

THE CORPORATION OF THE TOWN OF GEORGINA

REPORT NO. OED-2015-0025

**FOR THE CONSIDERATION OF
COUNCIL
July 14, 2015**

**SUBJECT: LAKE DRIVE North and East – Policy re Shoreline
Development**

RECOMMENDATION:

- 1. That Council receive Report No. OED-2015-0025 prepared by the Operations and Engineering Department dated July 14, 2015 regarding Lake Drive North and East – Policy re Shoreline development.**
- 2. That Council provide comment to staff and that staff report back with final drafts of the proposed policies and agreements.**
- 3. That staff provide public notice of any forthcoming reports.**
- 4. That staff use the resources of Lidor GPS mapping contractor to establish a baseline of existing structures and modifications to the lake side of the travelled portion.**

1. PURPOSE:

To provide Council with a preliminary review of proposed Policy RD 19 and the concept of an Encroachment Agreement. Please see Attachment 2 and 3.

To seek Council direction to contract the services of Lidnor GPS mapping contractor at an upset limit of \$7,000 to establish a baseline of existing structures and modifications to the lake side of the travelled portion.

2. BACKGROUND:

Who is W.D. (Rusty) Russell, Q.C., LL.B. B.A.

Mr. Russell is the Founder of, and was the senior member of, the Orillia law firm Russell, Christie, LLP. He has wide experience in municipal and planning law. In 2005, he was the first recipient of the Award of Excellence in Municipal Law awarded by the Municipal Law Section of the Ontario Bar Association. He has been a frequent and well known speaker at municipal conferences in Toronto and across the Province including the Law Society of Upper Canada, Ontario Land Surveyors, Ontario Good Roads Association and various municipal organizations.

Prior to 1992: Pre Rusty Russell

Prior to Rusty Russell being retained by the Town of Georgina, the Town staff and past Councils tried to address the issues of ownership of Lake Drive shoreline through several public meetings and other policies to deal with development issues. Many owners continue to believe they own portions of the road allowance, as their deed in some cases would support this. In past public meetings, many owners had legal representation to challenge the town's position. Although the town maintained their position of ownership they did not have a legal interpretation of the lands on the travelled portion of the road to challenge owner's deeds. As a result the town hired an expert on roads to validate the Town's position.

Hiring of Rusty Russell

Much of Lake Drive from Church Street in Keswick to South Drive in Jackson's Point abuts the shoreline of Lake Simcoe and Cooks Bay. In 1992 the Town retained Mr. Rusty Russell to examine ownership and limits of the Lake Drive road allowance between Eastborne and Jackson's Point and he concluded that a valid municipal road allowance was laid out by the Quarter Sessions Court in 1835 having a width of 66' measured from the shoreline. There are a number of areas where the road moves away from the shore across points of land as shown on registered plans of subdivision such that the Town does not own to the water's edge in these particular locations.

The Town also retained Mr. Russell in 2006 to examine the ownership of Lake Drive in Orchard Beach from Church Street to Boyers Road. He concluded that the road began as a forced or trespass road but that the limits of the road allowance became determined when plans of subdivisions were registered along the road. Where there is no registered plan the road became a municipal road by virtue of use and the expenditure of funds over time.

This has been a complex historical issue involving different opinions. Over a long period of time, cottage development took place, and owners used and made improvements to the portion of the road allowance lying between the travelled road and the shoreline. Buildings, retaining walls, boathouses, sheds, fences, decks, docks and landscaping are common along the lakeshore. The Town solicitor has advised that these items are not permitted to be placed there without closing or licensing the portion of the road allowance. It is recommended that the provision of water and sewer services to buildings on the road allowance not be permitted and that no plumbing permits be issued to install such works.

Notwithstanding the fact the Town owns to the water's edge and cannot issue permits to land owners abutting the east and south sides of the road allowance for structures and services, the Town does not object to these owners making reasonable use and maintaining the road allowance between the travelled road and the lake. Policies and procedures have been put in place over the years, however it is recommended that these be updated and formally approved, taking into consideration the opinions provided by Mr. Russell regarding ownership and by Cassels Brock regarding use and issuance of building permits. The Town's Operations and Engineering Department has conducted educational sessions to bring Council up to speed on the numerous 'issues' that have arisen over the years. The various uses of the land by owners abutting the east and south sides of the road allowance are discussed separately. Please see Attachment 1 illustrating Lake Drive North and East.

3. ANALYSIS:

ENCROACHMENT AGREEMENT:

Staff have determined that Encroachment Agreements are a viable tool to be used by the Town to control the shoreline development in question. Attachment 3 is a sample encroachment by-law that demonstrates the basic concept of such agreements. Should Council see this approach as favourable staff will proceed to draft an agreement specific to supporting Policy RD 19.

New Applications

The use of Encroachment Agreements would establish proper process and give required authority to staff.

Existing users of Road Allowance:

Again, the use of an Encroachment Agreement would establish proper process and give required authority to staff. As stated later in this report, staff feels this is a fair equitable approach after ownership has been established. The agreement most importantly indemnifies the Town. There will be owners who may refuse to sign the Encroachment Agreement. After attempts at educating such property owners, we will bring those issues back to Council for further direction.

Policy RD 19 Analysis

Before the Town will approve any uses outlined in Policy RD 19, the abutting owner must ensure all the applicable approvals are in place from the Lake Simcoe Region Conservation Authority, Ministry of Natural Resources and any other governing authorities. In some cases, abutting owners will also be required to provide engineered drawings.

1. **Fences**

Many residents want to install fences to prevent vehicles from parking on the grassed areas and to prevent children from running out when going back and forth across the road. The Town has not objected to these fences provided that they do not significantly obstruct the view of the lake nor interfere with snow plow operations. A policy was developed approximately 20 years ago to allow fences provided that fences:

- Are located a minimum of 1.5 metres from the edge of pavement.
- Area maximum height of 1 metre measured from the centerline of road. This would allow drivers, pedestrians, and cyclists to see over the fence and view the lake.
- The area of the fence material does not exceed 50% of the area of the overall length and height of the fence. This is to ensure that this is truly a fence and not a wall.
- Fences may only be installed parallel to the road. Perpendicular fences suggesting that a lot line exists are not permitted.

In some respects these fences are like guide rails. After discussions with staff and the Towns lawyer, we are recommending that such fences be maintained by the abutting property owners.

Staff are concerned about snow removal activities. Winters with large snowfall accumulations may result in fences being damaged by snow plowing. The 1.5 metres is a reasonable 'buffer' and will give a location for snow storage. The Town is not responsible for any damage that may occur to the fence during any road maintenance activities.

2. Hedges and Landscaping

Left in its natural state the shoreline supports the growth of trees and brush that almost totally obstructs the view of the lake. Land owners abutting the east and south sides of the road allowance have cleared the lakefront for their own purposes but this also provides a view for all users of the road. It is recommended that lot owners be allowed to remove trees and brush to make this land useable and to provide a view of the lake provided the ground does not become susceptible to erosion. On the other hand, trees are an asset and the Town should not be opposed to these owners planting trees and shrubs to landscape the area. An exception to this is the planting of hedges as these are essentially a fence and block the view completely. Hedges may only be 1 metre high when planted but will grow higher and act as a privacy fence. The Town does not want to start taking action to manage hedges that grow too high. The requirement to maintain is the sole responsibility of the abutting owner for the life of the plantings. The Town is proposing a 1.5 metre setback for maintenance activities.

3. Retaining Walls and Grading

Over the years many land owners have re-graded the lakefront and constructed various types of retaining walls to provide more useable level ground. Many of these walls are failing and threaten the stability of the road. Newer owners are asking the Town to repair or replace these walls. Retaining walls of a height less than 0.6 metres do not pose a significant risk of instability and therefore it is recommended that such be permitted. Similarly, re-grading by sloping the bank should be allowed with specific Town approval provided the slope will be stable and will not erode - i.e.: a maximum slope of 3:1 horizontal to vertical. Maintenance will be the sole responsibility of the abutting owner for the life of the structure.

4. Water and Sewer Service Laterals

Municipal services have been constructed along the subject road. Cabins, bunkies and boathouses have been constructed on the road allowance over the years and inquiries have been made about providing water and sewer services directly to these buildings or by a road crossing to the services for the lands on the east and south side of the road allowance

Although these existing structures may have some type of plumbing fixtures and perhaps some type of undesirable sewage system or holding tank, it is staff opinion that the adequacy of these facilities should be dealt with on their own and that allowing connections to the municipal system will encourage the continued use of the buildings and may allow interior upgrades to occur without Town approval. For that reason it is recommended that the provision of municipal water and sewer services to buildings on the road allowance not be permitted, and that no plumbing permits be issued to install such works.

5. Construction and Renovation of Boathouses, Cabins, Sheds, Cabanas, etc. on the Road Allowance

A number of boathouses and cabins have been constructed on the road allowance without approval but no action has been taken by the Town to remove them. Council gave informal direction in 1992 that new structures would not be permitted but that existing buildings could be rehabilitated. In addition, the Town solicitor has advised that the building permits cannot be issued to owners for structures on the road allowance. This would include building permits for renovation. It is recommended that this position be confirmed. This policy should also include the case of buildings not greater than 10m² where a building permit would not be required. Minor work such as reroofing, new siding and painting that does not require a building permit should be permitted.

There will no doubt be situations where the building will fall into disrepair and the owners will refuse to do anything. In that case the Town would have a responsibility to remove the structure and the liability that may exist. The Town should remove the owner's permission to use the lakefront if they refuse to remove dilapidated structures or keep them in reasonable condition.

6. Stairs, Decks and Docks

The Town does not object to abutting owners making use of the lakefront and has allowed stairs, decks and docks to be constructed on the road allowance. It is recommended that this practice be allowed to continue provided the structure does not require the issuance of a building permit. This would permit stairs and small decks/docks having an area of not greater than 10m² and less than 0.6 metres above grade. For clarity the abutting owner cannot have stairs or docks that exceed 10 m² in total aggregate, meaning several structures cannot be erected. An alternative to a 10m² deck would be a larger on-grade patio area. Only a portion of docks are located on the Town road allowance with the majority being located on the lakebed. The Town has in the past, and it is recommended that it continue to advise the Ministry of Natural Resources that, as riparian owner, the Town has no objection to the issuance of a work permit to allow the dock to be constructed on Crown land. A 1.5 metre setback from the asphalt surface is proposed.

7. Construction and Renovation of Boathouses totally on the Lakebed

The Town is being asked by the Ministry of Natural Resources for our comments or objections to the Ministry issuing permits to authorize large boathouses totally on the lakebed. As the abutting riparian owner the Town must support approval being granted to the non-riparian abutting owner wishing to build such a structure. This is not a road allowance issue and staff will seek Council's direction on next steps.

4. FINANCIAL ANALYSIS AND BUDGETARY IMPACT:

It is recommended that the Town complete a survey of all lands on the lake side of the road allowance. The quickest way to do this would be to GPS/GIS all lands on the travelled portion of the road on the lake side in their current state. There will be a fee for developing this baseline of Lake Drive North and East. An upset limit of \$7,000 would be established and the endeavor would be funded by the Town's operating budget.

5. PUBLIC CONSULTATION AND NOTICE REQUIREMENTS:

Should Council wish to proceed with the proposed policy, it is recommended that notice be given of such intent. This would allow an opportunity for interested parties to submit comment prior to Council's final adoption of the policy.

6. CONCLUSION:

One of the difficult aspects of adopting a Policy with the Lake Drive issue involves ownership itself. Some abutting owners' deeds include language suggesting that the owners own land on the Lake side of the travelled road, whereas the Russell opinions referred to earlier are quite definitive in their conclusion that no such conveyances were validly made. Staff are recommending that in situations where such abutting owners wish to install or have installed works on the lake side of the travelled road that are otherwise in accordance with the Policy, the Town will attempt to obtain an encroachment agreement.

In summary, many activities have been allowed to take place on the Town road allowance over a long period of time. Urban development has taken over cottage dwellings and evidence supports that there is more desire by the owners abutting the east and south sides of the road allowance to carry out more significant development of the shoreline. It is recommended that the attached policy be considered for adoption to allow reasonable use of the shoreline but not to allow it to be intensely developed.

Formally approving the Policy would allow staff to manage visual appeal and add control over the development of Town owned lands. By seeking Encroachment Agreements with the abutting owners, where existing structures and plantings have been constructed without approval of the Town, the Town is proposing a compromise with a reasonable approach going forward. Such Encroachment Agreements would include indemnification clauses protecting the Town from risk and liability if someone were to be injured.

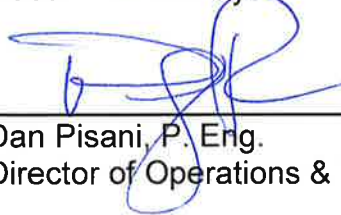
This approach is being sought after many hours of discussions with existing staff, and our legal experts. No solution is perfect but failing to act or deal with this difficult issue does not do justice to protecting our most valuable asset – Lake Simcoe.

Prepared by:



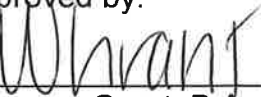
Robert Fortier, C.E.T., CRS
Capital Projects Manager

Recommended by:



Dan Pisani, P. Eng.
Director of Operations & Engineering

Approved by:



Winanne Grant, B.A., AMCT, CEMC
Chief Administrative Officer

Recommended by:

Michael Bigioni
Town Solicitor

SUBJECT: DRAFT Lake Drive – Development along the water side of travelled road.	AUTHORITY: Council Resolution TBA	
DEPARTMENT: Operations and Engineering	PAGES: 3	DAY MONTH YEAR 14 JULY 2015
APPROVED BY: Director of Operations & Engineering/ Mayor and Council	CONTACT POSITION FOR INFO: Director of Operations and Engineering Capital Projects Manager	

BACKGROUND

Most of the road allowances for Lake Drive North and Lake Drive East run along the shoreline of Lake Simcoe and Cook’s Bay but there are, at some locations, substantial amounts of land lying between the travelled portion of the road and the shoreline. The Town has allowed certain use of this land to be made by the owners of lands abutting the east and south sides of the road allowances, and other uses have occurred without Town approval. It is not the objective of the Town to turn this land into public open space, and the Town will continue to allow abutting owners to use and maintain the land in accordance with the above policy which sets out the activities that the Town will and will not allow on the untraveled portions of the Lake Drive North and Lake Drive East road allowances.

POLICY STATEMENT

Before the town will approve any uses outlined in this policy RD 19, the abutting owner must ensure all the applicable approvals are in place including Lake Simcoe Region Conservation Authority, Ministry of Natural Resources, applicable town policies, and any other governing authorities. In some cases, abutting land owners may be required to provide engineered drawings when requested by the town. New applications will be required to enter into an Encroachment Agreement. All future developments as defined below will be updated on the GIS to ensure tracking accuracy of the road allowance development from the established baseline.

After ownership has been verified, existing structures will be required to enter into an Encroachment Agreement.

That where the Lake Drive North and Lake Drive East road allowances run along the shoreline of Lake Simcoe:

1. FENCES

Lake Drive North to the east, or land abutting Lake Drive East to the south, may construct fences on the lake side of the travelled road provided that:

- The fence is located no less than 1.5 meters from the edge of the pavement.
- The maximum height of the fence is 1 meter above centre-line of road.
- At least 50% of the fenced area must be open.
- The fence may only be constructed parallel to the road; fences running perpendicular to the road are not permitted.
- Repairs and maintenance of the fence are the responsibility of the abutting owner.

2. HEDGES AND LANDSCAPING

Abutting owners may remove trees and brush from the lake side of the travelled road provided that measures satisfactory to the Town are taken to prevent erosion. Trees and shrubs may be planted on the lake side of the travelled road provided that:

- Plantings are located no less than 1.5 meters from the edge of the pavement.
- Hedges and similar linear plantings are not permitted.
- Maintenance of the plantings is the responsibility of the abutting owner.

3. RETAINING WALLS AND GRADING:

Abutting owners may regrade the lake side of the travelled road with Town approval provided that:

- Retaining walls are no higher than 0.6 meters.
- Slopes are not steeper than 3:1 horizontal to vertical.
- Slopes are stabilized immediately with staked nursery sod.

4. WATER AND SEWER LATERALS

Municipal water and sewer services shall not be extended to any buildings located on the lake side of the travelled road, and the Town will not grant its approval for the extension of other utilities to such buildings.

5. CONSTRUCTION AND RENOVATION OF BOATHOUSES, CABINS, SHEDS, CABANAS, ETC ON THE ROAD ALLOWANCE

New boathouses, cabins, sheds, cabanas, walls or screens are not permitted on the lake side of the travelled road. Existing buildings, regardless of size, may only be upgraded if the work does not require the issuance of a building permit. Existing buildings severely damaged or destroyed may not be replaced. The term severely damaged for the purpose of this policy means that the structures are unsafe for its intended use. Determination of severely damaged will be made by a qualified person. Abutting owners are responsible to remove buildings or structures considered by the Town to be unsafe, applying the standards set out in the Building Code Act, 1992. Failure to do so will entitle the Town to remove any such structure at the abutting owner's expense, together with all other facilities and structures maintained by such owner on the lake side of the travelled road, and to terminate such owner's ability to make use of the lake side of the travelled road.

6. STAIRS, DOCKS, AND DECKS

The Town may grant its consent, as riparian owner, to the Ministry of Natural Resources and Forestry where the Ministry requests the Town's comments on the issuance of work permits to abutting owners to permit the construction of docks within the lake. Stairs may not be greater than 10 m². Decks, patios and the portions of docks that are to be situated on land may be constructed on the lake side of the travelled road with Town approval provided that:

- Such structures do not require the issuance of a building permit.
- Such structures are located no less than 1.5 meters from the edge of the pavement.
- The abutting owner indemnifies the Town on a form prescribed by the Town in writing against any liability it may incur in connection with the presence of such structures on the lake side of the travelled road.

7. CONSTRUCTION AND RENOVATION OF BOATHOUSES TOTALLY ON THE LAKEBED

The Town will not grant its consent, as riparian owner, to the Ministry of Natural Resources and Forestry where the Ministry requests the Town's comments on the construction, replacement or renovation of boathouses located totally on the lakebed.

**BY-LAW NUMBER ##### Draft
(Requires legal review)**

OF

THE CORPORATION OF TOWN OF GEORGINA

**BEING A BY-LAW TO REGULATE
ENCROACHMENTS ON PUBLIC LANDS**

WHEREAS the *Municipal Act, 2001 S.O. 2001, c.25, as amended*, provides that a municipality may pass By-laws within the following spheres of jurisdiction: Highways, including parking and traffic on highways at Section 11(3) 1; Culture, parks, recreation and heritage at Section 11(3) 5 and Structures, including fences and signs at Section 11(3) 7;

AND WHEREAS Section 8 of the *Municipal Act, 2001 S.O. 2001, c.25, as amended*, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the *Municipal Act, 2001 S.O. 2001, c.25, as amended*;

AND WHEREAS Section 9(1) of the *Municipal Act, 2001 S.O. 2001, c.25, as amended*, provides that Section 8 and Section 11 shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate and enhance their ability to respond to municipal issues;

AND WHEREAS Section 391(c) of the *Municipal Act, 2001 S.O. 2001, c.25, as amended*, provides that a municipality may pass by-laws imposing fees or charges on any class of persons for the use of its property including property under its control;

AND WHEREAS Section 446(1) of the *Municipal Act, 2001 S.O. 2001, c.25, as amended*, provides that a municipality may proceed to do things at a person's expense which that person is otherwise required to do under a By-law or otherwise but has failed to do;

AND WHEREAS Section 446(3) of the *Municipal Act, 2001 S.O. 2001, c.25, as amended*, provides that the costs incurred by a municipality in doing a thing or matter under Section 446(1) may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE
TOWN OF GEORGINA ENACTS A BY-LAW AS FOLLOWS:**

SHORT TITLE

This By-law shall be known and may be cited as the "Encroachment By Law".

Section 1-Definitions

For the purpose of this By-law:

- 1.1 "Applicant" shall include an owner seeking an Encroachment Agreement, or renewal of an Encroachment Agreement.
- 1.2 "Clerk" shall mean the Clerk of the Corporation of the Town of Georgina.
- 1.3 "Council" shall mean the Council of the Corporation of the Town of Georgina.

- 1.4 "Director of Operations and Engineering" shall mean the Director of Operations and Engineering of the Corporation of the Town of Georgina.
- 1.5 "Easement" shall mean an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose, but does not include an interest created by a license agreement.
- 1.6 "Encroachment" shall mean any type of vegetation, man-made object or item of personal property of a person which exists wholly upon, or extends from a person's premises onto, public lands and shall include any aerial, surface or subsurface encroachments:
- (a) "aerial encroachment" shall mean an encroachment that is located at least thirty (30) centimeters above the surface of public lands;
 - (b) "surface encroachment" shall mean an encroachment that is located anywhere between the following: the surface of public lands to a height less than thirty (30) centimetres and beneath the surface of public lands to a depth of not more than three (3) centimetres;
 - (c) "sub-surface encroachment" shall mean an encroachment that is located beneath the surface of public lands to a depth exceeding three (3) centimetres.
- 1.7 "Encroachment Agreement" shall mean an agreement prepared by the Town for execution by the Town and an owner granted authorization to erect, place or maintain an encroachment.
- 1.8 "Expense" shall mean any and all sums of money actually spent or required to be spent by the Township, and shall include but not be limited to all charges, costs, a twenty five percent (25%) administrative fee, taxes, outlays, legal fees and losses.
- 1.9 "Highway" shall mean a highway within the meaning of *The Municipal Act, 2001 S.O. 2001, c.25*, as amended.
- 1.10 "Officer" shall mean a Municipal Law Enforcement Officer appointed by Town of Georgina By-law, a Police Officer.
- 1.11 "Owner" shall mean the registered owner of a parcel of property as such person is described in the most current assessment roll.
- 1.12 "Person" shall include an individual, a sole proprietorship, a partnership, an unincorporated association, a trust, a body corporate or a natural person.
- 1.13 "Personal Property" means any object or item of property other than real property.
- 1.14 "Premises" means a parcel of real property under registered ownership and includes all buildings and structures thereon.
- 1.15 "Public Lands" means lands owned by, leased, licensed to or under the management of the Township, and shall include but not be limited to any public highway, road, street, avenue, parkway, lane, alley, square, place, viaduct or trestle, water, thoroughfare, way or bridge, park, woodland, greenbelt, storm water management facility, open space, cemetery, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter and sidewalk.
- 1.16 "Right-of-Way" shall mean a person's legal right, established by usage, deed or by contract, to pass through grounds or private property which affords access to abutting lots and does not include a highway.

- 1.17 "Sign" shall mean any structure or device, intended for identification or advertisement, visible to the general public.
- 1.18 "Town" shall mean the Corporation of the Town of Georgina.
- 1.19 "Unauthorized Encroachment" shall mean any encroachment not authorized by this By-law.

Section 2-General Prohibitions

- 2.1 No person shall erect, place or maintain, or cause to be erected, placed or maintained, an encroachment of any kind on public lands, or on any right-of-way or easement in favor of the Town, except where permitted to do so in accordance with this By-law.
- 2.2 Notwithstanding Section 2.1 of this By-law, the provisions of this By-law do not apply to the following classes of encroachments:
 - (a) Signs and Advertising Devices, as authorized by By-law No. 2002-059, as amended;
 - (b) Election Signs, as authorized by By-law No. 2010-021 as amended;
 - (c) Encroachments permitted as a result of a written and signed agreement with the Town, other than an Encroachment Agreement;

Section 3-Request for Encroachment

ENCROACHMENT AGREEMENT APPLICATION FEES

- 3.1 All Encroachment Agreement application fees are for administrative purposes and are, therefore, non-refundable if the application is refused for any reason or is withdrawn by the Applicant prior to the issuance of an Encroachment Agreement.
- 3.2 The Encroachment Agreement application fee shall be as set out in Schedule 'A' to this By-law, and shall be reflected in the Town Fees By-law.

ENCROACHMENT AGREEMENT APPLICATION- FULL INFORMATION REQUIRED

- 3.3 Every Applicant shall provide in full a complete application, at the time the application is submitted or the Director of Operations and Engineering shall not accept the application.
- 3.4 Every Applicant shall provide in full a complete application, at the time the application is submitted, all of the information required on the application and shall provide:
 - (a) payment of the prescribed Encroachment Agreement Application fee set out in Schedule 'A' of this By-law;
 - (b) any other document or information as may be required in any other Section of this By-law;
 - (c) any other affidavit, document or information as may be requested by the Director of Operations and Engineering at any time during the term of the Encroachment Agreement.
 - (d) proof that the need for the encroachment is reasonable, feasible and no alternative option exists. In addition the encroachment must not jeopardize the health or safety of the public and must be in the public's best interest and must be minor in nature.

ENCROACHMENT AGREEMENT APPLICATION- SUBJECT TO APPROVAL

- 3.5 Every Encroachment Agreement application will be subject to investigations by and comments or recommendations from such municipal or provincial departments or agencies as the Director of Operations and Engineering deems necessary, or as directed by Council, including but not limited to:

INCOMPLETE APPLICATION

- 3.6 Any Encroachment Agreement application that does not comply with the provisions of Section 3.4 of this By-law, shall be deemed incomplete and shall be returned by registered mail to the applicant pursuant to Section 3.10 of this By-law.
- 3.7 Any Encroachment Agreement application that has not received approvals from all municipal or provincial departments or agencies as the Director of Operations and Engineering deems necessary within ninety (90) days from the date of the filing of the application, due to the Applicant's inability to comply with the requirements, shall be deemed to be incomplete.

INFORMATION HELD IS OPEN TO INSPECTION

- 3.8 Any application, comment, recommendation, information, document or thing in the possession of the Director of Operations and Engineering pursuant to the provisions of this By-law shall be made available by the Director of Operations and Engineering for an inspection:
- (a) by any Officer employed in the administration or enforcement of this By-law; and
 - (b) by any other person upon the consent, satisfactory to the Director of Operations and Engineering, of the person, civic department, board, commission, authority or other agency which produced or submitted the application, comment, recommendation, information, document or thing; subject only to the limitations imposed by the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, CHAPTER M.56, as amended.*

Notice

- 3.9 Every Encroachment Agreement owners shall notify the Director of Operations and Engineering in writing within ten (10) days of any change in his mailing address and shall be sent to:

Director of Operations and Engineering
Town of Georgina
Georgina, ON
L4P 3G1

- 3.10 Any notice or request made pursuant to this By-law may be given in writing by registered mail and is effective:
- (a) on the date on which a copy is hand delivered to the person to whom it is addressed;
 - (b) on the fifth (5th) day after a copy is sent by registered mail to the person's last known address.

- 3.11 For the purpose of Section 3.10 of this By-law, the Encroachment Agreement owner's last known address shall be deemed to include that provided pursuant to Section 3.4 of this By-law as they may be changed pursuant to Section 3.9 of this By-law.

CONTRAVENTION OF OTHER LAWS PROHIBITED

- 3.12 The issuance or renewal of an Encroachment Agreement under this By-law is not intended and shall not be construed as permission or consent by the Town for the Encroachment Agreement owner to contravene or to fail to observe or comply with any law of Canada or Ontario or any other By-law of the Town or the Regional Municipality of York.
- 3.13 Where a request to erect, install or maintain an encroachment has been approved, the Clerk shall prepare an Encroachment Agreement, and once the Applicant has been notified in writing that the Encroachment Agreement is ready for execution, the Applicant shall have thirty (30) calendar days to execute same.

Section 4-Registration of Agreement

- 4.1 Where the Director of Operations and Engineering deems it appropriate, an Encroachment Agreement may be registered against title to the Encroachment Applicant's property in the Land Registry Office and all expenses in doing so shall be paid for in advance by the Applicant.

Section 5-Authority of the Director of Operations and Engineering

- 5.1 The Director of Operations and Engineering shall have delegated authority to:
- (a) Approve or reject any application submitted for an Encroachment Agreement; and
 - (b) Impose such terms and conditions to any request and/or Encroachment Agreement as the Director of Operations and Engineering may deem appropriate; and
 - (c) Determine whether any Encroachment Agreement expiring on a date after the date of enactment and passage of this By-law shall be renewed and/or extended.

Section 6-Revocation

- 6.1 The execution of an Encroachment Agreement in respect of an encroachment does not create any vested right in the owner or occupant of the premises to which the encroachment is appurtenant, or in any other person, and the Encroachment Agreement may be revoked in accordance with the terms set out therein.

Section 7-Access to Encroachments

- 7.1 No person shall obstruct, hinder or interfere with the free access to any encroachment by an employee, officer or agent of the Township.

Section a-Discontinuance of Encroachments

- 8.1 The Director of Operations and Engineering may revoke an Encroachment Agreement:
- (a) If the owner of any premises to which an encroachment is appurtenant desires to permanently discontinue the encroachment.

The owner shall notify the Director of Operations and Engineering in writing and the Director of Operations and Engineering shall thereafter cause a notice to be sent to the owner by an Officer advising that the encroachment shall be removed or filled in and closed up, and the public lands shall be restored to their former condition by the owner at his own expense;

(b) If the Director of Operations and Engineering is at any time of the opinion that a breach of the terms and conditions attached to an Encroachment Agreement has occurred and that the encroachment should be discontinued, or where an Encroachment Agreement has expired, the Director of Operations and Engineering shall cause a notice to be sent to the owner advising that the encroachment be removed or filled in and closed up, and the public lands be restored to their former condition by the owner at his own expense;

- 8.2 Where an owner fails to comply with the notice described in Section 8.1 of this By-law, within a minimum of ninety-six (96) hours of receipt of same, the encroachment may be removed or filled in and closed up by an Officer, and the public lands restored to their former condition at the expense of the owner, such expense to be recovered in full in the manner provided in Section 11 of this By-law, and until the encroachment is so removed or filled in and closed up and the public lands restored to their former condition, all expenses incurred by the Town in respect thereto shall continue to be paid by the owner.

Section 9-Emergency Situations

- 9.1 If an Officer deems that an emergency exists or may exist as a result of any encroachment being or about to become a source of danger to the health and safety of the public, the Officer may:
- (a) notify in writing the owner of the premises to which the encroachment is appurtenant, requiring the repair, removal, filling in or closing up of the encroachment and restoration of the public lands to their former condition at the expense of the owner, so that the encroachment is no longer deemed to be a source of danger or potential danger to the public by the Officer, and/or
 - (b) take such measures on behalf of the owner, without notice to the owner, as the Officer may deem necessary to remove the danger or potential danger created by the encroachment.
- 9.2 Where the notice in Section 9.1(a) of this By-law is not complied with within ninety-six (96) hours of the date of the notice, an Officer may, on behalf of the owner shall, remove, fill in or close up the unauthorized encroachment and restore the public lands to their former condition at the expense of the owner, such expense to be recovered in full in the manner provided in Section 11 of this By-law.
- 9.3 Where the Officer elects to take any action under Section 9.1(b) of this By-law, the expenses incurred by the Town in so doing shall be recovered in full in the manner provided in Section 11 of this By-law.

Section 10-Removal of Unauthorized Encroachments

- 10.1 Where the Town becomes aware of an unauthorized encroachment, an Officer shall give notice in writing to the owner of the premises to which an unauthorized encroachment is appurtenant, to forthwith remove, fill in or close up the encroachment and to restore the public lands to their former condition at the expense of the owner.

- 10.2 Where the notice in Section 10.1 of this By-law is not complied with within ninety-six (96) hours of the date of the notice, an Officer shall, on behalf of the owner, remove, fill in or close up the unauthorized encroachment and restore the public lands to their former condition at the expense of the owner, such expense to be recovered in full in the manner provided in Section 11 of this By-law.
- 10.3 Any materials or structures forming part of or attached to the encroachment and removed by an Officer shall, at the discretion of the Officer, either be deposited at the owner's premises or be stored for a minimum of ninety-six (96) hours at the owner's expense, such expense to be recovered in full in the manner provided in Section 11 of this By-law. Any item so stored and not claimed by the owner within said minimum ninety-six (96) hour period shall be disposed of by the Town in such manner as it deems appropriate.

Section 11-Recovery of Expenses

- 11.1 All expenses incurred by the Town in connection with the enforcement of this By-law shall be paid within thirty (30) days of their billing date, and in the event of failure to pay the entire amount due within said thirty (30) days, at the discretion of the Township, the outstanding balance of the invoice may thereafter be added to the tax roll as of the year in which the expenses were billed.
- 11.2 The Town may also recover all expenses owing under this By-law by a court action as a debt due to the Town.

Section 12-Infractions and Penalties

- 12.1 Every person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction is liable to pay a fine or penalty for each offence, exclusive of costs, as provided for in the *Provincial Offences Act, R.S.O. 1990, c.P.33*, as may be amended from time to time.

Section 13-Prohibition Order

- 13.1 When a person has been convicted of an offence under this By-law,
- (a) the Superior Court of Justice, or
 - (b) any other court of competent jurisdiction, may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted directed toward the continuation or repetition of the offence.

Section 14- Administration

ADMINISTRATION OF BY-LAW

- 14.1 Unless otherwise indicated, the administration of this By-law is assigned by Council to the Director of Operations and Engineering who may delegate the performance of his functions under this By-law from time to time as occasion requires.
- 14.2 In this By-law, unless the contrary intention is indicated, words used in the singular shall include the plural and words used in the male gender shall include the female gender or vice versa, where applicable.

Section 15 - Enforcement

ENFORCEMENT OF BY-LAW

- 15.1 An Officer shall be responsible for the enforcement of this By-law.
- 15.2 No person shall hinder or obstruct, or attempt to hinder or obstruct, any Officer or the Clerk while exercising any power or performing any duty under this By-law.
- 15.3 If there is a conflict between a provision in this By-law and a provision of any other Municipal By-law, the provision that establishes the highest standard to protect the health, safety and welfare of the general public shall apply.

Section 16-Exceptions and Grandfathering

- 16.1 Notwithstanding Section 2.1 of this By-law, any encroachment authorized under an Encroachment Agreement determined by the Clerk to be valid and binding at the date of enactment of this By-law, shall not require further authorization pursuant to this By-law until the Encroachment Agreement has expired or is terminated.
- 16.2 Subject to Section 16.1 of this By-law, this By-law shall apply to all encroachments which existed or were created before this By-law was enacted and passed.

Section 17- Severability

- 17.1 In the event any section or provision of this By-law is held invalid, the remainder of the By-law shall continue in force.
- 17.2 This By-law shall come into full force and effect on the date of its passing by Council.

SCHEDULE 'A'

ENCROACHMENT BY-LAW

BY-LAW 2015 XX
DRAFT

ITEM	FEE
Encroachment Agreement Application (Non-Refundable)	TBA