



The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 129-2014

BEING A BY-LAW TO AUTHORIZE THE ENTRY INTO A SUBDIVISION AGREEMENT WITH 456941 ONTARIO LTD. (SILVESTRI HOMES) ALLISTON WOODS DRAFT PLAN OF SUBDIVISION

WHEREAS at the Council-in-Committee meeting held on May 5, 2014 the Municipal Council of the Town of Fort Erie approved Report No. CDS-48-2014, approving the revised Alliston Woods Draft Plan of Subdivision , and

WHEREAS at the Committee of the Whole meeting held on November 17, 2014 the Municipal Council of the Town of Fort Erie approved Report No. CDS-90-1-2014, authorizing the entry into a Subdivision Agreement with 456941 Ontario Ltd. (the "Developer") detailing certain land conveyances, payments and dedications, and the conditions whereby development can occur, and

WHEREAS it is deemed desirable to enter into a Subdivision Agreement with 456941 Ontario Ltd.;

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

1. **THAT** the entry into a Subdivision Agreement with 456941 Ontario Ltd. for the purposes referred to in the recitals hereto, in the form attached hereto as Schedule "A", is hereby authorized and approved.
2. **THAT** the conveyances, payments and dedications required by the said Subdivision Agreement, are hereby authorized and approved.
3. **THAT** the surplus proceeds from the conveyances and payments provided for in the said Subdivision Agreement be credited to the Parkland Reserve Fund of The Corporation of the Town of Fort Erie.
4. **THAT** the Developer's solicitor is hereby authorized to submit an Application for Absolute Title on behalf of The Corporation of the Town of Fort Erie for those lands to be conveyed by the Town to the Developer, and The Corporation of the Town of Fort Erie hereby consents to the said Application.
5. **THAT** the Mayor and Clerk are hereby authorized to execute the said Subdivision Agreement and affix the corporate seal thereto.

6. **THAT** pursuant to the provisions of Sections 23.1 to 23.5 inclusive of the *Municipal Act, 2001*, as amended, the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections solely of an administrative, numerical, grammatical, semantical or descriptive nature or kind to this by-law or its schedules as such may be determined to be necessary after the passage of this by-law.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 17th DAY OF NOVEMBER, 2014.

MAYOR

INTERIM CLERK

I, _____, the Clerk, of The Corporation of the Town of Fort Erie hereby certifies the foregoing to be a true certified copy of By-law No. 129-2014 of the said Town. Given under my hand and the seal of the said Corporation, this day of , 20

SCHEDULE "A" TO BY-LAW NO. 129-2014

SUBDIVISION AGREEMENT

BETWEEN

THE CORPORATION OF THE TOWN OF FORT ERIE

- and -

456941 ONTARIO LTD.

Date of this Agreement: _____, 20__

THIS AGREEMENT made this _____ day of _____, 2014 pursuant to Section 51 (26) of the *Planning Act* and authorized by By-Law No. ____-2014 of The Corporation of The Town of Fort Erie (the "Agreement"),

B E T W E E N:

456941 ONTARIO LTD.

Hereinafter called the "Developer"

of the FIRST PART;

- and-

THE CORPORATION OF THE TOWN OF FORT ERIE,

Hereinafter called the "Town"

of the SECOND PART;

WHEREAS the Developer is the registered owner of the lands described in Schedule "A" attached hereto and forming part of this Agreement (hereinafter referred to as the "Developer's Lands"); and

WHEREAS on the application of the Developer, the Town approved a draft plan of subdivision on inter alia the Developer's Lands (hereinafter referred to as the "draft plan") at its meeting of May 5, 2014 for the proposed "Alliston Woods" plan of subdivision (hereinafter referred to as the "plan of subdivision"); and

WHEREAS a plan showing, inter alia, the lands in the draft plan approved by the Town is filed in the Office of the Clerk of the Town of Fort Erie at 1 Municipal Centre Drive, Fort Erie, Ontario, and identified as "Alliston Woods Subdivision Land Exchange Plan", bearing Drawing No. 0506LAND, dated October 31, 2014, and prepared by Upper Canada Consultants; and

WHEREAS the parties are desirous of proceeding with the registration and development of the plan of subdivision and agree that it is necessary to enter into this Agreement in order to do so.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements to be observed and performed by each of the Parties hereto, and in consideration of the sum of ONE (\$1.00) DOLLAR of lawful money of Canada now paid by the Developer to the Town, the receipt whereof is hereby acknowledged by the Town, the Parties hereto mutually covenant and agree as follows:

1. Subject to paragraph 2, the Parties agree that this Agreement shall be registered on the title to the Developer's Lands as a Subdivision Agreement for the plan of subdivision and the Developer shall procure, register and provide to the Town a postponement of any person who has a prior registered interest in the Developer's Lands to ensure this Agreement shall have priority over any other interest in the lands.

2. The Parties agree that:
 - i) the Town shall not clear the conditions of draft approval for the plan of subdivision or approve the plan of subdivision; and
 - ii) the Developer shall not register the plan of subdivision unless and until:
 - a) this Agreement is registered on the title to the Developer's Lands;
 - b) the land conveyances, dedications and payments between the Parties, as described in Paragraph 4 herein, are completed; and
 - c) such further Subdivision Agreement(s) as may be required by the Town to satisfy the conditions of draft plan approval for the plan of subdivision, is registered.
3. In addition to any other conditions for approval of building permits for the plan of subdivision, the Parties agree that:
 - i) the Developer shall not apply for, and the Town shall not issue, any building permit for the construction of any building on any of the lots or blocks in the plan of subdivision except for those lots and blocks identified on the "Alliston Woods Subdivision Land Exchange Plan" located within the Phase 1 Limits outlined in Red thereon, unless and until:
 - a) the Developer has conveyed to the Town for the agreed upon value of \$280,000.00 (which will be credited against the monies payable by the Developer to the Town as referred to in Paragraph 5 below), by a good and valid Transfer, in fee simple, good and marketable title free and clear of any encumbrances, the following lands, namely:

Lots 11 and 12, Plan 459 Bertie; Fort Erie, being all of PIN 64236-0295 (LT) and Lots 31 and 32, Plan 459 Bertie; Fort Erie, being all of PIN 64236-0294 (LT)

identified as "Developer to Convey to Town" and coloured blue on the Alliston Woods Subdivision Land Exchange Plan,

for a public road to be constructed thereon (hereinafter referred to as the "public road"); and
 - b) the public road has been constructed by and at the sole expense of the Developer and to the complete satisfaction of the Town as certified by the Town's Director of Infrastructure Services.
4. The parties agree to the following land conveyances, dedications and payments upon the terms and conditions in paragraph 5:
 - i. The Town shall convey to the Developer, in fee simple, good and marketable title, free and clear of any encumbrances, the lands shown on the Alliston Woods Subdivision Land Exchange Plan identified as "Town to Stop Up, Close and Convey to Developer for Fair Market Value", coloured Pink thereon, save and except that part identified as Lot "1" being approximately 0.13 hectares which the Town shall convey to the Developer for the nominal consideration of One (\$1.00) Dollar, and the Developer shall pay to the Town fair market value for the remainder of the lands, being approximately 0.796 hectares and calculated in accordance with Paragraph 5 below.

- ii. The Developer shall pay to the Town fair market value calculated in accordance with Paragraph 5 below, for the existing unopened road allowances required for the plan of subdivision, identified on the Alliston Woods Subdivision Land Exchange Plan as “Developer to Pay Fair Market Value of Roads”, coloured Yellow thereon and being approximately 3.561 hectares.
 - iii. The Developer shall dedicate to the Town on the plan of subdivision, the roads identified on the Alliston Woods Subdivision Land Exchange Plan as “Developer to Dedicate to Town for Road Allowance on Plan of Subdivision”, coloured Purple thereon and being approximately 3.065 hectares.
 - iv. The Developer shall convey to the Town in fee simple, for nominal consideration of One (\$1.00) Dollar, good and marketable title, free and clear of any encumbrances, for park purposes, the lands identified on the Alliston Woods Subdivision Land Exchange Plan as “Developer to Convey to Town for Park Purposes (Condition #4)”, and coloured Green thereon.
 - v. The Developer shall convey to the Town in fee simple, for the agreed upon value of \$280,000.00, by a good and valid Transfer, in fee simple, good and marketable title, free and clear of any encumbrances, the lands in Paragraph 3 i)(a) above, and identified on the Alliston Woods Subdivision Land Exchange Plan as “Developer to Convey to Town for Agreed to Consideration (Road to be Constructed by Developer)”, for a public road to be constructed thereon.
5. The land conveyances, dedications and payments described in paragraph 4 shall be conditional upon:
- i. The fair market value of the lands described in Paragraphs 4 i) and ii) above, shall be calculated as at the date upon which this Agreement is signed by both parties, by an Appraiser accredited by the Appraisal Institute of Canada, selected and paid for by the Developer (the “Developer’s Appraiser”), subject to subparagraph ii) below.
 - ii. Any dispute relating to the valuation of the lands by the Developer’s Appraiser shall be resolved by the selection by the Town of a second accredited Appraiser, paid for by the Town (the “Town’s Appraiser”) to appraise the lands. If the value determined by the Town’s Appraiser is within ten (10) percent of the Developer’s Appraiser, the parties shall choose the average of the two values. If the value determined by the Town’s Appraiser is greater by more than ten (10) percent of the Developer’s Appraiser’s valuation, the parties shall retain, at shared cost, a third accredited Appraiser, to be agreed upon by the Developer’s Appraiser and the Town’s Appraiser (the “Third Appraiser”). The value determined by the Third Appraiser shall be accepted by both parties, however this value shall not be higher than the highest value or lower than the lowest value determined by either of the Town’s Appraiser and Developer’s Appraiser.
 - iii. A Reference Plan shall be prepared and deposited at the Developer’s expense for the purpose of conveying the lands as heretofore described, subject to the Town’s prior review and approval of the draft Reference Plan.
 - iv. The Developer shall accept the land in Paragraph 4 i) including Lot “1”, on an “as is where is” basis without regard for the land’s condition and state of repair, including but not limited to the locations of any and all structures,

walls, retaining walls or fences (freestanding or otherwise) or encroachment by buildings or fences or otherwise.

6. The Developer and the Town acknowledge and agree that it is their intent that all terms, conditions and covenants contained herein,
- a) shall run with the lands, and
 - b) shall be binding upon the Developer, its heirs, executors, administrators, assigns and successors in title, from time to time,
- and that the benefits of the said covenants shall enure to the Town, its successors and assigns in title.
7. This Agreement and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the Parties hereto and upon those persons and/or corporations hereafter acquiring title to all or any part of the lands.
8. If any term of this Agreement shall be found to be *ultra vires* the Town, or otherwise unlawful, such term shall conclusively be deemed to be severable and the remainder of this Agreement *mutatis mutandis* shall be and remain in full force and effect.
9. The Developer shall not call into question directly or indirectly, in any proceeding whatsoever in law or in equity, before any court or administrative or other tribunal, the right of the Town to enter into this Agreement and to enforce each and every term, covenant and condition thereof, and this provision may be pleaded by the Town in any such action or proceeding as a complete and conclusive estoppel of any denial of such right.
10. Time shall be of the essence of this Agreement.
11. It is hereby agreed that in construing this Agreement the words “Developer” and the personal pronoun “he”, “it”, “his” or “him” relating thereto and used therewith, shall be read and construed as “Developer or Developers”, and “he”, “she”, “it” or “they”, “his”, “hers”, “its” or “their”, and “him”, “her”, “it” or “them” respectively, as the number and gender of the Party or Parties referred to in each case require and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted.

IN WITNESS WHEREOF the Parties have hereunto caused their seals to be affixed and attested by their proper signing officers and the individual Parties have hereunto set their hands and seals, as of the date hereof.

) **456941 ONTARIO LTD.**
)
)
) _____ c/s
) Name:
) Title:
)
) _____ c/s
) Name:
) Title:
) I/We have authority to bind the corporation.
)
) Date: _____
)

) **THE CORPORATION OF THE**
) **TOWN OF FORT ERIE**
)
)
)
)
) _____
) Mayor
)
)
) _____
) Interim Clerk
) We have authority to bind the corporation.
)
)
) Date: _____

SCHEDULE “A”

Description of Developer’s Lands

<u>PIN</u>	<u>LEGAL DESCRIPTION</u>
64236-0307 (LT)	Lots 79, 80, 81, Plan 459 Bertie; Town of Fort Erie
64236-0313 (LT)	Lots 89, 90, 91, Plan 459 Bertie; Town of Fort Erie
64236-0336 (LT)	Lots 247, 248, 249, Plan 459 Bertie; Town of Fort Erie
64236-0343 (LT)	Lots 256, 257, 258, Plan 459 Bertie; Town of Fort Erie
64236-0442 (LT)	Part Lots 1 and 2, Concession 3 Niagara River, Bertie, Parts 1 & 2, 59R-13876; S/T Easement over Part 1, 59R-13876 as in RO444069; Fort Erie
64236-0443 (LT)	Lots 44, 46 to 78 inclusive, Plan 459, Part 3, 59R-13876; S/T Debts AA83010; Fort Erie
64236-0444 (LT)	Lots 92 to 121 inclusive, Plan 459, Part 4, 59R-13876; Fort Erie
64236-0445 (LT)	Lots 137 to 164 inclusive, Plan 459, Part 5, 59R-13876; Fort Erie
64236-0446 (LT)	Lots 182 to 204 inclusive, and Part Lot 205, Plan 459, Part 6, 59R-13876; Fort Erie
64236-0447 (LT)	Lots 214 to 246 inclusive, Plan 459, Part 7, 59R-13876; Fort Erie
64236-0448 (LT)	Lots 259 to 269 inclusive, and Lots 278 to 291 inclusive, Plan 459, Part 8, 59R-13876; Town of Fort Erie