



PORT COLBORNE

Subject: Waterfront Road Allowances

To: Council

From: Public Works Department

Report Number: 2025-87

Meeting Date: April 15, 2025

Recommendation:

That Public Works Department Report 2025-87 be received; and

That the Director of Public Works be directed as follows:

1. That the City retain ownership of the waterfront road allowances outlined in this report.
2. That the existing parking signage related to the pandemic parking prohibition remain and that By-law 89-2000, being a by-law regulating traffic and parking on City roads, be amended accordingly.
3. That the City continue to promote tourism to the City's destination locations including Nickel Beach, Centennial Park, and H.H. Knoll Park.
4. That sign boards be installed at the road allowance locations discussed in this report indicating the location, proximity to Nickel Beach and Centennial Park, and rules to respect the environment.
5. That staff collect existing gate keys & return deposits.
6. That gates be installed or upgraded as needed at the 7 road allowances discussed within this report to allow pedestrian access while restricting vehicular access.
7. That By-law 4527/58/04, being a by-law to regulate access over road allowances leading to the waters of Lake Erie, be amended to restrict vehicular access between the lake and gate on the seven (7) road allowances discussed within this report.
8. That staff create a process for waterfront access through a Municipal Consent Permit.

And further, that Council approve increasing the Road Allowances capital budget to \$150,000 by pre-encumbering the 2026 capital and related budget by \$50,000.

Purpose:

In July 2024, staff presented Report 2024-143 Waterfront Road Allowances to Council with recommendations based on the Lake End Road Study completed by Sierra Planning Management (SPM); Council referred this report back to staff for public consultation. This report outlines the feedback received from the area property owners and provides Council with recommendations.

Background:

The City of Port Colborne owns multiple road allowances that terminate at the Lake Erie shoreline. Some of these road allowances contain infrastructure such as storm sewer pipes and outlets, some act as pedestrian or vehicular accessways to the lake, and some, due to the area, are sand covered and are informally used as beaches.

In 2020, SPM was retained by the municipality to review the lake end roads due to the following:

- Use of the road allowance as a beach with the related problems of parking, lack of amenities, and for the visiting public;
- Correlated, a lack of protection for private property rights as these road ends are not operating parks with associated by-laws;
- The efficacy of, and issues surrounding, the use of gates to restrict vehicular access;
- Public right to access the road ends within the 66-foot right of way;
- Property boundaries that often extend to the high-water mark of the shoreline or, in some cases, extend into the water;
- Deeded right of access to the shore for property owners without waterfront;
- The value of these access points to the shore, the importance of the public vistas and the need to enable appropriate public access; and
- The broader opportunity for showcasing Lake Erie in the City as a fundamental part of the City's economic development, tourism, heritage and cultural competitive advantages.

The SPM study focused on the following 7 road allowances:

- Lorraine Road (Currently Gated Access)
- Weaver Road (Currently Open Access)
- Pinecrest Road (Currently Open Access)
- Cedar Bay Road (Currently Open Access)
- Silver Bay Road (Currently Gated Access)
- Wyldewood Road (Currently Gated Access)
- Pleasant Beach Road (Currently Gated Access)

During the study period, SPM conducted interviews with surrounding property owners and stakeholders, conducted a public meeting, and implemented an online feedback forum to ensure all aspects were taken into consideration. A draft report was prepared and circulated for public review before being presented to Council in a finalized version (the SPM Report) on May 16, 2022.

During the 2024 budget deliberations, Council approved \$100,000 for any works resulting from this report; to date this budget remains unspent.

In July 2024, staff presented Report 2024-143 – Waterfront Road Allowances (the “July 2024 Staff Report”). The July 2024 Staff Report can be found in Appendix A and made recommendations based on the SPM Report and its recommendations:

1. Retain ownership of the 7 waterfront road ends.
2. Install benches and waste receptacles at the waterfront entry points on Pleasant Beach Road, Wyldewood Road, and Pinecrest Road.
3. Include the waterfront road ends within the Active Transportation Masterplan for review.
4. Remove existing signage related to the pandemic parking prohibition.
5. Continue to highlight and drive tourism to the City’s destination locations including Nickel Beach, Centennial Park, and H.H. Knoll Park.
6. Install sign boards at road end locations to indicate the location, proximity to Nickel Beach and Centennial Park, and rules to respect the environment.
7. Collect existing gate keys & return deposits.
8. Install/Upgrade gates at all 7 road end locations to allow pedestrian access and restrict vehicular access.
9. Create a by-law to restrict vehicular access and parking between the lake and gate on all 7 road ends to replace all other relevant by-laws.
10. Create a process for waterfront access through a Municipal Consent Permit.
11. That Council approve increasing the Road Ends capital budget to \$140,000 by pre-encumbering the 2025 capital and related budget by \$40,000.

Council referred the July 2024 Staff Report back to staff for public consultation on the proposed recommendations with the findings to be presented to Council through a later report.

On August 21, 2024, staff held an open house at City Hall. A notification for this event was mailed out to 1,050 property owners within the bounded area of Highway 3 to Lake Erie, and Reuter Road to Mathews Road South which is the same notification area previously used for public consultation with the SPM Report. The public was also invited to submit feedback via phone or email.

Discussion:

The August 2024 open house was held between 4:00pm and 7:00pm. Three stations highlighting the key items and recommendations from the July 2024 Council meeting and current public inquiries were set up: Parking Restrictions, Waterfront Access Limitations, and Road Allowance Gate Operation. The public was able to circulate through the stations to discuss the recommendations presented by staff and provide feedback. Feedback was collected through comment sheets at the open house as well as by phone and email.

Approximately 75 people attended the August 2024 open house, representing 38 separate properties of the 1,050 notified. In addition to the feedback gathered at the open house, staff received 53 emails and voicemails. Further, the City was provided with a petition in respect of Pleasant Beach Road (Appendix D) and one request for a stewardship program from the Lorraine Bay Association (Appendix E).

Feedback from area residents is outlined below under three general headings being Parking Restrictions, Waterfront Access Limitations & Gate Operation, and Petition & Stewardship Program along with Staff's comments and recommendations.

Parking Restrictions

Many of the open house attendees, and written submissions offered suggestions to residents' ideal parking scenarios. The majority of residents requested that the current parking restriction layout remain in place while a few requested it be removed, reduced, or that additional parking lots be added near the road terminations for greater public access.

Residents in favour of the existing parking layout, stated that the area feels safer without cars parked roadside as they block drivers' sightlines of pedestrians moving in between parked cars. There were also comments on the increased cleanliness of the road allowances since the parking prohibition started.

Staff recommend retaining the existing parking signage related to the pandemic parking prohibition by amending By-law 89-2000, being a by-law regulating traffic and parking on City roads to suit.

Waterfront Access Limitations & Gate Operation

The majority of respondents requested that gated access to the waterfront road allowance remain as is with keyed access for local residents given through a deposit to the City. The basis for these requests was generally due to the following key topics which are discussed in further detail below:

- Public Safety
- Accessibility
- Waterfront Maintenance

- Boat Launching

There are also residents in favour of restricting vehicular access, particularly to prevent all terrain vehicles and cars/trucks from accessing the road allowances due to environmental concerns and for the general cleanliness fewer users with vehicles brings. There are also residents that brought forward middle ground solutions such as only providing keyed access to waterfront property owners or providing the community associations with keyed access.

Public Safety:

Many residents expressed concern for public safety. They indicated that there have been past scenarios where boaters, wind surfers, and pets have been injured on the beach and they were able to transfer the injured party from the sand covered area to the asphalt roadway with their golf carts or utility vehicles for emergency services.

Staff have reviewed the recommended vehicular restrictions with the Port Colborne Fire Department and the Niagara Regional Police Services. In both cases, an emergency response to the waterfront road allowance would not typically entail driving a vehicle onto it due to the potential for that vehicle to get stuck in the sand. Both entities also mentioned that they are equipped to remove a lock on a gate should they be required to do so. Any alteration to the existing by-law to Regulate Access over Road Allowances Leading to the Waters of Lake Erie, being By-law 4527/58/04, would retain the existing wording regarding exemptions for emergency vehicles.

It is also worth noting that in Ontario, it is illegal to operate a golf cart on municipal highways which includes the section of road allowance from the gate to the waterfront and the roadways to get to it.

The situation of knowingly allowing golf carts to operate illegally on City highways exposes the City to liability. In the event of a collision or incident involving a golf cart, there may be a claim or litigation against the City. Due to joint and several liability rules, if the City is found to have contributed to the damages or loss experienced, they could be required to pay 100% of the damages to the plaintiff.

Additionally, if a golf cart were to be at fault for an accident or cause injury to a pedestrian or cyclist, typically, no personal liability insurance policy would attach to reimburse the plaintiff/pedestrian/cyclist for their injury. In these circumstances, it is anticipated that plaintiffs would seek compensation from the City.

Accessibility:

A primary concern for waterfront residents is losing the ability to bring people with disabilities or elderly family and friends to their private waterfront on golf carts or utility vehicles by using the road allowance as traversing their sand dune or using their staircase on private property is not possible due to the steep incline.

As mentioned under the Public Safety section, the use of golf carts on road allowances in Port Colborne is illegal so their use to transfer anyone over the road allowance is not being considered.

Staff have reviewed the potential for installing asphalt trails and beach mats to accommodate the use of wheelchairs at select road allowances from the existing asphalt surface to the waters edge. Although this scenario would provide accessibility to the waters edge on the road allowance, it does not fulfill the requests of the residents to have accessibility to their private property waterfront. Both options are also susceptible to recurring damage or continual maintenance from the winds, storms, and wave action that takes place on Lake Erie. Additionally, these scenarios would cause an undue hardship on the City's duty to accommodate. The costs to install and maintain either scenario is cost prohibitive while the City already provides an accessible beach mat that leads to the Lake Erie waterfront at Nickel Beach.

Waterfront Maintenance:

Waterfront maintenance was a recurring topic. Owning waterfront property poses its own unique challenges and one of them involves the removal of debris deposited by the lake including large branches or seaweed. Residents have stated the need to drive a golf cart, utility vehicle, or truck to remove the deposited material in some situations due to the extent of the debris.

Staff recommend that these situations could be accommodated through the issuance of a Municipal Consent Permit on specific occasions when it is required. As of 2025 a Municipal Consent Permit is listed in the City's Rates and Fees for \$385.00; this typically covers costs associated with administration, work review, and inspection of sites but in this case would also cover the costs of opening and closing the gates. Depending on the time of year and scope of work, the requirements of issuing a permit may differ and the Niagara Peninsula Conservation Authority and the Ministry of the Environment, Conservation and Parks may also require permits.

Boat Launching:

Residents expressed concern over not being able to launch boats on the road allowances. In some cases, people launch a boat from the road allowance seasonally, in other cases people use the road allowance to launch their boat regularly.

In 2004, the City enacted by-law 4527/58/04 being a By-law to Regulate Access over Road Allowances Leading to the Waters of Lake Erie. The by-law restricts vehicular traffic on the waterfront road allowances at any time between 12:01 a.m. on March 16 and 12:00 midnight on November 30 of any year except for ambulances, police or fire department vehicles or public utility emergency vehicles, or any other vehicles required in the case of emergency, service vehicles and vehicles actively engaged in launching watercraft.

The by-law allowing vehicles actively engaged in launching watercraft to drive on the road allowance between the gate and waters edge poses the same issues as allowing

any other vehicle to access the area. Continuing to allow vehicular access in any manner can lead to the following issues:

- Potential damage to Fowler's Toad habitat or sand dunes
- Trespass to private property
- Safety issues with beach goers
- Conflicts with approved construction activity
- Environmental issues associated with vehicle fluids contaminating the sand or water

Providing controlled access by way of a permit for the necessities such as retaining wall and well installation/repair is the best solution to minimize traffic on the road allowances and thus minimize the potential issues listed above.

The City owns and operates a boat launch at the Sugarloaf Harbour Marina/H.H. Knoll Park where boaters can pay for daily (\$20.00) or seasonal (\$125.00) launch passes. The distance from the city boat launch is approximately 6 to 12.5 kilometers by boat to Lorraine Road and Pleasant Beach Road respectively. Another boat launch in Crystal Beach is approximately 10 kilometers away from Pleasant Beach Road, being closer than the Sugarloaf Harbour Marina boat launch.

Petition & Stewardship Program

The Pleasant Beach Road petition provides an overview of concerns residents have with recommendations proposed in the July 2024 Staff Report. The key concerns are addressed within the body of this report as they relate to parking and gate access. Additionally, the petition calls for the removal of the proposed benches recommended in the July 2024 Staff Report; due to this staff have removed that recommendation. Inconsistencies with environmental regulations were brought forward within this petition referring to waterfront maintenance conducted on the road allowance versus private property. The regulations referenced are enforced by the Ministry of Environment, Conservation and Parks who deal with infractions on a case-by-case basis. Property owners may have a single work approval or recurring maintenance approvals issued to them to conduct specific work similar to the City's, Ministry approved, operations manual which outlines maintenance that is typically conducted on an annual basis.

The Lorraine Bay Road Association's proposal for a stewardship program outlines recommended actions to remove the July 2024 Staff Report recommendation to install gates on the road allowances. The proposal put forward the following recommended actions:

- Education by the Recovery Team to identify the toad and potential breeding ponds.
- Monitor breeding sites, toadlet status and potentially fence off areas when toadlets emerge from breeding ponds.

- Restrict vehicular use of the beach during night since the toad is nocturnal.
- Drive along the water's edge during the day since the toad burrows into loose sand during the day.

While stewardship opportunities and education may assist the Lorraine Bay Road Association in creating or improving Fowler's Toad habitat within Lorraine Bay and on their private properties, the creation of toad habitat in the road allowance is contrary to the continued use and access by vehicles that's been requested. The road allowance is a narrow strip that currently provides limited habitat function. Annual toad monitoring will add annual costs to the City's budget and confirmed identification of toads within the road allowance may suspend any proposed access. Limiting vehicular access to a specific time of the day or specific parts of the beach area will prove difficult to enforce and will continue to leave the City open to the risks outlined within this report.

Recommendations

Staff have reviewed alternative recommendations with the City's Solicitor, Insurer, and Environmental Consultant to determine the solution that poses the least amount of risk to the City. That solution is to implement controlled access by gating the road allowances to prevent vehicular access and allowing access for construction or maintenance purposes to waterfront property owners through a Municipal Consent Permit. This solution will continue to allow pedestrian access to all users.

Utilizing the same approach to operating all 7 waterfront road allowances ensures consistency in our process and minimizes the risk of vehicles entering the waterfront road allowances that can cause damage to habitat, property, and people.

Internal Consultations:

Staff have reviewed this matter with the Development and Government Relations Department to determine the best process for permitted access through a Municipal Consent Permit.

Staff have reviewed this matter with By-law Services for general guidance on past practise, historical issues, and to determine the appropriate solution for the matter.

Staff have reviewed this matter with the Port Colborne Fire Service and the Niagara Regional Police Service to determine historical issues and ensure safe practices continue.

Staff have reviewed this matter with the City's Solicitor for compliance with applicable laws and regulations, and general guidance to manage the City's risk pertaining to this matter.

Staff have reviewed this matter with the City's insurer to expose potential liabilities with proceeding with restricting vehicular access or proceeding with alternate solutions.

Staff have reviewed this report with the City's' Environmental Consultant to provide guidance on SAR and determine solutions leading to the proposed recommendation.

Financial Implications:

The 2024 budget deliberations approved \$100,000 for the implementation of actions proposed within this report. The July 2024 Staff Report outlined a budget of \$140,000 for this project which is now being revised to \$150,000 to reflect 2025 labour and material costs. Staff recommend increasing the Road Allowance capital budget to \$150,000 by pre-encumbering the 2026 capital and related budget by \$50,000.

Public Engagement:

Public engagement included an online survey, interviews with commercial property owners in the direct area, multiple public meetings, receipt of online feedback, and public consultation on the draft SPM report. Public engagement on the July 2024 Staff Report was conducted through an open house held at City Hall through a mail out notification to property owners within the bounded area of Highway 3 to Lake Erie, and Reuter Road to Mathews Road South.

Strategic Plan Alignment:

The initiative contained within this report supports the following pillars of the strategic plan:

- Service and Simplicity - Quality and Innovative Delivery of Customer Services
 - City-Wide Investments in Infrastructure and Recreational/Cultural Spaces
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Conclusion:

This report outlines the residents feedback regarding the staff recommendations presented to Council in July 2024. The area residents expressed strong support for maintaining the existing infrastructure and process regarding access to the road allowances waterfronts.

Staff have reviewed the residents feedback and suggestions with the City's solicitor, insurer, and environmental experts to determine possible outcomes. Continuing with the existing process exposes the City to liability, while still not ultimately providing the residents main request, being golf cart and UTV access, which is already prohibited by City by-law and the Highway Traffic Act.

With this, staff have identified that gating each of the 7 road allowances to restrict vehicular traffic, while still allowing pedestrian access will minimize the risk of damage to potential Fowler's Toad habitat or sand dunes, trespass to private property, safety issues with beach goers, and conflicts with approved construction activity.

Appendices:

- a. App. A – Report 2024-143 – Waterfront Road Allowances
- b. App. B – By-law 4527 58 04
- c. App. C – Pleasant Beach Road Petition
- d. App. D – Lorraine Bay Association Stewardship Program

Respectfully submitted,

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Report Approval:

All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final review and approval by the Chief Administrative Officer.