



Planning and Development Services

Prepared for: Council-in-Committee

Report: PDS-15-2024

Meeting Date: April 9, 2024

File: File 350308-0077

1. Title

Extension of Draft Plan of Subdivision Approval and Modification to Conditions of Draft Approval Recommendation Report for 1589 Nigh Road

2. Recommendations

That: Council extends draft plan approval for the Nigh Road draft plan of subdivision until April 12, 2025, and the Owner and Regional Municipality of Niagara Planning and Development Services be advised, and further

That: Council directs that the conditions of approval for the Nigh Road draft plan of subdivision be amended as detailed in Appendix 5 to Report PDS-15-2024, and further

That: Council directs that written notification of the amended conditions is not required due to the minor nature of the changes in accordance with Section 51(47) of the *Planning Act*, and further

That: Council authorizes entry into a Subdivision Agreement with 2538070 Ontario Limited for the Draft Plan of Subdivision at 1589 Nigh Road, and further

That: Council authorizes staff to prepare a by-law to execute the Subdivision Agreement and associated documents.

3. Relation to Council's Corporate Strategic Plan

Priority: Sustainable and managed growth

4. List of Stakeholders

2538070 Ontario Limited (Bryce Ivanchuk) – Owner

Upper Canada Consultants (Ethan Laman) – Agent

External agencies (E.g., Niagara Region, NPCA, Public Utilities, etc.)

Residents and Property Owners in the Town of Fort Erie

5. Purpose of Report

The purpose of this report is to make a recommendation to Council regarding the requested extension of draft plan approval and modification to conditions of draft plan approval for the Draft Plan of Subdivision at 1589 Nigh Road. A Location Map of the subject lands is included as **Appendix “1”**.

6. Analysis

6.1 Background

A Draft Plan of Subdivision application for the lands municipally known as 1589 Nigh Road was submitted to the Town of Fort Erie in March of 2008. In December of 2008, the Niagara Region identified an issue with the Owner's hydrogeological study and requested a peer review. The peer review concluded in October 2011 and resulted in a disagreement among hydrogeologists. Ultimately, the Owner opted to proceed with the development of ten lots, as recommended by the Niagara Peninsula Conservation Authority (NPCA) at the time.

The Nigh Road Draft Plan of Subdivision received draft approval from Town Council on January 16, 2012 for the development of 10 lots for single detached dwellings, two blocks for environmental protection, and a new public street, as detailed in **Appendix 2**. The subject lands have an area of 9.51 ha (23.5 acres) and are located outside of the urban boundary on the south side of Nigh Road, between Buffalo Road and Rosehill Road. The lots will be serviced with private septic systems and water cisterns.

In order to allow the development of the Nigh Road Draft Plan of Subdivision the owner is required to satisfy the conditions of Draft Plan Approval granted by the Town and enter into a Subdivision Agreement with the Town. The Owner cleared all the conditions of Draft Plan Approval and subsequently Council approved a Subdivision Agreement for this development at the October 1, 2018 Council-in-Committee meeting through Report [PDS-69-2018](#) and the passing of By-law [134-2018](#). The Owner failed to execute the Subdivision Agreement within the required one-year time frame of the passing of By-law.

Council approved another Subdivision Agreement on July 12, 2022, after the extension of Draft Plan Approval in June 2021, through Report [PDS-56-2021](#) and the passing of By-law [87-2021](#), which expired on July 19, 2022.

Most recently, on September 12, 2022, through Report [PDS-62-2022](#), Council approved the sixth extension of Draft Plan Approval, approved a Subdivision Agreement, and authorized the owner to pre-service the site. The Subdivision Agreement was approved with the passing of By-

law [139-2022](#), which expired on November 12, 2023. Again, the Owner failed to execute the Subdivision Agreement within the required one-year time frame of the passing of By-law.

On October 30, 2023, the Director of Planning and Development Services temporarily extended draft plan approval to February 12, 2024 to process this extension request. However, a second temporary extension was provided until April 12, 2024 after receiving a complete request with the necessary payment to initiate Planning staff to review the request and provide recommendations to Council. This is the seventh request for extension of Draft Plan Approval since the plan was approved by Council in 2012. To Town staff's knowledge, financial obligations to execute pre-servicing and for draft plan approval have not been satisfied. However, all other draft plan conditions have been satisfied.

6.2 Extension of Draft Plan Approval and Modification to Conditions of Draft Plan Approval

The Agent is requesting a two-year extension of draft plan approval for the Nigh Road Draft Plan of Subdivision. The request letter contained in **Appendix 3** notes that this extension is being sought to allow the developer additional time to make financial arrangements through presales to procure the necessary securities and cash payments to execute the pre-servicing agreement and to ultimately enter into a Subdivision Agreement with the municipality.

Planning Staff support the extension of draft plan approval, but do not support the requested extension period of two years (twenty-four months). It is important to mention that the subject lands are located outside of the urban boundary, and since the plan was approved by Council in 2012, the Town's policies governing subdivisions have changed. Under the current policies, subdivision development are permissible only within the urban boundary. Further to note, this is the seventh extension request since the plan's approval, and that the procurement of securities has been ongoing since 2018.

Staff recommend that an extension of one year (twelve months) from the currently lapsing date of April 12, 2024 is more reasonable, bringing the new lapsing date to April 12, 2025. One year extension provides the Owner with a reasonable time frame to make the necessary financial arrangements, enter into a Subdivision Agreement with the Town, and ultimately register the subdivision. Staff respectfully may not support any further extensions of draft plan approval following the recommendation made in this report unless it has been demonstrated that the Owner has made reasonable progress towards entering into the Subdivision Agreement.

The Niagara Region has requested an amendment to the conditions of Draft Plan Approval to include an archaeological resource warning clauses for the duration of construction. Staff note that the *Planning Act* permits minor changes or additions to conditions of Draft Plan Approval without the need to provide written notice if the approval authority deems the changes to be minor. Staff are of the opinion that the proposed changes to the conditions are minor and that

written notification of the amended conditions is not necessary. The updated conditions of draft plan approval are contained in **Appendix 4**.

7. Financial, Staffing and Accessibility (AODA) Implications

All costs associated with the development of the subdivision are the responsibility of the Owner and are incorporated into the subdivision agreement. The Owner will be required to provide securities in an acceptable form as specified in the subdivision agreement to ensure that all of the works are completed to the satisfaction of the Town.

8. Policies Affecting Proposal

The development of this plan of subdivision is set out in accordance with the requirements of the *Planning Act*. Section 51(33) of the *Planning Act* contains a regulation relative to the lapsing of draft plans of subdivision, noting that the approval authority may extend the approval for a specified period of time, however, no extension is permitted if the approval lapses before the extension is given. The Nigh Road draft plan of subdivision conforms with this *Planning Act* regulation.

Section 51 (47) of the *Planning Act* states that an approval authority is not required to give written notice of changes to conditions of approval if, in the opinion of the approval authority, the change to conditions is minor.

9. Comments from Departments, Community and Corporate Partners

The Subdivision Agreement will not be registered until the Owner addresses all the conditions of Draft Plan Approval and fulfills all the financial obligations, including the provision of required securities.

The draft Subdivision Agreement along with the security requirements have been reviewed and accepted by the Owner. A By-law will be prepared authorizing the Town to enter into a Subdivision Agreement with the Owner.

Niagara Region

Regional staff have no objection to the extension of draft plan approval for Nigh Road Draft Plan of Subdivision for up to two years, conditional upon the inclusion of an archaeological resource warning clause being added in the Conditions of Draft Plan Approval. Detailed comments are attached as **Appendix 5**.

10. Alternatives

Council may elect to extend draft plan approval for the requested duration of two years, and authorize the entry into a Subdivision Agreement. Alternatively, Council may deny the request to

extend draft plan approval and enter into a Subdivision Agreement, at which point the draft plan of subdivision will lapse.

11. Communicating Results

No additional communication is required at this time. The applicant will be notified of Council's decision.

12. Conclusion

Planning Staff recommend that Council authorizes the extension of draft plan approval until April 12, 2025, modifications to the conditions of draft plan approval and entry into a Subdivision Agreement for the Nigh Road Draft Plan of Subdivision.

13. Report Approval

Prepared by:
Samantha Yeung,
Intermediate Development Planner

Reviewed by:
Mark Iamarino, MCIP, RPP
Manager, Development Approvals

Submitted by:
Anamika Dilwaria, M.PL., MCIP, RPP
Director, Planning and Development Services

Approved by:
Chris McQueen, MBA
Chief Administrative Officer

14. Attachments

Appendix 1 – Location Map
Appendix 2 – Nigh Road Draft Plan of Subdivision
Appendix 3 – Extension Request Letter from Agent
Appendix 4 – Updated Conditions of Draft Plan Approval
Appendix 5 – Comments from Niagara Region