

**Kagan  
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LAWYERS

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File: 10018

**WITHOUT PREJUDICE**

November 20, 2013

**By email**

Ms. Esther Armchuk, Town Solicitor  
Town of Newmarket  
395 Mulock Drive  
Newmarket, Ontario  
L3Y 4X7

Dear Ms. Armchuk:

**Re:   Redevelopment of former Glenway Country Club  
      Appeal to OMB of OPA, ZBL and Subdivision  
      Applicant/Appellant: Marianneville Developments Limited  
      OMB Case No. PL130413 & PL110685**

This offer replaces our client's earlier offer dated August 23, 2013.

As you know the OMB has scheduled an eight (8) week hearing commencing on Monday, March 3, 2014. The parties have since exchanged Issues Lists and the number of issues filed suggests that all of the eight (8) weeks will be required for this hearing. This will be a very expensive hearing for all concerned. In a sincere effort to avoid the substantial cost and resources of this hearing (about half of which will be borne by the taxpayers), our client has authorized that this revised settlement offer be made.

The changes between this offer and our client's previous offer arise from a careful review of staff report 2014-47 (dated October 15, 2013) and the discussions Town staff and Ms. Victor have had with our client's consulting team. The revised draft plan is attached to this letter as is a memo from Mr. Richard Zelinka (our client's consulting Land Use Planner) which explains the changes our client has made to the development.

As the time for filing Witness Statements is quickly approaching and the costs of this hearing are about to escalate substantially, the meetings and discussions referred to above were important so that both parties could better understand the areas of difference between them. As you are no doubt aware, our client has just filed a revised draft plan of subdivision with the Town. This document represents a formal revision to the application and is the development it will be seeking approval for at the OMB hearing. This revised application replaces the original (and

appealed) application. We are confident that your staff and Ms. Victor will advise you that this revised draft plan appropriately responds to the major issues raised in the October 15, 2013 report. Without attempting to downplay the importance of any of the other technical issues raised in that report, the revised plan answers the concerns respecting:

1. The amount, location and configuration of parkland
  - a. The revised plan provides the amount and location of park land which staff and Ms. Victor were seeking.
2. The size, standard of design and Town ownership of the SWM ponds.
  - a. All SWM ponds will be designed to Town standards and dedicated to the Town.
3. The significant reduction in height (down from 15 to 6 stories) of the residential condominium adjacent to the GO station.
  - a. This reduced height poses no challenge to the Town's Urban Centre.

Our client has instructed its consulting team to prepare an updated set of reports which reflects this revised development and responds to the various technical concerns of staff and commenting agencies. Many of staff's technical concerns are in fact entirely resolved by virtue of the revised development.

With respect to the York Region District School Board, our client and the school board have agreed to dual zone the two blocks and three lots in the area adjacent to the GO Station to permit both residential units and a public school. The school board will continue to look for a site in the area which is superior to this one (since this site does not meet all of their requirements) but we have reserved the block for them if needed.

What our client is offering the Town in this settlement, should it agree to support our client at the OMB hearing, is an opportunity to secure certainty over the approximately fifty-seven (57) acres of lands lying west of the proposed development and to, at the very same time, secure the acquisition of additional park land in relative close proximity to the Urban Centre.

Accordingly, the terms of the settlement are as follows. Provided the OMB approves the revised development:

1. Our client will grant the Town a 10-year option (from the date of the OMB's decision approving the revised development) to purchase the approximately fifty-seven (57) acres of lands our client owns lying immediately west of the revised development (the "Option Lands"), for a price of \$5,500,000. This price remains fixed for ten (10) years.
2. During the option period our client will maintain the Option Lands as passive open space and will comply with all applicable property standard by-laws.
3. If the Town requests, our client will grant an easement to the Town over the Option Lands for the option period. This easement will permit members of the public to use the Option

Lands for non-motorized travel and access, and for public recreational purposes.

- a. Our client will not be under any obligation to improve the Option Lands (such as but not limited to building trails or sports facilities) but our client will, subject to the usual and necessary legal agreements, permit the Town to do so at the Town's expense.
  - b. Our client will require that the Town fully indemnify it against any liability which results from the easement.
4. Our client will make a voluntary contribution of \$250,000 to the Town for use specifically to improve the park land which is being dedicated to the Town in the subdivision. This payment will be made prior to registration of the plan of subdivision (or the first phase if it is registered in phases). This voluntary contribution can be secured through a condition of draft plan approval.
5. Our client will address perimeter tree preservation and additional planting, where required, through the conditions of draft plan approval and site plan approval (where applicable).
6. Since some of the existing fencing between existing homes and the former golf course is not in good condition, our client will repair (or where appropriate replace) such fencing at its sole cost. The details will be dealt with in the conditions of draft plan approval.
7. The Town will permit our client to balance the fill across all its lands (i.e. the east development lands and the Option Lands). The intent is to minimize off site disturbance from trucks removing fill from the site. The estimated amount of fill is 100,000m<sup>3</sup>. The placement and grading of the fill material will be in accordance with plans prepared by our client's engineers and will be subject Town staff's approval. Any areas on the Option Lands where fill is placed will be graded and hydro-seeded in accordance with Town staff's approval.
8. With respect to servicing allocation, our client intends to develop the lands in phases and will apply for servicing allocation in accordance with Town policy as each phase proceeds. The Town will grant such allocation as is reasonably required for each phase. The subdivision agreement can deal with phasing and so Town staff will be involved with phasing. The Town's allocation policy ranks development for *Emerging Residential* lands higher than development in *Stable Residential* areas. Our client's official plan amendment seeks to re-designate its lands to *Emerging Residential*. Should the Town prefer that some of the lands be instead re-designated to *Stable Residential*, and should our client agree to do so, the Town will not use this designation as a reason to rank the allocation request lower than would have been the case with an *Emerging Residential* designation.
9. The intent of granting the Town a 10-year option on the Option Lands is that these lands remain as public park, open space or used for public recreational purposes (if the Town exercises its option) but that they not be sold by the Town or otherwise developed. Accordingly, the option and transfer documents will provide that should the Option Lands, at

any time in the future, be sold by the Town or developed, that they either be returned to our client (at the price of \$5,500,000) or that all profits from the sale or development be turned over to our client (or a charity of its choosing). This is not intended to be punitive in any way nor is it uncommon in similar transactions. If the purpose of the Town exercising the option is to ensure that the Option Lands never develop, then our client wants to ensure that this remains the case.

10. The Town will support the revised development at the OMB hearing and will instruct its staff and legal counsel (external if one has been retained by the time of the hearing) to attend the hearing in support.
11. The Town will instruct its legal counsel (forthwith after this settlement has been approved by Town Council), to inform the OMB and the Glenway Preservation Association of this settlement and that it hereby withdraws all of its issues which were filed on November 15, 2013.
12. Our client will, as soon as possible, file updated reports which address this revised development and which respond to the various technical concerns raised by staff (and others) in staff report 2013-47. Many (if not most) of those comments are addressed and resolved by virtue of the revisions reflected in the revised draft plan. Others will be addressed in the reports. Nothing in this offer will restrict the Town's ability to fully review and comment on the reports. This offer is intended to deal with the larger issues of the number of units, location and amount of parkland, design and ownership of the SWM facilities, etc. The parties will work together to resolve all technical issues in advance of the OMB hearing; and
13. Town staff will work with the applicant to finalize an Official Plan Amendment, Zoning By-law Amendment, draft plan of subdivision and conditions of draft plan approval, which implement the revised development and respond appropriately to any technical comments. All of these documents will be presented to the OMB for approval by no later than the March 3, 2014 scheduled hearing.

Your staff can advise you on the true fair market value of the Option Lands and what the Town would have to pay for the amount of developable land (in relative close proximity to the Urban Centre) which staff believe will be required when the planned intensification units of that centre are built. Given that approximately twenty-six acres of the Option Lands are developable, the fixed price for these lands may save the Town and its taxpayers tens of millions of dollars (in today's dollars). There is no telling what the land will be worth in ten years.

Finally, although this settlement offer is being provided on a "without prejudice" basis, our client again consents to it being made public so that, among other things:

- It can be circulated to relevant departments of the Town.
- It can be circulated to commenting agencies including the LSRCA and the Region of York; and

- It can be provided to the Glenway Preservation Association and any other party or participant to the OMB hearing.

This offer is open for acceptance until revoked in writing. We look forward to the Town's response.

Yours very truly,

A handwritten signature in cursive script that reads "Ira Kagan". The signature is written in black ink and is positioned below the closing "Yours very truly,".

Ira T. Kagan

Enclos. (revised draft plan of subdivision and covering memo)

cc. Client and its consulting team

Mr. James Feehley (counsel to the Glenway Preservation Association)



**ZELINKA PRIAMO LTD**  
*A Professional Planning Practice*

November 19, 2013

Town of Newmarket  
Planning & Development Department  
395 Mulock Drive  
P.O. Box 328, Stn Main  
Newmarket, ON L3Y 4X7

Attention: Rick Nethery, Director of Planning

**Re: Revised Plan of Subdivision  
Marianneville Developments Limited: D12NP1210**

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On behalf of Marianneville Developments Limited, we are pleased to submit a revised draft plan of subdivision proposal for these lands. The revised plan incorporates a number of changes which have been identified through the Town's circulation process and have been the subject of extensive discussion with Town staff and the Town's planning and engineering consultants. Kindly consider this as a formal revision to the above-noted application.

This letter describes the changes from our original 2012 application submission and the August 23, 2013 Without Prejudice offer. Since the changes have required the renumbering of many lots and blocks, references are made to both original numbering and the new numbering, where appropriate: e.g. Block 171 (New Block 160).

### **STORMWATER PONDS**

The original plan modified and upgraded the five existing stormwater management ponds within the plan boundary, but retained them as private lands integrated as private open space amenity areas into proposed condominium residential blocks.

The Marianneville Without Prejudice offer of August 23, 2013 (the "August W/O/P Proposal") agreed to the Town request to have all stormwater ponds dedicated to the Town. All of the ponds met MOE design standards, but not necessarily the higher Town standards.

The current proposal includes a reconfiguration of two of the ponds to achieve better land efficiency, and a redesign of all five ponds to meet Town standards. All of these ponds will be dedicated to the Municipality along with related maintenance access facilities, and adjacent areas of open space for which Town staff have indicated an unwillingness to grant parkland dedication credit.

New Blocks 164, 165, 166 and 167 containing the stormwater management ponds designed to Town standards, related facilities and additional open space will be dedicated to the Town.

## **PARKLAND**

The original submitted plan identified Block 173 east of Kirby Crescent for parkland dedication and trail development. Based on the Town's desire to have parkland located more easterly in the subdivision, close to the stormwater management ponds in Blocks 169 and 170, the August W/O/P Proposal included combined parkland and stormwater management areas lying west of Eagle Street W. with a continuous connection through to Street 'B' and to Crossland Gate at Alex Doner Drive.

As a result of continued discussion, the revised proposal removes several more dwellings and part of Street 'B' to widen and enlarge the contiguous parkland areas. The revised plan provides the Town with the parkland it has requested, and removes some of the parkland which Town staff have indicated they either did not support or would not consider eligible for parkland credit. The revised plan provides an enhanced parkland system which fully satisfies the 5% parkland dedication requirement. Moreover, the stormwater ponds and smaller uncredited open space areas adjacent to them will be used as public amenity areas, rather than private open space, and will be integrated with the parkland to provide a fully interconnected public park, open space and trail system which will connect existing residential areas and new residential areas.

A new Parkland Block 163 is shown on the revised plan extending from Street 'B' on the northwest to Stormwater Pond Block 165 to the east and to Stormwater Block 164 in the south and southeast. As a result, a system of parkland, stormwater ponds and related open space areas is created, ringing Glenway Circle and providing a continuous connection from Eagle Street (at Millard Ave) westerly to Street 'B', then southerly to Crossland Gate (opposite Alex Doner Drive), then returning easterly to Eagle Street (opposite Street 'D', south of Glenway Circle).

The parkland dedication has an area of 1.84 hectares (4.55 acres), or 5.07% of the plan of subdivision. However, the community amenity and passive recreational benefits will be further enhanced by the inclusion of the stormwater ponds and their associated open space areas as public spaces. The overall system of dedicated parkland, stormwater ponds and associated open space areas amounts to 8.3 hectares or (20.51 acres), equivalent to 22.87% of the plan.

## **REALLOCATION AND REDESIGN OF DWELLINGS**

Because of the changes to the parkland configuration and because of the redesign of the stormwater ponds to Town standards, residential units have been reallocated within the revised plan.

The former Park Block 173 east of Kirby Crescent has been reallocated to 24 condo singles in a renumbered Block 157, as was shown in the August W/O/P Proposal.

The original Blocks 169 and 170 condo bungalow singles were reduced in the August W/O/P Proposal from the original 54 units to 30 units. In the revised proposal, the number of units is raised nominally to 31 units on new Blocks 158 and 159, reconfigured to provide a wider, more usable Parkland Block.

In the August W/O/P Proposal, five lots (Lots 100-104 inclusive) were removed to provide continuity of the parkland system. To provide the additional parkland requested by the Town, the revised

proposal removes six more lots adjacent to the removed Street 'B' cul-de-sac; so that the total number of single detached lots (non-condo) has been reduced from 165 to 154.

For greater clarity, I have attached an enlarged drawing of this redesigned area of proposed public parkland, stormwater ponds and open space showing Blocks 163, 164 and 165 which are to be dedicated to the Town. The drawing also illustrates a conceptual layout of lots for the proposed single detached bungalows within condo Blocks 158 (15 lots) and 159 (16 lots), as well as the general configuration of the associated condo roads. A redesigned turnaround in Block 159 has enabled us to remove the turnaround from lands desired by the Town for park purposes. The details of this turnaround (among other matters) will be determined through the condominium approval process and/or site plan approval (as the case may be).

With the reconfigured units, the new plan maintains the approach of the original plan for new development which is consistent with the size and form of housing in the existing neighbourhood, or which is separated from existing residences by distance and/or substantial landscape buffers.

In response to the YRDSB request for a school site, the original Blocks 168 and 171 (New Blocks 160 and 161), as well as Lots 123-125 (New Lots 112-114) are being proposed for dual zoning to permit both an elementary school site and the proposed residential units. However, if a superior school site is found elsewhere by the YRDSB, the lands will be developed for residential units: Block 160 has high density residential apartments (292 units), but these have been reduced from 15 storeys maximum height to four-to-six storeys maximum (These units are intended to be wood construction. Currently the Building Code limits the height of wood construction residential buildings to four stories but there is a proposal to amend the Building Code to permit six stories.); Block 161 has 12 mixed use "live-work" units; and there would be single detached dwellings on New Lots 112 to 114.

The total number of proposed dwelling units remains at 730 units in the revised proposal, the same number as in the original plan. However, the unit mix has changed slightly.

I trust this revised proposal appropriately addresses the Town's issues and its specific requests.

Yours very truly,

ZELINKA PRIAMO LTD.



Richard Zelinka, MES, MCIP, RPP  
Principal Planner



RESIDENTIAL

MARSDEN COI

GRAMMAR STREET

RESIDENTIAL

MILLARD AVENUE

BLOCK 166  
STORMWATER POND  
AND OPEN SPACE  
1.13 ha (2.79 ac)

STREET D

EAGLE STREET WEST

BLOCK 159  
CONDO RESIDENTIAL  
1.29 ha (3.19 ac)

GLENWAY CIRCLE

RESIDENTIAL

GLENWAY CIRCLE

BLOCK 163  
PARKLAND  
1.84 ha (4.55 ac)

BLOCK 164  
STORMWATER POND  
AND OPEN SPACE  
3.67 ha (9.07 ac)

RESIDENTIAL  
CROSSLAND GATE

STREET B

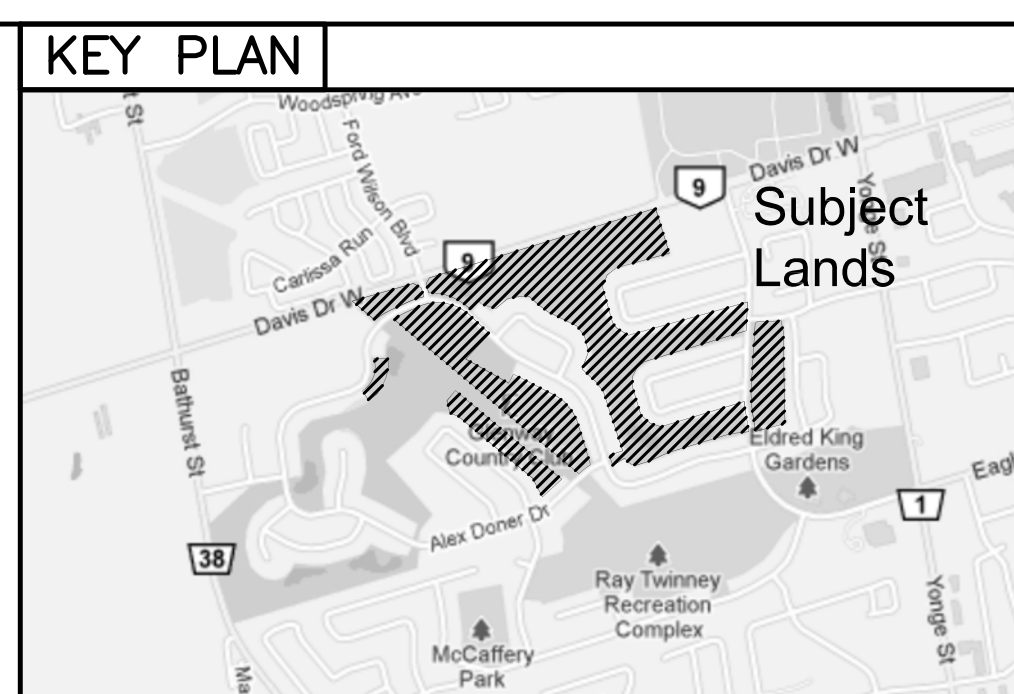
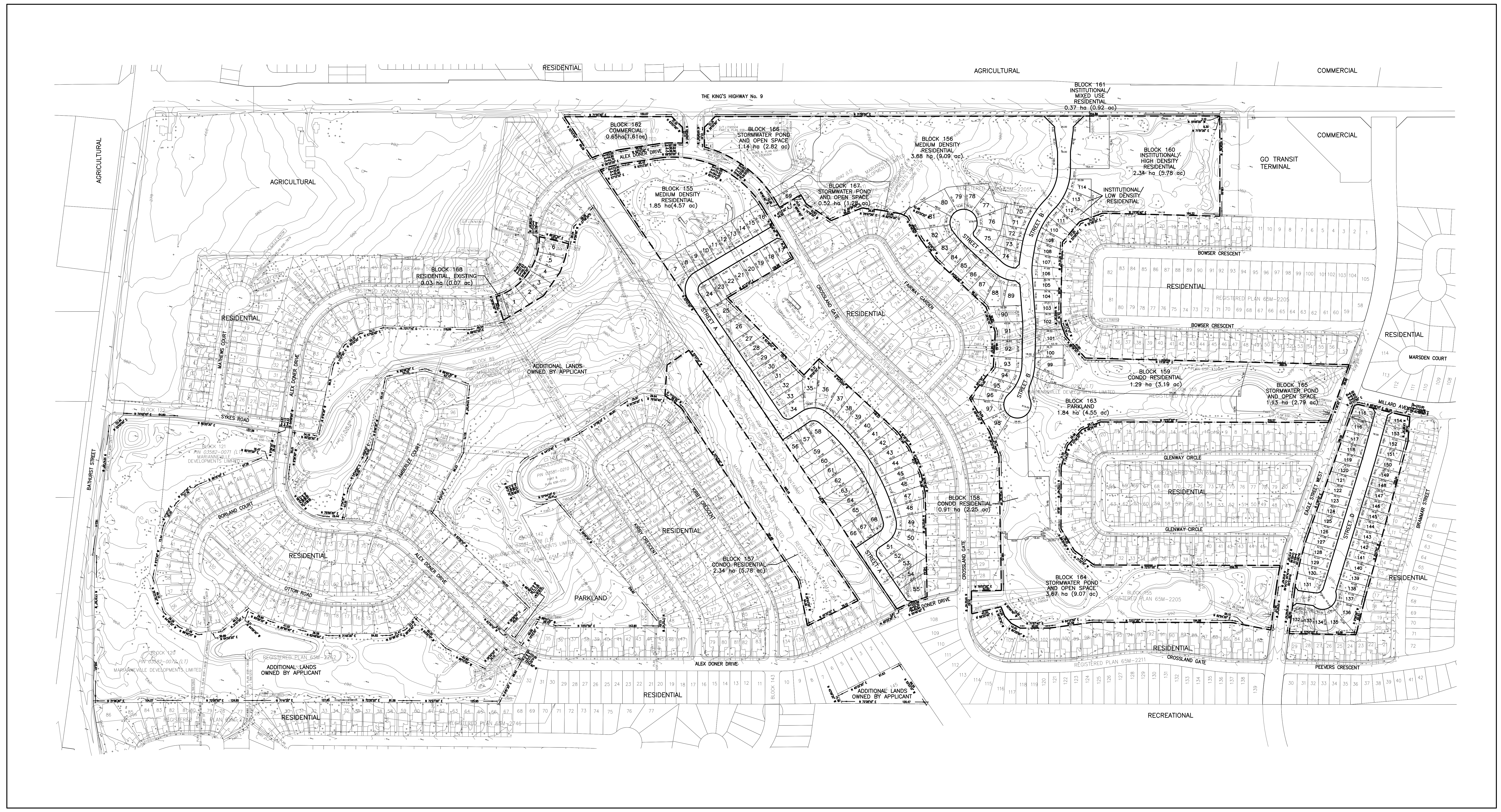
BLOCK 158  
CONDO RESIDENTIAL  
0.91 ha (2.25 ac)

CROSSLAND GATE

DRIVE







# DRAFT PLAN OF SUBDIVISION

OF PART OF  
**LOTS 60, 61, 64, 65, 66, 67**  
**BLOCK 92, RP 65M-2212**  
 AND ALL OF  
**BLOCK 91, RP 65M-2212**  
**BLOCK 155, RP 65M-2205**  
**BLOCKS 144, RP 65M-2261**  
**BLOCK 89, RP 65M-2263**  
**BLOCK 73, RP 65M-2284**  
 TOWN OF NEWMARKET  
 REGIONAL MUNICIPALITY OF YORK

INFORMATION REQUIRED UNDER SECTION 51 (17) OF THE PLANNING ACT

A) As shown  
 B) As shown  
 C) As shown  
 D) As listed above  
 E) As shown  
 F) As shown

G) As shown  
 H) Municipal water supply available  
 I) Mix of Silty Sand & Silty Clay  
 J) As shown  
 K) All municipal services to be available  
 L) As shown

**PROPOSED LAND USES AND AREAS**

RESIDENTIAL (LOTS 1-111, 115-154)	151 units	11,138 ha
INSTITUTIONAL/RESIDENTIAL (LOTS 112-115)	3 units	0,220 ha
RESIDENTIAL, MEDIUM DENSITY (BLOCKS 155-156)	217 units	6,532 ha
RESIDENTIAL, CONDOS (BLOCKS 157-159)	55 units	4,535 ha
INSTITUTIONAL/RESIDENTIAL, HIGH DENSITY (BLOCK 160)	292 units	2,337 ha
INSTITUTIONAL/MIXED USE (BLOCK 161)	12 units	0,373 ha
COMMERCIAL (BLOCK 162)	1 unit	0,648 ha
PARKLAND (BLOCKS 163)		1,838 ha
STORMWATER MANAGEMENT & OPEN SPACE (BLOCKS 164-167)		6,469 ha
RESIDENTIAL, EXISTING (BLOCK 168)		0,030 ha
PROPOSED ROADS		3,178 ha
<b>TOTAL</b>	<b>730 units</b>	<b>38,298 ha</b>

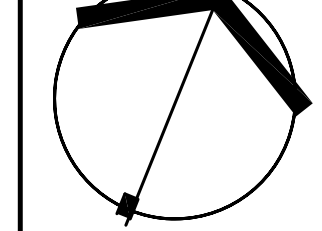
**OWNER'S CERTIFICATE**  
 MARIANVILLE DEVELOPMENTS LIMITED  
 HEREBY CONSENTS TO THE FILING OF THIS PLAN IN DRAFT FORM

MARIANVILLE DEVELOPMENTS LTD., OWNER \_\_\_\_\_ DATED \_\_\_\_\_

**SURVEYOR'S CERTIFICATE**  
 I HEREBY CERTIFY THAT THE BOUNDARIES OF THE LAND TO BE SUBDIVIDED AND THEIR RELATIONSHIP TO THE ADJACENT LANDS ARE ACCURATELY SHOWN ON THIS PLAN.

Greg G. Robinson, ONTARIO LAND SURVEYOR  
 for J.D. BARRIS LTD. \_\_\_\_\_ DATED \_\_\_\_\_

NO.	REVISION	DATE	INITIAL
3	Revised for submission to Town	Nov 15	CK
2	Parkland Dedication Revisions	Nov 7	CK
1	Revised for OMB Prehearing	Aug 6	CK



**ZELINKA PRIMO LTD**  
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DRAWN BY CK	PROJECT NO. MVL/NMK/10-01
DATE MARCH 2012	SCALE 1:2,000