

COMMITTEE OF THE WHOLE DECEMBER 09, 2002

TELECOMMUNICATIONS FACILITIES IN NEW SUBDIVISIONS

Recommendation

The Commissioner of Engineering and Public Works and the Commissioner of Planning in consultation with the Director of Legal Services recommends:

That the following clause be included in all future conditions of draft plan approval:

“The Owner shall permit any telephone or telecommunications service provider to locate its plant in a common trench within the proposed plan of subdivision prior to release of the plan for registration, provided such service provider has executed a Municipal Access Agreement with the City. The Owner shall ensure that any such service provider will be permitted to install its plant so as to permit connection to individual dwelling units within the subdivision as and when each dwelling unit is constructed.”

Purpose

To seek Council's endorsement of a condition of approval for all draft plans of subdivision that would provide equal access to future municipal road allowances and private lots for telecommunications carriers who have executed Municipal Access Agreements with the City of Vaughan.

Background - Analysis and Options

As a result of deregulation under the Telecommunications Act, various licensed telecommunications companies emerged as competitive local exchange providers, having rights of access to municipal road allowances. In order to permit these companies to use municipal rights-of-way within the City of Vaughan, the City established a standard form of municipal access agreement. In July, 2000, Council enacted By-law 284-2000 authorizing the execution of a standard-form, municipal access agreement with various telecommunications companies.

With the passage of the Telecommunications Act by the Federal Government in 1993 the telecommunications industry is continuing to go through major changes. The Act did not provide guidelines on many administrative and legal issues governing business relations between municipalities and carriers. This led to either municipalities/carriers negotiating resolution of the issues, or disputes being resolved at the CRTC.

York and Durham Regions and municipalities have formed a joint working group and have retained a consultant to prepare a policy/procedure manual in consultation with the telecommunications/utility industry. The draft report and procedures manual is currently being finalized regarding right-of-way management.

Prior to registration of a plan of subdivision, the road allowances in a plan are not public highway and are owned by the developer. The developer normally completes the installation of municipal services in the plan prior to registration, so that immediately following registration, building permits can be issued for the serviced lots. Vaughan, along with other municipalities, has experienced situations where developers have restricted access to road allowances in unregistered plans and private lots for telecommunications providers wishing to have access. In certain areas of Vaughan, Bell Canada has been denied access by the developer, where, the developer has provided telecommunications services through Futureway. Bell has not been able to install its services in these area and claims that they are unable to extend their underground services to other adjacent subdivisions where their facilities are desired, due to this lack of access.

Once a plan is registered, the road allowances become public and other service providers have the right to apply to the Municipality to install their own plant. Such installation is difficult and costly since the subdivision is serviced and the additional utility would have to be installed by overdigging (i.e. reexcavating roads and boulevards over previously installed utilities) In Block 39, Shaw Cable installed their plant by overdigging and Bell decided not to install their plant. In several areas of Block 10, either Bell or Futureway plant, but not both, is installed in the various subdivisions.

As noted above, since the subdivision lands and road allowances are private prior to registration, the developer, because of the CRTC decision, has the ability to control which telecommunications providers may have access to utility trenches in the plan when it is being serviced. Following registration, when the road allowances are complete and come under City ownership, any service provider may apply to the municipality to install their plant.

Providing for all utility installations to be undertaken simultaneously will avoid the problems associated with overdigging and further disruption of homeowners in newly completed developments. Applying the recommended condition of draft plan approval to all future plans of subdivision would require the developers to grant access to approved telecommunications providers at the time of servicing their lands. This will also ensure that equal access is provided to all licensed telecommunications providers who have signed a municipal access agreement with the City.

A similar condition of approval was adopted by the Town of Markham earlier this year. We understand that the City of Mississauga and the Town of Newmarket have also included a similar condition in their subdivision agreements.

Conclusion

In order to provide equal access to future municipal road allowances and private lots for telecommunications providers who have executed Municipal Access Agreements with the City of Vaughan, it is appropriate to include the recommended clause in all future conditions of draft plan approval.

Respectfully submitted,

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Commissioner of Engineering and Public Works

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