

STAFF REPORT: ENGINEERING AND PUBLIC WORKS DEPARTMENT



REPORT TO: **Committee of the Whole**
MEETING DATE: **November 10, 2014**
REPORT NO.: **EPW.14.082**
SUBJECT: **Response to Georgian Triangle
Development Institute re Draft
Subdivision Agreement
Template**

PREPARED BY: **Reg Russwurm, Director,
Engineering and Public Works**

A. Recommendations

THAT Council receive Staff Report EPW.14.082, "Response to Georgian Triangle Development Institute re Draft Subdivision Agreement Template";

AND THAT Council endorse the distribution of the response letter attached to Report EPW.14.082 prepared by the Director of Engineering and Public Works to the Georgian Triangle Development Institute;

AND THAT Council delegate the authority to finalise and enact the Town's Subdivision Agreement upon the recommendation of the Town's solicitor, Director of Planning and Building Services, Director of Finance and Information Technology, and the Director of Engineering and Public Works.

B. Background

Through the adoption of Staff Report EPW.12.001 and Staff Report EPW.13.016, Council instructed Staff to make modifications to the Town's Subdivision Agreement Template. The modifications were made along with re-wording and re-organising the template for ease of use and administration.

A Draft of the Subdivision Agreement Template was distributed to the Georgian Triangle Development Institute (GTDI) in April 2014. A letter response was received October 3, 2014 (Attachment #1).

Staff prepared a response to the GTDI letter for the consideration of Council (Attachment #2). Staff recommend that Council endorse the distribution of the Staff response letter attached to Report EPW.14.082 prepared by the Director of Engineering and Public Works to the Georgian Triangle Development Institute.

In addition, Staff recommend that Council reaffirm the resolution passed in Report EPW.12.001 to delegate the authority to finalise and enact the Town's Development Agreements upon the recommendation of the Town's solicitor, Director of Planning and

Building Services, Director of Finance and Information Technology, and the Director of Engineering and Public Works.

C. The Blue Mountains' Strategic Plan

This report furthers the Town's Strategic Goal #2 "Addressing the Town's municipal infrastructure needs" and Strategic Goal #6 "Providing a strong well managed municipal government".

D. Environmental Impacts

None.

E. Financial Impact

The recommendations within this Report effectively manage the cost risk to the Town resulting from development activities.

F. In Consultation With

John Metras, Town solicitor
Troy Speck, CAO

G. Attached

1. Georgian Triangle Development Institute Letter, October 3, 2014
2. Response to GTDI, undated

Respectfully submitted,

Reg Russwurm

Reg Russwurm
Director, Engineering and Public Works

Office: 519-599-3131 Ext.260
Fax: 519-599-7723
russwurm@thebluemountains.ca



GEORGIAN TRIANGLE DEVELOPMENT INSTITUTE

October 3, 2014

Via: Email (directorepw@thebluemountains.ca)

Mr. Reg Russwurm / Mr. John Metras
Town of The Blue Mountains
32 Mill Street, P.O. Box 310
Thornbury, ON N0H 2P0

Dear Mr. Russwurm and Mr. Metras:

**Re: Town of The Blue Mountains
DRAFT Subdivision Agreement, April 2014
Comments from the Georgian Triangle Development Institute**

The Georgian Triangle Development Institute (GTDI) has thoroughly reviewed the current DRAFT version of the Town of The Blue Mountains Subdivision Agreement on behalf of its members and industry associates, and we have significant concerns about the document.

In general, the document includes many clauses that are unacceptably onerous to the development industry. The Agreement is also significantly altered from the previous version considered by the working group. This was also the case in the version, where the Agreement established, by Council May 12, 2012, was disregarded and the Town introduced a completely new set of issues. We are at a loss to understand why Council's direction is again being disregarded.

Furthermore, after discussions with the PEO, we believe there are several aspects of the Agreement that would contravene the Professional Engineer's Act.

We have provided our comments generally in the order in which the subject of concern arises in the document, and have categorized these under the same headings as the Agreement.

Role and Involvement of the Director

While it may be that the intent of replacing "The Town" with "The Director" in many occurrences from the previous version of the Agreement is to streamline lines of communication and approvals, or is otherwise to suggest that these matters no longer have to go through Council for affirmation, this creates several practical issues,

including potential for delays in turn-around / response times on relatively basic matters and requests.

If the intent of this change was to create efficiency and expediency, we believe this will, in fact, do just the opposite. We understand that the Director carries a significant workload and must manage the Town's Capital infrastructure planning and implementation (among many other responsibilities), as well as overseeing private development files.

For this reason, we foresee that the inclusion of the statement **"to the satisfaction of the Director"** or similar wording requiring **"written consent of the director"** in numerous clauses and requirements through the document will simply create an unnecessary bottleneck in due process and communication. There are many clauses that require Notices to be issued and acceptances to be given in writing by the director for small milestones in the project, which can be adequately and competently managed by staff and inspectors. For example, we question why all site meeting minutes are to be provided to the Director (page 17). Would it not make more sense for these to be circulated through the Town's inspector who was likely present at the meeting?

Language such as **"if, in the sole and absolute opinion of the Director"** (page 27), gives way to significant subjectivity, which undermines the purpose of Agreements and Standards that should be the mainstays of quality control and assurance.

Role and Involvement of the Consultant

The fourth paragraph of Page 12 of the Agreement has a very troublesome clause, stating that the Director may issue a Notice to the Developer requiring a "replacement" consultant, should the Director feel that the consultant is not providing the services required by the Agreement.

It is not the Town's nor Director's prerogative to make this decision. It is not acceptable for the Director to force a developer to fire its own consultant. If the Consultant is not fulfilling their duties as an agent for the developer, this would, in all likelihood, be a matter for resolve between the Consultant and Developer (client). However, the wording of this clause puts sole discretion on this matter to the Director. This is far too subjective. We believe the PEO and CEO would have some significant concerns with this clause.

Clause g) on page 13 requires that the **"Lead Consultant...be responsible for...reviewing the activities of all sub-consultants or technical experts / advisers..."**

This clause cannot be fulfilled as it contravenes the statutes of the Professional Engineer's Act. While it is reasonable to request that the Lead Consultant act as the project manager or coordinator on behalf of the developer, it is not reasonable to include with this responsibility any technical review as it relates to design or engineering. The Lead Consultant can only be responsible for (and seal) technical work (including design and or review) within their domain of training and knowledge. This clause must

be re-written as it is currently exposes the Lead Consultant to unacceptable risk, and the PEO has highlighted this concern.

Page 13 of the Agreement states in clause i) that “without exception”, full time inspections are required for any construction activities. While we agree that any works on a public ROW or that will be eventually vested to the municipality should undergo this level of inspection, there are certain elements of construction on private lands that will always remain as such, and do not warrant this level of scrutiny. To some extent, this work may be undertaken at the developer’s own risk.

Page 13 clause p) (ii) and (iii) and (iv) have to do with lot grading and tree preservation plans. For clarity, it is recommended that these items are removed from the Agreement, as these are more appropriately provided in the Design Standards, and the timing of these is completely independent of the subdivision completion and assumption process. In addition, these requirements are submitted to and followed up on through the CBO through the Building Permit process. We have no objection to these standard requirements; we simply do not see how they relate to this Agreement.

Changes to Engineering Standards

Section 2.3 includes unacceptable language that exposes developers to undue risk, and must be modified. Opening with the ambiguous and undermining statement **“despite anything contained in this agreement”**, it continues on to outline how revised engineering standards shall be incorporated at various stages of work.

A particular section of the clause states that **“If [already] installed, before the start of the Maintenance Period for the Works, the Developer shall, at its own expense...redesign and install...the particular Works...in accordance with the new Engineering Standards.”**

This is unacceptable. If a change in design standards occurs after previously accepted works have been installed, it is not reasonable, or warranted to remove and re-install these works. (This is not referring to sub-standard or deficient work – that would still have to be remediated as necessary to meet acceptable standard). It is entirely appropriate to set a time limit for requiring any redesign, and this should be at the approval of the detailed design.

Amendments to the Accepted Plans

Clause (a) of this section on page 14 requires that any amendments to the Accepted plans must have the written consent of the Director. Further to our above concerns regarding the micro-management of the construction process by the Director, we believe that this too, is not a practical requirement. The Town’s inspector should have the authority in some cases, to authorize minor field amendments and changes necessary to accommodate unforeseen conditions, conflicts, etc. Decisions on these types of design issues must often be made quickly and by the inspector on site, as they have the best knowledge of the situation and can see for themselves what the implications of the problem and proposed solution entail. Moreover, the time involved to communicate with and obtain written consent from the Director may cause undue

delays to the project, which has potential cost and public safety implications (when dealing with open trenches, traffic matters, etc.).

Works Installed Without Approval

This may simply be an oversight, but we believe in Section 2.13 clause (c) (ii) that reference to video inspection of **watermains** should be removed.

On page 17, we question why the Town would authorize a municipal water connection and allow it to continue in use but not issue Acceptance of this connection. There is a similar clause on page 18 for sanitary connections. The intent or purpose of these clauses should be clarified. This would perhaps make more sense for temporary connections.

Securities, Maintenance Period and Road Guarantee Period

These proposed policies are the most concerning to the GTDI, as they require the Developer to post securities for many years past completion of the physical works in the subdivision. This can be described no other way but as an obvious avoidance tactic by the Town to defer maintaining its own roads, and it is simply not fair, nor does not pass the test of logic. The Town is holding securities from the developer instead of drawing from its Capital Works Budget, and as currently worded, empowers the Director to ultimately decide when the roads are finally sufficient to allow for release of the security.

The proposed definition of the **Maintenance Period** is a minimum three (3) year period following Preliminary Acceptance up to Completion, and continuing for a minimum of an additional one (1) year past Completion (once final top asphalt is down) to Assumption. The three year maintenance period is already one year longer than many municipalities that require a two year maintenance period. If there is sufficient evidence from past projects that an additional year is warranted, this should be explained in more detail to the development community to justify this policy.

While this is already becoming onerous, add to this the proposed Road Guarantee Period (5 or 6 years) which would commence at Completion / Final Acceptance (and could – as currently written in the agreement – be extended in an indefinite “cycle”). This is unacceptable and it does not pass the common sense test that developers are paying to maintain the Town's road.

We are at a loss to understand why Council's direction of November 25, 2013 has been disregarded in the preparation of this draft agreement. The assumption of works has been set at four years instead of three, and the security deposit to ensure roadway performance has been effectively turned into a method to delay assumption by a further five or more years.

Conditions for Final Acceptance of the Works

We would be interested to see the formula developed for the storm drainage cleaning fee as described in Section 3.10 clause (b), and request further explanation as to what specifically this is for, and to seek confirmation that this is not already a cost borne directly by the developer through their construction contract, or otherwise secured for in the Agreement.

In the same Section, there is a suggestion that the Director may require the Developer to enter into yet another unnamed Agreement with respect to dealing with outstanding deficiencies. This seems to be completely redundant. The Subdivision Agreement itself has sufficient tools to manage remediation of deficiencies – this is the entire purpose of posting securities and requiring a maintenance period. Another stand-alone agreement is needless and onerous. This paragraph should be removed entirely from the document.

Model Homes

We do not have any issues with this Section as is, but would suggest that thought be given to outlining the similar process / requirements for temporary sales centres. We have not looked into the zoning provisions or other details related to these, this is simply a suggestion to assist in clarifying the process as it relates to the Agreement.

Special Provisions

Under section 2, we believe clause a) should be modified with the wording “**as required**” at the end of the paragraph. Currently it reads as though a Record of Site Condition is required for all lands conveyed to the Town. If this is the intent of the clause, we have further concerns.

In summation the GTDI has serious concerns regarding the draft Subdivision Agreement and cannot support the document in its current form. We recommend that the PEO be contacted to ensure elements are consistent with its statutes, and that the document be consistent with Council direction.

Respectfully Submitted,



Alex Fleming, President GTDI



James Orr, Director

cc: Mayor Anderson and Members of Council



Town of The Blue Mountains

32 Mill Street, Box 310
THORNBURY, ON N0H 2P0
www.thebluemountains.ca

OFFICE OF: REG RUSSWURM, MBA, P.Eng.
Director of Engineering & Public Works
Email: rrusswurm@thebluemountains.ca
Phone: 519-599-3131 Ext 260

DRAFT

November XX, 2014

By Mail

Alex Fleming, President
James Orr, Director
Georgian Triangle Development Institute
115 First Street, Suite 414
Collingwood, ON
L9Y 4W3

Dear Mr. Fleming and Mr. Orr:

Re: Comments of GTDI on Draft Subdivision Agreement, October 3, 2014

On behalf of Mr. John Metras and myself, we provide the following response to your letter of October 3, 2014 concerning the Town's Draft Subdivision Agreement, April 2014 version. For ease of reading, I have structured the response in the same order as your letter and provided the measures that will be taken under the heading Agreement Revision.

Role and Responsibility of the Director

The GTDI is correct in pointing out that the purpose of clarifying the role within the Agreement as the Director and not the generic "Town" is to streamline lines of communication and approvals and to avoid confusion over who to contact at the Town. However the GTDI is incorrect in stating that matters related to the administration of the Development Agreement will no longer have to go to Council for affirmation. The fact is that the Town for many years has delegated the administration of Subdivision Agreements to the Director of Engineering and Public Works, and previously to the person acting as the Town's Engineer. Indeed, if day to day administration of the Subdivision Agreement had to flow through Council, the administration would be slowed considerably as reports were prepared and shepherded through the Committee / Council process.

The GDTI wonders why the Director has to be named where other staff may be appropriate. The definition of Director includes the words “or his designate” so in practicality, much of the routine administration is carried out by other Town staff such as the Construction Coordinator. Given the potential issues and ramification that can arise during the administration of a Subdivision Agreement, it is appropriate to name the Director, as an official of the Town, as having overall responsibility so that ultimate responsibility for decisions is not borne at a Staff level.

The GDTI is worried that the use of the term “if, in the sole and absolute discretion of the Director” gives way to subjectivity. This clause is used in Agreements where at some point a firm and final decision is needed. The Agreement in s1.3(a) states that in all times the Director and other named officials are “acting reasonably”. Any action or decision taken by the Director in the administration of the Agreement can be appealed to Council. Ultimately any actions taken by the Director would have to stand up to a legal test should it come to that.

Agreement Revision: Wording will be added to the Agreement to state any decision taken under this Agreement can be appealed to Town Council.

Role and Involvement of the Consultant

The clause about the Town being able to require the Developer to replace a consultant has been in the Town’s Subdivision Agreement for some time and is not a new idea in this version of the template document. This concern has not been raised previously.

The Consultant is to provide impartial professional advice ultimately leading to verification that the Works are installed as per the Agreement. It is crucial that the Town can rely on the Consultant’s advice. Unfortunately, a situation can arise where the Consultant is not providing impartial advice and the Director has lost confidence in the Consultant’s ability. Albeit not a favourable position to be put in, the Town, through the Director, needs to have the ability to force the removal of a Consultant from a project to protect the long term interest of the Town. The Town’s expectation is that the Consultants will provide the same level of advice and service on a development project as they would if they were hired directly by the Town on a town-lead project.

GDTI expressed concern that the Agreement requires the Lead Consultant to take technical responsibility for another’s consultant’s work. That is certainly not the intent of the clause. The wording in the clause is “when the Lead Consultant, act as the Developer’s administrator of this Agreement and be responsible for overseeing, coordinating and reviewing the activities of all sub-consultants or technical experts / advisers as the case may be”. The intent of the clause is for the Lead Consultant to review the activities of other consultants much like Town Staff do when undertaking a technical review, and to be the key “go to” consultant for the Town during and after construction. One consistent problem the Town experiences is the apparent lack of coordination between various disciplines as to the location of Works during the technical submission process. The clause is to minimise the inconsistencies Staff experience between drawings and to undertake the quality control / quality assurance

that Town Staff now has to do to advance a project. Similar wording will be included in the next edition of the Town's Engineering Standards. The hope is that the amount of review time taken by Staff can be reduced leading to quicker approvals. During and after construction, the goal of the clause is also to channelize communications. Staff have many development files to manage and experience administrative delays when packages or submissions are provided "piece meal" with the expectation that Town Staff compile a complete package and identify missing documentation. Again, the Lead Consultant is to be the technical communication conduit by which the Agreement can be efficiently administered for the benefit of the overall project.

Agreement Revision: The following wording will be included: "...It is not required that the various sub-consultants are employed or retained by the Lead Consultant, however the Lead Consultant is responsible for overseeing, coordinating and ~~reviewing~~ project managing the activities of the sub-consultants to verify performance with this Agreement prior to any submissions of documentation is provided to the Town. **It is not the Town's intention that the Lead Consultant is to be technically responsible for the work of the sub-consultants.**"

The GDTI raised concern that full time inspection is required to be provided on private works. Since the Subdivision Agreement involves public works with very little if any private works, the clause is warranted; however it can be revised to alleviate the concern around private works. It is agreed that truly Private Works that will remain under the long-term ownership of the Developer (i.e. site plans) are at the risk of the Developer. It should be noted though that Works to be transferred to a condominium corporation should be constructed in a manner like Public Works because the future residents would expect that the Town ensure any condominium works are installed to the same quality as Public Works. Ultimately, the Consultant is required to certify the Works were installed as per the Agreement. If part-time inspection occurred it becomes questionable how the Consultant can certify the Works.

Agreement Revision: add the words in s2.1i) "... any construction activities, **except for Private Works not to be assumed by a condominium or another entity,** are underway..."

The GDTI questioned the inclusion of requirements that the Consultant provide lot grading and tree preservation plans. This concept has been included in the Town's previous Agreement Templates for some time. It has been relocated to this section to compile the Consultant's responsibilities. This clause is to make it understood to the Consultant, as the responsible Engineer until Assumption, to provide such plans during the active life of the Agreement, after which it can be provided by a Consultant of the lot owner's choosing.

Agreement Revision: none

Changes to Engineering Standards

The GDTI expressed concern that Works may have to be re-designed, or even re-designed if the Town's Engineering Standards change prior to the start of the Maintenance Period. This clause has been in the Town's Development Agreement for some time, is not a new idea in this version of the template document, and has not been concern raised previously. Albeit the wording is quite dramatic, it provides the Town the ability to deal with immediate and serious design or material problems. The example often cited is the discovery by the Town or a Government Agency of a defective or hazardous material as having warrant to have Works removed. It would only be extreme circumstances that this clause would be invoked to cause Works to be removed.

GDTI suggests that the date at which point the Engineering Standards should be locked in is at the acceptance of the design drawings. The Subdivision Agreement is silent on the minimum time that the Developer has to install the Works and achieve the Maintenance Period. It is conceivable that many years can go by from the time the Works were originally designed until the Maintenance Period commences, and as such, the Town should retain the ability to modernise Works that will be assumed given possible changes in the community preferences and industry best practices.

It needs to be kept in mind that any such action by Staff is appealable to Council where the Staff decision can be overturned, and then ultimately the Courts if the Developer is not satisfied that the action taken was reasonable. It is advisable to maintain the ability to require the re-design and re-installation of Works should such an action be reasonably warranted in the long-term best interest of the Town. Without the clause in the Agreement, the action cannot be undertaken without incurring compensation.

Agreement Revision: While the original wording has been in the agreement for some time, the following revision clarifies the intent of the section.

“2.3 Changes to the Engineering Standards

Despite anything contained in this Agreement, including the acceptance of the Accepted Plans, if the Town or any Government Authority changes or causes changes to any of the Engineering Standards for any of the Works which the Developer;

- (a) is required to install before the particular Works are installed, the Developer shall, at its own expense, if required by Notice given by the Town redesign and install the particular Works referred to in the Notice in accordance with the new Engineering Standards; or
- (b) is required to maintain, if installed before the start of the Maintenance Period, the Developer shall, if required by Notice given by the Town maintain the particular Works referred to in the Notice in accordance with the new Engineering Standards.”

Amendment to the Accepted Plans

The GDTI is concerned about the time it may take to obtain written consent from the Director for modifications to the Accepted Plans. As pointed out previously, the Director can designate their authority to others. In practicality, decisions are made regularly by the Town's Construction Coordinator and others within their comfort sphere that facilitates the installation and approval of Works. Where revisions are required to Accepted Plans, the time required to prepare the drawings is well within the timeframe of that needed to confer with and gain the approval of the Director. Also as pointed out above, given the potential issues and ramification that can arise during the administration of a Subdivision Agreement, it is appropriate to name the Director, as an official of the Town, as having overall responsibility so that responsibility for decisions is not borne at a Staff level.

Agreement Revision: none

Works Installed Without Approval

The GDTI pointed out an editorial error concerning videoing watermains which will be corrected.

The GDTI expressed concern that the Town can connect or authorise a watermain or sanitary connection to be made without Acceptance of the Works. The purpose of the clause is to enable the orderly progression of development and servicing. The extension of a subdivision, let's say, into a neighbouring development property should not be dependent on the first developer achieving Assumption or the Town having to assume Works prematurely. These clauses have been in the old template since its approval and are standard provisions found in most subdivision agreements.

Agreement Revision: none

Securities, Maintenance Period and Road Guarantee Period

The GDTI is well aware that the Town went through an extended discussion with area developers to modify the Town's current assumption criteria from 75% of houses built to one based on the passage of time with securities and fees taken for post-assumption liabilities. Council approved the changes on November 25, 2013 subject to some conditions that have now been satisfied or will be with this subdivision agreement template document.

The GDTI is correct to point out the inconsistency between the Council report and the wording in the template Agreement. During the editing of the document, it was missed that the "minimum period of three (3) years" should have read "minimum period of two (2) years" for the period of time from Preliminary Acceptance to Completion. An additional year of maintenance is required from Completion to Assumption for a total of three (3) years from Preliminary Acceptance to Assumption.

Agreement Revision: "Maintenance Period" means a minimum period of ~~three (3)~~ **two (2)** years following Preliminary Acceptance and continuing until Completion and a further minimum period of one (1) year following the date of Completion and continuing until Assumption.

Separately from the GTDI letter, the Town has received feedback that questions the need for an additional 1 year maintenance period after the corrective repairs have been undertaken by the Developer of any road deficiencies at the end of the 5 year Road Guarantee Period. This additional year is the maintenance period to ensure the deficiency repair works were installed correctly. It is not advisable that the Town accept Works without appropriate Maintenance Period. In order alleviate this concern, the Developer will be provided the option to instruct the Town to undertake the deficiency repairs using the Developer's security. Under this scenario, the Town will transfer the maintenance period to the Contractor who undertakes the Works by requiring the contractor to provide a 1 year warranty period in its construction contract. Once the warranty period has expired, any unspent securities will be returned to the Developer.

Agreement Revision: Sub-clause (f) will be added to Clause 3.13 Road Guarantee Period which states:

- (f) The Developer, when provided Notice to undertake repairs under Clause 3.13(a), may instruct the Town to undertake the repairs and utilise the Road Guarantee Security as required. Then:
- (i) The Director shall have full authority and power immediately to purchase such materials, tools and machinery and to employ such contractors or workmen as in the opinion of the Director are required for the proper rectification of the deficient Road Works, to enter upon the Lands and to do all such work and things, including the installation of Road Works, as are necessary to rectify the deficient Road Works to the satisfaction of the Director, at the cost and expense of the Developer.
 - (ii) The cost of such corrective work will be calculated by the Treasurer, whose decision shall be final and the Developer agrees that the Treasurer shall be entitled to draw upon and use all or any part of the Road Guarantee Security to pay the cost of the corrective work.
 - (iii) The Management Fee will be applied to the cost of corrective work to determine the security utilised.
 - (iv) The remaining balance of the Road Guarantee Security will be returned upon:
 1. the expiration of the warranty period in the contract with the Town's contractor undertaking the corrective work, and
 2. a written request by the Developer to the Director.

Conditions for Final Acceptance of the Works

The formula for determining the storm water management maintenance payment will be developed on a case by case basis. It is impractical to attempt to develop a maintenance payment within a template document that will fit all situations. The payment will be formulated using the concepts outlined in the Council Report approved on November 25, 2013.

Agreement Revision: Expand on the wording in Schedule H under Part 9 - Storm Water Management System Maintenance Payment to say: **“The formulae for the determination of the Storm Water Management System Maintenance Payment to be paid prior to the release of Security at Final Acceptance is to be developed at the time of the execution of the Subdivision Agreement based on the specific conditions of the proposed Development. The Payment will be dependent on expectant costs of cleaning the stormwater management pond, storm sewers, catchbasins, ditches and any other works considered part of the storm water management system. In addition, an inflationary factor will be overlaid at the time of setting the fee and will be based on the expected inflation rates for 10 years (net of earned interest) as determined by the Director of Finance and IT Services. A 15% administrative fee will be superimposed on the expected cost of the work to compensate the Town for Staff time. The amount of non-recoverable HST will also be added. The fee will be deposited in a stormwater management reserve or similar as established by the Director of Finance and IT Services.”**

GTDI stated concern over the Director requiring the Developer to enter a subsequent agreement to deal with outstanding deficiencies. This concept is not new and has been in the Town’s previous subdivision agreement template. The purpose of the clause is to provide the Director the flexibility to release the Developer from the bulk of the obligations under the Agreement yet ensure the Town has the securities to ensure completion of otherwise minor issues. For example, it would not be warranted to hold 10% of the completed works, which could be in excess of \$100k, as the maintenance security for some minor sidewalk damage and the replacement of a few street trees.

Agreement Revision: None.

Model Homes

The GDTI suggests that similar consideration be given to temporary sales centres as that for model homes. This is a reasonable course of action and wording will be included.

Agreement Revision: Section 5.4 – Model Homes will be modified to include temporary sales centres.

Special Provisions

The GDTI requests that the words “as required” are added to the condition to provide a Record of Site Condition for Lands to be conveyed to the Town. The purpose of a Record of Site Condition is that the Town is receiving Lands free of contamination. The Work to demonstrate such is straight forward for Lands considered “clean” and more onerous for Lands “at risk” as it should be. With the addition of the words “as required”, the decision as to what Lands require a Record of Site Condition is with the Director. This does not necessarily reduce the amount of Lands to be reviewed, but does provide the flexibility to waive the requirement for Lands that pose minimal risk.

Agreement Revision: Modify Sch G – Special Provisions, Part 2 a) to say: “to retain the services of a Qualified Person to ensure the Lands are developed in accordance with the legislative and regulatory requirements, for assessing the environmental condition, for cleanup and for filing of Records of Site Condition in the Ministry of the Environment's Environmental Site Registry, **as required.**”

The GDTI concludes their letter by recommending the template agreement be sent to the PEO for evaluation. We don't believe the agreement was counter to any PEO statutes. Should the GDTI still have those concerns even after the proposed wording is added to clarify the Town's intention, GDTI should make those inquiries. The Town wishes to move forward with the new template and doesn't want to delay its implementation any longer.

I trust the above has addressed the concerns of GTDI. The Town will proceed to finalise the Subdivision Agreement and initiate its use.

Please do not hesitate to contact either John Metras or myself if you have additional questions.

Sincerely,

Reg Russwurm MBA, P. Eng.
 Director of Engineering and Public Works
 Town of The Blue Mountains
 RR/jh

cc: Mayor and Council, The Blue Mountains (e-mail)
 Troy Speck, CAO (e-mail)
 John Metras, Town Solicitor (e-mail)