



**Meeting Date:** September 21, 2022

**Submitted by:** Marion-Frances Cabral, Planner

**Report No:** PLA-67-2022

**Subject:** Application for Zoning By-law Amendment (ZBA-07-2022); Filed by Zelinka Priamo Ltd. (Matt Campbell) on behalf of Oxbow Developments Limited Partnership

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**Recommendation:**

THAT Zoning By-law Amendment application (ZBA-07-2022), as amended, filed by Zelinka Priamo Ltd. on behalf of Oxbow Developments Limited Partnership, for 10072 Oxbow Drive and land on Oxbow Drive (Concession 3 S Part of Lot 6 RP 33R21086 Parts 1 and 2, and Concession 3 S Part of Lot 6 RP 33R7661 Parts 1,2, and 3), that amends the current ‘Urban Residential Third Density exception 14 (UR3-14)’ zone, be APPROVED.

**Purpose:**

This report is to provide a recommendation regarding the rezoning application for the easterly portion of land at 10072 Oxbow Drive and the abutting parcel located east of 10072 Oxbow Drive, legally described as Concession 3 S PT LOT 6 RP 33R7661 PARTS 1, 2, 3.

The Zoning By-law Amendment application requests to amend the definition of “Lot” to apply the zoning regulations (e.g. setbacks, lot coverage) to the entirety of the land, whereas, the current Zoning By-law applies the regulations on each condominium unit on an individual, per lot basis. The amendment proposes to add the following clause to the Urban Residential Third Density Exception 14 (“UR3-14”) zone:

“Notwithstanding the definition of “Lot”, the entire area zoned UR3-14 is considered a “Lot”, and the regulations applicable to the subject lands apply to the zoned lands as a whole and not to any individual unit within a Plan of Condominium.”

No changes to the zoning regulations or permitted use list of the UR3-14 zone are proposed.

If approved, the amendment would permit residential development in the form of a vacant land condominium using the existing zoning standards of the UR3-14 zone.

A location map is included as Attachment 1.

**Background:**

The rezoning application is applicable to the lands described above that were subject to previous severance and rezoning applications (Files: B-10/20, B-17/20, B-18/20 and ZBA-11-2020) in 2020 to create 1 consolidated parcel for residential development with access easements.

The subject lands are located on the north side of Oxbow Drive and west of Union Avenue. The lands are approximately 2.00 ha (4.99 ac) in area and has frontage and a shared access onto Oxbow Drive.

Residential lands exist to the west, north and east of the subject lands. The existing Komoka water tower and park, and future residential development is located on the south side of Oxbow Drive. At the closest point, the subject lands are approximately 215 m (705 ft) from the railway corridor located to the north.

In addition to the current rezoning application, the applicant has also applied for site plan approval for development of the site (File: SPA-06-2022) which is under review by staff. To fulfill a condition to remove a Holding symbol, a separate meeting will be held in the future to review the site plan in detail.

The current site plan shows a revised development plan containing 50 townhouse units on a private internal road. The proposed site plan and building elevations are appended to this report as Attachment 2 and 3, respectively.

Unlike the plans seen previously in 2020 and 2021, the current plan contemplates a vacant land condominium tenure which applies the provisions of the zoning by-law on a per lot basis, not on a site-wide basis. To avoid amending all the standards of the zone, the applicant has requested that the definition of a “Lot” pertaining to condominiums not apply in this circumstance. This would allow the applicant to apply and adhere to the recently approved zoning regulations to facilitate development on the site.

**Policy Regulation:**

When reviewing the applications, the following planning instruments are applicable to guide development within settlement areas. The Provincial Policy Statement provides planning direction for growth and a variety of uses within settlement areas and contains specific policies to ensure development is appropriate. The lands are identified as part of the Komoka ‘Settlement Area’ in Middlesex County’s Official Plan. The Middlesex Centre Official Plan designates the land at 10072 Oxbow Drive as ‘Medium Density Residential’ and the abutting parcel to the east as ‘Residential’. The Middlesex Centre Official Plan also identifies an Aggregate Overlay on the lands. The lands are zoned ‘Urban Residential Third Density exception 14 with Hold (UR3-14)(h-3)(h-6)(h-7)’ by Middlesex Centre’s Comprehensive Zoning By-law. As such, the policies and provisions below are applicable to the land.

## **Provincial Policy Statement, 2020:**

The Planning Act states that all decisions made by planning authorities “shall be consistent with the policy statements issued” under subsection 3. The Provincial Policy Statement, 2020 (PPS) document is comprised of several policy statements and those that are applicable to the proposed development are noted below.

Section 1.0 – Building Strong Healthy Communities establishes policies that support long-term prosperity, environmental health and social well-being within communities.

Section 1.1 of the PPS identifies that healthy communities are sustained by accommodating an appropriate range and mix of uses, avoiding development patterns that cause environmental concerns, and promoting cost-effective development patterns that optimize the use of planned and future infrastructure. The PPS also identifies that communities include institutional uses including long-term care homes and an appropriate mix of affordable and market-based residential types including affordable housing and housing for older persons. Section 1.1.2 requires municipalities to accommodate an appropriate range and mix of land uses to meet projected land needs for a time horizon of up to 25 years. Within settlement areas land is to be made available through intensification and redevelopment.

Section 1.1.3 – Settlement Areas establishes that settlement areas can vary in size, population, and diversity and intensity of land uses. The PPS directs growth and development to settlement areas where new development varies in densities and land uses, and there are opportunities for intensification, redevelopment, and the efficient use of land. New development patterns are based on the efficient use of land that minimize negative impacts to the environment, support active transportation and are appropriate for the infrastructure and public service facilities.

Sections 1.1.3.4 and 1.1.3.6 promote intensification, compact development, varying uses and densities where it avoids or mitigates risks to public health and safety and is adjacent to the existing built-up area. Section 1.1.3.5 also allows municipalities to establish a minimum target for intensification within built-up areas subject to local conditions.

Section 1.4 – Housing speaks to the provision of housing within a municipality. The PPS promotes an appropriate range and mix of housing types and densities and directs development of new housing towards areas where there is an appropriate level of infrastructure. Municipalities are to provide opportunities for all forms of housing and intensification to meet the social, health and well-being needs of the current and future community.

## **Middlesex County's Official Plan:**

The County of Middlesex Official Plan (County Plan) identifies the subject land within the Komoka ‘Settlement Area’.

The County Official Plan does not speak to the ownership or tenure of the land, but provides direction for the development of land within the ‘Settlement Area’.

Section 2.3.7 – Growth Management-Housing Policies encourages a wide variety of housing types, sizes and tenure to meet market requirements and demand for current and future residents. Municipalities are responsible to determine and encourage a range of housing types, densities and options through local official plans that meet current and future needs. This can also include intensification and redevelopment in appropriate locations. The County also encourages innovative housing design and servicing standards as a means of reducing housing costs.

Section 2.3.8 – Growth Management-Settlement Areas of the County Plan recognizes that Settlement Areas will be the focus for future growth including commercial, industrial and residential uses. These areas are intended to have the highest concentration and a wide range of land uses and full municipal servicing in conjunction with 2.4.5 of the County Plan.

Section 3.2 – Settlement Areas provides additional development policies for lands within Settlement Areas. The County Plan further supports that Settlement Areas are developed in a manner that is phased and compact, and preserves the historic character of Settlement Areas and complements the positive elements of the existing built-form. The County Plan defers to the municipality to provide detailed direction on a variety of areas including addressing land supply and policies for land uses within urban areas including residential and institutional.

County Council adopted Amendment No. 3 to the County official plan on July 19, 2022. The purpose of the Amendment was to update the official plan to ensure that the land use planning policies are current, reflect Provincial legislation and policy, have regard for matters of Provincial interest and any guideline documents, are consistent with the Provincial Policy Statement (PPS), and reflect changing community needs for the next 25-years. While the policies implemented through Amendment No. 3 are not in force and effect until Ministry approval, the updated policies are included in this report for informative purposes indicating the intent of County Council, but are not determinative for the purposes of this planning application.

Adopted Section 2.4.2.1 – Transportation Hierarchy identifies private roads that are wholly located on private property for the benefit of providing access to a single user or multiple users. Such private roads remain subject to the design, construction and maintenance standards, policies and regulations of the local municipality.

As a first priority, development shall be located with frontage along a public road. Development that will result in the construction, maintenance or use of a private road may be considered based on an evaluation of the proposal based on the following: site characteristics, including sizing, configuration and topography; feasibility of alternative access solutions; potential impact on traffic; potential impact on road network; servicing by local emergency services; and compatibility with surrounding areas.

Further, Adopted Section 2.4.2.2 – General Policies states that the layout of all new residential developments shall provide a minimum of two access points to the existing road network. Exceptions to this policy shall be considered if the proposed street pattern

is approved by the local Municipality, emergency service provider(s) and the County Engineer, where applicable.

### **Middlesex Centre's Official Plan:**

The Middlesex Centre Official Plan (Official Plan) shows the land located within the Komoka-Kilworth Urban Settlement Area and Secondary Plan on Schedule A-2 and designated 'Residential' and 'Medium Density Residential'. Schedule A-2 also identifies an Aggregate Overlay over the subject lands.

The Middlesex Centre Official Plan does not speak to the ownership or tenure of the land, but provides direction for the development of land within Urban Areas like Komoka.

Section 5.2 – Residential Areas pertain to lands designated 'Residential' within settlement areas like the Komoka-Kilworth area. The 'Residential' designation permits a range of housing, institutional uses, municipal uses, parks or open space and group homes. The Municipality is to provide and encourage a wide variety of housing types, sizes and tenures to meet demographic and market requirements. The Municipality shall provide opportunities to increase the supply of housing through intensification while considering issues of municipal servicing capacity, transportation issues and potential environmental considerations. Specifically, the Municipality shall require that 15 percent of all development occur by way of intensification.

Residential development should also reflect a high quality of residential and neighbourhood design and have regard for the Municipality's Site Plan Manual and Urban Design Guidelines. This includes promoting a development that is designed to be sustainable and support public transit and oriented to pedestrians.

The Municipality shall also encourage housing accessible to lower and moderate income households. In this regard the County of Middlesex through its Official Plan will require that 20 percent of all housing be affordable.

Section 5.2.3 – Policies for Multiple Dwellings in Residential Areas provides direction when considering multiple dwellings, including four plexes, townhouses and low/medium rise apartments. Locations should be proximate to adequate open space or park areas, schools, or Village Centre areas, like Komoka, where possible. Densities proposed should be compatible with adjacent densities when proposed adjacent to or within existing residential areas. Apartment dwelling should be located in proximity to a major roadway, or roadway suitable for carrying higher than average volume of traffic. The excessive clustering of multiple dwellings shall be avoided, and a general integration and distribution of such uses at appropriate locations within neighbourhoods or settlements is encouraged. The siting of multiple dwellings adjacent to or in proximity to Village Centres is encouraged. Lastly, townhouses and apartments shall be subject to the site plan approval requirements of Section 41 of the *Planning Act* and Section 10.5 of the Official Plan, and have regard for the site plan manual and urban design guidelines.

Section 5.7.4 – Komoka-Kilworth Residential Area Policies summarized below apply to lands designated ‘Residential’ and ‘Medium Density Residential’ in Schedule A-2 of the Official Plan.

The types of housing, density of development and targeted mix within the Residential and Medium Density Residential designations on Schedule A-2 are as follows:

Use	Housing Mix Targets	Net Density (units per ha)
Low density residential (e.g. singles, semis)	60%	Less than 20
Medium density residential (e.g. townhouses)	40%	20 to 50

The net density refers to the land area to be used for housing as well as the abutting local streets, but does not include major streets and other residentially associated land uses. Notwithstanding the housing mix targets and net density provisions, multiple dwellings shall be permitted in the Residential designation in accordance with Section 5.2.3 – Policies for Multiple Unit Dwellings in Residential Areas.

Development proposals within areas designated as ‘Medium Density Residential’ shall provide for a diverse mix of multi-unit housing forms and choices to accommodate the needs and lifestyles of people at different stages throughout their life.

Further, all residential development shall ensure appropriate orientation and massing of residential buildings to provide adequate private and public open spaces and to facilitate the penetration of sunlight into these spaces.

In addition to compliance with the urban design guidelines, private garages for residential development shall not project into the front yard than the habitable portion of the building or porch on the main floor in order to limit visual and streetscape impacts of garages.

Lastly, entrance features to new residential neighbourhood development shall be encouraged where features are landscape related and require minimal maintenance.

Section 6.3 – Design Policies-Site Plans and Infill Developments provide additional direction to guide infill development to ensure there is compatibility with existing residences and neighbourhoods. High quality site design and architectural design is encouraged for new medium density residential development. Setbacks, massing, location of parking, architecture and other design elements will be carefully reviewed to ensure new development is in keeping with the character of the neighbourhood.

Middlesex Centre Council adopted Amendment No. 59 on May 18, 2022. While the policies implemented through Amendment No. 59 are not in force and effect until County approval, the updated policies are included in this report for informative purposes indicating the intent of County Council, but are not determinative for the purposes of this planning application.

Adopted Section 5.3.1 – General Residential Policy was revised to ensure the Municipality has at least a fifteen year supply of designated land available at all times to meet projected new housing needs of the Municipality, and that 20% of development in Urban Settlement Areas like Kilworth occur by way of intensification.

The Municipality shall encourage that 20% of new housing is accessible to lower and moderate income households in accordance with the County Official Plan. In the case of ownership, the least expensive housing is where the purchase price is at least 10% below the average purchase private of a comparable resale unit in the regional market area for the previous year.

Adopted Section 5.8.4 – Komoka-Kilworth Residential Area Policies was revised to state the targeted housing mix within the Medium Density Residential designation has a Gross Density (units per hectare) of 20 to 50.

Adopted Section 6. 2 – Design Policies Plan of Subdivision states that this section shall apply to subdivisions, condominiums and site plan applications or cluster development. New development shall include sidewalks, other active transportation infrastructure and traffic calming measures as deemed appropriate by the municipality. Rear-lotting or reverse lotting on Municipal roads is discouraged. Wherever possible, new residences will be oriented towards street or parks. Developments shall be required to comply with the Municipality's current infrastructure design standards as may be amended from time to time.

Adopted Section 6. 4 – Design Policies – Streetscapes and Public or Semi-Public Realm provides direction of streetscaping to complement the existing built form of the neighbourhood. Accessible sidewalks and low impact development standards should be incorporated to minimize the impacts of climate change and reduce stormwater management costs. Surface parking shall be located behind buildings and away from the street to provide a continuous streetscape. Appropriate design treatments and buffering is encourage to screen parking areas from the public realm.

#### **Middlesex Centre Zoning By-law:**

The subject land is currently zoned 'Urban Residential Third Density exception 14 (UR3-14)' and permits a nursing home, retirement home, street townhouse dwelling and townhouse dwelling.

The Zoning By-law defines a “Lot” as:

“2.101 **LOT** means a parcel or tract of land which:

- (a) is the whole of a lot or block on a registered plan of subdivision, so long as such registered plan of subdivision is not deemed, pursuant to Section 50 of the Planning Act, R.S.O. 1990, c. P.13, not to be a registered plan of subdivision for subdivision control purposes;
- (b) is all of the land held or owned under distinct and separate ownership from the ownership of the fee or equity of redemption in abutting land;
- (c) the description of which is the same as in a Deed or Transfer which has been given consent pursuant to Section 53 of the Planning Act, R.S.O. 1990, c. P.13; or
- (d) is the whole remnant remaining to an owner or owners after a conveyance made with consent pursuant to Section 53 of the Planning Act, R.S.O. 1990, c. P.13;
- (e) is a vacant land condominium unit on a registered vacant land condominium plan; and

For the purposes of this definition, no parcel or tract of land ceases to be a lot by reason only of the fact that a part or parts of it has or had been conveyed to or acquired by the Municipality, Her Majesty in Right of Ontario, or Her Majesty in Right of Canada.”

The requested amendment add a special provision to the current site-specific ‘Urban Residential Third Density exception 14 (UR3-14)’ zone as written below:

“Notwithstanding the definition of “LOT”, the entire area zoned UR3-14 is considered a “Lot”, and the regulations applicable to the subject lands apply to the zoned lands as a whole and not to any individual unit within a Plan of Condominium.”

No further changes to the existing “UR3-14” zone are proposed with this application.

#### **Consultation:**

Notice of the application was posted on the property and circulated to agencies, and property owners in accordance with the *Planning Act* and Ontario Regulation 545/06.

#### **Public Comments:**

At the time of writing this staff report, staff provision additional information to area residents who sought clarification of the requested amendment and what is intended for development. No further comments or concerns were expressed by the area resident related to the Zoning By-law Amendment.

### **Agency Comments:**

At the time of writing the subject report the following comments had been received:

The Municipality's Chief Building Official did not provided comments related to the rezoning application. Additional detailed comments will be provided during review of a detailed site plan.

The Municipality's Public Works and Engineering Department did not provided comments related to the rezoning application. Additional detailed comments will be provided during review of a detailed site plan.

### **Analysis:**

As noted, the subject lands are located within the Komoka-Kilworth Urban Settlement Area and is designated 'Residential' and 'Medium Density Residential' in the Official Plan. The lands are also zoned 'Urban Residential Third Density exception 14 (UR3-14)' in the Middlesex Centre Zoning By-law. The subject land abuts a public road, Oxbow Drive, and have access to full municipal services.

The requested amendment is primarily related to the interpretation and application of the Zoning By-law as it relates to the definition of a "Lot", and the intended tenure of the land (ownership vs. lease). The amendment would facilitate the development in the same way as proposed through a leasehold development.

To consider the appropriateness of the requested zoning by-law amendment it must conform to the Official Plan and maintain the intent of its policies including policies contained within the Komoka-Kilworth Urban Settlement Area and Secondary Plan. The Official Plan encourages a variety of housing types and tenures that meet the needs of current and future residents.

If the amendment is approved, the applicant would have the ability to develop either a condominium or leasehold development. Council can consider the mix of owned and leased units within the Municipality to achieve housing goals and needs.

Planning staff do not have concerns with the amendment as requested since it is minor in nature and alters the tenure of the land but not the permitted uses or built form. The applicant would still be required to adhere to all provisions of the zoning by-law including the "building envelope" that was established through setbacks, density, and lot coverage of the zone.

For consistency with the terminology and language within the Zoning By-law, staff recommend a revised provision that specifically addresses vacant land condominium units within the amendment:

(h) Notwithstanding the definition of “LOT”, the entire area zoned UR3-14 is considered a “Lot”, and the regulations applicable to the subject lands apply to the zoned lands as a whole and not to any individual unit on a registered vacant land condominium plan.

Given the above, planning staff determined that the requested zoning by-law amendment, as amended, maintains the intent for medium density residential development on the subject lands. Planning staff recommend that the requested amendment to the Zoning By-law be approved, as the proposal is consistent with the Provincial Policy Statement, 2020, the County of Middlesex Official Plan and Middlesex Centre’s Official Plan.

This opinion is provided following the public meeting and with the benefit of receiving all comments from agencies or members of the public. Should new information arise regarding this proposal prior to or at the meeting, the Council is advised to take such information into account when considering the application.

**Financial Implications:**

None.

**Strategic Plan:**

This matter aligns with following strategic priorities:

- Balanced Growth

**Attachments:**

Attachment 1 – Location Map

Attachment 2 – Proposed Site Plan

Attachment 3 – Proposed Building Elevation