

**CORPORATION OF THE TOWN OF AMHERSTBURG  
BY-LAW 2004-05**

**Being a by-law to authorize the execution  
of an Agreement (Mickle).**

**WHEREAS** the Committee of Adjustment for the Town of Amherstburg approved a consent for lands being Part of Knapp's Island, Concession 2 on May 13, 2003;

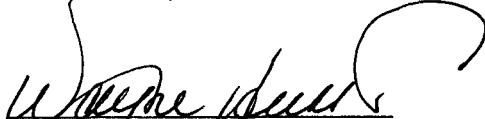
**AND WHEREAS** a condition of the subject consent is that the applicant enter into an agreement that will require the owner to carry out all recommendations within the Issues Summary Report completed by BioLogic in April, 2003 and further supplemental report dated May, 2003;

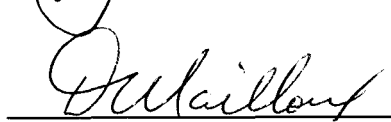
**AND WHEREAS** the Council of the Town of Amherstburg and owners of the said property have agreed to the terms and conditions of the Agreement in the form annexed hereto;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:**

1. That the Corporation of the Town of Amherstburg enter in an agreement with Ronald Gordon Mickle, Susie Alean Mickle and Steven Mickle in the form annexed hereto, and the Mayor and Clerk be and they are hereby authorized to sign the original and copies and affix the Corporate Seal thereto.
2. This by-law shall come into force and effect on the date of final passage hereof.

Read a first, second and third time and finally passed this 12<sup>th</sup> day of January, 2004.

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Clerk

**BUILDING RESTRICTIONS AGREEMENT**

THIS AGREEMENT made in quadruplicate, this        day of        , 2004.

**B E T W E E N:**

**THE CORPORATION OF THE TOWN OF AMHERSTBURG,**  
a municipal corporation with registered office in Amherstburg, Ontario

hereafter referred to as the "Town"

and

**RONALD GORDON MICKLE and SUSIE ALEAN MICKLE,**  
both of the Town of Amherstburg, County of Essex and  
Province of Ontario

hereafter referred to as the "Landowners"

and

**STEVEN MICKLE,** of the Town of Amherstburg,  
In the county of Essex and Province of Ontario

hereafter referred to as the "Purchaser"

**PREAMBLE**

**WHEREAS** Ronald Gordon Mickle and Susie Alean Mickle, collectively hereafter referred to as the "Landowners" applied to the Committee of Adjustment of the Town of Amherstburg for a land severance of certain lands and premises generally being composed of part of Knapps Island, in the Caldwell Grant, more particularly described in Schedule "A" hereto attached (the "lands").

**AND WHEREAS** the Corporation of the Town of Amherstburg, through its Committee of Adjustment, hereafter referred to as the "Town" heard the Severance Application of the landowners.

**AND WHEREAS** the Town approved the Severance Application of the lands made by the landowners by a decision, a certified copy of which was mailed on May 14<sup>th</sup>, 2003 (the "decision").

**AND WHEREAS** the last day for filing an appeal of the decision was June 3<sup>rd</sup>, 2003.

**AND WHEREAS** there has been no appeal filed of the decision.

**AND WHEREAS** the intention of the landowners was to transfer a part of the lands of the landowners to Steven Mickle, the son of the landowners, hereafter referred to as the "Purchaser".

**AND WHEREAS** one of the conditions of the decision requires the landowners to carry out recommendations contained in a certain report that was part of the documentary record before the Town when it made the decision.

**AND WHEREAS** these presents are intended to represent the consent agreement made between the landowners and the Town as a result of the decision.

**AND WHEREAS** the building restrictions described in this agreement shall affect the part of the lands that have been severed from the remainder of the lands by the decision of the Town (the "severed parcel").

**AND WHEREAS** the purchaser is prepared to acquire the severed parcel with the building restrictions described by the terms of this agreement.

**AND WHEREAS** this agreement represents satisfaction of one of the terms of the decision and is executed to give full effect to the decision.

**AND WHEREAS** the Town, the landowners and the purchaser shall also sometimes hereafter be referred to as the "parties".

**NOW THEREFORE WITNESS** in consideration of the obligations accepted by the landowners and by the purchaser affecting the severed parcel, and the Town delivering to the landowners and the purchaser a certificate acknowledging the consent of the Town to the division of the severed parcel from the lands upon fulfilling all of the conditions of the decision and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the landowners and the purchaser hereby covenant, warrant and represent to the Town on behalf of the landowners and the purchaser and their respective heirs, executors, successors, estate trustees, trustees, administrators, executors and assigns as follows:

**ARTICLE I: INTERPRETATION**

- 1.1 The terms “this agreement”, “this indenture”, “hereof”, “hereunder”, and any similar type of expression refers to all of the terms, conditions and covenants contained herein. Such references shall also include any agreement or instrument that is made supplementary or ancillary hereto.
- 1.2 The recitals contained in this agreement are factual representations which form true conditions of this agreement and each of the parties rely on such recitals as effectively as if repeated in the main body of this agreement.
- 1.3 The schedules attached to this agreement are incorporated into it by reference and are deemed to be part of this agreement.
- 1.4 Unless something in the subject matter or context is inconsistent therewith, references in this agreement to articles or sections shall be a reference to articles or sections of this agreement.
- 1.5 The term “party” or any similar type of expression shall be deemed to be a reference to one or more of the town, the landowners and the purchaser as the context requires.

**ARTICLE II: BIOLOGIC ISSUES SUMMARY REPORT AND BUILDING RESTRICTIONS**

- 2.1 As part of the application of the landowners that was made to the Town to apply to divide the lands into the severed parcel, a report prepared by BioLogic Aquatic and Terrestrial Ecosystem Planners and dated April 2003 was delivered to the Town as part of the documentary records relied upon by the Town to consider dividing the lands (the “report”).
- 2.2 In May, 2003, BioLogic Aquatic and Terrestrial Ecosystem Planners delivered to the Town a supplement to the report (the “supplement”).
- 2.3 The Town relied on the report and the supplement to arrive at its decision to divide the lands into the severed parcel.
- 2.4 Attached hereto and marked as Schedule “C” to this agreement is an illustration of the proposal of the landowners and the purchaser to divide the lands into the severed parcel.
- 2.5 Schedule “C” defines an “EIS trigger distance” within which a defined area is contemplated for the construction of a single family detached dwelling unit, a barn and incidental services to improve the amenities for the single family detached dwelling unit

and barn including a manicured lawn, the location of water, gas, hydro and telephone services, and the location of a septic system tank and weeping bed to service the single family detached dwelling unit and the barn or someone of them (the “building and amenity envelope”).

- 2.6 The landowners and the purchaser hereby covenant, represent and warrant to restrict the construction and the installation of any single family detached dwelling unit, barn, septic system tank, weeping bed, water, gas, hydro, telephone services and manicured lawn amenities incidental thereto to the location and within the area described in the building and amenity envelope (the “building restrictions”).
- 2.7 The landowners and the purchaser hereby covenant, represent and warrant for themselves, their heirs, executors, trustees, estate trustees, administrators and assigns to uphold and maintain the building restrictions described in this agreement in perpetuity or until the Town resolves or decides to change the building restrictions as the Town, in its sole, absolute and unfettered discretion, may decide hereafter.
- 2.8 The landowners and the purchaser hereby grant, transfer, assign, and deliver to the Town full power and right to enforce the building restrictions within the building and amenity envelope as the Town decides in its sole, absolute and unfettered discretion and for such purposes confers unto the Town such right of action, cause of action, proprietary incidence and lawful access as is required to give full force and effect to the terms of this agreement.
- 2.9 The proprietary rights of the landowners and the purchaser and their successors or assignees in title shall be restricted, as is required, to give full force and effect to the terms of this agreement and convey, transfer or assign to the Town such lawful incidences as necessary to give full force and effect to this agreement.
- 2.10 The landowners and the purchaser for themselves and their heirs, executors, trustees, estate trustees, administrators, successors and assigns acknowledge the Town shall be at liberty to pursue lawful remedies to enforce the terms of this agreement. Without intending to limit the generality of the foregoing, the remedies of the Town shall include the right to a permanent, interim or interim interim injunction to preclude, prevent and prohibit the landowners and the purchaser and/or their successors and assigns in title contravening, breaching or violating the terms of this agreement.

### **ARTICLE III: COVENANTS RUN WITH THE SEVERED PARCEL**

- 3.1 The landowners, the purchaser and the Town intend the building restrictions to run with the severed parcel and be part of the proprietary incidences of the severed parcel from time to time in perpetuity, subject to the limitations described in this agreement.

- 3.2 The landowners, the purchaser and the Town intend the terms of this agreement to encumber, burden and limit the proprietary rights of the owners of the severed parcel from and after the date of execution of this agreement and register this agreement against the title of the severed parcel to affect, limit and restrain the legal and beneficial prerogatives, rights and entitlements of the landowners and the purchasers or any successors or assigns or trustees the landowners or the purchaser.

#### **ARTICLE IV: LEGAL DESCRIPTION OF THE BUILDING AND AMENITY ENVELOPE**

- 4.1 Attached hereto and marked as Schedule "D" to this agreement is a plan of survey of the severed parcel describing the boundary limits of the building and amenity envelope by surveyor reference.
- 4.2 The description of the building and amenity envelope is intended to convey certainty as to the limits of the boundaries of the building restrictions.
- 4.3 The description of the boundary of the building and amenity envelope is included into the terms of this agreement to give the legal and beneficial interests in the severed parcel certainty as to the limits of the application of the building restrictions within the severed parcel.
- 4.4 The landowners, the purchaser and the Town acknowledge that the uses of the severed parcel is determined by the zoning by-law and the official plan of the Town together with sundry additional by-laws and resolutions of the Town affecting the severed parcel.
- 4.5. Save and except for the building restrictions within the building and amenity envelope described by this agreement, the Town does not preclude the landowners, the purchaser or their heirs, executors, trustees, estate trustees, administrators, successors and assigns from using the severed parcel for purposes that comply with the zoning by-law, official plan and sundry by-laws and resolutions of the Town.

#### **ARTICLE V: FUTURE EVENTS**

- 5.1 The landowners, the purchaser and the Town acknowledge that the building restrictions have been imposed for good planning considerations and to comply with provincial policy statements of the Province of Ontario, municipal policies and the laws and regulations of general application within the Province of Ontario and within the municipality of the Town.
- 5.2 In the event the policies, the laws and the regulations of the Town and the Province change, the Town acknowledges the right of the landowners, the purchaser and their

heirs, executors, trustees, estate trustees, administrators, successors and assigns to apply to the Town to vary the terms of this agreement.

- 5.3 This agreement may be amended or varied but only if the Town, in its sole, absolute, arbitrary and unfettered discretion, decides that the laws of special and general application of the Province of Ontario and the Town warrant amendment or variation of this agreement.

#### ARTICLE VI: MISCELLANEOUS

- 6.1 The division of this agreement into articles and sections is for convenience of reference only and shall not affect interpretation of the terms of this agreement.
- 6.2 Words importing the singular number only shall include the plural and vice versa and words importing gender shall include masculine, feminine and neuter gender as the context requires.
- 6.3 No modification, variation, amendment or termination of this agreement and no waiver of the performance of any of the responsibilities of any of the parties to this agreement shall be effective unless in writing, dated and signed by all parties.
- 6.4 Each of the parties to this agreement shall execute such further and other assurances, instruments and documents and do and perform all such proper acts and things necessary and proper for carrying out the purpose and intent of this agreement.
- 6.5 This agreement constitutes and contains the entire and only agreement amongst the parties relating to the matters described herein. It supersedes and cancels any and all previous agreements and understandings between all or any of the parties.
- 6.6 There are no representations, inducements, promises, understandings, conditions or warranties expressed, implied or statutory between the parties other than as is expressly set forth in this agreement.
- 6.7 This agreement shall be binding upon and enure to the benefit of the parties and their respective heirs, administrators, executors, estate trustees, trustees, successors and assigns.
- 6.8 This agreement shall be governed and construed in accordance with the laws of the Province of Ontario and Dominion of Canada.
- 6.9 This agreement may be executed in several counterparts in which case each of such agreements when so executed shall be deemed to be an original and when all of the parties have signed a counterpart, then together all of such counterparts shall

constitute but one and the same instrument.

IN WITNESS WHEREOF the parties hereto have caused these presents to be executed as attested by the proper parties hereto.

DATED at the Town of Amherstburg this                    day of                    , 2004.

THE CORPORATION OF THE TOWN OF AMHERSTBURG

Per: Wayne Dennis Mayor

Per: J. J. Mailloux Clerk

We have authority to bind the corporation.

DATED at the Town of Amherstburg this 3rd day of February , 2004.

Ronald Gordon Mickle  
RONALD GORDON MICKLE

Susie Alean Mickle  
SUSIE ALEAN MICKLE

Steven Mickle  
STEVEN MICKLE



**SCHEDULE "A"**

Part of Knapp's Island in the Caldwell Grant, designated as Parts 1 and 3 on Reference Plan 12R-20910, Geographic Township of Malden, now in the Town of Amherstburg and in the County of Essex



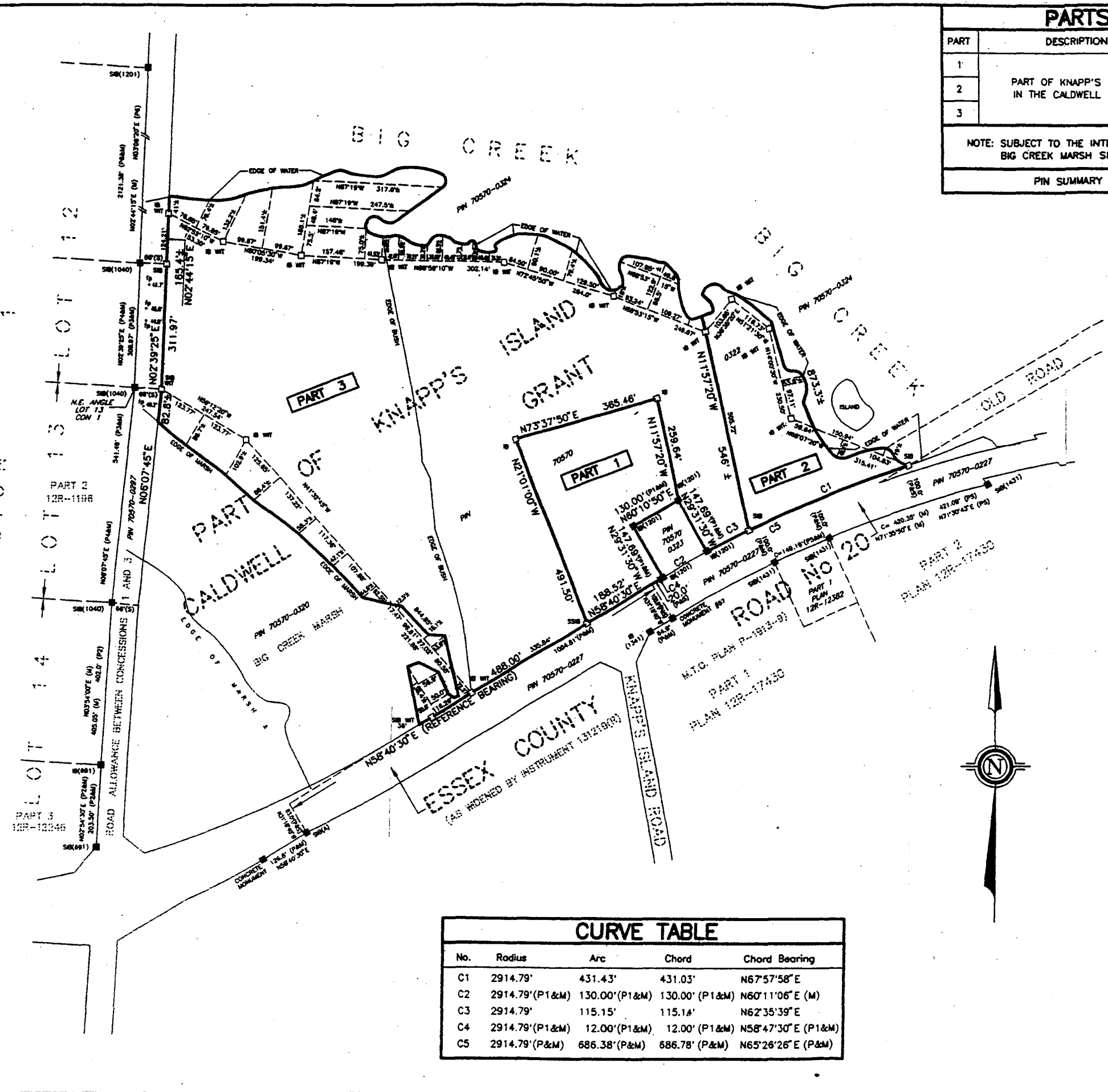
Figure 7 : Development Proposal - Zoning (revised site plan)

- Legal Boundary
- EIS Trigger Distance
- Building Envelope
- Tree Area
- Proposed Expanded EP Zone
- 🌲 Tree Area Increase

- Ag Agriculture
- Ep Environmental Protection
- R Residential

Scale 1 : 2000  
September 2003





PARTS SCHEDULE			
PART	DESCRIPTION	ALL OF PIN	AREA
1	PART OF KNAPP'S ISLAND IN THE CALDWELL GRANT	70570-0322	3.06 acres
2			2.80 acres
3			25.03 acres

NOTE: SUBJECT TO THE INTEREST OF THE CROWN IN THE BANKS OF BIG CREEK MARSH SHOWN HEREON

PIN SUMMARY - ALL OF PIN 70570-0322

I REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT

DATE: NOVEMBER 21, 2003

PLAN 12R-20910  
RECEIVED AND DEPOSITED

2003-NOV-24

ROSS A. CLARKE  
ONTARIO LAND SURVEYOR  
for: CLARKE SURVEYORS INCORPORATED

R. LAVENDER  
ASST. DEPUTY LAND REGISTRAR  
FOR THE LAND TITLES DIVISION  
OF ESSEX (12)

PLAN OF SURVEY  
OF  
PART OF KNAPP'S ISLAND  
IN THE CALDWELL GRANT  
GEOGRAPHIC TOWNSHIP OF MALDEN, NOW IN THE  
TOWN OF AMHERSTBURG  
COUNTY OF ESSEX, ONTARIO  
CLARKE SURVEYORS INCORPORATED - 2003  
SCALE: 1" = 200'

SCHEDULE "D"

0 100.0' 200.0' 400.0' 600.0' 800.0' FEET

"IMPERIAL" DISTANCES SHOWN ON THIS PLAN ARE IN FEET AND CAN BE CONVERTED TO METRES BY MULTIPLYING BY 0.3048

**SURVEYOR'S CERTIFICATE**

I CERTIFY THAT:  
1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.  
2. THE SURVEY WAS COMPLETED ON THE 25th DAY OF SEPTEMBER, 2003.

NOVEMBER 21, 2003

ROSS A. CLARKE  
ONTARIO LAND SURVEYOR  
for: CLARKE SURVEYORS INCORPORATED

**BEARING REFERENCE**

BEARINGS ARE ASTRONOMIC AND ARE REFERRED TO THE NORTHERN LIMIT OF ESSEX COUNTY ROAD No 20, SHOWN AS N58°40'30"E, ON M.T.O. PLAN P-1913-9

- NOTES**
- DENOTES SURVEY MONUMENT FOUND
  - DENOTES SURVEY MONUMENT SET AND MARKED 1201
  - SB DENOTES STANDARD IRON BAR
  - SSIB DENOTES SHORT STANDARD IRON BAR
  - IB DENOTES IRON BAR
  - RIB DENOTES ROUND IRON BAR
  - CC DENOTES CUT CROSS
  - (OU) DENOTES ORIGIN UNKNOWN
  - WIT. DENOTES WITNESS MONUMENT
  - (S/P) DENOTES SET BY PROPORTION
  - (S) DENOTES SET
  - (M) DENOTES MEASURED
  - (1201) DENOTES ROSS A. CLARKE, O.L.S.
  - (A) DENOTES C.G.R. ARMSTRONG, O.L.S.
  - (1194) DENOTES JOHN B. SMEETON, O.L.S.
  - (1528) DENOTES VERHAEGEN, STUBBERFIELD, HARTLEY, BREWER, BEZARE, O.L.S.
  - (1040) DENOTES WILLIAM J. SETTERINGTON, O.L.S.
  - (691) DENOTES H.B. HEAD, O.L.S.
  - ⊥ DENOTES PERPENDICULAR DISTANCE
  - (M/S) DENOTES NOT TO SCALE
  - f/p DENOTES FENCE POST
  - (D) DENOTES INSTRUMENT
  - (P) DENOTES M.T.O. PLAN P-1913-9 INSTRUMENT 131219 (R)
  - (P1) DENOTES PLAN OF SURVEY BY: ROSS A. CLARKE, O.L.S. DATED: AUGUST 22, 1972.
  - (P2) DENOTES PLAN 12R-12248
  - (P3) DENOTES PLAN 12R-20380
  - (P4) DENOTES PLAN 12R-11196
  - (P5) DENOTES PLAN 12R-17430
  - (P8) DENOTES PLAN 12R-20380

CURVE TABLE				
No.	Radius	Arc	Chord	Chord Bearing
C1	2914.79'	431.43'	431.03'	N67°57'58"E
C2	2914.79'(P1&M)	130.00'(P1&M)	130.00'(P1&M)	N60°11'06"E (M)
C3	2914.79'	115.15'	115.11'	N62°35'39"E
C4	2914.79'(P1&M)	12.00'(P1&M)	12.00'(P1&M)	N58°47'30"E (P1&M)
C5	2914.79'(P&M)	686.38'(P&M)	686.78'(P&M)	N65°26'26"E (P&M)

CAD DATE: 21/NOV/2003 11:36AM CAD FILE: H:\100AT31\33272-00.DWG

<b>CLARKE SURVEYORS INCORPORATED</b> www.clarkesurveyors.com	Ontario Land Surveyors Consulting Surveyors 640 Victoria Avenue Windsor, Ontario N9A 4N2 Ph. (519) 258-4166 Fax (519) 258-3874	ASSOCIATE COMPANY <b>MACKAY MACKAY &amp; PETERS LIMITED</b> ESTABLISHED 1906 BURLINGTON AND HAMILTON ONTARIO	DRAWN BY: C.M.M. CHECKED BY: RAC JOB NO.: 33272 FILE: L-MALD-CALD-GRNT PLAN FILE: 2F-3392
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