

THE CORPORATION OF THE TOWNSHIP OF PELEE

BY-LAW NO: 2020-10

**“Encroachment 271 North Shore Road”
(April 14, 2020)**

Being a By-Law to enter into an Agreement with Jeremy Truax to allow an encroachment at property described as Lot 26 to 27, Plan 438 in the Township of Pelee.

Whereas, Section 27(1) of the Municipal Act, R.S.O. 2001, S.O. 2001, c. 25 and amendments thereto, permits a municipality to pass By-Laws in respect of a highway over which it has jurisdiction;

And Whereas, Jeremy Truax is the owner of all and singular that parcel or tract of land situate, lying and being in the Township of Pelee, in the County of Essex and Province of Ontario being Plan 438 Lot 26 to 27;

And Whereas, The Council of the Corporation of the Township of Pelee approved By-law No. 2019-41 – being a Zoning By-law Amendment. The purpose of the amendment was to rezone lands to create a site specific, residential building lot and permit the development of a single-family dwelling/cottage. The zoning by-law amendment changed the zone symbols from “C1-Commercial Zone” to an “R1-6 – Residential Zone” and amends Subsection 6.4 by adding the following:

- (i) Lot Area (Minimum): 565 m² (6081.61 ft²)
- (ii) Front Yard Setback: 0.3 m (1 ft)
- (iii) Rear Yard Minimum: 6.096 m (20 ft)

As the By-law allowed for a 0.3 metre or one foot minimum front yard setback, an encroachment agreement is required to allow for the roadside septic system on the municipal right of way of North Shore Road;

And whereas the owners have applied to the Township for permission to permit the encroachment;

Now therefore be it resolved that the Council of The Corporation of the Township of Pelee enacts as follows:

1. That the encroachment is hereby permitted in accordance with the terms and conditions of the Encroachment Agreement attached hereto and marked as Schedule “A”.
2. That the Mayor and chief Administrative Officer/Clerk are hereby authorized to sign said Agreement on behalf of the Corporation of the Township of Pelee.

Read a first, a second and a third time and finally passed on April 14, 2020.

Original Signed By:

MAYOR, Ray Durocher

Original Signed By:

CAO/CLERK, Janice Hensel

Schedule "A" to By-Law Number 2020-10

This encroachment agreement made in duplicate on April 14, 2020.

Between:

The Corporation of the Township of Pelee, herein after called the "Township"

Of the First Part

And

Jeremy Truax, herein after called the "Licensee"

Of the Second Part

Whereas the Licensee are owners of all and singular that parcel or tract of land situate, lying and being in the Township of Pelee, in the County of Essex and Province of Ontario Plan 438, Lot 26 to 27;

And whereas the Licensee requires an encroachment to allow for the septic system setback;

And whereas Section 27(1) of the Municipal Act, R.S.O. 2001 and amendments thereto, permits a municipality to pass By-Laws in respect of a highway over which it has jurisdiction;

And whereas the Township has agreed to allow an encroachment for the purpose of the septic system;

Now therefore this indenture witnesseth that in consideration of the premises and the payment of the fees hereinafter provided the Licensee hereby undertake and agree with the Town as follows:

1. The encroachment up to, but no closer than, 0.3 metres or one (1) feet from the North Shore Road travelled portion shall be deemed to have been made and the continuance hereafter of the said encroachment shall be, with the express license and consent of the Township to the intent that the said Licensee shall not acquire any easement or right in respect thereof.
2. The Licensee covenant and agree to maintain the said encroachment in good repair at all times to the satisfaction of the Township of Pelee.
3. It is further understood and agreed by and between the parties hereto that if the said portion of the roadway or right-of way encroached upon is required by the Town for its purposes, the Licensee shall remove the said encroachment and restore the said roadway

to the condition of the surrounding area at their expense on sixty (60) days' notice from the Township to do so, provided that if the Licensee fail to remove the said encroachment and restore the lands encroached upon the expense of such removal and restoration shall be paid by the Licensee forthwith upon demand or, at the option of the Township, payments of such expense may be enforced in the same manner as realty taxes payable in respect of the said land owned by the said Licensee.

4. If the Township at any time exercises its powers or rights to terminate this Agreement or demand the removal of the said encroachment or revoke the permission granted herein, the Township 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.
5. The Licensee shall indemnify and save harmless the Township from and against all loss, costs or damages which they may suffer or be put to and from and against all claims or action which may be made or brought against the Township by reason of the said encroachment, its construction, existence, repair or maintenance or resulting therefrom in any manner whatsoever. The Licensee shall name the Township on the Licensee' Premises Liability Policy and shall produce a copy to the Township when requested to do so. Liability shall be no less than \$1,000,000.
6. By the execution of these presents, the Licensee do hereby expressly and completely release the Township from any and all liabilities, suits, claims and demands (whether for property damage or personal injury or death and whether found in tort, contract or quasi-contract) which at any time might be exerted by the Licensee arising out of the existence of the encroachment on the Township's roadway or out of any act or omission by the Township.
7. All notices, demands or requests which may be or are required to be given under the provisions of this Agreement by either party to the other herein shall be in writing and may be mailed or delivered and shall be addressed in the case of the Licensee to Jeremy Truax, 1310 McRae Street, Kingsville, Ontario N3W 2R9 and in the case of the Township to

The Township Clerk, 1045 West Shore Road, Pelee Island, Ontario, N0R 1M0, or to such other address as either party may from time to time designate by written notice to the other party.

8. This Agreement shall be binding upon and enure to the benefit of the parties and their respective heirs, administrators, executors, successors and assigns.

In witness whereof the parties hereto have executed this agreement as at the date first written above.

Jeremy Truax

The Corporation of the Township of Pelee

MAYOR, Ray Durocher

CAO/CLERK, Janice Hensel

Receipt of Agreement:

I hereby acknowledge receiving a duplicate original copy of the herein Agreement this _____ day of _____, 2020.

Jeremy Truax