Recommendation: THAT Council of the Corporation of the Town of Smiths Falls repeals By-law 10134-2020 and adopts a new by-law lifting part lot control for lands described as Blocks 7, 8 and 9 of Registered Plan 27M-83 in order to allow the division on the Block into a total of 12 separate townhouse lots; and

THAT the By-law be written to take immediate effect.

Purpose: To pass a new part lot control by-law that would allow the division of Blocks 7, 8 and 9 of the Phase 1 subdivision approval immediately in order to accommodate and respond to procedural changes brought forward through Regulation 73/20 (relating to the provincial emergency).

Background: On April 6, Council adopted By-law 10134-2020 to lift the part lot control provisions of the Planning Act to allow the division of three townhouse blocks that are part of the Bellamy Farm Subdivision into separate freehold units, thereby allowing the sale of the individual townhouse units. The By-law would have the effect of creating 12 townhouse lots.

On March 23rd, Council adopted a zoning amendment that allowed reduced townhouse lot sizes and frontages in the Bellamy Farm subdivision. This amendment was a prerequisite to approving the ‘creation’ of the lots as defined in the part lot control application.

By-law 10134-2020 included an administrative provision that noted the by-law would come into effect upon the zoning amendment taking full force and effect (ie. upon conclusion of the appeal period). There were no public or review agency objections to the zoning amendment application. The 20-day appeal period was scheduled to conclude on April 14th, thereby allowing for the registration of the part lot control by-law and completion of the sales of several of the units that were scheduled to close on April 16.

On March 20th, the Province filed Regulation 73/20 that suspended all legislative timelines and limitation periods associated with a provincial act for the duration of the declared state of emergency. This was retroactive to March 16th. The Regulation does not prohibit a municipality from exercising its decision-making authority under the Planning Act, but it removes an obligation
to do so, thereby allowing a municipality to divert resources to matters relating to the emergency while removing the threat of an appeal on a non-decision. The wide-ranging effects of this Regulation were not immediately apparent to staff, however in subsequent consultation with the Town’s solicitor (T. Fleming) and planning colleagues in other municipalities (many of whom sought their own legal opinions) it was determined that this Regulation also had the effect of suspending the planning appeals process and therefore the appeal period following a planning approval. As such, appealable planning decisions could not become final until the state of emergency is lifted. This legislative pause would, strictly speaking, prevent the completion of the part lot control process and sale of the lots.

Staff have worked with the developers, their legal counsel and the Town’s legal counsel (Tony Fleming at Cunningham Swan) to explore solutions to this unprecedented procedural hiccup. The Town’s solicitor suggested as an option that the Town amends its part lot control by-law to take effect immediately, thereby allowing for its registration and the division of the lots. While the lot size zoning is not in full force and effect with the suspension of the appeal period, the proposed land division complies with Council’s adopted by-law and given the circumstances staff and the Town’s lawyer feel it is an acceptable solution. The enabling legislation (Section 50(7) of the Planning Act) does not prohibit the municipality, at its discretion, from doing this.

**Analysis and Options:** If Council supports the request by Parkview Homes, By-law 10134-2020 would be repealed and replaced with a new by-law that comes into effect immediately. This is an imperfect solution to a problem that has no perfect solution. Staff’s recommendation is premised on the fact that in this case the broader public interest is best served by accommodating the completion of the uncontested residential development and allowing the new residents to take ownership of their properties. It cannot be known when that would happen otherwise.

It is not a completely risk-free solution as there is no guarantee someone may not attempt a successful appeal later on, however that risk is likely quite low. The developer’s lawyer, in agreeing to this course of action, is aware of that risk.

The By-law that was adopted by Council on April 6th was worded properly and in a normal circumstance would not be at issue. The recommendation to repeal and replace with a new by-law taking immediate effect is a response to the unprecedented situation that has arisen that has created a procedural stalemate for this development.

**Options:**

1. **THAT Council repeals By-law 10134-2020 and adopts a new by-law lifting part lot control for the same lands and taking effect immediately. (recommended)**
2. **THAT Council does not support the request.**

**Budget/Financial Implications:** N/A

**Link to Strategic Plan:** Not Applicable.

**Existing Policy:**
- Planning Act, Section 50

**Consultations:** Applicant (K. Shelley on behalf of Parkview Homes) and Applicant’s lawyer (M. Perry); Legal Services (T. Fleming)
Attachments: Staff Report 2020-030 (Lifting Part Lot Control- Blocks 7, 8 & 9, Bellamy Farm Phase 1)

Notes/Action (space for Council Member’s notes):

Respectfully Submitted:

Karl Grenke RPP, MCIP
Senior Planner

Kerry Costello
Director of Corporate Services

Malcolm Morris, CMO
Chief Administrative Officer

Approved for agenda by CAO:

Page 3 of 3
To: Mayor and Council
From: Karl Grenke, Senior Planner
Date: March 19, 2020
Committee of the Whole Date: March 23, 2020
Title: Lifting of Part Lot Control- Plan 27M-83, Blocks 7, 8 & 9

Recommendation: THAT Council of the Corporation of the Town of Smiths Falls pass a Part Lot Control lifting By-law for lands described as Blocks 7, 8 and 9 of Registered Plan 27M-83 in order to allow the division on the Block into a total of 12 separate townhouse lots; and

THAT the By-law be written to take effect upon the associated Zoning Amendment Application ZA-20-01 taking full force and effect.

Purpose: The purpose of this report is to consider a request by the owners of the above noted property (1686994 Ontario Inc., c/o Parkview Homes) for Council to approve a by-law lifting the part lot control provisions of the Planning Act in order to allow the three subdivision blocks to be divided in a total of 12 to allow the creation of street row dwelling house lots with freehold occupancy, as envisioned in the subdivision approval.

Background: In 2018 the Town of Smiths Falls gave final approval to Phase 1 of the Bellamy Farm subdivision, thereby approving the creation of fourteen townhouse blocks and 1 apartment block (as well as various easements and reserves). The townhouse blocks were planned as “street row dwelling houses” which means that each townhouse dwelling unit is an independent unit designed for freehold occupancy. This was incorporated in the Residential Type 5- Special Exception zoning that was established for the subdivision. In 2019, a building permit was issued (following site plan approval) for the first townhouse block (Block 6) on Ferrara Drive and later for Blocks 7, 8 and 9. In early January 2020 Council passed a by-law under Section 50(5) of the Planning Act to allow the division of Block 6 into three separate lots along the building walls. At this time, the developer has applied to the Town to lift the part lot control provisions of the Act to allow the division of the next three blocks. Construction of these blocks are also almost complete.

Part lot Control
The principle of part lot control is to prevent the conveyance of parts of lots within a registered plan of subdivision. Once a subdivision has been approved and registered under Section 50 of the Planning Act, a landowner may sell any lots created by that plan however part lot control (under Sec. 50(5)) prevents any owner from selling a part of a lot or a block on a Registered Plan without further consent.
Section 50(7) of the Act enables a municipality to pass a by-law to lift Part Lot Control to exempt all or some lands within a subdivision from part lot control. That by-law would allow the conveyance of a portion of a lot or block without requiring severance or subdivision approval. This process is most often used in further subdividing lots for semi-detached units and townhouses once the structures are built. This process was envisioned as part of the overall Bellamy Farm development plan.

Part lot control processes are normally initiated after construction has started and the foundations (at a minimum) are in the ground so the surveyor can determine with precision where the exact lot lines will be established.

The proponents provided a draft survey with their application. The survey revealed that while the end unit lots would be significantly larger than the minimum required in zoning for a street row dwelling house unit, the middle lot, proposed at 165 m² (1,776 ft²) was smaller than the minimum lot size of 200 m² (2,153 ft²) as per the current R5-4 zoning. As such, Parkview Homes applied for a zoning amendment to recognize the reduced lot size and frontage for these blocks and the rest of the Bellamy Farm lands that have the R5-4 zoning. This zoning amendment is intended to accommodate future townhouse development and avoid the need for multiple minor variance applications.

The zoning process is a necessary prerequisite as the municipality would not otherwise be able to allow creation of a non-complying lot.

Analysis and Options: If Council supports the request by Parkview Homes, a new by-law would need to be passed lifting the part lot control provisions of the Planning Act with the effect of creating the individual freehold lots.

The Official Plan (Sec. 7.1.6(3)(b)) allows Council to exempt properties from part lot control for the “creation of townhouse lots within a Registered Plan of Subdivision.” As this development concept was already subject to a public Planning Act process through the subdivision approval there will not be a need for a further public meeting as would normally be required for new lot creation.

The by-law to lift part lot control cannot take effect until the final zoning approval for the requested lot sizes is in place and as such the zoning needs to come first sequentially. If Council approves the zoning and the Committee of the Whole supports the application to lift part lot control, then the draft survey can be deposited and that legal description inserted into a by-law to lift part lot control.

The lifting of the part lot control would be the final administrative step of the development of these blocks and will, pending final inspections, allow for the final occupancy of each unit by their intended owner.

This process will be repeated as the townhouse units continue to develop.

Options:

1. THAT Council adopts a by-law lifting part lot control for lands described as Blocks 7, 8 and 9 on Plan 27M-83. (recommended)
2. THAT Council defers the decision pending the submission of more information.
3. THAT Council does not support the request.

Budget/Financial Implications: $1,000 application fee per block, as per Town’s fee schedule.
Link to Strategic Plan: Not Applicable.

Existing Policy:
- Planning Act, Section 50

Consultations: Department of Public Works and Utilities; Chief Building Official; Applicant and Representative (Parkview Homes)

Attachments:
Appendix A – Key Map
Appendix B – Draft Survey

Notes/Action (space for Council Member’s notes):

Respectfully Submitted: Karl Grenke RPP, MCIP
Senior Planner

Kerry Costello
Director of Corporate Services

Approved for agenda by CAO:
Malcolm Morris, CMO
Chief Administrative Officer
Appendix A: Key Map (Affected Lots)

Ferrara Dr.

Block 6

Blocks 7, 8 and 9 Proposed to be divided into total of 12 lots