

The Corporation of the Municipality of Brockton



By-Law 2021-126

Being a By-Law to Authorize the Signing of an Amended Conditional Permit Agreement with Walker West Estates Inc. and the Corporation of the Municipality of Brockton

Whereas the *Municipal Act, 2001*, S.O. 2001, c. 25, Section 5(3), as amended provides that a municipal power, including a municipality's capacity rights, powers and privileges under section 9, shall be exercised by By-Law;

And Whereas pursuant to Section 41, Subsection (7) of the *Planning Act* R.S.O 1990, c. P.13 as amended, authorizes the Corporation to require the owner of subject lands to enter into an agreement with the Corporation formalizing the nature, scope and details of the development on said subject lands;

And Whereas the Council of the Corporation of the Municipality of Brockton entered into a Pre-Servicing Agreement with Walker West Estates Inc. on August 13, 2019 by way of By-Law 2019-090 for the development of a Subdivision in the former Town of Walkerton within the Municipality of Brockton which was further amended on November 12, 2019 by way of By-Law 2019-144;

And Whereas the Council of the Corporation of the Municipality of Brockton entered into a Subdivision Agreement with Walker West Estates Inc. on May 26, 2020 by way of By-Law 2020-064 for the development of a Subdivision in the former Town of Walkerton within the Municipality of Brockton which was further amended on June 23, 2020 by way of By-Law 2020-078;

And Whereas the Council of the Corporation of the Municipality of Brockton established a Conditional Permit Agreement Template for owners of properties located within the Walker West Subdivision; and entered into a Conditional Permit Agreement between the Corporation and Walker West Estates Inc. on August 10, 2021 as per By-Law 2021-103;

And Whereas the Council of the Corporation of the Municipality of Brockton desires to amend the Conditional Permit Agreement between the Corporation and Walker West Estates Inc. upon further consultation with Walker West Estates Inc.;

Now Therefore the Council of The Corporation of the Municipality of Brockton enacts as follows:

- 1.0 That the Corporation of the Municipality of Brockton hereby enter into an Amended Conditional Permit Agreement with Walker West Estates Inc. which shall be attached hereto and marked as Schedule "A" to this By-Law and shall form an integral part of this By-Law.
- 2.0 That the Conditional Permit Agreement Template be established for owners of properties located within the Walker West Subdivision;
- 3.0 That the Mayor, Clerk, and Chief Administrative Officer are authorized to sign and execute any other related documentation on behalf of the Corporation;

- 4.0 That Municipal staff are hereby authorized to execute any administrative amendments to Conditional Permit Agreements.
- 5.0 That By-Law 2021-103 be hereby amended.
- 6.0 This By-Law shall come into full force and effect upon final passage.
- 7.0 This By-Law may be cited as the “Amend Walker West Estates Inc. Conditional Permit Agreement By-Law”.

Read, Enacted, Signed and Sealed this 14th day of September, 2021.

Mayor – Chris Peabody

Clerk – Fiona Hamilton

CONDITIONAL BUILDING PERMIT AGREEMENT

Hereinafter called the “Agreement”

THIS AGREEMENT dated the XX day of MONTH 2021.

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF BROCKTON

(hereinafter the “Municipality”)
OF THE FIRST PART

and

PROPERTY OWNER/APPLICANT

(hereinafter the “Owner”)
OF THE SECOND PART

WHEREAS the Owner is the registered owner of certain lands municipally known as XXXX and more particularly described in Section 2 (the “Lands”);

AND WHEREAS construction on the Lands related to (input residential construction type) requires the issuance of a Building Permit pursuant to subsection 8(2) of the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended (“BCA”);

AND WHEREAS the Lands are subject to a Subdivision Agreement dated May 26, 2020 registered as Instrument No. BR156062 on June 4, 2020 (“Subdivision Agreement”).

AND WHEREAS no connection shall be permitted to the municipal water distribution system until such time as the Walker West Water Booster Pumping Station (“Pumping Station”) being constructed on Block 49 on Plan 3M-249 has been completed and has been commissioned.

AND WHEREAS Section 10.2.2.1 of Ontario Design Guidelines for Drinking Water Systems provides guidelines for maximum and minimum operating pressures and recommends that the normal operating pressure in a water distribution system should be approximately 350-480 kPa (50 to 70 psi) and not less than 275 kPa (40 psi).

AND WHEREAS the Municipality’s Engineers cannot recommend connections to the Municipality’s water mains that have pressures less than 275 kPa (40 psi).

AND WHEREAS the Municipality’s Engineers have informed the Municipality that any lot north of Lots 21-38 on Plan 3M-249 cannot maintain the minimum design operating pressure until such time as the Pumping Station has been constructed and commissioned and is operational.

AND WHEREAS the Owner has requested that the Municipality’s Chief Building Official (“CBO”) issue a conditional building permit (the “Conditional Building Permit”) pursuant to subsection 8(3) of BCA, prior to meeting all requirements to obtain a Full Building Permit.

AND WHEREAS subsection 8(3) of the BCA permits the CBO to issue a conditional building permit for any stage of construction notwithstanding all requirements have not been met to obtain a permit under subsection 8(2) of the BCA.

AND WHEREAS the construction on the Lands related to the Conditional Building Permit complies with by-laws enacted under sections 34 and 38 of the *Planning Act*, R.S.O. 1990, c.P.13.

AND WHEREAS the CBO is satisfied that meeting such requirements would unreasonably delay the proposed construction if a conditional permit is not granted.

AND WHEREAS the CBO considers the restoration of the site to be feasible in the event that all necessary approvals are not ultimately obtained by the Owner.

AND WHEREAS the remaining requirements of subsection 8(3)(c) of the BCA can be achieved by entering into this Agreement.

AND WHEREAS connection to the municipal water distribution system and the use and occupancy of the building to be constructed on the Land will be prohibited until the Pumping Station is fully operational to the satisfaction of the Municipality.

NOW THEREFORE in consideration of the covenants contained herein and other good and valuable consideration and the sum of two (\$2.00) dollars of lawful money of Canada now paid by each of the Parties (the receipt of which is hereby acknowledged), the Parties hereby covenant and agree as follows:

1. RECITALS

The parties hereto acknowledge and declare that the foregoing recitals are true and accurate in substance and in fact, and form part of this Agreement.

2. LANDS SUBJECT TO AGREEMENT

The Lands affected by this Agreement are as follows:

[INSERT LEGAL DESCRIPTION HERE]

3. SUBJECT CONSTRUCTION

The construction (hereinafter referred to as "Subject Construction") affected by this Agreement is that construction proposed in permit application [REDACTED] filed with the Municipality, by the Owner.

4. CONDITIONAL BUILDING PERMIT

- (a) The Owner acknowledges that the issuance of a Conditional Building Permit is at the sole discretion of the CBO, being satisfied that all terms and conditions contained in this Agreement have been met and that all requirements in the *Building Code Act* have been satisfied.
- (b) The Owner specifically acknowledges and agrees that the said Conditional Building Permit will prohibit connection to the municipal water distribution system and will prohibit occupancy until such time as the Pumping Station is fully operational and, to that end, the Owner agrees to assume all risks involved in commencing construction before the Pumping Station is commissioned and fully operational and agrees to indemnify and save harmless the Municipality and the CBO from all claims arising from the issuance of the Conditional Building Permit.
- (c) The Owner specifically acknowledges that although construction and commissioning of the Pumping Station is scheduled to be completed by February 1, 2022 this timing may be delayed due to a number of factors beyond the Municipality's control including, but not limited to, labour shortages and shortage or delays in materials and supplies.
- (d) The Owner further acknowledges being advised by the Municipality that there is insufficient fire suppression available for Phase 2 of the Walker West Subdivision until such time as the Pumping Station has been constructed, commissioned and fully operational, and to this end the Owner assumes all risks associated with commencing construction at this time and agrees to indemnify and save harmless the Municipality and the CBO from all claims arising from the issuance of the Conditional Permit.

5. OWNER'S COVENANTS

The Owner hereby covenants and agrees as follows:

- (a) to assume all risks in commencing construction on the of the subject construction before

every requirement to obtain a Full Building Permit has been met and the Pumping Station has been constructed, commissioned and fully operation and agrees that he or she will indemnify and save harmless the Municipality from and against all claims, actions, costs and/or awards arising from the issuance of the Conditional Building Permit;

- (b) to prohibit Occupancy and not to request an Occupancy Inspection on the Lands until such time as the Pumping Station has been constructed, commissioned and is operating to the satisfaction of the Municipality;
- (c) to immediately stop construction on the Lands and secure the site to the satisfaction of the CBO, if in the opinion of the CBO, at his sole discretion, any impediment arises to prevent the lawful continuation of the subject construction;
- (d) if construction is immediately stopped and sites are secured as outlined in clause (c), the Owner shall commence investigating options for providing a drinking water system for all lands where a conditional building permit has been issued. The CBO shall ensure that prior to requesting the removal of the subject construction and site restoration if all necessary approvals have not been obtained by May 1st, 2022 to allow the Owner the opportunity to find an acceptable solution by May 1st, 2023 to supply the Lands with a drinking water system that will comply with all applicable legislation;
- (e) if no acceptable solution has been found by May 1st, 2023 as per clause (d), the Owner at its own expense shall, if requested by the CBO in writing, remove the subject construction and restore the site;
- (f) to comply with all development standards, approvals, by-laws, laws and regulations that are applicable to the Lands including but not limited to site servicing, grading, fire protection, and storm water management;
- (g) to provide and maintain access for emergency vehicles to the satisfaction to the Municipality's Fire Chief;
- (g) to defend, indemnify and save harmless the Municipality and CBO from any and all claims whatsoever arising from this Agreement, including but not limited to, those arising out of:
 - a) Any breach, violation, or non-performance of any covenant, condition or agreement set forth in this Agreement to be fulfilled, kept, observed or performed by the Owner; or
 - b) Any damage to or loss of property occasioned, connected to, or related to this Agreement.

The obligation of the Owner to indemnify the Municipality and CBO contained in this Section shall survive any termination of this Agreement, anything in this Agreement to the contrary notwithstanding.

6. NO REPRESENTATION OR WARRANTIES BY THE MUNICIPALITY

The Municipality and CBO provide no representations, warranties, or any assurances whatsoever to the Owner as to the construction and completion of the Pumping Station, its authority to enter into this Agreement, the CBO's ability to issue a Conditional Building Permit or the ability or inability of the Owner to complete the subject construction as proposed.

7. SITE RESTORATION

The restoration of the Lands referred to in this Agreement shall be subject to the conditions present at the time of the Conditional Building Permit application and shall include limiting the scope of construction as stipulated by the Conditional Building Permit. Restoration must commence within fourteen (14) days of the date set out in subsection 5(d) above or commence on such other date as agreed upon by the CBO in writing.

8. MUNICIPAL ENTRY AND RESTORATION

If the CBO determines that the subject construction has not been removed or the site restored as required by this Agreement, the CBO may cause the subject construction to be removed and the Lands restored and for this purpose the CBO, an Inspector and/or their delegates or agents may enter upon the Lands and into the buildings or structures therein governed by this Agreement at any reasonable time without a warrant.

9. PRIORITY LIEN

The Municipality shall have a lien on the Lands for any amount incurred by the Municipality pursuant to section 8 of this Agreement to remove the subject construction and restore the site, other than the amount provided pursuant to section 10 of this Agreement, and the amount shall have priority lien status pursuant to the subsections 1(2.1) and (3) of the *Municipal Act, 2001*, S.O. 2001, c.M.25, as amended ("Act") and shall form a special lien in the same manner as taxes pursuant to subsection 349(3) of the Act.

10. SECURITY

The Owner shall provide a refundable Occupancy deposit in the amount of \$500.00 to be held in a non-interest-bearing account by the Municipality. Should non-compliance arise related sections 5(c) and (d) of this Agreement, the \$500.00 Occupancy deposit shall be forfeited. The Occupancy deposit shall be refunded upon the commissioning and completion of the Pumping Station to the sole satisfaction of the Municipality and compliance with all applicable requirements for obtaining an Occupancy Permit as required by the *Ontario Building Code*.

11. RELEASE

The Owner hereby releases the Municipality, its Council, officers, directors, agents, representatives, employees and volunteers and the CBO from any and all liability, recourse, proceedings, claims, and causes of action of any kind whatsoever, including but not limited to, any claims pursuant to the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, or any other statutory duty of care, any negligence, or breach of contract, and damages, for costs or expenses of whatsoever kind, nature, or description, whether direct or indirect, present or future, whether known or unknown, and any injury, including but not limited to death, arising out of or connected with this Agreement. This release shall be binding upon the Owner, and its heirs and personal representatives.

Landowner's
initials:

12. NOTICE

- (a) If any notice is required to be given by the Municipality to the Owner with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile or email transmission to:

William Clancy
36 John Crescent,
Chepstow, ON
N0G 1K0
billclancy5@gmail.com

- (b) If any notice is required to be given by the Owner to the Municipality with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile or email transmission to:

Municipality of Brockton
100 Scott Street P.O. Box 68
Walkerton, ON.
N0G 2V0
Tel: 519-881-2223
Fax.: 519-881-2991
Email: dweltz@brockton.ca

Attention: Dieter Wultz, Chief Building Official

13. REGISTRATION OF AGREEMENT

- (a) The Municipality may, at its sole option and discretion, register this Agreement against the title to Land, and by the Owner duly signing this Agreement, no further consent to register this Agreement is required to be obtained by the Municipality. The cost of preparation and registration of same shall be paid for by the Owner.
- (b) Upon the issuance of an Occupancy Permit pursuant to the application referred to in Schedule A, the Municipality shall execute an authorization for the Owner to register a Notice releasing this Conditional Permit Agreement, if this Conditional Permit Agreement was registered against the Lands.

14. COST RECOVERY

It is agreed that the reasonable costs incurred by the Municipality in preparation of this Agreement shall be recovered from the Owner and shall be payable to the Municipality in the amount of \$500.00 prior to the execution of this Agreement.

15. MISCELLANEOUS

- (a) The division of this Agreement into Sections and Subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- (b) This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario and the laws of Canada applicable in that province.
- (c) Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.
- (d) The Owner shall not assign this Conditional Permit Agreement without the prior written consent of the Municipality which consent is not to be unreasonably withheld by the Municipality provided that any such assignee executes an agreement assuming the obligations of the Owner under this Conditional Permit Agreement in a form satisfactory to the Municipality's Solicitor.
- (e) The Owner and the Municipality agree that all provisions contained in this Agreement shall be severable, and that should any provision in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions and the remainder of the Agreement shall remain valid and not terminate thereby.
- (f) The Owner shall not call into question, directly or indirectly, in any proceedings whatsoever, in law or in equity, or before any administrative tribunal, the right of the Municipality to enter into this Conditional Permit Agreement or to enforce each and every term, covenant and condition herein contained and this Conditional Permit Agreement shall be pleaded as an estoppel against the Owner in any such proceedings.
- (g) Nothing in this Agreement derogates from, interferes with, or fetters the exercise by the Municipality of all of its rights and obligations as a municipality (whether discretionary or mandatory), or imposes any obligations on the Municipality in its role as a municipality, and the Municipality shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including but not limited to, its planning rights and responsibilities, and the application of the *BCA*, its Regulations, or successor legislation. Nothing in this Agreement derogates from, interferes with, or fetters the exercise by the Municipality's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the Municipality's officers, employees, agents, representatives or elected and appointed officials.

- (h) The covenants, agreements, conditions and undertakings herein contained on the part of the Owner shall run with the Lands and shall be binding upon the Owner and its successors and permitted assigns as owners and occupiers of the Lands from time to time and shall be appurtenant to the adjoining highways in the ownership of the Municipality and, where in this Conditional Permit Agreement the word "Owner" is used, it shall be deemed to have been followed by the words "or any subsequent owner or occupier of the Lands"; and this Conditional Permit Agreement shall ensure to the benefit of and be binding upon the Municipality and its successors and assigns.
- (i) Time shall be of the essence hereof in all respects. The Owner may, by written request, seek extensions of time in respect of the Subject Construction or any part or parts thereof and the CBO may grant any such request on such terms and conditions as such the CBO may see fit to impose. The right of the Municipality to require strict performance by the Owner of any and all obligations imposed upon it hereunder shall not be affected in any way by any previous waiver, forbearance or course of dealing.
- (j) The Owner acknowledges that he/she has read and understands the terms and conditions of this Agreement and acknowledges and agrees that he/she has had the opportunity to seek, and was not prevented or discouraged by any other party from seeking, any independent legal advice which it considered necessary before the execution and delivery of this Agreement and that, if it did not avail itself of that opportunity before signing this Agreement, it did so voluntarily without any undue pressure. A failure by the Owner to obtain independent legal advice shall not be used by it as a defense to the enforcement of its obligations under this Agreement.
- (k) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together constitute one agreement. Delivery of an executed counterpart of this Agreement by facsimile or transmitted electronically in legible form, including in a tagged image format file (TIFF) or portable document format (PDF), shall be equally effective as delivery of a manually executed counterpart of this Agreement.

[SECTION INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement by their duly authorized representatives.

SIGNED,

Witness:

Name: XXXX
Title: Owner

**The Corporation of the
Municipality of Brockton**

Name: Chris Peabody
Title: Mayor

Name: Sonya Watson
Title: Chief Administrative Officer

We have authority to bind the
Corporation

SCHEDULE A

Attached Building Permit Application here