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MEMORANDUM

DATE: August 14, 2015

TO: Council, Summer Village of Kapasiwin

FROM: Denny Thomas

RE: Summary of Subdivision and Right of Way Plans and Easement No. 1420 E.T. and Recommended Action

1. The original subdivision plan which created the residential lots in what later became the Village of Kapasiwin and then the Summer Village of Kapasiwin is Plan No. 4722A.Q. registered at the Land Titles office for the North Alberta Land Registration District ("LTO") on March 25, 1913 (TAB B1).
2. Plan 4722 A.Q. included Wapameg Avenue as a dedicated road allowance. At that time, the title to the road allowance resided in the Crown in Right of Canada because the lands in question had been surrendered out of Indian Reserve No. 133B.
3. In 1934, all streets, lanes and avenues lying southwest and south of the Grande Trunk erePacific Railway ("GTP") [now the CNR] right of way were vested in the Province of Alberta by a federal Privy Council Order registered in the LTO on October 1, 1934 as Instrument No. 584 E.U. It appears that this project was led by the Honourable John R. Boyle, a resident of the Village and a retired Judge of the Supreme Court of Alberta, Trial Division. I speculate that some of the villagers involved were lawyers who had been engaged in the passage by Parliament of the Transfer of *Natural Resource Act* which, in 1930, transferred all mines and minerals from Canada to Alberta. That Act now forms part of the *Constitution Act of Canada*. These lawyers and former Judge Boyle would have been aware of the importance of transferring ownership of all road allowances into the title and control of Alberta so that they would be in provincial jurisdiction and therefore capable of management and control by the Village Council.
4. As part of this exercise, the Village Council had part of Wapameg Avenue, shown outlined in green on the original subdivision plan 4722 A.Q. cancelled by an Order of the Board of Public Utility Commissioners (Order #7486 dated March 7, 1935) and registered in the LTO as Instrument No. 1420E.T. ("Easement") (TAB A). A new certificate of title No. 179-C-81 was generated in the name of the Village of Kapasiwin. The Easement was granted over the parcel that was formerly Wapameg Avenue in favour of the "lots abutting on said Avenue", that being all of the residential lots in the Village as shown on subdivision plan 4722A.Q. (see the endorsement by the Registrar of LTO on Plan 4722A.Q.).

5. In 1950, Wapameg Avenue was formally closed by a Judge's Order and a Village Bylaw which were registered in the LTO as Instrument No. 2017H.W. This Judge's Order vested title in the Village of Kapasiwin (new certificate of title 29-V-132) which was issued July 26, 1950 (see endorsement by the Registrar on Plan 4722A.Q.).
6. The Village Council then undertook a replotting exercise which led to the resubdivision of some of the existing lots and road allowances within the Village. This culminated in the preparation of a Replot Plan of Resubdivision registered at the LTO as Plan No. 5674H.W. on March 25, 1954. (TAB B2). This Plan created the lot layout within the portion of the Village lying west and southwesterly of Gibbons and Railway Avenues respectively, i.e. the current occupied portion of Kapasiwin.
7. Plan 5674H.W. incorporated what had been Wapameg Avenue (and some other closed east/west road allowances) into the lots created under 5674H.W. From a practical point of view, this extended the boundaries of all lots to the high-water mark of the Lake as shown on a plan of survey prepared in 1906 by J.K. McLean, Dominion Land Surveyor. The Easement carried over to all titles within the new Plan 5674H.W., and remains registered to this day on these titles.
8. In the late 1980s, some of the road allowances east of Gibbons Avenue were closed by Village Bylaws and those closed roads were consolidated into Municipal Reserve blocks and given the designation of Natural Environment Recreation District under the Land Use Bylaw.
9. Also, in the late 1980s, land surveyors were instructed by Council to prepare a right of way plan 3.05 metres (10 ft.) in width, to document the location of the long existing footpath lying within the area of the Easement. The surveyors were instructed to follow the existing footpath, keeping as close to the Lake as possible. The Land Use Bylaw had recently created an 8 metre (26.2 ft) setback for dwellings and the Council of the day was concerned not to create non-conforming buildings by having the right of way for the path located too close to existing residences/cottages. The new Right of Way Plan for Easement Purposes was prepared and registered at the LTO as Plan # 902 1906 on July 10, 1990 (Instrument No. 902 203 995)
11. Right of Way Plan 902 1906 was registered to serve two purposes:
 - a) Firstly, the east boundary of Plan # 902 1906 was to serve as a reference point for calculating setbacks under the Land Use Bylaw (now Bylaw #242). See the definition in s.2(1) of FOOTPATH EASEMENT, which refers to this Plan.
 - b) Secondly, as a new description for the Easement which currently uses the old description of Wapameg Avenue which is very wide. Some of the newer residential buildings (e.g. Wiles, Kirbys, and perhaps others) intrude into the Easement and may have difficulty obtaining clear Real Property Reports required at the time of sale or financing.

12. Over the years, various Councils and Administrators were urged to take steps to reduce the description of the Easement from the very wide Wapameg Avenue to the new 3.05 metre wide right of way, shown in Plan # 902 1906, but this was never done.

13. The issue of reducing the area of land covered by the Easement was researched in the 1980s and a legal opinion was obtained that the Easement could be amended by a Judge's Order, i.e. an order of a Justice of the Court of Queen's Bench of Alberta. A Court Application to resolve the lingering uncertainty as to the location and width of the Easement should be undertaken, preferably by volunteer legal assistance provided by one of the lawyers in the Village.
