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Date: January 25, 2017

To: Mayor and Council

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RE: Right-of-Access By-law Implementation

Report No.: PDS-2017-003

AIM

To provide Council with the final version of the proposed Right-of-Access by-law and follow-up on comment provided at the public meeting.

BACKGROUND

Council was presented with background information on the rationale for development of a Right-of-Access by-law along with a draft version of the by-law itself in November of 2016. With Council's support that draft by-law was posted for public review and comment and a public meeting held on January 9, 2017. Comment received prior to that public meeting and at the meeting itself has been incorporated into the final version of the by-law.

DISCUSSION

Public comment was positive with general support of the by-law particular in the Cedar Island area where development is very compact and was developed in advance of any of the past or current zoning setback regulations. This has created a number of circumstances where basic access to the sides of many homes relies on a co-operative relationship between two or more adjoining landowners, in many cases, to provide mutual access to each other's property for access and maintenance. In the vast majority of circumstances this is not an issue and no form of legal or Town intervention is necessary.

Because this co-operative relationship occasionally does not materialize the Municipal Act has afforded the ability for Towns to enact a Right-of-Access by-law under Section 132 of the Act. While the detail of the by-law is up to the individual Town there are certain basic conditions including who requires the access, display of proper identification, reasonable notice of the proposed access, that entry into a building is not authorized by the by-law

and lastly that the lands needed for access are restored to their original condition. The Kingsville Right-of-Access by-law addresses all of these items and also adds provisions for the specific time of access, having proper liability insurance and the length of time that access will be granted during any given year.

The primary issue that initiated the need for consideration of a Right-of-Access by-law was the construction and location of fencing along a shared property line. The problem is that the lot line and now fence are located in very close proximity, in some cases less than 1 foot, from the dwelling on the adjoining lot. This in turn limits or prevents even basic access to the dwelling for maintenance or repair purposes. In light of this situation public and Council comment posed the question as to whether the Kingsville Fencing By-law needed to be reviewed and amended to prevent similar problems occurring in the future.

As a matter of clarification any review of or consideration of the Fencing By-law should be undertaken separately from the Right-of-Access By-law. To make any changes to the Fencing By-law achieve the goal of not restricting access it would require the establishment of regulations to require certain minimum standards for fencing setbacks, particularly in close proximity to buildings. In order to enforce these standards fences would potentially need to be subject to a permitting process including an application and fee to review proposed locations. This in turn would mean both public education, as fences are not currently subject to a permitting process and eventual enforcement in the event fencing is constructed without a permit. Review of the Fencing By-law is something that can be undertaken in the coming months and would be appropriate given that it was originally implemented in 2005. However, any changes to the Fencing By-law would not be applicable retroactively and would not resolve any circumstances which currently exist.

Implementation

As suggested as part of the initial presentation to Council a draft notification form for property owners to circulate to an adjoining land owner has been prepared. This form, along with a copy of the Right-of-Access By-law will be provided to Owners seeking to utilize the By-law. There will be no formal permitting process for use of the By-law however PDS will provide consultation with both the property owners involved to address any concerns or provide clarification of the by-law requirements if necessary.

LINK TO STRATEGIC PLAN

There is no link to the Strategic Plan.

FINANCIAL CONSIDERATIONS

There was some modest cost incurred to have the by-law reviewed from a legal standpoint however this is covered as part of the Professional Fee budget item for PDS.

CONSULTATIONS

A comprehensive public circulation was undertaken in preparation of the January 9, 2017 Council meeting. The by-law has been reviewed by Planning & Development Services legal counsel and management remains supportive of the proposed by-law.

RECOMMENDATION

It is recommended that Council:

- i) adopt the proposed Right-of-Access by-law as presented, and
- ii) direct administration to schedule of review of the current Fencing By-law for 2017 and provide an information report to Council on possible updates.

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