Shore Road Allowances in Haliburton Evolution and Disposition

by: Ambrose Moran April 1996

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1. Introduction

Public road allowances have been provided in Ontario through the *original* township surveys prepared during the last century. As townships were surveyed, a network of public road allowances was laid out establishing lots which could be made available through either sales or free grants to encourage settlement by immigrants. In certain parts of Ontario, the survey system that was applied involved establishing shoreline road allowances on lakes and rivers. On shores, adjacent to the water, there is often a 66 foot strip of land which is a public road allowance owned by the municipality or in unorganized townships by the Crown.

Shore road allowances have played an important part in the development of the waterways. Changes in the *role* of these narrow strips of land have taken place in response to changing times. In the early history of Haliburton, shore road allowances provided trappers and loggers with access from the waterways to land without trespassing on private lands. Later, as cottage development came starting in the 1950's, many structures were built on these public lands which subsequently caused property title complications. Since 1980, provincial policies have changed allowing municipalities to sell shore road allowances to abutting land owners under certain conditions. Today, these shore allowances are seen by the Ministry of Natural Resources and municipal planners as critical ecological zones capable of buffering the water quality of lakes from the impacts of cottage development.

What follows is a review of the evolution of shore road allowances issue in Haliburton County along with a discussion of the ownership and planning issues which have changed over time in response to changing provincial policy regarding the transfer of these allowances from public to private ownership.

2. Original Surveys in Haliburton

Prior to settlement in Ontario, surveys were carried out establishing townships. As the country developed, it was found advisable to revise the township survey system and size of township lots having regard for new ideas in land-settlement schemes, physical characteristics of the country and municipal organizations (Department of Lands and Forest 1962).

In 1835, a new "1000-Acre Sectional System" survey system was introduced in Ontario and not discontinued until 1906 (Ladell 1993). This system was one of seven different systems of Township surveys adopted through the years (Vander Schelde 1973). Originally this survey system was used by the Canada Company which acquired from the Government, a 1.1 million acre tract of unsurveyed territory, known as the Huron Tract¹. The Canada Company wanted a survey system providing for 100 acre lots, the size of which was considered to be suitable for immigrant farmers (Ladell 1993). The lots were allocated to settlers and the Crown Grants were generally made in whole Lots (Vander Schelde 1973).

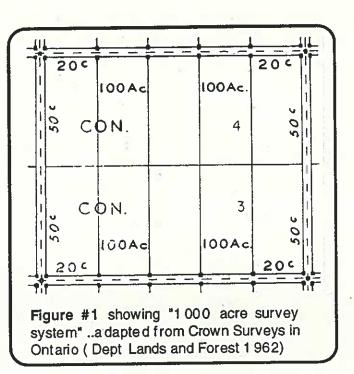
In or about 1850, this system was adopted for Crown surveys, except that the government introduced the placing of a one-chain (66 ft.) allowance for a road along the banks of rivers and lakes. The 1000 acre section system proved popular and was used to in laying out townships extending from Georgian Bay to Ottawa (Dept of Lands and Forest 1962). All townships in Haliburton were surveyed under the 1000 acre sectional system. This system was also used in Bruce County, Muskoka and the Parry Sound Districts².

¹ The Huron Tract was composed of most of what are now Huron and Perth Counties in Western Ontario.

² Reference appendix # 1 showing location where the 1000 acre sectional survey system was used in Ontario

The surveys of the townships comprising Haliburton County were conducted over a period of only eighteen years³ (1859-1878). As noted by Robert Ryan (1978), this was a surprisingly short period of time to completely cover twenty three townships containing rugged terrain typical of the Canadian Shield.

In the original surveys, the survey lines were in the centre of the road allowances, creating Sections containing 1000 acres with 10 Lots of 100 acres each (Vander Schelde 1975). Survey posts were planted at the front corners of all Lots while the interior boundaries, being the division lines between Lots, were not surveyed in the original survey (Dept of Lands)



and Forest 1962). Every second concession line was surveyed while side roads were surveyed between every fifth and sixth lots. Allowances for roads running east west were surveyed on alternate concessions (Ryan 1978).

Nine of the Haliburton townships were owned by and surveyed by the Canadian Land and Immigration Company of London, England, which was formed for the purpose of purchasing lands in Upper Canada and selling the lands to new settlers. This company, whose chairman was Thomas Haliburton, had purchased 146,000 acres of land in Haliburton (Humber 1984). The surveys for these township were overseen by David Gibson who was public land surveyor and Superintendent of the Colonization Roads (Ryan 1978).

³ Reference appendix # 2 showing dates Haliburton townships were surveyed

Both the nine townships⁴ owned by the Canada Land and Immigration Company and those surveyed directly by Crown Land Surveyors used the 1000 acre section system including the reservation of road allowances along the banks of rivers and lakes.

3. Study Finding Regarding the Original Surveys

Research directed towards understanding the establishment of the shore road allowances in Haliburton County lead to a review of several survey maps filed in various locations. One objective of this study was to determine the extent of the shore road allowances within Haliburton County. Preliminary review of township surveys on file at the County Land Registry Office in Minden confirmed that all townships were in fact surveyed with the 1000 acre section system, but inconsistencies were revealed regarding the location and extent of the shore road allowances. In order to obtain reliable information on where the actual road allowances were laid out, it was found to be essential that the original surveys be located and examined.

Although copies of the original township surveys are frequently available for perusal at land registry offices these are not registered or deposited or officially of record (Seawright 1989). The original provincial crown land survey records are under the custody of and maintained by the Surveying Services Office of the Surveys, Mapping and Remote Sensing Branch, Ministry of Natural Resources under the direction of the Surveyor General of Ontario (Seawright 1989). These records date back to the 1700's and include the original township plans. The fact that the copies available at the Land Registry Offices are hand drawn from the originals introduces the possibility of human errors affecting the overall accuracy of the plans. When absolute

⁴ Townships owned by the Canada Land and Immigration Company were Havelock, Eyre, Clyde, Guilford, Harburn, Bruton, Dysart, Dudley and Harcourt. Reference Appendix # 2.

reliance is required, it is necessary to examine the *original* surveys kept by the Office of the Surveyor General.

All of the township plans filed at the Land Registry Office in Minden were examined as part of this study. Also the writer was afforded the opportunity to examine certain of the *original* township surveys at the office of the Surveyor General along with the general⁵ and specific instructions⁶ provided to the surveyor for Harcourt Township. Within the general instructions is contained a direct reference to shore road allowances. Instruction # 10 states:

Traverse any lake you may find within the limits of your survey, in order to ascertain the area of the lots adjoining them. Lay out road allowances round those lakes which your road lines intersect and along the banks of rivers where necessary. [emphasis added]

The "where necessary" clause appears to be the basis of considerable inconsistency in where shore road allowances were laid out within the townships in Haliburton. Despite considerable effort by the writer to establish a common pattern as to where road allowances were laid out, none were revealed. Staff at the Surveyor General's Office suggested that further effort to determine such a pattern would likely be fruitless and the explanations as to why certain shores were included or excluded could only be provided by the original surveyors who were not available for consultation.

The following summarizes certain findings and observations made in regard to the extent of the road allowances provided for along the banks and rivers and lakes of the townships in Haliburton County. At the outset, it should be recognized that in attempt to determine the location of shore road allowances, several sources of available surveys were relied on. Surveys were

⁵ Appendix # 3a 3b & 3c General Instruction (undated) issued by Commissioner of Crown Lands

⁶ Appendix # 4 Instruction dated 9 Dec 1861 to Provincial Crown Surveyor William Drennan to survey Harcourt Township

examined at the Land Registry Office in Minden, the Haliburton Highlands Museum and the Office of the Surveyor General in North York. As stated earlier, the *best evidence* is of course the *original* surveys retained by the Office of the Surveyor General. All others are copied and subject to errors.

An illustration of this point is an error between the Harcourt Township survey filed at the Land Registry Office in Minden and the original retained by the Surveyor General. Appendix #5 is a photo copy of the original survey of Harcourt Township by William Drennan dated July 1, 1862 which identified a shore road allowance on the west side only of a small lake in Concession II south of Elephant Lake. The cartographic technique of this original map provided for four lines around lakes where shore road allowances were provided and three where road allowances were not laid out. Appendix # 6 shows a portion of the *copy of the original* filed with the Land Registry Office. The drafter for this survey includes a double line to indicate shore road allowances and a single line when no allowance is provided for. The same lake on this survey includes a shore road allowance around the entire lake in contradiction of the *original* survey.

This discrepancy illustrates that human errors existed in the tracing of the original surveys when providing copies for filing at the Land Registry Offices. Examining the original survey is important when accuracy is essential. The original surveys provided the first legal assessment of the land and these maps along with the accompanying surveyors field notes are regularly consulted today (Ryan 1978).

Appendix # 7 pertains to Brunton Township and illustrates the situation where shore road allowances were not consistently laid out on all shores of lakes. Portions of Kingscote, Rock, Burnt and Branch lakes do not have the

shore road allowances shown on this map. An examination of many township maps revealed similar situation without any apparent reasoning.

Certain townships surveys showed a system where the road allowance was laid out around portions of lakes being the *shortest* distances. Appendix #8 shows this application of Luke and Benoir and other lakes but not Kennaway Lake in Harcourt Township.

Rarely are road allowances found to be included on *islands*. An exception was found on Kawagama Lake in Havelock Township. As shown on appendix # 9, shore road allowances were included on portions of both Dennison and Bear islands.

Although the suveyor's general instruction indicated that shore road allowances were to be provided as necessary when road lines *intersected* lakes, a rare exception was found in Concession X of Hindon Township where a road allowance was laid out around a lake totally within the 1000 acre section without intersecting road lines. Reference appendix # 10.

This part of the study concludes that, even though all of Haliburton was surveyed using the 1000 acre sectional system which provided for shore road allowances, inconsistencies are common. A detailed examination of the original surveys is required to determine with confidence where the shore road allowances were reserved in favour of the public.

4. Water Level Implications

The original surveys were based on the lake water levels existing on the day that the field surveys were conducted. Today water levels are different.

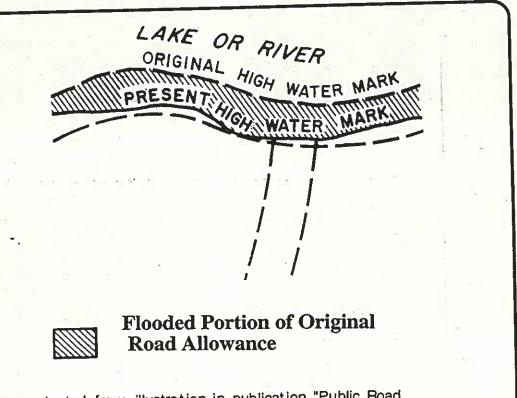
Many of the Lakes in Haliburton County form part of the Trent-Severn Waterway (TSW). This water resource system includes 39 reservoir lakes. Many are located totally or partially within Haliburton County. These reservoir lakes contribute to the TSW's primary objective of maintaining navigation on lakes and rivers which form the waterway from Trenton to Georgian Bay. That objective is achieved by regulating the water levels in the reservoir lakes in order to allow only small fluctuations in water levels in the waterway during the summer. This maintains a minimum navigational depth to serve the recreational boating in the waterway. Regulating the water levels of the reservoir lakes involves a series of control structures. The installation of these structures has direct implications to this study of shore road allowances.

During the 1800's, lumbering in the Haliburton area was an important economic activity. For the purpose of moving logs to sawmills, lake levels and river flows were controlled by a number of timber crib dams. Many of these dams were constructed in the mid-1800's and owned and operated by the Department of Public Works of the Province of Ontario (Acres 1988). These and more recently built water control structures have affected the county's hydrography, altering shoreline delineations.

As the original surveys were undertaken between 1859 and 1878, the structures could have affected the high watermarks of lakes and rivers, having direct implication on the water edge boundary of waterfront property owners throughout Haliburton. If the structures were installed following the original surveys, portions of the original shore road allowances could have been flooded. The extent would depend on the level the water body was artificially raised to and the steepness of the shoreline.

Today, the water levels in the Haliburton reservoir lakes are under the jurisdiction of the Federal Government. At the turn of the century, the Federal Government decided to acquire the water rights to some 44 Haliburton lakes for the purpose of sustaining navigation in the Trent Canal. By an Order-in-Council in 1905, the Province of Ontario transferred water withdrawal rights to federal jurisdiction (Acres 1988). This legislation provided the Federal Government with the legal right to build, maintain and operate dams affecting this area.

Competing interest in water needs between recreational user of lakes in Haliburton and the operational need of the TSW to maintain the canal system involves ongoing conflicts which are outside this discussion. What is significant is that the federal government regulates water levels and these water levels often serve as the boundaries for ownership of properties adjacent to Haliburton lakes.



As shown in Figure #2, the existing high water mark creates a totally different shore location from that of the high water mark used to establish the original shore road allowance at the time of the original survey.

5. Riparian Rights

If the original Crown grants did not include the ownership of the parcel to the waters edge, as in the case where the Crown retains the ownership of the shore road allowance in favour of public access to the land, the grantee did not become a riparian owner. A riparian owner is one whose land runs to the water and is bounded by it (Canadian Encyclopedia Digest 1981). Title to the high water mark on a lake or river is sufficient to entitle the owner to riparian rights. It is not necessary to own the lake or river bottom.

The Canadian Encyclopedia Digest clarifies the implication of the term riparian rights as it could apply to the situation of shore road allowances covered in this study. The Ontario Courts have laid down the following well established rules:

- riparian owner's rights are not founded on the ownership of the bed of the lake or river but rather on the right of access to the water
- a grant of land to the water carries with it to the grantees the right of access to and from the water from any spot on their own lands
- any grantee of the Crown must take subject to the right of navigation
- the riparian owner has the right to natural flow and quality of
- the riparian owner is entitled to accretions⁷
- the riparian owner and the public have the right of navigation in navigable waters (Eccles, 1981)

⁷ The term "accretion" means the increase which land bordering on a river....undergoes through silting up of soil, sand or other substances, or the permanent retiral of the water. This increase must be formed by a process slow and gradual as to be, in a practical sense, imperceptible, by which in meant that the addition can not be observed in its actual progreess...although after a period can be observed as being a fresh addition to the shore line (Canadian Encyclopedia Digest 1981)

The beds of inland non-tidal navigable rivers and lakes are vested in Her Majesty and allocated to her in right of the province. No *grants* of land bordering on a navigable body of water shall be deemed to have conveyed any potion of the bed of the water in the absence of a further expressed grant (Lambden 1989).

Clarification is required on what terms must be included in the grant to imply contact with water in order to make an upland property riparian. As explained by David Lambden (1989), in Ontario it has been well settled by the Courts that when applied to navigable, non-tidal bodies of water the term 'bank', 'line of the bank', 'shore', 'line of shore', 'margin of the water', and 'water edge' are synonymous as lines of demarcation. Also can be included 'to the bank of lake', 'to the lake' and 'to the shore' meaning to the edge of the water in its natural condition at low water.

In Ontario, exists a common law rule that title adjoining navigable waters is limited to the natural water boundary, properly called the 'bank' of rivers or 'shore' of lakes. This applies in the absence of a specific reservation to the contrary, such as a shore road allowances or other reservation of the upland which would make it non-riparian (Lamden 1989).

What is note worthy from the forgoing is that when one does not own land to the waters edge, such as the case when a shore road allowance is reserved in public ownership, the cottager would not be a riparian owner and would not enjoy riparian right. By purchasing the shore road allowance up to the high water mark, apart from gaining property rights associated with ownership, one would obtain riparian rights to the total property if and when the two parcels are merged on title.

6. Complications in Non-Ownership of Shore Allowances

Apart from acquiring riparian rights and property title, there may be other issues tied to the ownership of shore road allowance. This usually is dependent on whether or not one has already built a cottage or accessory buildings on the public land or have any future plans to build structures close to the waters edge.

If a cottage is partially or totally encroaching on public property, this can lead to complication in acquiring property financing. According to the Federation of Ontario Cottagers' Associations, "if you don't own the land under your buildings you may experience difficulty getting a mortgage on your property or selling your property should you want to do this" (FOCA 1990). Financial lending institutions often require a site survey indicating the location of buildings relative to property boundaries before committing to a loan agreement to ensure that their equity is secure. Obtaining a mortgage from a lending institution may not be possible and a private mortgage may be required at a higher rate of interest if the major site improvements are not located on the owners property.

7. Jurisdiction Over Road Allowances

Provincial Legislation contains a number of provisions to assist municipalities in opening, closing, altering, diverting, selling and widening original shoreline road allowances. The matter of municipalities closing original shore road allowances is tied specifically to the term "original". According to Rusty Russell⁸, the word original is key. Original road allowances have been created in four ways of which two have application to

⁸ Lawyer with law form of Russell, Christie, Miller, Koughan...Orillia

this paper. Let's look at the two ways in which original shore road allowances were created in Haliburton County.

The first situation involved the first Crown survey of a township where the Crown surveyors would lay out the concession roads and lot line roads. Most of these township surveys were done by Crown land surveyors (CLS). The second situation has direct application to the nine townships in Haliburton County where large tracts of unsurveyed lands were patented to companies or individuals. When these tracts of land were subsequently privately surveyed and laid out into municipalities, those roads were then considered "original" road allowances since they were the first surveys of the original Crown lands (Russell 1993).

The ownership of the original road allowances was vested with the Crown rather than the municipality up to 1913. Prior to July 1, 1913, a conflict existed within the Municipal Act regarding municipal jurisdiction over roads. As explained by Russell (1993), one section of the Municipal Act stated that every highway or road that was laid out was "vested" with the Crown while another section provided municipal councils with jurisdiction over the allowances for roads with power to close and sell them. How could the municipality close a road if the Crown had title to the road?

This problem was resolved by an amendment to the <u>Municipal</u> <u>Institutions Act</u> of 1913 stating:

Section 432...all allowances for roads made by Crown surveyors, all highways laid out or established under the authority of any statute,... shall be common and pubic highways

Section 433...the soil and freehold of every highway shall be vested in the corporation of the municipality, ...the council or councils of which for the time being have jurisdiction over it under the provisions of the Act (The Municipal Institutions Act 1913)

The wording of these sections passed in 1913 is almost identical to the current Municipal Act (1990). As a result of this amendment, municipalities owned all the roads previously owned by the Crown that were not designated as provincial highways. Since the municipality has both title to and jurisdiction over the road allowances, they can close and sell them under the provisions of the Municipal Act (Russell 1993).

8. Occupancy of Road Allowances

As shown, the ownership of shore road allowances is vested with the municipalities and in unorganized townships with the Crown. Despite the fact that these road allowances are public highways, it has been very common for cottagers to have occupied these parcels and in fact in many cases to have built their cottages, guest cabins and boat houses totally or partially on public property. The question does get raised as to whether the cottagers have acquired *possessory title* to the lands based on lengthy unchallenged possession. This is worthy of clarification.

An important aspect of municipalities land ownership is that, unlike private land ownership it cannot, as a general rule, be lost by adverse possession. Notwithstanding any long occupation, use or encroachment by an abutting landowner, no prescriptive title may be acquired of such lands (Smither undated). As explained by Wayne Fairbrother⁹, according to the provision of the Statues of Limitation, adverse possession with respect to Crown road allowances can only be established if the claimant can

⁹ Lawyer with law firm of Templeman, Brady, Menninga, Kort, Sullivan & Fairbrother ..Belleville

demonstrate adverse possession for a period of 60 years prior to June 13th 1922. In the case of other road allowances, the claimant must establish adverse possession for a continuous period of ten years prior to June 13, 1922 (1989). It is unlikely any cottagers in Haliburton could legitimately claim adverse possession of a shore road allowance since cottage development in fact was not common back in the 1920's.

But what status do cottagers have relative to their occupancy of the shore road allowances? Do they have *legal non conforming status* relative to the provisions of the <u>Planning Act</u>? A legal non-conforming use is a use that legally existed on the day the municipal zoning bylaw came into effect (OMMA 1984). How could the cottage be legally on public property? Even if the cottage existed at the time the zoning bylaw was passed, but is located totally or partly on the public road allowance, it would appear to the writer that legal non-conforming status would not apply for the purposes of the provisions of the <u>Planning Act</u> as it did not *legally* exist when the zoning bylaw was passed.

Even if a case was made to provide legal non-conforming status for a cottage occupying the public shore road allowance, another <u>Planning Act</u> section applies relative to rights to expand legal non-conforming uses. The expansion has to be within the limits of the land owned on the day the by-law was passed (OMMA 1984). This means the cottage owner can not buy adjacent land, such as the shore road allowance, in order to benefit from the provision in the <u>Planning Act</u> for expanding legal non-conforming uses. Other remedies within the Planning Act may be available such as site specific rezoning to provide relief from by-laws. Relief granted but must be in accordance with any adopted municipal official plan policy.

9. Provincial Policy to Permit Sales-1980

Following a period of lobbying in the late 1970's by the Federation of Ontario Cottagers Associations for the rights of their members to purchase shore road allowances, the province responded with an policy announcement on April 18th, 1980. The announcement was made by the then Natural Resources Minister James Auld.

According to the Federation of Ontario Cottagers' Association report on the announcement, the Minister stated that:

- the practice of creating 66-foot shore road allowances began because
 waterways were the primary transportation routes in the early days and it
 was therefore essential that the travelling public would be able to gain
 access to and from waterways without trespassing on private property...
- it appears the philosophy for outright retention of shore road allowances was no longer valid because, in most cases, the original purpose of the road allowance is now redundant...
- most owners of land adjacent to waterways have, over the years, and with the tacit (but not formal) approval of Municipalities and the Ministry of Natural Resources, constructed valuable cottages, residences, and other structures on the 66-foot road allowances...
- they had also, without authority, placed docks, boat-houses, protection works and other structures on the underwater Crown lands in front of their properties...
- that consequently, owners have had problems with land transfers, mortgages, insurance claims and the settling of estates because their improvements are located on, or partly on land they don't own...
- that the situation has been growing intolerable for Municipalities, shoreline property owners, and Provincial administrators...

- that in recognition of the problem, the Ministry of Natural Resources
 would no longer object to Municipalities stopping up and disposing of
 [shore] road allowances to owners of abutting lands...
- that the Ministry would favourably consider disposing of road allowances and 66-foot reserves that fall within the Ministry's jurisdiction, providing that the disposition did not conflict with an established or proposed public use... (Strickland 1990)

The details of the policy were contained in a procedure dated April 8, 1980 issued by the Public Lands Section of the Land Management Branch of MNR. This procedure outlines certain significant administrative matters relative to the announcement. According to this MNR procedure No. L.M. 8.02.11, for the disposition of Crown owned road allowances and reserves, a set fee would be based on the Ministry's cost of administering the transaction (OMNR 1980). According to another policy directive LM 8-11-01 dealing with service fees for public land transactions, the fee would be \$250.00 (1980).

Two other significant matters were raised in these policy directives. The Ministry would no longer impose a universal shoreline reserve when disposing of Crown waterfront lands. Another matter covered relates to riparian rights discussed earlier. In the event that a reservation was found to be necessary, the front boundary would be by a straight line survey as close a practical to the high watermark or controlled water datum. According to this procedure, "the straight line survey would clearly delineate property boundaries and preclude questions concerning riparian rights such as accretion and dereliction" (OMNR 1980).

This position of establishing straight line surveys at the waters edge appears to be unique to the Crown's approach to title transfers and not followed by municipalities which accept the high water as the property boundary which provided for riparian rights to the purchasers of shore road allowances. The Crown's practice in this matter continues today. Current instruction issued by the Surveyors General of Ontario governing Crown land surveys require that a survey boundary be established adjacent to the present high water mark (OMNR 1985), Reference appendix # 11.

10. Sale of Shore Road Allowances 1980-1991

Following the position established in 1980 by the province in allowing municipalities to sell shore road allowances, the then Ministry of Housing prepared and issued publications to assist municipalities and other involved in this process. In 1976, the Ministry of Housing issued an Explanatory Guideline for Public Road Allowances and in 1981 a Procedural Guideline for Public Road Allowances. What follows draws directly from the sections of these reports dealing specifically with original shore road allowances.

What is of particular note in the procedure for closing and selling of shore road allowances is that, even though the ownership of the road allowances is vested with municipalities as discussed earlier in section #7 dealing with jurisdiction, the Municipal Act requires various approvals for closure and sale of certain types of road allowances. Approval is require of the Minister of Municipal Affairs and Housing for by-laws to close and sell road allowances which were both:

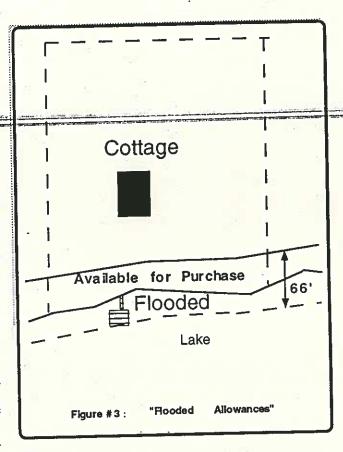
- reserved on the original survey of land; and
- are located on or leading to water

The *original survey* means the first authorized survey made of the boundaries and interior of any part of Ontario. If the road allowance was not reserved in the original survey, a by-law would not require the minister's approval (OMH 1981). This paper deals with road allowances on water which are those rights-of-way running parallel to and abutting the bank of a river or shore of a lake. In the original surveys, the road allowances were established at a width of one chain (66 ft.) and were measured from the high water mark at the time of the survey.

When the province is considering the approval of a municipal by-law to close a shore road allowance, the province's main concern in evaluating a proposed road closing is the preservation of public access to Ontario waterways and conformity with any local official plan policies on road closings. The province's interest appear to be represented in this matter by the Ministry of Natural Resources which is the circulated agency regarding proposed by-laws to close the road allowance. It was this provincial ministry which made the announcement in 1980 indicating that they would no longer object to the closures.

At the time of that announcement, the MNR issued a procedure providing their land management branch with clarification of the province's concerns regarding any proposed closures of municipally owned shoreline road allowances (OMNR 1980). That directive indicated, as did the Minister's announcement of the same time, that "MNR would not object to closures and dispositions which did not affect MNR programs or conflict with existing or proposed public uses of the lands" (1980).

This procedure was revised and re-issued on November 8, 1992 adding further details of concerns. province's the According to this directive, further issues were identified related to what effect the closure and disposition would have on fish habitat or other aspects of water management if part of the shore road allowance was under water. In that directive it is noted that "[m]unicipalities should retain encouraged



submerged [shore road allowances] in public ownership" (OMNR 1992).

During the course of preparing this paper, the writer found a widely accepted belief among cottage owners and municipal staff that municipalities can not sell *flooded* portions of shore road allowances. No basis has been found to substantiate this position and practice. To put this in perspective, look *closely* at what has been stated by the province:

- the Ministry of Natural Resources procedure for commenting on proposed closure and sale of shore road allowances indicates that "municipalities should be *encouraged* to retain submerged highways in public ownership".(OMNR 1982) [emphasis added]
- the Ministry of Housing indicated that "the ministry would not normally approve the sale of any portion of a road allowance below the natural or regulated high water mark" (MOH 1981) [emphasis added]

In neither case has any reference been given to any legislative authority compelling municipalities to retain flooded portions of road allowances in public ownership.

Taking this rather permissive language within the provincial ministry's documents along with the explanation by Rusty Russell (1993) that since 1913 the "ownership" and "jurisdiction" of road allowances laid out in original surveys vested in municipalities, it is unclear to the writer whether the province is in a position to stop the sale of a shore road allowance which is partially or even totally flooded as a result of the raising of a water level following completion of the original survey.

The one sound basis for the province refusing to approve a by-law to sell an original shore road allowance relates to compliance with an in-effect official plan policy. No municipal by-law is to be passed in contravention of an approved official plan. As indicated earlier, the province's review of proposed sales includes consideration for compliance with official plan policies.

In 1981, the Ministry of Housing provided municipalities with guideline and advised them to establish official plan policies setting out condition under which shore road allowances may be sold. Included in these guidelines was among other things the suggestion that "only the portions of road allowances above the natural or regulated highwater mark may be sold (MOH 1981). The province has had very limited success throughout Haliburton County in advancing provincial interest and policies through official plans. At the time of this study only three municipalities have official plans in-effect and only the township of Dysart et al. has detailed policies related to the disposal of

Official Plans in-effect in Dysart et al, Cardiff and Anson Hindon Minden.

shore road allowances. No county wide upper-tier official plan exists or is currently being developed.

Although a case could be made for the Crown to take ownership of the complete bed of in-land lakes, the lack of precise language in the documents by both the Ministry of Natural Resources and the Ministry of Housing would suggest that the Crown has no legislative, but only persuasive powers to deny cottage owners the rights to buy and the municipalities the rights to sell the shore road allowances below the existing high water marks. The question is whether in fact the province can refuse to approve a by-law by a municipality to dispose of the portion of an original shore road allowance under water. The issue is raised as a basis of further discussion towards establishing a more precise understanding.

Look at the implications of this matter in the current practice of selling road allowances in Haliburton. If a partially flooded shore road allowance is closed and the land above the high water mark is sold to the abutting land owner, what happens to the flooded portion? Does it remain in municipal ownership or being the bottom of a navigable waterway is it transferred to the Crown as the other abutting land owner?

In reviewing all the application procedure for purchase of shore road allowances issued by the Townships in Haliburton, it was found that only Sherborne Township included a requirement that the survey include all the 66' road allowance. This township requires that "the survey is to include all the 66' road allowance and must differentiate by part numbers between the section of road allowance lying above and below the controlled high water mark" (Sherborne 1991). In order for the title of the flooded portion to be transferred to another ownership, a survey would be required for registration of the deed. Based on conversations with many approached during this study,

no conclusive information was available regarding the disposition of the flooded portions of the road allowances. The MNR staff claimed that as part of their agreement to closure of the municipal shore road allowances, the flooded portion was deeded to the Crown while some municipal staff were either unaware of this arrangement or indicated that this requirement was not consistently applied. What are the implications? More discussion on this issue is contained at the conclusion of the paper under emerging issues.

11. MNR Policy on Trout lakes In Algonquin Region-1991

Throughout the 1980's many cottagers purchased shore road allowances from municipalities without objections from the MNR. By 1990, indications were that the MNR was reviewing the practice of disposing of shore road allowances under their control. First indication came in a letter from MNR to the Federation of Ontario Cottagers' Association in late 1990 stating that:

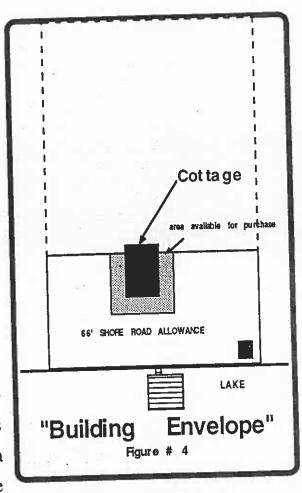
- [MNR] is taking a stronger role to manage Crown lands on the principle of sustainable development
- retaining Crown ownership ensures flexible management options in the
 future...including the ability to protect habitat or resources which may be
 identified by future generations and ability to control/restrict development
 which has a negative effect on the environment
- the [MNR] policy regarding shoreline road allowances is currently underway
- where a sale of a road allowances will impact on one of our resources, a
 decision will be made to recommend against the sale and closure of a shore
 road allowance
- we are exploring further options...to control incompatible development on shorelines (OMNR 1990)

It was not long after this that the new MNR policy was issued. Through the release of a MNR Resource Report, the Algonquin Region of MNR

announced a new policy titled "Disposition of Crown Reserves and Shoreline Road Allowances" which became effective January 31, 1991 (OMNR 1991). MNR would no longer sell Crown-owned shoreline road allowances would encourage municipalities to retain shorelines in public ownership where the lands contribute to the preservation of fish and wildlife habitat.

The new policy provided an option recognizing site specific situations where cottages were built on shoreline properties prior to this new policy. As shown in Figure #4, MNR will consider disposing of a "building envelope" which is the land actually occupied by the residence within the Crown reserve or shore road allowance (OMNR 1991).

The directive applied to Crown owned shorelines and reserves and to municipal shore road allowances within Algonquin Region. This was a Regional policy, not a provincial wide



policy. The MNR indicated that it was broadening its interest in the retention of shore road allowances to include the protection of fish and wildlife resources claiming that action is needed to protect the remaining fisheries habitat and to conserve natural shoreline features in this part of Ontario.

In subsequent communication from the MNR, emphasis was placed on protection to trout lakes which are also referred to as cold water lakes.

According to the MNR " in order to permit closure of municipal shoreline

road allowances, the municipality must have suitable policy and land use controls in place" (OMNR 1991b). They required that an appropriate mechanism be put in place by municipalities to affect the retention of vegetation and restrict the placement of building and structures (1991b).

Since 1991, when the MNR placed these restrictions related to the sale of shore road allowances on cold water lakes supporting trout populations, Cardiff Township has been the only municipality which has put in place the "appropriate controls" to satisfy the MNR requirement in order that the sale of shore road allowances could proceed on the cold water lakes. Cardiff township simply includes the following covenant in an agreement associated with the shore road allowance sales of the shore road allowance:

The Owner and the Encumbrancer hereby acknowledge, covenant and agree in as much as possible to retain the natural aesthetics, to retain the natural fish and wildlife habitat, and to retain natural soil retention capabilities, through the preservation and enhancement of the natural vegetation of those lands described in schedule [shore road allowance being purchased] (Cardiff undated)

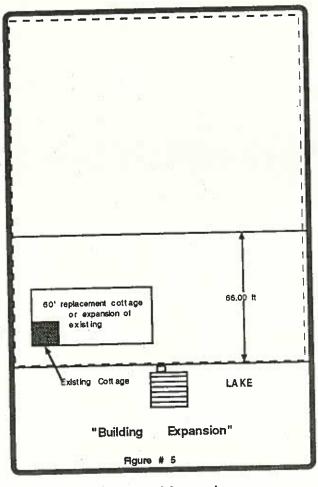
Based on discussion with the clerk of Cardiff Township, it was learned that as part of meeting the *appropriate* control requirements of the MNR, Cardiff Council will include a restriction of the expansions allowed for existing cottages within the road allowances as previously agreed to by MNR with both Burleigh Anstruther and Chandos townships. It is worth looking at what was agree to by the MNR as being *appropriate* controls in Chandos Township. In June 1995, Chandos council revised its shoreline alteration bylaw by passing bylaw 34-1995 which included a new section dealing with structure. Section 4.3 has application:

Where a dwelling unit was erected prior to the date of the passing of this bylaw and does not conform to the water setback as required by the zoning bylaw, such dwelling unit may be reconstructed, repaired, renovated or enlarged subject to the following provisions:

4.3.1 It does not further reduce the water setback, and

4.3.2 Any dwelling unit, after construction, repair, renovation or enlargement shall not have a shoreline frontage dimension greater than 40% of the total frontage or 60' which ever is lesser (Chandos 1995)

What are the implications of this formula and policy? Assuming a lot frontage of 150 feet, this by-law would permit the replacement of a very small modest cottage, located say ten feet from the shore of a cold water lake, with a two storey 60 foot long new monster cottage. The MNR has agreed to this approach as being appropriate control in order to allow sales of shore road allowances to proceed on cold water lakes. This appears to contradict its stated objective to retain shorelines of lakes in their natural state. If a cottage does not



exist on the shore road allowance, the zoning bylaw would require a new cottage to comply with much more stringent development setbacks of say 70' or 100' which is intended to preserve the shoreland of waterbodies in a natural state to provide a buffering effect to impacts of development.

12. Municipal Practices and Approaches

This section will outline the current practices of municipalities within Haliburton county regarding the disposal of the shore allowances on both warm and cold water lakes.

Figure # 6 provides a summary of the current practices found to be followed by the various municipalities which differ between cold and warm water lakes. Certain findings are highlighted and deserve comment. As shown neither Bicroft nor Monmouth townships offer for sale shore road allowances on either cold or warm water lakes, but do sell the building envelope areas. Cardiff is the only township in a position to sell allowances on cold water lakes as it is the only one which has in place MNR approved controls as discussed earlier.

Figure #6

Figure no						
SUMMARY 66' 9	shore i	oad				
allowances					MNR	Build
Municipality	66' Fo	or Sale	Bldg En	velope For Sale		on
	Cold	Warm	Cold	Warm	Controls	withou
	Lakes	Lakes	Lakes	Lakes	Approved	owning
Anson Hindon/		Yes	Yes	Whole	No	No
Minden	e di genç				,	
Bicroft	No	No	Yes	Yes	No	No
Cardiff	Yes	Yes	No	No	Yes	No
Dysart et al	No	Yes	No	No	No	Yes
Glanmorgan	No	Yes	Yes	Whole	No	No
Lutterworth	No	Yes	Yes	Whole	No	No
Monmouth	No	No	Yes	Yes	No	No
Sherborne	No	Yes	Yes	Whole	No	No
Snowdown	No	Yes	Yes	Whole	No	No
Stanhope	No	Yes	Yes	Whole	No	Yes

Dysart and Stanhope Townships do permit owners to build on the allowances without ownership. This is an interesting approach undermining MNR's attempts to regulate development based on controls associated with the disposal process.

13. Cost to Purchase Road Allowances

Apart from various municipal practices regarding the actual disposal of the road allowances, there are also variations in the costs that are charged. This section will outline this subject. When road allowance sales became common in the early 1980's, the province encouraged municipalities to adopt procedures establishing the charges associated with the purchases (OMOH 1981). According to subsection 316.(2) of the Municipal Act, the township councils shall by by-law set the sale price of the land to be sold (RSO 1980). The matter is solely within the discretion of the municipal council. Even so, Haliburton County Council became involve in the matter of cost associated with purchasing shore road allowances and at its June 18, 1980 meeting adopted the following policy stating:

That a uniform fee structure be used throughout the County by municipalities involved unless there are tradeoffs or different circumstances affecting the individual case, in which case the reason is to be explained to County, and if deemed reasonable the by-law is to be approved.

The suggested fee structure payable to the municipality is \$250.00 for each individual lot up to 150' of frontage, and at the rate of \$1.00 per foot for each additional foot closed beyond the 150' for each owner, plus administration fee. In addition the landowner shall pay all legal and survey cost.(County of Haliburton 1980) [emphasis added]

This policy actually implied that if the uniform fee structure is not followed or if a reasonable explanation was not provided, that the County would not pass the by-law supporting the Municipality's intention to dispose

of the property. This appear to seriously exceed the statutory role afforded to the County in the road closure process. In accordance with the Municipal Act, the County is entitled to be notified of the intentions of a municipality to pass a by-law to close and sell a shore road allowance. If the county council objects to the passing of the by-law, it shall notify the township and if the matter can not be resolved between the county and township councils, the matter can be resolved through an application to the Ontario Municipal Board (RSO1980). It is unlikely that County Council would proceed to the OMB on a matter of imposing a uniform county wide fee structure on member municipalities when this is clearly outside its jurisdiction. In fact, based on discussions with both Peterborough and Haliburton County staff members, neither of the county governments have ever objected to any of the hundreds of shore road closures in their respective jurisdictions.

Although there may have been a requirement for the County to encourage a common purchase price among their member townships, the <u>Municipal Act</u> is clear in that the local municipalities have the authority to set the sale price of land associated with sale of a highway over which the municipality has jurisdiction (RSO 1980).

Again in 1991, the County passed another resolution # 55/91 establishing new rates for sale of shore road allowances to be calculated at the rate of \$300.00 for each individual parcel up to 150 feet, and \$2.00 for each additional foot beyond 150 feet (Twp of Snowdown 1991). Only three of the eight townships offering road allowances for sale have adopted the fee structure indicated in the County's 1991 resolution. Reference Figure # 7.

Apart from the actual land cost, purchasers are required to pay for the survey and the administrative cost associated with the transaction incurred by the township including the advertising and legal cost. It is common practice

among municipalities to recover their cost of administration of the road closure and sale procedure. Deposits are received with applications and often the accompanying information indicates that the applicant is responsible for all costs incurred by the township in excess of the fee or deposits. Debate has taken place as the fairness of the municipality charging their ratepayer for administration cost. Are not the cost of municipal administration not already paid for by property taxes?

Municipal Char	ges for	Purcl	nasing Shore	Road	
Allowances				e de la companya de La companya de la co	
Townships	For Sale		Admin Cost	Cost for Land	
	Cold Lake	Warm Lake			
Anson Hindon/ Minden	No	Yes	\$450.00 deposit	\$250/100' +\$1/ft	
Bicroft	No	No	N/A	N/A	
Cardiff	Yes	Yes	\$2000 deposit	\$450/100'+\$4.50/f	
Dysart et al	No	Yes	\$625.00 deposit	\$250/150'+\$1/ft	
Glamorgan	No	Yes	\$100 fee	\$300/150'+\$2/ft	
Lutterworth	No ····	Yes	\$500.00 deposit	\$300/150'+\$2/ft	
Monmouth	No	No	N/A	N/A	
Sherborne et al	No	Yes	\$400.00 deposit	\$300/150'+\$2/ft	
Snowdown	No	Yes	\$500.00 deposit	\$300/150'+\$2/ft	
Stanhope	No	Yes	\$300.00/fee	\$250/150'+\$1/ft	

Figure #7 (data based on current application forms from various townships along with interviews of township staff)

Savings in survey, advertising and other administrative cost can be realised by adjacent property owners making a group application resulting in significant savings. A review of the township application information kits indicates that group purchases are encouraged.

A review of Figure #7 shows a range of charges for both the land cost and the administration charges. In certain situations, the township allow for a reduced deposit if a group purchase is arranged. Noteworthy, is the deposit required by Cardiff Township which, as part of its closure arrangement, requires a covenant to be prepared and placed on title as discussed earlier. Glamorgan has a very low fee of \$100.

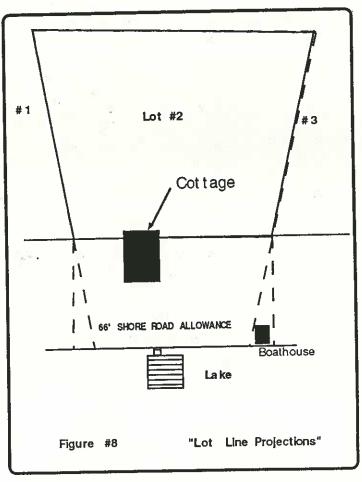
14. Lot Line Extensions

When the ownership of a shore road allowance is transferred to an abutting landowner, boundaries need to be established and surveyed as required to register the property title. Where the shoreline is straight and the abutting cottage lots are uniform, the existing side lot lines can be extended across the shore road allowance without creating any problems. In the situation where the existing cottage lot lines are not parallel, converging lot line extensions could affect the resulting property configurations and cause contentions with adjoining owners.

As an alternative, the Ontario Ministry of Housing in 1976, suggested that the municipality could, as an option to straight line projections of existing side lot lines, adopt a policy of stating that lot lines would be extended so that the line extends from the inner limit of the road allowance the shortest distance to the high water mark (OMOH 1976). In this case all lot owners would be ensured shore access (Figure # 8).

No rigid policy would likely address all situations created by various shore line configurations and existing long established uses including improvements established on the shore allowances. In Figure #8, the existing boathouse in fact could belong to lot #2. In this case the lot line between lots #2 & #3 could be established by agreement between land owners to be a straight line projection of the existing side lines. This would be dependent on the ownership of the boathouse.

A common practice among Townships in Haliburton is to use the side lot line extension method except where problems occur in agreeing to lot line extensions. As part of the purchase procedure, the applicant is required to obtain the adjoining owners written agreement of the lot line to be established. Lack of agreement presents problems. Based on discussions with staff from several townships, the generally practice has developed that if agreement can not be reached



between cottagers, the municipality does not proceed with the process of closure and sale.

This could present hardship for a property owner anxious to purchase the road allowance to solve various encroachment issues regarding the placement of structure on public property to satisfy mortgage and or insurance requirements or even to satisfy a condition of property sale. In 1992, Chandos Township in the northern part of Peterborough County, put in place a process for dealing with disputes regarding lot line extensions across shore road allowances. In the event that a property owner can not reach agreement with a neighbour regarding extension of side lot lines, the property owner can make application¹¹ for arbitration by a Lot Line Committee composed of three non-elected members (Municipality of Chandos 1992).

The basis for this arbitration process appears to be founded in section 299 of the Municipal Act which states:

Section 299(3) If such person disputes the sufficiency of the road or way of access provided, the sufficiency of it shall be determined by arbitration under this Act...(RSO 1980)

This arrangement by Chandos township is commendable. It provides for a resolution of disputes to the lot line extension problems in order that cottagers can proceed with the purchase of road allowances.

15. Emerging Issues

During the 1950's little regard was placed on building cottages on public lands adjacent to waterbodies. The casual administration of public lands permitting the development of cottages on near-shore lands has now caused both title and land-use planning problems. Could an error be repeated by not more carefully dealing with the flooded road allowances? In the future these

¹¹ Application fee \$300.00

submerged lands may also present problems. Even today, boathouses and other marine structure are being built on public lands.

But who owns these flooded shorelands? As discussed earlier, inconsistencies appear to exist in the current practices regarding the disposal of the shore road allowances in terms of how the flooded sections are dealt with. What is at stake may be the authority to regulate the submerged lands through either municipal zoning or the Public Lands Act. Does the MNR have the authority to regulate docks floating over municipal lands?

Even more interesting, who in the future may be in a position to charge annual fees for landowners to occupy these lands with floating docks of boathouse? Trent Severn Waterway is now looking at charging an annual fee for placement of private docking facilities on Waterway properties (TSW undated).

Another matter which is likely to surface is what is the real value that should be charged for the disposal? As is the case with potential dock fees, all levels of government are exploring creative revenue generating sources. What would happen it the municipalities decided to set the sale price of shore road allowances based on an appraised market value! Today's modest per foot charges will look very attractive in retrospect. No doubt, in the future, cash strapped municipalities will see these road allowances as more of a revenue source that reflected in current charges.

16. Conclusion

This paper has presented basic background information on the evolution of road allowances in Haliburton County through original surveys. Issues were raised regarding the complexities associated with transferring the public road allowances into private ownership to satisfy title problems created through the casual administration of our public land which included tacit approval to place major improvements on the shore road allowances.

As discussed in the foregoing, there has been an important shift in public policy over time related to the shore road allowances. In the mid 1800's, as seen by the instruction to the original surveyors, shore road allowances were laid out in order to provide access for the public to lands from the waterways which were at that time the principal means of transportation and travel. In 1980 the Crown decided to allow municipalities to sell shore road allowances provided established or proposed public access points were retained in public ownership. We can see that the considerations today have been reversed. Public access from lands to the waterways is now the concern of the Crown.

The Crown in fact has provided for *public* access to the waterways, but in its land disposition policies has removed the rights of *private* landowners to acquire riparian rights to waterbodies through the survey instruction to place a straight line boundary at the high watermark.

The current MNR policy to restricting expansions of existing cottages on shore road allowances under its control by only selling the building envelope area, acknowledges the important role these properties provide in buffering the negative ecological effects of cottage development around lakes. The MNR shore road allowance disposal policy is in direct contrast with the

expansion formula for existing cottages on shore road allowances which MNR has agreed to with certain townships as being appropriate municipal controls to regulate near shore development on cold water lakes. Sustainable development approaches should apply to all shore road allowances whether under crown or municipal control and also should apply to both warm and cold water lakes.

Haliburton lakes are the foundation of the area economy and inappropriate development leading to deteriorated water quality could undermine future recreational use and investment. The shore road allowances provide a valuable *opportunity* for municipal and provincial planners to apply development controls through the purchase agreements with abutting landowners in order to protect lakes from inappropriate development of the sensitive areas adjacent to lakes.

It is anticipated that this background work will contribute to a clearer understanding of certain aspects of the subject while it is also recognized that many issues raised will provide a base for further research and discussion on this important topic impacting on and development adjacent to all waterbodies throughout Haliburton County.

Acknowledgements

The material in this study is drawn largely from information willingly provided by both the municipal staff throughout Haliburton County and staff at various office of the Ministry of Natural Resources. A conscious effort has been made to report all finding with accuracy. I would like to thank all those for their co-operation in the research required in this study.

Finally, sincere thanks goes to Professor Tom Whillans for his guidance and encouragement throughout the period of this study.

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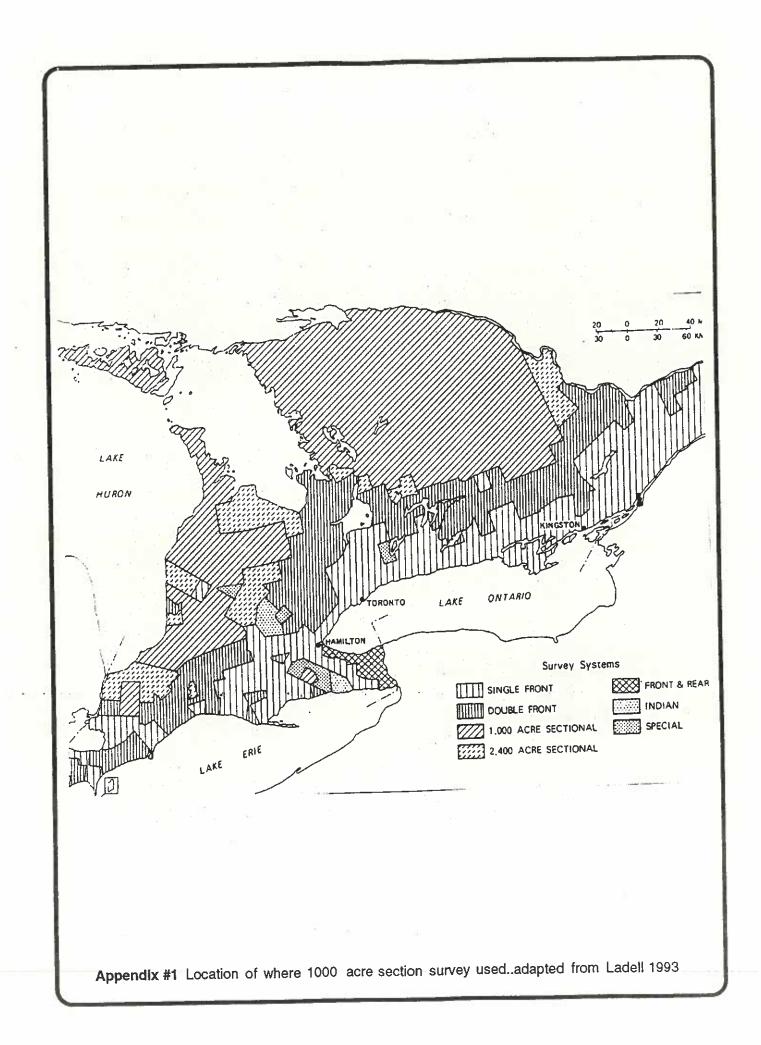
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~ / \	McCLINTOCK 1876 M. McFadden 42548	1877 A. Niven 43460	1877 A. Niven 42784	NIGHTINGALE 1878 A. Niven 46457
	SHERBORNE 1862 C. Brady 36690	HAVELOCK 1861 B. W. Gossage 51995	EYRE 1863 J. J. Francis 51710	CLYDE 1863 C. Sproat 49806
HINDON 1861 C. Brady 42048	STANHOPE 1860 G. Stewart 33437	GUILFORD 1863 F. A. Baldwin 47298	HARBURN 1862 J. J. Francis 43856	BRUTON 1863 B. W. Gossage 42100
ANSON 1859 C. Brady 40398	MINDEN 1859 J. W. Fitzgerald 46000	DYSART 1862 J. J. Francis 43620	DUDLEY 1862 B. W. Gossage 42010	HARCOURT . 1862 W. A. Drennan 39044
LUTTERWORTH 1859 C. Unwin 41776	SNOWDON 1859 M. Deane 50938	GLAMORGAN 1862 E. R. Ussher 50603	MONMOUTH 1862 J. W. Fitzgerald 53528	CARDIFF 1862 J. W. Fitzgerald 68238
0 5 10	15 km 10 mi.	u u		N.

DYSART Township
1862 Date of survey

J. J. Francis Surveyor
43620 Acreage

Appendix #2 Summary of survey information as adapted from works of Robert Paul Ryan 1978. Townships purchased by of Canada Land and Immigration Company are outlined.

GENERAL INSTRUCTIONS.

- 1. Ascertain the bearings of all the lines you survey or verify by Astronomical observations, and note the variation of the Magnetic needle at the places of observation, and wherever there is any remarkable change in its amount. Enter the details of all your Astronomical observations in your field-book.
- 2. Clear out your lines well, and blaze the adjacent trees distinctly on three sides, i. c., one blaze on each side in the direction of the line, and one on that side by which it passes.
 - 8. Take a back observation at each station.
- 4. Verify the length of your chain previous to commencing operations, and frequently during the progress of the survey, and pay particular attention to accuracy in your measurements, and to the correct marking of your posts, to ensure which you will select your chain-boarers with strict regard to good conduct and fitness for duty, employing those only on whose honesty and capacity you can rely. In all your measurements, the horizontal distances must, by levelling the chain, be ascertained. Use only steel arrows or pins.
- 5. Your theodolite must be often examined to prevent errors which would arise from the derangement of its adjustments.
- 6. Trace all the lines in the middle of the road allowances, planting the posts at the distance of fifty links from the lines on both sides thereof. Make the posts of the most durable wood you can find, squaring about two fees of the top, and cutting the numbers of the Lots, Concessions, &c., with a proper marking tool. The posts at the corners of towns and townships to be at least six inches square, those at the ends of concessions five inches, and the lot posts four inches, all planted firmly in the ground: and in the survey of farm lots and township boundaries, but not in the survey of town lots, taking the courses and distances to the nearest trees, which must be blazed in a conspicuous manner, and marked B. T. Enter the courses and distances from the posts to those trees, and their kind, and apparent diameter, in your field-hook. Where a tree stands in the place for a post, blaze it on four sides, and mark it as you would the post. Where they can be had, place stones round the posts at the corners of townships.
- of links in breadth, by 50 7. The regular farm lots are to be 20 chains acres each, with road allowances, one 100 OO links in depth, containing lot . The park chain in width, between each alternate concession and every links in depth, links in breadth, by chains lots, chains chains each: and the town lots containing links in depth, containing links in breadth, by chains each, and the concessions and lots must be numbered, as shown on the

accompanying projected plan, which must be returned to this Department.

8. If your survey contains an eligible site for a town-plot, mark it on your plan, and

- report on its capabilities.

 O Make a diligent search for, and adhere to, the boundary lines drawn, and posts
- 9. Make a diligent search for, and adhere to, the boundary lines drawn, and posts planted in the original survey of the adjacent townships, to prevent encreachments.

10. Traverse may lakes you may find within the limits of your survey, in order to ascertain the areas of the lots adjoining them. Lay out road allowances round those lakes which your road lines interced and stone the banks of tivers where necessary.

11. No lines embraced in your survey are, in any case, to be run or surveyed by any person but yourself, or some other duly admitted Provincial Land Surveyor, whom this Department may authorize you to employ.

12. Ascertain the names of all the squatters on the lands you survey, and the position, extent, and value of their improvements, with such other particulars as will enable you to make a return of inspection of all the lots in the accompanying form which you will transmit apart from your field-hook.

12. As soon as possible after completing your field work, you will furnish the Department with a pian thereof, on a scale of forty chains to an inch, exhibiting the natural features of the country, such as hills, swamps, marshes, meadows, lakes, streams and water-fails, and the clearings and buildings of the settlers; also, the proper sites for mills, town-plots, barbours, and other public improvements. Mark on your plan the lengths and bearings of the outlines of all the irregular lots and their contents in acres, with the total area of your survey. Mount your drawing-paper on thin linea or cotton, well stretched on your drawing-table, previous to drawing your plan, and roll, not fold it, when you send it to this Department.

14. You will keep a diary, in the form transmitted herewith, containing a detailed account of your proceedings; the number of chains surveyed each day; when you hired and when you discharged your men, and their names; the kind of weather, &c.

15. Your field-book is to be kept in the accompanying form, comprising the Astronomical courses of all the lines you have run or verified—the Magnetic variation—the distances in chains and links from the points and departure in the lot, concession, &c., to each object noted-the kind and quality of the soil and timber, entering each kind of timber in the order of its relative abundance—the general nature of the face of the country, whether evel, rolling, broken, hilly or mountainous-all marshes, swamps and meadows-all lakes and ponds, with a description of their banks, and whether their waters be deep or shallow, pure or stagnant-all springs-all brooks and rivers, with their width, depth and course, rapids and falls, giving the estimated difference of level in feet, and stating whether they afford mill-sites-all mines and minerals-all travelled roads-the tracks of hurricanes, as shown by the fallen timber-all offsets or Trigonometrical observations, by which you have obtained the measurement or distance of any line or part of a line which could not be actually measured, or the distance of any object from a line-the distances at which you met and at which you left any lake, buy, pond, marsh, swamp, meadow, stream, windfall, precipice, hill or mountain, stating whether the slopes of the latter two he steep or gradual, and their inclination-all posts planted, the kind of wood of which they are made, their dimensions and marks, with the courses and distances to bearing trees, and the details of all your Astronomical observations, ir.c., the place, day, hour, abitude, azimuth, &c., methods of working and results.

- 16. Your report of survey must contain a concise summary of your proceedings, with a few general observations on the Physical Geography of the country, its capabilities and the best mode of developing them. Write it on paper of the same size as the printed forms of field notes and diary, as it will be bound with them.
- 17. The copy of your field-notes, diary and report of survey for this Department are to be entered in the accompanying printed forms. Number the pages of your field notes, and index them. Sum up the columns of your diary and carry forward the amounts, so as to give the grand totals on the last page. Do not bind your field notes, diary and report of survey.
- 13. The pay and allowances of yourself and of your party, which must not exceed ten in number, chain-bearers included, are to be at the daily rates of blood yourself, blood for your chief chain-bearer, for your second chain-bearer, cach for your axo men, and Sold each for your other assistants, with an allowance of a day each in lieu of rations.
- 19. You will also be allowed to charge a reasonable amount for the transport of your provisions and camp equipage, for the travelling expenses of yourself and your chain-bearers, and for the stationery required for the service, for all of which you must furnish receipts in duplicate, and detailed statements on the accompanying forms.
- 20. Your account, pay-list, statement of charges for returns of survey and transport to be in duplicate, and in the accompanying form.
 - 21. Your field notes, diary, account and pay-list, to be duly attested on eath.
- 22. With a view to obtaining a knowledge of the Gology of the country in which your survey lies, you will collect and transmit to this Department, finall specimens, (from one to two cubic inches or larger, according to the facility for transporting them to the settlements,) of the fixed rocks you meet with on your lines—attaching a number to each, and wrapping it up in birch or cedar bark, or such other suitable materials as are to be had on the spot, and noting the exact locality in your field-book, and the dip and strike of the rock if stratified. You are not, however, to allow this materially to retard the progress of your survey.
- 28. Report the progress of your survey once a formight, furnish a sketch or diagram shewing the lines surveyed, and the general quality of the land.
- 24. You will endeavour to conduct this survey with a judicious economy, combining accuracy with despatch.

I have the honor to be, Sir.

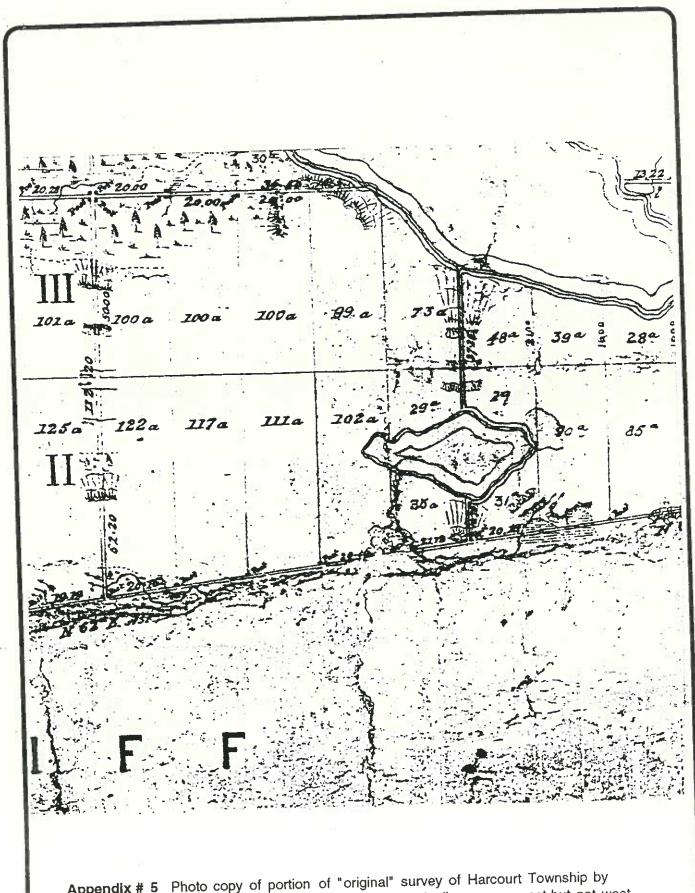
Your most obedient Servant,

Crown Lands Department,

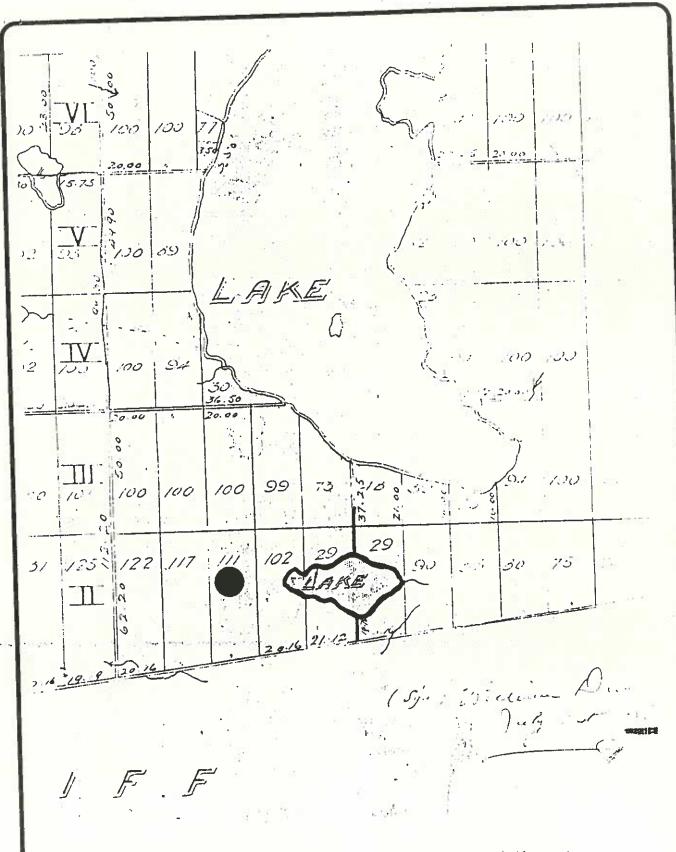
Commissioner of Crown Lands.

Austructioned to brownial Land Jarveyor William Dremman to Lurvey with farder lots the lownship of Mairebourt I have to instruct you to proceed to lis performance of the whom service without thelay. The luis to be surveyed are marked in red on the accompanying projected place . The hourship of Nancourt is hounded on the North by the burnestife of Bruton on the South by the township of Ourdiff on the East by the township of Househell are North by: 08 20 & and Sty 08. 20 11. autronomically and the bearings of the side road lines are ex 20: 51: 40: 1. 9 8. 20. 51 40: 6. alshonomically The bol are to be 20 Chains in width with an allowance for road of one chain at every be sumbered from their towards last as represented the accompanying projected plan and the onceptions fifty Chairs in depth with a Similar allowance for road between cach alternato You will plant fish at the several funity indi-Checkway - called by the black dots on the accompanying projested plan. have the honor tole Mave the pour-lor's Cheat low 3 (lynn) Audrew blussell Cynn, Audrew blussell trucut of Crownfund, metro qualecunder 1801. With Rounded flow; End Sato; Del Seguiron & F. Ser in more for the

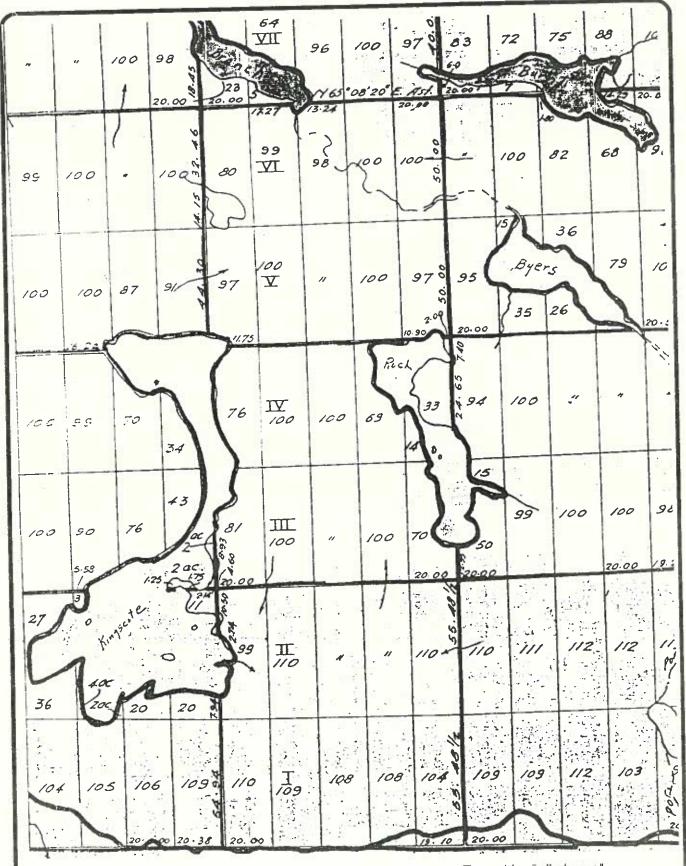
Appendix #4 Instructions, dated 9 Dec1861, to Provincial Crown Surveyor William Drennan to survey Harcourt Township



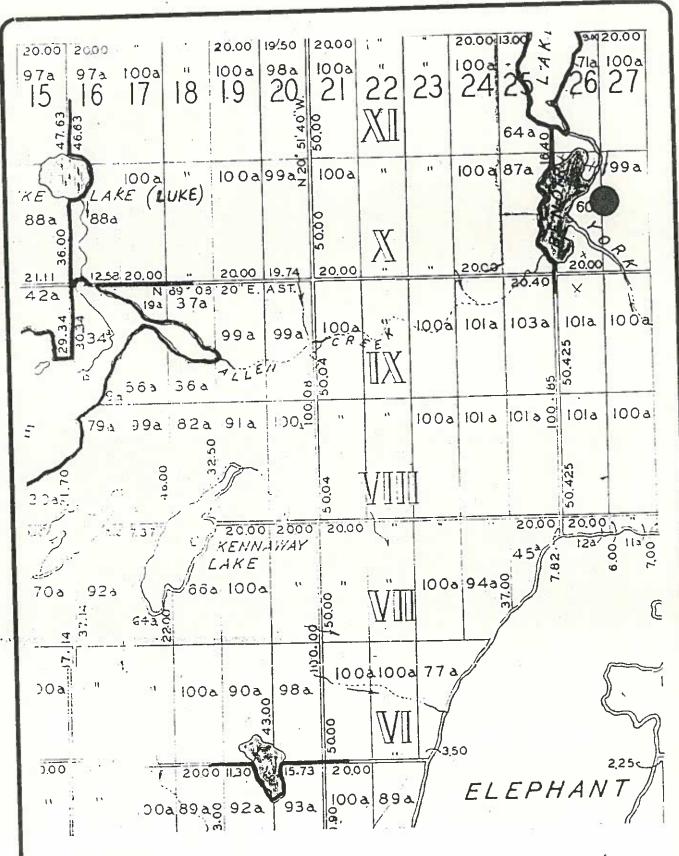
Appendix # 5 Photo copy of portion of "original" survey of Harcourt Township by Surveyor W.A. Drennan dated July 1, 1862 showing road allowance on east but not west side of small lake in Concession II, south of Elephant Lake. Courtesy the office of the Surveyor General of Ontario



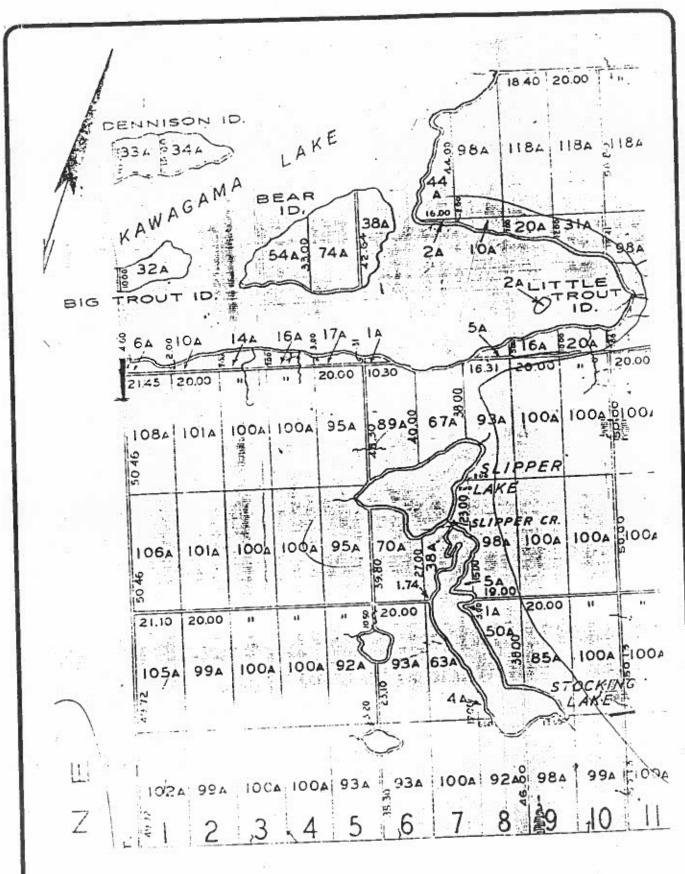
Appendix # 6 photo copy of portion of "copy of original survey" of Harcourt Township filed with Registry office in Minden indicating road allowance totally around small lake south of Elephant Lake in Concession II. Outline emphasis added by author. This is not in accordance with the "original" survey. Courtesy Land Registry Office Minden.



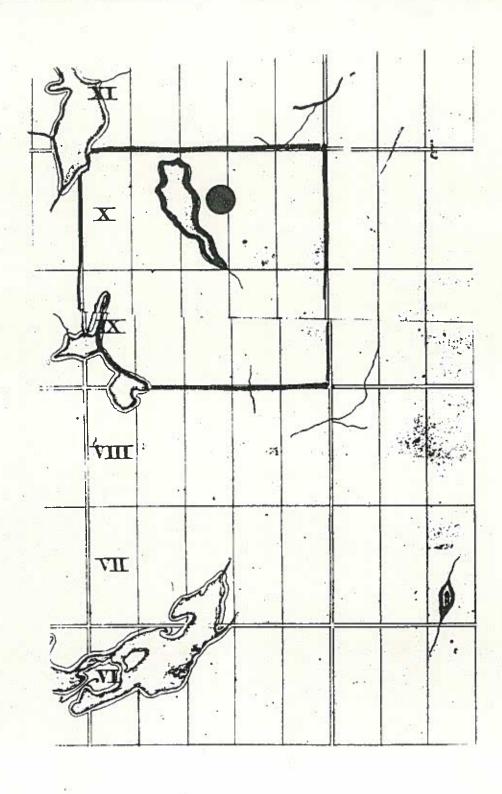
Appendix #7According to this undated survey map of Brunton Township, "all shores" of lakes do not have shore road allownaces. Note on Rock, Kingscote, Branch and Branch Lakes that certain portions of shores do not indicate shore allowances. Courtesy of Haliburton Highlands Museum.



Appendix #8 Copy of portion of Harcourt Township survey plan of by Department of Land and Forest dated Dec 1950 showing several examples where shore road allowances were only plotted (outline empahsis added by author) around shortest side of lakes connecting concession road allowances. Courtesy Haliburton Highlands Museum.



Appendix # 9 Rare example of shore road allowance on island. Note Bearand Dennison islands on Kawagama Lake. Info taken from map NumberT-681 dated Nov 1950 of Havelock Township by Department of Lands and Forest. Courtesy Haliburton Highlands Museum



Appendix #10 Lake shown in Concession X on "copy of original" survey plan of Hindon Township dated Oct 1861, is totally within the 1000 acre section. This plan shows (outline emphasis added by author) road allowance around the lake even though no concession lines intersect the lake which appears to be inconsistent with the survey general instructions appendix.....Map courtesy of Land Registry Office Minden.