

**COMMITTEE OF THE WHOLE (WORKING SESSION)    NOVEMBER 26, 2002**

**PROTOCOL FOR ESTABLISHING TELECOMMUNICATION TOWER/ANTENNA FACILITIES WITHIN THE REGIONAL MUNICIPALITY OF YORK**

**Recommendation**

The Commissioner of Planning recommends:

1. THAT "Protocol for Establishing Telecommunications Tower/Antenna Facilities" be endorsed and adopted by Council as policy, subject to the following modification:

"For proposed towers or alterations to existing towers that do not meet the Exemption to Municipal Approval criteria, as a minimum, the Proponent shall give notice by regular mail to all owners within a radius of 120m or within a distance of three times the height of the proposed tower, whichever is greater, measured from the tower base, within urban areas and within 250m measured from the tower base in the rural areas and to area ratepayers association impacted by the proposal. The notice shall also be provided to the Ward Councillor, the Commissioner of Planning, the City Clerk and to the Clerk and the Commissioner/Director of Planning of any municipality within 500m of the proposed facility."

2. That provisions with respect to Exemptions to Municipal Approval for replacement of, and modifications to existing towers be modified by deleting the second bullet which reads: "The proposed radius does not exceed the existing height by more than 10%".

**Purpose**

To update Council respecting proposed modifications to the Region of York's "Protocol for Establishing Telecommunications Tower/Antenna Facilities".

**Background - Analysis and Options**

On June 17, 2002, Vaughan Committee of the Whole considered a report entitled, "Protocol for Establishing Telecommunication Tower/Antenna Facilities Within The Region Of York". The Committee resolved as follows:

1. That the recommendations contained in the following report of the Commissioner of Planning, dated June 17, 2002, be approved, subject to the notification to property owners being measured within a radius of 500m from the location of the tower; and
2. That the deputation from Mr. Stephen D'Agostino, Thomson Rogers, 390 Bay Street, Suite 3100, Toronto, M5H 1W2, and maps submitted be received.

At the following Council meeting June 24, 2002, Council resolved:

"That this matter be deferred to a Committee of the Whole meeting in September 2002, to allow further discussion and review of the policy."

At the June 24, 2002 meeting, Council also had a letter dated July 19, 2002, from Mr. S. D'Agostino of Thomson Rogers, Barristers and Solicitors, outlining three concerns with the protocol:

1. The need to enter into an Agreement registrable on title for the following:
  - the removal of all structures upon expiration of the lease;
  - the posting of securities for the cost of removal; and
  - a commitment to accommodate other providers on site where feasible.
2. The replacement of and modification of existing towers shall be exempt from municipal approval if they meet all of the following criteria:
  - the proposed height does not exceed the existing height by more than 10%
  - the proposed radius does not exceed the existing radius by more than 10%
  - tower replacement within identified development envelope/leased area.
3. There was also concern raised with the requirement that notice of public consultation, with respect to proposed tower(s), be given to owners of properties within a radius of 500m of the proposed tower. Mr. D'Agostino is of the opinion that the 500m requirement is excessive and that 120m is sufficient.

#### Agreements

With respect to entering into an agreement to ensure the cost of removal of a tower, Mr. D'Agostino has advised that Industry Canada has jurisdiction to require the removal of a tower and that his clients are not prepared enter into agreements with respect to tower removal. His clients are, however, prepared to provide a letter of commitment in place of an agreement. This letter would document his clients' agreement to undertake the municipality's reasonable land use mitigation requirements with respect to the proposed telecommunication tower.

The protocol states that the proponent may be required to enter into an agreement, undertaking or letter of commitment acceptable to the municipality, which may include such matters as:

- the removal of structures upon expiration of a lease
- the posting of securities to cover the cost of removal
- a commitment to accommodate other providers on site where feasible.

Staff is of the opinion that it would be in the municipality's interest to maintain this flexibility to make use of agreements if the undertaking/commitment approach is determined not to be acceptable. The protocol, as written, enables use of all 3 methods at the discretion of the City, and change is not considered necessary.

#### Replacement of and Modification to Existing Towers Exempt From Municipal Approval

The requirement for the proposed radius not exceeding the existing radius by more than 10%, was to ensure that replacement towers are constructed in reasonably close proximity to the approved tower.

Mr. D'Agostino has indicated that according to his clients, it is physically impossible to replace a tower and meet the 10% radius. When towers are replaced, it is usual practice to leave the original tower operational until the new tower is ready. As working room is needed between the bases of the two towers, it may be physically impossible to meet the 10% radius requirement. He also states that it is impossible to increase the height of the tower by 10% and still meet the 10% radius exemption.

It has been observed that general practice seems to be that telecommunication company leases small blocks of land within a larger landholding to accommodate only a tower. If the protocol requires the tower to be within the leases area, there should be little net effect if a new tower is build on-site. As such, it is recommended that the requirement limiting the radius be deleted, in lieu of requiring the tower to be on leased property.

#### Notice of Public Consultation

Issue has been raised with the requirement that notice of public consultation with respect to proposed tower be given to owners of properties within a radius of 500m of the proposed tower. Mr. D'Agostino is of the opinion that 120m-radius circulation from the tower is appropriate, similar to the notification given under the Planning Act for development applications.

Under the Planning Act, new development is subject to public notice given to Owners within 120m. While this distance can encompass a extensive number of properties in the urban area, in the rural area, it may only reach abutting properties. As such, Staff would suggest the following as a suitable compromise.

For proposed towers or alterations to existing towers that do not meet Exemption to Municipal Approval criteria, as a minimum, the proponent shall give notice by regular mail to all owners within a radius of 120m, or within a distance of three times the height of the proposed tower, whichever is greater, measured from the tower base within urban areas, and within 250m measured from the tower base in the rural areas, and to area ratepayers association impacted by the proposal. The notice shall also be provided to the Ward Councillor, Commissioner of Planning, City Clerk and to the Clerk and Commissioner/Director of Planning of any municipality within 500m of the proposed facility.

#### Conclusion

Staff have reviewed the above noted issues and can support the proposed modifications as noted in the recommendations section of this report. Should the Committee concur, the recommendations in this report can be adopted.

#### Attachments

1. Extract from Council Meeting June 24, 2002, regarding Item 57, Report No. 50 of the Committee of the Whole. Including Additional Information (Letter dated, June 19, from Mr. S. D'Agostino)

#### Report prepared by:

Arto Tikiryan, Senior Planner, ext. 8212  
Marco Ramunno, Manager, Development Planning, ext 8485

Respectfully submitted,

MICHAEL DeANGELIS  
Commissioner of Planning

JOANNE R. ARBOUR  
Director of Community Planning

/LG

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EXTRACT FROM COUNCIL MEETING MINUTES OF JUNE 24, 2002

Item 57, Report No. 50, of the Committee of the Whole, which was considered by the Council of the City of Vaughan on June 24, 2002, was dealt with by approving:

*That this matter be deferred to a Committee of the Whole meeting in September 2002, to allow further discussion and a review of the policy.*

**57 PROTOCOL FOR ESTABLISHING TELECOMMUNICATION TOWER/ANTENNA FACILITIES  
WITHIN THE REGIONAL MUNICIPALITY OF YORK**

The Committee of the Whole recommends:

- 1) That the recommendation contained in the following report of the Commissioner of Planning, dated June 17, 2002, be approved, subject to the notification to property owners being measured within a radius of 500 metres from the location of the tower; and
- 2) That the deputation of Mr. Stephen D'Agostino, Thomson Rogers, 390 Bay Street, Suite 3100, Toronto, M5H 1W2, and maps submitted, be received.

Recommendation

The Commissioner of Planning recommends:

1. That Council endorse the Region of York report entitled "Protocol for Establishing Telecommunications Tower/Antenna Facilities" (Attachment No.1 to this report) and adopt the protocol as a basis for considering new telecommunication towers proposed in Vaughan.
2. That Staff undertake a work program which implements the protocol for processing telecommunications facility proposals, including the implementation of a fee schedule, development of application forms, and the development of a notification protocol for public meetings.

Purpose

The purpose of this report is to advise Council on a new protocol recently adopted by the Region of York to provide guidance to municipalities in York Region when considering proposals to locate telecommunications facilities; guidance is provided respecting preliminary consultation, site selection criteria, type of information required, design, fees, agreements/undertakings, exemptions to municipal approvals and public consultation.

Background - Analysis and Options

Council of the Region of York, on April 18, 2002, adopted Clause No. 1 contained in Report No.4 of the Planning and Economic Development Committee. The report recommended that the attachment entitled "Protocol for Establishing Telecommunications Tower/Antenna Facilities within the Regional Municipality of York" be forwarded to area municipalities for endorsement.

A copy of the pertinent extracts of the minutes of Regional Council, dated April 18, 2002, and Report No.4, form Attachment No. 1 to this report.

At a meeting of Planning Commissioners and Directors of York Region on March 2, 2001, issues surrounding the location of telecommunications tower/antenna facilities were discussed. It was decided that the municipalities in York Region should establish a common approach for reviewing telecommunication facility proposals. A working committee was established involving area Planning Department Staff to develop a protocol.

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Item 57, CW Report No. 50 – Page 2

The intent of the Protocol for Establishing Telecommunications Tower/Antenna Facilities is:

- to balance facility demands with a desire to preserve natural and cultural landscape and minimize community impacts, including health and safety concerns
- to outline a general process to be followed by municipalities in York Region for reviewing and processing telecommunication facility proposals which are not exempted by this protocol, and to provide an opportunity for public consultation
- to provide consistency within York Region regarding the review of telecommunication facility proposals
- to encourage the provision of high caliber wireless telecommunication facilities, to promote economic development, and meet the business and safety needs of the traveling public

Highlights of Proposed Protocol

The protocol provides guidance regarding preliminary consultation, site selection criteria, information required, design, fees, agreement/undertakings, exemptions to municipal approval and public consultation. The following is a summary of the key areas of the protocol.

Preliminary Consultation

Preliminary consultation shall be required between the proponent and municipalities. At the preliminary consultation meeting, municipal staff shall provide the proponent with an information package detailing:

- the process to be followed, including requirements for public consultation
- documents, drawings and fees required
- list of agencies to be consulted
- consultation with adjacent municipalities within 500 metres of the proposed facility

Site Selection Criteria

The proponent shall be encouraged to use existing structures wherever possible; in selecting sites for a new tower, the following shall be considered:

- maximize distances from residential areas
- maximum distance from public and institutional facilities such as schools, hospitals, community centers, day care and seniors residences
- avoid natural features, vegetation, hazard lands (floodplains, steep slopes)
- avoid areas of topographical prominence, where possible, to minimize long/short range viewscapes
- compatibility with adjacent uses
- access

Information Required

All proposals for new telecommunications towers, and modifications to existing towers that are not exempted from this protocol, shall be supported by an information package, including the information outlined in the Appendix to the protocol.

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Design

Where co-location is not possible:

- structures shall be designed to minimize visual impact and avoid disturbance to natural features
- type and colouring of structures shall be selected to blend in with surroundings
- landscaping will be provided where appropriate
- towers and accessory base stations should be designed to fit into the context of the surrounding area
- tower designs that mimic other features customarily found in an area context, such as trees and flagpoles, are encouraged, where appropriate
- towers shall accommodate telecommunications facilities; no signs or other material not directly related to this equipment shall be permitted on the tower.

Fees

The proponent shall be required to pay applicable processing fees, including municipal, regional and Conservation Authority fees.

Agreement

The proponent may be required to enter into an agreement or undertaking, with and acceptable to the municipality, registerable on title, which may include the following:

- the removal of all structures upon expiration of the lease
- the posting of securities to cover the cost of removal
- a commitment to accommodate other providers on site where feasible.

Exemptions to Municipal Approval

Proposals to locate telecommunications facilities on existing telecommunications structures shall be exempt from municipal approval.

Replacement of, and modification to, existing towers shall be exempt from municipal approval if they meet all of the following criteria:

- the proposed height does not exceed the existing height by more than 10%
- the proposed radius does not exceed the existing radius by more than 10%
- tower replacement within the identified development envelope/leased area

For proposed towers constructed on buildings, the following exemption would apply:

- towers located on any building where the tower height does not exceed 25% of the height of the building or 16.6 metres above ground level, whichever is greater, and a municipal building permit is required.

Public Consultation

- the municipality shall determine whether the proponent or the municipality shall be responsible for organizing and holding a community meeting for a proposed tower or alteration to a tower that does not meet the above criteria
- the proponent shall give notice by regular mail to all owners within a radius of 500 metres of the subject property and any ratepayers' association impacted by the proposal

## CITY OF VAUGHAN

### EXTRACT FROM COUNCIL MEETING MINUTES OF JUNE 24, 2002

#### Item 57. CW Report No. 50 – Page 4

- the notice is to be accompanied by an educational information package: the municipality should be contacted to determine specific requirements
- the proponent or municipality shall prepare a record of attendees.

#### Exemption to Public Consultation

The following facilities would be exempt from the public consultation process:

- towers less than 16.6 metres in height above ground
- all proposals exempt from municipal approval
- towers located on any building where the tower height does not exceed 25% of the height of the building or 16.6 metres above ground level, whichever is the greater
- towers within industrial and commercial zoned areas, located a minimum of 100 metres away (or more, if determined by the municipality) from residential areas.

#### Approvals Required

A number of approvals may be required, as determined at the preliminary consultation meeting:

- building permits/site layout plan, and agreement if required
- access from Ministry of Transportation/Region of York
- conservation authority fill, construction and alterations to waterways
- Transport Canada
- municipal approval

#### Municipal Action

The municipality that receives a proposal for consideration shall:

- provide guidance to the proponent regarding the public consultation process
- provide direction to the proponent respecting the format to be used for notices for the community information session and a mailing list of parties to be notified
- provide direction respecting an appropriate location for the community information session
- contact the Regional Municipality of York if there are any cross-boundary issues, so that the Region can co-ordinate a mediation meeting and provide mediation assistance
- make recommendations based on the public consultation process and discussions with the proponent
- endeavor to complete its circulation and make its view known to the applicant within 60 days and complete the review and approval process within 120 days
- advise York Region when a proposal has been received and when approved so that the region can maintain a database of pending and approved facilities

#### Industry Response

Staff have recently received a letter, dated May 16, 2002, from the solicitors representing Bell Mobility, Rogers Wireless Inc. and Telus Mobility with respect to the Region of York Telecommunications Protocol. Three concerns with respect to the Region adopted protocol were addressed, as summarized below:

1. They object to the need to enter into agreements for the following:
  - the removal of all structures upon expiration of the lease;
  - the posting of securities to cover the cost of removal;



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Item 57, CW Report No. 50 – Page 5

- a commitment to accommodate other providers on sites where feasible.

They are requesting an amendment to the protocol to delete this requirement.

2. The protocol requires a notification area of 500 metres from the subject lands, whereas they believe that this is excessive and that a 120 metre radius is sufficient.
3. The protocol requires that replacement or modification of towers which exceed 10% of the existing radius would require municipal consultation. They state that such a requirement would likely have the effect of requiring most co-located facilities to be subject to municipal approval.

Conclusion

Staff can support report entitled "The Protocol for Establishing Telecommunications Tower/Antenna Facilities" attached as Attachment No.1, and would recommend Councils endorsement of this report.

Staff are also requesting direction to undertake a work program which would outline the procedures for the processing of telecommunication facilities applications, implementation of fee schedules, and the development of a notification protocol for public meetings, and other administrative issues which may need to be addressed.

Attachments

1. Clause No.1, Report No.4 of the Planning and Economic Development Committee (Region of York Protocol for Establishing Telecommunication Tower/Antenna Facilities) as adopted by the Council of the Regional Municipality of York April 18, 2002.

Report prepared by:

Arto Tikiryan, Senior Planner, ext 8212  
Marco Ramuno, Manager, Development Planning, ext 8485

/CM

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)

**Thomson**  
**Rogers**

ITEM # 57  
 ADDITIONAL  
 INFORMATION  
 CW RPT. NO. 50  
 Council June 24/02

Stephen J. D'Agostino  
 416-868-3126  
 sdagostino@thomsonrogers.com

SENT BY FACSIMILE ONLY

C. Mike Deringer  
 June 20/02

June 19, 2002

Mr. Mike De Angelis  
 Commissioner of Planning  
 City of Vaughan  
 2141 Major Mackenzie Drive  
 Vaughan, Ontario  
 L6A 1T1

Dear Mr. DeAngelis:

City of Vaughan Telecommunications Policy  
 Council Date: June 24, 2002  
 Our File No. 50/068

We are writing to you further to our deputation at the Committee of the Whole on June 17, 2002. As you are aware, we attended on behalf of our clients, Bell Mobility, Rogers Wireless Inc. and Telus Mobility. Our purpose in writing to you is to underline the importance of the three items we brought to Council's attention at that time.

As you know, our clients participated in the preparation of the Region of York Protocol. The development of a protocol is voluntary on the part of the industry and the municipality, however it was our clients' view that a substantial benefit arises to all concerned when processes are standardized. While they were not happy with each and every provision in the Region's draft, on the whole they felt that it struck a balance. It is unfortunate that Region of York Council saw fit to change the balance by making unilateral amendments to the staff recommendation.

Our clients' items of concern are set out below. We trust that you will bring them to Council's attention so that they may be considered as part of Council's deliberation on the protocol on Monday:

1. The protocol adopted by the Committee of the Whole contains a requirement for an agreement, registrable on title, including requirements such as the posting of securities to cover the cost of removal and the requirement that the structure be removed at the expiration of the lease.

B A R R I S T E R S A N D S O L I C I T O R S  
 SUITE 3100 ■ 390 BAY STREET ■ TORONTO, ONTARIO ■ CANADA ■ M5H 1W2 ■ FAX 416-868-3134 ■ TEL. 416-868-3100

Our clients did not agree to such a provision in the Region of York Protocol. Our clients' position is evidenced at page 3 of the Region of York staff report and in our recent correspondence to you. Only Industry Canada has the jurisdiction to require the removal of a tower. Our clients are not prepared to fetter Industry Canada's jurisdiction by entering into an agreement with the municipality with respect to the removal of the tower or to any other Planning Act matter. Our clients' obligation is to consult, and even then, the obligation is limited to consultation concerning the land use impacts arising from significant antenna structures. There is no requirement to consult on insignificant structures.

Our clients are prepared to provide a letter of commitment in place of an agreement. The letter would document our clients' agreement to undertake the municipality's reasonable land use mitigation requirements with respect to the proposed telecommunications tower. Since the letter of commitment would form the basis of the municipality's concurrence with the proposed telecommunications facility, it would in essence become a condition of license. As such, it affords the municipality significant protection.

In addition, our clients are prepared to provide evidence that its lease provisions contain the requirement that the tower be removed at the end of the lease. This could form part of the submission documents filed at the outset of the consultation process.

In order to effect these changes, the protocol should be amended by: under the heading "Agreement", deleting the words "agreement or" in the first line and the phrase "the posting of securities to cover the cost of removal" in the second bullet and the phrase "the removal of all structures upon expiration of the lease" in the first bullet. In addition, the submission requirement would have to be amended.

2. In our deputation, we identified an ambiguity which appears in the draft protocol at page 3 under the heading "Exemptions to Municipal Approval". The second bullet deals with the proposed radius of a replacement or modified tower. At the time the protocol was reviewed at the Region, the carriers believed that radius meant the width of the telecommunication structure. That is to say using the staff recommended 50 percent, a monopole with a radius of one foot could be increased to a radius of 18 inches without triggering the municipal approval process. The purpose of the exemption was to facilitate co-location which is the driving principle behind the protocol. Unfortunately, Regional Council reduced the permitted radius change to 10 percent, making the provision impossible to comply with.

We recently learned that our interpretation of the section is completely wrong in the eyes of Regional staff and several of the area municipalities that participated in discussions. They believed that radius referred to in the bullet is the falling radius of the tower. The purpose of this section they say was to ensure that replacement towers are constructed in reasonably close proximity to the approved tower. As such, it was meant to compliment the next bullet which requires that the tower be located within the identified development envelope/leased area.

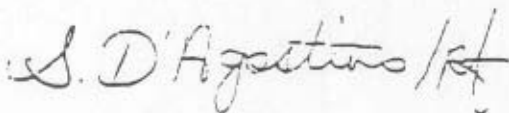
When towers are replaced, it is usual practice to leave the original tower operational until the new tower is ready to go. As such, working room is required between the bases of the two towers. Our clients have considered the radius under the interpretation suggested above and have concluded that it is physically impossible to replace a tower and meet the 10 percent radius. In addition, it is impossible to increase the height of the tower by the permitted 10 percent and meet the 10 percent radius exemption.

We believe the best way to deal with the ambiguities of this section is to simply delete it since both the height of the tower and the location is controlled by the remaining bullets.

3. Finally, we are concerned with the requirement that notice of public consultation with respect to a proposed tower be given to the owners of properties within a radius of 500 metres of the proposed tower compared to the land use activities for which the municipality regularly requires a 120 metre circulation. The land use impacts associated with telecommunication facilities are modest. We believe that the number ought to be reduced to the Region of York staff recommended 120 metres.

We trust that these items are self-explanatory and that you will bring them to Council's attention prior to the adoption of the protocol.

Yours very truly,



Stephen J. D'Agostino

SJD/pf

*(Dictated but not read.)*

JUN-19-2002 12:15

# Thomson ■ Rogers

4

cc: Clerk, City of Vaughan  
cc: Neil Garbe, Region of York  
cc: Dave Yaromich, Bell Mobility  
cc: Jack Hills, Rogers Wireless  
cc: James Kennedy, Telus Mobility

TOTAL P.05

Received: 06-19-02 12:23pm

From: 416 888 3134

To: CLERKS

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JUNE 19, 2002

### FAX TRANSMITTAL SHEET

TO: MR. MIKE DE ANGELIS  
CLERK  
NEIL GARBE

FIRM: CITY OF VAUGHAN  
CITY OF VAUGHAN  
REGION OF YORK

FAX NO: 905-832-8535  
905-832-8535  
905-895-3031

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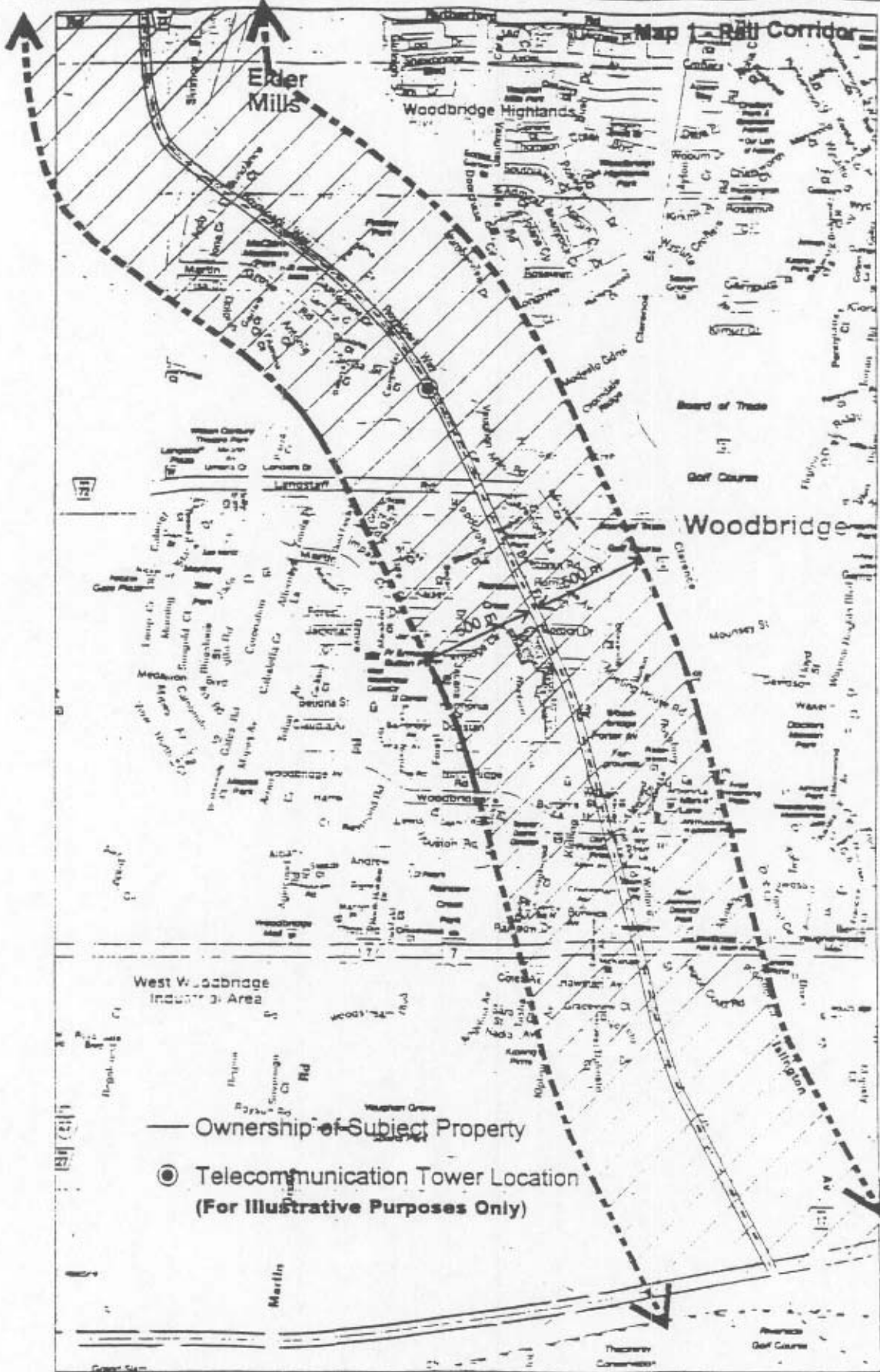
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Prepared By: SJD

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Submitted by S. D'Agostino

# Notification Requirement - 500 Metres from Ownership



- Ownership of Subject Property
- Telecommunication Tower Location  
(For Illustrative Purposes Only)

Proposed  
Telecommunications  
Protocol  
Regional Municipality of York

