

## Section I – Items for Board of Directors Action

**TO:** Chair and Members of the Board of Directors  
Friday, April 28, 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 169/21, AS AMENDED)**  
CFN 68367 requesting permission for Development, Interference with Wetlands & Alterations to Shorelines & Watercourses pursuant to Ontario Regulation 166/06, 36 Apple Creek Boulevard, Markham Ontario. (Part of Lot 13, Concession 4, City of Markham, Regional Municipality of York), by the Mon Sheong Foundation.

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### KEY ISSUE

Issuance of permission pursuant to Section 28.0.1 of the Conservation Authorities Act to make alterations within a Regulated Area to facilitate the development of an 8-storey “life lease” mixed-use building (assisted living centre), proposed at 36 Apple Creek Boulevard, within the City of Markham, Regional Municipality of York.

### RECOMMENDATION:

**WHEREAS** the Minister of Municipal Affairs and Housing (MMAH) issued a revised MZO for the subject property on February 24, 2023, as Ontario Regulation 169/21, as amended;

**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 an 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 an MZO, outside of the Greenbelt 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 Permit for the commercial development where it has been demonstrated there will no impact on the control of flooding, erosion, dynamic beaches, unstable soil and bedrock, or jeopardize the health or safety of persons or result in the damage or destruction of property;

**THEREFORE, LET IT BE RESOLVED THAT** the Mon Sheong Foundation be granted permission to make alterations within a Regulated Area to facilitate the development of an 8-storey “life lease” mixed-use building (assisted living centre) at 36 Apple Creek Boulevard in the City of Markham, Regional Municipality of York;

**AND FURTHER THAT** the Board of Directors authorize the entering into of the required agreement related to the Permit for the 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, 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 include standard conditions and have been agreed upon by the proponent with their filing of this application, and the one additional condition has been agreed to in writing by the applicant.
- An Agreement is required and will include standard Permit conditions and one additional Permit condition.
- This report and approval are required to allow the applicant to proceed with construction.

### **BACKGROUND**

The owner has applied for permission pursuant to Ontario Regulation 166/06, and Section 28.0.1 of the Conservation Authorities Act, for topsoil stripping, grading, installation of an infiltration trench, stormwater cistern/storage tank and outfall to facilitate an 8-storey “life lease” mixed-use building (assisted living centre).

The 3.24 ha (~8 ac) site is located on the north side of Apple Creek Boulevard, east of Woodbine Avenue and bounded to the east by the Rouge River Valley that is part of

## Item 8.11

Markham's Greenway System and within TRCA's regulated area (see Attachment 2: Ministers Zoning Order (MZO) – Map 303).

The MZO converted the zoning of the lands from industrial and commercial to mixed-use, allowing a long-term care facility with accessory uses including, medical offices and health care centre. As well as the inclusion of open space zoning on the east side of the property to protect the natural heritage of the Rouge River valley.

Although the entire property is subject to the MZO, this report and the associated permit is for "Phase One" of the development constituting the "life lease" mixed-use building (assisted living centre) on 1.53 ha (~3.8 ac) of the site fronting Apple Creek Boulevard.

Phase Two, constituting 0.61 ha (~1.5 ac) portion of the property to the immediate north of the subject lands; and Phase Three, a 1.1 ha (~2.7 ac) lot located on adjacent lands at 8885 Woodbine Avenue, are anticipated to be a future "assisted living facility and a long-term care facility respectively. When formally proposed, the prospective developments will be subject to separate/new municipal planning approval and TRCA permits.

### **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 Section 28.0.1 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 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 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.
- The agreement must be executed before work commences on the site; some enforcement provisions through court proceedings are in effect for MZO permits.

## Item 8.11

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.

### **RATIONAL**

#### **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 have been located outside of the regional storm floodplain;
- erosion: all works have been located beyond the long term stable top of slope to mitigate geotechnical/slope stability concerns;
- dynamic beaches: not applicable;
- unstable soil: no organic soils or leda clays have been identified within the subject lands;
- unstable bedrock: no karst topography is located within or immediately adjacent to the site;
- 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: as previously noted, the limits of the proposed works have been located outside flood and erosion hazards.

#### **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 TRCA Watersheds.

#### **Recommended Condition to Permission:**

The applicant has requested to proceed with the subject TRCA permit although the related planning approvals are still in process as of the writing of this report.

To ensure that revisions resulting from the planning approvals process do not inadvertently impact TRCA's interests (the control of flooding, erosion, dynamic beaches, unstable soil or bedrock, or 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), staff recommend a condition to ensure that any revisions proposed through the municipal planning approvals process are to the satisfaction of TRCA.

### **SUMMARY CONCLUSION**

Approval of permission for development within the TRCA's regulated area is required to allow development to commence. Staff are recommending the issuance of this Permit based upon TRCA's standard permit conditions and one additional condition, which will be included in the Agreement as required by the updated Conservation Authorities Act. (See **Attachment 4, Standard Permit Conditions** and **Attachment 5, Additional Permit Conditions**).

**Report prepared by: Mark Howard**

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**Date: April 12, 2023**

**Attachments: 5**

- Attachment 1: Ministers Zoning Order (MZO) – Ontario Regulation 169/21 (as amended)
- Attachment 2: Ministers Zoning Order (MZO) – Map 303
- Attachment 3: Proposed Works
- Attachment 4: Standard Permit Conditions
- Attachment 5: Additional Permit Conditions