

## Council Report

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**Report Number:** RS2021-001

**Meeting Date:** January 28, 2021

**Title:** **License Agreement for Parking Spaces on Clonsilla Drive (East Beehive Subdivision)**

**Description:** Update on the Status of the License Agreement between the City of Kawartha Lakes and Country Club Heights Association Incorporated for the Creation of Three Permanent Parking Spaces on Clonsilla Drive

**Author and Title:** Laura Carnochan, Law Clerk – Realty Services

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### **Recommendation(s):**

**That** Report RS2021-001, **License Agreement for Parking Spaces on Clonsilla Drive (East Beehive Subdivision)**, be received; and

**That** the tasks associated with Council Resolution CR2020-156 and Council Resolution CR2020-157 be considered complete.

**Department Head:** \_\_\_\_\_

**Financial/Legal/HR/Other:** \_\_\_\_\_

**Chief Administrative Officer:** \_\_\_\_\_

**Background:**

At the Council Meeting of June 23, 2020 Council adopted the following resolutions:

**CR2020-156**

**Moved By** Councillor Yeo

**Seconded By** Councillor Dunn

**That** Report RS2020-004, **Request for the Creation of Parking Spaces on Clonsilla Drive – East Beehive Subdivision**, and additional correspondence, be received;

**That** permission be granted for three permanent parking spaces to be created on the most westerly portion of the road allowance legally described as Clonsilla Drive on Plan 373, in the Geographic Township of Verulam, City of Kawartha Lakes, being PIN: 631296-0485 (LT) in the East Beehive Estates subdivision;

**That** staff be directed to commence the process of allowing the creation of three parking spaces on the land described above, with all costs, including those of maintenance and insurance, payable by the applicants;

**That** the Mayor and Clerk be authorized to execute any documents and agreements required by the approval of this decision; and

**That** the necessary By-laws be forwarded to Council for adoption.

**Carried**

**CR2020-157**

**Moved By** Councillor Seymour-Fagan

**Seconded By** Councillor Elmslie

**That** Country Club Heights Association be required to donate \$500, annually, to the East Beehive Association as a contribution toward the cost of road maintenance; and

**That** staff report back at the end of Q2, 2021, on the use of the three approved parking spaces on Clonsilla Drive.

**Carried**

This report addresses that direction.

Following Council's decision on June 23, 2020, Realty Services (in consultation with the City Solicitor) drafted a License Agreement which would allow Country Club Heights Association Incorporated to create three permanent parking spaces at the West end of the City-owned road allowance legally described as Clonsilla Drive on Plan 373, in the Geographic Township of Verulam, City of Kawartha Lakes, being PIN: 63126-0485 (LT).

The initial License Agreement was provided to Country Club Heights Association Incorporated (hereinafter referred to as "CCH") on July 31, 2020. Following review by CCH, several requests for amendments were made throughout the month of August 2020. The City did agree to several of the requests and made amendments to the Agreement, including to the insurance provisions. The final version of the License Agreement was sent to CCH on September 11, 2020. A copy of the License Agreement is attached as Appendix A.

By way of e-mail dated September 25, 2020, The City of Kawartha Lakes received correspondence from CCH advising that its membership had voted against entering into the License Agreement.

CCH had specific concerns with the following aspects of the License Agreement:

1. The three parking spaces would not be exclusive to CCH;
2. Residents of the East Beehive Estates subdivision (hereinafter referred to as "EB") would have the right to have the License Agreement terminated at any time by claiming that CCH was causing a nuisance;
3. Section 14.1(d) of the License Agreement states that CCH would be in default if "the Lands are used by any other person or persons, or for any other purpose than as provided for in this License without the written consent of the City.";
4. The requirement to pay \$500.00 annually to EB as a contribution to road maintenance; and
5. That the License Agreement does not contain any protections for CCH with regards to harassment by EB.

The correspondence from CCH also noted general concerns with the process of obtaining the License Agreement since their initial request.

### **Rationale:**

The City of Kawartha Lakes provided CCH with a License Agreement that was consistent with the format of all License Agreements that the City of Kawartha Lakes offers property owners who wish to utilize City land. The City then made amendments to the standard format, which could be accommodated in keeping with Council direction by way of resolution and which still preserved the City's interests.

Exclusivity of parking cannot easily be implemented on an open road with no mechanism (such as barriers, as seen in private parking lots) to prevent unauthorized persons from parking. Enforcement would also be difficult for the same reason, and costly for the City.

The draft license provides that the license should not create a nuisance for others. If the City received a complaint of nuisance, the City would investigate to determine if the complaint had merit. If the City decided it did, the City could terminate the license.

The draft license provides that the lands cannot be used for any other purpose than as provided for in the license, which allows the City to terminate the license if it results in unexpected actions/ consequences.

The annual payment was required by Council Resolution, to offset third party road maintenance costs.

A license agreement between two entities cannot control the actions of a non-party to the agreement.

As CCH has advised that they do not wish to enter into the License Agreement as drafted and negotiated, it is in the best interest of the City to consider the matter at an end.

### **Other Alternatives Considered:**

Council could decide to remove some of the standard language from the License Agreement as per CCH's request. This is not recommended, for the above-noted reasons.

Council could decide to reconsider CCH's original request, which was to amend By-Law 2018-196 to remove the West end of Clonsilla Drive as a restricted parking area. This would allow CCH to park in its desired area, close to its easement located to the West of the end of the Clonsilla Drive road allowance. However, this would not allow CCH any rights to maintain a path or walkway. Further, City resources may be required to deal with any parking complaints made to Municipal Law Enforcement.

### **Alignment to Strategic Priorities**

The recommendations in this Report do not specifically align with any of the strategic priorities.

### **Financial/Operation Impacts:**

There is no financial impact if Council decides to consider this matter at an end.

### **Consultations:**

City Solicitor

### **Attachments:**

Appendix A – License Agreement between The City of Kawartha Lakes and Country Club Heights Association Incorporated



Appendix A -  
License Agreement (

**Department Head email:** rcarlson@kawarthalakes.ca

**Department Head:** Robyn Carlson, City Solicitor

**Department File:** L17-20-RS041