

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 599/21)**
CFN 66762 requesting permission for Development, Interference with Wetlands & Alterations to Shorelines & Watercourses pursuant to Ontario Regulation 166/06, 3143 19th Avenue, (Part Lot 30, Concession 4, City of Markham, Regional Municipality of York) by Tung Kee Investment Canada Limited.

KEY ISSUE

Issuance of permission pursuant to Section 28.0.1 of the *Conservation Authorities Act* to make site alterations within a Regulated Area to facilitate topsoil stripping, and rough grading in preparation of commercial development within 3143 19th Avenue, in the City of Markham, Region of York.

RECOMMENDATIONS

WHEREAS the Minister of Municipal Affairs and Housing issued a Minister’s Zoning Order (MZO) for the subject property on August 27, 2021, as Ontario Regulation 599/21;

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 Permit for the first phase of construction and where it has been demonstrated there will 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;

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THEREFORE, LET IT BE RESOLVED THAT Tung Kee Investments Limited in the City of Markham be granted permission through a Permit to make alterations within a valley corridor for the construction of a temporary drain and temporary sediment pond to facilitate topsoil stripping and rough grading in preparation of a commercial development within Block 5 of 3143 19th Avenue, in the City of Markham, Region of York;

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

AND FURTHER THAT the Executive Committee, authorize the entering into of an agreement related to the Permit for the initial site works.

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 Descriptions and Background

The owner has applied for permission pursuant to Ontario Regulation 166/06, and Section 28.0.1 of the *Conservation Authorities Act* to construct temporary stormwater facilities, strip topsoil and rough grade in preparation for commercial development on lands known municipally as 3143 19th Avenue, within the City of Markham. The lands are located at the just west of Woodbine Avenue on the south side of 19th Avenue.

The MZO converted the land use from agricultural to commercial including a mix of commercial uses (office space, parking garage, film studios, hotels, and related amenities). The site is located along Berczy Creek within the Rouge River watershed, portions of which are to be conveyed to the City of Markham (see location map - ***Attachment 1***).

The entire property is 40 ha (100 acres) however this Permit only deals with an 8 ha (20 acre) portion at the northeast corner of the site, east and north of Berczy Creek. This portion of the property was subject to extensive review with the landowner and City including consultation prior to the MZO being approved, the staking of the dripline and continuous design meetings between TRCA Staff, the City and the Consulting Team. The valley and stream corridor and development limits were defined, and buffers determined in consultation with the applicant's engineering and environmental consultants.

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The construction is to be phased. Phase 1 which is the subject of this Permit, includes temporary erosion and sediment controls including a sediment pond and outlet which intrude into the Regulated Area to facilitate drainage and prevent erosion during topsoil stripping and rough grading. **Attachment 2** shows the proposed works. An additional permit will be required in the future for a permanent stormwater pond, outlet, and site grading.

Mandatory Permits for MZO Development Projects

Section 28.0.1 of the amended *Conservation Authorities Act* (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:

- CAs shall issue a permit.
- CAs 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 CA.
- If the applicant still objects to conditions following a decision of the Hearing, the applicant has the option to either request a Minister's review (MNRF) or appeal to the LPAT.
- 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.
- 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 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;

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- 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 temporary 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) and 8.5 (Valley and Stream Corridors) 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 *Conservation Authorities Act*.

Report prepared by: June Little, extension 5756

Emails: June.Little@trca.ca

For Information contact: Steve Heuchert, extension 5311

Emails: Steve.Heuchert@trca.ca

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Attachments: 3

Attachment 1: Ministers Zoning Order (MZO) - Ontario Regulation 599/21, Map 270

Attachment 2: Proposed Works

Attachment 3: Standard Permit Conditions