

HALIFAX

P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 14.1.16
Halifax Regional Council
July 18, 2017

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: June 15, 2017

SUBJECT: Request for Permanent Encroachment – Softwind Lane

ORIGIN

Application by Gary and Florence Gray for an encroachment under Softwind Lane, Hammonds Plains.

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that Halifax Regional Council approve the attached Encroachment Agreement allowing the installation of a footing drain to cross Softwind Lane within the right of way.

BACKGROUND

Halifax Water is currently undertaking a culvert replacement on Softwind Lane, Hammonds Plains Rd. During the site investigation, it was noted that the property owners at 31 Softwind Lane have the discharge line of their footing drain in the Halifax Water cross-culvert in front of their property. Halifax Water proposed the property owners obtain an Encroachment License from Halifax Regional Municipality which would allow them to legally extend their drain to discharge on the opposite side of the street to the same location to which it currently discharges.

DISCUSSION

The footing drain from the property at 31 Softwind Lane does not have free discharge at the ditch due to insufficient grade from the footing to the ditch. Currently, the property owners have the discharge line of their footing drain running the entire length of the HW cross-culvert in front of their property. This line must be removed to accommodate the replacement of the cross-culvert. The drain cannot be reconnected after construction, as it would be non-compliant with Halifax Water regulations.

The new discharge line for the footing drain would be a 150 mm pipe from Civic 31, crossing Softwind Lane, and discharging to a brook on the opposite side of the road. It could be installed either in the same trench as the replacement culvert during construction, or in a separate excavation as coordinated by the property owners. The discharge pipe from the footing drain would be located a minimum of 1.5m from the Halifax Water headwall structures, parallel to the culvert. A schematic of the proposed drain location is provided as part of the Encroachment Licence Agreement; Attachment A to this report.

The area of the encroachment is approximately 2.7 m². The applicant is required to pay a one-time license fee of \$125.00 and an annual encroachment fee of \$27.00 (as prescribed by HRM Administrative Order 15, the current fee is \$1 per 0.1 m²).

FINANCIAL IMPLICATIONS

HRM would collect an annual encroachment fee of \$27.00, based on the encroachment area of 2.7 m² (as prescribed by HRM Administrative Order 15, the current fee is \$1 per 0.1 m²).

RISK CONSIDERATION

There are no significant risks associated with the recommendations in this Report.

COMMUNITY ENGAGEMENT

Community Engagement, as described by the Community Engagement Strategy, is not applicable to this process as only the applicant can appeal the decision of Regional Council to the Appeals Standing Committee.

ENVIRONMENTAL IMPLICATIONS

Implications not identified.

ALTERNATIVES

Council could choose not to approve the proposed Encroachment Agreement. This alternative is not recommended.

ATTACHMENTS

1. Attachment A – Encroachment Agreement with plan showing proposed encroachment.

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Megan Soroka, P.Eng., PMP, Right of Way Engineer, 902.490.6219

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

BETWEEN:

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

and

**GERALD WILLIAM GRAY
FLORENCE MAE GRAY**
(the “Licensee”)

Recitals

- A. **Whereas** the Licensee owns property at 31 Softwind Lane, Hammonds Plains, Nova Scotia, and wishes to construct a discharge pipe from a footing drain (the “**Encroachment**”) within the HRM street right of way (the “HRM Lands”) as shown and described in Schedule “A”;
- B. **And Whereas** by resolution of the Halifax Regional Municipal Council on _____, 20____, 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:

"Encroachment" means a structure or facility upon, under or over a street and also includes any portion of the street required by the encroachment as a clearance from other structures by good engineering practice.

License

1. Subject to the terms of this encroachment license agreement and subject to all municipal By-laws, including By-law E200 and By-law S-300, HRM hereby grants to the Licensee, its officers, servants, agents and contractors, the non-exclusive right at all times to enter on, over and under that portion of Softwind Lane, Hammonds Plains, identified in Schedule “A” to install and maintain the Encroachment.

Ownership

2. (1) The Licensee retains ownership of the Encroachment.
(2) HRM retains ownership of the HRM Lands and all right, title and interest in and to the HRM Lands upon which the Licensee will install 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.

Permits

4. (1) The Licensee agrees to comply with all municipal By-laws including the Streets By-law, S-300 for the original construction and maintenance of the Encroachment and all subsequent work which involves the excavation of the street.

(2) The application for a Streets & Services permit shall include an engineering plan and profile of the Encroachment. The engineering plan shall clearly indicate area (in square metres) of the Encroachment proposed over, on, or under the HRM street right of way.

(3) The final location of the Encroachment shall be subject to the approval of the Engineer of the Municipality as defined by the *Halifax Regional Municipality Charter*, SNS 2008, c 39, (the "Engineer").

(4) For the purposes of the construction of the Encroachment, the Licensee agrees:

(a) to engage the services of a professional engineer, licensed to practice in the Province of Nova Scotia;

(b) to file with the Engineer a written undertaking stating that the professional engineer has been engaged by the Licensee to supervise and set out the Encroachment;

(c) that the Encroachment will be done in accordance with the approved plans; and

(d) that the project shall be subject to full time inspection and approval by the professional engineer or his representative.

(5) For the purposes of the construction of the Encroachment, the Licensee agrees to arrange a preconstruction meeting with HRM staff.

(6) Upon completion, the Licensee shall provide HRM with a certificate from a professional engineer certifying that the Encroachment was completed according to the approved drawings, any applicable municipal services specifications and standard drawings, and approved changes.

Record Drawings

5. The Licensee shall provide a copy of the record drawings immediately upon completion of the Encroachment, and immediately upon completion of any relocation.

Maintenance

6. 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.
7. 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.
8. 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.
9. 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.
10.
 - (1) The Licensee agrees to reimburse HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9 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.

Street Maintenance

11. 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

12.
 - (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

13. 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

14. 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 2.7 square metres.

15. 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

16. 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

17. (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 8 and 9; 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 8 and 9;
- (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 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

18. 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

Gerald William Gray
Florence Mae Gray
31 Softwind Lane
Hammonds Plains NS B3Z 1K5

19. 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.

20. 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.

21. 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.

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

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

24. 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:

**GERALD WILLIAM GRAY
FLORENCE MAE GRAY**

Witness

Name: Gerald William Gray
Title: Property Owner

Witness

Name: Florence Mae Gray
Title: Property Owner

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"

