

ENCROACHMENT POLICY SUMMARY

Presented to Council on SEPT. 18, 2006

Shorewalk's position on policy CS-33-06/lc-07-06

1. The directive to prepare a policy for residential, commercial and waterfront encroachments has served no useful purpose other than to appear even handed and universal when dealing with the waterfront. Waterfront Road Allowance Encroachments are the only current issue and it makes it difficult to create a "one size fits all" policy. We continue to urge a single waterfront policy be crafted.
2. Throughout the policy document reference is made to the fact that encroachments do not interfere with access to the lake and that always a footpath or trail is available. What is lost in such a point of view is that the road allowance lands not on the water are a very valuable public asset in themselves. They have been deemed parkland and will, when improved over time, become a wonderful series of public parks with their own intrinsic value quite apart from their proximity to the lake. We urge council to treat these lands as an asset for us and for future generations and not a mere trail to the lake to be squandered away. It would be a tragic loss for this town.
3. Further proof of the intention to maintain these upland sections of our waterfront allowances comes with Ms. Hansen's 2002 report to council. She employed professional biologists to examine these road allowances and used their comments in her final report. They clearly were not being viewed as simply a way to the lake.
4. Much of the staff report is framed as a defense of encroachments. I quote-"Of the two surveys completed to date only one reveals the encroachment of a retaining wall", "Encroachments on the road allowances north of the beach are not 'on the waterfront'". "Encroachments are typically minimum in size in relation to the width of the road and do not interfere with access to, or enjoyment of the beach", "In most cases soft encroachments are aesthetically pleasing and contribute to the natural beauty of these road allowances..." and "In most cases landscaping, hedges, and fences do not inhibit the public's access to the waterfront". Even if these attributes were universally true, which they are not, it totally misses the point. As previously stated these are public parklands that have a large public value in their own right They are **NOT** simple route ways to the lake.
5. The report goes out of its way to point out that these encroachments were "unintentional" and "inadvertent". Are the authors mind readers or have they been reassured that these fences which are frequently 5, 10, or 15 feet into the public land were just a mistake? It is quite ironic that there are virtually no examples of where the mistake was made at the expense of their own land ie. a few feet inside their property. However you wish to interpret past intent it really is irrelevant to the issue at hand. These valuable lands need to be returned intact to their public owners.

6. On the page seven WATERFRONT grid Shorewalk's proposed alternative is listed but there is an important omission. The report says "All encroachments required to be removed regardless of nature and extent." No mention is made of the fact that we have in every discussion or presentation indicated that a different policy is needed for shore works and houses. This is serious because it leads any stakeholders who read the document to think that we are in favour of removing houses etc. which has never ever been suggested by us.

7. The town entered into the "deemed parkland" scenario in order to protect the public since the road allowances technically remain highways and can not be threatened with adverse possession. This proposal reiterates: "It is understood through statute law and common law that an owner cannot claim title or acquire any part of a municipal road allowance so encroached by virtue of adverse possession." The law is clearly on the town's side but of course anyone can attempt to litigate even when there is no merit. The same could happen with the staff plan if council refused to accept an application. It would seem the height of arrogance for anyone to sue to retain land upon which they have encroached for years. I would hope that we have the resolution to stand up to any such possibility however implausible.

SHOREWALK'S REQUESTS.

1. Council move to reject this report and direct staff to come back with a report that includes no tolerance for fences and other soft encroachments with a further direction to confer with council to prepare an acceptable policy for hard encroachments. (in our view one that works towards non-financial compensation)

2. Staff amend (p.7 of 10) Waterfront alternatives to include the fact that our Zero Tolerance position is for fences and other soft encroachments and not for buildings and shore works.

3. Inquiries of many municipalities in Ontario indicate that they do not enter into Encroachment Agreements for "landscaping" or "yardworks" (including fences, plantings, debris piles and excavations). In many cases the municipal workers simply arrive and remove the encroachment. In other the encroaching property owners are given a time period to remove and if it does not happen the municipality removes and bills the landowner on his or her tax bill.

Footnote for readers on our website:

1. The town proposal stands for now and will be introduced on Oct. 23 with a vote to follow on Oct.30
2. If this by law passes then it will have reduced the already scarce public shoreline for years to come.
3. A reasonable compromise would be to keep the Commercial and Residential Proposal and to modify the Lakefront Proposal to allow, at council's discretion, an Encroachment Agreement on houses, garages and shoreline protective works. The section dealing with landscaping and yardworks would be excluded. This would follow the pattern in most municipalities.
4. Help us by contacting the mayor and/or councilors and ask them to eliminate the parts of the proposal that pertain to "landscaping" and "yardworks" including fencing.
5. Join Shorewalk at www.shorewalk.ca
We will carry your message to council.

Garry Skerrett, President
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www.shorewalk.ca