

THE CORPORATION OF THE
TOWN OF PELHAM
BY-LAW NO. 2385 (2002)

Being a by-law to authorize the Mayor & Clerk to enter into a Pre-Servicing Agreement with Maxland Developments Inc. re Timber Creek Estates Subdivision.

WHEREAS the Corporation of the Town of Pelham (the "Town") and Maxland Developments Inc. (the "Owner") have not concluded the specific terms and conditions of a formal, comprehensive subdivision agreement, for the Timber Creek Estates Subdivision (the "Subdivision Agreement");

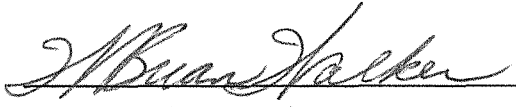
AND WHEREAS the Council of the Town deems it appropriate to enter into a pre-servicing subdivision agreement with the Owner in order to permit the construction and installation of those services prior to the entering into and execution of the Subdivision Agreement;

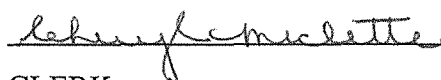
AND WHEREAS Section 51 (6) of the Planning Act, R.S.O. 1990, Chapter P.13, authorizes the Town to enter into agreements imposed as a condition to the approval of a plan of subdivision and to register any such agreement against the land to which it applies;

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

- (1) THAT the Pre-Servicing Agreement between the Corporation of the Town of Pelham and Maxland Developments Inc. attached hereto and made part of this by-law 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 Pre-Servicing Agreement and the Clerk is hereby authorized to affix the Corporate Seal thereto.
- (3) THAT notwithstanding the execution of the Pre-Servicing Agreement as provided for herein, The Corporation of the Town of Pelham is not waiving the conditions imposed for subdivision approval, is still requiring the completion and execution of a formal, comprehensive subdivision agreement by it and Maxland Developments Inc. and is under no obligation to issue building permits for the subject subdivision.

READ A FIRST, SECOND AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
6th. DAY OF MAY, 2002 A.D.


MAYOR (ACTING)


CLERK

THIS AGREEMENT made in triplicate, this 6th day of May, 2002

BETWEEN:

THE CORPORATION OF THE TOWN OF PELHAM

(hereinafter called the TOWN)
OF THE FIRST PART

AND:

MAXLAND DEVELOPMENTS INC.

(hereinafter called the OWNER)
OF THE SECOND PART

WHEREAS:

1. Maxland Developments Inc., the developer of the proposed Timber Creek Estates subdivision, wishes to enter into an agreement with the Town which will allow the installation of services prior to the acceptance of construction drawings or execution of a subdivision agreement which will regulate and govern the development of the plan.
2. The Town deems it appropriate to grant to the Owner permission to proceed with the installation of services for Lots 1 to 10, inclusive, Lots 30 to 56, inclusive, and Lot 70, prior to the signing of the subdivision agreement which will regulate and govern the development of the plan.

NOW THEREFORE THE PARTIES TO THIS AGREEMENT AGREE TO AND WITH EACH OTHER AS FOLLOWS:

1. The Owner acknowledges that he is proceeding with the installation of services in the proposed plan prior to executing a subdivision agreement with the Town, entirely at his own risk and the Town will not be held liable for any losses, claims or damages which might result from the installation of services at the Owner's risk prior to traditional approvals being received. Further this preservicing agreement does not guarantee the Town's final agreement to execute a subdivision agreement.
2. The Owner will allow the Town, its employees, servants and agents, to enter upon the lands at all times for the purposes of, without limiting the generality of the foregoing, to make necessary inspections to correct drainage problems, to correct or eliminate any other nuisance such as dust, garbage and debris and the cost of any and all services relating to inspections and necessary works conducted by the Town on the lands shall be charged to the Owner and the Owner agrees to pay the Town's accounts within thirty (30) days of receipt of an invoice.
3. The Owner will submit letters of credit and cash as would be required by the subdivision agreement regulating and governing the development of the lands and the specific requirements under this section are shown on Schedule "A" to this agreement.
4. The Owner agrees to save harmless and indemnify the Town, Regional Municipality of Niagara and Hydro One, its employees, servants and agents against all actions, causes of action, suits, claims and demands whatsoever, which may arise either directly or indirectly by reason of the pre-servicing.
5. The Owner agrees to proceed with the construction of all municipal services in accordance with the plans hereto affixed as Schedule "B", in accordance with Town requirements and standards, and should active development of the land come to a termination, to smooth, grade and seed the site to renew vegetation and prevent erosion problems and upon any failure in performing this obligation, to allow the Town to enter the lands and carry out the work deemed necessary by the Operations Department with the costs incurred by the Town to be a charge to the Owner.

6. The Owner agrees to implement siltation controls as per the approved engineering drawings prior to commencing any other pre-servicing works and to continuously maintain throughout the construction of servicing, etc.
7. The Owner shall make arrangements for and pay for all compaction tests requested by the Town during the period of construction, and the said compaction tests shall be carried out by a reputable soils engineering consultant to the satisfaction of the Director of Operations.
8. The Owner agrees to allow the Town to draw on the letter of credit under Clause 3 above for the completion of any works considered necessary by the Director of Operations, including those indicated under Clause 5, 6 and 7 and other works such as rectification of drainage problems and cleanup of existing roads, upon verbal notification to the Owner's Engineer.
9. The parties hereto agree that this agreement shall be registered against the title of the affected lands to require these undertakings and covenants to be assumed by any successor in title, to the effect that the obligations and covenants herein shall be binding upon the executor's administrators, successors and assigns.
10. The Owner agrees to provide five million (\$5,000,000.00) dollars of liability insurance for the development in the developer's name with the Town, Regional Municipality of Niagara and Hydro One named as additional insured prior to starting any construction.
11. The Owner agrees that the construction of any sewage works or water works will not be undertaken until the final approval of the Ministry of the Environment has been obtained by issue of its standard Certificate of Approval.
12. The Owner agrees that nothing in this agreement shall fetter the rights of the Town to require additional works to be completed as deemed necessary by the Director of Operations.
13. The Owner agrees that upon registration of the necessary subdivision agreement, this pre-servicing agreement becomes null and void.
14. The Town hereby agrees that it shall not conduct any works as contemplated by paragraphs 5, 6, 7, 8 and 9 of this agreement until it has first served written notice on the Owner by prepaid registered mail outlining the nature of the works or corrective action to be undertaken and allowing him a reasonable period of time to complete the said works or corrective action taken to the reasonable satisfaction of the Town. In the event that the Owner fails to complete the said works or corrective action within the time period allowed or as it may be extended in writing by the Town, the Town may then enter upon the lands and complete the works or corrective actions as contemplated by paragraphs 5, 6, 7, 8 and 9 of this agreement.

SIGNED, SEALED AND DELIVERED)

IN THE PRESENCE OF)

) THE CORPORATION OF THE TOWN OF PELHAM

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) *Ralph Beamer*
MAYOR RALPH BEAMER

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) *Cheryl Miclette*
CLERK CHERYL MICLETTE

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) MAXLAND DEVELOPMENTS INC.

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) *John De Liso*
JOHN DELISIO

) I have authority to bind the Corporation