

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



**ISSUE DATE:** December 29, 2017

**CASE NO(S):** PL170632

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Garwood Homes Inc.  
Subject: Application to amend Zoning By-law No. 79-200 – Refusal of Application by the City of Niagara Falls  
Existing Zoning: Residential Single Family 1C Density (R1C) zone  
Proposed Zoning: Residential Single and two Family (R2) zone with site specific provisions.  
Purpose: To permit the construction of two semi-detached homes with a common private driveway  
Property Address/Description: 5065 Portage Road  
Municipality: City of Niagara Falls  
Municipality File No.: AM-2016-021  
OMB Case No.: PL170632  
OMB File No.: PL170632  
OMB Case Name: Garwood Homes Inc. v. Niagara Falls (City)

**PROCEEDING COMMENCED UNDER** subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Garwood Homes Inc.  
Subject: Proposed Plan of Subdivision  
Property Address/Description: 5065 Portage Road  
Municipality: City of Niagara Falls  
Municipal File No.: 26CD-11-2017  
OMB Case No.: PL170632  
OMB File No.: PL170633

**Heard:** November 23, 2017 in Niagara Falls, Ontario

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

Garwood Homes Inc.

J. Patrick Maloney

City of Niagara Falls

Ken L. Beaman

**DECISION DELIVERED BY PAULA BOUTIS AND ORDER OF THE BOARD**

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[1] Garwood Homes Inc., the Applicant, appeals a decision of the City of Niagara Falls Council (“Council”) not to approve a Zoning By-law Amendment (“ZBLA”) and Draft Plan of Condominium (“DPC”) regarding property located at 5065 Portage Road (“Subject Site”).

[2] The proposal is to build two semi-detached dwellings, for a total of four dwellings, divided into two blocks (Block A and Block B). These are to be developed as bungalows.

[3] Currently at the Subject Site is a detached home, an accessory building, and what appears to be a former tennis court. It fronts onto the west side of Portage Road, which is a collector road owned by the City. Portage Road intersects with Valley Way to the south and Morrison Street to the north.

[4] The Applicant proffered two witnesses, John R. Henricks, a land use planner with the Niagara Planning Group (NPG) Inc., and Ken Mech, who appeared under summons. Mr. Mech is the Manager of Current Planning for the City of Niagara Falls (“City”) and a professional land use planner. He has been employed with the City since 1987, first as a Planning Technician, then as a Planner, before becoming the Manager of Current Planning.

[5] The City, while contesting the appeal, did not proffer its own planning witness. Instead, the City focused its case on the issue of the Board's obligation to have regard to the decision of Council, in accordance with s. 2.1 of the *Planning Act* ("Act").

[6] Several residents appeared before the Board as participants, in opposition to the appeal. These were George Teibert, Ed Czaban, Jackie Sanche, Laura Leskiw and Kelsey Harvey. Of these, only Ms. Sanche is an adjoining neighbour, immediately to the south, at 5091 Portage Road. No one from the adjoining property to the north, at 5049 Portage Road, and no one from the three adjoining backyard homes on Shirley Avenue attended to speak to the proposal.

[7] After a fulsome review of the evidence, the Board allows the appeal, with one amendment to the proposed ZBLA and one amendment to the proposed DPC conditions, as fully described in these reasons.

## **EVIDENCE AND ANALYSIS**

### **Planning Framework**

[8] In every decision the Board makes, the Board must have regard to matters of provincial interest addressed in s. 2 of the Act. These include the orderly development of safe and healthy communities, the adequate provision of a full range of housing, and the appropriate location of growth and development.

[9] In accordance with s. 3(5) of the Act, the Board's decision must be consistent with the Provincial Policy Statement, 2014 ("PPS") and the Growth Plan for the Greater Golden Horseshoe, 2017 ("2017 Growth Plan"). Council has the same obligation under this section of the Act.

[10] Zoning by-law amendments must also conform to the Niagara Region Official Plan ("Regional OP") and the City's Official Plan ("OP").

[11] The DPC must also satisfy the provisions of s. 51(24) of the Act, specifically regard must be had to the numerous provisions listed in that section, including whether the proposed plan conforms to official plans, is in the public interest, and the suitability of the land for the purposes for which it is to be subdivided.

[12] Also as noted earlier, the Board must also have regard to the decision of Council, in accordance with s. 2.1 of the Act.

### **Subject Site Context and Application**

[13] The Subject Site sits on what appears to be two lots that merged in title at some point in the past. The southerly lot of the merged lots is an irregular shape, with a very small frontage onto Portage Road, widening out, something like a triangle, into the backyard going west. The northerly lot of the merged lots is more rectangular in shape, though also irregular, and does not have as deep a backyard as the southerly portion. Several lots to the south of the Subject Site along Portage Road, like the Subject Site, are deeper than other lots in the area (Exhibit 1A, Tab 1).

[14] The Subject Site, consisting as it does of two merged lots, is bigger in area than most if not all of the surrounding residential lots. Mr. Henricks testified that the Subject Site is approximately 2,430 square metres ("m<sup>2</sup>") or 0.6 acres in area.

[15] Mr. Henricks commented that the lot fabric in the area is a bit varied, with Portage Road being a bit older, and as noted, having lots that are quite a bit deeper. He indicated there could be some opportunity for more intensification, but probably not in the near term. The Board notes that there do not appear to be other lots in the area of the size before it in this proposal. For intensification of this type or greater to occur, lot assemblies would likely be necessary. As described later in these reasons, a lot assembly was contemplated, but later abandoned, for redevelopment of the Subject Site and the property immediately to its south at 5091 Portage Road.

[16] The surrounding neighbourhood is predominantly detached homes. In addition, at 5130 Portage Road, a two-storey apartment complex owned by Niagara Regional Housing is accessed from the east side of Portage Road and lies behind single detached dwellings. The north end of this complex is immediately opposite the Subject Site, with the home at 5062 Portage Road between the complex and the Subject Site. Further south on the east side of Portage Road is another apartment building at Valley Way.

[17] The area otherwise has institutional uses, including a hospital and a church.

[18] The proposed semi-detached dwellings will be in two blocks: Block A and Block B and will not, like the detached homes on the street, have dwelling faces oriented towards Portage Road like a typical detached dwelling.

[19] Block A and B are to be configured in something of an L configuration on the Subject Site. Block A is closest to Portage Road on the north side of the lot. Units 1 and 2 in Block A run parallel to the side lot line of the property to the north (5049 Portage Road) with entrances and garages facing south towards the interior of the lot.

[20] Block B Units 3 and 4 are more southerly on the lot and face Portage Road, though well back from it and not easily visible from the road. Their rear yards run parallel to the lot line of the backyards of 5110 and 5122 Shirley Avenue, on the west end of the lot. The backyards of Block B units will be buffered by space and trees, and a privacy fence at the back.

[21] Unit 1, which is part of Block A, is the closest to and will be visible from, Portage Road. The east elevation of Unit 1, though it will be the side of a semi-detached home, is designed to appear as though it is the front of a detached dwelling (Exhibit 1A, Tab 5). This design is intended to ensure that the development is compatible with the character of the streetscape.

[22] Units 2, 3 and 4 will have walk-out components. Unit 2 will have a side walk out to the back. Units 3 and 4 have rear walk outs. Unit 1, which will be closest to Portage Road, has no walk out.

[23] All the units face onto a long driveway which will be used to access and exit the Subject Site. This became a point of some concern at the hearing by Ms. Sanche, who lives on the lot immediately south of the Subject Site at 5091 Portage Road. Ms. Sanche's side yard will abut the driveway and Units 1 and 2 will directly face her side yard. She was concerned she would see cars and lights facing her bedroom window. In addition, one of the units in Block B would be approximately 1 metre ("m") from her chain-link fence in her back yard. Ms. Sanche was also concerned about having 8 cars entering and existing next to her property. She was also concerned about snow removal and having it piled up along her driveway.

[24] The Applicant's lawyer asked Ms. Sanche about the fencing, for which there is a draft condition in relation to the DPC. He asked if it would be her preference to have the fence extended to the same location as the existing fence. The condition as initially drafted would have had it go no further east than the front of Block B. The Applicant has proposed to amend this condition (condition 7) to allow the fence to go beyond Block B, but be no less than 34 m west of the front lot line. This will allow for a suitable connection with the existing privacy fence found at 5091 Portage Road.

[25] Ms. Sanche understood that while the fence could go beyond that point (i.e. closer to the street along her lot line), she did not want to affect trees on the property beyond that location. As a result she would accept a fence at the point proposed. In addition, the Board heard evidence that Ms. Sanche is entitled to build her own fence up to 8 m from Portage Road and could extend the fence if she ultimately wanted to do so.

[26] On cross-examination by the City's lawyer, Mr. Mech was asked about the headlight concern and if he had any thoughts on the configuration. He was asked, "Do you predict parties using [the Subject Site] would point their cars south"? Mr. Henricks

answered, "Not likely. They'd be pulling into the driveway, then back out and leave in a forward direction".

[27] Another point of concern raised by participants related to the removal of trees on the Subject Site to accommodate the development. Some questioned whether the trees that had already been removed really were unhealthy, as suggested by Tomahawk Tree Service (Exhibit 1A, Tab 19). Whether or not the trees were unhealthy, the City's tree by-law relates to woodlots and as a result, trees on this property are not regulated. As such, the condition of these trees, and their removal, is of no moment.

[28] Nonetheless, it was Mr. Henricks' view, supported by Tomahawk Tree Service, that the removal of some trees will provide a better opportunity for growth of the remaining trees. Further, new trees are also intended to be planted, as proposed on the site plan (Exhibit 1A, Tab 4).

[29] The history of the Application is of some interest, in so far as it implicates the property to the south at 5091 Portage Road, which is a heritage home that is about 200 years old, as described by Ms. Sanche. Mr. Mech indicated that the initial application was proposed to include 5091 Portage Road and was proposed to be an eight unit development, including townhouses and semi-detached dwellings (Exhibit 7). Mr. Mech indicated that staff wanted to see the heritage home at 5091 Portage Road incorporated into the development rather than removed.

[30] Subsequent to that, we now have what is before the Board, which does not include the lands at 5091 Portage Road and is only four dwellings, in the form of two semi-detached blocks. The Applicant was directed to apply for an R2 zone, being a residential single and two family zone, and then make site-specific amendments to the zoning by-law to allow for the development contemplated, i.e. to allow for two semi-detached homes rather than just one on the lot, along with other appropriate modifications. Current zoning is R1C, which permits single family homes.

[31] Initially the applicant intended to proceed by way of consent to sever once the zoning by-law amendment was adopted (Exhibit 1A, Tab 9), but then concluded a draft plan of condominium would make more sense to address servicing allocation to the site.

[32] To accommodate a storm sewer located north of Unit 3 (Exhibit 1B, Tab 35), an amendment to the rear yard depth is required to reduce it from the required 7.5 m to 5.8 m to accommodate one corner of Block B, as it angles slightly into the rear yard. It is not at 5.8 m throughout the rear yard, but at its shortest point is 5.8 m.

### **Council's Refusal to Approve the Applications**

[33] Though City Staff drafted a report in favour of the applications (Exhibit 1B, Tab 35), Council refused them.

[34] Council's reasons for declining to approve the ZBLA and the DPC were the following (Exhibit 1B, Tab 39):

Council was of the opinion that the proposed development was out of character with the surrounding neighbourhood, would generate additional traffic, cast shadows on neighbouring properties and would adversely impact the drainage of surrounding dwellings.

[35] The Staff report referenced comments of various reviewing agencies and City bodies, as well as comments from the Regional Municipality of Niagara ("Region").

[36] The Region concluded that the proposal met applicable provincial policies and otherwise requested standard conditions as part of the DPC. Transportation Services for the City was supportive on the basis that the four units will be accessed by a single driveway and the drivers will be able enter and exit the site in a forward direction. Municipal Works advised it could provide the servicing through a single connection, though sought a storm water management brief matching post-development flows with pre-development flows for a five year storm event.



[37] Fire Services, Enbridge Gas, Bell Canada and Canada Post had no objections, but requested particular conditions be included in relation to the DPC.

[38] City Staff comments indicated that this development was in compliance with the OP for the City, which allows a variety of housing types to be developed on collector roads, including semi-detached homes. Staff concluded that the proposed dwellings would be similar to others in terms of density, building mass, setbacks and appearance.

[39] Regarding the zoning, City Staff comments included the following:

- a. the development exceeded the standard zoning requirements for the minimum lot area and frontage, and will blend in with the existing lot fabric;
- b. The generous front yard depth will maintain landscaping along Portage Road and will help the proposal achieve compatibility with the surrounding neighbourhood
- c. The 6 m setback along the north property line (which will abut with the side yard at 5049 Portage Road) will provide adequate amenity space for the future residents

[40] Staff also noted the comments from concerned residents regarding removal of trees, traffic, fencing and shadowing. They noted that the City does not have a tree by-law applicable to this situation and suitable fencing was anticipated.

[41] The Staff report did not comment on shadowing in the report. The Board notes there was no shadow study before it and the height of the proposed homes could not exceed the existing zoning by-law standard of 10 m in any event, as the ZBLA did not amend this standard. Impacts relate not to impacts that could occur by complying with an existing standard, but those which might arise as a result of a variance.

[42] Mr. Mech in oral testimony advised that he noted based on the photographs he took personally earlier in the week, that the north home currently experiences shadowing. Even in the absence of a formal study, given his experience with shadow

studies in the municipality, it was his professional opinion that the proposed development would result in an improvement as it relates to shadowing. The dwellings will be separated by 6 m from the north lot's property line, they are bungalows and will have a pitched roof.

[43] Despite the evidence that adverse shadow impacts were not likely to occur, during the hearing the Applicant offered that the proposed ZBLA could be amended to indicate a maximum height limit of 9 m for the dwellings, as the Applicant had no intention to go above 9 m in any event. As a result, the Board directs City Staff to add that maximum height limit as item 5 (g) to the ZBLA.

[44] At the hearing, Mr. Mech reviewed more fully with the Board responses from the commenting agencies and City departments.

[45] Regarding traffic, Transportation Services noted staff support for street access by a single driveway, which would allow for an exit in a forward direction. This is uncommon for Portage Road. Mr. Mech testified this constitutes a safer exit route than backing onto the road, though this was disputed by a participant, Mr. Teibert, who considered backing onto the road was safer as people would move more slowly and will look before they entered onto the street; it was his view that people driving in a forward direction would simply drive out without looking.

[46] Transportation Services also noted that that section of Portage Road was serviced by a daytime bus route. Transportation Services did not seek a road widening. Mr. Mech commented that they did not seek traffic study and likely this is because the additional volumes would be so minor that a study was not warranted.

[47] Mr. Mech confirmed that the sewers could handle the increased demand and a proper grading plan would be prepared by the Applicant and reviewed by the City, addressing drainage concerns raised by residents.

[48] Matters regarding waste collection have also been addressed, and the Applicant understands that if it wishes to rely on public waste collection services, it must meet the rules for that. This means each unit will have to place their waste and recycling at the Portage Road curbside, like other homes on the street, some of which also have long driveways. If they wish to do something else, then private pick up will have to be arranged.

[49] Mr. Mech commented that regarding snow removal, he understood the Applicant intends that snow will be stored between Blocks A and B where the catch basin will be at the north west corner of the property.

[50] Regarding density concerns raised by Council in its refusal, Mr. Mech indicated that he did not share that concern. He noted, the proposal is “comparable to a single family dwelling on Shirley” and the Subject Site has almost double the required minimum lot area. While the City’s OP doesn’t focus intensification in this area, there are opportunities to make better use of the Subject Site. He considered this particular property to be exceptional in the neighbourhood, but further opportunities might arise if people assembled land. He anticipated more intensification in other locations however.

[51] Mr. Henricks took the Board through the applicable provincial policies, the Regional OP, City OP, the zoning by-laws, the proposed ZBLAs, and tests under the Act that apply to minor variances.

[52] It would be hard to dispute that this proposal is consistent with the PPS and conforms to the Growth Plan. The thrust of both policy instruments is to ensure that development is on a “go forward” more intense, more compact, within the urban boundary, uses land and infrastructure efficiently, and promotes an appropriate range of residential uses, among other goals to achieve “complete communities”.

[53] The Region’s OP indicates that Niagara Falls has an intensification target of 40 percent (“%”). The City is currently a little under that, at 36%. This proposal will assist

the City in reaching its target. Mr. Henricks was satisfied that the proposal conformed to the Region's OP.

[54] This is not to say that every intensification proposal is acceptable. The OP of the City, like many OPs, requires that development be designed to integrate into the surrounding neighbourhood (OP Policy 1.15) or be compatible with it. It is in this way that the local community maintains control over development, while still being required to make decisions that are consistent with or conform to, as required, provincial planning instruments.

[55] This issue, feeling as though the local area residents had no control over what is happening in their neighbourhood, was a point of concern amongst the participants and was particularly articulated by Ms. Harvey, who resides on Shirley Avenue, though not immediately behind the Subject Site. However the Board cannot find, based on the evidence, that this development is unresponsive to the local needs of the community. It is simply a change, but it is not an inappropriate one.

[56] OP Policy 1.15.1 requires that "residential development, intensification and infilling shall blend into the lot fabric, streetscape and built form of a neighbourhood".

[57] As Mr. Henricks testified, being compatible is not to be confused with being "the same as". Mr. Mech indicated that the development can "co-exist" with the neighbourhood. He testified that he typically considers building mass, setbacks, and composition of land uses for compatibility. It was his opinion that the project was "completely sensitive to the form of housing we see in the neighbourhood". He did not share Council's concerns about character. A great deal of care appears to have gone into the design of this project, specifically to ensure compatibility.

[58] There also seemed to be a concern about precedent. As earlier noted in these reasons, and as echoed by Mr. Mech, this parcel's size is unique in this area. Similar development would likely require a land assembly to proceed. Indeed an earlier

proposal contemplated a land assembly with 5091 Portage Road, but it appears this was not likely to succeed in light of that property's heritage status, or at the very least, it had no prospect of proceeding if the current owner was unwilling to sell.

[59] Ultimately, each proposal is considered on its merits, and each will be carefully scrutinized, as this one so very clearly was by the City's staff.

[60] Policy 1.15.3 indicates that, "Generally, development within the Built-Up Area should be at a higher density than what currently exists in the neighbourhood. A harmonious mix of single and multiple accommodation will be encouraged through the Built-Up Area so that at any one time a variety of housing types will be available and suitable for different age groups, household sizes and incomes."

[61] More generally, the City's OP designates the Subject Site as residential. It notes at Policy 1.1, "Predominant uses shall include single detached and semi-detached dwellings, duplexes, triplexes, quadruplexes, townhouses, apartments, group homes and other forms of residential accommodation." In short, everything that one can consider a residential form of dwelling is acceptable.

[62] In accordance with Policy 1.2, the City is to provide opportunities for choice of housing, and in order to achieve this, the City "shall support" multiple unit developments, smaller lots sizes and innovative housing forms; development of vacant land and more efficient use of under-utilized parcels and existing housing stock; and the full utilization and consolidation of properties to achieve larger scale and more comprehensive residential development."

[63] The City's OP seeks that in accordance with Policy 1.15.5, residential development is to be set at a net maximum density of 40 units per hectare and a minimum net density of 20 units per hectare. New housing forms are to be of a height and massing and to provide setbacks that are in character with the surrounding neighbourhood. This proposal sits at 16 units per hectare on a generous lot for two

blocks of semi-detached bungalows and is already considered to be overdevelopment by the participants, despite being slightly under what the OP requires.

[64] Given the clear direction of the City's OP, and in light of Mr. Henricks' and Mr. Mech's uncontradicted evidence, the Board concludes the proposal conforms with the Region's and City's OP; with regard to the latter, the proposal achieves the necessary obligation of integration with the surrounding neighbourhood.

[65] Regarding the DPC, with reference to s. 51(24) of the Act, Mr. Henricks was satisfied that the matters referenced there, and by incorporation the matters referenced in s. 2 of the Act (matters of provincial interest), are properly regarded to. Section 51(24) requires the Board to have regard to various matters, including whether the proposal conforms with applicable OPs, whether the proposal is in the public interest, the suitability of the land for the purposes in which it is to be subdivided, and the adequacy of utilities and municipal services.

[66] In respect of s. 2 matters of the Act, Mr. Henricks testified the proposal represents the orderly development of safe and healthy communities; responds to the adequate provision of a full range of housing; is an appropriate location for growth and development; and promotes a built form that is well designed.

[67] Mr. Mech testified that the purpose of the conditions regarding the DPC was to ensure, for example, that the site would be properly serviced and that grading would be appropriate. Other conditions are included, like suitable fencing. A condition for parkland was included to direct funding to parks development.

[68] In respect of the concerns raised by residents, it was Mr. Mech's opinion that residents' concerns about traffic were not substantiated so no conditions exist for that. Fencing is addressed and a landscape plan will be required. Mr. Mech had no concerns with the proposed amendment to the fencing condition to better address Ms. Sanche's concerns.

[69] Mr. Henricks, in response to a question in cross-examination, indicated that in his professional opinion, the Council's decision was not consistent with the provincial instruments in place. This was despite the requirement under s. 3(5) of the Act that councils are obligated to make decisions which conform to or are consistent with, as the case may be, such provincial policies or plans. Nor was it consistent with the City's own OP.

[70] Mr. Mech testified that he considered the development to be good land use planning and supported both the ZBLA and the DPC, with the conditions. He considered the proposal to constitute compatible infill, representing good land use planning and to be in the public interest.

[71] The Board finds that the concerns raised by the residents have been addressed by the City.

[72] In so far as the Board is obligated to have regard to the decision of Council, it has carefully considered the decision of Council. Council's decision does not meet the requirements of s. 3(5) of the Act. Any measure of deference the Board may be obligated to provide is limited by s. 3(5) of the Act and "have regard to" does not, in any event, require a high degree of deference on the part of the Board. The evidence simply does not support the conclusions drawn by Council when it refused to approve the ZBLA and DPC.

[73] The Board concludes, on the basis of the evidence, that the proposal is consistent with the PPS, conforms to the 2017 Growth Plan, the Regional and City OP; and the DPC properly responds to the enumerated items referenced s. 51(24). The proposal constitutes good planning and is in the public interest.

**ORDER**

[74] For the foregoing reasons, the Board allows the appeal. The Board approves the zoning by-law amendment found at Exhibit 1B, Tab 38, subject only to the additional amendment noted in paragraph 43. It further approves the draft plan of condominium, as found at Exhibit 1A, Tab 4, subject to the conditions in Attachment 1.

[75] The Board so orders.

*“Paula Boutis”*

PAULA BOUTIS  
MEMBER

If there is an attachment referred to in this document  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Ontario Municipal Board**

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# ATTACHMENT 1

## Conditions for Draft Plan Approval (as amended by the Ontario Municipal Board)

1. Approval applies to the Draft Plan of Vacant Land Condominium prepared by Matthews, Cameron, Heywood — Kerry T. Howe Surveying Ltd., dated February 8, 2017, showing 4 units of vacant land as well as a common private driveway and amenity areas.
2. The developer submit to the City's Senior Zoning Administrator all necessary drawings and information, including, but not limited to, site, elevation and landscaping drawings to confirm zoning compliance.
3. The developer provide five copies of the pre- registration plan to Planning, Building Development and a letter stating how all the conditions imposed have been or are to be fulfilled.
4. The applicant demolish the existing dwelling and the accessory structure on the property.
5. The developer enter into a Vacant Land Condominium Agreement with the City, to be registered on title, to satisfy all requirements, financial and otherwise, related to the development of the land. Note: Should any other body wish to have its conditions included in the Vacant Land Condominium Agreement, they may be required to become party to the Vacant Land Condominium Agreement for the purpose of enforcing such conditions.
6. The developer submit a Solicitor's Certificate of Ownership for the Condominium land to the City Solicitor prior to the preparation of the Vacant Land Condominium Agreement.
7. The developer provide details of fencing to the satisfaction of Parks Design. Closeboard fencing shall be provided along the westerly property line, along the northerly property line to within 8 metres of the front lot line, and along the southerly property line, ~~but no further east than the front of "Block B".~~ to a point beyond the front of Block B but no less than 34 metres west of the front lot line, allowing for a suitable connection with the existing privacy fence found on 5091 Portage Road.
8. The developer provide a landscape plan, prepared by a Landscape Architect (OALA), showing fencing, any entrance features, streetscape treatment, internal landscaping, patio details, driveway locations, and any garbage collection areas.
9. The developer pay the City cash- in- lieu of 5% parkland dedication.
10. The roadways, services, lot grading and construction shall all be designed and constructed in accordance with City standards. Any sidewalks damaged during construction shall be replaced by the developer.
11. The developer submit a lighting plan prepared by a professional engineer. Design is to be independently powered and metered. Photometric plans to be submitted demonstrating zero impact on neighbouring properties.

12. The developer provide the proposed site servicing and grading scheme for the subject property to the City' s Municipal Works Department for review and comment prior to approval of the plans for construction.
13. The developer pay the applicable development charges, if any, in place at the execution of the Vacant Land Condominium Agreement and at Building Permit issuance in accordance with By- law No. 2014- 87, as amended.
14. The developer pay to the City the applicable required fees for administration.
15. The developer ensure that the existing municipal infrastructure will adequately service the development as proposed. All underground services within the subject lands shall be designed and constructed in accordance with City standards. A functional servicing brief is required to address water, sanitary and storm water management for the development.
16. That the following condition be placed in the Vacant Land Condominium Agreement:

"Owners shall be required to have their Engineering Consultant provide written acceptance that the works completed conform with the City's accepted drawings and in accordance with NPSCD and City construction specifications."
17. The developer submit a request to the Fire Department to designate through municipal by-law a fire access route on the property, provide a drawing illustrating the fire route' s compliance with sections 3. 2. 5.4., 3. 2. 5.5. and 3. 2. 5.6. of the Ontario Building Code and post the necessary `no parking' signs. NOTE: parking shall be prohibited on both sides of the access road.
18. The developer agree in the Vacant Land Condominium Agreement, in words satisfactory to Bell Canada, to grant to Bell Canada any easements that may be required, which may include a blanket easement, for communication/telecommunication infrastructure. In the event of any conflict with existing Bell Canada facilities or easements, the developer shall be responsible for the relocation of such facilities or easements.
19. The developer meet the requirements of Enbridge Gas Distribution with respect to the provision of their facilities to the subject lands including providing necessary easements, any necessary relocation of the gas main, provision of an exclusive use location for a pressure reducing regulator station, installation of gas piping and subsequent completion of landscaping, grading and paving, and service and meter installation details.
20. That a Community Mail Box (CMB) be located adjacent to Unit 1 facing south and the internal road, and that the developer identify this site on a display in the sales office prior to offering any units for sale.
21. The developer include in all offers of purchase and sale, a statement that advises the prospective purchaser that the mail delivery will be from a designated Community Mail Box

(CMB) and that the developer be responsible for officially notifying the purchasers of the exact CMB locations and easements granted to Canada Post prior to the closing of any home sales.

22. The developer satisfy all requirements of Canada Post regarding temporary and permanent CMB locations and associated works, engineering servicing drawings, installation, notification of the start of construction and providing mail service information to property owners.
23. If waste is not brought to the curbside of Portage Road and/ or if waste exceeds the collection limits of 1 bag/ container and unlimited bins of recycling and compost per unit:

- a. That private waste collection be provided by the condominium corporation, as the site layout does not meet the Niagara Region' s Corporate Policy for Requirements for Commencement of Collection for waste.
- b. That the following clause be included in the Condominium Agreement to survive closing;

“The Owner agrees to include the following clause in all Offers and Agreements of Purchase and Sale or Lease for all units;

‘Purchasers/Tenants are advised that due to the site layout, waste collection for the development will be provided through a private waste collector arranged by the Condominium Corporation and not Niagara Region.’ ”

24. Prior to granting final plan approval, the City must be in receipt of written confirmation that the requirements of each condition have been met and all fees have been paid to the satisfaction of the Niagara Region.
25. Prior to final approval for registration, a copy of the draft condominium agreement for the proposed development should be submitted to the Niagara Region Planning and Development Services Department (Development Services Division) for verification that the appropriate clauses pertaining to any of these conditions have been included. A copy of the executed agreement shall be provided prior to registration.
26. As required as part of the aforementioned Conditions of Approval, the format for all studies and reports to be submitted to the Niagara Region shall be one hard copy and a PDF digital copy.

### **Clearance of Conditions**

Prior to granting approval to the final plan, Planning, Building & Development requires written notice from applicable City Divisions and the following agencies indicating that their respective conditions have been satisfied:

Planning Division for Conditions 1 to 4 ( inclusive)

Legal Services for Conditions 5 and 6  
Municipal Works Department for Conditions 7 to 16 ( inclusive)  
Fire Services for Conditions 17  
Bell Canada for Condition 18  
Enbridge Gas for Condition 19  
Canada Post for Conditions 20 to 22 ( inclusive)  
Regional Niagara Public Works Department for Conditions 23 to 26 ( inclusive)