



DunnCap Job # 16-0043

March 14, 2024

Town of The Blue Mountains
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Attn: Mayor Matrosovs and Members of Council

Re: Staff Recommendation Report PDS.24.046 File P3358 Draft Plan Approval of Vacant Land Condominium 516681 7th Line – Comments Regarding the Draft Plan Conditions (Agenda Item B.9.1)

Dear Mayor Matrosovs and Members of Council,

Dunn Capital Corporation ("DunnCap") is the authorized agent acting on behalf of the Owner of 516681 7th Line with respect to the Draft Plan of Vacant Land Condominium P3358.

We have reviewed Staff Recommendation Report PDS.2024.046 which includes recommended Draft Plan Conditions ("DPC") for the proposed development. On review, we have noted a number of concerns regarding certain draft plan conditions. Specifically, the conditions noted below, as currently written, are not possible to clear, do not reflect their intended purpose, or in some cases do not clearly outline the expectations of the developer in satisfying the condition.

While we do not necessarily object to the overall purpose of the recommended draft plan conditions, we strongly request and suggest that they be revised to include such wording as necessary to provide the appropriate clarification as to their intended purpose and requirements for clearing. In this regard, we provide suggested revised text for the associated DPC and justification for same below.

1. Draft Plan Condition 10 – Holding Provisions and Changes to Zoning By-law and Draft Plan Conditions

"The Owner acknowledges and agrees that:

- *this Draft Approval applies to all lands described under Section 1 to these conditions; and*

- *Holding provisions of the Zone shall be fulfilled in their entirety before final approval and the owner agrees not to request the removal of the Holding provision until such time that....”*

Per our comments provided to Staff by email dated March 5, 2024, this DPC, as currently written, requires that the Zoning Holding provisions be fulfilled “***in their entirety***” prior to final approval of the draft plan. This cannot be fulfilled and presents two issues:

- Final approval and registration of the Draft Plan, as required by the Holding Provisions, cannot be completed unless DPC 10 has been satisfied. However, DPC 10, as written, requires all of the Holding Provisions, including final approval and registration, to be completed prior to satisfying the condition. The text of the DPC creates a “catch twenty-two” situation wherein the DPC and the Holding Provisions require each of the other to be addressed prior to either being satisfied. This is not possible to accomplish and as previously stated, cannot be fulfilled.
- As written, this is contrary to the general planning process and further does not appear to be in conformity with the process described by Section D1.6 of the Town’s Official Plan related to Holding Provisions.

This issue needs to be addressed prior to Draft Plan Approval. As previously proposed by email to Staff dated March 5, 2024, the following wording would maintain the intent of Draft Plan Condition 10 while adhering to appropriate process and not precluding the ability to clear the condition:

“The Owner acknowledges and agrees in the Condominium Agreement that:

- ***This Draft Approval applies to all lands described under Section 1 to these conditions; and***
- ***Holding provisions of the Zone shall be fulfilled in their entirety prior to the removal of the Holding Symbol and that, in the event any of the Holding provisions cannot be met without requiring changes to the Zoning By-law and/or Plan of Vacant Land Condominium, the Owner agrees to file the necessary Planning applications subject to municipal and agency requirements in force at the time that the applications are submitted”.***

2. DPC 31 – Traffic Study

“That the Owner agrees to complete the Traffic Impact Study in accordance with approved terms of reference to the satisfaction of the Town”.

By email dated March 5, 2024, Planning Staff confirmed that the intent of DPC 31 is to require the re-evaluation of traffic management issues in the event that access easements over Club Drive cannot be secured. The intent outlined by Staff is not captured in the Condition as currently worded.

Specifically, the condition as currently written requires a new Traffic Impact Study (“TIS”), subject to terms of reference to be determined by the Town. A TIS was required for a complete Draft Plan Application and did not receive any comments or concerns through the draft plan review process. While

it is agreed that a revised/updated TIS may be appropriate should access to the development change, it is not reasonable to require a new TIS at this juncture.

It is suggested that this condition may be removed without risk to the Town, as any future redline revisions related to site access would be subject to a formal application submission, including requirements for a complete application prescribed by the Town and County. This is supported by the proposed wording for Draft Plan Condition 10. At minimum, the condition should be revised as proposed to Staff by email dated March 5, 2024, in order to appropriately address the intent, as confirmed by Staff, and to clarify that a new TIS is not expected based on the current plan. Suggested wording is as follows:

“That the Owner agrees to undertake updates to the completed Traffic Impact Study in accordance with approved terms of reference to the satisfaction of the Town, if deemed necessary, in the event that access to the development is revised to be provided directly from the 7th Line property frontage”.

3. DPC 50 – Urban Design Guidelines

“That the Owner agrees to provide Urban Design Guidelines prepared by a qualified Architect/Landscape Architect prior to registration and to the satisfaction of the Town”.

By email dated March 5, 2024, Planning Staff confirmed that the intent of Condition 50 is that street lighting, road cross section, landscaping, etc., are addressed in a review against the Town’s Community Design Standards (“CDG”) and Engineering Standards. Based on our understanding of the response from Staff, the intent outlined by Staff is not captured in the Condition as currently worded.

As currently written, DPC 50 requires development specific Urban Design Guidelines to be prepared and submitted. Per our March 5, 2024, email comments, DCP 50 should be deleted in its entirety, as the intent of this condition can be captured in revised text for Condition 22, as follows (revisions are underlined):

“Ontario Building Code, Engineering Standards, and Community Design Guidelines

That the Condominium Agreement shall contain specific clauses related to the required Ontario Building Code/Engineering Standards and Community Design Guidelines of the Town and County of Grey, as applicable, including but not limited to the following:

- i. The appropriate horizontal and vertical alignments of all roads, including their intersection geometrics, and underground services;***
- ii. That suitable construction traffic routes are identified to the satisfaction of the Town and County of Grey;***

- iii. ***The street lighting system on roadways be designed and constructed, to the satisfaction of the Town, including consideration for the Town's Community Design Guidelines. The Condominium Agreement shall also require that all external lighting, including street lighting, be dark-sky compliant;***
- iv. ***That the cross-section for the private internal roadway be designed and constructed in consultation with the Town's Community Design Guidelines and in accordance with the Town's Engineering Standards, as appropriate, to the satisfaction of the Town; and***
- v. ***That the Landscape Plan be prepared and implemented in consultation with the Town's Community Design Guidelines, as appropriate, to the satisfaction of the Town."***

It is noted that the CDG's are referenced as being 'considered', as they are not to be applied as a policy checklist and are rather applied on a case-by-case basis depending on the scale, nature, and context of development (See CDG Section 1.3). The proposed wording appropriately references the CDG's in the preparation of final design drawings for the development, where the technical aspects related to cross-sections and street lighting will be primarily guided by the Town's Engineering Standards.

4. DPC 44 – Tree Compensation

"That the Owner agrees that any tree that cannot be retained through the tree preservation/retention/protection plan be compensated for through a tree planting plan to the satisfaction of the County and Municipality and that all trees not retained by the tree retention plan must be replanted at a 2:1 compensation ratio to the satisfaction of the Town and the County. General landscape plantings for streetscape will not be considered compensation".

The Owner has confirmed directly with the County of Grey that there is no policy document that requires or prescribes tree compensation in support of this DPC. Clarifying questions have been posed to County Staff, however, no responses have been received at the time of writing.

The intent of the condition is to generally provide replacement trees for those that cannot be retained in the development in order to reduce the net loss of tree canopy, where possible. As currently written, the specific scope of compensation and obligations of the developer are not clear (i.e. what constitutes a "tree"? Where can replacements be planted? Etc.). Without a formal guiding policy, there are no specific details on the implementation of this condition, and it is unclear if the replanting could be reasonably completed within the limit of the development lands.

In the absence of a formal policy or By-law, compensation or replanting should be completed on a site-specific basis through the Landscaping Plan and/or through the Tree Retention/Enhancement Plan, as are required by DPC 43. This is generally consistent with previous development approvals in the municipality and will allow for further discussion between the County and the Applicant to determine detailed expectations for tree replacement/compensation regarding scope, size, number, and location of

replacement trees. Subject to the revisions to DPC 43 outlined below, DPC 44 can be deleted in its entirety and tree replacement be included in the preparation of the tree preservation/retention/protection plan (revisions underlined).

" 43. Tree preservation, retention and protection plan

That the Owner agrees to complete a tree preservation/retention/protection/replacement plan by a qualified professional, Environmental Consultant, Landscape Architect or Arborist which identifies existing trees and other vegetation and means of protection, restoration and enhancement, through appropriate plantings or other measures including edge management, to the satisfaction of Town and County. This plan shall be implemented in the design and construction phases of the development. The Terms of Reference for this plan must be approved by the Town and County prior to being prepared. The plan must be submitted and approved prior to finalization of the Engineering Drawings. The plan shall be approved prior to any on-site works being undertaken in accordance with an approved terms of reference to the satisfaction of the County, the Niagara Escarpment Commission and the Town."

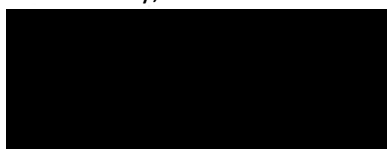
5. Technical and Administrative Comments

Further to the specific concerns outlined above, we have also noted technical and/or housekeeping matters related to a number of the remaining conditions. These matters can be further discussed directly with Staff prior to a final decision by Council. These technical and administrative comments are not intended to result in material changes to the associated DPC and only serve to provide additional clarification regarding the intent and expectations of the applicant.

Conclusion

This correspondence outlines for Council our concerns related to the Draft Plan Conditions as currently written and recommended in the Staff Report. We strongly encourage Council to consider the comments contained herein and to request that Staff work with the applicant to establish mutually agreeable draft plan conditions prior to a final decision being made. As noted herein, the proposed revised conditions are not intended to circumvent or otherwise relinquish any obligations of the developer with respect to the project, but are necessary to provide clarity on the roles, responsibilities, and expectations for all parties in advancing the development to final approval.

Sincerely,



Travis Sandberg
Manager – Land Development and Planning