

Committee of the Whole (2) Report

DATE: Tuesday, February 13, 2024

WARD(S): 4

TITLE: RUTHERFORD LAND DEVELOPMENT CORP.
DRAFT PLAN OF SUBDIVISION FILE 19T-18V001
2901 RUTHERFORD ROAD
VICINITY OF RUTHERFORD ROAD AND JANE STREET

FROM:

Haiqing Xu, Deputy City Manager, Planning and Growth Management
Vince Musacchio, Deputy City Manager, Infrastructure Development

ACTION: DECISION

Purpose

To seek approval from the Committee of the Whole to amend the previously approved Canadian National Railway Company ('CN') conditions of approval shown in Attachment 1 for Draft Plan of Subdivision File 19T-18V001.

Report Highlights

- The Owner is having difficulty satisfying CN conditions of approval for Draft Plan of Subdivision File 19T-18V001
- The Development Planning Department supports the approval of the proposed revised conditions of draft approval in accordance with the *Planning Act*, as it is satisfied that the intent of the CN conditions is still maintained, and that CN conditions can be applied to future Site Development Applications in Draft Plan of Subdivision File 19T-18V001.

Recommendations

1. That the Canadian National Railway Company conditions of Draft Plan of Subdivision File 19T-18V001 (Rutherford Land Development Corp.) BE AMENDED as follows:

“The Owner shall exercise its reasonable best efforts to enter into an Agreement with CN stipulating how CN’s concerns will be resolved and will pay CN’s reasonable costs in preparing and negotiating the Agreement, to the satisfaction of CN. If after exercising its reasonable best efforts, the Owner is unable to secure such an Agreement with CN prior to making application for site plan approval for any development, the Owner shall, prior to seeking site development approval for such development, secure the following in respect of the development to the satisfaction of the City:

1. The Owner shall engage a consultant to undertake an analysis of noise. Subject to the review of the noise report, the Railway may consider other measures recommended by an approved Noise Consultant.
2. The following clause should be inserted in all development agreements, offers to purchase, and agreements of Purchase and Sale or Lease of each dwelling unit within 1000 m of the railway right-of-way:

“Warning: Canadian National Railway Company or its assigns or successors in interest has or have a rights-of-way within 1000 metres from the land the subject hereof. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CN will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid rights-of-way.”
3. The Owner shall, through restrictive covenants to be registered on title and all agreements of purchase and sale or lease, provide notice to the public that the noise isolation measures implemented are not to be tampered with or altered and further that the Owner shall have sole responsibility for and shall maintain these measures to the satisfaction of CN.
4. The Owner shall be required to grant CN an environmental easement for operational noise and vibration emissions, registered against the subject property in favour of CN, failing which the Owner shall reasonably prove to the satisfaction of the Deputy City Manager, Infrastructure Development that it offered a reasonable environmental easement to CN.

and in connection with the foregoing, the City may retain a qualified peer reviewer at its sole discretion and the Owner shall pay the City’s reasonable costs in respect of same.”

Background

The subject lands are municipally known as 2901 Rutherford Road (the 'Subject Lands') and are located on the east side of Jane Street, south of Rutherford Road. The Subject Lands and surrounding land uses are shown on Attachment 2.

The Draft Plan of Subdivision File 19T-18V001 (the 'Draft Plan') shown on Attachment 3 applies to the entirety of the Subject Lands representing a total of approximately 8 hectares. The Subject Lands are located within 1000 m of a CN main rail yard (CN MacMillan Yard), as shown on Attachment 4.

The majority of the Draft Plan, with the exception of Block 4 (i.e. Phase 1), is subject to a Minister's Zoning Order ('MZO') issued by the Ministry of Municipal Affairs and Housing ('MMAH') on November 6, 2020 (Ontario Regulation 643/20), as shown on Attachment 3.

Draft Plan of Subdivision and Site Development Applications were previously approved for the Subject Lands

Council on November 29, 2022, approved Draft Plan of Subdivision and Site Development Application Files 19T-18V001 and DA.19.010 for the Subject Lands shown on Attachment 2 to:

1. Permit a subdivision consisting of three (3) blocks for High-Rise Mixed-Use development, a park block, an open space block, a vegetation protection zone block, and blocks to facilitate the extension of Caldari Road to Rutherford Road (Street 'A'), completion of a new east-west road (Street 'B') and other road widenings, and
2. Facilitate the development of three (3) high-rise mixed-use buildings in Block 4.

The Owner has advised that it is having difficulty satisfying the CN Draft Plan of Subdivision Conditions

Rutherford Land Development Corp. (the 'Owner') has advised that despite its efforts to satisfy the conditions, an agreement has not yet been reached with CN. The revisions to the CN conditions proposed in the Recommendations of this report seek to address this concern.

Previous Reports/Authority

The following links are to the Committee of the Whole report and Council meeting minutes pertaining to Draft Plan of Subdivision File 19T-18V001, Site Development File DA.19.010, and the MZO for the Subject Lands:

Committee of the Whole (1) report for Draft Plan of Subdivision File 19T-18V001 (and Site Development File DA.19.010):

[November 22, 2022 Committee of the Whole \(1\) \(Item 6, Report No. 38\)](#)

Council Meeting Member's Resolution and Minutes – Request from Cortel Group on Behalf of RLDC and CLDC (collectively RLDC) for an MZO to Zone 2901 Rutherford Road et al.:

[October 21, 2020 Council Member's Resolution](#)

[October 21, 2020 Council Minutes \(Minute No. 156\)](#)

Minister's Zoning Order issued by the MMAH:

[November 6, 2020 Ontario Regulation 643/20](#)

Analysis and Options

The Planning Act allows changes to previously approved conditions of Draft Plan of Subdivision approval.

The *Planning Act* is provincial legislation that sets out the rules for land use planning in Ontario. It describes how land uses may be controlled, and who may control them.

The nature of Draft Plan of Subdivision applications allows revisions to the previously approved Draft Plan of Subdivision conditions through Section 51(44) of the *Planning Act*, which permits an approval authority (i.e. City of Vaughan Council) to change conditions of approval at any time before the approval of the final plan of subdivision. Given that the Draft Plan has not yet received final approval, the conditions can be changed in accordance with this section.

Block 4 of the Draft Plan is located outside of the MZO and conforms to the site-specific Vaughan Official Plan 2010 policies.

Block 4 of the Draft Plan, subject to related Site Development File DA.19.010, is identified as an area subject to a Secondary Plan on Schedule 13 – Land Use of Vaughan Official Plan 2010 ('VOP 2010'), being the Vaughan Mills Centre Secondary Plan ('VMCSP') – Section 11.7 in Volume 2 of VOP 2010. Block 4 is designated "High-Rise Mixed-Use" within the VMCSP area and the VMCSP is further identified as a "Primary Centre" by VOP 2010. Block 4 conforms to the site-specific VOP 2010 policies, as amended by the former Local Planning Appeal Tribunal.

The Owner and CN reached an agreement for Block 4 of the Draft Plan.

The former Local Planning Appeal Tribunal ('LPAT'), now Ontario Land Tribunal, in a Decision dated December 18, 2018, approved in principle, amendments to VOP 2010 and Zoning By-law 1-88 as they relate to Block 4 of the Draft Plan. The LPAT's final Order was withheld until the LPAT was informed that the Owner and CN reached an agreement, and it was registered on title. The Owner and CN reached an agreement on September 23, 2019, and it was registered on October 24, 2019, for the lands in Block 4. The LPAT issued the final Order on December 24, 2019.

An MZO applies to the balance of the lands in the Draft Plan.

Vaughan Council on October 21, 2020, adopted a resolution based on the request of the Owner in a letter dated October 13, 2020, to enact an MZO for the balance of the Subject Lands outside of Block 4 of the Draft Plan, as shown on Attachment 4.

In accordance with the resolution, a draft MZO was prepared and forwarded to the Minister of MMAH together with Council's resolution as a statement of Council's direction and requests.

The Minister of MMAH on November 6, 2020, issued an MZO through Ontario Regulation 643/20 for the balance of the lands outside of Block 4.

The MZO effectively zones the entirety of the Subject Lands outside of Block 4, the equivalent of the "RA3 Apartment Residential Zone" of Zoning By-law 1-88, with additional exceptions to this zone, including but not limited to: increasing the maximum building height of 30 storeys, permitting a maximum floor space index of 8.5 times the area of the lot, and placing no limits on the maximum number of dwelling units or the maximum gross floor area permitted.

MZOs are not required to be consistent with or conform to provincial policy documents.

Given that the balance of the Subject Lands outside of Block 4 of the Draft Plan are subject to an MZO, these lands are not required to be consistent with the Provincial Policy Statement, 2020, nor conform to A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019, as amended, or to the York Region Official Plan 2010.

The Development Planning Department has no objection to the revised Conditions of Draft Plan Approval.

The proposed revisions to the Conditions of Approval do not alter the Draft Plan shown on Attachment 3 and seeks to facilitate the registration of the Draft Plan in a timelier manner.

The proposed revisions to the CN Conditions of Draft Plan Approval require approval by Council. The remainder of the Conditions of Approval for the Draft Plan approved by Council on November 29, 2022, continue to apply to the Draft Plan as approved. If the proposed revisions are adopted by Council, the subdivision agreement will require an amendment to reflect the revised conditions.

The Development Planning Department has no objection to the approval of the proposed revisions to the CN Conditions of Draft Plan Approval, as it is satisfied that the intent of the CN conditions is still maintained.

Furthermore, Site Development Application File DA.22.079, submitted by the Owner for Block 19 of the Draft Plan is currently under review. Based on the CN comments received by the Development Planning Department for Site Development File DA.22.079, it appears that the conditions of approval being applied at the Site Development Application stage are the same as those identified in the Conditions of Draft Plan Approval. On this basis, it is anticipated that future Site Development Applications submitted to facilitate the development of the remaining development blocks in the Draft Plan, will be reviewed by CN and the same comments and conditions of approval will be also applied accordingly at the Site Development Application stage.

Also, CN and the Owner have already entered into an Agreement as part of the LPAT final Order for the lands in Block 4 of the Draft Plan which has been registered on title.

Financial Impact

There are no financial requirements for new funding associated with this report.

Operational Impact

No operational impacts have been identified, as the proposed revisions to CN Draft Plan conditions are considered minor and maintain the intent of CN's original conditions.

Broader Regional Impacts/Considerations

York Region Community Planning and Development Services ('CPDS') has no objection.

York Region CPDS has no objections to the Draft Plan, subject to their comments and Conditions of Approval, as approved by Council, being satisfied.

Conclusion

The Development Planning Department has reviewed the Application in consideration of the *Planning Act*, applicable Provincial Policies, Regional and City Official Plan policies, the requirements of Zoning By-law 1-88 and the MZO, and the surrounding area context. The Development Planning Department is satisfied that the proposed revisions to the Conditions of Draft Plan of Subdivision Approval are appropriate and facilitate the timely development of the Subject Lands, and that the intent of the CN conditions are still maintained, and that CN conditions can be applied to future Site Development Applications in Draft Plan of Subdivision File 19T-18V001. On this basis, the Development Planning Department can support the proposed revisions to the CN Conditions of Draft Plan Approval for File 19T-18V001 as identified in the Recommendations of this report.

For more information, please contact: Mary Caputo, Senior Manager of Development Planning, at extension 8635.

Attachments

1. Original CN Conditions of Draft Plan Approval
2. Context and Location Map
3. Draft Plan of Subdivision File 19T-18V001
4. Proximity of Subject Lands to CN Lands

Prepared by

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