

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



ISSUE DATE: November 04, 2020

CASE NO(S): PL190206

The Ontario Municipal Board (“OMB”) is continued under the name Local Planning Appeal Tribunal (“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 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 10736198 Canada Inc.
Subject: Application amend Zoning By-law No. 79-200 –
Refusal of Application by the City of Niagara
Falls
Existing Zoning: Residential 1E Density (R1E) zone
Proposed Zoning: Residential Low Density, Grouped Multiple
Dwellings (R4) zone, with site specific
provisions
Purpose: To permit the development of 53 townhouse
units and a semi-detached dwelling
Property Address/Description: Vacant parcel between 2294 and 2472
Thompson Road
Municipality: City of Niagara Falls
Municipality File No.: AM-2018-016
LPAT Case No.: PL190206
LPAT File No.: PL190206
LPAT Case Name: 10736198 Canada Inc. v. Niagara Falls (City)

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

Appellant: 10736198 Canada Inc.
Subject: Proposed Plan of Subdivision
Property Address/ Description: Vacant parcel between 2294 and 2472
Thompson Road
Municipality: City of Niagara Falls
Municipal File No.: 26CD-11-2018-08
LPAT Case No.: PL190206
LPAT File No.: PL190207

Heard: October 7-8, 2020 by video hearing

APPEARANCES:

Parties

Counsel

10736198 Canada Inc.

Rocco Vacca

City of Niagara Falls

Tom Halinski

DECISION DELIVERED BY HUGH S. WILKINS AND ORDER OF THE TRIBUNAL

[1] This is an appeal filed under s. 34(11) and s. 51(39) of the *Planning Act* by 10736198 Canada Inc. (“Appellant”) regarding the refusal by the City of Niagara Falls (“City”) to approve applications for a Zoning By-law Amendment and for approval of a draft Plan of Subdivision. The proposed draft Plan of Subdivision is in the form of a draft Plan of Vacant Land Condominium. The proposed instruments would facilitate a 55-unit residential development on the lands located between 2294 and 2472 Thompson Road (“subject property”).

[2] The subject property is located near the intersection of Stanley Avenue and Portage Road. It consists of a 1.37 hectare parcel of vacant land with 54.73 metres (“m”) of frontage on Thompson Road. The subject property is adjacent to Open Space lands to the south and the east owned by Ontario Power Generation (“OPG lands”), which are used as a hydropower line corridor. Residential uses are located to the north and west of the subject property consisting of 97 single detached dwellings. Further to the northeast is a hydropower reservoir and further to the west are employment lands. A higher density residential development has been approved for nearby lands located close to the intersection of Stanley Avenue and Portage Road.

[3] The subject property is designated as Designated Greenfield Area under the Regional Municipality of Niagara (“Region”) Official Plan. It is within the Urban boundary and is designated Residential and Greenfield Area under the City’s Official

Plan. No secondary plan applies to the subject property. It is currently zoned Residential Single Family 1E Density Zone (“R1E”) under the City’s Zoning By-law No. 79-200. This zoning allows for one single detached dwelling on each lot and for minimum lot frontages of 12 m and lot areas of 370 square metres (“m²”) for interior lots.

[4] The Appellant is proposing a development consisting of two semi-detached dwellings and 53 townhouse condominiums within a vacant land condominium. It seeks to amend the zoning for the subject property to site-specific Residential Low Density, Grouped Multiple Dwellings (R4) Zone. The proposed zoning would include site-specific provisions to allow for semi-detached dwellings as a permitted use, decrease the minimum lot area under R4 for each new unit from 250 m² to 248 m², and reduce the minimum permitted rear yard setback for one of the proposed townhouse blocks (Block 7) from 7.5 m to 3.3 m. It also seeks approval of a draft Plan of Vacant Land Condominium and associated conditions of draft Plan approval.

[5] The City’s planning staff supported the proposed instruments and recommended their approval. The applications were refused by City Council on the basis that the proposed development is out of character with the surrounding neighbourhood and would generate additional traffic.

[6] At the hearing, the Parties agreed on consent to a minor revision to the proposed Zoning By-law Amendment to better address the proposed rear yard setback and to minor revisions to the proposed conditions of draft Plan approval to delete an unnecessary condition and to reformat the document.

ISSUES

[7] In making a decision on zoning by-law amendment and draft plan of vacant land condominium appeals, the Tribunal must have regard to the matters of provincial interest set out in s. 2 of the *Planning Act* and must have regard to the decision of the City and the information considered by the City under s. 2.1(1) of the *Planning Act*. The decision must be consistent with the Provincial Policy Statement, 2020 (“PPS”) and

conform with the Growth Plan for the Greater Golden Horseshoe, 2019, as amended (“Growth Plan”) under s. 3(5) of the *Planning Act*. Also, the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium must each conform with the Region’s Official Plan and the City’s Official Plan under s. 24(1) of the *Planning Act*. The draft Plan of Vacant Land Condominium must have regard for the criteria set out in s. 51(24) of the *Planning Act* and the associated conditions of draft Plan approval must be reasonable under s. 51(25) of the *Planning Act*.

EVIDENCE AND SUBMISSIONS

Appellant’s Evidence and Submissions

[8] The Appellant called Mike Crough, a land use planner, and summoned Alex Herlovitch, the City’s Director of Planning, to each provide opinion evidence on its behalf. The Tribunal qualified each of them to provide opinion evidence as an expert in land use planning. The Appellant also called Peter Richards, who is a transportation expert. The Tribunal qualified him to provide opinion evidence as an expert in transportation engineering.

[9] Mr. Crough and Mr. Herlovitch each opined that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium are consistent with the PPS. Mr. Crough stated that the subject property is located within a settlement area under the PPS. He said a public transit bus route is located roughly one kilometre (“km”) from the subject property. He said there are bicycle lanes nearby on Portage Road and schools and parks also are located slightly over one km from the site. He stated that the subject property is located in the Stamford Community. He said the community includes housing, services, commercial areas, schools, churches, banks, restaurants and other facilities. He and Mr. Herlovitch each stated that the proposed development provides for a more diverse type of housing through the addition of townhouses and condominium tenure to the area as well as more housing stock. Mr. Crough said there is sufficient infrastructure and services in the area to support the proposed

development. He said the proposed development represents efficient and compact development while maintaining the low density character of the area.

[10] Mr. Crough and Mr. Herlovitch each stated that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium conform with the Growth Plan. Mr. Crough stated that the subject property is located within a Greenfield Area under the Growth Plan. He stated that the proposed development would support the achievement of a complete community, noting that amenities are located 2.5 km away and employment areas are close by. He said it conforms with Growth Plan policy 2.2.7.1 on active transportation and policy 3.2.8.1 on coordination of public services with parks, trails and golf areas close by. He said it provides for compact development at a higher density than other residential uses nearby and makes efficient use of lands and services. He said it would assist in meeting forecasted growth and development for the area.

[11] Mr. Crough and Mr. Herlovitch each stated that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium conform with the Region's Official Plan. Mr. Crough said the subject property is located in the Urban Area under the Plan and he reiterated that the proposed development represents compact development, provides for the efficient use of land, and contributes to a complete community. He said it would diversify the housing stock. He said the Zoning By-law Amendment and draft Plan of Vacant Land Condominium conform with Region's Official Plan policies 4.J.3 and 11.A.2 in that they facilitate a development that is attractive and well designed and balances the need for private and public space. He said the proposed development would assist the Region in meeting its density targets and would be accessible to public transit and active transportation.

[12] Mr. Crough and Mr. Herlovitch each stated that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium conform with the City's Official Plan. Mr. Crough stated that the subject property is located within the City's Urban boundary and Greenfield Area. He opined that the proposed development would be compatible with the existing neighbourhood, would contribute to a complete

community, and would have access to services. He and Mr. Herlovitch said the proposed development is consistent with the existing streetscape, provides good built form, and is sufficiently set back from the street with an 8 m front yard setback, which is consistent with existing houses on Thompson Road. They noted that although there would be parking adjacent to the street in front of the proposed buildings, buffering would be provided. Mr. Crough stated that a landscaped strip is required in the front yard to act as a buffer to screen this parking area. He said the landscape buffers would be in the common element area of the condominium. He said the proposed development satisfies the low density requirements for the area. He said the proposed height of the buildings is similar to that of existing homes in the area and there are no transition issues associated with the proposed development. He stated that the proposed reduced rear yard setback relates to proposed Townhouse Block 7 located in the southeast corner of the subject property, which would have a setback of 3.3 m from the abutting Open Space OPG lands. He stated that it is essentially a side yard setback based on the configuration of the proposed buildings and would otherwise comply with the existing zoning standards. Due to its location at the rear corner of the lot, it is interpreted as a rear yard setback. Mr. Crough opined that the subject property is too small to have a park included on it and noted that the City's Engineering Services Parks and Landscape Development Section staff recommended cash-in-lieu to be paid instead of parkland being provided on the subject property. Mr. Herlovitch reiterated that the City's Parks staff did not object to the proposed development. He said if a park were required it would be very small and isolated. Mr. Crough said the proposed development is too small for a secondary plan to be required.

[13] In regard to the criteria in s. 51(24) of the *Planning Act*, Mr. Crough opined that the proposed draft Plan of Vacant Land Condominium is not premature given the existing municipal servicing along Thompson Road and adequate road access. He said it is in the public interest to provide more housing. He said the proposed draft Plan of Vacant Land Condominium conforms with the City's Official Plan and that the subject property is suitable given that it is flat vacant land that is designated for residential uses. He said there are no school capacity issues arising from the proposed development.

[14] Mr. Crough opined that the proposed conditions of draft Plan of Vacant Land Condominium approval are reasonable. He said they properly address the comments that were received from public agencies regarding the proposal.

[15] Mr. Crough opined that that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium have regard to the matters of provincial interest set out in s. 2 of the *Planning Act*. He said there is adequate transportation and sewage infrastructure in the area, the proposal constitutes orderly development by developing vacant lands within a residential area, the subject property is in close proximity to services, the proposed development will not cause public health or safety issues, it is in an appropriate location for growth and development, it is oriented to active transportation, and it is well-designed. He said there are no natural heritage features in the area and no environmental issues associated with the proposed development.

[16] Mr. Crough opined that the revised proposed draft Zoning By-law Amendment, proposed draft Plan of Vacant Land Condominium, and revised proposed conditions of draft Plan approval represent good planning and satisfy the applicable statutory tests.

[17] Mr. Richards reviewed the methodology and results of his transportation study regarding the traffic and safety impacts of the proposed development. He said the proposed development would have minimal traffic and transportation impacts.

The City's Evidence and Submissions

[18] The Tribunal qualified Alan Young to provide opinion evidence in the area of land use planning on behalf of the City.

[19] Mr. Young opined that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium are not consistent with the PPS. He said PPS policy 1.1.3.2 requires that the proposed development support active transportation and be transit supportive, which he stated it is not. He opined that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium are not consistent with PPS policies 1.4.3 and 1.5.1, which require there to be public service facilities available to

support needs, including nearby public parks as well as opportunities for active transportation and access to public transit. He stated that the area in which the proposed development is located is set apart from the existing built-up area of the City and has no retail or other amenities. He said the OPG lands and nearby railway tracks act as barriers between the neighbourhood and other areas of the City to the south. He said there are no public parks, public transit or public services within reasonable walking distance of the subject property. He said there are limited opportunities for active transportation in the area, noting that the nearby bicycle lanes are in poor condition and are incomplete. Although sidewalks are planned for within the proposed development, he said there are none on Thompson Road.

[20] Mr. Young opined that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium do not conform with the Growth Plan. He said the proposed development does not provide for easy access to the necessities for daily living such as to employment areas, transit and public services. He opined that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium do not conform with Growth Plan policies 1.2.1, 2.2.1.2(a)(iii), 2.2.1.4 (a) and (d), or 2.2.7.1 in that they do not provide for easy access to active transportation, public services, parks or public transit. He said the area is not a complete community and there is a need for more parks. He said the small size of the subject property is not an excuse to ignore complete community policies.

[21] Mr. Young opined that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium do not conform with the Region's Official Plan. He opined that the proposed instruments do not conform with the Region's Official Plan policies 4.A.1.10 and 4.C.5.1 as they do not help to achieve a complete community. He said these policies apply to both large and smaller developments and should be interpreted at the local scale by addressing density, phasing, urban design, and other factors. He said the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium do not conform with the Region's Official Plan policy 11.A.2 as they do not facilitate active transportation with connections to adjacent areas, parks or schools and do not include sidewalks on Thompson Road. He stated that a secondary plan is

needed for conformity with the Region's Official Plan policies 14.F.2 and 14.I.3.1 to help achieve a complete community.

[22] Mr. Young opined that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium do not conform with the City's Official Plan. He stated that the proposed development would result in overdevelopment of the subject property with setbacks and frontage that are incompatible with the existing neighbourhood of single family homes. He said the area is a low density neighbourhood with large lots and a suburban character. He stated the proposed increase of 55 units to a 97 dwelling neighbourhood would change the area's character. He said there are no townhouse units presently in the area and the addition of a townhouse development in mid-block with parking in the front would be out of character. Mr. Young stated that the area on the north side of Thompson Road across the street from the subject property is within the City's Built-up Area, the character of which should be maintained under the City's Official Plan Part 2, policy 1.15.1. He said the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium do not conform with the City's Official Plan Part 2, policy 1.2.4 on walkable neighbourhoods or Part 2, policy 1.5 on complete communities. He stated that the City's Official Plan Part 2, policy 1.16.5 states that development should be close to public transit, sidewalks should be on local roads, and pedestrian connectivity should be available. He stated that under Part 3, policies 2.1.1, 2.2 and 2.3.1, the proposed development should be accessible to public parks and new parks should be created. In terms of urban design issues under Part 3, policy 5.1.5, he stated that parking should be minimized in front yards and visitor parking should not be permitted in front of the proposed development. He said he does not oppose the requested rear yard setback reduction for Block 7 as it would not adversely impact the abutting OPG lands and would not function as a rear yard amenity space given that it is at the side, not to the rear, of proposed Block 7. However, he stated that setbacks that abut residential uses should be at least 7.5 m to ensure compatibility. He acknowledged that townhouses are permitted on the subject property under the City's Official Plan, but he opined that they should not be indiscriminately allowed amidst an area of single detached dwellings. He reiterated that a secondary plan or a neighbourhood plan should be prepared for the proposed development to consider how

higher densities are to be introduced in a compatible manner and to ensure adequate parkland and the achievement of a complete community. He acknowledged that the Niagara Parks areas and the Bruce Trail are close by, but he said that these do not resolve the need for more neighbourhood parks in the area. He agreed that a parkette on the subject property would be one of the smallest parks in the City. He also stated that the subject property would not be appropriate for commercial development.

[23] Mr. Young referred to the City's Strategic Plan for the Provision of Parks, Recreation, Arts and Culture (January 2007) ("Strategic Plan for Parks"), which addresses park location relative to population and also the allocation of cash-in-lieu funds. He said the Strategic Plan for Parks states that the identification of the future range of parks and open space areas is to be done at the secondary or community plan level.

[24] The City did take a position or produce evidence on any transportation or traffic issues.

Participants' Statements

[25] The Tribunal received Participant statements from:

- Carmen, Luigi, and Josephine Bertone;
- John and Beth Bertone;
- Michelle Cyr and Diane Cyr;
- Joan and Paul Moore;
- Cindy Papineau, Liza Delaney, John Confiant, and Marc Pouliot; and,
- Miki Richardson and Adèle Richardson.

[26] The Participants raised privacy, density, snow removal, flooding, garbage disposal, emergency services, traffic safety, neighbourhood character, and greenspace issues relating to the proposed development. They submitted that the proposed development would cause an increase in traffic volume and traffic safety issues, particularly at the intersection of Portage Road and Thompson Road, which is on an angle and provides for poor visibility. They raised concerns regarding the location of the entrance to the proposed development, parking, sidewalks, the narrowness of the streets, and pedestrian safety.

ANALYSIS AND FINDINGS

[27] The Tribunal finds that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium are consistent with the PPS. The Tribunal finds that they facilitate development that makes efficient use of existing municipal services and transportation infrastructure and will provide residential units that will supply needed housing options in terms of form and tenure. The proposed development provides for an appropriate range and mix of housing options and densities in an area with appropriate levels of infrastructure and public service facilities. The Tribunal finds that the proposed instruments are consistent with PPS policies 1.1.3.2, 1.4.3 and 1.5.1. The subject property is located close to bicycling routes on Stanley Avenue and Portage Road facilitating active transportation. It would be preferable to have public transit closer by; however, the Tribunal finds that the proposed development is transit-supportive based on the existing densities and mix of land uses in the area. The Tribunal notes that with further residential development planned for the area, public transit, parks, and other facilities should be developed and expanded closer to the subject property in the future.

[28] Regarding conformity with the Growth Plan, the Tribunal finds that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium will facilitate development that helps diversify housing options in an area of predominantly single detached dwellings. The Tribunal finds that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium will facilitate compact development that

efficiently uses under-utilized vacant lands and existing municipal services. The Tribunal finds that the proposed instruments support the achievement of complete communities by diversifying the housing stock and range of housing options in terms of form and tenure in conformity with Growth Plan policies 1.2.1 and 2.2.1.2(a)(iii). It finds that the contribution of cash-in-lieu of parkland also contributes to the achievement of a complete community and, given the size and location of the subject property, is appropriate in the present case. The Tribunal finds that the proposed instruments will facilitate development that supports healthy and active living, meets people's needs, makes efficient use of land and infrastructure, supports transit viability, and supports a range and mix of housing options in conformity with the Growth Plan's guiding principles in its policy 1.2.1. The Tribunal finds that the subject property is located close to employment lands, Open Space lands, and active transportation facilities and is within walking distance of schools, parks, and public transit located roughly one km away. As a result, it finds that the proposed instruments conform with Growth Plan policies 2.2.1.4 (a) and (d) and 2.2.7.1.

[29] Regarding conformity with the Region's Official Plan, the Tribunal finds that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium support the achievement of complete communities by diversifying the housing stock and range of housing options both in terms of form and tenure and by contributing funds for parklands. It finds that they thereby conform with the Region's Official Plan policies 4.A.1.10 and 4.C.5.1. The proposed development adds to the local mix of land uses and housing types, is close to Open Space areas, and is accessible to local stores and services by automobile, transit and active transportation. The Tribunal finds that the proposed instruments focus growth in the Urban Area under the Region's Official Plan, provide for increased residential densities, and provide for compact form and the efficient use of municipal infrastructure. It also finds that the proposed instruments facilitate development that encourages active transportation with nearby bicycle lanes and trails as well as sidewalks within the subject property in conformity with the Region's Official Plan policy 11.A.2.

[30] The Tribunal also finds that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium conform with the City's Official Plan. The Tribunal finds that the addition of townhouses to the area is new; but it will be in harmony with the surrounding neighbourhood and existing nearby buildings. It finds that the proposed setbacks, height and frontage are compatible with the existing buildings on the street. The design of the proposed development and its position will make it relatively unobtrusive and will maintain the character of both sides of Thompson Road. Also, the density of the proposed development is permitted under the City's Official Plan. The Tribunal finds that the proposed setbacks, height and massing of the proposed development are in keeping with the character of the area.

[31] The Tribunal finds that the proposed instruments conform with City's Official Plan Part 2, policy 1.5 on complete communities. They provide for additional housing stock and choice in terms of form and tenure and facilitate parkland development through payment of cash-in-lieu of parkland dedication. The Tribunal finds that the proposed instruments assist in providing for opportunities for a choice of housing including type, tenure, cost, and location through a multi-unit development on presently under-utilized vacant land in conformity with the City's Official Plan Part 2, policy 1.2.4. The Tribunal finds that the proposed development includes street configurations with sidewalks within the subject property that support walking and bicycling and the subject property is reasonably accessible to public transit in conformity Part 2, policy 1.16.5.

[32] Regarding the need for parkland, the Tribunal finds that a parkette on the subject property would not adequately address the need for local parklands in the area. The Tribunal finds that the payment of cash-in-lieu of parkland provides support for the creation of park facilities in the area and can support the future acquisition of parkland. The Tribunal notes that City's Parks staff reviewed the proposed instruments and found that a parkland dedication on the subject property was not necessary. The Tribunal notes the need and importance of having parks in the area and encourages the creation of appropriate parks in accordance with the City's Official Plan Part 3, policies 2.1.1, 2.2 and 2.3.1 and the Strategic Plan for Parks. Given the size of the subject property and

the evidence from the City's Parks staff that cash-in-lieu of parkland dedication is appropriate, the Tribunal finds that parkland is not required on the subject property.

[33] The City's Official Plan Part 3, policy 5.1.5 states that parking areas are to be minimized within the front yard of development sites. Based on the evidence before it, the Tribunal finds that although the parking spaces proposed for the front yard area of the proposed development are not preferable, they are compatible with the private driveways in the area, which frequently appear to have multiple parking spaces in front of homes. There will be a 1.5 m landscape strip adjacent to the front yard parking spaces for a screening buffer. The Tribunal notes that the parking provisions for R4 zoning requires front yard parking to be screened and Condition 6 of the conditions of draft Plan approval requires the developer to provide a plan prepared by a landscape architect. The Tribunal finds that with these provisions mitigating the visual impacts of the proposed parking spaces, the proposed instruments conform with Part 3, policy 5.1.5.

[34] Regarding the proposed rear yard setback reduction, the Tribunal finds that it would not adversely impact abutting lands or result in a loss in amenity space. It finds that the other proposed setbacks for the development comply with the standards in the Zoning By-law and will help ensure greenspace and compatibility with existing development in the area.

[35] The Tribunal finds that the size of the subject property and the proposed development do not warrant the completion of a secondary plan or neighbourhood plan in the present case and that the proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium are appropriate for the scale and type of development proposed. It finds that they will help ensure the orderly development of the area.

[36] Based on Mr. Richards' evidence, the Tribunal finds that the proposed development is expected to have minimal impacts on local roads and traffic. The Tribunal finds that based on Mr. Richards' evidence, the proposed development will not cause an increase in traffic volume beyond the capacity of the local road network. It

notes that the intersection of Stanley Avenue and Portage Road has recently been signalized and, based on Mr. Richards' evidence, there have been few collisions here in the past. Mr. Richards had no concerns regarding the narrowness of the streets, visibility, the location of the entrance to the subject property, or traffic safety. The Tribunal notes that the proposed development satisfies the City's parking requirements and no concerns were raised by the City's departments regarding snow removal, emergency services, flooding, or garbage collection issues.

[37] The Tribunal finds that the proposed instruments have regard to the matters of provincial interest set out in s. 2 of the *Planning Act*, including the orderly development of safe and healthy communities and the protection of public health and safety.

[38] Based on Mr. Crough's evidence, the Tribunal finds that the proposed draft Plan of Vacant Land Condominium has proper regard to the criteria in s. 51(24) of the *Planning Act*. It finds that it is not premature given the existing municipal servicing and road access, is in the public interest by providing housing, conforms with the applicable official plans, and is on lands that are suitable for development.

[39] The Tribunal also finds that the proposed conditions of draft Plan approval are reasonable and addresses the public agency comments that were received regarding the proposed instruments. The Tribunal finds that the proposed Zoning By-law Amendment, draft Plan of Vacant Land Condominium and conditions of draft Plan approval represent good planning and are in the public interest.

CONCLUSIONS

[40] The Tribunal finds that the revised proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium are consistent with the PPS and conform with the Growth Plan, the Region's Official Plan, and the City's Official Plan. The Tribunal finds that the draft Plan of Vacant Land Condominium has regard to the criteria in s. 51(24) of the *Planning Act* and that the revised proposed conditions of draft Plan approval are reasonable. The Tribunal has had regard to the matters of provincial

interest set out in s. 2 of the *Planning Act* and it has had regard to the decision of City Council and the information considered by it. The Tribunal finds that the revised proposed Zoning By-law Amendment and draft Plan of Vacant Land Condominium satisfy the applicable statutory tests and represent good planning.

ORDER

[41] The Tribunal orders that the appeal is allowed in part.

[42] The Tribunal approves the Zoning By-law Amendment as attached to this Order and Decision as Attachment 1, the draft Plan of Vacant Land Condominium as attached to this Order and Decision as Attachment 2, and the conditions of draft Plan approval as attached to this Order and Decision as Attachment 3.

[43] The Tribunal authorizes the municipal clerk to assign a number to the approved by-law for record keeping purposes.

[44] The Tribunal orders that pursuant to subsection 51(56.1) of the *Planning Act*, the City shall have the authority to clear the conditions of draft Plan approval and to administer final approval of the Plan of Subdivision for the purposes of subsection 51(58) of the *Planning Act*. In the event that there are any difficulties implementing any of the conditions of draft Plan approval, or if any changes are required to be made to the draft Plan, the Tribunal may be spoken to.

“Hugh S. Wilkins”

HUGH S. WILKINS
MEMBER

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

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

CITY OF NIAGARA FALLS

BY-LAW NO. 2020- ____

A By-law to Amend Zoning By-law No. 79-200, Respecting Lands Located between 2294 and 2472 Thompson Road, to Permit the Use of the Lands for 53 Townhouse Dwelling Units and 2 Semi-detached Dwelling Units (City File AM-2018-016)

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

1. The Lands that are 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 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. All regulations contained within Section 7.9 Residential Low Density, Grouped Multiple Dwellings Zone (R4 ZONE) shall apply, except for the following modifications:
 - a) In addition to the uses permitted under Section 7.9.1 Permitted Uses, the following use shall also be permitted:
 - A semi-detached dwelling
 - b) Notwithstanding any corresponding provision in Section 7.9.2 Regulations, the following shall apply:
 - a) Minimum lot area
 - (i) For a townhouse and semi-detached dwelling 248 square metres per dwelling unit
 - d) Minimum rear yard depth 7.5 metres, except

(i) For a townhouse dwelling

where a side elevation of a townhouse dwelling abuts a rear lot line the setback to that elevation may be reduced to a minimum of 3.30 metres

5. 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.
6. No person shall use the Lands for a use that is not a permitted use.
7. No person shall use the Lands in a manner that is contrary to the regulations.
8. The provisions of this by-law shall be shown on Sheets C1, C2, D1 and D2 of Schedule "A" to By-law No. 79-200 by redesignating the lands from R1E to R4 and numbered_____
9. Section 19 of By-law No. 79-200 is amended by adding thereto:
19.1. _____ Refer to By-law No. 2020-_____

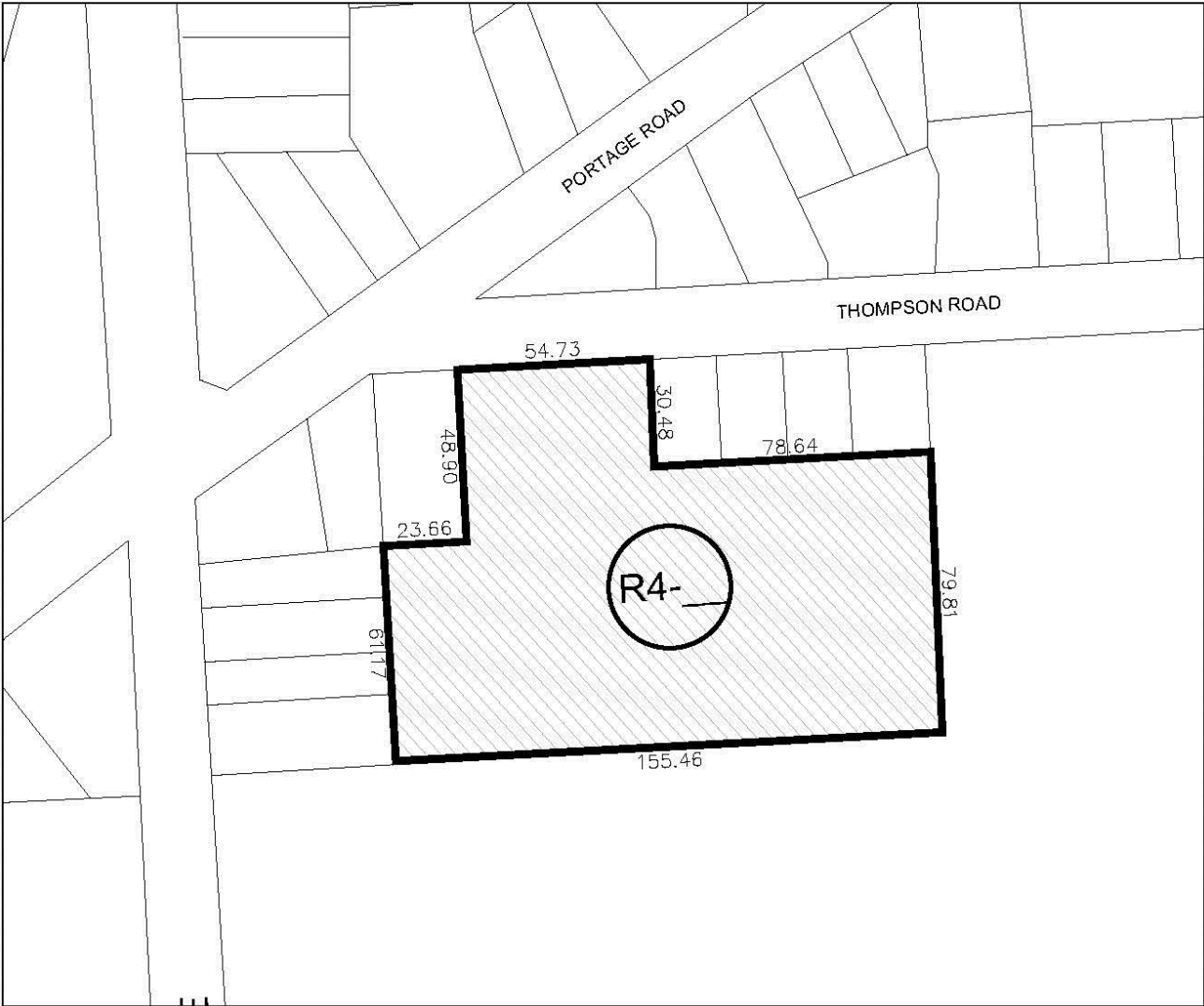
PASSED and ENACTED this ____ day of _____, 2020.

City Clerk

Mayor

SCHEDULE 1 TO BY-LAW NO. 2020-

Subject Lands: 



Amending Zoning By-law No. 79-200

Description: PART OF LOT 23, GEOGRAPHIC TOWNSHIP OF STAMFORD, NOW IN THE CITY OF NIAGARA, REGIONAL MUNICIPALITY OF NIAGARA

Applicant: 10736198 Canada Inc.

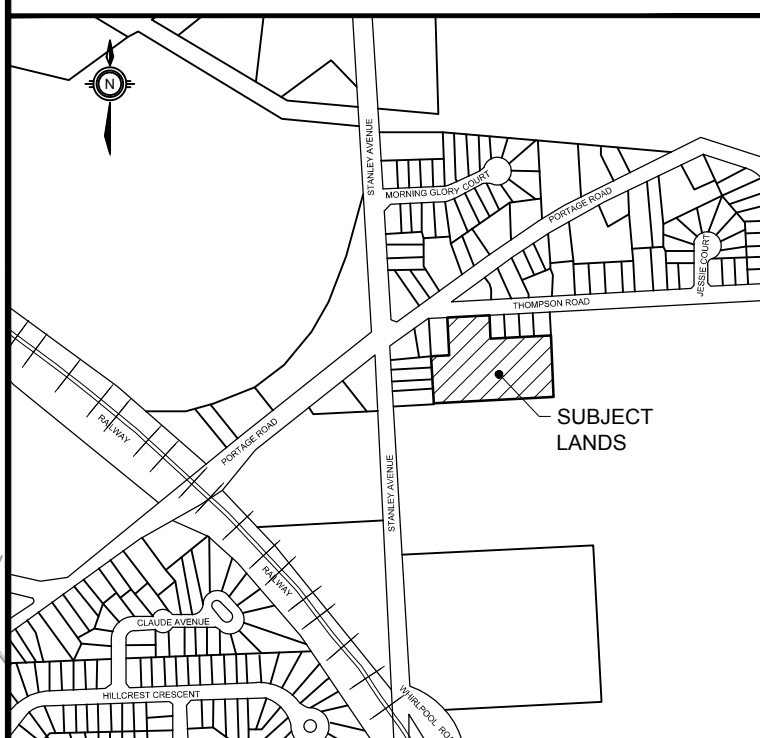
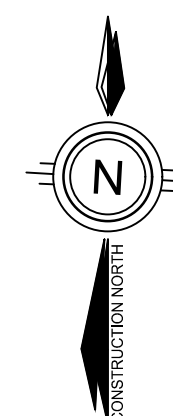
Assessment #: 272510000108303



ATTACHMENT 2

DRAFT PLAN OF VACANT LAND CONDOMINIUM

PART OF LOT 23
GEOGRAPHIC TOWNSHIP OF STAMFORD
NOW IN THE CITY OF NIAGARA FALLS
REGIONAL MUNICIPALITY OF NIAGARA



KEY MAP - N.T.S.

SOURCE
MATTHEWS, CAMERON, HEYWOOD - KERRY T. HOWE SURVEYING LIMITED

BENCHMARK
BEARINGS ARE UTM GRID, DERIVED FROM OBSERVED REFERENCE POINTS A AND B, BY REAL TIME NETWORK (RTN) OBSERVATIONS, UTM ZONE 17, NAD83 (ORIGINAL)
DISTANCES ARE GROUND AND CAN BE CONVERTED TO GRID BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.9998742
FOR BEARING COMPARISONS, A ROTATION OF 01°20'11" COUNTER-CLOCKWISE WAS APPLIED TO BEARINGS ON P2.

INFORMATION REQUIRED

UNDER SECTION 51 (17) OF THE PLANNING ACT, R.S.O. 1990, c.P.13 AS AMENDED

- (a) - AS SHOWN
- (b) - AS SHOWN
- (c) - AS SHOWN
- (d) - SEE LAND USE SCHEDULE
- (e) - AS SHOWN
- (f) - AS SHOWN
- (g) - AS SHOWN
- (h) - MUNICIPAL WATER
- (i) - CLAY LOAM
- (j) - AS SHOWN
- (k) - MUNICIPAL SANITARY AND STORM SEWERS
- (l) - NONE

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE BOUNDARIES OF THE LANDS TO BE SUBDIVIDED ON THIS PLAN AND THEIR RELATIONSHIP TO THE ADJACENT LANDS ARE ACCURATELY AND CORRECTLY SHOWN.

SIGNED: *Alan J. Heywood*
ALLAN J. HEYWOOD, D.L.S.
MATTHEWS, CAMERON, HEYWOOD - KERRY T. HOWE SURVEYING LTD.

DATE: June 14, 2018 FILE: 17-16-035

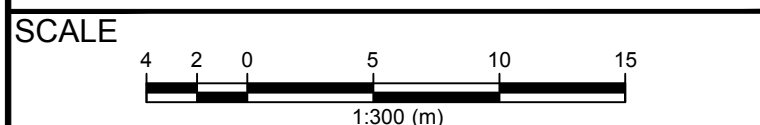
OWNER'S CERTIFICATE

I HEREBY CONSENT TO THE FILING OF THIS PLAN BY IBI GROUP, IN DRAFT FORM.

SIGNED: *Humain Siddiqui*
10736198 CANADA INC., OWNER

DATE: June 15, 2018

LAND USE SCHEDULE		
LOTS/BLKS	DESCRIPTION	AREA
LOTS 1-59	TOWNHOUSES	1.053ha
BLOCK 60	COMMON ELEMENT	0.313ha
	SITE AREA	1.366ha



DESIGN BY: A.B. CHECKED BY: S.A.
DRAWN BY: B.C. DATE: 2018-05-22

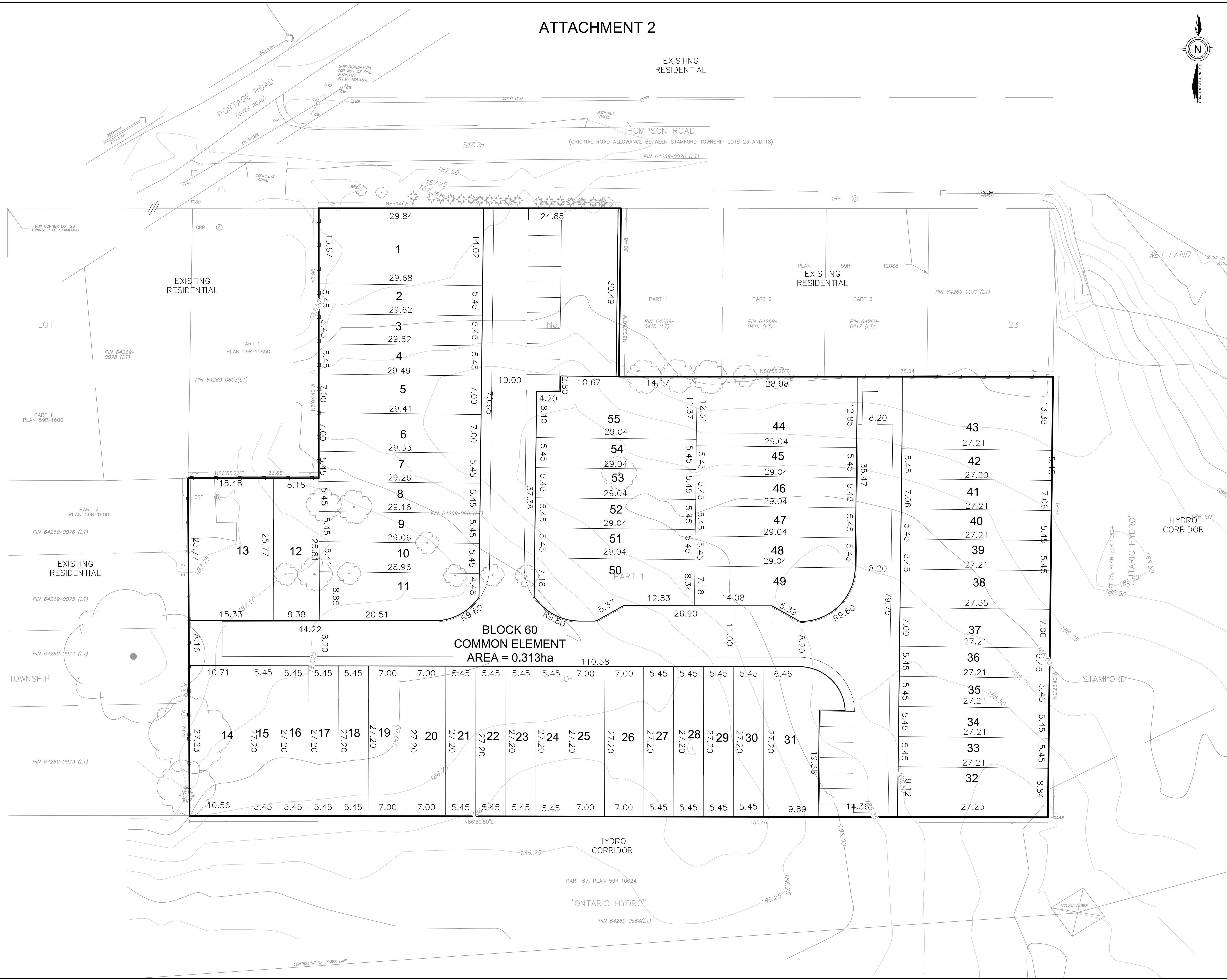
#	DATE	BY	DESCRIPTION
4	2019-04-08	SC	REVISED DRAFT PLAN FOR SUBMISSION
3	2018-11-19	AB	AS PER COMMENTS RECEIVED
2	2018-08-13	AB	SUBMISSION AS PER CITY'S COMMENTS
1	2018-05-22	BC	FIRST SUBMISSION

DRAWING ISSUE RECORD

APPROVALS

IBI GROUP
200 East Wing-360 James Street North
Hamilton ON L8L 1H5 Canada
tel: 905 546 1010 fax: 905 546 1011
ibigroup.com

FILE NUMBER: **116228** SHEET NUMBER: **DP1**



**BLOCK 60
COMMON ELEMENT
AREA = 0.313ha**

G

ATTACHMENT 3

CONDITIONS OF DRAFT PLAN APPROVAL

26CD-11-2018-008

1. Approval applies to the Draft Plan of Vacant Land Condominium prepared by IBI Group, dated April 6, 2019, showing 55 units of vacant land for dwelling units as well as a common private road and parking 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 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.
5. 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.
6. The developer provide a landscape plan, prepared and stamped by a Landscape Architect (OALA).
7. The developer pay the City cash-in-lieu of 5% parkland dedication as determined by a qualified appraiser.
8. The developer design and construct the roadways within the Vacant Land in accordance with City standards.
9. The developer ensure that the existing municipal infrastructure will adequately service the development as proposed.
10. The developer design and construct all underground services within the subject lands in accordance with City standards.
11. The developer confirm an appropriate storm sewer outlet and obtain all applicable permits.
12. The developer design and construct all the sidewalks within the Vacant Land Condominium in accordance with City standards.
13. The developer prepare a lot grading plan which is designed and constructed in accordance with City standards.
14. The developer pay the applicable Development Charges in place and prior to the release of the Building Permits for the proposed 55 dwelling units in accordance with the By-law No. 2017-87, as amended.

15. The developer submit a Lighting Plan prepared by a Professional Engineer licensed in Ontario. Design to be independently powered and metered. The photometric plan must demonstrate zero impact on the neighbouring property.
16. The developer provide to the City all proposed site servicing and grading plans for the subject property to Municipal Works for review and approval prior to the start of construction.
17. The developer pay to the City the required fees for the administration as per the above.
18. The developer's engineering consultants provide written acceptance that the works completed conform with the City's Accepted Drawings and is in accordance with the NPSCD and City's construction specification.
19. 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.
20. The developer agrees in the Vacant Land Condominium Agreement, in words satisfactory to Bell Canada, to grant to Bell Canada any easements that may be required for telecommunication services. Easements may be required subject to final servicing decisions. In the event of any conflict with the existing Bell Canada facilities or easement, the developer shall be responsible for the relocation of such facilities or easements.
21. The developer is hereby advised that prior to commencing any work, the developer must confirm that sufficient wire-line communication/telecommunication infrastructure is available. In the event that such infrastructure is unavailable, the Developer shall be required to pay for the connection to and/or extension of the existing communication/telecommunication infrastructure.
22. If the developer elects not to pay for the connection in condition 22, then the developer will be required to demonstrate to the satisfaction of the Municipality that sufficient alternative communication/telecommunication will be provided to enable, at a minimum, the effective delivery of communication/telecommunication services for emergency management services (i.e. 911 Emergency Services).
23. 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 providing cross section and field survey information, and service and meter installation details.
24. That a Community Mail Box (CMB) be located on the site in a location determined by Canada Post, and that the developer identify this site on a display in the sales office prior to offering any units for sale.
25. 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 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.

26. The developer satisfy all requirements of Canada Post regarding temporary and permanent CMB locations and associated works, engineering servicing drawings, installation and providing mail service information to property owners.
27. The developer install a concrete pad in accordance with the requirement of and in locations to be approved by Canada Post to facilitate the placement of Community Mail Boxes.
28. That the condominium agreement between the owner and the City contain provisions whereby the owner agrees to implement the recommendations of the Noise Study titled "2294 Thompson Road Residential Development, Niagara Falls, Ontario, Acoustical Report", prepared by IBI Group (dated June 2018).
29. At the final design stage of development, and once the building concepts have been finalized, an Acoustical review shall be completed to verify the assumptions of the "2294 Thompson Road Residential Development, Niagara Falls, Ontario, Acoustical Report", prepared by IBI Group (dated June 2018) to determine if an update to the Study and recommendations is required.
30. Due to expected noise levels from the Canadian National Railway, all units are to have forced air heating with a provision for air conditioning and associated warning clause. The condominium agreement shall include the following warning clause, as well as all Offers of Purchase and Sale, lease/rental agreements and condominium declarations for designated units:

"This dwelling unit has been designed with the provision for adding central air conditioning at the occupant's discretion. 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 the Environment"
31. The following clauses be included in the condominium agreement:
 - (a) *Should deeply buried archaeological remains/resources be found on the property during construction activities, all activities impacting archaeological resources must cease immediately, notify the Archaeological Program Unit of the Ontario Ministry of Tourism, Culture and Sport (416-212-8886) and a licenced archeologist (Detritus Consulting Ltd.) is required to carry out an archaeological assessment in accordance with Ontario Heritage Act and the standards and Guidelines for Consultant Archaeologists.*
 - (b) *In the event that human remains are encountered during construction, all activities must cease immediately and the local police as well as Cemeteries' Regulation Unit of the Ministry of Government and Consumer Services in Toronto (416-326-8800) must be contacted. In a situation where human remains are associated with archeological resources, MTCS should also be notified to ensure the site is not subject to unlicensed alteration which would be a contravention of the Ontario Heritage Act.*
32. That prior to approval of the final plan or any on-site grading, the owner shall submit a detailed stormwater management plan 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 for review and approval:
 - Detailed lot grading, servicing and drainage plans, noting both existing and proposed grading and the means whereby overland flows will be accommodated across the site;

- Detailed erosion and sedimentation control plans; and
 - Detailed phasing of construction of the stormwater management facility to coincide with phasing of development of residential lands (internal and external to the subdivision) planned to be serviced by the stormwater management facility.
33. That the condominium agreement between the owner and the City contain provisions whereby the owner agrees to implement the approved plan(s) required in accordance with conditions 32 and 33.
 34. That in order to accommodate Regional Waste Collection service, waste collection pads are required to be provided by the applicant for Block 3, Block 4, the three western units of Block 5, the four southern units of Block 7, Block 8 and Block 9. The waste collection pads shall be in accordance to the details outlined in Niagara Region's Corporate Policy for Waste Collection.
 35. That the following warning clause shall be included in the Condominium Agreement and inserted in all Agreements of Purchase and Sale or Lease for Block 3, Block 4, the three western units of Block 5, the four southern units of Block 7, Block 8 and Block 9:

Purchasers/Tenants are advised that due to the site layout, garbage/recycling pick-up for their unit will be required to bring their waste/recycling containers to collection pads.
 36. That the applicant submits waste collection truck turning templates to Niagara Region for review and approval
 37. That the developer ensure that all streets and development blocks can provide access in accordance with the Regional Municipality of Niagara Corporate Policy for Waste Collection, and by-laws relating to the curbside collection of waste.
 38. That the developer provides a written acknowledgement to Niagara Region Planning and Development Services Department 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 that any pre-servicing will be at the sole risk and responsibility of the owner.
 39. The developer submit a written undertaking to Niagara Region agreeing that all offers and agreements of purchase and sale, which may be negotiated prior to registration of this condominium, shall contain a clause indicating that a servicing allocation for this development will not be assigned until the plan is registered, and a similar clause be inserted in the condominium agreement.
 40. 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.
 41. Prior to final approval for registration, a copy of the draft condominium agreement for the proposed development should be submitted to the Niagara Region for verification that the appropriate clause pertaining to this condition has been included. A copy of the executed agreement shall also be provided prior to registration.

Note: The Planning and Development Services Department recommends that a copy of the draft agreement also be provided in order to allow the incorporation of any necessary revisions prior to execution.

42. In order to request clearance of the above noted Regional conditions. A letter outlining how the conditions have been satisfied, together with all the 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 applicant as one complete package or circulated to the Niagara Region by the City of Niagara Falls.
43. That the developer obtain a Work Permit from the Niagara Peninsula Conservation prior to beginning any work related to grading and paving the parking lot with the 100 year flood plain.
44. That the developer submit to the Niagara Peninsula Conservation Authority for review and approval, detailed grading and construction sediment and erosion control plans.
45. That the conditions 37 and 38 be incorporated in the Condominium Agreement between the developer and the City to the satisfaction of Niagara Peninsula Conservation Authority. The City shall circulate the Draft Condominium Agreement to the Niagara Peninsula Conservation Authority for its review and approval Authority developer
46. Purchasers must be aware that Ontario Power Generation's reservoir associated with the Sir Adam Deck Generating Station is directly north of this residential development and that, from time to time, the reservoir may be subject to construction and maintenance activities.
47. Purchasers must be aware that Ontario Power Generation's Service Centre lies to the south of this residential development and that from time to time, the Service Centre may affect future residents from a noise perspective.

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 1-3 (inclusive)
- Legal Services for Condition 4 and 5
- Parks Design for Conditions 6 & 7
- Municipal Works Department for Conditions 8-18 (inclusive)
- Fire Services for Conditions 19
- Bell Canada for Condition 20-22 (inclusive)
- Enbridge Gas for Condition 23
- Canada Post for Conditions 24-27 (inclusive)
- Regional Niagara Public Works Department for Conditions 28-42 (inclusive)
- Niagara Peninsula Conservation Authority for Conditions 43-45 (inclusive)
- Ontario Power Generation for Conditions 46 and 47