

Town of Georgina
Lake Drive Shoreline Jurisdiction Ad Hoc Committee
COMMITTEE AGENDA

Tuesday, April 19, 2016
6:30 PM
Council Chambers- Civic Centre

1. CALL TO ORDER
2. ROLL CALL
3. INTRODUCTIONS OF ADDENDUM ITEM(S)
4. APPROVAL OF AGENDA
5. DECLARATIONS OF PECUNIARY INTEREST AND GENERAL NATURE THEREOF
6. ADOPTION OF MINUTES

Pages 1 - 11

- (1) Minutes of the meeting held on March 29, 2016.

7. PRESENTATIONS

- (1) Volume of shoreline inquiries.
- (2) Mapping update.
- (3) Road Allowance Education 101, continued.

8. CONSIDERATION OF REPORTS ON THE AGENDA

- (1) Draft Issues List

Pages 12 - 13

- A. Staff Version Draft Issues List

Page 14

- B. Lake Drive Shoreline Jurisdiction Ad Hoc Committee Issues list
(Email from Deyril Blanchard March 2, 2016)

Page 15

- C. Email Attachment

- (2) Proposed Interim Control By-law- Lake Dr. North and East Road Allowance and Water/Lakebed of Lake Simcoe

(Attachment to be circulated under separate cover)

9. COMMUNICATIONS

10. OTHER BUSINESS

- (1) Scheduled meeting dates:
May 17, 2016, location: Council Chambers 6:30 PM
June 14, 2016, location: Council Chambers 6:30 PM

11. MOTION TO ADJOURN

**Town of Georgina
Lake Drive Shoreline Jurisdiction Ad Hoc Committee
COMMITTEE MINUTES**

Tuesday, March 29, 2016
6:30 PM
Committee Room- Civic Centre

1. CALL TO ORDER

The meeting was called to order at 6:34 PM.

2. ROLL CALL

The following Committee members were present:

Alan Direnfeld
David Szollosy
Cathy Hasted
Councillor Dan Fellini
Councillor Dave Neeson
Deyril Blanchard
Mayor Margaret Quirk
Peter Stevens
Susan Jagminas
Terry Holgate

The following Committee member was absent with regrets:
Carr Hatch

The following Staff members were in attendance:

Winanne Grant, Chief Administrative Officer
Harold Lenters, Director, Planning & Building
Dan Pisani, Director of Infrastructure and Operations
Andrew Biggart, Town Solicitor
Bob Fortier, Manager of Capital Projects
David Scherbarth, Operations Assistant
John Espinosa, Town Clerk
Sarah Brislin, Committee Services Coordinator

3. INTRODUCTIONS OF ADDENDUM ITEM(S) - *None*

4. APPROVAL OF AGENDA

Moved by Susan Jagminas, Seconded by Councillor Dave Neeson

RESOLUTION NO. LDSJAHC-2016-0006

That the agenda for the Lake Drive Shoreline Jurisdiction Ad Hoc Committee meeting held on March 29, 2016, be approved as presented.

Carried.

5. DECLARATIONS OF PECUNIARY INTEREST AND GENERAL NATURE THEREOF - *None*
6. ADOPTION OF MINUTES
 - (1) Minutes of the meeting held on February 9, 2016.

The Committee discussed the minutes of the previous meeting (February 9, 2016) and clarification was provided for the following points:

- Where the minutes state the distance of the road allowance on either side being 33 feet Bob Fortier, Manager of Capital Projects, advised the distance of the road allowance is not the same in all areas.
- That the discussion beginning on page 4 details what issues are to be considered by the Committee, and it does not reflect any decisions made by the Committee.
- On page 4 under the heading *Ownership – Liability/Indemnification* the public refers to the general public.
- On page 6 the statement “Belief that the value of property will increase if it is purchased, meaning taxes would increase versus the fact that property has been bought and sold for years with the assumption that the lakefront is part of the sale. Therefore, the value is included in those transactions which means taxes wouldn’t change” reflects two schools of thought:
 1. The concern that the value of property will go up, if the road allowance is conveyed to the abutting owners, meaning the property taxes would increase.
 2. That the property value will not increase, and the taxes will stay the same.
- That the interpretation of the statement on page 9 “For properties where ownership is being challenged declining a building permit could mean court whereas an ICB if challenged would be at the OMB rather than court and is less likely to be challenged as they are harder to challenge” refers to the difficulty of challenging a regular By-law versus the difficulty of challenging an interim control By-law and that the Committee was advised that it is harder to challenge an Interim Control By-law (ICB) which would go through the OMB rather than a regular By-law which would go through the court system.

The Committee requested Staff provide details regarding the increased inquiries and requests in relation to shoreline development applications. Specifically, it was suggested that Staff provides a listing of activities going back the last couple of months to see the reported increase and types of inquiries that are being received.

Moved by Susan Jagminas, Seconded by Peter Stevens

RESOLUTION NO. LDSJAHC-2016-0007

That the minutes of the Lake Drive Shoreline Jurisdiction Ad Hoc Committee meeting held on February 9, 2016, be approved with the following amendments:

1. The information on page 5, second paragraph down stating the road allowance is 33 feet on either side of the road be removed.
2. That the *Roll Call* reflect that member David Szollosy was absent with regrets.
3. That the statement on page 5, "Dealing with lakeside road allowance as per TOR, not the east and north side road allowances" be changed to reflect the correct direction of "east and south side road allowances."
4. That the statement on page 6, "As long as it is clear who ones it" be corrected to state "As long as it is clear who owns it."
5. That the part of the sentence on page 5 stating, "if... the Town is an owner of the property than it are liable" be corrected to state "if... the Town is an owner of the property than the Town may be liable."
6. At the top of page 7, a correction be made to the sentence "It would be a publicly declared paused" to read "It would be a publicly declared pause."

Carried.

7. PRESENTATIONS

- (1) Staff presentation: Road Allowance Education.

Bob Fortier, provided a summary of his role as Manager of Capital Projects and his experience as it relates to the issue of ownership and development on the shoreline. He summarized the study conducted by Rusty Russell in relation to the shoreline development and road allowances noting:

- The study indicates that some lands on water side of travelled portion of road had been surveyed and conveyed incorrectly.

- The high-water mark is shown on old registered plans and may show limit of road allowance (Rusty Russell Study).
- The distance of the road allowance to the shoreline varies, partly because of the change in water levels over the years (accretion).

Harold Lenters, clarified development on the water abutting Town owned land becomes a problem and, as an example, referenced an application of an owner wanting to repair an old boat house. The owner received the necessary approvals from the Ministry of Natural Resources (which has jurisdiction over Lake Simcoe) but also needed permission from the Town to build the dock connecting to the land owned by the Town. Currently, there is no policy giving Staff direction from Council to handle these types of requests. In the absence of such a policy, each request should be individually directed to Council. Staff suggest that this is an onerous process, and policy would alleviate the confusion and allow Staff the authority to make consistent decisions.

The following was clarified for the Committee:

- The high-water mark is a moving target, and that other municipalities that have conveyed land using the high-water mark have had the owners submit surveys done by an Ontario Land Surveyor (OLS) showing the high-water elevation at the time of the agreement.
- The boundaries in the water had been defined by elevation rather than distance from the front of the property to the back of the property.
- The Rusty Russell report provides the principle of the high-water mark it does not provide a definitive measurement of all properties along the shoreline.
- Some properties were incorrectly conveyed
- It was assumed that if there was a PIN it was a separately owned parcel.

The Committee requested Staff investigate the means to find the record of the high-water mark.

Staff responded by saying this could not be done. The relevance of the high-watermark is the principle used by Rusty Russell in his study.

Harold Lenters, advised he believes the reference plans state 'to the shoreline' in relation to any confusion about whether the road allowance has precedence over the high water mark. It was also explained that there are properties with reference plans showing ownership up to the shoreline and lake.

Moved by Susan Jagminas, Seconded by David Szollosy

RESOLUTION NO. LDSJAH-2016-0008

That the Lake Drive Shoreline Jurisdiction Ad-hoc Committee receive item 7(1), the Staff presentation on Road Allowance Education.

Carried.

The Committee asked for a summary of the presentation to be provided in the minutes. Dan Pisani, Director of Infrastructure and Operations, advised he had a power point he could share.

Further to the Committee's request, Winanne Grant advised she would find the handout that the previous Town Solicitor, Mike Bigoni, provided. It was noted that the handout was given to Council in a Closed Session meeting. Andrew Biggart, Town Solicitor, offered to review the handout to ensure attorney-client privilege would not be violated and only what can be shared publicly is shared.

It was suggested that at this point that what has been accomplished is issue identification (A list of what needs to be done) on a global basis and on a site by site (lot by lot basis).

The Committee identified a new issue to be added to the list, defining the shoreline road allowance (it had been explained earlier that it varies along the shoreline). Winanne Grant, suggested there may be a need to determine if the road allowance starts at the high water mark or if it is a distance measured from the travelled road outwards. The Committee questioned whether the first step would be to identify a road allowance and identified the Boundaries Act Plan as a potential solution. It was also clarified that creating a new road allowance to simplify the problem is a possibility.

In response to the discussion, Andrew Biggart, Town Solicitor, advised it is possible but not the only option but that adding that an Interim Control By-law would provide the pause (on development) needed to apply that option.

Winanne Grant, suggested that a fulsome report should come to the Committee and include several options.

8. CONSIDERATION OF REPORTS ON THE AGENDA

(1) Draft Issues List

The list provided in the agenda was created by some of the voting Committee members and was reportedly based on the list circulated by Staff. Staff requested time to compare the lists and bring back for review.

Moved by Mayor Margaret Quirk, Seconded by Councillor Dan Fellini

RESOLUTION NO. LDSJAHC-2016-0009

That the Lake Drive Shoreline Jurisdiction Ad-hoc Committee refer the Draft Issues List back to Staff for further review.

Carried.

(2) Report on Interim Control By-law

Harold Lenters summarized under the Planning Act, the Town could pass an Interim Control By-law (ICB), and the intent of the By-law would apply to the road allowance. The road allowance can be defined if one goes through every plan; you are left with a composite Map (of Lake Drive North and East). The principle idea behind the report is that the ICB would cover the road allowance along the shoreline and prohibit development activity (temporarily). The intent was explained not to be too restrictive. Harold Lenters reviewed the 5 recommended provisions for the ICB that were outlined in the Report.

The Committee and Staff discussed the details and possible outcomes of an ICB dealing with development on Lake Drive Shoreline. Consideration was given to the following:

- Potential public perceptions:
 - Reactions to previous ICBs in place
 - Anxiety in the public and concerns that this could become a permanent rule.
 - Illustration of the Town and the Committee's commitment to solving the current issues.
 - Public concerns that the Town is trying to assert its ownership
 - The length of time the ICB is in place having an impact on the perceptions of members of the public.
- Any activity that has begun in anticipation of a restrictive policy (By-law)
- If there were possible restrictions to the rehabilitation of existing structures
- The alternative option to an interim policy (as opposed to an ICB):
 - Challengeable through courts
 - Harder to enforce
 - May send a more positive message
 - Option to try it and implement an ICB if the interim policy doesn't work
- How the absence of policy for development on the shoreline impacts the issue of ownership:
 - The potential for expensive court cases and litigation
 - Would stand notwithstanding certainty of ownership (ICB would not apply to private owners)
 - Potential safety concerns

- Enforcement concerns
- The ability of the ICB provisions to be applied regardless of the ownership issues.
- The current inability to issue permits without a policy in situations where private owners own a water lots abutting the Town land and they would like to build a dock adjoining the Town owned shoreline.
- Whether the OMB would question or support the reasoning behind an ICB, should there be an appeal.
- The process and expected length of time for an OMB appeal versus a court case for a regular By-law (interim policy).
- Why the Zoning By-law doesn't apply:
 - Private ownership
 - Town owned land
- Whether or not ownership would be an issue with or without an ICB in place.
 - A concern was raised that people would think they could have built on land in the absence of an ICB when they actually may not be able to (If it is Town owned land) regardless of the ICB
- Potential of litigation (in absence of and ICB or Policy):
 - The belief that the ICB would withstand litigation challenges (in regards to ownership and development).
 - One case could set a precedence and then limit the municipality and Committee to work on a co-operative solution.
 - Litigation being adversarial and costly
 - An ICB offering the Committee and Council an opportunity to work on a co-operative solution.
- Whether or not an ICB should only apply to privately owned land since people can't build on Town owned land anyway:
 - The discrepancies between the Town and some owners of who owns the land being the reason for applying the ICB across the board.
- Concern that Staff are acting in a policy voice (taking on a role beyond their mandate).
- It was suggested that some people are already under the impression there is a freeze and that these people are constructing without a permit anyway. It was asked if the ICB would have any 'teeth' to it.

- It was clarified that the ICB would have more 'weight' (in terms of the Town's ability to enforce) than an interim policy.
- It was explained that Staff does not require the Committee's endorsement of the ICB in order to present the report to Council but is trying to achieve a collective solution.
- The steps involved in implementing an ICB:
 - Process is relatively quick
 - Does not require notice or hearing
 - To be in place for 1 year (2 years if an extension is required).
- The implementation being sudden and not offering public consultation or input:
 - How to communicate with residents, so they are aware of what happening
 - Being clear about what is allowed under and ICB
 - Showing that we (the Committee) are committed to a collective solution.
 - Having a clear communication plan
 - The idea of communicating with the outside group to test how the idea will be received
 - The importance of communicating and disseminating information and focusing on the 5 points.
 - Not making it difficult and convoluted; announcing that this (The ICB) is one of the steps that needs to be taken.
- Whether the road allowance needs to be addressed first:
 - Determining a consistent road allowance
 - Defining the road allowance as travelled road to the water's edge
- Encroachment agreements would not be superseded by the ICB
- Allowing for all repairs to existing structures
- Clarification of the mandate under the Committee's Terms of Reference:
 - Exclusive use
 - Policy for what can be built.

The Committee discussed taking the least inflammatory approach and reviewed with Staff the 5 recommended provisions outlined in the report.

1. Fences
2. Landscaping

It was clarified that the reason for not including lineal foliage was that it would be difficult to enforce. Worst case scenario is that the owners would have to leave it as it is. It was also clarified that the provision was related to protecting views. The intent is, that if a large cedar hedge shows up, the ICB will allow the Town to remedy the situation.

3. Retaining Walls and Grading

The wording of the provision was discussed. 0.6 meters measured above grade was suggested as a more suitable phrasing for the limit under the *Retaining Walls and Grading* provision.

4. Water and Sewer Services Laterals

It was noted that adding water and sewer service laterals is contrary to the Lake Simcoe Protection Plan

5. Rehabilitation and Renovation of Existing Buildings and Structures on, or partially on, the Road Allowance

The Committee discussed the need for renovations and rehabilitation. It was suggested that the following be extracted from the Report:

“but only to the extent that it does not involve the requirement for a building permit (this blanket building permit restriction...so to speak through the interim control bylaw).”

The following was clarified:

- What can and cannot be done on the lake is a separate issue.
- While the ICB is in place, the 5th provision would prevent the construction of docks that would be connected to the Town's property.
- There are rules in place (Zoning By-law) for the land between the road allowance and water (private land).

Moved by Susan Jagminas, Seconded by Councillor Dan Fellini

RESOLUTION NO. LDSJAHC-2016-0010

That the Lake Drive Shoreline Jurisdiction Ad-hoc Committee approve as amended, item 8(2), Report on Interim Control By-law.

Carried.

Note: The Committee requested the amended draft come back for review before going to Council.

9. COMMUNICATIONS

(1) Procedural By-law approved by Council March 2, 2016.

Moved by David Szollosy, Seconded by Peter Stevens

RESOLUTION NO. LDSJAHC-2016-0011

That the Lake Drive Shoreline Jurisdiction Ad-hoc Committee receive item 9(1), Procedural By-law (approved by Council March 2, 2016).

Carried.

10. OTHER BUSINESS

(1) Communication Protocols

Winanne Grant, opened the floor for a discussion regarding the understanding of the communication protocols. The Committee discussed the following:

- The importance of joint efforts and demonstrating consensus.
- Communications to the public regarding the Committee's actions being a joint effort.
- Being deliberate
- Being minimalistic (vague) in relation to the Interim Control By-law until complete details and information become available.
- Creating a fact sheet to disseminate information consistently.
- In the meantime (until an ICB is passed) Staff will not process any applications

(2) Next Meeting: April 19, 2016 at 6:30 PM

The Committee suggested setting the following meeting dates:

- May 17, 2016,
- June 14, 2016

Staff were in agreement with the dates and a start time of 6:30 PM, with a commitment to adjourning by 9:00 PM.

11. MOTION TO ADJOURN

Moved by Peter Stevens, Seconded by Councillor Dan Fellini

RESOLUTION NO. LDSJAHC-2016-0010

That the Lake Drive Shoreline Jurisdiction Ad-hoc Committee March 29, 2016, meeting be adjourned at 9:29 PM.

Carried.

Deyril Blanchard
Chair

C. Sarah A. Brislin
Committee Services Coordinator

Lake Drive Shoreline Jurisdiction Ad Hoc Committee
Issues List as compiled March 7, 2016

For the purposes of the discussion below “lands” shall mean the Lake Drive North and East road allowance abutting the Lake Simcoe shoreline.

“Road allowance” shall mean (needs definition)

~~(R)~~—Resident related issue

~~(T)~~—Town related issue

Ownership Related Issues:

The desire of some residents to purchase the lands ~~(R)~~

Some residents have deeds which purport ownership of the lands while others have assumed they purchased/own the lands ~~(R)~~

Residents have capital investment and longstanding exclusive use on the lands ~~(R)~~

Concern over Town developing the lands ~~(R)~~

Varying legal opinions re ownership of lands ~~(R)~~ ~~(T)~~

The need to determine and evaluate mechanisms that would provide for transfer of ownership and/or exclusive use of the lands ~~(R)~~

Land Use Related Issues:

Trespass by general public ~~(R)~~

Need for determination of allowable uses and/or buildings and structures, reasonable use/construction, and enforcement of same ~~(R)~~ ~~(T)~~

Protection of shoreline ~~(R)~~ ~~(T)~~

Maintenance/protection of structural integrity of travelled road ~~(T)~~

Liability Related Issues:

The inability for those wishing to secure exclusive use of the lands to insure the lands ~~(R)~~

| Potential exposure to liability due to placing structures/buildings on the lands (T) (R)

| Lack of clarity of ownership makes liability responsibility unclear (T) (R)

Assessment Related Issues:

| Are privately owned lands assessed as being waterfront? (R) (T)

| Assessment implications of any long term solutions (R) (T)

Jurisdictional Issues:

| Staff operating in policy "void" (T)

| Confusion between road allowance versus water lots (R)

| Difficulty in accommodating requests to build (T) (R)

| Difficulty in accommodating requests to repair (T) (R)

| Strategy for dealing with improvement requests in interim period (T)

| Prosecution related difficulties (T)

| Need for solid solution framework that will withstand appeal (T) (R)

| Need for Town retention of lands for unforeseen circumstances (T)

Communication Related Issues:

| Need for common message between Residents/Town (R) (T)

Sarah Brislin

From: Deyril Blanchard <deyri1@yahoo.ca>
Sent: March-02-16 11:45 AM
To: Sarah Brislin
Cc: Susan Jagminas; Alan Direnfeld; Carr Hatch; Peter Stevens; Cathy Hasted; David Szollosy
Subject: Lake Drive Shoreline Jurisdiction Ad Hoc Committee Issues list
Attachments: Feb282016-Lake Drive Committee Issues Revised.docx

Hi Sarah,

In response to the issues list we prepared a document that orders the issues under three headings. When I compare the document to the list you sent out, I note that there are two points not on your list.

First, there are a number of definitions in play for the road allowance which is the centre of our coming discussions. The Rusty Russell report stated the road allowance is from the waters edge whereas most of us are of the opinion that we should be discussing the road allowance as the traveled road including 33 feet to each side from the medium. Therefore, there is a need to clarify what the road allowance is.

Second, and maybe not an issue but rather a necessary discussion for the coming ad hoc meetings, is item B in our document. In our first meeting we discussed a possible interim moratorium on development and the need to have the ownership issue resolved. We did not discuss that the policy and guidelines for development along Lake Drive need to be created and recommended to council for adoption into a bylaw. This was probably understood by everyone but I think we need it formally discussed as to how we move forward to deal with it.

Thanks

Deyril

Deyril V. Blanchard
416-876-9608C

**LAKE DRIVE SHORELINE JURISDICTION AD HOC COMMITTEE:
ISSUES LIST**

1. Ownership is unclear and must be resolved

Many residents believe they own their waterfront, have a capital investment in that waterfront and/or have deeds which purport ownership. Residents purchased their property under the premise they owned their waterfront, paid waterfront prices and pay waterfront taxes. Some residents have documentation to confirm their ownerships, whereas some may not.

The Town has received legal opinion that does not support Resident ownership.

This lack of clarity has been an ongoing issue for decades and attempts to resolve it have never been successful. This lack of clarity presents a potential exposure to liability for both the Town and Residents. There have been instances where the general public has entered onto what Residents consider their private waterfronts. This raises public safety concerns since these situations have resulted in face to face conflict.

Establishing ownership is necessary in order to resolve this long-standing issue once and for all.

2. Development along waterfront is problematic and needs clear guidelines

There is a need to determine what is allowable in terms of reasonable use/construction and enforcement. There is a need to ensure the protection of the shoreline. There is a need to maintain/protect the integrity of the travelled road. There is also a need to clarify the confusion around what the road allowance is.

3. An interim solution is necessary

Staff are operating in a policy void, and have been for years. There is a desire for some sort of interim measure to deal with development requests until guidelines are established and ownership is resolved.

COMMITTEE STRATEGY TO DEAL WITH ISSUES LIST

A. Come up with an interim solution (suggested timeline: 0 – 6 months)

This will resolve the Town's concern about development applications coming in while the other issues are being resolved. Town staff are exploring options for consideration by this Committee.

B. Develop a policy regarding development/construction/improvement (suggested timeline: 3 – 12 months)

This will resolve both the Town and Resident concerns around development as there will be a clear policy and guidelines created. There is also the need to clarify the confusion that exists around what is considered the road allowance. Public consultation will be an important part of this.

C. Resolve ownership (suggested timeline: 3 months – 2 years)

This group needs to examine and evaluate mechanisms that would provide for clarity of ownership, either through confirming ownership, transferring ownership, establishing some sort of exclusive use, through some combination thereof, or through some other means. This will be the most challenging to deal with as it will require significant research as well as consultation with Residents.