
MEETING TYPE: Special Council Meeting
MEETING DATE: September 12, 2023
AUTHOR: Scott Unser, Public Works Manager
DEPARTMENT: Engineering and Environmental Services
ITEM TITLE: Encroachment Permit E2023-003, 10851 Maddock Avenue
DESCRIPTION: Permit retaining wall encroachment at 10851 Maddock Avenue

QUESTION

Does Council wish to permit the encroachment of the retaining walls in the District Right-of-Way at 10851 Maddock Avenue?

OPTIONS

- A. THAT the owners of the property having a civic address of 10851 Maddock Avenue, legally described as Lot A, Plan KAP88573, Section 17, Township 20, Osoyoos Div of Yale Land District, (the “Applicant”) be authorized to encroach on the District’s Right-of-Way, with constructed retaining walls;
AND THAT prior to issuance of an Encroachment Permit, the Applicant be required to register a Long-Term Encroachment Agreement and Covenant on Title.
- B. THAT the owners of the property having a civic address of 10851 Maddock Avenue, legally described as Lot A, Plan KAP88573, Section 17, Township 20, Osoyoos Div of Yale Land District, (the “Applicant”), be authorized to encroach on the District’s Right-of-Way, with constructed retaining walls;
AND THAT the registration of a Long-Term Encroachment Agreement and Covenant on Title not be required.
- C. THAT the owners of the property having a civic address of 10851 Maddock Avenue, legally described as Lot A, Plan KAP88573, Section 17, Township 20, Osoyoos Div of Yale Land District, (the “Applicant”) be directed to remove the encroachment of constructed retaining walls on the District’s Right-of-Way.

EXECUTIVE SUMMARY

District Engineering staff were contacted by the owner and contractor regarding permissions required to construct retaining walls at 10851 Maddock Avenue in May of 2023. Staff conducted a site visit and requested a design drawing. At the time of site visit, it was noted that proposed landscape retaining walls will encroach onto the District Right- of- Way. The applicant is aiming to improve the access and drainage on a portion of the unopened unmaintained section of Maddock Avenue that is in use as their driveway. An Encroachment Permit application has been submitted, which includes a Design drawing that is attached for reference. Council can require that any Encroachment permit issued under Council’s authority, by way of Highways Bylaw 1189, 2022, include a Section 219 Covenant to be registered on title of the property.

DESIRED BENEFIT

Resolve the encroachment and, if permitted, formalize the legal responsibilities of the encroachment through the registration of a Long-Term Encroachment Agreement Covenant on title.

STRATEGIC RELEVANCE AND COMMUNITY SUSTAINABILITY

Development on the east side of Maddock Avenue presents challenging constraints due to the natural topography. The proposed retaining walls will encroach by approximately 2 metres, however, the retaining walls will address slope stability, drainage and driveway access in an effective manner.

By way of Section 219 Covenants, the District can regulate long-term encroachments and manage associated legal responsibilities and risks. If necessary for future works, the District may invoke the termination clause in the Covenant at any time.

BACKGROUND/HISTORY

- The Applicant initiated their request to build a retaining wall in May of 2023. District staff visited the site on 2 occasions to ensure the wall design meets District standards.
- The residence on 10851 Maddock Ave. predates incorporation of the District. There is no Access Permit on file.
- The portion of Maddock Avenue adjacent to this property is public road but is considered unopened and unmaintained by the District. The area serves as a driveway access for two residences and is their responsibility to maintain.
- The owner has constructed a retaining wall on their property and is awaiting approval prior to constructing in the District Right-of-Way.



Existing driveway and rock walls per inspection on June 2023.

DISCUSSION/ANALYSIS

APPLICABLE LEGISLATION AND POLICIES

Highways Bylaw 1189, 2022, applies specifically to regulating Encroachment, and Section 219 of the Land Title Act authorizes the use of covenants by municipal government. Section 219 covenants run with the land and ensure the District's interests are protected over time and throughout any changes in ownership of the land. Highways Bylaw 1189, 2022, speaks to encroachments and prescribes Council authorization of long term surface encroachments.

IMPACT ON INFRASTRUCTURE OR MUNICIPAL SERVICES

The retaining wall, as designed, does not currently impact District infrastructure or operations.

IMPACT ON STAFF CAPACITY AND FINANCIAL RESOURCES

Regular staff time and resources have been used to process the application.

Respectfully Submitted,
Scott Unser, Public Works Manager

Report Approval Details

Document Title:	10851 Maddock Avenue - Encroachment Permit E2023-003.docx
Attachments:	- 05.Toby Smith_Maddock Avenue_May24.pdf
Final Approval Date:	Sep 5, 2023

This report and all of its attachments were approved and signed as outlined below:

Matthew Salmon, Director of Engineering and Environmental Services - Sep 5, 2023 - 12:21 PM

Reyna Seabrook, Director of Corporate Services - Sep 5, 2023 - 1:52 PM

No Signature found

Trevor James, CFO, Director of Finance & Administration - Sep 5, 2023 - 3:19 PM

No Signature - Task assigned to Tanya Garost, Chief Administrative Officer was completed by assistant Kelly McIntosh, Executive Coordinator

Tanya Garost, Chief Administrative Officer - Sep 5, 2023 - 3:49 PM