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## Memo

From: Kelly Vader  
kvader@bmross.net

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**To:** Clinton Randolph, Project Evaluator - MOE

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**Re:** Township of ACW – Class EA for Drainage Improvements

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**File #:** 08024

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**Date:** January 7, 2011

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Clinton:

Further to your request for additional information regarding historic flooding and drainage problems in the London Road area of Port Albert, please find enclosed the following additional information:

- i) Comprehensive Zoning By-Law Report to ACW Council dated May 14, 2008, prepared by Monica Walker-Bolton, Huron County Planner assigned to ACW;
- ii) Chart for Council which summarized input received by the County on the draft Comprehensive Zoning By-Law (Item No. 7 on the chart refers to 'servicing issues' associated with the London Road area);
- iii) Letter to Don Scott dated May 30<sup>th</sup>, 2008 in regards to his comments on the draft Comprehensive Zoning By-Law;
- iv) Points of Evidence prepared by Monica Walker-Bolton dated May 2, 2009 in preparation for an anticipated OMB Hearing
- v) Draft Minutes of Settlement prepared in regards to the above-noted OMB Hearing and the resultant settlement reached prior to the start of the Hearing.



Corporation of the

## COUNTY OF HURON

PLANNING & DEVELOPMENT DEPARTMENT  
Court House, Goderich, Ontario N7A 1M2

(519) 524-8394 ext 3  
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To: Mark Becker, Administrator/Clerk-Treasurer,  
Township of Ashfield-Colborne-Wawanosh  
From: Monica Walker-Bolton, Planner  
Date: May 14, 2008  
Re: **Comprehensive Zoning By-law for Ashfield-Colborne-Wawanosh**

This report is submitted to Council for their meeting on May 20<sup>th</sup>.

### RECOMMENDATION

That the recommendations as outlined in the attached chart be endorsed by Council.

### PURPOSE

The purpose of this report is to ensure that all requests for changes to the proposed new comprehensive zoning by-law are brought to the attention of Council and to provide a planning recommendation for each request.

### COMMENTS

There have been a number of comments arising from the Public Meeting concerning the proposed new comprehensive zoning by-law. Leading up to the public meeting, during the public meeting and after the public meeting there were several landowners who have requested changes to the zoning proposed for their properties in the new zoning by-law. Also, comments were received regarding general improvements to the text and maps of the zoning by-law.

Each comment is outlined on the attached chart with a planning recommendation and rationale for the planning recommendation.

Any further amendments as directed by Council will be made to the proposed zoning by-law prior to the final draft being brought back to Council for passing.

Monica Walker-Bolton, Planner

	<b>Date Comment Received</b>	<b>Name</b>	<b>Property</b>	<b>New Key Map</b>	<b>Issue</b>	<b>Recommendation</b>	<b>Rationale</b>	<b>Follow up Needed</b>
1.	March 24, 2008	Clarence Dorherty	Part of Lot 2 Concession 5, WD, Ashfield	30	Both lots have merged together and should be zoned AG4.	Zone both as AG4	Lots have merged	Letter
2.	March 25, 2008	Robert Pattison, Kevin & Jennifer Gazley, Charlene Blondy, Samuel R. Webster, Rod Lafontaine	Registered Plan 569	82b	Property was previously zoned RR1 now proposed to be LR1.	Change zoning to LR2	Maintains rights allowed in previous zoning by-law	Letter
3.	April 3, 2008	Kirk Livingston			Home industry in AG4 too restrictive, Home Occupation too loose.	Make changes as recommended.	Provides clarity and better control.	No
4.	April 4, 2008	Homan	Registered Plan 626	83	Keith has pointed out additional needed changes on map.	Edit map as discussed.	Improves clarity.	Letter
5.	April 3, 2008	Rob Morley			Extractive resources are regulated by MNR, is it really necessary to have provisions in the Zoning By-law to provide an extra level of regulation?	Retain ER1 and ER2 provisions in Zoning by-law	Zoning by-law provisions are complementary to MNR provisions. The Township retains the right to approve any variances to provisions.	Letter

6.	April 3, 2008	Ruth Brown	Part of Lot 6, Lake Road West Concession Colborne	76	Ruth Brown owns the Walnut Bush next to the north part of the Sunset Golf Course. Mrs. Brown has sent a letter requesting that the zoning be made NE1-2.	Retain current proposed NE1 zoning.	Change might meet requirements of Official Plan but should be processed as a separate Planning Application to allow proper public review.	Letter
7.	April 14, 2008	Don Scott Cuesta Planning Consultants Inc.	Registered plan No. 137	36d	The existing lots are undersized to the requirements of the zoning by-law. Don Scott has requested that relief from the 1850 square metre provision be incorporated into the new zoning by-law.	Subject to confirmation from the Health Unit that the lot sizes are sufficient for septic systems, use a special zone to allow a minimum lot size of 1600 square metres in RP 137. Use a holding zone on the lots fronting on to Anne St. to require a development agreement to address servicing issues such as road and drainage.	Recognizes existing situation and allows for development on lots that are smaller than the requirement of the zoning by-law. Other lots to the north have been developed at this size. Holding zone restricts development until servicing issues can be addressed through a development agreement.	Letter
8.	April 15, 2008	Jim Martin	North half of Lot 6, Front Concession	29	Lands that were previously zoned FD in old by-law are now showing as Natural Environment. The 2003 Official Plan designated the lands Natural Environment.	Lands were changed to Natural Environment in 2003 OP in error. Add FD land where previously zoned FD.	Maintains existing rights. OP should be modified to reflect this change.	Letter

9.	April 17, 2008	Jim Walters	Lot 8, Concession 1, Colborne	87	Wants to know if there is any change to the zoning for this property.	No Change	There has been no change to zoning on this property.	Reply by E-mail.
10.	April 16, 2008	Glen and Karen Schlotzhaur		34a 34 23	Issues with zoning on these properties. Request LR1 zoning for property below the bank of Lake Huron on Key Map 34a. Requests removal of FD zone on neighbouring property shown on Key Map 34 Requests adding FD zoning on property south of Kingsbridge Lane on Key Map 23.	Change proposed zoning on Key Map 34a to a special zone to match existing special zone.	No change to existing zoning rights from old zoning by-law to new zoning by-law.	Letter
11.	April 5, 2008	Patricia Dingle and Leonard Lugsdin	Part Lot 25 Concession 5	62	Wants to ensure that conservation authority regulated lands on map is correct.	No Change	No change to zoning rights on property.	Letter
12.	April 11, 2008	Sharon Munro	Lot 11, Con. 5 ED, Ashfield	32	Wants to be allowed to have a hobby barn with a maximum of 5 nutrient units.	Keep provisions same.	There are opportunities for a barn that fit with ZBLA provisions.	Letter
13.	April 17, 2008	Wendy Wright Cascaden	Lot 21, Con. 8 Wawanosh	57	Wants to ensure that decks, porch and or garage could be added without need for soil test and have this specified in section 3.31	Make change as suggested.	Provides clarity.	Letter
14.	April 17, 2008	Eleanor Brooks	Fernhurst Glenn		Eleanor disagrees with the mapping for Fernhurst Glenn. Feels that property was NE before.	Keep same.	No change from previous Zoning By-Law.	Letter
15.	April 17, 2008	Jay McColl	Dungannon		Concerns with definition of Settlement Area and setback requirements for wind turbines.	Improve definition of Settlement Area. Keep proposed setback provisions the same.	Improves clarity of Settlement Area definition. Setback issue has already been studied and	Letter

							decided by Council.	
16.	April 17, 2008	Frank Gardiner		36a	<p>Has a number of process and procedural concerns as outlined in his letter.</p> <p>Would like VR1 instead of LR1</p> <p>Would like special consideration for Amish people to be able to drain wetlands and establish separate residences for their elders.</p> <p>Would like large wind turbines to be disallowed west of Hwy. 21 and would like a cap on the number of large turbines permitted in the Township.</p> <p>Would like ethics paragraph written into the zoning by-law.</p> <p>Would like the roles of agencies spelled out in zoning by-law.</p>	<p>Change property in Port Albert to VR1</p> <p>No Further Changes.</p>	<p>VR1 is consistent with surrounding area and policies of the Official Plan.</p> <p>Issues pertaining to draining wetlands will be dealt with in consultation with the MVCA with regard to the Provincial Polity Statement.</p> <p>Homes for elders have been considered in the Official Plan and discussed with Council previously.</p> <p>Requirement for rezoning of wind turbines allows public comment on their number and location.</p> <p>Ethics paragraph and description of roles of agencies go beyond the purpose of the Zoning By-Law as a document that provides</p>	Letter

							provisions for land use.	
17.	April 17, 2008	Ross Brindley and Darlene Brindley	Lot 4, Concession 9 Council Line, Colborne Ward	79	<p>Wanted changes to setbacks from manure storage to field tile drains as outlined in Section 3.33.</p> <p>Concerned with Map 79 and AG2 land with wind towers – some lots without wind towers have been zoned.</p> <p>Drains showing on map as creeks.</p>	<p>Make setbacks consistent with the Nutrient Management Act</p> <p>Remove AG2 zoning from farm lots not containing wind turbines.</p> <p>Remove drains showing as creeks provided this is approved by the Maitland Valley Conservation Authority.</p>		Letter
18.	April 17, 2008	Ron Stephenson	Kincardine		Concerns with the setbacks for Wind Turbines. Mentioned noise issues of the Vandenburg report.	No Change to Wind Energy Provisions	This issue has already been dealt with by Council.	Letter
19.	April 17, 2008	Mike McKeon	Lakeshore		Questions for Clarification regarding Lakeshore Zoning.	No Change	No change requested.	No.
20.	April 17, 2008	Paul Doherty	Lots 7-12 E of Wellington Lots 1 & 2 Ashfield St. Port Albert	36d	On behalf of his mother's property in Port Albert, wanted clarification on agriculture change to residential.	No Change	VR1 zoning in old by law, no change to new. If the land has been cropped cropping can continue in future.	Letter
21.	April 17, 2008	Charlie Culbert	Nile	44a	50 acres was agriculture and is now VRI	Change Error on Map.	Follow Official Plan.	Letter

22.	April 17, 2008	Ken Brindley	Lot 12 Broken Front Concession and Lot 12 Lake Road West Concession	76a	On Key map 76a area between Lots 7 and 22 should be white. RP 574, should show road along N lot line of Lot 12 Broken Front Concession, Lake Road West Definition of Farmer's Flea Market has been changed from old definition to new. Would like rights established in old 18-1982 zoning.	Add provisions from former Colborne Zoning By-law for Farmer's Flea Market in his special zone  Show unopened road allowance. Show area between Lot 7 and Lot 22 as white	Retains zone rights from former zoning by-law  Improves clarity.	Letter
23.	April 17, 2008	Bob Hallum	Lot 20, Concession 3, Wawanosh Ward  Lots 14 and 15, Concession 4, Wawanosh Ward	64  63	Former dump on Key Map 64 is in wrong location. Concerns with the environment zoned areas. Two tributaries of Boundary Creek showing on Key Map 63 are not there. Concerns with required setbacks from NE areas. Suggests extra consideration with respect to the Amish and their homes.	Move location of dump on map.  Remove creeks subject to approval from MVCA.	Local knowledge of old dump is more accurate than original data source.  MVCA regulates these areas and should have final say in whether the creeks are shown on maps or not.	Letter
24.	April 17, 2008	Brad Vanstone	Benmiller	89b	Questioned VR1 zone.	No Change	No change requested.	No
25.	April 17, 2008	Harry Reed	Benmiller		Had concerns about the extraction of ground water. Asked for clarification on the small scale wind energy facility and large commercial scale wind energy facilities.	Add a general provision to prohibit water-taking without a rezoning.	Follows Official Plan.	Letter

26.	April 17, 2008	Rob Evans	Amberley Beach	01a	Had concerns with Section 17, page 100, LR2, interior side yard and suggest where the structure is an addition that minimum be reduced. Questioned Lot 8 having holding symbol.	No Change.	Requested change requires a minor variance application. This process ensures that neighbours have an opportunity to comment on proposed variance.	Letter
27.	April 17, 2008	Katrina Bos			Concerns with setbacks for large scale wind turbines from lot lines to protect livestock, not just people.	No Change.	This issue has already been decided with Council.	Letter
28.	April 17, 2008	Elvis Vincent	Wawanosh Ward		Concerns with conservation regulated lands.	No Change	CA regulated lands information comes from the MVCA. We provide this as additional information to the zoning by-law.	Letter
29.	April 17, 2008	Donald Guant	Wawanosh Ward		Expressed concern with the conservation lands	No Change		Letter
30.	April 17, 2008	Tony McQuail	Wawanosh Ward		Wanted clarification on the Home Occupation definition. Wants to allow the right for local people to retail items that are unique to local community.	Add extra wording to Home Occupation to allow sale of items accessory to the Home Occupation. Allow sale of items accessory to home industry and/ or manufactured as a home industry.	Consistent with intent of Home Occupation and Home Industry provisions.	Letter

31.	April 17, 2008	Adam Miller Menno Miller	North ½ of Lot 24, Concession 9, Wawanosh	54	Had concerns with Key Map 54 with respect to the wetland. He wants to drain the dark area provincially significant wetlands. Was drained and farmed at one time. Mr. Miller was asked to speak to the Conservation Authority in this regard.	No change.	No change unless recommended by Maitland Valley Conservation Authority. Wet area is showing on air photo.	Letter
32.	April 17, 2008	Andy Stutzman			Wanted clarification on the definition of a second dwelling	No change	Issue has already been discussed by Council.	Letter
33.	April 17, 2008	Mary Lou Rae	Port Albert, North of South Street.	36c	A large amount of farmland has now been changed to VR1 and Lakeshore Seasonal has now changed to VR1	No change	There has been no change to the zoning for these lands.	Letter
34.	April 17, 2008	Tyler Nicholson	Belgrave Rd.		Asked for further clarification on the small scale wind energy facilities	Change to definition of small scale wind energy facility to take out reference to the energy being consumed on site.	Some small scale wind turbines could produce energy for several homes or sell energy to the grid.	Letter
35.	April 17, 2008	Sam Apavoo	Airport Road.		Asked for further clarification on the small scale wind energy facilities – restriction to use power on site not necessary	Change to definition of small scale wind energy facility to take out reference to the energy being consumed on site.	Some small scale wind turbines could produce energy for several homes or sell energy to the grid.	Letter
36.	April 17, 2008	Fran McQuail	Wawanosh Ward		Wanted clarification on the enlarged dwelling definition	No Change.	Issue has already been discussed by Council.	Letter
37.	April 17, 2008	Dale Gammie	Lot 17 and 18, Concession 12, Wawanosh	49	Concern with conservation lands designated on his property. Pond is now gone. The creek is now a closed drain.	Change map if change approved by MVCA.	MVCA regulates these areas.	Letter

38.	April 17, 2008	Don Gaunt	Lot 17 Con 12	49	Concerns with mapping of Natural Environment in Agricultural area.	Change map if change approved by MVCA.	MVCA regulates these areas.	Letter
39.	April 17, 2008 (by E-mail)	J. Richard Ottewell	North ½ of South 1/2 of Lot 6, Concession 4, Ashfield	38	Concerns with structures and uses permitted in the NE5 zone Concerns with requirement for residential dwelling to be accessory to agriculture and that agriculture does not include forestry. Objects to NE5 zone on Key Map 38	Change to the size and shape of the AG1 zoned land on this property.  No other changes.	Follows Official Plan	Letter
40.	April 17, 2008	Anne Marie Howard Michael Leitch	36970 School Road		Suggests that there needs to be a definition for the term height in relation to commercial windmills, ie does that refer to the tower plus blades?  Concerns with ability of landowners to locate homes near turbines. Suggests greater setbacks from vacant lots larger than 4 hectares.	Add to definition of Building Height the definition of Wind Turbine Height  No further change.	Improves clarity.  The issue of location of a house would be one of the issues considered in the required rezoning process for wind turbines	Letter
41.	April 17, 2008 (By E-mail)	Richard Foster	W half of Lot 23 Con 4, West Wawanosh		Would like the Conservation Authority Regulated Lands removed as this is a municipal drain.	Change map if change approved by MVCA.	MVCA regulates these areas.	Letter
42.	April 15, 2008 (Letter)	Jim Martin and Dorothy Brindley	Part of Lot 1, Front Concession, S.T.P.	40A	Would like their land to be zoned LR2	Change as per request	Meets requirements of Official Plan.	Letter
43.	April 17, 2008	Wayne Clarence	Con. 4, ED, N pt of Lot 6  36389 Dungannon Rd.	38	Thinks that he cannot build a house due to MDS restrictions.	No Change.	There is no change in the application of MDS in the new by-law.	Letter

44.	April 17, 2008	Helen Rintoul	S½ of E1/2 Lot 9 Con. 4, Ashfield	38	Helen says that NE5 area on south half of east half of Lot 9 concession 4 Ashfield was zoned for a residence in the past.	No Change.	Is now NE3 and is proposed to be NE5 because it is a regional life science ANSI There has been no effective change in the proposed In order to have a residence owner would apply for a rezoning of an existing Natural Environment lot.	Letter
45.	April 17, 2008	John Bos		67 and 64	Creeks and Drains showing on Key Map 67 and 64 are closed.	Change map if change approved by MVCA	MVCA regulates these areas.	Letter
46.	April 17, 2008	Keith and Janet Bachert	38326 Blyth Rd.		There is an existing historic home that must be torn down because a new home has been built. Would like to talk about using old home for a farm market.	No Change.	This is a matter outside the zoning by-law.	Referred to Chief Building Official
47.	April 28, 2008	Tom Hogan		24	Properties in Kingsbridge are improperly zoned. EPCOR property should be VM1 CF is south of EPCOR property	Make changes to map as needed.	Map was incorrect.	Letter
48.	April 28, 2008	Ron Whetstone	Part of Lot 16, Concession 7, Colborne	81	Map for Woody's Place doesn't show special zone.	Add special zone but show defined area.	Keeps same zoning rights from old zoning by-law.	Letter

49.	April 17, 2008	Mel Lyons	West Part of Lot 14 Concession 14, Wawanosh	45	Would like the buffer around the provincially significant wetland removed.	No Change.	This buffer is required by Provincial Policy. It is not a no build zone it is a zone that requires a study before building.	Letter
50.	May 8, 2008	Lloyd Courtney	86713 Amberly Beach Road. Lot 8 RP 594	01a	Has concerns with use of Holding zone on vacant lot in Amberly Beach	Add clarification to LR1 and LR2 to provide explanation of holding zone.	Provides Clarity, helps land owners understand what can be done to lift holding symbol.	Letter
51.	May 12, 2008	Tony Goud	Lot 11 and Lot 10 Maitland Concession	92	Does not like proposed zoning. Would like to be able to build a cottage on the portion of the property zoned NE1-1.	Council may want to consider zoning to permit a recreational residence in a defined area of the NE1-1 zone  Direction from Council	Current zoning allows an "existing" recreational residence in NE1-1 zone and the Gouds house at front of property zoned AG1	Letter
52.	May 13, 2008	Joan Compton	104 Goderich St. Auburn, ON	69	Mrs. Compton would like the VC1 zoning on her property changed to VR1	Change Zoning on property to VR1.	This recognizes existing use which has existed for many years.	Letter
52.	April 20, 2008	Other			Planning Department has been working on revised provisions for small scale wind energy. 50kW may be large for urban areas.	Consider amending new small scale wind energy provisions in a housekeeping by-law in future.	Requirement of setback of the height of the turbine from lot lines should limit large turbines from being located in densely developed areas.	



Corporation of the  
**COUNTY OF HURON**

PLANNING & DEVELOPMENT DEPARTMENT  
Court House, Goderich, Ontario N7A 1M2

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May 30<sup>th</sup>, 2008

Don Scott  
Cuesta Planning Consultants Inc.  
978 First Ave. West  
Owen Sound, ON  
N4K 4K5

Dear Mr. Scott,

You had provided comments to me in regard to the proposed new Comprehensive Zoning By-Law for Ashfield-Colborne-Wawanosh.

Your comments concerned lots east of William St. and Anne St. in registered plan 137 in the Village of Port Albert in Ashfield Ward.

New zoning is proposed for the lots east of William St. and Anne St. in registered plan 137. Your comments as well as servicing issues have been taken into consideration. The proposed zoning will allow development on the proposed lots with a minimum lot size of 1600 square metres. For lots gaining road access from Ann St. a holding zone has been proposed to ensure that servicing issues are addressed prior to development. A copy of the proposed new Key Map 36d indicating the proposed VR1-13 special zone and the provisions for the VR1-13 zone are enclosed with this letter.

The next step in the process to approve the new Comprehensive Zoning By-Law will be for Ashfield-Colborne-Wawanosh to pass the new Zoning By-Law. This is expected to happen at the next Council meeting on June 3rd. After notice of passing of the Zoning By-Law is given there will be a 20 day appeal period.

I would be happy to answer any further questions you may have.

Thank you for your participation in this public consultation process.

Sincerely,

Monica Walker-Bolton  
Planner

Monica Walker-Bolton  
Points of Evidence  
May 2, 2009

## Non-Opinion Evidence

### Background to Qualifications/By-law

#### 1. Curriculum Vitae

– n.b already qualified by the Board as a professional planner in this matter

#### 2. Planning Services for the Township

Q. Does the Huron County Planning & Development department provide planning service to the lower tier municipalities?

A. Yes, and I am the planner providing service to the Township of Ashfield-Colborne-Wawanosh. I have been in this role since October 2004.

- 3. Background to Amalgamation In 2001 the former townships of Ashfield, Colborne and West Wawanosh were amalgamated into the Township of Ashfield-Colborne-Wawanosh.
- In October of 2003 a new Official Plan for the amalgamated Township of Ashfield-Colborne-Wawanosh was adopted. The new Official Plan replaced the Secondary Plans for the former Townships. In the fall of 2005 Ashfield-Colborne Wawanosh staff, planning department staff and I started working on a new comprehensive zoning by-law. The process of creating the comprehensive zoning by-law involved reviewing the three zoning by-laws from the former townships and reviewing the official plan to create a new zoning by-law. The goal was to create a new zoning by-law that would bring the policies of the Official Plan into force while maintaining the historical planning wisdom that was accumulated over the years in the former township zoning by-laws, and we were successful in achieving our goal

None of the appellants in this matter before the board appealed the Official Plan when it was adopted in 2003. When the staff team and I had developed the new zoning by-law to the point that it was ready to release for public consultation we scheduled two public open houses. One public open house was held on the evening of May 30<sup>th</sup>, 2007 at Brookside Public School for properties east of Hwy 21 and the other was held on Saturday June 2, 2007 at Kingsbridge Church for properties west of Hwy 21. Printed copies of the draft zoning by-law were made available and published on the Township's website The process of public consultation was very valuable and helped to further refine the document. Prior to the final passing of the new zoning by-law a Public Meeting was held at Brookside Public School on Thursday April 17, 2008. More comments were received at the public meeting and further changes were made to the zoning by-law before it was finally passed on June 3, 2008.

4. Subject Area

- Key Map 36d (enlarged)
- Site Photographs
- Air Photographs
- Copy of R.P. 137 – Registered Plan 137 was registered September 12, 1856
- The lots with frontage on London Rd. are 44.2 feet by 132 feet. Which is 5,834.4 square feet or 542 square metres. The lots at the end of William and Ann Streets are 85.8 feet by 132 feet, which is 11325.6 square feet or 1052 square metres. The rest of the lots on William and Ann Streets are 66 feet by 132, which is 8712 square feet or 809 square metres.
- Legal Description of subject property  
(Registered Plan 137 lots 4-12 London Road, Lots 1-8 South of William Street, Lots 1-8 North of Anne St. and lots 1-8 south of Anne St.)

- The subject area is designated Village/ Hamlet in the Official Plan. The subject area is located within the village of Port Albert. The Official Plan permits residential, commercial, industrial or community facilities and infrastructure to be developed in the Village/ Hamlet designation. The primary development in Port Albert is residential. When Port Albert was originally planned in the late 1800's it was envisioned as a major town, with the original town plot covering over 600 acres. Development has concentrated on the river valley and along Lake Huron.
- The Official Plan sets out the development standards for all development in the villages and hamlets. There are 12 separate items under development standards including the following considerations:
  - Land use compatibility
  - Protection of Natural Features and Functions
  - Appropriate Lot size to accommodate the proposed method of servicing, which in most cases is private water and septic
  - Proper approvals, for example Health Unit approval for septic
  - Vehicle access provided by a public road developed to municipal standards.
  - Adequate lot grading and drainage

5. Zoning Provisions for the Area under 32-2008

- Text of VR1-13 pg. 109  
19.9.13 VR1-13
- a) Notwithstanding the provisions of Section 19.4 to the contrary, in the VR1-13 zone where two or more contiguous lots are held in common ownership on Registered Plan 137 at the date of passing of this by-law, such lots may be used and a single-detached dwelling erected on the lots provided that the minimum Lot area shall be 1600 square metres and all relevant regulations made under the Public Health Act and all relevant requirements of the relevant Health Authority are fulfilled. All other provisions of this by-law shall apply.
  - 19.9.13-h – describe area it covers using the map and short description of what it is meant to capture
- Text of Section 19.8.2 pg.106 (if needed) – can read out because relevant to the appeal  
Where a lot in the Ashfield, Colborne or Wawanosh ward having an area, depth and/ or frontage less than the minimum requirements stated in Section 19.4 is held under distinct and separate ownership

from abutting lots as shown by a registered conveyance in the records of the Registry Office, at the date of passing of By-law 5-1986 Ashfield in Ashfield, 18-1982 Colborne in Colborne, or 13-1991 Wawanosh in Wawanosh such lot may be used and a single detached dwelling erected on the lot provided:

Lot Frontage (minimum)	18 metres
Lot Area (minimum)	1000 square metres
All relevant regulations made under the Public Health Act and all relevant requirements of the relevant Health Authority are fulfilled.	

- I understand that the appellants have an issue with the text of Section 19.8.2, the Existing Undeveloped Lots provision but it should be considered together with the text of the Special Zone, VR1-13 in Section 19.9.3. Even though the appellants are not eligible to take advantage of the existing undeveloped lot provisions of Section 19.8.2 the special VR1-13 zone permits the flexibility to use two lots together to achieve the specified minimum lot size of 1,600 square metres so therefore the development the appellants wanted is not held back due to a lot size issue.

#### 6. Letter of Appeal of Appellants

The appellants identify three aspects of the zoning by law that they wish to appeal.

- Section 19.8.2 Existing Undeveloped Lots provision
- Section 19.9.12 VR1-13 Special Zone, and
- The application of the –h Holding Symbol to lands identified on Key Map 36d.

The appellants in their letter of appeal assert that their appeal is based on the premise that the lots on Anne St. and on the south side of William St. in Plan 137 presently qualify for building permits.

The appellants assert that the holding provision is not appropriate for the reason that road upgrades were completed to municipal specifications and the street has been assumed by the municipality.

The appellants do not consider it necessary, but they suggest that wording similar to wording Section 15.7 from the existing by-law (Ashfield 5-1986) be added to recognize a minimum lot area of 1600 square metres for plan 137.

The appellants suggest that it would be more appropriate to clarify the wording in section 15.6.2 (Now 19.8.2 in zoning by-law 32-2008) in the new by-law. They suggest lot should read “lot of record” and the phrase “by a registered conveyance” removed.

#### 7. Monica Walker-Bolton Opinion Evidence re Zoning By-law provisions

Q. Explain Section 19.8.2 and how it applies to the appellant's properties.

A. Section 19.8.2 is titled Existing Undeveloped Lots.

- The purpose of this section is to provide for isolated undeveloped lots in a plan of subdivision that are undersized to the lot area, and/ or lot frontage requirements of the zoning by-law.
- The VR1 zone requires a minimum lot area of 1,850 square metres (Just under 20,000 square feet) and a minimum lot frontage of 23 metres (Just over 75 feet). If the owner of the property owns vacant lots beside the undersized lots then more lots can be used together to meet the minimum lot frontage and/ or area requirement. However, if the owner does not have another vacant lot abutting the undeveloped lot they might be stuck with an lot on which they cannot build.
- This Section provides some flexibility, allowing the minimum lot size to be reduced to 1000 square metres (10, 764 square feet) and the lot frontage to be reduced to 18 metres (59 feet).
- The wording in 19.8.2 speaks of "distinct and separate ownership from abutting lots as shown by a registered conveyance in the records of the Registry office at the date of passing of By-law 5-1986" because the intent of the provision is that if an owner owns more than one abutting undersized lots then multiple lots should be used together to meet the minimum lot size requirement. In other words, if the owners can meet the standard minimum lot area provision of 1850 square metres and the lot frontage provision of 23 metres then they should do so.
- The subject lands were all vacant and all owned in common ownership prior to the date of the passing of Ashfield Zoning By-Law 5-1986; consequently they are not eligible to benefit from the flexibility offered by Section 19.8.2. I have a copy of a document that the Planning Department obtained from the Land Registry office showing that the lots were all in the same ownership prior to transfers into separate ownership in 1989.
- However, the issue of the lots being undersized was addressed through the introduction of the VR1-13 special zone, which recognizes a minimum lot size of 1,600 square metres.
- Based on this minimum lot size, lots could be grouped together to create 10 buildable lots between William and Ann Streets and 5 more lots south of Ann St.

Comment [MK1] : please use both metres and feet as some Board members are not so used to metric

Comment [MK2] : what do you mean by this, I thought there were separate owners

Comment [MK3] : explain using the Key Map

Q. What is the purpose and effect of the VR1-13 Special Zone?

A. The purpose of the VR1-13 special zone is to permit a minimum lot size of 1,600 square metres when two or more contiguous lots are used together and were held in the same ownership on the date of the passing of the zoning by-law, provided all relevant regulations under the Public Health Act and the relevant requirements of the relevant Health Authority are fulfilled. The relevant requirements would include verification from the Health Unit that the lot size of 1,600 was appropriate given the soil type and site conditions to support septic systems.

Comment [MK4] : what are these sort of requirements?

- The proposed zoning would allow for multiple lots in plan 137 to be grouped together to create buildable lots.
- As I have already noted, an “-h” Holding Symbol was placed on some of the lots in registered plan 137 to restrict development on certain lots until the servicing issues such as the road and drainage could be addressed.

Comment [MK5] : show on the Key Map

Q. Please explain why the –h was imposed.

A. Section 9.7 of the Ashfield-Colborne-Wawanosh Official Plan states that a holding symbol (H) may be used in the zoning by-law in connection with any land use zone, in accordance with Section 36 of the Planning Act. In this case it was used to address servicing issues.

Q. What were the servicing issues that the –h was addressing?

- A. There were two serious servicing issues to be addressed prior to development going ahead for the lots covered by the -h.
- Reference Potter evidence re road and drainage
- The most serious issue is drainage. The drainage service available for the lands between William and Ann St. and the lands south of Ann St. is not adequate to support development on these lands.
- The second issue was that Ann St. was in poor shape. It was a municipally assumed road but it is in need of significant upgrades to meet the Township’s standards. This was an issue because the Ashfield-Colborne-Wawanosh zoning by-law in Section 3.22 requires that no one can erect a building or structure on a lot unless the lot abuts on a public road and the road is of satisfactory construction and maintenance to permit the reasonable and safe passage of motor vehicles.
- I have attended several meetings and it is clear to me that this work is a priority for the Township, and it is anticipated that that it will be undertaken within the next 2 years, subject to the availability of capital funding.

Comment [mwb6] : I don't know if I feel really comfortable commenting on the motivations of the Township. Since I work for the County of Huron is it really appropriate for me to speak for the Township? Just wondering.

Q. What authorities support the use of the –h?

The Planning Act, Section 36 permits the Council of a local municipality to pass a zoning by-law amendment to apply the –h to lands in any zone provided the local official plan contains provisions authorizing the use of an h

- . The Ashfield-Colborne-Wawanosh Official Plan Section 9.7 states that a holding symbol may be used in connection with any land use zone in accordance with Section 36 of the Planning Act.
- The use of the –h is consistent with the direction under Section 2 of the Planning Act that requires Councils to make decisions with regard to matters of provincial interest such as: the orderly development of safe and healthy communities, the protection of the financial and economic well being of the Province and its municipalities and the protection of public health and safety.
- The Provincial Policy Statement under Section 1.1.1 requires that Councils make decisions that are consistent with the direction to create Healthy, liveable and safe communities. The policies of the Provincial Policy Statement (PPS) should be taken into consideration on all planning matters including at the time of a

Comment [MK7] : explain

comprehensive review of the zoning by-law. The PPS suggests that Healthy, liveable and safe communities are promoted by several means including:

- a) Promoting efficient development and land use patterns which sustain the financial well-being of the Province and municipalities over the long term, and
- c) Avoiding development and land use patterns which may cause environmental or public health and safety concerns;

Item a) in 1.1.1 is germane to this situation because the Township could be exposing itself to significant financial risk if development is allowed to go ahead without appropriate controls in an area where there are serious problems with drainage and the road because there is a potential for damage to private property.

Item c) requires that development that causes public health and safety concerns should be avoided. Allowing development to go ahead in an area where the drainage is inadequate or the road is unsafe could pose a risk to the public.

It is my professional planning opinion that the use of the VR1-13 and the –h zoning for the subject properties fulfills the objectives of good planning and is consistent with the Provincial Policy Statement, Planning Act and conforms with the Official Plan for Ashfield-Colborne-Wawanosh.

Comment [MK8] : explain

Comment [MK9] : does the OP say anything about drainage or proper roads etc?

#### 8. Response to Appellants' Issues

The appellants identify three aspects of the zoning by law that they wish to appeal.

- Section 19.8.2 Existing Undeveloped Lots provision
- Section 19.9.12 VR1-13 Special Zone, and
- The application of the –h Holding Symbol to lands identified on Key Map 36d.

The appellants in their letter of appeal assert that their appeal is based on the premise that the lots on Anne St. and on the south side of William St. in Plan 137 presently qualify for building permits.

None of the lots in Registered plan 137 presently qualify for building permits because they are all undersized to the requirements of the minimum lot size requirement of 1850 square metres.

Only by clustering lots together could a developer meet the minimum lot size requirement and have a lot large enough to support a septic system.

If by “lots” the appellants meant the “two-lot” clusters that they have proposed previously. There are only 3 potential “two-lot” clusters, (within the portion of R.P. 137 owned by the appellants) of adequate size to have been eligible for building permits prior to the passing on zoning by-law 32-2008.

The lot clusters of adequate size are located with one at the end of William St., and 2 at either side of the end of Ann St. that might have been eligible for building permits prior to the passing of zoning by-law 32-2008. (Ill' use the map)

Now that the zoning by-law has been passed (with the special VR1-13 zone) there is a potential for 5 “two-lot” clusters north of William Street to be developed.

Only two of the (arguably buildable) lots have had the –h applied and those are the two lots at the end of Ann St.

I say that the lots at the end of Ann St. were “arguably buildable” because the appellants make the argument that Ann St. is adequate to meet the requirements of the Ashfield zoning by-law 5-1986 Section 3.3 that lots front on a public road of satisfactory construction and maintenance to support the safe and reasonable passage of motor vehicles.

The appellants assert that the holding provision is not appropriate for the reason that road upgrades were completed to municipal specifications and the street has been assumed by the municipality.

The argument that some of the lots that now have a –h holding symbol were once buildable is not enough grounds to support an appeal of the zoning by-law for the removal of the –h because the new zoning by-law is implementing the policies of the Official Plan which contain policies in Section 8.4.4.6 (pg. 21) and Section 9.7 (pg. 26) to support the application of the –h for servicing reasons. These policies are the requirement for “vehicle access provided by a public road developed to municipal standards and adequate lot grading and drainage and storm water management.

The appellants do not consider it necessary, but they suggest that wording similar to wording Section 15.7 from the existing by-law (Ashfield 5-1986) be added to recognize a minimum lot area of 1600 square metres for plan 137.

The VR1-13 zone does exactly this.

The appellants suggest that it would be more appropriate to clarify the wording in section 15.6.2 (Now 19.8.2 in zoning by-law 32-2008) in the new by-law. They suggest lot should read “lot of record” and the phrase “by a registered conveyance” removed.

The suggested changes were brought to my attention by the planner for the appellants, Don Scott. I considered the proposed changes and determined that they do not help to further clarify the intent of the provisions and if anything, the changes would further confuse the intent of the provision because the phrase “by registered conveyance” is important. The phrase by registered conveyance as shown in the Records of the Registry office conveys the intent that the lots have to be conveyed to different owners on a date prior to the passing of the by-law in order to be eligible for the flexibility provided by the provision.

Furthermore, the wording as it is has worked well since the 80’s when it was introduced and it is not appropriate to make changes to the wording that might invite new interpretations when the intent of the provision has not changed.

## 9. Conclusions

The special zone combined with holding symbol in my professional opinion represents the best planning to open up the possibility of development for the subject lots in registered plan 137 while at the same time controlling development to allow time for the proper services to catch up.

**Comment [MK10]:** this should probably go a little later since it is more of a conclusion

The use of the –h is supported by the Ashfield-Colborne-Wawanosh Official Plan in Sections 8.4.4.6 and Section 9.7.

The Provincial Policy Statement in Section 1.1.1 requires that municipalities promote development that is safe, healthy and fiscally responsible.

The VR1-13 Special zone and the –h holding provision allow for development to happen in a manner that will provide for the appropriate services to be in place prior to the development commencing. This approach represents good planning for the reasons I have mentioned and is consistent with the Provincial Policy Statement and conforms to the Ashfield-Colborne-Wawanosh Official Plan.

To be used if the board so orders.  
Proposed Wording for lifting of –h from VR1-13

#### VR1-13-h

Notwithstanding any provisions of Section 19 to the contrary, the area zoned VR1-13-h may only be used for existing uses.

Explanatory Note: Removal of the –h holding symbol in the VR1-13-h zone will be subject to a review of existing municipal services such as drainage and road service.

PL....

**In the Matter of subsection 34(19) of the Planning Act, as amended...**

**MINUTES OF SETTLEMENT**

WHEREAS Evelyn Knetsch, **J\_\_ Talbot**, **J\_\_ Zwart** and R\_\_ Ireland (the “Appellants”) have appealed Comprehensive Zoning By-law 32-2008 (the “By-law”) of The Corporation of the Township of Ashfield-Colborne-Wawanosh (the “Township”) to the Ontario Municipal Board (the “Board”) (the “Appeal”);

**Comment [m1]:** Is John an appellant?  
Linda, can you check that this list of appellants matches your list?

AND WHEREAS the Appellants own the lands municipally known in 2008 as \_\_\_\_ and \_\_\_\_ (the “Subject Lands”)

AND WHEREAS the parties have agreed to settle the Appeal on the terms and conditions set out in these Minutes of Settlement;

NOW THEREFORE in consideration of the terms and conditions of these Minutes of Settlement, the parties agree as follows:

1. The parties shall request that the Board approve the Appeal in part by removing the “h” provision on Key Map 36d of the By-law, subject to requiring that the parties enter into the Development Agreement attached hereto as **Schedule “A”** to regulate certain aspects of development on the Subject Lands. The Development Agreement shall be registered on title to all lands within the Subject Lands at the sole cost of the Appellants.
2. These Minutes are undertaken without prejudice or precedent to any future land use planning initiatives undertaken by the Township with respect to the Subject Lands or any other lands situate in the Township.
3. The Appellants and the Township agree that each shall bear their own costs in respect of the Appeal and there shall be no request for costs made to the Board.
4. [reserved]

IN WITNESS WHEREOF the Appellants have hereunto set their signatures and the Township has hereunto affixed its corporate seal under the hands of its Reeve and Administrator/Clerk - Treasurer.

SIGNED, SEALED AND DELIVERED

In the Presence of

Appellants:

—

\_\_\_\_\_

The Corporation of the  
Township of Ashfield-  
Colborne-Wawanosh

—

\_\_\_\_\_

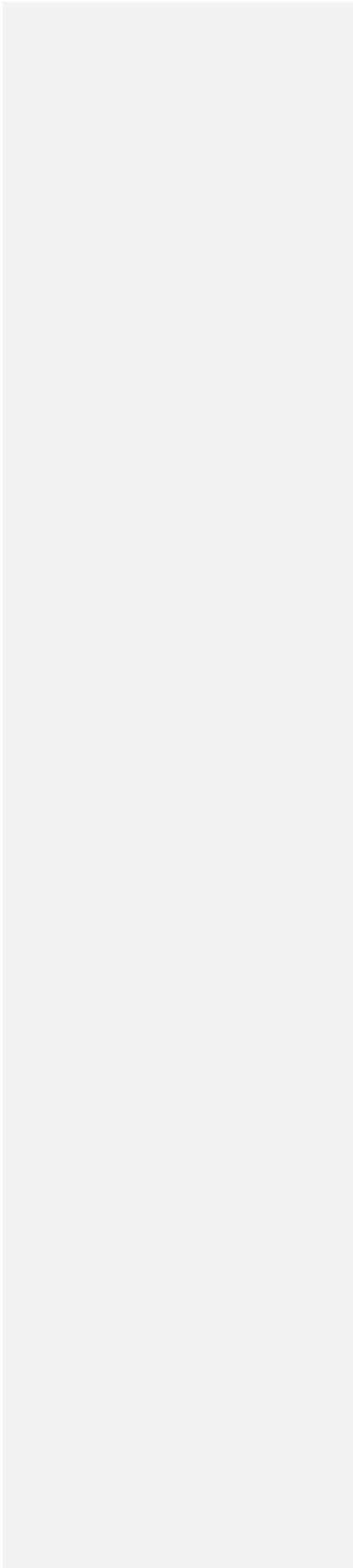
Ben VanDienpenbeek  
Reeve

—

\_\_\_\_\_

Mark Becker  
Administrator/Clerk-  
Treasurer

We Have The Authority To  
Bind The Corporation



## DEVELOPMENT AGREEMENT

THE AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2008.

BETWEEN:

EVELYN KNETSCH, J\_\_ TALBOT, J\_\_ ZWART AND R\_\_ IRELAND

hereinafter called the "Appellants"

of the FIRST PART;

and

THE CORPORATION OF THE TOWNSHIP OF ASHFIELD-  
COLBORNE-WAWANOSH

hereinafter called the "Township"

of the SECOND

PART;

WHEREAS section 34 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (the "Act"), permits local councils of municipalities to pass zoning by-laws to regulate land use within the municipality.

AND WHEREAS the Township Council passed comprehensive zoning By-law 32-2008 (the "By-law") at its meeting of June 3rd, 2008, to implement the provisions of the Township's new Official Plan (By-law 32-2008);

AND WHEREAS the Appellants, who own lands located in Registered Plan No. 137 in Port Albert, which lands are municipally described in **Schedule "A"** attached to this Agreement, appealed the By-law to the Ontario Municipal Board (the "Board") by way of Notice of Appeal dated 3 July 2008 (the "Appeal");

AND WHEREAS the Board, pursuant to section 34(26) of the Act, may amend a zoning by-law, and pursuant to section 37 of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O.28, as amended, is authorised to make such orders or give such directions as may be incidental to the exercise of such power;

AND WHEREAS the parties have agreed, by way of Minutes of Settlement dated \_\_\_\_, 2008 (the "Minutes"), a copy of which are attached hereto as **Schedule "C"**, to settle the Appeal;

AND WHEREAS the Board approved the Minutes at [prehearing]\_\_\_\_, 2008, and in so doing required that the parties enter into this Development Agreement;

NOW THEREFORE in consideration of the premises, covenants, acknowledgements and provisions contained herein and the payment of TEN (\$10.00) DOLLARS of lawful Canadian currency each to the other, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### **Interpretation**

1. Capitalised terms in this Agreement shall have the below meanings ascribed to them. Where a word is used without a capital letter, its regularly understood meaning shall apply:
  - (a) “Act” means the *Planning Act*, R.S.O. 1990, c. P.13, as amended;
  - (b) “Agreement” means this Development Agreement, and includes its Recitals and attached Schedules may be amended from time to time in the future;
  - (b) “Appellants” means the individuals listed in **Schedule B**” to this Agreement, who have appealed Township By-law 32-2008 to the Ontario Municipal Board;
  - (c) “Board” means the Ontario Municipal Board;
  - (d) “Drainage Solution” shall mean an assessment of drainage including adequate outlet for storm water to the satisfaction of the Township with review from the Township’s consulting engineer;
  - (e) “Subject Lands” means the lands set out in Schedule “A” to this Agreement;
  - (f) “Township” means The Corporation of Township Of Ashfield-Colborne-Wawanosh and, where the context so applies, its employees, councillors and agents;

(g) [reserved]

2. Any obligation, acknowledgement or agreement set out in this Agreement shall be construed as a covenant of the party upon whom the obligation, acknowledgement or agreement rests or by whom that agreement was made.
3. The Recitals and Schedules to this Agreement form an integral part of it.

#### **Acknowledgements by the Appellants**

4. The Appellants acknowledge and agree that the Subject Lands are located within an area of the Township prone to drainage issues and that no building permits shall be issued by the Township for any development on any lot(s) within the Subject Lands until and unless the permit applicant(s) has provided a Drainage Solution including adequate outlet for storm water to the satisfaction of the Township with review from the Township's consulting engineer.
5. The Appellants further acknowledge that the Township assumes no liability, in negligence or otherwise, related to environmental or any other matters, in issuing a building permit(s).
6. The Appellants acknowledge and agree that the entering into of this Agreement does not relieve the obligations on the Appellants to comply with all requirements of the Act or the by-laws or other requirements of the Township.
- .
7. The Appellants also acknowledge and agree that the Board has the jurisdiction under the Act and the *Ontario Municipal Board Act*, as amended, to require that the parties enter into this Agreement and that the terms, conditions and acknowledgements contained in this Agreement are legally binding and fully enforceable. Should the Appellants at any time challenge the jurisdiction of the parties to enter into this Agreement, the Appellants shall fully indemnify the Township for the full amount of legal and other costs, including disbursements, incurred by the Township in resisting any challenge of its jurisdiction by the Appellants.

8. The Appellants shall individually and at their own expense register this Agreement on title to their individual lots.
9. [reserved]
10. The covenants, agreements, acknowledgements, conditions and understandings set out in this Agreement shall enure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the parties have executed this agreement under the hands and seals of their duly authorized signing officers in that behalf.

SIGNED, SEALED AND DELIVERED \_\_\_\_\_.

Per:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Title:

I/We have authority to bind the Corporation.

**THE CORPORATION OF THE  
TOWNSHIP OF ASHFIELD-  
COLBORNE-WAWANOSH**

Ben VanDienpenbeek  
Reeve

---

Mark Becker  
Administrator/Clerk-  
Treasurer

We have authority to bind the  
Corporation.

