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# HALDIMAND COUNTY

## Report PDD-19-2020 Holding Provision Removal and Authorization for Agreements for Development in Jarvis - Gusenbauer

For Consideration by Council on June 16, 2020

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### OBJECTIVE:

To request approval to remove a Holding (H) provision from lands located on the south side of Jarvis (having no municipal address) to facilitate the development of a 47 unit condominium townhouse development in Jarvis, and to authorize the County to enter into various agreements with the proponent as part of the site plan and mutual drainage approval processes, and to authorize staff to reassess the assessment schedule for Jarvis Drain 1.

### RECOMMENDATIONS:

1. THAT Report PDD-19-2020 Holding Provision Removal and Authorization for Agreements for Development in Jarvis - Gusenbauer be received;
2. AND THAT the by-law for the removal of the Holding (H) provision attached to Report PDD-19-2020, be presented for enactment;
3. AND THAT the by-law authorizing the Mayor and Clerk to sign a development agreement with 2159974 Ontario Inc., attached to Report PDD-19-2020, be presented for enactment;
4. AND THAT the proposal is deemed to be consistent with the Provincial Policy Statement (2020) and Provincial Growth Plan (2019) and other matters of provincial interest;
5. AND THAT staff be authorized to appoint an engineer under Section 65(1) and (3) of the *Drainage Act, R.S.O. 1990, Chapter D.17*, to examine the proposed changes in land use and ownership relating to the Gusenbauer development for townhouse development in Jarvis and make recommendations to modify the assessment schedule for Jarvis Drain 1;
6. AND THAT the Mayor and Clerk be authorized to sign a mutual drainage agreement under Section 2 of the *Drainage Act, R.S.O. 1990, Chapter D.17* with 2159974 Ontario Inc. relating to the Gusenbauer development to create an outlet to the Jarvis Drain 1 across County owned lands.

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**Approved:** Craig Manley, MCIP, RPP, Chief Administrative Officer

### EXECUTIVE SUMMARY:

The purpose of the subject report is four-fold:

- 1) to obtain Council's approval to remove a Holding (H) provision from the subject lands;

- 2) to obtain Council's approval to permit the Mayor and Clerk to sign a development agreement on behalf of the municipality with the proponent as part of the site plan process;
- 3) to permit staff to appoint an engineer to examine the proposed changes in land use and ownership relating to the development and to make recommendations to modify the assessment schedule for Jarvis Drain 1 through approval of the resolution; and
- 4) to permit the Mayor and Clerk to enter into a mutual drainage agreement with the proponent relating to the development to create a stormwater outlet to the Jarvis Drain 1 across County owned lands through approval of the resolution.

This suite of approvals will facilitate the development of a 47 unit condominium development in the south-east area of Jarvis. The project is near obtaining site plan approval which is the final stage in approvals prior to applying for a building permit.

## **BACKGROUND:**

The subject lands are located in the south end of Jarvis and legally described as Concession 7, Part of Lot 4, former geographic township of Walpole, Jarvis (Attachment 1). The subject lands do not have a municipal address. Surrounding land uses include residential and the Jarvis Lions Park to the north, sewage lagoons to the east, agricultural to the south, and agricultural to the west.

Part 1 of the subject lands was rezoned in 2004 from the 'Agricultural (A)' Zone to a site specific 'Urban Residential Type 4 – Holding (R4.1(H))' Zone (Attachment 1) to permit a group townhouse development (referred to now as 'Gusenbauer Development') on a private road connecting into John Street (Attachment 2). Part 1 of the subject lands is located in the urban boundary of Jarvis, and portions of Part 2 are located inside and outside of the urban boundary of Jarvis.

The subject lands are currently vacant. Staff received a site plan application for a 47 unit group townhouse development to be constructed on Part 1 with the stormwater management pond on Part 2 of the subject lands and outletting into the Jarvis Drain 1 in 2011. The project has had various starts and stops over the years, as well as ownership changes. However, the plan has now progressed to a point where site plan approval is imminent given that technical details have been addressed. The most recent version of the site plan is included as Attachment 2.

The primary purpose of the subject report is to request Council's approval to remove a holding (H) provision from Part 1 of the subject lands to facilitate the development. Use of an H provision permits Council to make a principal of land use decision (in 2004) while restricting the development permitted through the zoning until the criteria of the H provision have been satisfied. This ensures that key development matters are addressed or put in place before development occurs. Application of the H provision to Part 1 of the subject lands in 2004 pre-dates the current practice where the H provision removal process is delegated to staff for efficiency purposes (starting in 2011). As such, staff does not have the authority to remove the H provision from Part 1 of the subject lands; Council must make the decision about its removal before building permits can be issued.

The H provision was affixed to the zoning of Part 1 of the subject lands when Part 1 was rezoned in 2004 through By-law 158-HC/04 to ensure the owner completes an Environmental Impact Statement (EIS) and assesses means of mitigating possible methane gas (including soils and hydrogeological investigation, if necessary) to the satisfaction of the County and any recommendations noted in the Environmental Impact Statement and Methane Mitigation Assessment are addressed in the site plan and/or site plan agreement. A second H provision was affixed to the zoning of Part 1 of the subject lands in 2008 via By-law 568-HC-08 to ensure servicing capacity has been allocated to the proposed development, a site plan has been approved for the development, and a site plan agreement has been registered on title. All of the conditions of the H provision are being managed through the site plan process, with details discussed in the Analysis section below. Given the satisfactory advancement of

the technical aspects of the project, and the forthcoming approvals, staff are satisfied that the H removal can be advanced at this time. The By-law authorizing the H provision removal is included as Attachment 3.

The secondary purpose of the subject report is to obtain authorization from the Mayor and Clerk to:

1. permit the Mayor and Clerk to sign a development agreement with the proponent relating to onsite and external works to be completed as part of the site plan process through passage of the attached authorizing by-law (Attachment 4);
2. permit staff to appoint an engineer to examine the proposed changes in land use and ownership relating to the development and to make recommendations to modify the assessment schedule for Jarvis Drain 1 through approval of the resolution; and
3. permit the Mayor and Clerk to sign a Mutual Drainage Agreement with the proponent relating to the development to create a stormwater outlet to the Jarvis Drain 1 across County owned lands through approval of the resolution.

Item #2 noted above is required because the subject lands are located in the sub-watershed of the Jarvis Drain 1 and the land use and ownership of the subject lands is going to change. The land use will change from vacant lands to residential. The ownership will change as the cul-de-sac is going to be conveyed to the County and the remaining portion of the subject lands is going to be divided in some manner to accommodate condominium ownership. As such, the drainage apportionment for the subject lands must be reapportioned.

Item #3 noted above is required because the proponent is proposing to create a new stormwater outlet to the Jarvis Drain 1 across County property which necessitates a mutual drainage agreement. Council must pass these items to authorize Staff to undertake this work and to authorize the Mayor and Clerk to enter into the agreement.

## **ANALYSIS:**

### **Provincial Policy:**

#### ***Provincial Policy Statement (2020)***

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The *Planning Act* directs that decisions affecting planning matters “shall be consistent with” the policies of the PPS. The lands proposed to be developed are located within the settlement boundary of Jarvis and the development will be contiguous with existing development. The proponent’s consulting team has provided a site plan which identifies how the lands will be serviced in accordance with the Provincial policy. The dwellings will be appropriately setback from the adjacent sewage lagoons in accordance with the land use compatibility policies. The proponent’s consulting team continues to work with staff to ensure that some of the woodlands are removed in accordance with Provincial and County natural heritage policies. Overall, the proposal continues to be consistent with the PPS.

#### ***Provincial Growth Plan (2019)***

The purpose of the Growth Plan is to address challenges related to the forecasted growth and changes in the Greater Golden Horseshoe, and to ensure the protection and effective use of finite resources. The Growth Plan establishes a unique land use planning framework for the Greater Golden Horseshoe that supports the achievement of complete communities, a thriving economy, a clean and healthy environment, and social equity. Planning decisions must conform to the Growth Plan.

The lands proposed to be developed are located in the greenfield area of Jarvis, which is the area within the Jarvis settlement area that is not built-up. The Growth Plan set the County’s greenfield density

target at 40 persons and jobs per hectare for new residential developments, excluding natural heritage features and areas (such as woodlands), natural heritage systems, and floodplains. The subject lands also about the Jarvis sewage lagoons and development is discouraged within 150 metres (492 feet) of the lagoons. Based on the area that can be developed, the proposed density is approximately 33 units per hectare and 90 persons and jobs per hectare. Overall, the proposal continues to conform to the Growth Plan.

## **County Policy:**

### ***Haldimand County Official Plan***

The subject lands are located on the south side of Jarvis. A portion of the subject lands (Part 1 and a portion of Part 2 – Attachment 1) are located in the urban settlement boundary of Jarvis; these lands are designated 'Residential'. The remaining portion of the subject lands are located in the prime agricultural and industrial influence area of the County and are designated 'Agriculture', 'Riverine Hazard Lands', and 'Floodway' around the watercourse.

The 'Residential' designation permits all forms of residential development (including townhouse developments) in accordance with the policies of the Haldimand County Official Plan (OP). The OP directs that development shall proceed in an orderly, phased manner contiguous to existing development and take into consideration, the availability of services. This development proposal was assessed for conformity with the OP policies through the zoning by-law amendment application Z-HA-23/2003 in 2004.

### ***City of Nanticoke Zoning By-law NE 1-2000***

Part 1 of the subject lands is zoned a site specific 'Urban Residential Type 4 – Holding (R4.1(H))' Zone (Attachment 1) to permit a group townhouse development on a private road (Attachment 2). Part 1 of the subject lands is subject to site plan control through site specific By-law 159-HC-04-SP and the proponent is currently working through the site plan application process with staff. Part 2 of the subject lands is zoned 'Agriculture (A)' Zone and 'Hazard Lands (HL)' Zone. The proponent must receive approval from Council for removal of the H provision on Part 1 of the subject lands prior to issuance of building permits.

Council implemented the following criteria for removal of the H provision via By-laws 158-HC/04 and 568-HC/08:

1. The owner completes an Environmental Impact Statement (EIS) and any recommendations noted in the EIS are addressed in the site plan and/or site plan agreement;

**Planning Comment:** The proponent's team submitted an EIS in 2011 with the original site plan submission and an updated opinion letter with a subsequent submission confirming that the EIS remains valid in 2016. Staff are generally satisfied with the EIS results. Minor changes to the proposed development to satisfy natural heritage requirements and inclusion of the EIS mitigation recommendations into the site plan agreement can be managed through the site plan approval process. Given that site plan control applies to this property, site alteration (removal of trees) and development cannot occur until the site plan is approved. As such, there is no risk in removing the holding provision from the subject lands from a natural heritage perspective.

2. The owner assesses means of mitigating possible methane gas (including soils and hydrogeological investigation, if necessary) to the satisfaction of the County and any recommendations noted in the methane gas mitigation assessment are addressed in the site plan and/or site plan agreement;

**Planning Comment:** Following zoning approvals for the project in 2004, the applicant met with staff to undertake a pre-consultation meeting to discuss the details and supporting studies required to be submitted as part of the site plan submission package. At that time (2008), staff

decided that a methane gas mitigation assessment would not be required. Instead, requirements relating to methane gas would be handled through the building permit process (i.e. venting, alarms, etc.). As such, the holding provision can be removed from the subject lands from a methane gas perspective.

3. Servicing capacity has been allocated to the proposed development; and

**Planning Comment:** Council allocated servicing to this project most recently through Report PDD-14-2019 Servicing Allocation – 2019 Year End Update and Recommendations on December 10, 2019 until December 31, 2020. If the proponent does not start construction in 2020, he will need to reapply for servicing allocation through the extension request process.

4. A site plan has been approved for the development and a site plan agreement has been registered on title.

**Planning Comment:** Registration of a development agreement prior to site plan approval has become a standard requirement in the site plan control process for new developments. A development agreement contains technical terms and guarantees to ensure that a developer complies with engineering, technical, and agency requirements related to onsite works and external works. A development agreement also contains financial terms and guarantees to ensure that a developer covers any cost associated with working within the County's right of way or with any County infrastructure. A security is provided to the County to ensure that if any damage occurs that the developer cannot remedy, the County has the funds to restore the damage without using tax revenue.

The proponent is progressing through the site plan approval process and will need to register the development agreement prior to site plan approval. Given that a development agreement must be registered on the title of the subject lands prior to site plan approval and that a site plan must be approved prior to the proponent altering the site or obtaining building permits, the H provision is unnecessary/redundant, as there is a process in place to manage these requirements (i.e. the site plan control process). Therefore, the H provision can be removed.

Overall, it is Planning Staff's opinion that the H provision can be removed as the criteria has been satisfied. Removing the H provision now will ensure that the development continues to progress efficiently through the site plan approval process. A by-law for the removal of the H provision is attached to the subject report and is being presented for enactment (Attachment 3).

#### **Other:**

Further, Council must pass an authorizing by-law to permit the Mayor and Clerk to sign the development agreement with the proponent. The authorizing by-law is included as Attachment 4. Council must also pass the resolutions relating the drainage reapportionment and mutual drainage agreement to permit staff to undertake this work and to authorize the Mayor and Clerk to enter into the mutual drainage agreement.

#### **External Works:**

In addition to the onsite works for servicing and constructing the townhouse units, the proponent is proposing to construct a watermain extending from the end of John Street through the Jarvis Lions Park (along the south property boundary of the Park) to Main Street South. The reason that the new watermain is proposed to be constructed through County property is to provide for a looped water system within the site. Looping of the watermain is required to keep water moving to avoid stagnant water (to ensure public health) and to improve fire flows (firefighting water pressure). The new watermain external to the site will be assumed by the County once constructed.

To accommodate the new watermain along the south property boundary of the Park, the proponent will be responsible for relocating the trees nearest the south property line. The County's Project Manager,

Forestry Operations has reviewed the site and the plan. He has indicated that most of the trees were planted last year and can be easily relocated to other areas of the Park. There are three (3) larger trees in this area that will need to be removed and new replacement trees will be planted elsewhere in the Park. This will provide approximately 10 metres (33 feet) of clearance between the south property line and the remaining trees. Tree protection fencing will need to be installed to protect the remaining trees. It is unlikely that the newer pathway constructed at the south end of the Park will be impacted by the installation of the watermain through the Park.

Planning staff have requested that the proponent's consulting team prepare a construction plan to demonstrate how the proponent's construction team will access the Park, the area of construction, and trees to be relocated/removed and replaced. Access and construction will only be permitted on the south end of the Park.

Planning Staff notified the Jarvis Lions Club of the imminent development and external works proposed to be completed within the Park. The Lions Club and proponent's consulting team are willing to work with County Staff to ensure that the installation of the watermain has limited impact on the Park. The construction plan will be provided to the Lions Club for review prior to site plan approval.

Further, the external works (relating to the watermain installation) will be regulated and captured through the development agreement. The development agreement will provide the County with the legal means to ensure that construction is undertaken as proposed.

### **Next Steps:**

The following site plan related items still need to be addressed prior to site plan approval:

- Preparation, signature, and registration of the development agreement, which includes approval and submission of financial securities and a certificate of insurance.
- Conveyance of the proposed cul-de-sac lands (currently unconstructed) to the County.
- Confirmation from the Manager of Engineering & Capital Works that the proponent has obtained a legal and adequate outlet (via the Jarvis Drain 1).
- Finalization of the Site Plan to address the remaining outstanding staff comments and technical details.

All of the items are in process or will be in process shortly. The development agreement will be reviewed and signed by the Mayor and Clerk at a later date. Removal of the H provision will ensure that once these items are completed to the satisfaction of Haldimand County staff, the site plan application can be forwarded to the General Manager of Community and Development Services for approval, and building permits can be issued thereafter with no delay.

It is important to recognize that the drainage reapportionment and mutual drainage agreement processes are separate processes from the site plan process and will be managed through the Engineering & Capital Works Department.

### **Notice Requirements:**

The *Planning Act* only requires public notice to be given to those individuals or groups that have previously provided the Clerk of the municipality a written request for notice of the intention to pass an amending by-law to remove a holding (H) provision from a zoning by-law under subsection 34(4) of the *Planning Act*. No such requests were made; therefore, public notice is not required.

## **FINANCIAL/LEGAL IMPLICATIONS:**

A development agreement and mutual drainage agreement will be required. The Jarvis Drain 1 will need to be reassessed by an engineer, with the proponent covering this cost.

## **STAKEHOLDER IMPACTS:**

All agencies and departments required to provide input have provided such input via the Site Plan approval process. Agencies and departments required to input on the agreements will be consulted when the agreements are being prepared. The Mayor and Clerk will review the development and mutual drainage agreements and provide signature if the agreements are satisfactory.

## **REPORT IMPACTS:**

Agreement: Yes

By-law: Yes

Budget Amendment: No

Policy: No

## **ATTACHMENTS:**

1. Location Map.
2. Site Plan.
3. Holding (H) Provision Removal By-law.
4. Authorizing Site Plan Agreement By-law.