

Section II – Items for Executive Committee Action

TO: Chair and Members of the Executive Committee
Friday, May 06, 2022 Meeting

FROM: Sameer Dhalla, Director, Development and Engineering Services

RE: **APPLICATION FOR PERMIT PURSUANT TO S.28.0.1 OF THE CONSERVATION AUTHORITIES ACT (MINISTER’S ZONING ORDER, ONTARIO REGULATION 698/20)**
CFN 66718 requesting permission for Development, Interference with Wetlands & Alterations to Shorelines & Watercourses pursuant to Ontario Regulation 166/06, 1577 to 1621 Major Mackenzie Drive East, Ontario (Part Lot 19 & Part W ½ Lot 20, Concession 3, City of Richmond Hill, Regional Municipality of York) by Montagna Capital Inc.

KEY ISSUE

Issuance of permission in the context of an issued Minister’s Zoning Order under the *Planning Act* and pursuant to Section 28.0.1 of the *Conservation Authorities Act* to make alterations within a Regulated Area to facilitate the construction of a stormwater tank and outlet in preparation of residential development, including a long-term care facility within 1577 to 1621 Major Mackenzie Drive East, in the City of Richmond Hill, Region of York.

RECOMMENDATIONS

WHEREAS the Minister of Municipal Affairs and Housing has issued a Minister’s Zoning Order (MZO) for the subject properties on December 2, 2020, as Ontario Regulation 698/20;

WHEREAS Section 28.0.1 of the *Conservation Authorities Act* requires the Authority to issue permission for a development project that has been authorized by a Minister’s Zoning Order (MZO) issued under the *Planning Act*, and where the lands in question are not located within a Greenbelt Area as identified through Section 2 of the *Greenbelt Act*;

WHEREAS Section 28.0.1 of the *Conservation Authorities Act* requires that the Authority shall not refuse to grant permission for a development project that has been authorized by a Minister’s Zoning Order (MZO), outside of the Greenbelt, under subsection (3) despite, (a) anything in Section 28 or in a regulation made under Section 28, and (b) anything in subsection 3(5) of the *Planning Act*;

WHEREAS Section 28.0.1(6), of the *Conservation Authorities Act*, permits the Authority to attach conditions to the permission, including conditions to mitigate any effects the development may have on the control of flooding, erosion, dynamic beaches, pollution, or the conservation of land and/or in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property;

WHEREAS Section 28.0.1(24), of the *Conservation Authorities Act*, provides that where a permit is to be issued pursuant to Ontario Regulation 166/06, the applicant is required to enter into an agreement with the Conservation Authority;

AND WHEREAS TRCA staff, in the absence of an approved MZO, would normally issue a Section 28 Permit for the construction of stormwater management facilities, if it has been

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demonstrated there will be no impact on the control of flooding, erosion, dynamic beaches, pollution, the conservation of land, or jeopardize the health or safety of persons or result in the damage or destruction of property;

THEREFORE, LET IT BE RESOLVED THAT Montagna Capital Incorporated in the City of Richmond Hill be granted permission through a Permit to construct stormwater facilities within a valley corridor in preparation of residential development including a long-term care facility within 1577 to 1621 Major Mackenzie Drive East, in the City of Richmond Hill, Region of York;

THAT TRCA staff seek full cost recovery in accordance with TRCA's Administrative Fee Schedule;

AND FURTHER THAT the Chief Executive Officer be authorized to execute an agreement related to the Permit for the site works as required by the *Conservation Authorities Act*.

MZO PERMIT SUMMARY

- Section 28.0.1 applies, and the Board must issue this permit.
- TRCA staff support the issuance of this permit application as the applicant has demonstrated that it does not impact flooding, erosion, dynamic beaches, pollution, the conservation of land, or jeopardize the health or safety of persons or result in the damage or destruction of property.
- The conditions of this permit are standard conditions and have been agreed upon by the proponent with their filing of this application.
- An Agreement is required and will include standard Permit conditions.
- This report and approval are required to allow the applicant to proceed with construction.

BACKGROUND

Permit Applications, Property Description and Background

The owner has applied for permission pursuant to Ontario Regulation 166/06, and Section 28.0.1 of the *Conservation Authorities Act* (CA Act) to construct a permanent underground stormwater tank and outlet in preparation for residential development including a long-term care facility on lands known municipally as 1577 to 1621 Major Mackenzie Drive East, within the City of Richmond Hill. The lands are located at the southwest corner of Highway 404 and Major Mackenzie Drive, (see location map - **Attachment 1**).

At the Board of Directors Meeting on June 25, 2021, Resolution #A131/21 was approved and Permit #C-210892 was subsequently issued for this site to construct temporary stormwater facilities, strip topsoil and rough grade. As required by the CA Act, an MZO permit agreement with the landowner was executed including standard permit conditions.

TRCA staff have been involved in planning applications (City File #19T(R)-11004) pertaining to this property since 2005. The property was subject to extensive review through the prior approval process whereby: the valley and stream corridor was defined and buffers determined, the employment use established, and the subdivision approved with conditions. Through our review and consideration of these applications, TRCA staff previously processed permits on this

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property for the previous owners, Rice Commercial in 2011 and DDR Major Mac in 2013. The MZO (Ont. Reg. 698/20) that has been issued (December 2, 2020) on this property converted the employment land use to residential uses including a mix of densities and a long-term care facility for seniors. The property is 29.38 ha in area which includes an Open Space Block of 8.66 ha along the Rouge River valley system as shown on **Attachment 1**.

The construction is to be phased. Phase 1 is under construction which involves the topsoil stripping and rough grading works associated with TRCA Permit #C-210892. **Attachment 2** shows the presently proposed Phase 2 works which include a permanent underground stormwater tank, outlet, site grading and connection to the York Durham Sewage System (YDSS) (located within the valley corridor). As illustrated, minor grading associated with these works extends beyond the boundaries of the approved MZO. As such, a separate Section 28 Permit will be issued for the development outside of the MZO boundary. The works are being constructed in conjunction with the installation and servicing of Vogell Road which is critical to the delivery of the long-term care facility. These additional works are located outside of TRCA's Regulated Area and permits are not required. Additional TRCA Permits will be required for the grading and servicing elements within the regulated area associated with the residential subdivision development.

Mandatory Permits for MZO Development Projects

Section 28.0.1 of the amended CA Act applies to a development project that has been authorized by an MZO under the *Planning Act*, within an area regulated under Section 28(1) of the CA Act, outside of the Greenbelt Area. In TRCA's case, the regulated area is prescribed in Ontario Regulation 166/06.

The provisions of this new Section of the Act are summarized as follows:

- Conservation Authorities shall issue a permit.
- Conservation Authorities may only impose conditions to the permit, including conditions to mitigate:
 - Any effects the development project is likely to have on the control of flooding, erosion, dynamic beaches or pollution or the conservation of land;
 - Any conditions or circumstances created by the development project that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property; or
 - Any other matters that may be prescribed by the regulation,
- An applicant has the right to a Hearing before the authority (Board) if there is an objection to the permit conditions being imposed by the Conservation Authority;
- If the applicant still objects to conditions following a decision of the Hearing Board, the applicant has the option to either request a Minister's review (MNRF) or appeal to the Ontario Land Tribunal (OLT);
- All MZO-related CA permits must have an agreement with the permittee (can include all parties, e.g., municipalities, on consent of applicant);
- The agreement shall set out actions that the holder of the permission must complete or satisfy to compensate for ecological impacts, (where applicable), and any other impacts that may result from the development project; and
- The agreement must be executed before work commences on the site; some enforcement provisions through court proceedings are in effect for MZO permits.

In summary, TRCA must issue a permit for development projects on lands subject to an MZO, outside of the Greenbelt, and can make that permission subject to conditions and must enter into an agreement with the landowner/applicant. Consistent with current practice, Board

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approval is required.

RATIONALE

Review of Permit Application by TRCA Staff

The applications have been reviewed by TRCA's geotechnical, water resources, hydrogeology, and ecology staff. The proposed site alteration does not impact:

- the control of flooding – all works are located outside of the regional storm floodplain;
- erosion – no geotechnical/slope stability issues have been identified;
- dynamic beaches – not applicable;
- pollution – sediment and erosion control measures will be installed and maintained through construction to prevent sediment from migrating from the site onto the adjacent lands or features;
- conservation of land – no significant vegetation will be removed and no adverse impacts to nearby natural features are anticipated; and / or
- in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property – the stormwater facilities have been sized and located based on current best practices.

Policy Guidelines:

The proposed works are consistent with Section 8.4 (General Regulation Policies), 8.5 (Valley and Stream Corridors) and 8.9 (Infrastructure Policies) of the Living City Policies for Planning and Development in the Watersheds of the Toronto and Region Conservation Authority.

SUMMARY CONCLUSION

Approval of permission for development within the valley and stream corridor is required to allow site alteration to commence. Staff are recommending the issuance of this Permit based upon TRCA's standard permit conditions, which will be included in the Agreement as required by the updated CA Act.

Report prepared by: June Little, extension 5756

Emails: June.Little@trca.ca

For Information contact: Adam Miller, extension 5244

Emails: Adam.Miller@trca.ca

Date: April 19, 2022

Attachments: 3

Attachment 1: Ministers Zoning Order (MZO) - Ontario Regulation 698/20, Map 251

Attachment 2: Proposed Works

Attachment 3: Standard Permit Conditions