

**STAFF REPORT:      LEGAL SERVICES**



**REPORT TO:            Council**  
**MEETING DATE:      August 27,2007**  
**REPORT NO.:          LS.07.02**  
**SUBJECT:              Encroachment Agreement –  
                                 Lake Drive**  
**PREPARED BY:        John G. Metras**

**A.    Recommendations**

THAT Council:

Approve and authorize the Mayor and Clerk to sign an agreement, in a form approved by the Town Solicitor, between Lorna Wedgbury and the Town providing for the continued use, repair and maintenance of a private water system on Lake Drive

**B.    Background**

1.    Patrick and Cecile Kendrick are the owners 173 Lake Drive and they have agreed to sell their property to Lorna Wedgbury. A recent survey (copy attached) shows that the well and waterline (the private water system) providing the water supply to the property are located on Lake Drive. The well is located on the side of the hill on the south side of the Lake Drive off the travelled portion of Lake Drive and has been in this location for over forty years.
  
2.    The Town has received requests from the solicitors for the vendors and purchaser requesting that the purchaser, Lorna Wedgbury be permitted to continue to use, maintain and repair the private water system until the property is serviced by the Town's water system. It is anticipated that Lake Drive will be serviced with water and sanitary sewer within the next two years
  
3.    Town staff have reviewed these requests and have no objection to permitting the continued use of the private water system provided the purchaser enters into an encroachment agreement with the Town.
  
- 4    An encroachment agreement (Attachment 2) satisfactory to Town staff has been finalized with the purchaser, Lorna Wedgbury. This agreement;

- (a) provides for the continued use, maintenance of the private water system at the owner's expense for a period not to exceed 10 on the understanding that the private water system will be removed at the owner's expense and the agreement terminated when the property is serviced with Town water.
- (b) provides for Town approval of any maintenance and repair work involving excavation, tree removal or damage to Lake Drive or disruption of traffic on Lake Drive,
- (c) provides that the Town will not be responsible for any damage to the private water system, including contamination of the well or disruption of the water supply caused by any reason including the maintenance, repair and reconstruction of Lake Drive and the installation of the new water and sewer works by the Town.

**C. The Blue Mountains' Strategic Plan**

No application to this agreement.

**D. Budget Impact** (cc: Treasury if required)

No budget impact

**E. Attached** (Relevant documentation not personal information about an identifiable person)

1. Excerpt from survey showing location of well.
2. Agreement with Lorna Wedgbury

Respectfully submitted,  
John G. Metras Q.C., Town Solicitor

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THIS AGREEMENT MADE THIS

DAY OF AUGUST, 2007

BETWEEN:

LORNA WEDGBURY

(hereinafter called "the Owner")

-AND-

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

(hereinafter called "the Town")

WHEREAS the Owner owns the land described as Lots 37 and 38, Judges Plan 931, save and except Part 2 on Reference Plan 16R-2921 and Part of Lot 39, Judges Plan 931 described as Part 1 on Reference Plan 16R-2921 in the Town of The Blue Mountains (formerly Township of Collingwood), County of Grey (the "Owner's Lands");

AND WHEREAS the Owner's Lands abuts Lake Drive, a public highway under the jurisdiction of the Town ("Lake Drive");

AND WHEREAS a concrete well and water line which provides the water supply to the Owner's Lands (the "Private Water System") has been installed on and encroaches on Lake Drive in the location shown on the plan of survey attached hereto as Schedule "A";

AND WHEREAS the Town is prepared to permit the Private Water System to remain on Lake Drive on 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 agree that the recitals herein are true and accurate and form part of this Agreement.
2. The Town agrees that the Private Water System may remain on Lake Drive subject to the terms and conditions of this Agreement for a period not to exceed TEN (10) years from the date of this Agreement (the "Term") and that the Owner may continue to use, maintain and repair the Private Water System during the Term without charge. The Parties further agree this Agreement may be extended upon written request of the Owner and at the sole discretion of the Town, acting reasonably. In any event this Agreement shall terminate at such time as the Owner removes the Private Water System from Lake Drive in accordance with the requirements of section 5 of this Agreement.
3. The Town agrees that the Owner shall have access to the Private Water System for the purpose of maintaining and repairing the Private Water System at the Owner's sole cost and expense provided that the Owner shall not undertake any maintenance and repair work that requires any excavation, tree removal or damage whatsoever on Lake Drive and/or the disruption of traffic on Lake Drive in any way without the prior written approval of the Town, which approval will not be unreasonably withheld, but may be subject to conditions. All work undertaken by the Owner on Lake Drive shall be

undertaken in accordance with any conditions imposed by the Town for such work. The Owner shall restore Lake Drive to the satisfaction of the Town to the same condition, as far as is practicable, to that which it was found prior to the commencement of such work.

4. The Owner agrees that nothing herein contained shall be construed as giving anything more than permission (insofar as the Town can legally do so) to continue to use, maintain and repair the Private Water System in accordance with the terms of this Agreement.

5. The Owner acknowledges that the Town proposes to extend its sanitary sewer system and water distribution system along Lake Drive across the frontage of the Owner's Lands (the Sewer and Water Works) to provide sanitary sewer service and municipal water service to the Owner's Lands. The Owner shall at their sole cost and expense connect their dwelling to the municipal sanitary sewer and water distribution systems within ninety (90) days of receiving a written notice from the Town to make such connections and within sixty (60) days from making such connections decommission and remove the Private Water System from Lake Drive in accordance all applicable government regulations and requirements and restore Lake Drive to the satisfaction of the Town to the same condition, as far as is practicable, to that which it was found prior to the commencement of such work.

6. In the event that the well becomes contaminated beyond repair and/or the supply of water from the Private Water System is disrupted beyond repair for any reason whatsoever, including the maintenance, repair and reconstruction of Lake Drive and the installation of the Sewer and Water Works by the Town, the Owner shall be solely responsible, at the Owner's own cost and expense to provide, in accordance with the provisions of all applicable government regulations and requirements, a water supply, including potable water, for the Owner's use. Provided that the Town agrees that the Owner may use a temporary cistern, installed at the Owner's own cost and expense in accordance with the provisions of all government regulations and requirements, to supply water to the Owner's property during construction of the Sewer and Water Works and the Town shall not object to the Owner's occupation of the dwelling during this period.

7. The Owner shall indemnify and save the Town and its employees, elected officials, officers, contractors, sub-contractors, servants and agents completely harmless from and against all costs, damages, claims, demands, actions, causes of action, suits and liabilities of any kind of any kind whatsoever directly or indirectly arising or in any way connected with the use, repair and maintenance of the Private Water System by any person and any damage , including disruption of the supply of water and contamination of the well, caused to the Private Water System by the maintenance, repair and reconstruction of Lake Drive and the installation of the Sewer and Water Works by the Town.

8. The Owner hereby releases and forever discharges the Town and its employees, elected officials, officers, contractors, sub-contractors, servants and agents from all costs, damages, claims, demands, actions, causes of action, suits and liabilities of any kind whatsoever directly or indirectly arising or in any way connected with the use, repair and maintenance of the Private Water System by any person and any damage , including disruption of the supply of water and contamination of the well, caused to the Private Water System by the maintenance, repair and reconstruction of Lake Drive and the installation of the Sewer and Water Works by the Town provided that this release shall not

apply to any obligations imposed on the Town pursuant to the terms and conditions of this Agreement.

9. 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.

10... The Parties agree that this Agreement will be registered on title of the Owner's Lands 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 Natural Parties have hereunto affixed their hand and seal the day first before mentioned;

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WITNESS

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LORNA WEDGBURY  
Owner

THE CORPORATION OF THE TOWN OF  
THE BLUE MOUNTAINS

Ellen Anderson, Mayor

Stephen Keast, Clerk

SCHEDULE "A"

Survey