

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** January 23, 2015

**CASE NO(S):** DC000032  
D000121

**PROCEEDING COMMENCED UNDER** subsection 17(10) of the *Development Charges Act*, 1997, S.O. 1997, c. 27

Appellant: Bronte Creek Developments Inc.  
Subject: Complaint against a Council's refusal to recognize a credit claim for a development charge imposed  
Property Address/ Description: Lot 4, Concession 11  
Municipality: City of Hamilton  
OMB Case No.: DC000032-D000121  
OMB File No.: D000121

**PROCEEDING COMMENCED UNDER** subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Subject: Site Plan  
Referred by: Sierra Lane (2000) Developments Inc.  
Property Address/Description: Lot 4, Concession 11  
Municipality: City of Hamilton  
OMB Case No.: DC000032-D000121  
OMB File No.: PL090412

**PROCEEDING COMMENCED UNDER** subsection 51(43) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Sierra Lane (2000) Developments Inc.  
Subject: Conditions of approval of draft plan of subdivision  
Property Address/ Description: Lot 4, Concession 11  
Municipality: City of Hamilton  
Municipal File No.: 25 CDM 99004  
OMB Case No.: DC000032-D000121  
OMB File No.: PL090740

Heard: January 06, 2015 by telephone conference call

**APPEARANCES:****Parties****Counsel**

City of Hamilton

Michal Minkowski

Sierra Lane (2000) Developments Inc.

Scott Snider

**MEMORANDUM OF ORAL DECISION DELIVERED BY R. G. M. MAKUCH ON  
JANUARY 6, 2015 AND ORDER OF THE BOARD**

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[1] Counsel for the parties advised the Board that they had settled their differences and requested the Board to convene a settlement hearing via telephone conference call to finalize the settlement.

[2] It is noted that the appeal pursuant to s. 17(10) of the *Development Charges Act* had previously been withdrawn.

[3] The Board is satisfied based on the un-contradicted affidavit evidence of Ed Fothergill, the professional land use planning consultant for the Appellant, that the appeal pursuant to s. 51(43) of the *Planning Act* should be allowed.

[4] The City and Appellant have arrived at an agreement on a revised set of conditions for the proposed development and the Board is satisfied that such conditions adequately account for the necessary approvals and assurances regarding a private communal water and wastewater system and their incorporation into a Condominium Agreement.

[5] Furthermore, the Board is satisfied that the proposed conditions conform with the provincial plans that are in effect and are consistent with the Provincial Policy Statement, 2014. These also conform to the City's Official Plan and comply with the provisions of the City's zoning by-law and as such are reasonable and represent good land use planning.

[6] Accordingly, the appeal is allowed and the Board hereby approves the conditions of draft approval as set out in Attachment 1 hereto.

[7] The appeal pursuant to s. 41(12) of the *Planning Act* is adjourned in order to allow these conditions to be fulfilled by the Appellant.

*“R. G. M. Makuch”*

R. G. M. MAKUCH  
MEMBER

**Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

## **ATTACHMENT 1**

### **Proposed Draft Plan Conditions:**

1. That, prior to registration, the owner agrees to:
  - i) provide the Director of Water and Wastewater, Public Works Department with all documentation required to fulfill the monitoring plans required as part of the Ministry of Environment's Environmental Compliance Approval for the private communal water and wastewater systems. The City shall be satisfied that the performance of the communal systems meets all applicable provincial standards prior to the issuance of any building permits for the subject lands. The results of the monitoring plan may be peer reviewed, at the cost of the proponent.
  - ii) include the requirements of Condition 1 i) above in the Condominium Agreement to ensure that the future Condominium Corporation is similarly obligated to provide the communal water and wastewater system monitoring plan documentation to the City.
2. That, prior to registration, the owner provides the City with financial assurance for the operation, maintenance, capital replacement and management of the communal services systems. The financial assurance model will include the following, to the satisfaction of the Director of Water and Wastewater, Public Works Department:
  - i) an initial capital reserve payment to be held by the City throughout the life of the communal systems;
  - ii) an irrevocable Letter of Credit for the total cost of all on-site development works associated with the communal services system to be held by the City as security for the completion of said works; and,
  - ii) an agreement in writing by the owner that the Condominium declaration will include provisions obligating the future Condominium corporation to establish and maintain a reserve fund to cover the cost of the ongoing operation, maintenance, capital replacement and management of the communal services systems.
3. That, prior to registration, the owner agrees that should deeply buried archaeological remains be found on the property during any of the above

development activities the Ontario Ministry of Culture (MCL) should be notified immediately (416.314.7143). In the event that human remains are encountered during construction, the applicant/landowner should immediately contact both MCL and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Government Services (416.326.8392).”

4. That, prior to registration, the owner agree in writing to include the following warning clause in all agreements of purchase and sale:

*“Purchasers are advised that the City of Hamilton will not be providing maintenance or snow removal service for the private condominium road.”*

5. That, prior to registration, the owner agree in writing to include the following warning clause in all agreements of purchase and sale:

*“Purchasers are advised that the subject lands are designated as a Gravel and Sand Mineral Aggregate Area on Map No. 5 of the Hamilton-Wentworth Official Plan and as a Mineral Aggregate Resource Area on Schedule J to the Town of Flamborough Official Plan and as a Potential Gravel and Sand Mineral Resource Area in the City of Hamilton Rural Official Plan.”*

6. That the final plan of condominium comply in all respects, including finalization and registration of the Site Plan Agreement, related to this development.
7. That the Final Plan of Condominium comply with all of the applicable provisions of the applicable Zoning By-law.
9. That the Condominium Corporation be required to enter into and register on title the Agreement of the Condominium Corporation to assume and be bound by the Site Plan Agreement.

#### Development Engineering

10. That prior to registration of the Plan, the Owner be required to provide the City with a functional servicing report, road cross-sections, a grading plan and water & sanitary servicing details, all to the satisfaction of the Director of Development Engineering.
11. That prior to registration of the Plan, the Owner be required to submit a detailed Storm Water Management report for review and approval by the Director of Development Engineering and all other appropriate agencies with sufficient back-up information to verify that the storm water management

facility has been designed with a suitable outlet and in accordance with current storm water management guidelines.

12. That the Owner be required to incorporate a cul-de-sac design within the private road allowances on the Plan that includes a pavement radius of 13.0m at the bulb which is the minimum requirement to accommodate emergency and service vehicles.

### Conservation Halton

**City of Hamilton's standard conservation authority draft plan conditions remain applicable (i.e., 3.3 and 4.1 of the City's standard form subdivision agreement).**

#### Ontario Regulation 162/06

1. that the owner obtain a Permit from Conservation Halton, pursuant to Ontario Regulation 162/06, for any works (i.e., grading, filling, structures) within our regulated area, on- or off-site;

#### Stormwater Management

2. that the owner prepare and implement a detailed stormwater management report to the satisfaction of Conservation Halton and the City of Hamilton;

#### Grading

3. that the owner submit grading plans for all lots and blocks backing onto the watercourse/wetland/woodlot to the satisfaction of Conservation Halton and the City of Hamilton;
4. that the owner agree that if it is determined through detailed design that grade changes are required in order to accommodate development of lots/blocks adjacent to a watercourse/wetland/woodlot, this grade change must be accommodated outside of the buffer block and the lot lines adjusted accordingly, to the satisfaction of Conservation Halton and the City of Hamilton;

#### Securities

5. that the owner agree to post securities with the City of Hamilton to assure the rehabilitation of the wetland/watercourse/woodlot, in the event disturbance occurs during the development of the subdivision;

#### Fees

6. that the owner agree to pay any outstanding review fee of \$1400.00 to Conservation Halton;
7. that the owner submit the final clearance fee to Conservation Halton, pursuant to the City of Hamilton Memorandum of Understanding, immediately

prior to registration of the draft plan (note: if the development is phased, each phase will require a separate clearance fee); and

Other

8. that the annual operation reports required by the Ministry of the Environment, as per the Certificate of Approval (septic) and the Engineering Evaluation Report (water), are to be filed annually to Conservation Halton for its records.

**Existing conditions (modified) to be retained in new approval:**

*Planning*

1. That the owner agrees to deed, free and clear to the City of Hamilton, any easements that may be required for utility purposes.
2. That the owner convey an easement in favour of the Condominium Corporation to facilitate the maintenance of the leaching bed.
3. That the owner agrees to satisfy any requirements of the City of Hamilton, financial and otherwise.
4. That the developer be required, prior to registration of the condominium plan, to enter into a Condominium Approval Agreement with the City of Hamilton which shall provide, that as initial owner of the condominium units, the developer will cause the condominium corporation, upon its formation:
  - a) to enter into a Condominium Assumption Agreement to expressly assume the obligations to the Region in the Communal Systems Default Agreement dated January 28, 2000; such Agreement to be in a form satisfactory to Corporate Counsel; (the developer remains liable to perform its obligations to the City); and,
  - b) to Transfer to the Region an easement(s) in the common elements of the condominium plan(s) to carry out and enforce the City's rights pursuant to Communal Services Systems Default Agreement; such easement to be upon terms satisfactory to the Planning Division and to Corporate Counsel of the City of Hamilton.
- 4A. That the developer be required to enter into any applicable agreements with the City regarding the implementation of a vacant land plan of condominium to the satisfaction of the City.

*Canada Post*

5. That the owner agrees to provide Canada Post facilities as required by Canada Post Corporation to and to locate these facilities to the satisfaction of the City of Hamilton and Canada Post. The facilities are to be installed as part of the installation of Public Works.

*Bell Canada*

6. That the Owner covenants and agrees to provide the Manager of Engineering Design and Construction with evidence that satisfactory arrangements, financial and otherwise, have been made with a telecommunication service provider approved by the Canadian Radio and Telecommunication Commission (CRTC) to provide adequate telecommunication service to the lands within the approved Draft Plan, including 9-1-1 emergency calling service that identifies, at a minimum, the caller's name and location information.

*NOTE: Pursuant to Section 51(32) of the Planning Act, draft approval shall lapse if the plan is not given final approval within 3 years. However, extensions will be considered if a written request is received before the draft approval lapses.*