

Encroachment & Trespass to Property By-law

Realty Services Division

November 21, 2017



Currently...

- Engineering: Regulate seasonal encroachments of patios on City sidewalks through patio license program
- Public Works:
 - issues entrance permits onto City roadways
 - issues road occupancy permits for temporary work on City roadways, including brushing
- Community Services issues 2 year licenses for docks at Thurstonia Park and Kenstone Beach (both shoreline road allowances)
- Realty Services (per LMC):
 - issues licenses to remove trees and construct permanent roads on unopened road allowances
 - issues 5 year leases for docks on City shoreline road allowances
 - issues 5 year encroachment agreements for permanent structures on City property

Currently...

- CKL (City Solicitor/ MLEO/ CAO, Community Services / Public Works) will issue Notices under Trespass to Property Act for unauthorized acts on City property

Current Enforcement Powers

- Trespass to Property Act
 - Information issued by Information pursuant to Part 3 of the *Provincial Offences Act*
 - Trial required for conviction (fine to be levied up to \$5,000)

Current Enforcement Powers & Municipal Direction as to what constitutes Trespass

- By-law 2006-147; Regulate Public Parks and Facilities
 - Director of Community Services has powers to determine Trespass in Parks
 - MLEO enforces
 - Part 1 and Part 3 enforcement ability
 - Encroachment prohibited: “No person shall encroach upon or take possession of any part of a park or facility by any means whatsoever, including, without limitation, by constructing, installing, storing or maintaining of a fence, gate, building, dock, or other fixture or chattel in or upon the park or facility, unless authorized by written approval from the City.”

Recommendation

- Staff recommend that the City pass a by-law to:
 - define acts of trespass on City property excluding Parks
 - Delegate authority to determine what constitutes “trespass”
 - Provide enforcement powers for MLEO under Part 1 POA
 - Provide transparency to existing process

Shoreline Road allowances: Docks

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.

CARRIED CR2010-1206

Realty Services Dock Leasing Program – Conditions to Approval

- Approval for 5 year term will issue where the conditions to approval have been met:
 - Use does not adversely affect the use by others of the property (shoreline use will not be exclusive; dock use exclusive)
 - Minimum 10 m spacing between docks
 - Use does not adversely affect the ability of the City to use, access and maintain its property
 - Federal and provincial permits are the obligation of the dock owner
 - Existing crib docks to be replaced with post/ floating docks upon repair
 - Continued obligation to maintain and insure dock
 - Payment: \$125 application + \$150/a, payable upfront / \$1,500/a for commercial dock
 - Obligation to post permit number on dock and notice of private property

Recommendations for Realty Services Dock Leasing Program

- Terms to approval: Upon default of any condition, can be revoked on 30 days' notice. Structures left 72 hours following deadline for removal will be abandoned and City may remove and charge the applicant for the costs of demolition and removal (MLEO)

Additional Considerations upon issuing a Permit

- Fairness between potential permit holders
- Environment (i.e. shoreline naturalization)

Budget Implications

- Recommend \$25,000.00 be added to MLEO budget as estimate to cover removal costs of encroachments where the owner cannot be found / cost recovery otherwise cannot be enforced.
 - This amount has been included in the proposed 2018 Operating Budget that will be presented to Council in mid-December
 - This figure will be better assessed for the 2019 budget, using actuals from 2018

Staffing Implications

- 18 Trespass to Property occurrences (warranting enforcement) in 2017, less than 16 in each of the preceding 2 years.
 - Suggest time spent on encroachment matters be tracked throughout 2018. By Q3 2018, MLEO to bring forward a report recommending staffing additions, if any, required.
- By-law to be enforced through complaints process. Dock encroachments will eventually be addressed through PMT rationalization process.
- Where possible, dock encroachments to be dealt with through residents' associations on a beach-specific basis.

Next Steps

- Realty Services (with assistance from MLEO) will bring a Staff Report to Council recommending approval of a By-law to regulate acts of trespass on City-owned property (outside of Parks)
 - This By-law will confirm existing procedures to obtain encroachments onto municipally-owned property