



# The Municipal Corporation of the Town of Fort Erie

## By-law No. 57-2020

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### Being a By-law to Authorize the Entry into an Encroachment Agreement with Dominic Pandolfino and George Saleh (2297 Staniland Park Road)

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**Whereas** Report No. CAO-11/LC-04-2020 was considered and approved at the Special Council Meeting held on June 8, 2020, to permit the existing garage to continue to encroach on the Town's Waterline Easement (RO767824), appurtenant to the building located at 2297 Staniland Park Road, and to authorize entry into an Encroachment Agreement with the owners of the property and to adopt the provisions, requirements and costs associated with Residential Encroachments as set forth in The Municipal Road Allowance Encroachment Policy (By-law No. 89-07, as amended) in this matter, with certain exceptions, and

**Whereas** it is deemed desirable to enter into an Encroachment Agreement with the owners of 2297 Staniland Park Road,

**Now therefore** the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

1. **That** the entry into an Encroachment Agreement with the owners of 2297 Staniland Park Road, to permit the existing garage to continue to encroach on the Town's Waterline Easement (RO767824), substantially in the form of Schedule "A" attached to and forming part of this by-law, is authorized and approved.
2. **That** the provisions, requirements and costs associated with Residential Encroachments as set forth in The Municipal Road Allowance Encroachment Policy, By-law No. 89-07, as amended (the "Policy"), are adopted in this case with the exception of the requirement for the preparation and depositing on title of a new Reference Plan by an Ontario Land Surveyor, as required by Section 12.3 (i) of the Policy.
3. **That** in the event the owners do not enter into the Encroachment Agreement within ninety (90) days of passage of this By-law, then the garage shall be required to be removed within thirty (30) days thereafter, from the Town's Waterline Easement.
4. **That** the Mayor and Clerk are authorized and directed to execute the Encroachment Agreement and any other documents necessary to implement the intent of this By-law and affix the corporate seal thereto, provided the owner has first paid in full all fees and expenses required pursuant to By-law No. 89-07, as amended, save and except the requirement of a new Reference Plan as aforesaid.
5. **That** the Town Law Clerk shall register a Notice on the title, at the owners' expense.

6. **That** the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

**Read a first, second and third time and finally passed this 15<sup>th</sup> day of June, 2020.**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

I, Carol Schofield, the Clerk, of The Corporation of the Town of Fort Erie certifies the foregoing to be a true copy of By-law No. 57-2020 of the said Town. Given under my hand and the seal of the said Corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_

# ENCROACHMENT AGREEMENT

This Agreement made in triplicate this                      day of                      , 2020

**B E T W E E N:**

**THE CORPORATION OF THE TOWN OF FORT ERIE**  
hereinafter called the "**Town**"

**OF THE FIRST PART;**

**- AND –**

**DOMINIC PANDOLFINO and GEORGE SALEH**  
hereinafter called the "**Owners**"

**OF THE SECOND PART;**

**WHEREAS** the Owners are the registered owner of certain lands and premises in the Town of Fort Erie, municipally known as 2297 Staniland Park Road, and legally described as Lot 19, Plan 479, Bertie; together with a Right of Way over Block A, Plan 479, Bertie, as in SN90933; Fort Erie, being all of PIN 64200-0136 (LT); and

**WHEREAS** it was discovered that a portion of the Owners' garage was constructed on part of a municipal waterline easement (RO767824) in the Town of Fort Erie; and

**WHEREAS** the said Owners have requested permission from the Town to permit the continued use and maintenance of the encroachment on the said municipal waterline easement; and

**WHEREAS** the Town has agreed to grant permission to the Owners, subject to the conditions and limitations hereinafter set forth; and

**WHEREAS** entry into this Agreement is authorized by By-law No. 57-2020.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises and the covenants and agreements hereinafter to be performed, the parties hereto covenant, promise and agree as follows:

## **ENCROACHMENT**

1.                      The Town hereby grants permission to the Owners to continue the use and maintenance of the said garage (hereinafter referred to as the "encroachment") now erected over, under or upon that part or parts of the municipal waterline easement

registered in the Land Registry Office as Instrument Number RO767824, in the Town of Fort Erie, described as Part of Lot 19, Plan 479, Bertie, designated as Parts 5 & 6 on Reference Plan 59R-11259; Fort Erie being part of PIN 64200-0136 (LT), until such time as the said encroachment shall be demolished, removed or destroyed by fire or otherwise or until such time as it is required to be removed by the Town in its sole discretion, whichever shall first occur ("termination").

### **ENCROACHMENT LIMITATION**

2. The Owners covenant and agree with the Town that the encroachment upon the said municipal waterline easement shall be limited to the encroachment defined above, and the Owners shall not replace, increase, extend or enlarge or permit the replacement, increase, extension or enlargement of the said encroachment, nor permit any further encroachments within the area of the waterline easement in any manner whatsoever.

### **MAINTENANCE**

3. The Owners shall maintain the encroachment at all times in a good and safe condition to the satisfaction of the Town, having due regard not only to the use of the encroachment by the Owners and persons desiring access to or egress from the property of the Owners, but also to the lawful use of the municipal waterline easement by the Town.

### **NO IMPLIED RIGHTS**

4. (1) Nothing contained in this Agreement shall be construed as giving to the Owners anything more than permission to maintain the encroachment until such time as this Agreement is terminated or the removal of such encroachment, or any part thereof, may be required as provided herein.

(2) The parties further acknowledge and agree that no length of time of, or enjoyment by the Owners of the permission granted in this Agreement shall enure to, or give any right, title or interest to the Owners or their successors in title, in the municipal waterline easement or any right to maintain the encroachment over, under or upon the easement, or shall deprive the Town by the operation of any limitation period or otherwise of any right to require the removal of the encroachment or any use of the municipal waterline easement to the satisfaction of the Town at the Owners' expense.

### **ENTRY**

5. Nothing herein shall limit or prevent the Town, its employees, contractors or agents, the right to enter onto the municipal waterline easement and to authorize any

public or private utility or any other service provider and its or their respective employees, agents or contractors and its or their vehicles, supplies or equipment to enter upon the municipal waterline easement, without giving notice, for the purpose of constructing, installing, operating, maintaining, inspecting, altering, moving, replacing, reconstructing, enlarging or repairing any of their plant or equipment and for all purposes necessary incidental to the exercise of the foregoing rights or other municipal purpose. Any such entry shall not be deemed to be an interference with the Owners' rights under this Agreement. The Owners understand and agree that the carrying on of the said work shall be solely the risk of the Owners and the Owners hereby release the Town from any and all claims relating to any damage to the encroachment occasioned by the carrying on of the said works by the Town or by any public or private utility or other service in the said municipal waterline easement.

### **ANNUAL FEES**

6. The Owners covenant and agree to pay to the Town an annual fee of One Hundred & Seventy-Eight & 01/100 Dollars (\$178.01) plus any applicable Goods and Services, Provincial Sales Taxes and/or Harmonized Sales Tax imposed, commencing \_\_\_\_\_, 2020, and increased annually in accordance with the Consumer Price Index ("CPI"). The annual fee and CPI increase, plus any applicable taxes, shall be added to the municipal tax roll of the Owners and collected in the same manner as municipal taxes.

### **INSURANCE, INDEMNITY AND RELEASE**

7. (1) The Owners shall take out, keep in force General Liability insurance for a limit of no less than \$2,000,000 per occurrence and in a form satisfactory to the Town's Treasurer and the Town Solicitor. Coverage shall include but not be limited to bodily injury, property damage, contractual liability and contain a cross liability, severability of insured clause. The Town shall be named as an additional insured. The Owners shall provide confirmation of insurance in the form of a certificate prior to the execution of this agreement and annually thereafter upon the renewal of such policy. All applicable deductibles are at the sole expense of the Owners. The policy shall be considered primary and not excess of any insurance available to the Town.

(2) The Owners hereby covenant and agree to indemnify and do hereby indemnify and save harmless the Town against all manner of actions, causes of action, claims, demands, losses, liabilities, costs, damages and expenses of whatsoever kind and nature (collectively "losses"), that may be suffered by or occasioned to the Town in any manner howsoever arising either directly or indirectly from or in consequence of the encroachment, whether such loss is

incurred by reason of negligence or without negligence on the part of, and whether such loss is sustained by, the Town or the Owners or their several and respective employees, workers, servants and agents, or any other person or corporation whom or whatsoever, save and except gross negligence by the Town.

(3) The Owners grant to the Town full power and authority to settle any such actions, suits, claims or demands on such terms as the Town may deem advisable and the Owners covenant and agree with the Town to forthwith pay to the Town on demand all moneys paid by the Town in pursuance of any such settlement and such sum as shall represent the reasonable costs of the Town or its solicitors in defending or settling any such actions, suits, claims or demands, based on a solicitor and own client basis.

### **REMOVAL**

8. The Owners covenant and agree to remove the said encroachment to the satisfaction of the Town, or any part thereof, at the Owners' sole expense, upon written notice from the Town, addressed to the Owners at the Owners' last known address for service according to the municipal assessment roll. The Town shall provide a minimum of thirty (30) days written notice from the date of mailing of the notice, or such longer period as deemed appropriate taking into consideration the Town's requirements, weather conditions, the scope of the work to be undertaken, and whether the Owners are seasonal residents. The Owners further agree that they shall not be entitled to any damages or compensation of any kind therefore.

### **REMOVAL IN DEFAULT**

9. (1) Where removal of the encroachment, or any part thereof, is required and it is not removed within the specified time, in addition to any other remedies available to it by law, the Town may, upon reasonable notice to the Owners, enter upon the Owners' lands where necessary, to undertake the removal of the encroachment in accordance with the *Municipal Act, 2001*, as amended from time to time, and through its agents, employees, contractors or otherwise, remove the encroachment without any liability and add the costs of so doing to the municipal tax roll of the Owners and collect the same in the same manner as municipal taxes. The Owners shall not be entitled to any compensation of any kind for removal of the encroachment.

(2) In addition to the collection of costs by adding the same to the municipal tax roll, the Town may also register a notice of lien in the land registry office on the Owners' land for such costs. Upon receiving payment of all costs payable plus interest accrued to the date of payment, the Town shall register a discharge of the lien in the land registry

office. Notwithstanding the foregoing, the provisions of the *Municipal Act, 2001*, as amended from time to time, shall at all times govern.

### **TERMINATION**

10. This Agreement shall continue in effect until termination.

### **REGISTRATION ON TITLE**

11. (1) This Agreement shall be registered against the title to the Owners' lands, and the Town shall be entitled to enforce its provisions against the Owners and, subject to the Registry Act and the Land Titles Act, any and all subsequent owners of the subject lands;

(2) The Owners agree to pay all registration and administration costs incurred by the Town prior to execution of this Agreement;

### **ENTIRE AGREEMENT**

12. (1) This Agreement constitutes the entire agreement between the parties hereto, and it shall not be amended, altered or changed except by the written agreement signed by the parties hereto.

(2) No term, covenant or condition of this Agreement can be waived except by the express written consent of the parties hereto.

(3) Nothing herein shall be construed or deemed to be an approval of any permit, approval or licence required to be issued by the Town or any Town official.

### **INTERPRETATION**

13. This Agreement shall be read with all changes in gender and number required by the context.

### **SUCCESSORS AND ASSIGNS**

14. This Agreement and everything in this Agreement shall run with the Owners' lands and shall enure to the benefit of and be binding upon the successors of the Town

and the heirs, executors, administrators, successors and assigns of the Owners, it being the express intention of the parties hereto that subsequent purchasers and mortgagees in possession shall obtain the benefit of and be bound by the provisions of this Agreement.

**IN WITNESS WHEREOF** the Town has hereunto affixed its Corporate Seal under the hands of its Mayor and Clerk and the Owners have hereunto set their hands and seals.

**SIGNED SEALED AND DELIVERED**

**In the presence of:**

**THE CORPORATION OF THE  
TOWN OF FORT ERIE**

\_\_\_\_\_  
Wayne H. Redekop, Mayor

\_\_\_\_\_  
Carol Schofield, Clerk

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**DOMINIC PANDOLFINO**

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**GEORGE SALEH**