



# The Municipal Corporation of the Town of Fort Erie

## By-law No. 71-2021

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### Being a By-law to Authorize the Entry into a Memorandum of Understanding with Westwind Niagara Developments Inc. (3285 Thunder Bay Road)

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**Whereas** a proposed acquisition of land from Westwind Niagara Developments Inc., was considered by the Municipal Council of The Corporation of the Town of Fort Erie at the Closed Session Special Meetings of Council, held on March 29, 2021, May 10, 2021 and May 17, 2021; and

**Whereas** it is deemed desirable to enter into a Memorandum of Understanding with Westwind Niagara Developments Inc. in relation to the proposed acquisition of a portion of the property located at 3285 Thunder Bay Road and the conditions related thereto;

**Now therefore** the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

1. **That** the entry into a Memorandum of Understanding with Westwind Niagara Developments Inc. for the proposed acquisition of a portion of the property located at 3285 Thunder Bay Road, in the Town of Fort Erie and the conditions related thereto, is authorized and approved.
2. **That** the Mayor and Clerk are authorized and directed to execute the Memorandum of Understanding, in a form satisfactory to the Town Solicitor, and to affix the corporate seal thereto, and all other documentation necessary to effect the terms and conditions of same.
3. **That** the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions, solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

**Read a first, second and third time and finally passed this 31<sup>st</sup> day of May, 2021.**

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Mayor

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Clerk

I, Carol Schofield, the Clerk, of The Corporation of the Town of Fort Erie certifies the foregoing to be a true copy of By-law No. 71-2021 of the said Town. Given under my hand and the seal of the said Corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

WESTWIND NIAGARA DEVELOPMENTS INC.

("the Developer")

- and -

THE CORPORATION OF THE TOWN OF FORT ERIE

("the Town")

### **MEMORANDUM OF UNDERSTANDING**

**WHEREAS** the Developer is the owner of certain lands in the Town of Fort Erie, which are legally described as Lot 20A, Plan 408, Bertie; Lot 20B, Plan 408, Bertie; Part Lot 19A, Plan 408, Bertie; Part Lot 19B, Plan 408, Bertie; Part Lot 21C, Plan 408, Bertie; Part Lot 20, Concession Broken Front Lake Erie, Bertie, as in RO700198; Subject to and together with RO700198; Subject to RO600464; Fort Erie, being all of PIN 64199-0163 (LT), and which are commonly known as 3285 Thunder Bay Road ("the Property");

**AND WHEREAS** the Developer is desirous of developing and constructing a residential subdivision at the Property; and

**AND WHEREAS** the Developer and the Town have engaged in discussions in relation to the proposed development, including lands to be conveyed to the Town by the Developer, infrastructure and servicing for the proposed development and various other matters;

**NOW THEREFORE** the Developer and the Town (each "a party" and collectively "the parties"), in consideration of the promises and mutual covenants contained within this Memorandum of Understanding and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, confirm their mutual understanding of, and agreement to, the following terms:

#### **1. Purpose and Scope**

- 1.1. The Developer and the Town acknowledge that it is their common interest for the Property to be developed in a manner that complies with all applicable legislation, regulations, by-laws, plans and policies and that preserves and/or enhances public access to the waterfront through the Property.
- 1.2. This Memorandum of Understanding sets out all rights and responsibilities of the parties in furtherance of the common interest set out in paragraph 1.1.

## **2. Term**

- 2.1. Subject to section 2.2, this Memorandum of Understanding comes into effect on the date it is signed by the parties and will continue indefinitely unless it is amended or terminated in accordance with section 6.
- 2.2. Notwithstanding anything to the contrary set forth herein, this Memorandum of Understanding and all rights and obligations hereunder shall terminate and this Memorandum of Understanding shall have no force or effect on the fifth anniversary of the date of execution herein subject to the mutual agreement of the parties to extend said expiry date.

## **3. Confidentiality**

- 3.1. Subject to paragraphs 3.3 and 3.4, neither party will disclose the content of any confidential discussions between the parties prior to entering into this Memorandum of Understanding relating to its subject matter or any confidential information received as part of said discussions, save and except to their consultants and professional advisors, unless the parties agree to a specific disclosure in writing and in advance of the disclosure being made.
- 3.2. This provision survives any amendment or termination of this Memorandum of Understanding.
- 3.3. The parties acknowledge that this Memorandum of Understanding and/or associated communications may be subject to disclosure pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 (“*MFIPPA*”).
- 3.4. The parties further acknowledge that Town staff, the Mayor and/or members of Council may receive inquiries from the public in relation to this Memorandum of Understanding. Such inquiries will be answered only to the extent that the requested information would be subject to disclosure pursuant to *MFIPPA*.

## **4. The Property**

- 4.1. For the purposes of defining and describing their rights and responsibilities in relation to this Memorandum of Understanding, the parties accept the general configuration, layout and dimensions of the Property as set out in a draft plan of subdivision proposed by the Developer, which is attached as Appendix “A”.
- 4.2. For greater certainty, all references in this Memorandum of Understanding to Block 1, Block 2, Block 3, Block 4, Street ‘A’ and other aspect of the Property or adjacent lands will be construed with reference to and in accordance with Appendix “A”.

- 4.3. Notwithstanding paragraph 4.1, the Town has not approved Appendix “A” as a draft plan of subdivision and nothing in this Memorandum of Understanding constitutes or will be taken to constitute such an approval.

## **5. Responsibilities and Obligations of the Parties**

- 5.1. The Developer will gratuitously convey Block 1 and Block 4 to the Town as Environmental Protection Areas pursuant to Town of Fort Erie By-Law No. 69-08 (“the parkland dedication by-law”).
- 5.2. The Developer will convey a portion of Block 2 equivalent to five percent (5%) of the Property to the Town as parkland dedication pursuant to the parkland dedication by-law. The location of the portion of Block 2 to be dedicated shall be determined by mutual agreement of the parties.
- 5.3. The Developer and the Town will enter into an Agreement of Purchase and Sale pursuant to which the Town will acquire the balance of Block 2 from the Developer at a purchase price of three hundred and twenty thousand dollars (\$320,000.00).
- 5.4. The park constructed at the Property will be named by mutual agreement of the Developer and the Town.
- 5.5. The Developer will gratuitously convey Block 3 to the Town for the purposes of a parking lot that contains no more than twenty (20) parking spaces, which conveyance is subject to registration of the subdivision plan by the Developer with the Town. As part of the road works to be undertaken at the Property, the Developer or its designate will pave the parking lot at the Town’s expense, subject to prior review and approval by the Town of the parking lot layout and the paving cost.
- 5.6. The Developer may require an easement over lands conveyed to the Town for the purposes of providing a storm outlet to Lake Erie. If such an easement is requested, the Town will grant the easement subject to (i) prior approval by the Town of its design and location; and (ii) all required regulatory studies and approvals.
- 5.7. All lands and any existing structures located thereon to be conveyed to the Town in accordance with this Memorandum of Understanding will be conveyed “as is”. The Developer is not required to make any improvements to the lands conveyed to the Town, other than to restore any areas disturbed as a result of the easement and/or storm outlet described in paragraph 5.6, if said easement and/or storm outlet is required.
- 5.8. For greater certainty, the lands conveyed to the Town in accordance with this Memorandum of Understanding will include any existing structures located on said lands. The Developer will not move, alter or demolish any existing structures at any time prior to or following the conveyance of the lands.

- 5.9. The Developer will not undertake any reconstruction of Burleigh Road other than (i) road reconstruction at the intersection of Burleigh Road and Thunder Bay Road; and (ii) trench reinstatement for any servicing tie-ins on Burleigh Road and at the intersection of Burleigh Road and Street 'A'.
- 5.10. The Developer will, at its sole cost and expense, enhance the east boundary of the Property to provide a naturalized buffer for the lands immediately adjacent to the Property. The Developer will design and install the buffer plantings as part of its landscaping plan for the Property, subject to prior review and approval by the Town of the buffer planting design, only if the naturalized buffer is to be installed on the Property. The owner of the lands immediately adjacent to the east boundary of the Property shall have the option to determine whether the naturalized buffer is to be installed on the Property or on the owner's lands.
- 5.11. If the naturalized buffer plantings are located on lands owned by or conveyed to the Town in accordance with this Memorandum of Understanding, the Town will provide long-term maintenance of the plantings. If the plantings are located on lands not owned by or conveyed to the Town, then the Town will not provide any maintenance of the plantings.
- 5.12. The Developer will, at its sole cost and expense, extend the sanitary sewer line on Thunder Bay Road westerly from its current terminus to the most westerly lot of the proposed development fronting onto Thunder Bay Road.
- 5.13. The Developer will retain Upper Canada Consultants to design the necessary road reconstruction works for Thunder Bay Road from Burleigh Road to Cook Street, subject to prior review and approval by the Town of (i) the engineering design for the road reconstruction; and (ii) the engineering design costs.
- 5.14. The Town expects that the engineering design costs for the total project will not exceed ninety-seven thousand, six hundred and eighty dollars (\$97,680). The Town will reimburse the Developer for such costs up to that amount only upon review, approval and release of the engineering design documents.
- 5.15. The engineering design described in paragraph 5.13 will provide the basis for the recovery of development charges for road works and storm sewer works based on the frontage of the proposed development at the Property, which the Town estimates to be approximately two hundred and twenty-five (225) metres.
- 5.16. The proportion of costs allocated to this project that will be paid back from the development charges to the Developer is three hundred and forty thousand dollars (\$340,000).
- 5.17. The Town will accelerate the development charge recovery for the road works and storm sewer works on Thunder Bay Road described in this Memorandum of Understanding. Notwithstanding this acceleration, the Town expects that

the development charges will be paid within the budget year following completion of the described works but no later than the subsequent budget year following completion of the described works, provided that the plan of subdivision described in paragraph 5.20 has been registered on or before the payment date. The Town is not required to provide any earlier payment.

- 5.18. The Town will contribute fifty percent (50%) to the cost of replacing the cast iron watermain along the Property frontage of approximately two hundred and twenty-five (225) metres. The Town expects that the cost incurred by each party to replace the watermain will not exceed ninety-one thousand, one hundred and twenty-five dollars (\$91,125) and expects that the contribution to the cost incurred will be paid within the budget year following completion of the described works but no later than the subsequent budget year following completion of the described works, provided that the plan of subdivision described in paragraph 5.20 has been registered on or before the payment date.
- 5.19. The Town will assign a dedicated staff member in the Planning and Development Services department to this project. The Town will work to move the project forward in an expeditious manner, subject to applicable statutory provisions.
- 5.20. The aforementioned responsibilities and obligations of the parties are all subject to and conditional upon the registration of the subdivision plan contemplated herein. For greater certainty, the Parties agree that the Developer will register the plan of subdivision prior to conveying any lands to the Town and prior to undertaking any of the servicing of the site, including on lands owned by the Developer and/or on lands owned by the Town, or any of the other works described herein.

## **6. Amendment and Termination**

- 6.1. This Memorandum of Understanding may be amended or modified by mutual agreement of the parties at any time. Any amendments or modifications will be made in writing, signed by the parties, and appended to this Memorandum of Understanding.
- 6.2. This Memorandum of Understanding may be terminated for cause only where the cause for termination is a material and significant breach of any of the provisions of this Memorandum of Understanding, wherein it may be terminated with ninety (90) days advance written notice, unless the material and significant breach has been remedied or rectified prior to expiry of the termination period.
- 6.3. This Memorandum of Understanding may also be terminated upon mutual agreement of the parties, which agreement will be made in writing, signed by the parties and appended to this Memorandum of Understanding.

## **7. Dispute Resolution**

- 7.1. If a dispute arises as to the interpretation, application and/or execution of this Memorandum of Understanding, including a party's rights and responsibilities and/or an allegation of material and significant breach, the parties will confer in good faith to promptly resolve the dispute.
- 7.2. If the parties are unable to resolve the dispute, the matter shall be mediated and/or arbitrated. If the matter is not resolved through mediation, it will go to and be resolved through binding arbitration. The decision of the arbitrator will be final and binding on the parties.
- 7.3. The parties will each bear their own costs associated with the determination of disputes arising under this Memorandum of Understanding, including but not limited to legal costs and arbitration costs.

## **8. General**

- 8.1. This Memorandum of Understanding constitutes the entire understanding and agreement between the parties relating to the matters set out herein. There are no other representations, covenants or terms relating to the subject matter of this Memorandum of Understanding and this Memorandum of Understanding supersedes any and all prior discussions, understandings or agreements between the parties relating to its subject matter.
- 8.2. Nothing in this Memorandum of Understanding will be deemed to create any partnership, agency or joint venture relationship between the Developer and the Town.
- 8.3. The invalidity or unenforceability of a particular term of this Memorandum of Understanding will not limit the validity or enforceability of the remaining terms, each of which is distinct and severable from all other terms contained in this Memorandum of Understanding.
- 8.4. This Memorandum of Understanding will be governed by and construed in accordance with the law of the Province of Ontario and the laws of Canada applicable herein.
- 8.5. This Memorandum of Understanding may be signed in counterpart, each of which is an original and all of which together constitute a single document. Counterparts may be executed in original or electronic form and may be exchanged by way of mail or PDF file delivered by email.

EXECUTED as a Memorandum of Understanding this ..... day of ....., 2021.

**WESTWIND NIAGARA DEVELOPMENTS INC.**

By: \_\_\_\_\_

Name:

Title:

I have authority to bind the Corporation.

**THE CORPORATION OF THE TOWN OF FORT ERIE**

\_\_\_\_\_  
Wayne H. Redekop  
Mayor

\_\_\_\_\_  
Carol Schofield  
Clerk



# 3285 THUNDER BAY ROAD TOWN OF FORT ERIE



## KEY PLAN N.T.S.

## DRAFT PLAN OF SUBDIVISION

### LEGAL DESCRIPTION

LOT #  
MUNICIPALITY  
REGION

### OWNER'S CERTIFICATE

BEING THE REGISTERED OWNER, I HEREBY  
AUTHORIZE UPPER CANADA CONSULTANTS TO  
PREPARE AND SUBMIT THIS DRAFT PLAN OF  
SUBDIVISION TO THE TOWN OF FORT ERIE  
FOR APPROVAL.

3285 THUNDER BAY ROAD INC. DATE

### SURVEYOR'S CERTIFICATE

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

KIRKUP MASCOE URE SURVEYING LTD. DATE

## REQUIREMENTS OF SECTION 51(17) OF THE PLANNING ACT

- |             |                    |                 |
|-------------|--------------------|-----------------|
| a) SEE PLAN | e) SEE PLAN        | i) SILTY SAND   |
| b) SEE PLAN | f) SEE PLAN        | j) SEE PLAN     |
| c) SEE PLAN | g) SEE PLAN        | k) FULL SERVICE |
| d) SEE PLAN | h) MUNICIPAL WATER | l) SEE PLAN     |

### LAND USE SCHEDULE

LAND USE	LOT/BLOCK	# OF UNITS	AREA(ha)	AREA(%)
SINGLE FAMILY RESIDENTIAL	1-40	40	2.2634	49.18
ENVIRONMENTAL PROTECTION	BLOCK 1		0.4822	10.48
ROADWAY			0.5363	11.85
PARKLAND	BLOCK 2,3		0.6014	13.07
SHORELINE DEDICATION	BLOCK 4		0.7191	15.62
TOTAL		40	4.6024	100.00

DEVELOPABLE AREA (TOTAL - BLOCK 1) = 4.1202 ha  
DEVELOPABLE DENSITY = 9.71 units/ha

#	ISSUED FOR REVIEW	2020-07-09	MK
#	REVISION	DATE	INIT



**UPPER CANADA  
CONSULTANTS**  
ENGINEERS / PLANNERS

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St. Catharines, ON  
L2W 1A3  
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Fax: (905) 688-5274

DRAWING TITLE

**DRAFT PLAN OF  
SUBDIVISION  
OPTION 4**

DRAFTING	MK
DATE	JULY 6, 2020
PRINTED	JULY 9, 2020
SCALE	1:750
DWG No.	17143-DP
REV	0