

THE CORPORATION OF THE
TOWN OF PELHAM

BY-LAW NO. 2167 (2000)

Being a by-law to authorize the Mayor and Clerk to enter into a Site
Plan Agreement with Hamilton East Community Services Corp.

WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable to enter into a Site Plan Agreement with Hamilton East Community Services Corp. with regard to the construction of the Peninsula Youth Centre.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF PELHAM ENACTS AS FOLLOWS:

- (1) THAT the Site Plan Agreement attached hereto and made part of this by-law between the Corporation of the Town of Pelham and Hamilton East Community Services Corp. be and the same is hereby approved.
- (2) THAT the Mayor & Clerk be and each of them is hereby authorized and instructed on behalf of the Corporation of the Town of Pelham to execute the said Site Plan Agreement and the Clerk is hereby authorized to affix the Corporate Seal thereto.

READ A FIRST, SECOND AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
15TH DAY OF MAY, 2000 A.D.


MAYOR RALPH BEAMER


CLERK CHERYL MICLETTE

Additional Property Identifier(s) and/or Other Information

SCHEDULE

DESCRIPTION

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the Town of Pelham, in the Regional Municipality of Niagara, formerly in the Township of Welland, Province of Ontario and being composed of Part of Lot 12 in the 13th Concession of the said Township and premising with the northerly limit of Lot 12 in the 14th Concession has an astronomic bearing of North $89^{\circ} 02'$ east and relating all bearings herein thereto and the said parcel may be more particularly described as follows:

COMMENCING at the southeasterly angle of said Lot 12 in Concession 13;

THENCE north $0^{\circ} 01'$ west along the easterly limit of the Lot, 1,095.71 feet to an iron bar;

THENCE south $88^{\circ} 45'$ west 798.71 feet to an iron bar;

THENCE south $0^{\circ} 24'$ east 1,091.67 feet more or less to the southerly limit of said Lot;

THENCE north $89^{\circ} 02'$ east along the said southerly limit 791.59 feet more or less to the point of commencement and containing by admeasurement an area of 19.960 acres.

SAVE AND EXCEPT Part of Lot 12, Concession 13 in the said Township of Pelham, now Town of Pelham, and being more particularly described as follows:

COMMENCING at the southeastern angle of the said Lot;

THENCE south $89^{\circ} 02'$ west along the southern limit thereof, 791.59 feet;

THENCE north $0^{\circ} 24'$ west, 17 feet;

THENCE north $89^{\circ} 02'$ east, 741.7 feet to a standard iron bar;

THENCE $44^{\circ} 30' 30''$ east, 71.3 feet to a standard iron bar planted on the easterly limit of said Lot;

THENCE south $0^{\circ} 01'$ east along the said easterly limit of the said Lot, 67 feet to the place of beginning, said exception being for the purposes of road widening.

As described in instrument No. 754162 and being all of the PIN.

THIS AGREEMENT made in triplicate this *26th* day of June, 2000 A.D.

BETWEEN:

HAMILTON EAST COMMUNITY SERVICES CORP.
Hereinafter called the "Owner"

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF PELHAM
Hereinafter called the "Town"

OF THE SECOND PART

WHEREAS the Owner purports to be the owner of the lands in the Town of Pelham described in Schedule "A" attached hereto;

AND WHEREAS the Owner is desirous of performing renovations and the construction of additions to the existing building for the purpose of a youth detention centre in accordance with Schedules "B", "C", "D", "E" and "F" attached hereto, being the Site Plan, dated revised April 2000, and numbered A1 SPA; the Site Services Plan dated revised April 13, 2000, and numbered M1 SPA; the Planting Plan dated revised April 13, 2000, and numbered L-1; the Electrical Site Plan, dated revised April 2000, and numbered E1 SPA; and the Elevations Plan, dated revised April 2000, and numbered A2 SPA, respectively and filed in the Town's offices;

AND WHEREAS the Town has agreed to permit the said construction subject to certain terms and conditions;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One Dollar (\$1.00) now paid by the Owner to the Town (the receipt whereof is hereby acknowledged), the Parties hereto mutually covenant and agree as follows: -

1. DEFINITIONS in this Agreement: -

- (a) "TOWN CLERK" shall mean the Clerk of the Corporation of the Town of Pelham.
- (b) "COUNCIL" shall mean the Council of the Corporation of the Town of Pelham.
- (c) "DIRECTOR" shall mean the Director of Operations of the Corporation of the Town of Pelham.
- (d) "TREASURER" shall mean the Director of Financial Services of the Corporation of the Town of Pelham.
- (e) "CHIEF BUILDING OFFICIAL" shall mean the Chief Building Official of the Corporation of the Town of Pelham.
- (f) "DIRECTOR OF PLANNING SERVICES" shall mean the Director of Planning Services of the Corporation of the Town of Pelham.
- (g) "PROFESSIONAL ENGINEER" shall mean a Professional Engineer registered with the Association of Professional Engineers.

(h) "PROFESSIONAL ARCHITECT" shall mean a Professional Architect registered with the Ontario Association of Architects.

(i) "FACILITIES AND WORKS" means and includes those facilities and works which are shown on or referred to in any one or more of the plans, drawings and schedules to this Agreement.

2. The Owner agrees to develop and maintain the lands only in accordance with the terms and conditions contained herein and any other applicable by-law of the Town.

3. (a) The Owner agrees to perform any and all construction and installation on the lands in accordance with the terms and conditions contained herein and as shown on Schedules "B", "C", "D" and "E" attached hereto and forming part of this Agreement to the reasonable satisfaction of the Town.

(b) And further, the Owner agrees not to perform any construction or installation on the lands except in accordance with the terms and conditions contained herein and shown on said Schedules "B", "C", "D" and "E" attached hereto and forming part of this Agreement and to the reasonable satisfaction of the Town.

4. PRIVATE SEWAGE SYSTEM:

The Owner shall obtain approval from the Niagara Regional Health Services Department or the Ministry of the Environment, whichever is applicable, for the construction of sub-surface disposal systems.

5. PRIVATE WATER SUPPLY:

The Owner shall ensure the availability of potable water supply to the satisfaction of the Niagara Regional Health Services Department. The approval of the Niagara Health Services Department for potable water supply must be obtained before any building permit will be issued by the Town.

6. GRADING:

(a) The Owner agrees to have prepared by an Ontario Land Surveyor or Professional Engineer, a detailed grading plan, being the Site Plan, for the site, said plan to clearly indicate the existing drainage pattern on the said lands originally flowing through, into or over the area of the site, to the street storm sewer system or other outlet approved by the Director. This Site Plan shall be approved by the Director prior to the execution of this agreement. Minor changes to the Site Plan may be permitted subject to the approval of the Director.

(b) The Owner shall not change or do any work that will prejudicially affect any natural watercourse or drainage ditch without making full provisions for the continuance of such drainage facilities. The proposed proper provision to be made by the Owner shall be subject to the approval of the Director. In the event changes are made after having been approved by the Director, the Owner nevertheless shall be solely responsible for any damage caused thereto, and shall indemnify and save harmless the Town therefrom.

(c) Unless otherwise approved or required by the Town, the Owner agrees not to alter the grades of the said lands until such time as a building permit is issued for the construction of the building additions contemplated herein on the said lands.

(d) The Owner agrees to submit a certificate signed by an Ontario Land Surveyor or Professional Engineer which indicates that the grades as stipulated on Schedule "B" to this agreement have been complied with.

7. Landscaping:

(a) The Owner shall, at its own expense, adequately landscape, plant and maintain all of the lands not required for buildings, parking or roads so as at all times to provide effective green areas enhancing the general appearance of the development contemplated herein, said planting and landscaping shall be in accordance with the approved Planting Plan attached hereto as Schedule "D". Minor changes to the Landscape Plan may be permitted subject to the approval of the Director of Planning Services.

(b) Unless otherwise approved or required by the Town, the Owner agrees not to remove trees or other vegetation from the said lands until such time as a building permit is issued for the construction of the buildings contemplated herein on the said lands.

(c) Notwithstanding paragraph (a) above the Owner shall also, at its own expense, maintain all of the remaining lands beyond the main building and fenced areas in accordance with the applicable municipal by-laws and provincial regulations.

8. HYDRO:

The Owner shall cause to be installed, at its own expense, a hydro system to serve the development, in accordance with the plans and specifications approved by Ontario Hydro. The Owner further agrees to be responsible for the cost of maintaining and repairing the hydro system located on said lands in perpetuity.

9. GARBAGE DISPOSAL:

(a) The Owner shall at all times provide adequate collection and disposal of garbage and sanitary refuse. The garbage and sanitary refuse shall be located outside the building in accordance with the approved Site Plan attached hereto as Schedule "D".

(b) If it is the intention of the Owner to provide for Regional solid waste collection services within the proposed development, the Owner shall follow the Regional Policy entitled Waste Collection By Way Of Entry On Private Property and attachments thereto.

10. FLOODLIGHTING:

The Owner shall ensure that any lighting facility used to illuminate any building or parking area shall be designed and installed as to deflect from adjacent buildings and streets in accordance with the approved Electrical Site Plan attached hereto as Schedule "E".

11. PARKING, CURBING AND DRIVEWAYS:

The Owner shall, at its own expense, provide and at all times maintain on the said lands, paved asphalt parking areas and driveways or such other form of hard surfacing acceptable to the Town in accordance with the approved Site Plan attached hereto as Schedule "B".

12. BUILDING AND SERVICES:

The Owner shall construct and the Town shall permit the construction of the buildings and other structures on the lands described in Schedule "A" in accordance with Schedules "B", "C", "D" and "E" attached hereto to permit the development provided that all such uses shall comply with all building and zoning requirements of the Town.

13. ADMINISTRATIVE AND CONSULTING COSTS:

The Owner shall pay the Town's processing and administrative expenses associated with the registration of this agreement on title.

14. DEPOSIT FOR FACILITIES AND WORKS:

(a) At the time of execution of this Agreement the Owner shall pay to the Town a deposit to guarantee its compliance with this Agreement in an amount equal to the lesser of:

- (i) the estimated cost of completing the facilities and works; or
- (ii) \$60,000.00

The parties have calculated that the estimated cost for completion is approximately One Hundred and Forty Thousand Dollars (\$140,000.00) as set out in Schedule "G" attached hereto and forming part of this Agreement.

(b) The deposit shall be paid to the Town in cash or in the form of an irrevocable letter of credit from a chartered bank or from a recognized lending institution, subject to the approval of the Treasurer and shall be held as security to ensure the completion of the facilities and works until such time as the Town permits its release as ordered herein. The deposit may be used to pay for the cost of any work performed by the Town in accordance with the following clause in the event of the failure of the Owners to comply with the terms of this Agreement..

(c) Upon completion of the facilities and works, the Owner shall provide to the Town at the Owner's expense confirmation in writing by the Owner's Professional Architect or Professional Engineer or both, that the approved plans appended hereto have been complied with. When such confirmation has been received, the Chief Building Official shall confirm such compliance and the deposit, less any amounts expended to enforce compliance with the agreements and any amounts refunded or reduced as the work required by this agreement progresses, shall be returned to the Owner, without interest.

(d) The Town may, from time to time, demand an increase in the sum of the deposit in accordance with increases in the cost of performing the works required herein to be completed and the Owner covenants and agrees to make such increase. At the sole discretion of the Chief Building Official the amount of the deposit may be reduced at any time after the Owner has reached the stage where the costs to complete the facilities and works is less than the amount of the deposit.

(e) The release of the deposit by the Town does not release the Owners from their obligation to maintain all of the facilities and works pursuant to this Agreement.

(f) The Owner agrees that all of the facilities and works required to be provided by the Owner shall be provided, installed or constructed by the Owner within one hundred and eighty (180) days after the date of substantial completion of the proposed development as determined by the Chief Building Official and shall be maintained at all times in good condition.

15. GENERAL:

(a) The Owner shall maintain and keep in repair, driveways and access servicing the buildings located in the development.

(b) The Owner grants to the Town, its servants, agents and assigns permission to enter upon the lands for the purpose of inspection of any facilities and works referred to in this Agreement and for the purpose of the completion of any facilities and works in accordance with this clause and this Agreement.

(c) The Owner will, at all times, indemnify and save harmless the Town from all loss, costs, damages and injuries which the Town may suffer or be put to for or by reason of the construction, maintenance or existence of any facilities and works done by the Owner, its contractors, servants or agents on the lands or which the Town may suffer or be put to for or by reason of the completion by the Town of any of the required facilities and works in accordance with this clause and this Agreement.

16. The Owner shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative tribunal the right of the Town to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this Agreement may be pleaded as an estoppel against the Owner in any such proceeding.

17. The Owner covenants for itself, its successors and assigns and the Owners from time to time of the said lands and the burden of the covenants contained in this Agreement shall be deemed to be negative and shall run with and be binding upon the lands described in said Schedule "A" to and for the Town, its successors and assigns.

18. Default:

Upon breach by the Owner of any covenant, term, condition or requirement of this Agreement, or upon the Owner becoming insolvent or making any assignment for the benefit of creditors, the Town, at its option, may declare the Owner to be in default. Notice of such default shall be given by the Town, and if the Owner shall not remedy such default within such time as provided in the notice, the Town may declare the Owner to be in final default under this Agreement. Upon notice of default having been given, the Town may require all work by the Owner, its servants, agents, independent contractors and sub-contractors to cease (other than any work necessary to remedy such default) until such default shall have been remedied, and in the event of final default, may require all work as aforesaid, to cease. Upon final default of the Owner, the Town may, at its option, adopt or pursue any or all of the following remedies, but shall not be bound to do so:

- (a) enter upon the subject lands by its servants, agents and contractors and complete any work, service, repair or maintenance wholly or in part required herein to be done by the Owner, and collect the cost thereof from the Owner and/or enforce any security available to it;
- (b) make any payment which ought to have been made by the Owner to the Town, for any purpose, and apply the same in payment or part payment for any work which the Town may undertake;
- (c) retain any sum of money heretofore paid by the Owner to the Town, for any purpose, and apply the same in payment or part payment for any work which the Town may undertake;
- (d) bring action to compel specific performance of all or any part of this Agreement for damages;
- (e) exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law.

19. The Owner agrees and consents to the registration of notice of this Agreement against the said lands described in said Schedules "A" attached hereto.

20. This agreement and the provisions hereof do not give to the Owner or any person acquiring any interest in the said lands (each hereinafter in this paragraph called "such person") or any other person any rights against the Town with respect to the failure of any such person to perform or fully perform any obligation under this agreement, or the failure of the Town to force any such person to perform or fully perform any obligation under this agreement or any negligence of any such person in the performance of the said obligation.

21. Notwithstanding any of the provisions of this agreement, the Owner, its successors and assigns, shall be subject to all of the by-laws, as amended, of the Town at the time of the issuance of a building permit required pursuant to the terms of the agreement or at the time of the execution of this agreement, whichever is applicable.

22. The Owner agrees that all plans shall be drawn by a Professional Architect or by a Professional Engineer and all surveys by an Ontario Land Surveyor, subject to the reasonable satisfaction of the Town.

23. Any notice, demand, acceptance or request provided for in this agreement shall be in writing and shall be deemed to be sufficiently given if personally delivered or sent by registered mail (postage prepaid) as follows:

To the Town at: Town Clerk
 Town of Pelham
 P. O. Box 400
 20 Pelham Town Square
 Fonthill ON L0S 1E0

To the Owner at: Hamilton East Community Services
 681 Main Street East
 Hamilton ON L8M 1K3

Attn: CEO Heather Hunter

or as such other address as the party to whom such notice is to be given shall have last notified the party giving the notice in the manner provided in this paragraph 23. Any notice delivered to the party to whom it is addressed in this paragraph 23 shall be deemed to have been given and received on the day it is so delivered at such address. Any notice mailed as aforesaid shall be deemed to have been given and received on the fifth day next following the date of its mailing.

24. The originals of the plans set out in Schedules "B", "C", "D", "E" and "F" attached are available at the offices of the Town at the address set out in paragraph 23.

25. This Agreement shall enure to and be binding upon the parties hereto and their heirs, executors, trustees, successors, permitted assigns and anyone acquiring any interest in the lands described in Schedule "A".

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date and year first above written.

THE CORPORATION OF THE TOWN OF PELHAM

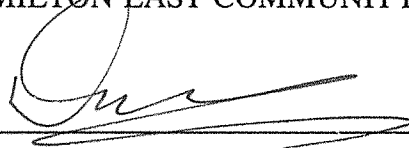


Mayor Ralph Beamer

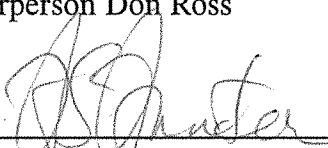


Clerk Cheryl Miclette

HAMILTON EAST COMMUNITY SERVICES CORP.



Chairperson Don Ross



Secretary and Chief Executive Officer Heather Hunter