

**THE CORPORATION OF THE TOWN OF  
NORTHEASTERN MANITOULIN AND THE ISLANDS**

**BY-LAW No. 2003-46**

**Being a by-law to adopt a Custodial Care Policy for Shore Road Allowances  
released under the Ontario Manitoulin Land Claims Settlement  
December 5, 1990**

**WHEREAS** title and ownership to certain specified roads and Shore Line Road Allowances laid out by Crown surveyors were released to municipalities in the District of Manitoulin pursuant to a land claim settlement dated December 5, 1990,

**AND WHEREAS** pursuant to sub-section 11(1) of the *Municipal Act, 2001*, as amended, a Municipality may pass by-laws respecting matters within certain spheres of jurisdiction that includes, among other spheres, Highways,

**AND WHEREAS** under section 26 of the *Municipal Act, 2001*, all road allowances made by the Crown surveyors that are located in municipalities are deemed to be a Highway,

**AND WHEREAS** pursuant to section 35 of the *Municipal Act, 2001*, a municipality may pass by-laws removing or restricting the common law right of passage by the public over a highway and the common law right of access to the highway by an owner of land abutting a highway,

**AND WHEREAS** the Council of the Corporation of the Town of Northeastern Manitoulin and the Islands wishes to enunciate certain policies relating to the use and the disposition of Shore Line Road Allowances released under the Ontario Manitoulin Land Claims Settlement, December 5, 1990,

**NOW THEREFORE** the Council of the Corporation of the Town of Northeastern Manitoulin and the Islands enacts as follows:

1. That the terms "Shore Line Road Allowance" or "Shore Road Allowance" used in this By-law shall mean a designated part of the original road allowances abutting a water body and described by the Crown surveyors in the survey of the various townships comprising the Municipality but does not include a road allowance lying between concessions.
2. That the Shore Road Allowance Custodial Care Policy Statement be adopted as per Schedule "A" attached to and forming part of this by-law.
3. That the Custodial Care Policy for Shore Road Allowances be adopted as per Schedule "B" attached to and forming part of this by-law.
4. The following activities shall be prohibited on Shore Road Allowance, subject to this by-law:
  - a) Open fires
  - b) Littering
  - c) Parking and/or camping
  - d) Picnicking
  - e) Conduct that would degrade the quality and tranquility of the life of adjacent landowners, this being the eyes of a reasonable person.

Articles 3 (a), 3(c) and 3(d) above do not apply to the owners of land adjacent to a Shore Road Allowance.

5. Every person who is convicted of an offence under this by-law is liable to a fine of no more than \$1,000 exclusive of costs pursuant to the *Provincial Offences Act, R.S.O. 1990 c. P 33*.

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6. a) Anyone served with a notice in writing of a violation of the provisions of this by-law, may voluntarily pay the set fine set out in the notice of the Town within fifteen days of service of this notice. In the event that the fine is not voluntarily paid, the fine, exclusive of costs, is recoverable under the *Provincial Offenses Act*.
  - b) Notice of violation shall be in a standard form approved by Council and may be served personally or by registered mail in which case service shall be deemed to be effective on the fourth day after mailing.
7. This By-law shall come into effect on date of passing.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 25<sup>th</sup> DAY OF NOVEMBER, 2003.

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Kenneth Ferguson                      Mayor

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E.O. Martin                      Clerk-Treasurer

## **Schedule 'A' to By-Law No. 2003-46**

### **Shore Road Allowance Custodial Care Policy Statement**

**WHEREAS** title to certain specified roads and Shore Road Allowances were released to municipalities under the terms of the Manitoulin Land Claims Settlement dated December 5, 1990,

**AND WHEREAS** the Council of the Corporation of the Town of Northeastern Manitoulin and the Islands deems it appropriate to retain ownership of the said roads and Shore Road Allowances,

**AND WHEREAS** Council recognizes the historic and customary use of owners of land adjacent to the said roads and Shore Road Allowances,

**IT IS THE INTENT AND OBJECTIVE OF COUNCIL** to establish a policy of custodial care to ensure the continued use of the Shore Road Allowances by adjacent landowners without impairing the Town's title thereto and the Town's right to designate or develop the Shore Road Allowances and without impairing public's limited use thereof for emergency access or as a walking area.

The Custodial Care Policy shall:

- 1- Provide to the owners of adjacent Shore Road Allowances, certain limited uses and controls of the designated Shore Road Allowances in recognition of their past and future intended custodial use and,
- 2- Support a program to provide public use areas for picnicking, swimming, boat launching, and other incidental uses to prevent public encroachment onto those parts of the Shore Road Allowance maintained by the adjacent landowners.

## Schedule 'B' to By-Law No. 2003-46

### **Custodial Care Policy for Shore Road Allowances Released under the Manitoulin Land Claims Settlement, 1990**

It shall be the policy of the Council of the Town that:

1. Shore Road Allowances released under the Ontario Manitoulin Land Claims Settlement and located within the Town shall not be sold, encumbered or otherwise disposed of.
2. The Town may consider (from time to time) entering into a Lease Agreement or other use agreements with the abutting landowners to limit public access to certain parts of a Shore Road Allowance.
3. Any leases or other use agreements considered by the Town;
  - a) Shall insure that the Town retains ownership of the Shore Road Allowance.
  - b) Shall adequately safeguard the rights and interests of the Town.
  - c) Shall contain provisions for user fees payable to the Town
  - d) Shall insure that the only permitted use of the Shore Road Allowance by the adjacent land owner shall be restricted to an incidental use of the abutting land owner's use of his property.
  - e) Shall be subject to the following procedures:
    - i) All proposed use agreements shall be prepared in accordance with the *Municipal Act, 2001*.
    - ii) All proposed use agreements shall be subject to a review by the Town or other interested agency to insure that part of the proposed Shore Road Allowance is not flood susceptible, hazardous lands or escarpment lands as defined under the Manitoulin Official Plan.
    - iii) Proposed use agreements shall only be entered into with the person(s) owning land immediately abutting a Shore Road Allowance.
    - iv) All proposed use agreements shall be subject to review and impact comments from any federal, provincial or municipal governmental agencies or bodies, by the relevant First Nations, by the general public, by the adjacent landowners on each side of the proposed designated Shore Road Allowance and other interest groups as determined by the Town's Council.
  - f) Where the owner of a property abutting a Shore Road Allowance wishes to restrict public access to part or all of a Shore Road Allowance abutting his or her property, the following procedures shall apply:
    - i) The owner shall make written application to Council detailing:
      - a) the particulars of his or her property and the Shore Road Allowance in question, including surveys, maps or other sketches describing both the owner's property and the Shore Road Allowance.
      - b) the reasons for the proposed restrictions.
      - c) the nature of the proposed restrictions.
      - d) any other matters deemed relevant by the applicant.
    - ii) Council shall submit the applicant's written proposal to the Manitoulin Planning Board and such other governmental and aboriginal agencies and bodies as required under Article 3(e)(iv) above and as is deemed appropriate for comment.

- iii) Council shall solicit input from adjacent landowners, the general public and such other interested groups as required under Article 3(e)(iv) above and as is deemed appropriate for comment. Where necessary, a public meeting may be held.
  - iv) Based on the comments and other input received, Council shall accept or reject the application.
  - v) Where an application is accepted, Council shall enter into a use agreement with the applicant to limit or restrict the public use of the Shore Road Allowance in question. The use agreement shall:
    - a) be prepared by the Town's Solicitor, at the expense of the applicant.
    - b) insure that the rights and interests of the Town are adequately safeguarded.
    - c) be enacted by a By-law, and
    - d) contain the following reservation: "reserving the right of access for all vessels, boats, and persons, together with the right to use so much of the banks thereof not exceeding one chain 66' depth from the high-water mark as may be necessary for fishery or public use".
  - vi) Where a use or lease agreement to be entered into involves stopping up part of the Shore Road Allowance, all the road closing procedures of the *Municipal Act, 2001*, shall be met before such use or lease agreement is entered into.
  - g) Where an owner of land wishes to erect a fence across a Shore Road Allowance for the purpose of limiting the travels of cattle or sheep actively pastured on adjacent lands owned by him, the provisions of paragraph 3 (f) shall not apply subject to the provisions in section 68 of the *Municipal Act, 2001*.
4. Building permits, other than in connection with a lease agreement pursuant to paragraph 3 of this policy, will not be issued. Improvements to Shore Road Allowances proposed by owners of abutting land shall be limited to:
- a) water line crossings,
  - b) access roadways, and/or
  - c) works necessary to prevent the erosion of shoreline (subject to the written approval of the Ministry of Natural Resources)
- to the extent that approval from other applicable jurisdictions is granted and that the public's use of the Shore Road Allowance for emergency access or as a walking area is not impaired.
5. Buildings and other improvements, exclusive of fences, located on Shore Road Allowances as of the date of passing of this by-law will be permitted to remain, subject to the issue of a letter of tolerance by the Town and to the right of the Town to pass a by-law pursuant to section 68 of the *Municipal Act, 2001* in respect of enclosed road allowances.