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**MEETING TYPE AND DATE:** REGULAR COUNCIL MEETING – DECEMBER 21, 2021  
**AUTHOR:** EVAN SMITH, ENGINEERING TECHNICIAN II  
**SUBJECT:** 17073 CORAL BEACH ROAD - CROSSING AGREEMENT COVENANT

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**ESSENTIAL QUESTION:**

Does Council wish to permit the unauthorized encroachment of the retaining wall in the District Road Dedication at 17073 Coral Beach Road?

**OPTIONS:**

- A. THAT the owners of the property having a civic address of 17073 Coral Beach Road, legally described as Lot 41, Plan KAP11565, Section 17, Township 14, Osoyoos Div of Yale Land District, (the “Applicant”) be permitted to construct a retaining wall within the District’s Road Dedication subject to the following conditions:
- prior to proceeding with construction, the Applicant is required to register a Crossing Agreement Covenant on Title.
- B. THAT the owners of the property having a civic address of 17073 Coral Beach Road, legally described as Lot 41, Plan KAP11565, Section 17, Township 14, Osoyoos Div of Yale Land District, (the “Applicant”) be permitted to construct a retaining wall within the District’s Road Dedication without entering into a Crossing Agreement with the District subject to the following conditions:
- prior to proceeding with construction, the Applicant is required to submit a complete design of the retaining wall for approval by District Staff.
- C. THAT the owners of the property having a civic address of 17073 Coral Beach Road, legally described as Lot 41, Plan KAP11565, Section 17, Township 14, Osoyoos Div of Yale Land District, (the “Applicant”) be directed to remove the encroachments within the District’s Road Dedication.

**EXECUTIVE SUMMARY:**

**Key Information:**

The current house was constructed in 2017 (BC Assessment). An Access Permit was applied for and approved as part of the 2017 Building Permit application; the driveway was designed to be compliant with the Highway Access and Driveway Regulation Bylaw and constructed with a gravel surface and landscaped side slopes in District Road Dedication (Figure 1).

In November 2021, the Owner was found to be altering the existing landscaped side slope by building a 3-foot retaining wall on District Road Dedication without permission (Figure 2-4). During a subsequent review of the constructed driveway it was identified that the driveway was not constructed to the design approved by the 2017 Access Permit and was not compliant with the Access Bylaw or the approved Access Permit. The Owner was instructed to apply for a new Access Permit to trigger a review of the intended works.

According to the District's Highways and Boulevards Policy – Section 3: Permanent structure, such as retaining walls, fencing or private signs, or large rocks and pieces of wood are prohibited in the boulevard or Road Dedication.

**Relevant Observations:**

Majority of homes on the east side of Coral Beach Road have a steep driveway due to the natural topography. The driveway side slope for 17073 Coral Beach Road, which resides in District Road Dedication, extends to the edge of asphalt. By constructing a 3-foot retaining wall, the applicant is increasing the slope stability and creating a gravel shoulder along Coral Beach Road. The proposed driveway is considered non-compliant with the Access Bylaw due to the grade exceeding 2% for the first 6 meters. The Applicant will be required to register an Access Covenant on Title regardless of Council's decision to allow the retaining wall encroachment.

**Strategic Questions:**

1. Does Council wish to formally permit the existing encroachment?
2. Does Council wish to formalize the legal responsibilities of the encroachment through the registration of a Crossing Agreement Covenant on Title.

**Strategic Relevance & Community Sustainability:**

The District requires a tool to regulate long-term encroachments and manage associated legal responsibilities. The existing encroachment at 17073 Coral Beach Road does not currently affect any District utilities. If the District wanted to install sanitary sewer or upgrade the watermain on Coral Beach Road in the future, the District may evoke the termination clause in the Crossing Agreement Covenant at any time if required. The proposed retaining wall encroachment in the District's Road Dedication will create larger area of gravel shoulder typically available on Coral Beach Road.

**Key Result:**

Provide safe access to 17073 Coral Beach Road and formalize the legal responsibilities of the encroachment and non-compliant driveway grades through the registration of a Crossing Agreement Covenant and Access Covenant on Title.

**Desired Benefit of Key Result:**

Registering the Crossing Agreement Covenant and Access Covenant with Land Titles will allow the Covenants to remain with the property ensuring the legal responsibilities transfer to any subsequent owners of 17073 Coral Beach Road.

**Requisites:**

All works within the Road Dedication will be approved by the District prior to construction.

**BACKGROUND/HISTORY**

- In May 2017, An Access Permit was granted to 17073 Coral Beach Road for a driveway design which met the Highway Access and Driveway Regulation Bylaw. No final inspection was required.
- The Owner constructed the driveway at a steeper grade than originally specified. Current driveway is not compliant with the Access Bylaw.
- In November 2021, District Staff witnessed work being constructed in the District's Road Dedication without the required permits. The Applicant was attempting to construct a retaining wall which supports the driveway and landscaped slope (Figures 2-4).
- Once notified of the requirements, the applicant met District Engineering Staff onsite to discuss the intent of their driveway realignment.
- The Applicant applied for a new Access Permit on November 18<sup>th</sup>, 2021. The issuance of the Access Permit is pending Council's decision on the retaining wall encroachment and the registration of an Access Covenant on Title.

## **DISCUSSION/ANALYSIS**

### **Legislation & Applicable Policies**

The District currently has one Bylaw and one Council Policy that regulate encroachments within the Road Dedication. The pertinent details of each are as follows:

The Highways and Boulevard Policy No. 11.117 governs the principles to be followed regarding encroachments on public road dedication and states that permanent structures, such as retaining walls, fencing or private signs, or large rocks and pieces of wood are prohibited in the boulevard or road right of way.

The Encroachment Bylaw 624, 2007, only allows encroachments to exist for a maximum of 5 years, which does not effectively resolve longer term encroachments such as this.

### **Technical Considerations:**

- **Impact on Infrastructure and Other Municipal Services**

17073 Coral Beach Road's current driveway alignment extends to Coral Beach Road's edge of asphalt. The drainage system on Coral Beach Road consists of gravel swales fronting the subject property. Allowing the applicant to construct the 3-foot retaining wall would create a gravel shoulder area for stormwater to exit the roadway.

- **Impact on Staff Capacity and Financial Resources (Cost/Benefit Analysis)**

Impact on staff capacity and financial resources is considered to be negligible.

## ANALYSIS OF OPTIONS FOR CONSIDERATION:

**Option A:** The dwelling at 17073 Coral Beach Road residence is situated at a higher elevation than the road, which creates the need for steep driveway. The current location of the house does not allow for a driveway alignment which would meet District Highway Access and Driveway Bylaw 628, 2007. Resolving any of these existing conditions would result in significant construction works at considerable expense to the owner. Registering the Crossing Agreement Covenant and Access Covenant will ensure the property owners are legally responsible for the encroachment and steep grade while allowing the driveway to remain. Staff prefer this option as it is least impactful on the property owners and mitigates the District's potential liability.

**Option B:** Without a Crossing Agreement Covenant, the District would continue to be liable for a portion of the retaining wall located within the Road Dedication.

**Option C:** The existing encroachments consist of a driveway and fill slope. Should Council decide to remove the encroachment, significant earthworks would be required. In this case a driveway would likely be unfeasible and access to the house would have to be on foot be via a pathway.

Respectfully Submitted,

Evan Smith, P.Eng.  
Engineering Technician II  
Development and Environmental Services

This report has been prepared with the collaboration of the following individuals:

COLLABORATORS	
TITLE	NAME
Public Works Manager	Scott Unser

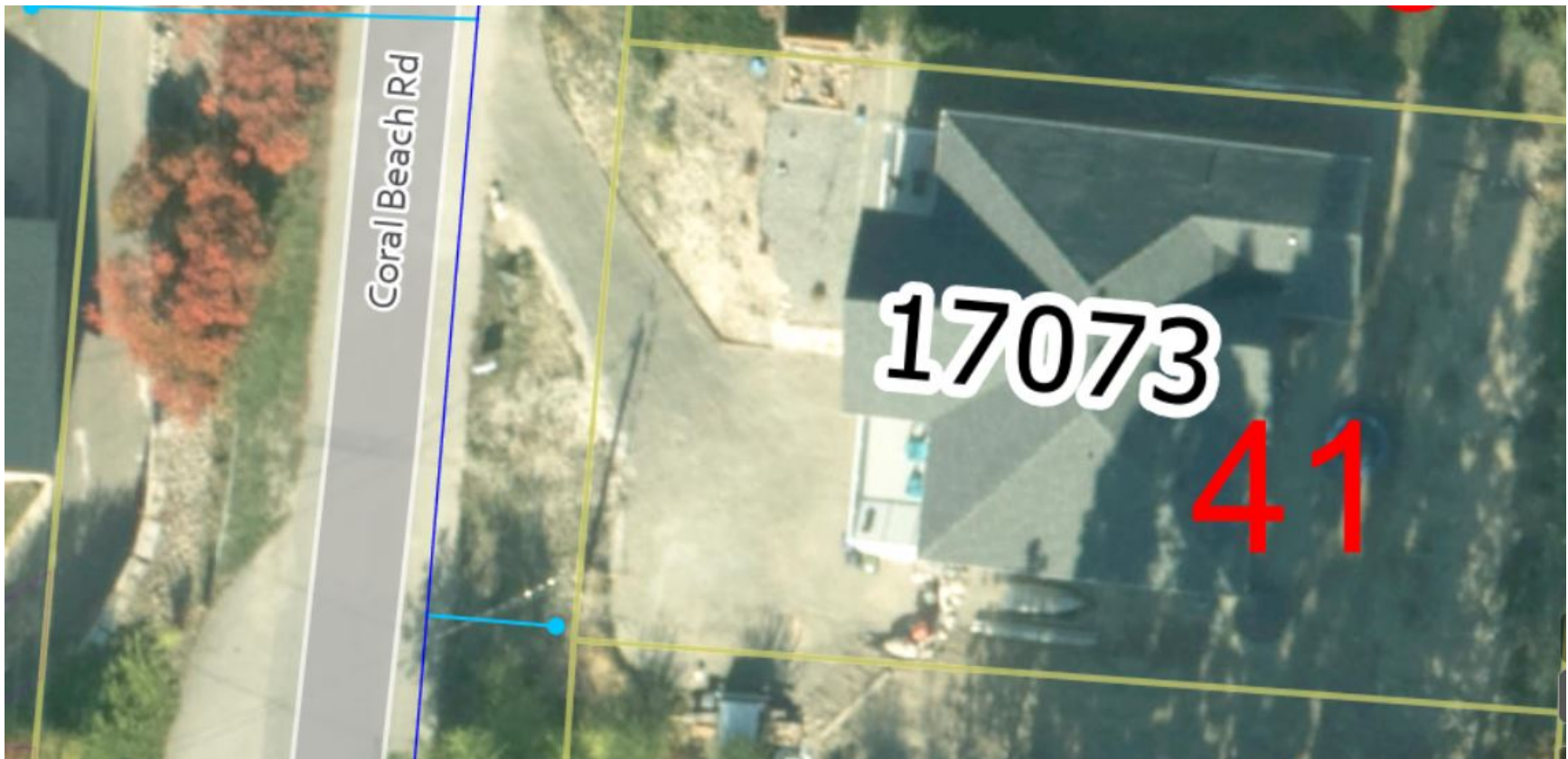
This report has been prepared in consultation with the following departments:

CONCURRENCES	
DEPARTMENT	NAME
Chief Administrative Officer	Tanya Garost
Director of Engineering and Environmental Services	Matthew Salmon

## ATTACHMENTS:

Figures 1-4

**Request For Council Decision – December 21<sup>st</sup>, 2021**  
**17073 Coral Beach Road – Retaining Wall Encroachment**



*Figure 1: Orthophoto of 17073 Coral Beach Road (GIS 2018).*





*Figure 2: 17073 Coral Beach Road driveway (looking south). Existing driveway toe of slope extends to edge of pavement.*





*Figure 3: 17073 Coral Beach Road; Stone retaining wall displayed is at 50% completion.*





*Figure 4: 17073 Coral Beach Road; Stone retaining wall displayed is at 50% completion.*