

Report

To: Mayor and Council
From: Faye Flatt, Municipal Planner
Date: 4 June 2013
Re: 400 Butler Avenue – Encroachment Agreement

JUN 14 2013
Municipal Planner
Report #2013-15

Purpose:

This report will provide information on an encroachment of the building at 400 Butler Avenue into the road allowance of Church Street and recommends that the Town enters into an Encroachment Agreement with the owner.

Background:

The above property is being sold and as often occurs, a request for zoning confirmation was received. In responding to that request it came to my attention that the main building, a one storey residential dwelling constructed in 1925, encroaches into the road allowance of Church Street. Structures that predate zoning are considered legal as existing structures but this status does not apply to encroachments. To correct the situation, the vendors solicitor was advised to request an encroachment agreement from the Town. Rather than proceed as recommended, a request was received to purchase a portion of the road allowance.

The request was considered by the Planning and Development Executive Committee with input from the Operations and Facilities Executive Committee and at the May 13th meeting, Council approved the recommendation that the request be denied for a number of reasons.

Mr. Taylor has now submitted a request for an Encroachment Agreement together with the applicable fee.

Recommendation:

It is recommended that the Town enter into an Encroachment Agreement with the owner of 400 Butler Avenue to formally recognize the encroachment. In anticipation of support, an agreement with standard provisions was drafted and forwarded to the solicitor for signature and is attached for review. Please note that proof of insurance as per paragraph 4 will be confirmed prior to enacting of authorizing by-law.

The Planning and Development Executive Committee supported the above recommendation at it's meeting held June 4, 2013.

Respectfully submitted



N. F. Flatt, AMCT, CPT, ACST

COUNCIL APPROVAL OF THIS REPORT WILL: authorize the preparation of an Encroachment Agreement with the owner of 400 Butler Avenue and associated by-law for the Mayor and Clerk.



This is Schedule "A" to By-Law 29/13, being an Encroachment Agreement made in triplicate this 3rd day of June 2013, between

THE CORPORATION OF THE TOWN OF FORT FRANCES

hereinafter called the "Town"

- a n d -

Patrick Gregory Foran

hereinafter called the "Owner"

WHEREAS the Owner is the registered owner of the land and premises legally described as Parcel 8129 being the South Part of Lot 290 Alb. Plan, and municipally known as **400 Butler Avenue** in the Town of Fort Frances, District of Rainy River.

AND WHEREAS a part of the buildings or structures located on the said lands have been identified as encroaching on a municipal public road allowance or laneway in the said Town of Fort Frances, a distance of 0.76 ft as shown on Schedule "A" attached hereto (hereinafter called the "Encroachment"), being a Real Property Report dated July 21, 1988 as prepared by B. Maskell Limited, an Ontario Land Surveyor.

AND WHEREAS the Owner has requested permission from the Town to maintain the Encroachment.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and covenants and agreements hereinafter contained on the part of the Owner to be observed, fulfilled and performed, the Town hereby grants to the Owner permission to maintain the Encroachment, upon the following terms and conditions:

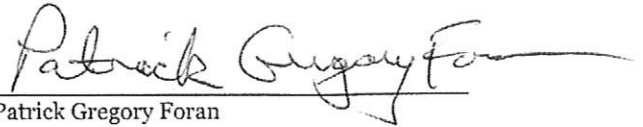
1. The Owner shall maintain the Encroachment in a good and workmanlike fashion and shall comply in all respects with the provisions of the Building Code Act, all by-laws of the Town, and any other applicable legislation and shall not do or cause anything to be done which would further increase the amount of Encroachment.
2. The Owner and their agents and servants may have access to the lands and premises under the jurisdiction and control of the Town for the purpose of causing any repairs or maintenance to be made to the building or structure provided that the Owner, their agents or servants shall not cause any damage or waste upon the lands and premises under the jurisdiction and control of the Town and shall restore such lands to their original condition as soon as practicable after such repairs or maintenance have been performed.
3. The Owner acknowledges and agrees that the permission granted by the Town to maintain the Encroachment is at the sole risk of the Owner and agrees to save harmless the Town from any and all claims or actions for liability and/or damages which may be brought against or made upon the Town and against all loss, costs, damages, charges, or expenses whatsoever, which may be sustained, incurred or paid by the Town in consequence of the Encroachment, or otherwise by reason of the exercise by the Owner of the permission hereby granted to maintain the Encroachment. The Owner hereby grants to the Town full power and authority to settle any action, suit, claim or demand on such terms as the Town may deem advisable and hereby covenants and agrees with the Town to pay to the Town, on demand, all monies paid by the Town in pursuance of any such settlement, in defending or settling any such action, suit, claim or demand. This Agreement shall not be alleged as a defense by the Owner in any action, or by any person, for actual damage suffered by reason of the permission granted to maintain the Encroachment.
4. The Owner agrees to maintain in full force and effect property damage and public liability insurance, naming the Town as an additional named insured, and with a cross-liability endorsement in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence. The Owner shall provide the Town with evidence confirming the existence of the above noted insurance coverage.
5. The Owner acknowledges and agrees that should the Town require the use, for public purposes, of the lands upon which the Encroachment is located, the Owner shall, upon thirty (30) days written notice from the Town by registered mail to the address of the subject property, remove or relocate the encroachment including reinstatement of the Town lands, to the satisfaction of the Town and at the sole expense of the Owner. Said removal or relocation to be commenced within a reasonable period of time following the giving of notice.

6. The Owner acknowledges and agrees that should the building creating the encroachment be destroyed by fire, demolition or otherwise and is reconstructed by the Owner, said reconstruction is to be effected in such a manner as to ensure that the encroachment is removed.
7. This Agreement shall be registered on title to the property and shall serve as perpetual notice to successors in title. This Agreement shall enure to the benefit of, and be binding upon, the parties hereto, their respective heirs, executors, administrators, successors and assigns.
8. The Owner hereby agrees to pay all legal costs and disbursements relating to the negotiation, preparation and registration of this agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement under the hands of the authorized signing officers and seal on the date first above written.

SIGNED, SEALED & DELIVERED

Witness


Patrick Gregory Foran

The Corporation of the Town of Fort Frances

Per: R. Avis, Mayor

(Seal)

Per: Glenn W. Treftlin, Clerk