



TOWN OF
PEACE RIVER
ALBERTA

TOWN OF PEACE RIVER Request for Direction

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| To: | Mayor and Council | Date: | January 19, 2022 |
| Presenter: | Alisha Mody, Manager of Planning and Development | Prepared By: | A. Mody |
| Topic: | Policy on Encroachments | File No.: | 61/200 |
| Attachments: | Draft Policy on Encroachments Draft Amendment to Traffic & Streets Bylaw No. 1746 Current Policies: Encroachments on Utility Right of Ways, Policy on Fencing of Walkways, and Policy on Encroachment Agreements | | |

Issue

Encroachments onto lands that the Town holds an interest in are managed by three outdated policies. A new Encroachment Policy has been drafted to effectively manage encroachments.

Background

The Town owns a variety of parcels of land, administers land including Roads, and also has interests in privately owned land by way of rights of way and Easements. Encroachments are when a structure is constructed beyond a property line or over an easement or right-of-way. Encroachments are usually discovered when a property is surveyed or sometimes when a Certificate of Compliance is requested. The Town realizes Encroachments exist on Municipal Lands and will continue to be discovered. The Town must ensure that Encroachments do not adversely affect Municipal Lands and have mechanism to address Encroachments.

Currently, three policies inform but do not provide complete direction with respect to how the Town manages encroachments. The current policies are “Encroachments on Utility Right of Ways”, “Policy on Fencing of Walkways”, and “Policy on Encroachment Agreements”.

The new Encroachment Policy will assist the Town to effectively manage Encroachments. The Policy is intended to provide a consistent approach in processing applications and protecting the Town wherever encroachments onto Municipal Lands have been identified. The policy provides direction with respect to when the Town may enter into an Encroachment Agreement, allowing the Encroachment to remain, or when the Encroachment should be required to be removed. An Encroachment Agreement is a written confirmation between the Town and an owner of a property, in which the agreement allows a structure that encroaches onto land that the Town holds interest, to remain in place. The Town and this policy do not manage encroachments from one private property to another.

Currently, the Town is a party to 30 existing Encroachment Agreements with property owners in the Town. Those encroachments will continue to be managed by the terms and conditions of the existing agreements. As a part of the policy development process, the Town’s template (standard) Encroachment Agreement has also been reviewed and updated.

Traffic & Streets Bylaw Amendment

As part of the Encroachment Policy process, the Traffic and Streets Bylaw must be amended to ensure that the Town has the authority to manage encroachments onto Road Rights of Way. Specifically, the *Traffic Safety Act* states:

“13(1) Subject to this Act and the Dangerous Goods Transportation and Handling Act, the council of a municipality may, with respect to a highway under its direction, control and management, make bylaws that are not inconsistent with this Act, doing the following: ...

o) authorizing the municipality to issue a licence or permit that is terminable on 30 days’ notice in writing for the temporary occupation or use of a road allowance or highway or a portion of a road allowance or highway when it is not required for public use;”

The draft amendment to the Traffic and Streets Bylaw is attached and is intended to be adopted in concurrently with the approval of the Encroachment Policy.

Fees and Charges Bylaw Update

As part of the policy update, the Encroachment Agreement Fees were reviewed (Tables 1 and 2). Updated annual fees are proposed (Table 3 below), as well as a \$300.00 Encroachment Agreement Application fee and will be incorporated into the 2022 update to the Fees and Charges Bylaw. The fee schedule has been simplified, and the \$300.00 application fee is proposed to cover the administrative costs of processing the application and encroachment agreement.

Table 1. Current Residential Encroachment Agreement Fees

| Residential Flat Rate | Up to 500 Sq. Ft. | 500 – 1000 Sq. Ft. |
|------------------------------|--------------------------|---------------------------|
| Under ¼ of Assessed Age Life | \$125.00/year | \$250.00/year |
| Between ¼ & ½ of Age Life | \$60.00/year | \$125.00/year |
| Between ½ & ¾ of Age Life | \$40.00/year | \$50.00/year |
| Over ¾ of Age Life | \$20.00/year | \$25.00/year |

Table 2. Current Commercial Encroachment Agreement Fees

| Commercial Flat Rate | Up to 500 Sq. Ft. | 500 – 1000 Sq. Ft. |
|------------------------------|--------------------------|---------------------------|
| Under ¼ of Assessed Age Life | \$400.00/year | \$800.00/year |
| Between ¼ & ½ of Age Life | \$200.00/year | \$400.00/year |
| Between ½ & ¾ of Age Life | \$100.00/year | \$200.00/year |
| Over ¾ of Age Life | \$50.00/year | \$100.00/year |

Table 3. Proposed Encroachment Agreement Fees

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|---|---------------------------|
| Encroachment from Residential Property | |
| Up To 500 Sq. Ft. | 500 – 1000 Sq. Ft. |
| \$150.00/year | \$300.00/year |
| Encroachment from Commercial or Industrial Property | |
| Up to 500 Sq. Ft. | 500 – 1000 Sq. Ft. |
| \$500.00/year | \$1000.00/year |

Request

Administration requests:

1. That Council provide direction with respect to any required changes to the Policy.
2. That Council direct Administration to publicly advertise the Draft Policy on Encroachments and provide an opportunity for public feedback, for not less than two weeks.
3. That Council direct Administration to provide a summary of public feedback prior to presenting the Encroachment Policy for decision.
4. That Council direct Administration to present the Encroachment Policy for decision at a future Council meeting.



Submitted by:

February 3, 2022

Date Submitted:

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| Approval Date: Motion: | Policy Number: P-XX-XX-X |
| Supersedes: | P-61-2000-01, P-31-1990-01, D-61-1995-01 |
| Title: | Policy on Encroachment |

Policy Statement

The Town of Peace River has a broad mandate to provide good government, develop a safe and viable community, and to supply necessary services to the community.

The Town owns a variety of parcels of land, administers land including Roads, and also has interests in privately owned land by way of rights of way and Easements. The Town realizes Encroachments exist on Municipal Lands and will continue to be discovered. The Town must ensure that Encroachments do not adversely affect Municipal Lands.

This Encroachment Policy will assist the Town to effectively manage Encroachments. The Policy is intended to provide a consistent approach in processing applications and protecting the Town wherever encroachments onto Municipal Lands have been identified.

Definitions

“CAO” means the Chief Administrative Officer of the Town of Peace River or the CAO’s delegate.

“Council” means the duly elected Mayor and Councillors of the Town of Peace River.

“Development Officer” means the Development Officer established by the Development Authority Bylaw.

“Easement” means any right of way established for the installation, construction, repair, and maintenance of utilities, or for the access and passage of the general public, identified by a registered plan or by description and documented by a registered caveat or easement agreement at the Alberta Land Titles Office.

“Encroachment” means anything constructed or erected permanently or semi-permanently on the ground or attached to something that is permanent or semi-permanent extending on, over or under Titled property onto Municipal Lands and shall include, but not be limited to, the following:

1. Buildings and all projections (including but not limited to eaves, footings, foundations, weeping tiles, and cantilevers) and siding;
2. Sheds including those attached to a dwelling or fence;
3. Fences;
4. Hard landscaping which includes but is not limited to asphalt, concrete, or brick sidewalks, curbs, parking pads, aprons, driveways, fire pits and planters;

5. Structures which includes but is not limited to decks, stairs, patios, and balconies;
6. Retaining walls;
7. Swimming pools and hot tubs;
8. Private light standards; and
9. Signs.

“Encroachment Agreement” means an agreement which the Town may enter with a Property Owner authorizing an Encroachment which shall, among other items, include:

1. The location and identification of the Encroachment;
2. Fees (as based on the Town’s Fee Schedule Bylaw 2084, as amended or replaced);
3. The Owner’s responsibility to maintain the Encroachment;
4. Terms or conditions to terminate the Encroachment Agreement;
5. Cost and liability for removing an Encroachment;
6. Indemnification of the Town, its agents, or licensees;
7. A provision requiring the removal of an Encroachment onto a Road following 30 days’ notice by the Town or a provision requiring the removal of an Encroachment onto Municipal Lands other than a Road following a minimum of 30 days’ notice by the Town.

“Fence” means any enclosing barrier, wall, or structure usually located along the property line.

“Hard Encroachment” means anything constructed or placed permanently or semi-permanently onto Municipal Lands from another Parcel.

“Municipal Government Act” means the Municipal Government Act, RSA 2000, c M-26, as amended or replaced.

“Municipal Lands” means collectively or individually, Roads, Easements, utility rights of way, reserve parcels, public utility lots, and Town-owned Parcels.

“Parcel” has the meaning in the Municipal Government Act for “parcel of land”.

“Property Owner” means the registered owner(s) of the Parcel from which an Encroachment extends onto Municipal Lands.

“Real Property Report” or “RPR” means a legal document prepared and signed by a Registered Alberta Land Surveyor which illustrates in detail the location of developments relative to property boundaries.

“Roads” has the meaning in section 1(1)(p) of the *Traffic Safety Act*, RSA 2000, c. T-3 which for ease of reference is set out below:

(p) “highway” means any thoroughfare, street, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, causeway, trestleway or other place or any part of any of them, whether publicly or privately owned, that the public is ordinarily entitled or permitted to use for the passage or parking of vehicles and includes

- (i) a sidewalk, including a boulevard adjacent to the sidewalk,
- (ii) if a ditch lies adjacent to and parallel with the roadway, the ditch, and
- (iii) if a highway right of way is contained between fences or between a fence and one side of the roadway, all the land between the fences, or all the land between the fence and the edge of the roadway, as the case may be, but does not include a place declared by regulation not to be a highway;

“Soft Encroachment” means flowers, vegetation, shrubbery, or trees that do not restrict access or line of site and also includes non-permanent landscaping such as rock accents and materials used to edge vegetation.

“Town” means the corporation of the Town of Peace River.

General Provisions

1. The Property Owner is responsible for the placement of Fences, structures, and other developments within their property in accordance with the Land Use Bylaw 1891, as amended or replaced.
2. The Town should discourage new or existing Encroachments on Municipal Lands. The Town shall prohibit Encroachments onto the travelling surfaces of Roads.
3. Encroachments listed in Schedule “A” may remain and do not require an Encroachment Agreement.
4. Encroachments not listed on Schedule “A” must:
 - 4.1. be removed by the Property Owner at the Property Owner’s expense; or
 - 4.2. receive formal authorization from the Town in the form of an Encroachment Agreement.
5. For greater certainty, the Property Owner is responsible for the costs of removing an Encroachment if that Encroachment is not listed in Schedule “A” and if the Town does not agree to enter an Encroachment Agreement.
6. The purpose of an Encroachment Agreement is to protect Town and the public.
7. The Town has sole and absolute discretion to decide whether to enter an Encroachment Agreement with a Property Owner.
8. The Town will not enter into Encroachment Agreements where the Town determines in its sole discretion that any one or more of the following circumstances exist:
 - 8.1. the Encroachment causes a safety concern;
 - 8.2. the Encroachment extends into Municipal Lands that are intended by the Town for or may be used as an emergency access;
 - 8.3. the Encroachment interferes with the Town’s ability, or the ability of a utility company, to access an Easement; or
 - 8.4. the structures, Fences, or objects at issue are not permanent and can be reasonably and practically relocated.
 - 8.5. An Encroachment Agreement shall ensure that all claims, damages, and costs associated with the Encroachment are the responsibility of the Property Owner.

Responsibilities

9. Town Council is to:
 - 9.1. approve and amend this Policy, as required;
 - 9.2. consider the allocation of resources for successful implementation of this Policy in the annual budget process; and

- 9.3. consider any requests related to Municipal Reserve disposition or Environmental Reserve boundary adjustment processes.
10. The CAO is to:
 - 10.1. implement this Policy;
 - 10.2. make recommendations to Town Council for amendments to this Policy as required;
 - 10.3. consider appeals from Property Owners of denied Encroachment Agreement applications as required; and
 - 10.4. discuss Encroachment Agreements with the Development Officer, as required; and
 - 10.5. sign Encroachment Agreements.
11. Manager of Planning & Development is to:
 - 11.1. ensure that all Encroachments into Municipal Lands are dealt with in a timely manner according to this Policy;
 - 11.2. ensure that this Policy is reviewed at least every three years; and
 - 11.3. make recommendations to the CAO for amendments to this Policy.
12. The Development Officer is to:
 - 12.1. advise Property Owners of the process for obtaining an Encroachment Agreement;
 - 12.2. receive and review requests for Encroachment Agreements from Property Owners;
 - 12.3. decide whether to enter Encroachments Agreements with Property Owners based on this Policy;
 - 12.4. prepare Encroachment Agreements as required;
 - 12.5. discuss issues regarding Encroachment Agreements with the CAO, as required;
 - 12.6. recommend the CAO sign Encroachment Agreements as required;
 - 12.7. prepare and complete agreements for registration against the title to the Municipal Lands, as required; and
 - 12.8. maintain an inventory of all Encroachment Agreements.

Procedures

13. Each application for an Encroachment Agreement submitted to the Town must be accompanied by:
 - 13.1. A completed application form, in the form established by the Town;
 - 13.2. a non-refundable application fee as per the Fees and Charges Bylaw;
 - 13.3. a Real Property Report (RPR) dated not more than 5 years before the date of the application showing the Encroachment; and
 - 13.4. if the RPR is more than thirty days old, a signed statutory declaration by the applicant confirming that there have been no changes to the Parcel since the RPR was prepared.
 - 13.5. If there have been changes to the Parcel since the RPR was prepared, the Development Officer may require the applicant to provide an RPR prepared no earlier than 30 days before the application for an Encroachment Agreement.
14. The Development Officer shall consider an Encroachment Agreement application based on the circumstances of the specific Encroachment and decide, in its sole and absolute discretion, whether to recommend to the CAO to enter an Encroachment Agreement. The Development Officer may consider:
 - 14.1. legal concerns, including whether an Encroachment is contrary to an act or bylaw that forbids the granting of an encroachment agreement.
 - 14.2. liability concerns, including whether an Encroachment may create liability for the Town.

- 14.3. access concerns, including whether an Encroachment may deny access to public space or occupies space in a manner that narrows or otherwise impede visibility or access to, or along, a public roadway or lane.
 - 14.4. safety concerns, including whether an Encroachment creates safety issues for the Town or the public.
 - 14.5. unsightliness concerns, including whether an Encroachment may create an unsightly condition or an appearance not conforming to the look and appeal of the general neighborhood, or may create or worsen the placement of debris, or other materials that result in an unsightly appearance.
 - 14.6. fairness concerns, including whether an Encroachment may increase the usable area for a Property Owner, for which the Property Owner is not taxed.
15. The Development Officer shall review a completed Encroachment Agreement application and, based on the Development Officer's review, the Town shall either:
 - 15.1. Accept the Application: If the Encroachment Agreement application is accepted, the Town shall advise the Property Owner in writing that the Encroachment is approved; or
 - 15.2. Deny the Application: If the Encroachment Agreement application is denied, the Town will advise the Property Owner in writing that the Encroachment is not approved. The Town shall stipulate that the Encroachment shall be removed at the Property Owner's expense within 45 days, subject to the Property Owner's right to appeal, or any longer period determined by the Town in its sole and absolute discretion.
 16. The Property Owner may appeal the Town's decision to deny an Encroachment Agreement application by providing a written request for an appeal not more than 14 days after the Property Owner received the Town's denial letter. A Property Owner's request for appeal must include a copy of the application and the Real Property Report previously submitted, a copy of the refusal, and provide reasons in support of the appeal. The CAO shall make a final and binding decision regarding the appeal. If the CAO accepts the appeal, the Town and the Property Owner shall enter an Encroachment Agreement. If the CAO denies the appeal, the Property Owner shall remove the Encroachment at the Property Owner's expense within 45 days from receiving notice that the appeal was denied.
 17. If the Town agrees to enter into an Encroachment Agreement with a Property Owner, the Town shall attach three copies of the Encroachment Agreement for the Property Owner to sign and return to the Town within 30 days. If the Encroachment Agreement is not returned within 30 days, the Town will send the Property Owner a letter requiring the Encroachment must be removed at the Property Owner's expense within 45 days, or any longer period determined by the Town in its sole and absolute discretion.
 18. Upon receipt of three copies of the fully signed and completed Encroachment Agreement, at the Property Owner's expense the Town shall register the Encroachment Agreement on the certificate of title of the Property Owner's Parcel at the Property Owner's property and return a copy of the certificate of title to the Property Owner.
 19. If a Property Owner refuses to remove an Encroachment or fails to apply for an Encroachment Agreement under this Policy, the Town may take action to remove the Encroachment and seek reimbursement from the Property Owner for all such costs under the Municipal Government Act or any other relevant legislation.

20. A Property Owner shall comply with all applicable federal and provincial statutes, municipal bylaws, regulations, orders, and policies related to the Encroachment.
21. A Property Owner shall be responsible for all expenses, costs, liabilities, or other risks associated with the Encroachment.
22. All Encroachments without existing Encroachment Agreements shall be dealt with according to this Policy and there shall be no grandfathered Encroachments regardless of the length of time an Encroachment has been in existence.
23. The Town shall honour existing Encroachment Agreements according to the terms and conditions of the individual Agreement.
24. An Encroachment once authorized by the Town, may continue to be used, but the Encroachment shall not be added to, rebuilt, or structurally altered, except:
 - 24.1. as may be necessary to remove the Encroachment; or
 - 24.2. as may be necessary for the routine maintenance of the Encroachment.
 - 24.3. unless the development is approved by the Town's Development Authority and a new Encroachment Agreement has been approved by the Town.
25. If an Encroachment or the structure benefiting from the Encroachment is damaged or destroyed to the extent of more than 75% of the replacement value of the Encroachment or such structure, the Encroachment shall not be repaired or reconstructed and shall be removed from the affected lands, unless the repair or reconstruction has been authorized by the Town.
26. If an Encroachment or the structure benefiting from the Encroachment is removed, destroyed, or modified, the Encroachment shall not be repaired or reconstructed and shall be removed from the Municipal Lands unless the repair or reconstruction has been authorized by the Town.

Elaine Manzer, Mayor

Christopher J. Parker, CAO

SCHEDULE "A"

Encroachments onto Municipal Lands, excepting the travelling surfaces of Roads, that DO NOT Require an Encroachment Agreement

1. Hard landscaping which provide direct access to a development and meet the Land Use Bylaw requirements, including driveways, sidewalks, special needs access (ramps, fire escapes, etc.), steps.
2. Soft Encroachments.
3. Fences that encroach not more than 0.15 m.
4. Any Encroachment constructed for valid municipal purposes by the Town or its agents (i.e. bollards, rock barriers (boulders), sound barriers, developer fences, subdivision entrance signs, guard rails, etc.)

**TOWN OF PEACE RIVER
BYLAW NO. XXXX**

BEING A BYLAW OF THE TOWN OF PEACE RIVER IN THE PROVINCE OF
ALBERTA TO AMEND 1746 TRAFFIC & STREETS BYLAW

WHEREAS The Council of the Town of Peace River has adopted Bylaw No. 1746 in accordance with the Traffic Safety Act and the Municipal Government Act, being respectively Chapter T-6 and Chapter M-26.1 of the Revised Statutes of the Alberta and amendments thereto; and

WHEREAS the Council of the Town of Peace River deems it advisable to amend the said Bylaw;

NOW THEREFORE, the Council of the Town of Peace River, in the Province of Alberta, duly assembled, enacts as follows:

TITLE

1. This Bylaw may be cited as the "Amendment to Traffic & Streets Bylaw No. 1746".
2. Renumber 208 as 208 (1).
3. Add 208 (2) as follows:

Despite section 208, the Town may issue a licence or permit that is terminable on 30 days' notice in writing for the temporary occupation or use of a road allowance or highway or a portion of a road allowance or highway when it is not required for public use.

SEVERABILITY

4. If any portion of this Bylaw is declared invalid by a court of competent jurisdiction, then the invalid portion shall be severed.

SCHEDULES

5. This Bylaw contains no schedules.

EFFECTIVE DATE

6. This Bylaw shall come into force and have effect on the date of third and final reading.

READ a first time this ____ day of _____, 20____.

READ a second time this ____ day of _____, 20____.

READ a third and final time this ____ day of _____, 20____.

SIGNED by the Mayor and Chief Administrative Officer this _____ day of _____, 20____.

Elaine Manzer
Mayor

Christopher J. Parker
Chief Administrative Officer

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| Adopted by Resolution: Administrative Policy | Polic Subject: Policy on Encroachments on Utility Right of Ways |
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In order to ensure compliance with the policies of Alberta Power Limited and Northwestern Utilities, Town staff will inform the utility companies of any encroachment on the respective Company's Right of Ways. In the event of an encroachment the Town will proceed as follows:

1. Fences encroaching on utility right of ways:
 - a) An encroachment agreement will be entered into with the property owner being responsible for all legal costs. The Town of Peace River will not charge an annual fee.
 - b) In lieu of (a) the owner can remove the fence. A compliance certificate will NOT be issued until the owner advises the Town which he would prefer.
2. If a shed is located on a utility right of way it is to be moved and a compliance certificate will be issued "subject to" the shed being moved.
3. If a garage encroaches on to a utility right of way the utility company will be notified. If access to the utility is required it will be at the owner's expense.

Attached for further reference are the policies of Alberta Power and Northwestern Utilities.

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| Adopted by Resolution: 90-06-44 dated June 25, 1990 | Policy Subject: Policy on Fencing of Walkways |
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Policy on Fencing of Walkways

Councillor Kruse moved that the homeowners be responsible for the materials, labour and maintenance of the fencing of walkways.

CARRIED

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| Adopted by Resolution No.91-09-38 dated Sept. 23, 1991 & 92- 12-03 dated Dec. 7, 1992 & 00-09-21 dated Sept. 25, 2000 | Policy Statement No.: EDS-61-110.2 |
| | Subject: Policy on Encroachment Agreements |



PURPOSE: The purpose of setting a fee for encroachment agreements would be to encourage development within the owner's property lines and secondly to insure that the current and all subsequent landowners are aware of the encroachment. The fee should reflect the administrative costs as well as create incentive to the landowner to correct the encroachment or, if possible, request re-subdivision and purchase the encroached upon land.

POLICY STATEMENT:

1. That should Council deem it desirable to grant an encroachment on Town Property, that an annual fee be paid for the encroachment by the property owner benefiting from the encroachment for the life of the encroachment.
2. That the property owner entering into the Encroachment Agreement agree to have this fee attached as an annual charge on the tax account for the property benefiting and that the same be payable and due as are the municipal taxes. This fee is established in order to facilitate maintaining an accurate record of properties being charged, current property owners and subsequent discharge of encroachment when the encroachment is corrected.
3. That the fee schedule be based on the following rates (determined as 10% return on the market value per square foot of area encroached and the age of the structures encroaching):

| <u>Residential Flat Rate for:</u> | <u>up to 500 sq. ft.</u> | <u>500 – 1000 sq. ft.</u> |
|-----------------------------------|--------------------------|---------------------------|
| Under ¼ of Assessed Age Life | \$125.00/year | \$250.00/year |
| Between ¼ & ½ of Age Life | \$ 60.00/year | \$125.00/year |
| Between ½ & ¾ of Age Life | \$ 40.00/year | \$ 50.00/year |
| Over ¾ of Age Life | \$ 20.00/year | \$ 25.00/year |
| <u>Commercial Flat Rate for:</u> | <u>up to 500 sq. ft.</u> | <u>500 – 1000 sq. ft.</u> |
| Under ¼ of Assessed Age Life | \$400.00/year | \$800.00/year |
| Between ¼ & ½ of Age Life | \$200.00/year | \$400.00/year |
| Between ½ & ¾ of Age Life | \$100.00/year | \$200.00/year |
| Over ¾ of Age Life | \$ 50.00/year | \$100.00/year |

4. That, as per motion 00-09-21 dated September 25, 2000, the Chief Administrative Officer be authorized to approve encroachments of a privately owned structure on to Town property at his sole discretion, providing that the Development does not materially affect the use and enjoyment of the neighboring property and;

Policy on Encroachment Agreements
Policy Statement No: ~~EDS-61-110.2~~
Dated: 91-09-23, 92-12-7, 00-09-25

Policy Number: P-61-2000-01
Previously: EDS-61-110.2
Subject: Policy on Encroachment Agreements

5. That a property owner or an adjacent property owner may appeal the decision of the Chief Administrative Officer to Town Council after making application to Town council through the chief Administrative Officer.