

CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2001-60

Being a By-law regarding a Highway Encroachment.

WHEREAS James Taylor and Vicky Taylor owners of 49 Levergood Road in the Town of Amherstburg, more particularly described in Schedule "A", to the agreement, have applied to the Town of Amherstburg for permission to continue the encroachment of a septic tank system under the southerly portion of Levergood Road right-of-way.

AND WHEREAS the owners intend to proceed with an upgrade to the septic system in accordance with Windsor-Essex County Health Unit specifications.

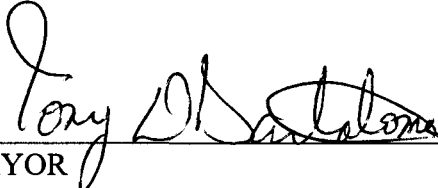
AND WHEREAS the length of the encroachment required is approximately 28 feet, and is more described in Schedule "B" to the agreement.


AND WHEREAS Council deems it expedient to authorize and permit the continuation and upgrade of same as per the agreement attached hereto.

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF
THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:**

1. That the owners of the property at 49 Levergood Road be authorized and permitted to encroach upon Levergood Road as described and in accordance with the attached agreement.
2. That the Mayor and Clerk be and they are hereby authorized to sign the subject agreement and affix the Corporate seal thereto.
3. This By-law shall come into force and effect on the date of the final passing thereof.

Read a first, second and third time and finally passed this 10th day of December 2001.


MAYOR


CLERK

1st Reading: December 10, 2001

2nd Reading: December 10, 2001

3rd Reading: December 10, 2001

THIS AGREEMENT made in triplicate this day of

B E T W E E N:

THE CORPORATION OF THE TOWN OF AMHERSTBURG

Hereinafter called the **CORPORATION** of the **FIRST PART**;

and

JAMES TAYLOR and VICKY TAYLOR

Hereinafter called the **LICENSEE** of the **SECOND PART**

WHEREAS the Licensee is the registered owner of certain lands and premises in the Town of Amherstburg, County of Essex and Province of Ontario, more particularly described in Schedule "A" annexed hereto and forming part of this agreement.

AND WHEREAS the Licensee has applied to the Corporation for permission to continue the encroachment of a septic tank system under the southerly portion of Erie Avenue in the Town of Amherstburg, which encroachment occupies and projects approximately 14 feet into the Erie Avenue right-of-way, and the length of the encroachment is approximately 28 feet and contains a portion of the Licensee's septic tank system and is used in conjunction with the adjoining lands and premises municipally known as 49 Levergood Road, in the said Town. The encroachment is more particularly described in Schedule "B" annexed hereto and forming part of this agreement.

NOW THEREFORE WITNESSETH THAT:

1. The Corporation permits the Licensee to occupy and use the public highway for the purpose of the encroachment for a maximum term not exceeding the lifetime of the encroaching structure. In the event of any disagreement as to the estimated or actual lifetime of such encroaching structure, the opinion of the Corporation's chief engineer shall prevail and be final and binding on the parties. Notwithstanding the foregoing, the term hereof shall automatically terminate and be at an end in the event that the portion of such public highway under encroachment, shall be closed or stopped up by the Corporation such as to no longer constitute a public highway.

2. RESERVED

3. The Licensee further covenants and agrees that the payment of the aforesaid fees may, in the discretion of the Corporation, be enforced in the same manner as property taxes payable in respect of the Schedule "A" lands.
4. The Licensee further covenants and agrees to maintain the said encroachment in good repair at all times and to the satisfaction of the Corporation.
5. The Licensee further covenants and agrees to obtain the necessary permits from all pertinent Departments of the Corporation prior to any work on the said parcel, and that Licensee shall comply with all federal, provincial and municipal legislation pertaining to the construction, maintenance, repair and existence of the encroachment.
6. It is expressly agreed that upon destruction, removal or replacement of the said building now erected upon the Schedule "A" lands, or upon partial destruction or damage to the said building from any cause including the voluntary act of the owner(s) thereof, to the extent of more than sixty percent (60%) of its assessed value, exclusive of its foundations, or upon breach by the Licensee of any of the

provisions of this agreement which breach shall not have been corrected by Licensee within 30 days of demand or such sooner time noted in such demand if in the Corporation's opinion such breach may adversely affect the public interest, the permission hereby granted shall, without any further action or notice and at the sole option of the Corporation, be terminated and at an end and the Corporation may require the Licensee to forthwith remove the said encroachment and restore the lands encroached upon to the satisfaction of the Corporation and upon failure so to do may itself do all things necessary for the removal of the said encroachment and for such purpose may enter upon the Schedule "A" lands and the expense of such removal, restoration and entry shall be paid by the Licensee forthwith upon demand and payment of such expenses may, in the discretion of the Corporation, be enforced in the same manner as property taxes payable in respect of the Schedule "A" lands and/or building.

7. The Licensee further covenants and agrees to pay to the Corporation any additional property taxes or other rates and charges, if any, levied or imposed on or in respect of the said portion of the public highway encroached upon or over by the said encroachment.
8. The Licensee further covenant sand agrees to assume the responsibility and to pay for any additional costs or charges which the Corporation, and its respective successors and assigns, may reasonably incur in the future installation or relocation of their services or utility plants by by reason of such encroachment and the payment of such costs may be enforced in the same manner provided in paragraph 3 of this agreement.
9. It is further understood and agreed by and between the Parties hereto that if due to any emergency so declared by the Corporation's chief engineer, vacant possession of the Schedule "B" lands is required by the Corporation (whether in its own behalf or at the request of the utility providers mentioned in this Agreement) for the purpose of installing, repairing or maintaining watermains or pipes, wires, conduits, sewers or other services or utilities, the Corporation may give notice to the Licensee forthwith at any time to forthwith deliver vacant possession of the Schedule "B"

lands to the Corporation and to therefrom remove all chattels, equipment, fixtures, parking areas, buildings and structures, as the case may be, installed or located therein or thereupon by the Licensee, and upon such notice having been given, the Licensee shall forthwith deliver such clear vacant possession of the Schedule "B" lands to the Corporation, provided that if the Licensee fails so to do, the Licensee shall pay to the Corporation or any such service provider any costs or additional costs, expenses or damages incurred by the Corporation or any such service provider by reason of the Licensee's failure. A notice given under this section shall not constitute a termination of this Agreement but shall be a suspension thereof which shall be in force and effect during the time the work aforesaid is being carried out, and following the completion of such work this Agreement shall again come into and be in full force and effect subject to all the terms, covenants, conditions and provisos of this Agreement.

10. It is further understood and agreed by and between the parties hereto that if the said portion of the public highway encroached upon is required by the Corporation for its purposes, the Licensee shall remove the said encroachment and restore the said public highway to the condition of the surrounding area at their own expense on sixty (60) days written notice from the Corporation so to do; provided that if the Licensee fails to remove the said encroachment and restore as aforesaid, the Corporation may enter upon the said lands and premises of the Licensee and remove the said encroachment and restore the lands encroached upon and the expense of such removal and restoration shall be paid by the Licensee forthwith on demand, or at the option of the Corporation the payment of such expense may be enforced in the same manner provided in paragraph 3 of this agreement.
11. It is further understood and agreed by and between the parties hereto that if the Corporation at any time exercises its power or right to terminate this agreement or demand the removal of the encroachment or suspend or revoke the permission granted herein, the Corporation shall not be liable to pay any compensation for any loss, costs or damages which may be incurred by the Licensee or any person claiming under the Licensee by reason of such termination, demand or revocation.

12. The Licensee further covenants and agrees to defend, indemnify and save harmless the Corporation from and against all loss, costs or damages which it may suffer or be put to and from and against all claims or actions which may be made or brought against the Corporation by reason of the said encroachment, its construction, existence, repair or maintenance or resulting therefrom in any way whatsoever, unless such loss, costs, damages, claims or actions arise due to the negligence of the Corporation, or the Corporation's officers, agents or employees.
13. The Licensee further covenants and agrees to provide and maintain public liability and property damage insurance in a form (containing endorsements naming the Corporation as an additional named insured and providing a cross-liability/separation of insureds clause) in the amount of at least TWO MILLION DOLLARS (\$2,000,000.00) and satisfactory in form and content (including policy limit) to the Corporation's Director, Audit & Consulting Services, and a true copy of the said insurance policy shall be filed with the Clerk of the Corporation. Licensee acknowledges and agrees that the Corporation shall be entitled to require that such policy limit amount be increased from time to time during the term hereof to take into account inflationary pressures and relevant judicial awards.
14. It is further understood and agreed by and between the parties hereto that by the execution of these presents, the Licensee does hereby expressly and completely release the Corporation from any and all liabilities, suits, claims and demands (whether for property damage or for personal injury or death and whether founded in tort, contract or quasi-contract) which at any time might be exerted by the Licensee arising out of the existence of the encroachment in the public highway or out of any act or omission of the Corporation, unless the liability, suit, claim or demand arises due to the negligence of the Corporation or the Corporation's officers, agents or employees.
15. It is further understood and agreed by and between the parties hereto that if the Licensee agrees to sell the said lands described in Schedule "A" hereto annexed, the Licensee shall give notice to the Corporation of such sale at least ten (10) days prior to the completion thereto.

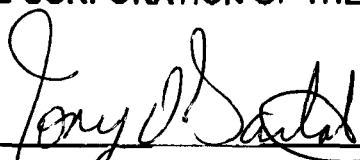
16. It is further understood and agreed by and between the parties hereto that all notices, demands and requests which may be or are required to be given by the Corporation to the Licensee or by the Licensee to the Corporation under the provisions of this agreement shall be in writing and may be mailed or delivered and shall be addressed in the case of the Licensee to the Licensee at Licensee's address for service depicted on the Document General attached hereto, and in the case of the Corporation, to the Clerk, 271 Sandwich St.S.,Box 159, Amherstburg, Ontario N9V 2Z3, or to such other address as either party may from time to time designated by written notice to the other.
17. It is further understood and agreed by and between the parties hereto that notwithstanding anything hereinbefore or hereinafter contained and further notwithstanding the execution of this agreement, this agreement shall not go into force or have any effect unless and until Schedule "B" (satisfactory in form to the Corporation's Clerk) has been incorporated herein and it (or notice thereof) has been registered by and at the expense of the Licensee at the Land Registry Office for Essex (No.12) and a registered copy thereof delivered to the Clerk of the Corporation.
18. It is further understood and agreed between the parties hereto that this agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns, it being acknowledged that in the event of the Licensee selling, conveying, transferring or entering into an agreement for sale or of transfer of any title to or interest in part or all of the Schedule "A" lands to a purchaser or transferee not approved of in writing by the Corporation (which approval may not be unreasonably withheld by the Corporation, but may be made subject to conditions including a condition that such purchaser or transferee enter into a fresh encroachment agreement with the Corporation in the Corporation's then standard or usual form), the Corporation may forthwith terminate this agreement or demand the immediate removal of the encroachment or forthwith revoke the permission granted for the encroachment, and may enter upon the Schedule "A" lands in whole or in part and

remove the said encroachment and restore the lands encroached upon and the expense of such removal and restoration shall be paid by the Licensee or by such unapproved purchaser or transferee forthwith on demand or, at the Corporation;'s option, the payment of such expense may be enforced in the same manner as property taxes payable in respect of the Schedule "A" lands; and the Corporation shall not be liable to pay any compensation for any loss, costs or damages which may be incurred by the Licensee or by such unapproved purchaser or transferee by reason of such termination, demand, revocation, entry, removal, or restoration.

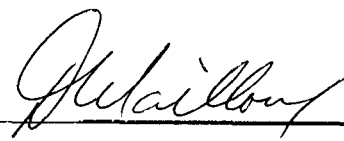
PROVIDED HOWEVER, that notwithstanding the foregoing, the permission to encroach and this agreement shall be assignable to and assumable by a bona fide mortgagee or chargee of the Schedule "A" lands.

THE PARTIES HERETO have executed and delivered this agreement as of the day and year first hereinbefore written.


THE CORPORATION OF THE TOWN OF AMHERSTBURG



Tony DiBartolomeo (Mayor)



David Mailloux (Clerk)



James Taylor



Vicky Taylor

Schedule 'A'

Lot 1, Plan 1502, Town of Amherstburg, County of Essex

