



THE CORPORATION OF THE TOWNSHIP OF PUSLINCH
** SPECIAL COUNCIL MEETING

A G E N D A

DATE: Tuesday, July 23 2013

TIME: 8:30 A.M.

1. Calling the Meeting to Order.
2. Disclosure of Pecuniary Interest & the General Nature Thereof.
3. **REPORT**
 - (a) Agreement between The Corporation of the Township of Puslinch and 2354084 Ontario Limited (Mammoet) and Zehr Levesque Inc.– Regarding the passing of a By-Law to authorize the entering into of a Conditional Building Permit.
4. **BY-LAWS:**
 1. By-law to authorize the entering into an Agreement with 2354084 Ontario Limited (Mammoet).
 2. Confirming By-law.

CONDITIONAL BUILDING PERMIT AGREEMENT

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AGREEMENT FOR A CONDITIONAL BUILDING PERMIT

THIS AGREEMENT dated the day of 20 .

BETWEEN:

2354084 Ontario Limited

(hereinafter called the "Applicant")

-and-

Zehr Levesque Inc.

(Name of Other Person or Party Also Signing Agreement)
(hereinafter called the "Contractor")

-and-

THE CORPORATION OF THE TOWNSHIP OF PUSLINCH
(hereinafter called the "Township")

WHEREAS the Applicant is the registered owner of certain lands in the Township and more particularly described in Section 1;

AND WHEREAS construction on the lands will require the issuance of a building permit under subsection 8(2) of the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended;

AND WHEREAS the Applicant has requested a conditional building permit (the "Conditional Permit") from the Township prior to meeting all requirements to obtain a building permit;

AND WHEREAS the Contractor has entered into an agreement to construct a structure on the lands described in Section 1;

AND WHEREAS the Township's Chief Building Official:

- (a) is satisfied that meeting the requirements for the issuance of a full building permit under subsection 8(2) of the *Building Code Act, 1992*, would unreasonably delay the proposed construction;
- (b) considers the restoration of the site to be feasible in the event that all the necessary approvals are not ultimately obtained by the Applicant;

AND WHEREAS the construction on the lands complies with by-laws enacted under s. 34 of the *Planning Act*;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants hereinafter expressed and other good and valuable consideration, the Parties hereto agree one with the other as follows:

1. LANDS SUBJECT TO AGREEMENT

The lands affected by this Agreement (hereinafter referred to as the "Lands") are as follows:

Part Lot 25 Con 8 in the Township of Puslinch and being more particularly described as in ROS273441 and Part Lot 25, Con 8, Township of Puslinch, Pt 1, 61R-10036 except Pts 1 to 9, 61R-11887 and Pts 2 and 4, 61R-11888 Township of Puslinch

2. SUBJECT CONSTRUCTION

The construction affected by this Agreement (herein referred to as the "Subject Construction") is that construction proposed in a permit application filed by the Contractor.

3. CONDITIONAL BUILDING PERMIT

The Township acknowledges that the Chief Building Official is entitled to issue a Conditional Permit for the Subject Construction to be erected on the Lands provided that the Applicant and Contractor agrees to assume all risks involved in commencing construction before every requirement for a building permit has been met, and to this end, hereby will indemnify and save harmless the Township from and against all claims arising from the issuance of the conditional permit.

4. APPLICANT'S AND CONTRACTOR'S COVENANTS

The Applicant and the Contractor hereby covenant and agree:

- (a) to obtain before the occupancy and not later than October 18, 2013 all approvals prerequisite to the issuance of a building permit by;
- (b) to file any required plans and specifications of the Subject Construction by the date set out in Subsection 4(a);
- (c) to stop construction on the Lands and secure the Lands to the satisfaction of the Chief Building Official if:

- (i) in the opinion of the Chief Building Official, any impediment arises to prevent the lawful continuation of the Subject Construction.
- (d) to remove the Subject Construction and restore the Lands if all necessary approvals have not been obtained by the date set out in Subsection 4(a);
- (e) to comply with all development standards that are applicable to the Lands including but not limited to site servicing, grading, tree protection, fire protection, and storm water management;
- (f) to provide and maintain access for emergency vehicles and water supply to the satisfaction of the fire department;
- (g) without limiting the generality of the foregoing, to satisfy any specific conditions set out in Schedule "A" to this Agreement no later than the date set out in Subsection 4(a).

5. EXTENSION OF AGREEMENT

If the Chief Building Official has cause to believe that all approvals will not be met by the deadline set out in Subsection 4(a), but will be obtained within a reasonable amount of time; and at the Chief Building Official's sole discretion may extend the term of this Agreement by an amount of time that the Chief Building Official deems to be adequate to obtain the necessary approvals.

6. SITE RESTORATION

The restoration of the Lands referred to in this Agreement shall be to the conditions present at the time of the foundation building permit application and shall include the removal of the Subject Construction, the replacement of all vegetative matter, the stabilization of slopes and the restoration of drainage patterns. Restoration must commence within 60 days of the date set out in Subsection 4(a) or at such later time as may be directed by the Chief Building Official and must be completed no later than December 31, 2013.

7. MUNICIPAL ENTRY AND RESTORATION

If the Chief Building Official determines that the Subject Construction has not been removed or the site restored as required by this agreement, the Chief Building Official may cause the Subject Construction to be removed and the Lands restored and for this purpose the Chief Building Official, an inspector and their agents may enter upon the Lands and into the buildings or structures governed by this Agreement at any reasonable time without a warrant.

8. SECURITY

- (a) The Applicant agrees to modify an irrevocable standby letter of credit identified as BMT04036900S Issued May 1, 2013 in the amount of \$231,582.35; as filed as security for the Site Plan Agreement to include reference to the Conditional Building Permit Agreement L04ONT. The letter of credit shall be for term of this Agreement and the original agreement and shall provide for automatic renewal at the end of said term.
- (b) If the Chief Building Official determines that the Subject Construction has not been removed or the Lands have not been restored as required by this Agreement, the letter of credit may be drawn upon in full or in part, in the sole discretion of the Chief Building Official and the moneys used to restore the Lands as provided for in Section 6.

- (c) Should there be full compliance with this Agreement; the letter of credit will be returned to the Applicant in accordance with the terms and conditions of the Site Plan Agreement.
- (d) Should the Township incur costs associated with the restoration of the Lands or the removal of any buildings or structures in excess of the amount of the letter of credit, the Township shall have a lien on the Lands for such amount having priority lien status in accordance with section 1 of the *Municipal Act, 2001*, S.O. 2001, c, 25, as amended.

9. REGISTRATION OF AGREEMENT

- (a) This Agreement may be registered against the Lands and the Township is entitled to enforce its provisions against the current owner of the Lands and, subject to the *Registry Act* and the *Land Titles Act*, any and all subsequent owners of the Lands.
- (b) Upon the issuance of a building permit pursuant to the application referred to in Section 2, the Applicant and the Contractor shall be entitled to request that the Township shall provide the registered owner of the Lands with a release of this Agreement in a form that may be registered against title provided the Applicant has agreed to pay all legal costs and expenses related to the registration of the release.

10. NOTICE

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

2354084 Ontario Limited
John Ham
127 Earl Thompson Place
Ayr, ON NOB 1E0

ZehrLevesque
Reg Levesque
607 King St. W. Suite 205A
Kitchener, ON N2G 1C7

or such other address of which the Applicant and Contractor has notified the Clerk, in writing, and any such notice mailed, delivered or sent by facsimile transmission shall be deemed good and sufficient notice under the terms of this Agreement.

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

Robert Kelly
Chief Building Official
7404 Wellington Rd 34
Guelph, ON N1H 6H9

or such other address of which the Township has notified the Applicant and the Contractor, in writing, and any such notice mailed, delivered or sent by facsimile transmission shall be deemed good and sufficient notice under the terms of this Agreement.

11. OTHER APPLICABLE OR GOVERNING LAWS

Nothing in this Agreement shall relieve the Applicant and the Contractor from compliance with all applicable municipal by-laws, laws and/or regulations or laws and/or regulations established by any other governmental body that may have jurisdiction over the Lands.

12. AGREEMENT NOT TO BE CALLED INTO QUESTION

The Applicant and the Contractor and its successors and assigns, will not call into question, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the Township's right to enter into and enforce this Agreement. This provision may be pleaded by the Township in any action or proceeding as an estoppel of any denial of such right.

13. INTERPRETATION OF AGREEMENT

This agreement shall be interpreted as follows:

- (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 the Agreement.
- (b) This Agreement shall be construed with all changes in number and gender as may be required by the context.
- (c) Every provision of this Agreement by which the Applicant or any other person executing this Agreement is obligated in any way shall be deemed to include the words "at the expense of the Applicant" unless the context otherwise requires.
- (d) 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.
- (e) All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.
- (f) 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.
- (g) The Applicant, the Contractor and the Township agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.
- (h) All schedules attached to this Agreement form an integral and operative part of this Agreement.

14. GOVERNING LAW

14. GOVERNING LAW

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

IT IS HEREBY DECLARED THAT this Agreement and the covenants, provisions, conditions and schedules herein contained shall be binding upon the parties hereto, their successors and assigns.

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

**SIGNED, SEALED
& DELIVERED**

) **2354084 Ontario Limited**
)
) _____
) Name:
) Title:
)
) _____
) Name:
) Title:
) *I/We have authority to bind the corporation.*
)
)
) **Zehr Levesque Inc.**
)
) _____
) Name:
) Title:
) *I have authority to bind the corporation.*
)
)
) **THE CORPORATION OF THE TOWNSHIP OF PUSLINCH**
)
) _____
) Mayor
)
) _____
) Clerk

'Schedule A'

Conditions of Approval

1. The Contractor/Applicant receive Ministry of Environment – Environmental Compliance Approval for the Sewage Works.

THE CORPORATION OF THE TOWNSHIP OF PUSLINCH

BY-LAW NUMBER 48/13

BEING A BY-LAW AUTHORIZE THE ENTERING INTO OF AN AGREEMENT WITH 2354084 ONTARIO LIMITED AND ZEHR LEVESQUE INC.

WHEREAS the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended, authorizes the issuing of conditional building permits;

AND WHEREAS the Applicant has requested a conditional building permit (the "Conditional Permit") from the Township prior to meeting all requirements to obtain a building permit;

AND WHEREAS the Township's Chief Building Official is satisfied that the requirements for the issuance of a full building permit under subsection 8(2) of the *Building Code Act*, 1992, would unreasonably delay the proposed construction subject to the entering into of this Agreement;

NOW THEREFORE the Council of the Corporation of the Township of Puslinch enacts as follows:

1. **THAT** the Corporation of the Township of Puslinch enter into an Agreement with 2354084 Ontario Limited and Zehr Levesque Inc. with respect to the issuance of a conditional building permit.
2. **THAT** the Mayor and Clerk are hereby authorized to execute the said Agreement.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 23rd DAY OF JULY 2013.

Dennis Lever, Mayor

Karen Landry, CAO/Clerk

THE CORPORATION OF THE TOWNSHIP OF PUSLINCH

BY-LAW NUMBER 49/13

Being a by-law to confirm the proceedings of the Council of the Corporation of the Township of Puslinch at its meeting held on July 23, 2013.

WHEREAS by Section 5 of the *Municipal Act, 2001, S.O. 2001, c.25* the powers of a municipal corporation are to be exercised by its Council;

AND WHEREAS by Section 5, Subsection (3) of the *Municipal Act*, a municipal power including a municipality's capacity, rights, powers and privileges under section 8, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise;

AND WHEREAS it is deemed expedient that the proceedings of the Council of the Corporation of the Township of Puslinch at its meeting held July 23, 2013 be confirmed and adopted by By-law;

NOW THEREFORE the Council of the Corporation of the Township of Puslinch hereby enacts as follows:

- 1) The action of the Council of the Corporation of the Township of Puslinch, in respect of each recommendation contained in the reports of the Committees and each motion and resolution passed and other action taken by the Council at said meeting are hereby adopted and confirmed.
- 2) The Head of Council and proper official of the Corporation are hereby authorized and directed to do all things necessary to give effect to the said action of the Council.
- 3) The Head of Council and the Clerk are hereby authorized and directed to execute all documents required by statute to be executed by them, as may be necessary in that behalf and the Clerk authorized and directed to affix the seal of the said Corporation to all such documents.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 23th DAY OF JULY, 2013.

Dennis Lever, Mayor

Karen Landry, C.A.O./Clerk