THE REGIONAL MUNICIPALITY OF YORK

REPORT NO. 5 OF THE FINANCE AND ADMINISTRATION COMMITTEE MEETING HELD ON APRIL 17, 2008

For Consideration by
The Council of The Regional Municipality of York
on April 24, 2008

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BALES DRIVE SUBDIVISION COST SHARING AGREEMENT

The Finance and Administration Committee recommends the adoption of the recommendations contained in the following report, March 10, 2008, from the Commissioner of Corporate Services:

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council approve the cost sharing arrangements negotiated with a landowner in the Town of East Gwillimbury which relate to the construction of a watermain and a stormwater management pond which were required to facilitate the development of the Regional Material Recovery Transfer facility and other Regional uses that are located on Bales Drive, north of Davis Drive and east of Woodbine Avenue.

2. The Regional Chair and Clerk be authorized to execute a cost sharing agreement with the landowner, upon review of the Regional Solicitor, which is in accordance with the terms and conditions outlined in this report.

2. PURPOSE

To obtain Regional Council's approval of a cost sharing agreement that has been negotiated with a landowner in connection with the construction of a watermain and stormwater management pond (the “works”) within the Bales Drive subdivision, which is located north of Davis Drive and east of Woodbine Avenue, in the Town of East Gwillimbury. The Region constructed these works as part of the development of a Material Recovery Transfer facility, a Transportation and Works Operations Centre/Fleet Maintenance facility.

3. BACKGROUND

An owner of 25.1 acres of land within the Bales Drive subdivision, Woodbine Davis Developments Limited (the “Owner”), will derive a benefit from the works. The Region has therefore required that the Owner enter into a cost sharing agreement as a condition of gaining access to the watermain and stormwater management pond.

3.1 Settlement of the Expropriation Proceedings

The Owner is the former owner of Part of Lot 2, Concession 4 in the Town of East Gwillimbury. The lands comprise 160 acres and are located on the east side of Woodbine Avenue north of Davis Drive.

On May 3, 2002, the Region expropriated approximately 137 acres of the property from the Owner for purposes of establishing a Material Recovery Transfer facility, a Transportation and Works Operations Centre and a Fleet Maintenance facility. The Region initially intended to expropriate the Owner’s entire holding of 160 acres. The Owner resisted a complete taking arguing that the Region did not require the full 160 acres to achieve its objectives. The Owner wished to retain approximately 25 acres of the parcel along the Woodbine Avenue frontage in order to develop it for industrial/commercial uses.

On December 18, 2001, following the commencement of the expropriation process, the Owner requested a hearing of necessity under Section 6(2) of the Expropriations Act in an effort to challenge the proposed expropriation of the entire 160 acres. An Inquiry Officer was appointed but prior to the Hearing of Necessity, the parties engaged in negotiations which were designed to resolve the extent of the land required by the Region and other matters. The parties ultimately settled the land area issue on the basis that the Region would permit the Owner to retain the 25 acre Woodbine Avenue frontage (the “Retained Parcel”) in exchange for the Owner withdrawing its request for a Hearing of Necessity. Such hearing had the potential to delay the implementation of the expropriation and the construction of the Material Recovery Transfer facility and other uses for an extended period. The Owner subsequently withdrew its request for a Hearing of Necessity which permitted the Region to finalize the expropriation of the 137 acre parcel (the “Expropriated Parcel”), leaving the Owner with the Retained Parcel of 25 acres.

There were a number of other relevant terms of the settlement which are summarized below:

1. the Owner accepted the sum of $2,000,000.00 in full and final satisfaction of its claims for market value and injurious affection arising from the expropriation;

2. the Region agreed to undertake the following:

   (a) provide the Owner with a right of access to the Retained Parcel from the public road that the Region would construct running east from Woodbine Avenue to the Expropriated Parcel;

   (b) construct a watermain to service the Expropriated Parcel and provide the Owner with a right of access to such watermain to serve the Retained Parcel, subject to the parties negotiating an equitable sharing of the watermain costs;

   (c) construct on the Expropriated Parcel a stormwater management pond capable of serving both the Retained Parcel and the Expropriated Parcel and provide the Owner with access thereto for the benefit of the Retained Parcel, subject to the parties negotiating an equitable sharing of the costs of such facility; and

   (d) reimburse the Owner for the reasonable legal, appraisal and planning fees that it incurred in connection with the settlement of the various issues relating to the expropriation.

3.2 Bales Drive Plan of Subdivision

On February 10, 2003, the Region secured draft approval of a plan of subdivision to facilitate the development of the Expropriated Parcel. In satisfying the conditions of draft approval, the Region was required to enter into a subdivision agreement with the Town of East Gwillimbury and the Owner (the Owner was required to be a party to the subdivision agreement because the Town insisted that the plan of subdivision apply to the entire original holding of 160 acres, and thus extended to the Owner’s Retained Parcel as well). Regional Council authorized the finalization of the subdivision agreement and, as part of such authorization, directed that staff negotiate a cost sharing agreement with the Owner relating to the construction of the watermain and the stormwater management pond consistent with the terms of the settlement of the expropriation. The Bales Drive plan of subdivision was registered on July 22, 2005 as Plan 65M-3843.

3.3 Cost Sharing Arrangements

Staff have now negotiated cost sharing arrangements with the Owner for the watermain and the stormwater management pond which are described below.

Stormwater Management Pond

The total cost of this facility was $679,519.00. This facility is intended to service both the owner's lands and the Region's Material Recovery Transfer facility. The Region and the Owner have agreed to share the cost based on the proportion that each party's benefiting area bears to the total benefiting area of the facility, which is 22.99 hectares. The benefiting area of the Retained Parcel is 10.09 hectares (43.89%) while the benefiting area of the Expropriated Parcel is 12.9 hectares (56.11%). Based on these proportions, the total cost of $679,519.00 is apportioned $298,240.89 to the Owner and $381,278.11 to the Region. Allocating the cost on this basis is consistent with industry standards.

Watermain

The total cost of the watermain was $2,769,544.00. This cost includes the sections of the pipe both external and internal to the Bales Drive subdivision. The section of the watermain that is external to the subdivision runs east along Davis Drive and then north on Woodbine Avenue. The cost attributable to the external section is $2,524,425.00; this leaves $245,119.00 attributable to the section internal to the subdivision, which includes the Retained Parcel. Staff have negotiated a cost sharing arrangement which contemplates a payment by the Owner of $100,000.00 toward the cost of the watermain. It is a term of the arrangement that the Owner will pay full Regional development charges in accordance with the provisions of the applicable Regional development charge by-law then in force. That is to say, the payment of $100,00.00 will not give rise to a credit against Regional development charges. The same applies to the Owner's payment toward the cost of the stormwater management pond.

4. ANALYSIS AND OPTIONS

The cost sharing arrangements negotiated with the Owner provide for access to regional infrastructure in exchange for an immediate financial consideration contributing to regional costs. In addition, the owner is not excused from development charges in the event they wish to develop their parcel of land. The retained parcel represents approximately 20% of the total land in the subdivision. The financial consideration is shown below.

5. FINANCIAL IMPLICATIONS

The key principles of the proposed agreement are as follows:

1. the Owner will contribute $100,000.00 toward the cost of the watermain;

2. the Owner will contribute $298,240.89 toward the cost of the stormwater management pond; and

3. the Owner will pay full Regional development charges when it develops its lands. The payments described in points nos.1 and 2 above will not give rise to a credit against Regional development charges.

6. LOCAL MUNICIPAL IMPACT

This cost sharing agreement facilitates the development of the Bales Drive Subdivision which will add to the local tax base.

7. CONCLUSION

The Owner will derive a benefit from the watermain and the stormwater management pond. The Region has therefore required that the Owner enter into a cost sharing agreement as a condition of the Owner gaining access to these works. This report outlines the terms of the cost sharing agreement negotiated with the Owner. The Owner will be required to pay to the Region the sum of $398,240.89 as its share of the construction costs of the watermain and stormwater management pond.

For more information on this report, please contact Barry Crowe, Director Property Services at Ext. 1684.

The Senior Management Group has reviewed this report.

Respectfully submitted,

April 17, 2008	**T. Van Bynen**
Newmarket, Ontario	**Chair**

(Report No. 5 of the Finance and Administration Committee was adopted, without amendment by Regional Council at its meeting on April 24, 2008.)