



# The Municipal Corporation of the Town of Fort Erie

## By-law No. 123-2021

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### **Being a By-law to Authorize the Entry into an Amendment to Memorandum of Understanding with Westwind Niagara Developments Inc. (Alfred Beam) - 3285 Thunder Bay Road**

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**Whereas** By-law No. 71-2021 was passed by the Municipal Council of the Town of Fort Erie on May 31, 2021, authorizing the entry into a Memorandum of Understanding with Westwind Niagara Developments Inc. (the "Developer") for the proposed acquisition of a portion of the property located at 3285 Thunder Bay Road; and

**Whereas** the Developer and the Town entered into the Memorandum of Understanding on June 8, 2021 (the "Memorandum of Understanding"); and

**Whereas** a draft plan of subdivision drawing for the lands was appended to the Memorandum of Understanding for the purposes of defining and describing the rights and responsibilities under the Memorandum of Understanding; and

**Whereas** the Developer submitted a draft plan of subdivision dated June 22, 2021, which necessitates amendments to various provisions of and Appendix "A" to the Memorandum of Understanding; and

**Whereas** Report No. PDS-65-2021 was considered and approved at the Special Council Meeting held on July 26, 2021, authorizing the entry into an agreement to amend the Memorandum of Understanding, to replace Appendix "A" to the Memorandum of Understanding with Appendix "2" to Report No. PDS-65-2021, and to make corresponding amendments to lot and block references within the Memorandum of Understanding;

**Now therefore** the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

- 1. That** the entry into an Amendment to Memorandum of Understanding with Westwind Niagara Developments Inc. to replace Appendix "A" to the Memorandum of Understanding with Appendix "2" to Report No. PDS-65-2021, and to make corresponding amendments to lot and block references within the Memorandum of Understanding, in the form attached hereto as Schedule "A" and forming part of this by-law, is authorized and approved.
- 2. That** the Mayor and Clerk are authorized and directed to execute the Amendment to Memorandum of Understanding and to affix the corporate seal thereto, and all other documentation necessary to effect the terms and conditions of same.

- 3. That** the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions, solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

**Read a first, second and third time and finally passed this 25<sup>th</sup> day of October 2021.**

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Mayor

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Clerk

I, Carol Schofield, Clerk of The Corporation of the Town of Fort Erie, certify the foregoing to be a true copy of By-law No. 123-2021 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. 123-2021

WESTWIND NIAGARA DEVELOPMENTS INC.

("the Developer")

- and -

THE CORPORATION OF THE TOWN OF FORT ERIE

("the Town")

**AMENDMENT TO MEMORANDUM OF UNDERSTANDING**

**Whereas** the Developer and the Town entered into a Memorandum of Understanding dated June 8, 2021 in relation to the proposed development of a residential subdivision at a property known as 3285 Thunder Bay Road ("the Memorandum of Understanding"); and

**Whereas** the Developer has now submitted a draft plan of subdivision dated June 22, 2021, which necessitates amendments to various provisions of and the appendix to the Memorandum of Understanding; and

**Whereas** paragraph 6.1 of the Memorandum of Understanding provides that any amendments or modifications will be made in writing, signed by the parties, and appended to the Memorandum of Understanding;

**Now therefore** the Developer and the Town (each "a party" and collectively "the parties"), in consideration of the promises and mutual covenants contained within the Memorandum of Understanding, the further promises and covenants contained within this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

1. Paragraph 4.1 of the Memorandum of Understanding is amended as follows:
  - 4.1. For the purposes of defining and describing their rights and responsibilities in relation to this Memorandum of Understanding, the parties accept the general configuration, layout and dimensions of the Property as set out in the draft plan of subdivision dated June 22, 2021 submitted by the Developer to the Town, which is attached hereto as Appendix "A".

2. Paragraph 4.2 of the Memorandum of Understanding is amended as follows:
  - 4.2. For greater certainty, all references in this Memorandum of Understanding to Block 42, Block 43, Block 44, Block 45, Street 'A' and any other aspect of the Property or adjacent lands will be construed with reference to and in accordance with Appendix "A".
3. Paragraph 5.1 of the Memorandum of Understanding is amended as follows:
  - 5.1. The Developer will gratuitously convey Block 42 and Block 44 to the Town as Environmental Protection Areas pursuant to Town of Fort Erie By-Law No. 69-08 ("the parkland dedication by-law").
4. Paragraph 5.2 of the Memorandum of Understanding is amended as follows:
  - 5.2. The Developer will convey a portion of Block 43 equivalent to five percent (5%) of the Property to the Town as parkland dedication pursuant to the parkland dedication by-law. The location of the portion of Block 43 to be dedicated shall be determined by mutual agreement of the parties.
5. Paragraph 5.3 of the Memorandum of Understanding is amended as follows:
  - 5.3. The Developer and the Town will enter into an Agreement of Purchase and Sale pursuant to which the Town will acquire the balance of Block 43 from the Developer at a purchase price of three hundred and twenty thousand dollars (\$320,000).
6. Paragraph 5.5 of the Memorandum of Understanding is amended as follows:
  - 5.5. The Developer will gratuitously convey Block 45 to the Town for the purposes of a parking lot that contains no more than twenty (20) parking spaces, which conveyance is subject to registration of the subdivision plan by the Developer with the Town. As part of the road works to be undertaken at the Property, the Developer or its designate will pave the parking lot at the Town's expense, subject to prior review and approval by the Town of the parking lot layout and the paving cost.
7. Appendix "A" to the Memorandum of Understanding is revoked and replaced with the draft plan of subdivision dated June 22, 2021 submitted by the Developer to the Town, which is attached as Appendix "A" to this Amendment.
8. All other terms and provisions of the Memorandum of Understanding are unchanged and remain in full force and effect and are binding upon the parties.
9. This Amendment may be signed in counterpart, each of which is an original and all of which together constitute a single document. Counterparts may be executed in original or electronic form and may be exchanged by way of mail or PDF file delivered by email.

EXECUTED as an Amendment to the Memorandum of Understanding this ..... day of  
....., 2021

**WESTWIND NIAGARA DEVELOPMENTS INC.**

By: \_\_\_\_\_

Name:

Title:

I have authority to bind the Corporation.

**THE CORPORATION OF THE TOWN OF FORT ERIE**

By: \_\_\_\_\_

Name: Wayne H. Redekop

Title: Mayor

By: \_\_\_\_\_

Name: Carol Schofield

Title: Clerk

We have authority to bind the Corporation.

APPENDIX "A"

