



## REPORT N° AMÉ-19-31-R

<b>Date</b>	19/03/2019
<b>Submitted by</b>	Marie-Eve Bélanger
<b>Subject</b>	Solar panel on City property at 464 du Ruisseau
<b>File N°</b>	464 du Ruisseau

1) **NATURE/GOAL :**

The goal of this report is to make a decision on the solar panels that are located on City property on Block 25 of Plan 50M-225.

2) **DIRECTIVE/PREVIOUS POLICY :**

On November 5th, 2018, Council deferred the following resolution:

"Whereas Committee of the whole received on May 7<sup>th</sup>, 2018, a letter from Mr. Jacques Taillefer, owner of 464 du Ruisseau, regarding the encroachment of his solar panels on municipal property;

Whereas during this meeting, the Committee of the Whole mandated the administration to obtain a legal advice from the City's legal Counsel in order to evaluate Mr. Taillefer's proposal; and

Whereas the legal counsel and insurance company advice demonstrates that an agreement with the owner should require many criteria, which could be an issue due to the situation;

Be it resolved that Council ask that the solar panels, being the property of the owner at 464 du Ruisseau, be removed from City property, as recommended in report AMÉ-18-08-R."

3) **DEPARTMENT'S RECOMMENDATION :**

THAT the Committee of the Whole recommends to Council that the solar panels be removed from City property and that it be returned to its natural state.

QUE le comité plénier recommande au conseil que les panneaux solaires soient enlevés du terrain de la Cité et que le terrain soit retourné à son état naturel.

4) **BACKGROUND :**

The owner of 464 du Ruisseau Street, Jacques Taillefer, signed a contract with a private company for the installation of an array of solar panels for the generation of electricity. Mr. Taillefer was under the

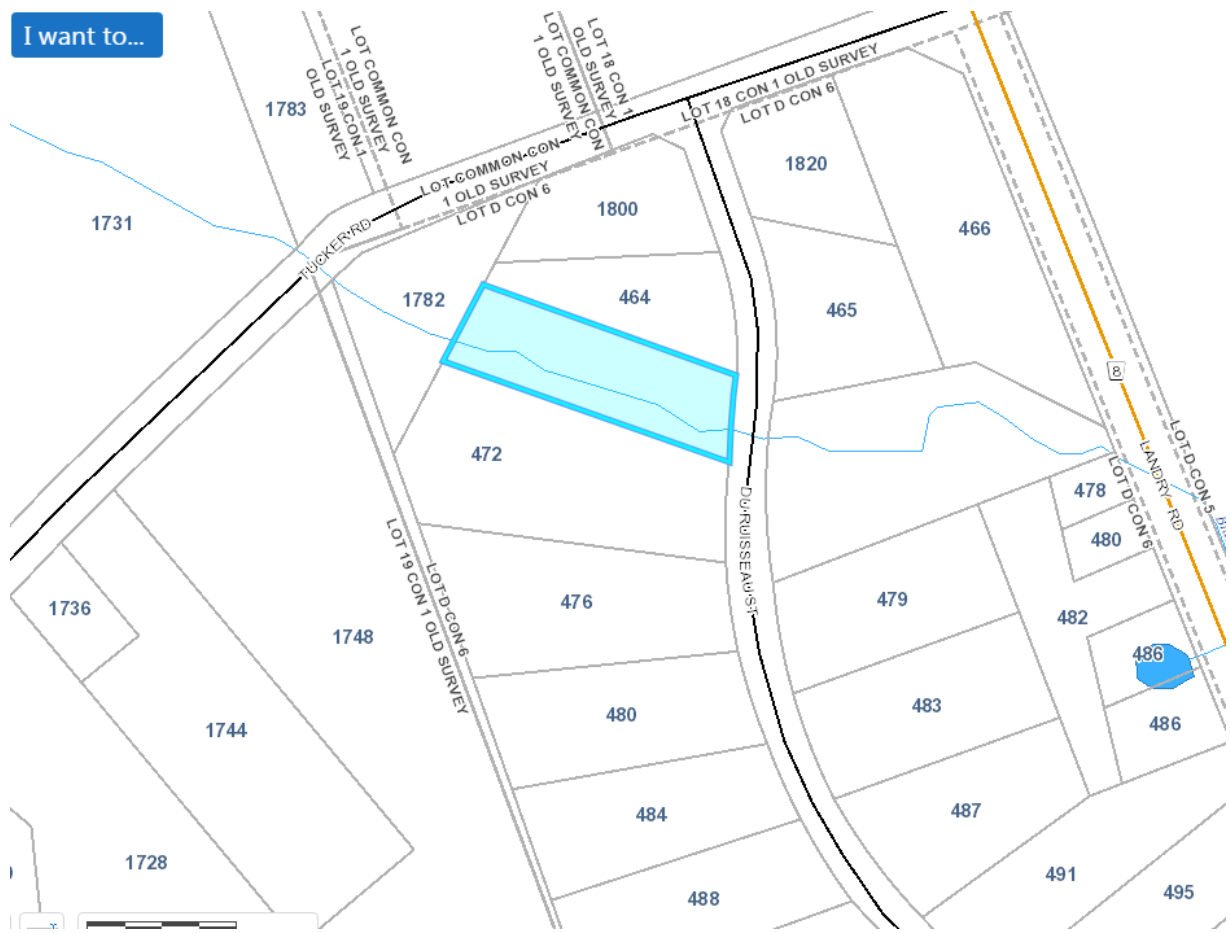
impression that his contractor had communicated with the City in order to obtain permission to install the solar panels on the municipal property adjacent to his rear yard. No evidence exists of any such communication. Having discovered this, Mr. Taillefer inquired if he could continue using the City's property for the existing solar panels at their current location, being partially on the municipal property along the side lot line at the rear of his residence at 464 du Ruisseau Street. It is important to note that the property was sold to Mr. Julien Legris. The new owner is now looking for answers.

5) **DISCUSSION :**

The Corporation of the City of Clarence-Rockland is the owner of a portion of land known as Block 25, Plan 50M-225. This property has frontage on du Ruisseau Street in Clarence Point. The property contains a portion of Blais Creek, which flows from east of Landry Street onto a municipal property (Block 26 of Plan 50M-225) to the east of du Ruisseau Street, under du Ruisseau Street and onto the subject property and then continues on private property to the west and into Clarence Creek to the Ottawa River. The subject property was transferred to the City by the developer of the subdivision in order to allow the City to maintain and protect Blais Creek and its riparian zone.

Under the Subdivision Agreement, it is indicated that any new development or buildings must be setback 15 metres from the top of bank of the Blais Creek. This was a condition of the Ministry of Natural Resources at the time.

The solar panels are currently located at approximately 10 metres from the creek itself. It is not clear where the top of bank is located but it is clear that the 15-metre setback is not respected in this case.



**Figure 1: Keymap showing the location of the subject property outlined in red and Blais Creek in blue**

Mr. Jacques Taillefer, the original owner of the adjacent residential property, lot 24, plan 50M-225, known by the civic address of 464 du Ruisseau, hired a private contractor in 2011 to install an array of solar panels located on a portion of the subject property adjacent to his rear yard. The contract with the private company for the solar panels continues until October 3<sup>rd</sup>, 2031, however, the potential useful lifespan of the solar panels may continue for up to 100 years from when they were manufactured.

Mr. Taillefer contacted his lawyer that suggested that a license of occupation would be the proper mechanism to authorize the placement of his solar panel on City property. He also suggested a fee of \$100 per year.

Section 9 and 10 below include the City's lawyer and insurer's comments.



**Figure 2: Aerial photography showing solar panels, creek, and house at 464 du Ruisseau St**

Following Council's meeting of November 5th, 2018, Council had decided that the file be deferred for 3 months pending more information from South Nation Conservation.

South Nation has advised the City that although the solar panel's removal will probably create more harm for the environment than leaving it there, at some point in time, the panels will reach its end of life cycle and would need to be removed. As such, the removal will likely harm the environment one way or another.

The Department does not recommend that land be transferred to the property owner since it is only a temporary structure. This would also create a negative precedent for encroachments in the City.

The idea of a license of occupation seemed a better option for the owners, however, they advised us that the panels cannot be insured (based on their insurance company) since it is not on their land. This license would need to be signed without a liability insurance.

As such, the Department deems that the solar panels should be removed from City property and that the land should return to its natural state.

6) **CONSULTATION:**

n/a

7) **RECOMMENDATIONS OR COMMENTS FROM COMMITTEE/ OTHER DEPARTMENTS :**

n/a

8) **FINANCIAL IMPACT (expenses/material/etc.):**

n/a

9) **LEGAL IMPLICATIONS :**

The City has obtained comments from the City lawyer which is as follows:

"There are two principal characteristics of a Licence of Occupation which distinguish it from other arrangements, such as a Lease or Easement. First, a licence of occupation is intended to permit a *temporary* use of land for specific purpose. Second, a licence of occupation is intended to grant a *personal privilege* to the occupying party. Based on our recent discussions, it would not appear that either of those considerations reflect what the owners are looking for. It is now my understanding that they want the solar panel to be able to remain indefinitely, and that the agreement continue to apply to the benefit of any subsequent owner. In effect, the owners appear to want the City to recognize the solar panel installation as a permanent interest which runs with the land. A discussion of issues arising from such a desired arrangement follow below.

As you are aware, the City has a policy governing the disposal of surplus land. This policy applies to the granting of an interest in land by way of lease, or other *long term* disposition. If Council were to agree to an agreement which saw the solar panel installation permitted to remain in perpetuity, and with such right being transferred to a new owner on a sale, it is our opinion that your policy would apply. Determining fair market consideration for such a right would ordinarily be required. Failing the payment of reasonable consideration, Council may be seen to be establishing an unintended precedent of effectively allowing the encroachment onto, and use of, City property. The owner has the benefit of maintaining its full backyard, unencumbered by the presence of this large installation, while receiving the benefit of the solar panel installation. It is my understanding that the owners are in fact able to sell electricity back to the "grid", as a result. The appropriateness of permitting an owner to benefit from the City's permission in this way should be considered.

It is our view that there are further concerns as a result of the specific characteristic of the land itself. It is our understanding that the entire installation is located within 30 m of a fish-habitat creek located on the City's lands. The City's zoning by-law requires that all site alteration must

be completed at least 30 metres from fish habitat. As a result, it is unlikely that the City would ever consider allowing alteration of its lands in this location. Even if the lands were the owner's, the Zoning By-law would have prohibited the installation in this location.

Notwithstanding the matters discussed above, if it is Council's direction to proceed with a Licence of Occupation agreement, it is our recommendation that the agreement include the following requirements (in addition to other, standard language):

1. The licence of occupation can be revoked by the City at any time on sixty (60) days notice. The owner would be required to remove the installation, and return the land to its previous condition;
2. The owner should be required to pay a yearly occupation fee which has some connection to the market value of the land.
3. The permission is specific to the current owner, and will cease upon a sale or conveyance of the land;
4. The owner shall obtain and hold insurance in such amounts as suggested by the City's insurer;
5. The owner will accept all liability with respect to the use of the land, including any issues relating to the creek and fish habitat."

#### 10) **RISK MANAGEMENT :**

We have also obtained comments from the City's insurance company, as follows:

"Although the solar panels are already installed, we still recommend that you have an agreement with the owner outlining the permissible use of the land as well that insurance and indemnification clauses. The following is the recommended clauses for your perusal.

*The Owner shall at their own expense obtain and maintain and provide the City with evidence of:*

#### **Commercial General Liability Insurance**

*Commercial General Liability Insurance issued on an occurrence basis for an amount of not less than \$5,000,000. per occurrence / \$5,000,000. annual aggregate for claims. Such insurance shall include, but is not limited to bodily injury and property damage including loss of use; personal injury; contractual liability; premises, property & operations; non-owned automobile; broad form property damage; broad form completed operations; owners & contractors protective; occurrence property damage; products; employees as Additional Insured(s); contingent employers liability; cross liability and severability of interest clause*

*Such insurance shall add the Corporation of the City of Clarence-Rockland as Additional Insured subject to a waiver of subrogation. This insurance shall be non-contributing with and apply as primary and not as excess of any insurance available to the City.*

*The Policy shown above shall not be cancelled unless the Insurer notifies the City in writing at least thirty (30) days prior to the effective date of the cancellation. The insurance policy will be in a form and with a company which are, in all respects, acceptable to the City.*

*Any and all deductibles shall be the sole responsibility of the Owner and the City shall bear no cost towards such deductible. Additionally, the City shall not be responsible for any damage to the property / equipment of the project.*

*The Owner shall defend, indemnify and save harmless The Corporation of the City of Clarence-Rockland, their elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the Owner, their directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this Contract. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Owner in accordance with this Contract, and shall survive this Contract."*

As such, the insurance company indicated that this was only a an example and that the City's lawyer could draft something up to reflect those comments.

**11) STRATEGIC IMPLICATIONS :**

n/a

**12) SUPPORTING DOCUMENTS:**

n/a