

THE MUNICIPALITY OF LAMBTON SHORES

Report CL 08-2022

Council Meeting Date: February 22, 2022

TO: Mayor Weber and Members of Council

FROM: Stephanie Troyer-Boyd, Director of Corporate Services

RE: Request for Encroachment Agreement – 6 Main Street

RECOMMENDATION:

THAT Report CL 08-2022 regarding Request for Encroachment Agreement – 6 Main Street be received; and

THAT the request for encroachment be denied; and

THAT fence constructed on municipal property adjacent to 6 Main Street be removed by the property owner.

SUMMARY

This report presents an encroachment request from the owners of the property located at 6 Main Street in Grand Bend.

BACKGROUND

In January 2022 the municipality received complaints regarding a newly constructed fence constructed adjacent to property located at 6 Main Street that encroaches on the Main Street road allowance. Staff have attended the site and confirmed that the closed type construction fence was found to be encroaching approximately eight (8) feet onto the municipal road allowance for distance of roughly forty (40) feet parallel with Main Street. The owner was provided with a notice to remove the fence on January 6, 2022 (attached) with flexibility for a removal timeline.

The owner has provided the attached correspondence requesting that the fence be permitted to remain. With the receipt of the request to retain the structure, staff are asking Council make a determination on an encroachment request. Staff have taken a compliance approach in order to remain consistent with Council's 2018 direction for the removal of wooden railing and concrete pad that was constructed on municipal road allowance. At that time, Council denied a request for an encroachment agreement and directed that the encroachment be removed. Since 2019, there have been additional enforcement measures at other properties consistent with that direction and the property owners have complied.

As a result of the enforcement initiative, the owner has noted additional concerns outside the encroachment matter that staff have not brought forward as they are not pertinent to the request for encroachment agreement.



Figure 1

The fence is located behind the guard rail on the south side of Main Street eight (8) feet beyond the property line onto the municipal road allowance.

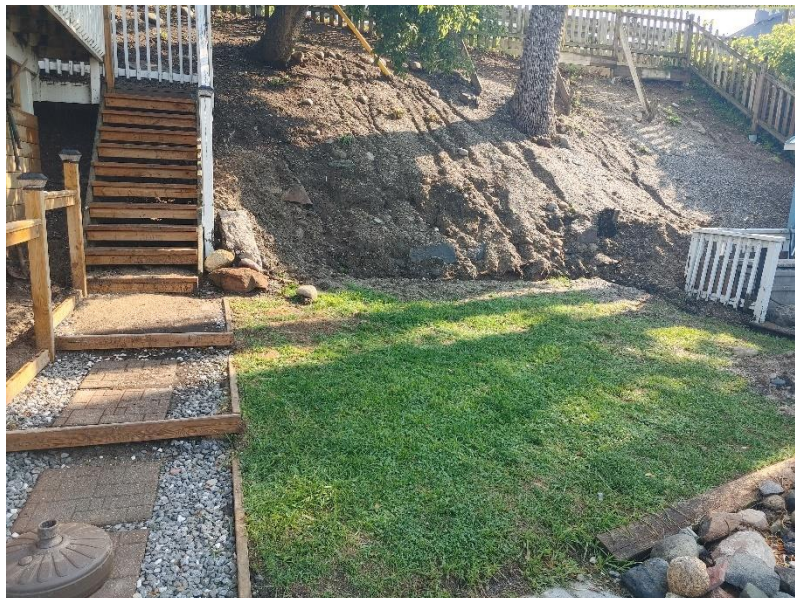


Figure 2

Figure 2 shows the picket fence style structure prior to the construction of the closed board fence being built.

Staff do not recommend an encroachment agreement at this location. The closed type construction fence is located close to the corner of Main Street and Ontario Street

entrance to the Main Street strip and is not a particularly welcoming structure as it blocks the view to the river. In addition, there is a definite concern that the structure will eventually be covered with signage and graffiti similar to what presently exists in Figure 1. The owner's concern for privacy and security could still be addressed if the fence was erected on their own property.

If Council chooses to allow the structure to remain, it would be appropriate to enter into an encroachment agreement with the property owner in order to legitimize the use of municipal property. Typically encroachments such as these would require an encroachment agreement that would allow the structure or object to remain in place within the road allowance under a set of conditions that would be included in the agreement. The municipality has entered into agreements to recognize these types of encroachments before for things like parking, septic holding tanks, electrical utility lines etc. In some cases, such as sidewalk patios, the agreements are renewed annually. A typical encroachment agreement would include at minimum the following conditions:

- The agreement would be registered on title to bind future owners (at owner's expense)
- Proof of suitable insurance with the Municipality as named insured would be required
- The Municipality would have the right to order its removal should it interfere with future road works, operations etc. (at owner's expense)
- The Municipality charges an application fee and often an annual encroachment fee
- Any breach of the conditions of the agreement would result in an order to remove the encroachment. Failure to remove the encroachment would result in the Municipality removing the encroachment at the owner's expense.

ALTERNATIVES TO CONSIDER

Council can decide whether the fence is desirable to have within the road allowance or not. If not, the owner would be ordered to remove the structure in accordance with the by-law enforcement direction on January 6, 2022. Should Council wish to allow the fence to remain, staff could present Council with an encroachment agreement and authorizing by-law at the next Council meeting for consideration.

RECOMMENDED ACTIONS

Staff recommend the fence be removed in accordance with enforcement initiatives already commenced.

FINANCIAL IMPACT

Outside of staff time and resources, there will be no additional financial impact to the Municipality.

CONSULTATION

Sean Smith, By-Law Enforcement Officer
Steve McAuley, CAO