TO: Mayor and Council

FROM: Jim Keech, President and CEO, Utilities Kingston

RESOURCE STAFF: Mark Van Buren, Director, Engineering Department

DATE OF MEETING: July 20, 2010

SUBJECT: REQUEST TO INSTALL STONE RETAINING WALL WITH FENCE IN THE CITY RIGHT OF WAY ADJACENT TO 1891 JACKSON MILLS ROAD

EXECUTIVE SUMMARY:

An application has been made to the Engineering Department by the owners of 1891 Jackson Mills Road to be granted permission to erect a stone retaining wall and fence on the City right of way in front of their dwelling. In order to proceed with the proposed construction an exemption to By-Law No.2004-107 is required. Section 4.11 of By-Law No.2004-107, “A BY-LAW TO PROTECT THE CITY’S HIGHWAYS FROM UNAUTHORIZED ENCROACHMENTS”, states; “No permit authorizing a fence or hedge upon a highway will be issued except for a fence or hedge that extends diagonally from the outer limit of a corner lot toward the intersection of two highways, whose purpose is to prevent pedestrians and others from crossing the boulevard at that intersection.”

Several notwithstanding clauses to section 4.11 have been granted over the years for situations that do not cause conflict with the operation and management of the public right-of-way.

RECOMMENDATION:

That Council authorize the Mayor and Clerk to enter into a Encroachment Agreement satisfactory to the City Solicitor, for the purpose of allowing the stone wall and fence to be erected on the City right-of-way located at 1891 Jackson Mills Road; and

That a condition of the encroachment be that the owners agree the retaining wall and fence be temporary in nature and will be removed by the owner at their expense at such time as it is requested by the City; and

That the Encroachment Agreement be registered on title.
**AUTHORIZING SIGNATURES:**

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<th>ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER</th>
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**CONSULTATION WITH THE FOLLOWING COMMISSIONERS:**

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<th>Commissioner</th>
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<td>Cynthia Beach, Sustainability &amp; Growth</td>
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<td>Terry Willing, Community Services</td>
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<td>Denis Leger, Transportation, Properties &amp; Emergency Services</td>
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<td>Jim Keech, President and CEO, Utilities Kingston</td>
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*(N/R indicates consultation not required)*
OPTIONS/DISCUSSION:

The owners of 1891 Jackson Mills Road have recently completed extensive renovations to their century home to help resolve some safety issues relating to their property. The property is located directly across from an access point to the K & P Nature Trail and the owners contend that this has resulted in interrupted enjoyment of their home. In addition, the owners have also raised concern with unsolicited attention from the public using the trail. Unfortunately some of the confrontations have become verbally abusive and have resulted in the police being notified numerous times. In light of these on-going circumstances, the owners feel that their privacy is being violated. The owners feel that once the wall with fence has been installed it will help to distinguish their property line thus eliminating the issues mentioned. Due to the size of the lot there is no space available to place the retaining wall and fence on the property line. Please refer to Exhibit “A” for the details.

The City’s Road Designer has reviewed the proposal and has concluded that the location of the proposed stone wall and fence is outside the recommended clear zone for this type of road. Jackson Mills Road is a low volume, low design speed road and the recommended clear zone (traversable fixed –object free area) is 2.0 - 3.0 m measured from the edge of the traveled lane. The proposed wall and fence will be located 4.1 m from the pavement edge which will be outside the clear zone beyond the existing ditch.

Noting the above information staff is recommending that Council authorize the Mayor and Clerk to enter into an Encroachment Agreement with the property owners of 1891 Jackson Mills Road for the placement of a stone retaining wall and fence along their frontage. It is also recommended that there be language in the agreement that speaks to the requirement of the removal of the encroachment if for any reason the Municipality requires it to be removed. The removal costs will be the sole responsibility of the owner. It is also recommended that the agreement be registered on title so that any future owner of the property is aware of the temporary approval of the encroachment in the right of way. The preparation costs of the agreement as well as the registration costs will be the responsibility of the owner.

EXISTING POLICY/BY LAW:

By-Law No. 2004-107, “A By-Law To Protect The City’s Highways from Unauthorized Encroachments”

NOTICE PROVISIONS: There is no notice requirements associated with this report.

ACCESSIBILITY CONSIDERATIONS: No accessibility considerations are to be considered in this report.

FINANCIAL CONSIDERATIONS:

In addition to the requirement to pay legal costs of preparing and registering the agreement the applicant will be required to pay the annual encroachment fee for the privilege of using the City right-of-way.

CONTACTS:

Mark Van Buren, P.Eng, Director Engineering Department, ext. 3218
Kimberley Brown, P.Eng, Manager, Infrastructure and Development ext. 3132
Brad Morton, Infrastructure Technician, Engineering Department, ext. 3147

OTHER CITY OF KINGSTON STAFF CONSULTED:

Don Penney, Road Designer, Engineering Department

EXHIBITS ATTACHED:

Exhibit “A” – Site Location Plan