

CITY OF ST. THOMAS
BY-LAW NO. 95-2019

A By-law to establish smoke free municipal places in the City of St. Thomas.

WHEREAS section 115 of the Municipal Act, 2001, S.O. 2001, c.25, as amended, (the “Municipal Act”) provides that a municipality may prohibit or regulate the smoking of tobacco in public places and workplaces within the municipality and Section 128 (1) of said Act provides that a municipality may prohibit and regulate with respect to matters that in the opinion of Council of the municipality are or could be public nuisances;

AND WHEREAS subsection 10(1) of the Municipal Act provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the Municipal Act provides that a municipality may pass by-laws respecting public assets of the municipality acquired for the purpose of exercising its authority; respecting economic social and environmental well-being of the municipality; respecting the health, safety and well-being of persons; respecting services and things that the municipality is authorized to provide under section 10(1) of said Act; and respecting protection of persons and property;

AND WHEREAS the Smoke-Free Ontario Act, 2017, S.O. 2017, c. 26, Sched. 3 does not generally address the issue of smoking in all outdoor public places and work places on property owned or operated by a municipality and said Act contemplates that a municipal by-law may deal with a matter to which that Act applies but in a more restrictive manner and further provides that the by-law shall prevail to the extent it is more restrictive than said Act;

AND WHEREAS the Council of the City of St. Thomas has determined that it is desirable to ensure that all municipal property will be non-smoking areas for the purposes of abating public nuisance arising from the irritation and discomfort of smoke, protecting young people by reducing smoking participation and smoking related addictions among children, promoting and protecting the health, safety and welfare of the inhabitants, visitors and workers in the City of St. Thomas and enhancement and protection of municipal property;

AND WHEREAS the Trespass to Property Act, R.S.O. 1990, c. T.21 provides that where an occupier of lands or premises has given oral or written notice that a particular activity is prohibited, that activity and entry for the purpose is prohibited and the Council of the City of St. Thomas intends to provide for enforcement and to allow individuals to be required to leave City Property if such persons, while on City Property, have failed to comply with a smoking prohibition;

AND WHEREAS section 426(1) of the Municipal Act provides that no person shall hinder or obstruct or attempt to hinder or obstruct any person who is exercising a power or performing a duty under the Municipal Act or under a by-law passed under the Municipal Act;

NOW THEREFORE THE COUNCIL OF THE CITY OF ST. THOMAS ENACTS AS FOLLOWS:

Citation

The short title of this by-law is “Smoke Free St. Thomas”.

Part I

1. Definitions

“**Authorized Person**” means an individual employed by or otherwise authorized by the City of St. Thomas whose duties include the monitoring of a City owned property and ensuring that unauthorized activities are not permitted;

“**Cannabis**” has the same meaning as in subsection 2(1) of the *Cannabis Act, 2017*, S.O. 2017, c. 26, Sched. 1;

“**City**” means the Corporation of the City of St. Thomas;

“**City Property**” means the lands and premises, enclosed or outdoors, which belong exclusively to the Corporation of the City of St. Thomas, including but not limited to:

- “Highways” as defined herein;
- places which are open to the public and places which are not public places;
- City Property used or occupied by others under the terms of rental agreements, leases, licenses and permissions granted by the City; and

- lands and premises owned by others and used by the City under leases or other agreements granted to the City by such property owners;

“Council” means the Council of the Corporation of the City of St. Thomas;

“Electronic Cigarette” means a vaporizer or inhalant-type device, whether called an electronic cigarette or any other name, that contains a power source and heating element designed to heat a substance and produce a vapour intended to be inhaled by the user of the device directly through the mouth, whether or not the vapour contains nicotine;

“Enforcement Officer” means a police officer or a provincial offences officer as defined in section 1(1) of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, which includes a person appointed by Council as a Municipal By-law Officer;

“Highway” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the sidewalks, land and structures in the area between the lateral boundaries of the property dedicated as public highway;

“Medical Cannabis User” means an individual who has been prescribed Cannabis for the individual’s own medical purposes;

“Outdoors” or **“Outdoor”** means any open space which is outside of a building, structure, or premises. Any tent, temporary building, structure or part thereof, whether covered by a roof or not, is considered Outdoors;

“Person” shall include the plural where the context requires. Wherever the word “he”, “she”, “him” or “her” is used, it shall mean and include the other gender or neutral gender wherever the context so requires;

“Smoking Product” means tobacco, a tobacco-like product, Cannabis and a Vapour Product the primary purpose of which is to be burned or heated to produce vapours, gases, or smoke, which are inhaled, and shall include but is not limited to herbal shisha, and other plant material or oils intended for inhalation;

“Vapour Product” means an electronic cigarette, water pipe, an e-substance, or any component of an electronic cigarette or a pipe or similar device or substance the primary purpose of which is to, by heating or burning, produce vapour gas or smoke for a Person to directly inhale;

Part II

2. General Prohibition

(1) No Person shall smoke, hold or otherwise use lighted tobacco, lighted Cannabis, or use a Vapour Product on City Property, regardless of whether or not a “No-Smoking” sign of any format or content is posted.

(2) No Person shall:

- fail to leave a City Property after an Enforcement Officer or an Authorized Person has given the Person notice or direction to leave for smoking in breach of 2(1) above;
- enter or use City Property after an Authorized Person has prohibited the Person’s entry or use due to breach of 2(1) above;

The prohibitions in this Section 2(2) shall apply whether or not a “No-Smoking” sign of any format or content is posted.

Part III

3. Exemptions

(1) Notwithstanding Part II, the prohibition in Section 2(1) shall not apply to the following::

- (a) smoking, holding or otherwise using lighted tobacco on a Highway, as defined in Section 1, except to the extent described below in Section 3(2);
- (b) a designated Outdoor smoking area, posted with signage to that effect, within an uncovered parking lot on City Property;
- (c) a designated Outdoor smoking area, posted with signage to that effect, on City Property adjacent to a City owned residential building, City owned residential care facility or City owned workplace;
- (d) a City owned residential unit for which an exemption has been specifically acknowledged in writing by the Director, or designate, of St. Thomas Social Housing

Services based on St. Thomas Social Housing Services policies in respect of Medical Cannabis Users unable to access designated smoking areas or in respect of other tenants;
(e) a designated Outdoor smoking area set up on City Property for a permitted special event using City Property.

- (2) The exemption provided under 3(1)(a) does not apply to Persons within a public transportation vehicle or a taxicab or any vehicle containing a Person who is less than 16 years of age.
- (3) Section 13(3) of the Smoke-Free Ontario Act, 2017, S.O. 2017, c. 26, Sched. 3 reads, No provision of an Act, regulation or municipal by-law that prohibits smoking in a place:
 - (a) prohibits an Aboriginal person from smoking tobacco or holding lighted tobacco there, if the activity is carried out for traditional Aboriginal cultural or spiritual purposes;
 - (b) prohibits a non-Aboriginal person from smoking tobacco or holding lighted tobacco there, if the activity is carried out with an Aboriginal person and for traditional Aboriginal cultural or spiritual purposes.

Part IV General

4. Offences

- (1) Every Person who contravenes any of the provisions of this By-law is guilty of an offence.
- (2) Every Person who is not acting under a right or authority conferred by law and who engages in an activity on City Property when the activity is prohibited by this By-law and does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier, is guilty of an offence.

5. Penalty

Every Person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a fine as provided for the *Provincial Offences Act*, R.S.O. 1990, C.P.33, or any successor thereof. Upon summary conviction for offences listed in Schedule "A" of this By-law, a Person shall be liable for the set fines provided in Schedule "A" of this By-law.

6. Continuation, Repetition- prohibited by order

The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the Person convicted, and such order shall be in addition to any other penalty imposed on the Person convicted.

7. Enforcement

The provisions of this By-law may be enforced by an Enforcement Officer or other persons deemed to be agents of the City for the purpose of addressing unauthorized activity on City Property.

8. Obstruction

Every Person who hinders or obstruct, or attempts to hinder or obstruct, an Enforcement Officer or Authorized Person lawfully carrying out the enforcement of this By-law is guilty of an offence.

9. Conflicts

- (1) If a provision of this By-law conflicts with an Act, a regulation or another by-law, the provision that is the most restrictive of the activities referred to in Section 2(1) of this By-law shall prevail.
- (2) Nothing in this By-law shall be interpreted in a manner that implies condonation of any practice that is subject to more stringent provisions in a Statute of Canada or a Statute of Ontario.

10. Severability

If any section or sections of this By-law or parts thereof are found in any court of law to be *ultra vires* of the City, such section or sections or parts thereof shall be deemed to be severed and all other sections or parts of this By-law shall remain in full force and effect.

11. Repeals

The following by-laws and all amendments thereto, are hereby repealed:

89-2004
221-2004
27-2005

28-2005
36-2005
146-2013

12 Coming into Force

This by-law comes into force and effect on the date it is passed.

READ a First and Second time this 12th day of August, 2019.

READ a Third time and Finally passed this 12th day of August, 2019.

Original signed by "Maria Konefal"
City Clerk

Original signed by "Joseph Preston"
Mayor

CORPORATION OF THE CITY OF ST. THOMAS

BY-LAW NO. 95-2019.
Smoke Free St. Thomas

Schedule "A"

PART 1 PROVINCIAL OFFENCES ACT
SET FINE SCHEDULE

<u>ITEM SHORT FORM WORDING</u> <u>NO.</u>	<u>PROVISION</u> <u>CREATING</u> <u>OR DEFINING</u> <u>OFFENCE</u>	<u>SET</u> <u>FINE</u>
1. Smoking on City Property	2.(1)	\$300.00
2. Enter or remain on City Property contrary to direction or prohibition	2.(2)	\$300.00

NOTE: The general penalty provision for the offences listed above is Section 5 of this By-law, a certified copy of which has been filed.

Summary of Buildings	Contact
AIRPORT	Dale Arndt
Flight School/Sky Navigation Hanger - 4989 Talbot Line	Identified
POOL	Gary Drouin
Jaycee Outdoor Pool, 93 Inkerman St	Identified
ARENA	Gary Drouin
Memorial Arena, 80 Wilson Avenue	Identified
Joe Thornton Community Centre, 75 Caso Crossing	Identified
FIRE	Ray Ormerod
Fire Station #2, 235 Burwell Road	Identified
Central Fire Station, 305 Wellington Street	Identified
GENERAL CITY	Tim Bridge
Library, 153 Curtis Street	Use Justice lot
City Hall, 545 Talbot Street	Use Justice lot
POLICE	Chris Herridge
St. Thomas Police Services HQ Building, 45 Caso Crossing	Identified
PARKS	Ross/Adrienne
Parks Department Administration Building, 95 Elm St., Pinafore Park	Identified
ROADS	Chris Andrew
Public Works Depot, 100 Burwell Road	Identified
SEWAGE	John Mansell
Pollution Control Plant, 40359 Bush Line	Identified
VALLEYVIEW	Mark Minor
Valleyview Long Term Care, 350 Burwell Road	Complete
HOUSING	Jacki Hussey
49 Chestnut St., Aylmer	Complete
58 Myrtle St., Aylmer	Complete
45 St. Anne's Place, St Thomas	Complete
5 Morrison Dr., St. Thomas	Complete
76 Churchill Cres., St Thomas	Complete
200 Chestnut St., St Thomas	Complete
253 Ridout St., Rodney	Complete
16 Celestine Avenue, St Thomas	Complete
144 Main St., West Lorne	Complete

AIRPORT
Flight School/Sky Navigation Hanger



POOL

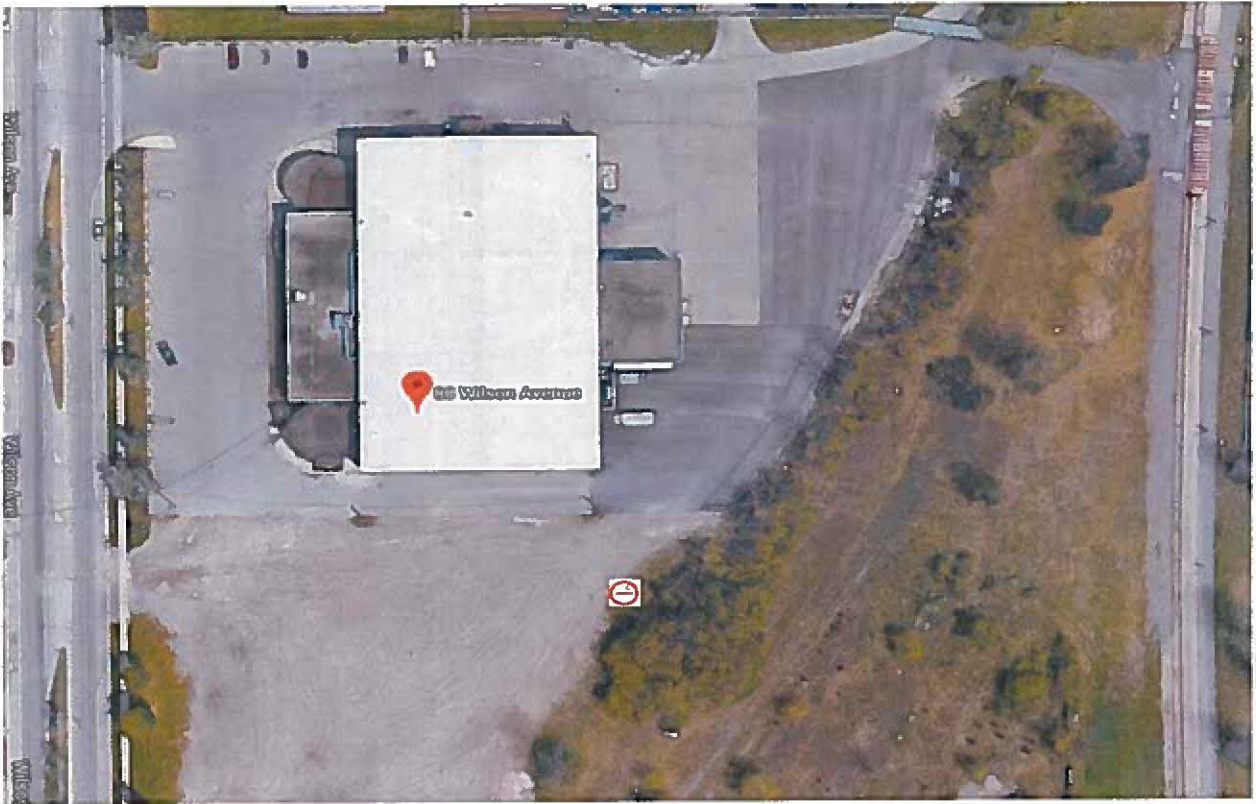
Jaycee Outdoor Pool, 93 Inkerman St



ARENA

Memorial Arena, 80 Wilson Avenue

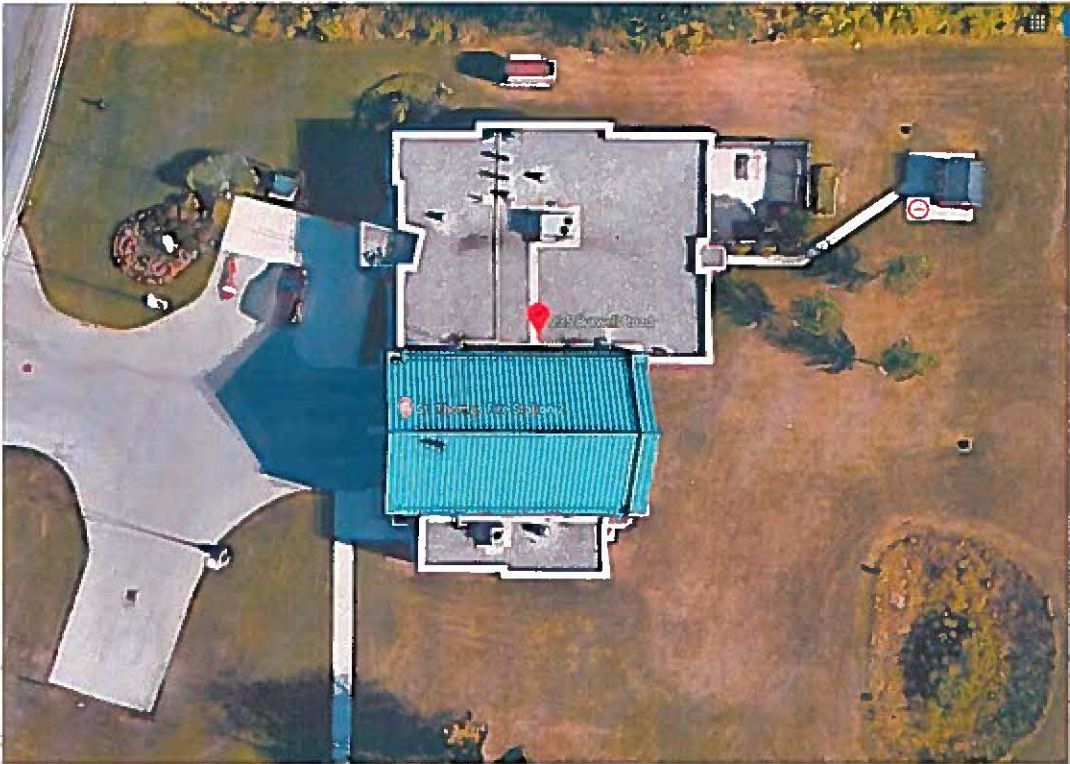
Joe Thornton Community Centre, 75 Caso Crossing



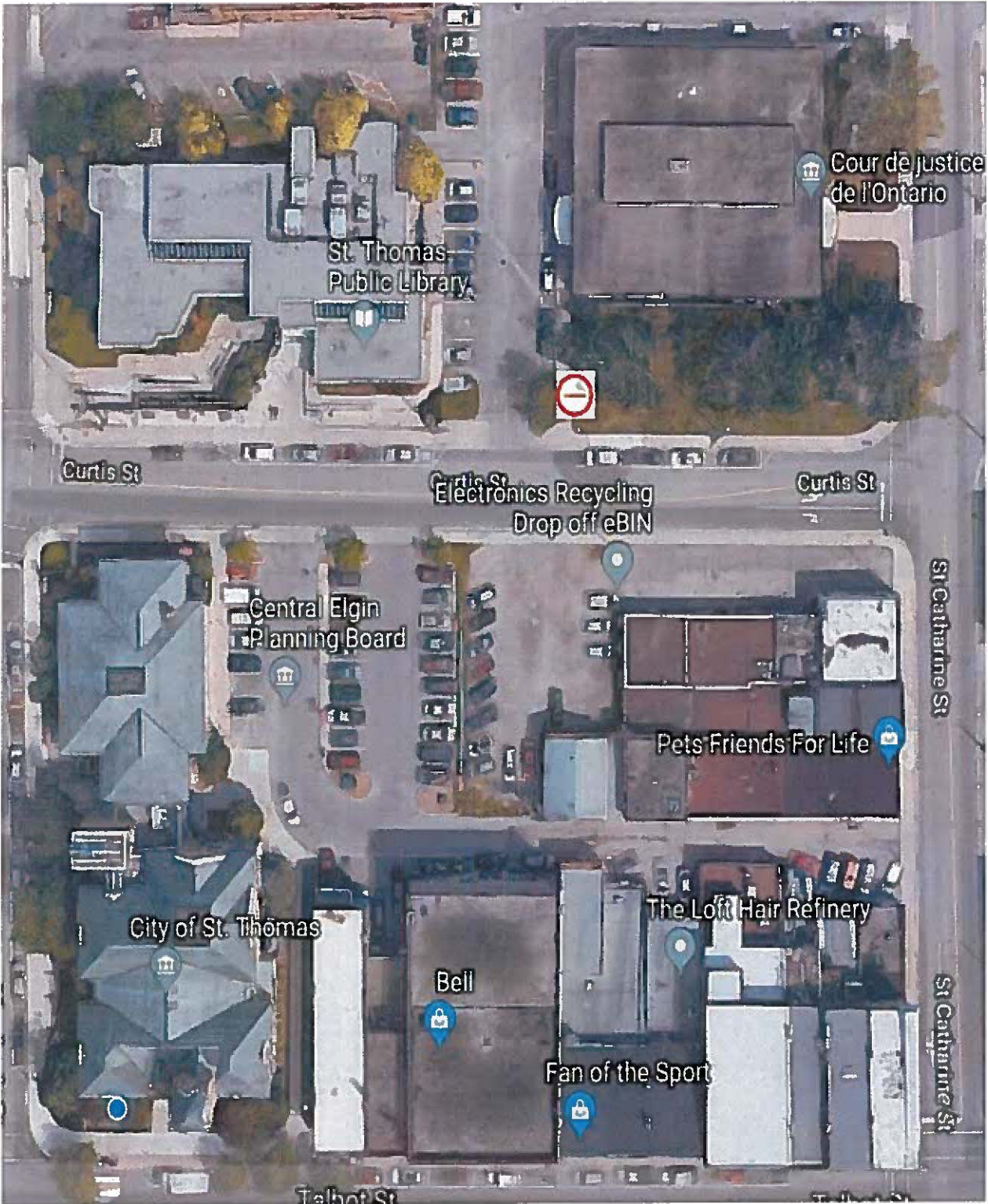
FIRE

Fire Station #2, 235 Burwell Road

Central Fire Station, 305 Wellington Street

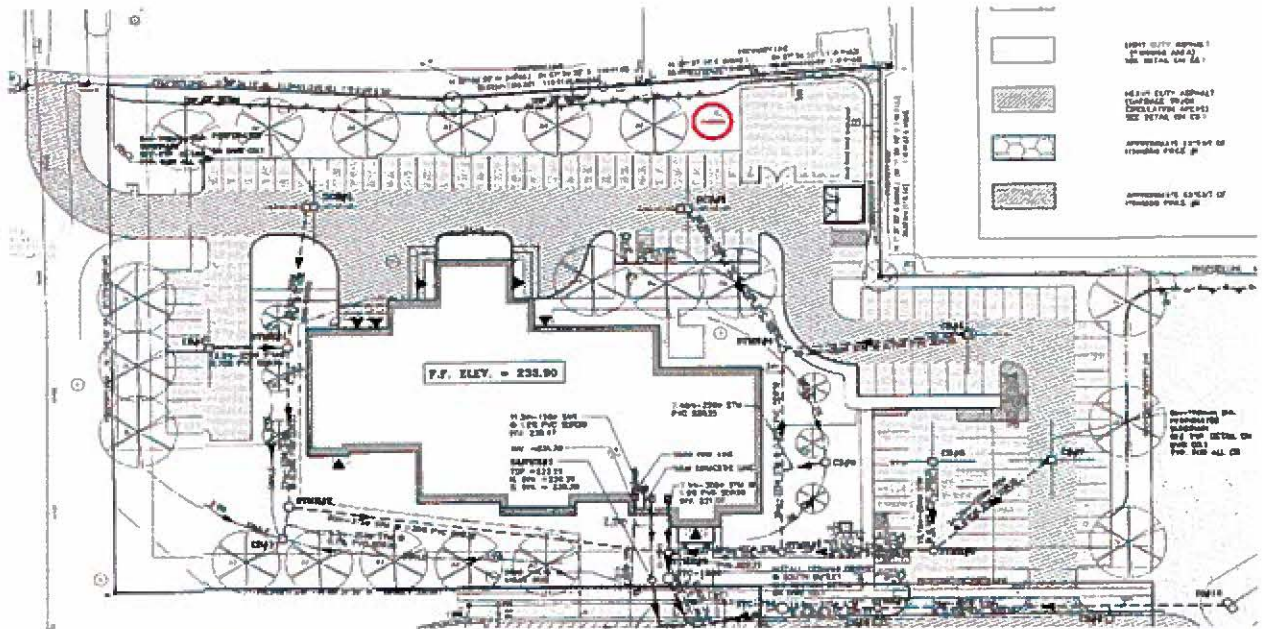


GENERAL CITY	
Library, 153 Curtis Street	Use Justice lot
City Hall, 545 Talbot Street	Use Justice lot



POLICE

St. Thomas Police Services HQ Building, 45 Caso Crossing



PARKS

Parks Department Administration Building, 95 Elm St., Pinafore Park



ROADS

Public Works Depot, 100 Burwell Road



SEWAGE

Pollution Control Plant, 40359 Bush Line



VALLEYVIEW

Valleyview Long Term Care, 350 Burwell Road – By circle is for Residents Only and the other is for Staff.



HOUSING

49 Chestnut St., Aylmer



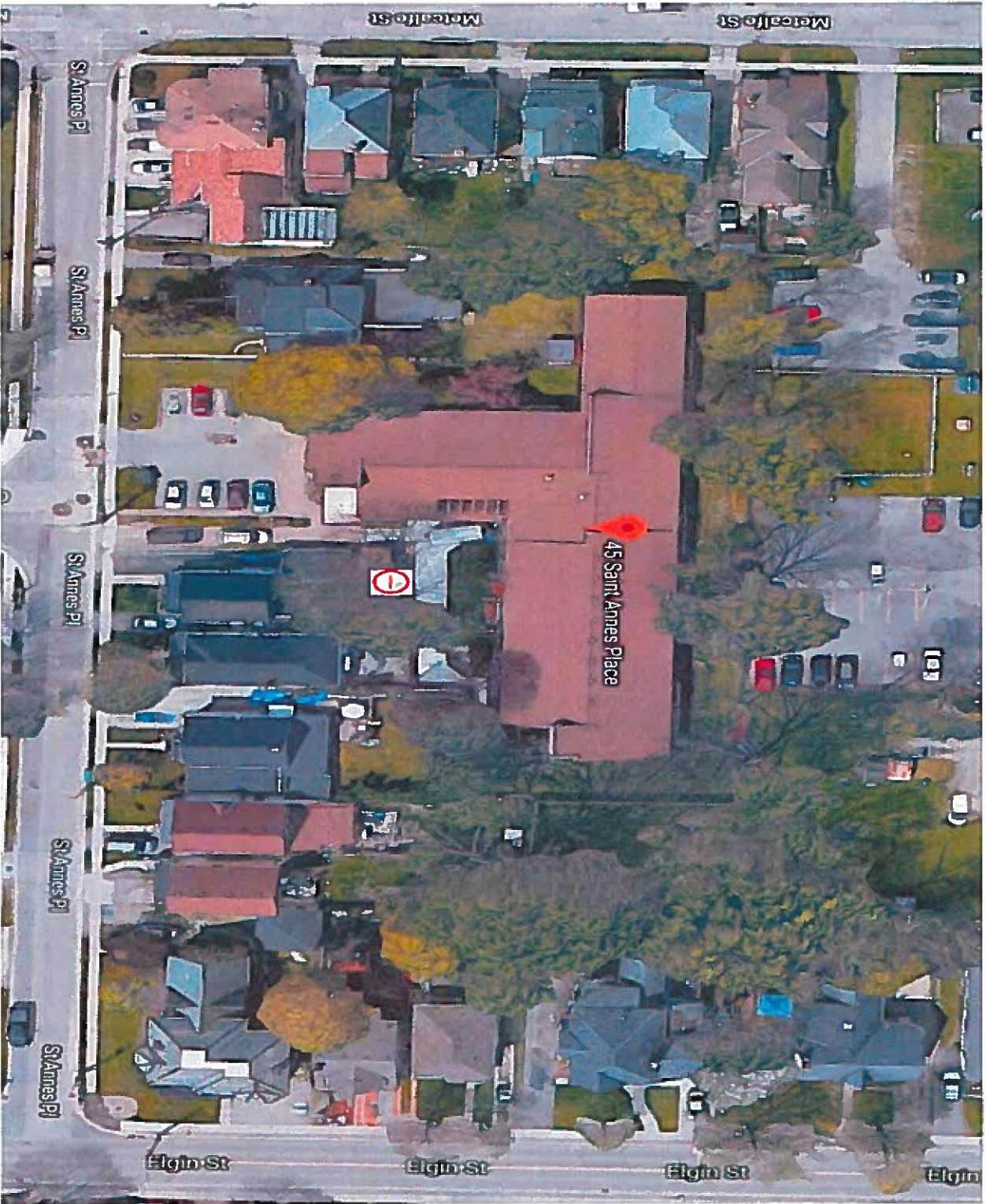
HOUSING

58 Myrtle St., Aylmer



HOUSING

45 St. Anne's Place, St Thomas



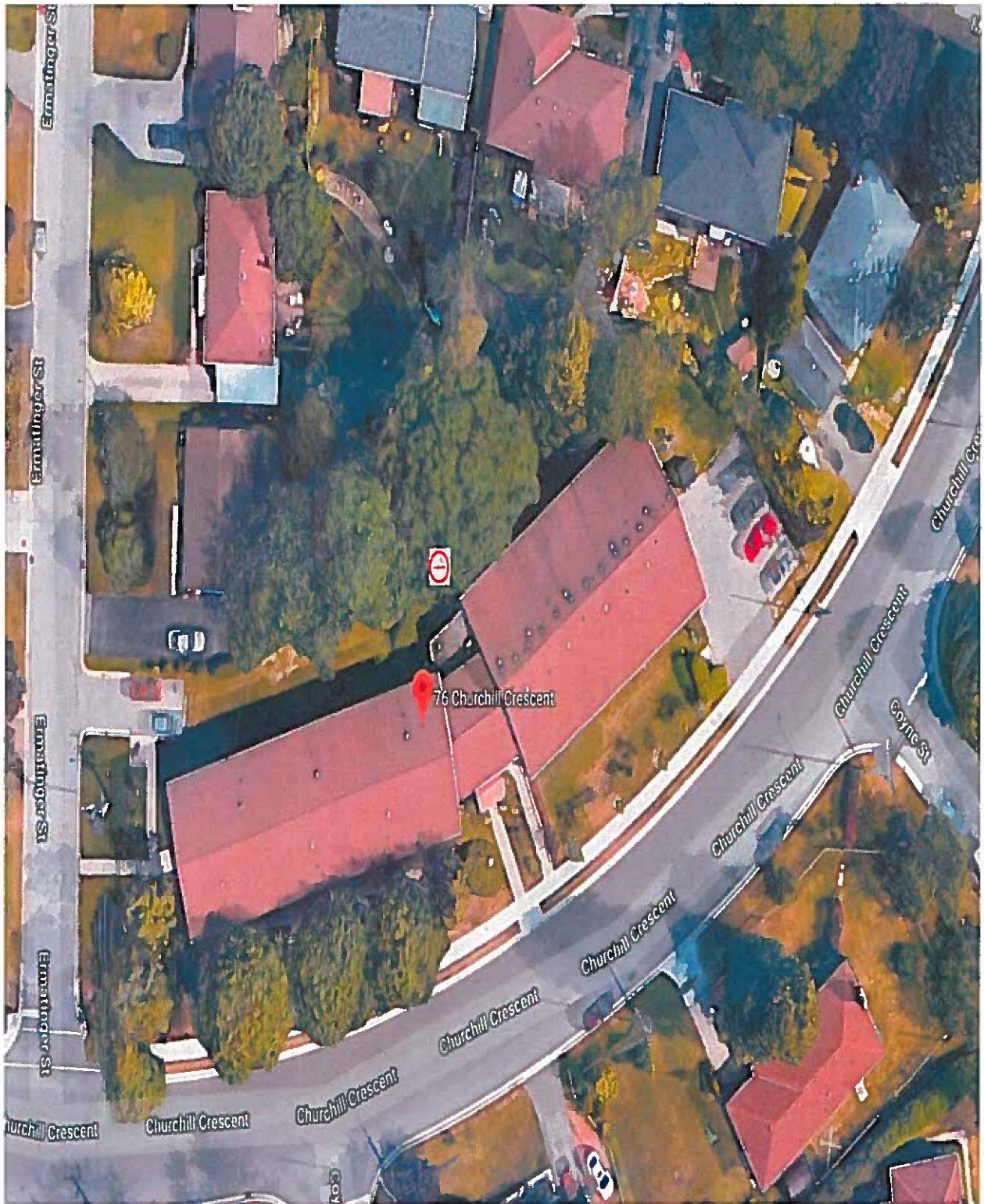
HOUSING

5 Morrison Dr., St Thomas



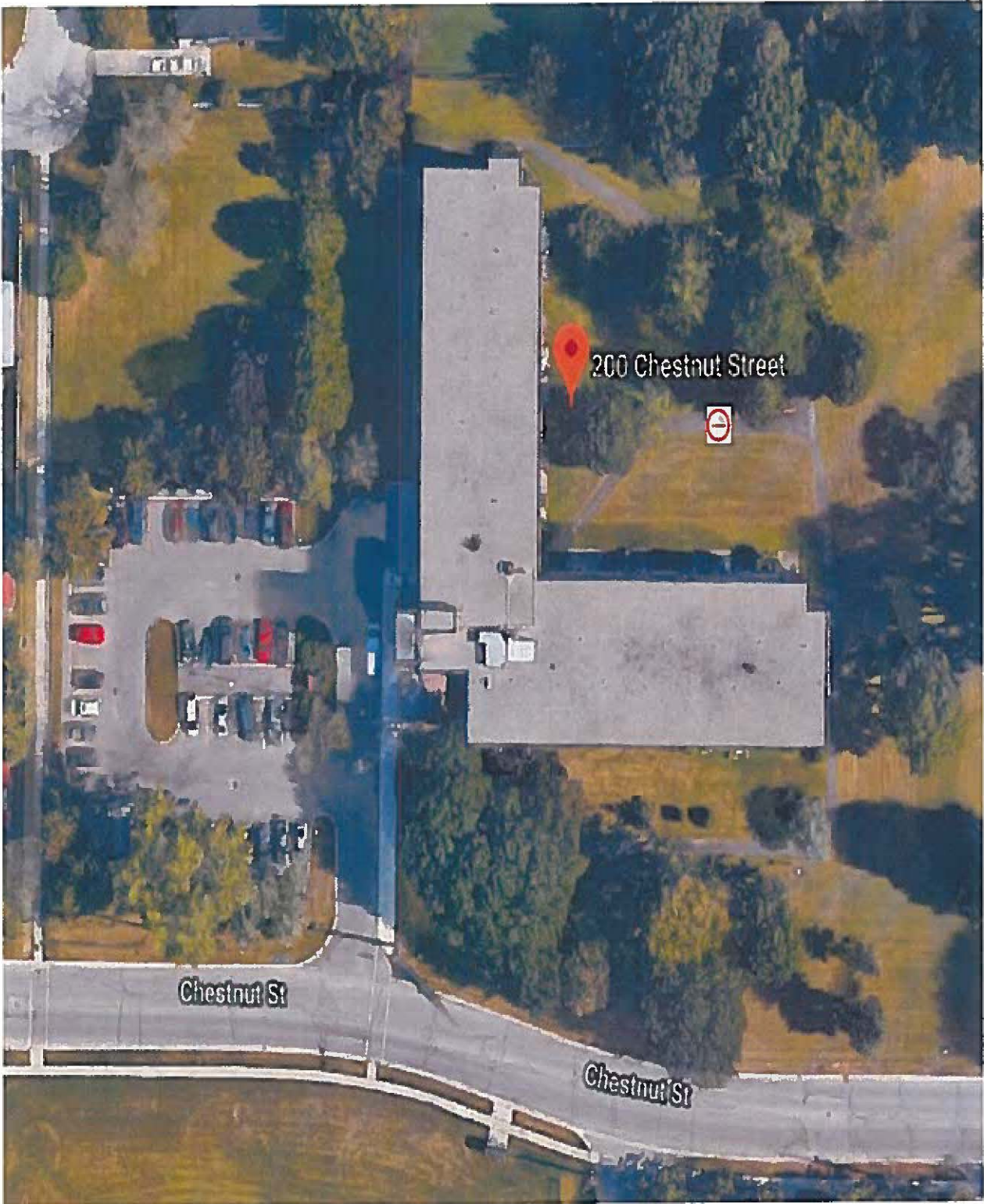
HOUSING

76 Churchill Cres., St Thomas



HOUSING

200 Chestnut St., St Thomas



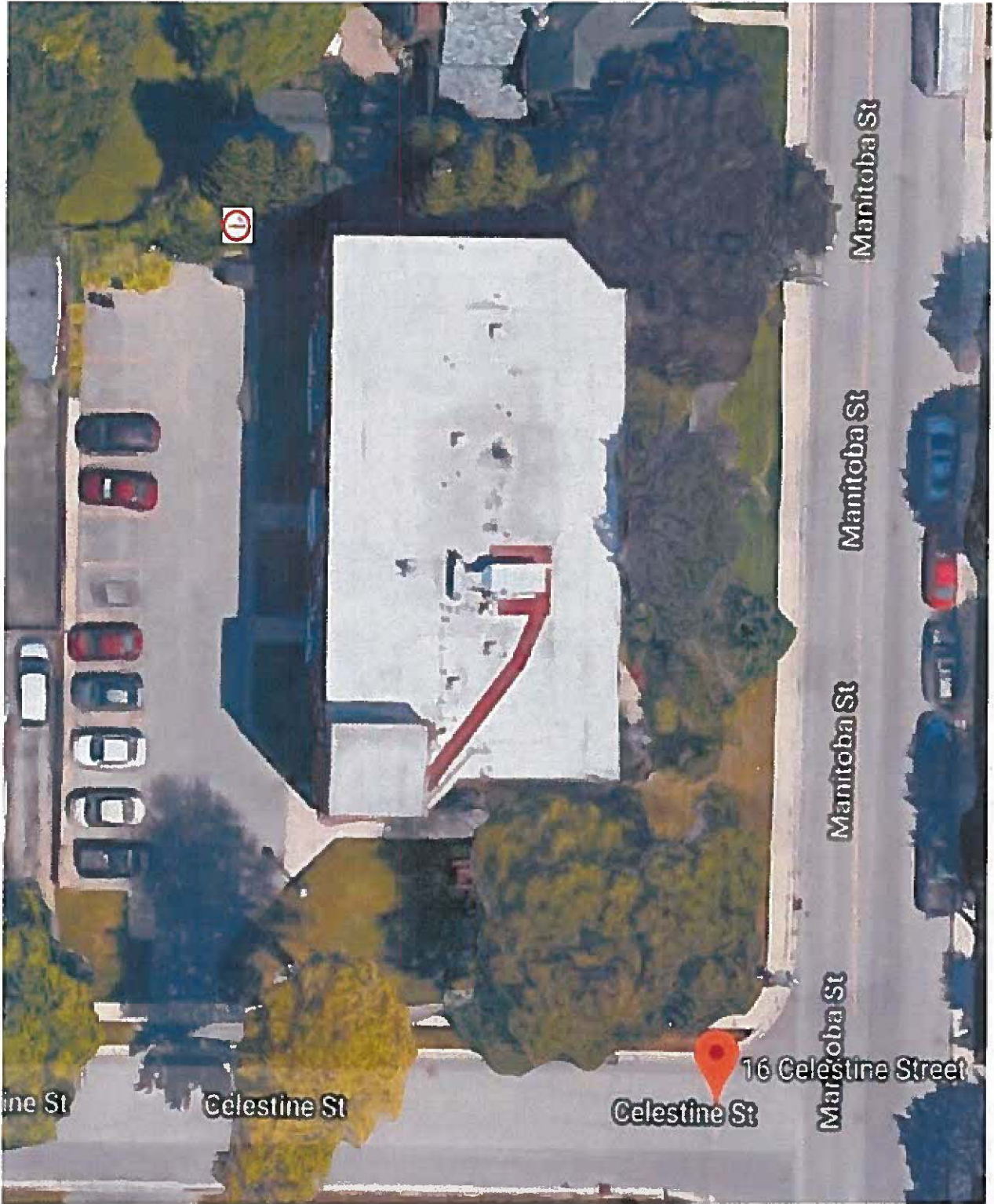
HOUSING

253 Ridout St., Rodney



HOUSING

16 Celestine Ave, St Thomas



HOUSING

144 Main St, West Lorne

