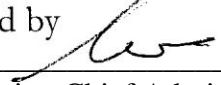


Item No. 11.1.2
Halifax Regional Council
February 1, 2011

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 
Wayne Anstey, Acting Chief Administrative Officer

Original Signed by 
Mike Labrecque, Deputy Chief Administrative Officer

DATE: January 5, 2011

SUBJECT: Permanent Encroachment – 3081 Robie Street, Halifax

ORIGIN

Staff has received a request for a permanent encroachment over a public right of way on Demone Street, Halifax.

RECOMMENDATION

It is recommended that Halifax Regional Council **approve** the application for a permanent encroachment of a roof overhang over Demone Street, Halifax, and formalize this approval with the attached encroachment agreement.

BACKGROUND

The building at 3081 Robie Street in Halifax (known as the Lion's Head Tavern) underwent renovations to the interior and exterior in 1988. City Investing Company Limited, the property owner, recently became aware that the roof overhang added during the renovations encroaches over Demone Street.

DISCUSSION

As the encroachment has existed for more than two decades, the encroachment does not create any operational issues. There is no surplus street right of way at this location, so if the overhang is allowed to remain it will continue to encroach over the Demone Street right of way. Now that the owner and municipal staff are aware of the encroachment, it should be documented and made to conform to the requirements of By-Law E-200 (Encroachments By-Law). The encroachment agreement also provides a clear understanding by the owner that the roof overhang must be removed from over the right of way if requested by HRM, should HRM require this space in the future for municipal purposes.

BUDGET IMPLICATIONS

If approved, the applicant is required to pay a one-time licence fee of \$125.00 and an annual encroachment fee of approximately \$141.70 (based on a calculated area of encroachment of 14.17 square meters) as prescribed by Administrative Order 15.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation. The applicant is aware of the one-time licence fee cost and the annual encroachment fees.

COMMUNITY ENGAGEMENT

Community engagement was not deemed to be necessary in this process because there is no impact to the community.

ALTERNATIVES

Council could choose not to approve the application for the permanent encroachment. The owner would then be made to remove the encroaching portion of the overhang.

ATTACHMENTS

Encroachment Agreement

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Christopher Davis, EIT, Right of Way Engineer, 490-7462

Report Approved by: _____
Phillip Francis, P.Eng, Manager of Right of Way Services, 490-6219

Financial Approval by: _____
Cathie O'Toole, CGA, Director of Finance, 490-6308

Report Approved by: _____
Ken Reasor, P.Eng, Director of Transportation and Public Works, 490-4855

This **Encroachment License Agreement** made this _____ day of _____, 20____

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY
Of the One Part

and

CITY INVESTING COMPANY LIMITED
Of the Other Part

APPROVED
AS TO FORM
MLD
Municipal Solicitor

1. Recitals

- a. Whereas City Investing Company Limited has constructed a roof overhang on a structure located at 3081 Robie Street in Halifax which encroaches on the public right of way on Demone Street, Halifax;
- b. And Whereas by resolution of the Halifax Regional Municipal Council on February 1, 2011, the Halifax Regional Municipality agreed to give City Investing Company Limited an encroachment license in accordance with the terms and conditions set out in Halifax Regional Municipality Bylaw E-200, being the Encroachment Bylaw, and as contained in this license agreement.

2. Definitions

In this agreement, unless the context otherwise requires:

- a. "HRM" means the Halifax Regional Municipality;
- b. "Engineer" means the Engineer as defined by the Halifax Regional Municipality Act;
- c. "City Investing" means City Investing Company Limited.

3. License

Subject to the terms of this encroachment license agreement, HRM hereby grants to City Investing the non-exclusive right by its officers, servants, agents and contractors at all times to enter on and over that portion of Demone Street, Halifax identified on Schedule "A" to maintain a roof overhang structure as shown on Schedule "B".

4. Relocation

If necessary for municipal purposes, the roof overhang must be removed from over the street if requested by HRM, which removal will be at the expense of City Investing. Should City Investing wish to alter the size or location of the roof overhang, such shall be done only upon receipt of the written consent of HRM, and said alteration or relocation shall be at the expense of City Investing.

5. Permits

City Investing agrees to comply with all municipal bylaws including the Streets Bylaw (S-300) when performing maintenance to, altering, or removing the roof overhang which involves the occupation of the street.

6. Indemnity

City Investing agrees to indemnify and save HRM harmless from all claims, liabilities and expenses of any kind in any way related to or connected with the grants of the rights set forth in this license agreement or from the existence or operation of the roof overhang, however caused, except to the extent that the loss arises out of the gross negligence of HRM.

7. Fees

City Investing shall pay the fees set out in Encroachment Bylaw E-200, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the roof overhang is 14.17 square metres.

8. Occupational Health & Safety Act

City Investing agrees to comply with the requirements of the Occupational Health & Safety Act and all regulations enacted pursuant thereto. Specifically, City Investing

agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the Occupational Health & Safety Act and its regulations are followed by its contractors or agents.

9. Termination

Either party may terminate this license agreement at any time. Upon termination of the license agreement, City Investing shall remove the encroachment.

10. Notices

Any written notice or communication relating to the administration of this agreement to be given or delivered by one party to the other shall be deemed to be duly given or delivered by hand, by fax or by courier to the following addresses or such other address that may subsequently be provided:

Halifax Regional Municipality
Director of Transportation & Public Works
P.O. Box 1749, Halifax, Nova Scotia B3J 3A5

and

City Investing Company Limited
C/O Alan Chandler, President / Secretary
750 Maplewood Lane, Halifax, Nova Scotia B3H 4K3

Legal notices in respect of HRM must be given in compliance with the Halifax Regional Municipality Charter.

This agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this License agreement as of the day and year first above written.

HALIFAX REGIONAL MUNICIPALITY

Mayor Peter Kelly

Municipal Clerk

CITY INVESTING COMPANY LIMITED

Alan Chandler, President / Secretary

S.L.C. 77990

Schedule B – Photos of Roof Overhang

