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STAFF REPORT: Recreation Department



REPORT TO: Council
MEETING DATE: September 16, 2013
REPORT NO.: DOR 13 42
SUBJECT: Camperdown Road North Encroachment Agreement
PREPARED BY: Shawn Everitt, Director of Recreation

A. Recommendations

THAT Council receive Staff Report DOR 13 42 entitled “Camperdown Road North Land Use and Encroachment Agreement”; and,

THAT Council Authorize the Mayor and Clerk to sign a Land Use and Encroachment Agreement with Mr. Orest Dzulnsky in a form satisfactory to the Town Solicitor.

B. Background

On May 27, 2013 staff received direction from Council through Staff Report DOR.13.22 being approved to proceed with the development of a Land Use and Encroachment Agreement as follows;

AND THAT Council direct Staff to proceed with developing an encroachment agreement to allow for existing encumbrances save and except the north rock wall to remain on Camperdown Road North of Hoover Lane and identify a fee per square meter of land included in the land use agreement;

Staff has developed the Draft Agreement (Attachment 1) through consultation with CAO Troy Speck, Town Solicitor John Metras, Manager of Roads and Drainage Jim McCannell and Director of Recreation Shawn Everitt.

The intention of this agreement is to have the northern portion of the existing rock wall removed from town property and relocated to private property, the encroachment and land use agreement permits the Southern portion of the rock wall and vegetation to remain with terms of this permission set out in the agreement.

Staff has identified an annual fee of \$330.00 for the right to continue the Encroachment. This fee shall be adjusted annually in accordance with the most recently available Statistic Canada, Ontario Consumer Price Index.

With Council’s Authorization, staff could present the draft agreement to Mr. Dzulnsky and proceed with formalizing the Agreement. If the Agreement is not signed by the Land Owner, the Northern portion of the rock wall will be removed and taken off site by Town staff with costs billed to the owner. The remaining encroachments will be reviewed and removal of the remaining rock wall as well as vegetation on town property could be completed.

C. The Blue Mountains' Strategic Plan

Providing a strong, well-managed municipal government.

D. Environmental Impacts

Effective and sustainable use of Town property

E. Financial Impact

Removal of the existing rock wall and relocation to private property will be at the cost of the landowner.

Revenue will be generated through encroachment agreement.

F. In Consultation With

Troy Speck, CAO
John Metras
Jim McCannell, Manager of Roads & Drainage

G. Attached

- 1) Draft Land Use and Encroachment Agreement
- 2) May 14, 2013 Staff Report DOR 13 22

Respectfully submitted,

Shawn Everitt, Director of Recreation
For more information please contact:
519-599-3131 ext. 281
519-599-7723
severitt@thebluemountains.ca

DOR 13 42 Attachment # 1

LAND USE AND ENCROACHMENT AGREEMENT

THIS AGREEMENT MADE THIS DAY OF ,2013

BETWEEN:

OREST DZULYNSKY

(hereinafter called "the Owner")

- AND -

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

(hereinafter called "the Town")

WHEREAS the Owner is the owner of the land described on the attached Schedule "A" which is hereby declared to form part of this Agreement (the "Lands");

AND WHEREAS the Owner acknowledges that a portion of an existing cedar hedge and concrete wall planted and installed by the Owner is found to be encroaching onto Camperdown Road, a highway under the jurisdiction of the Town, in the manner shown on a Plan of Survey certified on September 21, 2012 by Paul R. Thomsen, Ontario Land Surveyor of Zubek, Emo Patten and Thomsen Limited (the "Encroachment")

AND WHEREAS the Town is prepared to permit the Encroachment to continue under the terms and conditions set out in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in the consideration of two dollars (\$2.00) of lawful money of Canada now paid by each Party to the other the receipt of which is hereby acknowledged and other good and valuable consideration the Parties hereby agree as follows:

1. The Parties acknowledge the accuracy of the aforementioned recitals.
2. The Parties agree that this Agreement is deemed to be a Municipal Lands Permit Agreement within the meaning of Town By-law 99- 53 as amended or any successor by-law thereto.
3. The Owner acknowledges the Encroachment onto Camperdown Road. .
4. The Town agrees, subject to Sections 6 and 11, that the Encroachment may continue according to the terms and provisions of this Agreement for a period not to exceed TWENTY (20) years from the date of this Agreement or until the Encroachment is removed from Camperdown Road by the Owner, whichever occurs first (the "Term"). In any event the Owner shall at his own cost remove the Encroachment from Camperdown Road at the end of the Term.
5. The Owner shall pay to the Town, during the Term, an annual fee of Three Hundred and Thirty (\$330) Dollars for the right to continue the Encroachment. The first payment shall be made prior to the Town executing this Agreement and all future annual payments shall be made on the anniversary date of the Town executing this Agreement (the "Anniversary Date"). This fee shall be adjusted annually without amendment to this Agreement commencing on the first Anniversary Date and on the Anniversary Date each year thereafter in accordance with the most recently available Statistics Canada, Ontario Consumer Price Index.
6. In the event the Owner is fails to make an annual payment when it becomes due the Town may immediately terminate this Agreement by written notice to the Owner and the Owner shall forthwith at his own cost remove the Encroachment from Camperdown Road.

7. The Owner agrees that nothing contained in this Agreement shall be construed as giving the Owner any ownership or other rights to that part of Camperdown Road occupied by the Encroachment except for permission to maintain the Encroachment as it presently exists onto Camperdown Road.
8. The Owner further agrees that the Encroachment shall not be replanted, replaced or reconstructed following any removal, destruction, failure or deterioration thereof. For clarity, the Parties agree that regular maintenance and repairs to the Encroachment shall be permitted from time to time.
9. The Owner shall indemnify and save completely harmless the Town and its elected officials, officers, agents, contractors and employees from and against all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly or in any way connected with the Encroachment.
10. A copy of the survey referred to in the recitals is on file with the Town Clerks Office and may be viewed during normal office hours.
11. This Agreement may be terminated by either Party during the term of this Agreement upon thirty (30) days prior written notice given to the other Party, provided that the termination date set out in such notice shall not be any date after September 1st in any year and before March 1st in the following year. In the case of such termination the Owner shall at his own cost remove the Encroachment from Camperdown Road by no later than sixty (60) from the date of termination set out in such notice.
12. In the event the Owner fails to remove the Encroachment at the end of the Term or in accordance with the requirements of Sections 6 and 11, the Town may remove the Encroachment and recover its costs of doing so in accordance with the provisions of Town By-law 99- 53 as amended or any successor by-law thereto and Section 446 of the Municipal Act, 2001, S.O. 2001, c.25 as amended or any successor thereto.
13. If any notice is required to be given by the Town to the Owner with respect to this Agreement, such notice shall be mailed, delivered or sent by email or facsimile transmission to the Owner o:

Orest Dzulynsky

To be advised

or such other address of which the Owner has notified the Town, in writing, and any such notice mailed, delivered, emailed or sent by facsimile transmission shall be deemed good and sufficient notice under the terms of this Agreement.

If any notice is required to be given by the Owner to the Town with respect to this Agreement, such notice shall be mailed, delivered, emailed or sent by facsimile transmission to:

Director of Recreation
The Corporation of the Town of The Blue Mountains
32 Mill Street,
Box 310
Thornbury, Ontario
N0H 2P0

Fax: 519-599-7723

Email: severitt@thebluemountains.ca

Or such other address of which the Town has notified the Owner, in writing, and any such notice mailed, delivered, emailed or sent by facsimile transmission shall be deemed good and sufficient notice under the terms of this Agreement.

- 14 The Parties agree that this Agreement shall enure to the benefit of and be binding upon the Parties and their respective heirs, executors, successors or assigns, as the case may be.
15. The Parties agree that this Agreement may be registered on title of the Lands at the sole discretion of the Town and at the sole cost of the Owner.

IN WITNESS WHEREOF the Corporate Parties have executed this Agreement by affixing thereto their corporate seals, as attested by the hand of their proper signing officers duly authorized in that regard and the Natural Parties have hereunto affixed their hand and seal the day first before mentioned;

OREST DZULYNSKY

Owner

Witness

**THE CORPORATION OF THE TOWN OF
THE BLUE MOUNTAINS**
PER:

Ellen Anderson, Mayor

Corrina Giles, Clerk

SCHEDULE "A"

Subject Lands

PIN 37308-0267 LT

Part Lot 27, Concession 7, The Blue Mountains as in R497335, R390072 S/T R296797,
R337304

DRAFT

DOR 13 42 Attachment # 2

STAFF REPORT: Recreation Department



REPORT TO: Infrastructure and Recreation Committee
MEETING DATE: May 14, 2013
REPORT NO.: DOR 13 22
SUBJECT: Camperdown Road Waterfront Access & Right of Way
PREPARED BY: Shawn Everitt, Director of Recreation

A. Recommendations

THAT Council receive Staff Report DOR 13 22 with respect to “Camperdown Road Waterfront Access & Right of Way” for information purposes.

AND THAT Council direct Staff to proceed with developing a encroachment agreement to allow for existing encumbrances save and except the north rock wall to remain on Camperdown Road North of Hoover Lane and identify a fee per square meter of land included in the land use agreement;

AND THAT Council direct Staff to develop the southern portion of the Camperdown waterfront access as a pedestrian friendly access point that prohibits vehicular access to the waterfront however placed in a manner that allows for the passage of small watercraft trailers as well as personal mobility devices;

B. Background

Staff has been in the process of addressing concerns relating to the use of town property and encroachments on Camperdown Road North where it fronts Nottawasaga Bay. During the review of concerns it was identified that encroachment onto the Town Right of Way has occurred.

A request was made to Zubek, Emo Patten & Thomsen, Ontario Land Surveyors, to complete a plan of survey of the original road allowance between concessions 6 & 7 where it fronts Nottawasaga Bay and this work was completed in September of 2012. This property is the 66 foot road allowance of Camperdown Road North.

The survey determined that a foundation block retaining wall and cedar hedges on the western boundary are situated on the road allowance adjacent to a drainage course outlet. Additionally, on the easterly boundary there are some landscape stones and a grouping of trees also situated on road allowance.

It is recommended by staff that the reclaiming of the 66 foot right of way take place and measures be taken to ensure that encroachments are removed. Engineering & Public

Works staff main goal with the western boundary encroachment is to ensure that this significant drainage course can be maintained and be unobstructed so that required drainage flows can be achieved. Engineering and Public Works second goal is to reclaim the road allowance property and ensure that it is free from any encroachments or encumbrances.

The road allowance has been utilized in the past as an informal boat launch and public beach access. Staff recommend that physical barriers be placed just north of Hoover Lane on Camperdown Road to eliminate any further vehicular use of the public beach area. Staff have identified that the terrain in around the water's edge of Camperdown Road North is not compatible with or appropriate for continued use by vehicular traffic.

During recent years, discussions have taken place with the adjacent landowners on both the East and West boundaries of the Camperdown Road right of way as well as a number of local residents in the Camperdown/Teskey Drive area.

Once the re-establishment of the property stakes was completed it became obvious that significant encroachments on Town property were present. Surprisingly, most complaints received through this process over the past number of years identified concerns with what were thought to be significant property encroachments on the East side of the right of way. After the re-establishment of property stakes it was clearly shown that significant encroachments had taken place on the Western portion of the right of way. These encroachments included a large rock wall approximately 20 meters in length identified in attachment "1".

In November of 2012, staff initiated further discussions with both adjacent landowners. The landowner on the western portion and staff reviewed preliminary options that dealt with the removal or relocation of the rock wall. The landowner has opted to have the existing rock wall material relocated wholly onto the western property at their costs. Staff has also provided assistance to the landowner in obtaining permits for the relocating of the rock wall. Staff has received the permit from Grey Sauble Conservation Authority allowing for the relocation on behalf of the residents.

Staff has confirmed with the residents that the existing rock wall will be removed this spring, the removal will be at the cost of the landowner and the landowner is responsible for arranging these works.

Options A. and B. have been identified by staff as preferred options for next steps. Options C, D, and E were also reviewed during this process, and have been included in this report for additional background information.

- A. Staff proceed with developing a encroachment agreement to allow for existing encumbrances save and except the north rock wall to remain on Camperdown Road North of Hoover Lane and identify a fee per square meter of land included in the encroachment agreement;

and

- B. Staff develop the southern portion of the Camperdown waterfront access as a pedestrian friendly access point that prohibits vehicular access to the waterfront however placed in a manner that allows for the passage of small watercraft trailers as well as personal mobility devices;
 - C. Staff to remove all remaining encumbrances from the Camperdown Road North of Hoover Lane, including landscaping and hedge to re-establish the Right of Way and be encroachment free;
- and/or,
- D. Staff to proceed with developing an encroachment agreement to allow for existing encumbrances save and except the north rock wall to remain on Camperdown Road North of Hoover Lane;
 - E. Staff to leave the southern portion of the Camperdown Road waterfront access as is.

Pending approval of this report, staff will proceed with providing notification of the future works based on the direction staff receives to the residents of Camperdown Road North as well as Residents on Teskey Drive and Hoover Lane.

C. The Blue Mountains' Strategic Plan

Providing a strong, well-managed municipal government.

D. Environmental Impacts

Effective and sustainable use of Town property

E. Financial Impact

Removal of the existing rock wall and relocation to appropriate property line will be at the cost of the landowner. Removal of trees on the eastern portion will be completed by town staff.

Revenue could be generated through encroachment agreements.

F. In Consultation With

Troy Speck, CAO
John Metras
Jim McCannell, manager of Roads & Drainage

G. Attached

- 1) Photos of Right of way

- 2) Plan of Survey, Patten & Thomsen
- 3) 2007 Staff Report CAO.07.11

Respectfully submitted,

Shawn Everitt, Director of Recreation

For more information please contact:

519-599-3131 ext. 281

519-599-7723

severitt@thebluemountains.ca