



THE REGIONAL MUNICIPALITY OF HALTON

Report To:	Chairman and Members of the Planning and Public Works Committee
From:	Mark G. Meneray, Director of Legal Services and Corporate Counsel Peter M. Crockett, P. Eng., Commissioner of Planning & Public Works
Date:	November 9, 2006
Report No. - Re:	CA-39-06/PPW93-06 - Amendments to the Region's Standard Land Development Agreements

RECOMMENDATION

1. THAT Halton's standard land development agreements be amended and updated as set out in Report CA-39-06/PPW93-06.
2. THAT Regional Council adopt the agreements set out in Schedules "A", "B" and "C" to Report CA-39-06/PPW93-06 as representing Halton's standard form land development agreements and that the Director of Legal Services and Corporate Counsel be authorized to prepare the necessary by-law for that purpose and to repeal By-law No. 9-88, as amended.

REPORT

As Council is aware, the Region enters into standard land development agreements with developers/owners of property (the "Owner") to ensure that its requirements related to servicing and other aspects of the development of the property are met. The land development agreements which are currently in use represent various versions of subdivision and servicing agreements. These standard agreements are subject to periodic review to ensure that they are current with statutory and legal requirements, reflect ongoing changes to Regional policy, are consistent with current development practices and are user-friendly documents.

The current versions of the standard land development agreements originated from Report RS-9-87 and By-law No. 9-88, which were passed by Council on December 9, 1987. Since that time, Legal Services has made periodic amendments to the agreements to reflect changes in legislation and Regional by-laws and to incorporate approved policy changes and administrative details. Given the time that has passed since the adoption of these agreements, the need to undertake a more comprehensive review was identified and to that end Legal Services, Planning & Public Works and Capital Budget & Development Financing staff have been conducting a detailed review of the various standard land development agreements over the course of the past eighteen months. While some areas of the agreements only required minor housekeeping changes, others needed to be discussed and debated more fully amongst staff and the development community. In particular, some of the key issues that staff set out to address are: the impact of *Building Code Statute Law Amendment Act, 2002* (Bill 124), the interpretation and application of the Region's water well interruption clause, the timeliness of assumption of services by the Region and the

Region's receipt of "as constructed" drawings.

Schedules "A", "B" and "C" to this Report are provided under separate cover. Schedule "A" is the proposed revised residential subdivision agreement while Schedule "B" is the proposed revised servicing agreement for situations where the Owner is constructing the works. These agreements incorporate the various changes which are discussed in further detail in this Report and are recommended for adoption. Also, the Region's standard rural and industrial subdivision agreements, as well as the servicing agreement utilized where the Region is constructing the works (which are essentially variations of the agreements in Schedules "A" & "B" and used in those specific fact situations), will reflect these same changes. Upon Council's approval of this Report, these standard form development agreements will be formally adopted by by-law.

In addition, Schedule "C" is a new version of a servicing agreement intended for situations where the Owner is constructing development charge funded projects. This form of agreement was not specifically contemplated by Report RS-9-87 and was not included in By-law No. 9-88 since the development charge legislation did not exist at the time of their adoption. As such, it is recommended that for development charge funded projects, a new standard form agreement be implemented, which will be included in the by-law adopting Halton's new standard form of development agreements.

Proposed Non-Substantive Changes

The content of the revised agreements is inherently the same as that found in the current versions. However, several non-substantive amendments have been made to the land development agreements. The revised land development agreements have been reformatted and have a new look. Staff's intention is to make the agreements easier to read and understand and as such, many of the changes are minor in nature in the sense that language, wording and intent have been clarified and grammar and inconsistencies have been corrected.

In order to clarify the Owner's requirements, staff have incorporated references to specific Regional manuals, policies and procedures into the agreements. These include the *Development Engineering Review Manual*, the *Region of Halton Design Criteria*, *Contract Specifications and Standard Drawings*, the *Procedures for Development Related Construction on Regional Roads – Major Intersection Works and Minor Intersection Works*, and the *Design Information for Proposed Road and Traffic Signal Works on Region of Halton Roads*. Owners have always been obligated to comply with these manuals, policies, and procedures but now these documents are listed by name in the agreements for ease of reference.

Given the technology available today, Planning and Public Works staff have included new technological requirements in the agreements which change the way Regional staff receive information from Owners. Owners will now be required to provide the Region with their registered plans of subdivision on digital disc. Owners will also be required to submit horizontal coordinates of all boundary monuments on real 6° UTM coordinates NAD 83 datum. This is the standard used by Regional staff and engineers throughout the development industry.

Proposed Substantive Amendments

When reviewing the land development agreements, staff identified the need to update some existing development practices, as well as the need to include some new provisions to better meet the Region's requirements and reflect the realities of the development industry. The following seven items represent the most significant amendments which have been made to the agreements:

1. Provision regarding Bill 124

In July 2003, the *Building Code Statute Law Amendment Act, 2002* (Bill 124) was proclaimed and Ontario Regulation 305/03 was filed amending the *Building Code Act, 1992* (O.Reg. 403/97), implementing the Province's building regulatory reforms. Certain provisions of this Act came into force on September 1, 2003, while other provisions came into force on July 1, 2005 and January 1, 2006 respectively. Report CA-31-05/PPW89-05 outlined the Region's concerns with this legislation, specifically the removal of the servicing provision from the definition of applicable law and the mandated time frames within which the Chief Building Officials must provide a decision, once a complete building permit application is submitted.

Because the responsibility for issuing building permits rests with the Chief Building Official at the local municipal level, it is possible that a building permit could be issued before the Region has had an opportunity to ensure that the required works within the subdivision are constructed and functioning properly. The Region can take some comfort that most of the Local Municipalities have passed zoning, building, and site-plan by-laws protecting the Region's interests but unfortunately not all Local Municipalities have yet had the opportunity to do so. Therefore, the purpose of this new section, Section 23 in the subdivision agreement is to provide a mechanism to ensure that an Owner cannot submit a request to a Local Municipality for the release of a building permit within a plan of subdivision until such time as the Region's Commissioner of Planning and Public Works has indicated that the works are substantially complete to the Region's satisfaction.

2. Insurance Requirements

The Region's current insurance requirements are set at one million dollars which has been the standard rate since the late 1980s. In order to meet current industry standards and reflect 21st century realities, the Region is increasing its insurance coverage requirements in respect of any one occurrence from one to five million dollars. The Risk Management section has reviewed this provision and has advised that this change in coverage to five million is both reasonable and necessary given the increased costs of litigation and higher cost of constructing infrastructure and works under the agreements. Regional staff reviewed other municipalities' rates and found that the amount of coverage required varies from two to five million dollars throughout the Golden Horseshoe area.

3. Indemnity for Water Well Interruption and Pay Assurance Clauses

The purpose of Schedule “Six” is to list all non-standard sections, provisions and clauses relevant to each specific land development agreement, rather than including unnecessary standard wording in the body of Regional agreements. The sections titled “Indemnity for Water Well Interruption” and “Pay Assurance” currently appear in Schedule “Six” of the land development agreements but will be incorporated directly from Schedule “Six” into the body of the new agreements, since it is staff’s current practice to incorporate both these sections into land development agreements in every instance.

Although no changes were made to the wording of the Pay Assurance clause, which Council approved for inclusion in these agreements on March 3, 1999 through Report PPW01-99, the water well interruption clause has been revised and the definition section reworded to further clarify the roles of the Owner, the Region and the owner of a neighbouring well in any water dispute.

4. Emergency Services notification requirement

Staff identified a need to include a clause in the agreements which requires Owners to provide written notification for the duration and after completion of the construction of the works, to all emergency services when there will be any interruption in the provision of services or access. Currently, the Region’s land development agreements are silent on such notice. This notice is intended to include but not be limited to fire, police and ambulance services. The intent of this clause is to ensure that if Regional works being constructed by Owners on existing rights-of-way are interrupted in some way, emergency services will be advised of such circumstance so that in case of an emergency, parties can respond accordingly.

5. Schedules attached to the Agreement

Along with the revisions to the body of the land development agreements, the Schedules attached to the agreements have been amended and updated.

Schedule “Four” lists the lands and easements to be provided by the Owner to the Region free and clear of any encumbrances on title. Although the purpose of Schedule “Four” remains the same, it has been reformatted in “chart” form to better highlight this information, with the inclusion of the surveyor’s name and the drawing number for greater certainty and identification of the parts, lots, and blocks on registered plans.

Schedule “Five” is the Region’s standard letter of credit. In 2005, Financial Planning & Budgets staff along with the treasurers of the Local Municipalities and their respective legal counsels reviewed and revised this standard letter of credit. The Region and the four Local Municipalities adopted this letter of credit as the standard letter of credit to be used across Halton Region and as such, it has been incorporated into the revised agreements.

Schedule “Seven” is a new schedule added to the land development agreements which is intended to list all the approved design drawings required in order to better assist Regional staff and the Owner to identify and locate the necessary drawings for each file. This Schedule serves as a complete inventory of all drawings submitted by the Owner to the Region. This is particularly helpful to staff when there are numerous drawings and many different versions which have been submitted over the course of a particular file.

Outstanding Issues

In addition to the amendments highlighted above, a number of other issues were identified by staff for review. Primary among those are the difficulties Regional staff currently experience obtaining “as constructed” drawings from Owners in a timely manner and developing a method to streamline the assumption process.

6. “As Constructed” Drawings

An important component of the provision of acceptable servicing for a new development is the submission of drawings which accurately reflect what has actually been constructed. Since the majority of servicing components are buried underground, it is crucial that Regional Operations staff have access to information on the location and depth of water and sanitary mains and services.

Upon completion of the works for a new subdivision, the Owner’s contractor is no longer on site. As such any concerns or complaints from new homeowners are typically relayed to Regional Operations staff rather than to the Owner or the Owner’s contractor. Regional staff respond to all residents’ phone calls including those from new developments and staff assess the severity of the deficiency. Once a phone call is deemed to be an emergency, Regional staff will arrange to have the deficiency rectified immediately. In order to quickly and efficiently respond to these phone calls, staff must have access to the “as constructed” information for the subdivision.

The timely submission of “as constructed” drawings has long been a concern with both Regional staff and the Local Municipalities’ fire departments. Over the years, a number of techniques have been used to encourage Owners and their consultants to submit these drawings as soon as the works have been substantially completed but unfortunately, these practices have not been very successful.

The Region’s current land development agreements consider the submission of “as constructed” drawings to be the final component of servicing. The agreements require Owners to post securities equal to 100% of the cost of the Regional works. Some exceptions to this requirement are permitted depending upon when the Owner wishes to register the plan of subdivision. In the event that the Owner does not wish to register the plan until servicing (including the submission of “as constructed” drawings) has been completed, then securities equal to only 20% of the cost of works internal to the plan of subdivision and 100% of the cost of external works may be posted. Owners generally choose this last option as it is less expensive; however they have expressed concerns with a perceived delay in registration of the plan when the requirement to submit the “as constructed” drawings is enforced.

A further exception that is currently permitted allows for the registration of the plan after construction of the works but prior to the submission of the “as constructed” drawings. This may be done provided that the Owner’s engineer submits a letter certifying that the drawings will be submitted within six months and upon the Owner increasing the securities posted to an amount equal to 50% of the cost of the internal works. This option is rarely used because Owners do not wish to incur the additional cost of increasing their securities.

In response to the development community’s comments concerning the timing of registration of the plan of subdivision, Regional staff have investigated options to encourage the submission of “as constructed” drawings, while still giving the Owner the flexibility of registering the plan once the services are complete. Since there is less of a problem in receiving the drawings when 100% of the securities are posted, a proposal to revise the securities provision to increase the base security to 50% of the value of the internal works and 100% of the cost of the external works was discussed with representatives of the development community. This proposal met with significant opposition by many members of the development community and consequently no revisions to the securities requirement of the agreements have been made at this time. Discussions between staff and the development community are ongoing and it is hoped that these concerns can be resolved and a mutually acceptable solution to the timely submission of “as constructed” drawings can be developed over the course of the next several months

7. Assumption of Regional Works

Prior to Regional Council’s approval of significant revisions to the standard residential and industrial subdivision agreements in 1992 (Report LS-58-92), the Region required that the Local Municipalities assume the works under their jurisdiction prior to the Region assuming its works constructed under the Region’s agreement. In most cases, a subdivision would not be assumed for a period of at least five years and Regional staff’s experience has shown that this is too long a period of time.

Upon completion of the works and registration of the plan, the Region becomes responsible for the quality of the services provided. However, under the land development agreement, the Owner of the lands is still contractually responsible to maintain the works and repair any deficiencies identified until assumption of those works by the Region. Staff identified that most deficiencies come to light within the first two years, following substantial completion of the works. Therefore, it is desirable that the new development agreements should provide for the assumption of Regional works after a two year maintenance period and prior to, or regardless of the timing of assumption by the Local Municipality. This shorter time period preceding the Region’s assumption would result in improved customer service for new homeowners and would ensure that the works are maintained to the Region’s standards.

With passage of *The Safe Drinking Water Act, 2002*, S.O. 2002, c. 32 (the “Act”), it has become even more important that these works (especially water works), be assumed as quickly as possible. The Act requires that the operating authority, which is the Region, ensure:

11. (1) 2. That, at all times in which it is in service, the drinking-water system;
 - i. is operated in accordance with the requirements under this Act;
 - ii. is maintained in a fit state of repair; and
 - iii. satisfies the requirements of the standards prescribed for the system or the class of systems to which the system belongs.

3. That the drinking-water system is operated by persons having the training or expertise for their operating functions that is required by the regulations and the license or approval issued or granted for the system under this Act.

Unfortunately staff are not always aware of maintenance activities occurring on unassumed subdivisions and there have been instances where Owners have not complied with the Region’s standard procedures.

While Owners have been able to have Regional works assumed in as little as two years following the start of the guaranteed maintenance period, not all Owners have availed themselves of this opportunity. Regional staff are continuing to meet with members of the development community to discuss ways in which the assumption of the subdivision works can be expedited with the objective of developing new procedures over the next several months.

Consultation with Developers

In July 2005, staff began meeting with members of the development community to discuss amendments to the Region’s standard land development agreements. Staff brought this matter forward at several Halton Developers’ Liaison Committee (the “Committee”) meetings for discussion during the past fifteen months. Staff also invited a group of developers, consultants and the President of the Halton chapter of the Urban Development Institute to several meetings to discuss proposed amendments and outstanding issues. At the Committee meeting on February 10, 2006, a draft of the revised residential subdivision agreement was distributed to representatives of the development community and the Local Municipalities for review and comment. As a result of the comments received a further meeting with staff dedicated to discussion of the amended agreement was held on April 4, 2006. After consulting with the development community and having heard their comments and concerns on the amended agreement, staff undertook several more revisions to the land development agreements. Again in August 2006, a further revised draft of the residential subdivision agreement and draft report was distributed to members of Committee and staff for review, comment and discussion.

The development community's response to this final draft has been very positive and its members' comments reflect their acceptance of the amended agreements, along with their appreciation of the Region's ongoing dialogue regarding the need for changes to these agreements. Furthermore, the development community has indicated its desire to continue discussions with staff to arrive at solutions to the various outstanding issues discussed above. In this regard, staff will continue to meet with the development community to resolve the outstanding issues, specifically the Region's concerns with "as constructed" drawings and the assumption of Regional services, following which further revisions to the standard land development agreements may be required.

Internal Review Process

Concurrent with the Region's consultations with the development community, Regional staff also conducted an internal process review to identify issues and concerns raised by staff in relation to the amended land development agreements. The issues identified included the receipt of the "as constructed" drawings and the assumption of the works in a timely manner but they also included the correction of deficiencies in Regional works (particularly curb boxes), the location of bulk water stations and the Owners' design obligations regarding the engineering design drawings for Regional works.

With respect to the deficiencies in curb boxes and other Regional works, staff are evaluating options including using the Owners' letters of credit to correct such deficiencies. Although this issue was raised during discussions on the timely assumption of Regional works, a concern was also identified with respect to the correction of deficiencies during the guaranteed maintenance period.

With regard to the location of bulk water stations, not every agreement will require a bulk water station and therefore a revision to the standard agreement will not be necessary. If a bulk water station is required staff will insert special clauses into Schedule "Six" to accommodate any safety and transportation requirements. Staff are aware of the public's concerns with bulk water stations given the increased truck traffic they generate and will continue to work with Owners to find the best site for such stations. Appropriate conditions of draft plan approval will also be developed and imposed.

Engineering Services' staff have identified that although the land development agreements outline the Owners' design obligations, in reality the engineering drawings are completed long before the agreements are even drafted. Therefore, it is appropriate that Owners' design obligations should also be addressed in the conditions of draft plan approval which occur before the Region and the Owner enter into an agreement. As such, the Region's conditions of draft plan approval will now be revised to include the same engineering requirements as regarded by the agreements.

Staff will continue to work with the development community in 2007 to resolve these outstanding issues and any solutions developed may require further amendments be made to the land development agreements in order to better meet the needs of the Region, its residents and Halton's developers. Staff will report back to Council in 2007 when the issues have been resolved, with any recommendations in this regard as may be appropriate.

FINANCIAL/PROGRAM IMPLICATIONS

There are no financial or program implications arising from this Report.

RELATIONSHIP TO THE STRATEGIC PLAN

This is an operation/program matter which does not have a direct relationship to the Strategic Plan.

Respectfully submitted,



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Approved by



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