

## **Encroachment Agreement 30 Denton Avenue**

<b>Date:</b>	April 28, 2009
<b>To:</b>	Scarborough Community Council
<b>From:</b>	Chief Corporate Officer
<b>Wards:</b>	Ward 35 – Scarborough Southwest
<b>Reference Number:</b>	P:\2009\Internal Services\F&re\Sc09045F&re – (AFS 9711)

### **SUMMARY**

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This report is about a matter for which the Scarborough Community Council has delegated authority from City Council to make a final decision.

The purpose of this report is to seek authority to enter into an Encroachment Agreement (the “Agreement”) with Cambridge Place Apartments Ltd., the owner of the property municipally known as 30 Denton Avenue (the “Owner”). Their retaining wall encroaches onto City land.

### **RECOMMENDATIONS**

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**The Chief Corporate Officer recommends that:**

1. Approve the Agreement with the Owner of 30 Denton Avenue for a term of 10 years commencing on August 1, 2009, with an option to renew for a further 10 years, under terms and conditions as the Chief Corporate Officer deems appropriate and in a form acceptable to the City Solicitor, including but not limited to the following:
  - a) The Owner indemnify the City and assume all liability relating in any way to the encroachment and provides an insurance policy for such liability for; the lifetime of the Agreement in a form as approved by the City Solicitor, in an amount no less than \$5,000,000.00 or such greater amount as the City Solicitor deems appropriate;
  - b) The Owner maintains the encroachment at their sole expense, in good repair and in a condition satisfactory to the Chief Corporate Officer and

will not make any additions or modifications to the encroachment beyond what is allowed under the terms of the Agreement; and

- c) The Owner shall pay all applicable fees, including but not limited to licence, legal, administration, and registration fees.
2. In the event of a sale or transfer of the property, the City Solicitor be authorized to extend the Agreement with the new owner subject to the approval of the Chief Corporate Officer.

### **Financial Impact**

The total revenue from this Agreement over the 10 year term is estimated to be approximately \$11,850.00, net of G.S.T. which shall be payable in annual instalments.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

### **ISSUE BACKGROUND**

The property is a multi-storey apartment building located near the corner of Denton Avenue and Victoria Park Avenue adjacent to the Victoria Park Subway Station.

During a site inspection of the Victoria Park Station, TTC staff discovered that a retaining wall which had been built on an adjoining property encroaches onto City lands. City staff were contacted by TTC staff and asked to produce an accurate survey of the encroachment area.

### **COMMENTS**

A site inspection determined that the retaining wall (measuring 23.04m in length by 0.2 m in width) forms part of an underground garage wall and integrated concrete maintenance shed running alongside the easterly limits of the TTC access road along the property line with 30 Denton Avenue.

There is a chain link fence with an encroachment area measuring 1.08 m<sup>2</sup> along the northern limit of the retaining wall. As well, a portion of the retaining wall at the southern end must be re-built as it has crumbled and collapsed; this will, like the fence, be re-built and setback within the property limits. The Owner has agreed to re-locate the chain link fence and crumbling south wall as soon as possible. The garage wall is the subject of this encroachment Agreement.

The encroachment does not pose a hazard to the new construction at the subway station or the ongoing TTC operations.

City staff has determined that the City's interests would be properly protected by the documentation of an Agreement between the City and the Owner of the property.

The licence fees for the Agreement are considered fair and reasonable.

## **CONTACT**

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## **SIGNATURE**

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Bruce Bowes, P. Eng.  
Chief Corporate Officer

### **Attachments:**

Appendix 1: Site Area