

The Corporation of the City of Kawartha Lakes
Council Report

Report Number RS2018-021

Date: July 17, 2018
Time: 2:00 p.m.
Place: Council Chambers

Ward Community Identifier: Ward 6

Title: Boathouse Encroachment – 22 Walnut St., Fenelon Falls

Author and Title: Christine Oliver, Law Clerk of Realty Services

Recommendation:

That Report RS2018-020, Boathouse Encroachment – 22 Walnut St., Fenelon Falls, be received.

Department Head:_____

Financial/Legal/HR/Other:_____

Chief Administrative Officer:_____

Background:

The City passed the City Lands Encroachment By-law 2018-017 in February 2018. The City Lands Encroachment By-law provides that encroachments on City property are not permitted, unless authorized by the City pursuant to by-law, statute, regulation, policy, resolution of the City, or encroachment agreement.

The City Lands Encroachment By-law provides further that any person wishing to encroach on City lands must make an application to the Land Management Committee.

The Land Management Committee consists of the Director of Public Works, the City Solicitor, the Asset Manager, the Director of Engineering and Corporate Assets, the Director of Development Services and a Land Use Planner. All members are employed by the City. Unlike other Committees, the purpose of the Land Management Committee is not only to make recommendations to Council; in some cases, the purpose of this Committee is to make administrative decisions within Staff's delegated authority, set out in the City Lands Encroachment By-law and the Signing Authority By-law.

More specifically, the Land Management Committee makes recommendations to Council regarding land acquisition and land disposition, and with respect to longer term leases and licenses having a higher annual associated revenue or expense. The Land Management Committee also is used as a venue for Staff to process shorter term leases and licenses that have a lower annual associated revenue or expense, for which Staff have delegated authority.

Pursuant to section 5.05 of the Signing Authority By-law 2016-009, License Agreements with associated revenue of \$10,000.00 or less per year are signed by the City Solicitor or the Director of Corporate Services. A Council by-law is not required.

With respect to License Agreements for encroachments, the criteria upon which the Land Management Committee makes its decisions is set out at section 4.01 of the City Lands Encroachment By-law. Some examples of when an application will be denied include: the encroachment creates an unsafe condition; the encroachment creates liabilities for which the City cannot assign full responsibility to the owner of said encroachment; etc.

Section 4.04 of the City Lands Encroachment By-law provides that an applicant will be advised of the Committee's decision and has the opportunity to bring a deputation to a Special Meeting of Council. At that Special Meeting, Council may refer the matter back to Staff for a Report, which will allow Council to consider the matter and make a final decision on it.

Rationale:

The Applicant, being the homeowner at 22 Walnut St., Fenelon Falls, applied to the Land Management Committee to allow an existing boathouse (photographs and aerial showing property lines at Appendices A and B) to remain in its current location being the unopened road allowance of Walnut St., which is leading to water. The entire boathouse encroaches into the City's road allowance (shown on the draft plan of survey at Appendix C).

In the application, the Applicant noted that they are prepared to repair the boathouse and have met with the building inspector.

The Committee denied the application on the grounds that the Committee had previously made a decision that, generally, private structures on road allowances leading to water will not be permitted by the Committee. In this way, the Committee treats road allowances leading to water quite differently from shoreline road allowances. The reason for this differential treatment is because, in the case of a shoreline road allowance, continued use of the shoreline tends to promote the public use of the City property. In the case of road allowances leading to water, on the other hand, providing exclusive access decreases the ability for the general public to use the area. The reason for this is because, in the case of road allowances leading to water, only a 66 foot width must service an entire area. Where we may allow one person to exclusively use most of the cleared portion of the road allowance leading to water, we tend to deny the use of this water access to many more persons who may use the area to swim, launch their boats, etc.

This is in alignment with Council Resolution CR2001-1025, that unopened road allowances leading to water shall be retained by the municipality. Exceptions may be considered where alternate access to water in the immediate vicinity can be provided.

This is further in alignment with Council Direction to Staff in 2010, wherein Council expressly envisioned an Encroachment Policy that enabled property owners immediately adjacent to a travelled shoreline road allowance to have continued access to the water opposite their property. Specifically, Council passed Council Resolution CR2010-1206:

Moved by Councillor Luff, seconded by Councillor Strangway,
RESOLVED THAT Report LMC2010-048, "*Unauthorized Dock Placement on Municipally Owned Land within the City of Kawartha Lakes*", be received; and ***THAT*** staff be directed to develop an Encroachment Policy for docks on municipal property based upon the following principles:

1. THAT such a policy be structured to deal with matters on the basis only where access to waterfront is being adversely affected;
2. THAT such a policy be structured to protect the general public's interest in access to the waterfront;

3. THAT such a policy be structured to ensure the municipality's rights as landowner, along with protecting the municipality from liability;
4. THAT such a policy contemplate a license, permit or encroachment agreement process for those residents wishing to ensure longer term use of municipal property and where previously referenced principles are not impacted; and

THAT staff be directed to bring forward a report to Council in 2011 with a DRAFT policy as outlined above.

Subsequent to this direction, Council passed the Encroachment By-law 2018-017, which section 4.01(i) states that the Committee may object to encroachments on the basis that the encroachment interferes with the public use of the space. Such is the case here. This same philosophy is carried into the Dock Encroachments Policy CP2018-001, which further requires Staff to consider the potential for overcrowding of the waterfront. Again: Such is the case here.

22 Walnut is a back lot. City Staff understands that the boathouse may have historically been in the ownership of a person owning a property other than 22 Walnut. Accordingly, to allow one back lot owner to exclusively use a road allowance leading to water and thus prohibit others from likewise using the road allowance is not what was envisioned by Council, nor what was approved by Council in adopting its Encroachment and Docking policies.

The second reason for this decision is the fact that this boathouse is in disrepair. Council has passed a Docking Policy – expressly allowing docks to encroach on City property – with respect to the Encroachment By-law, but has not yet considered Boathouse encroachments. The Committee previously passed a decision of general application concerning boathouses: in each of the instances boathouse is in substantial or structural disrepair such that substantial costs would be required to bring it into repair, such that a building permit would be required for its rehabilitation, or such that it creates an unsafe condition, the boathouse should be removed. This would result in its removal at the most convenient time for the boathouse owner.

The reason for this decision is the fact that boathouses constitute a larger impediment to general public access, and a larger visual impairment. They also have the potential for bigger risks to the City: Specifically, gas stored in boathouses present additional risk of discharge of contaminants into the environment. Further, roofed structures such as boathouses or covered boat slips carry additional personal injury risk associated with collapse.

Realty Services envisions formalizing a set of boathouse policies in a Council Policy or Management Directive in 2019.

Other Alternatives Considered:

The City could choose to enter into a License Agreement with the Applicant to allow the boathouse to remain in its current location. This would be achieved by adding a second statement to the recommendation, in passing the Council Resolution: “That Staff be directed to enter into a License Agreement with the owner of 22 Walnut St., Fenelon Falls, to allow the boathouse at the northwest corner of unopened road allowance of Walnut St. to remain in its current location.” This would be to the detriment of the other back lot owners in the area, it would not align with existing Council resolution and policy that provides guidance in this instance, and thus is not recommended.

Financial/Operation Impacts:

None, if the encroachment is not permitted.

If the encroachment is permitted, then the License Agreement will be structured in a way so that the City will be insured and indemnified for any government order or third party claim (such as an environmental spill from contents stored in the boathouse, or personal injury) resulting from the encroachment.

Relationship of Recommendation to the 2016-2019 Strategic Plan:

This Report does not specifically align with any of the goals in the Council Adopted Strategic Plan. This Report is in alignment with the strategic enabler of “efficient infrastructure and asset management”.

Consultations:

Land Management Committee

Appendixes:

Appendix A – Photograph of Current Structure



Appendix A-Photo.pdf

Appendix B – Aerial Photograph



Appendix B-
Aerial.pdf

Appendix C – Draft Plan of Survey



Appendix C- Plan.pdf

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