

# Staff Report



Development Services Department

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**REPORT TO:** Committee of Adjustment

**DATE OF MEETING:** November 19, 2024

**SUBMITTED BY:** Tina Malone-Wright, Manager, Development Approvals  
519-783-8913

**PREPARED BY:** Tim Seyler, Senior Planner, 519-783-8920

**WARD INVOLVED:** Ward 5

**DATE OF REPORT:** November 6, 2024

**REPORT NO.:** DSD-2024-483

**SUBJECT:** Consent Application B2024-030 – 630 Benninger Drive

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## RECOMMENDATION:

That Consent Application B2024-030 for 630 Benninger Drive requesting consent to create an irregular shaped access Easement over the internal roadway, within Unit 2 of Waterloo Vacant Land Condominium Plan 782, in favour of Units 3-9 of WVLCF 782, in accordance with Parts 1 and 2 on Reference Plan 58R-21439, prepared by MTE Ontario Land Surveyors Ltd., dated June 8, 2022, BE APPROVED subject to the following conditions:

1. That the Owner's solicitor shall provide draft transfer documents and associated fees for the Certificate of Official to the satisfaction of the Secretary-Treasurer and City Solicitor, if required.
2. That the Owner shall obtain a tax certificate from the City of Kitchener to verify that there are no outstanding taxes on the subject property(ies) to the satisfaction of the City's Revenue Division.
3. That the owner provides a digital file of the deposited reference plan(s) prepared by an Ontario Land Surveyor in PDF and either .dwg (AutoCad) or .dgn (Microstation) format, as well as two full size paper copies of the plan(s). The digital file needs to be submitted according to the City of Kitchener's Digital Submission Standards to the satisfaction of the City's Mapping Technologist.
4. That the Transfer Easement document(s) required to create the Easement(s) being approved herein shall include the following, and shall be approved by the City Solicitor in consultation with the City's Director, Development and Housing Approvals:

\*\*\* This information is available in accessible formats upon request. \*\*\*  
Please call 519-741-2345 or TTY 1-866-969-9994 for assistance.

- a) a clear and specific description of the purpose of the Easement(s) and of the rights and privileges being granted therein (including detailed terms and/or conditions of any required maintenance, liability and/or cost sharing provisions related thereto); and
  - b) a clause/statement/wording confirming that the Easement(s) being granted shall be maintained and registered on title in perpetuity and shall not be amended, released or otherwise dealt with without the express written consent of the City.
5. That a satisfactory Solicitor's Undertaking, to register the approved Transfer Easement(s) and to immediately thereafter provide copies thereof to the City Solicitor, be provided to the City Solicitor.
  6. That prior to final approval, the Owner/Applicant submits a valid Section 59 notice.

#### **REPORT HIGHLIGHTS:**

- The purpose of this report is to review a consent application to create an access easement over a private roadway in a Vacant Land of Condominium to permit access to adjacent vacant land of condominium parcels to Benninger Drive.
- There are no financial implications.
- Community engagement included a notice sign being placed on the property advising that a Committee of Adjustment application has been received, notice of the application was mailed to all property owners within 30 metres of the subject property and this report was posted to the City's website with the agenda in advance of the Committee of Adjustment meeting.
- This report supports the delivery of core services.

#### **BACKGROUND:**

The subject property is located on Benninger Drive, near the intersection of Ottawa Street North and Trussler Road. The existing property contains multiple dwelling blocks in the form of stacked townhouses. The property has been subject to a Vacant Land Condominium Application in order to divide the parcels into townhouse blocks and was approved by Kitchener City Council. The original intent for Units 1-9 of WVLCPC 782 was for the lands to be further developed with a standard condominium application and this portion of the road would be part of the common elements of the future condominium application. At this time, the owners have decided not to proceed with a standard condominium application for the private roadway and are required to establish legal access to each unit along the established internal roadway.

The proposed easement will be defined by boundaries that are already established through Registered Plan 58R-21439 and are identified as Reverie Way shown in Figure 1.



Figure 1: Location Map – 630 Benninger Drive

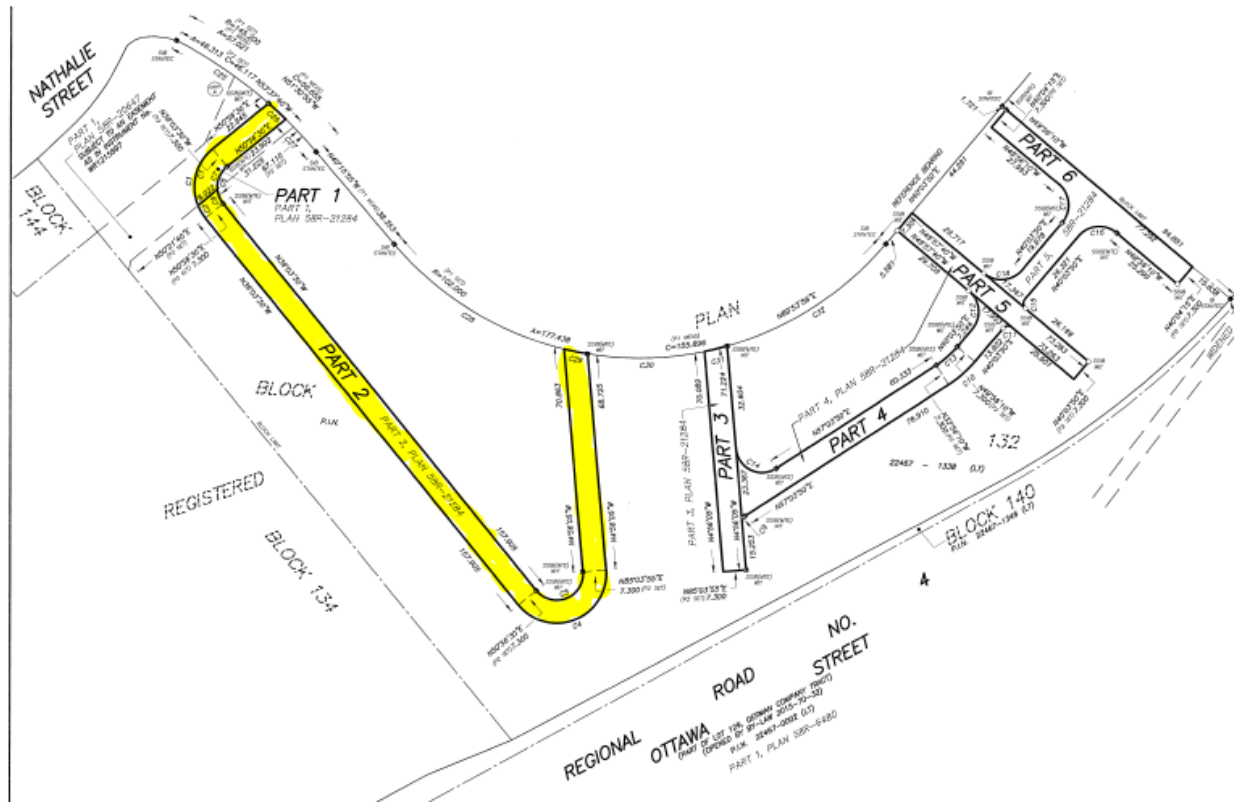
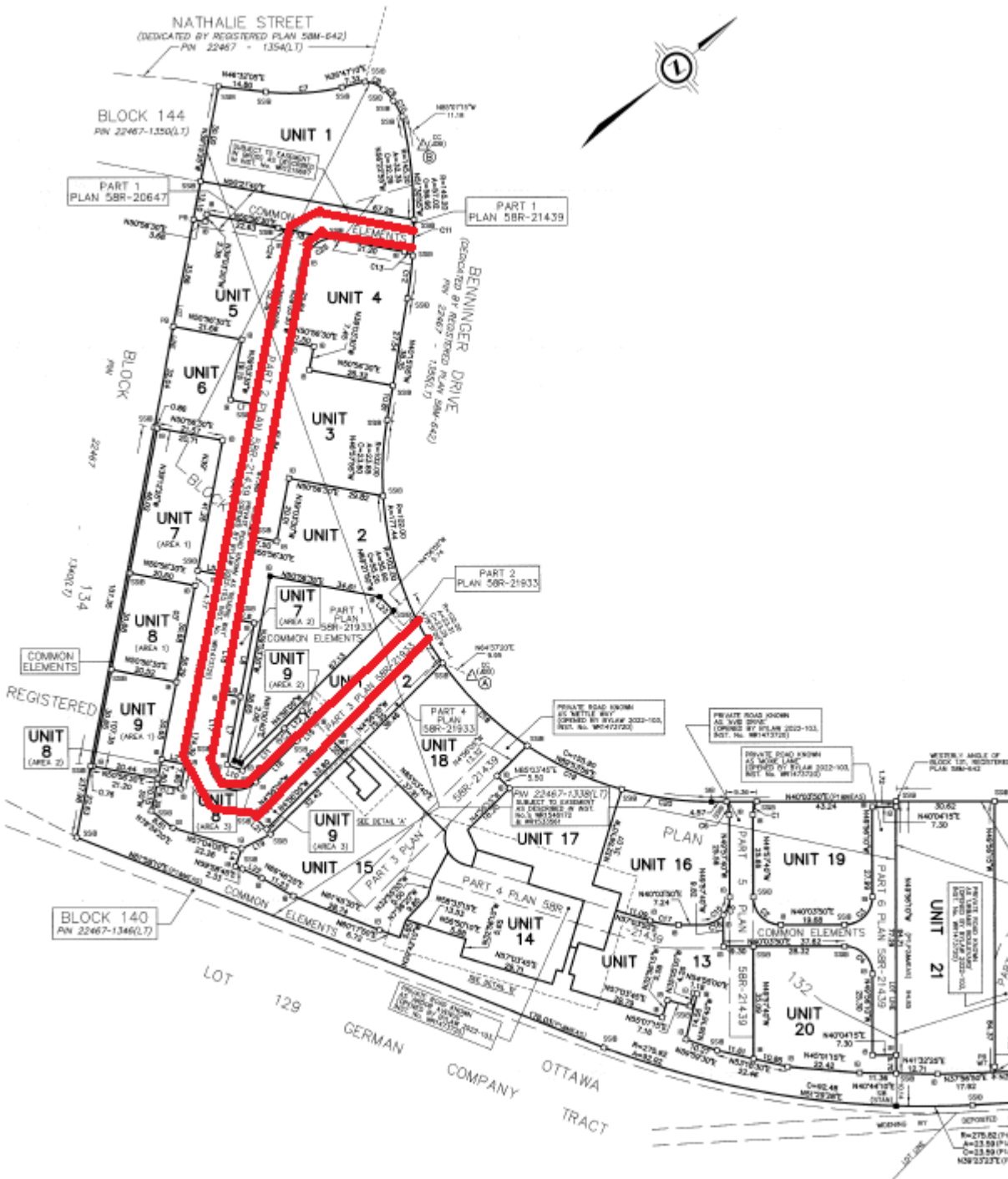


Figure 2: Reference Plan 58R-21439 – 630 Benninger Drive



**Figure 3: Location of Easement on WVLC 782 – 630 Benninger Drive**

The subject property is identified as 'Community Areas' and 'Neighbourhood Node' on Map 2 – Urban Structure and is designated 'Low Rise Residential' and 'Mixed Use' on Map 3 – Land Use in the City's 2014 Official Plan.

The property is zoned 'Mixed Use One Zone (MIX-1) with Site Specific Provisions (27), and (69)' in Zoning By-law 2019-051.



**Figure 4: Reverie Way – 630 Benninger Drive**



**Figure 5: Future townhouses under construction – 630 Benninger Drive**





**Figure 6: Reverie Way – 630 Benninger Drive**

The purpose of this report is to review a consent application to create an access easement over a parcel of land in a Vacant Land of Condominium to permit access to adjacent vacant land of condominium units/parcels.

## **REPORT:**

### **Planning Comments:**

In considering all the relevant Provincial legislation, Regional and City policies and regulations, Planning staff offer the following comments:

#### PPS (2024) and Regional Official Plan

As the application is to facilitate an access easement, no lots are being created or lot lines being adjusted, and no physical changes to the existing development are proposed, it is Planning staff's opinion that no sections of the PPS or Regional Official Plan are specifically relevant, and that the application would conform to these plans and policies.

#### City's Official Plan (2014)

The subject property is identified as 'Community Areas and Neighbourhood Node' on Map 2 – Urban Structure and is designated 'Low Rise Residential and Mixed Use' on Map 3 – Land Use in the City's Official Plan.

Section 17.E.20.4. outlines that consents may be permitted for the creation of a new lot, boundary adjustments, rights-of-way, easements, long-term leases and to convey additional lands to an abutting lot provided an undersized lot is not created.

### Zoning By-law 2019-051

The subject property is zoned 'Mixed Use One (MIX-1) with Site Specific Provisions (27) and (69)' in Zoning By-law 2019-051.

With respect to the City's Zoning By-law the use of the subject lands for townhouse dwellings is a permitted use in the 'MIX-1' Zone and the site as developed complies with the Zoning By-law with respect to setbacks and parking.

The access easement would not negatively impact the functioning of the site. It will have the opposite effect as it will facilitate access for Units 3-9 to Benninger Drive.

### **Planning Conclusions/Comments:**

With respect to the criteria for the subdivision of land listed in Section 51(24) of the Planning Act, R.S.O. 1990, c.P.13, staff is satisfied that the creation of the easement is desirable and appropriate.

### **Environmental Planning Comments:**

No environmental planning comments or concerns.

### **Heritage Planning Comments:**

No heritage planning comments or concerns.

### **Building Division Comments:**

The Building Division has no objections to the proposed consent.

### **Engineering Division Comments:**

Since the application is to convey an access easement, Engineering has no comments.

### **Parks/Operations Division Comments:**

No parks/operations comments or concerns.

### **Transportation Planning Comments:**

Transportation Services have no concerns with this application.

### **Region of Waterloo Comments:**

The applicant/owner proposes consent to create an access easement over the internal roadway in Unit 2, in favour of Units 3-9, within WVLCP 782 (as illustrated on Parts 1 and 2 on Plan 58R-21439). The access easement will provide Units 3 through 9 with legal access to and from Benninger Drive, and facilitate redevelopment of the site in accordance with approved Site Plan SP21/017/B/CD. Originally, the road was planned to be registered as common element within a standard plan of condominium. However, this is no longer possible as the owners have decided not to proceed with said registration of Units 1 through 9.

The subject lands are within the 'Urban Area Boundary' and are designated 'Greenfield Area' in the Regional Official Plan (Maps 1, 2). The subject lands are designated 'Low Rise Residential/ Mixed Use' in the City's Official Plan (Map 3 – Land Use) and zoned 'Mix-1'.

## **Source Water Protection**

The subject lands are within a Wellhead Protection Area under the Clean Water Act, and Wellhead Protection Sensitivity Area and Groundwater Recharge Area under the Regional Official Plan. A Notice of Source Protection Plan Compliance (Section 59 Notice) is required as part of a complete application. Please visit the TAPS website to obtain documentation and for further information: <https://taps.regionofwaterloo.ca/>. The Section 59 Notice will be required as condition of approval for the consent application.

## **Regional Review Fees**

Regional Staff received the required consent review fee of \$350 on November 1, 2024.

## **Regional Staff has no objection to this application subject to the following condition(s):**

1. That the Owner/Applicant submit the Section 59 Notice to the Regional Municipality of Waterloo.

## **STRATEGIC PLAN ALIGNMENT:**

This report supports the delivery of core services.

## **FINANCIAL IMPLICATIONS:**

Capital Budget – The recommendation has no impact on the Capital Budget.

Operating Budget – The recommendation has no impact on the Operating Budget.

## **COMMUNITY ENGAGEMENT:**

INFORM – This report has been posted to the City's website with the agenda in advance of the Committee of Adjustment meeting. A notice sign was placed on the property advising that a Committee of Adjustment application has been received. The sign advises interested parties to find additional information on the City's website or by emailing the Planning Division. A notice of the application was mailed to all property owners within 30 metres of the subject property.

## **PREVIOUS REPORTS/AUTHORITIES:**

- *Planning Act*
- *Provincial Policy Statement (PPS 2024)*
- *Regional Official Plan (ROP)*
- *Official Plan (2014)*
- *Zoning By-law 2019-051*
- *DSD-2022-347*
- *DSD-2023-252*