

The Corporation of the City of Kenora

By-law Number 156 - 2015

A By-law to amend a site plan agreement between The Corporation of the City of Kenora and 6676961 Manitoba Inc. (Tall Pines Marina)

Whereas section 41(2) of the *Planning Act* enables a municipality where in an official plan an area is shown or described as a proposed site plan control area, the council of the local municipality in which the proposed area is situate may, by by-law, designate the whole or any part of such area as a site plan control area; and

Whereas section 41(4)(e) enables a municipality to approve plans for the sustainable design elements on any adjoining highway under a municipality's jurisdiction, including without limitation trees, shrubs, hedges, plantings or other ground cover, permeable paving materials, street furniture, curb ramps, waste and recycling containers and bicycle parking facilities, if an official plan and a by-law passed under subsection (2) are in effect in the municipality; and

Whereas the lands shown and described on Schedule A, are designated pursuant to the City of Kenora Official Plan as being subject to site plan control; and

Whereas 6676961 Manitoba Inc. (Tall Pines Marina) has submitted to the City of Kenora an amendment (A0.1 Rev 7 July31/15) to a site plan for those lands described in Schedule A and the City of Kenora has approved such plan subject to entering into a Site Plan Agreement.

Now Therefore the Corporation of the City of Kenora enacts as follows:

1. That the Mayor and the Clerk be and they are hereby empowered to execute the Agreement attached.
2. That this By-Law shall come into force and be in effect from and after the final passing thereof.

By-law read a First & Second Time this 20th day of October, 2015

By-law read a Third & Final Time this 20th day of October, 2015

The Corporation of the City of Kenora:-

David S. Canfield, Mayor

Heather Kasprick, City Clerk

Site Plan Development Agreement

THIS AGREEMENT made this 20th day of October, 2015.

BETWEEN:

**6676961 MANITOBA INC.
(hereinafter called the "Owner")**

OF THE FIRST PART,

-and-

**THE CORPORATION OF THE CITY OF KENORA
(hereinafter called the "Municipality")**

OF THE SECOND PART,

Whereas the Owner represents that it is the registered owner of the lands described in Schedule "A" annexed hereto, which lands are hereinafter referred to as the "Lands";

And Whereas the Owner has obtained approval from the Council of the City of Kenora;

And Whereas this Agreement has been entered into pursuant to Section 41 of the Planning Act, 1990;

And Whereas sub-section 10 of Section 41 of the Planning Act, R.S.O. 1990, c P. 13, provides for the registration of Site Plan Development Agreements on the title of the Lands;

And Whereas the execution of this agreement was authorized by By-Law No. 53-2014;

Now Therefore This Agreement Witness that in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties hereto hereby covenant and agree as follows:

1. Prohibition

The Owner hereby agrees that no development or re-development will proceed or take place on the Lands except as shown on plans, drawings and specifications approved by Council of the Municipality or the staff who have been delegated the authority to approved said plans (hereinafter referred to as the "Site Development Plans"), and without limiting the generality of the foregoing, development or redevelopment shall include the construction, erection or placing of one or more buildings or structures on the Lands or the making of or an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof, or the laying out and establishment of a commercial parking lot, or the construction, erection, installation or placement on the lands of any loading spaces, parking areas, garbage container areas, landscaping, alteration of the natural landscape, lighting, drainage facilities, access driveways or fencing. Amendments to the Site Development Plans as construction progresses will be reasonably approved by the Municipality.

2. Conditions

The Owner hereby agrees that the following conditions apply to the Municipality Approval contained in this Agreement:

~~a) The temporary placed ATCO Trailer for use for the commercial marina purposes pending construction of a proposed marina building will be removed on or before October 31, 2014; Intentionally deleted~~

i. The temporarily placed ATCO trailer (October, 2015) shown on Schedule A to this agreement, for use for the commercial marina/staff purposed pending the construction of a proposed show room and service shop will be removed within thirty (30) days of the issuance of an occupancy certificate (Per Section 18), for either the proposed show room and/or the proposed service shop, as required;

ii. The temporarily placed, fabric covered Quonset huts, shown on Schedule A to this agreement, for use for outdoor servicing will be removed within seven (7) days of the issuance of an occupancy certificate (Per Section 18), for either the proposed show room and/or the proposed service shop, as required;

b) The Owner agrees to the following timeline with respect to the removal of interim septic system tank facilities and temporary connections that service the temporary buildings:

i. The Owner agrees to advise the Municipality as to the method of water and sewer servicing to be used for the property on or before June 15, 2015. The nature of the service options under consideration are Municipality water and sewer services or, in the alternative, an environmentally sustainable system approved by the Ministry of Environment.

ii. The Owner agrees to complete the connection to the services chosen under section 2b)i. to this Agreement as soon as practicable, but within a period not to exceed two (2) years from the date that the Owner advises the Municipality of the determined service option. With respect to the selection of an alternative environmentally sustainable system approved by the Ministry of Environment, connection shall include construction of the system and completion of the related installation.

iii. The Owner agrees to remove the interim septic system tank facilities and temporary connections following the connection of the chosen services as soon as practicable, but, not in any event to exceed one (1) year from the date the complete services are first available.

3. Conformity with Site Development Plans and Conditions

The Owner further agrees that if any structures, buildings, facilities, services, works or landscaping improvements are constructed or altered on the Lands and Boulevard, they will be constructed in conformity with the Site Development Plans contained in Schedule "B", attached hereto. It is understood and agreed that if construction is not commenced within one year of the approval or any part thereof by the Council of the Municipality of the Site Development Plans, such approval shall at the option of the Municipality become null and void and Site Development Plans must be re-submitted to the Municipality for approval pursuant to the terms of this Agreement and in accordance with the provisions of the Planning Act, R.S.O. 1990, c P. 13]. In such event, the Owner hereby acknowledges that the Municipality may alter, amend or revoke any or all of the conditions of approval previously given and substitute new conditions of approval.

4. Completion

The Owner agrees that he shall construct and provide the structures, buildings, facilities, service or works shown on the Site Development Plans within three (3) years of the approval by Council of the Site Development Plans. The Owner may, at its discretion, elect not to construct any or all of the facilities forming part of "Phase 3" as shown on the Site Development Plans.

5. Construction

a) The Owner shall undertake all construction activity on the Lands in such a manner so as not to unreasonably interfere with adjoining lands or traffic on adjacent streets. The Owner shall control all dust, mud and debris resulting from any construction activities and remove the same promptly from any municipal catch basin, manhole, sewer, ditch, culvert, roadway, boulevard or sidewalk. The Owner shall reimburse the Municipality for any damage to any municipal services, facilities or works resulting from the development or re-development of the Lands, howsoever caused and the reasonable determination of the City Manager of Operations with respect to whether or not said damage was caused by the Owner or with respect to the extent of the damage shall be final and binding on all parties.

b) The Owner agrees that the Municipal approval with respect to the westerly driveway for access and egress both for permitted right and left hand turns shall be in effect for one year from July 1, 2014 to June 30, 2015. After the expiration of the one year, or at any time before if reasonable concerns are identified by the Municipality because of incidents indicating that the westerly access is unsafe, the Owner and the Municipality will meet to review the situation with respect to maintaining the status of that westerly driveway for access and egress. If a mutually agreeable resolution is not reached, the Municipality and the Owner will engage a mutually acceptable traffic engineer to determine if the use of the westerly driveway is unsafe in any material respect and, if so, to recommend a reasonable course of action to alleviate such unsafe conditions. The Municipality and the Owner, acting reasonably, shall proceed to implement such course of action, the costs of which shall be shared equally, provided that if the implementation of such course of action, including the cost thereof, is more than the Owner is prepared to do, the Owner may decide to discontinue use of the westerly driveway for ingress and egress. In no event shall use of the westerly driveway be discontinued while the foregoing process is being undertaken unless there is a clear and obvious material damage to the public from its continued use. The cost of the traffic engineer's services to be shared equally by the Municipality and the Owner.

In the event that the westerly driveway use is discontinued then at the Owner's expense boulders will be installed to affect the use discontinuance.

In the event the second phase proceeds (being the retail sales office and display building/development labelled "Phase 2" on the site plan which forms Schedule 'B') there will be a further one year trial period from the commencement of that operation on the same terms and conditions as the first trial period as specified above, which shall be handled in the same way as the initial trial period. Final approval therefore is only available once the trial periods have been successfully passed.

6. Maintenance

The Owner shall maintain in good repair and in a safe and clean condition the Lands and Boulevard, vegetation, structures, buildings, facilities, services, works and landscaping on the Lands and Boulevards at his own expense and shall do all acts necessary to comply with and properly carry out and provide for the maintenance and use thereof, including the replacement or repair of broken, damaged or worn material or parts and the replacement of dead or deceased vegetation. The Owner shall further keep the Lands and Boulevard free and clear of all refuse, debris and obstructions.

7. Connections to Municipal Services

- a) ~~All connections to the Municipality's storm sewers/water mains/sanitary sewer mains shall be made in accordance with the terms of a separate development agreement to be negotiated.~~ Intentionally deleted
- b) The Owner shall provide the Municipality an easement six (6) metres in width – three (3) metres on each side measured from the middle of the pipe for municipal sewer and water for access to the westerly shoreline of Cameron Bay as set out in the Site Plan attached hereto as Schedule “B”, as amended ~~subject to the Owner and Municipality reaching agreement on the terms of the separate development agreement referred to in paragraph (a) as set out above.~~ Intentionally deleted
- c) Application fees associated with municipal sewer and water connection will be waived.

8. Building or Demolition Permits

Notwithstanding the provisions of this Agreement, the Owner hereby acknowledges that the Municipality is not obligated to issue any building permits or demolition permits or grant any other permits or consents with respect to any development or re-development on the Lands unless:

- a) all federal, provincial and municipal statutes, regulations, by-laws, ordinances, orders and requirements have been complied with;
- b) any other agreements with any other governmental body or agency are not in default; and
- c) all property taxes with respect to the Lands have been paid in full.

In the event the development or re-development of the Lands herein contemplated requires any other municipal or other governmental approvals, including but not limiting the generality of the foregoing, a building permit, a consent for a severance or rezoning or a variance pursuant to the provisions of the Planning Act, 1990, (as amended), a permit for access, ingress or egress, approvals pursuant to the provisions of the Environmental Assessment Act, (as amended) or the Environmental Protection Act (as amended), the approval of the Medical Officer of Health, having jurisdiction, or the approval of any other governmental body or agency, then in such event the Owner hereby agrees not to commence any work on the Lands or demolish or alter any structures on the Lands unless all such approvals, permits or rezoning have been obtained.

9. Landscaping

The Owner shall install and maintain such landscaping improvements on the Lands as shown on documents already provided to the Municipality. The Owner shall use reasonable efforts to cause all approved landscaping to be maintained in a healthy and growing condition at all times.

10. Hydro

The Owner shall, at its sole cost, comply with the requirements of Kenora Hydro and KMTS where applicable, including bearing the cost of the relocation of existing hydro facilities if applicable.

11. Costs

The Owner shall pay to the Municipality, forthwith upon demand, all costs and expenses incurred by the Municipality, whether directly or indirectly, in connection with this Agreement and the approval of any Site Development Plans.

12. Owner's Expense

The Owner acknowledges that where this Agreement obliges the Owner to perform any work or do anything it is to be done at the Owner's expense and not at the Municipality's expense.

13. Registration

The Owner hereby consent to the registration of this Agreement on the title of the Lands and are responsible for said costs, per section 14.

14. Indemnification by Owner

The Owner shall indemnify and save harmless the Municipality against all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly by reason of this Agreement or the Owner undertaking the development or re-development herein referred to.

15. Right of Entry

The Owner covenants and agrees with the Municipality to grant and hereby grants to the Municipality or its authorized representatives the right to enter upon the Lands or any part thereof in order to ascertain whether or not the provisions of this Agreement have been complied with in full.

16. Default

In the event of any default by the Owner pursuant to any of the terms of this Agreement, which is not remedied within thirty (30) days of Owner's receipt of notice of default, in addition to any other remedies available to the Municipality and without any limitation thereof, the Municipality may:

- a) undertake or complete any obligation of the Owner hereunder;
- b) enter upon the Lands through its servants or agents for any purpose whatsoever;
- c) issue a stop work order with respect to any further development, re-development or work upon the Lands; and
- d) recover from the Owner all costs and expenses incurred by the Municipality whether directly or indirectly, with respect to the default or the remedy thereof.

17. Drainage

The Owner shall not take any action or cause any work to be done that will adversely affect drainage from or onto properties adjoining the Lands, and the Owner shall with the prior approval of the Municipality, at the Owner's expense, construct such drainage works as may be required. Notwithstanding the aforesaid, the Owner shall indemnify

and save harmless the Municipality with respect to drainage from or onto lands adjoining the Lands as a result of the development or re-development hereby contemplated and the construction of any works, facilities or structures on the Lands.

18. Occupancy

- (a) The Owner covenants and agrees that there shall be no occupancy of the temporary ATCO building until all the interim septic tank facilities and temporary connections have been installed pursuant to Northwestern Health Unit specifications.
- (b) Prior to the issuance of a final Occupancy Certificate the Owner shall complete the following:
 - (i) Application for occupancy permit;
 - (ii) All internal lighting, fencing and landscaping;
 - (iii) The submission of "As Built" lot grading drawings to ensure that the site has been developed in accordance with the approved site plan.

19. Successors and Assigns

The parties hereto hereby covenant and agree that this Agreement shall be binding upon them, their respective heirs, executors, administrators, successors and assigns.

20. Invalidity

If a Court of competent jurisdiction should declare any section or part of a section of this Agreement to be invalid or unenforceable, such section or part of a section shall not be construed as being an integral part of the Agreement or having persuaded or influenced a party to this Agreement to execute the same, and it is hereby agreed that the remainder of the Agreement shall be valid and in full force and effect.

21. Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute but one and the same instrument.

22. Interpretation

In construing this Agreement, words in the singular shall include the plural and vice versa and words importing the masculine shall include the feminine, and neuter and vice versa, and words importing persons shall include corporations and vice versa. In the event of any conflict or ambiguity in the Site Development Plans or Schedules to this Agreement, the decision of the Clerk of the Municipality shall be final and binding. In the event of conflict between the main body of this Agreement and the Schedules attached hereto, the provisions in the schedules attached hereto shall apply.

23. Notice

All notices, demands or requests provided for or permitted to be given pursuant to this Agreement shall be made in writing as follows:

- a) If made to the Municipality, shall be addressed to The Clerk, City of Kenora;

b) If made to the Owner at its designated address for service shown on the Document General attached to this Agreement in the Registry Office in which this Agreement is registered.

All notices, demands or requests shall be deemed to have been properly given if delivered personally or sent by prepaid and registered mail, return receipt requested. If notice is given by mail, the same shall be effective five (5) business days of being deposited with the post office, or upon proof of delivery by return receipt. However, in the event of the interruption of postal services, the notice shall not be deemed to have been given during such period of interruption, unless the notice has been actually received.

In Witness Whereof, the individual parties hereto have hereunto set their hands and seals and the Corporate parties have hereunto affixed their Corporate Seal as attested to by the hands of their proper officers in that behalf duly authorized.

SIGNED, SEALED AND DELIVERED
Authorized to be executed by By-law
passed on the 20th day of October, 2015

) THE CORPORATION OF THE CITY OF
KENORA

) David S. Canfield, Mayor

) Heather L. Kasprick, City Clerk

"We have the authority to bind the
Corporation"

) 6676961 MANITOBA INC.

) Blain King - President

"I have the authority to bind the Corporation"

Schedule "A"

PIN: 42161-0654, Firstly: Cameron & Kennedy's Mill Location Kenora that portion of land patented as Mill Location at Norman as in LT3546; Secondly: Pt Cameron Kennedy's Mill Location Kenora; Thirdly: Pt Mill Reserve Plan M12 situate at Norman as in LT1161 & PA435 EXCEPT LT26601, PI M248, LT31474, LT32082, LT1934, PI M49, LT3546, LT8077, LT8292, LT31474, LT31717, LT31828, LT31935, LT32235, LT32236, LT 32506 EXCEPT LT34380, LT35410, LT73849, Pt, KR967, Pts 1 & 2, 23R7664 & Pt 1, 23R9413; T/W PA435; City of Kenora, District of Kenora

