



**The Municipal Corporation of the
Town of Fort Erie
BY-LAW NO. 202-2002**

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF A
CONDITIONAL BUILDING PERMIT AGREEMENT FOR PROPERTY
LOCATED AT NORTHWEST CORNER GARRISON ROAD AND
THOMPSON ROAD – WAL-MART CANADA CORP.
(350101)**

WHEREAS the *Building Code Act*, 1992 establishes the rules and regulations for building in Ontario, and

WHEREAS Section 3 of the said *Act* provides the council of each municipality is responsible for the enforcement of this *Act* in the municipality and the council of each municipality shall appoint a chief building official and such inspectors as are necessary for the enforcement of this *Act*, and

WHEREAS Section 8(2) of the said *Act* requires the chief building official to issue a permit under subsection (1) subject to the exceptions stated therein, and

WHEREAS Section 8(3) of the said *Act* provides even though all requirements have not been met, to obtain a permit under subsection (2), the chief building official may issue a conditional permit for any stage of construction subject to the provisions set out therein as follows:

- (a) compliance with by-laws passed under Sections 34 and 38 of the *Planning Act* and with such other applicable law as may be set out in the building code has been achieved in respect of the proposed building or construction;
- (b) the chief building official is of the opinion that unreasonable delays in the construction would occur if a conditional permit is not granted; and
- (c) the applicant and such other persons as the chief building official determines agree in writing with the municipality to do certain things as set out therein, and

WHEREAS Section 8(4) of the said *Act* provides in considering whether a conditional permit should be granted, the chief building official shall, among other matters, have regard to the potential difficulty in restoring the site to its original state and use if required approvals are not obtained, and

WHEREAS it is deemed desirable to issue a conditional building permit to Wal-Mart Canada Corp. in order to accelerate development;

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NOW THEREFORE the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

1. **THAT** the Mayor and Clerk be and they are hereby authorized and directed to execute the Conditional Building Permit Agreement annexed hereto to this by-law as Schedule "A" in order to effect the Conditional Building Permit with Wal-Mart Canada Corp. for the lands described therein.
2. **THAT** pursuant to the provisions of Section 102.1 of the *Municipal Act* should any minor amendments to the Conditional Building Permit Agreement of an administrative, typographical, grammatical or descriptive nature be required to effect the intent of this by-law and the Conditional Building Permit Agreement herein the Clerk of the Town of Fort Erie is hereby authorized to effect the same.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 21st DAY OF OCTOBER, 2002.



MAYOR



CLERK

I, the Clerk, Carolyn J. Kett, of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 202-2002 of the said Town. Given under my hand and the seal of the said Corporation this _____ day of _____, 2002.

BETWEEN:

(Agent : Wal-Mart Canada Corp.)

- and -

Hereinafter called the "Town" OF THE SECOND PART

3. The Town agrees to issue a Conditional Building Permit for the subject construction to be erected on the subject lands provided that the Owner agrees to assume all risks involved in commencing construction before every requirement for a building permit has been met, and to this end hereby indemnifies and saves harmless the Town and the Chief Building Official from and against all claims arising from the issuance of the conditional building permit.

CONDITIONAL BUILDING PERMIT AGREEMENT

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4. The Owner hereby agrees:

- (a) to obtain all approvals prerequisite to the issuance of a building permit by the date specified in Column 2 of Schedule "2" attached hereto, or if no date is specified as soon as practicable;
- (b) to file any required plans and specifications of the complete building by the date set out in Column 3 of Schedule "2" attached hereto;
- (c) to stop the subject construction and secure the site to the satisfaction of the Chief Building Official of the Town if, in the opinion of the Chief Building Official, any impediment arises to prevent the lawful continuation of the subject construction or if an appeal is filed with the Ontario Municipal Board with respect to a minor variance that is required for the lawful erection of the subject construction;
- (d) to remove the building and restore the site if plans and specifications are not filed or approvals have not been obtained as set out herein;
- (e) to comply with all development standards and site plan requirements that are applicable to the subject lands, including but not limited to site servicing, tree protection, fire protection and storm water management;
- (f) to provide and maintain access for emergency vehicles and water supply to the satisfaction of the Fire Department of the Town; and
- (g) without limiting the generality of the forgoing, to meet any specific conditions that are set out in Schedule "3" to this Agreement.

5. The site restoration referred to in this Agreement shall be to the conditions present at the time of permit application and shall include the removal of all construction, the replacement of all vegetative matter, the stabilization of slopes and the restoration of drainage patterns. Restoration must seriously commence within thirty (30) days of the date cited in paragraph 4 or as otherwise directed by the Chief Building Official of the Town.

6. If the Chief Building Official of the Town determines that a building has not been removed or a site restored as required by this Agreement, the Chief Building Official may cause the building to be removed and the site restored and for this purpose the Chief Building Official, an Inspector and their agents may enter upon the land and into the building governed by this Agreement at any reasonable time without a warrant.

CONDITIONAL BUILDING PERMIT AGREEMENT
SCHEDULE "A" TO BY-LAW NO. 202-2002

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7.
 - (a) The Owner agrees to deliver security or securities to the satisfaction of the Chief Building Official of the Town and if same shall be a letter of credit, it shall be in the Town's standard form, such securities to be in the amount of not less than 15% of the project cost as shown in Column 4 of Schedule "2" attached hereto;
 - (b) If the Chief Building Official of the Town determines that a building has not been removed or a site restored as required by this Agreement the security or securities may be drawn upon in full and the monies used to restore the site as provided for in paragraphs 5 and 6;
 - (c) Should there be full compliance with the Agreement, the security or securities shall be returned to the Owner at the address provided on the application for building permit;
 - (d) Should costs associated with the restoration of the site be incurred by the Town in excess of the amount of the security or securities, the Town shall have a lien on the land for such amount and the amount shall be deemed to be municipal taxes and may be collected in the same manner and with the same priorities as municipal taxes.
8.
 - (a) This Agreement shall be registered against the subject lands and the Town shall be entitled to enforce its provisions against the Owner and, subject to the Registry Act and the Land Titles Act, any and all subsequent owners of the subject lands;
 - (b) The Owner agrees to pay all registration and administration costs incurred by the Town at the time of execution of this Agreement;
 - (c) The Owner consents and agrees to the Town inserting a registerable description in order to register the agreement on title.
9. This Agreement shall expire upon issuance of a "regular" building permit and may be removed from title at the Owner's expense by contacting the Chief Building Official.

CONDITIONAL BUILDING PERMIT AGREEMENT

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IN WITNESS WHEREOF the Parties hereto have caused their corporate seals to be hereunto affixed attested by the proper officers in that behalf and the individual parties have hereunto set their hands and seals.

**SIGNED, SEALED AND
DELIVERED** in the
presence of:

) **OWNER**

)

)

) Name:

) Title:

) Authority if Corporation:

) I have authority to bind the Corporation

)

)

)

) Name:

) Title:

) Authority if Corporation:

) I have authority to bind the Corporation

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) **THE CORPORATION OF THE TOWN**

) **OF FORT ERIE**

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) Mayor

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) _____
Clerk

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)

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) _____
John Castrilli, CET, CBCO

) Chief Building Official

NOTE: Authorized officers must sign for corporate parties and state their full names and corporate seals must be affixed.

SCHEDULE "1"

Description of lands taken from Deed,
Together with copy of Reference Plan.
If property is described by boundaries,
Instrument Number of Deed to registered
Owner must be provided.

-) Town of Fort Erie, in the Regional Municipality
-) of Niagara, being Parts of Lots 1 and 2,
-) Concession 2, Niagara River, Town of Fort Erie,
-) Regional Municipality of Niagara (formerly
-) Township of Bertie), designated as Parts 1, 2, 3, 4,
-) 5, 8, 9, 10, 11 and 13, Reference Plan 59R-11642.
-)
-) Being all of PIN 64236-0361 (LT) and Part of
-) PIN 64236-0359 (LT)
-)

SCHEDULE "2"

Application Number	Date by which to Obtain Approvals	Date by which to File Plans	Amount of Security (State Type)
	➤ Pre-Servicing Agreement Dated		\$742,339
	➤ Site Plan Agreement	ASAP	
	➤ Building & Land Use Permit (MTO)	ASAP	
	➤ Project Costs (Building only)		\$2,700,000 @ 15% = \$400,000

Note: The aforementioned approvals are to be obtained as soon as practicable in accordance with Section 4(a) of this Conditional Permit Agreement with the exception of the Pre-Servicing Agreement which must be executed prior to the Agreement for a Conditional Building Permit.