

~~REPEALED/AMENDED~~

by By-Law No. 11-100

~~REPEALED/AMENDED~~

by By-Law No. 07-091

Dec 16/07

THE CORPORATION OF THE TOWNSHIP OF TINY

~~REPEALED/AMENDED~~

by By-Law No. 12-111

BY-LAW 05-099

Being a by-law to establish a Township Encroachment Policy and to repeal By-law 04-037

~~REPEALED/AMENDED~~

by By-Law No. 08-084

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

AND WHEREAS Section 9 of The Municipal Act, 2001, provides that Sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities to a) enable municipalities to govern their affairs as they consider appropriate and, b) enhance their ability to respond to municipal issues;

AND WHEREAS Section 11 of The Municipal Act, 2001, provides that a lower-tier municipality may pass by-laws respecting matters within the spheres of jurisdiction set out therein;

AND WHEREAS The Corporation of the Township of Tiny is the registered owner of municipal road allowances and other municipally owned tracts of lands within the Township of Tiny;

AND WHEREAS the Council of The Corporation of the Township of Tiny deems it advisable to adopt a policy with regard to how encroachments shall be handled by the municipality in order to deal consistently with encroachment issues;

AND WHEREAS By-law 04-037 was enacted of the 10th day of May 2004 and Council now deems it advisable to repeal this by-law;

NOW THEREFORE the Council for The Corporation of the Township of Tiny hereby enacts as follows:

1.0 ENCROACHMENT(S)

An encroachment occurs when a property owner intrudes on, in, or under the ground space or in the air space of an adjacent Township-owned or managed property, either deliberately or inadvertently. Encroachment results from any use of such Township land by individuals for their own personal purposes. Encroachments may be structural (e.g., construction of decks, pools, wells, septic systems, docks, retaining walls etc.), non-structural (e.g., pool drainage, application of pesticides, waste dumping), or vegetative (e.g., planting of vegetable gardens, shrubs, trees etc.).

Encroachments are of concern because they:

- (a) may restrict or limit the use and enjoyment of public lands maintained by the Township for the benefit of all residents;
- (b) may pose a safety hazard to the public and give rise to potential liability claims from resultant injuries;
- (c) may damage the natural environment and undermine the Township's stewardship role in protecting natural features;
- (d) may lead to claims of adverse possession and the loss of public assets;
- (e) may destabilize public lands with resultant damage to adjacent private lands; and

- (f) may result in ratepayers absorbing costs to restore degraded public lands.

While it is generally the policy of the Municipality to not permit any encroachment onto municipal land, in certain circumstances consideration may be given to allowing an encroachment to continue if an agreement is entered into between the adjacent property owner and the Municipality.

2.0 IDENTIFICATION OF ENCROACHMENT(S)

The Township identifies encroachments by the following means:

- a) Through inspections and patrols as may be deemed necessary from time to time by the Manager of Public Works or designate.
- b) Through information or plans provided to the Township, which by the determination of Township staff, identify encroachments on any municipal property.
- c) Through boundary surveys, title searches, or other functions completed by the Township, its consultants, contractors or agents.

3.0 ACTION TAKEN WHEN ENCROACHMENT(S) IS IDENTIFIED

As soon as possible after the identification of an encroachment, the Deputy Clerk, or Manager of Public Works, or designate shall give notice in writing to the owner of the abutting property by registered mail. Such abutting property owner, who is using or has used, has constructed or is constructing, or in any other way appears to be the reasonable "owner" of such encroachment, for the purpose of this by-law shall be deemed the owner. This notice shall include a copy of the encroachment policy in place for the Township of Tiny.

If the registered mail is not claimed, notice shall be given by either regular mail or personal delivery.

The property owner will have thirty (30) days from the later of the date of mailing or personal delivery of the notice to remove the encroachment, and notify the Township of such removal. Where notice is sent by the Township after September 30th and before April 1st, the abutting owner will be given until the next June 1st to remove the encroachment. The owner shall notify the Township within 30 days of the later of the date of mailing or delivery of notice of its intent to remove the encroachment prior to the next June 1st or such owner shall be considered to be in contravention of this by-law. Where such encroachment is deemed to be a safety hazard by the Township the owner shall remove the hazard, in a time schedule deemed appropriate by the Township.

If the property owner has not rectified the encroachment, and restored the property to the satisfaction of the Township, within the allotted time, the Township will retain the services of a qualified landscape company or other applicable services it deems necessary to remove the encroachment, restore the property and take any other remedial action, as may be required, all at the expense of the owner. Township staff shall not provide this corrective work.

Where the Township employs the services of such companies or other professional services as it deems appropriate to remove and restore the property, the Township shall invoice the owner the cost of the work as invoiced by those services, times 1.5 (150%) in order for the Township to recover costs relating to the administration of this By-law. The Township will employ the services of reputable firms with which it has ongoing works through a regular tendering process or specialty service orders, from time to time, all at the discretion of the Township. Expenses incurred by the Township, in accordance with this By-law, will be invoiced to the property owner and recovered in the same manner as property taxes.

Under special and extenuating circumstances a property owner may request that Council consider an encroachment agreement, which would allow the encroachment to continue under specific terms and conditions.

4.0 CRITERIA FOR CONSIDERING THE AUTHORIZATION OF AN ENCROACHMENT AGREEMENT INCLUDE

The Encroachment

- Historically has been constructed inadvertently, contrary to applicable zoning regulations
- Is constructed on permanent foundations and is an integral part of a structure on private property adjacent to the municipal property
- Is structurally sound and does not constitute a public or private nuisance or a threat to public health or safety or to the environment
- Does not occupy municipal property shown as an intrinsic part of an existing or potentially continuous walkway or trail system under municipal ownership
- Does not occupy municipal property which has been reserved, dedicated or zoned to provide public access to any of the Municipality's beaches, lakes or other water bodies

The Township encroachment policy makes reference to encroachments on all types of Township-owned lands and sets out how each type is to be dealt with.

5.0 OPENED/PUBLIC ROAD ALLOWANCES

If the Township identifies the encroachment as meeting all of the criteria set out in this policy (4.0), then a property owner may request that Council consider an encroachment agreement, which would allow the encroachment to continue under specific terms and conditions. An encroachment agreement is available only for road encroachments, which in the opinion of Council, with the advice of the Manager of Public Works, do not present any safety concerns and do not interfere with any planned or proposed changes to the roadway and regular road maintenance. The owner will covenant to place insurance on the said encroachment in the joint names of the Township and the owner for public liability in an amount to be determined by the Township. The said insurance may be included in the owner's insurance policy of the lands but must show the interest of the Township with respect to the public liability claims arising by reason of the said encroachment on the encroached lands. All administrative costs including legal fees with an annual rental fee as determined by the Township shall be imposed on all encroachment agreements. Council, at its sole option, may reject any request for an agreement.

The agreement will stipulate that the owner pays the Township an annual rental fee for as long as the encroachment remains and that the encroachment be removed at the time of change of ownership.

6.0 UNOPENED/PUBLIC ROAD ALLOWANCES

If the encroachment is a safety issue the property owner be requested to remove it within 30 days.

If the Township identifies the encroachment as meeting all of the criteria set out in this policy (4.0), then a property owner may request that Council consider an encroachment agreement, which would allow the encroachment to continue under specific terms and conditions. An encroachment agreement is available only for road encroachments, which in the opinion of Council, with the advice of the Manager of Public Works, do not present any safety concerns and do not interfere with any planned or proposed changes to the roadway and regular road maintenance. The owner will covenant to place insurance on the said encroachment in the joint names of the Township and the owner for public liability in an amount to be determined by the Township. The said insurance may be included in the owner's insurance policy of the lands but must show the interest of the Township with respect to the public liability claims arising by reason of the said encroachment on the encroached lands. All administrative costs including legal fees with an annual fee as determined by the Township shall be imposed on all encroachment agreements. Council, at its sole option, may reject any request for an agreement.

The agreement will stipulate that the owner pays the Township an annual rental fee for as long as the encroachment remains and that the encroachment be removed at the time of change of ownership.

In the case of encroachments on an unopened/public road allowance the encroaching party cannot acquire the property by virtue of adverse possession.

7.0 LANEWAYS, PARKS AND BLOCKS, WATERFRONT/SHORELINE TOWNSHIP-OWNED PROPERTIES

If the Township identifies the encroachment as meeting all of the criteria set out in this policy (4.0), then a property owner may request that Council consider an encroachment agreement, which would allow the encroachment to continue under specific terms and conditions. An encroachment agreement is available only for encroachments, which in the opinion of Council, with the advice of the Manager of Public Works, do not present any safety concerns and do not interfere with any planned or proposed functionality of the municipal property. The owner will covenant to place insurance on the said encroachment in the joint names of the Township and the owner for public liability in an amount to be determined by the Township. The said insurance may be included in the owner's insurance policy of the lands but must show the interest of the Township with respect to the public liability claims arising by reason of the said encroachment on the encroached lands. All administrative costs including legal fees with an annual fee as determined by the Township shall be imposed on all encroachment agreements. Council, at its sole option, may reject any request for an agreement.

The agreement will stipulate that the owner pays the Township an annual rental fee for as long as the encroachment remains and that the encroachment be removed at the time of change of ownership.

8.0 DOMESTIC WELLS ON MUNICIPAL PROPERTY

Domestic wells will not be permitted to remain on Township property.

If the well is not being used, the owner will be ordered to properly abandon and decommission the well as per the Ministry of the Environment's guidelines.

If the well is being used, the owner will be requested to relocate the well onto private property within a reasonable period of time, and to properly abandon and decommission the existing well located on Township property. A copy of all documentation from a qualified well driller will be required.

9.0 ENCROACHMENTS ON PUBLIC WATERFRONT PROPERTY

Only in situations where there is no reasonable public access to the area will further discussion of a potential encroachment agreement or other action be considered. A separate report will be brought to Council for consideration in such circumstances.

10.0 ENCROACHMENT AGREEMENT FEES

10.1 Minor Encroachments:

The encroaching owner pay a \$1000.00 Agreement preparation fee, plus a rental fee of \$500 per year and provide a current liability insurance policy for one million dollars naming the Township as third party insured.

A Minor Encroachment is defined as one in which there is no significant additional risk to the Municipality, the majority of the municipal property is still fully accessible or usable by the public, and the intended functionality of the municipal property is not affected negatively, as determined by Manager of Public Works.

10.2 Major Encroachments:

Major Encroachments include situations where the Township assumes significant additional risk and/or property is no longer accessible or usable by the public, as determined by Manager of Public Works.

The encroaching owner will pay a \$1000.00 Agreement preparation fee, plus an annual rental fee, as determined by the Manager of Public Works, and provide a current liability insurance policy for one million dollars naming the Township as third party insured.

The annual rental fee will be calculated as follows:

- The assessed value of the owner's property (A) divided by the square footage of the property (Y) to calculate a square footage charge (B).
- The total area of the encroachment (C), as determined by the Manager of Public Works, multiplied by the square footage charge calculated above (B)
- Rental fee equals (C) multiplied by 5%.

11.0 CURRENT/EXISTING ENCROACHMENT AGREEMENTS

That all current encroachment agreements in force are subject to the costs outlined in this policy and further that all such encroachment agreements shall be terminated effective January 1, 2008.

12.0 PENALTY

In addition to any other penalty or obligation imposed by this by-law, any person who contravenes any of the provisions of this by-law after the expiration of the thirty (30) day notice period, shall be guilty of an offence under the Provincial Offences Act, R.S.O. 1990 c.P. 33, as amended and shall be liable upon conviction therefore to a fine not to exceed \$5,000.00 for each such offence, in addition to any other penalty or requirement, and every such penalty shall be recoverable under the Provincial Offences Act.

13.0 REPEALING BY-LAWS

That By-law #04-037 is hereby repealed.

14.0. TITLE

The title of this By-law shall be the "Township Encroachment Policy".

15.0 EFFECTIVE DATE

This By-law shall come into force and take effect upon passage.

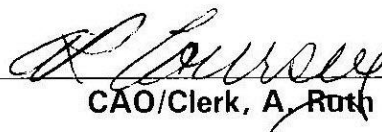
READ A FIRST AND SECOND TIME THIS 28TH DAY OF NOVEMBER 2005.

READ A THIRD TIME AND FINALLY PASSED THIS 28TH DAY OF NOVEMBER 2005.

THE CORPORATION OF THE TOWNSHIP OF TINY



Mayor, Robert Klug



CAO/Clerk, A. Ruth Coursey