

# Municipality of Lakeshore - Report to Council

## Legislative & Legal Services



**To:** Mayor & Members of Council

**From:** Kristen Newman, Director of Legislative & Legal Services

**Date:** March 3, 2021

**Subject:** Delegation of Authority regarding Title Issues (Serenity Bay Title Issue)

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### Recommendation

Direct the Clerk to read By-law 26-2021 delegating authority to the Clerk to amend *By-law 50-2020 being a By-Law to Delegate Authority regarding Execution of Instruments relating to Real Property* to delegate authority to the Clerk to execute instruments to permit, consent, agree to or otherwise authorize correction of real property title issues where the Municipality of Lakeshore is not adversely affected; and

Read By-law 27-2021 delegating authority to the Clerk to amend *By-law 50-2020 being a By-Law to Delegate Authority regarding Execution of Instruments relating to Real Property* to delegate authority to the Clerk to execute instruments to permit, consent, agree to or otherwise authorize regarding the correction of the real property title issues with the absolute title regarding the Serenity Bay subdivision, as presented at the March 9, 2021 Council meeting.

### Background

As a requirement of a previous subdivision development (Serenity Bay), Jack Mocer & Sons Contracting Limited ("Developer") was required to convey to Lakeshore a one foot reserve. That reserve is shown as Parts 6 and 8 on plan 12R20514 (appears at Appendix "A" to this report). Such reserves are routinely taken as a means of control over future development. When subsequent approvals are granted the intent is that these reserves disappear. Accordingly they are either given back to the developer, to become part of newly created lots or dedicated as part of a new public road.

The Serenity Bay Subdivision was approved in 2019 by Council. It is adjacent to plan 12R20514 and encompasses the one foot reserve mentioned above. Prior to registering the approved plan of subdivision the developer's title to the lands must be upgraded to the status of "Absolute Title" in the Province's electronic land registry system. During this process not only is ownership of the lands certified but the boundaries or property lines of the land are certified as well. In completing this process for the Serenity Bay Subdivision the fact that Lakeshore still owned the one foot reserve was inadvertently

missed (this is the “Subject Property”). This resulted in Absolute Title for the Subject Property being applied for and granted to the Developer for land they did not own and that was, in fact, owned by Lakeshore.

The Subject Property is a strip of land running down the middle of what is shown as Xavier Circle and along the edge of lot 13 on the new plan of subdivision (Plan 12M673 attached as Appendix “B” to this report). This error has caused a significant title problem meaning that the Land Registry Office has frozen title for the entire subdivision meaning that no lands in the subdivision can be transferred. The Developer’s lawyer has reached out to Lakeshore for assistance.

At the suggestion of the Deputy Land Registrar (described in the email appearing at Appendix “C” to this report), the Developer is asking that Lakeshore convey the one foot reserve (part 6 on plan 12R20514) back to the Developer. The Deputy Land Registrar would then register a Registrar’s Order deeming that registration to have occurred prior to the granting of Absolute Title. In this way, the title problem is cleared up and Lakeshore is still left owning the entire width of Xavier Circle, as it should at this point.

## **Comments**

Administration recommends that the Clerk be authorized to sign the necessary documents and instruments to convey part 6 on reference plan 12R20514 back to the Developer to facilitate the process to correct title to the Serenity Bay Subdivision as suggested by the Deputy Land Registrar. To do so, By-law 27-2021 is included in the By-laws section of the agenda for reading.

Administration also recommends that the Developer be required to agree, in writing, to convey those portions of Parts 6 on Plan 12R20514 that form part of Xavier Circle on plan 12M673, should the plan for correcting title proposed by the Deputy Land Registrar fail to result in those lands being owned by Lakeshore at the end of the process and that the Mayor and Clerk be authorized to execute such agreement.

Finally, Administration is recommending that By-law 50-2020 being a By-Law to Delegate Authority regarding Execution of Instruments relating to Real Property be more broadly amended to incorporate delegated authority to the Clerk to correct title issues that arise that will not adversely affect the Municipality. This will help to avoid the need to bring minor issues such as the one described above to Council taking up valuable Council meeting time and unduly delaying the development process.

## **Others Consulted**

Jim Renick, Goad & Goad LLP

Mary-Ann Keefner, Shibley Righton LLP – Counsel for the Developer

## Financial Impacts

The costs of obtaining the necessary orders and preparation of the necessary instruments will not be borne by the Municipality.

**Attachment(s):** A – Plan 12R20514

B – Plan 12M673 (New Plan of Subdivision)

C – Email from Land Registry Office

## Report Approval Details

Document Title:	SerenityBayTitleIssue.docx
Attachments:	- A-12R20514.pdf - B-12M673.pdf - C-LandRegistryEmail.docx
Final Approval Date:	Mar 4, 2021

This report and all of its attachments were approved and signed as outlined below:

Kristen Newman

Rosanna Pellerito

Truper McBride