

The Corporation of the Town of Minto

By-Law Number 2012-17

**Being a by-law to authorize the Mayor and Clerk
to Execute a Development Agreement between
The Corporation of the Town of Minto and Wellingdale Construction
Ltd.,**

WHEREAS the Corporation of the Town of Minto has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under Section 8 of the Municipal Act, S.O. 2001, c.25;



AND WHEREAS the parties hereto have agreed upon the terms as set out in the attached Development Agreement, in substantially the same form affixed hereto as Schedule "A" to this By-law;

NOW THEREFORE the Council of The Corporation of the Town of Minto enacts as follows:

1. That the Mayor and Clerk are hereby authorized and instructed to execute the Development Agreement between the Corporation of the Town of Minto and Wellingdale Construction Ltd. attached as Schedule "A" to this By-law.
2. That the Clerk is hereby instructed to affix the Corporate Seal thereto.

Read a first second third time and passed in open Council this 6th day of March, 2012.

SEAL


Mayor George A. Bridge
Deputy Mayor Terry Fisk

CAO/Clerk Bill White

DEVELOPMENT AGREEMENT

THIS AGREEMENT made as of the 2nd day of May, 2012.

B E T W E E N:

THE CORPORATION OF THE TOWN OF MINTO

Hereinafter called "Minto",
Of the FIRST PART,

- and -

WELLINGDALE CONSTRUCTION LTD. a company incorporated
under the Laws of the Province of Ontario

Hereinafter called "the Owner",
Of the SECOND PART.

WHEREAS:

- A. The Owner is the registered owner of the following lands being part of property identifier number 71031-0093 (LT) and which lands have frontage on John Street and Lorne Street in the former Town of Harriston, now in the Town of Minto, legally described as:

Part of Park Lot C, Preston's Survey (Lot 88, Concession D, Minto), former Town of Harriston, in the Town of Minto, in the County of Wellington being Pts 1-11 on Reference Plan 61R-11808 (hereinafter called "the lands").

- B. The Owner has applied to the County of Wellington Planning and Land Division Committee (hereinafter called "the Committee") for consents to sever the lands pursuant to Section 53 of the Planning Act into five (5) residential building lots (four lots and one retained) under Application Nos. B111/11, B112/11, B113/11 B114/11 and B115/11.
- C. Provisional consent pursuant to each of the said Applications was given by the Committee on the 13th day of October, 2011 with conditions of approval to be fulfilled no later than 4:30 p.m. on October 13th, 2012.
- D. This Agreement is being made to address the following conditions of approval established by the Committee for the proper and orderly development of the lands, that is, numbers 5, 6, 8, 9, 10 and 11 as authorized by subsection 51 (25) (d) of the *Planning Act*.
- E. Subsection 51 (26) of the Planning Act provides that such an Agreement may be registered on the title of the land to which it applies and that the municipality is

Schedule A to By-law 12-17

entitled to enforce the provisions of it against the Owner and subject to the Registry Act and the Land Titles Act any and all subsequent owners of the land.

IN CONSIDERATION OF the terms, covenants and provisos set forth in this Agreement and other good and valuable consideration, and in satisfaction of the said conditions imposed by the Committee, the Owner covenants and agrees with Minto as follows:

1. **Definitions:**

- (a) **“Approved Plans”** means the plans on file with Minto and listed or otherwise identified in Schedule “A” attached to this Agreement and approved by Minto’s consulting engineer or to be otherwise agreed upon by the parties;
- (b) **“Building Permit”** means any permit to construct a building on the lands or any part thereof pursuant to Section 8 of the Building Code Act, 1992, S.O. 1992, c.23, as amended or re-enacted from time to time.
- (c) **“Construction Lien Act”** means the Construction Lien Act, R.S.O. 1990, c.30 as amended or re-enacted from time to time.
- (d) **“Estimated Cost of Municipal Services”** means an estimated cost of the Municipal Services prepared by the Owner’s consulting engineer and approved by Minto’s consulting engineer.
- (e) **“Letter of Credit”** means an irrevocable unconditional Letter of Credit from a Canadian Chartered Bank acceptable to Minto’s Treasurer and in the form attached as Schedule “B” to this Agreement, with such alterations, if any, in language (not affecting the substance thereof) as are acceptable to Minto’s Treasurer, acting reasonably, and with the necessary particulars entered onto the Letter of Credit.
- (f) **“Lots” and “Lot”** means any one (1) of the lots created on the lands pursuant to the said Application Nos. B40/10, B41/10, B42/10 B43/10 and B44/10 and/or the retained portion of the lands.
- (g) **“Municipal Act, 2001”** means the Municipal Act, 2001, S.O. 2001, c.25, as amended and re-enacted from time to time.
- (h) **“Municipal Services”** means the municipal road construction, the sanitary sewer system including the sewage pumping station, water distribution system

Schedule A to By-law 12-17

and storm sewer system, and street lighting, required by Minto for the development of five (5) lots on the lands for single family residence purposes.

- (i) **“Municipal Servicing Plan”** has the meaning set forth in paragraph 3.1.3.
- (j) **“Utilities”** means any required telecommunication services, gas services, electrical services, cable television services and other utilities.
- (k) **“Work”** means the construction and installation of the Municipal Services or any part or parts of the Municipal Services and such other work required in connection with this Agreement.

2. **Ownership Warranty.** The Owner warrants that it is a registered owner in fee simple of the lands.

3. **Municipal Services.**

3.1 **Responsibility of Owner** – Prior to the commencement of construction of any Municipal Services, the Owner shall at its sole expense:

- 3.1.1 Prepare and have approved by Minto’s Director of Public Services (the “Director”) a Grading Plan for the lands.
- 3.1.2 Prepare and register on title to the lands a reference plan of survey prepared by an Ontario Land Surveyor delineating thereon by separate parts the Lots and the easement over the Lots provided for in this Agreement in a form satisfactory to the Director.
- 3.1.3 Prepare the Municipal Servicing Plan consisting of an overall grading and drainage plan and an overall sewer and water plan for the lands to the extent necessary for the development permitted on the lands and to the satisfaction of the Director with the approval of Minto’s consulting engineer (the “Approved Grading and Drainage Plan” and the “Approved Sewer and Water Plan” respectively once approved).
- 3.1.4 Prepare and submit for the approval of the Director detailed design drawings in accordance with Minto’s requirements for all Municipal Services including a Site Grading Plan, lighting facilities, and any Utilities required by Minto for the development of the Lots (the “Approved Construction Drawings”).
- 3.1.5 Obtain any necessary approvals from the Maitland Valley Conservation Authority, the Ministry of the Environment or such other provincial ministry as required for the design and construction of the Municipal Services or any of them.

Schedule A to By-law 12-17

Provided that the said Plans may be individual or combined documents as approved by the Director and Minto's consulting engineer.

- 3.2 Construction – The Owner covenants and agrees to construct the Municipal Services, lighting facilities, and any required Utilities, subject to and in accordance with the Approved Construction Drawings and the provisions of this Agreement to the applicable Minto requirements and standards. The Owner shall have the overall responsibility for the design and construction of all Municipal Services provided that all such design and construction shall be carried out in accordance with the provisions of this Agreement. The Owner acknowledges that notwithstanding any approval, inspection or other review of the design and construction of any Municipal Services by Minto, including the Director and Minto's consulting engineer, the Owner shall not be released of its responsibility for ensuring that the design and construction conforms to Minto's standards.
- 3.3 Consulting Engineer – The Owner agrees to retain a qualified professional engineer (the "Owner's consulting engineer") satisfactory to Minto to design and supervise the grading and the construction of all Municipal Services, and the parties agree that the Director has approved of the firm Triton Engineering Services Limited as the Owner's consulting engineer.
- 3.4 Inspection – The Director or any person authorized by the Director shall have the right at all times to inspect the installation of the Work provided for in this Agreement.
- 3.5 Damage Repair – The Owner shall repair any damage caused to any existing road or mains or sewers as a result of the construction of the services and facilities provided for in this Agreement, and shall pay for any costs involved in the relocation of any existing services such as hydrants, telephone poles and public utilities plant and equipment.
- 3.6 Minto's Professional Fees and Disbursements – The Owner shall reimburse Minto for all of its engineering and legal expenses (professional fees and disbursements) in connection with the development and implementation of this Agreement, and further the Owner shall pay the sum of \$5,000.00 to Minto upon the signing of this Agreement as a deposit towards the said professional fees and disbursements, and when the said deposit has been depleted below the sum of \$1,000.00 the Owner shall pay another deposit in the same or lesser amount as determined by Minto, and if necessary thereafter such further deposits

Schedule A to By-law 12-17

shall be made upon the depletion of the amount of any deposit on hand below the sum of \$1,000.00 until the discharge of this Agreement by performance.

3.7 Building Permits – No application for a Building Permit for any Lot shall be made except in compliance with Section 4. Further, the Owner acknowledges that prior to the issuance of any Building Permit for any of the Lots, approval will be required from the Maitland Valley Conservation Authority of the building drawings in addition to Grading and Drainage Plans for any proposed residence. The Owner further acknowledges that such approval is required due to the Maitland Valley Conservation Authority's Regulator Control of the lands and Owner acknowledges that this requirement is in addition to the requirements of the Ontario Building Code Act and other sections of this Agreement.

3.8 Deficiencies Prior to Acceptance – The Owner agrees that if the Director, at any time, determines that any of the Work is being or has been improperly performed or if the Owner neglects or refuses to correct and perfect such Work as may have been rejected by the Director as defective or unsuitable, then Minto shall not accept such Work.

3.9 Completion Certificate – Upon the completion of the Municipal Services to the satisfaction of the Owner's consulting engineer, the Owner's consulting engineer shall prepare a completion certificate in respect of all of the Municipal Services (the "Completion Certificate") and shall forward such Completion Certificate to the Owner and to the Director for the approval of Minto's consulting engineer (B. M. Ross and Associates Limited). The Completion Certificate shall include the following:

- 3.9.1 The description of the Work in respect of which such Completion Certificate is given;
- 3.9.2 Confirmation that the final certificate with respect to the Municipal Services has been issued under the Construction Lien Act by the payment certifier if so required by the contract for construction;
- 3.9.3 A certificate stating that the Work has been completed to operational condition in accordance with the Approved Construction Drawings and the provisions of this Agreement;
- 3.9.4 A statement as to the date of the completion of the Municipal Services;
- 3.9.5 A complete set of as-built drawings for the Municipal Services showing final plan and profile locations of the Municipal Services together with a complete consolidated set of drawings;

Schedule A to By-law 12-17

- 3.9.6 Confirmation that the finished Municipal Services and grading elevations are in conformity with the Grading Plan approved by the Director; and
- 3.9.7 A statement as to the total cost of the Municipal Services.
- 3.10 Notice of Acceptance – Unless the Director is aware of defects either in the Completion Certificate or the Work and provided that the Specific Conveyances required under Section 5 have been accepted by Minto and registered, the Director shall thereafter forward to the Owner's consulting engineer a Notice of Acceptance (the "Notice of Acceptance").
- 3.11 Security – In order to satisfy Minto that sufficient funds are available to pay the total cost relating to the construction of the Municipal Services and to cover the faithful performance of this Agreement including the correction of deficiencies and the maintenance of the Municipal Services during the Warranty Period, the Owner shall deliver to Minto upon the execution of this Agreement, either a banker's draft or certified cheque made payable to Minto or a Letter of Credit (the "Security") to guarantee the said matters. The amount of the Security shall be equal to 100% of the Estimated Cost of the Municipal Services which is \$49,081.55 based on the estimated cost of works provided by Triton Engineering dated March 2012. Subject to subsection 3.14 the said banker's draft or certified cheque or Letter of Credit shall be kept in full force and effect until the Notice of Acceptance is issued under subsection 3.10 and the Warranty Period has expired.
- 3.11.1 The Parties acknowledge the agreement dated June 2nd, 2010 respecting severance files B40/10, B41/10, B42/10, B43/10 and B44/10 and that security in the amount of \$20,000 shall be retained by the Town for the completion of remaining works (dialer, manhole repair, final paving of John Street) during the maintenance period that applies under that development agreement.
- 3.12 Warranty Period – The Owner shall guarantee the Work to be free of defects during the period (the "Warranty Period") of two (2) years from the issuance of the Notice of Acceptance in respect of the Municipal Services.
- 3.13 Payment of Security:
- 3.13.1 Minto may draw upon and use the Security for any of the purposes set out in subsection 3.11 to pay for part or all of the costs to effect such purposes or any of them.

Schedule A to By-law 12-17

3.13.2 The Owner acknowledges that the cost of workers employed to carry out any of such purposes, whether or not such workers are normally employed by Minto, may be paid for in part or in full out of the Security. The application of the Security for payments for such purposes shall not relieve the Owner from its responsibility to pay for, or reimburse Minto for any shortfall in respect of all such costs and expenses.

3.14 Release of Security:

3.14.1 Upon the issuance of the Notice of Acceptance ninety percent (90%) of the Security then held by Minto, less the cost of any uncompleted Work, shall be released to the Owner, provided that there are no outstanding claims against the Security and no liens have been registered and all lien periods have expired under the Construction Lien Act.

3.14.2 Not less than twenty (20) days prior to the expiry of the Warranty Period for the Municipal Services, the Owner shall arrange with the Director for a final inspection and testing as may be appropriate and shall deliver a final acceptance certificate from the Owner's consulting engineer in a form satisfactory to the Director confirming in the opinion of such consulting engineer that there are no defects or deficiencies in the Municipal Services. Upon receipt of the final clearance certificate and provided that the Director and Minto's consulting engineer, acting reasonably, are satisfied that there are no defects or deficiencies in the Municipal Services, the Director shall so advise the Owner in writing and the warranty shall expire. Thereupon the balance of the Security then held by Minto, shall be released to the Owner, provided that there are no outstanding claims against the Security, no liens have been registered and all lien periods have expired under the Construction Lien Act.

3.15 Responsibility Prior to Acceptance – The Owner expressly acknowledges and agrees that prior to the acceptance or assumption of the Municipal Services by Minto, all components of the Municipal Services shall continue to be privately owned and the Owner and its assigns shall be jointly and severally responsible for all maintenance and replacement of all such components. The Owner and its assigns shall permit the components of the Municipal Services located within the lands to be used for the benefit of the lands in such manner as if the Municipal Services have been accepted by and conveyed to Minto. The Owner shall advise all prospective purchasers of any of the Lots of the provisions of this Agreement.

Schedule A to By-law 12-17

- 3.16 Conveyance to Minto – Where any Municipal Services are not located on a municipal highway, the Owner will, upon acceptance of such Municipal Services by the Director, convey without charge to Minto such Municipal Services and will provide to Minto appropriate easements for the purpose of the same, without charge, across or under the land upon which such Municipal Services are located. Such easements shall permit maintenance, servicing and re-construction and shall be satisfactory to the Director and to Minto's solicitor.
- 3.17 Local Services – The Owner acknowledges and agrees that the requirement to construct the Municipal Services is a condition of approval under Section 53 of the Planning Act and these are local services pursuant to Section 59 (2) of the *Development Charges Act*, 1997 installed by or paid for by the Owner.
- 3.18 Development Charges Credits – The Owner hereby releases and forever discharges Minto from any and all claims relating to payments made under this Agreement, for credits against development charges payable under any by-law of Minto passed under the *Development Charges Act*, 1997 with respect to any development of the lands.
- 3.19 Road Signs – A sign at least 4 feet by 6 feet shall be erected by the Owner at each entrance to the lands area. The sign shall read as follows: "Road Not Assumed By Municipality – Use At Your Own Risk". The sign shall be installed prior to the start of construction and be removed after the Notice of Acceptance has been issued.
- 3.20 911 Signs – Prior to the commencement of construction of any of the Work and until the issuance of the Certificate of Completion the Owner shall provide to the satisfaction of the Director individual lot signs showing the municipal address to allow 911 service during construction.
- 3.21 Parkland Dedication – The Owner agrees to pay to the Town \$1,000 cash-in-lieu of parkland dedication as a condition of severance approval.
- 3.22 Sidewalk – The Owner shall cover the cost of constructing a sidewalk on Lorne Street.
4. Building Permits -- The Owner agrees that it, or anyone claiming title from it or under its' authority, shall not apply for any Building Permits for any Lot until all of the requirements hereinafter set out have been carried out to the satisfaction of Minto. It is agreed that a copy of this Section 4 shall be delivered by the Owner to each and every

Schedule A to By-law 12-17

purchaser of any Lot and to each and every builder seeking a Building Permit for any Lot. It is agreed that Minto shall have the right to refuse any such application until the Completion Certificate provided for in Section 3.9 has been approved by Minto's consulting engineer, the Director is prepared to issue the Notice of Acceptance provided for in Section 3.10 subject to the fact that the final coat of asphalt may not have been applied to complete the municipal road construction, the Specific Conveyances required under Section 5 have been accepted by Minto and registered, and the required Utilities have been provided and installed.

5. Specific Conveyances.

5.1 Pursuant to subsection 3.16 the Owner shall convey an easement to Minto for emergency access over the lands described as Part 3,6,9 and 11, 61R-____ to provide for ingress/egress in flood conditions.

5.2 Notwithstanding anything to the contrary in this Agreement, when Minto acquires any part of the lands, or any interest therein, or any other lands of the Owner, for any municipal purpose, Minto shall not be bound by this Agreement as an Owner.

6. Construction Lien Act.

6.1 The Owner, as it carries out and completes all Work, shall holdback from any persons supplying services or materials respecting such Work, such amounts as a person would be required to holdback in accordance with the Construction Lien Act for such time periods as would be required to be held back pursuant to that Act (such amounts herein referred to as the "Holdbacks").

6.2 Following the expiry of the period that such Holdbacks are required to be held pursuant to the Construction Lien Act, they may be released by the Owner to the relevant contractors supplying the services or materials with respect to which such Holdbacks relate.

6.2.1 In the event that Minto incurs any costs or expenses involving making payments into Court to remove liens or defending actions taken by any party under the Construction Lien Act in connection with any portion of the Work, such costs and expenses shall be paid by the Owner to Minto on demand.

6.2.2 Minto shall promptly notify the Owner of any such actions by third parties upon receipt of notice and shall permit the Owner at its sole expense to add the carriage of any defense in connection with any such notices provided that the Owner shall indemnify and save Minto

Schedule A to By-law 12-17

harmless from any and all costs, expenses and liability whatsoever arising in connection with such action.

7. **Municipal Addresses.** The Owner agrees, that prior to the commencement of the construction of any of the Work, it shall submit applications for a revised municipal numbering for each Lot to Minto.
8. **Timing of Occupation.** No building constructed under a Building Permit shall be occupied until all Utilities required by this Agreement necessary to service such building have been constructed and completed.
9. **Insurance.** The Owner shall insure against all damages or claims for damage in an insurance company satisfactory to Minto's Clerk. Such policy or policies shall be issued in the joint names of the Owner, Minto, and Minto's consulting engineer and the form and content shall be subject to the approval of Minto. The minimum limits of such policy shall be \$5,000,000.00 all inclusive, but Minto shall have the right to set higher amounts. The policy shall be in effect for the period of this Agreement including the Warranty Period. The issuance of such policy or policies of insurance shall not be construed as relieving the Owner from responsibility for other or larger claims, if any, for which it may be held responsible.
10. **Registration of Agreement.** Prior to the provision of a clearance letter by Minto to the Committee with respect to the conditions addressed by this Agreement, the Agreement shall be registered pursuant to the provisions of the *Land Titles Act* by the Owner's solicitor in a manner approved by Minto's solicitor.
11. **Grading/Drainage and Maintenance.** All of the Lots shall be graded to drain in accordance with the Drainage Plan and the drainage of surface waters on the Lots shall be the sole responsibility of the Owner and subsequent purchasers. After any Lot has been graded in accordance with the Grading Plan and/or the Grading and Drainage Plan no change shall be made to the actual finished elevation and grading of the Lot in any way that results in a material alteration of drainage on or across the Lot or adjacent lands from that shown on the said Plans. The Owner and each subsequent owner shall not block, impede, obstruct or prevent the flow of surface water as provided for in the said Plans over any Lot by the construction, erection or placement thereon of any damming device, building, structure or other means. The grading required under this Agreement shall be provided and maintained by the Owner or subsequent owner of each Lot from time to time at such party's sole risk and expense.

Schedule A to By-law 12-17

12. **Acknowledgement of Agreement Status.** Upon the satisfaction of all or any part of the obligations under this Agreement, Minto will provide, upon the request of the Owner, an acknowledgement to the Owner, or such other interested party as the Owner may direct, that this Agreement has been totally or partially discharged by performance, as the case may be, and to the best of Minto's knowledge and belief as to the status of any remaining Work or defaults under this Agreement. Minto shall provide such written acknowledgement within a reasonable time, from time to time, at the Owner's reasonable request.
13. **Limited Release.** When this Agreement has been totally discharged by performance, Minto shall provide the Owner with a limited release with respect to this Agreement. The said release shall not affect any of the provisions and requirements of and under Section 11, Grading/Drainage and Maintenance.
14. **Legal Notice to Owner.** Any notice required with respect to this Agreement may be given to the Owner by registered mail addressed to the Owner at its principal place of business and shall be effective as of the date of the deposit thereof in the post office.
15. **Enforcement.**
 - 15.1 The Owner agrees that the facilities, Works and matters required by this Agreement shall be provided and maintained as required by this Agreement by the Owner at its sole risk and expense and to the satisfaction of Minto.
 - 15.2 The Owner agrees, that upon failure by it to do any act that is required by this Agreement, Minto may, in addition to any other remedy under this Agreement, enter upon the lands if necessary, and do the said act at the Owner's expense and collect the cost in like manner as municipal taxes as provided for in Section 427 of the *Municipal Act*, 2001.
 - 15.3 The Owner agrees that wherever the provisions of this Agreement allow Minto to refuse to process a Building Permit, such provisions shall apply equally to Minto's Chief Building Official.
 - 15.4 The Owner agrees that this Agreement when registered shall have priority over any registrations now or in the future subsequent to the transfer of the lands to the Owner by registered instrument number RO790437.
16. **Enurement.** The Parties agree that the covenants, rights, duties, provisions, conditions and obligations in this Agreement shall enure to the benefit of and be binding upon Minto and the Owner and their respective successors and assigns.

Schedule A to By-law 12-17

IN WITNESS WHEREOF the parties have executed this Agreement.

THE CORPORATION OF THE TOWN OF MINTO

Per: 

Mayor – George Bridge

Per: 

CAO/Clerk – Bill White

We have authority to bind the Corporation.

WELLINGDALE CONSTRUCTION LTD.

Per: 

John Mohle – Secretary/Treasurer

I have authority to bind the Corporation.

TOWN OF MINTO, LORNE STREET
JOHN TO MARGARET STREET, HARRISTON
ESTIMATE TO COMPLETE SURFACE WORKS - MARCH 2012

ITEM NO.	SPEC. NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
LORNE STREET - SURFACE WORKS						
1.1		Adjust Maintenance Holes to Finished Asphalt Grade	5	Each	\$400.00	\$2,000.00
1.2		Adjust Valve Boxes to Finished Asphalt Grade	2	Each	\$250.00	\$500.00
1.3		Granular "A" - Road Preparation	50	Tonne	\$24.00	\$1,200.00
1.4		Concrete Sidewalk	180	m2	\$55.00	\$9,900.00
1.5		Boulevard and Overflow Route - Grading, Topsoil and Sodding	1600	m2	\$6.00	\$9,600.00
1.6		Hot Mix Asphalt HL4 Surface Course Asphalt (50mm Depth)	145	Tonne	\$75.00	\$10,875.00
1.7		Hot Mix Asphalt HL3 Surface Course Asphalt (40mm Depth)	120	Tonne	\$78.00	\$9,360.00
SUB-TOTAL - LORNE STREET						<u>\$43,435.00</u>
HST 13%						<u>\$5,646.55</u>
TOTAL ESTIMATED COST						<u>\$49,081.55</u>