



Council Report

For the Meeting of February 9, 2017

To: Council **Date:** February 7, 2017
From: Jonathan Tinney, Director, Sustainable Planning and Community Development
Subject: Rezoning Application No. 00511 and Development Permit with Variances
Application No. 00020 for 90-92 Dallas Road

RECOMMENDATION

That Council, after giving notice and allowing an opportunity for public comment at a meeting of Council and after the Public Hearing for Rezoning Application No.00020, if it is approved, consider the following motion:

"That Council authorize the issuance of Development Permit Application No. 00020 for 90-92 Dallas Road, **subject to confirmation of registration of the Statutory Right-of-Way Agreement No. CA5805077**, and in accordance with:

1. Plans date stamped October 19, 2016
2. Development meeting all Zoning regulation Bylaw requirements, except for the following variances:
 - i. reduce the front yard setback from 4.70m to 2.44m;
 - ii. reduce the rear yard setback from 12.93m to 11.90m;
 - iii. reduce the side yard setback (north) from 2.10m to 1.54m;
 - iv. reduce the side yard on a flanking street from 3.50m to 2.47m;
 - v. reduce the combined side yard from 4.50m to 4.01m; and
 - vi. increase the site coverage from 40% to 40.5%
3. The Development Permit lapsing two years from the date of this resolution."

EXECUTIVE SUMMARY

The purpose of this report is to amend the Council motion for Development Permit with Variances Application No. 00020 for 90-92 Dallas Road to require confirmation of registration of the legal agreement to secure the Statutory Right-of-Way along Dallas Road and St. Lawrence Street prior to issuance of the Development Permit. The requirement is shown in bold text in the amended motion above.

BACKGROUND

At the Committee of the Whole meeting on November 16, 2016, Council supported the following recommendation:

"That Council instruct staff to prepare the necessary Zoning Regulation Bylaw Amendment that would authorize the proposed development outlined in Rezoning Application No. 00511 for 90-92 Dallas Road, that first and second reading of the Zoning Regulation Bylaw Amendment be considered by Council and a Public Hearing date be set once the following conditions are met:

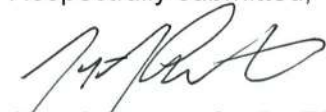
1. Registration of a 2.41m Statutory Right-of-Way on the Dallas Road frontage; and
2. Registration of a 2.47m Statutory Right-of-Way on the St. Lawrence Street frontage"

In accordance with the recommendation, a legal agreement to secure the Statutory Right-of-Way on both Dallas Road and St. Lawrence Street has been prepared, executed and deposited at the Land Titles office. At the time of writing this report the agreement was pending registration.

CONCLUSION

Staff recommend that the proposal is ready to proceed to Public Hearing with an amended motion for Development Permit with Variance Application No. 00020 to ensure the legal agreement is registered prior to the issuance of a Development Permit.

Respectfully submitted,



Alec Johnston, Senior Planner
Development Services



Jonathan Tinney, Director
Sustainable Planning and Community
Development Department

Report accepted and recommended by the City Manager:



Date:

February 7, 2017

List of Attachments:

- Legal agreement to secure Statutory Right of Way along Dallas Road and St. Lawrence Street frontages

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Larry Wong
U2GEXT

Digitally signed by
Larry Wong U2GEXT
Date: 2017.02.03
12:54:06 -08'00'

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Larry Wong, Barrister & Solicitor

Wong & Doerksen

1618 Government Street

Victoria

BC V8W 1Z3

Ph. 250-381-7799

File: 24887

Document Fees: \$71.58

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

009-218-327 LOT 3, BECKLEY FARM, VICTORIA CITY, PLAN 224

STC? YES ☐

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) ☐ Filed Standard Charge Terms D.F. No.

(b) ☒ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

EKATERINA HERCULES GEORGIADES AND ATHAN HERCULES GEORGIADES

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

CORPORATION OF THE CITY OF VICTORIA

1 CENTENNIAL SQUARE

VICTORIA

BRITISH COLUMBIA

V8W 1P6

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

DENISE E. LITTERINI

Notary Public

Monroeville Boro, Allegheny County
My Commission Expires Dec. 28, 2020
Member, Penn. Assoc. of Notaries
UPMC East Hospital, 2775 Mosside
Blvd, Monroeville, PA 15146

Execution Date

Y	M	D
17	02	02

Transferor(s) Signature(s)

EKATERINA HERCULES
GEORGIADES

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

DENISE E. LITTERINI

Notary Public

Monroeville Boro, Allegheny County
My Commission Expires Dec. 28, 2020
Member, Penn. Assoc. of Notaries
UPMC East Hospital, 2775 Mossdale
Blvd, Monroeville, PA 15146

Y	M	D
17	02	02

ATHAN HERCULES GEORGIADES

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

Officer Signature(s)

CHRISTOPHER D. COATES

Commissioner for Taking Affidavits For British Columbia

#1 Centennial Square
Victoria BC V8W 1P6

(as to all signatures)

Execution Date

Y	M	D
17	02	01

Transferor / Borrower / Party Signature(s)

CORPORATION OF THE CITY OF
VICTORIA by its authorized signatories:

Name: MAYOR LISA HELPS
#1 Centennial Square
Victoria BC V8W 1P6

Name:



OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

NATURE OF INTEREST
Statutory Right of Way

CHARGE NO.

ADDITIONAL INFORMATION
See Attached Schedule

NATURE OF INTEREST

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ADDITIONAL INFORMATION

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

ITEM 3.

NATURE OF INTEREST

Statutory Right of Way

ADDITIONAL INFORMATION

All that part of Lot 3, Section 29, Beckley Farm, Victoria City, Plan 224 more particularly described as follows:

Firstly: all that part of the said Lot 3 lying to the southwest of a straight line and its productions drawn parallel to and perpendicularly distant 2.41 metres from the southwesterly boundary of the said lot; and

Secondly: all that part of the said Lot 3 lying to the southeast of a straight line and its productions drawn parallel to and perpendicularly distant 2.47 metres from the southeasterly boundary of the said lot save and except that part of the said lot firstly described.

Statutory Right of Way - Highway

TERMS OF INSTRUMENT - PART 2

WHEREAS:

A. The Transferor is the registered owner in fee simple of the following land in the Province of British Columbia:

PID 009-218-327
Lot 3, Beckley Farm, Victoria City, Plan 224

(the "**Lands**")

B. The Transferee is the Corporation of the City of Victoria;

C. This Right of Way is necessary for the operation and maintenance of the Transferee's undertaking as described in Recital D;

D. The Transferee wishes to be able to construct, operate and maintain a public highway and other works including but not limited to a system of roadways, sidewalks and utility services in perpetuity over a portion of the Lands; and

E. To facilitate the construction and use by the Transferee and the public of a public highway, and to facilitate the installation and use of works that may be placed by the Transferee on, under or over the highway including pavements, sidewalks, boulevards, curbs, gutters, drains, sewers, utility poles, wires, fences, overhead and underground cables, traffic signals, transit shelters, and landscaping including but not limited to trees, shrubs, flowers and grass, and irrigation works required for the maintenance of that landscaping, and any other works, facilities or appurtenants necessary for the use of the Right of Way as a public highway (collectively the "**Works**"), the Transferor has agreed to grant the Right of Way in this Agreement.

NOW THEREFORE, in consideration of the sum of One (\$1.00) Dollar of lawful money of Canada, now paid by the Transferee to the Transferor (the receipt and sufficiency of which is now acknowledged by the Transferor), and in consideration of the covenants and conditions agreed to be observed and performed by the parties and for other valuable consideration:

1.0 THE TRANSFEROR:

1.1 Pursuant to Section 218 of the *Land Title Act*, hereby grants, conveys, confirms and transfers, in perpetuity, to the Transferee, its officers, employees, contractors, licensees and invitees, including without limitation the general public, the full, free and uninterrupted right, licence, liberty, privilege, permission and right of way to use as a

public highway, including but not limited to the right to enter onto, use, go, return, pass over and across for highway purposes, that portion of the Lands more particularly described as follows:

Firstly: all that part of the said Lot 3 lying to the southwest of a straight line and its productions drawn parallel to and perpendicularly distant 2.41 metres from the southwesterly boundary of the said lot; and

Secondly: all that part of the said Lot 3 lying to the southeast of a straight line and its productions drawn parallel to and perpendicularly distant 2.47 metres from the southeasterly boundary of the said lot save and except that part of the said lot firstly described.

(the “**Right of Way**”);

1.2 Covenants and agrees to and with the Transferee that in connection with the grant under Section 1.1 of this Agreement, the Transferee and its officers, employees, contractors, licensees and invitees shall have the full, free and uninterrupted right, licence, liberty, privilege, permission and right of way to lay down, install, construct, entrench, operate, maintain, inspect, alter, repair, remove, replace, bury, cleanse, string, and otherwise establish one or more system of Works upon the Right of Way;

1.3 Covenants and agrees to and with the Transferee that the Transferee shall:

- (a) for itself and its agents, workers, contractors and all other licensees of the Transferee;
- (b) together with machinery, vehicles, equipment, and materials;
- (c) upon, over, under and across the Right of Way;
- (d) as may be necessary, useful, or convenient for the purposes in Section 1.1 and Section 1.2; and
- (e) in connection with the operations of the Transferee in relation to the Works;

be entitled at all times to enter, use, pass and repass, labour, construct, erect, install, dig, carry away soil or other surface or subsurface materials, and clear of all trees, growth, buildings or obstructions now or hereafter in existence upon, over, under and across the Right of Way;

1.4 Grants, conveys, confirms and transfers unto the Transferee for itself, and its employees, agents, workers, contractors and all other licensees of the Transferee together with machinery, vehicles, equipment and materials, the right at all times to enter upon and to pass and repass over such of the Lands of the Transferor as may reasonably be required for the purpose of ingress to and egress from the Right of Way;

1.5 Transfers, assigns and conveys to the Transferee all right, title and interest in and to any Works that the Transferee, or the Transferor have prior to this Agreement established or constructed or maintained or operated within the Right of Way or in relation to any similar Works previously constructed by any party whatsoever within the Right of Way.

2.0 THE TRANSFEROR COVENANTS:

2.1 Not, and not to permit or allow any other person, to erect, place, install or maintain any building, structure, addition to a building or structure, mobile home, paved driveway or patio, pipe, wire or other conduit on, over or under any portion of the Right of Way;

2.2 Not to do anything or to permit any act or thing which in the opinion of the Transferee in any way interferes with or damages or prevents access to or use of the Right of Way or is likely to cause harm to the Works installed in or upon the Right of Way;

2.3 To trim or, if the Transferee determines it is necessary, cut down any tree or other growth on the Lands which in the opinion of the Transferee, constitutes or may constitute a danger or obstruction to the Right of Way or the Works or those using same;

2.4 From time to time and at all times at the reasonable request and at the cost of the Transferee to do and execute or cause to be made, done or executed any further and other lawful acts, deeds, things, devices, conveyances and assurances in law required to ensure the Transferee of its rights under this Agreement; and

2.5 To permit the Transferee to peaceably hold and enjoy the rights hereby granted.

3.0 THE TRANSFEE COVENANTS:

3.1 As far as reasonably possible, to carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands as possible; and

3.2 To make good at its own expense damage or disturbance which may be caused to the Lands in the exercise by the Transferee of its rights under this Agreement except as permitted under this Agreement.

4.0 THE PARTIES COVENANT TO AND AGREE WITH EACH OTHER, as follows:

4.1 The Transferor shall not diminish or increase the soil cover over any pipe installed in the Right of Way without the Transferee's prior written consent;

4.2 No right herein granted to or reserved by the Transferee shall require the Transferee to clear, repair or maintain the Works or the Right of Way unless the Transferee is expressly required herein to perform such cleaning, repairing or maintenance;

4.3 If the Transferor defaults in observance or performance of its obligations hereunder, the Transferee, after 10 days prior written notice to the Transferor specifying the default and at any time in case of emergency, may (but is not obligated to) rectify the default, and the Transferor shall pay to the Transferee, on demand, its reasonable costs in connection with so rectifying;

4.4 The Transferor shall, after execution hereof by it at the expense of the Transferor, do or cause to be done all acts necessary to grant priority to this Agreement over all financial charges and encumbrances which are registered, or pending registration, against the Title to the Lands in the Land Title Office save and except those as have been specifically approved in writing by the Transferee or have been granted in favour of the Transferee;

4.5 Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default by that party;

4.6 Whenever this Agreement creates a power or obligation of the Transferee to make a decision or to exercise any contractual right or remedy, the Transferee may do so in accordance with the provisions of this Agreement and no public law duty, whether arising from the principals of fairness or the rules of natural justice, shall have any application;

4.7 Notwithstanding anything herein contained, the Transferee reserves all rights and powers of expropriation otherwise enjoyed by the Transferee;

4.8 Without limiting Section 4.7, nothing contained or implied in this Agreement will derogate from the obligations of the Transferor under any other agreement with the Transferee or prejudice or affect the Transferee's rights, powers, duties or obligations in the exercise of its functions under all public and private statutes, by-laws, orders and regulations, which may be as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by Transferor and the Transferee;

4.9 In spite of any rule of law or equity to the contrary, the Works brought on to, set, constructed, laid, erected in, upon or under the Right of Way by the Transferee shall at all times remain the property of the Transferee, even if the Works are annexed or affixed to the freehold, and the Works shall at any time and from time to time be removable in whole or in part by the Transferee;

4.10 No part of the title in fee simple to the Lands of the Transferor shall pass to or be vested in the Transferee under or by virtue of this Agreement, and the Transferor may fully use and enjoy all of the Lands of the Transferor subject only to the rights and restrictions in this Agreement;

4.11 If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Agreement;

4.12 This Agreement shall attach to and run with the Lands and each and every part

to which the Lands may be divided or subdivided whether by subdivision plan, strata plan or otherwise howsoever;

4.13 The Transferor acknowledges that (a) these Covenants are enforceable against the Transferor and his successors in title, but (b) the Transferor is not personally liable for breach of these Covenants where such liability arises by reason of an act or omission occurring after the Transferor named herein or any future owner ceases to have a further interest in the Lands;

4.14 If at the date hereof the Transferor is not the sole registered owner of the Lands of the Transferor, this Agreement shall nevertheless bind the Transferor to the full extent of his interest therein, and if he acquires a greater or the entire interest in fee simple, this Agreement shall likewise extend to such after-acquired interests;

4.15 Where the expression "Transferor" includes more than one person, all covenants made by the Transferor shall be construed as being several as well as joint with respect to all persons constituting the Transferor;

4.16 This Agreement shall continue to benefit and be binding upon the Transferor and Transferee, and their respective heirs, administrators, executors, successors and permitted assigns, as the case may be;

4.17 Gender specific terms include both genders and corporations, and the singular and plural forms are interchangeable, according to the context; and

4.18 This Agreement will be governed and construed according to the laws of the Province of British Columbia.

4.19 Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the Transferee in the exercise of its functions under any public or private statutes, bylaws, order and regulations, all of which may be fully and effectively exercised in relation to the Land as if this Agreement had not been executed and delivered by the parties.

The parties hereto acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D attached hereto.