



THE CORPORATION OF THE TOWN OF AMHERSTBURG

OFFICE OF THE CAO

Mission Statement: As stewards of the Town of Amherstburg, we strive to improve the quality of life of all residents through the delivery of effective, efficient, and affordable services.

Author's Name: Kevin Fox	Report Date: April 12, 2024
Author's Phone: 519 736 0012 ext. 2272	Date to Council: May 13, 2024
Author's E-mail: kfox@amherstburg.ca	Resolution #:

To: Mayor and Members of Town Council

Subject: Councillor Request for Information re. Resident Concern on Encroachment Matter

1. RECOMMENDATION:

It is recommended that:

1. The report **BE RECEIVED** for information.

2. BACKGROUND:

On March 29, 2016, the Town of Amherstburg adopted the Delegation of Powers and Duties policy which includes section 6.2.2, delegating approval to Administration of the approval of legal encroachments.

On May 23, 2023, by way of Council Resolution #20230523-015, the Town of Amherstburg adopted its current Encroachment Policy and By-law 2023-061, a By-law regulating encroachments on public lands.

At the Council Meeting on April 9th, a Member of Council requested further information with regards to a letter that had been sent from a private resident whose use of public lands would necessitate the entering into of an encroachment agreement with the Town of Amherstburg.

3. DISCUSSION:

A letter was received by Administration on April 3, 2024, by way of a Member of Council, on behalf of a property owner, with regards to an encroachment matter. The letter

requested assistance and/or relief from the encroachment, and mentioned several factors that they believed may have been relevant to such a determination.

Administration spoke with the property owner via phone on two occasions and further attended the private residence to provide additional information and assistance. Following those discussions, a written response to their letter was sent, and a copy provided to all Members of Council on April 5, 2024 providing information on the matter.

In response to the request for an Administrative report on the matter, the following information is provided:

Item #1 – Question Posed:

Throughout the letter there were references to the period of time for which the use of the public lands has existed and that during that period the maintenance of the lands has been privately delivered.

Item #1 – Response Provided:

By way of response, Council should be mindful that legal rights to lands are not conveyed or determined by the length of time someone has encroached on lands owned by someone else. The duration of the encroachment does not affect the current need to resolve an issue, longstanding or otherwise.

Additionally, the Town's Yard Maintenance By-law sets out the requirements for maintenance of lands, such as grass-cutting. This By-law includes the requirement that private lands may be responsible for activities such as grass-cutting on public lands that abut their property, such as public right-of-ways.

Further to any legal requirement on the private resident that may have existed for cutting the grass on these lands, much of the lands in question were inaccessible to the public, as the private citizen had erected a gate enclosing the public lands within the bounds of their backyard.

These public lands are also the subject of a legal easement registered on title which requires that the municipality ensure access to those lands can be maintained for a utility.

Item #2 – Question:

One of the requests for consideration was that Council consider a request for relief by means of 'grandfathering' and the question was posed by a Member of Council whether consideration could be given to extending such a consideration to this property owner.

Item #2 – Response:

This term is often used with regards to certain pieces of legislation where something which existed prior to a specific date is allowed to continue on the basis of its historical precedence.

While no such mechanism exists for encroachments, **it would not be recommended to enact such a precedent as anyone desirous of public lands would be incentivized to illegally make use of Town owned lands for their own eventual gain.**

If there is an area in which a private entity is making use of Town owned lands, the Town has an adopted policy and practice in its Encroachment By-law and Policy that sets out a reasonable process for due diligence to be done on the behalf of the Town and, where practicable and of interest to both parties, for the use to be allowable.

The alternative to entering into an encroachment agreement by another party is to remove the items which are encroaching on the lands. In this instance, that would be a gate/fence and some landscaping elements.

Item #3 - Question:

The letter also spoke to the difficulty in securing a Certificate of Insurance which named the Town as additional insured for the purposes of addressing the Town's liability exposures in the private use of public lands.

Item #3 – Response:

The private use and enjoyment of public lands carry liability risk for the municipality which directly relates to the use and enjoyment of those lands by those encroaching upon them. This requirement is an industry standard which exists in the Encroachment Agreements and programs of every municipality we have encountered which enters into encroachment agreements. Ultimately, it is up to the insurer whether they will agree to take on the associated risk and liability that an encroachment entails.

While the Town has and does provide information and works to help identify the particular details associated with each encroachment agreement, if the party entering into the encroachment has a personal homeowners policy, they may encounter resistance from underwriters who do not wish to take on the associated risk. While not uncommon to face this resistance, Administration did speak with a number of insurers and brokers who could assist with such issues and the Town has been provided with same in the past.

As in all such cases, the Town provided in its response that it would continue to work with the third party to help them meet the requirements to enter into the agreement.

4. RISK ANALYSIS:

There are no risks associated with the receiving this report for information.

There are a number of risks associated with deviating from the established program and policy of the Town with regards to encroachment agreements. Council has delegated responsibility for performing the due diligence and administration of this program to Administration to ensure that the Town limits its exposure and risk and that the use of public lands for private purposes are governed by the legal right to do so, under agreement.

Further, in relation to these lands specifically, there exists an easement for utility services across the public lands which require that access be provided, as a legal right, to the utility. In encroaching onto these lands, the encroachment, if not managed through a legal agreement, could represent a challenge in meeting the Town's obligations.

The use of an encroachment agreement sets out what is permissible on those lands, and provides a legal right of use by the encroaching party to those public lands. In exchange for that legal right of use of the public lands, the public needs to be assured that the risk borne by private uses is not carried by the public at large, that have no vested interest in the associated encroachment, or in the quiet enjoyment that may provide to a private party. It is for this reason that the legal liability associated with that encroachment is appropriately governed by having an effective agreement between all parties.

5. FINANCIAL MATTERS:

There are no financial impacts associated with this report.

6. CONSULTATIONS:

Valerie Critchley, Chief Administrative Officer
Tracy Prince, Chief Financial Officer/Director of Corporate Services/Treasurer
Bill Tetler, Manager of Licensing and Enforcement
Society of Public Insurance Administrators of Ontario (SPIAO)
BFL Canada
H.L. Hamilton Insurance Brokers and other local Insurance Brokers

7. CORPORATE STRATEGIC ALIGNMENT:

Vision: Preserving our past while forging our future.

<i>Amherstburg Community Strategic Plan 2022 - 2026</i>	
<p style="text-align: center;">PILLAR 1 Deliver Trusted & Accountable Local Government</p> <ul style="list-style-type: none"> <input type="checkbox"/> Improve trust between council and staff, and residents, by strengthening governance and internal accountability structures. <input type="checkbox"/> Deliver transparent and efficient financial management. <input type="checkbox"/> Increase effective communication and engagement with residents. <input type="checkbox"/> Develop our staff team, resources, and workplace culture. <input checked="" type="checkbox"/> Continue to deliver strong core municipal services. <input type="checkbox"/> Ensure Amherstburg is an inclusive accessible and welcoming community committed to reconciliation. 	<p style="text-align: center;">PILLAR 3 Encourage Local Economic Prosperity</p> <ul style="list-style-type: none"> <input type="checkbox"/> Encourage development of commercial and industrial lands. <input type="checkbox"/> Continue to promote local tourism industry, especially overnight accommodation. <input type="checkbox"/> Continue to facilitate downtown development for residents and visitors. <input type="checkbox"/> Continue to leverage partnership opportunities with other provincial, federal, and local governments, agencies, and organizations.
<p style="text-align: center;">PILLAR 2 Invest in Community Amenities and Infrastructure</p> <ul style="list-style-type: none"> <input type="checkbox"/> Maintain safe, reliable and accessible municipal infrastructure and facilities. <input type="checkbox"/> Increase access to recreation opportunities for all ages. <input type="checkbox"/> Finalize and execute plans for town-owned lands (e.g. Duffy’s site, Belle Vue) <input type="checkbox"/> Create public access to water and waterfront <input type="checkbox"/> Prioritize opportunities to reduce environmental impacts of Town operations and increase Town resilience to climate change. 	<p style="text-align: center;">PILLAR 4 Shape Growth Aligned with Local Identity</p> <ul style="list-style-type: none"> <input type="checkbox"/> Define and communicate a vision for the Town’s future and identity. <input type="checkbox"/> Promote and plan for green and “climate change ready” development. <input type="checkbox"/> Review and implement policies that promote greater access to diverse housing. <input type="checkbox"/> Protect the Town’s historic sites and heritage. <input type="checkbox"/> Preserve the Town’s greenspaces, agricultural lands, and natural environment.

8. CONCLUSION:

This report is provided for informational purposes.



Kevin Fox
Clerk / Risk Manager

Report Approval Details

Document Title:	Councillor Request for Information re. Resident Concern on Encroachment Matter.docx
Attachments:	- 2023-05-23---Encroachment-RM.pdf - 2023-061 - Encroachments By-law.pdf - Delegation-of-Powers-and-Duties-Policy.pdf
Final Approval Date:	Apr 29, 2024

This report and all of its attachments were approved and signed as outlined below:



Tracy Prince



Valerie Critchley



Kevin Fox