario Municipal Board (OMB) decision.

The Essex Region Conservation Authority worked with the Town of Essex to ensure that this Site Specific Zoning By-law consolidated the OMB decision, the natural hazard management requirements of the PPS, and floodproofing requirements under Section 28 of the Conservation Authorities Act. We support this Site Specific Zoning By-law as it will provide clarity on current permissible uses and requirements that were specified by the OMB decision, which also included floodplain mitigation measures. This amendment will specify parameters on the developable lot area, fill area, maximum lot coverage for dwellings and accessory buildings, and update sizing for conventional and/or tertiary treatment septic systems.

We appreciate the opportunity to assist and provide input in this Zoning By-law, and believe that this update will help to streamline the development review process for applicants, and Town of Essex and ERCA staff.

**DELEGATED RESPONSIBILITY TO REPRESENT PROVINCIAL INTEREST IN NATURAL HAZARDS, (PPS, 2014) AND REGULATORY RESPONSIBILITIES OF THE CONSERVATION AUTHORITIES ACT**

The following comments reflect our role as representing the provincial interest in natural hazards encompassed by Section 3.1 of the Provincial Policy Statement of the Planning Act as well as our regulatory role as defined by Section 28 of the Conservation Authorities Act.

The identified area above is entirely subject to our Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the *Conservation Authorities Act*,



Mr. Watson  
March 27, 2019

(Ontario Regulation No. 158/06). Any development of the subject lands is controlled by conditions established through two Ontario Municipal Board (OMB) hearings. The OMB decisions lead to establishing requirements for drainage, septic systems, roadways, maximum infilling amount, and other matters related to development of this subdivision. The location and allowable size for the building envelope and septic system envelope for each lot in this development were established through the implementation of the South Point Lane Development - Grade/Fill Control Plan. The grade and fill plan is executed as a component of the Section 28 permitting process of the ERCA. All properties located in this development are required to obtain a Permit from the Essex Region Conservation Authority prior to any construction or site alteration or other activities affected by the regulations.

### **FINAL RECOMMENDATION**

We have no objections to this Zoning By-law Amendment.

We ask to receive a copy of the Committee's decision on this application.

If you have any questions or require any additional information, please contact the undersigned.

Sincerely,



Tim Byrne, Director  
Watershed Management Services

CC: Morley Bowman, ERCA Board Member, Town of Essex  
Chris Vander Doelen, ERCA Board Member, Town of Essex  
Kevin Carter, Chief Building Official, Town of Essex