



Corporation of the Municipality of Temagami

Report No.
2018-020

Memorandum to Council

Staff

Committee

Subject: Encroachments and Lot Line Variations regarding 12 Parkwood Lane

Agenda Date: July 26, 2018

Attachments:

- DRAFT Encroachment Agreement
- Lots 186 to 193 on Registered Plan M-66
- Resolution No. 14-088 & Report No. 2014-021

RECOMMENDATION

WHEREAS the Municipality of Temagami in 2014 received a request regarding the encroachments on 12 Parkwood Lane; AND WHEREAS the Municipality road encroaches on the property owner's driveway and the applicants garage encroaches on to municipal property; AND WHEREAS the Municipality of Temagami directed staff on February 20, 2014 to prepare and draft encroachment agreement for Council's consideration; AND WHEREAS an encroachment agreement will permit the structures to remain until the structures are demolished or otherwise removed; AND WHEREAS the proponent shall cover all legal costs associated with the encroachment agreement unless Council deems otherwise; NOW THEREFORE BE IT RESOLVED THAT Council receive report No. 2018-020; AND FURTHER THAT Council direct staff to execute and finalize the agreement with the proponent.

BACKGROUND

This report is being brought forward to Council as previous direction was given to staff to bring information regarding encroachments and what that means when a structure (retaining walls, garages or houses etc.) that are not built entirely on privately owned land.

The Municipality has had numerous Municipal Planners over the course of seven years. Wayne Koethe (previous Municipal Planner) provided to Council Report No. 2014-021 (**attached**), which outlined recommendations of possible solutions for encroachments within the Municipality. Another issue with encroachments is that often Municipal roads also encroach onto private lands, especially with "Forced Roads".

If Council deems it desirable as this issue has been outstanding for more than four years, Council may wish for the proponent, to cover all cost, such as legal associated with the agreement. As Mr. Koethe's reports mentions that one option is to use an encroachment agreement that is a registerable document on title of the property.

For Council's information Kemp Pirie was consulted in 2014 regarding drafting an encroachment agreement and the attached agreement was drafted in conjunction with comments and suggestions received by our legal representation.

Prepared and Submitted by:	Reviewed by:
Tammy Lepage, Planning Clerk	Craig Davidson, Treasurer/Administrator
Name and Position	Name and Position

Agreement between
The Corporation of the Municipality of Temagami
and
Owner
for the subject lands (Property Location)

DRAFT

FORM OF AGREEMENT

THIS AGREEMENT made in duplicate this ____ day of _____, 2018.

B E T W E E N: CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

A N D:

(hereinafter called “the Owner”)

W I T N E S S E T H:

THAT the Owner and the Contractor shall undertake and agree as follows:

RECITALS

- a) The Owner is the registered and beneficial owner of _____ **ADDRESS and LEGAL DESCRIPTION** _____ (hereinafter called the “Property”);
- b) The Owner has made certain improvements to the Property, including the construction of a _____ **STRUCTURE DESCRIPTION** _____ and a _____ **STRUCTURE DESCRIPTION** _____ (collectively the “Subject Improvements”) which encroach upon the road allowances for _____ and _____, the abutting dedicated municipal roads;
- c) The Municipality is prepared to permit the Subject Improvements to continue to encroach upon the dedicated roads. A sketch illustrating the Subject Improvements are hereto attached as Appendix “A” to this Encroachment Agreement.

TERMS AND CONDITIONS

- 1** The Owner acknowledges that for the duration of time that the Subject Improvements continue to encroach upon the dedicated municipal road, the Municipality shall be entitled to an annual encroachment fee of \$____ as per By-law _____, as amended, being a bylaw to _____. Said encroachment fee shall be added to the Owner’s annual payments in lieu of realty taxes to the Municipality in respect of the Property as contemplated under the Municipal Grants Act;
- 2** In the event the Municipality delivers written notice to the Owner that the Municipality requires for municipal work purposes any portion of the dedicated municipal road which is affected by the Subject Improvements, the Owner shall, at its sole cost and expense either reconfigure, or relocate the Subject Improvements in a manner-acceptable to the Municipality, acting reasonably, or in the alternative, remove the Subject Improvements therefrom;
- 3** The Owner shall be responsible for the maintenance and repair of the Subject Improvements and all related expenses;

- 4 The Owner shall indemnify and save harmless the Municipality of and from all loss, costs and damages which the Municipality may incur, arising from the existence of the Subject Improvements or the use, maintenance or repair thereof, save and except all losses, costs or damage arising from or incurred by negligence or willful acts or Omissions by the Municipality;
- 5 The Owner covenants and agrees that this encroachment agreement is restricted to the existing Subject Improvements and the use, maintenance and repair thereof, not any expansions or further improvements thereto;
- 6 This encroachment agreement shall be binding upon the owner, its successors and assigns and shall not expire until the date upon which the Subject Improvements are demolished or otherwise removed.

WITNESS the signature and seal of the parties hereto.

THE CONTRACTOR: MX CONSTRUCTORS INC,
416 CHAMPAGNE RD.
STURGEON FALLS, ONTARIO, P2B 3N5

THE OWNER: THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI,
P.O. BOX 220, 7 LAKESHORE DRIVE,
TEMAGAMI, ONTARIO, P0H 2H0

IN WITNESS WHEREOF the parties have executed this Agreement the day and year first above written.

SIGNED AND SEALED IN)
THE PRESENCE OF)
)
) _____
) Property Owner
)
)
) _____
) Witness
) (print name)
)
)
) CORPORATION OF THE MUNICIPALITY
) OF TEMAGAMI:
)
) _____
) Mayor
)
)
) _____
) Clerk (Seal)
)

APPENDIX "A"
to this Encroachment Agreement

ILLUSTRATION OF ENCROACHMENT

DRAFT



Corporation of the Municipality of Temagami

Report No.
2014-021

File No.
N/A

Subject: Encroachments and Lot Line Variations

Agenda Date: February 20, 2014

Attachments: n/a

RECOMMENDATION

1. THAT Council receive the report No. 2014-021 regarding Encroachments and Lot Line Variations;
2. WHEREAS non-Municipal structures may be located on Municipal right-of-ways;

AND WHEREAS proponents may approach the Municipality requesting to allow subject structures to remain;

AND WHEREAS Council may consider allowing subject structures to remain through the use of an encroachment agreement;

NOW THEREFORE BE IT RESOLVED THAT an encroachment agreement registered on title to the encroaching property shall be the mechanism employed to allow subject structures to remain until subject structures are demolished or otherwise removed;

AND FURTHER THAT proponents shall cover all legal costs associated with the encroachment agreement unless Council determines otherwise;

AND FURTHER THAT the sale of land to proponents may be employed as an alternative mechanism provided the proponent provides a rationale for the deviation to the satisfaction of Council;

AND FURTHER THAT Council direct staff to bring a draft encroachment agreement to Council for approval;

AND FURTHER THAT Council direct staff to draft a policy regarding this matter for Council's consideration;

AND FURTHER THAT each request will be considered on a case-by-case basis until a policy is approved regarding this matter.

BACKGROUND

This report is being brought to Council as direction was given to staff to bring information to Council for consideration regarding lot line variations that are historical in nature (CAO status report). This report discusses structures (i.e retaining walls, or houses) not built entirely on privately owned land which are encroaching on municipal road right-of-ways.

This report outlines the Municipality's options when a proponent approaches the Municipality seeking to 'legalize' a structure that is partially, or fully, on a municipal right-of-way. A proponent may seek to 'legalize' a structure for many reasons - including obtaining a mortgage, or for the transfer of land.

Another related issue is Municipal roads encroaching on private land. This is not discussed in this report. Also, privately owned structures encroaching on other persons privately owned land is not being considered in this report as this may be resolved through the consent (lot addition) process. Further, privately owned structures encroaching on Municipal patent land (i.e a vacant municipal lot) is not being considered in this report as this may be resolved through the sale of land process.

ANALYSIS

Options:

This report identifies two options for consideration:

1) One option is to use an encroachment agreement registered on title to the encroaching property. The Municipality would have to pass a by-law first to allow it to enter into the agreement. The encroachment agreement would allow the structure to remain until it is demolished or otherwise removed. At a later date, if the structure is demolished, or removed, any replacement structure would need to be re-built correctly on the proponents land.

It is recommended that the proponent cover all costs, such as legal, associated with the agreement.

The encroachment agreement would include a clause that the subject structures may be required to be reconfigured, relocated, or alternatively removed by the owner for municipal work purposes. The encroachment agreement would also include a clause stating that the Municipality is indemnified from all costs arising from the existence of the subject encroaching structure on Municipal land. If this is Council's desired option, having a lawyer prepare the agreement is recommended. A draft agreement can be prepared for Council approval.

If this is Council's desired option the following resolution is recommended:

WHEREAS non-Municipal structures may be located on Municipal right-of-ways;

AND WHEREAS proponents may approach the Municipality requesting to allow subject structures to remain;

AND WHEREAS Council may consider allowing subject structures to remain through the use of an encroachment agreement;

NOW THEREFORE BE IT RESOLVED THAT an encroachment agreement registered on title to the encroaching property shall be the mechanism employed to allow subject structures to remain until subject structures are demolished or otherwise removed;

AND FURTHER THAT proponents shall cover all legal costs associated with the encroachment agreement unless Council determines otherwise;

AND FURTHER THAT the sale of land to proponents may be employed as an alternative mechanism provided the proponent provides a rationale for the deviation to the satisfaction of Council;

AND FURTHER THAT Council direct staff to bring a draft encroachment agreement to Council for approval;

AND FURTHER THAT Council direct staff to draft a policy regarding this matter for Council's consideration;

AND FURTHER THAT each request will be considered on a case-by-case basis until a policy is approved regarding this matter.

Based on the above direction, staff can prepare a policy by-law to formalize the process – which would be brought back to Council for consideration.

This option provides some flexibility stating that 'the sale of land to proponents may be employed as an alternative mechanism provided the proponent provides a rationale for the deviation to the satisfaction of Council'.

2) Another option is that the Municipality may sell the land to the proponent. In this case, the proponent would make an offer to purchase; the land would be surveyed, and disposed of in the manner required by Municipal policy – including public notice requirements. A road closure by-law would be needed for structures located on Municipal right-of-ways prior to the land being disposed of. A deeming by-law may also be required on case-by-case basis.

With this option, even if the structure is demolished or otherwise removed, the proponent retains the land.

For discussion purposes, the road allowances in Temagami North (Plan M383, M393 and 36R9753) and the Village of Temagami (Plan M66 and M269) are a standard width of 66 feet (20 meters). The Municipality's Official Plan (OP) is the document guiding municipal planning policies at the municipal level. Section 2.12.2 discusses a standard width of 20 metres for municipal road allowances. Similarly, Section 2.12.3 discusses a minimum right of way of 20 metres for roads. It is not recommended that roadways be reduced in size. It is recommended that the Municipality retain a minimum right-of-way of 20 meters. Similarly, it is not recommended that municipal laneways be reduced in size.

It is recommended that the proponent cover all costs, such as appraisal, survey, by-law, notice, and legal, associated with the sale of land.

This option has not been recommended. If this is Council's desired option the following resolution is suggested:

WHEREAS non-Municipal structures may be located on Municipal right-of-ways;

AND WHEREAS proponents may approach the Municipality requesting to allow subject structures to remain;

AND WHEREAS Council may consider allowing subject structures to remain through the use of the offer of purchase and sale of land process;

NOW THEREFORE BE IT RESOLVED THAT the offer of purchase and sale of land process in accordance with Municipal policies and by-laws shall be the mechanism employed to allow subject structures to remain;

AND FURTHER THAT an encroachment agreement registered on title to the encroaching property may be employed as an alternative mechanism provided the proponent provides a rationale for the deviation to the satisfaction of Council;

AND FURTHER THAT each request will be considered on a case-by-case basis when Council considers accepting the offer to purchase.

Further Consideration:

Regardless of the option selected, each request will be considered by Council on their own merit as requests arise. Each scenario will be unique.

If the first option, regarding encroachment agreements, is chosen, Council would consider the merits of a request when Council considers passing a by-law to allow the Municipality to enter into an agreement. If the second option, regarding the sale of land, is chosen, Council would consider the merits of a request when Council considers accepting the offer to purchase.

It should be noted that, in response to any request, Council may direct that the Municipal lawyer take the necessary action for the Municipality to require the proponent to remove the structure.

Conclusion of Analysis:

This report discussed structures (i.e retaining walls, or houses) not built entirely on privately owned land which are encroaching on municipal road right-of-ways. A proponent may approach the Municipality seeking to 'legalize' such a structure. Council may consider allowing subject structures to remain through the use of an encroachment agreement, or through the use of the offer of purchase and sale of land process.

It is recommended that an encroachment agreement registered on title to the encroaching property shall be the mechanism employed to allow subject structures to remain until subject structures are demolished or otherwise removed. This option allows for flexibility as the sale of land to proponents may be employed as an alternative mechanism provided the proponent provides a rationale for the deviation to the satisfaction of Council. It is also recommended that staff draft a policy by-law to formalize the process which would be brought back for Council approval.

Regardless of the option selected, each request will be considered by Council on its own merit as requests arise.

FINANCIAL/STAFFING IMPLICATIONS

This item has been approved in the current budget:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
This item is within the approved budgeted amount:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>

Financial implications were considered in the analysis section of this report. It is recommended that the proponent cover all costs, such as legal, associated with an encroachment agreement.

No staffing implications were considered during the preparation of this report.

ALTERNATIVES

Alternatives as discussed in the analysis section of this report.

Prepared and Submitted by:

W. Koethe

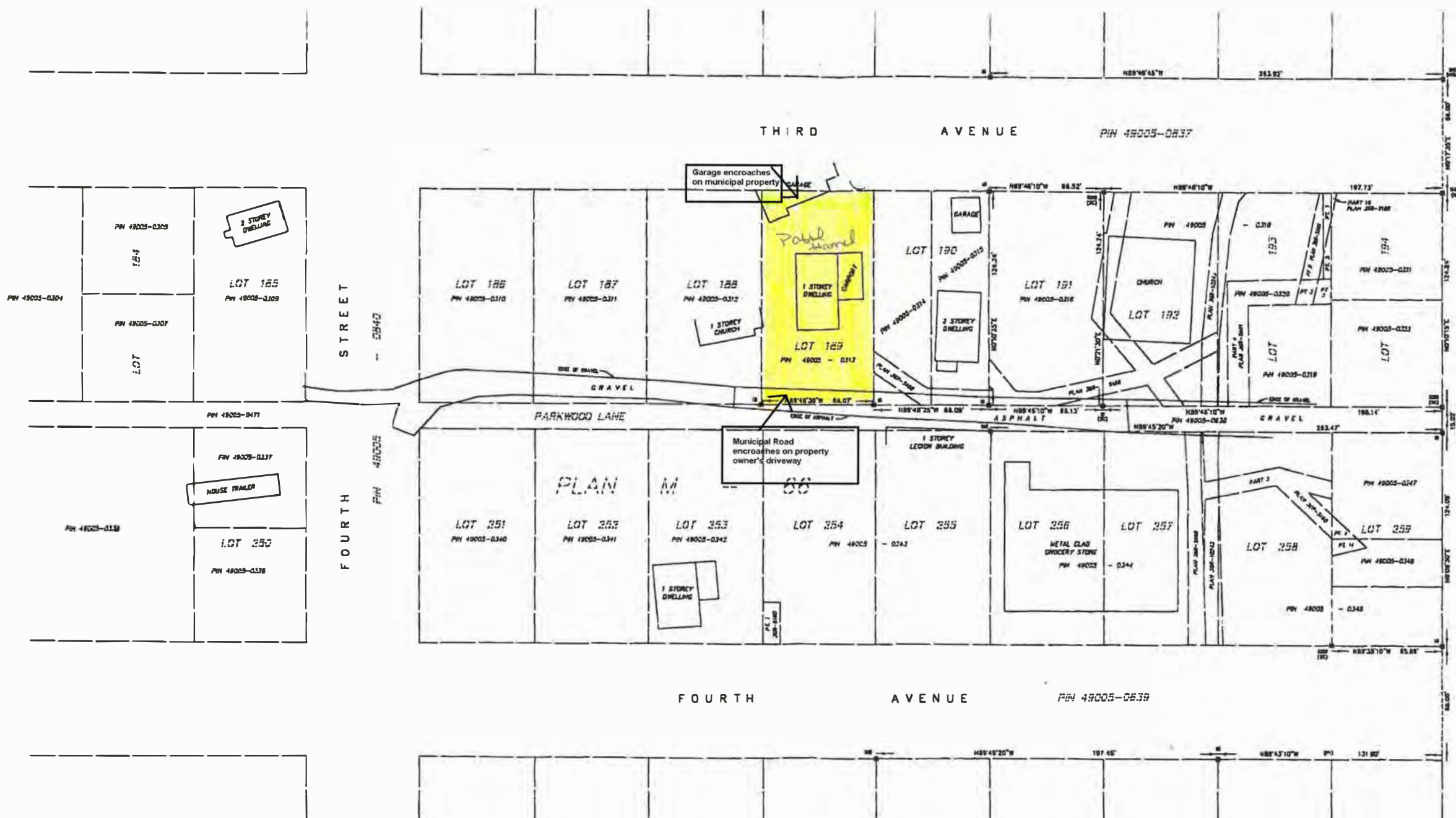
Wayne Koethe
Municipal Planner

Reviewed and Accepted for Council Consideration by:

Patrick Cormier
CAO

SKETCH SHOWING
 LOCATION OF TRAVELLED ROAD
 LOTS 186 TO 193 & PARKWOOD LANE
 REGISTERED PLAN M-66

TOWNSHIP OF TEMAGAMI
 DISTRICT OF NIPISSING
 SEPTEMBER 10, 2008



THE KING'S HIGHWAY No. 11

- LEGEND**
- DENOTES PLANTED
 - ▨ DENOTES FILING
 - ▧ DENOTES IRON BAR
 - ▩ DENOTES BRONZE CAP IN ROCK
 - DENOTES STANDARD IRON BAR
 - DENOTES SHORT STANDARD IRON BAR
 - P DENOTES REGISTERED PLAN 368-5188
 - PI DENOTES REVISIONS PLAN 368-5188
 - SC DENOTES H. SUTCLIFFE LTD.

SRQ Geomatics Inc.
 Ontario Land Surveyors
 New Lismore, Cobourg, Toronto, Kemptville
 North Bay, Sudbury
 1-800-461-4584

DISTANCES ON THIS PLAN ARE IN FEET AND CAN BE CONVERTED TO METRES BY MULTIPLYING BY 0.3048

30' 15' 0' 30' 60' Feet

PL. BY CM SCALE 1" = 30' PLAN 7-187
 CHD BY SMV JOB No. 2400039 NOTES IN 219/220 W-13

COPY

Memo & Resolution
Wayne 6
Re: Encroachment

THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

NO.: 14-088

DATE: February 20, 2014

MOVED BY: [Signature]

SECONDED BY: [Signature]

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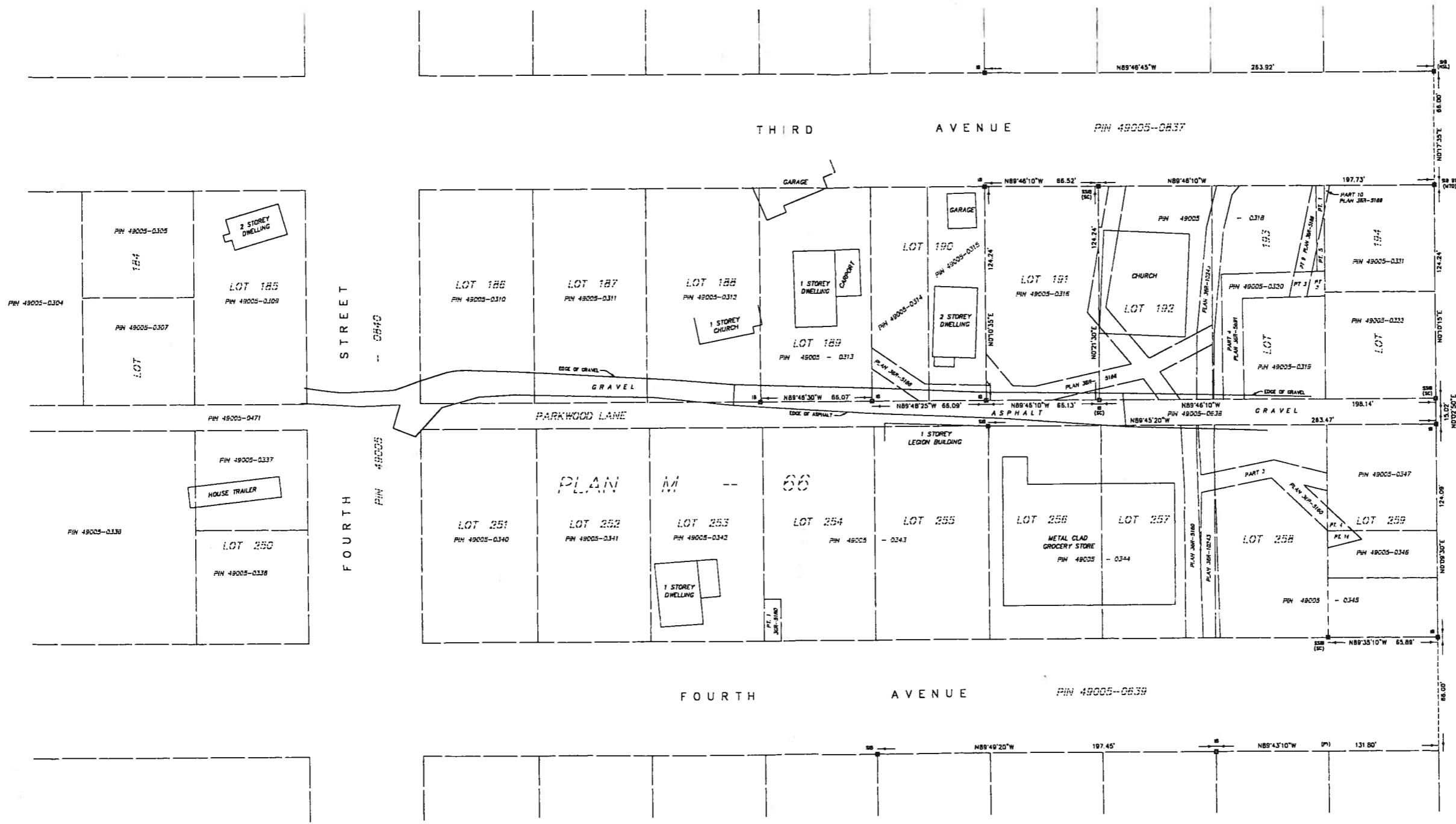
CARRIED AMENDED DEFEATED DEFERRED

Declaration of Conflict of Interest:

MAYOR: [Signature]

SKETCH SHOWING
 LOCATION OF TRAVELLED ROAD
 LOTS 186 TO 193 & PARKWOOD LANE
 REGISTERED PLAN M-66

TOWNSHIP OF TEMAGAMI
 DISTRICT OF NIPISSING
 SEPTEMBER 10, 2008



THE KING'S HIGHWAY NO. 11

- LEGEND**
- DENOTES PLANTED
 - DENOTES FOUND
 - ▨ DENOTES IRON BAR
 - BC DENOTES BRONZE CAP IN ROCK
 - SIB DENOTES STANDARD IRON BAR
 - SSB DENOTES SHORT STANDARD IRON BAR
 - P DENOTES REGISTERED PLAN 368-5186
 - P1 DENOTES REGISTERED PLAN 368-5180
 - SC DENOTES H. SUTCLIFFE LTD.

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 Ontario Land Surveyors
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PL. BY CM SCALE 1" = 30' PLAN 7-187
 CTD BY SWY JOB No. SMO6039 NOTES On 2191/Pg 91-93