

The Corporation of the City of Kawartha Lakes

Council Report

Report Number RS2018-016

Date: June 5, 2018

Time: 2:00 p.m.

Place: Council Chambers

Ward Community Identifier: 10

Title: Fence Encroachment – 59 Cambridge Street North, Lindsay

Author and Title: Robyn Carlson, City Solicitor and Acting Manager of Realty Services

Recommendation:

That Report RS2018-016, Fence Encroachment – 59 Cambridge Street North, Lindsay, be received.

Department Head:_____

Financial/Legal/HR/Other:_____

Chief Administrative Officer:_____

Background:

The City passed the City Lands Encroachment By-law 2018-017 in February 2018. The City Lands Encroachment By-law provides that encroachments on City property are not permitted, unless authorized by the City pursuant to by-law, statute, regulation, policy, resolution of the City, or encroachment agreement.

The City Lands Encroachment By-law provides further that any person wishing to encroach on City lands must make an application to the Land Management Committee.

The Land Management Committee consists of the Director of Public Works, the City Solicitor, the Asset Manager, the Director of Engineering and Corporate Assets, the Director of Development Services and a Land Use Planner. All members are employed by the City. Unlike other Committees, the purpose of the Land Management Committee is not only to make recommendations to Council; in some cases, the purpose of this Committee is to make administrative decisions within Staff's delegated authority, set out in the City Lands Encroachment By-law and the Signing Authority By-law.

More specifically, the Land Management Committee makes recommendations to Council regarding land acquisition and land disposition, and with respect to longer term leases and licenses having a higher annual associated revenue or expense. The Land Management Committee also is used as a venue for Staff to process shorter term leases and licenses that have a lower annual associated revenue or expense, for which Staff have delegated authority.

Pursuant to section 5.05 of the Signing Authority By-law 2016-009, License Agreements with associated revenue of \$10,000.00 or less per year are signed by the City Solicitor or the Director of Corporate Services. A Council by-law is not required.

With respect to License Agreements for encroachments, the criteria upon which the Land Management Committee makes its decisions is set out at section 4.01 of the City Lands Encroachment By-law. Some examples of when an application will be denied include: the encroachment creates an unsafe condition; the encroachment creates liabilities for which the City cannot assign full responsibility to the owner of said encroachment; etc.

Section 4.04 of the City Lands Encroachment By-law provides that an applicant will be advised of the Committee's decision and has the opportunity to bring a deputation to a Special Meeting of Council. At that Special Meeting, Council may refer the matter back to Staff for a Report, which will allow Council to consider the matter and make a final decision on it.

Rationale:

The Applicant, being the homeowner at 59 Cambridge Street North, Lindsay, applied to the Land Management Committee to allow an existing fence (photographs and aerial showing property lines at Appendices A – D) to remain in its current location in the front yard of 59 Cambridge Street North, at the intersection of Cambridge Street North and Bond Street. The fence encroaches approximately 8 feet into the City's road allowance.

In his application, the Applicant noted that his fence lines up with fences along Bond Street. He states the need to retain the fence in its current location as being that he has insufficient backyard space for his young children to run around, and this low fence allows a barrier between his children and traffic, for the safety of his children. If the fence was relocated to the property line, there would be insufficient space for the children to run around.

The Committee denied the application on the grounds that the fence was within the sight triangle, with the associated large masonry columns causing reduced visibility and in turn causing a hazard for those using the road network at that intersection.

Further, between the property line and the fence line on Cambridge Street North, the following utilities are present: main gas line; City fiber that runs from City Hall to 12 Peel and 180 Kent Street; Bell line; water service connect and service valve.

Along this section of Bond Street, the location of the Bell line is unknown. The gas line runs under the south curb line, so the fence does not block in this utility. Water runs under the north curb line, so the fence does not block in the water. There is no City fiber along this section of Bond Street.

The Applicant made a deputation request, however, with the next available Special Council date not scheduled until September (the July Special Council being full), and with the Applicant indicating some urgency in his request, Realty Services authored this Report to give the Applicant an earlier venue to request reconsideration of Council.

Other Alternatives Considered:

The City could choose to enter into a License Agreement with the applicant to allow the fence to remain in its current location. This would be achieved by adding a second statement to the recommendation, in passing the Council Resolution: "That Staff be directed to enter into a License Agreement with the owner of 59 Cambridge Street North, Lindsay, to allow the fence at the South

West corner of Cambridge Street and Bond Street to remain in its current location.

Financial Implications:

None, if the encroachment is not permitted.

If the encroachment is permitted, then the License Agreement will be structured in a way so that the City will be insured and indemnified for any third party claim (such as a collision at the intersection) resulting from the encroachment. The 5 year Agreement should be registered on title at the cost of the owner of 59 Cambridge Street North, to bind successor owners.

Similarly, any License Agreement will require the owner of 59 Cambridge Street North to waive his rights for compensation in the event that the fence needs to be removed for location/relocation of utilities or road widening.

Further, any License Agreement will require the owner of 59 Cambridge Street North to waive his rights for compensation in the event of damage to the fence as a result of snow clearing activities.

Relationship of Recommendation to the 2016-2019 Strategic Plan:

This Report does not specifically align with any of the goals in the Council Adopted Strategic Plan. This Report is in alignment with the strategic enabler of “efficient infrastructure and asset management”.

Consultations:

Land Management Committee

Attachments:

Appendix A – Photograph of Fence



Appendix A -
Photograph of Fence.

Appendix B – Photograph of Fence looking North on Cambridge Street North



Appendix B -
Photograph of Fence

Appendix C – Photograph of Fence looking West on Bond Street



Appendix C -
Photograph of Fence

Appendix D – Aerial Photograph



Appendix D - Aerial
Photo.pdf

Department Head E-Mail: rcarlson@kawarthlakes.ca

Department Head: Robyn Carlson

Department File: L17-18-RS034