



**THE CORPORATION OF THE MUNICIPALITY OF LAMBTON SHORES  
COUNCIL MEETING AGENDA ADDENDUM  
AGENDA**

Meeting #: 08A-2017  
Date: Tuesday, April 25, 2017  
Time: 7:00 p.m.  
Location: Legacy Centre - Thomas Hall, Thedford

Pages

**1. Consideration of Staff Reports**

- 1.1 Report PL 19-2017 - Encroachment Agreement for the Commercial Use of Municipal Property - 1707884 Ontario Limited, Ed Catley (Sandbar and Grill) - 23 Main Street, West, Grand Bend**

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**RECOMMENDATION:**

**THAT** Report PL 19-2017 regarding the annual encroachment agreement with 1707884 Ontario Limited (Sandbar and Grill) for commercial use of municipal property be received; and

**THAT** the encroachment agreement between 1707884 Ontario Limited (Sandbar and Grill) and the Municipality of Lambton Shores affecting the Municipal sidewalk in front of lands known as 23 Main Street, West in Grand Bend to allow a sidewalk patio, be approved.

**2. By-laws**

- 2.1 By-law 49-2017 - Authorizing Encroachment Agreement with 1707884 Ontario Limited to Operate a Sidewalk Patio**

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**RECOMMENDATION:**

**THAT** By-law 49-2017 be read a first, second and third time, passed and signed by the Mayor and Clerk.

## THE MUNICIPALITY OF LAMBTON SHORES

**Report PL 19-2017**

**Council Meeting Date: April 25, 2017**

**TO:** Mayor Weber and Members of Council

**FROM:** Patti Richardson, Senior Planner

**RE:** Encroachment Agreement for the Commercial Use of Municipal Property  
1707884 Ontario Limited, Ed Catley (Sandbar and Grill)  
23 Main Street, West, Grand Bend

### **RECOMMENDATION:**

**THAT** Report PL 19-2017 regarding the annual encroachment agreement with 1707884 Ontario Limited (Sandbar and Grill) for commercial use of municipal property be received; and

**THAT** the encroachment agreement between 1707884 Ontario Limited (Sandbar and Grill) and the Municipality of Lambton Shores affecting the Municipal sidewalk in front of lands known as 23 Main Street, West in Grand Bend to allow a sidewalk patio, be approved.

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### **SUMMARY**

This report relates to a request from Ed Catley, operator of Sandbar and Grill located at 23 Main Street, West, Grand Bend (See Map, Attachment 1), to use a portion of the municipal sidewalk in front of their restaurant for a sidewalk patio.

### **BACKGROUND**

Mr. Catley, operating business as 1707884 Ontario Limited, is again requesting permission to operate a sidewalk patio on the Municipal sidewalk in front of his restaurant, located at 23 Main Street, East in Grand Bend. In 2016 the Municipality entered into an encroachment agreement with Mr. Catley, to operate a commercial business, being a sidewalk patio, on municipal property located in front of 23 Main Street in Grand Bend. Prior to last year the sidewalk patio was operated by J. Dee's Summerhouse o/b 1068998 for many years.

We have received a letter (Attachment 2) from Mr. Catley, the operators of the Sandbar and Grill, requesting the use of this property to conduct this sidewalk patio again in 2017.

In 2014, the Streets By-law (By-law 28 of 2005), was amended to allow cafes and patios associated with businesses abutting Municipal sidewalks to be established on the sidewalk under certain conditions, including the need to enter into an encroachment agreement with the Municipality.

Staff has reviewed the request in light of regulations and find that the request complies with the regulations.

The encroachment agreement required by the regulations has been prepared and is attached for Council's review and approval (See Attachment 3). This agreement is identical to the 2016 agreement.

The request is being brought forward for Council consideration as an addendum to the April 25, 2017 meeting as the operator would like to open May 6, 2017. A misunderstanding on Staffs' part account for the delay in bringing this request forward.

As approved by Council on March 24, 2015, a 3% increase is to be added to last year's encroach fee. As well the Operator is to provide sufficient liability insurance to indemnify the Municipality and to assume all risks associated with the operation.

### **ALTERNATIVES TO CONSIDER**

None at this time.

### **RECOMMENDED ACTIONS**

That Council receive Report PL 19-2017 and approve a by-law authorizing the encroachment agreement with 1707884 Ontario Limited.

### **FINANCIAL IMPACT**

There is a 3% increase to the fee over the 2016 rate and the fee in the draft agreement reflects this increase.

Attachments:

1. Location Map
2. Letter of Request
3. Draft Encroachment Agreement

## ATTACHMENT 1



SUBJECT LANDS

## ATTACHMENT 2

Municipality of Lampton Shores  
7883 Amtelecom Parkway  
Forrest, Ontario, N0M1J0

Sandbar & Grill  
23 Main St,  
Grand Bend, On, N0M 1T0

April 24TH, 2017

His Honor the Mayor & Council;

The Sandbar & Grill requests that His Honor the Mayor and the Lampton Shores Council accept this communication as a formal request for approval of an encroachment permit to allow the Sandbar & Grill to operate its Sidewalk Café for the upcoming 2017 season.

Kind Regards

Ed Catley

905-208-1300

# ENCROACHMENT AGREEMENT

THIS AGREEMENT made in duplicate this \_\_\_\_ day of \_\_\_\_\_, 2017

BETWEEN:

**1707884 ONTARIO LTD.**

hereinafter called the "Operator" of the FIRST PART

- AND -

**THE CORPORATION OF THE MUNICIPALITY OF LAMBTON SHORES**

hereinafter called the "Municipality" of the SECOND PART

**WHEREAS** the Operator has requested permission from the Municipality to install a sidewalk patio, as defined below, which encroaches on Municipal property;

**"Sidewalk Patio"** means a group of tables and chairs and other accessories situated and maintained upon a public sidewalk for the use and consumption of food and beverages sold to the public from, or in an adjoining or adjacent indoor restaurant located and adjacent to the business. A Sidewalk Patio shall extend no wider than the width of the associated indoor food and beverage establishment and shall be fenced. Table service and the consumption of alcohol are permitted.

**AND WHEREAS** the Operator is the operator of a business located at Lot 26, Lot 27 and Lot 43, Plan 24 known as **23 Main Street**, (the "Property") which abuts the municipal property for which the encroachment is requested;

**NOW THEREFORE** this Agreement witnesseth that the Parties hereby acknowledged, covenant and agree each with the other as follows:

1. The sidewalk patio shall comply to all other provisions of applicable bylaws of the Municipality of Lambton Shores.
2. Two (2) metres of clear unobstructed pedestrian access shall be maintained around the sidewalk patio at all times.
3. The sidewalk patio shall operate from May 6, 2017 to November 1, 2017.
4. The sidewalk patio shall be for the sole purpose of food and beverage service associated with the adjacent restaurant. No retail sales of goods or products shall be permitted.

5. No food preparation shall be permitted in the sidewalk patio. This provision includes the use of an outdoor barbeque;
6. No audio speakers shall be permitted on the sidewalk patio and speaker sound from the adjacent restaurant is to be directed into the building rather than projecting out to the sidewalk patio.
7. The maximum area of the sidewalk patio is as shown on Attachment 1.
8. The use of the areas covered by the Encroachment Agreement, shall cease at 12:00 (midnight) p.m.. every day, which means that serving and consumption of food and beverages shall stop at 12:00 (midnight) p.m. each day.
9. The Operator shall bear all costs of construction, installation, maintenance and removal of the sidewalk patio.
10. The Operator acknowledges that he/she is responsible to ensure that the liquor license for the establishment is extended to cover the sidewalk patio. The Operator shall provide proof to the Municipality that the liquor license for the establishment has been extended.
11. The Operator acknowledges that plans showing the location of the sidewalk patio, comprise Schedule "A" to this agreement.
12. The location of the sidewalk patio shall be in accordance with Schedule "A"
13. The sidewalk patio shall be enclosed with an open style fence/barrier which has a minimum height of 0.9 metres and a maximum height of 1.2 metres. Fences must be constructed for easy removal in the off season and they shall not be permanently attached to the sidewalk. Any supporting brackets cannot extend into the required pedestrian access and shall not create a hazard.
14. The Operator shall pay to the Municipality a rental fee of \$1,639.09 for the area of the sidewalk patio encroachment.
15. No music or entertainment provided to patrons of the sidewalk patio shall be amplified.
16. All exterior lighting shall be task lighting, shall not interfere with the sidewalk and shall be totally contained within the sidewalk patio. Lighting levels shall be low and directed onto the sidewalk patio and shall not spill onto abutting private properties or sidewalk. Lighting shall not have exposed cables. No lighting shall be installed without prior approval from the Municipality.

17. The owner/operator shall keep the sidewalk patio free from papers, garbage, rubbish and debris of any kind and the patio furniture clean.
18. The Municipality or any public utility shall have the right to enter any portion of the sidewalk patio at any time for the purpose of installing, maintaining or repairing pipes, cables, sidewalks, wires, poles and other installations.
19. No awnings shall be permitted on the sidewalk patio, but umbrellas are. No umbrella shall project beyond the perimeter fence.
20. The sidewalk patio shall be installed at existing grade.
21. Barrier free access of 1.5 metres in width shall be provided to the sidewalk patio.
22. All outstanding Municipal accounts against the Property are paid in full before the execution of this Agreement.
23. All taxes, charges and existing local improvements assessed against the Property are paid in full as of the date of signing of this Agreement. Such payments are to be made to the Municipality before the execution of this Agreement and a certificate of payment from the Treasury department will be proof that all outstanding charges are paid in full.
24. The Operator shall take out and maintain, at its expense, personal liability and property damage insurance in the minimum amount of \$2,000,000.00, such policy to name the Corporation of the Municipality of Lambton Shores as co-insured and to provide proof of such insurance to the Municipality. **If the insurance policy lapses during the term of this agreement, the permission for the sidewalk café is revoked until such time as the Municipality receives a valid insurance policy meeting the requirements of section 16 of this agreement.**
26. The Operator hereby agrees to indemnify and save harmless the Municipality against any and all losses, costs (including legal costs of a solicitor and his client basis), claims, liabilities, expenses or damage sustained, incurred or arising from this Agreement.
27. The term of this Agreement shall expire on November 1, 2017, and on such date the sidewalk patio shall be removed forthwith at the expense of the owner.
28. In the event the sidewalk patio is removed, this Agreement is hereby terminated.
29. This Agreement is not transferable.
30. The Operator hereby acknowledges the Municipality's right to control the operation of the sidewalk patio, and any violation of the terms of this agreement may result in



suspension or termination of the permission granted. In addition, the Municipality has the right to terminate this Agreement if in the Municipality's view complaints are not being addressed to the Municipality's satisfaction.

**IN WITNESS WHEREOF** the Operator and the Municipality have affixed their respective corporate seals over the hands of their duly authorized signing officers.

**SIGNED, SEALED AND DELIVERED**

in the presence of:

**THE SANDBAR & GRILL o/b  
1707884 ONTARIO LTD.**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Owner/Operator

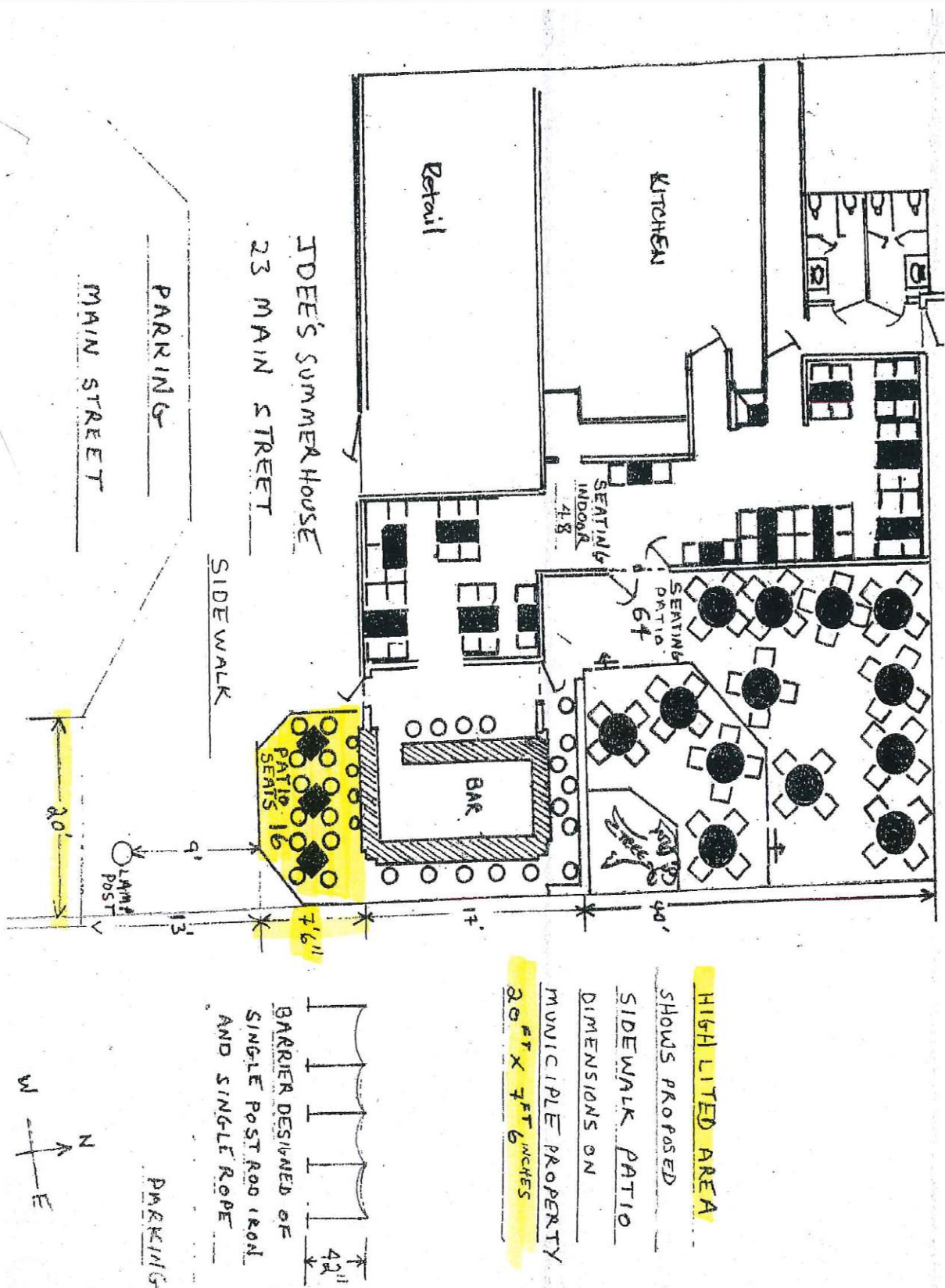
**THE CORPORATION OF THE  
MUNICIPALITY OF LAMBTON HORES**

\_\_\_\_\_  
Bill Weber, Mayor

\_\_\_\_\_  
Nancy Wright-Laking, Clerk

## SCHEDULE "A"

This is Schedule "A" to the encroachment agreement dated the \_\_\_\_ day of \_\_\_\_\_, 2017 between the Corporation of the Municipality of Lambton Shores and **1707884 Ontario Ltd.** to which it is attached and forms a part.



**THE CORPORATION OF THE MUNICIPALITY OF LAMBTON SHORES**

**BY-LAW 49 of 2017**

Being a By-law to Authorize an Encroachment Agreement with  
1707884 Ontario Ltd. (The Sandbar & Grill) for a Sidewalk Patio

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**WHEREAS:** The Sandbar & Grill o/b 1707884 Ontario Ltd. has requested permission to operate a sidewalk patio in conjunction with their restaurant operations, located at 23 Main Street West, Grand Bend, in the Municipality of Lambton Shores in the County of Lambton; and

**WHEREAS:** An agreement has been drafted that outlined the terms and conditions under which the permission for the encroachment would be granted; and

**WHEREAS:** It is deemed appropriate for the Municipality to authorize the Mayor and Clerk to sign the necessary agreement.

**THEREFORE** The Municipal Council of the Corporation of the Municipality of Lambton Shores enacts as follows:

1. The Mayor and Clerk are authorized to execute an agreement on behalf of the Corporation between the Municipality of Lambton Shores and 1707884 Ontario Ltd. and to affix to the agreement the Corporate Seal of the Corporation of the Municipality of Lambton Shores;
2. This By-law comes into force and effect upon being finally passed.

Read a FIRST and SECOND time, this 25<sup>th</sup> day of April, 2017

**READ A THIRD TIME AND PASSED THIS 25<sup>th</sup> DAY OF APRIL, 2017.**

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MAYOR – Bill Weber

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CLERK – Nancy Wright-Laking