

Section II – Items for Executive Committee Action

TO: Chair and Members of the Executive Committee
Friday, April 14, 2023 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 68520 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 (MZO) 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 outfall and associated outfall channel for road widening works on Major Mackenzie Drive East and to facilitate the construction of a second stormwater outfall and associated outfall channel in preparation of residential townhome development within 1577 to 1621 Major Mackenzie Drive East, in the City of Richmond Hill, Region of York.

RECOMMENDATION:

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 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 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, or unstable soil or bedrock 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 infrastructure, if it has been demonstrated there will be no impact on the control of flooding, erosion, dynamic beaches, pollution, the conservation of land, and new tests of unstable soils or bedrock, 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 outfalls and associated outfall channels within a valley corridor in preparation of residential development 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 Executive Committee authorize entering into 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, or unstable soil or bedrock, 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 two (2) outfalls and their associated outfall channels to service road widening modifications to Major Mackenzie Drive East and a townhome residential development 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**).

The proposed development is Phase 3 of a multi-phased development project on the subject lands. 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 (Phase 1). At the Executive Committee Meeting on May 6, 2022, Resolution #B35/22 was approved and Permit #C-220684 was subsequently issued to construct an underground stormwater management facility and outfall to service a portion of the subject lands (Phase 2). As required by the CA Act, MZO permit agreements with the landowner were executed including standard permit conditions for both permits. The works which comprise Phase 1 have been completed and the works which comprise Phase 2 are well underway.

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 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**.

According to the York Region Official Plan, the area of the site where development is proposed is designated "Urban Area" and the natural heritage system is designated "Regional Greenlands System". Based on the City of Richmond Hill Official Plan, the subject lands have various employment designations (i.e., "Employment Area" and "Employment Corridor") which do not permit the proposed development. A City staff report was received by City Council on February 26, 2020. The report outlined the Region's Municipal Comprehensive Review (MCR) process that was underway when the report was prepared. The report identified evolving employment land trends within the Region. The report also considers several employment land conversion requests received by both the City and Region, which included the subject property. At the same meeting, Council passed a resolution recommending that the Region support the employment lands conversion for the site to permit the proposed development. On October 22, 2020, York Region Council passed a similar resolution approving the

conversion for the subject lands as part of the Regional MCR process. Despite the intent of the MCR, on October 28, 2020, a Member Motion was passed at City Council supporting a draft MZO to convert the zoning permissions. The resolution instructed City staff to formally request the Minister to issue a MZO to implement the proposed development. On December 2, 2020, the Minister of Ministry of Affairs and Housing (MMAH) approved the MZO. On November 4, 2022, a decision was made by the Minister to approve, with modifications, the York Region Official Plan (By-law 2022-4) and the subject lands are now designated “Community Area”, which permits residential development.

Attachment 2 shows the proposed Phase 3 works which include constructing 2 separate outfalls and associated outfall channels, one to manage storm flows resulting from the widening of Major Mackenzie Drive (to accommodate anticipated traffic generated by the subdivision) and the second to provide stormwater management for a townhome block which is not connected with the stormwater management facility constructed in Phase 2.

The proposed outfall channel for the Major Mackenzie Drive widening includes a pocket wetland/plunge pool at the outfall headwall followed by an enhanced grassed swale to bring flows to a natural, vegetated area within the valley corridor roughly 60 metres away from the watercourse. The proposed channel is approximately 80-90 metres in length on a gentle slope and there are no geotechnical concerns.

The proposed outfall channel for the townhouse block is located halfway down a gentle slope (approximate 6 horizontal: 1 vertical), well away from the watercourse (approximately 200 metres). This outfall channel is roughly 7 metres long and ends in a plunge pool/pocket wetland. The channel area is to be vegetated with plantings of native species. There are no geotechnical concerns with this outfall and outfall channel.

Both outfalls and outfall channels are located outside of the Regulatory Flood Plain in disturbed areas which requires no removal of significant vegetation.

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 a 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 unstable soil or bedrock;
 - 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 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 regulatory storm floodplain;
- erosion – no geotechnical/slope stability issues have been identified;
- dynamic beaches – not applicable;
- unstable soil – not applicable;
- unstable bedrock – karst topography is not located within or immediately adjacent to the site;
- 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 outfalls and outfall channels have been sized and located based on current best practices.

Note that upon royal assent, Bill 23 repealed clause 28.0.1 (6)(a) of the Conservation Authorities Act, removing the ability of CAs to attach conditions mitigating the effects a MZO development project would have on the conservation of land and pollution. It is worthwhile to note that an agreement under 28.0.1 (25) can still require compensation for ecology impacts. As a result of Bill 23, the amended clause 28.0.1 (6) now includes the ability to attach conditions mitigating the effects of a development project on unstable soil and bedrock.

For clarity, Bill 23 also proposes to similarly repeal, under clause 28.1 (1)(a), the conservation of land and pollution tests and add the unstable soil and bedrock tests by

way of amendment, for applications where an MZO has not been issued, but this does not come into force until an enabling regulation is proclaimed.

Even though this application was submitted prior to the royal assent of Bill 23, the application is now subject to the amendments of the Bill. However, the application in staff's opinion would not have affected the conservation of land or pollution tests as the development project will mitigate any construction-related impacts to the adjacent natural heritage system and is located outside of the sediment and erosion controls, in accordance with TRCA's guidelines.

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 TRCA.

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 (Standard Conditions – **Attachment 3**), which will be included in the Agreement as required by the updated CA Act.

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Date: March 10, 2023

Attachments: 3

Attachment 1 Ministers Zoning Order (MZO) – Ontario Regulation 698-20 Map 251

Attachment 2 Proposed Works

Attachment 3 Standard Permit Conditions