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**Date:** October 21, 2016

**To:** Mayor and Council

**Author:** Robert Brown, H. Ba. MCIP, RPP Manager, Planning & Development Services

**RE:** Right-of-Access By-law

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## **AIM**

To provide Council with information and a draft version of a possible by-law to permit access to adjacent properties for the purpose of repair and maintenance.

## **BACKGROUND**

Across Kingsville, particularly in older established areas, both residential and commercial, there is existing development on properties that was constructed before Zoning By-laws existed, without a firm knowledge of property line locations or illegally. The vast majority of these uses are now considered legal non-conforming under the current zoning by-law.

The location of many of these existing buildings and structures is in close proximity of lot lines that creates access issues for maintenance or repair to the exterior of the building without potentially trespassing on adjacent lands. In some cases the construction of fencing or perhaps the location of landscaping can also impact on an adjacent property owner's ability to access a building for maintenance or repair.

In most cases neighbours, when asked by an adjacent property owner, will grant permission for the property owner to access their building with the understanding that no damage is done to their property or that if damage is done it is repaired. This is the ideal circumstance and does not involve any intervention on the part of the Town. However, on occasion neighbour relations between adjacent land owners is not favourable and voluntary access is not granted for any one of a number of reasons.

## **DISCUSSION**

At the August 22, 2016 meeting of Council a notice of motion (501-2016) was put forward as follows:

“Council direct Administration to prepare a report as to what options are available to the Town to ensure that property owners are able to access their property to perform maintenance and/or repairs when structures or fences are prohibiting them from doing so, and as well, options for height restrictions and setbacks where fences or structures will block neighbouring windows or doors.”

The motion was the result of an ongoing issue between two property owners where a fence was constructed, legally, on the property but due to the proximity of an existing dwelling on the neighbouring property the fence now limits or blocks access to one exterior wall of the dwelling. The home owner would like to replace the windows in the effected wall however the adjacent property owner will not grant them access which would involve removing one or more sections of the fence temporarily for the purpose of maintenance and repair. Planning and Development Services staff has visited the properties in question and spoke with both property owners. Based on the current regulations in place the owners were advised that the issue is a civil matter that must be resolved by them as the Town has no ability at present to facilitate access.

The two options that exist are amend the fencing by-law to establish a setback for fences from lot lines where neighbouring buildings or structures are less than 1 m from the lot line or establish a right-of-access by-law under the Municipal Act to provide adjacent land owners the ability to access their property over adjoining lands subject to several conditions outlined in the attached draft by-law.

Option One would potentially prevent future access issues but has a number of drawbacks:

- i) It does nothing to solve any existing circumstances.
- ii) While an amendment would prevent a fence from restricting access the adjacent property owner would still require permission from the neighbour for access.
- iii) Fences do not require building permits so how do you monitor and enforce a setback.
- iv) If the by-law is amended a permitting system would be required and would mean the need for public education that permits are now required and with an associated cost.

Option Two is a Right-of-Access By-law under Section 132 of the Municipal Act which reads as follows:

**132. (1)** A local municipality may authorize the owner or occupant of land to enter adjoining land, at any reasonable time, for the purpose of making repairs or alterations to any building, fence or other structures on the land of the owner or occupant but only to the extent necessary to carry out the repairs or alterations. 2001, c. 25, s. 132 (1).

**Conditions**

**(2)** The following apply to a power of entry under a by-law under this section:

1. The power of entry may be exercised by an employee or agent of the owner or occupant of land.

2. A person exercising the power of entry must display or, on request, produce proper identification.
3. Nothing in a by-law under this section authorizes entry into a building.
4. The owner or occupant shall provide reasonable notice of the proposed entry to the occupier of the adjoining land.
5. The owner or occupant of land shall, in so far as is practicable, restore the adjoining land to its original condition and shall provide compensation for any damages caused by the entry or by anything done on the adjoining land. 2001, c. 25, s. 132 (2).

This provision in the Municipal Act has been around for quite some time and many Municipalities have one in place. A number of existing by-laws were reviewed and the level of detail varies considerably. Some by-laws provide only the authority to access while others also establish a significant permitting process directly involving the Municipality in the access issue.

To provide Council with the best overview of what could be potentially be established a draft by-law was prepared which is modelled closely after the Markham Right-of-Access by-law which is a mix of newer and a balance of detail. The other by-laws were either very old and lacked detail or were just too onerous. The draft Kingsville Right-of-Access By-law outlines the ability for an adjoining land owner to access an adjacent property for the purpose of maintenance and repair, consistent with the Municipal Act, and outlines the requirements that must be followed. The key points are:

- i) Notification of the adjoining land owner in advance
- ii) Time the access will be permitted (i.e. 9 to 5 Mon.to Sat.)
- iii) Restoration of the adjoining property (if applicable)
- iv) Provision of proper liability coverage for the land owner and any contractors
- v) Length of time that access can be granted

The other important factor of this draft by-law is that it does not establish a permitting system for granting access. It simply establishes the ability for a neighbour to access adjoining lands subject to the provisions of the by-law. The Town's role will be to provide the by-law to a resident and outline and/or clarify the requirements. If access is refused by the adjoining land owner at that point the Town would step in to outline to the adjoining land owner that they cannot refuse access for the purpose of repair or maintenance. For clarification purposes repair and maintenance will not include new construction such as additions, pools or new detached accessory structures. The sole intent is to provide access to repair and maintain what is currently on a property.

## **LINK TO STRATEGIC PLAN**

There is no link to the Strategic Plan

## **FINANCIAL CONSIDERATIONS**

The by-law will require advertising in the local paper with the associated cost of doing so.

## **CONSULTATIONS**

The senior management team was provided with the by-law for comment. If the proposed direction and by-law is supported by Council it will be made available for public review and comment prior to future presentation to Council for approval consideration.

## **RECOMMENDATION**

It is recommended that Council:

- i) receive the report for information purposed on the consideration of implementing a Right-to-Access By-law for the Town of Kingsville, and
- ii) Council direct administration to make the draft Right-to-Access By-law available for public review and consultation.

Prepared By:

Reviewed by:

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