

Subject: Private Entry Onto Adjacent Lands By-law 2020

Recommendation:

BE IT RESOLVED THAT Council receive Report #2020-0102; and recommend to Council:

THAT the private entry onto adjacent lands by-law be considered for Council's approval.

Background:

Construction and renovation activities can often be challenging in urban areas because of tight spaces associated with close proximity of structures and that make it difficult or impossible to gain access for equipment, materials, and people to perform maintenance or repair without encroaching onto a neighboring property. To gain access, it may be necessary to pass over or temporarily occupy part of a neighbour's property. In the absence of a private entry onto adjacent lands by-law, property owners can be frustrated in their attempts to repair or improve their properties. While in many instances an accommodation can be reached, the neighbour has no obligation to consent to such entry, which can lead to many difficulties for residents.

Section 132 of the *Municipal Act, 2001* provides municipalities with the capacity to create by-laws that allow for private entry onto adjacent lands. These are common by-laws in municipalities that have dense urban form. As set out in the Act, the entry may only be exercised by the owner or occupant (or his contractor or agent.) The entry is restricted to effecting repairs or maintenance on an existing building, fence or other structure; it authorizes entry only to the extent required and prohibits entry into dwelling units. Prior to exercising the right of entry, reasonable notice must be provided. Additionally, the person exercising the right of entry must self-identify on request and is required, as far as possible, to restore the land to

its original condition and compensate for damages resulting from the entry or anything done on the neighboring property. The by-law will repeal and replace an outdated previously enacted by-law from 1987, By-law No. 1155(1987).

Generally, by-laws are passed to regulate or prohibit activities. This type of by-law differs in that it is permissive; granting a property owner a right respecting their neighbor's land which would not otherwise exist, while establishing parameters for exercising this right. However, the grant of rights to each owner gives the affected owners the ability to directly address the matters which arise through the civil courts as would be the case with other property rights and would provide protection against allegations of trespass. This by-law has been drafted in such a manner to create a system for property owners that do not get along to be able to exercise rights, and also address disputes, should such arise, without involving the municipality.

Analysis:

The proposed by-law will provide a mechanism for residents who wish to perform work on their property and require private entry onto neighbour's adjacent lands. The by-law also provides an avenue for a civil litigation between two parties, relieving the Town from responsibility to settle matters in dispute.

Financial Considerations:

There are no direct costs associated with this report.

Alternatives Reviewed:

If Council prefers, it can choose not to enact this By-law.

Alternatively Council can require the parties to engage through a municipal application process, which will require the by-law to be returned to staff for significant alteration. An application process would add at least a month to any proposed construction or maintenance project, and would draw the municipality into private land use disputes, where there is generally little or no public interest, so this approach is not recommended, but it is a viable alternative.

Strategic Plan Relationship: Communication and Engagement

This proposed by-law is meant to provide residents with a mechanism to repair, maintain and upgrade their properties. The by-law requires communication between private properties, and contemplates use of the court system to settle disputes if agreement proves to be impossible or damages occur without compensation.

Consultation:

CAO, by-law, other municipal by-laws

Other Pertinent Reports/Attachments:

Entry onto adjacent lands by-law

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