



THE CORPORATION OF THE TOWN OF AMHERSTBURG

OFFICE OF DEVELOPMENT SERVICES

MISSION STATEMENT: Committed to delivering cost-effective and efficient services for the residents of the Town of Amherstburg with a view to improve and enhance their quality of life.

Author's Name: Sarah French	Report Date: August 21, 2023
Author's Phone: 519 736-5408 ext. 2145	Date to Council: September 11, 2023
Author's E-mail: sfrench@amherstburg.ca	Resolution #:

To: Mayor and Members of Town Council

Subject: Official Plan Amendment No. 23 and Zoning By-law Amendment for 9538 Walker Road

1. **RECOMMENDATION:**

It is recommended that:

1. Official Plan Amendment No. 23, attached to this report as Appendix "J", **BE ADOPTED** by Council and forwarded to the County of Essex; and,
2. By-law 2023-087 being a by-law to amend Zoning By-law 1999-52, to amend the zoning for the subject lands known as 9538 Walker Road, as the corresponding implementing Zoning By-law Amendment, be taken as having been read three times and finally passed and the Mayor and Clerk **BE AUTHORIZED** to sign same.

2. **BACKGROUND:**

The Town is in receipt of an application for an Official Plan Amendment and Zoning By-law Amendment to By-law 1999-52 from MGV Developments (McGregor) Inc. c/o Dillon Consulting. The lands are located at 9538 Walker Road, west of Walker Road and north of Middle Sideroad. The lands are also subject to an application for a subdivision known as the Woodland Trails subdivision.

Woodland Trails Subdivision received Draft Plan Approval from the County of Essex on March 19, 2023. The subdivision proposes lots for 74 single detached residential units, one block for a pumping station, three blocks for future residential development, two blocks for commercial uses, one block for a stormwater management facility and four blocks for natural heritage protection. The Draft Plan Approval document provides conditions that are required to be completed prior to final approval, including the registration of a subdivision agreement.

The purpose of the Official Plan Amendment and Zoning By-law Amendment is to rezone and re-designate the four blocks required for natural heritage protection. The application intends to re-designate the blocks to 'Woodlot' and rezone the blocks to 'Environmental Protection (EP) Zone' to ensure that development cannot occur on the blocks without further permissions from the Town and the County of Essex. Condition Number 17 in the conditions provided by the County of Essex requires the rezoning and re-designating of the natural heritage blocks prior to final approval of the subdivision.

Condition Number 17 states:

That the subdivision agreement between the Owner and the Municipality contain provisions that requires the Owner to gratuitously dedicate the lands identified as Woodlot (Blocks 81 to 84) to the Essex Region Conservation Authority, as appropriate and said conveyances to be in fee simple and free of encumbrances, at no cost to the Essex Region Conservation Authority and be at the Owner's expense. Alternatively, Blocks 82 and 83 may remain in private ownership only if the Owner obtains approval for an Official Plan Amendment and Zoning By-law Amendment to prohibit development and protect the natural heritage features in perpetuity within Blocks 82 and 83, prior to final approval of the plan of subdivision.

The proposed amendments will effect Blocks 81-84 on the Draft Plan of Subdivision (Figure 1). The larger woodlot (known as Block 84) is 3.85 ha (9.53 ac) in size. The smaller woodlot (known as Blocks 81, 82, and 83) is 0.70 ha (1.74 ac) in size. The total area being re-designated and rezoned is 4.55 ha (11.24 ac) in size.

Following the re-designation and rezoning of the existing wooded areas on the property to an appropriate Official Plan designation and Zoning category, and upon registration of the 12M Plan, the lands will be transferred to:

- Block 81 and Block 84 will be transferred to the Essex Region Conservation Authority (ERCA) providing connectivity to the Cypher Systems Trail; and
- Block 82 and Block 83 will be transferred to the previous land owner, Chris Mannina, as per condition of the existing agreement of purchase and sale, along with the future commercial blocks.

Dillon Consulting Ltd., as support for the applications, prepared a Planning Justification Report (PJR) and Environmental Impact Assessment (EIA), attached as Appendix E and F, respectively.

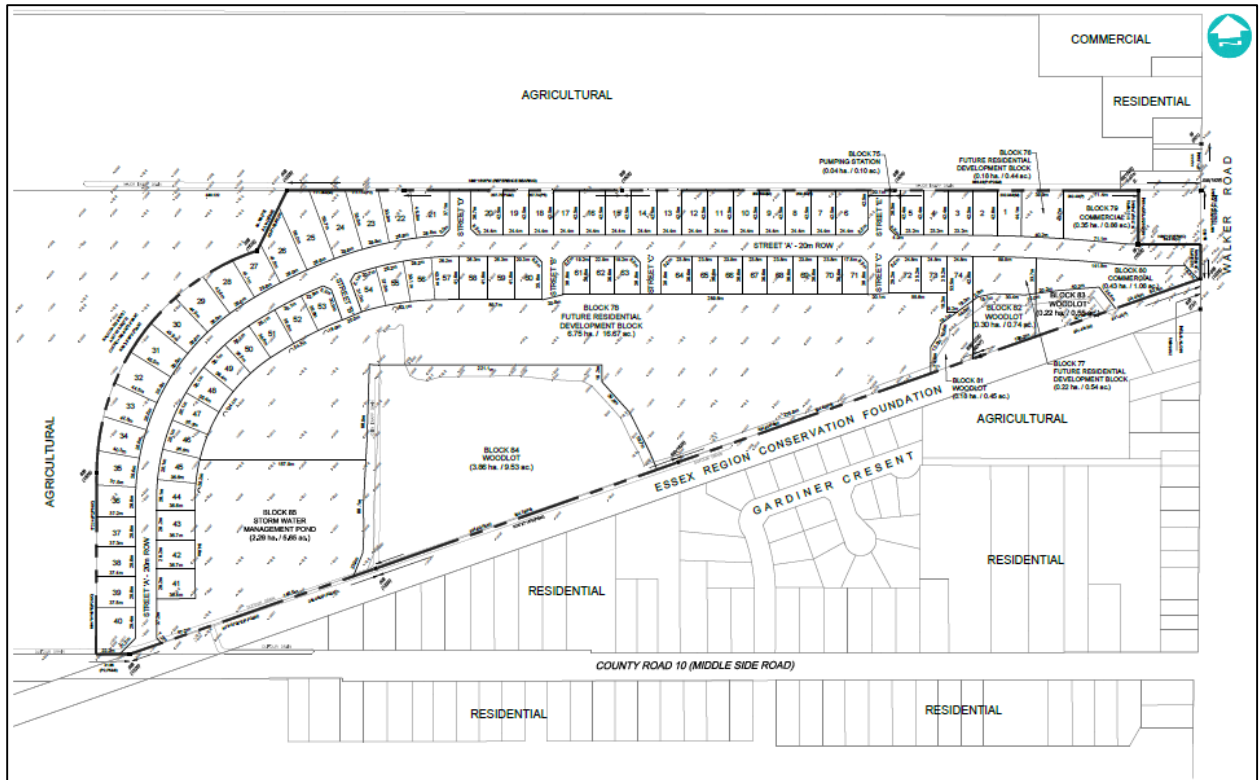


Figure 1: Draft Plan of Subdivision for Woodland Trails Subdivision

The Statutory Public Meeting under the Planning Act was held on August 14, 2023 at 4:00 p.m., at which comments were received from Council. Following the August 14, 2023 meeting, Administration reviewed the comments and drafted the following planning review and recommendation to bring forward for Council’s consideration.

3. **DISCUSSION:**

The submitted application seeks to re-designate and rezone the existing woodlots on the subject lands, in order to ensure their continued protection during the subdivision development process and in continued perpetuity beyond the construction period.

The Official Plan currently designates the lands as following:

- Blocks 81-83: Low Density Residential
- Block 84: Woodlot

The Zoning By-law 1999-52 currently zones the lands as following:

- Blocks 81, 82 and 84: Residential First Density (R1) Zone
- Block 83: Commercial General (CG) Zone

The proposed Official Plan Amendment will designate all four blocks to Woodlot. The proposed Zoning By-law Amendment will rezone all four blocks to Environmental Protection (EP) Zone.

The submitted application is consistent with the Provincial Policy Statement and in conformity with the County of Essex Official Plan and the Town of Amherstburg Official Plan.

The following section will identify the planning rationale to support the recommendation of this report.

Planning Analysis

Planning Act (R.S.O. 1990)

The proposal is consistent with Section 2 of the Planning Act which requires that Council have regard to matters of provincial interest including (the following are excerpts from Section 2 of the Planning Act that apply to this application):

- the protection of ecological systems, including natural areas, features and functions;
- the conservation and management of natural resources and the mineral resource base; and,
- the mitigation of greenhouse gas emissions and adaptation to a changing climate.

The amendments will provide for the protection of existing woodlots that currently provide carbon sequestration, natural stormwater management, and other environmental benefits to the surrounding area.

Provincial Policy Statement

The Provincial Policy Statement was issued under Section 3 of the Planning Act and came into effect on May 1, 2020. The Provincial Policy Statement provides policy direction on matters of provincial interest related to land use planning and development. As a key part of Ontario's policy-led planning system, the Provincial Policy Statement sets the policy foundation for regulating the development and use of land. It also supports the provincial goal to enhance the quality of life for all Ontarians.

The Provincial Policy Statement provides for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment. The Provincial Policy Statement supports improved land use planning and management, which contributes to a more effective and efficient land use planning system.

When reviewing a planning application to determine if the requested Official Plan Amendment (OPA) and Zoning By-law Amendment (ZBA) makes sound planning, it is imperative that the proposed development is consistent with the Provincial Policy Statement (PPS).

The PPS provides policy direction for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural environment. The PPS recognizes that the wise management of development may involve directing, promoting, or sustaining growth. Land use must be carefully managed to accommodate appropriate development to meet the full range of current and future needs while achieving efficient development patterns.

The following policy excerpts from the PPS are particularly applicable to the subject application:

1.1.1 Healthy, liveable and safe communities are sustained by:

- a) promoting efficient development and land use patterns which sustain the financial well-being of the Province and municipalities over the long term;*
- b) accommodating an appropriate affordable and market-based range and mix of residential types (including single-detached, additional residential units, multi-unit housing, affordable housing and housing for older persons), employment (including industrial and commercial), institutional (including places of worship, cemeteries and long-term care homes), recreation, park and open space, and other uses to meet long-term needs;*
- c) avoiding development and land use patterns which may cause environmental or public health and safety concerns;*
- d) avoiding development and land use patterns that would prevent the efficient expansion of settlement areas in those areas which are adjacent or close to settlement areas;*
- e) promoting the integration of land use planning, growth management, transit-supportive development, intensification and infrastructure planning to achieve cost-effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs;*
- f) improving accessibility for persons with disabilities and older persons by addressing land use barriers which restrict their full participation in society;*
- g) ensuring that necessary infrastructure and public service facilities are or will be available to meet current and projected needs;*
- h) promoting development and land use patterns that conserve biodiversity; and*
- i) preparing for the regional and local impacts of a changing climate.*

1.7.1 Long-term economic prosperity should be supported by:

- k) minimizing negative impacts from a changing climate and considering the ecological benefits provided by nature;*

2.1 Natural Heritage

2.1.1 Natural features and areas shall be protected for the long term.

2.1.2 The diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features.

2.1.3 Natural heritage systems shall be identified in Ecoregions 6E & 7E1, recognizing that natural heritage systems will vary in size and form in settlement areas, rural areas, and prime agricultural areas.

2.1.4 Development and site alteration shall not be permitted in:

- a) significant wetlands in Ecoregions 5E, 6E and 7E1; and*
- b) significant coastal wetlands.*

2.1.5 Development and site alteration shall not be permitted in:

- a) significant wetlands in the Canadian Shield north of Ecoregions 5E, 6E and 7E1;*
- b) significant woodlands in Ecoregions 6E and 7E (excluding islands in Lake Huron and the St. Marys River)1;*
- c) significant valleylands in Ecoregions 6E and 7E (excluding islands in Lake Huron and the St. Marys River)1;*
- d) significant wildlife habitat;*
- e) significant areas of natural and scientific interest; and*

f) coastal wetlands in Ecoregions 5E, 6E and 7E1 that are not subject to policy 2.1.4(b) unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions.

2.1.6 Development and site alteration shall not be permitted in fish habitat except in accordance with provincial and federal requirements.

2.1.7 Development and site alteration shall not be permitted in habitat of endangered species and threatened species, except in accordance with provincial and federal requirements.

2.1.8 Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.4, 2.1.5, and 2.1.6 unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.

2.1.9 Nothing in policy 2.1 is intended to limit the ability of agricultural uses to continue.

The proposed ZBA and OPA will provide protection for the natural heritage features on the subject lands for the long term and will restrict development on the parcels without further Planning Act approvals.

The Planning Justification Report provided by Dillon Consulting states:

The preservation of the wooded areas through the proposed Official Plan and Zoning By-law Amendments represents an opportunity for land use planning that maintains the ecological function of the woodlots and will contribute to the overall health and resilience of the ecosystem. Preserving the woodlots will contribute to biodiversity conservation, air quality improvement, soil erosion prevention, and additional recreational and aesthetic benefits which will promote an overall healthier environment for the community. (page 12)

County of Essex Official Plan

The County of Essex Official Plan was adopted on February 19, 2014 and was approved by the province on April 28, 2015. The applicable County policies that should be considered when assessing the merits of the subject Zoning By-law Amendment include:

Section 3.4.2, relating to goals of a natural heritage system, including:

a) To facilitate and support the preservation, protection and enhancement of existing natural heritage features.

e) Support partnerships with local Conservation Authorities, local municipalities, and other partners, that result in plans to appropriately manage ecologically sensitive lands that are in public ownership, discourage the introduction and spread of invasive species, and promote a high level of biodiversity.

Section 3.4.4, relating to natural environment overlay policies, including:

a) Development and site alteration is not permitted on lands within the “Natural Environment Overlay” unless it has been demonstrated to the satisfaction of the approval authority and/or the local municipality, in consultation with the relevant

Conservation Authority, that there will be no negative impacts on the natural features or their ecological functions.

These lands may be adjacent to lands designated “Natural Environment” and/or may contain fish habitat, significant woodlands, areas of natural and scientific interest, significant wildlife habitat, significant valleylands, and secondary priority existing natural features that meet 1 to 4 of the 11 natural heritage feature criteria outlined in the Essex Region Natural Heritage System Strategy (ERNHSS) prepared by the Essex Region Conservation Authority.

Adjacent lands are defined as generally those lands within 120 metres of the “Natural Environment” designation and “Natural Environment Overlay”. Assessment of negative impact is to be determined by conducting an environmental impact assessment in accordance with Appendix Three to this Plan which will be required prior to consideration of any Planning Act application.

Section 3.4.6, relating to general policies for lands designated as natural environment, including:

h) During the preparation of local Official Plans, the County encourages additional refinement of the natural heritage system and the implementation of tools to enhance the system such as more detailed land use designations, overlay designations, promotion of stewardship and voluntary landowner actions.

The parcels of land subject to the OPA and ZBA applications are identified as Natural Environment Overlay in the County of Essex Official Plan. The proposed OPA and ZBA are in conformity with the County of Essex Official Plan as they provide for continued protection of the ecologically sensitive land.

The Planning Justification Report provided by Dillon Consulting states:

The redesignation and rezoning of the wooded areas will facilitate the preservation and protection of the existing natural heritage features. The wooded areas are located along the Cypher Systems Group Greenway and provide an opportunity for connections with other naturalized areas for both wildlife and pedestrians. This approach is a coordinated effort between the land owners, Town of Amherstburg, Essex Region Conservation Authority, and County of Essex to maintain the integrity of the naturalized areas. (page 15)

Town of Amherstburg Official Plan

The Town of Amherstburg Official Plan currently designates Block 84 as Woodlot and Blocks 81-83 as Low Density Residential. The proposed OPA will re-designate Blocks 81-83 from Low Density Residential to Woodlot and retain the Woodlot designation on Block 84. The proposed ZBA will enact the proposed OPA by re-zoning all four blocks to Environmental Protection (EP) Zone.

Section 3.5.1 of the Official Plan describes Woodlots as the following:

Woodlots are forested wooded lands of Amherstburg that have been identified as having an area of 2 hectares or greater. The Woodlots are treed areas that provide environmental and economic benefit to both the private land owner and the general public, such as erosion prevention, hydrological and nutrient cycling, provision of

clean air and the long-term storage of carbon, provision of wildlife habitat, outdoor recreational opportunities, and the sustainable harvest of a wide range of woodland products.

The smaller woodlot (Blocks 81-83) is less than 2 hectares in size, however it provides a wildlife connection to the Cypher Systems Group Greenway, located directly to the south of the subdivision development. According to the Environmental Impact Assessment (EIA) the woodlot contains special concern and rare wildlife species and should be protected as part of the approvals for the subdivision.

The proposed OPA and ZBA will provide protection for the woodlots, as proposed by the EIA and the condition number 17 provided by the County of Essex. The EIA identified that the property contained one confirmed significant wildlife habitat (the larger woodlot), one candidate significant wildlife habitat (the smaller woodlot) and two species of special concern (located in both woodlots). The protection of the woodlots will provide for the protection of the existing species and a reduced impact from the development on the surrounding properties. Additionally, the EIA provides recommended mitigation measures for the developers to employ during construction to protect the significant natural features and the species within.

The Planning Justification Report provided by Dillon Consulting states:

The lands proposed to be designated as “Woodlots” will retain their natural state for purposes of conservation. Development and site alteration is not contemplated for the subject areas. The lands will be maintained as treed areas that provide environmental and economic benefit to the community and will conform to the policies as set out by the Town of Amherstburg Official Plan - Section 3.5 Woodlots. An Environmental Impact Assessment, dated April 2023, has been prepared by Dillon Consulting Limited and is included as a supporting document to the Planning Justification Report. The Environmental Impact Assessment (EIA) concludes that through adherence with the recommended mitigation measures, best management practices, and compensatory measures outlined in the EIA, as well as advice from MECP, there will be no negative impacts to the natural features or their ecological function. (page 20)

Section 6.7 of the Town of Amherstburg Official Plan – Planning Impact Analysis sets out several criteria that must be considered as part of an Official Plan Amendment or Zoning By-law amendment. These include:

6.7 Planning Impact Analysis

It is a policy of the Official Plan that a Planning Impact Analysis will be used to evaluate applications for an Official Plan Amendment and, depending on the magnitude of the development, a Zoning By-law Amendment, to determine the appropriateness of the proposed change and to identify what measures are needed to reduce any adverse impacts on surrounding land uses. The Planning Impact Analysis will supplement the consideration of compliance with the permitted use, location, scale of development, and other criteria applicable to the relevant land use designation. Proposals for changes in the use of land which require the application of a Planning Impact Analysis will be evaluated based on:

(1) Compatibility of proposed uses with surrounding land uses, and the likely impact of the proposed development on present and future land uses in the area on the character and stability of the surrounding neighbourhood.

(2) The height, location and spacing of any buildings in the proposed development, and any potential impacts on surrounding land uses.

The applicants have provided a Planning Justification Report from Dillon Consulting, provided in the attachments to this report. Administration concurs with the opinion of the planner for the applicants that the proposed amendments meet the general intent and purpose of the Official Plan and provide for protection of existing natural heritage features.

Statutory Public Meeting Follow-up

Administration has addressed the questions and concerns raised on the Statutory Public Meeting through a table located below.

Table 1: Items and Comments raised during the Statutory Public Meeting that are directly related to the Official Plan Amendment and Zoning By-law Amendment proposed for the subject lands located at 9538 Walker Road.

Comment	Administration’s Response
Are the existing woodlots being protected or removed?	<p>The proposal before Council is to re-designate and re-zone the existing woodlots that are currently located on the property, as recommended by the EIA. The amendments will protect the woodlots from future development pressures.</p> <p>The possibility of relocating one of the woodlots as a form of habitat compensation was raised at the Statutory Public Meeting, should the block wish to be developed in the future. The block in question is Block 83, which is proposed to be re-designated as woodlot and re-zoned as Environmental Protection (EP) Zone through the current proposed amendments. Should the future owner of Block 83 wish to develop the lot, they will be required to return to Council for an OPA and ZBA at that time, with the proper justification. The current proposal does not consider the use of habitat compensation and only proposes the protection of the existing woodlots.</p>
Is there enough sewage capacity for the proposed 74 unit subdivision?	The subdivision proposes 74 units as phase 1 of the development. There is currently enough sanitary capacity for the 74 units. This information was confirmed by the Infrastructure Services Department during planning process for the Draft Plan of Subdivision. Any additional phases and/or units in the future will require an upgrade to the McGregor sewage lagoons.

Town of Amherstburg Zoning By-law

The Town's Zoning By-law currently zones the woodlot parcels on the subject land as Residential First Density (R1) Zone and Commercial General (CG) Zone. Within these zone categories, a broad range of uses are permitted.

The proposed Zoning By-law Amendment will rezone all four blocks to Environmental Protection (EP) Zone. The following uses are permitted in the EP Zone:

- (i) agriculture;
- (ii) a boat dock;
- (iii) a boat ramp;
- (iv) cemetery;
- (v) public or private park;
- (vi) public uses;
- (vii) works of a Conservation Authority.

The proposed ZBA would provide an additional layer of protection from development for the woodlot blocks.

4. **RISK ANALYSIS:**

There is a risk that a decision on a zoning matter or official plan matter is appealed to the Ontario Land Tribunal. The risks noted below provides further clarity on this depending on the recommendation and Council decision on the matter.

Administration's Recommendation	Decision of Council	Who can appeal the decision to OLT.*	Costs to the Town if Appealed
Recommend approval	Approve the Recommendation	Parties who provided written and or verbal communication on this matter at the Statutory Public Meeting (SPM) or public meeting of Council, and or signed in and provided their contact information at the SPM.	Legal consulting and Administrative time to defend the decision before OLT.
Recommend to deny the application	Approve the Recommendation	The Applicant who requested the amendment.	Planning and legal consulting services to defend Council's decision and legal consulting and Administrative time to defend Administration's recommendation before OLT.
Recommend approval	Refuse the Recommendation Note: The Planning Act defines a tied vote as a refusal.	The Applicant who requested the amendment.	Planning and legal consulting services to defend Council's decision and legal consulting and Administrative time to defend Administration's recommendation before OLT.
Recommend to deny the application	Refuse the Recommendation	Parties who provided written and or verbal communication on this matter at the Statutory	Legal consulting and Administrative time to defend the decision before OLT.

	Note: The Planning Act defines a tied vote as a refusal.	Public Meeting (SPM) or public meeting of Council, and or signed in and provided their contact information at the SPM.	
Recommend to approve (or deny)	Request to defer decision on the grounds of requiring additional information.	The Applicant who requested the amendment.	In this scenario it allows for the applicant to consider if the additional information requested by Council, rather than an OLT hearing is preferred. As OLT hearings are costly and time consuming the applicant may elect to provide the additional information. If that is the direction the Town may need to refund the application fee, noting the refund is also less costly for the Town than an OLT hearing.

*In all matters the Municipality, the Minister of Municipal Affairs and Housing, any Prescribed Person has the right to appeal a zoning decision. The table above is to provide clarity on other parties who can appeal.

As a result of changes in the *Planning Act*, which resulted from amendments made by Bill 109 and Bill 23, a decision on a zoning matter must be made within 90 days from when the application is deemed complete. If Council does not make the decision within the required 90-days, including if the matter is deferred placing the decision past the 90 days, the Applicant would be allowed to appeal to the Ontario Land Tribunal (OLT) on the grounds of failure to make a decision as per s. 34 (11) of the Planning Act. In addition to the costs incurred for an appeal, the Town would need to refund the zoning application fee. This risk is mitigated by the following measures:

- Amherstburg’s OP was amended in 2022, section 7.20, stating in part “deemed complete when a letter is issued to the applicant indicating that the application is complete”. This was put in place to ensure submission date of an application was not the date it was deemed complete, due to previous lack of clarity on this matter;
- Holding the SPM as soon as possible after deeming an application complete. This allows for appropriate time to summarize and consider the feedback for the recommendation report, which is the report for Council to make a decision on the application.

For this particular zoning amendment application, it was deemed complete on July 13, 2023, setting the 90-day timeframe by which a decision of Council must be made before close of business on October 11, 2023.

5. FINANCIAL MATTERS:

All costs associated with the application are the responsibility of the Applicant. Should Council’s decision be appealed to the Ontario Land Tribunal, the Town will incur costs, as noted above. OLT appeals of any nature can be costly with estimated costs of a

hearing at \$20,000/day, noting that those daily costs will likely be higher if Town Administration is required to be before OLT as both witnesses for an Applicant and defense of a decision.

Decisions on zoning matters require Council to render a decision within 90-days of the application being deemed complete. Should a decision not be made within the 90 days, including if the matter is deferred placing the decision past the 90 days, the Town will be required to refund 50% (\$1,942.50) of the applicant's Zoning By-law Amendment application fee of \$3,885 (the applicant paid a combined OPA/ZBA fee of \$7,770, therefore the \$3,885 represents half of the fee, specifically for the ZBA) per s. 34 (10.12) of the Planning Act, and the applicant can appeal the matter directly to the OLT under "failure to make a decision"

6. CONSULTATIONS:

The Notice of Public Meeting was published in the local newspaper and circulated to the required agencies, property owners and municipal departments in accordance with the requirements of the Planning Act, R.S.O. 1990, c.P. 13 and associated regulations. The circulation map and list of properties within the 120m circulation radius are attached for information.

7. CONCLUSION:

Administration has prepared a comprehensive analysis of all of the comments and recommendations received, and is providing a professional planning opinion and recommendation to approve the requested zoning by-law amendment and endorse the requested Official Plan Amendment.



Sarah French
Planner

Report Approval Details

Document Title:	Official Plan Amendment No. 23 and Zoning By-law Amendment for 9538 Walker Road.docx
Attachments:	<ul style="list-style-type: none">- Appendix 'A' - Woodland Trails Aerials.pdf- Appendix 'B' - Draft plan showing woodlots.pdf- Appendix 'C' - OPA 23 Application - July 13_Redacted.pdf- Appendix 'D' - ZBA-12-23 Application July 13_Redacted.pdf- Appendix 'E' - 20-2669 - Woodland Trails Development - PJR (June 2023)_Optimized.pdf- Appendix 'F' - 20-2669 - EIA 9538 Walker (June 2023)_Optimized.pdf- Appendix 'G' - Council Circulation List.pdf- Appendix 'H' - 2023-087- ZBA- Woodland Trails EP DRAFT.pdf- Appendix 'J' - 2023-088- OPA23.pdf- Appendix 'K' - 20-2669 - Response to Council Aug 14 2023 questions Aug 29 2023.pdf
Final Approval Date:	Aug 31, 2023

This report and all of its attachments were approved and signed as outlined below:

No Signature found

Chris Aspila



Melissa Osborne

No Signature - Task assigned to Tracy Prince was completed by delegate Yufang Du

Tracy Prince



Valerie Critchley

A handwritten signature in black ink, appearing to read "Kevin Fox". The signature is written in a cursive style with a long, sweeping underline that extends to the left and then curves back under the name.

Kevin Fox