

Appendix A to Report RS2023-037

Form to Accompany Legal Document for Submission to CAO Office

Document Name: **Encroachment Agreement**

Document to be Submitted to Solicitor and Requiring the following Services:

Corporate Profile Report	Yes	No
Document Registration	Yes	No
If agreement/contract, are you confident the other party has authority to sign it?	Yes	No
Have you made contact or do you have written or verbal confirmation?		
Return Original to:		
Copy to:		

For Submission to CAO's Office:

Was the document prepared or reviewed by a Solicitor?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Name of Solicitor: <i>Stades + Swain</i>		
Was the document reviewed by the Insurer	Yes	<input checked="" type="radio"/> No
Attach a copy of the Council resolution or section of the Signing Authority By-Law authorizing the Mayor and Clerk to sign. <i>CR 2007-802 Aug 28/07</i>	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Has the document been approved by Department Director or Appropriate Department Staff?	Yes	No

Checklist

Proofread the document and ensure all cross references and legislative authority to enter into the agreement is correct.	✓
Ensure proper City corporate name – The Corporation of the City of Kawartha Lakes	✓
Ensure correct spelling of Mayor's name – Ric McGee	✓
Ensure names of city officials and positions are completed.	✓
Identify all areas to be signed or initialed by "Sign Here Sticker"	✓
Return Original to: <i>Land Management</i>	
Copy to:	

Submitted by _____

Date _____

*Land Management
Co-ordinator.*

May 28/08

August 28, 2007

Moved by Councillor Campbell, seconded by Councillor O'Reilly,

RESOLVED THAT staff be directed to enter into an Encroachment Agreement with the property owners adjacent to 8 Monty's Inn Street for the buildings only; and

THAT the Director of Public Works be requested to review the vehicular traffic aspect on this road allowance.

CARRIED CR2007-802

necessary technical and project management services to address this aggressive timelines of the project, such costs to be included in the overall scope of the project. Staff was also authorized to issue an RFP showing committed funding of \$243,378 matching funds from the City, as well as other phased options up to the \$800,000 amount previously committed, in principle, by the City to allow Council to assess the potential leverage and community coverage opportunities put forward by such options. Staff will report back to Council in early October with the final recommendation for funding and coverage priorities based upon the RFP results.

Encroachment Agreement

It was agreed to enter into an encroachment agreement with the property owners adjacent to 8 Monty's Inn Street for the buildings only and the Director of Public Works is to review the vehicular traffic aspect on this road allowance.

OMB Hearing

Staff was authorized to appear in support of Council's decision to rezone the property located at 15 Lindsay Street, Fenelon Falls before the OMB on September 13, 2007.

Drainage Board Appointments

Councillors G. Campbell and D. Hodgson were appointed to the Drainage Board.

By-Laws

The following by-laws were passed by Council:

- A by-law to amend By-Law 2003-17 being a by-law to appoint additional Deputy Clerks for the City for specific purposes
- A by-law to correct By-Law 2007-163, being a by-law to change the name of Nursery Street in Pontypool to Old Cottage Lane
- A by-law to authorize the execution of a lease agreement between the City of Kawartha Lakes and Barrett Xplorer for the lease of the Fenelon Falls Water Tower
- A by-law to amend the Town of Lindsay Official Plan to relocate collector road within the City of Kawartha Lakes (Jennings Creek Community Development Plan Area)
- A by-law to amend the Village of Fenelon Falls

ENCROACHMENT AGREEMENT

BETWEEN:

THE CORPORATION OF THE CITY OF KAWARTHA LAKES
("the City")

-and-

JAMES CRAWFORD TURNER
SHELLY ANN-MARIE TURNER
MICHAEL NORMAN MACNEIL
ANN-MARIE ROSELIND MACNEIL
("the Owner")

Recitals

- (a) The land benefiting from this Agreement is defined as the "Land" in section 1.01(d) and depicted on Schedule 'A', and is owned by the Owner.
- (b) The Land is adjacent to an unopened road allowance owned by the City, defined as the "Road Allowance" in section 1.01(c), and identified on Schedule 'A'.
- (c) The Owner proposes to maintain the buildings located upon the portion of the unopened road allowance known as Monty's Inn Street lying adjacent to 8 Monty's Inn Street.
The City has agreed to allow this, on the terms and conditions outlined in this Encroachment Agreement.

This Agreement provides evidence that the parties, for themselves, their respective heirs, executors, administrators, successors and assigns, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, have agreed to the terms and conditions within it.

Article One: Interpretation

1.01 Definitions: This section sets, in lettered subsections, precise definitions for certain words used in this Encroachment Agreement.

- (a) The "City" means The Corporation of the City of Kawartha Lakes, a municipal corporation, and includes its employees, servants and agents.
- (b) The "Encroachment Agreement" means this Agreement.
- (c) The "Road Allowance" means part of the road allowance between Lots 10 and 11, Concession 4, in the Geographic Township of Ops, City of Kawartha Lakes, Part of PIN 63240-0068 (LT) known as Monty's Inn Street, owned and under the jurisdiction of the City.
- (d) The "Land" means all and singular, those lands and premises known as Part of the South Half of Lot 11, Concession 4, in the Geographic Township of Ops, City of Kawartha Lakes as more particularly described in R423482, PIN 63240-0143 (R) and municipally known as 8 Monty's Inn Street.
- (e) The "Owner" means James Crawford Turner, Shelly Ann-Marie Turner, Michael Norman MacNeil, Ann-Marie Roselind MacNeil and includes his/her successors and assigns, and any registered owner of the Land from time to time.

- 1.02 Gender, Plural: All words in this Encroachment Agreement are deemed to include any number or gender as the context requires.
- 1.03 Proper Law: This Encroachment Agreement shall be interpreted according to the laws of the Province of Ontario.
- 1.04 Headings: Article, clause and/or paragraph headings are for reference purposes only and shall not in any way modify or limit the statements contained in any article, clause or paragraph.
- 1.05 Legislation: Reference to federal or provincial statutes or municipal by-laws are deemed to refer to the relevant legislation as amended, including successor legislation.
- 1.06 Agreements are Covenants: All positive obligations and agreements in this Encroachment Agreement will be interpreted as covenants.

Article Two: Permission to Encroach

- 2.01 Encroachment: The City grants to the Owner, on the terms and conditions set out in this Encroachment Agreement, the right to enter upon the unopened portion of Monty's Inn Street adjacent to 8 Monty's Inn Street for the purposes of maintaining the buildings located thereon.
- 2.02 Extent of Encroachment: The Owner agrees that the extent of the encroachment permitted pursuant to this Encroachment Agreement shall be as depicted in Schedule "A" (the "Encroachments") and that no further or other encroachments are permitted.

Article Three: Acknowledgments and Covenants of the Parties

- 3.01 Fee: The Owner agrees to pay to the City of fee of two dollars (\$2.00) per year for permission to maintain the encroachments, the first payment being due upon execution of this Encroachment Agreement. The Owner covenants and agrees that the City may add this annual fee to the property taxes for the Land, and collect the fee in the same manner.
- 3.02 Indemnity: The Owner agrees to indemnify and save the City harmless from any and all costs arising out of any claim for damages, expenses, costs, charges, claims, liabilities, indebtedness and sums, including legal fees, as a result of the Owner's Encroachments on the portion of the unopened road allowance known as Monty's Inn Street. Without limitation, these costs include:
- (a) any sums expended by the City on its own behalf for damage, expenses, costs, claims, liabilities, indebtedness and sums, including legal fees, and including the cost of the City's own forces, legal or otherwise, including an allowance for overhead expenses; and
 - (b) any sums the City is ordered by a Court of competent jurisdiction to pay to any third party, or to the Owner themselves, for damages, expenses, costs, claims, liabilities, indebtedness and sums, including legal fees.
- 3.03 Damage to "Encroachments": The City agrees to use its best efforts to avoid damaging the Owner's Encroachments. The Owner acknowledges, however, that damage may occur and the Owner indemnifies the City and saves it harmless from any such damage.

- 3.04 Damage to the Road Allowance: The Owner agrees to use his best efforts to avoid damaging the Road Allowance during the course of maintenance, repair, reconstruction or demolition of the Encroachments, in any manner which would inhibit its use as a Road Allowance by vehicular or pedestrian traffic. The Owner agrees to repair any damage to the Road Allowance which does occur, at his expense, to the satisfaction of the City.
- 3.05 Breach of Owner's Covenants: In the event of a breach by the Owner of his covenant to repair the Road Allowance (Section 3.04), or to fail to remove the Encroachments upon termination of this Encroachment Agreement (Section 4.01), the Owner agrees that, upon thirty (30) days' written notice, the City shall rectify the breach and the Owner shall pay the City's reasonable costs of doing so. All items shown in paragraph 3.02 (a) are considered included in the City's "reasonable costs". Any sums outstanding, owing by the Owner to the City, shall be added to the municipal tax roll for the Land, and collected in like manner as municipal taxes.

Article Four: Termination

- 4.01 Termination by Notice: Either party may give written notice to the other of termination of this Encroachment Agreement. If the Owner elects to give notice, the notice period shall be a minimum of thirty (30) days. If the City elects to give notice, the notice period shall be a minimum of twelve (12) months. Upon termination, the Owner shall remove the Encroachments from the Road Allowance.
- 4.02 Termination by Rebuilding: If, at any time during the term of this Encroachment Agreement, the Owner wishes to rebuild the Encroachments, he shall, at that time, reconstruct the Encroachments so that they are either located without any encroachment onto the Road allowance, or located so that the encroachment is minimized. Upon reconstruction, this Encroachment Agreement shall be deemed to have been amended so as to exclude any portion of the Road Allowance which is no longer subject to an encroachment. This Encroachment Agreement shall be deemed to have been terminated if reconstruction has occurred to an extent that no part of the Encroachments encroach onto the Road Allowance.

Article Five: General Provisions

- 5.01 Registration: The Owner consents to the registration of this Encroachment Agreement (at the sole cost of the Owner) against the title to the Land.

- 5.02 Notices: Any notice to be given under this Encroachment Agreement must be in writing signed by or on behalf of the party giving such notice and delivered by hand or mailed by prepaid first class mail in Canada and addressed as follows:

If to the City, at:
The Corporation of the City of Kawartha Lakes
Attention: City Clerk
26 Francis Street, P.O. Box 9000
Lindsay, Ontario K9V 5R8

If to the Owner, at:

8 Monty's Inn Street
R.R.#4
Lindsay, Ontario K9V 4R4

or at another address which the party has specified by notice in writing to the other party or at another address which is specified as an "address for service" on a document registered after this document. Where notice is given by mail, it is deemed to have been received by the person to whom it is addressed, on the fifth (5) business day following the next business day after which the notice, sent by prepaid first class mail, was deposited in a post office or letter box in Ontario. Where notice is personally delivered, it shall be deemed to have been received by the person to whom it is addressed on the next business day immediately following the date of delivery. In the event of postal disruption, the parties agree that service shall be made by personal delivery only.

- 5.03 Severability: If any provision, clause, or part of this Encroachment Agreement or the application of this Encroachment Agreement under certain circumstances, is held by a court or tribunal of competent jurisdiction to be invalid, the remainder of this Encroachment Agreement, or the application of that provision, clause or part under other circumstances, shall not be affected.
- 5.04 Survival: All representations, acknowledgments, covenants, and warranties of the parties contained in this Encroachment Agreement shall run with the land and shall be binding upon the parties, their successors and assigns, and future Owner and occupiers of the Land.
- 5.05 Written Agreement: This Encroachment Agreement, including Schedule "A", is the entire Agreement between the parties pertaining to the Owner's encroachment into the Road allowance, and supersedes all prior and contemporaneous agreements, undertaking, negotiations, and discussions of the parties, whether oral or written. There are no warranties, representations or other agreements relied upon by either party. No amendment supplement, modification, waiver or termination of this Agreement shall be binding unless it is completed in writing and is signed by both parties. No waiver of any of the provisions of this encroachment Agreement shall be deemed or shall constitute a waiver of any other provision of this Encroachment Agreement, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.
- 5.06 Lands Affected: This Encroachment Agreement affects the Land defined in Section 1.01 (d), which is adjacent to the Road Allowance defined in Section 1.01 (c).

5.07 Schedule "A": For the purposes of registration, Schedule "A" is not attached to the copy of this Agreement, but rather, is available for viewing in the office of the City Clerk for the City.

TO WITNESS their Agreement, the parties have executed this Encroachment Agreement as of the date first above written.

DATED THIS 2nd DAY OF June, 2008.

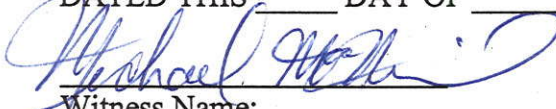
THE CORPORATION OF THE CITY OF KAWARTHA LAKES

Per: 
Ric McGee, Mayor


Per: 
Judy Currins, Clerk

I/We have authority to bind the Corporation.

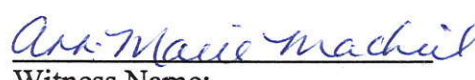
DATED THIS _____ DAY OF _____, 2008.


Witness Name:

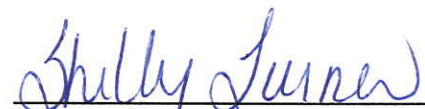

James Crawford Turner


Witness Name:


Shelly Ann-Marie Turner


Witness Name:


Michael Norman MacNeil


Witness Name:


Ann-Marie Roselind MacNeil

SCHEDULE 'A'

The "Land" is hereby described as follows:

Part of the South Half of Lot 11, Concession 4
Geographic Township of Ops
City of Kawartha Lakes
As more particularly described in R423482
PIN 63240-0143 (R)

The "Road Allowance" is hereby described as follows:

Part of the Road Allowance between Lots 10 and 11, Concession 4
Geographic Township of Ops
City of Kawartha Lakes
Part of PIN 63240-0068 (LT)

Municipally known as Monty's Inn Street