



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 2024
EFFECTIVE DATE: November 25, 2020	REVISIONS:
APPROVED BY BY-LAW NO. By-Law No. 2020-112	ADMINISTERED BY: Director, Legislative Services & 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

All existing and proposed privately owned encroachments onto streets, road allowances, and other lands owned and under the jurisdiction of the Town shall be subject to this Encroachment Policy.

It is the general policy of the Town that encroachments not be allowed onto Town-owned lands. Except as otherwise specifically permitted by the Town, where 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 materially diminished by permitting the encroachment. Permission to allow an encroachment shall be by written agreement between the property owner and the Town. 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 require an encroachment agreement if the Town decides 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.

Encroachments will only be considered in the event that the encroachments do not materially interfere with municipal operations and/or capital construction or the public right of usage.

Standards for Assessing Encroachments :

The following is a non-exhaustive list of factors that will be considered by the Town to militate against permitting an encroachment:

- 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, or vehicular use;
- The encroachment interferes with the Town's current or future 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 and Indemnity

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.

The encroaching party must be capable of holding adequate insurance in perpetuity and indemnifying the Town from all claims that may result by reason of the existence of the encroachment.

The applicant will be required to maintain property damage and general liability insurance in the amount of \$2,000,000 (individual) or \$5,000,000 (corporation), or such higher amount as determined by the Town as a condition of approving an encroachment, and the Corporation of the Town of Wasaga Beach must be named an additional insured on such policy. Specific coverages required under such policy may be different for individual applicants and corporate applicants. Please refer to Schedule "C" for further specifics. The onus is on the landowner to carry the insurance in perpetuity and to provide the Town with a certificate of insurance at renewal, or such other frequency as reasonably required by the Town.

The applicant agrees to indemnify and hold harmless the Town from and against all liability in respect to all claims that may arise or be made against the Town resulting from the encroachment.

All approved encroachments are considered to be placed at the property owner's own risk. The Town is not responsible for repairing or replacing an encroachment, or for any damages arising from normal Town operation over roads onto which the encroachment may extend, including removal of snow or ice therefrom, or as a result of Town repairs or reconstruction over such roads.

Implementation Procedure

Upon the discovery of an encroachment, the registered owner of the encroaching property will be notified in writing of the encroachment and the options available to such owner, namely:.

1. **REMOVAL:** 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. **ENCROACHMENT APPLICATION:** If the encroaching party wants to apply to Council for the right to continue the encroachment, they may make an application to the Town following the process as outlined below under Application for an Encroachment Agreement.
3. **PURCHASE:** Where the encroachment has existed for a period of time the Town deems to be significant, and the use throughout such period of time 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. The Town may, in its unfettered discretion, require that the fair market value of any lands to be so transferred also be paid to the Town upon such disposition, and the Town's own determination as to fair market value shall be final and not subject to appeal or assessment by any other party other than the Town.
4. **LEASE:** 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 continues to be the registered owner of the adjoining lands;
 - b) Until the encroachment is removed; or
 - c) Until the property is required for municipal purposes.

5. **LICENSE:**

- a) If the encroachment is intended to continue for a brief period not exceeding two years or such longer period as the Town may unilaterally determine, and is not otherwise contrary to this Policy and may have commercial benefit, then a license agreement may be considered. Any such license granted shall be to the present owner of the adjacent property, and shall not run with the land and shall terminate on any transfer of the adjacent property by the licensee.

Upon receipt of an Application for Sale, Lease, or License, Staff shall forward a report outlining the details of a proposed sale, lease, or licence agreement to Council for its consideration. Council shall not be bound in any way to approve such sale, lease, or license, and may disregard any recommendations in such report, and may instead either encourage the encroaching party to make application for an Encroachment Agreement, or Council may insist upon removal of the encroachment.

Application for Encroachment

The following information must be submitted before Council will consider 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 indicated 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. Nothing in such staff report shall bind the said Committee or Council.

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.

Form of Agreement

Attached as Schedule "C" to this Policy is the Form of Agreement to be used in cases where an encroachment has been approved. Minor deviations not impacting the nature of the agreement may be allowed at the discretion of the Town, upon approval 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 of Town policy at the cost of the property owner.

Any fees, costs, and expenses incurred by the Town in the enforcement of this Policy shall be added 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

Schedule "C" – Form of Encroachment Agreement

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 – \$600.00 refundable if denied
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, and to provide evidence of such insurance annually at the time the annual license fee is paid.	
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)	
<p>_____</p> <p>Owner</p>	
<p>_____</p> <p>Owner</p>	
<p>_____</p> <p>Authorized Agent (please attached letter of authorization)</p>	
<p>_____</p> <p>Date</p>	

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

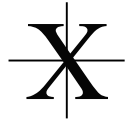
For further information, please contact the Clerk’s Office at 705-429-3844 ex 2223 or ex 2224

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.

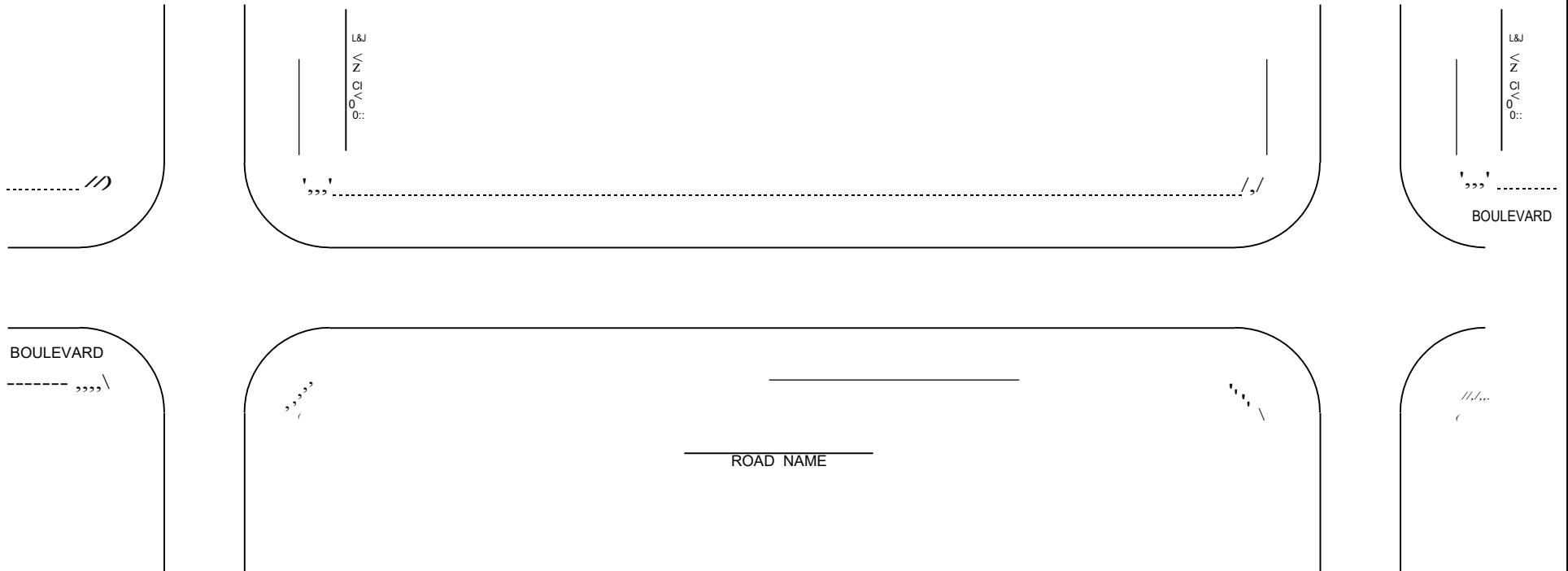
Schedule "B"

TOWN OF WASAGA BEACH ENCROACHMENT AGREEMENT APPLICATION DRAWING OF ENCROACHMENTS

ROLL NUMBER



INDICATE NORTH



DRAWN BY: _____

DATE: _____

Schedule "C"

THIS AGREEMENT made in duplicate this ____ day of _____ B E T W E E N:

THE CORPORATION OF THE TOWN OF WASAGA BEACH

(hereinafter called the "Town") OF THE FIRST PART

A N D

XX

(hereinafter called the "Owner") OF THE SECOND PART

WHEREAS the Owner represents that they are the registered owner of certain lands and premises in the Town of Wasaga Beach, in the County of Simcoe, which abut on the side of [STREET], known municipally as [ADDRESS], in the Town of Wasaga Beach, County of Simcoe, and being more particularly described in Appendix "A" attached hereto;

AND WHEREAS [DESCRIBE ENCROACHMENT (in Appendix if necessary), hereinafter referred to as "Encroachment", has been wholly or partly constructed by the Owner, or its predecessors, in the Town of Wasaga Beach;

AND WHEREAS the Owner has petitioned the Municipal Council of The Corporation of the Town of Wasaga Beach that they be allowed to maintain and use the said encroachment;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the sum of TWO DOLLARS (\$2.00) of lawful money of Canada, now paid by the Owner to the Town, the receipt whereof is hereby acknowledged, the Owner covenants and agrees with the Town as follows:

1. The Owner, their executors, administrators, successors and assigns, are hereby allowed to use and maintain the Encroachment, for so long as the Encroachment shall remain in its present location.

Schedule "C"

2. Upon demolition or removal of the Encroachment, all parts of the Encroachment upon the road allowance or other Town property for [ADDRESS] shall be removed by the Owner to the satisfaction of the Town at the expense of the Owner.

3. In the event of failure by the Owner to remove the encroachment as required by Clause 2 hereof, the same may be removed by the forces of the Town and the cost of said removal shall be a first lien upon the Owner's lands and may be recovered in a like manner as taxes.

4. The Owner shall pay to the Town Treasurer, so long as the said encroachment is used and maintained upon the road allowance the sum of [SUM] as an [ANNUAL CHARGE OR ONE TIME FEE] for such privilege and such fee or charge shall form a charge upon the lands of the Owner of the said lands, his executors, administrators, successors and assigns, and upon default of payment after reasonable notice may be recovered as a lien upon the said lands in a like manner as taxes.

5. **[optional clause]**

If, during the term of this Agreement, the Town requires the use of part or all of the Encroachment lands for any municipal purpose, the Town may terminate this Agreement and require the Owner to remove the Encroachment at the Owner's expense upon 90 days written notice being given to the Owner by the Town. The Owner shall not make any claim against the Town on account of such removal and will restore the Encroachment lands to a safe and proper condition satisfactory to the Town Engineer. Provided that if the Owner neglects, refuses or fails so to do within the time specified, the Town may remove the Encroachment and restore the lands to a safe and proper condition and may charge the cost thereof to the Owner of which cost the invoice of the Town be final and the Town may recover such cost from the Owner in any court of competent jurisdiction as a debt due by the Owner to the Town. In addition, any fees due and any costs incurred upon termination of this Agreement shall be a first lien upon the said lands herein described and may be recovered in like manner as municipal taxes. No remedy conferred upon or reserved to the Town is intended to be exclusive of any other remedy whether given herein or not, but every such remedy shall be cumulative and shall be in addition to every other remedy.

6. **for companies**

The Owner shall at their own expense obtain and maintain during the term of this Agreement, and provide the Town with evidence of comprehensive general liability insurance for an amount not less than Five Million (\$5,000,000.00) Dollars and shall

Schedule "C"

include the Town as an additional insured with respect to the Owners' use and operations on the property described in this Agreement; such policy to include non-owned automobile liability, personal injury, broad form property damage, contractual liability, owners' and contractors' protective, completed operations, contingent employers liability, cross liability and severability of interest clauses. The aforementioned policy will not be cancelled or permitted to lapse unless the insurer notifies the Town in writing at least thirty (30) days prior to the date of cancellation or expiry. The Owner will provide that evidence of such insurance shall be delivered to the Town promptly at inception of this Agreement and thereafter on the insurance renewal date.

for homeowners

The Owner shall at their own expense obtain and maintain during the term of this Agreement, and provide the Town with evidence of general liability insurance (homeowners) for an amount not less than Two Million (\$2,000,000.00) Dollars

and shall include the Town as an additional insured with respect to the Owners' use and operations on the property described in this Agreement. The aforementioned policy will not be cancelled or permitted to lapse unless the insurer notifies the Town in writing at least thirty (30) days prior to the date of cancellation or expiry. The Owner will provide that evidence of such insurance shall be delivered to the Town promptly at inception of this Agreement and thereafter on the insurance renewal date.

7. The Owner, their heirs, executors, administrators, successors and assigns, as Owner and occupiers from time to time of the said lands described in Appendix "A" attached hereto, will at all times indemnify and save harmless the Town of and from all loss, costs and damages which the Town may suffer, be at or be put to, for or by reason of or on account of the existence of, use, maintenance or repair, or lack of repair of the said encroachment or anything done or purported to be done pursuant to this Agreement, or any act or neglect in carrying out anything to be done pursuant to this Agreement.

8. Such sums as may become due or for which the Owner may be obligated under this Agreement respecting the said encroachment shall be a first lien and charge upon the said lands and premises described in Appendix "A" attached hereto in priority to all other claims, liens, mortgages or charges.

9. The Owner covenants and agrees that this Agreement shall cover the encroachment upon the Town owned property adjacent to the said lands described in

Schedule "C"

Appendix "A" attached hereto, and does not imply or grant any permission to erect any part of any new building on the said encroachment, or enlarge or extend the said encroachment.

10. This agreement shall be binding upon the Owner, their heirs, executors, administrators, successors and assigns, as Owner and occupier from time to time of the lands and premises described in Appendix "A" attached hereto and the covenants herein contained shall be deemed to run with the lands and premises and bind the owners and occupiers thereof from time to time.

IN WITNESS WHEREOF the Owner hereto has hereunto set their hand and seal.

THE CORPORATION OF THE TOWN OF WASAGA BEACH

Name: _____

Title: _____

I have authority to bind the corporation (OWNER)

Name: _____

Title: _____

I have authority to bind the corporation