

BY-LAW NUMBER 17-52

OF

THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW

Being a by-law to establish an encroachment agreement between owners of 6906 Regent Street (Nathan & Deana Metus) and the Corporation of the Township of Clearview

WHEREAS Section 9 of the Municipal Act, R.S.O. 2001 provides that a municipality has the capacity, rights, power and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed expedient to permit an encroachment onto the Elgin Street road allowance (former Township of Nottawasaga), now in the Township of Clearview;

NOW THEREFORE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW HEREBY ENACTS AS FOLLOWS:

1. That an encroachment agreement, attached hereto as Schedule "A" and forming part of this By-law, be entered into with Nathan & Deana Metus.
2. That a map of 6906 Regent Street and Elgin Street road allowance be attached as Schedule "B".
3. That the Mayor and Clerk be authorized to execute the agreement on behalf of the Township of Clearview.
4. That this by-law shall come into force and effect on the date of final passing thereof.

By-law Number 17-52 read a first, second and third time and finally passed this 26th day June, 2017.

Bruce Bird
DEPUTY MAYOR

Pamela Yutts
DIRECTOR OF LEGISLATIVE SERVICES/CLERK

SCHEDULE "A"

THIS AGREEMENT made this 26th day of June, 2017

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW

(Hereinafter called the "Township") of the First Part,

- AND -

NATHAN AND DEANA METUS

(Hereinafter called the "Owner") of the Second Part.

WHEREAS Nathan & Deana Metus are the owners of the lands described as, Plan 110, Blk 38, Part 1, Plan 51R-38185 (former Nottawasaga Township), in the Township of Clearview, in the County of Simcoe, situated municipally at 6906 Regent St.; and

WHEREAS a driveway on the unopened portion of Elgin Street is required for 6906 Regent St.;

WHEREAS the Owners have made application to the Township for the right and licence to maintain said encroachment and the Owners shall remove the encroachment from Elgin Street abutting the Owners' property within six (6) months of receiving notice from the Township to do so;

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the mutual covenants and agreements hereinafter contained, together with other good and valuable consideration (the receipt of which is acknowledged), the Township and the Owners mutually covenant and agree as follows:

1. The Owners shall have the right and licence to keep the driveway on the unopened portion of Elgin Street (collectively referred to hereafter as the "Authorized Encroachment") in their present location, as depicted in a sketch attached hereto and marked as Schedule "A", encroaching from the Owners' lands described as Plan 110 Blk 38, Part 1, Plan 51R-38185 (former Nottawasaga Township), in the Township of Clearview, in the County of Simcoe onto Elgin Street. PROVIDED THAT the Owners shall remove the Authorized Encroachment from Elgin Street within six (6) months of receiving notice from the Township to do so and PROVIDED THAT this right and licence shall apply only for so long as the Authorized Encroachment on the property continue to stand.

2. The Owners shall have the right to perform normal repairs, maintenance and upkeep of the Authorized Encroachment.
3. No extension or enlargement of the Authorized Encroachment shall be permitted without the express written consent of the Township of Clearview.
4. In the event that the Authorized Encroachment are removed or demolished, singularly or collectively, any reconstruction shall be in accordance with the Township's Zoning By-law and other applicable laws, by-laws, regulations and policies in force and effect at the time of reconstruction.
5. Other than the right and licence referred to in Paragraph 1 hereof, the Owners shall not, pursuant to this agreement acquire any easement or other rights in and to those portions of Elgin Street onto which the Authorized Encroachment encroach.
6. In the event the existing water and sewer service to the subject property has to be repaired or replaced by the Township, the Township shall be responsible for the repair or replacement of said water or sewer service to within a reasonable distance from the Authorized Encroachment (so that the encroachment will not be damaged by the work done by the Township) and the Owners shall be responsible for the continuation of the repair or replacement work from that point.
7. The Owners shall notify the Township in writing of any change of ownership of any part or all of the lands more particularly described in Clause 1 hereof.
8. The Owners hereby release the Township from any and all liability and obligation for any and all loss, damage or injury, including death to persons, which happens as a result of or arises out of the Township granting this licence to the Owners.
9. The Owners hereby covenant and agree to indemnify and save harmless the Township from any and all liability, costs, causes of action and damage whatsoever arising out of the Township granting this licence to the Owners.
10. The Owners shall make no claim against the Township in respect of damage to said encroachment, arising from snow removal, road maintenance, or other such similar activities of the Township's employees or contractors on said street.

11. This Agreement shall endure to the benefit of and be binding upon the parties hereto, their heirs, executors, successors and assigns, respectively, as owners from time to time of all or any part of the lands more particularly described in Clause 1 hereof and Schedule "A" attached hereto.
12. It is the Owners' responsibility to store this document and ensure that it is brought to the attention of all mortgagees and future purchasers.
13. This Agreement may be registered on title to the lands affected, at the sole expense of the Owners.
14. The Owners each acknowledge that he or she:
 - a. Has received independent legal advice or has freely waived his or her right to obtain such advice;
 - b. Has read this Encroachment Agreement in its entirety and has full knowledge of the contents;
 - c. Understands his or her respective rights and obligations under this Agreement, the nature of this Agreement and the consequences of this Agreement;
 - d. Acknowledges that the terms of this Agreement are fair and reasonable;
 - e. Is entering into this Agreement without any undue influence, fraud, or coercion whatsoever, and
 - f. Is signing this Agreement voluntarily.

IN WITNESS WHEREOF The Corporation of The Township of Clearview and the Owners hereunto set and affix their respective hands, seal and corporate seal under the hands of their proper officers duly authorized in that behalf.

THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW

per: Barry Burton

Christopher Vanderkruys, Mayor
Barry Burton, Deputy Mayor

per: Pamela Fettes

Pamela Fettes, Legislative Services/Clerk

We have authority to bind the Corporation

**SIGNED, SEALED AND DELIVERED)
IN THE PRESENCE OF:)**

Deanna Metrus Melissa

Name of Owner

Witness Signature

Witness - PLEASE PRINT HERE

