

HALIFAX

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Item No. 14.1.1
Halifax Regional Council
August 15, 2017

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: July 25, 2017

SUBJECT: Request for Permanent Encroachment – Saskatoon Drive

ORIGIN

Application by Terrence and Michelle Higgins for a permanent encroachment of a shed on Saskatoon Drive

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that Halifax Regional Council not approve the application for Encroachment as described in the report.

BACKGROUND

Michele and Terrence Higgins, the property owners of 81 Saskatoon Drive, Halifax have requested permission to relocate an existing 16 ft. x 12 ft. (4.88 m x 3.67 m) shed to 3.6 meters within the Saskatoon Drive street right of way. While a development permit has been issued for the shed, its present location does not meet the setback requirements of the land use by-law.

The existing shed is currently located on the Higgins' private property and encroaching on the neighbouring undeveloped lot, owned by Annapolis Group Inc. Should Council decide to not approve the encroachment request, the owner may choose to either move the shed to meet the setback requirements or seek a variance to relax the setback requirements.

Saskatoon Drive is a municipally owned Stone & Oil Street, constructed in the 1950's - 1960's. It is classified as a local road, 5 m wide, with no curbs or retaining walls in this area. The Municipality does not have adequate data on the quality of material under the roadway.

81 Saskatoon Drive is accessed by a laneway, which provides access to 3 homes addressed on Saskatoon Drive. The laneway is owned by the Municipality, which was the former Saskatoon Drive before realignment took place in the 1950's. The laneway is accessed from Saskatoon Drive and then runs parallel to Saskatoon Drive, separated by a slope, 5 - 10 m wide, within the Right of Way. 81 Saskatoon is located at the end of this laneway. (See Schedule A for Site Plan).

There is a significant slope between the street and the laneway / Saskatoon property boundary. The laneway and private lot are at a much lower elevation than the elevation of the roadway, approximately 4 m vertical distance. There is no retaining wall supporting this slope. The slope is heavily vegetated.

DISCUSSION

Mr. Higgins has requested permission to relocate the shed 3.6 meters within the Right of Way. Should a permanent encroachment license be granted, Mr. Higgins will be required to submit engineered plans, and obtain a Streets and Services Permit for work within the Right of Way, in accordance with By-Law S-300, By-Law Respecting Streets. An engineered design and review will ensure the work is completed without compromising the structural integrity of the roadway of Saskatoon Drive. It is expected that a retaining wall would be required to stabilize the slope.

The addition of a retaining wall in the Right of Way is contradictory to the Municipality's policies. Section 4.5 of the Municipal Design Guidelines states;

"Retaining walls are not normally accepted as a means of handling grade differentials associated with streets or services in the Municipality.

Retaining walls can create a hazardous situation and an on-going maintenance cost as well as a future capital cost when the wall needs to be replaced. The street and service systems are to be designed such that retaining walls are avoided if possible.

In the extreme circumstances that a retaining wall is acceptable to the Municipality, the wall shall be designed by a Professional Engineer with due consideration given to soundness of material, stabilization, safety, maintenance and other relevant features."

If an engineered design recommends a retaining wall to support the slope, the cost of construction and maintenance will be that of the homeowner. The retaining wall would be included in the Encroachment Agreement for the shed, including an increase to the expected yearly fee. The Encroachment Agreement would assign ownership and responsibility of the retaining wall to the homeowner.

Municipal staff does not have adequate data for the condition of the roadway, and the proposed excavation in the Right of Way could undermine the street and could negatively impact municipal operational requirements for this portion of the Right of Way, as well as pose safety hazards to road users.

The Municipality is responsible for snow removal on Saskatoon Drive, as well as the laneway. On the laneway, the Municipality currently plows snow to the end of the laneway, and piles the snow in the Right of Way at the toe of slope, in the proposed location of the shed (see Schedule A for figure). This allows snow removal equipment to pile the snow and then back out of the laneway without performing a turn on the private property, thus minimizing the impact to the private property. The laneway is not wide enough to allow snow storage on the side of the laneway while maintaining vehicle access to the residential driveways. The proposed shed location in the laneway would result in snow blocking access to 81 Saskatoon Drive. Trucking snow from the laneway is cost prohibitive. The inability for the Municipality to clear snow is a public safety concern, as it would prevent access to the residences on the laneway.

On the main roadway of Saskatoon Drive, the Municipality stores snow in the boulevard between the road and top of slope. With excavation into the slope and removal of trees, there is potential for snow to drift over the slope and on top of the shed, or to pile against the shed. Under those conditions there is potential for damage to the shed from snow loading, and drifting.

Potential revenue from encroachment fees is quite limited. The area of the proposed shed encroachment is approximately 17.91 m². For an encroachment of this size, the applicant would be required to pay a one-time license fee of \$125.00 and an annual encroachment fee of \$17.91 (as prescribed by Municipal Administrative Order 15, the current fee is \$1 per 0.1 m²). The Municipality would recoup \$662 over 30 years from this Encroachment. It is expected that a retaining wall will be required as part of this construction. The size of the retaining wall is currently unknown; therefore, the cost is unknown. The encroachment fees associated with the retaining wall would be added to the above fees after it is designed and details become known. This would become part of the Encroachment License.

In summary, the relocation of the shed in the Right of Way could pose the following negative impacts:

- Compromise stability of Saskatoon Drive roadway;
- Public safety concerns arising from hindrance to snow removal, thus blocking access to properties;
- Damage / collapse of shed from snow loading; and,
- Additional costs arising from municipal snow removal and the retaining wall

Therefore, staff recommends Council does not approve the application for Encroachment.

FINANCIAL IMPLICATIONS

There are no financial implications of the recommendation in this report.

RISK CONSIDERATION

If Council approves this application, the potential risk to the Municipality is outlined below:

- There is the risk of the resulting excavation into the Right of Way to cause slope failure, and thus failure of the roadway of Saskatoon Drive. The road would likely become impassable until fixed. This risk would be mitigated through the requirement of an Engineer's design and review (in accordance with the attached Encroachment Agreement) as part of the permit application for work within the Right of Way. Although the likelihood of failure of the roadway is low, the impact would be considered major.
- There is potential for damage to be caused to the shed in the proposed location, resulting from snow drifts from the top of slope piling against the side, or on the roof of the shed.

- There is a public safety risk to the residents on the laneway associated with the potential for snow to block driveway access, caused by inability to pile snow at the proposed shed location.

The report recommendation removes these risks by not approving the application for encroachment.

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

Clearing a space and cutting into the slope in the Right of Way would require removal of several trees owned by the Municipality, and therefore removes the benefits that trees provide, such as increased slope stability, a decreased soil erosion, air filtration, and wildlife habitat.

ALTERNATIVES

Council could choose to approve the proposed Encroachment Agreement. This alternative is not recommended for the reasons outlined in this report.

ATTACHMENTS

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

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: Shannon O'Connell, P.Eng., MASc, Development Engineer, 902.476.2917

Report Approved by: Ashley Blissett, P.Eng., Program Manager, Development Engineering, 902.490.6848

Financial Approval by: Amanda Whitewood, Director of Finance and Information Technology/CFO, 902.490.6308

Report Approved by: Bob Bjerke, Director, Planning and Development, 902.490.1627

This **Encroachment License Agreement** made this ____ day of _____, 2017.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a body corporate
("HRM")

and

**TERRENCE XAVIER HIGGINS and
MICHELE ANN HIGGINS:**
(the "Licensee")

Recitals

- A. **Whereas** the Licensee owns property at 81 Saskatoon Drive and wishes to relocate a shed (the "Encroachment") within the HRM street right of way as shown and described in Schedule "A";
- B. **And Whereas** by resolution of the Halifax Regional Municipal Council on _____, 2017, 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:

License

1. Subject to the terms of this encroachment license agreement, HRM hereby grants to the Licensee, its officers, servants, agents and contractors, the non-exclusive right at all times to enter on, under and over that portion of Saskatoon Drive, identified in Schedule "A" to install and maintain the Encroachment.

Ownership

2. The Licensee retains ownership of 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 stamped by a professional engineer. 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 temporary or minimal 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 **17.91** 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

Terrence Xavier Higgins
81 Saskatoon Drive
Halifax, N.S. B3M 3H8

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 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:

TERRENCE XAVIER HIGGINS

Witness

Name:
Title:

Witness

Name:
Title:

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

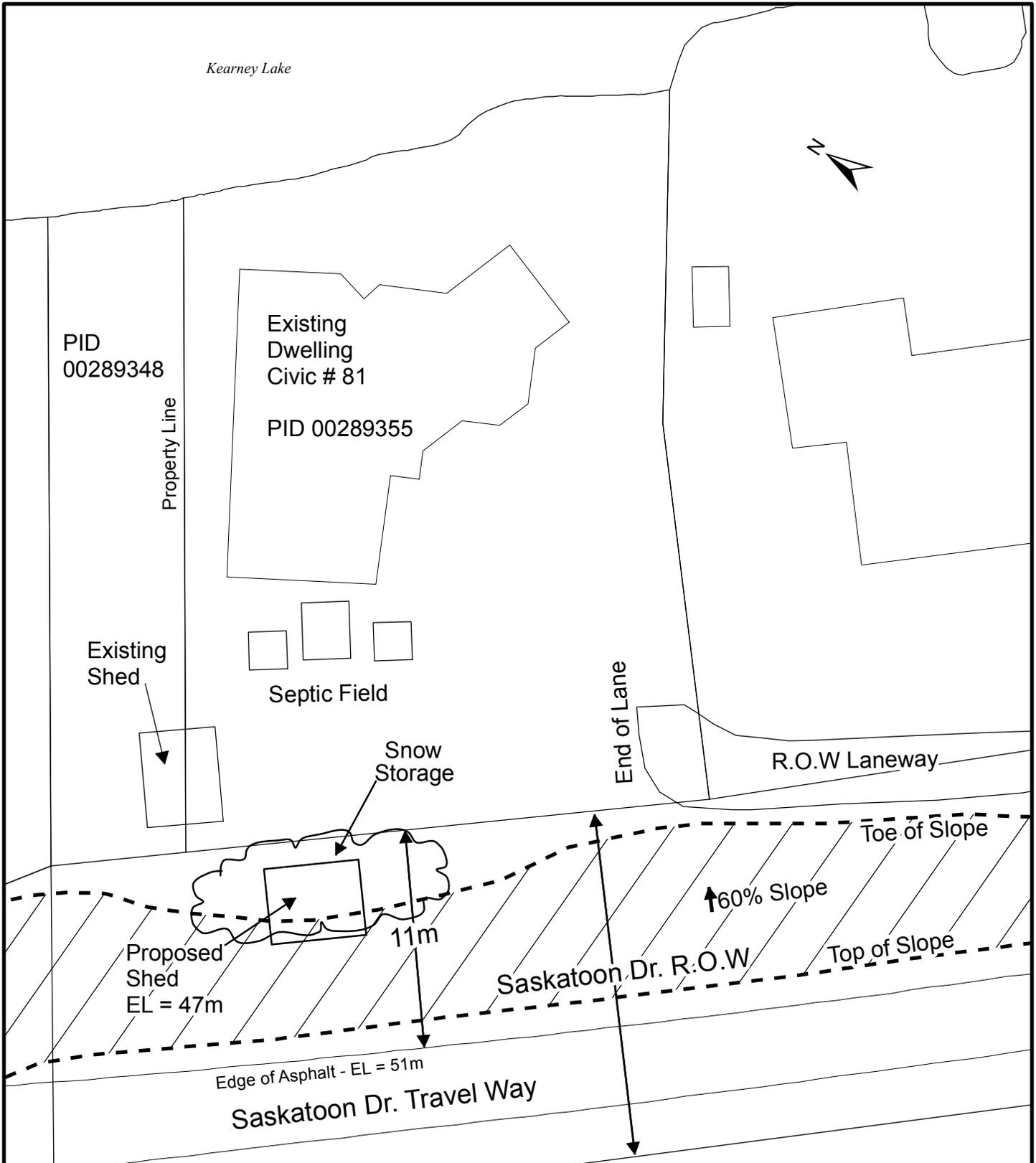
A Commissioner of the Supreme Court of Nova Scotia

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" – Plans Showing and Describing the Proposed Encroachment, including the type of encroachment, the civic address where such encroachment is authorized, and any other terms and conditions as may be necessary in the opinion of Council, the Inspector or the Engineer.



Schedule "A"

81 Saskatoon Dr.
Halifax

HALIFAX