



The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 12-2000

**BEING A BY-LAW TO AUTHORIZE THE ENTERING INTO OF AN
ENCROACHMENT AGREEMENT WITH THE ESTATE OF ANNA
EARLE TO PERMIT THE CONTINUED USE AND MAINTENANCE
OF A GARAGE WHICH ENCROACHES ON THE EAST SIDE OF
NORTH STREET (147 NORTH STREET) (LO7.290)**

WHEREAS Section 210(107) of the *Municipal Act*, R.S.O. 1990, Chapter M.45, as amended, provides that by-laws may be passed by the councils of local municipalities for allowing any person owning or occupying any building or other erection that by inadvertence has been wholly or partially erected upon any highway to maintain and use such erection thereon and for fixing such annual fee or charge as the council considers reasonable for such owner or occupant to pay for such privilege, and

WHEREAS Section 210(107)(a) of the said *Municipal Act* provides that such fee or charge forms a charge upon the land used in connection therewith and is payable and payment of it may be enforced in like manner as taxes are payable, and

WHEREAS the Estate of Anna Earle, as the owner of a building, part of which has, by inadvertence, been erected upon the east side of North Street, and which part of North Street as described in Schedule "B", has requested the Corporation of the Town of Fort Erie to permit the continuance of the said encroachment, and

WHEREAS Council, at its Committee Meeting held January 17, 2000 approved Report No. F-6-2000, authorizing the entry into an Encroachment Agreement with the Estate of Anna Earle to permit the continued use and maintenance of a garage which encroaches on the east side of North Street (147 North Street), and

WHEREAS the Council of the Corporation of the Town of Fort Erie deems it expedient to allow the said encroachment until such time as the said building shall have been demolished, removed or destroyed by fire or otherwise or until the part of the said highway so encroached upon is required for municipal purposes, whichever shall occur first, and

WHEREAS it is deemed necessary to fix an annual fee for the aforesaid owners to pay for such privilege;

NOW THEREFORE the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

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- (1) **THAT** subject to Section 2, authority be and it is hereby given for allowing the owners for the time being of the land described in Schedule "A" attached to and forming part of this by-law the privilege of maintaining and using the parts of the garage and the projections thereof now erected upon and over that part of North Street, which part of North Street is described in Schedule "B" attached hereto until such time as the said building shall have been demolished, removed or destroyed by fire or otherwise or until that part of the said highway so encroached upon is required for municipal purposes, whichever shall first occur.
- (2) **THAT** an annual fee of \$100.00 shall be charged and such fee forms a charge upon the land used in connection therewith and is payable and payment of it shall be enforced in like manner as taxes are payable, and the payment of them may be enforced, but nothing herein affects or limits the liability of the municipality for all damages sustained by any person by reason of such erection upon a highway.
- (3) **THAT** the entry by the Corporation of the Town of Fort Erie into an agreement with the Estate of Anna Earle under the terms and conditions as set out in Schedule "C" hereto annexed is hereby approved and authorized.
- (4) **THAT** the Mayor and Clerk be and each of them is hereby authorized to execute the agreement annexed to this by-law as Schedule "C" and any other documents necessary to implement the intent of this by-law and the agreement as set out in Schedule "C" annexed hereto and the Clerk is hereby authorized to affix the Corporate Seal thereto.
- (5) **THAT** upon passage of this by-law that it be duly registered in the local land registry office.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 24th DAY OF JANUARY, 2000.



MAYOR



CLERK

I, the Clerk, Carolyn J. Booth, of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 12-2000 of the said Town. Given under my hand and the seal of the said Corporation this _____ day of _____, 2000.

SCHEDULE "A"
TO
BY-LAW NO. 12-2000

LEGAL DESCRIPTION OF PROPERTY

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Town of Fort Erie in the Regional Municipality of Niagara, formerly in the Township of Bertie in the County of Welland and being composed of Part Lot 24, according to Registered Plan Thomson and Lewis, now known as Plan 502 in the Town of Fort Erie and more particularly designated as Part on Reference Plan 59R-

SCHEDULE "B"
TO
BY-LAW NO. 12-2000

DESCRIPTION OF ENCROACHMENT

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Town of Fort Erie in the Regional Municipality of Niagara, formerly in the Township of Bertie in the County of Welland and being composed of Part Lot 24, according to Registered Plan Thomson and Lewis, now known as Plan 502 in the Town of Fort Erie and more particularly designated as Part on Reference Plan 59R-

SCHEDULE "C" TO BY-LAW NO. 12-2000

This Agreement made in triplicate this day of , 2000.

B E T W E E N:

THE CORPORATION OF THE TOWN OF FORT ERIE
hereinafter called the "Town"
OF THE FIRST PART;

- AND -

THE ESTATE OF ANNA EARLE
hereinafter called the "Owner"
OF THE SECOND PART;

WHEREAS a part of the building of the Owner erected on the land described in Appendix "A" attached hereto have, by inadvertence, been erected on part of the east side of North Street, a highway in the Town of Fort Erie, which encroachment is more particularly described in Appendix "B" hereto attached; and

WHEREAS the said Owner has requested the Town to permit the continuation of the encroachment of the said building; and

NOW THEREFORE in consideration of the premises and the covenants and agreements hereinafter to be performed, the parties hereto COVENANT AND AGREE as follows:

1. The Town shall allow the Owner for the time being of the land described in Appendix "A" attached hereto the privilege of maintaining and using those parts of the said building now erected upon and over that part of North Street, in the Town of Fort Erie, more particularly described in Appendix "B" attached hereto until such time as the said building shall be demolished, removed or destroyed by fire or otherwise or until any part or parts of the said highway or highways so encroached upon is or are required by the Town for any municipal purposes, whichever shall first occur.

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2. The Owner COVENANTS AND AGREES to pay to the Town an annual fee of One Hundred Dollars (\$100.00) to pay for such privilege mentioned in Clause "1" and such sum shall be deemed to be municipal taxes and the Town shall be at liberty to add such sum to the municipal tax bill for the property and shall have all lien rights and rights to the collection of this sum as if it were municipal taxes.
3. The Owner COVENANTS AND AGREES to indemnify and does hereby indemnify the Town against all manner of actions, causes of action, claims, demands, loss, costs, damages and expenses of whatsoever kind and nature that may be suffered by or occasioned to the Town in any manner howsoever by reason of the existence of the said encroachment.
4. In consideration of the granting of this encroachment agreement the owner release the Town from any and all claims relating to any damage to the premises being the subject of this encroachment agreement occasioned by maintenance of the road allowance upon which the encroachment is situate or by any utility (including water and sewer) located in such road allowance.
5. The Owner CONVENANTS AND AGREES to remove at its sale cost any such portion of the said building encroaching or erected upon or over the said highway at any time upon six months notice in writing being given by the Town to the Owner in the event of the said part of the highway being required by the Town for any municipal purposes and the owner further agrees that it shall not be entitled to any damages or compensation of any kind therefore.
6. The Owner COVENANTS AND AGREES with the Town to maintain the said encroachment at all times in good and proper repair and condition satisfactory to the Town's building inspector.
7. The Owner COVENANTS AND AGREES with the Town that the encroachment upon the said highway shall be limited to the encroachment described in Paragraph 1 and Appendix "B" of this agreement and that they will not increase, extend or enlarge or permit the increase, extension or enlargement of the said encroachment in any manner whatsoever.

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8. This agreement shall enure to the benefit of and be binding upon the successors of the Town and the successors and assigns of the Owner it being the express intention of the parties hereto that subsequent purchasers and mortgages in possession shall obtain the benefit of and be bound by the provisions of the agreement.

IN WITNESS WHEREOF the Town has hereunto affixed its Corporate Seal under the hands of its Mayor and Clerk and the Owner have hereunto set their hands and seals.

| | | |
|------------------------------------|---|-------------------------------|
| SIGNED SEALED AND DELIVERED |) | THE CORPORATION OF THE |
| In the presence of: |) | TOWN OF FORT ERIE: |
| |) | |
| |) | |
| |) | _____ |
| |) | Mayor |
| |) | |
| |) | |
| |) | _____ |
| |) | Clerk |
| |) | |
| |) | |
| |) | ESTATE OF ANNA EARLE: |
| |) | |
| |) | |
| |) | _____ |
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| |) | _____ |
| |) | |

APPENDIX "A"
TO
SCHEDULE "C"
OF
BY-LAW NO. 12-2000

LEGAL DESCRIPTION OF PROPERTY

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Town of Fort Erie in the Regional Municipality of Niagara, formerly in the Township of Bertie in the County of Welland and being composed of Part Lot 24, according to Registered Plan Thomson and Lewis, now known as Plan 502 in the Town of Fort Erie, and more particularly designated as Part on Reference Plan 59R-

APPENDIX "B"
TO
SCHEDULE "C"
OF
BY-LAW NO. 12-2000

DESCRIPTION OF ENCROACHMENT

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Town of Fort Erie in the Regional Municipality of Niagara, formerly in the Township of Bertie in the County of Welland and being composed of Part Lot 24, according to Registered Plan Thomson and Lewis, now known as Plan 502 in the Town of Fort Erie, and more particularly designated as Part on Reference Plan 59R-