

1. Purpose

The purpose of the Encroachment on Municipal Lands Policy is to outline the guidelines and requirements for dealing with encroachments on municipal property and if warranted, the processing of applications to recognize existing encroachments upon property owned by the Municipality.

2. Scope

An encroachment occurs when a property owner intrudes on, in, or under the ground space or in the air space of an adjacent Municipally owned or managed property, either deliberately or inadvertently. Encroachments may be structural (i.e. construction of a deck, pool, well, septic system, dock, retaining wall, etc.) or non-structural (i.e. pool drainage, waste dumping, planting of vegetable gardens, shrubs, trees, flowers, etc.)

a) Encroachments are a concern because they:

- May restrict or limit the use and enjoyment of public lands maintained or owned by the Municipality for the benefit of all residents.
- May pose a safety hazard to the public and give rise to potential liability claims.
- May damage the natural environment and undermine the Municipality's stewardship role in protecting natural features.
- May lead to claims of adverse possession and loss of public assets.
- May destabilize public land with resultant damage to adjacent private lands.
- May result in ratepayers absorbing costs to restore degraded public lands.

b) It is the general policy of the Municipality that encroachments not be allowed onto Municipally 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 Municipality. All related costs shall be at the expense of the encroaching party. Council may however, approve encroachments in special circumstances. Permission to allow an encroachment shall be by written agreement between the property owner and the Municipality. 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.

- c) 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. All applications are subject to the approval process outlined in this Policy.
- d) No person shall encroach upon or take possession of any municipally owned lands (parkland, open space, development lands, etc.) by any means whatsoever, including the construction, installation or maintenance of any fence, building or structure, the dumping or storage of any materials or plantings, or planting, cultivating, grooming or landscaping thereon. If an encroachment is discovered, the encroaching party may make an application to the Municipality to continue the encroachment. All applications are subject to the approval process outlined in this Policy.

3. Types of Encroachment Agreements

If an encroachment is identified the encroaching party may request that Council consider and Encroachment Agreement, which would allow the encroachment to continue under specific conditions. Encroachment Agreements which meet the criteria outlined in this Policy will be classified by the Municipality as one of three (3) types:

- a) Lifetime Encroachment Agreement - for the lifetime of the encroaching structure.
- b) Six Month Encroachment Agreement - six (6) months' notice will be provided by the Municipality requiring that the encroachment be removed and the property restored to their original state.
- c) Temporary Encroachment Agreement – for a maximum of one year in relation to the completion of purchase/sale of shoreline road allowance. Temporary Agreements can be extended with no additional fee at the Municipality's discretion.

4. Criteria for Considering the Authorization of an Encroachment Agreement

The following criteria will be considered when assessing an Encroachment Agreement application:

- a) Historically the encroachment was constructed inadvertently, contrary to applicable zoning regulations.
- b) Is constructed on a permanent foundation and is an integral part of a dwelling structure on private property adjacent to the municipal property.
- c) Is structurally sound and does not constitute a public or private nuisance or a threat to public health or safety or to the environment.
- d) Does not occupy municipal property shown as an intrinsic part of an existing or

potentially continuous walkway or trail system under municipal ownership

- e) Does not occupy municipal property which has been reserved, dedicated or zoned to provide current or future public access to any of the Municipality's beaches, lakes or other water bodies.

5. Implementation Procedure

- a) Upon the discovery of an encroachment, the Municipality shall notify the registered owner of the adjacent property with the encroachment in writing of the encroachment and the options available. See Letter of Notification of Encroachment.
- b) When 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 Municipality shall do so at the registered property 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 provide for under Section 398(2) of the Municipal Act.
- c) If the encroaching party want to apply to Council for the encroachment to remain they may make an application to the Municipality following the process as outlined below under Application for an Encroachment.
- d) 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, land transfer, land purchase, registration costs and HST. Where municipal property is to be sold it shall be in accordance with By-law B2007-114, as amended, being "A By-law to Establish Policies for the Sale of Real Property".
- e) Where the encroachment has existed for a number of years and the use has been exclusive to the encroaching party, and the encroaching party does not wish to purchase the lands, then a lease agreement, with all costs being the responsibility of the encroaching party, may be considered for a period equal to the shorter of:
 - As long as the current occupant owns the adjacent lands, or
 - Until the encroachment is removed, or
 - Until the property is required for municipal purposes.

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

6. Application for Encroachment

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

- a) A complete Application for an Encroachment Form.
- b) An application fee as established by Council (See the Municipality's Fees and Charges By-law, as amended).
- c) A copy of the deed of the encroaching party's lands which abut the subject municipal property.
- d) A plan or sketch of the subject lands with details of the encroachment clearly marked thereon.
- e) A pertinent history of the encroachment such as the estimated length of time the said encroachment has been in place, need to extend etc.
- f) The Application will be submitted to the Municipal Clerk and circulated to the appropriate Departments for review, comment and recommendation.
- g) If approved, the applicant will be required to pay all costs associated with the transaction, including the cost 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 Municipality of Trent Lakes.

7. Insurance

In cases of an approved encroachment the encroaching landowner must provide insurance acceptable to the Municipality. If the landowner/encroaching party is a company it will be required to maintain general liability insurance in the amount of \$2,000,000 and the Municipality of Trent Lakes must be named as an additional insured. The onus is on the landowner/encroaching party to carry the insurance in perpetuity and to provide the Municipality with a certificate of insurance at renewal. If the landowner/encroaching party is a private resident they 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 and to provide the Municipality of Trent Lakes a certificate of insurance at renewal.

8. Lifetime Encroachment Agreement – Annual Fee

At their Regular Council Meeting held on December 16, 2014, by Resolution R2014-161, Council approved the following calculation for the annual fee for a lifetime encroachment of a structure:

- a) the annual fee will be calculated by taking the previous year's tax times the size of the encroachment (area) divided by the total area of the owned property.

This calculation would be determined by the Municipality on an annual basis. Once calculated, this annual fee is added to the tax bill of the property owner. The minimum annual fee, regardless of the area, would be \$25.00.

9. Review Cycle

This policy will be reviewed on an as needed basis.

10. Repeals

This Policy repeals a previous version, and all revisions.

This Policy was previously referred to as AD-35.

11. Related Information

Revisions to this document may impact the following policies, procedures, and/or by-laws.

#	Document Title
N/A	No related documents were identified at the time the policy was passed

12. Policy Revisions

Version	Date Approved	Council Resolution
1	January 21, 2014	R2014-52
2	December 16, 2014	R2014-161