



Planning and Development Services

Prepared for: Regular Council

Meeting Date: Monday, March 31, 2025

Title: Memorandum - Response to Public Comments on the Proposed Draft Plan of Common Elements Condominium and Draft Plan of Subdivision for 0-15850 Rebstock Road

Planning staff have prepared responses to the multiple inquiries that were submitted by a member of the public regarding the proposed Draft Plan of Common Elements Condominium and Draft Plan of Subdivision for 0-15850 Rebstock Road. The inquiries are addressed in sequential order below. Staff responses are provided in blue text.

1. Errors in the Recommendations in the online Agenda and Staff Report

The recommendation approving the Draft Plan of Subdivision should say subject to the conditions in Appendix 5, not Appendix 8. The phrase “and a Common Elements Condominium as illustrated in Appendix 2” doesn’t belong. The DPSD is in Appendix 2. The recommendation approving the Draft Plan Common Elements Condominium should say subject to the conditions in Appendix 6, not Appendix 9.

These are typographical errors that have been corrected.

2. OPA 61 and OLT Decision Problems

The Staff Report is incorrect in saying that the OPA was not required. The 8 Feb 2024 OLT Order stated that “... OPA 61 is not currently before the Tribunal for disposition, the Tribunal agrees ... it cannot be Ordered in the present case...”. The OPA has not come forward to Council. Any approvals of the 0-15850 Rebstock By-Law need to be delayed until an OPA has been submitted to revise OPA 56 By-Law 143-2024.

The Ontario Land Tribunal (OLT) noted in their decision that it was not ordering the Town to complete a separate Official Plan Amendment to update the Crystal Beach Secondary Plan to match the density approved for the proposed development. It was agreed upon, through the settlement, that the proposed development was in conformity with the Town of Fort Erie Official Plan land use designation and policies at the time of submission of the Zoning By-law Amendment.

3. Legal Instrument Content and Common Elements Designation Problems

The Appendix 5 Draft Plan of Subdivision (DPSD) and Appendix 6 Draft Plan of Common Elements Condominium (DPCEC) did not use the legal title boxes which were in the Urban Design Brief (Pg 37 and Pg 39). The Minutes of Settlement (Pg 6) (Pg 6) minimum rear yard is

6.3.99 [sic] but staff are using 6.3m. By-Law 36-2024 approved this as 6.30m. The 6.238 setback does not comply with the OLT Order. The DPSD has 11 blocks while the Staff Report is only referring to 10. The DPCEC did not enclose the Park Towns and does not label them as “Not Part of the Comment Element”. The west side swales need to be included in Block 10 so that the condo corporations can be responsible for maintenance, rather than have this split by 16 owners. The Landscape Plan, which is proposing trees on the POTLs and has shared sods, needs to be administered by the condo corporation, along with the driveways, as is done in other developments.

The Applicant has submitted a Plan of Common Elements Condominium and Plan of Subdivision that was prepared and signed by an Ontario Land Surveyor (O.L.S.). The plans have been revised by the O.L.S. to show the correct 6.30 metre setback. The revised plans were submitted to Town Staff on March 19, 2025 and are attached to Report PBBS-16-2025 as Appendix 2 and Appendix 3.

Detailed engineering design review to the satisfaction of Development Engineering and Infrastructure Services Staff will be required as a condition of approval. Similarly, review of the Landscape Plan to the satisfaction of Community Planning Staff will be required as a condition of draft plan approval.

4. OLT and By-Law 36-2024 and Zoning By-Law 144-2021 Approval Problems

The OLT Order and the 18 Mar 2024 Appendix 2 Minutes of Settlement and the original received from the OLT Coordinator had a page missing, however, the Draft Order received from OLT had the missing page which does not refer to the “One Lot for Zoning” provision which appears in By-Law 36-2024. Technically this results in By-Law 36-2024 having been approved without the supporting authority.

The OLT included the amending by-law, later amending By-law 36-2024, as part of their decision/order. The Tribunal was the approval authority. OLT decisions are final unless it can be demonstrated there was an error in law.

The OLT Order and By-Law 36-2024 rescinded By-Law 59-10 rather than the ND-428 designation. By-Law 2010-059 changed Part 1 from ND to R1 for the severed parcel now numbered 3720 Rebstock and Part 2 from ND to ND-428 for 0-15850 Rebstock. This has resulted in the removal of the legal authority for the change for 3720 Rebstock. Geopedia added the RM1-793 to 3720 Rebstock. This will require a correction to re-establish the correct zoning and authority for 3780 Rebstock. Neither changed the Zoning By-Law Schedule A map.

The full repeal of amending By-law 59-2010 appears to be an oversight by the OLT. Repealing amending By-law 59-2010 did impact the zoning of 3720 Rebstock Road, which was included as part of that Zoning By-law Amendment. Planning staff note that the R1 zoning of 3720 Rebstock Road can be corrected through a future housekeeping amendment to the Zoning By-law.

By-Law 36-204 created a number of problems by adding a flawed Block Back-to-Back Townhouse Definition to Section 5 instead of providing a site-specific exception, without

updating the section 14.2 permissions.

By-Law 36-2024 added the ONE LOT FOR ZONING provision, however, the Minutes of Settlement, the Order, and By-Law 36-2024 did not provide a Notwithstanding clause for a site-specific exception to make the block back-to-back townhouses compliant.

Amending By-law 36-2024 added “back-to-back block townhouses” as a permitted use to Subsection 14.2 under part b). The By-law also added site-specific zoning regulations to Subsection 14.3 under part c).

5. Niagara On The Beach Investors Package Problem

<https://niagaraonthebeach.com/>

In 2024, M5V and partner Estate Hill Developments posted this package which targets investors, commuters, and remote workers with hybrid work plans, rather than families, and provides rental profits. The package includes more renderings and plans than were provided in the submission to staff and some of them conflict or are misleading. If there are a large number of “investor owners” this development will be attracting short-term or seasonal rentals which along with other rentals may result in high turnover rates. In the 11 April 2022 CIC meeting, Councillors were told that units would be priced between \$399,900 and 500,000. The Package has the range as \$399,900 to \$599,900 with the 2030 Projection increasing the range from \$545,465 to \$818,063.

Planning staff do not have the ability to control what is marketed to potential buyers by the Owner. It is noted that the approved zoning does not prohibit Short Term Rentals on the subject lands. Any future Short-term Rentals on the subject lands will be subject to the zoning regulations for Short Term Rentals that were introduced by amending By-law 1-2024 and will be required to obtain a Short-term Rental License from the Town.

6. Compliance with the OLT-approved Minutes of Settlement Problems

The Minutes of Settlement, M5V agreed that it would “not submit any site plan for approval by the Town ... that is not in substantial conformity with the ... Preliminary Site Plan and Renderings”. The July 2024 revisions to the Site Plan reduced the 5.0m west side setback but otherwise appear to be substantially compatible, however, the Renderings are totally different, and as such, do not meet the Minutes of Settlement “substantial conformity” test. The Minutes of Settlement provides renderings which had normal roofs and balconies rather than rooftop terraces, are much more compatible.

Planning staff are of the opinion that the most recent plans are in substantial conformity with what was submitted as part of the Minutes of Settlement. The addition of rooftop patios is a minor change and provides some additional amenity area for residents of the proposed development. The rooftop patios conform to the provisions of the Zoning By-law.

7. Access to the Park and Sidewalk Problems

The Staff Report and Urban Design Brief have numerous references to northwest sidewalk providing access to the park. The 2024 Parks and Open Space Plan only refers to connectivity

to trails and active transportation sidewalks adjacent to SWM facilities, not direct access from subdivisions. The proposed sidewalk to the Park requires Town approval to extend and maintain the sidewalk, cost recovery, and conditions to coordinate maintenance and snow removal. Sidewalk drainage to the Park may cause problems.

The Town's Parks and Open Space Master Plan does not prevent future development from incorporating active transportation linkages such as a sidewalk to provide connectivity to a park. This connection is beneficial from a planning perspective. Town staff will review the sidewalk connection as the proposed development moves through the planning process.

8. Servicing and Drive Lane Problems

Many potential problems have been identified e.g. lack of details required by the Town's 2021 Subdivision Guidelines, whether M5V and 272 Ridge Road South are competing for sanitary sewer capacity, excessive number of bathrooms (284 for 90 units), snow storage and Canada Post locations not identified, waste pads with 12 bins for 180 cans and other garbage impacting the view with potential for access and odour problems, headlights projecting into existing and new yards, positioning B2B blocks close to the east property line with terraces increasing the noise, light and overlook problems, sight line reduction, lack of sidewalks on centre drive lanes, etc.

The Town's sanitary sewer consultant GMBLuePlan (now GEI Consultants) completed a peer review of the Applicant's Functional Servicing Report in 2024. The peer review concluded that there was sufficient capacity in the Town's downstream sanitary sewers to accommodate the proposed 90 dwelling units in the Rebstock development and the dwelling units proposed as part of the 272 Ridge Road South development.

Snow storage and removal will be the responsibility of the condominium corporation as all internal roads are private.

Waste collection is arranged in pads on the east side of the development in deep collection units (Molok containers). Waste collection will need to be through a private contractor as Niagara Region does not provide waste collection services for Molok containers.

Light emission from headlights will be mitigated through landscaping and board-on-board fencing along the perimeter of the development.

The Applicant has provided a lighting plan that will be reviewed by Development Engineering Staff as part of the detailed engineering review. A condition of approval of the Plan of Subdivision is that the proposed lighting for the site must not negatively impact any abutting properties with lighting spillover.

Planning staff note that the conceptual site plan for the development does include sidewalks throughout the development, including crosswalks across the private roads within. The internal sidewalks connect to the sidewalk network along Rebstock Road and Crystal Ridge Park.

9. Building Height Problems

The referral to 3 storeys disagrees with the OLT decision and the RM1-793 zoning which requires 2.5 storeys.

The change to slab-on-grade foundations, which should have lowered the height compared to the 2022 plans where basements increased the height, when compared to Block C adjacent grades in results in a grade differential of 2.2m to 2.41m on the building (average 2.3m) and 2.5m and 2.56m (average 2.53m) on the adjacent lands. Adding this average to the proposed 10.844m results in a height of 13.374m above ground level.

Ceiling heights of approximately 10ft and 9ft for the first and second floors could be reduced compensate for these significant grade raises and very tall gable roofs, and also reduce the number of stairs between the floors.

Planning staff note that the OLT-approved zoning permits a maximum height of 2.5 storeys or 11.00 metres, whichever is greater. As per the definition of “Height of Building” in Section 5 – Definitions of the Zoning By-law, building height is measured from finished grade to peak of roof along the front elevation of a building. The proposed block townhouses and block back-to-back townhouses comply with the maximum height of 11.00 metres along the front elevation as required by the zoning. Zoning compliance will be confirmed at the time of building permit review.

10. Common Amenity Area Problems

The Draft Plan of Condominium and Draft Plan of Subdivision have different widths than the Site Plan with 14.451m vs 14.445 between B2B blocks 6/7 and 10.770m vs 10.766m between blocks 8/9.

There are several other problems e.g. swale reducing the amenity space, sod shared with Park Towns, lack of sidewalks to access the amenity areas, building grading lines in the amenity areas in the 2024 Tree Preservation Plan, inability to add pergolas without a retaining wall due to the grade raise, lack of facilities for children, etc.

The claimed discrepancies are less than a centimetre between the Draft Plan of Common Elements Condominium, the Draft Plan of Subdivision and the Site Plan, due to the use of three decimal points. The discrepancy is not significant and does not impact Zoning compliance.

Amenity areas and grading are not mutually exclusive. Development Engineering Staff and Community Planning Staff will review the site grading and landscape plans. Approval of these plans to the satisfaction of Town staff is required as conditions of approval for this development.

Planning staff note that the subject lands are adjacent to a large community park. Facilities are available for children at the adjacent Crystal Ridge Park.

11. Unit Privacy Area Problems

OLT and By-Law 36-2024 approved 3.5sm balconies for the B2B Towns. The Urban Design Brief had end unit balconies and rear-yard decks for the 16 Park Towns and balconies for the 74 B2B units. The 10 Park Towns and 74 B2B Towns were changed to rooftop terraces in the Elevations (Pg 5 and Pg 8), which range in size from 6sm to 21sm, however, the NOTB renderings show terraces on some of the end units. For the B2B Towns, the change to rooftop terraces impacts between 27.7% to 62.35% of the roof area. Providing excessive privacy area space dramatically changes the character of the development for the future residents and the surrounding community. Noise mitigation, privacy and overlook issues, roof load capacity if large parties, furnishings, gardens, green roofs need to be addressed in the Plan of Condominium Conditions.

Other problems include shared sod causing problems as CEC owners expect to have exclusive use of the parts they own, terrace doors opening out creating a problem if excessive snow accumulates, reduction of the privacy area setback from 5.0m to 4.955m in the Site Plan, and interference of the swale with privacy areas.

Planning staff are of the opinion that the addition of rooftop patios is not anticipated to significantly impact privacy on adjacent properties. Most of the rooftop patios are internal to the development as the block back-to-back townhouses face each other. Most of the other dwelling units along the periphery of the development would have views of Crystal Ridge Park and the Crystal Ridge Arena. The dwellings, including doorways and patios, will be required to comply with the Ontario Building Code.

12. Landscaping Plan and Tree Protection Plan Problems

The Landscaping and Tree Protection Plans have been based on the swales and retaining walls not existing on the west, south and east perimeters. There are no rights-of-way along the drive lanes, as is included in the 272 Ridge Road South Condominium Plan, so these trees would be planted on the units which are owned by individuals. These plans have also not considered the feasibility and impact of placing trees on the small sod areas in the front yards along the drive lanes. If the Town wants to place trees on these POTLs, the Town's conditions should include a purchase and sale agreement clause that would inform purchasers that they would need to respect the Landscape Plan and Tree Protection Plan.

The Conditions should require the Grading Plan and other relevant plans to be completed before the Landscape Plan is finalized so that the feasible number, type and suitable location can be considered.

For the east side setback Section 6.21 requires that a strip of land abutting a residential lot line "shall be used for no other purpose than a planting strip" which excludes the swale use.

Planting strips are not necessarily exclusive of swales. Town Development Engineering and Community Planning Staff will review the landscape plan and grading plans to ensure that both are satisfactory to Town Staff. Approval of these plans are conditions of approval for this development. Necessary clauses requiring compliance with these plans will be included in the subdivision and condominium agreement.

13. Building Step-backs and Flat Contiguous Gable Roof Problems

The building step-backs are due to the provision of terraces.

Gable roofs normally have spaces between them to drain to lower level roofs, but these contiguous gables require a complex drainage system to get water to the downspouts to prevent roof drainage from other units going onto adjacent terraces. These create valleys between the units which will accumulate snow. The setbacks result in shared walls of different lengths in the interior of the roof where there are few options to remove water or snow. The terraces will be subject to Lake Erie effects on the weather. With winds reported up to 120km/h, unsecured items may be blown off and may cause damage or injury. Snow levels of 2 to 3m, which are mentioned in newspapers.com, would place heavy loads on the roofs which may cause damage or collapse. The terrace doors, unlike the balconies, open out rather than in. Snow removal will be a major problem.

The OLT-approved Rendering does not have these problems.

The cross-gables with windows at the sides do not agree with the Renderings which have a slanted roof at the sides.

The Town's Building Division will review future building plans to confirm they comply with Ontario Building Code requirements. It is noted that building plans submitted will be required to be stamped by a professional engineer or architect.

14. Surface Drainage Problems

The Servicing Report states that the east side swale will drain uncontrolled to the Park rather than provide a channel that will direct it to the existing Park swale. The fence will be at the bottom of the slope about 2m from the top of the road and may cause water to collect along that area. Developers are generally not permitted to direct flows to other properties. If the Town agrees to a connection to the Park swale, conditions should be included which address construction, maintenance and cost recovery.

The Servicing Report did not consider the drainage coming from adjacent parcels which may still flow to the swales as the fence boards can not be placed at ground level where they will rot. The width of the swale is unknown, but placing a swale and a retaining wall in this narrow area may result in inability to construct the Park Towns and meet the setback requirements and the NPCA SWMM Guidelines requirement for "ponding" to be 4m from the foundation. In addition, the Geotechnical Report, which should have been provided, may identify problems if the groundwater levels could impact the swale feasibility or performance.

Town Development Engineering Staff and Infrastructure Services Staff will be reviewing the detailed engineering design as the development moves through the planning process. The engineering designs submitted by the Owner/Applicant will need to demonstrate that there are no adverse drainage impacts on adjacent lands to the satisfaction of Town Staff.

15. Staff Report PBBS-16-2025 Problems

The Conditions for the DPSD and DPCEC overlap and are inconsistent with conditions established for other Town condominium projects as well as those of other municipalities e.g. The DPCEC, when compared to the MARZ 412 Ridgeway CIC 8 July 2024 Agenda Pg 698 and Pg 704 to Pg 710 differs significantly, e.g. MARZ has conditions 7 to 14 concerning registration and final approval conditions and do not identify specific reports. The focus of the DPCEC should be on those matters which relate to condominium registration, agreements, Town relationships and responsibilities and access to lands, requirements for purchase and sale agreements, other policies that the Town wishes to impose, etc. The DPSD Conditions should relate to what can be built where, when and how, what Town policies and regulatory processes are required, what agreements and payments are needed, etc.

Planning Staff note that development applications are circulated to Town Staff and external agencies for comments and include a request for required conditions of approval. Each individual development may have different conditions depending on the nature of the proposal and the condominium type (standard condominium, common elements condominium, or vacant land condominium). It is noted that this development is unique from the Marz development as it is comprised of both a Plan of Common Elements Condominium and Plan of Subdivision.

The Staff Report Pg 14 states “It is noted that this file predates the Town’s Tree By-law 33-2024, and therefore no compensation ratios are required for tree removal for this development”. The Tree By-Law was passed 18 Mar 2024 and the Draft Plans were submitted 4 Dec 2024, therefore, the condition should be applicable. If staff are relying on the previous application, Legal Services should confirm that the Clergy Principle can be applied to subsequent instruments

The pre-consultation meeting and agreement for this Plan of Common Elements Condominium and Plan of Subdivision and occurred in January 2024, prior to the Tree By-law coming into force and effect. Staff have therefore determined that the tree compensation requirements in the Tree By-law are not applicable to this development as it was not identified in the pre-consultation agreement. The number of trees being proposed for the development, as part of the Landscape Plan, are greater than the number of trees being removed on the subject lands. In total, 57 trees are proposed to be removed from the subject lands. The Applicant’s Landscape Plan is proposing to plant 120 trees.

Offsite Parking – Pg 16 “It is noted that additional overflow parking may be available in Crystal Ridge Park adjacent to the arena and library”. This would remove parking for regular users. The Conditions should have stated this

Planning Staff note that the proposed development is achieving a parking rate of 1.25 parking spaces per dwelling unit which is the parking ratio that was approved by the OLT. Therefore, the development is not deficient in parking. It is not in the Town’s interest to formally utilize Town lands for private parking. Parking infractions can be enforced through the Town’s By-laws.

DPSD Appendix 5 (Pg 3) Condition 20 and DPCEC 6 (Pg 2) Condition 13 duplicate the requirements for a Tree Protection Plan as the Plans are included in Condition 19 and Condition 12, respectively

Some duplication of conditions is required as the Plan of Common Elements Condominium is contained within a block on the Plan of Subdivision. If in the event duplicated conditions are redundant, Town Staff may clear the draft condition as needed.

All of which is respectfully submitted.

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