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Date August 17, 2023 **Report No.** 2023-404

To Chair and Members
Planning Committee

From Nicole Wilmot, MCIP, RPP
Chief Planner and Director of Planning and Development Services
Community Development Commission

1.0 Type of Report

Consent Item

Item For Consideration

2.0 Topic Zoning By-law Amendment PZ-26-22 and Draft Plan of Subdivision 29T-22505 - Lot 226, Registered Plan 1775 Donegal Drive [Financial Impact – None]

3.0 Recommendation

- A. THAT Zoning By-law Amendment Application PZ-26-22, submitted by G. Douglas Vallee Ltd on behalf of 832605 Ontario Inc. affecting the lands known as Block 226 of Registered Plan 1775, to change the zoning to “Holding – Residential Type 1C Zone (H-R1C)”, BE APPROVED as outlined in Report 2023-404; and,
- B. THAT the By-law to remove the “Holding (H)” provision from the subject lands not be presented to Council for approval until the following conditions have been satisfied:
 - i. THAT the applicant, at their expense, address the need for a peer review of the D-6 Compatibility and Noise Assessment, prepared by

CCS Engineering dated June 23, 2022, or any addendum thereto, to the satisfaction of the Manager of Development Planning; and

- ii. THAT the applicant, at their expense, implement the final recommendations of the D-6 Compatibility and Noise Assessment, prepared by CCS Engineering dated June 23, 2022, or any addendum thereto through the future conditions of Draft Plan of Subdivision 29T-22505, to the satisfaction of the Manager of Development Planning.
- A. THAT Draft Plan of Subdivision Application 29T-22505 submitted by G. Douglas Vallee Ltd on behalf of 832605 Ontario Inc, affecting the lands known as Block 226 of Registered Plan 1775, BE PRESENTED to Council at a later date for the consideration of the Draft Plan Conditions; and,
- C. THAT Pursuant to Section 34(18.2) of the *Planning Act*, R.S.O 1990, c.P.13 the following statement SHALL BE INCLUDED in the Notice of Decision:

“Regard has been had for all written and oral submissions received from the public before the decision was made in relation to this planning matter, as discussed in Section 9.4 of Report 2023-404.”

4.0 Executive Summary

The subject lands have a long history dating back to 1992. The original rezoning approval for the subject lands (File No. PZ-13-92) was approved by Council on November 23, 1992. Plan 1775 was registered by the Province on August 10, 1994. At the time, the Draft Plan of Subdivision (File No. PS-09-92) and the Official Plan Amendment (OPA No. 39) were approved by the Ministry of Municipal Affairs and Housing as the City did not have delegated approval authority of those *Planning Act* applications. The majority of the subdivision “Shellard Place” has since been developed and built out, with the exception of the subject lands (Block 226) (see **Figure 1**). However, the proposed lots were pre-serviced at that time. The reason for this is that the subject block of land is in close proximity to an industrial land use, Maple Leaf Foods (MLF) which requires the implementation of additional mitigation to attenuate noise, dust, light and odour prior to residential development being permitted; this is discussed in Section 9.0 of this Report.

To facilitate development of this underutilized remnant parcel, the applicant is seeking modernized approvals to consider development of the lands for the originally contemplated nine single detached dwelling units, while also

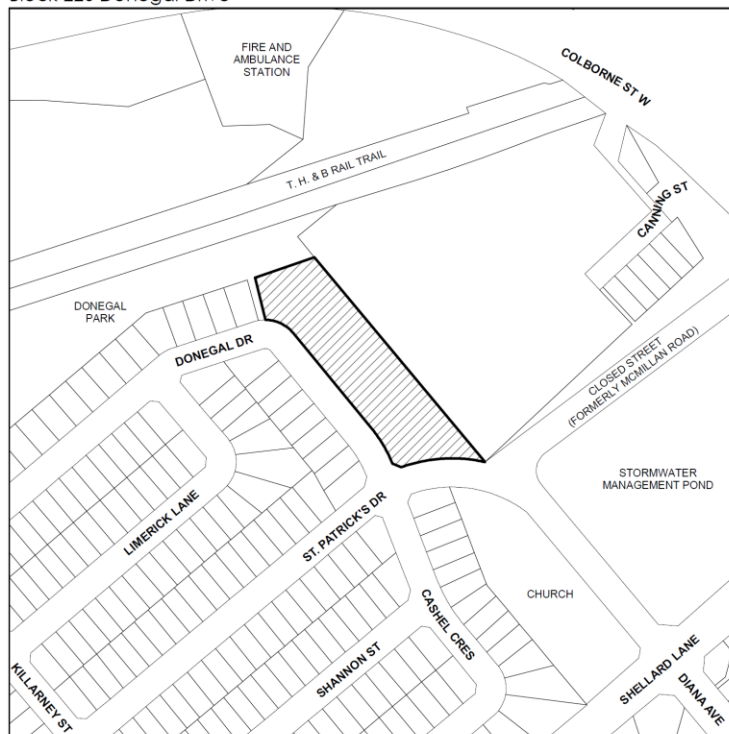
addressing the open space easement at the rear of the proposed units (see **Figure 2**). In that regard, the City received a Draft Plan of Subdivision and Zoning By-law Amendment applications in Q3 of 2022. An application has been received to amend the City of Brantford Zoning By-law 160-90 for the lands known as Block 226 in Registered Plan 1775 wherein that request is to keep the current zoning and add a Holding (H) provision. The Draft Plan of Subdivision application 29T-22505 will be brought forward to Council at a later date for consideration. Pursuant to recently updated Provincial legislation, the *Planning Act* no longer requires statutory public notice for Draft Plan of Subdivisions.

The lands will remain zoned as Residential Type 1C (12 metre) Zone and the applicant has requested to modify this existing zone to place a Holding (H) Zone on the subject lands, this is also discussed in Section 9.0 of this Report.

Figure 1: Location Map

LOCATION MAP

Application: PZ-26-22
Block 226 Donegal Drive

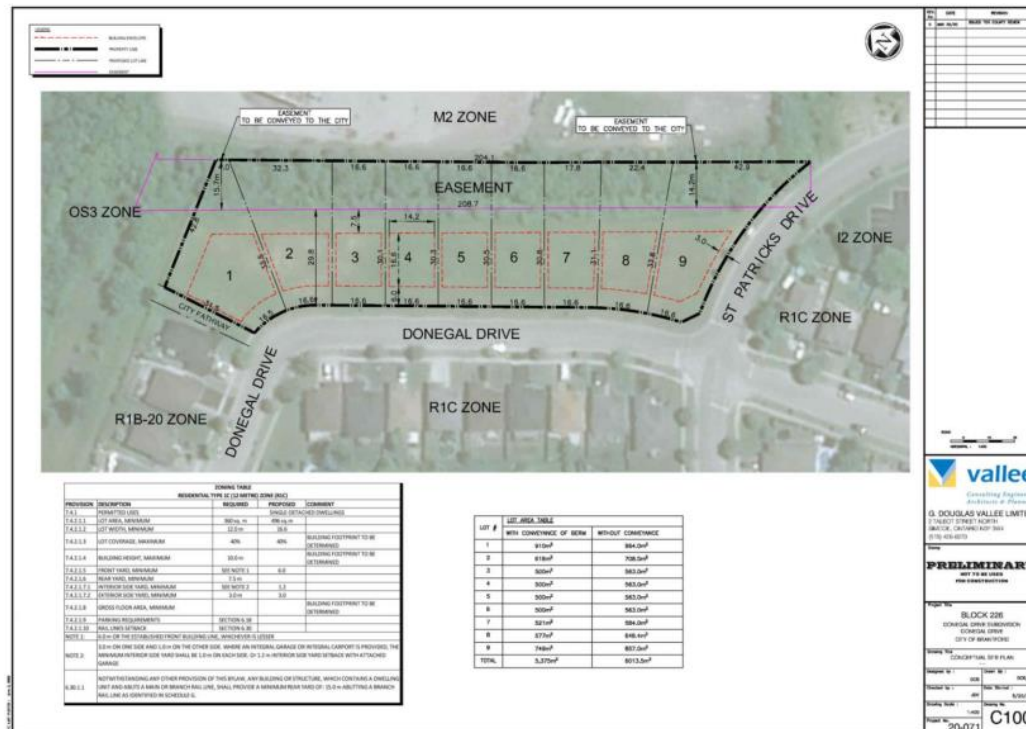


Legend

 SUBJECT LAND (Block 226 Donegal Drive)



Figure 2: Draft Plan of Subdivision for future development on Lot 226, Donegal Drive



Based on Staff's review of the application, Staff supports Zoning By-law Amendment PZ-26-22 in accordance with Section 9.0 of Report 2023-404, for reasons including:

- The application is consistent with the 2020 Provincial Policy Statement and conforms to the 2020 Growth Plan for the Greater Golden Horseshoe;
- The intent of Zoning By-law 160-90 is maintained;
- The proposed development will provide appropriate infill within an existing greenfield site and will provide additional housing opportunities; and,
- The application of a Holding provision will ensure that orderly development of the lands occurs in conjunction with the Ministry of Environment, Conservation and Parks (MECP) D-6 Guidelines and be further implemented through the future consideration of the Draft Plan of Subdivision and associated conditions of approval.

The Draft Plan of Subdivision application 29T-22505 will be brought forward to Council at a later date for consideration. Under the new Provincial amendments

to the *Planning Act*, no statutory public notice will be required for this Draft Plan of Subdivision.

5.0 Application Information

Table 1: Application Details

Application Details	
Applicant / Owner	832605 Ontario Inc. c/o David VanEislander
File Number(s)	PZ-26-22 and 29T-22505
Application Type(s):	Zoning By-law Amendment and Draft Plan of Subdivision
Proposed Use:	Single detached dwelling units
Historic / Concurrent Applications / approvals	<p>PZ-13-92, Zoning By-law Amendment, Approved on November 23, 1992.</p> <p>PS-09-92, Subdivision file Approved on November 23, 1992.</p> <p>(29T-92006) Plan 1775, Registered August 10, 1994.</p> <p>MECP-ECA File No. 29-0-OP-3768-039 (1994).</p>
Property Details	
Address / Ward	Block 226, Registered Plan 1775 on Donegal Drive / Ward 1
Area (acres / hectares)	1.48ac / 0.6ha
Existing Use	Vacant
Documents	

Official Plan Designation (existing)	Residential
Official Plan Designation (proposed)	Residential
Zoning (existing)	“Residential Type 1C (12 metre) Zone”
Zoning Proposed / Modifications	“Holding – Residential Type 1C Zone (H-R1C)”
Provincial Policy Statement	The proposal is consistent with the PPS.
Places to Grow Growth Plan	The proposal is consistent with the Growth Plan.
Processing Details	
Application Deemed Complete	December 22, 2022
Neighborhood Meeting	In consultation with the Ward Councillors the neighbourhood meeting was waived.
Statutory Hearing	August 17, 2023
Public Comments	There were three phone calls received by Staff and one walk in member of the public regarding this application that requested explanation of the application. This is discussed in Section 9.0 of this Report.

6.0 Purpose

The purpose of this Report is to recommend an amendment to Zoning By-law 160-90 to add a Holding (H) provision for the lands known as Block 226 in Registered Plan 1775, Donegal Drive. The subject lands are currently zoned as “Residential Type 1C Zone (R1C)”. The intent of this request is to maintain the existing Zone and add a Holding (H) provision which will further evaluate the MECP Land Use Compatibility D-6 Guidelines to ensure that the appropriate

mitigation measures are addressed. If approved, the proposed development will also determine what mitigation measures will be needed for the future residential subdivision of the nine proposed lots in proximity to MLF.

7.0 Corporate Policy Context

7.1 2023-2026 Council Priorities

This Report is in keeping with the City of Brantford Council Priorities endorsed February 28, 2023, specifically the following outcome:

- Build a greener Brantford; and,
- Move people more effectively.

The proposed development will contribute to these outcomes by introducing a greater population density that will support local businesses and transit in a compact and efficient form. The proposed development is within walking distance to existing transit routes and Staff is optimistic that this will increase ridership. To align with the “Build a greener Brantford” priority, the applicant is encouraged to incorporate sustainable design features listed in Section 4.2 of the Urban Design Manual, which will be implemented through the Draft Plan of Subdivision process. It is Staff’s opinion that the applications is consistent with Council’s priorities.

8.0 Description of Proposal

This subject lands were included in the existing subdivision agreement registered on August 11, 1994. At the time, subdivision agreements were approved by the Ministry of Municipal Affairs and Housing which included the one-window review with partner ministries. In this regard, the Ministry of Environment, (MOE, now MECP) was involved given the proximity of industry to more sensitively land uses (i.e. residential dwellings). These established specific clauses which were implemented through the subdivision agreement. This is uncharacteristic and not typical of the planning process today. The applicant sought a legal opinion on this matter, and the letter is attached to this Report as **Appendix A**. This is one of the reasons why the lands remain vacant to date.

The lands were purchased by 832605 Ontario Inc., and a D-6 Noise and vibration study was prepared by CCS Engineering, Inc. dated June 23, 2022

wherein that report concluded that residential development on the subject lands would not be negatively affected by the MLF plant with noise, dust, light or odour emissions. However, this is the opinion of the applicant's consultant and a peer review would be necessary and appropriate to assess potential impacts and implementation measures through the Draft Plan of Subdivision.

These recommendations are the rationale behind adding the Holding Provision to the existing Zone, which will be further implemented through the future Draft Plan of Subdivision. These applications seek to modernize the planning approval process which will review the proposed lots. Although the proposed lots are within a registered plan and subject to a corresponding subdivision agreement, new approvals are necessary. The rationale for this is that the Holding provision affords the opportunity to the applicant to address the mitigation measures to ensure the proposed lots meet current MECP Guidelines. Further, although in a registered plan wherein Part Lot Control could be utilized to establish the nine lots, Staff is of the opinion that given the time that has elapsed and the measures needed to mitigate against the industrial use, new applications were more appropriate as it gives Council and the public the opportunity to revisit development of the lands.

Directly to the east of the property abuts a utility Easement A405488. (see **Figure 2** above) This easement is a sanitary easement which is treed and in a naturalized state. The applicant wants to convey the easement lands to the city because of the existing sanitary trunk line located within it, which the City maintains. Public Works staff is agreeable to this.

To facilitate future development of the subject lands, the applicant is proposing to apply a Holding "H" provision to Block 226 so that the developer can address compatibility with the MLF property in accordance with the recommendations of the updated Land Use Compatibility Report. The Holding Provision will also determine what changes may be needed for any future updates to the Draft Plan of Subdivision to be implemented.

8.1 Supporting Documents

The following technical reports and studies have been submitted in support of the subject Zoning By-law Amendment and Draft Plan of Subdivision applications:

- Covering letter;
- Planning Justification Brief;

- D6 Compatibility Analysis (Noise and Odour);
- Servicing Plan and Brief; and,
- Grading and Sediment and Erosion Control Plan.

8.2 Site Information

The subject lands are located directly on the northeast side of Donegal Drive and north of St. Patrick's Drive. There is a sanitary easement to the rear of Block 226 and further beyond is the MLF property which abuts the subject lands. The area is generally flat and vegetation consists primarily of a sodded area. The Draft Plan of Subdivision will determine if these lands are to be conveyed to the City or if the existing easement in favour of the City is more appropriate. The area further to the rear is wooded and treed and slopes downward. This area has a drop in elevation to the east that goes down into the spillway. As seen in the photos (see **Figures 4 and 5**), the area is heavily treed and acts as a buffer from the adjacent industrial site.

Surrounding land uses are predominately residential with a place of worship to the southeast and the existing industrial use (MLF) to the northeast with the remainder of the neighbourhood consisting primarily of single detached dwellings.

Figure 3: Aerial Map

AERIAL PHOTO

Application: PZ-26-22
Block 226 Donegal Drive



Legend

Subject Land

Aerial Photo from spring 2021

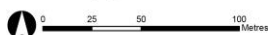


Figure 4: View of the site looking from northeast from Donegal Drive toward wooded easement.



Figure 5: site looking from southwest towards Donegal Drive from wooded easement



9.0 Analysis

9.1 Planning Policy Context

A map identifying the land use designations in the general area of the subject lands is attached as **Appendix B**. The City of Brantford Official Plan designates the lands as follows:

Table 21: Official Plan Policies

Designation	Schedule
Neighbourhood - Designated Greenfield Area	Schedule '1' Growth Management
Density target of 55 residents and jobs / ha	Schedule '2' Designated Greenfield Area Density
Residential Designation	Schedule '3' Land Use Plan
Residential Designation	Schedule '4' Designated Greenfield Area Structure
Adjacent Lands Overlay (for a portion of the lands)	Schedule '6' Natural Heritage System

- The Designated Greenfield Area includes lands within the Settlement Area Boundary that are outside of the Delineated Built-Up Area. Since this subject lands are undeveloped it is considered a greenfield area.
- The Core Natural Areas designation generally does not permit development within 30 metres of natural heritage features, and any development application within the 90 m Adjacent Lands Overlay may be subject to an Environmental Impact Study (EIS). The applicant provided a Letter of Opinion, prepared by a professional OALA, Vroom and Leonard, dated May 5, 2022. That letter evaluated the proposed lots within the policy context of the City and Province and concluded that the proposed development does not propose any direct impact. Staff concurs with the recommendation of that Letter. In that regard, Staff is of the opinion that the proposed development is considered minor in nature and the requirement for an EIS may be waived. It has been determined that no negative impacts would result

if new dwellings were constructed on this subject lands. Further, no development is proposed to be located within the Core Natural Area Designation. The GRCA had no comment on the proposed lots.

This proposed residential development is similar to adjacent residential development in scale and form (single detached units). In Staff's opinion, it would not have a negative impact on the surrounding neighbourhood or existing designations and therefore conforms to the Official Plan.

9.2 Planning Evaluation of Zoning Amendment

Existing Zoning: "Residential Type 1C Zone (R1C)"

Proposed Zoning: "Holding – Residential Type 1C Zone (H-R1C)"

A map identifying the zoning in the general area of the subject lands is attached as **Appendix C**. Section 4.1.7 of the Zoning By-law outlines how holding provisions function, pursuant to Section 36 of the *Planning Act*. The purpose of applying this Holding (H) provision is to ensure the orderly development of the lands and that the Holding Provision will better address mitigation measures for any noise, dust, light or odour emissions. If required, the applicant will also provide an updated Land Use Compatibility Study through the finalization of the Draft Plan of Subdivision.

The applicant is not seeking to modify the zoning provisions of the existing R1C Zone on the lands, but rather incorporate Holding provisions which will assist in facilitating the future development of the lands for nine single detached dwelling units which will be implanted through the Draft Plan of Subdivision. The existing Zone regulations are attached as **Appendix D** to the Report.

9.3 Development Considerations

9.3.1 Utility Easement

There is an existing easement labelled as Instrument Number A405488 in favour of the City, on lands that are owned by the applicant. The applicant would like to convey these lands to the City, so that the City can have access for maintenance of this area as there is a sanitary sewer located within the easement. The area is largely undisturbed and overgrown. This easement

also has some trees that act as a natural buffer between the MLF lands and the adjacent proposed residential development. This matter will be further considered through the Draft Plan of Subdivision application and the requisite conditions of approval.

9.3.2 Holding Provision

At the request of the applicant and in accordance with Section 9.7(a)(iv) of the Official Plan, Staff recommends that a Holding provision (H) be applied to the subject lands to ensure that the City's and MCEP's requirements are satisfied prior to the development proceeding. Staff recommends that the Holding provision (H) not be removed until the applicant has addressed the following:

- a. THAT the applicant, at their expense, address the need for a peer review of the D-6 Compatibility and Noise Assessment, prepared by CCS Engineering dated June 23, 2022, or any addendum thereto, to the satisfaction of the Manager of Development Planning; and
- b. THAT the applicant implement, at their expense the final recommendations of the D-6 Compatibility and Noise Assessment, prepared by CCS Engineering dated June 23, 2022, or any addendum thereto through the future conditions of Draft Plan of Subdivision approval for File No. 29T-22505, to the satisfaction of the Manager of Development Planning.

9.3.3 Land Use Compatibility D-6 Guidelines

As stated earlier in this Report, the applicant retained the services of CCS Engineering, whom prepared the D-6 Compatibility and Noise Assessment, dated June 23, 2022. Guideline D-6 – Land Use Compatibility deals with the compatibility between industrial uses and sensitive uses by classification of the industry and identifying an area of influence and establishing recommended minimum setback distances between the industrial operations and sensitive land uses.

This report was prepared by the applicant to assess and determine if noise, odour, vibration, light or dust emissions from surrounding sources might adversely impact the proposed subdivision development (sensitive land uses), specific to the Maple Leaf Foods Inc. facility located at 10 Canning Street, directly behind the proposed development. This report described the surrounding industrial and commercial facilities, focusing on the nearest neighbouring businesses and industries to the proposed development as having the highest potential to cause an adverse impact. Other surrounding facilities within approximately one half kilometer diameter had also been identified and reviewed.

The report concluded that based on the compatibility review and noise assessment undertaking, the following is recommended:

1. Housing units include the installation of central air conditioning;
2. Install triple pane windows on facades facing MLF;
3. Continue correspondence with MLF and GHD (their air/noise consultant) and attempt to work with MLF to implement and/or compliment noise control measures (from their Acoustic Assessment Report and Noise Abatement Action Plan – which is unknown at this time). A combined effort will provide more noise reduction potential with mitigation at the source (at the MLF noise sources), predict whether the noise barrier is better placed on the proposed development property line or the MLF property line (on either side of the stormwater right of way) and will be more cost effective.
4. A barrier fence along the lot lines on top of the existing earthen berm with a total height of 5.18 m (5 foot berm plus 12 foot barrier wall) and a minimum density of 20 kg/m³, will reduce the line of site and will reduce noise impacts of the proposed development houses.
5. Incorporate warning clause agreements due to the proximity of the facility and its current excess noise impacts. NPC 300 recommends warning clause E:

6. “Purchasers are advised that due to the proximity of the adjacent industry (Facility), noise from the industry (facility) may at times be audible.”

Staff acknowledges the findings and conclusions of the report, which have been incorporated into the Holding (H) provision and further implemented through the Draft Plan of Subdivision at a later date.

9.3.4 Natural Core Area and the Adjacent Lands Overlay

As outlined in Section 9.1 of this Report, the applicant provided a Letter of Opinion, prepared by a professional OALA Vroom and Leonard, dated May 5, 2022. That letter evaluated the proposed lots within the policy context of the City and Province and concluded that the proposed development does not propose any direct impact on watercourses or municipal drains that would require DFO authorization or site-specific review. It is the opinion of this consultant that these findings are consistent with the Provincial Policy Statement 2020 and the policies of the City of Brantford Official Plan. Planning Staff agrees with this interpretation as the proposed lots will not adversely impact the 90 metre Adjacent Lands Overlay of the Natural Core Area designation of the Official Plan. The Grand River Conservation Authority was also consulted in this regard and they have advised that they would not require an Environmental Impact Study for these applications. They further advised that the wetlands to the north are approximately 97 metres from the proposed development and we will not require a study to examine these in relation to the development being proposed.

9.3.5 Conditions of Draft Plan of Subdivision Approval

The consideration of the approval conditions for the Draft Plan of Subdivision will be brought forward at a later Council hearing. There are still technical considerations regarding the easement, servicing, landscaping, grading as well as noise, dust, light and odour which all need to be addressed before the Draft Plan conditions can be finalized.

9.4 Summary of Consultation

Summary of relevant consultation under the *Planning Act* is provided below.

9.4.1 Public Interest

Staff received three phone calls. All phone calls were generally enquiring about information/overview of the applications and an explanation of the reasons for the Holding Provision. One person also came to City Hall and met with Staff at the counter. Staff followed up accordingly, answering questions and explaining the planning process.

Table 3: Departments and Agency Comments

Department	Comment	Staff Response
Accessibility Fire Housing Transit Building GRCA	No comments or concerns.	
Canada Post	This development will be serviced by an existing nearby Community Mailbox.	
Development Engineering	No issues with the potential easement or conveyance to the City, and Draft Plan of Subdivision conditions will we address at a later date.	No issues with addition of H provision (Zoning By-law Amendment). Further review and analysis will be reserved for the Draft Plan of

Department	Comment	Staff Response
		Subdivision review.
Landscaping	An Arborist should at a minimum complete a Tree Inventory and a Tree Protection Plan to identify the amount of trees present (all trees greater than 10 cm in DBH) and what is being removed and preserved (if any). As the City would like to re-coup any lost canopy cover by determining what is going to be lost and determine replacement trees.	It was determined this could be addressed through a condition of Draft Plan of Subdivision.
Transportation	The driveway at the St. Patricks and Donegal intersection is to be set back from the intersection as much as possible	A Parking Plan is to be provided to Transportation Staff through the Draft Plan of Subdivision.
Environmental Services	Standard comments that can be addressed during the Draft Plan of Subdivision stage.	Agreed.
Operational Services	The Division has no concerns regarding the City of Brantford acquiring the easement A405488 through a conveyance.	This will be implemented through the Draft Plan of Subdivision process.
Real Estate Economic Development, Tourism & Cultural Initiatives	No concerns with the conveyance of the easement A405488.	Noted.

Department	Comment	Staff Response
Enbridge Gas	The owner/developer is provide to Enbridge the necessary easements and/or agreements required by Enbridge for the provision of gas services for this project, in a form satisfactory to Enbridge.	This will occur as a condition of Draft Plan of Subdivision approval.

10.0 Financial Implications

There are no direct municipal financial implications respecting these applications.

11.0 Climate and Environmental Implications

There are no direct municipal climate and environmental implications that can be assessed at this time respecting this application. The lands are currently designated for residential uses. The development has been contemplated for many years and will utilize existing infrastructure and require fewer resources. For this reason, a land area calculation was not considered.

12.0 Conclusion

The proposed Zoning By-law Amendment to place a Holding (H) provision on the subject lands is consistent with the Provincial Policy Statement, and in conformity with the Growth Plan and Official Plan. The inclusion of a Holding provision will ensure that orderly development of the lands will occur once the mitigation measures are implemented so that the proposed lots meet current MECP Guidelines which will facilitate the implementation of the Draft Plan of Subdivision. This development is consistent with the policies in the Official Plan, the Provincial Policy Statement, and the Growth Plan, as the proposed development will facilitate the appropriate infill of lands. The proposed Zoning By-law Amendment will facilitate the development of nine lots and will help to ensure that a specific built form is achieved, while addressing all other technical matters through the Draft Plan of Subdivision. Based on these considerations, Planning Staff is of the opinion that the application for Zoning By-law Amendment is appropriate and represents good planning.

Nicole Wilmot, MCIP, RPP
Chief Planner and Director of Planning and Development Services
Community Development Commission

Prepared By:
Joe Muto, MCIP, RPP, Manager of Development Planning

Attachments
Appendix A: Applicant's Legal Opinion Letter
Appendix B: Official Plan
Appendix C: Zoning By-law 160-90
Appendix D: Zoning By-law R1C Regulations

In adopting this report, is a by-law or agreement required? If so, it should be referenced in the recommendation section.

By-law required	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no
Agreement(s) or other documents to be signed by Mayor and/or City Clerk	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no
Is the necessary by-law or agreement being sent concurrently to Council?	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no

Appendix A – Applicant’s Legal Opinion Letter



Nancy Smith
15 Bold Street
Hamilton Ontario Canada L8P 1T3
Receptionist 905 529 3476 (905 LAW-FIRM)
Facsimile 905 529 3663
nsmith@tmalaw.ca

EMAIL LETTER

To: David VanElslander
cc: Eldon Darbyson
From: Nancy Smith
Re: Interpretation of Subdivision Agreement – Block 226 Obligations
Date: September 28, 2020

You have requested a review of the Subdivision Agreement between the Corporation of the City of Brantford and Shellard Place Limited that was registered on August 11, 1994 (the “SA”). The SA contains sections concerning Block 226 on the final plan (Schedule 9, Part IV, 12.03, 12.04 and 16.61) (the “Block 226 Obligations”). See Appendix A. Paragraph 16.49 is an additional provision that speaks to Block 226 which is not referenced in Part IV (the “Additional Block 226 Obligation”). See Appendix B. We have been asked to provide an opinion as to whether the Block 226 Obligations and the Additional Block 226 Obligation preclude development on Block 226. In our opinion, they do not.

SA, CONDITIONS AND LEGALITY

The *Planning Act* deals with approval of plans of subdivision in s. 51. Appeals of draft plan of subdivision conditions and changes to these conditions are available up until final approval. The legal standard is that conditions must be relevant, necessary and reasonable. (*Bodnan, Re* (2014), 82 O.M.B.R. 77, 2014 CarswellOnt 12955 (O.M.B.)). The time frame for challenging the conditions as unreasonable has passed as the draft plan is now final.

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NANCY SMITH PROFESSIONAL CORPORATION
TURKSTRA MAZZA ASSOCIATES, LAWYERS

However, draft plan conditions carried forward in a SA may still be reviewed. A dispute as to the interpretation of the SA is a matter of contractual interpretation for the Courts (*DiBattista Gambin Developments Ltd. v. Brampton (City)*, [2017] O.J. No. 5355 (S.C.J.), affirmed [2018] O.J. No. 2584 (C.A.); *Caledon (Town) v. Waterstone Properties Corporation*, [2016] O.J. No. 4531 (S.C.J.), affirmed [2017] O.J. No. 4087 (C.A.)). To the extent a municipality may try to enforce conditions that are not supported by the municipality's jurisdiction or the words in the agreement, they may not be enforceable (*Valleyview Subdivision Ltd. v. Sudbury (City)*, [1970] O.J. No. 521 (H.C.J.)).

SA, BLOCK 226 OBLIGATIONS AND ADDITIONAL BLOCK 226 OBLIGATION

The Block 226 Obligations state that lots on Block 226 as shown on the final plan are unsuitable for building purposes until conditions in paragraphs 12.03, 12.04 and 16.61 are met. The conditions in paragraphs 12.03 and 12.04 require drainage issues to be addressed. The Additional Block 226 Obligation requires notice in Agreements of Purchase and Sale of specific drainage maintenance responsibilities. These requirements are not unusual.

Section 16.61 is unusual. Its meaning is less clear. It states:

The Owner agrees that prior to approval by the Ministry of Municipal Affairs of Block 226 for residential use, the adjacent industrial lands to the east shall be converted to a use which is deemed compatible with residential use by the Ministry of the Environment and Energy and shall be redesignated and/or rezoned to preclude the establishment of a new industrial use considered to be incompatible with residential use. Until that time, no use except passive Open Space or uses determined as being compatible with residential use by the Ministry of Environment and Energy shall be made of these lands [underlining added].

The intent of Section 16.61 is to ensure compatibility with adjoining land uses. The planning regime in Ontario achieves this intent by testing a development proposal against provincial and municipal policy. That testing is part of a public process under the *Planning Act* with procedural safeguards to achieve fairness.

The opening words of Section 16.61 purport to alter this regime by freezing development of Block 226 until a third-party landowner, not a party to the SA, changes its land use. This puts complete control of the future development of Block 226 in the hands of a private third party and not the municipality. But for the compatibility issue, Block 226 does not need the adjacent lands to develop. In my opinion, this approach to ensuring compatibility falls outside the *Planning Act* policy-led regime and is not enforceable.

The closing language of Section 16.61 remains operative:

Until that time, no use except passive Open Space or uses determined as being compatible with residential use by the Ministry of Environment and Energy shall be made of these lands.

This directive aligns with the planning regime in Ontario that achieves compatibility by testing a development proposal against provincial and municipal policy.

AMENDING THE SA

A subdivision agreement is a contract. It may be amended. Updated technical reports or information could fuel amendments to the Block 226 Obligations and the Additional Block 226 Obligation.

CONCLUSION

In my opinion, the SA and specifically the Block 226 Obligations and the Additional Block 226 Obligation do not preclude the development of Block 226. Any proposal should be processed under the *Planning Act* with specific attention to the drainage and compatibility issues identified in the SA. And, depending on the results of any technical work done to support development, the SA can always be amended to reflect the updated information.

I trust the foregoing is of assistance to you. If you have any questions, please do not hesitate to contact me.

Yours truly,



Nancy Smith
ns/l

SECTION 11 DEVELOPMENT CHARGES

11.01 The Owner agrees with the Corporation that development charges shall be payable, in accordance with Bylaw Number 190-91 as amended from time to time, at the times and in the amounts as set out in the said bylaw.

SECTION 12 CONSTRUCTION & OCCUPANCY OF BUILDINGS

12.01 The Owner agrees with the Corporation and the Commission that no building permit will be applied for, nor issued, in respect to a lot or block in the Plan until the following work has been carried out in front of each lot or block for which such building permit is acquired.

- a) Storm and sanitary sewers constructed, tested, and approved by the City Engineer.
- b) Watermains constructed, tested, disinfected, and approved by the Commission's Engineer.
- c) Sewer service connections completed and approved by the City Engineer.
- d) Water service connections completed and approved by the Commission's Engineer.
- e) All necessary catchbasins, manholes and other appurtenances constructed and approved by the City Engineer.
- f) All necessary valves, chambers and other appurtenances constructed and approved by the Commission's Engineer.
- g) All the above services connected to existing facilities that are in operation, and in the opinion of the City Engineer and the Commission's Engineer capable of providing adequate service.
- h) Base course gravel placed for the full width of the roadway and to the depths prescribed by the City Engineer and the said base extended to an existing road.
- i) All necessary electrical equipment, lines and appurtenances are installed, and approved by the Commission's Engineer, or the securities and deposits as set out in Section 7.10 have been provided to the Commission.

12.02 The Owner agrees that buildings to be erected on the said lands covered by or included in the said Plan of Subdivision shall be erected to conform to the grades shown in Schedule "11".

12.03 The Owner agrees with the Corporation not to sell or dispose of the lots and/or blocks set forth in Schedule 9 because of their marshy, low lying, or unstable character, until suitable drainage is provided, the land is properly filled, or otherwise rendered stable and written approval is obtained from the City Engineer.

12.04 The Owner agrees with the Corporation that no application will be made for a building permit for the erection of any structure on the lots or blocks set forth in Schedule 9 because of their marshy, low lying, or unstable character, until suitable drainage is provided, the land is properly filled, or otherwise rendered stable and written approval is obtained from the City Engineer.

12.05 The Owner agrees with the Corporation that no building erected on lots in the subdivision shall be occupied until in addition to the above, hydro-electric installation and curb and gutter construction is completed, provided always the Engineer may waive the requirements for curb and gutter construction if, in his opinion, weather conditions would not permit construction thereof, in which event, the Owner shall commence curb and gutter construction at the earliest possible opportunity, and in no case later than six months after occupancy of any building.

16.60 The Owner agrees to ensure that prior to the issuance of an occupancy permit for the following lots, the related provisions as recommended by the Ministry of the Environment and Energy will be fulfilled to the satisfaction of the Corporation and the Ministry of Environment and Energy:

Lots 1-221 (inclusive)

a) To have installed and/or constructed, the recommended mitigation measures with respect to the Parrish Heimbecker grain drying operations as outlined in the Noise Assessment Report dated May 10, 1993 and letter dated January 10, 1994 by Vibron Ltd. and approved by the Ministry of Environment and Energy, and to submit to the Ministry of Environment and Energy and receive approval from same, an acoustic measurement survey indicating that the recommended mitigation measures have been installed/constructed and are in compliance with the governing Ministry Guidelines.

Lot 43 and Lots 160-168 (inclusive)

b) An acoustic consultant has confirmed that all recommendations proposed in Vibron's January 10, 1994 letter have been incorporated into the development and that the architectural design of the homes on Lots 43, and 160 through 168 (inclusive), conform to the restrictions stated in the Conclusion and Recommendation section of Vibron's January 10, 1994 letter.

Lots 23-43 (inclusive)

c) The facades of Lots 23 through 43 (inclusive), facing the railway line, have been constructed of a minimum "EW5" exterior wall (brick veneer) or equivalent construction from the foundation to the rafters.

Lots 1, 2, 55-67 (inclusive), 79 and 80 .

d) The following warning clause has been included in all Offers of Sale and Purchase or Lease Agreements, for Lots 1, 2, 55 through 67 (inclusive) and 79, and 80:

"Purchasers and/or tenants are advised that despite the inclusion of noise control features in this development area, noise levels from increasing vehicular traffic on Shellard Lane may continue to be of concern, occasionally interfering with activities of the occupants. This dwelling unit has, therefore, been equipped with forced air heating and ducting etc., sized to allow for the future installation of central air conditioning by the occupant.

Note: If the occupant decides to install central air conditioning, the air-cooled condenser unit should be located in a noise insensitive area."

16.61 The Owner agrees that prior to approval by the Ministry of Municipal Affairs of Block 226 for residential use, the adjacent industrial lands to the east shall be converted to a use which is deemed compatible with residential use by the Ministry of Environment and Energy and shall be redesignated and/or rezoned to preclude the establishment of a new industrial use considered to be incompatible with residential use. Until that time, no use except passive Open Space or uses determined as being compatible with residential use by the Ministry of Environment and Energy shall be made of these lands.

16.62 The Owner agrees that prior to registration of the Plan, the developer shall submit a Plan for the approval of the Ministry of Environment and Energy showing the proposed berm and/or noise attenuation wall along the common property line of the subject lands and the Maple Leaf Frozen Foods industrial facility.

-
- the swale located at the front of the property is to be diverted to the drainage channel on the south side of Shellard Lane in accordance with the D'Aubigny Creek Master Watershed Plan.
 - ii) An Erosion and Siltation Control Plan in accordance with the Grand River Conservation Authority's Guidelines for Sediment and Erosion Control, indicating the means whereby erosion will be minimized and silt maintained on-site throughout all phases of grading and construction in accordance with current Grand River Conservation Authority Guidelines;
 - iii) An application for Fill, Construction and Alteration to Waterways Regulation Permit pursuant to Ontario Regulation 149/90 as amended by 69/93 for the construction of the stormwater management facility (Block 225) and the outlet as well as the replacement of the culvert under the railway.
- 16.48 The Owner agrees to carry out or cause to be carried out, to the satisfaction of the Grand River Conservation Authority and the City Engineer, all works in accordance with the plans and reports submitted in conjunction with 16.47 above.
- 16.49 The Owner agrees for Block 226 to include in all offers of sale and purchase or lease and to register on title to the land, a clause informing all purchasers and tenants that the surface water run-off at the rear of this block is drained via a catchbasin and infiltration trench and that this system is not assumed by the Corporation and the maintenance of this system becomes the responsibility of the individual owner.
- 16.50 The Owner agrees that prior to registration of the Plan of Subdivision, or any construction or grading on the subject property, the developer shall submit the following plans or reports to the District Manager, Cambridge District, Ministry of Natural Resources and City Engineer for review and approval:
- i) Plans that show existing and proposed site grades and drainage;
 - ii) A detailed stormwater management plan which shows how storm water will be conveyed from the site and conducted to the receiving water bodies. Such plans shall be in accordance with best management practices, the MOE/MNR document entitled, "Interim Stormwater Quality Control Guidelines for New Development - May, 1991" and the D'Aubigny Creek Master Watershed Plan;
 - iii) An erosion and siltation control plan which shows how exposed soils, sediments and eroded materials will be retained on site during all phases of construction. Plans should include maintenance requirements for all employed devices. Proposed techniques should be in accordance with the Provincial publication, "Technical Guidelines, Erosion and Sediment Control - February, 1989".
- 16.51 The Owner agrees to carry out or cause to be carried out, to the satisfaction of the Ministry of Natural Resources and the City Engineer, all works in accordance with the plans and reports submitted in conjunction with 16.50 above.
- 16.52 The Owner agrees that the following warning clause, as recommended by CN North America, will be included in all agreements of sale and purchase or lease for lots 14-50 (inclusive), 92, 110 - 139 (inclusive) and 141 - 221 (inclusive) within the plan of subdivision:
- "Warning: Canadian National Railway Company or it's assigns or successors in interest. has. or have a right-

Appendix B – Official Plan Designation

OFFICIAL PLAN EXCERPT MAP

Application: PZ-26-22
 Block 226 Donegal Drive



Legend

0 10 20 40 Metres

Subject Land	Land Use	Symbols
	Agricultural Designation	Sanitary Landfill Site
	Core Natural Areas Designation	Water Treatment Facility
Neighbourhoods	Residential Designation	Wastewater Treatment Facility
	Major Institutional Designation	Municipal Works Yard
	Parks and Open Space Designation	Transit Bus Barns
Strategic Growth Areas	Downtown Urban Growth Centre Designation	Downtown Transit Terminal
	Major Commercial Centre Designation	VIA Rail Station
	Intensification Corridor Designation	
Employment Areas	Prestige Employment Designation	
	General Employment Designation	

Appendix C – Zoning By-law 160-90

EXISTING ZONING

Application PZ-26-22
Block 226 Donegal Drive

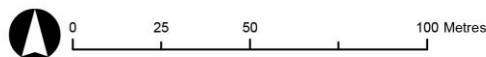


Legend

-  Subject Land
-  Zone Boundary

Existing Zoning (Bylaw 160-90)

- R1B Residential Type 1B (15 metre) Zone
- R1C Residential Type 1C (12 metre) Zone
- I2 Institutional School Zone
- OS3 Open Space Restricted Zone
- M2 General Industrial Zone



Appendix D – Zoning By-law 160-90 R1C Zone Regulations

10-1

7.4. Residential Type 1C (12 Metre) Zone (R1C)

7.4.1. Permitted Uses

The following uses are permitted in a R1C Zone:

- .1 Single-detached dwellings.
- .2 Bed and breakfast establishments.
- .3 Day nurseries.
- .4 Home occupations.
- .5 Mini-group homes.
- .6 Accessory uses, buildings, and structures.
- .7 Uses permitted in Section 6.1.

7.4.2. Regulations

Any use, building, or structure in a R1C Zone shall be established in accordance with the following:

Amended by
Bylaw No.
34-93

- | | | |
|--|----------------------------|---|
| .1 | Single-Detached Dwellings | |
| .1 | Lot Area (minimum) | 360.0 m ² |
| .2 | Lot Width (minimum) | 12.0 m |
| .3 | Lot Coverage (maximum) | 40% |
| .4 | Building Height (maximum) | 10.0 m |
| .5 | Front Yard (minimum) | 6.0 m or the
Established Front
Building Line,
whichever is the
lesser |
| .6 | Rear Yard (minimum) | 7.5 m |
| .7 | Side Yard (minimum) | |
| .1 | Interior | 3.0 m on one side
and 1.0 m on the
other side. |
| Where an integral garage or integral carport is provided,
the minimum interior side yard shall be 1.0 m each side | | |
| .2 | Exterior | 3.0 m |
| .8 | Gross Floor Area (minimum) | 70.0 m ² |
| .9 | Parking in accordance with | Section 6.18 |