

Section I – Items for Board of Directors Action

TO: Chair and Members of the Board of Directors
Friday, June 21, 2024 Meeting

FROM: Sameer Dhalla, Director, Development and Engineering Services

RE: **APPLICATION FOR PERMIT PURSUANT TO SECTION 28.1.2 OF THE CONSERVATION AUTHORITIES ACT (MINISTER’S ZONING ORDER, ONTARIO REGULATION 329/22)**
21 Don Roadway, 375 Eastern Avenue, 385 Eastern Avenue, and 30 Booth Avenue (PART OF LOTS 14 AND 15, BROKEN FRONT CONCESSION, YORK; PART OF WATER LOT IN FRONT OF LOTS 14 AND 15, BROKEN FRONT CONCESSION, YORK; PART OF FRONT STREET, REGISTERED PLAN 105, CITY OF TORONTO) by EHL (21 Don Roadway) Holdings Inc., EHL (375 Eastern Ave) Holdings Inc., EHL (385 Eastern Ave) Holdings Inc., and EHL (30 Booth Ave) Holdings Inc. (PER-DPP-2024-00003)

KEY ISSUE

Issuance of permit pursuant to Section 28.1.2 of the Conservation Authorities Act for lands subject to a Minister’s Zoning Order under the Planning Act to develop within a Regulated Area to facilitate enabling works, roads and services and a Flood Protection Landform within a future Transit Oriented Development at 21 Don Roadway, 375 Eastern Avenue, 385 Eastern Avenue, and 30 Booth Avenue, City of Toronto.

RECOMMENDATION:

WHEREAS the Minister of Municipal Affairs and Housing (MMAH) issued a Minister’s Zoning Order (MZO) for the subject properties on April 8, 2022, as Ontario Regulation 329/22;

WHEREAS Section 28.1.2 of the Conservation Authorities Act requires Toronto and Region Conservation Authority (TRCA) to issue a permit for a development project that has been authorized by an MZO issued under the Planning Act, and where the lands in question are not

Item 8.3

located within a Greenbelt Area as identified through Section 2 of the Greenbelt Act;

WHEREAS Section 28.1.2(6), of the Conservation Authorities Act, allows TRCA to attach conditions to the permit, 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 28.1.2(17), of the Conservation Authorities Act, provides that where a permit is to be issued, the applicant is required to enter into an agreement with the TRCA;

AND WHEREAS TRCA, in the absence of an approved MZO, would normally issue a permit for the construction of a Transit Oriented Development, if it has been demonstrated there will no impact on the control of flooding, erosion, dynamic beaches, and 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 EHL (21 Don Roadway) Holdings Inc., EHL (375 Eastern Ave) Holdings Inc., EHL (385 Eastern Ave) Holdings Inc., and EHL (30 Booth Ave) Holdings Inc., in the City of Toronto be issued a permit to construct enabling works, roads and services and a Flood Protection Landform;

AND FURTHER THAT the required agreement reflects and secures the approved conditions, and any actions or requirements that the permit holder must complete or satisfy to mitigate any impacts that may result from the development project;

AND FURTHER THAT TRCA staff continue to seek full cost recovery on this permit application in accordance with TRCA's Administrative Fee Schedule.

BACKGROUND

Mandatory Permits for MZO Development Projects

Section 28.1.2 of the 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 the CA Act, outside of the Greenbelt Area. The provisions of Section 28.1.2 of the Act are summarized as follows:

Item 8.3

- The Conservation Authority (CA) shall issue a permit.
- CA's 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 if there is an objection to the permit conditions being imposed by the CA. No hearing was requested for this permit application and the applicant has confirmed their consent to the conditions.
- If the applicant objects to conditions following a decision of the Hearing Board, the applicant has the option to either request a Minister's review (MNR) or appeal to the Ontario Land Tribunal (OLT).
- All MZO-related CA permits must have an agreement with the permittee (and include additional parties, e.g., municipalities, on consent of application).
- The agreement shall set out actions that the holder of the permission must complete or satisfy to compensate for ecological impacts, and any other impacts that may result from the development project.
- The agreement must be executed before work commences on the site; it is an offence to commence the works without a signed agreement.

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 practice, Board approval is required for all TRCA MZO permit applications.

Permit Application, Property Descriptions and Background

The owner has applied for permission pursuant to Section 28.1.2 of the Conservation Authorities Act to facilitate enabling works, roads and services and a Flood Protection Landform within the future East Harbour Transit Oriented Development at 21 Don Roadway, 375 Eastern Avenue,

Item 8.3

385 Eastern Avenue, and 30 Booth Avenue, City of Toronto. The lands subject to the MZO are located east of the Don Valley Parkway, south of the Metrolinx rail corridor, north of Lake Shore Boulevard E., and west of Booth Avenue (Site Location and Minister's Zoning Order (MZO) from O. Reg. 329-22 – Map 290 – **Attachment 1**).

The properties are collectively owned by subsidiaries of Cadillac Fairview, are approximately 15.10 hectares in total area and do not include any natural features. The lands are located within the Lower Don Special Policy Area and are subject to flooding from the Don River in a regional storm event (Existing Lower Don Floodplain – **Attachment 2**). The properties will be removed from the floodplain upon completion of the Port Lands Flood Protection and Enabling Infrastructure Project, which includes a Flood Protection Landform on the western portion of the 21 Don Roadway property (subject to Phase 3 of this permit), in addition to the Broadview Eastern Flood Protection Project to the north (subject to future permitting).

The Transit Oriented Development which is associated with the proposed East Harbour Transit Hub under construction on the Metrolinx lands to the north has been subject to review through Draft Plan of Subdivision Application No. 16 270078 STE 30 SB, detailed design of the East Harbour Flood Protection Landform, and extensive TRCA staff engagement with the City of Toronto, Waterfront Toronto, Infrastructure Ontario and Metrolinx.

Minister's Zoning Order (MZO)

On April 8, 2022, a Ministers Zoning Order (MZO) was issued as Ontario Regulation 329/22. It provided zoning permission for 302,000 square metres of residential uses and 926,000 square metres of non-residential uses for a mixed-use Transit Oriented Community. The Master Plan for the properties envisions seventeen (17) buildings, an extension of Broadview Avenue, several local roads, and parkland (East Harbour Master Plan – **Attachment 3**). This permit application is to facilitate the infrastructure necessary to implement the future Transit Oriented Community.

RATIONALE

Review of Permit Application by TRCA Staff

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

Item 8.3

- the control of flooding – while the lands are currently within the floodplain associated with the Don River, impacts are not anticipated up and downstream of the site during construction and the proposed Flood Protection Landform along with other off-site flood remedial work will remove the floodplain in its entirety from the site;
- erosion – the site is separated from the Don River. No impacts to erosion are anticipated.
- dynamic beaches – the lands are not located along the Lake Ontario shoreline;
- unstable soil – there are no unstable soils or wetlands on the site;
- unstable bedrock – karst topography or other forms of unstable bedrock are not located on 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 - works are taking place on site while the floodplain remains, which is unavoidable. The applicant through additional Condition 15 has committed to prepare and implement an Emergency Management Plan addressing life safety and property damage during and after construction until such time as the TRCA has confirmed in writing that the site is permanently flood protected.

Given the requirements of Section 28.1.2 of the Act which requires TRCA to grant the requested permissions, TRCA staff are proposing a phased release of the permit, as follows:

- **Phase 1:** This early works phase includes below grade excavation and demolition of old foundations, temporary stormwater management facilities, site grading and construction trailers (Phase 1 Early Works – **Attachment 4**). The additional conditions identified in **Attachment 7** are required to be fulfilled prior to the release of the Phase 1 permit.
- **Phase 2:** This phase includes the development of roads and sanitary, storm and water servicing (illustration not yet available). Staff have reviewed preliminary servicing report and drawings for this infrastructure. The additional conditions identified in **Attachment 7** are required to be fulfilled prior to the release of the Phase 2 permit.
- **Phase 3:** This phase includes the construction of the Flood Protection Landform (FPL) necessary to contain flood waters west of the properties (Phase 3 East Harbour Flood Protection Landform –

Item 8.3

Attachment 5). The FPL will be constructed consistent with TRCA's Flood Protection Land forming Technical Design Considerations document and include rigid inclusions below the core of the landform to address settlement. Staff have reviewed and are satisfied with the 100% detailed design drawings. The additional conditions identified in **Attachment 8** are required to be fulfilled prior to the release of the Phase 3 permit.

The mandatory agreement required for all MZO permits will recognize the conditions identified within **Attachments 6 and 7** as relating to Phases 1 and 2 and those within **Attachments 6 and 8** as relating to Phase 3. Phase 1 of the permit will be issued for 2 years. The implementation of Phases 2 and 3 will require a permit extension and revisions and will be subject to permit extension and revision fees identified in the TRCA Fee Schedule for Permitting Services in effect at that time.

It is the opinion of TRCA staff that the conditions as provided will serve to successfully mitigate the prospective negative impacts on the control of flooding, erosion, dynamic beaches, unstable soil or bedrock, or the 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.

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 TRCA Watersheds.

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 application based upon TRCA's standard permit conditions (Standard Permit Conditions - **Attachment 6**), and additional conditions to ensure that the features removed are replicated on site (Additional Permit Conditions for Phase 1 and 2 – **Attachment 7** and Additional Permit Conditions for Phase 3 – **Attachment 8**).

Prior to the approval of the MZO, TRCA staff anticipated that development

Item 8.3

would take place on these lands to begin construction of a Transit Oriented Community and to implement the removal of the floodplain. The Conservation Authorities Act requires TRCA to issue such a permit on these lands as they are subject to an MZO, issued under the Planning Act. Staff has therefore reviewed the applications and have created additional conditions to ensure that the development takes place in an orderly fashion and to mitigate risk due to flooding during construction.

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Attachments: 8

Attachment 1: Location of Subject Lands and Minister's Zoning Order (MZO) from Ontario Regulation 329-22 – Map 290

Attachment 2: Existing Floodplain Map

Attachment 3: East Harbour Master Plan

Attachment 4: Phase 1 Early Works

Attachment 5: Phase 3 East Harbour Flood Protection Landform

Attachment 6: Standard Permit Conditions

Attachment 7: Additional Permit Conditions for Phase 1 and 2

Attachment 8: Additional Permit Conditions for Phase 3