HALDIMAND COUNTY
Report PED-COM-10-2017 Port Maitland Gazebo Encroachment
For Consideration by Council in Committee on May 30, 2017

OBJECTIVE:
To obtain approval for the partial encroachment of the gazebo in Port Maitland park onto the County road allowance and the submission of a Minor Variance in order to address zoning non-compliance issues, and to obtain formal sign off from the Building Controls and By-law Enforcement Division for the structure.

RECOMMENDATIONS:
1. THAT Report PED-COM-10-2017 Port Maitland Gazebo Encroachment be received;
2. AND THAT the gazebo encroachment be permitted on the road allowance known as Maitland Esplanade, Plan 2695, owned by Haldimand County and being part of PIN # 38124-0386(LT);
3. AND THAT the submission of a Minor Variance to regularize the location of the gazebo relative to the Zoning By-law be authorized;
4. AND THAT the Mayor and Clerk be authorized to execute all necessary documents to give effect to the intention herein.

Prepared by: Sheila Wilson, CPRP, Manager of Community Development and Partnerships
Respectfully submitted: Craig Manley, MCIP, RPP, General Manager of Planning and Economic Development
Approved: Donald G. Boyle, Chief Administrative Officer

EXECUTIVE SUMMARY:
Subsequent to the construction of parkland and parking improvements in Port Maitland associated with the 2013 Lakescape Action Plan, it was determined that the gazebo forming part of those improvements is partially located on the road allowance rather than the parkland. In order to address this issue, it is recommended that Council allow for the continuance of the gazebo encroachment on the abutting County owned road allowance being Port Maitland Esplanade, and to initiate a minor variance to ensure compliance with the Zoning By-law.

BACKGROUND:
Port Maitland Esplanade Attachment 1 and 2 was redeveloped as part of the Lakescape Action Plan in 2013. This project was managed through the Community Development and Partnerships Division. The actual work was undertaken via contract administration with a construction management company that encompassed a number of projects being constructed over a 4 year timeframe.

Post construction of the Esplanade, County staff realized that a building permit had not been acquired by the construction contractor for the gazebo within the park. As part of the activities undertaken by
Staff to rectify this matter an ‘as-built’ survey of the area identified that the gazebo was built partially in the park and on the existing road allowance. The purpose of this report is to identify the means by which this situation can be rectified to ensure the non-compliance issues are addressed. Staff have confirmed that the issue is the building location and that the engineering of the structure complies with all Ontario Building Code requirements.

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. Accordingly, the following options are presented for Council’s consideration:

Option 1 – Require the removal of the encroaching portion of the gazebo onto the County park property.

Since there is an unapproved encroachment onto the municipal road allowance, the County could simply move the structure to remove the encroachment. Since the County is the owner of both the park property and the road allowance, removal of the gazebo would have financial costs and would not be practical. The gazebo location does not interfere with the functioning of the road nor does it impact on any below ground infrastructure. From a practical perspective the Esplanade and the adjacent parkland function as one entity. For these practical reasons, this option is not recommended.

Option 2 – Close the portion of road allowance the gazebo is constructed upon.

Since approximately ½ of the gazebo structure is located on the road allowance and the road allowance is not overly wide in this area, closing this portion of road is not be supported by Staff. For these reasons, this option is not recommended.

Option 3 – Allow the gazebo encroachment to continue and apply for the necessary minor variance and subsequently obtain sign off from the Building Controls and By-law Enforcement Division that the structure complies with the Ontario Building Code.

Since the County is owner of both the park and the road allowance, this encroachment will not require additional insurance coverage since it is already covered by the County’s insurance. It would also not be legally necessary for the County to enter into an encroachment agreement with itself. In order to comply with the Zoning By-law, however, the County will need to finalize the necessary paperwork to obtain a minor variance and subsequently obtain formal confirmation that the structure is compliant with the Ontario Building Code. An engineering report has been prepared that confirms that the structure was built as per submitted plans and to the Code, however, the variance process to regularize the location is required before formal sign off can occur.

For these reasons, this option is recommended.

FINANCIAL/LEGAL IMPLICATIONS:

If approved by Council, the costs associated with Option 3 are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title Search Costs</td>
<td>$38</td>
</tr>
<tr>
<td>Property Survey</td>
<td>$2,712</td>
</tr>
<tr>
<td>Minor Variance Fee</td>
<td>$1,138</td>
</tr>
<tr>
<td>Building Permit</td>
<td>$712</td>
</tr>
<tr>
<td><strong>Total Costs</strong></td>
<td><strong>$4,600</strong></td>
</tr>
</tbody>
</table>
No budget amendment is required for these expenditures, as there is sufficient budget in the existing Council approved Tax Supported Capital budget for Lakescape Improvements.

**STAKEHOLDER IMPACTS:**
Planning and Development, Engineering Services, Support Services, Building Controls and By-law Enforcement, and Roads Operations staff have provided comments in support of the encroachment. Port Maitland Road ends 185 metres from the gazebo by the pier parking lot and there is no future need to widen the road.

**REPORT IMPACTS:**
Agreement: No
By-law: No
Budget Amendment: No
Policy: No

**ATTACHMENTS:**
1. Location and Detail Map.