

THE CORPORATION OF THE TOWN OF AMHERSTBURG

By-law 2009-16

A By-law to provide for the transfer of easement for an encroachment

WHEREAS 1603966 Ontario Limited has developed a Condominium known as Essex Condo # 124 on the property municipally known as 252 Dalhousie Street;

AND WHEREAS the transfer of easement for encroachments is required respecting property being Plan 1 Pt Lots 8 and 9 RP 12R21823 Parts 1 to 3, having been constructed over Part 1 and 2, Lot 8 and 9 and closed Richmond Street;

AND WHEREAS the benefitting lands are described as Plan 1 Pt Lots 8 and 9 and Part 1 and 2, Plan 12R 23860.

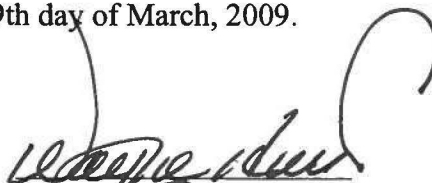

AND WHEREAS the roof canopy is required to comply with the appropriate section of the Ontario Building Code to provide fire protection to the residential units above;

AND WHEREAS the Council deems it appropriate to grant the said transfer of easement for encroachment to allow for the continuation of the canopied entrance on Richmond Street Parkland at 252 Dalhousie Street;

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

1. That a Transfer of Easement for Encroachment in the form annexed hereto and referred to as Schedule "A" be granted to the benefitting lands being Plan 1 Pt Lots 8 and 9 RP 12R21823 Parts 1 to 3.
2. That the costs associated with the transfer of easement for encroachment will be the responsibility of the transferee.
3. This By-law shall come into force and effect upon the date of final passage.

Read a first, second and third time and finally passed this 9th day of March, 2009.


Mayor Wayne Hurst

Clerk Pamela Malott

Schedule A

The Transferor hereby grants to the Transferee, its servants, agents and successors in title to the part of Lots 8 and 9 on the west side of Dalhousie Street, Registered Plan 1 and that part of Richmond Street (closed by Instrument No. CE161813) Registered Plan 2, designated as Parts 1, Plan 12R 23860, in the Town of Amherstburg, in the County of Essex and Province of Ontario (hereinafter called the "Benefitting Lands") a free, unencumbered, uninterrupted and exclusive encroachment in perpetuity on, in, over, under, across, along and through the lands described herein being that Part of Dalhousie Street, Plan 1 Pt. Lot 8 and 9, RP 12R21823 Parts 1 to 3, in the Town of Amherstburg, in the County of Essex and Province of Ontario (the "subject lands") as appurtenant to the Benefitting Lands, for the purpose of allowing for the continuation of the canopied entrance on Richmond St. Parkland.

With respect to Part 1, Plan 12R 23860:

A structure in the form of a vinyl canopy and rod iron over interconnected fencing with three architectural pillars has been installed at the site.

The Transferee covenants to fill in all excavations and restore the surface of the subject lands immediately after performing any work therein or thereon, to the satisfaction of the Corporation of the Town of Amherstburg.

Notwithstanding any rule of law or equity, and even though the works and materials or some of them may become affixed to or annexed to the subject lands, the title to such works and materials shall nevertheless remain in the Transferee and its successors in title to the Benefitting Lands, and the Transferor shall have not interest in such works and materials, nor any responsibility for the same.

The Transferee, on behalf of itself and its successors in title to the Benefitting Lands, covenants and agrees to maintain all of the works and materials permitted by this encroachment in a state of good repair to the satisfaction of the Corporation of the Town of Amherstburg, and to indemnify and save the Transferor, its successors and assigns harmless from any and all claims, demands, damages and causes of action that may arise by reason of or stemming from the works and materials permitted by this easement, howsoever caused.

In the event of the destruction or demolition of the building to be constructed on the benefitting lands, unless such building is replaced within a reasonable time as determined by the Corporation of the Town of Amherstburg after such demolition or destruction, the Transferee, on behalf of itself and its successors in title to the Benefitting Lands, covenants and agrees to remove all of the works and materials permitted by this encroachment from the subject lands to the satisfaction of the Corporation of the Town of Amherstburg, to restore the subject lands to their state prior to the installation of such works and materials, and to grant to the Transferor or its successors a complete and final release of this encroachment.