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BOX GROVE - 9TH LINE BY-PASS SUBDIVISION AGREEMENT PRINCIPLES BOX GROVE HILL DEVELOPMENTS INC. ET AL. (19T-03M12) TOWN OF MARKHAM

1. RECOMMENDATIONS

It is recommended that:

1. Regional staff be authorized to negotiate the terms of a subdivision agreement with Box Grove Hill Developments Inc. et al. 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 agreement.

2. PURPOSE

The purpose of this report is to obtain Council's authorization to permit Regional staff to negotiate the principles of a subdivision agreement with the developers of subdivision 19T-03M12 in the Box Grove Community of the Town of Markham, and authorize execution of the agreement.

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. This has in fact occurred for the two subdivisions which will construct the north section of the by-pass, Box Grove Hill Developments Inc. et al. (19T-03M12) and Animate Construction Ltd. (19T-03M14, now under M. Midget Inc.), both of which received draft approval from the Town of Markham in June, 2004.

4. ANALYSIS AND OPTIONS

A condition of draft approval for the Box Grove Hill subdivision 19T-03M12 is that the right-of-way for the 9th Line By-pass be dedicated to the Regional Municipality of York on registration of the Plan of Subdivision, and that the roadway be constructed as

required in the Memorandum of Understanding. It is a requirement of the Town of Markham that the developers of 19T-03M12 construct that portion of the 9th Line By-pass on the plan to provide a second means of access to the subdivision. Since the Town requirement means that this portion of the by-pass must be completed whether or not the adjacent subdivision is ready to proceed, and since 19T-03M12 is ready for registration, this portion of the by-pass will proceed prior to the adjoining section of the by-pass on 19T-03M14 (*see Attachment 1*).

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. The part of the 9th Line By-pass being constructed for 19T-03M12 will serve only as a local access to the subdivision until all of the by-pass is complete between 9th Line north of Box Grove and 14th Avenue, at which time it will begin to carry Regional traffic. On satisfactory completion of all of the north section of the by-pass, the Region will 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 subdivision 19T-03M12 based on the following principles:

- The developers will construct the 9th Line By-pass shown on Plan of Subdivision 19T-03M12 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 Plan of Subdivision.
- The construction securities will be returned to the developers upon satisfactory completion of the portion of the by-pass on subdivision 19T-03M12 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 the portion of the 9th Line By-pass north of 14th Avenue is satisfactorily completed and able to carry Regional traffic.

- A two year maintenance period will commence upon satisfactory completion of the north portion of the 9th Line by-pass.
- 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 developers 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 Plan of Subdivision.

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.

5. FINANCIAL IMPLICATIONS

Subdivision 19T-03M12 will be paying \$4,805,596.00 in Regional development charges on registration of which \$1,770,468.00 is applicable to the road development charges. The developers 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 developers' 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 Plan of Subdivision 19T-03M12 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 this Plan 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 two years after completion of all of the 9th Line By-pass – through this subdivision and an adjoining subdivision. 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 Plan of Subdivision; and securities will be maintained until satisfactory completion of the maintenance period and the Region has assumed 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.

(The attachment referred to in this clause is attached to this report.)