

ONTARIO MUNICIPAL BOARD

724903 Ontario Inc. and 771322 Ontario Inc. have appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c.P.13, from Council's refusal to enact a proposed amendment to Zoning by-law 1979-50, as amended, of the Town of Newmarket to rezone lands composed of Part Lots 28 & 29, Concession 3, E.Y.S. from Rural Residential (RR1) and Rural General Second (RU2) to single Detached Dwelling Second Density (R2), Two Family Residential Third Density (R3), Institutional (I) and Open Space and Conservation (O) to permit a residential plan of subdivision
O.M.B. File no. Z000055

At the request of 724903 Ontario Inc., and 771322 Ontario Inc., the Town of Newmarket has referred to the Ontario Municipal Board under subsection 51(5) of the *Planning Act*, R.S.O. 1990, c.P.13, a plan of subdivision on lands comprised of Part Lots 28 & 29, Concession 3, E.Y.S., Town of Newmarket
Region's File No. 19T-90064
O.M.B. File No. S000057

MINUTES OF SETTLEMENT

BETWEEN

724903 Ontario Inc. and 771322 Ontario Inc. (the "Owners")

and

The Corporation of the Town of Newmarket (the "Town")

and

The Corporation of the Regional Municipality of York (the "Region")

and

Kingdale Road Residents Group, a company to be incorporated, (currently being the owners of the properties known municipally as: 1163, 1168, 1171, 1173, 1176, 1181, 1184, 1185, 1189, 1192, 1196, 1197, 1201 and 1205 Kingdale Road (the "Residents"))

WHEREAS: The Owners, the Town, the Region and the Residents have in good faith entered into an agreement for the purposes of settling the matters presently before the Ontario Municipal Board (the "Board") regarding the lands subject to applications for zoning by-law amendment and plan of

subdivision 19T-90064, located on Part Lots 28 and 29, Concession 3, E.Y.S., Town of Newmarket (the "subject property").

The Parties agree as follows:

1. The Board will render a decision granting the rezoning and draft plan approval.
2. The zoning by-law amendment will contain a Holding (H) symbol on all of the lands subject to the applications, with the (H) only to be removed so that development could proceed when water capacity has been identified for the lands concerned. The (H) may be removed in phases and only from those lands for which water capacity was identified and allocated by the Town.
3. A condition of draft plan approval will be imposed to prevent any misleading activity such as pre-sale of lots until water capacity is identified and then allocated by the Town for the lots concerned.
4. The Board will be asked to issue orders implementing any decision granting the draft plan approval(s) in phases and not to issue an order for any particular phase until an appropriate agreement has been entered into with the Town and registered on title, respecting no pre-sale of lots on draft approved plans AND until:
 - (i) the Board is advised that that phase and the particular lots and blocks have been identified for water allocation and therefore draft plan approval can be made effective;
 - (ii) that the Town has actually passed the allocation resolution respecting the phase, lots and blocks concerned. It is acknowledged that the Town will not pass such resolution until after it has been advised by the Region that the water is available for allocation.
5. The terms of this settlement impose no obligation on the Region to provide the water capacity, or to build the infrastructure required to deliver that capacity.
6. The Parties acknowledge that the Region has no obligation to, and is not required to provide the water capacity referred to and the extension of such capacity is subject to the appropriate studies, including, but not limited to:
 - (i) those required by the *Environmental Assessment Act*;
 - (ii) those required by the Official Plan of the Regional Municipality of York.

7. It is understood that upon completion of the studies necessary to provide additional water to Newmarket, including but not limited to the Environmental Assessment, the Region may revise its conditions of draft approval that relate to water servicing. This is not intended to limit the Region's ability to request any other amendments to the conditions of draft approval.
8. In the event that no Order of the Board granting draft approval for all of the plan of subdivision or any phase thereof has been issued within ten years of the date of the Board's decision in this matter then the Board shall not issue its final order granting draft approval.
9. The Owners agree to make all reasonable efforts to minimize the adverse impacts to Residents' properties as a result of the proposed alterations to present stormwater drainage patterns. In this regard, the stormwater management plan to be approved by the Town and other commenting agencies shall address the concerns of the Residents. In particular, the Residents are concerned that their properties will be subjected to substantially longer periods during which surface water will be discharged from the subject property over their lands and/or that such stormwater will pool and sit on their properties, or that vegetation may be adversely impacted by the redirection of surface water.
10. If the concerns listed in paragraph nine cannot be addressed to the satisfaction of the Town Engineer, in consultation with the Residents, by measures taken on the subject property, the Owners shall enter into an agreement(s) with the affected Resident(s) to undertake such measures on their properties as may be required by the Town's Engineer to address the aforementioned concerns.
11. Council of the Town of Newmarket shall pass a resolution indicating that for the purposes of the Town of Newmarket Servicing Allocation Policy 98-01, the subject property is recognized as "Committed Urban Service Area". The resolution will acknowledge that the development of the subject plan of subdivision is consistent with the objectives of the Town of Newmarket Official Plan, that it constitutes proper and orderly development and that, subject to the recommendations of the Functional Servicing Plan and the acceptance of those recommendations by both the Town and the Region, services can reasonably be extended to the subject property.
12. The Parties agree that the proposed zoning by-law for the subject property will be amended to provide that a twenty (20) metre strip along the entire northernmost limit of the subject property shall be zoned Open Space (O). No structures shall be permitted within such zone and the uses shall be restricted to private, passive open space uses.
13. The Parties agree that the proposed zoning by-law for the subject property will be amended to provide the following siting specifications for proposed lots any parts of which are located within 45 metres of the northernmost limit of the subject property:

(i) a rear yard (minimum) from any north rear lot line: 45 metres;

(ii) a sideyard (minimum) from any north side lot line: 45 metres.

14. As a condition of draft approval, the Owners shall provide a landscape plan prepared by a qualified landscape architect to the satisfaction of the Town, in consultation with the Residents (the "landscape plan"), showing continuous planting along the crest of the berm along the northernmost limit of the subject property. The owner shall further provide a report of such architect addressing the assessment and protection of the existing vegetation adjacent to the northernmost limit of the subject property. The Owners shall replace any such existing vegetation that is damaged or destroyed as a consequence of the installation of the berm.
15. As a condition of draft approval, the Owners shall incorporate in their subdivision grading plans, a berm as shown on the Master Plan, May 2001, Drawing L1, prepared by Strybos Associates, and shall construct such berm prior to completion of the initial grading of any portion of the subdivision. Seeding, sodding and the planting of vegetation in accordance with the landscape plan shall be carried out as soon as is reasonably possible, but in any event no later than October 31st of the year in which site grading is commenced. The Parties agree that the subdivision plans shall include the landscaping features of the berm, as shown on the landscape plan.
16. Where homes with walkouts are proposed to be constructed on the proposed lots which front on the four northernmost cul-de-sacs those homes shall be bungalows.
17. That, prior to the commencement of site grading, the Owners shall complete a hydrogeological/well impact study to determine the impact, if any, of the proposed development on the wells of the properties fronting on Kingdale Road. The well impact study shall recommend any required mitigation or remedial measures to the satisfaction of the Town Engineer. The study shall include preconstruction well monitoring for a period commencing one year prior to site grading and continuing until five years following completion of construction. The Owners shall, throughout such period, provide security satisfactory to the Town to ensure completion of monitoring and any mitigation or remedial works or measures reasonably anticipated or required.
18. The provisions of paragraphs 9, 10, 14, 15, 16 and 17 shall be reflected in the subdivision agreement.
19. The draft plan of subdivision will be amended to reflect the changes contained in paragraphs 12-13, and to incorporate a convenience commercial block on Leslie St.
20. The proposed zoning by-law will be amended to permit the range and mix of housing types permitted in the Low Density Residential designation in the Town of Newmarket Official Plan.

21. It is understood that the draft plan of subdivision for the subject property will be circulated in accordance with the regular procedures of the Town. Town staff shall make best efforts to complete the circulation process and formalize conditions of draft approval within twelve weeks from the date of receipt of the revised plan of subdivision by the Town.
22. The Parties acknowledge that these Minutes of Settlement are subject to confirmation by the Council of the Town and the Council of the Region.



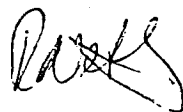
724903 Ontario Inc.
I have authority to bind the corporation



771322 Ontario Inc.
I have authority to bind the corporation



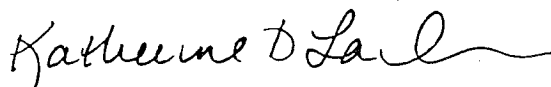
The Corporation of the Town of Newmarket
by its solicitor



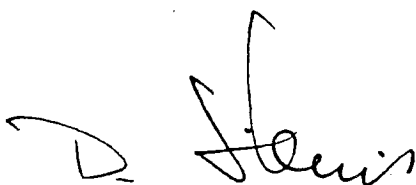
Richard Nethery
Director of Planning



Kingdale Road Residents Group
by their solicitor, Ken Hill -



Katherine Larkin
Member of the Kingdale Residents Group



The Corporation of the Regional Municipality of York