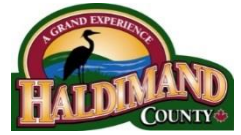

HALDIMAND COUNTY

Report LSS-09-2019 835 Sandy Bay Road, Dunnville – Encroachments
For Consideration by Council in Committee on April 16, 2019



OBJECTIVE:

To obtain authorization to enter into an Encroachment Agreement with the owners of 835 Sandy Bay Road, Dunnville and to authorize staff to proceed with the road closure and conveyance of parts of the road allowances surrounding 835 Sandy Bay Road, Dunnville.

RECOMMENDATIONS:

1. THAT Report LSS-09-2019 835 Sandy Bay Road, Dunnville – Encroachments be received;
2. AND THAT an Encroachment Agreement be entered into for the lands shown in yellow on Attachment #1 to LSS-09-2019, to allow for the continuance of the encroachments of the gravel driveway and part of the rock wall onto the abutting road allowances owned by Haldimand County;
3. AND THAT the subject road allowances, as shown in red on Attachment #1 to LSS-09-2019 and legally described as follows, be closed and declared surplus to all County needs: Part of PIN # 38128-0051(LT), Part of the Road Allowance between Lots 12 and 13, Concession 5 South of Dover Road; Haldimand County, and Part of PIN # 38128-0263(LT), Part of Lot 13, Concession 5 South of Dover Road; Haldimand County;
4. AND THAT the subject road allowances, as shown in red on Attachment #1 to LSS-09-2019 and legally described as Part of PIN # 38128-0051(LT), Part of the Road Allowance between Lots 12 and 13, Concession 5 South of Dover Road; Haldimand County, and Part of PIN # 38128-0263(LT), Part of Lot 13, Concession 5 South of Dover Road; Haldimand County, be sold to the abutting owner Joseph Brennan for a purchase price of \$2,475 plus HST, plus costs of the closure and conveyance;
5. AND THAT public notice of the proposed closure and conveyance be given;
6. AND THAT a By-law be passed to authorize the closure and conveyance;
7. AND THAT the Mayor and Clerk be authorized to execute all necessary documents to give effect to the intention herein.

Prepared by: Sandra Marsh, Property Coordinator

Reviewed by: Dana McLean, Supervisor, Risk Management & Legal Services

Respectfully submitted: Cathy Case, General Manager of Corporate & Social Services

Approved: Donald G. Boyle, Chief Administrative Officer

EXECUTIVE SUMMARY:

There are several encroachments onto the County-owned road allowances abutting 835 Sandy Bay Road in Dunnville.

It is recommended that the Mayor and Clerk be authorized to execute the attached Encroachment Agreement with the owner of 835 Sandy Bay Road, Dunnville to allow for the continuance of

encroachments of a gravel driveway and part of the rock wall on the abutting County-owned road allowances being the road allowance between Lots 12 and 13, Concession 5 South of Dover Road and Sandy Bay Road in Dunnville.

It is also recommended that a portion of the road allowances be closed and conveyed to the owners of 835 Sandy Bay Road in Dunnville in order to address the encroachments of the cistern, deck, concrete knee wall and part of the rock wall currently located on the abutting County-owned road allowances. Staff have determined these lands are not required for municipal purposes and can be deemed surplus to the County's needs and divested in accordance with the established process for road closures and conveyances.

BACKGROUND:

Through a Planning application received by staff to ultimately permit a 2nd storey addition to 835 Sandy Bay Road in Dunnville, several encroachments onto the County-owned road allowances were discovered. A recent survey of the property, which was obtained from the applicant, identified that the gravel driveway, cistern, rock wall, concrete knee wall and deck all encroached onto the abutting road allowances. Attachment #1 shows the location of the subject property. The location of the encroachments are shown on the Survey (Attachment # 2).

According to MPAC records, the dwelling was constructed in 1930 and it is unclear as to when the encroachments were created. A title search of the subject property did not identify the existence of a registered encroachment agreement on title. Without the County's approval through an encroachment agreement or property purchase, the property owner, Joseph Brennan, has no legal right to occupy the portions of the property that encroach onto the County's road allowances.

Staff have determined that only a portion of the subject road allowances can be closed and conveyed to the abutting owners. This portion encompasses the cistern, deck, concrete knee wall and part of the rock wall encroachments. In order to address the remaining encroachments, being the gravel driveway and part of the rock wall, it is recommended that the County enter into an encroachment agreement with the owner.

ANALYSIS:

When the County becomes aware of an encroachment of a structure onto public property, the background giving rise to the issue is explored in order to determine how to rectify the situation.

Joseph Brennan owns 835 Sandy Bay Road in Dunnville, which abuts the subject road allowances. This property recently went through a minor variance application (PLA-2018-194), and Condition #3 identifies the need for a long standing encroachment of the cistern onto the County's road to be addressed.

Mr. Brennan approached the County requesting permission to allow the continuance of all the existing encroachments, being a cistern, deck, concrete knee wall, rock wall and gravel driveway, onto the County-owned road allowances. The Applicant has provided the County with the non-refundable administration fee for the request to enter into an Encroachment Agreement with the County.

Encroachments are not permitted to be created on, under or above County property or road allowance, however there are several historical incidences that exist throughout the County which staff become aware of from time to time. It is not always practical to insist on removal of the encroachments although legally, the County has the right to do so. Alternatively, when feasible, the next best approach to address existing encroachments is to require the applicants to purchase the lands upon which the encroachments exist, in this case, through the County's road closure and conveyance process. Closure

and conveyance of the entire encroachment area was not an option in this situation. The Applicant has provided the County with the non-refundable administration fee for the road closure request.

In order to determine the feasibility of closure of the subject road, staff circulated a "Road Closure Inquiry Form" to Hydro One, Union Gas, Bell Canada, Rogers Cable, Grand River Conservation Authority and the following Haldimand County Divisions: Building & Municipal Enforcement Services, Community Development & Partnerships, Economic Development & Tourism, Emergency Services, Engineering Services, Environmental Operations, Facilities, Parks, Cemeteries & Forestry Operations, Planning & Development, and Roads Operations.

The Planning & Development Division advised that any existing non-conformities would be extinguished as a result of this purchase from the County and would require another minor variance application to address deficiencies. The Applicant is aware of the additional Planning requirements and costs.

The Public Works Division and Engineering Division have reviewed the suggested proposal and would support the closure and conveyance of part of the lands and would also support entering into an Encroachment Agreement for the existing encroachments lying outside the lands that are able to be purchased.

In reviewing the road closure request, staff, in keeping with the County's past practice, notified all abutting property owners of the expression of interest received and the possible closure and conveyance. No abutting owners came forward with concerns.

When a request to purchase a road allowance is received by staff, prior to proceeding, the applicants are advised that the land, if deemed surplus, will be sold for no less than the appraised value, plus all costs of closure and conveyance. The purpose of the appraisal is to estimate the market value of the subject property based on the most probable "best use" at the time. The County's past practice is to require the applicants to pay for a certified appraisal to determine the value of the property. The cost to the applicants of obtaining a certified appraisal is significant at approximately \$2,000 to \$2,500. Where it is expected that the sale of the lands would result in competing interests, it is advisable to obtain a certified appraisal. However, in situations where the only party interested in acquiring the land would be the abutting land owners, staff feel that the County's 2017 Vacant Land Values Chart is a reasonable alternative to determine the estimated value. If the applicant does not agree with the tool-generated value, they have the option of obtaining an independent certified appraisal at their own cost for Council's consideration.

Staff have generated an estimated value of \$2,475 for this 0.033 acre parcel of land using the County's Vacant Land Values Chart. The Applicant has been made aware of the suggested value and the requirement of Council approval. The Applicant is in agreement with the suggested value should Council approve the conveyance of the land to him.

When taking into consideration the value of the subject property, Council should keep in mind the following:

- If sold, the road allowance will merge with the abutting lands owned by the Applicant. The subject lands are completely regulated by the Grand River Conservation Authority and have very limited development potential;
- Since the Applicant's property is too small to accommodate the encroachments within the current property boundaries, disposal of part of the land and entering into an Encroachment Agreement for the remaining encroachments is a practical way to address the encroachments;
- There is no reasonable expectation that anyone other than the abutting landowner would be interested in purchasing the subject lands;

- Sale of this property would eliminate the County's risk and liability associated with use of this portion of the road allowance;
- All County property is sold as is/where is and the purchasers will sign an Acknowledgement confirming this.

The following options are presented for Council's consideration:

Option 1 – Require removal of the encroaching portions of the concrete knee wall, deck and rock wall and relocation of the cistern, gravel driveway and part of the rock wall onto Mr. Brennan's property.

Since there are unapproved encroachments onto municipal property, the County has the legal right to require removal of the encroachments. In this case, relocating the cistern and driveway is not physically possible due to the very small size of Mr. Brennan's property. Therefore, the removal of these encroachments would be practically prohibitive. For these practical reasons, this option is not recommended.

Option 2 – Enter into an encroachment agreement to formalize the permitted occupation of the gravel driveway and part of the rock wall on the County land, under standard terms and conditions, and closure and conveyance of portions of the road allowances to Mr. Brennan to address the cistern, concrete knee wall, deck and rock wall encroachments.

The proposed encroachment agreement was vetted through various County staff with no objections noted. The draft agreement for the encroachments onto County property is appended to this report as Attachment #3 and is modeled on previous encroachment agreements that the County has entered into. This agreement requires the owner to indemnify the County and provide proof of liability insurance. Should the municipality require the use of the lands where the encroachments are located, the County has the ability to require the removal of the encroachments, at any time, at the sole discretion of Haldimand County. These terms are standard in all County encroachment agreements. By entering into an encroachment agreement and registering this on title, potential purchasers of Mr. Brennan's property are given notice that the gravel driveway and rock wall are located on County property. The proposed encroachment agreement also includes some additional lands west of the concrete knee wall in order to address any maintenance concerns.

Mr. Brennan has agreed to the suggested proposed road closure and conveyance of a portion of the subject lands for a purchase price of \$2,475 on the condition that the property will be added to the abutting lands currently owned by him. The typical land transaction provisions will apply, including the "as is/where is" condition. The Applicant will also be responsible for all costs of the closure and conveyance, including survey and legal costs, advertising, appraisal fees and applicable taxes. Additionally, the Applicant will be responsible for all future Planning application costs and all costs incurred for the relocation of the cistern, if required.

Staff recommend Option #2 given it is a reasonable option to address the encroachments.

FINANCIAL/LEGAL IMPLICATIONS:

Mr. Brennan has paid the administration fee of \$224 for the preparation of an encroachment agreement and the \$1,151 administration fee for the road closure and conveyance request. In addition, there will be a cost of approximately \$250 for title searches and registration of the agreement on title which will be Mr. Brennan's responsibility.

A continued level of risk and liability is being accepted by the municipality when allowing encroachments onto County property. The requirement for the property owner to indemnify the County and provide proof of an adequate amount of insurance is a method of transferring risk from the municipality.

Staff recommend that the lands, totalling 0.033 acres, be sold to the abutting owner, Joseph Brennan, for a purchase price of \$2,475, plus HST, and all costs of closure and conveyance. The net proceeds of the sale will be contributed to the Land Sales Reserve in accordance with County Policy. By adding these lands to the lands owned by the Applicant, the legal non-conforming status is voided, thus requiring another Planning Act application, costs of which are \$1,815. The applicant has agreed to the purchase price and is aware of the additional planning requirements.

In accordance with the County's Notification Policy, a proposed road closure and conveyance is to be advertised in the local newspaper prior to consideration of a By-law.

STAKEHOLDER IMPACTS:

Planning & Development, Engineering Services, and Roads Operations staff have provided comments in support of the suggested approach to address the existing encroachments onto the County road allowances.

REPORT IMPACTS:

Agreement: Yes

By-law: Yes

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Map of the Subject Property
2. Survey
3. Draft Encroachment Agreement