



The Corporation of the Town of Pelham

**Forensic Review of East Fonthill Development Project
March 2014 to November 2017**

**Presentation at the Town of Pelham
Council Meeting - November 29, 2017**

Subject to Restrictions on Page 66



Overview

East Fonthill Development Project

- ✓ Introduction
- ✓ Scope of Review
- ✓ Limitations
- ✓ Background
- ✓ Timeline of Events
- ✓ Findings

Finances of the Town of Pelham

- ✓ Findings re September 5, 2017 contained in the report commissioned by Daniel & Partners LLP in contemplation of litigation with an identifiable individual and presented in a Closed Meeting

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Introduction

Introduction

KPMG Forensic retained on October 6, 2017 due to public concern over the East Fonthill Development Project (“EFDP”) transactions

- Price paid for land
- Issuance of Municipal Credits
- Buyback of the Municipal Credits
- Receive questions from the public and address them anonymously

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Scope of Review

Scope of Review

We were requested to undertake a review which included:

Reviewing and analyzing:

- Policies, By-laws or other legislation
- Communications and emails
- Documentation, including minutes, approvals, resolutions, appraisals, purchase and sale agreements, etc.
- Information questions, and/or documentation, as submitted by interested members of the general public to KPMG

Interviewing

- Employees of the Town of Pelham and
- Third parties that may have knowledge of the matters under review

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Interviews

Specifically, we have discussed this matter with, and received correspondence from the following representatives of the Town, and third parties:

Representatives of the Town:

- Barbara Wiens, Director of Planning & Development
- Charlotte Tunikaitis, Deputy Treasurer
- Darren Ottaway, Chief Administrative Officer
- Nancy Bozzato, Clerk
- Teresa Quinlin, Director of Corporate Services and Town Treasurer

Third Parties:

- Callum Shedden, Daniel & Partners LLP
- Sarah Draper, Daniel & Partners LLP
- David Allen, Fonthill Gardens
- Thomas Richardson, Sullivan Mahoney LLP

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Limitations

Limitations

Our report and analysis were limited for the following reasons:

- We have held no discussions with current or former elected officials or former employees of the Town
- We have not reviewed all documents of the Town for the entire period under review, March, 2014 to November, 2017
- We have been provided with minutes relevant to the matter under review. We have not reviewed all minutes of the Town for 2014 to 2017.

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Background

Background

East Fonthill Development Project:

- The Town adopted an Official Plan on April 2, 2012
- The Official Plan includes a secondary plan for an area known as East Fonthill (the “Secondary Plan”)
- As part of the Development of the EFDP - the Town entered into agreements with several companies, including Fonthill Gardens (“FG”)
- The Secondary Plan describes a Greenlands System, consisting of linked natural heritage features, public parks, trails and stormwater management facilities

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Background (contd.)

East Fonthill Development Project:

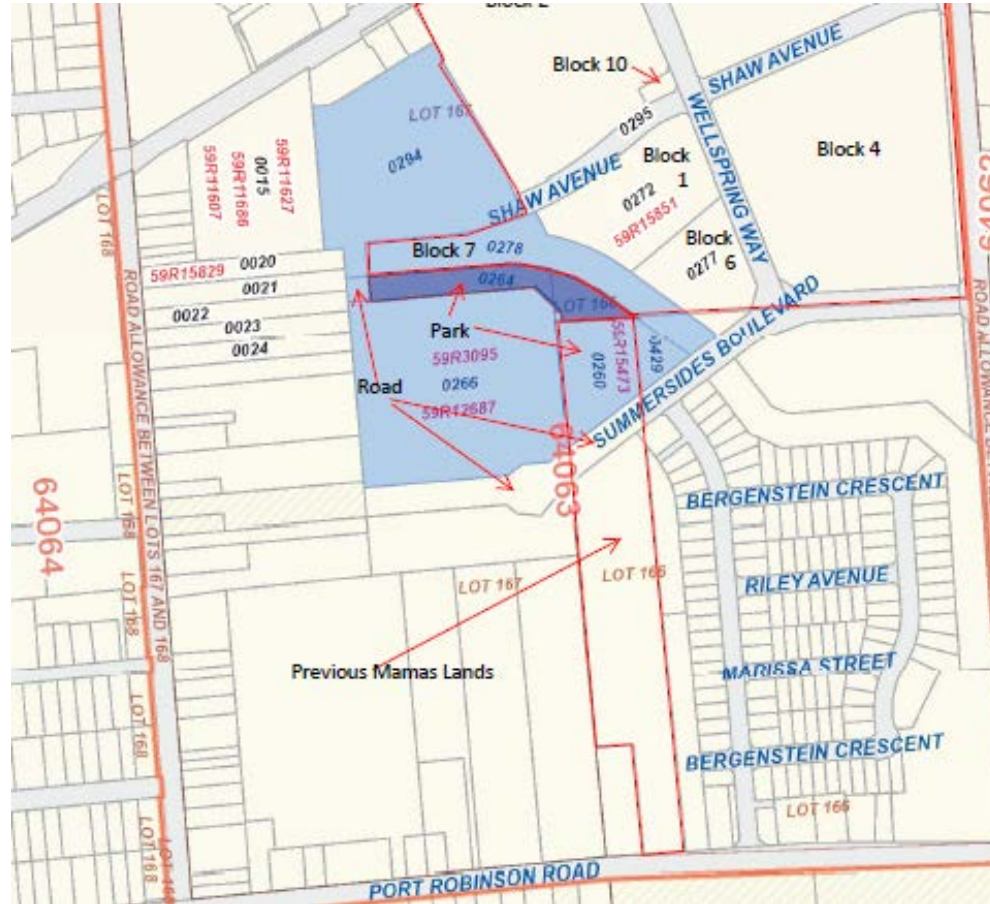
- The Town required excess park and road dedications from FG, in order to execute the Secondary Plan which required connection from the historic downtown to the East Fonthill lands and the acquisition of parkland for public use.
- The Town's development included planned construction of the Pelham Community Centre (the "Community Centre") with a budget of approximately \$36 million

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Excess Dedications: Timeline of Events

Ownership History of the Dedicated Lands



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Excess Dedications: Timeline of Events

March 31, 2005

Title for a parcel of land in East Fonthill is transferred to FG from Gardens Four Ltd. for consideration of \$3,625,092.

April 2, 2012

The Town Council adopts a new Official Plan which includes descriptions and drawings depicting planned land use in East Fonthill, including roads and parks

March 4, 2014

The Town CAO contacts Mamas to inquire about purchasing a portion of an 8.87 acre parcel of land, upon which the Town plans to build a road and park per the Official Plan.

Denise Mamas is unwilling to sell a portion of the land- only wants to sell all of the land.

March 4, 2014

The Town CAO contacts FG's owner David Allen, to inquire if he is interested in purchasing the Mamas land (to develop and transfer a portion to the Town).

Mr. Allen advised he would think about it and asked about the price

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Excess Dedications: Timeline of Events

April 24, 2014

The Town Treasurer engages an appraiser to appraise the Mamas land. The 8.87 acre parcel is appraised at \$1,800,000 as at April 24, 2014.

October 17, 2014

FG signs an Agreement of Purchase and Sale for the Mamas land which is extended two times.

February 25, 2015

The Town CAO sends a letter to David Allen to confirm understanding of the Town and FG re Mamas Land

FG will buy the Mamas land and dedicate park and road lands early, in exchange for credits with the Town.

Dedications are to be appraised per Parkland Dedication By-law (2005).

May 29, 2015

Title for the full 8.87 acres of Denise Mamas land is transferred to FG for consideration of \$1,789,555

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Excess Dedications: Timeline of Events

**September 8,
2015**

The Town Council signs a Parkland Dedication Agreement with FG. FG to grant 3.268 acres of parkland to the Town.

Terms consistent with the February 25, 2015 letter to David Allen.

1.729 acres of the parkland are (formerly) Mamas land.

**November 3,
2015**

The Mamas land is appraised at \$1,138,462 per acre

Assumption that the land is developed, and ready for issuance of building permits,

Consistent with the Parkland Dedication By-law.

**January 11,
2016**

The Town Council signs a Roadway Agreement with FG.

FG to grant road at a width that exceeds the municipal requirement of 22 metres.

Town will pay (via credits) FG \$300,000 per acre for excess road dedication.

A portion of the dedication is (formerly) Mamas land.

March 11, 2016

The Town Treasurer engages an appraiser to complete a peer review of the November 3, 2015 appraisal (of Mamas Land).

Value of \$1,024,615 per acre.

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Excess Dedications: Timeline of Events

March 21, 2016

**Council approves a negotiated value of \$1,118,582 per acre
Town to proceed with the acquisition of parkland in exchange for municipal credits**

August 22, 2016

**The Town Treasurer in a written report recommends Council to approve the payout of the outstanding credits in cash (w ST loan)
RE administrative burden and negative public perception of the use of credits.
Council instructs Town CAO to negotiate a discount. (slide 48)**

September 12, 2016

Titles for the excess road and park dedications are transferred to the Town

September 20, 2016

The Town pays FG \$3,027,618 for the balance of outstanding municipal credits

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KPMG Findings



East Fonthill

Development Project

East Fonthill Development Project

In the course of the EFDP, the Town entered into agreements with several companies, including those listed below:

- Parkland Dedication Agreement with FG dated September 8, 2015
- Roadway Agreement with FG dated January 11, 2016
- Subdivision Agreement with River Realty dated August 22, 2016 for the purpose of developing an area within East Fonthill
- Subdivision Agreement with FG dated September 19, 2016 for the purpose of developing the East Fonthill commercial area

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Parkland Dedication Agreement

Parkland Dedication Agreement

Certain relevant terms of the Parkland Dedication Agreement are summarized below:

- *FG agreed to grant parkland to the Town which exceed the requirements of the Planning Act*
- *The Town agreed to credit FG for an amount equal to the excess dedications (the “Credits”)*
 - *Credits could be used to satisfy the payment of:*
 - *any fees,*
 - *costs and*
 - *other amounts including any parkland dedication fees, development charges and application fees*

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Parkland Dedication Agreement

Certain relevant terms of the Parkland Dedication Agreement are summarized below:

- *FG had the right to assign, all or any portion of, the Credits to any one or more developer or builder according to its discretion.*
- *The Assignees were entitled to use the Credits to satisfy any Municipal Payments in the same manner as FG under this Agreement.*
- *FG agreed to provide the particulars of Credits assigned.*

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Parkland Dedication Agreement

Certain relevant terms of the Parkland Dedication Agreement are summarized below:

The Town would determine the value of dedications by using an appraisal that values those lands as of the day before the issuance of building permits.

Fonthill Gardens would:

- (i) prepare a draft plan depicting the Municipal Lands for purposes of the appraisal;*
- (ii) pay for the appraisal and select an appraiser subject to the approval of the Town*

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New Parkland Dedication By-law

The Town Enacted a new Parkland Dedication By-law on June 1, 2015

We understand:

- *This by-law repealed the previous Parkland dedication By-law (2005)*
- *The new By-law was enacted in response to changes to the Planning Act*
- *It was not a result of and had no impact on the Parkland Dedication Agreement*
- *The intent of valuing excess parkland dedications “as of the day before the day of issuance of a building permit” is to compensate the developer for their opportunity cost*

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Roadway Agreement

Roadway Agreement

Certain relevant terms of the Roadway Agreement are summarized below:

- *FG agreed to grant roadway to the Town of a width which exceeded the municipal standard (22 metres)*
- *As with the excess parkland dedication:*
 - *the Town agreed to credit FG for an amount equal to the excess dedication (the “Credits”)*
 - *Credits could be used to satisfy payments to the Town*
 - *FG had the right to assign, all or any portion of, the Credits to any one or more developer or builder according to its discretion.*
- *The value of the excess dedication was based on a formula of \$300,000 per acre*

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Appraisal of Excess Parkland Dedication

Appraisal of Mamas Land

An appraisal was completed by Ridley & Associates Appraisal Services Limited (“Ridley”) as at April 24, 2014 indicated:

- the value was \$1.8 million

We understand

- The land had an area of 8.87 acres, or approximately \$203,000 per acre
- Current zoning was agricultural in nature
- The appraisal was performed on behalf of the Town
- The appraisal was provided to FG and formed the basis of their purchase price of the property
- A portion of the excess dedications originated from the Mamas Land

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Appraisal of Excess Parkland Dedication

An appraisal was completed by MacKenzie Ray Heron and Edwardh (“MRHE”) as at November 3, 2015 which indicated

# of Lots	\$/Lot	Indicated Value
148	\$60,000	\$8,880,000
Rounded To		\$8,900,000

We understand the following:

- The unit rate per acre was \$1,141,025 (based on 7.8 acres)
- The appraisal was commissioned to establish the value of the excess parkland dedication in accordance with the Parkland Dedication Agreement,
- This formed the basis of the extraordinary assumption to value the land as if there were 148 fully serviced lots *“as of the day before the day of issuance of a building permit”*

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Appraisal Peer Review

A Town commissioned Ridley to peer review the MRHE appraisal which was received on March 11, 2016

- It suggested a value of \$54,000 per lot (\$1,024,615 per acre) would be more appropriate

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Negotiated Value

- Based on the MHRE and Ridley Peer review, FG agreed to the mid-point between the two of \$57,000 per lot (\$60,000 and \$54,000)
- This implies a unit rate per acre of \$1,081,538
- This unit rate was used to determine municipal credits that would become available upon conveyance of the park dedications
- The Town anticipates the value will be similar when parkland dedication fees are paid to the Town when adjoining lands are developed, including FG lands

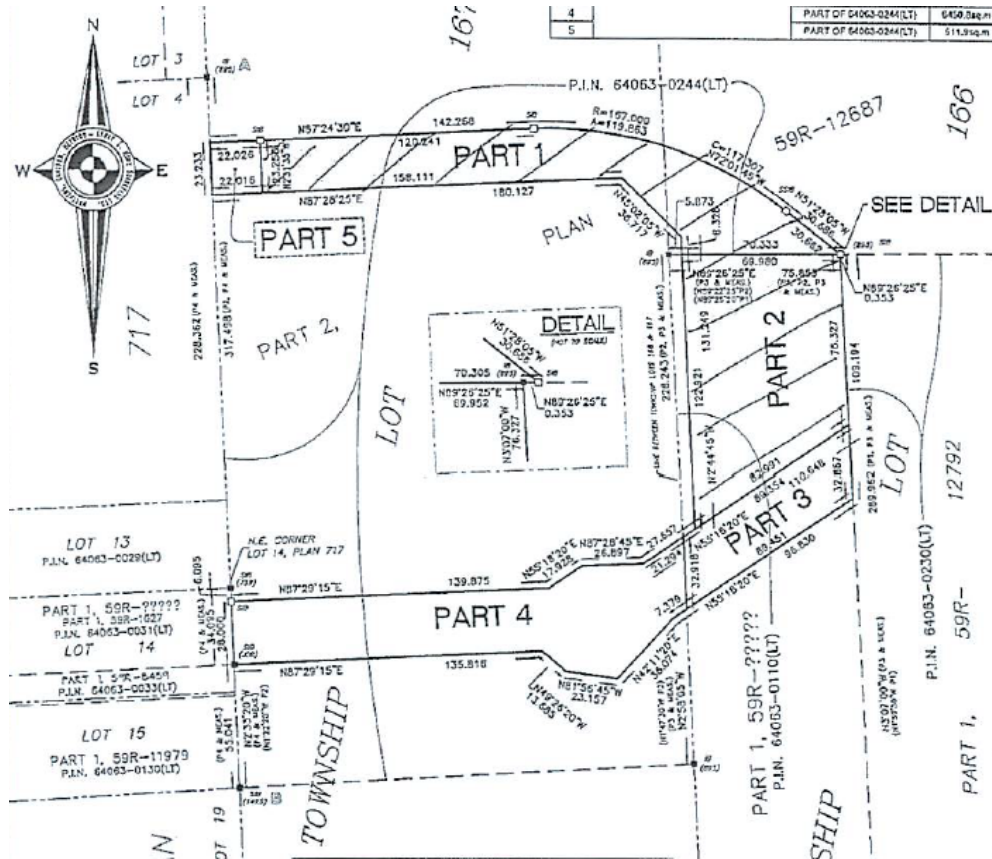
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Ownership History of the Dedicated Lands

Ownership History of the Dedicated Lands

The excess road and park dedications by Fonthill Gardens consist of 5 part parcels of land:



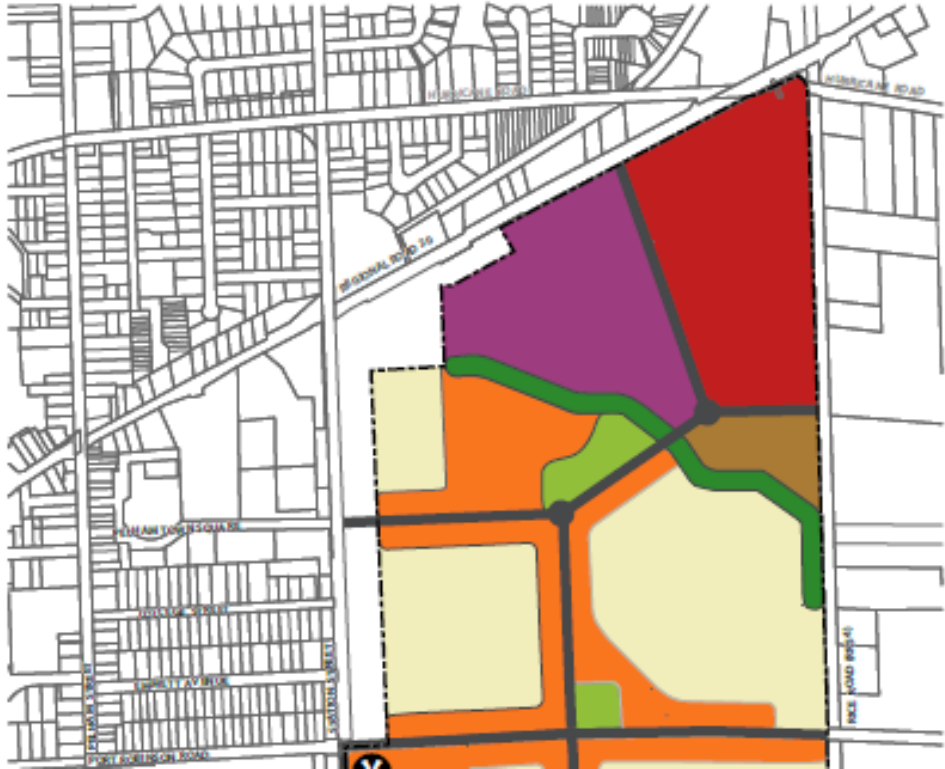
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Ownership History of the Dedicated Lands

EAST FONTHILL SECONDARY PLAN AREA SCHEDULE 'A5' - LAND USE PLAN



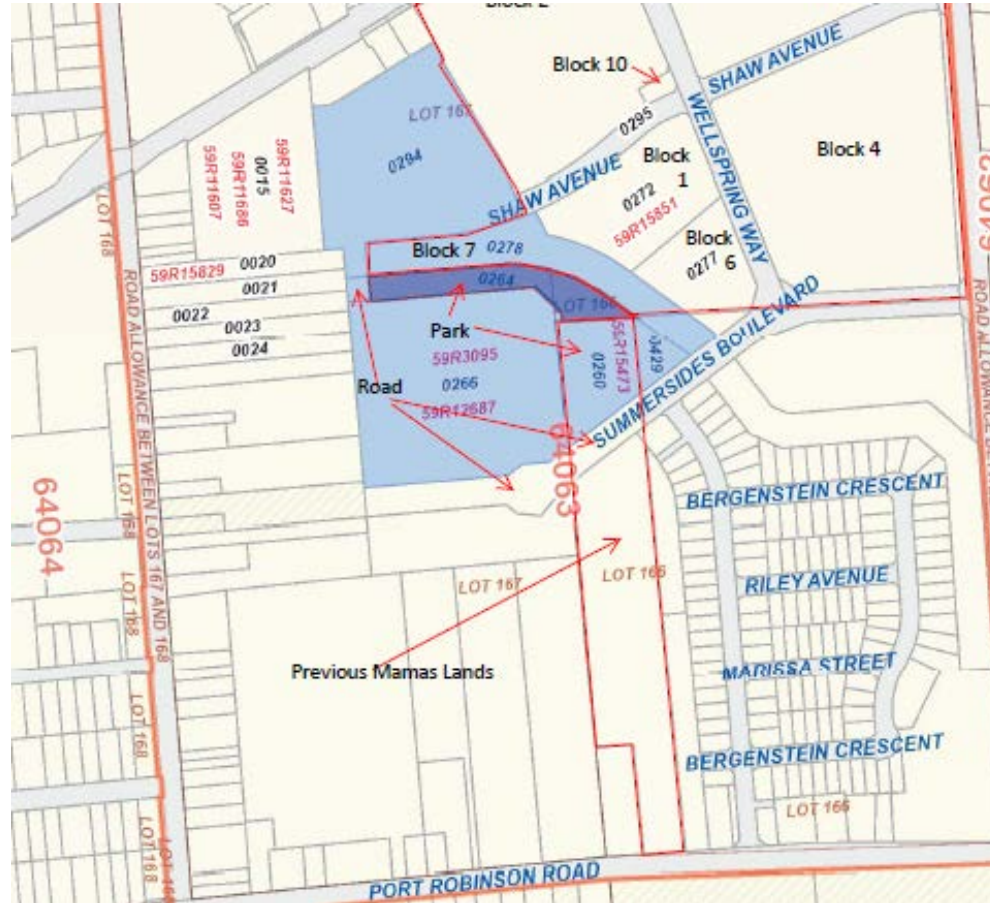
MARCH 11, 2014



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Ownership History of the Dedicated Lands



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Ownership History of the Dedicated Lands

Fonthill Gardens Acquisition

The Parts were acquired by Fonthill Gardens in two separate transactions as follows:

- Part 1, 4 & 5 were included in a sale of land to FG by Gardens Four Ltd. on March 31, 2005, for consideration of \$3,625,092
- Part 2 & 3 were included in a sale of land to FG by Denise Mamas on May 29, 2015, for consideration of \$1,789,555

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Ownership History of the Dedicated Lands

Town Acquisition

We understand the following:

- The Town assumed title of the excess dedications by FG on September 12, 2016
- At that time, the municipal credits equal to the excess dedications were to become payable to Fonthill Gardens

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Municipal Credits

Municipal Credits – Excess Parkland

The Parkland Consists of Part 1 & 2 with a total area of 3.268 acres.

- The consideration (municipal credits) for the excess parkland dedication would appear to be the negotiated unit rate per acre multiplied by the area as follows:
 - $\$1,081,538 \times 3.268 \text{ acres} = \$3,534,468$ (municipal credits)

Part 2, originating from Mamas Land had an area of 1.729 acres

- The consideration (municipal credits) of the parkland originating from Mamas land would appear to be as follows:
 - $\$1,081,538 \times 1.729 = \$1,869,979$ (municipal credits)
- The Town provided municipal credits of approximately \$80,000 more for 1.729 acres than FG paid for the entire 8.87 acres of the Mamas Land. This resulted from the different basis from which the land was appraised.

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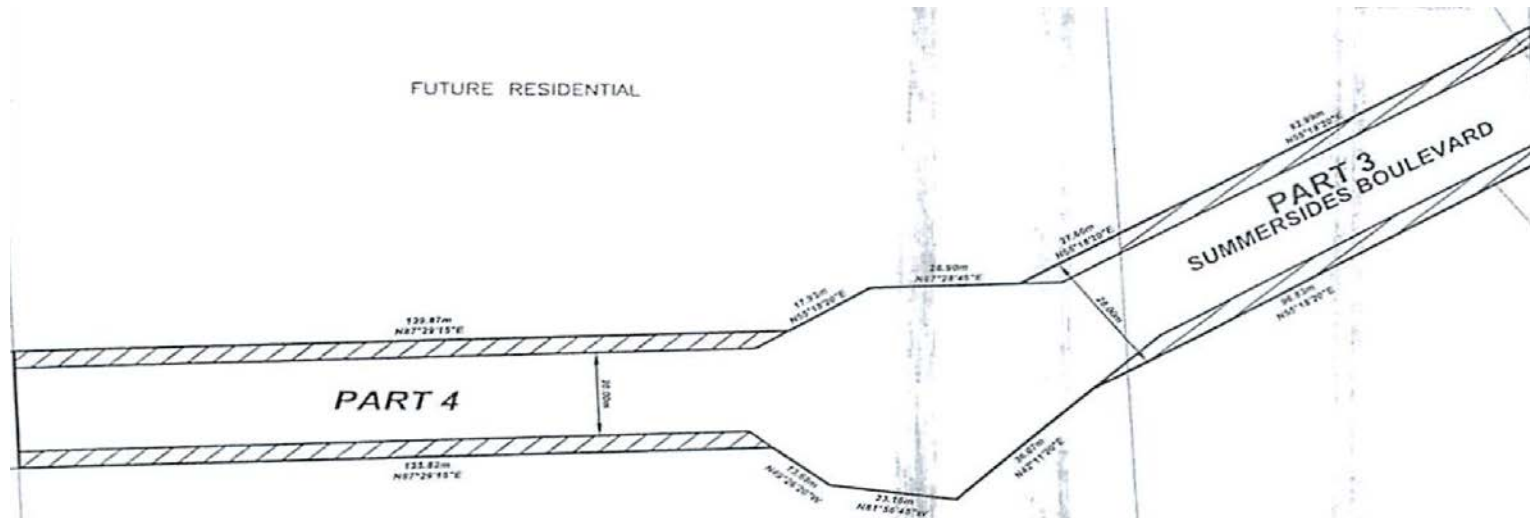
Municipal Credits – Roadway

The excess roadway consists of a 6 metre wide “row” on Part 3 & 4, (excluding the roundabout)

- The consideration (municipal credits) for the excess roadway dedication would appear to be the \$300,000 rate per acre multiplied by the area of the “rows”.
- We understand:
 - The “row” area was determined to be 0.4586 acres
 - Based on the number of calculated acres, the value was calculated by the Town to be approximately \$137,587
- We noted, the 0.4586 acres was miscalculated by a third party consultant, resulting in an overpayment of approximately \$33,000 to FG which will be refunded to the Town

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Municipal Credits - Roadway



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Transfer of Municipal Credits

Transfer and Use of Municipal Credits

We understand the following:

- The municipal credits available to FG would have exceeded their needs
- FG solicited developers to purchase its municipal credits at a discount of 5%
- FG provided particulars of the transfers to the Town
- There was a disagreement between the Town Treasurer and FG with respect to eligible use of Municipal Credits
- Sale of municipal credit by FG's consultant appeared to raise public concern
- Two developers ultimately purchased municipal credits with a value of approximately \$44,000
- FG used municipal credits of approximately \$541,000
- These were used prior to the conveyance of the excess dedication lands to the Town, September 12, 2016
- The Town's lawyers confirmed to FG that no further transfer of credits were permitted until the Town received transfer of the land

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Payout of the Fonthill Gardens Municipal Credits

Payout of the FG Municipal Credits

August 22, 2016, in a Council Report – Town Treasurer recommended, “that Council approve staff to proceed with a short-term loan in an amount no higher than \$3,500,000 for payment to Fonthill Gardens for the value of Parkland over dedication within the East Fonthill Lands”.

We understand the Town Treasurer recommended the Payout for the following reasons:

- Unanticipated burden of administration to track transfers
- Use of FG municipal credits by other developers would reduce cash flow
- Paying out the credits with a financial instrument would make cash flow from developers more predictable

Council instructed the CAO to negotiate a discount on potential payout to FG

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Payout of the FG Municipal Credits

September 19, 2016 – meeting - Council directed the CAO to proceed with the payout.

We understand the following:

- Town CAO negotiated a discount of 2% on balance of credits to be paid out
- Town Treasurer indicated to Council it would not need to borrow to finance the payout, it could be funded internally

On September 20, 2016 \$3,027,618 was paid to FG by EFT from Town's operating bank account

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Accounting for Excess Dedications

Accounting for Excess Dedications

The net impact on the December 31, 2016 Financial Statements is as follows:

Table			
Accounting for Excess Dedication of Parkland & Roadway (Net Impact)			
Description	Asset	Liability	Revenue
Land	\$ 3,612,429	-	-
"Receivables - FG PkInd Overdedication"	3,612,429	-	-
Bank	(3,027,618)	-	-
Security Deposits	-	12,000	-
Deferred Revenue - Development Charges	-	563,525	-
Fees - Rezoning Amendment	-	-	5,186
Fees - Plan Application	-	-	4,100
Debenture / Unfinanced Capital	-	-	137,587
Contributed TCA (tangible capital assets)	-	-	3,474,842
Total	\$ 4,197,240	575,525	3,621,715

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Contributed Tangible Capital Assets

For the year ended December 31, 2016, the balance of the contributed tangible capital assets was \$4,928,757. This consisted of the following:

- The accounting for excess dedications by FG of \$3,474,842
- The excess stormwater management pond dedication by River Realty of \$1,453,915

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Compliance - Town By-laws & Municipal Legislation

Town By-laws & Municipal Legislation

From our discussions with Daniel & Partners LLP, we understand the following:

- The Parkland Dedication Agreement is not subject to the Development Charges Act. Therefore it does not contravene Section 38 to 41 (Credits) or 44 (Front-ending agreements) as questioned by the public
- The Municipal Act contains specific legislation to deal with the issuance of debt. However, since FG could not compel the Town to pay out the credits under the agreement, the credits do not constitute debt
- The Town had broad authority to enter into the agreement so long as it did not contravene any portion of the Municipal Act

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Findings RE:

September 5, 2017

Report

Closed Meeting



Financial condition of the Town

Financial condition of the Town

- The Town went from a net financial assets position of \$4.1 million in 2008 to a net debt of approximately \$13.7 million in 2016.

Consolidated Statement of Financial Position									
As at December 31									
Actuals	2008	2009	2010	2011	2012	2013	2014	2015	2016
Financial Assets	14,108,693	12,954,298	10,329,586	10,713,134	9,160,993	9,274,078	9,232,416	9,636,156	24,174,422
Liabilities	10,006,318	10,499,560	13,565,915	13,526,204	10,907,043	11,567,955	16,695,495	18,862,355	37,915,261
Net Financial Assets / (Net Debt)	4,102,375	2,454,738	(3,236,329)	(2,813,070)	(1,746,050)	(2,293,877)	(7,463,079)	(9,226,200)	(13,740,839)

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Debentures and the Annual Repayment Limit

Debentures and the Annual Repayment Limit

As at December 31, 2016 the balance of debentures issued and outstanding by the Town was \$21.3 million

- ***Annual Repayment Limit***

- the Municipal Act is applicable to the issued and approved long-term debt
- The Limit is calculated by the Ministry of Municipal Affairs annually
- Estimated annual repayment effective January 1, 2017 was \$3 million

- ***Additional long term borrowing capacity***

- \$37.6 million as at December 31, 2015 (at 5% annually, with an amortization period of 20 years)

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Debentures and the Annual Repayment Limit

- **Debentures Issued**

- Since December 31, 2015, \$27 million in debentures were issued as follows:
 - \$9,066,166 in respect of the Pelham Community Centre (2016)
 - \$5,750,000 related to Fenwick & Pt Robinson (2016)
 - \$12,138,592 in respect of the Pelham Community Centre (2017)

- **Debentures Approved (but not issued) (Not Debt)**

- At the time we understood debentures that had been approved by Council but not issued as at July 21, 2017 included the following:
 - \$17,228,147 of various debentures for various projects – we understand this has now been updated to approximately \$9.9 million
 - \$14,795,257 for the Pelham Community Centre, to be issued in July 2018 if needed to fund the project prior to other project revenues being received

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Ministry of Municipal Affairs: Financial Indicator Reviews

Ministry of Municipal Affairs: Financial Indicator Reviews

The indicators illustrate levels of financial challenge of the municipalities

Table 2

Summary of Pelham Financial Indicator Reviews

Indicator	Year	Level of Challenge	
		Pelham	South - LT Regions - Non-Rural
Net Financial Assets or Net Debt as a % of Own Purpose Taxation Plus User Fees	2014 & 2015	Moderate	Low
Total Reserves and Discretionary Reserve Funds as a % of Operating Expenses	2014	Moderate	Low
Debt Servicing Cost as a % of Total Operating Revenue	2011 to 2015	Moderate	Low
Total Cash and Cash Equivalents as a % of Operating Expenses	2011 to 2015	High	Low
Net Working Capital as a % of Total Municipal Operating Expenses	2010, 2012 & 2013	Moderate	Low
	2011, 2014 & 2015	High	Low
Asset Consumption Ratio	2009 to 2015	Moderate	Moderate

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Reserves, reserve
funds and deferred
revenue

Reserves, reserve funds and deferred revenue

Table 3

Deferred revenue, reserves and cash balances

As at December 31

		2015	2016
Deposits and deferred revenue	\$	157,698	1,864,319
Deferred revenue - obligatory reserve funds		1,932,489	3,398,984
Reserve and reserve funds		4,695,956	5,828,384
Total	\$	6,786,143	11,091,687
Cash and temporary investments		554,430	9,324,711
Less: Pelham Community Centre Debenture		-	(9,066,166)
Adjusted cash and temporary investments		554,430	258,545
Bank indebtedness	\$	(3,350,000)	(1,800,000)

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Restrictions

Restrictions

This is not meant to represent a KPMG Report, rather it is a presentation to the Town of Pelham Council of the summary of our findings with respect to our engagement dated October 6, 2017 arising from public concerns regarding certain transactions related to the East Fonthill Development Project as well as findings from a report commissioned by Daniel & Partners LLP as presented at an in-camera meeting on September 5, 2017. It is not intended for general use, circulation or publication outside of this presentation. For the avoidance of doubt, our presentation may not be disclosed, copied, quoted or referred to in whole or in part, whether for the purposes of litigation, disciplinary proceedings or otherwise, without our prior written consent in each specific instance.

We will not assume any responsibility or liability for any costs, damages, losses, liabilities or expenses suffered by the Town of Pelham or its Council as a result of circulation, publication, reproduction, use of or reliance upon our presentation contrary to the provisions of this section. We will not assume any responsibility or liability for any costs, damages, losses, liabilities, or expenses incurred by anyone else as a result of circulation, publication, reproduction, use of or reliance upon our presentation. Comments in our presentation are not intended, nor should they be interpreted to be, legal advice or opinion.

We have relied upon the completeness, accuracy and fair presentation of all the information obtained (the "Information"). Our findings are conditional upon the completeness, accuracy and fair presentation of such Information. Subject to the exercise of professional judgment, KPMG has not audited or otherwise independently verified the accuracy or fair presentation of any of the Information. Should additional information be provided to us after the date of this presentation, we reserve the right, but will be under no obligation, to review this information and adjust our presentation and calculations.

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