

ISSUE DATE:

August 16, 2013



Ontario

Ontario Municipal Board
Commission des affaires municipales de l'Ontario



2233497 Ontario Ltd. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal to enact a proposed amendment to Zoning By-law 4316-09 of the Town of Niagara-on-the-Lake to rezone lands respecting 46 Paxton Lane by replacing a section in its entirety with provisions that permit a Residential (R1-14) – Site Specific Zone, Residential Multiple (RM1-14) – Site Specific Zone and Open Space (OS-14) Zone – Site Specific Zone to change the existing proposed development to permit the development of a 36 unit condominium, consisting of 25 townhouses and 11 single detached dwellings, and a park

OMB File No.: PL130165

IN THE MATTER OF subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	2233497 Ontario Ltd.
Subject:	Proposed Plan of Subdivision
Property Address/Description:	46 Paxton Lane
Municipality:	Town of Niagara-on-the-Lake
Municipal File No.:	26T-18-05-01
OMB Case No.:	PL130165
OMB File No.:	PL130166

APPEARANCES:

Parties

2233497 Ontario Ltd.
Town of Niagara-on-the-Lake

Counsel

T. A. Richardson
C. Shedden

MEMORANDUM OF ORAL DECISION DELIVERED BY R. ROSSI ON AUGUST 6, 2013 AND ORDER OF THE BOARD

[1] 2233497 Ontario Ltd. ("Applicant") and the Town of Niagara-on-the-Lake ("Town") have presented to the Board this settlement related to the Applicant's proposed draft plan of subdivision to develop a condominium comprised of townhouses, single-detached dwellings and a park at the south end of Paxton Lane in the St. David's

community. The proposed draft plan of subdivision is known as "The Settlement at St. David's (Extension)."

[2] The subject property is bounded by the Niagara Escarpment and the St. David's Golf Course to the east and Four Mile Creek and its valley lands to the west. There are approximately ten residential properties fronting along Paxton Lane. To the south is the Settlement of St. David's Subdivision that consists of single-detached dwellings of varying sizes and a small number of townhouse units.

[3] An approved draft plan with a different house form configuration and layout was presented in 2008 but the presence of significant archeological artifacts on portions of the subject lands required substantive changes to the overall development. Today, the Board has been asked to consider the revised development proposal and its facilitating Zoning By-law Amendment. Where the previous draft plan contemplated 29 house form units in total, this proposal adds four houses to the subdivision, resulting in a 60-40 mix of townhouses and single detached dwellings. Blocks 19 and 20 of the subdivision will be conveyed to the Town as these are likely to contain significant heritage resources and archeological artifacts. Maintenance and general upkeep will be provided for in the common element costs.

[4] Access to the site will stem from a permanent turning circle on Paxton Road South, where another residential development is currently under construction – all part of the St. David's Settlement. This access route will lead into the private road condominium development for the site. Responding to concerns from residents, the Applicant will create a road connection to Paxton Road North at the northern part of the site; however, that north access point will be closed to residential traffic and is intended for emergency vehicle use only. This will preserve the local character of Paxton Road North. The Region of Niagara ("Region") has expressed no concerns with the road system as configured or the limiting of access at the north end of the site. As for one resident's concern with possible future traffic impacts, Transportation Planner Philip Grubb, president of Paradigm Transportation Solutions Limited, which completed the traffic impact assessment for this development, testified briefly that the road network is sufficient to accommodate the 33 new homes. Mr. Grubb made specific reference to the intersection of David Secord Drive and Four Mile Creek Road and advised that the intersection and the internal street network within the existing Settlement of St. David's Subdivision are capable of accommodating traffic from the subject site. His report appeared in Exhibit 4, Tab 12 and was reviewed by the Board.

[5] "Paxton House" (also known by some residents as "David Secord" House) is identified in the Town Heritage Resource Register and is one of the oldest houses in the Town. It is sited on the subject lands and will form part of the proposed residential subdivision. On the recommendation of the Town's Municipal Heritage Committee, the house will be designated under Part IV of the *Ontario Heritage Act*. Conditions for its preservation and external restoration are also included in the conditions for draft plan approval.

[6] The Town's Senior Planner, Leah Wallace, was qualified to provide professional land use planning evidence and expert opinion in this case. Ms. Wallace spent 13 years as the Town's heritage planner before accepting her current senior role. She has been intimately involved with this file since its inception and she wrote the final planning report on the subject property. She also worked closely with the Municipal Heritage Committee regarding conservation of Paxton House and the safeguarding of ongoing archeological work on the site. Ms. Wallace also advised the Board that the conveyance of Blocks 19 and 20 is an acceptable approach to the Town and the Region to ensure that lands containing possibly significant artifacts and heritage resources remain the property of the Town. She added that proposed landscaping designs for the two affected blocks will meet minimum standards and will not touch below the ground. She added that the proposal and preservation of Paxton House conform to the Town's Official Plan policies regarding heritage conservation.

[7] The Board heard that no public agency has expressed any objections to the proposed development. Planning staff recommendations related to approval of the subdivision are reflected in the settlement details (Exhibit 2) and attached to these reasons.

[8] Planner John Ariens was qualified to provide professional land use planning evidence and expert opinion in this case. Mr. Ariens has had prior development experience in the St. David's community and his planning evidence and opinion were uncontradicted. Mr. Ariens advised the Board that the Town's Urban Design Guidelines will be implemented through the site plan control process. He described the urban design review process as a very detailed one and is quite rigorous. This opinion derived from one interested participant's subjective comment that the quality of house forms contemplated for this subdivision is not up to the design standards of his residential area and the rest of St. David's. This latter statement was assigned little weight in the context of the professional planning evidence presented at this hearing.

[9] The planner opined that the upper-tier provincial planning instruments all identify this site as developable land within a settlement, offering a compact urban form that will contribute to a range of housing types within the Municipality. It will provide both townhouse and single-detached houses while preserving an existing historical dwelling on these lands. Regionally, this is an Urban Settlement Area and the Region and its Public Works staff are supportive of the proposed conditions. The development also complies with the Town's secondary plan for this area and the proposed subdivision will retain a low density residential designation.

[10] Mr. Ariens also referenced the applicable criteria to be considered in s. 51(24) of the *Planning Act*. He opined that these are all met through this proposal. He opined that the conditions of approval as constituted are appropriate for the development. The full list appears in the Minutes of Settlement. In the planner's opinion, the proposed settlement and the implementing documents represent good land use planning; they comply with all of the in-force planning instruments; the result is compatible development for the area; and this completes the development of the St. David's lands east of Four Mile Creek.

[11] Some interested participants expressed concerns with the proposed development. Among them, Mr. Richard Woodroff, a resident of Paxton Road North, had his traffic and site access concerns addressed by the planning evidence and supported by the documents presented to the Board jointly by the Town and the Applicant.

[12] Hans De Meel lives in the St. David's Settlement and lives south of the proposed development site. His property is separated from the site by a storm water pond. He expressed concerns with the incompatibility of the site; incomplete archeological digging that might yield further finds on the site; and traffic impacts created by the new entrance at Four Mile Creek Road. These issues were also addressed satisfactorily through the planning evidence as cited above.

[13] All of the planners who testified expressed their unanimous support for the draft plan of subdivision, the site-specific zoning by-law amendment and the list of final conditions for approval. The parties have clearly undertaken significant and comprehensive negotiations and work to arrive at a settlement that is respectful of the area, preserves important components of the Town's heritage and limits impacts on surrounding and adjacent lands. In this context, it is the Board's determination that the

proposed draft plan of subdivision and implementing conditions along with the facilitating by-law amendment represent good planning and should be approved.

ORDER

[14] Having considered all of the evidence, the Board attaches the Minutes of Settlement (Attachment 1) to this Order and it Orders the appeal is allowed in the following manner:

- [1] By approving the draft plan of subdivision renderings (contained in Schedule "A" and Schedule "D" of the Minutes of Settlement) subject to the Town of Niagara-on-the-Lake Final Conditions of Approval at Schedule "B";
- [2] By approving the landscaping plan (contained in Schedule "C"); and
- [3] By amending Zoning By-law No. 4316-09, as amended, with site-specific By-law No. 4316AP-13 (Schedule "E").

"R. Rossi"

R. ROSSI
MEMBER

MINUTES OF SETTLEMENT

IN THE MATTER OF subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	2233497 Ontario Limited
Subject:	Proposed Plan of Subdivision
Property Address/Description:	46 Paxton Lane, Part of Niagara Township Lot 60 Part 1, 30R - 3213 Save and Except Part 2, 30R - 1960
Municipality:	Town of Niagara-on-the-Lake
Municipal File No.:	CDS - 12 - 081
OMB Case No.:	PL130165

IN THE MATTER OF subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant:	2233497 Ontario Limited
Subject:	Proposed Amendment to By-law 4316/09
Property Address/Description:	46 Paxton Lane, Part of Niagara Township Lot 60, Part 1, 30R - 3213 Save and Except Part 2, 30R - 1960
Municipal File No.:	CDS - 12 - 081
OMB Case No.:	PL130165

Parties

Counsel

2233497 Ontario Limited

Thomas A. Richardson

Town of Niagara-on the-Lake

Callum Shedden

1. 2233497 Ontario Limited (the "Appellant") and the Town of Niagara-on-the-Lake ("the Town") confirm that the appeals filed by The Appellant with respect to the refusal of the Town to approve the proposed plan of subdivision known as 46 Paxton Lane - The Settlement of St. Davids Extension Subdivision and the application to amend the provisions of Zoning By-law No. 4316/09 for Part of Niagara Township Lot 60, Part 1, 30R - 3213, Save and Except Part 2, 30R - 1960 (the "Site") have been resolved on the basis of these Minutes of Settlement.
2. The Town and the Appellant agree that the Draft Plan of Subdivision shall be amended to comprise of 14 single detached lots and 3 Blocks containing a

total of 19 townhouse units as shown on the Draft Plan of Subdivision attached as Schedule "A" hereto.

3. The Town and the Appellant agree that all of the Conditions of Final Approval for proposed plan of subdivision known as 46 Paxton Lane - The Settlement of St. Davids Extension Subdivision shall be as set out in Schedule "B" attached hereto.
4. The Town and the Appellant agree that the landscape plan for Blocks 17 and 18 of the draft plan of subdivision which the Appellant is required to provide to the Ministry of Tourism, Culture and Sport pursuant to condition 13 c) of the Conditions of Final Approval shall be the landscape plan attached as Schedule "C" hereto, which landscape plan is hereby confirmed to be to the satisfaction of the Town of Niagara-on-the-Lake.
5. The Town and the Appellant agree that the sidewalk/trail through the development which the Appellant is required to provide pursuant to condition 24 of the Conditions of Final Approval shall in the location identified by the dashed line on the Draft Plan of Subdivision attached as Schedule "D" hereto.
6. The Appellant shall provide the Town with a traffic study with respect to the proposed development prior to the commencement of the Ontario Municipal Board hearing, which document shall be made available by the Town for review by the public.
7. The Town and the Appellant agree that the provisions of the Town's Comprehensive Zoning By-law No. 4316/09 shall be amended by the approval by the Ontario Municipal Board of Zoning By-law No. 4316AP - 13 attached as Schedule "E" to these Minutes of Settlement.
8. The Town and the Appellant agree that the Ontario Municipal Board shall be provided with a copy of these Minutes of Settlement and shall request that the Board approve the revision of the conditions of draft plan approval in accordance with the terms hereof and approve By-law No. 4316AP - 13 at the Hearing scheduled to commence on August 6, 2013.
9. The Town and the Appellant agree that the Appellant and the Town shall present land use planning evidence at the Hearing in support of the amendment to the Conditions of Final Approval for the proposed subdivision and in support of the approval of By-law 4316AP - 13, in accordance with the terms of these Minutes of Settlement.

10. These Minutes of Settlement may be executed in counterparts.

In witness whereof the Town and the Appellant have executed these Minutes of Settlement this 16 day of July, 2013.

Corporation of the Town of Niagara-on-the-Lake
By its solicitors, Daniel & Partners LLP



Per: Callum Shedden

2233497 Ontario Limited
By its solicitors, Sullivan, Mahoney LLP



Per: Thomas A. Richardson

FILE 26T-18-05-01

SCHEDULE "B"

TOWN OF NIAGARA-ON-THE-LAKE
CONDITIONS OF FINAL APPROVAL

The conditions of final approval and registration of the "The Settlement at St. Davids Extension Subdivision", FILE 26CD-18-12-01 Revised are as follows:

1. That this approval applies to "Settlement at St. Davids Extension Subdivision", being Part of Lot 90, formerly in the Township of Niagara, in the County of Lincoln, designated as Part 1 on Reference Plan 30R-3213 save and except Part 2 on Reference Plan 30R-1960 prepared by Andrew Cameron, Ontario Land Surveyor dated June 29, 2012 consisting of 14 single detached lots, 3 blocks of 19 townhouse units, Blocks 17 and 18, open space and Block 16, a private road, as a common element in a plan of condominium.
2. That the owner enter into one or more agreements with the Town of Niagara-on-the-Lake agreeing to satisfy all requirements, financial and otherwise, of the Municipality including the provisions of services, roads, signage, grading, drainage, streetlighting, sidewalks and urban design. The agreement shall also specifically prohibit development on the lands, save and except for model homes until such time as sanitary sewers can be adequately provided.
3. That the subdivision agreement between the owner and the Town of Niagara-on-the-Lake be registered by the municipality against the lands to which it applies, pursuant to the provisions of the Planning Act.
4. That the owner agrees in the subdivision agreement to grant to the municipality any required easements for services or utilities.
5. That the owner pays 5% cash in lieu of park dedication pursuant to Section 51.1 of the Planning Act.
6. That the owner acknowledges within 60 days of draft plan approval of this subdivision that draft approval does not include a commitment of servicing allocation by the Regional Municipality of Niagara as this servicing allocation will be assigned at the time of final approval of the subdivision for registration purposes.
7. That immediately within 60 days of draft plan approval, the owner shall provide the Regional Niagara Planning and Development Department with a written undertaking that all offers and agreements of purchase and sale, which may be negotiated prior to registration of this subdivision, shall contain a clause clearly indicating that a servicing allocation for this subdivision will not be assigned until the plan is granted final approval for registration.
8. That the design drawings for the water, sanitary sewer and stormwater drainage systems required to service this development (including any required downstream municipal sewer improvements) be submitted to the Regional Public Works Department for review and approval.
9. That prior to final approval for registration of this plan, the owner shall obtain Ministry of the Environment Certificates of Approval to the satisfaction of the Regional Public Works Department for the necessary servicing (watermains, storm sewers and sanitary sewers) for this development.
10. That the owner complies with the Regional policies relating to the collection of waste on private property ["Collection of Material By Way of Entry on Private Property (PolicyC.3.17)] to the

satisfaction of the Niagara Region Public Works Department (Development Services Division). Otherwise, if the common element condominium plan does not satisfy Regional waste collection policy, the following warning clause shall be included in the condominium agreement and inserted in all Agreements of Purchase and Sale or Lease for each dwelling unit.
Purchasers/Tenants are advised that due to the site layout, waste collection for this development cannot be provided by the Region but will be provided by the condominium corporation through a private contractor.

11. That prior to approval of the final plan or any on-site grading, the owner shall submit to the Regional Planning and Development Department for review and approval two copies of the following plans for the subdivision designed and sealed by a suitably qualified professional engineer.
 - a) Detailed lot grading and drainage plans, noting both existing and proposed grades and the means whereby overland flows will be accommodated across the site;
 - b) Detailed sediment and erosion control plans;
 - c) That the subdivision agreement between the owner and the Town of Niagara-on-the-Lake contain provisions whereby the owner agrees to implement these approved plans.

Note: The Region may request the Niagara Peninsula Conservation Authority to review the detailed lot grading and drainage plan as well as the detailed sediment and erosion control plan on the Region's behalf and to submit comments to the Regional Planning and Development Department regarding the approval of these plans and the subsequent clearance of related conditions by Regional Planning staff.
 12. That the owner receive clearance from the Ministry of Tourism, Culture and Sport for reports titled Archaeological Assessment (Stages 1 and 2), dated April 2012, and Archaeological Assessment (Stage 3) dated September 2010, both prepared by Mayer Heritage Consultants Inc., and for any other required archaeological assessments. All archaeological issues shall be resolved to the satisfaction of the Town, Niagara Region and the Ministry of Tourism, Culture and Sport which may include modifications to the draft plan. No demolition, grading or other soil disturbances shall take place on the subject property prior to the Ministry, through the Niagara Region Public Works Department (Development Services Division), confirming that all archaeological resource concerns have met licensing and resource conservation requirements.
- Note:** Copies of the archaeological assessment reports are to be submitted to the Town and to the Niagara Region Public Works Department (Development Services Division) for information.
13. Prior to approval of the final plan of subdivision, the owner shall convey blocks 19 and 20 to the Town of Niagara-on-the-Lake. The Town of Niagara-on-the-Lake will assume ownership of these blocks with the following conditions:
 - a) The property will be referred to as Town Open Space and will not be taken as parkland dedication.
 - b) The Common Element Condominium Corporation will provide maintenance on the blocks and that the Common Element Corporation will enter into an agreement with the Town detailing the maintenance standards for the site.
 - c) That the applicant provides a landscape plan design to the satisfaction of the Ministry of Tourism, Culture and Sport and the Niagara-on-the-Lake Parks & Recreation Department for blocks 19 and 20. The blocks will be not be maintained as a public park and this will be registered on the title of each owner in the subdivision.
 - d) The property may be subject to a Heritage Conservation Easement to be held either by the Ontario Heritage Trust or the Town of Niagara-on-the-Lake.

14. That the lands below top of bank, and within 7.5 m of the stable top of bank be placed within an "Environmental Conservation Zone" that prohibits structural development and prevents removal of existing vegetation on steep slopes and that these prohibitions be registered on the title of Lots 8,9,10,11 and 15 , including reference to an approved landscape plan designed to ensure slope protection/stability (see conditions #19)
15. That detailed sedimentation and erosion control plans be prepared for this agency's review and approval.
16. That detailed lot grading and drainage plans, noting both existing and proposed grades and the means whereby overland flows will be accommodated across the site, be submitted to the Conservation Authority for their review and approval.
17. That prior to the approval of the final plan, the owner submit to the Conservation Authority a detailed stormwater management plan for the subdivision completed by a qualified engineer and prepared in accordance with the MOEE Stormwater Management Practices, Planning and Design Manual, June 1994.
18. That the owner agrees in the executed subdivider's agreement to:
 - a) Erect a limit of work fence a minimum of 3 m from the top of the Four Mile Creek valley slope during the construction phase;
 - b) That recommendations of the stormwater management plan be implemented;
 - c) Notify potential homebuyers that the Four Mile Creek Valley and an area 15 m from the top of bank on each side of the creek are regulated by the Conservation Authority in accordance with Regulation 155/06.
 - d) Not place or dump material of any kind, whether originating on-site or off-site, on the Four Mile Creek valley slope, and to maintain the natural grades of this valley slope; and,
 - e) Re-vegetate all disturbed areas immediately upon completion of the works.
19. That prior to approval of the final plan, a landscape architect prepare a landscape plan for the rear yards of lots 8,9,10,11 and 15 that will provide slope protection/stability, subject to confirmation and approval by a qualified geotechnical engineer.
20. That the above noted draft plan conditions 10-20 inclusive be implemented in the subdivision agreement.
21. That the detailed design drawings with calculations for the watermain system, the sanitary sewer system and the stormwater drainage system required to service this proposal be in accordance with current Town Specifications and subject to M.O.E. and Town Public Works Approvals and submitted to the Town's Public Works Department and the Fire Department for review and approval.
22. That the owner agrees in the subdivision agreement to construct all on-site and off-site servicing in accordance with the servicing plans as approved by the Town's Public Works Department and to post the standard subdivision agreement securities and cash deposits relating to primary, secondary and tertiary works, plan reviews, site inspections (based on working days), signs and barricades and road clean up prior to commencing the installation of any services. The owner shall also agree in the subdivision agreement to:
 - a) Cost share in the watermain looping along Paxton Lane and the existing storm water management facility in the Settlement of Davids to the south.
 - b) Cost share in the construction costs of the main entrance to Four Mile Creek Road.

23. That the owner agrees in the subdivision agreement to submit a residential street lighting plan for approval by the Town Public Works Department. The street lighting poles and fixtures should be the same as provided in the Settlement of St. Davids to the south.
24. That the owner agrees in the subdivision agreement to provide a sidewalk/trail through the development approved by the Town Public Works Department and connecting new and old Paxton Lane.
25. That the owner agrees in the subdivision agreement to provide 13 guest parking spaces within the development.
26. That the owner agrees in the subdivision agreement, subject to the approval of the Public Works Department, to provide for a turnaround at the entrance to the subdivision from Paxton Lane to accommodate snow plows and other Town maintenance vehicles.
27. That the owner agrees in the subdivision agreement that during the construction of development the site will be kept in a reasonably tidy condition so that the raising of dirt and dust is kept to a minimum and further that all roads adjacent to and in the vicinity of the development are kept clean of mud and debris and that any standing water is eliminated.
28. That the subdivision agreement between the owner and the Town of Niagara-on-the-Lake address any required fencing and/or landscaping along the perimeter of townhouse blocks (excluding the front line) to be detailed in the site plan control agreement.
29. The owner shall agree in the subdivision agreement that :
The emergency access from Paxton Lane shall be gated/chained to restrict vehicular access and access will be permitted only for emergency vehicles. The emergency access required for the development shall be built to meet or exceed all applicable code requirements by the developer to the satisfaction of the Town and a 0.3 municipal reserve shall be dedicated to the municipality from Old Paxton Lane.
30. The owner agrees in the subdivision agreement that, because the single dwelling units are more than 90 metres from the principle access to the subdivision, the single dwelling units on Lots 5, 6,7,8,9,10 and 11 shall be sprinklered or;
The owner agrees to provide a minimum 6m wide vehicular access for emergency vehicles over the existing Paxton House laneway on Lot 15. The emergency access shall be built to meet or exceed all applicable code requirements to the satisfaction of the Town and a 0.3m reserve shall be dedicated to the municipality from Old Paxton Lane.
31. The owner agrees in the subdivision agreement that the Paxton House lot (Lot 15) be designated under Part IV of the Ontario Heritage Act and the exterior of the Paxton House (Lot 11) be restored.
32. That the owner agrees in the subdivision agreement that the development will be subject to the Village of St. Davids Urban Design Guidelines. The subdivision agreement shall include urban design approval process procedures and shall also contain the following:
 - a. That prior to site plan approval for the townhouse units and prior to a building permit being issued by the Town for the single detached dwellings that the design of the proposed buildings be reviewed and approved by the Urban Design Committee in accordance with the approved Village of St. Davids Urban Design Guidelines.

- b. That the owner agrees that all offers and agreements of purchase and sale shall contain a clause clearly indicating that prior to the issuance of a building permit the design of the dwelling units is subject to approval by the Urban Design Committee in accordance with the approved Village of St. Davids Urban Design Guidelines
33. That the owner agrees in the subdivision agreement that any outstanding taxes will be paid prior to the registration of the final plan.
34. That the owner enters into a separate agreement with Niagara-on-the-Lake Hydro for the provision of hydro services for the development.
35. That the owner agrees to include on all offers of purchase and sale a statement that advised the prospective purchaser that:
 1. Business mail delivery will be from a designated centralized mail box.
 2. The developers/owners are responsible for officially notifying the purchasers of the centralized mail box locations prior to closing of any sale.

That the owner further agrees to:

1. Install a concrete pad in accordance with the requirements of, and in locations to be approved, by Canada Post to facilitate the installation of Community Mail Boxes.
 2. Identify the pads on engineering and servicing drawings. The pads are to be poured at the time of the sidewalk and/or curb installation within each phase of the plan of subdivision.
 3. Determine the location of all centralized mail facilities in cooperation with Canada Post and to post the location of these sites on appropriate maps, information boards and plans.
36. Prior to commencing any work with the Plan, the developer must confirm with Bell Canada that sufficient wire-line communication/telecommunication infrastructure is currently available within the proposed development to provide communication/telecommunication service to the proposed development.

In the event that such infrastructure is not available, the developer is advised that he may be required to pay for the connection to and/or extension of the existing communication/telecommunication infrastructure.

If the developer elects not to pay for such connection, the developer shall be required to demonstrate to the municipality that sufficient alternative communication/telecommunication facilities are available within the proposed development to enable, at a minimum, the effective delivery of communication/telecommunication services for emergency management (i.e. 911 emergency services).
37. That if final approval is not given to this plan within 3 (three) years of the draft approval date and no extensions have been granted, draft approval shall lapse. If the owner wishes an extension to the draft approval, a written explanation with reasons why the extension is required, must be received by the Town prior to the lapsing date.
38. The developer agrees in the subdivision agreement that where an environmental assessment is not required as a condition of draft subdivision approval that:
 - a) During the construction of services or other works being undertaken on the lands that Owner agrees that should waste, materials or other contaminants be discovered that the Ministry of the Environment, the Regional Municipality of Niagara and the Town of Niagara-on-the-Lake shall be notified by the Owner.

- b) The Owner will indemnify and save harmless the Town from and against all actions, causes of action, interest, claims, demands, costs, charges, damages, expenses and loss.

Clearance of Conditions

Prior to granting final approval for the subdivision plan the Town of Niagara-on-the-Lake Department of Planning & Development Services will require **written notification** from the following agencies that their respective conditions have been met satisfactorily.

Agency	Condition(s) to be Satisfied
The Regional Planning Department for conditions:	6, 7, 11, 12 & 35
The Regional Public Works Department for conditions:	8, 9, 10 & 11
The Town of Niagara-on-the-Lake Planning & Development Services Department for conditions:	1, 2, 3, 4, 5, 12, 13, 19, 20, 25, 27, 28, 31, 32, 35, 36, 37, 38
The Ministry of Tourism, Culture and Sport for conditions:	12
The Town of Niagara-on-the-Lake Public Works Department for conditions:	4, 18, 19, 21, 22, 23, 24, 26, 27
The Town of Niagara-on-the-Lake Fire Department for conditions:	29, 30
Niagara-on-the-Lake Hydro for conditions:	34
The Town of Niagara-on-the-Lake Corporate Services Department for conditions:	5 & 33
Niagara Peninsula Conservation Authority for conditions:	14, 15, 16, 17 & 18
The Town of Niagara-on-the-Lake Parks and Recreation Department for condition:	26

1. **Notes**

An electrical distribution line operation at below 50,000 volts might be located within the area affected by this development or abutting this development. Section 186 - Proximity - of the Regulations for Construction Projects in the *Occupational Health and Safety Act*, requires that no object be brought closer than 3 metres (10 feet) to the energized conductor. It is the proponent's responsibility to be aware, and to make all personnel on site aware, that all equipment and personnel must come no closer than the distance specified in the Act. They should also be aware that the electrical conductors can raise or lower without warning, depending on the electrical demand placed on the line. Warnings signs should be posted on the wood poles supporting the conductors stating "DANGER - Overhead Electrical Wires" in all locations where personnel and construction vehicles might come in close proximity to the conductors.

2. **Conveying**

- a) As the land mention above to be conveyed to the municipal corporation may be more easily described in the conveyance by reference to a Registered Plan than by "metes and bounds", we suggest that the description be so worded, and,
- b) We further suggest that the owner give to the municipality an undertaking to deposit with the Clerk a properly executed copy of the conveyance concurrent with the registration of the Plan.

3. **Land Required to be Registered Under the Land Titles Act**

- a) Section 160(1) of The Land Titles Act, which requires all new plans be registered in land titles system;
- b) Section 160(2) - allows certain exceptions

4. **Water and Sewage Systems**

Inauguration or extension of a piped water supply, a sewage system or a storm drainage system is subject to approval of the Ministry of the Environment under Section 52 and Section 53 of The Ontario Water Resources Act, R.S.O. 1990.

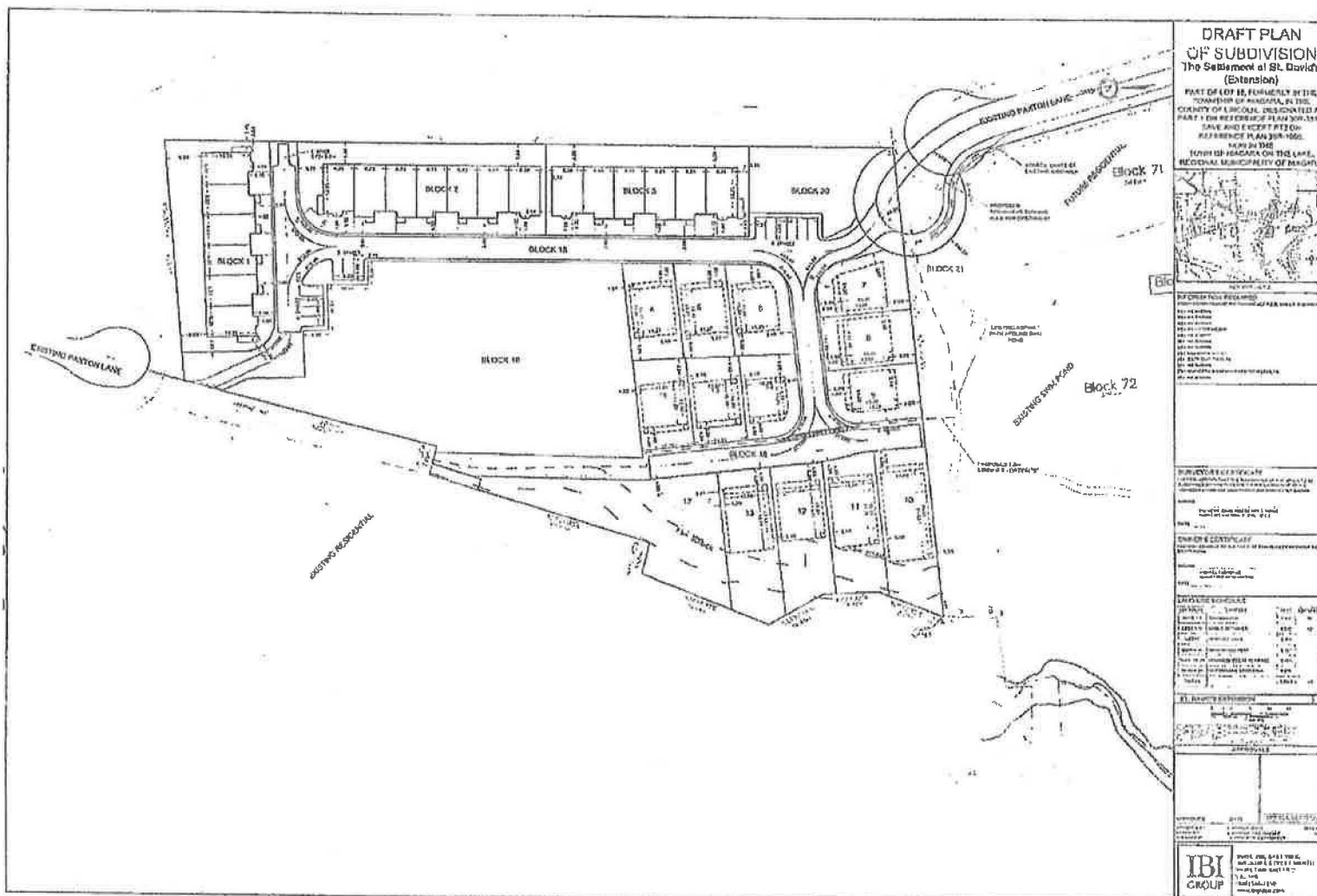
5. **Agencies to be Contacted**

- a) With regard to the requirements of the Regional Public Works Department: Mr. W. Stevens, 2201 St. David's Road, Thorold, Ontario L3V 4T7 (905) 685-1571 FAX (905) 687-8056
- b) With regard to the requirements of the Regional Planning Department: Mr. P. Colosimo, 2201 St. David's Road, Thorold, Ontario L2V 4T7 (905) 984-3630 FAX (905) 641-5208
- c) With regard to the requirements of the Ministry of Culture: Ms. S. Prowse, 400 University Avenue, 4th Floor, Toronto, Ontario, M7A 2R9 (416) 314-7143 FAX (416) 314-7175
- d) With regard to the requirements of the Niagara Peninsula Conservation Authority: Ms. S. McInnes, 250 Thorold Road West, 3rd Floor, Welland, Ontario, L3C 3W2 (905) 788-3135 FAX (905) 788-1121
- e) With regard to the requirements of the Town of Niagara-on-the-Lake Planning & Development Services Department: Ms. Milena Avramovic, 1593 Creek Road, P.O. Box 100, Virgil, Ontario L0S 1T0 (905) 468-3266 FAX (905) 468-0301
- f) With regard to the requirements of the Town of Niagara-on-the-Lake Public Works Department: Mr. E. Kuczera, 1593 Creek Road, P.O. Box 100, Virgil, Ontario L0S 1T0 (905) 468-3278 FAX (905) 468-1722
- g) With regard to the requirements of the Town of Niagara-on-the-Lake Fire Department: Fire Chief A. Burbidge, 1593 Creek Road, P.O. Box 100, Virgil, Ontario L0S 1T0 (905) 468-3266 FAX (905) 468-0301
- h) With regard to the requirements of the Town of Niagara-on-the-Lake Corporate Services Department: Mr. S. Randall, 1593 Creek Road, P.O. Box 100, Virgil, Ontario L0S 1T0 (905) 468-3266 FAX (905) 468-2959
- i) With regard to the requirements of the Town of Niagara-on-the-Lake Parks and Recreation Department: Mr. C. Buist, 1593 Creek Road, P.O. Box 100, Virgil, Ontario L0S 1T0 (905) 468-4261 FAX (905) 468-4555
- j) With regard to the requirements of Niagara-on-the-Lake Hydro: Mr. K. Sidey, NOTL Hydro, 8 Henegan Road, P.O. Box 460, Virgil, Ontario L0S 1T0 (905) 468-4235 FAX (905) 468-3861

6. **Review of Conditions**

Applicants are advised that should any of the conditions appear unjustified or their resolution appear to onerous, they are invited to bring their concerns to the Planning Advisory Committee's attention. The Committee will consider requests to revise or delete conditions, subject to ratification by Town Council.

SCHEDULE "D"



SCHEDULE "E"

**THE CORPORATION OF
THE TOWN OF
NIAGARA-ON-THE-LAKE
BY-LAW NO. 4316AP-13**

(46 Paxton Lane, The Settlement at St. Davids Extension, Roll # 25-006)

A By-law to amend By-law No. 4316-09, as amended, entitled a by-law to regulate the use of land and the character, location and use of buildings and structures thereon in the Town of Niagara-on-the-Lake.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE ENACTS AS FOLLOWS:

1. That Section 9.13.14 (46 Paxton Lane) – See Schedule 'A-23' (RD-14) is deleted in its entirety and replaced with the following.
2. That Schedule "A-23" of By-law 4316-09, as amended, be further amended by zoning the lands as shown on the Schedule attached hereto and forming part of this By-law to "Residential (R1-14) – Site Specific Zone"; "Residential Multiple (RM1-14) – Site Specific Zone" and "Open Space (OS-14) Zone – Site Specific Zone".
3. Notwithstanding the provisions of the "Residential (R1) Zone" only single detached dwellings shall be permitted on the lands identified as "Residential (R1-14) – Site Specific Zone" on the schedule attached hereto and shall be subject to the following special provisions:
 - a) Minimum lot frontage 12 m (39.37 ft)
 - b) Minimum lot area 300 m² (3,229.28 ft²)
 - c) Maximum lot coverage 45%
 - d) Minimum front yard setback 3.0 m (9.84 ft)
 - e) Minimum front yard setback to front face
of an attached garage 6.0 m (19.69 ft)
(Garages shall not project beyond the front face of the main building or
beyond a front porch of a minimum 1.5 m in depth)

- f) Minimum interior side yard setback with attached garage 1.2 m (3.94 ft)
except where there is no attached garage, the minimum side yard shall be 3.0 m (9.84 ft) on one side.
 - g) Maximum interior garage width 7.93 m (26.0 ft)
(single width garage door are required and the combined width of the garage doors cannot be more than 50% of the building face)
 - h) Minimum exterior side yard setback 3.0 m (9.84 ft)
 - i) Minimum rear yard setback 6.0 m (19.69 ft)
 - j) Accessory buildings shall have:
 - minimum side and rear yard setback 1.0 m (3.28 ft)
 - minimum exterior side yard 3.0 m (9.84 ft)
 - k) Maximum building height to the peak of roof 10 m (32.81 ft)
 - l) Minimum driveway width 3.0 m (9.84 ft)
 - m) Minimum number of parking spaces per dwelling unit 2
 - n) Minimum dwelling unit area 93 m² (1001.08 ft²)
 - o) Privacy fencing for dwellings on corner lots or flankage lots should not occupy more than fifty per cent (50 %) of the flankage lot line measured from the rear property line.
 - p) Fencing along the front yard for corner lots shall be a maximum of 1.0 m (3.28 ft) in height.
4. Notwithstanding the provisions of the "Residential Multiple Zone (RM1)" only townhouses shall be permitted on the lands identified as "Residential Multiple (RM1-14) – Site Specific Zone" as shown on the schedule attached and shall be subject to the following special provisions:
- a) Maximum of twenty-three (23) townhouse units
 - b) Minimum lot frontage per unit 8.0 m (26.25 ft)
 - c) Minimum front yard setback 3.0 m (9.84 ft)
 - d) Minimum front yard setback
to an attached garage 6.0 m (19.69 ft)
(Garages shall not project beyond the front face of the main building or beyond a front porch of a minimum 1.5 m in depth)
 - e) Minimum interior side yard setback 1.5 m (4.92 ft)
(0 m for interior common walls)
 - f) Minimum exterior side yard setback 3.0 m (9.84 ft)
 - g) Minimum rear yard setback 6.0 m (19.69 ft)
 - h) Accessory buildings shall have:
 - minimum interior side and rear yard setback 1.0 m (3.28 ft)

- minimum exterior sideyard setback 3.0 m (9.84 ft)
 - i) Minimum rear yard amenity space area 27.8 m² (289.25 ft²)
 - j) Maximum building height to the peak of roof 10.0 m (32.81 ft)
 - k) Minimum driveway width 3 m (9.84 ft)
 - l) Minimum number of parking spaces per unit 2
 - m) Minimum dwelling unit area 93 m² (1001.08 ft²)
 - n) Garage doors shall not occupy more than fifty per cent (50 %) of the building face.
 - o) Maximum interior garage width 6.0 m (19.69 ft)
 - p) Living fences shall be permitted (flora specie indigenous to area).
 - q) Privacy fencing for dwellings on corner lots or flankage lots shall not occupy more than fifty per cent (50 %) of the flankage lot line measured from the rear property line.
 - r) Fencing along the front yard or corner lots shall be a maximum of 1.0 m (3.28 ft) in height.
5. For the purposes of this by-law, a private or condominium road shall be regarded the same as a public road. This provision applies to all lots created in this development.
6. Notwithstanding the provisions of the "Open Space (OS) Zone" in Section 9.11 of the St. Davids Community Zoning District, no structural development or the removal of existing vegetation on steep slopes, below the top of bank, shall be permitted on those lands identified as "Open Space (OS-14) – Site Specific Zone" on the Schedule attached hereto.
7. All other provisions of Zoning By-law 4316-09, as amended, shall continue to apply.

If no notice of objection is filed with the Clerk within the time provided, this By-law shall come into force and take effect on the date of passing by the Council of the Corporation of the Town of Niagara-on-the-Lake in accordance with Section 34 of the Planning Act, S.O. 1990.

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By-law 4316##-13

If a notice of objection is filed with the Clerk, this By-law shall become effective on the date of passing hereof subject to receiving the approval of the Ontario Municipal Board.

READ A FIRST, SECOND AND THIRD TIME THIS DAY OF , 2013.

LORD MAYOR DAVID EKE

TOWN CLERK HOLLY DOWD

