


Item No. 10.1.3
Halifax Regional Council
April 30, 2013

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original signed by 

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: April 3, 2013

SUBJECT: Request for Permanent Encroachment – Colins Road, Bedford

ORIGIN

Application was made by Ed Versteeg of Ekistics Planning & Design on behalf of the property owner for the approval of an encroachment license for a newly constructed driveway pillar at 146 Colins Road, Bedford that encroaches on the street right of way.

LEGISLATIVE AUTHORITY

Under Section 3 of HRM By-Law E-200, Respecting Encroachments Upon, Under or Over a Street, no person is to construct or maintain any structure on the street right of way without being issued an encroachment license by Council.

RECOMMENDATION

It is recommended that Halifax Regional Council **approve** the attached encroachment agreement allowing the encroaching structure to remain at its current location within the right of way.

BACKGROUND

A permit was issued for the construction of a new driveway at 146 Colins Road in Bedford. When the Maintenance Planning Supervisor (MPS) went to inspect the driveway, he noted the construction of a driveway pillar on the right-of-way that had not been on the submitted plans. The MPS notified Right of Way Services of the encroachment issue.

DISCUSSION

HRM staff has reviewed the encroachment and have concluded that the driveway pillar does not negatively impact HRM's operational requirements for this portion of the right of way, nor does it pose any hazards to road users.

The overall area of the encroachment is approximately 1.2m². Pursuant to By-Law E-200, the encroaching driveway pillar will be subject to an annual encroachment fee as prescribed by Administrative Order 15. The current fee is \$1.00 per 0.1 square meters.

FINANCIAL IMPLICATIONS

The applicant is required to pay a one-time license fee of \$60.00 and an annual encroachment fee of \$12.00 (as prescribed by Administrative Order 15). This new annual revenue will be directed to Cost Centre R112-4912.

COMMUNITY ENGAGEMENT

Community engagement was not deemed necessary in this process as there is no long-term impact to the community.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with this report.

ALTERNATIVES

Council could choose not to approve the encroachment agreement as presented. Should Council make this choice, the property owner would be required to remove the encroaching driveway pillar at their cost. This alternative is not recommended.

ATTACHMENTS

1. Photograph of the encroaching structure
2. Encroachment Agreement with a plan showing the existing encroachment

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.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: Krista Hogan, EIT, Right of Way Engineer, 490-6822

Report Approved by: _____
Christopher Davis, P.Eng., Acting Manager of Right of Way Services, 490-7462

Report Approved by: _____
Taso Koutroulakis, P.Eng., Acting Manager of Traffic & Right of Way Services, 490-4816

Financial Approval by: _____
Greg Keefe, Director of Finance & ICT/CFO, 490-6308

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

Not Encroaching

ENCROACHING
DRIVEWAY
PILLAR



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

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a body corporate
(“HRM”)

and

FOXCO LTD., a body corporate
(the “Licensee”)

Recitals

- A. Whereas** the Licensee owns property at 146 Colins Road in Bedford (PID# 41065665) and there exists a Driveway Pillar (the “Encroachment”) within the HRM street right of way as shown and described in Schedule “A”;
- B. And Whereas** by resolution of the Halifax Regional Municipal Council on April 30, 2013, the HRM agreed to give the Licensee an encroachment license in accordance with the terms and conditions set out in Halifax Regional Municipality By-law E-200, being the Encroachment By-law, and as contained in this license agreement.

In consideration of the mutual promises contained in this agreement the parties agree as follows:

License

1. Subject to the terms of this license agreement, HRM hereby grants to the Licensee, its officers, servants, agents and contractors, the non-exclusive right its officers, servants, agents and contractors at all times to enter on, over and under that portion of Colins Road, Bedford, identified in Schedule “A” to maintain the Encroachment.

Ownership

2. The Licensee retains ownership of the Encroachment.

Relocation

3. If the Encroachment must be relocated for HRM purposes, as determined at the sole discretion of HRM, such relocation will be at the sole expense of the Licensee. Should the Licensee wish to relocate the Encroachment, such shall be done only upon receipt of the written consent of HRM, which may be withheld at the sole discretion of HRM, and said relocation shall be at the sole expense of the Licensee.

Maintenance

4. The Licensee agrees, at its sole expense, to maintain the Encroachment in a safe condition and so that it is not dangerous or hazardous to traffic, pedestrians or the public at large.
5. HRM may at any time and without notice inspect the Encroachment and, to the extent required to inspect the Encroachment, enter upon the Licensee's land.
6. If HRM determines in its sole discretion that the Encroachment is unsafe or dangerous, HRM may:
 - (1) Notify the Licensee that the Licensee, at its sole expense, shall repair or alter the Encroachment in any manner that HRM determines in its sole discretion is necessary to make it safe; and
 - (2) If the Licensee does not, within 15 business days of receiving notice to repair or alter the Encroachment, begin the repair or alteration, HRM may cause the work to be done and the Licensee shall be fully responsible for all costs of the repair, alteration and restoration of the street right of way, and for all expenses incurred by HRM for the work.
7. If HRM determines in its sole discretion that the Encroachment is an immediate safety issue, danger or hazard, HRM may without notice and without compensating the Licensee remove the Encroachment and restore the street right of way or remedy the safety issue in any manner.
8.
 - (1) The Licensee agrees to reimburse HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 6 and 7 within 15 business days of receiving notice of the costs of the work or expense incurred.
 - (2) HRM may, in addition to any other remedies available at law, lien the Licensee's property for any of the costs or expenses owed to HRM for the work.
9. The Licensee agrees to comply with all municipal By-laws including the Streets By-law, S-300 for the maintenance of the Encroachment and all work which involves the excavation of the street.

Street Maintenance

10. HRM shall not be responsible for any loss or damage to the Encroachment, however caused, occurring as a result of required street maintenance, snow and ice removal, and street cleaning.

Indemnity

11.
 - (1) The Licensee agrees to indemnify and save harmless HRM, its Mayor, Councillors, employees, agents, contractors and volunteers from all claims, including actions for negligence, death, and injurious affection, liabilities, damages 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 Encroachment however caused, except to the extent that the loss arises out of the gross negligence of HRM.
 - (2) This section shall survive the termination of this license agreement.

Insurance

12. A Licensee that is not a natural person shall purchase and maintain, during the term of this license agreement, commercial general liability insurance in the amount of not less than \$2 million in a form and with an insurer acceptable to HRM and with HRM named as an additional insured with respect to any claim arising out of the maintenance or use of the Encroachment or out of this license agreement. Evidence of such insurance shall be provided to HRM at the time of applying for this license and at any renewal of the insurance.

Fees

13. The Licensee shall be invoiced for, and shall pay, the fees set out in Encroachment By-law E-200 and Administrative Order 15, as amended, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the Encroachment is 1.2 square metres.

14. The Licensee acknowledges that the fee prescribed by Administrative Order 15 is subject to review by HRM Council and may be increased at any time by HRM Council.

Occupational Health and Safety Act, SNS 1996, c 7

15. The Licensee agrees to comply with the requirements of the *Occupational Health and Safety Act* and all regulations enacted pursuant thereto. Specifically, the Licensee agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the *Occupational Health and Safety Act* and its regulations are followed by its employees, contractors or agents.

Termination

16. (1) HRM may terminate this license agreement, in writing, at any time. Upon receipt of notice that HRM intends to terminate this license agreement, the Licensee shall:

- (a) pay to HRM all encroachment fees owing;
- (b) pay to HRM the cost of all work done by HRM and all expenses incurred by HRM under sections 6 and 7; and
- (c) at its sole expense, remove the Encroachment and restore the street right of way to the satisfaction of HRM within sixty calendar days, unless otherwise agreed to between the parties.

(2) The Licensee may terminate this license agreement under the following conditions:

- (a) notification to HRM in writing of its intention to terminate this licence agreement;
- (b) payment to HRM of all encroachment fees owed ;
- (c) payment to HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 6 and 7;
- (d) at the Licensee's sole expense, removal of the Encroachment and restoration of the street right of way to the satisfaction of HRM within sixty calendar days of notice to HRM, unless otherwise agreed to between the parties; and
- (e) any other terms and conditions as may be necessary in the opinion of the Building Inspector for the Municipality, (the "Inspector"), or the Engineer of the Municipality as defined by the *Halifax Regional Municipality Charter*, SNS 2008, c 39, (the "Engineer") for the restoration of the street.

(3) If the Licensee does not, within the sixty calendar days or such other time agreed to between the parties, remove the Encroachment and restore the street right of way, HRM may cause the work to be done and the Licensee shall be fully responsible for all costs and expenses of the work. HRM may, in addition to any other remedies available at law, lien the Licensee's property for any of the costs or expenses owed to HRM.

(4) The termination of this license agreement shall not be effective until the Licensee has paid all fees, costs and expenses owed to HRM under this license agreement and restored the street right of way to the satisfaction of HRM.

Notices

17. Any written notice or communication relating to the administration of this license 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, N.S. B3J 3A5

and

Foxco, Ltd.
36 Baker Drive
Dartmouth, N.S. B2W 6K1

18. This license agreement shall not be assigned without the written permission of the Engineer. Where the Engineer grants such permission, the assignee takes the place of the Licensee under this license agreement.

19. This license agreement shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors in title and permitted assigns.

20. The Licensee shall not acquire any right, title or interest in or to HRM property or HRM's public road allowance, or the portion thereof affected by the Encroachment, except the right to maintain the Encroachment in accordance with this license agreement.

21. This license agreement shall be construed according to the laws of the Province of Nova Scotia.

22. The parties agree this is a public document within the meaning of Part XX of the *Municipal Government Act*, SNS 1998, c 18.

23. If the Licensee is not a natural person the signatory declares that he or she has the authority to bind the corporation or organization.

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

SIGNED, SEALED AND DELIVERED in
The presence of:

INSERT NAME OF ENCROACHER HERE

Witness

Name:
Title:

Witness

Name:
Title:

HALIFAX REGIONAL MUNICIPALITY

Witness

Mayor

Witness

Municipal Clerk

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 20__, before me, the subscriber personally came and appeared _____ a subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that _____, one of the parties thereto, signed, sealed and delivered the same in his presence

A Commissioner of the Supreme Court of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 20__, before me, the subscriber personally came and appeared before me _____ the subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that the **Halifax Regional Municipality**, one of the parties thereto, caused the same to be executed and its Corporate Seal to be thereunto affixed by the hands of _____, its Mayor and _____, its Municipal Clerk, its duly authorized officers in his presence.

A Commissioner of the Supreme Court of Nova Scotia

Schedule "A" – Plans Showing the Existing Encroachment

