

CITY OF NANAIMO

BYLAW NO. 2350

A BYLAW TO AUTHORIZE THE CITY OF NANAIMO
TO LEASE CERTAIN PROPERTY

The Council of the City of Nanaimo, in open meeting assembled, ENACTS AS FOLLOWS:

1. This Bylaw may be cited as the "LEASE AUTHORIZATION BYLAW 1981 NO. 2350".


2. His Worship the Mayor and the City Clerk are hereby authorized and empowered to execute a lease in the form attached hereto and forming part of this Bylaw in favour of the following:

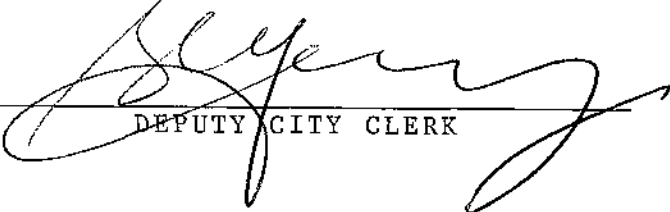
- (a) a lease in favour of Larry George MCKENNA and Karen Virginia KEWLEY, 4288 Victoria Avenue, Nanaimo, B. C., V9T 2A9 for THAT portion of Victoria Avenue adjoining Lot 1, Block 1, Section 5, Wellington District, Plan 318, as shown outlined upon the sketch map attached to such lease.

PASSED FIRST, SECOND AND THIRD READINGS 1981-SEP-14.

RECONSIDERED, FINALLY PASSED AND ADOPTED 1981-SEP-21.

REPEALED 1984-SEP-10.


MAYOR


DEPUTY CITY CLERK

CITY OF NANAIMO

ENCROACHMENT AGREEMENT

Made and entered into this 22nd day of September , 1981

BETWEEN: MCKENNA, Larry George and KEWLEY, Karen Virginia,
4288 Victoria Avenue,
Nanaimo, British Columbia, CANADA.
V9T 2A9

(hereinafter called "the Owner");

OF THE FIRST PART;

AND:

CITY OF NANAIMO, a duly incorporated
municipality, having its offices at 455 Wallace
Street, in the City of Nanaimo, Province of
British Columbia, V9R 5J6

(hereinafter called "the Municipality");

OF THE SECOND PART;

WHEREAS the Owner is the owner of:

Lot 1, Block 1, Section 5, Wellington District, Plan 318.

(herein called the "Land")

in the Municipality and has requested the Municipality to
grant him permission to construct, use or continue the use
or existence of an encroachment onto land owned or
possessed by the Municipality which encroachment is
appurtenant to the Land, which request the Municipality
has agreed to grant, subject to the provisions of all
Municipal By-laws and to the terms and conditions herein
set forth.



NOW THIS AGREEMENT WITNESSETH:

ENCROACHMENT

1. That, in consideration of the premises and the covenants contained herein by the Owner to be performed and observed, the Municipality (so far as it legally can, but not otherwise, and subject to the by-laws aforesaid), grants unto the Owner permission to construct and maintain an encroachment comprising:

2.787 Square Meters (30 Sq. ft.)

and adjoining the Land and in accordance with the plan attached, which encroachment, including all excavation or other work now or hereafter performed in connection therewith, is hereinafter referred to as "the Works".

NO RELIEF

2. It is understood, covenanted and agreed by and between the parties hereto that no provision of these presents and no act or omission or finding of negligence, whether joint or several, as against the Municipality, in favour of any third party, shall operate to relieve, or be deemed to relieve, the Owner in any manner whatsoever from any liability to the Municipality in the premises, or under these presents, or under the provisions of the Municipal Act, or any by-law of the Municipality and amendments thereto.

FEE

3. The Owner covenants and agrees:

(1) that he will pay to the Municipality the fee of
- - - - - One - - - - - 00/DOLLARS

(\$1.00) upon the execution of this

agreement; and also for the permission hereby

granted the annual sum of - - - - - Five - - - - -

- - - - - 00/DOLLARS

(\$5.00) the first annual payment to be payable upon the execution of this agreement and the ensuing annual payments to be paid on the first day of September, 1981 in each and every year during the continuance of this agreement;

SAVE HARMLESS

(2) to save harmless the Municipality from any and all liability whatsoever arising out of:

- (a) the Works encroaching upon, under or over the highway of the Municipality,
- (b) the Owner's construction of anything upon, under or over the highway, or
- (c) the Owner's maintenance of anything upon, under or over the highway,
- (d) the Owner's occupation or use of the highway or the ground below or the air above for the purpose of such encroachment by the Works;

(3) to charge his interest in the Land in favour of the Municipality for the payment of all sums which may at any time hereafter be payable by the Municipality in respect of any claims, loss, damage or expense of whatsoever kind arising:

- (a) from the construction, maintenance or existence of the Works,
- (b) from the permission hereby granted,

and to indemnify for payment provided in the said by-laws referred to herein, or under the terms of this agreement;

INSURANCE

(4) if requested to do so by the Municipal Engineer, deposit with the Municipality a policy of public liability insurance in a form and amount acceptable to the Municipal Engineer insuring both the Owner and the Municipality against any

loss resulting from the occurrences mentioned in (2) above. Cancellation of such insurance will serve to immediately cancel this agreement and any right the owner derives hereunder;

ENTRY (5) that the Municipality's servants or agents shall have the right at any and all reasonable times of entering into and upon the Land for the purpose of constructing, maintaining, inspecting or removing any public structure service or utility running underneath the sidewalk or in the vicinity of the said Works;

MUNICIPAL
WORKS (6) that in the event of any alteration or change being necessary by the construction, maintenance, use or removal of the Works to any meter, water service, sewer or other public works or utility in the vicinity of the Land, the Owner will reimburse the Municipality for whatever sums may be incurred by the Municipality in making such alterations or changes as may be deemed necessary by the Municipal Engineer;

DEFAULT (7) at all times to observe and perform the provisions of the by-laws of the Municipality, and this agreement shall be at all times subject thereto and in case the Owner shall fail to comply with the provisions of the said by-laws, or any of them or of this agreement, all rights of the Owner hereunder shall thereupon terminate and be at an end; but the Municipality, nevertheless, shall be entitled to proceed with the enforcement of any security or indemnity herein provided, or upon any bond or otherwise in satisfaction of any claim, loss or expenses of whatsoever kind arising under this agreement, or from the permission hereby granted.



REGISTRATION

4. In the event of this agreement being registered as a charge against the Land, none of the Owner's covenants herein contained shall be personal or binding upon the Owner save or except during the owner's seisin of or ownership of any interest in the Land, and with respect only to the portion of the Land of which the Owner shall be seised or in which he shall have an interest; but that the said Land shall, nevertheless, be and remain at all times charged therewith.

ALTERATION OF
MUNICIPAL
WORKS

5. This agreement shall not in any way operate to restrict the right of the Municipality at any time to:

- (1) alter the road, curb, gutter, sidewalk or boulevard abutting or adjoining the Land, and notwithstanding that the effect of such alteration in width or elevation may be to render the Works useless for the purposes of the Owner;
- (2) construct any form of structure or utility on, over or under any portion of the highway in which the Works encroach and for such purpose require that the Works be removed in part or in whole; and

the Owner covenants that, in the event of the Municipality effecting any such alteration in the width and/or elevation of the said roadway, sidewalk and/or boulevard, or in requiring removal of all or part of the Works, he will release and forever discharge, and doth hereby release and forever discharge, the Municipality from all manner of claims of any nature whatsoever, which may arise by reason of such alteration in width and/or elevation as aforesaid, or by reason of the discontinuance and removal of the Works, as a result of such alteration in width and/or elevation or construction.

6. In particular, but without restricting the generality of the foregoing, it is understood and agreed that:

- (1) this agreement may be revoked at any time by the Municipality;
- (2) the Owner will at all times, and at his own expense, keep and maintain the Works in good and sufficient repair to the satisfaction of the Municipal Engineer;
- (3) in the event of the termination of this agreement from any cause whatsoever, the Owner will, at his own expense, and within a period of one month from the date of such termination, or such further or shorter period as may be specified by the Municipal Engineer, remove the Works and fill up any excavation made, constructed or maintained, with respect to such encroachment, and replace and put the sidewalk, street, lane or other public place in, under or over such area in the same condition as the adjoining sidewalk, street, lane or other public place to the satisfaction of the Municipal Engineer;
- (4) should the Owner fail to keep the Works or covering thereof in good and sufficient repair, to the satisfaction of the Municipal Engineer, or failing to remove the Works or to fill up any excavation, the Municipal Engineer shall make such repairs, including structural changes, when by him deemed necessary, or remove the Works, or fill up such excavation, as the case may require, in the opinion of the Municipal Engineer, and the Owner shall pay the costs of such work to the Municipality forthwith; and in

the default of payment, the amount of such cost and interest at twelve per cent per annum may be recovered in any court of competent jurisdiction, or the same may be recovered in like manner as overdue taxes against the Land.

7. Time shall be of the essence.

8. This agreement shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

9. Words herein importing the singular number, or the masculine gender only, shall include more persons, parties or things of the same kind than one, and females as well as males, and the converse, and, unless the context requires a different meaning, words herein shall bear the same meaning as in the Municipal by-laws aforesaid.

IN WITNESS WHEREOF the said Owner has hereunto set his hand and seal the day and year first above written.

SIGNED, SEALED AND DELIVERED)
by)
in the presence of:)

[Signature])

Witness)

[Signature])
Address)

[Signature])
Occupation)

The Common Seal of)
was hereto)
affixed in the presence of:)

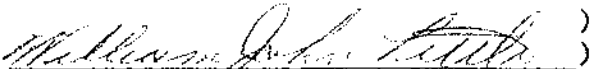
_____)
_____)
_____)

[Signature]
[Signature]

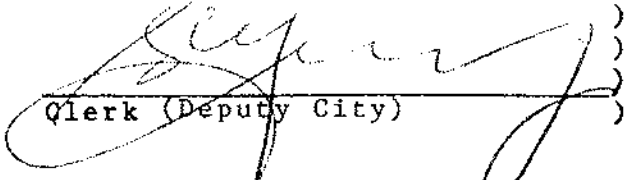
(SEAL)

[Signature]

The Common Seal of the)
Municipality was hereunto)
affixed in the presence of:)



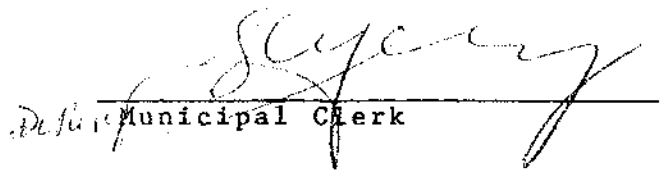
Mayor (Acting)



Clerk (Deputy City)

(SEAL)

Authorized by Council resolution on the ^{21st} day
of September , 1981.



Deputy Municipal Clerk

JOHN (JACK) GISBORNE
BRITISH COLUMBIA LAND SURVEYOR

ASSOCIATED WITH R.G. (Ron) FULLER, CIVIL ENGINEER
OFFERING COMPLETE PROFESSIONAL SERVICES FOR SUBDIVISION DEVELOPMENT.

SUBDIVISION PLANNING

PHONE 753-9181

LEGAL AND TOPOGRAPHIC SURVEYS

#7 - 20 Front Street

NANAIMO, B.C.

V9R 5H8

FILE No. 483

F. B. 194-59

LARRY McKENNA
295 CILAIRE
NANAIMO, B.C.

Dear Sirs:

AUG. 20 19 81

RE: LOT 1, BLOCK 1, PLAN 318,
WELLINGTON DISTRICT

I hereby certify that the building constructed on the above described parcel lies entirely within the legal boundaries thereof as indicated on the sketch below.

The measurements shown on the sketch below are the shortest distances between the foundation of the building (and garage, carport) and the adjacent boundaries of the parcel, unless otherwise indicated. The sketch also shows the dimensions of the parcel and the street or streets on which it fronts.

Scale: 1:200

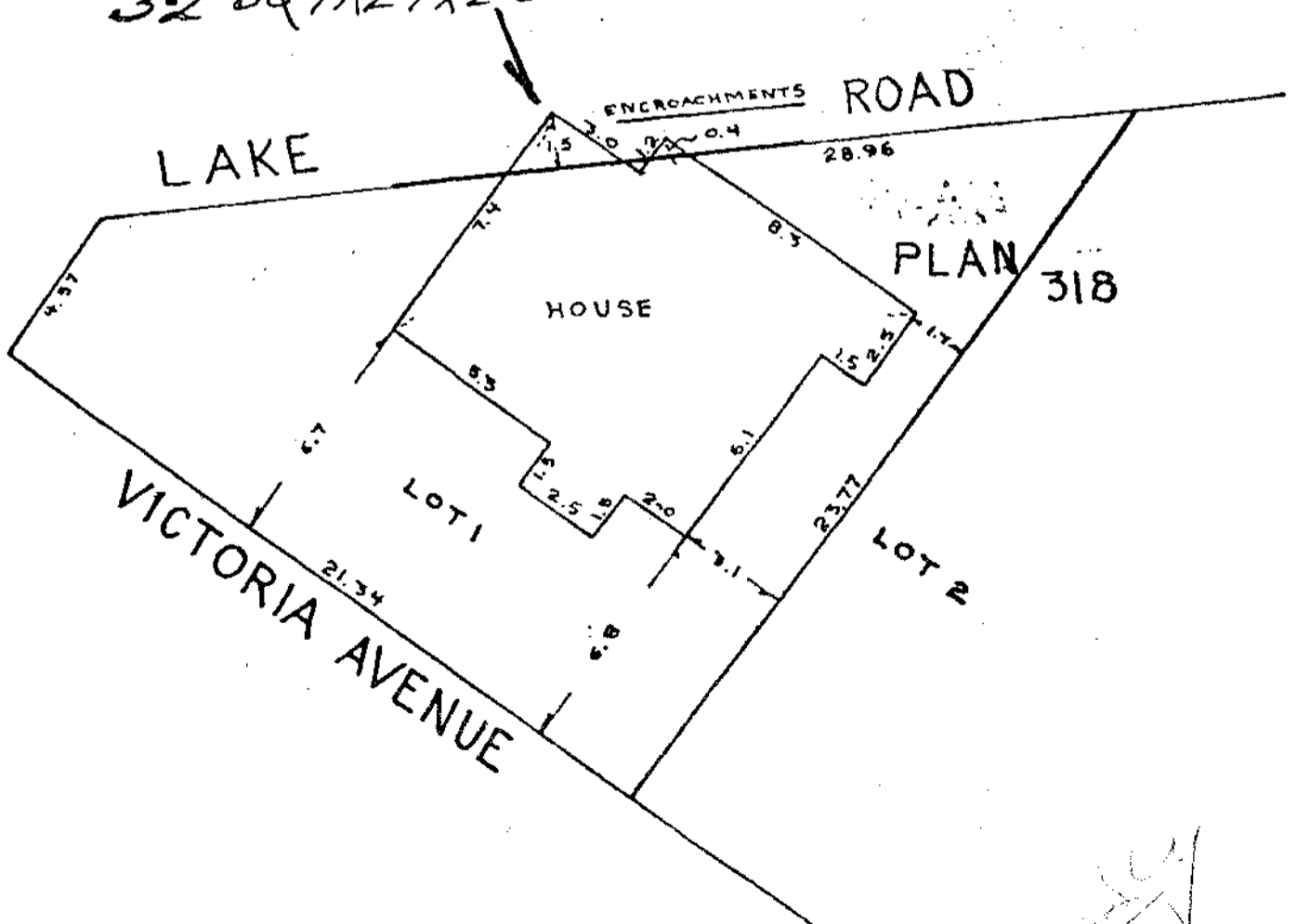
Yours very truly,

NOTE: All measurements metric.

J. GISBORNE, B.C.L.S.



*BAUGH-ALLEN ENCROACHMENT
3.2 SQ METRES OR 30 SQ FT. + OR -*



[Handwritten signature]

LONG

LAKE

H.W.M. as shown on Plan 318

M.H.

LAKE

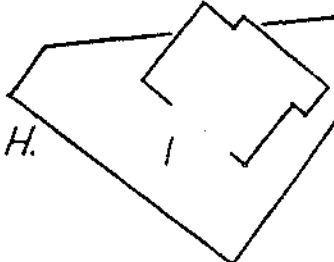
M.H.

ROAD

Parks Bldg.

M.H.

sundeck
house
Block



2

6

5

Plan
3

318

WELLESLEY
AVE.

Block

2

7

3

1

4

STREET

8

7

Block

6

VICTORIA
AVE.

101st

2

6

5

3

THE CORPORATION OF THE CITY OF NANAIMO

Long Lake Park

SCALE 1" = 50'

DATE JUNE 5, 1977

1642.9.77

CITY ENGINEER