

THE REGIONAL MUNICIPALITY OF YORK

**REPORT NO. 2
OF THE REGIONAL
COMMISSIONER OF TRANSPORTATION AND WORKS
AND
REGIONAL SOLICITOR**

**For Consideration by
The Council of The Regional Municipality of York
on May 19, 2005**

**1
BOX GROVE - 9TH LINE BY-PASS
SUBDIVISION AGREEMENT PRINCIPLES
M. MIDGET INC. (19T-03M14), BALGREEN HOLDINGS INC.
& WINTER GARDEN ESTATES INC. (19T-03M15),
AND IBRANS DEVELOPMENT LTD. (19T-04M01), TOWN OF MARKHAM**

1. RECOMMENDATIONS

It is recommended that:

1. Regional staff be authorized to negotiate the terms of subdivision agreements with M. Midget Inc. (19T-03M14), Balgreen Holdings Inc. and Winter Garden Estates Inc. (19T-03M15), and Ibrans Development Ltd. (19T-04M01) in the Box Grove Community of the Town of Markham in accordance with the principles outlined in this report.
2. The Regional Chair and Clerk be authorized to execute the agreements.

2. PURPOSE

The purpose of this report is to inform Regional Council of the status of the 9th Line By-pass around the Box Grove Community of the Town of Markham, to obtain Council's

authorization to permit Regional staff to negotiate the principles of subdivision agreements with the developers of subdivisions 19T-03M14, 19T-03M15 and 19T-04M01, and to authorize execution of the agreements.

3. BACKGROUND

The Region, the Town of Markham and developers in the Box Grove Community of the Town of Markham executed a Memorandum of Understanding, dated June 13, 2002 which, amongst other matters, addresses the 9th Line By-pass around the hamlet of Box Grove. The by-pass is to be constructed in two sections, respectively north and south of 14th Avenue. Construction of the north section is to begin with the pre-servicing of the first draft approved and zoned Plan of Subdivision north of 14th Avenue. Similarly, construction of the south section is to begin with the pre-servicing of the first draft approved and zoned Plan of Subdivision south of 14th Avenue. This has in fact occurred for both sections of the by-pass.

4. ANALYSIS AND OPTIONS

On March 31, 2005, Regional Council authorized principles of a subdivision agreement with one of the subdivisions north of 14th Avenue (Box Grove Hill Developments Inc. et al.) insofar as that subdivision was about to proceed to registration. Those principles referred to Regional assumption of only the north section of the by-pass when it was ready to receive Regional traffic. This approach was based on the wording of the MOU, as noted above.

Notwithstanding the provisions of the MOU respecting construction of the road in sections, the by-pass cannot become operational until all of it is in place. If only one of the north or south sections is opened to traffic, vehicles must travel back along 14th Avenue into Box Grove and then turn back onto 9th Line at the 14th Avenue intersection in the hamlet. This cannot be recommended.

To ensure that all of the by-pass is open to Regional traffic so that the new road operates effectively as a by-pass, the Region will not assume the road, nor open it to Regional traffic, until all of the by-pass is in place, not just the north or the south sections. In the meantime, as noted in the March 31, 2005 report of the Regional Solicitor and Commissioner of Transportation and Works and as confirmed by Markham staff, the road can operate as an unassumed road providing local access to the Plans of Subdivision.

The landowners advise that all of the road that will become the by-pass is scheduled to be in place in 2005 excepting possibly the north and south connections to the existing 9th Line.

The north connection cannot happen until a road is in place that can ensure a connection to the Legacy community developing to the west of 9th Line. Otherwise, that community must access the by-pass through the hamlet. The south connection requires the purchase of just under one acre of Hydro One lands from the Ontario Realty Corporation. These negotiations are ongoing. It is not known whether they can be concluded this year.

The Region will be retaining securities from the owners to ensure the Region can undertake and complete the work if necessary.

A condition of draft approval for subdivisions 19T-03M14 and 19T-03M15 is that the right-of-way for the 9th Line By-pass be dedicated to the Regional Municipality of York on registration of the Plans of Subdivision, and that the roadway be constructed as required in the Memorandum of Understanding.

Under Section 31(4) of the *Municipal Act, 2001*, the requirements in Section 44 of the *Act* for a municipality to maintain a roadway do not apply to a road shown on a registered Plan of Subdivision until the municipality passes a by-law assuming the road for public use. On satisfactory completion of all of the by-pass, it is proposed that the Region pass a by-law to assume the road as a Regional Road. A two year maintenance period will then commence.

To ensure that the Region can take advantage of the *Municipal Act, 2001* provisions limiting subdivision road maintenance obligations until assumption by a municipality, to ensure that the requirements of the Memorandum of Understanding are implemented, and to ensure the by-pass is constructed to the satisfaction of the Commissioner of Transportation and Works, it is recommended that a subdivision agreement be entered into with the developers of subdivisions 19T-03M14, 19T-03M15 and 19T-04M01 based on the following principles:

- The developers will construct the 9th Line By-pass shown on Plans of Subdivision 19T-03M14, 19T-03M15 and 19T-04M01 to a design and specification satisfactory to the Regional Municipality of York.
- The developers will provide securities acceptable to the Region to secure the construction commitment.
- The developers will pay all development charges on registration of the Plans of Subdivision.
- The construction securities will be returned to the developers upon satisfactory completion of the portion of the by-pass on subdivisions 19T-03M14, 19T-03M15 and 19T-04M01 with appropriate holdback provisions and with sufficient securities remaining to secure completion of all work to the satisfaction of the Commissioner of Transportation and Works.

- The Region will assume the by-pass for purposes of sections 31 and 44 of the *Municipal Act, 2001* when all of the 9th Line By-pass is satisfactorily completed and able to carry Regional traffic.
- A two year maintenance period will commence upon Regional assumption of the by-pass or such other maintenance period as may be acceptable to the Commissioner of Transportation and Works.
- The agreement will contain provisions respecting maintenance and operation of the roadway prior to Regional assumption of the by-pass and during the maintenance period.
- The owners will be compensated for the road construction pursuant to a standard Region Development Charge application for Development Charge credits following completion of the roadway on the Plans of Subdivision.

There is one remaining relevant plan of subdivision in the Box Grove Community that has not yet been draft approved (19T-04M01). It is anticipated that the conditions of draft approval respecting the by-pass will be similar if not identical to the previous draft approvals given to date. Therefore, it is recommended that Council authorize a subdivision agreement with this development as well. Should there be any matters that arise in this subdivision that significantly vary from the principles authorized in this report, then staff would report back to Committee and Council for further direction.

It should be noted that the Memorandum of Understanding provides that the developers will provide 20 metres of the right-of-way at no cost to the Region. Compensation for the width beyond 20 metres will be based on an independent appraisal to be undertaken on the Region's behalf.

The Box Grove Community Plans of Subdivision are indicated on *Attachment 1*.

5. FINANCIAL IMPLICATIONS

Subdivision 19T-03M14 will be paying up to \$530,396.00 in Regional development charges on registration of which approximately \$195,406.50 is applicable to the road development charges. Subdivision 19T-03M15 will be paying up to \$5,643,057.50 in Regional development charges on registration of which approximately \$1,792,064.50 is applicable to the road development charges. Subdivision 19T-04M01 will be paying up to \$749,902.00 in Regional development charges on registration of which approximately \$276,284.00 is applicable to the road development charges. The owners will be securing by way of letter of credit satisfactory to the Commissioner of Finance and Treasurer the cost of the road construction that is their responsibility. Pursuant to the Regional Road

Works Development Charge Credit Guidelines, the developers will be reimbursed for the costs of the road construction pursuant to a development charge credit application that they will provide to the Region on or before completion of construction. Under Regional policy, the owners' share of the non-growth component of the road works will be pro-rated based on the construction timing of the project in the Region's 10 year capital plan.

6. LOCAL MUNICIPAL IMPACT

Registration of Plans of Subdivision 19T-03M14, 19T-03M15 and 19T-04M01 is part of the implementation of the Memorandum of Understanding of the Region, the Town of Markham and the Box Grove Developer Group by which the hamlet of Box Grove benefits from the 9th Line By-pass and by the provision of municipal water services.

7. CONCLUSION

The Region is receiving that portion of the 9th Line By-pass that is included in these Plans of Subdivision through the subdivision approval process. As such, the Region's responsibilities for road maintenance under section 44 of the *Municipal Act, 2001* will not apply until the Region assumes the road by by-law. The Region will assume the road when all of the by-pass is open to traffic. To ensure satisfactory performance of the developers' obligations under the Box Grove Memorandum of Understanding, the Development Charge credit for road construction will not be provided to the developers until completion of the roadway on the Plans of Subdivision; and securities will likewise be maintained until satisfactory completion of the road. It is recommended that, since the road is being provided through the Plan of Subdivision approval process, the provisions outlined in this report be implemented by means of a standard subdivision agreement between the developers and the Region.

The Senior Management Group has reviewed this report.

Respectfully submitted,

**May 18, 2005
Newmarket, Ontario**

**K. Schipper
Commissioner of
Transportation and Works**

**J. Hulton
Regional Solicitor**

(Report No. 2 of the Commissioner of Transportation and Works and the Regional Solicitor was adopted, without amendment, by Regional Council at its meeting held on May 19, 2005.)