

TOWNSHIP OF LAKE OF BAYS POLICY MANUAL			
Chapter:	Administration	Index No.	AD-2.1
Section:	Municipal Property	Effective Date:	06/19/07
Subject:	Licence of Occupation Policy and Procedures	Revision Date:	Feb 28/12
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1 PURPOSE:

- 1.01 To provide a procedure for entering into licence agreements for encroachments on Township property within the Township of Lake of Bays.

2 POLICY:

- 2.01 It is the general policy of the Township of Lake of Bays not to allow encroachments on Township shore road and road allowances or other Township property.

This policy shall be reviewed at least every five (5) years to ensure compliance with current law and legislation.

- 2.02 Notwithstanding the above, the Township will receive and consider applications for Licence Agreements for a period of up to ten (10) years for existing and/or proposed encroachments on shore road and road allowances or other Township property associated with an existing use.

Encroachments located on Township property are required to be:

- Removed and/or relocated onto the applicant's principle property by the end of the term of the Licence Agreement (10 years), at the applicant's expense, and the Township property is to be returned to its natural state; or
- Shore road and/or road allowance is to be purchased from the Township by the end of the term of the Licence Agreement (10 years).

3 APPLICATION:

- 3.01 Application shall be submitted to the Township accompanied by:
- a) Application fee, as per the Township User Fee By-law;
 - b) Seasonal (summer) pictures of current shoreline vegetation, where applicable;
 - c) A detailed sketch or site plan, "to scale", which clearly shows the following:
 - i) The location and measurements of all existing and/or proposed structures/encroachments on the applicant's property
 - ii) The location and measurements of all existing and/or proposed structures/encroachments on the township property;
 - iii) The distance from the structures/encroachments to the abutting lot lines and from the shore line;
 - iv) Vegetation; and
 - v) Driveways and paths.
 - d) Letter of Authorization, if the applicant has an agent to act on their behalf.
- 3.02 The initial application fee, as per the Township's User Fee By-Law, shall include:
- a) Review of the application and creation of the new file;
 - b) Circulations to various departments;
 - c) Correspondence with applicant pre approval;
 - d) Transfer of file to solicitor with instruction letter;
 - e) Review of reference plan;
 - f) Preparation of preliminary approval report to Council, if required;
 - g) Yearly renewal of application

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- 3.03 If other administrative action is required exceeding the initial fee, the applicant shall pay any additional fee, as per the Township's User Fee By-Law. (i.e. incomplete application, inadequate sketch, site visit, etc.)
- 3.04 If the application is denied, half of the application fee will be refunded. The same refund shall be provided, should it be found that the shore road or road allowance has been closed or that a Licence Agreement has already been issued to the applicant.
- 3.05 If the applicant withdraws their application following its initial approval, the total application fee will be retained by the Township.
- 3.06 A Licence of Occupation Agreement Application will be considered **expired** if it has been inactive for a period of six (6) months.
- 3.07 Application will be circulated to Township Departments (Building & By-law Services, Public Works & Facilities and Planning) for comments.
- 3.08 Staff has been given the authority from Council to approve applications.
- 3.09 Controversial or significant applications may require a staff report and submitted to Council for approval.
- 3.10 The Township requires that their solicitor act on their behalf for the Licence of Township lands. All legal fees associated with the Licence Agreement, are the responsibility of the applicant. The applicant, at their option and cost, may wish to have their solicitor act on their behalf.
- 3.11 The applicant shall also be responsible for payment of all costs associated with consultants retained by the Township, if required, including survey costs incurred in connection with the review and processing of the Licence application.
- 3.12 Upon preliminary approval, the file will be transferred to the Township solicitor for processing. The Township solicitor will, upon receiving instruction, proceed as follows:
- a) Search the title to confirm that the applicant is the owner of property adjacent to the subject lands and that the Township is the owner of the subject lands;
 - b) Preparation of the Licence Agreement and forward to applicant for signature.
 - c) Submit the title search and signed Licence Agreement to the Township for completion.
- 3.13 The applicant shall submit to the Township three (3) copies of the duly signed Agreement and the annual fee, as per the Township User Fee By-law. The annual fee is due on the date of execution of the Agreement and on January 1st of each year thereafter during the currency of the Agreement.
- 3.14 One original copy of the Agreement will be returned to the applicant upon execution by the Clerk or designate.

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- 3.15 All Licence Agreements are at the discretion of the Township and no permanent rights of any kind whatsoever are conferred by the Licence Agreement.
- 3.16 The Township shall be notified immediately of any change of ownership of the subject property. Licence Agreements are non-transferable and therefore agreements shall be terminated upon the change of ownership. New owners shall be required to initiate a new application for Licence of Occupation to authorize said structure(s).
- 3.17 Licence Agreement holders will be required to deposit with the Township annually during the term of the agreement evidence of liability insurance covering the encroachment(s), in the minimum amount of two million dollars (\$2,000,000.00) with the Township as additional insured. The property owner's policy will be the primary policy if a loss occurs or if any action, suit, claim or demand is brought against the Township. The applicant is responsible for the payment of all premiums and for the costs of defending or settling any such actions, suits, claims or demands against the Township.
- 3.18 Encroachments located on Township property are required to be:
- Removed and/or relocated onto the applicant's principle property by the end of the term of the Licence Agreement (10 years), at the applicant's expense, and the Township property is to be returned to its natural state; or
 - Shore road and/or road allowance is to be purchased from the Township by the end of the term of the Licence Agreement (10 years).
- 3.19 A Licence Agreement application shall be required for the following:
- (a) New and existing structures/encroachments on Township owned property including shore road and road allowances directly adjacent to the applicant's property.
- i) A Licence Application, signed by the applicant, shall be required prior to the issuance of a building permit. Final inspections will be withheld for building permits issued for structures/encroachments until the Licence Agreement has been finalized.
 - ii) In the case of permanent structures/encroachments, such as boathouses, cottages, etc. purchase of the shore road and/or road allowance is recommended.
 - iii) Costs of demolition and/or removal of abandoned structures/encroachments shall be the responsibility of the property owner and deemed to be a debt owing to the Township and collectible as such and may be added to the tax roll for the principal property in accordance with provisions of the Municipal Act, 2001, as amended.

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- iv) Improvements to legally existing structures/encroachments and property are limited to applicable by-laws and regulations (e.g. Development Permit By-law, Comprehensive Zoning By-law, Department of Fisheries and Oceans, Ministry of Natural Resources)
 - v) Requests for renovation or replacement of structure(s) where more than 10% of the structure(s) is on the road allowance leading to water, the structure(s) must be re-located directly in front of the benefiting property and comply with all required setbacks or approved by Council.
- (b) New and existing structures/encroachments on Township owned property including original shore road and road allowances that are **not** directly adjacent to the applicant's property.
- i) Subject property must be located between the straight line projection of the side lot lines of the subject property, (e.g. a municipal road allowance or road lies between the OSRA and the applicant's property)
 - ii) A Licence Application, signed by the applicant, shall be required prior to the issuance of a building permit. Final inspections will be withheld for building permits issued for structures/encroachments until the Licence Agreement has been finalized.
 - iii) The benefiting property should be directly across the road, (i.e. located between the straight line projection of the side lot lines of the subject property), must be of sufficient size to obtain a building permit, and all structures must conform to applicable regulations. (e.g. the Development Permit By-law, Comprehensive Zoning By-laws, Department of Fisheries and Oceans and Ministry of Natural Resources)
 - iv) A structure shall not be located closer than 10 feet to the traveled portion of the Township road.
 - v) A structure will not be permitted on lands designated as public parks.
 - vi) New docks are the only permitted structure and cannot be larger than a total square footage of 300 square feet. Pathways and stairs that are no wider than two metres are permitted subject to applicable regulations (e.g. the Development Permit By-law, Comprehensive Zoning By-laws, Department of Fisheries and Oceans and Ministry of Natural Resources)
 - vii) Improvements to legally existing structures are limited to the same size/square footage as the original structure, but not necessarily the same configuration, subject to applicable regulations, i.e. the Development Permit By-law, Comprehensive Zoning By-laws, Department of Fisheries and Oceans and Ministry of Natural Resources.

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viii) Requests for renovation or replacement of structure(s) where more than 10% of the structure(s) is on the road allowance leading to water, the structure(s) must be re-located directly in front of the benefiting property and comply with all required setbacks or approved by Council

- 3.20 Should the individual refuse to sign the Licence Agreement after a structure/encroachment has been erected, as a result of expediting the issuance of a building permit, staff shall issue a letter requesting removal of structures from any original road/shore road allowance and, if required, pursue legal action.
- 3.21 The property owner agrees to indemnify and save harmless the Township from and against all claims, losses, proceedings made, sustained, brought, prosecuted or threatened to be brought or prosecuted that are based upon, occasioned by or attributed to any bodily injury to or death of a person or damage to or loss of property caused by any negligent act or omission on the part of the indemnified party.
- 3.22 The following costs shall be added to the tax roll for the subject property:
- (a) Costs of demolition and/or removal of abandoned structures and /or encroachments;
 - (b) Outstanding invoices for annual renewal

4 ADMINISTRATION:

- 4.01 The Chief Building Official, Planner and Clerk, or designate(s), shall follow this procedure in the processing of licence of occupation application agreements and applicable building permit applications.

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5. REVISION CONTROL

Revision Date	Revision	Effective Date
June 21/11	<ul style="list-style-type: none"> • Term 20 years to 10 years • Application Fee Refund • Title Search Requirement • Processing by Township Solicitor • Outstanding Annual Fees to be Collected as Taxes 	July 19/11 Resolution #7(a)(iv)/07/19/11 By-law #11-81
Feb 28, 2012	<ul style="list-style-type: none"> • Sect. 3.17 – removed requirement for certificate of public liability insurance and for Township to be an insured party on property owners insurance policy • Sect. 3.17 – added requirement of evidence of liability insurance with the Township as an additional insured. • Sect. 3.21 – removed “all actions, suits, claims or demands of any nature or kind whatsoever” • Sect. 3.21 – added new indemnification clause provided by Frank Cowan Insurance. • Sect. 6 (Agreement) - removed requirement for certificate of public liability insurance and for Township to be an insured party on property owners insurance policy; and removed clause allowing Township to pay insurance premiums and collect them in the same manner as taxes. • Sect. 6 (Agreement) – added requirement of evidence of liability insurance with the Township as an additional insured; and added the property owner’s policy is primary if a loss occurs and the applicant is responsible for all premiums, costs & expenses of defending claims against the Township. • Sect. 9 (Agreement) - removed “all actions, suits, claims or demands of any nature or kind whatsoever” and written notice to compromise on reasonable costs • Sect. 9 (Agreement) – added new indemnification clause provided by Frank Cowan Insurance. 	Feb. 28/12 Resolution #8(f)(iii)(e)/02/28/12 By-law #12-025

6. ATTACHMENTS:

- 6.01 Attachment A – Application for Encroachment Agreement
Attachment B – Sample Encroachment Agreement

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Attachment A

APPLICATION FOR ENCROACHMENT AGREEMENT

A. Applicant(s)

Name: _____

Address: _____

Phone: _____

Submitted herewith is the following:

- 1) Application Fee, as per the Township's User Fee By-law;
- 2) Seasonal (summer) pictures of road allowance; and
- 3) A detailed sketch or site plan, "to scale", which clearly shows the location and measurements of all existing and/or proposed structures/encroachments on the applicant's property and all existing and/or proposed structures/encroachments on the abutting township property (i.e. septic systems, well, vegetation, driveways and paths)

- 4) A letter of authorization, from the applicant appointing an agent **Required** Yes No

B. Structure / Encroachment

Nature of Installation _____

Existing / Proposed _____

Location of Installation: Lot ____, Conc. ____, Ward _____

Parts _____, **Plan** _____

Roll # _____

Civic Address _____

C. Solicitor (if applicable)

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Name: _____

Address: _____

Phone # _____

Email _____

D. Acknowledgement

1. We, the undersigned, hereby apply to the Township of Lake of Bays for a Licence Agreement for the proposed and/or existing structures/encroachments on the above property.
2. We agree to pay an annual licence agreement fee pursuant to the Township User Fee By-law, plus all legal costs and other fees required with the issuance of a Licence Agreement.
3. We authorize township staff to enter onto the subject lands to conduct a site visit in accordance with the processing of this licence agreement.
3. We understand and acknowledge that the subject structures/encroachments are required to be:
 - Removed and/or relocated onto the applicant's principle property by the end of the term of the Licence Agreement, at the applicant's expense, and the Township property is to be returned to its natural state; or
 - Shore road and/or road allowance is to be purchased from the Township by the end of the term of the Licence Agreement.

Owner

Owner

Authorized Agent (please attach letter of authorization)

Date: _____

Attachment B

SAMPLE ENCROACHMENT AGREEMENT

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ENCROACHMENT AGREEMENT #XX-XX

THIS AGREEMENT made in triplicate this _____ day of _____, 2011

BETWEEN: **XXXXXX**

(hereinafter called the "Owners")

-AND-

THE CORPORATION OF THE TOWNSHIP OF LAKE OF BAYS

(hereinafter called the "Township")

WHEREAS

1. The Owners are the registered owners of the lands described in Schedule "A" (hereinafter referred to as the "Lands").
2. The Township owns property described as: Part of the Original Shore Road Allowance in front of Lot XX, Concession XX and in front of the Original Road Allowance between Concessions XX and XX Township of Lake of Bays (hereinafter referenced to as the "Township Lands").
3. The Owners own a XXXX that encroaches and occupies part of the Township Lands being Part of the Original Shore Road Allowance in front of Lot XX, Concession XX Township of Lake of Bays and have applied for a licence agreement to permit said encroachment (hereinafter referred to as the "Encroachment").
4. The Council of The Township of Lake of Bays deems it desirable to grant to the Owners a licence for the Encroachment on the Township lands.

NOW THEREFORE THIS AGREEMENT WITNESSES, that in consideration of the mutual covenants contained in this agreement, and of the sum of \$500.00 per annum payable by the Owners to the Township for the term of Ten (10) years in accordance with the requirements set out in paragraph 5 below, the parties agree as follows:

1. The Township hereby grants to the Owners a licence to allow the encroachment of a dock and access to said dock until December 31st, XXXX, over those parts of the Township Lands, specifically part of the Original Shore Road Allowance in front of Lot XX, Concession XX, Township of Lake of Bays, subject to the terms, clauses and conditions contained in this Agreement. No other works or encroachments are to take place or be located on the Township Lands unless specified by this Agreement.
2. The Owners shall at their own expense and to the satisfaction of the Township keep and maintain the Encroachment in good and proper repair and condition at all times.

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3. The Owners agree that this agreement shall be binding on the Owners' heirs, successors, administrators and assigns and shall run with the lands described in Schedule "A". The Owners agree to execute such further and other documents, consents or applications as required for the purposes of giving effect to the provisions of this agreement. The Owners covenant and agree to obtain a similar covenant from any successor, heir or assign and shall provide actual notice of this agreement to such persons (hereinafter referred to as a "Purchaser"). The Owners shall obtain from any Purchaser a similar covenant to provide actual notice to any subsequent Purchaser *ad infinitum*.
4. Notwithstanding the general terms set out in paragraph 3 above relating to the transfer and assignment of this Agreement, the Owners acknowledge and agree that this Agreement shall not be transferred and may not be assumed without the prior written consent of the Township.
5. The Owners shall pay to the Township an Encroachment Fee of \$500.00 per annum within 10 days upon receipt of an invoice for such fee by the Township, and further agrees to pay, in the future, such annual encroachment fee as may be determined by resolution of the Township. In the event that the Owner fails to pay the annual encroachment fee to the Township the outstanding debt shall be deemed to be a debt owing to the municipality and collectible in the same manner as taxes and to which the provisions of Section 446 of the Municipal Act, S.O. 2001, c.25, as amended, shall apply to the lands described in Schedule "A".
6. The Owners shall deposit with the Township annually evidence of liability insurance covering the encroachment(s), in the minimum amount of two million dollars (\$2,000,000) with the Township as an additional insured on the lands identified in Schedule "A" to this Agreement. The Owners shall maintain the policy of insurance in force during the term of this Agreement. The property owner's policy is the primary policy if a loss occurs or if any action, suit, claim or demand is brought against the Township. The owner is responsible for the payment of all premiums and for the costs and expenses of defending or settling any such actions, suits, claims or demands against the Township.
7. Nothing contained in this Agreement shall be construed as giving to the Owners anything more than permission to maintain the Encroachment until such time as the removal of such Encroachment may be required. For greater certainty, the Encroachment is to be removed from the Original Road or Shore Road Allowance, at the Owner's expense, upon expiry of this Agreement and the encroached lands are to be returned to its natural state.
8. The Owners will not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative or other tribunal the right of the Township to enter into this Agreement and to enforce each and every term, covenant and condition thereof and this provision may be pleaded by the Township in any such action or proceeding as a complete and conclusive estoppel or denial of such right.

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9. The Owner agrees to indemnify and save harmless the Township from and against all claims, losses, damages, judgments, costs, expenses, actions and other proceedings made, sustained, brought, prosecuted or threatened to brought or prosecuted that are based upon, occasioned by or attributed to any bodily injury to or death of a person or damage to or loss of property caused by any negligent act or omission on the part of the indemnified party connected with this Agreement or on account of the permission granted to the Owners and/or the exercise by the Owners of such permission and/or the erections and maintenance of the Encroachment and appurtenances and/or anything relating against or made upon the Township or any of its officers, servants, workers or employees.

10. The Owners shall pay all reasonable costs as may be incurred by the Township, its solicitor and its staff for any work to be performed in connection with the preparation, execution and administration of this Agreement or any subsequent costs as a result of non-compliance with this Agreement. The Owners acknowledge and agree that it will be responsible for the costs and performance of all the Owners' obligations herein unless specifically relieved from such obligation by the terms of this Agreement.

11. The Owners will at their own cost and to the satisfaction of the Township, alter or remove the Encroachment from the Township Lands upon receiving thirty (30) days notice in writing from the Chief Administrative Officer and/or Clerk and/or Director of Public Works & Facilities, prior to the date specified by such notice, without being entitled to any compensation whatsoever for such alteration or removal. If the Owners fails to alter or remove the Encroachment as requested by the Chief Administrative Officer and/or Clerk and/or Director of Public Works & Facilities, the Township may remove or alter the Encroachment at the cost of the Owners and the certificate of the Chief Administrative Officer and/or Clerk and/or Director of Public Works & Facilities shall be final and binding upon the Owners and the Township may recover the cost from the Owners in any court of competent jurisdiction as a debt due and owing to the Township or the Township may deem the cost to be taxes to which the provisions of Section 446 of the Municipal Act, S.O. 2001, c.25, as amended, shall apply to the lands described in Schedule "A".

12. In the event of the Owners transferring or selling the lands or any portion thereof, the Owners shall forthwith notify in writing the Chief Administrative Officer and/or Clerk of such sale or transfer, together with the name and address of the transferee or purchaser.

13. The Township, its officers, servants, workers, employees, agents and contractors under its control or supervision, or any of them shall have the right from time to time and at all reasonable times during the currency of this Agreement and may provide notice, to enter in and upon the Owner's lands or any part thereof, with all necessary works, plant equipment and material for the purpose of inspecting the Encroachment or moving the Encroachment from the Subject Lands as hereinbefore provided; PROVIDED THAT such inspection shall not free or relieve the Owners in any way

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whatsoever from liability under the covenant to keep and maintain the Encroachment in good and property repair and condition.

- 14. For the purposes of this Agreement, notice may be given to the Owners by the Township by prepaid registered post at their tax roll address, and service shall be deemed effective three (3) days after mailing. The Owners may amend the address for service under this Agreement by deliver of notice in writing to the Township. Notices to the Township shall be to the attention of the Township Clerk.
- 15. For the purpose of the Agreement, notice may be given by the Owners to the Township by prepaid registered post addressed to the Township's Municipal Office to the attention of the Township Chief Administrative Officer and/or Clerk and service shall be deemed effective four (4) days after mailing.
- 16. Nothing contained in this Agreement shall be construed as giving the Owners anything more than a licence to maintain the Encroachment until such time as the removal of the Encroachment may be required.
- 17. The Owners agree to pay all taxes, rates and assessments relating to the land on which the Encroachment is located if they are ever levied by the Township.

IN WITNESS the Parties have set their hands and seals.

SIGNED, SEALED AND DELIVERED)	
In the presence of)	
)	
)	
)	
)	
)	
)	
_____)	_____
Witness as to the signature of)	XXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXX)	
)	
)	
)	
)	
)	
_____)	_____
Witness as to the signature of)	XXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXX)	
)	

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IN WITNESS WHEREOF the Parties herein have hereunder caused to be fixed their corporate seals under the hands of their proper signing officers duly authorized in that behalf

DATED at Dwight, Ontario this ____ day of _____, 20XX.

THE CORPORATION OF THE TOWNSHIP OF LAKE OF BAYS

Clerk or Designate

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SCHEDULE "A"

Owner Lands

Subject Lands