MEMORANDUM
CLK 19-19 Minor Variance Objections

June 27, 2019

TO: Council
FROM: Donna Wilson, Town Clerk

RE: Application for Minor Variance A05-19, 26 Thomas Avenue (Roy and Nancy Gardner)

At the Council meeting of June 24, 2019, Council deferred the decision for Minor Variance A-05/19 as additional information was provided at the meeting which Council had not had the opportunity to receive and review prior to the meeting.

The additional information provided was two objections. Both objections were based on their thought that the application contravenes a signed agreement between the Developer and the original home owner. The first objection is signed by 7 individuals representing 4 properties in the neighbourhood. The second objection is from another homeowner of the neighbourhood who provided a copy of their original agreement with the Developer.

Staff contacted the County Planner Eric Gilbert and Mr. James Morgan, Lawyer regarding their interpretation of the developer agreement and its legal impact to this application.

Eric Gilbert responded as follows: The agreement is not registered on title. I would consider the agreement to be a civil matter, between the owner of the property and the original developer/subdivider. We would also call these items private covenants.

The Planning Act & Building Code Act do not give any weight to these private agreements, they are not applicable law that the municipally is required to enforce. I don’t believe the Town has any authority to regulate the manner of construction beyond the minimum standards of the Building Code Act unless the property is subject to site plan control. The subject property is exempt from Site Plan Control as per Site Plan Control By-Law 4151. All residential accessory buildings are exempt from Site Plan Control in accordance with Section 2.1.1 of the by-law.
James Morgan stated that the statute of limitations on property agreements is 10 years, this agreement is dated March 27, 1990 which clearly has exceeded the 10 year limitation. He also stated that the agreement was entered into between the developer and the property owner and that the Municipality was not a party to the agreement. As the municipality is not a party to the agreement then we have no authority to require that the agreement is complied with. Municipalities enter into site plan agreements with property owners and register them on title which requires compliance in perpetuity.

It appears that Council can make a decision on Minor Variance A-05/19, 26 Thomas Avenue without regard for the 1990 agreement.