MIDDLESEX COUNTY COUNCIL

For meeting to be held on:	Submitted by:	For:
December 17, 2013	Chris Traini County Engineer	Action

Subject:

PERMANENT ENCROACHMENT AGREEMENT 6275 WILLIAM STREET LUCAN

BACKGROUND

There are a number of structures in the County of Middlesex that for one reason or another were originally built partially within County road allowances. Typically these were due to either a survey error or construction during a period where building control by municipalities was limited.

ANALYSIS

There is a building located at 6275 William Street in Lucan that has a very slight encroachment in the County road allowance. The County Engineer has reviewed and there is no current or future concern with this encroachment on road safety or use of the remaining right of way.

As per the County of Middlesex encroachment bylaw the owners have agreed to sign a permanent encroachment agreement. The County Solicitor has reviewed and confirmed the agreement is in accordance with the bylaw. A copy of the agreement is attached for review.

RECOMMENDATION

That the Encroachment Agreement with Kenneth Harvey Latta to allow for the permanent encroachment of an existing structure at 6275 William Street in Lucan, be approved and that the necessary bylaw be presented to County Council authorizing the Warden and the County Clerk to execute the Encroachment Agreement.

Attachments

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made this day of _____, 201__.

Between: **The Corporation of the County of Middlesex**

(the "County")

- and -

Kenneth Harvey Latta

(the "Owner")

WHEREAS:

(a) The Owner represents that he is the registered owner of certain lands and premises, being Lots 13, 14 and 15 on Registered Plan No. 187 (C), in the geographic Township of Lucan Biddulph, County of Middlesex, known municipally as 6275 William Street, Lucan (the "Owner's Property"), which abuts the William Street road allowance (the "County Lands");

(b) A building is located on the Owner's Property which encroaches 0.4m onto the County Lands as shown on the sketch attached as **Schedule "A"** (the "Encroachment");

(c) The Owner has applied to the County so that he may be allowed to maintain and use the Encroachment for an indefinite period.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the terms and conditions herein and the sum of Two ($2.00) Dollars now paid by the Owner to the County, the receipt and sufficiency of which is hereby acknowledged, the Owner and the County covenant and agree as follows:

1. The County and the Owner acknowledge and agree that the Encroachment shall be permitted on the County Lands subject to the terms and conditions herein.

2. The Owner acknowledges that no representation has been made by the County of any authority to grant the privilege to use and maintain the Encroachment and such use and maintenance by the Owner shall at all times be at the Owner's risk.

3. The Owner and the County covenant and agree as follows:

   (a) The Owner shall make no alteration to the County Lands, including without limitation the removal of trees or grade changes, and shall not erect any building or structures on the County Lands without the County's written permission;

   (b) The Owner shall obtain and maintain insurance in accordance with the following:

      (i) Comprehensive general liability insurance, in a form satisfactory to the County Engineer, in an amount not less than Two Million Dollars ($2,000,000.00) inclusive per occurrence for bodily injury, death and damage to property, including loss of use thereof, in the joint names of the Owner and the County of Middlesex;

      (ii) To ensure that the above-mentioned insurance is not cancelled, amended or permitted to lapse, the policy shall contain an endorsement to provide all named insureds with thirty (30) days prior notice of changes or the cancellation of the policy; and

      (iii) A Certificate of Insurance evidencing the above insurance coverage shall be provided to the County prior to the County signing the Agreement and thereafter promptly on the insurance renewal date;

(c) Subject to section 3(d) herein, if the Encroachment, or the building to which the Encroachment is attached, is rebuilt, altered or removed in any way for any reason, the Owner shall remove the Encroachment from the County Lands;

(d) If the Encroachment is moved, altered or changed in any manner during the lifetime of this Agreement, the Owner shall apply for a new Encroachment Agreement pursuant to the provisions of the Permanent Encroachment By-law being By-Law #5843 if the Encroachment will remain on County lands after such movement, alteration or change;

(e) The Owner of the premises to which an Encroachment is appurtenant shall at all times maintain and keep the Encroachment and adjacent surface in proper repair at the Owner's expense, in a proper and safe condition for the traffic thereon, and to County standards. If the Encroachment is not kept in good repair, upon written notice from the County, the Owner of the premises to which the Encroachment is appurtenant shall repair the Encroachment and the adjacent surface at his own expense and to the County's specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, the County may renew or repair the highway at the expense of the Owner, add the cost to the tax roll and collect same in like manner as municipal taxes;

(f) If at any time the County decides to renew, repair or maintain the surface of the highway upon which an Encroachment is located, the Owner of the property to which the Encroachment is appurtenant shall, upon written notice from the County, renew, repair or maintain the surface of the highway adjacent to the Encroachment at the Owner's expense and to the County's specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, the County may renew or repair the highway at the expense of the Owner, add the cost to the tax roll and collect same in like manner as municipal taxes;

(g) Upon removal of the Encroachment from the County Lands, the Owner shall maintain and restore the County Lands to the condition that the County Lands were in prior to the date of the Encroachment or in compliance with the standards of the County at the Owner's sole expense. In the event such restoration is not made, the County may complete such restoration work at the expense of the Owner and recover the expense by any legal means available including the addition of the cost to the tax roll. The County shall have the right to collect such expenses in like manner as municipal taxes; and

(h) The Owner shall comply with all federal, provincial and municipal laws, rules, regulations and by-laws including without limitation the Permanent Encroachment By-Law being By-Law #5843.

4. The Owner will at all times indemnify and save harmless the County from and against all loss, liability, claims, demands, damages, costs and expenses, including reasonable legal fees and disbursements, which the County may suffer, be put to or incur for or by reason of or on account of the existence of the Encroachment or the entering into of this Agreement or the maintenance of the Encroachment or any other matter or thing relating to the Encroachment.

5. In addition to the Application Fee in the Permanent Encroachment By-Law having By-Law #5843, the Owner shall remit to the County an annual encroachment fee as determined by County Council from time to time. Failure to remit the Encroachment Fee referred to in this Agreement shall constitute default under this Agreement. Upon termination of this Agreement, no portion of the said Encroachment Fee shall be refunded to the owner regardless of the date of termination.

6. If the Owner defaults in performing any of its obligations under this Agreement, the County shall give written notice to the Owner of such default giving the Owner ten (10) days to remedy the default, failing which the County may terminate this Agreement. Any waiver by the County of any breach by the Owner or any provisions of this Agreement shall be without prejudice to the exercise by the County of all or any of its rights or remedies in respect of any continuance or repetition of such breach.

7. The County or Owner may terminate this Agreement on sixty (60) days written notice for any reason.

8. The annual Encroachment Fee under the Permanent Encroachment By-Law being By-Law #5843 as determined by County Council from time to time and any other sums due and payable by the Owner to the County under this Agreement or regarding the Encroachment shall be a first lien and charge upon the lands and premises of the Owner to which the Encroachment is appurtenant.

9. The Owner and the County hereby agree that this Encroachment Agreement shall cover the Encroachment described in any Application submitted by the Owner and this Encroachment Agreement shall not grant any permission to erect any new part of any new building and shall not provide any implied right on the part of the Owner to alter, reconstruct or otherwise change the Encroachment approved by the County in the Encroachment Application.

10. This Encroachment Agreement shall not be assigned by the Owner to any third party without the prior written consent of the County, which consent may be unreasonably withheld. For clarity, in the event that the Owner sells the property to which the Encroachment is appurtenant, the Owner shall instruct the purchaser of the said property to submit a new Encroachment Application to the County for the County's review and approval.

11. In the event that the Encroachment represents a danger or detrimentally impacts: (i) the safety of persons using the County Lands; (ii) traffic flow; (iii) safety of the public (iv) encroaches on the rights of others to use the road allowance; or (v) interferes with future road improvements, the Owner and the County acknowledge that the County shall have a right to terminate this Agreement. Such termination of this Agreement shall be by written notice to the Owner, except in the case of an emergency. In the case of an emergency, the Encroachment Agreement may be terminated forthwith by the County.

12. In the event that this Agreement is terminated, the Owner shall remove the Encroachment on the date of termination. If the Owner fails to remove the Encroachment on the date of termination, the County shall provide the Owner with a notice requiring the Owner to remove the Encroachment within ten (10) days. If the Owner fails to remove the Encroachment within the ten (10) day period, the County shall have the right to remove the Encroachment at the expense of the Owner and add the cost of removal to the tax roll and shall also have the right to collect such costs in like manner as municipal taxes. In the case of an emergency, the County shall have the right to remove the Encroachment forthwith on the date of termination of the Agreement at the expense of the Owner and such costs shall be added to the tax roll and collected in like manner as municipal taxes.

13. Any notice required to be given to the County or the Owner under this Agreement shall be sufficiently given if delivered or mailed postage prepaid to the addresses below. Such notice shall be deemed to have been received on the date of its delivery or in the case of mailing, three (3) business days after it was delivered to the post office.

County's Address	Owner's Address
c/o County Engineer 399 Ridout Street North London, Ontario N6A 2P1	Kenneth Harvey Latta 121 Frank Street, P.O. Box 340 Lucan, ON N0M 2J0

14. This Agreement shall enure to the benefit of, and be binding upon the parties and their respective heirs, administrators, estate trustees, successors and (where permitted) assigns.

15. The Owner and the County hereby agree that this Agreement shall be registered on title to the Owner's Property at the Owner's expense. The Owner and the County shall take such further deeds, actions and execute such further documents that may be necessary to effect such registration.

WITNESS my hand and seal at London, Ontario, this _____ day of _____, 2013.

Kenneth Harvey Latta

Per:_____

Mark Poulton, Waghorn, Stephens, Sipos and Poulton

IN WITNESS WHEREOF the Corporation of the County of Middlesex has hereunto caused to be affixed its Corporate Seal attested by the hands of its proper signing officers pursuant to the authority contained in By-Law #5990 of the Council of the Corporation of the County of Middlesex, passed the 8th day of May, 2007.

THE CORPORATION OF THE COUNTY OF MIDDLESEX

_____
Per: Joanne Vanderheyden, Warden

_____
Per: Kathleen Bunting, County Clerk

Schedule "A"

(Established By Registered Plan No. 187 (C))
(Width Varies) P.I.N. 09700-0090
County Road No. 13
37.542 (LU-50 & Set)
N 20°45'00" W
7.650 (LU-50 & Meas.)
N 22°47'10" W (LU-50 & Set)
4.821 (LU-50 & Set)
N 66°29'50" E (Reference Bearing)
45.564 (Reg'd Plan No. 187 & Set)
SIB (CPC) (Buried 0.3m)
SIB (CPC) Disturbed 0.096 Northerly 0.108 Easterly
7.95
0.90
8.314
12.23
17.099 (Reg'd Plan No. 187 & AGM P1 & Meas.)
IB
Centreline of Wall On Lot Line
Building Corner 0.05 North
Building Corner 0.03 North
Building Corner 0.05 North
Building Corner 0.09 South
Lot Corner
End of Board Fence 0.21 East 1.21 South
Board Fence
2.86 (AGM P1 & Meas.)
Enclosed Porch
7.04 (AGM P1 & Meas.)
1 Storey Brick Dwelling Mun. No. 6283
5.804 (33R-11547 & Meas.)
30.480 (Reg'd Plan No. 187 & Set)
CC (Arrow Shaped) (On Retaining Wall)
Lot 15
Lot 14
Lot 13
Lot 12
P.I.N. 09702-0322
Walkway (Between Buildings)
Metal Clad Building Mun. No. 6275 William St.
Metal Clad Building (Quonset Hut)
Registered Plan No. 187 (C)
Site Area = 1394.5 Sq.m.
P.I.N. 09702-0322
P.I.N. 09702-0321
Part 12 Plan No. 33R-214
Lot Line
Board Fence
30.480 (Reg'd Plan No. 187 & AGM P1 & Meas.)
H.P. On Lot Line
West Face Of Wall 0.22 East
Guy Wire 0.1 East
Aerial Wires
Hydro Riser
24.682 - 33R-11547
24.677 (Meas.)
N 22°47'10" W (33R-11547 & Set)
N 23°30'10" W (Meas.)
Limit Of Reg'd Plan 187(C)
8.16
8.98
Frame Shed
Overhead Roof (Lean-To)
Addition
No-Wall (Building Opening)
12.41
11.16
Frame Structure (Lean-To)
11.59
0.13 East
Board Fence Corner 0.22 North 0.43 East
IBø 0.328 North 0.543 East
3.28
3.25
3.30
3.26
1.76
0.67
0.73
1.56
1.51
1.06
1.05
0.60
0.51
0.25 Wide Railway Tie Retaining Wall
45.944 (Meas.)
(45.564 - Reg'd Plan No. 187)
N 66°29'50" E (33R-11547 & Meas.)
17.099 (Reg'd Plan No. 187 & AGM P1 & Set)
SIB (Disturbed) Removed & Set SIB

NSHIP OF LUCAN BIDDULPH
(Village Of Lucan)

SURVEYOR'S REAL PROPERTY REPORT

OF ALL OF

LOTS 13, 14 & 15
REGISTERED PLAN No. 187 (C)

IN THE

TOWNSHIP OF LUCAN BIDDULPH
(Village Of Lucan)
COUNTY OF MIDDLESEX

SCALE 1:200 (METRIC)

3 1.5 0 3 6 9 12 15

(SCALE IN METRES)

FKS Land Surveyors

2013

NOTES AND LEGEND

BEARINGS ARE ASTRONOMIC, DERIVED FROM THE SOUTHERLY LIMIT OF WILLIAM STREET SHOWN ON PLAN 33R-11547 AS HAVING A BEARING OF N 66°29'50" E.

■	DENOTES SURVEY MONUMENT FOUND
⊕	DENOTES SURVEY MONUMENT SET
SIB	DENOTES STANDARD IRON BAR
SSIB	DENOTES SHORT STANDARD IRON BAR
IB	DENOTES IRON BAR
IBø	DENOTES ROUND IRON BAR
CC	DENOTES CUT CROSS
WIT	DENOTES WITNESS
FKS	DENOTES FARNCOMB, KIRKPATRICK & STIRLING, O.L.S.'S
AGM	DENOTES ARCHIBALD, GRAY & McKAY, O.L.S.'S
CPC	DENOTES C. P. CORBETT O.L.S.
CMF	DENOTES C. MURRAY FRASER O.L.S.
CD	DENOTES CALLON DIETZ O.L.S.

AGM P1 DENOTES A PLAN OF SURVEY BY AGM (File No. LU-56-1) DATED DECEMBER 3RD, 1974.

LU-50 DENOTES A PLAN OF SURVEY BY CP CORBETT (File No. LU-50) DATED DECEMBER 6TH, 1966.

* THIS PLAN IS INTENDED TO BE READ IN CONJUNCTION WITH THE SURVEY REPORT DATED THIS SAME DATE.

THIS SURVEYOR'S REAL PROPERTY REPORT WAS PREPARED FOR MABEL ALICE FROATS, AND THE UNDERSIGNED ACCEPTS NO LIABILITY FOR USE BY OTHER PARTIES.

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SURVEYOR'S CERTIFICATE

I CERTIFY THAT :

1) THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.

2) THE SURVEY WAS COMPLETED ON THE 15TH DAY OF JANUARY, 2013.

JAN. 31, 2013
LONDON, ONTARIO

ROBERT D. STIRLING
ONTARIO LAND SURVEYOR

FKS LAND SURVEYORS

(FARNCOMB KIRKPATRICK & STIRLING SURVEYING LTD.)
571 Wharncliffe Road South, London, Ontario N6J 2N6 TEL. 680-2422

FILE No. 13-011