



THE CORPORATION OF THE TOWN OF WASAGA BEACH
POLICY MANUAL

SECTION NAME: FACILITIES, PROPERTY AND LAND MANAGEMENT	POLICY NUMBER: 10-3
POLICY: Encroachments on Road Allowances and Municipally Owned Property	REVIEW DATE: November 2018
EFFECTIVE DATE: November 12, 2013	REVISIONS:
APPROVED BY BY-LAW NO. By-Law No. 2013-96	ADMINISTERED BY: Town Clerk

PREAMBLE

Town property including road allowances, municipal parks and other Town owned lands shall be kept free of encroachments. However, under certain circumstances Council may allow encroachments to take place. This policy outlines the steps necessary to address existing or proposed encroachments on municipal property.

PURPOSE

The purpose of this policy is to provide guidelines for dealing with encroachments on municipal properties and if warranted, the processing of applications to recognize existing encroachments upon property owned by the Town of Wasaga Beach.

There are numerous examples around the municipality where individual property owners innocently, or with intent, have improved or built within open or unopened road allowances or on other Town-owned property without the express permission of the municipality.

Where these situations exist, the Town has the authority under the provisions of its policies and the *Municipal Act, 2001, S.O., 2001*, to deal with the encroachments accordingly to manage the risk to the Municipality and continue to maintain access to public property either by removing the encroachments, entering into an Encroachment Agreement with the adjacent property owner or by conveying that portion of property.

POLICY

It is the general policy of the Town that encroachments not be allowed onto Town-owned lands. If an encroachment has been identified it must be removed and the lands returned to their original state to the satisfaction of the Town. All related costs shall be at the expense of the encroaching party.

Council may approve encroachments under special circumstances where public safety is not affected, Town interests are not adversely affected, and the public right of usage is not diminished by permitting the encroachment. Permission to allow an encroachment shall be by written agreement between the property owner and the Town. The department under whose jurisdiction the property falls is responsible for initiating this process. Failure on the part of the encroaching party to agree to this process will result in the removal of the encroachment at the encroaching party's expense.

When an existing or proposed building or structure encroaches onto municipal property, the Town will exercise its right to require an encroachment agreement if the Town intends to allow the encroachment to remain under certain terms and conditions.

All encroachments, whether existing or proposed, shall be reviewed on a case by case basis. No decision of Council on one case shall be deemed to bind Council on another case.

Right-of-Way (ROW) Encroachments (Road Allowances, Highways, etc)

No person shall encroach upon a municipal right-of-way. If an encroachment is discovered, the encroaching party may make an application to the municipality to continue the encroachment. See Application for Encroachment set out below.

Other Encroachments (Parkland, Open Space, Development Lands, etc)

No person shall encroach upon or take possession of any municipally owned lands by any means whatsoever, including the construction, installation or maintenance of any fence or structure, the dumping or storage of any materials or plantings, or planting, cultivating, grooming or landscaping thereon.

Other encroachments may be structural (e.g. construction of decks, pools, and retaining walls) non-structural (e.g. pool drainage, application of pesticides, waste dumping), or vegetative (e.g. planting of vegetable gardens, removal of wildflowers, shrubs, and trees).

When an encroachment is discovered, the encroaching party may make an application to the municipality to continue the encroachment. See Application for encroachment set out below.

Consideration for encroachments to remain will only be given in the event that the encroachments do not interfere with municipal operations and/or capital construction or the public right of usage.

Encroachments will not be permitted in the following circumstances:

- The encroachment creates an unsafe condition/poses a danger to the public, such as but not restricted to:
 - impeding or restricting sight lines, impedes normal access, obstructs vision of traffic or pedestrians, creates operational conflicts or creates hazards during the winter season, when snow covers the ground, such as rocks, boulders, wires, lines, etc.
- The encroachment diminishes the public's right of usage, such as but not restricted to:
 - impedes the public's passage and/or access along a travelled portion of a road ; or interferes or obstructs normal pedestrian, bicycles, snowmobile use
- The encroachment interferes with the Town's intent and purpose in holding the Town-owned land;
- The encroachment is over park property;
- The encroachment is an addition to existing buildings or other structures that would encroach or do encroach onto municipal property or road allowances;
- The encroachment creates liabilities for which the Town cannot assign full responsibility to the owner of said encroachment;
- Construction has commenced prior to the issuance of a required permit from the Town;
- The encroachment adversely affects municipal operations, work, plans, efforts or initiatives of the Town to maintain municipally-owned lands;
- The encroachment interferes with any utility or other similar installation located on Town-owned lands including underground infrastructure;
- The encroachment creates a situation that is contrary to the any Town By-Law, Town policy or resolution or any provincial or federal regulation or legislation;
- The applicant is unable to reasonably demonstrate a need for the encroachment;
- The encroachment will be in conflict with and/or create an issue with future capital works projects.

Insurance

In cases of an approved encroachment on a right-of-way, the landowner must provide insurance in a form satisfactory and acceptable to the Town Clerk's Office, at the time the Encroachment Agreement is signed by the property owner.

If the landowner is a company it will be required to maintain property damage and general liability insurance in the amount of \$2,000,000 and the Corporation of the Town of Wasaga Beach must be named an additional insured. The onus is on the landowner to carry the insurance in perpetuity and to provide the Town with a certificate of insurance at renewal.

If the landowner is a private resident, it will be required to keep in force Property insurance on a replacement cost basis for the building(s) against fire and such other perils including liability in the amount of \$2,000,000. The onus is on the landowner to carry the insurance in perpetuity and to provide the Town with a certificate at renewal.

Implementation Procedure

Upon the discovery of an encroachment, the registered owner of the property will be notified in writing of the encroachment and the options available to him/her.

1. Where the encroachment is to be removed, removal and the associated expenses are the responsibility of the encroaching party. Should the encroaching party not remove the encroachment within the specified period of time, then the Town shall do so at the registered owner's expense. All associated fees and charges will be billed to the encroaching landowner. If the fees and charges are not paid as requested they will be added to the tax roll as provided for under section 398(2) of the *Municipal Act*.
2. If the encroaching party wants to apply to Council for the right to remain they may make an application to the Town following the process as outlined below under Application for an Encroachment Agreement.
3. Where the encroachment has existed for a number of years and the use has been exclusive to the encroaching party, consideration may be given to the disposition of the occupied lands for costs including, but not limited to, survey, legal and registration fees. Where appropriate the Town may require some compensation towards the value of the lands.

If the encroaching party does not wish to purchase the lands, then a lease agreement may be considered for a period equal to the shorter of:

- a) As long as the occupant owns the adjoining lands; or
- b) Until the encroachment is removed. Costs relating to the lease shall be the responsibility of the encroaching party.
- c) Until the property is required for municipal purposes.

Staff shall forward a report outlining the details of a proposed sale or lease agreement to Council for approval.

Application for Encroachment

The following information must be submitted before Council will approve an existing encroachment upon municipal property:

1. A completed Application Form attached as Appendix "A" to this policy.
2. An application fee as established from time to time by Council.
3. A copy of the deed of the encroaching party's lands which abut the subject municipal lands.
4. A plan or sketch of the subject lands with details of the encroachment clearly marked thereon.
5. Any pertinent history of the encroachment such as the estimated length of time of the said encroachment has been in place, purpose, need to extend, etc.

The Application will be submitted to the Clerk's Office and circulated to appropriate Departments for review, comment and recommendations.

A staff report with a recommendation is then presented to the appropriate Standing Committee of Council for their consideration.

If approved by Council, the applicant will be required to pay all costs associated with the transaction, including the costs of the registration of the encroachment agreement. A Registered Reference Plan indicating the encroachment as a Part thereon is required for the preparation of the Encroachment Agreement and for registration purposes.

The Encroachment Agreement will be prepared by the Town's Clerk's Office and registered by the Town's Solicitors.

Enforcement

Encroaching on Town property and/or failing to remove encroachments by the owner may result in penalties pursuant to the *Municipal Act* and Town policy.

The Town of Wasaga Beach shall have the right to remove any encroachments within a Town road allowance or on municipally owned property in contravention to Town policy at the cost of the property owner.

Any fees, costs, and expenses incurred by the Town shall be enforceable by adding the same to the tax roll pursuant to Section 398 of the *Municipal Act, 2001*, as amended, from time to time.

ATTACHMENT

Schedule "A" – Encroachment Agreement Application Form

Schedule "B" – Encroachment Agreement Proposal Sketch Form

POLICY REVIEW AND PROCEDURE

This Policy will be reviewed as required, but in any case no later than five years from the date of the most recent review.

The Town Clerk will be responsible for initiating the review of this Policy.

In the event that this application is approved, it will be necessary for the Applicant to execute an Encroachment Agreement.	
FEES ASSOCIATED WITH APPLICATION	
Administration Fee	\$750.00 – non refundable
Encroachment Agreement Fee	\$250.00 – N/A if Agreement not pursued
Annual Fee to be included on property tax bill	\$300.00 – if approved
SOLICITOR (if applicable)	
Name:	
Address:	
Telephone #	Email:
CONSENT	
I/We understand and agree to provide the Town with an annual Certificate of Insurance, in perpetuity, as per Town policy.	
I/We understand and agree to the terms of this Application.	
I/We have enclosed the application fee : <input type="checkbox"/> Yes <input type="checkbox"/> No	
I/We have enclosed a detailed sketch, site plan, or survey, “to scale”, which clearly shows the location and measurements of all existing and/or proposed structures/encroachments on the applicant’s property and all existing and/or proposed structures/encroachments on the abutting Town property (i.e. septic systems, well, landscaping, vegetation, fence/wall, driveways and paths) Yes <input type="checkbox"/> No <input type="checkbox"/>	
I/We have enclosed a letter of authorization from the applicant/property owner appointing an agent: Yes <input type="checkbox"/> No <input type="checkbox"/>	
I/We agree to pay the current applicable application and agreement fees and annual license fee.	
I/We authorize Town staff to enter onto the subject lands to conduct a site visit in accordance with the processing of this Encroachment Licensing Agreement.	
SIGNATURE(S)	
<hr/> Owner Owner	
<hr/> Authorized Agent (please attached letter of authorization)	
<hr/> Date	

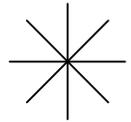
**PLEASE RETURN THIS APPLICATION FORM TO
CLERK’S OFFICE
Town of Wasaga Beach
30 Lewis Street
Wasaga Beach, ON L9Z 1A1**

For further information, please contact the Clerk’s Office at 705-429-3844 ex 2223 or ex 2224

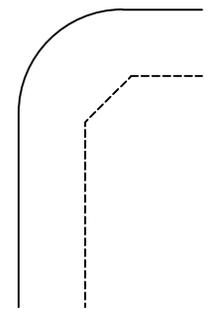
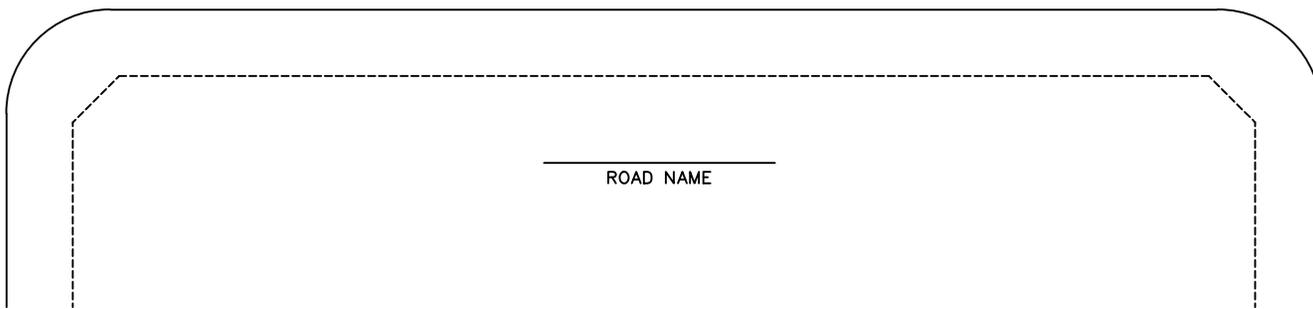
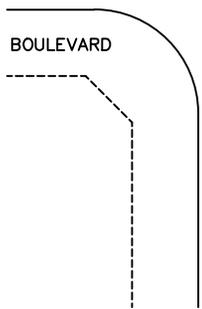
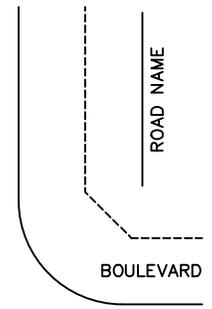
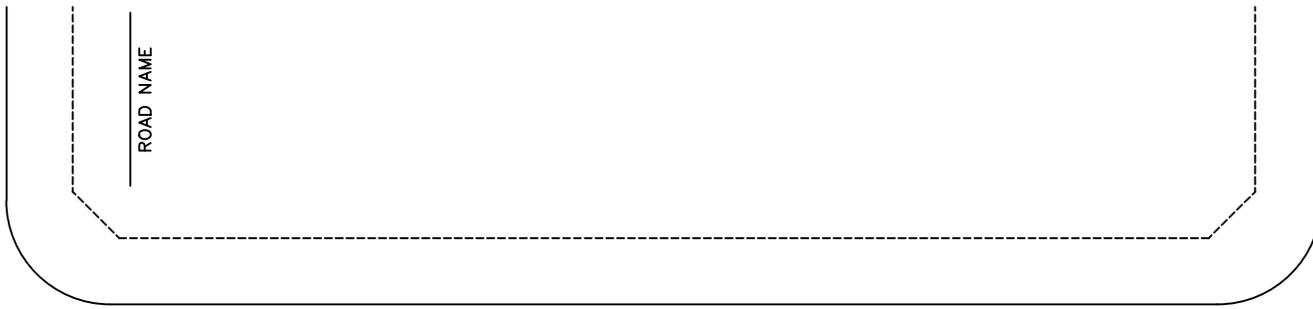
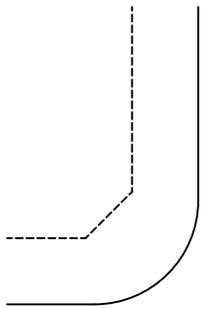
Personal information on this form is collected in accordance with the Municipal Freedom of Information and Protection of Privacy Act and will be used for the purposes of processing an Encroachment Licensing Agreement. Questions with respect to the collection and use of this information should be directed to the Clerk’s Office, Town of Wasaga Beach, 30 Lewis Street, Wasaga Beach, ON L9Z 1A1 or call 705-429-3844 ex 2223.

TOWN OF WASAGA BEACH
ENCROACHMENT AGREEMENT APPLICATION
DRAWING OF ENCROACHMENTS

ROLL NUMBER



INDICATE NORTH



DRAWN BY: _____

DATE: _____