

COMMUNICATION 136068

Received From: Niki Dwyer, MCIP RPP Director of Development Services
Addressed To: Committee of the Whole
Date: June 24, 2025
Topic: Request for Encroachment Agreement – 51 Hackberry Trail

BACKGROUND

The applicant (Above and Beyond Pools) acting for the owners of the property, applied for and were granted a pool permit in June 2022 for the property known municipally as 51 Hackberry Trail (a corner lot in the Mississippi Quays subdivision). The application included a sketch of the works which illustrated the addition of the pool, a future shade structure and a 6' vinyl fence around the yard and installed on the property line.

Work commenced in 2022 following the issuance of the permit. No inspections were called in during construction or following the installation of the works. Inspections following installation are a requirement of the issuance of a pool permit. The permit noted that the owner is required to provide updated drawings if any installation does not match the certified pool site-plan drawings. No such drawings were received.

In May 2025, the Town received a complaint from a third party regarding the installation of landscaping and a fence on the municipality's road allowance. The fence was determined to be located approximately 12-14 inches beyond the property line onto the road allowance, while hardscape in the form of pavers, river stone and an armour stone retaining wall encroach an additional 4-5 feet into the allowance.

The owner was advised upon inspection that the encroaching materials were located on the Town's property and that the materials had to be removed. Through additional discussions with the Chief Administrative Officer, an alternative was proposed by the pool company that installed the various elements requesting that an Encroachment Agreement be considered to recognize the work.

The owner has indicated that it is their preference to enter into an encroachment agreement with the Town to recognize the continued use of the lands.

Figure 1 – Site Photos



COMMENT

The Town may choose to execute agreements for the use of municipal property for various purposes. It is not uncommon, particularly in older neighbourhoods, to find encroachments of existing structures or buildings (i.e. porches, steps, eave overhangs) on municipal road allowances that have existed for a significant period of time. Provided the Town does not have a need for the use of the road allowance, an agreement for the temporary use of the property may be executed.

Encroachment Agreements are a formal acknowledgement of the occupancy of the municipal property by a third party and any successor on title. The Agreement is registered on title of the third-party property and is transferred to future owners at the time of property acquisition. In order to be registered, the scope of the encroachment needs to be surveyed to show the nature and extent of the structures or features being recognized. The Ontario Land Registry no longer accepts the registration of Encroachments in-gross (i.e. un-surveyed encroachments).

The Town has a standard Agreement used to recognize such encroachments which details the following conditions of execution:

- That the encroachment shall be permitted until such a time that the municipality requires the use of the property;

- That if the lands are required for the use by the municipality, the removal of the structures or features shall be at the expense of the owner;
- That the owner assumes all maintenance responsibility and costs of the encroaching features;
- That the owner shall insure and indemnify the municipality of any damages caused by or from the encroachment (min \$2 million CGL);
- That the owner is responsible for all costs incurred in the administration and registration of the Encroachment Agreement.

In a scan around the Town, there are many examples of historic encroachments onto the Town's right-of-ways. They are typical in older neighbourhoods where the roads are surveyed on narrow right-of-ways or on dwellings that were constructed before planning regulations. The use of the encroachment agreement protects the Town from extenuating liabilities associated with the private use of the Town's property.

There are also many examples of landscaping features and decorative elements which owners have erected or placed at grade within the Town's right-of-way. In this particular case, as the encroachment includes the installation of structured retaining wall there is greater risk of liability to the Town in the case that someone is hurt. The nature of the retaining wall and fence will also require ongoing maintenance or replacement and without recognizing their presence through an agreement, it is not clear if this responsibility lies with the Town or the owner.

Comments received from the Public Works Department expressed concern that recognizing this structure may set a precedent for approving future non-compliant installations – particularly as a remedial measure to a non-compliant installation.

If the owner does not receive consent from the Town to execute an Encroachment Agreement the obstacles on the right-of-way will need to be removed from the site.

FINANCIAL

The owner has been advised of the total costs associated with the execution of an Encroachment Agreement. Total cost of the Encroachment Agreement is estimated as follows:

Survey estimate	\$3,500
Encroachment Agreement	\$3,000
Registration of Agreement	<u>\$550</u>
Total	\$7,000

Plus Insurance: \$2 million Commercial General Liability (CGL) insurance providing the Town with an insurance certificate naming the Town as additional insured.

STAFF RECOMMENDATION:

THAT Council refuse the request by 51 Hackberry Trail for an encroachment agreement.