



Staff Report

Planning & Development Services

Report To: Council Meeting
Meeting Date: September 9, 2024
Report Number: PDS.24.123
Title: Draft Plan Approval Extension for 139 Brophy's Lane
Prepared by: Shawn Postma, Manager of Community Planning

A. Recommendations

THAT Council receive Staff Report PDS.24.123, entitled "Draft Plan Approval Extension for 139 Brophy's Lane";

AND THAT Council hereby supports a one (1) year extension to Draft Plan of Subdivision and Condominium File No. 42-T-2008-10B and 42-CDM-2008-10A from September 30, 2024 to September 30, 2025.

B. Overview

The purpose of this report is to consider a request for Draft Plan Extension on an approved Draft Plan of Subdivision and Condominium known as 139 Brophy's Lane.

C. Background

Draft Plan Approval was initially provided in 2012 and has received a number of Draft Plan extensions with the current expiry date of September 30, 2024. The property has seen ownership changes over the years, with the current owner actively pursuing the final development of the project.

Engineering approvals are now in place, and the Town and Owner are nearing the completion of a Pre-Servicing Agreement in order to allow the rough grading and installation of basic services including municipal water and sewer and internal roads. The agreement is ready for execution pending the delivery of the agreement obligations and financial securities to the Town.

The Owner has advised that they are close to finalizing the agreement requirements and will be prepared to execute the Pre-Servicing Agreement, the full Subdivision Agreement, and registration of the Plans within 6 months of the lapse date.

It is noted that generally the County of Grey is the approval authority for Draft Plan Extensions, however in this case the approval authority sits with the Ontario Land Tribunal due to a previous appeal process that moved the approval authority to the Tribunal.

D. Analysis

Draft Plan Approval extensions are subject to internal Town Staff review. At the same time, the County of Grey has a similar process that is completed at the County level. In accordance with the Town Delegation By-law, the Director of Planning and Development Services has the authorization to consider Draft Plan Extensions only where the Draft Plan Approval is less than 10 years old. Draft Plan Approvals greater than 10 years must be considered by Council.

Draft Plan Extension requests also allows the Town to revisit the Draft Plan Conditions, and make recommendations to the approval authority for any modifications to the existing Draft Plan and Conditions. Generally changes are recommended where new policy direction has been imposed since the previous approval, or if new legislation requires changes. For this development, a Pre-Servicing Agreement and Subdivision Agreement have already been drafted and supported by both the Owner and the Town. The Agreements include all necessary clauses for the proper development of the project and therefore no modifications to the Draft Plan or Draft Plan Conditions are recommended.

In consideration of a Draft Plan Extension request, Council must be satisfied that the Draft Plan and Conditions remain appropriate for the subject lands. Council has the following options:

1. Deny the Request. The project will have until September 30, 2024 to get to full registration or else the Draft Approvals expire and the lands will revert back to raw development land having to go through the approvals process again from the beginning.
2. Support the Draft Plan Extension Request with Modifications to the Draft Plan and/or Draft Plan Conditions. Conditions may be removed, added or modified, and will then become obligations on the developer to complete prior to registration of the Subdivision.
3. Support the Draft Plan Extension Request. Council can support the extension request to provide additional time to reach full registration.

Planning Staff note that six months may be realistic to reach registration, however to ensure there is sufficient time to complete all the necessary requirements to reach registration, Planning Staff recommend a one year extension which is permitted under the Official Plan and consistent with other Draft Plan Extensions considered by the Town. As noted above, Planning Staff do not have any recommended changes to the Draft Plan or Conditions. With the extent of work already completed, and the continued activity to bring this project to construction, Planning Staff have no concerns with supporting the Draft Plan Extension for the one year in order to achieve full registration. Should the Owner not be able to fulfill the requirements to get to full registration by September 30, 2025 a new request for extension may be considered by Council at that time with a further update from Town Staff regarding the status of the project.

Based on the foregoing, Planning Staff recommends that Council support a one (1) year extension with a new lapse date of September 30, 2025.

E. Strategic Priorities

3. Community

We will protect and enhance the community feel and the character of the Town, while ensuring the responsible use of resources and restoration of nature.

F. Environmental Impacts

There are no adverse environmental impacts anticipated as a result of the recommendations contained in this report.

G. Financial Impacts

In the absence of a resolution from Council supporting the extension, the applicant may choose to appeal the file once again to the OLT. In doing so, there will be legal and other third-party costs for the municipality to participate in a hearing and/or settlement negotiations.

H. In Consultation With

Brian Worsley, Manager of Engineering
Adam Smith, Director of Planning and Development Services

I. Public Engagement

The topic of this Staff Report has not been the subject of a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required. However, any comments regarding this report should be submitted to Shawn Postma, planning@thebluemountains.ca

J. Attached

1. August 28, 2024 Letter Requesting Draft Plan Approval Extension.

Respectfully submitted,

Shawn Postma
Manager of Community Planning

For more information, please contact:
Shawn Postma, Manager of Community Planning
planning@thebluemountains.ca
519-599-3131 extension 248

Report Approval Details

Document Title:	PDS.24.123 Draft Plan Approval Extension for 139 Brophy's Lane.docx
Attachments:	- OLT-23-000297 - Ltr.R.Cheeseman to S.Everett.pdf
Final Approval Date:	Aug 30, 2024

This report and all of its attachments were approved and signed as outlined below:

Adam Smith - Aug 30, 2024 - 10:58 AM

RUSSELL D. CHEESEMAN
~ Barrister & Solicitor ~

REAL ESTATE DEVELOPMENT | MUNICIPAL LAW | ENVIRONMENTAL LAW

August 28, 2024

DELIVERED BY COURIER and E-MAIL

Mr. Shawn Everett
Chief Administrative Officer
Corporation of the Town of the Blue Mountains
32 Mill Street
Thornbury, Ontario
N0H 2P0

Attention: Mr. Shawn Postma, Manager of Community Planning

Dear Sir:

**Re: Formal Request for an Extension of Draft Plan Approval
Town of Blue Mountains File Nos. 42T2008-10B & 42CDM-
2008-10-A – 139 Brophy’s Lane, Town of The Blue Mountains-
L & W Properties Limited
OLT Case No. OLT-23-000297**

As you are aware, we are counsel for L & W Properties Limited, the owner of the above referenced lands in the Town of the Blue Mountains.

By way of an Order issued on February 15, 2024, the Ontario Land Tribunal amended the “Lapsing Condition” of the above referenced Draft Plans, to September 30th, 2024. That Order provides that “if the owner wishes to request an extension to draft plan approval, a written explanation along with the applicable fee and a resolution from the local municipality must be received.” Please find enclosed a copy of that Order for your ready reference.

This letter will serve as our client’s formal request for the extension of the formal lapsing date from September 30th, 2024 for a period of six additional months, namely March 31st, 2025. Please find enclosed our firm cheque in the amount of \$206.00, payable the “Town of the Blue Mountains”, which we understand to be the required fee for a request of this nature.

Royal Building
277 Lakeshore Road East, Suite 211
Oakville ON L6J 1H9



Toronto Meeting Rooms
Brookfield Place, 161 Bay Street, Suite 2700
Toronto ON M5J 2S1

Since the last OLT Order our client has been engaged with the Town and various authorities in order to enter into a Subdivision Agreement with the Town, that would allow for the Registration of the Draft Plans. That Agreement has not yet been executed, and as the writer understands it, the only issues to be resolved is the posting of securities that the Town is requesting. At the same time, our client has also been engaged in the trying to obtain an executed Site Servicing Agreement, that also has been drafted, but not yet executed, which also requires for the posting of securities with the municipality. Those securities have been arranged and insurance obtained. There are duplications of the securities that need to be posted, resulting in the total amount of securities having to be calculated for each agreement, and then provided for separately.

We understand that both agreements should be in a position to be executed in the near future, and we are requesting the extension of the "Lapsing Date" at this time, to ensure that the matter can be wrapped up, without having to go through a similar exercise in the future. After all of the progress that has been made, and the money spent by our client to bring this matter to fruition, it should not be allowed to administratively dissolve into the ether, and require the entire process to begin again from scratch.

We understand that the authority to grant such an extension has been delegated to Staff by the Council of the Town. To that end, the "Lapsing Provision" was last extended by the OLT, and we believe that the OLT is still in a position to grant this extension. In fact, the Tribunal Caseworker assigned to this matter, Mr. Azeem Patel, has written by way of e-mail that the OLT is prepared to grant this extension with the payment of the fee and the consent of the Parties. If the Town would respond to Mr. Patel with such a consent, that would make the entire process much quicker.

If Staff is not in a position to process this request in a manner that would get it resolved prior to the end of September, then my client would have no choice but to formally appeal the "Lapsing Provision" back to the Ontario Land Tribunal, so that a Hearing could be scheduled to deal with this matter, and to prevent the "Lapsing Provision" to take effect. That seems like a very cumbersome and costly way to have to deal with this situation. Please advise the undersigned as soon as you are able as to the Town's ability to process this request.

Thank you for your cooperation in respect of this matter. If you have any questions, please do not hesitate to contact the undersigned directly by telephone.

Yours very truly,

A large black rectangular redaction box covering the signature of Russell D. Cheeseman.

Russell D. Cheeseman

Encl.

cc. Mr. Azeem Patel (via e-mail)

Mr. Will Thomson (via e-mail)
Mr. Brian Worsley (via e-mail)
Mr. Randy Scherzer, Deputy CAO Grey County (via e-mail)
Mr. Scott Taylor, Director of Planning Grey County (via e-mail)
Mr. Robert Walters (via e-mail)
Mr. Walter Zigan (via e-mail)

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: February 15, 2024

CASE NO.: OLT-23-000297

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

Applicant and Appellant: L & W Properties Ltd.
Subject: Plan of Subdivision – Appeal of Conditions of Draft
Plan Approval
Reference Number: 42T2008-10B 42-CDM-2008-10A
Property Address/Description: 139 Brophy's Lane
Municipality: The Blue Mountains
Reference No.: UHOPA-22-006
OLT Case No.: OLT-23-000297
OLT Lead Case No.: OLT-23-000297
Legacy Case No.: PL110635
OLT Case Name: L & W Properties Ltd. v The Blue Mountains (Town)

BEFORE:

WILLIAM R. MIDDLETON) Thursday, the 15th
VICE-CHAIR) day of February, 2024

THE TRIBUNAL ORDERS THAT:

1. The Condition Number 4 to the List of Conditions approved pursuant to OMB File No. PL110635 is amended to read as follows:

2.

“4. If final approval is not given to this plan prior to September 30, 2024,

and no extensions have been granted, draft approval shall lapse under Subsection 51(32) of the *Planning Act*, R.S.O., as amended. If the owner wishes to request an extension to draft plan approval, a written explanation along with the applicable fee and a resolution from the local municipality must be received.”

“Euken Lui”

EUKEN LUI
ACTING REGISTRAR

Ontario Land Tribunal

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

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.