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February 28, 2025

Erica Kellogg, Deputy Clerk
The Corporation of the Municipality of Magnetawan
4304 Hwy #520, P.O. Box 70
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via email to ekellogg@magnetawan.ca

Dear Ms. Kellogg,

Re: Dock Policy and Unopened Road Allowances

I have received and reviewed your email of today's date which follows upon the discussions we have had over the last few months. My responses to the two questions/topics set out in the email are below. Before providing specific answers to the questions, I will provide some background on the application of the *Public Lands Act* and its Regulations.

The *Public Lands Act* and Municipally Owned Road Allowances

The *Public Lands Act* and, in particular Regulation 161/17 (hereinafter referenced as the "Act" and the "Regulation") do affect the proposed dock licensing policy, however it is important to recognize the exact scope and application of that legislation. The Act and Regulation apply to the provincially owned land (and waters) but it does not apply to municipally owned lands. Thus, to be completely clear, neither the Act nor Regulation grant permission (or can grant permission) to occupy a municipally owned road allowance that abuts Crown Land.

That said, due to the nature and orientation of docks, invariably portions of a docks shore road allowance will be located partially upon the municipal road allowance (which could include portions of which are covered by water) and partially upon the waterbody, the bed of which is under Crown ownership and subject to the Act and the Regulations.

Thus, in contemplating the creation of a dock policy and/or issuing licenses to construct and maintain docks on an unopened road allowance (whether a shore road allowance or a road

allowance leading to the water), the Municipality cannot ignore the impact of the Act and the Regulations.

Application of the *Public Lands Act*, Section 21.1

Section 21.1 of the Act effectively replaces the former “Free Use Policy” adopted by the Ministry of Natural Resources and Forestry (the “MNR”). That section was specifically enacted as a result of an Ontario Superior Court decision (the “Glaspell Decision”) that, among other things, declared the policy not to be a regulation or to be enforceable. Following that decision, the Province eventually enacted section 21.1 and Regulation 161/17.

Generally speaking, no person is authorized to occupy Crown Lands without obtaining title to the land or obtaining occupational authority of some form from the Province (through the MNR). One form of occupational authority (or permission) is found in Section 21.1 which establishes a framework for permission to be “deemed to exist” without any other written documentation as long as the occupation fits within the criteria set out in the Regulation. Section 13 of the Regulation deals with waterfront structures, the definition of which includes docks. It reads as follows:

Waterfront structures

13. *A person is authorized to occupy public lands under section 21.1 of the Act for the purpose of erecting, placing or using a waterfront structure near or partially on waterfront property only if the following conditions are met:*

- 1. The person owns or occupies the waterfront property.*
- 2. The waterfront structure is secured or affixed to, or is attached to a dock that is secured or affixed to,
 - i. the waterfront property, or*
 - ii. the road allowance or the strip of public lands that separates the waterfront property from the lake, river, stream or pond, at a location that, if the sidelines of the waterfront property were extended in a straight line to the water’s edge, lies between those extended sidelines.**
- 3. In the case of a waterfront structure that is secured or affixed to, or is attached to a dock that is secured or affixed to a road allowance:
 - i. The waterfront structure or dock may obstruct the entire road allowance where the road allowance is not used for public travel by pedestrians or vehicles.*
 - ii. The waterfront structure or dock must be located at least two metres from the edge of the travelled portion of the road allowance if the road allowance is used for public travel by pedestrians or vehicles.**
- 4. The person does not charge a fee to any other person for use of the waterfront structure.*
- 5. In the case of a waterfront structure that is a shade structure such as a gazebo, canopy or pergola, the structure is not equipped or used for purposes of overnight accommodation*

Thus, a person who owns a waterfront property (which includes a lot separated from the lake by an unopened shore road allowance that has not been closed and purchased) is deemed to have permission to occupy Crown Land (which includes the surface of the water above the lakebed) if the remaining conditions in paragraphs 3, 4 and 5 are satisfied.

It should be noted that although subparagraph 3 speaks to “permitted” arrangements on the abutting road allowance, whether the dock may be permitted to be located on the municipally owned road allowance in the fashion described remains the sole jurisdiction of the municipality. In that regard, the definition of “*public lands*” in the Act does not include municipally owned road allowances.

Thus, even though a person may own what is considered a waterfront lot, if that lot is separated from the water by a Shore Road Allowance that has not been closed and sold/leased/licensed to that owner, express written permission to install a dock on the SRA would be required from the Municipality and it would be subject to any applicable zoning regulations.

Paragraph 4 of section 13 is also an important criterion. A person who is intends to occupy Crown Land under authority of section 21.1 and section 13 of the Regulation, cannot charge a fee for the use of the dock. In other words, if a person installs a dock on Crown Land and then starts renting out slips, deemed permission would not exist. In order to install docks with the intention of charging slip fees, a person must seek some other form of occupational authority from the Province (e.g., obtain a lease or ownership of the Crown Land).

Question 1 - Is the Municipality permitted to restrict right of passage to the public lands?

It is important to keep in mind the purpose of section 13 of the Regulation. It simply sets out conditions that must be met for the “*deemed permission to occupy Crown Lands*” authorized under section 21.1 to apply. Paragraph 3 of section 13 of the Regulation is, to be frank, a bit odd. Although it could be construed as granting permission concerning the arrangements of a dock on municipally owned land, the Act does not apply to municipally owned land. Paragraph 3 must be read such that the occupation of the road allowance in the fashion described in paragraph 3 would not invalidate the deemed permission. However, it cannot be understated that in order to occupy a municipal road allowance in any fashion (and more particularly to undertake any modifications or improvements upon that road allowance), the express written permission of the municipality is required. The salient point is that the Act does not specifically permit or authorize the construction of a dock on municipally owned land; such permission is solely within the municipality’s authority to grant.

Thus, I think it is important to state that section 13 of the Regulation does not actually regulate passage over public lands or to and from public lands. Certainly, the deemed permission to occupy Crown Lands with a building or structure like a dock (or boathouse) will impact how the public can utilize the occupied portion of the Crown Land.

The Municipality also has some regulatory control over what portions of the Crown Lands can be occupied by buildings or structures based upon the zoning that applies. In the Glaspell Decision referenced earlier, the Court confirmed that municipal zoning can apply “*over the*

water”. It is quite common and standard for municipalities to enact zoning regulations concerning the location of docks and boathouses; furthermore, the *Building Code Act, 1992* also applies to the construction of docks and boathouse upon or in the waterbody (also confirmed in the Glaspell Decision).

In summary, through the operation of the Act and Regulations and municipal zoning, the occupation and positioning of a dock (or boathouse) is controlled jointly by the Province and the Municipality.

When it comes to “affecting” the public’s access to public lands from a road allowance, the municipality does have authority to restrict or eliminate the public right of passage over a road allowance. This is effected through a road closing by-law. As you may recall, once a road closing by-law is passed and registered, the public right of passage is eliminated. Thus, if the public did use the portion of the road allowance that was closed by by-law, one could conclude that the municipality effectively eliminated access to the “*public lands*” (or waterbody) via that specific portion of the road allowance. The municipality does have that statutory authority to pass such a by-law and the *Public Lands Act* would not have any bearing upon Council’s decision to pass such by-law.

Although a municipality can affect public access to waterbodies through road closing processes when it comes to unopened road allowances leading to water, many municipalities have policies that either preclude or strongly discourage the passage of road closing by-law (or the sale of the land) that would eliminate public access to a waterbody. The current Magnetawan Official Plan has such a policy:

6.7 ROAD ALLOWANCES

The Municipality will not stop up or sell unmaintained road allowances where there is any possibility that there is a potential future public use for the lands. Road allowances leading to water will not be sold to abutting property owners unless there is other public access to the water in the immediate area. The sale of lakeshore road allowances may be permitted by the Municipality where there are no environmental, cultural, or other public interests that may be affected by the sale of these lands.

Question 2 - Can the Municipality rent slips from this? In the absence of charging fees could the Municipality authorize exclusive use of a slip(s)?

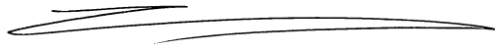
If a dock is proposed to be installed (under authority of section 21.1 of the Act) where an unopened concession road allowance leads to a waterbody, neither the Municipality nor any authorized occupier of the municipal land would be entitled to charge fees for the rental of slips on that dock where they are located upon that portion of the dock located on (or floating above) the Crown Land.

Although the Municipality is entitled to impose fees for the use and occupation of its land, in the case of a dock constructed at the terminus of an unopened road allowance leading to the waterbody, the “*in-water*” portion of the dock will likely be located primarily upon Crown Land and subject to the foregoing restriction.

In response to the second question, although the Municipality could take steps to provide for exclusive use of portions of its road allowance it would have no authority to grant exclusive rights to occupy the portion of the dock located on (or floating above) the Crown Land.

I trust my comments are of assistance.

Sincerely,



Edward B. Veldboom
(electronically signed)