



PORT COLBORNE

Memorandum

To: Mayor Steele and Members of Council
From: Councillor Aquilina
Date: April 25, 2023
Re: Sherkston Shores Resort (Sun Communities) Restoration of Access to residents of LOS 1R0

My intention is to move that the Chief Administrative Officer be directed to produce a report that provides options to Council regarding the issues being encountered by residents of the Hamlet of Sherkston (LOS 1R0).

Background:

June 18, 2018 Public Meeting in regards to the Stopping Up and Closing of parts of Empire and Michael Roads.

Cecil Vincent, Manager of Strategic and Corporate Initiatives stated that there were two issues in relation to Empire Road:

1. Empire Road in the past has provided an indirect benefit to the residents of LOS 1R0, which allowed the residents to have access to the Sherkston Shores beaches. The City's position is that **this access would need to be protected** if the City agreed to dispose of the land on Empire Road. Any sale of the land will be **in perpetuity** and access to those residents of LOS 1R0 to have the same access to the beaches, **under the same terms that they have enjoyed in the past to the beaches, and such properties (residents) of LOS 1R0 would be registered on title.** Any other access to amenities would be the discretion of the resort owners to residents of LOS 1R0 (nominal fee, etc.).

2. Continued access for relatives (during business hours) to the Shisler Cemetery that is within Sherkston Shores and that the City still maintains ownership of.

July 9, 2018 – Committee of the Whole, Stopping up and closing of parts of Empire and Michael Roads and sale to Sun Communities

Report 2018-95 was presented to Council on the sale of Empire and Michael Roads to Sun Communities for \$525,000.

Beach Access Easement Agreement

4. The rights of the City and the Invitees (collectively, the "Benefitting Parties") under this Easement Agreement are subject to the following terms and conditions:
 - (a) the use of the Easement is restricted to pedestrian access, ingress, egress and passage only, and the Easement may not be used for any other purpose;
 - (b) the use of the Easement is restricted to the Benefitting Parties only, and the Easement may not be used by any other persons;
 - (c) the use of the Easement is restricted to the dates and hours of operation of the business conducted by Sun on the Sherkston Lands, and the Easement may not be used at any other time;
 - (d) prior to being able to use the Easement in any calendar year, each Benefitting Party must register at the main office of the business conducted by Sun at the Sherkston Lands and must agree to be bound by all of the rules and regulations governing the business conducted by Sun at the Sherkston Lands;
 - (e) the use of the Designated Roadways by the Benefitting Parties shall be in common with Sun and its tenants, subtenants, invitees, customers, guests, licensees, agents, contractors, subcontractors, employees and other persons permitted to use the Designated Roadways by Sun from time to time;
 - (f) the Benefitting Parties shall not have access to any other lands, buildings, services or amenities at the Sherkston Lands other than the Designated Roadways, unless otherwise agreed by Sun in writing; and
 - (g) Sun shall be entitled at any time and from time to time to close or restrict access to all or any part of the Designated Roadways for the purpose of effecting any repairs, maintenance or servicing, or for the purpose of re-routing any of the roadways within the Burdened Lands, as Sun may determine to be necessary or advisable, provided in each case that a similar alternative means of pedestrian access from the Benefitting Lands to the Beach Lands and from the Beach Lands to the Benefitting Lands is provided by Sun for the duration of such closure or restricted access.

June 28, 2022 Regular Council Meeting: Sherkston Shores Golf Cart Access

Report Number: 2022-144 by the CAO

A representative of the City's law firm, Sullivan Mahoney, provided the legal opinion and presented it to Council in Closed Session on June 13, 2022. At that meeting, Council directed staff to bring forward a public report as a means of informing the public of the legal opinion and the results of the closed meeting.

In April 2022, City Staff became aware that the management of Sherkston Shores had decided to restrict the use of golf carts by residents of the hamlet and permit those residents 'pedestrian access only' or access on foot rather than golf carts.

Park management did indicate that they were eager to accommodate Hamlet residents with mobility limitations and would make arrangements to provide this accommodation when residents contacted the park directly to coordinate their access.

Subsequent to the events described above, the Regional Councillor raised this issue during the May 10th Council Meeting and Council directed staff to obtain a legal opinion to determine if the interpretation of the easement by the park was incorrect. Based on the direction of Council at the May 10, 2022 meeting, a legal opinion was requested from Sullivan Mahoney. The legal opinion was provided to Council in a closed session on June 13, 2022.

The legal opinion stated that the owner of the easement lands is entitled to prohibit the use of golf carts (and other vehicles) on the lands and is entitled to limit the use of the lands to pedestrian access only.

Questions I am raising as a result of the background presented:

- I am trying to understand the discrepancies between what was indicated as the "intent" of the City in the public meeting in June 2018 to what the City Solicitors drew up for the sales agreement and intern, the Beach Access Easement Agreement. Is the City's intent from the public meeting clearly represented in the easement agreement?
- Why has the access for residents of the hamlet evolved from protecting the access they always had to an issue about golf cart access?
- Access to Hamlet residents did not change until April 2022 – what transpired to trigger Sherkston Shores to change what was/has been in place for LOS 1R0 residents? Especially if the easement was in place back in 2018.
- During the June 28, 2022 meeting the acting Clerk put forward that Council directed the CAO to speak to Sherkston Shore Management representative to clearly define in **writing** what is considered access from LOS1R0 residents. Potential options were provided from the

Hamlet Representatives. My understanding is that Sherkston Shores Management will not entertain any discussions with the City and Hamlet representatives.

- To date has the CAO been able to obtain anything in writing from Sherkston Shores Management?
- Has Sherkston Shores been able to provide data as to how many LOS 1R0 residents participate in obtaining a yearly season resident pass? Prior years' data would be valuable information to obtain since not all LOS 1R0 residents participate in this program. In addition, confirmation of how many members are in the resort would be valuable, in order for council to make a comparison of the impact LOS 1R0 residents are having on the resort.

Furthermore, I am requesting that the following motion be approved:

That the Chief Administrative Officer be directed to bring forward a report at the May 9, 2023 Council meeting regarding the options for LOS 1R0 residents' access to Sherkston Shores.

Thank you for your consideration,

Councillor Aquilina
Ward Four