

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: February 24, 2020

CASE NO(S):

PL180941

PL180779

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Myer Salt Limited, Stanley Zelco Limited and
2114856 Ontario Inc.
Appellant: Washington Mills Electro Minerals Corporation
Subject: Proposed Official Plan Amendment No. 131
Municipality: City of Niagara Falls
LPAT Case No.: PL180941
LPAT File No.: PL180941
LPAT Case Name: Myer Salt Limited et al v. Niagara Falls (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Myer Salt Limited, Stanley Zelco Limited and
2114856 Ontario Inc.
Appellant: Washington Mills Electro Minerals Corporation
Subject: By-law No. 2018-118
Municipality: City of Niagara Falls
LPAT Case No.: PL180941
LPAT File No.: PL180942

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

Appellant: Myer Salt Limited, Stanley Zelco Limited and
2114856 Ontario Inc.
Appellant: Washington Mills Electro Minerals Corporation
Subject: Proposed Plan of Subdivision

Property Address/Description: South side of Marineland Parkway, opposite
Ailanthus Avenue
Municipality: City of Niagara Falls
Municipal File No.: 26-CD-11-2017-006
LPAT Case No.: PL180779
LPAT File No.: PL180779
LPAT Case Name: Myer Salt Limited v. Niagara Falls (City)

Heard: September 30, 2019 by telephone conference
call

APPEARANCES:

Parties

Counsel

Myer Salit Limited, Stanley Zelco
Limited and 2114856 Ontario Inc.

Brian Duxbury

Washington Mills Electro Minerals
Corporation

Patrick Maloney

Land Ridge Developments Ltd.

Robert Di Lallo

City of Niagara Falls

Tom Halinski

**MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON
SEPTEMBER 30, 2019 AND ORDER OF THE TRIBUNAL**

[1] Land Ridge Developments Ltd. (“Applicant”) applied for Official Plan and Zoning By-law Amendments and for Draft Plan of Vacant Land Condominium approval to the City of Niagara Falls (“City”) Council to facilitate a proposed development on the south side of Marineland Parkway and east of Alex Avenue (“subject property”).

[2] On August 14, 2018, City Council approved the Applicant's draft Plan of Vacant Land Condominium ("Draft Plan").

[3] On November 13, 2018, Council passed By-law No. 2018-117 which provided for the adoption of Official Plan Amendment No. 131 ("Official Plan Amendment") and it passed Zoning By-law No. 2018-118 ("Zoning By-law Amendment") amending Zoning By-law No. 79-200.

[4] On September 10, 2018, Myer Salit Limited, Stanley Zelco Limited and 2114856 Ontario Inc. (collectively "Salit Steel") and, on September 12, 2018, Washington Mills Electro Minerals Corporation ("Washington Mills") appealed Council's approval of the Draft Plan and associated Draft Plan conditions.

[5] On December 3, 2018, Washington Mills, and on December 5, 2018, Salit Steel appealed Council's passage of the Official Plan and the Zoning By-law Amendments.

[6] A Pre-hearing Conference ("PHC") for the Draft Plan appeals and a Case Management Conference ("CMC") for the Official Plan and Zoning By-law Amendment appeals were scheduled for September 30, 2019.

[7] On July 19, 2019, Washington Mills sent correspondence to the Tribunal stating that the Parties had reached a proposed settlement of the Official Plan and Zoning By-law Amendment appeals. It requested that the CMC scheduled for September 30, 2019 be converted to a settlement hearing.

[8] On September 27, 2019, the Tribunal converted the CMC to a settlement hearing and directed that it and the PHC for the Draft Plan appeals be heard by telephone conference call ("TCC") on September 30, 2019.

[9] At the commencement of the TCC on September 30, 2019, the Parties informed the Tribunal that they had reached a proposed settlement of all of the appeals, including the Draft Plan appeals.

[10] At the TCC, the Tribunal granted party status to the Applicant on consent for each of the proceedings. Given that the Applicant is the owner of the subject property and the applicant for each of the instruments under appeal, the Tribunal finds that there are reasonable grounds to add the Applicant as a Party to each of the proceedings. The Tribunal notes that as the Official Plan and Zoning By-law Amendment appeals were disposed of by oral decision on September 30, 2019 (i.e. before November 15, 2019), Ontario Regulation 382/19 does not apply to these proceedings and the hearing procedures of the *Local Planning Appeal Tribunal Act, 2017* as they stood prior to September 3, 2019 do not apply. The Tribunal notes that, in any event, if those procedures did apply, the Applicant did file satisfactory written submissions requesting party status to the Tribunal more than 30 days prior to the CMC and the Tribunal elected to have the Applicant's planner provide opinion evidence on the proposed settlement in accordance with those procedures.

EVIDENCE AND SUBMISSIONS

[11] The Tribunal heard opinion evidence from John Henricks on behalf of the Applicant in support of the proposed settlements. Mr. Henricks was qualified to provide opinion evidence in the area of land use planning.

[12] Mr. Henricks stated that the proposed Draft Plan and conditions and Official Plan and the Zoning By-law Amendments are to facilitate the development of townhouse and apartment dwellings on the subject property. The Applicant proposes building 42 townhouse dwelling units and an eight-storey apartment building with 122 units. The proposed Official Plan Amendment would add a Special Policy Area designation to permit both townhouse and apartment dwellings on the subject property. The Zoning

By-law Amendment would rezone it from site-specific Residential Apartment 5C Density (R5C -819) to Residential Apartment 5C Density (RSC-1079) zone with regulations, adding townhouses as a permitted use and regulations for lot area, rear yard depth, side yard width, lot coverage, building height, and privacy yard depth.

[13] Mr. Henricks stated that Salit Steel and Washington Mills have industrial facilities just over 300 metres (“m”) to the southeast of the subject property. They raised noise and land use compatibility concerns in their appeals. Mr. Henricks said that to address these concerns, the proposed Draft Plan conditions have been revised to include noise mitigation measures, including the installation of windows to address noise, central air conditioning for each residential unit, and noise warning clauses in the condominium agreements. He also stated that rooftop landscape features and tinted windows would be included to provide a buffer from views of the nearby industrial facilities. He said the proposed development addresses the Ministry of Environment, Conservation and Parks’ noise guidelines, including Policy D-6 on Compatibility between Industrial Facilities, which guides municipalities on the types of land uses that are appropriate near industrial areas and NPC-300 on Stationary and Transportation Sources. He reiterated that the proposed development would be at least 300 m from the nearby industrial facilities, which satisfies the setback requirements in Policy D-6. He said the Applicant retained noise experts who conducted a noise study regarding the subject property. They concluded that noise impacts from the nearby industrial facilities would be within acceptable limits.

[14] Mr. Henricks stated that the proposed Draft Plan and conditions, Official Plan Amendment, and Zoning By-law Amendment have regard to matters of provincial interest in s. 2 of the *Planning Act*. He stated that the proposed development would provide a range of housing options, is in an appropriate location for growth, and would have no impacts on ecological systems, including local woodlots.

[15] Mr. Henricks opined that the proposed Draft Plan and conditions and Official Plan and Zoning By-law Amendments are consistent with the Provincial Policy Statement, 2014 (“PPS”). He said they represent effective and resilient land-use planning. He said the subject property is located in a settlement area under the PPS, municipal services are available and transit is close by, and the proposed development is appropriately designed and buffered. He said the proposed instruments provide for an appropriate housing type that is compatible with surrounding land uses and facilitate development on an under-developed site.

[16] Mr. Henricks opined that the proposed Draft Plan and conditions and Official Plan and Zoning By-law Amendments conform with the Growth Plan for the Greater Golden Horseshoe, 2019 (“Growth Plan”). He said the subject property is located in a built-up area and is an appropriate site for development. He said there are no agricultural lands nearby.

[17] Mr. Henricks stated that the proposed Draft Plan and conditions and Official Plan and Zoning By-law Amendments conform with the Niagara Region Official Plan, which designates the subject property as “Urban” and permits residential intensification and infill development.

[18] Mr. Henricks stated that the proposed Draft Plan and conditions and Official Plan and Zoning By-law Amendments conform with City’s Official Plan. He said the subject property is on an arterial road facilitating access to transit and it is in an area in which municipal water and sanitary services are provided and intensification is permitted. He said the proposed development would be compatible with surrounding uses and provides transition from low density housing to the south and apartment housing to the north.

[19] Mr. Henricks stated that the proposed Draft Plan has regard to the criteria set out in s. 51(24) of the *Planning Act*. He stated that the proposed Draft Plan conforms to the applicable official plans, addresses municipal services and school sites, raises no conservation or flooding issues, and is in the public interest. He said the proposed Draft Plan conditions are reasonable and appropriate.

[20] Salit Steel, Washington Mills and the City did not call evidence. They support on consent the proposed Draft Plan and conditions, Official Plan Amendment and Zoning By-law Amendment.

ANALYSIS AND FINDINGS

[21] Based on the uncontradicted opinion evidence of Mr. Henricks, the Tribunal found that the proposed Draft Plan and conditions, Official Plan Amendment and Zoning By-law Amendment are consistent with the PPS and conform with the Growth Plan, the Niagara Region Official Plan and the City's Official Plan. It found that they have regard for the matters of provincial interest set out in s. 2 of the *Planning Act*. It also found that the proposed Draft Plan has regard for the criteria set out in s. 51(24) of the *Planning Act* and that the proposed Draft Plan conditions are reasonable as required under s. 51(25) of the *Planning Act*.

ORDER

[22] The Tribunal orders that the appeals are allowed in part.

[23] The Tribunal approves the Draft Plan as set out in Attachment 1 to this Decision, approves the Draft Plan conditions as set out in Attachment 2 to this Decision, approves the Official Plan Amendment as set out in Attachment 3 to this Decision, and approves the Zoning By-law Amendment as set out in Attachment 4 to this Decision.

“Hugh S. Wilkins”

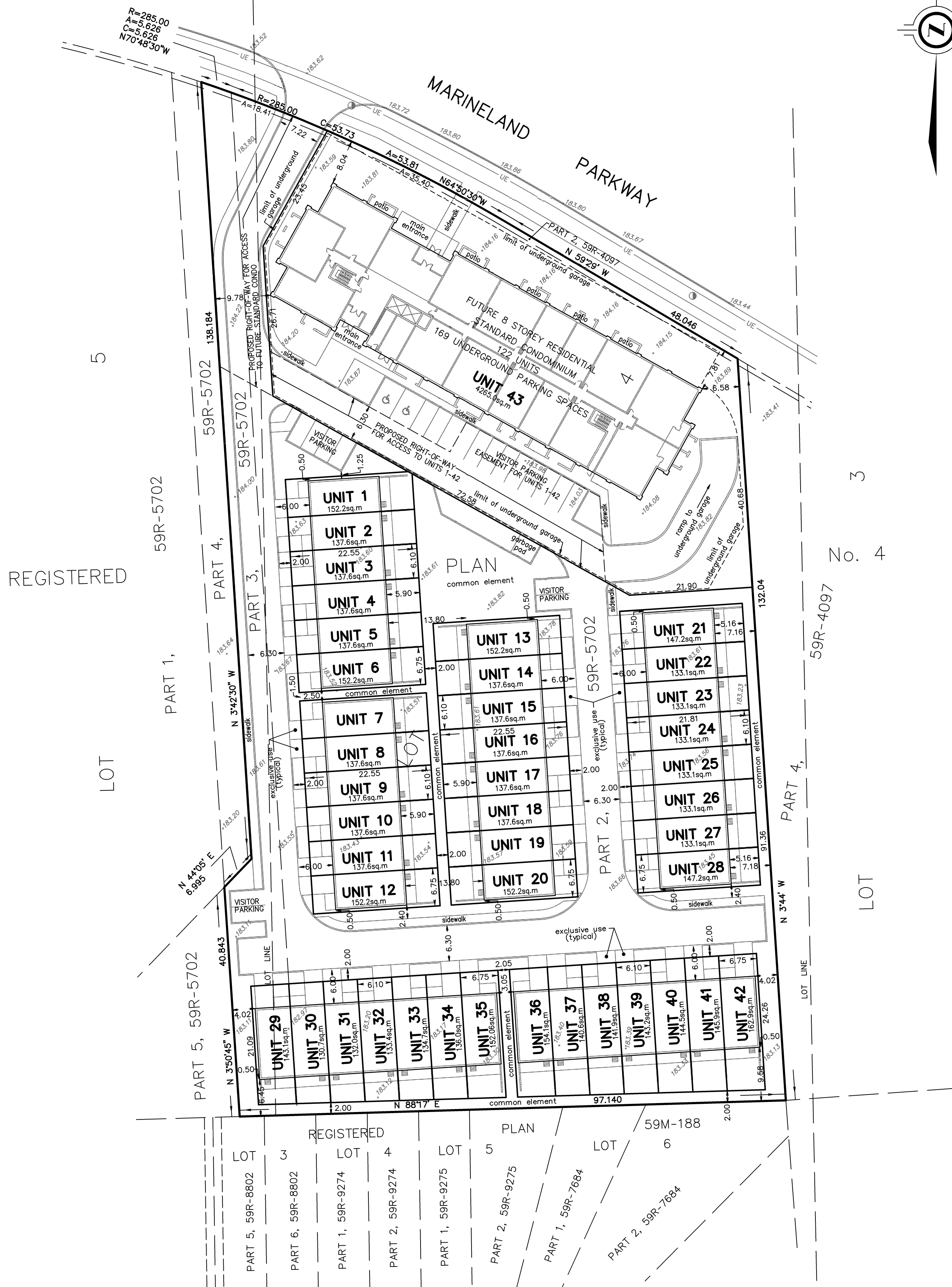
HUGH S. WILKINS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

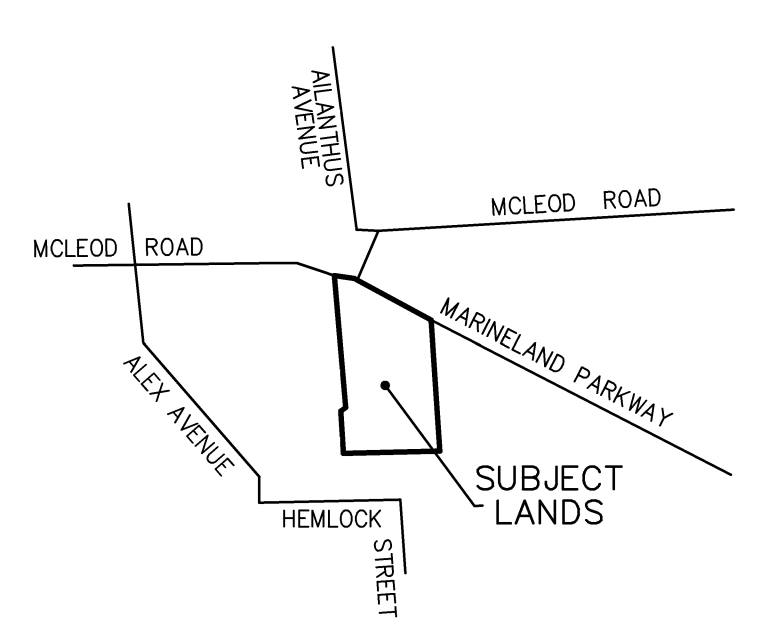
Local Planning Appeal Tribunal

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

PL180941 and PL180779 - Attachment 1



KEY PLAN (NOT TO SCALE)



ADDITIONAL INFORMATION REQUIRED UNDER SECTION 51(17) OF THE PLANNING ACT AND UNDER SECTION 9 OF THE CONDOMINIUM ACT 1998

- (A)-AS SHOWN ON DRAFT PLAN
- (B)-AS SHOWN ON DRAFT PLAN
- (C)-AS SHOWN ON DRAFT AND KEY PLANS
- (D)-THIS IS A PROPOSED RESIDENTIAL DEVELOPMENT OF 42 UNITS
- (E)-AS SHOWN ON DRAFT PLAN
- (F)-AS SHOWN ON DRAFT PLAN
- (G)-AS SHOWN ON DRAFT PLAN
- (H)-MUNICIPAL
- (I)-SANDY LOAM
- (J)-AS SHOWN ON DRAFT PLAN
- (K)-ALL MUNICIPAL SERVICES AVAILABLE
- (L)-AS SHOWN ON DRAFT PLAN

LAND USE ANALYSIS

LOT AREA	14958 sq.m
BUILDING AREA	4944 sq.m
BUILDING COVERAGE	33%
NUMBER OF UNITS	42 TOWNHOMES
	122 APARTMENTS
	164 TOTAL
PARKING	169 UNDERGROUND GARAGE SPACES
	42 DRIVEWAY SPACES
	42 GARAGE SPACES
	22 VISITOR SPACES
	275 TOTAL SPACES

— DENOTES BOUNDARY OF CONDOMINIUM

NINA'S COURT
 BEING A DRAFT PLAN OF VACANT LAND CONDOMINIUM OF
PART OF LOTS 4 AND 5,
REGISTERED PLAN No. 4
CITY OF NIAGARA FALLS
 REGIONAL MUNICIPALITY OF NIAGARA
 SCALE 1 : 500
 MATTHEWS, CAMERON, HEYWOOD - KERRY T. HOWE
 SURVEYING LTD.
 2018

OWNER'S CERTIFICATE

I HEREBY AUTHORIZE MATTHEWS, CAMERON, HEYWOOD - KERRY T. HOWE SURVEYING LTD. TO SUBMIT THIS PLAN TO THE CITY OF NIAGARA FALLS FOR THEIR APPROVAL.

[Signature]

DATE

VINCE VOCELLA
 LAND RIDGE DEVELOPMENT LTD.

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE BOUNDARIES OF THE LAND TO BE SUBDIVIDED ARE CORRECTLY SHOWN.

[Signature]

DATE

DASHA PAGE
 ONTARIO LAND SURVEYOR

MATTHEWS, CAMERON, HEYWOOD - KERRY T. HOWE SURVEYING MAPPING GIS
 SURVEYING LIMITED
 A wholly owned subsidiary of J.D. Bames Limited
 5233 STANLEY AVENUE, UNIT 1, NIAGARA FALLS, ON L2E 7C2
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DRAWN BY:	CHECKED BY:	REFERENCE NO.:	
DH	DP		16-16-861-00

FILE: G:\2016\16-16-861\00\Drawing\16-16-861-DRAFTPLAN.dgn DATED: JULY 12/18
 PLOTTED: 07/12/18

PL180941 and PL180779 – Attachment 2

Revised Conditions for Draft Plan Approval as per Minutes of Settlement

1. Approval applies to the Draft Plan of Vacant Land Condominium prepared by Mathews, Cameron, Heywood – Kerry T. Howe Surveying Limited, dated July 12, 2018, showing 42 units of vacant land for townhouses, 1 unit for an apartment building as well as common private roads, visitor parking 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 developer receive final approval of the related Official Plan and Zoning By-law amendment to provide land use policies and regulations to guide the development of the subdivision.
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 land to the City Solicitor prior to the preparation of the Vacant Land Condominium Agreement.
7. The developer provide a landscape plan, prepared by a Landscape Architect (OALA), showing fencing/buffering, plantings, sidewalks and any access to amenity areas. A 1.8 m high wood screening fence is to be provided along the south lot line.
8. The developer pay cash-in-lieu of parkland dedication to the City in the amount equal to 5% of the appraised value of the lands as determined by a qualified appraiser, to the satisfaction of the City.
9. The roadways, services, lot grading and construction shall all be designed and constructed in accordance with City standards.

Note: No looping connections of the existing watermain will be permitted at any point within the development (i.e. single connection to municipal distribution network only).

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10. The developer submit a servicing report to demonstrate available municipal infrastructure is sufficient to service the proposed development. Where existing watermain flow and/or pressures are unknown, testing shall be conducted in coordination with the City of Niagara Falls Environmental Services Division and at the Developer's expense.
11. The developer submit a lighting plan prepared by a professional engineer. The design is to be independently powered and metered. Photometric plans are to be submitted demonstrating zero impact on neighbouring properties.
12. The developer provide the City with the proposed site servicing, grading and photometric scheme for the subject property to Municipal Works for review and approval prior to construction.
13. The developer pay the applicable development charges 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 the City the applicable required fees for administration.
15. The developer 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.
16. The developer provide the appropriate servicing drawings demonstrating that all dwelling units shall be sprinklered. A clause shall be placed in the condominium agreement requiring sprinklered dwellings as a condition of Building Permit issuance.
17. The developer demonstrate to Fire Services' satisfaction that adequate water supply for firefighting purposes is available and accessible with sufficient volume and flow to facilitate firefighting operations prior to obtaining Building Permits.
18. 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 all private roads.
19. The developer provide the necessary servicing drawings to Fire Services, to confirm compliance of the development with Section 3.2.5.7 of the Ontario Building Code, including the location of the fire hydrants. Fire hydrants to be identified will be private hydrants and as such need to be tested and maintained in accordance with the requirements of the Ontario Fire Code. Mature landscaping shall not obstruct the fire access.
20. The developer provide electrical vehicle charging systems as per 9.34.4 of the Ontario Building Code to the satisfaction of Building Services. It is recommended

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that the applicant confirm proposed electrical servicing can support these systems.

21. The developer provide lane dimensions and curb radii of the ramps to the underground parking levels to the satisfaction of Transportation Services.
22. The developer satisfy 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.
23. That a Centralized Mail Box (CMB) be placed in a location determined by Canada Post at the developer's cost, and that the developer identify this site on the appropriate maps, information boards and plans. A map showing CMBs is to be prominently displayed in the sales office.
24. The developer include in all offers of purchase and sale, a statement that advises prospective purchasers that the mail delivery will be from a designated CMB and that the developer will be responsible for officially notifying the purchasers of the exact CMB locations and easements granted to Canada Post prior to the closing of any sales.
25. The developer satisfy all requirements of Canada Post regarding temporary and permanent CMB locations and associated works including concrete pads, engineering servicing drawings, installation, notification of the start of construction and providing mail service information to property owners.
26. Canada Post's multi-unit policy, which requires that the owner/developer provide the centralized mail facility (front loading lockbox assembly or rear-loading mailroom [mandatory for 100 units or more]), at their own expense, will be in effect for buildings and complexes with a common lobby, common indoor or sheltered space.
27. The condominium agreement include a clause requiring the owner to implement the recommendations of the Environmental Noise Compatibility Study, prepared by Novus Environmental (dated January 10, 2017), to the satisfaction of Niagara Region.
28. The condominium agreement include the following noise warning clause:

The developer/owner agrees to include the following warning clauses in all agreements of purchase and sale and any lease or rental agreement and/or disclosure statements and declarations for the development; and further that the acknowledgement letter and/or a schedule to an agreement to purchase and sale containing such noise warning clauses be signed by a new purchaser or tenant indicating they have read such warning clauses:

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Purchasers/tenants are advised that sound levels due to increasing road and rail traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Municipality and the Ministry of Environment, Conservation and Parks.

Purchasers/tenants are advised that due to the proximity of the adjacent commercial and industrial land uses, including but not limited to Myer Salit Limited ("Salit Steel") and Washington Mill Electro Minerals Corp. ("Washington Mills") and their successor owner, noise from these operations may at times be audible.

Salit Steel operates a large steel service centre whose operations include saw cutting, plate and plasma burning, rebar fabrication, and shipping and receiving activities. The facility may operate 24 hours per day, including weekend operations. Salit Steel will not be responsible for any complaints or claims arising from their operations.

Washington Mills operates an abrasive grain and specialty electro-fused minerals manufacturing facility including furnace operations, crushing and screening and shipping and receiving activities. The facility may operate 24 hours per day, including weekend operations. Washington Mills will not be responsible for any complaints or claims arising from their operations.

Purchasers/tenants are advised that sound levels due to Salit Steel and Washington Mills are required to comply with sound level limits that are protective of indoor areas and are based on the assumption that windows and exterior doors are closed. This dwelling unit has been supplied with a ventilation/air conditioning system which will allow windows and exterior doors to remain open.

29. The condominium agreement contain a clause requiring that the owner/developer shall install central air conditioning in all units, including the apartment units and townhouse units. Installation of central air conditioning by the occupant in low and medium density developments will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the sound level limits of the Municipality and the Ministry of Environment, Conservation and Parks.

30. The condominium agreement include the following additional warning clause:

The Purchaser(s) acknowledges that the Vendor has made no representation regarding the site lines and view from the Purchaser(s) Unit. In addition, the Purchaser(s) are advised that the property to the south overlooks a golf course and lands used for industrial purposes, including but not limited to Washington Mills Electro Minerals Corp. and any successors in interest as the property exists today and with potential future expansion, as well as other adjoining landowners may develop or

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redevelop their properties which may impact on the site line views and views from the Purchaser(s) Unit and will not object to the resulting noise, or visual interferences/obstructions.

31. That the Owner enter into an agreement with Washington Mills under the *Industrial and Mining Lands Compensation Act* for nominal consideration and compensation.
32. That the condominium agreement contain a clause requiring that the Owner shall install tinted windows through the entire building with a minimum of Low E 360 glass.
33. That the condominium agreement contain a clause requiring that the Owner shall install windows with a Sound Transmission Class (STC) rating of no less than 32 through the entire building as a noise mitigation measure.
34. That the condominium agreement contain a clause requiring that the Owner shall install rooftop landscape features on the outdoor amenity area to include, at a minimum, trees with a height of no less than five feet (1.524m) and a hedge that will grow to a height of no less than five feet (1.524m) along the south/southeast boundary of the rooftop terrace amenity area as part of Land Ridge's landscape plan.
35. The condominium agreement contain a clause requiring the owner to implement the mitigation measures outlined in Section 10 of the EIS Addendum, prepared by Earthquest (Canada) for the Environment (dated June 2018).
36. Prior to registration of the final plan and/or any vegetation removal (to be completed outside the breeding bird and summer active bat periods of March 15th to September 30th), the developer submit a Tree Saving Plan to the Niagara Region for review and approval.
37. The developer dedicates a 2.15 metre road widening to the Regional Municipality of Niagara along the frontage of Regional Road 49 (Marineland Parkway), free and clear of any mortgages, liens or other encumbrances, to Niagara Region.
38. That the developer submit engineering drawings for the construction of Marineland Parkway (Regional Road 49), including the recommendations given in the Transportation Impact Study, prepared by Paradigm Transportation Solutions Ltd. (dated May 2017) and the completed Environmental Assessment for this respective road section, to Niagara Region for review and approval.
39. The developer enter into a legal agreement with Niagara Region for required road improvements, as outlined in the Transportation Impact Study, prepared by Paradigm Transportation Solutions Ltd. (dated May 2017).
40. Prior to any construction taking place within the Regional Road allowance, the developer shall obtain a Construction Encroachment Permit. If permits are not

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obtained prior to the clearance of conditions, a clause shall be included in the condominium agreement.

41. Prior to any new or altered site entrances onto Regional Road 49 (Marineland Parkway) being created, the developer shall obtain a Regional Entrance Permit. If permits are not obtained prior to clearance of conditions, a clause shall be included in the condominium agreement. The following additional clause shall also be included in the condominium agreement:

That the owner shall not be permitted additional access to the subject property from Regional Road 49 (Marineland Parkway), except as shown on the site plan, prepared by SRN Architects Inc. (dated February 1, 2018) or subsequent approved versions by the Region.

42. The developer provide a written acknowledgement to Niagara Region stating that draft approval of this condominium does not include a commitment of servicing allocation by Niagara Region, as servicing allocation will not be assigned until the plan is registered, and any pre-servicing will be at the sole risk and responsibility of the owner.
43. The developer provide the Niagara Region with a written undertaking agreeing that all offers and Agreements of Purchase and Sale or Lease, which may be negotiated prior to registration of this condominium, shall contain a clause indicating that a servicing allocation for this condominium will not be assigned until the plan is registered, and a similar clause be inserted in the condominium agreement.
44. Verification of the available wet weather sanitary capacity in the South Niagara Falls system and required mitigation measures required to accommodate development, be submitted for review and approval by the Niagara Region and City of Niagara Falls.
45. The '28303 Marineland Parkway, Niagara Falls – Stormwater Management Design Brief, New Development Drainage System' (revised May 8, 2017) and the associated engineering drawings (revised May 8, 2017) all by Hallex Engineering, be revised to:
- a. provide additional catchbasins on the main drive entrance in order to minimize the amount of stormwater runoff discharging onto the Marineland Parkway (Regional Road 49);
 - b. direct, by way of grading, all major storm flows onto the Marineland Parkway or directly into the Conrail Drain (adjacent to the site); or
 - c. implement some mechanism (i.e. drainage easement) to allow for the perpetual, unimpeded discharge of stormwater across the adjacent property.

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46. That prior to approval of the final plan or any on-site grading, the owner shall submit an updated stormwater management plan and report for the condominium and the following plans designed and sealed by a qualified professional engineer in accordance with the Ministry of the Environment documents entitled Stormwater Management Planning and Design Manual, March 2003 and Stormwater Quality Guidelines for New Development, May 1991, or their successors to Niagara Region:
 - a. detailed lot grading and drainage, storm servicing, and stormwater management plans, noting both existing and proposed grades and the means whereby overland flows will be accommodated across the site; and
 - b. detailed construction erosion control plans.
47. The developer submits detailed design plans of the proposed stormwater outfall to the adjacent Conrail Drain channel to Niagara Region for review and approval.
48. The developer obtains written approval from the City of Niagara Falls for Regional Enhanced Waste Collection Services to collect on-site and provide the written approval to Niagara Region.
49. The developer submit waste collection truck turning templates to show the movement of the garbage truck into the proposed waste enclosure and reverse back out to the internal roadway, to Niagara Region for review and approval relative to the proposed garbage pad location.
50. The developer submit a letter to Niagara Region confirming garbage, recycling and organics are all intended to be collected by Niagara Region, and specifying the method of storage for each.
51. In order to accommodate Regional Waste Collection service, waste collection pads are required to be provided by the applicant for Units 29 and 40-42 inclusive. The waste collection pads shall be design/constructed in accordance to the details outlined in Niagara Region's Corporate Policy for Waste Collection.
52. The developer ensures that all streets and development blocks can provide access in accordance with the Niagara Region's Corporate Policy for Waste Collection and by-laws relating to the curbside collection of waste.
53. The developer provide the appropriate easement for the common elements located on unit 43 (driveway, parking spaces and waste disposal pad) to provide full access for all condominium unit owners, to the satisfaction of the City.
54. The developer update the Environmental Noise Compatibility Study, Marineland Parkway Development, Novus Environmental, January 10, 2017, based on the current layout of the site as shown on Schedule 2. The study is to provide the appropriate analysis based on Class 4 MOECC Noise Guideline – Stationary and

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Transportation Sources – Approval and Planning (NPC-300) and any mitigation measures beyond those required under conditions 31 and 32 are to be implemented in the condominium agreement.

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Notes:

1. 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 Niagara Region.
2. Prior to final approval for registration, a copy of the draft condominium agreement for the proposed development should be submitted to Niagara Region for verification that the appropriate clauses pertaining to any of these conditions have been included. A copy of the executed agreement shall also be provided prior to registration.
3. In order to request clearance of the above noted Regional conditions, a letter outlining how the conditions have been satisfied, together with all studies and reports (two hard copies and a PDF digital copy), the applicable review fee, and the draft condominium agreement shall be submitted to the Niagara Region by the developer as one complete package, or circulated to the Niagara Region by the City of Niagara Falls.

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), 53, 54
- Legal Services for Conditions 5 and 6
- Parks Design for Condition 7 and 8
- Municipal Works Department for Conditions 9 to 15 (inclusive)
- Fire Services for Conditions 16 to 19 (inclusive)
- Building Services for Condition 20
- Transportation Services for Condition 21
- Enbridge Gas for Condition 22
- Canada Post for Conditions 23 to 26 (inclusive)
- Regional Niagara Development Services for Conditions 27, 28 and 35 to 52 (inclusive)

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PART 2 - BODY OF THE AMENDMENT

All of this part of the document entitled PART 2 - BODY OF THE AMENDMENT, consisting of the following text and attached map, constitute Amendment No. 131 to the Official Plan of the City of Niagara Falls.

DETAILS OF THE AMENDMENT

The Official Plan of the City of Niagara Falls is hereby amended as follows:

1. **MAP CHANGE**

Schedule "A" to the Official Plan - Future Land Use, is hereby amended by redesignating the lands identified on Map 1 attached hereto, and forming part of the amendment, from Tourist Commercial to Residential and identified as Special Policy Area "74".

2. **TEXT CHANGE**

PART 2, SECTION 13 - SPECIAL POLICY AREAS is hereby amended by adding the following subsection:

13.74 SPECIAL POLICY AREA "74"

Special Policy Area "74" applies to 1.5 hectares of land on the south side of Marineland Parkway, opposite Ailanthus Avenue. Notwithstanding the policies of Part 1, Section 3.7 – McLeod Road Intensification Corridor, the land may be developed for an apartment building, up to 8 storeys in height, and townhouse dwellings and the maximum density shall be 112 units per hectare. **The land is in proximity to Class III (Heavy) industries as defined under the land use compatibility guidelines published by the Ministry of the Environment and Climate Change (MOECC). These industries are located to the east on Stanley Avenue.**

13.74.1 To maximize the amount of open space available to residents, structured or underground parking is to be integrated with the apartment building. In addition the apartment building is to be located in a manner to minimize shadowing impacts on adjacent residential uses.

13.74.2 **Due to the proximity of Class III industries, the land is classified as a Class 4 area pursuant to the MOECC Noise Guideline – Stationary and Transportation Sources- Approval and Planning (NPC-300). To ensure land use compatibility with nearby industries, appropriate mitigation measures, as determined through land use compatibility and noise studies, shall be incorporated into the implementing zoning by-law, plan of subdivision, plan of condominium, and/or site plan approval. Warning clauses shall be included in agreements to notify residents of potential noise impacts from nearby industrial operations.**

CITY OF NIAGARA FALLS

By-law No. 1773

A by-law to amend By-law No. 79-200, to permit an apartment building and townhouse dwellings on the Lands and to repeal By-law No. 2008-83 (AM-2017-010).

**THE COUNCIL OF THE CORPORATION OF THE CITY OF NIAGARA FALLS
ENACTS AS FOLLOWS:**

1. The Lands that are the subject of and affected by the provisions of this by-law are described in Schedule 1 of this by-law and shall be referred to in this by-law as the "Lands". Schedule 1 is a part of this by-law.
2. The purpose of this by-law is to amend the provisions of By-law No. 79-200, to permit the use of the Lands in a manner that would otherwise be prohibited by that by-law. In the case of any conflict between a specific provision of this by-law and any existing provision of By-law No. 79-200, the provisions of this by-law are to prevail.
3. Notwithstanding any provision of By-law No. 79-200 to the contrary, the following uses and regulations shall be the permitted uses and regulations governing the permitted uses on and of the Lands.
4. The permitted uses shall be:
 - (a) The uses permitted in a R5C zone
 - (b) A townhouse dwelling containing not more than 8 dwelling units
 - (c) Group dwellings, provided that no townhouse dwelling in the group dwellings contains more than 8 dwelling units
5. The regulations governing the permitted uses shall be:

(a) Deemed lot		the whole of Lands shall be considered one lot
(b) Minimum lot area		88 square metres for each dwelling unit
(c) Minimum front yard depth		5.5 metres plus any applicable distance specified in section 4.27.1 of By-law No. 79-200
(d) Minimum rear yard depth		
(i) for an apartment dwelling		105 metres

- | | | |
|------|---|--|
| (ii) | for a townhouse dwelling | 6.4 metres |
| (e) | Minimum interior side yard width | |
| (i) | for an apartment dwelling | 6.5 metres |
| (ii) | for a townhouse dwelling | 4 metres |
| (f) | Maximum lot coverage | 34% |
| (g) | Maximum height of building or structure | |
| (i) | for an apartment dwelling | 31 metres or 8 storeys, whichever is lesser, subject to section 4.7 of By-law No. 79-200 |
| (ii) | for an townhouse dwelling | 10 metres, subject to section 4.7 of By-law No. 79-200 |
| (h) | Minimum number of parking spaces | |
| (i) | for an apartment dwelling | 1.4 spaces per dwelling unit |
| (ii) | for a townhouse dwelling | 1.4 spaces per dwelling unit, which may be provided in tandem |
| (i) | Minimum landscaped open space | 39% of the lot area |
| (j) | Minimum privacy yard for each townhouse dwelling unit, as measured from the exterior rear wall of every dwelling unit | 6.4 metres |
| (k) | Noise mitigation measures | in accordance with a Class 4 area pursuant to the Ministry of the Environment and Climate Change Environmental Noise Guideline - Stationery and Transportation Sources - Approval and Planning (NPC-300) |
| (l) | The balance of regulations specified for R5C use | |

- 6. All other applicable regulations set out in By-law No. 79-200 shall continue to apply to govern the permitted uses on the Lands, with all necessary changes in detail.
- 7. No person shall use the Lands for a use that is not a permitted use.
- 8. No person shall use the Lands in a manner that is contrary to the regulations.
- 9. The provisions of this by-law shall be shown on Sheets C5, C6, D5 and D6 of Schedule "A" of By-law No. 79-200 by redesignating the Lands from R5C and numbered 819 to R5C and numbered 1079.
- 10. Section 19 of By-law No. 79-200 is amended by noting that section 19.1.819 is repealed by By-law No. _____ and adding thereto:

19.1.1079 Refer to By-law No. _____.
- 11. By-law No. 2008-83 is repealed.

Passed this _____ day of _____.

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CITY CLERK

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MAYOR

Mayor: _____
 Deputy Mayor: _____
 Councilor: _____
 Councilor: _____