



Staff Report

Planning & Development Services – Planning

Report To: Committee of The Whole
Meeting Date: December 5, 2016
Report Number: PDS.16.156
Subject: Peaks Bay Agreement
Prepared by: Michael Benner, Director Planning & Development Services

A. Recommendations

THAT Council receive Staff Report PDS.16.156 “Peaks Bay Agreement”;

THAT Council authorize the Mayor and Clerk to sign an amending agreement to the Peaks Bay Development Agreement as included as Attachment “2” to this report, and;

THAT Council authorize staff to pursue the early assumption of Block 29 of the Peaks Bay East development.

B. Overview

The purpose of this report is to seek Council authorization of amendments to the Parks Bay Development Agreement and the early assumption of Block 29 of the Peaks Bay East Plan of Subdivision.

C. Background

The Peaks Bay East and West Plans of Subdivision received Draft Plan Approval and registration in 2008. Certificates of the Completion of Basic Services were issued by the Town in 2009 covering the installation of roads, sewer, water and stormwater infrastructure and utilities. Since 2009 the Peaks Bay East plan has been slowly building out reaching over 50% build out in early 2017. A graphic noting the location of the Plans is included as attachment “1” to this report.

The 2008 Development Agreement for the Peaks Bay Development requires, amongst other things, that:

- 1 Prior to laying the top course of asphalt that 60% of the buildings to be constructed on the lots with in the Plan have been substantially completed;
- 2 Prior to final acceptance of the Works that 75% of the buildings to be constructed on the lots have been substantially completed, and;

- 3 A maintenance period of 1 year is effective following the provision of the top course of asphalt;

Peaks Bay Holdings Ltd (PBHL), through their representative, David Finbow, has noted that they would like to complete the top course of asphalt in the upcoming construction season. They would also like to pursue final certification, assumption and registration of the remaining works and plan. As the plan has not achieved 75% build out, the development agreement will need to be amended to replace the build out figures, noted above, with performance based guarantees.

In 2013, the Town began utilizing a revised development agreement that replaced build out provisions with the following:

- a) A minimum period of 2 years from the date of the issuance of the Certificate of Preliminary Acceptance of Basic Services to the provision of top course of asphalt;
- b) A maintenance period of 1 year following completion of asphalt, and;
- c) A requirement to post security to guarantee the performance of road works for 5 years post assumption equal to 6.5 % of the capital cost of the applicable road works.

PBHL has indicated that they do not have any concerns with replacing the 60% and 75% build out provisions with items a) and b) above, but has requested that Council consider that it is satisfied that a performance guarantee for the road, as noted in c) above, will not be required as the road works have been in place for 8 years without any deficiencies being identified.

Additionally, the Development Agreement also requires the construction of an acoustical fence noise attenuation barrier (a combination of a berm and a fence) along the rear of the lots backing on to Highway 26. Council may recall providing direction in 2012 to discourage noise attenuation walls along the Highway 26 corridor. PBHL has recently conducted updated noise studies to verify whether or not a noise attenuation wall is indeed still required following upgrades to Highway 26. These studies have indicated that noise levels from Highway 26 are just slightly below the 60 decibel threshold recommended by the Ministry of the Environment and Climate Change's (MOECC) guidelines for Peaks Bay West and just slightly above those guidelines for Peaks Bay East. Accordingly, PBHL is requesting that the development agreement be amended to replace the requirement for an acoustical fence with a requirement that the following warning clause be included in any purchase and sale agreements for the lots backing on to Highway 26:

"Purchasers/tenants are advised that despite the inclusion of noise control features in the development and within the building units, sound levels due to increasing road traffic (rail traffic) (air traffic) may on occasions interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Municipality and the Ministry of the Environment."

As Council may recall, there has been some activity associated with Block 29 if the Peaks Bay East development. Block 29 is associated with the Georgian Bay shoreline and a stormwater drainage channel in the plan of subdivision. Although block 29 is owned by the Town it has not yet been assumed. PBHL has also requested that the Town consider the early assumption of

Block 29 in advance of the assumption of the remainder of the public works in the development. Staff generally support this notion for reason detailed in the analysis portion of this report.

As council is also aware, the overall development of the Peaks Bay and Delphi Neighbourhood requires the completion of Delphi Lane across numerous land holdings. Delphi Lane is intended to connect PBHL lands to the Neighbourhoods of Delphi to the west and requires a crossing of Szekely lands that contain a small watercourse. The Szekely lands are being acquired through expropriation and a construction window for the watercourse crossing has been tentatively set for the summer of 2017 to respect fisheries protection dates. In the interim, the residents of Peaks Bay have been utilizing a temporary access off of the Town's parkland to the east. The Ministry of Transportation has also agreed to extend the temporary entrance permit associated with this access until the end of 2017.

PBHL intends on proceeding with the road and crossing works in the spring of 2017 upon confirmation that the Szekely Works will be executed in 2017. A future report addressing the crossing and the creation of the public highway across private lands to connect the east and west portions of Delphi Lane will be brought before Council in the spring of 2017.

D. Analysis

Performance Guarantees

As noted above, amendments to the 2008 Peaks Bay Development Agreement have been requested to replace build out provisions with performance guarantees. Sections 2.2 and 3.5 of the agreement contain provisions regarding build out and will need to be replaced with the following:

2.21 Highways and Private Roads

- (c) obtain the approval of the Town to lay the top course of asphalt, ~~which approval may be withheld by the Town until sixty percent (60%) of the buildings or structures permitted to be constructed on the lots, blocks or units within the particular Plan by the Town's zoning by law have been substantially completed~~ following a minimum period of 2 years from the date of the issuance of the Certificate of Preliminary Acceptance of Basic Services;

3.5 Conditions for Final Acceptance of the Works

The Town covenants and agrees that the Final Acceptance of the Works shall take place upon fulfillment of the following conditions to the satisfaction of the Town:

- (a) ~~seventy five percent (75%) of the buildings or structures permitted to be constructed on the lots, blocks or units within the Plan by the Town's zoning by law have been substantially completed.~~ A minimum period of 2 years from the date of the issuance of the Certificate of Preliminary Acceptance of Basic Services to the provision of top course of asphalt;

Staff have considered the request and find it to be acceptable given that the existing road network has been in place since 2009 without any deficiencies being detected. staff will continue to work with PBHL and their consultants to ensure that all outstanding matters are identified and addressed Prior to the final acceptance of the works.

Noise Attenuation

In order to implement the replacement of the requirement of an acoustic fence with a warning clause the following provisions in the development agreement will also be required to be amended as follows:

Schedule G – Part 5 Other Special Provisions (Schedule G- Part 5 sub-section 2 will be removed in its entirety)

- 2 ~~The Developer shall be responsible for the maintenance and repair of the acoustical fence shown on the Accepted Plans in accordance with section 3.3 of this Agreement up to Final Acceptance. After Final Acceptance, the registered owner of each lot on which a portion of the acoustical fence has been installed shall be responsible in perpetuity for the maintenance, repair and replacement to an Acceptable Standard of the portion of the acoustical fence installed on the owner's lot. No owner shall remove the portion of the acoustical fence installed on the owner's lot.~~

Schedule K – Notices and Warning

Acoustical Fence Highway 26 Noise Levels

~~Purchasers are advised that the Developer is responsible for the maintenance and repair of the acoustical fence shown on the Accepted Plans in accordance with section 3.3 of the Development Agreement for the Plan up to Final Acceptance as defined in the Development Agreement. After Final Acceptance, the registered owner of each lot on which a portion of the acoustical fence has been installed shall be responsible in perpetuity for the maintenance, repair and replacement to an Acceptable Standard of the portion of the acoustical fence installed on the owner's lot. No owner shall remove the portion of the acoustical fence installed on the owner's lot.~~

Purchasers/tenants are advised that despite the inclusion of noise control features in the development and within the building units, sound levels due to increasing road traffic (rail traffic) (air traffic) may on occasions interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Municipality and the Ministry of the Environment.

An amending agreement to the 2008 Development Agreement reflecting these changes is included as Attachment "2" to this report.

Early Assumption of Block 29

As noted, Block 29 is owned by the Town having been transferred to the municipality in 2009. However, this Block has not been assumed by the Town. The lack of assumption places the responsibility of the management of the Block with the developer. Block 29 contains the shoreline areas behind lots 1-6, an open space corridor behind lots 6-10 and the drainage channel between lots 5 and 6 as noted in Attachment "3" to this report.

Given that the block is primarily shoreline, abutting property owners have utilized the Block for landscape screening and tree preservation as well as other occasional uses. This use requires land use agreements with the Town and most of the abutting lots have entered into such agreements.

Block 29 also contains an Earth Science ANSI associated with the shoreline shale formations and, as such, the Block has been placed within an Open Space Holding zone until a parks management plan has been completed by the Town. The stormwater channel and associated works have been in place for some time and are functioning as designed.

Given the fact that the Block is already owned by the Town, the necessity of the completion of a parks management plan, ongoing use by abutting owners and existing and functioning stormwater infrastructure, it would appear that the management of this Block is more appropriately handled by the municipality. This can be accomplished through assumption.

Prior to final assumption, the existing stormwater channel and related works will be inspected by Town staff and any corrective measures will be implemented by the developer as per normal assumption practices.

E. The Blue Mountains Strategic Plan

Goal #1: Create Opportunities for Sustainability

Goal #3: Support Healthy Lifestyles

Goal #5: Ensure Our Infrastructure is Sustainable

F. Environmental Impacts

Nil

G. Financial Impact

Nil

H. In consultation with

Community Services

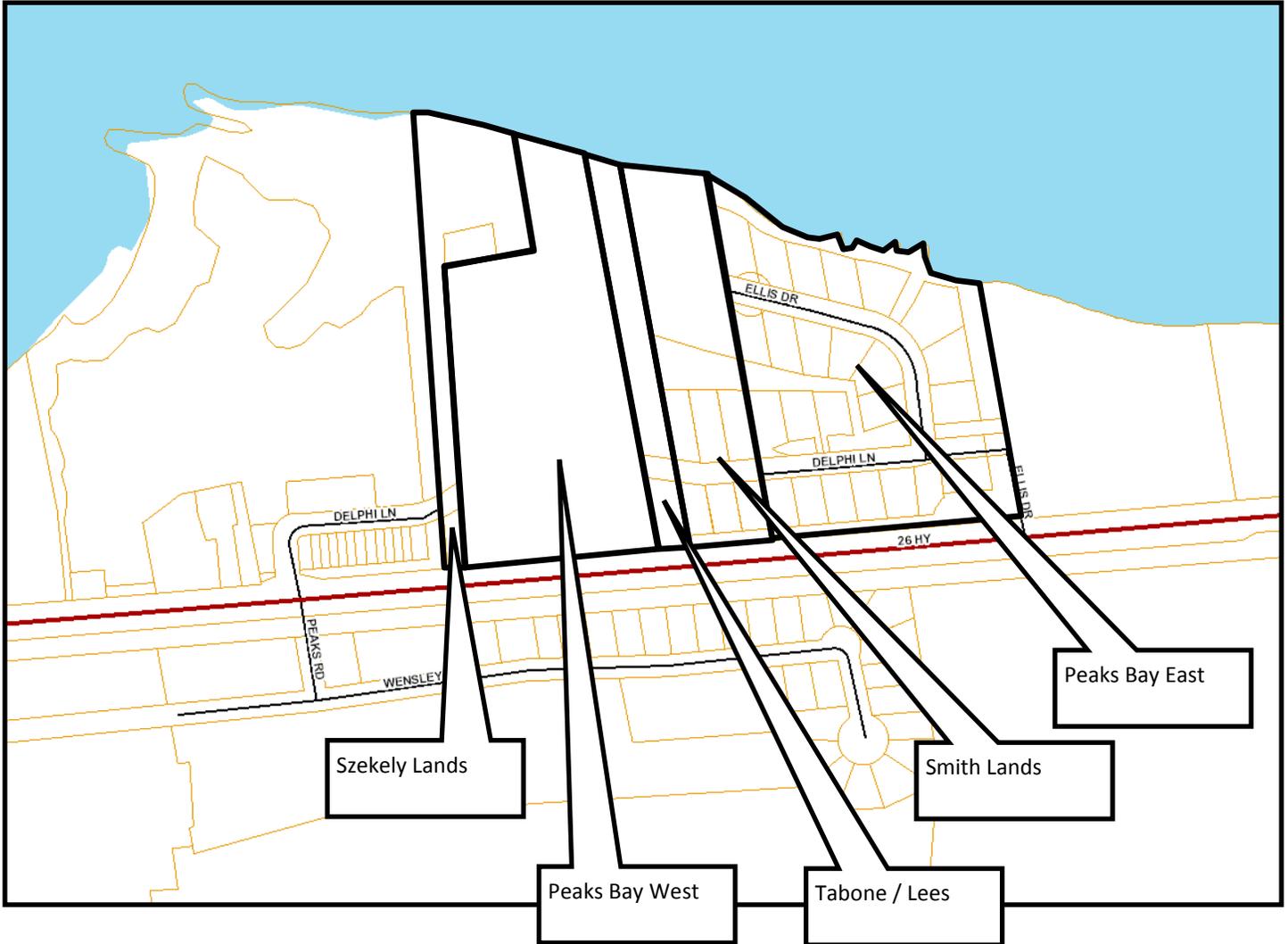
I. Attached

Attachment "1" Location Plan
Attachment "2" Amending Agreement
Attachment "3" Plan of Subdivision

Respectfully submitted,

Michael Benner
Director of Planning and Development Services

For more information, please contact:
Michael Benner, Director of Planning and Development Services
mbenner@thebluemountains.ca
519-599-3131 extension 246



AMENDING AGREEMENT

THIS AGREEMENT made this day of _____, 2016.

BETWEEN: **P. B. HOLDINGS LIMITED**
(Hereinafter referred to as the "Developer")

- and -

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS
(hereinafter referred to as the "Town ")

WHEREAS the Parties executed a development agreement dated May 5, 2008 for the development lands shown on Draft Plans 42T-87016 and 42T-95006 in phases (the "Development Agreement");

AND WHEREAS the purpose of this Agreement is to amend the Development Agreement to provide for completion and assumption of public works and Blocks.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants hereinafter expressed, other good and valuable consideration and the sum of TEN DOLLARS (\$10.00) of lawful money of Canada now paid by each of the Parties hereto to the other Party hereto, the receipt whereof is hereby acknowledged, the Parties hereto hereby covenant and agree with each other as follows:

PART I

DEFINITIONS AND BASIS OF AGREEMENT

1.1 Definitions

In this Agreement, including the recitals, the following terms shall have the meanings set out below, unless otherwise redefined or where the subject matter or context requires another meaning to be ascribed:

"Agreement" means this Amending Agreement;

"Lands" means the lands described in Schedule "A";

"Parties" mean the Developer and the Town.

All other capitalized terms shall have the meanings ascribed to them in the Subdivision Agreement.

1.2 Interpretation of Agreement

- (a) The part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (b) Unless the context otherwise requires, in this Agreement words importing the singular include the plural and vice versa and words importing a gender include all genders.
- (c) References herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.

- (d) All references to parts, sections, clauses, paragraphs and schedules unless otherwise specified are references to parts, sections, clauses, paragraphs and schedules of this Agreement.

1.3 Lands Affected

This Agreement applies to the Lands.

1.4 Recitals

The Parties agree that the recitals herein are true and accurate and form part of this Agreement.

PART II

AMMENDMENTS TO THE DEVELOPMENT AGREEMENT

2.1 Amendments

The Parties agree that the Development Agreement shall be amended in the manner set out in Schedule "B".

2.2 Development Agreement in Force

The Parties agree that all of the provisions of the Development Agreement shall apply to the development of the Lands and shall remain in full force and effect unamended except for the amendments set out in Schedule "B".

PART III

ADMINISTRATION

3.1 Registration of Agreement

The Parties hereby covenant and agree that this Agreement may be registered upon title to the Lands and the Developer authorizes the Town Solicitor or his designate to execute on behalf of the Developer all documents necessary to register this Agreement in the Land Registry Office. The Developer further shall pay all costs associated with the preparation and registration of this Agreement, as well as all other costs incurred by the Town as a result of the registration of any other documents pertaining to this Agreement.

3.2 Postponement and Subordination

The Developer covenants and agrees, at its own expense, to obtain and register such documentation from its mortgagees or encumbrances as may be deemed necessary by the Town to postpone and subordinate their interest in the Lands to the interest of the Town to the extent that this Agreement shall take effect and have priority as if it had been executed and registered before the execution and registration of the document or documents giving to the mortgagee and/or encumbrancers their interest in the Lands.

3.3 Governing Law

This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

3.4 Successors & Assigns

It is hereby agreed by and between the Parties hereto that this Agreement shall be enforceable by and against the Parties hereto, their heirs, executors, administrators, successors and assigns and that the Agreement and all the covenants by the Developers herein contained shall run with the Lands.

PART IVI

LIST OF SCHEDULES

The following schedules are attached hereto and form part of this Agreement:

"SCHEDULE A" being a Description of the Lands;

"SCHEDULE B" being the amendments to the Development Agreement.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals duly attested by the hands of their proper signing officers in that behalf.

SIGNED, SEALED AND DELIVERED

P.B. HOLDINGS LIMITED

_____ c/s

Name:

Title:

I have authority to bind the corporation.

**THE CORPORATION OF THE TOWN
OF THE BLUE MOUNTAINS**

Mayor – John McKean

_____ c/s

Clerk - Corrina Giles

SCHEDULE "A"

**This schedule forms part of a Development Agreement between
P. B. HOLDINGS LIMITED and
THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS**

DESCRIPTION OF THE LANDS

Assessment Roll No. 4242000006395010000, 4242 000006395010000,
4242000006 39701, 42420000063980000000, 4242000006399000000
Assessment Roll No.

Part of Lot 26 Concession 5 being Parts 1 and 2 on Reference Plan 9111

PIN 37309-0001 (LT) and 37009-0002 (LT)

(Geographic Township of Collingwood),

Town of The Blue Mountains, County of Grey,

Province of Ontario

SCHEDULE "B"

**This schedule forms part of an Amending Agreement between P.B.
Holdings Limited and
The Corporation of the Town of The Blue Mountains**

AMENDMENTS TO THE SUBDIVISION AGREEMENT

The Parties agree that the Development Agreement shall be amended by:

1. Deleting Section 2.21 (c) and replacing it with the following:
 - 2.21 Highways and Private Roads
 - (c) obtain the approval of the Town to lay the top course of asphalt following a minimum period of 2 years from the date of the issuance of the Certificate of Preliminary Acceptance of Basic Services;
2. Deleting Section 3.5 (a) and replacing it with the following:
 - 3.5 Conditions for Final Acceptance of the Works
 - (a) A minimum period of 2 years from the date of the issuance of the Certificate of Preliminary Acceptance of Basic Services to the provision of top course of asphalt;
3. Deleting Schedule G – Part 5 sub-section (2) in its entirety.
4. Deleting Schedule K – Notices and Warnings, Acoustical Fencing and replacing it with the following:

Highway 26 Noise Levels

Purchasers/tenants are advised that despite the inclusion of noise control features in the development and within the building units, sound levels due to increasing road traffic (rail traffic) (air traffic) may on occasions interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Municipality and the Ministry of the Environment.

THIS FINAL PLAN OF SUBDIVISION IS APPROVED UNDER SECTION 5158B OF THE PLANNING ACT, CHAPTER P-13 R.S. 1965 AS AMENDED.

THIS 12th DAY OF December 2008.

Janice McDonald
DIRECTOR OF PLANNING



THE KING'S HIGHWAY No. 26 IMPROVED PLAN 325