

Section I – Items for Board of Directors Action

TO: Chair and Members of the Board of Directors
Friday, June 24, 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 773/21)**
CFN 66361 requesting permission for Development, Interference with Wetlands & Alterations to Shorelines & Watercourses pursuant to Ontario Regulation 166/06, 221 Church Street (Part Lot 13, 14, Plan 40R-13916, Town of Ajax, Regional Municipality of Durham) by CSPS Annandale Nominee Inc.

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 construct barn swallow structures, site grade, install temporary erosion control and stormwater management facilities, and construct a commercial building within 221 Church Street South, in the Town of Ajax, Region of Durham.

RECOMMENDATION:

WHEREAS the Minister of Municipal Affairs and Housing issued a Minister’s Zoning Order (MZO) for the subject property on November 12, 2021, as Ontario Regulation 773/21;

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 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

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jeopardize the health or safety of persons or result in the damage or destruction of property;

THEREFORE, LET IT BE RESOLVED THAT CSPS Annandale Nominee Inc in the Town of Ajax be granted permission through a Permit to make alterations within a valley corridor to construct barn swallow structures, site grade, install temporary erosion control and stormwater management facilities, and construct a commercial building within 221 Church Street South, in the Town of Ajax, Region of Durham;

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

AND FURTHER THAT the Executive Committee, authorize the entering into of an agreement related to the Permit for the phased 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 barn swallow structures, site grade, install temporary erosion control and stormwater management facilities, and construct a commercial building for commercial development on lands known municipally as 221 Church Street South, within the Town of Ajax. The lands are located at the northeast corner of Church Street and Bayly Street.

The MZO converted the land use from Golf Facility Zone to Prestige Employment and Environmental Protection (EP) including a mix of commercial uses and related amenities with the valley and hazard lands to be protected and enhanced. The site is located along Duffins Creek, with the EP lands to be conveyed to the TRCA (see **Attachment 1 – MZO Ontario Regulation 773 21 - Map 276**).

The MZO and on-going Site Plan application was and is subject to extensive review with the landowner and Town including TRCA support for a Zoning By-law Amendment prior to the MZO being approved, the staking of the dripline and continuous design meetings between TRCA staff, the Town 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. These lands are zoned as Environmental Protection in the MZO.

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The lands rezoned to Environmental Protection will be conveyed to the TRCA. The Town's Site Plan Agreement for Site Plan Application SP1/22 will secure for this land conveyance. Once the Agreement is registered on title, the lands can be legally conveyed. These lands to be conveyed are intended to be restored through a comprehensive restoration plan. The necessary funds to implement the restoration plan will also be secured through the Town's Agreement, as the Town will collect these funds upon execution of the Agreement. The Town, in collaboration and consultation with the TRCA, intend to implement a trail system and passive recreational opportunities (where appropriate and supported) within the restoration lands. This will be a Town capital project separate from Site Plan Application SP1/22 and funded by the Town.

Given the requirements of Section 28.0.1 of the Act which requires TRCA to grant the requested permissions, TRCA staff are proposing a phased release of the permit. Phase 1 includes the installation of barn swallow structures within the valley (**Attachment 2 – Proposed Development Phase 1**); Phase 2 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; and Phase 3 includes the permanent stormwater management infrastructure, final grading and portions of commercial structures located at the edge of the TRCA regulated area (**Attachment 3 – Proposed Development Phases 2 and 3**).

We have received sufficient information for Phase 1, and for which TRCA staff would support works commencing at this time, subject to TRCA's Standard Conditions (**Attachment 4 – TRCA Standard Conditions**). Additional technical materials are required for Phase 2 and 3, and works would not commence until the additional condition is satisfied (**Attachment 5 – TRCA Additional Conditions**). Accordingly, staff's recommendation is to conditions the mandatory approval which will allow works to proceed at this time on lands for which technical issues are resolved, and to allow for the time for additional materials and confirmation to be provided for the other Phases, prior to the landowner proceeding with Phase 2 or 3 of the permit. To facilitate this, the special condition identified in Attachment 5 is required to be fulfilled prior to the Phase 2 or 3 works taking place. The mandatory agreement required for all MZO permits will recognize the standard conditions identified within Attachment 4 as relating to Phase 1, 2 and 3 of the permit release, and the additional condition identified within Attachment 5 as relating to Phase 2 or 3.

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

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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;
- 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 that work proceed in phases based upon TRCA's standard permit conditions and an additional condition, which will be included in the Agreement as required by the updated *Conservation Authorities Act*.

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Date: June 7, 2022

Attachments: 5

Attachment 1: Ministers Zoning Order (MZO) - Ontario Regulation 733/21, Map 273

Attachment 2: Proposed Development Phase 1

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Attachment 3: Proposed Development Phases 2 and 3
Attachment 4: Standard Permit Conditions
Attachment 5: Additional Permit Condition