

Board Correspondence

October 2024

Date	From	Subject
September 4, 2024	Coleman Township	Resolution, letter and staff report: Incidental Cabin in Municipal Boundaries.

Resolution
Regular Council Meeting



Agenda Number: 9.4.
Resolution Number 24-248
Title: 24-R-31 Incidental Cabin in Municipal Boundaries
Date: Tuesday, September 3, 2024

Moved by: M. Lubbock
Seconded by: S. Cote

BE IT RESOLVED THAT Council acknowledges receipt of Report Number 24-R-31 entitled "Incidental Cabin in Municipal Boundaries"; and

FURTHER THAT a letter be sent to the Province recommending the establishment of a provincial policy regarding incidental cabins within municipal boundaries and forwarded to Ontario to the Minister of Natural Resources Hon. Graydon Smith, to the Minister of Indigenous Affairs and First Nations Economic Reconciliation, Hon. Greg Rickford, to the Minister of the Environment, Conservation and Parks Hon. Andrea Khanjin, the Local Provincial Member of Parliament (MPP) John Vanthof, Temiskaming Municipal Association, Federation of Northern Ontario Municipalities, the Timiskaming Health Unit, Fisheries and Oceans Canada, and Anthony Rota MP for Nipissing - Timiskaming.

CARRIED

Certified True Copy

Christopher W. Oslund
CAO/Clerk - Treasurer



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September 4, 2024

The Honourable Graydon Smith
Minister of Natural Resources
Whitney Block Room 6630
99 Wellesley St. W
Toronto, Ontario
M7A 1W3
Email: graydon.smith@pc.ola.org

Dear Minister Smith,

Re: Recommendation for the Establishment of a Provincial Policy on Incidental Cabins within Municipal Boundaries

I am writing to bring to your attention a matter of growing concern within our community, and to recommend the establishment of a provincial policy regarding incidental cabins within municipal boundaries.

As you are aware, Indigenous community members, particularly those with ancestral ties to the land, have rights under treaties with the Crown to engage in traditional practices such as hunting, fishing, and gathering on public lands. These practices are integral to their cultural heritage and way of life. However, the increase in incidental cabins-temporary or semi-permanent structures used during these activities within municipal boundaries has raised several issues that need to be addressed at the provincial level.

Key Concerns:

- 1. Traditional Rights vs. Municipal By-laws:** While respecting the traditional rights of Indigenous and other community members, it is important to ensure that incidental cabins comply with municipal by-laws, including zoning regulations, official plans, property standards, and the Building Act.

In addition, it should be established that these cabins are indeed incidental to hunting and fishing as well as communal, not private recreational establishments as per *R.v. Sundown*.

2. **Environmental Protection:** There is a need for clear guidelines on the minimum setbacks from lakes, rivers, and other residential dwellings to protect sensitive ecological areas, shorelines, and the environment. Including the maintenance of vegetative buffers along the shoreline.
3. **Public Health and Sanitation:** Appropriate standards for wastewater facilities (both grey & black water) and garbage disposal are essential to protect public health and prevent environmental contamination.
4. **Taxation and Election Participation:** Clear guidelines are required regarding the taxation of incidental cabins and the participation of their occupants in municipal elections, particularly for those residing seasonally.
5. **Protection from Political and Social Marginalization:** It is deeply concerning that some citizens (both Indigenous and non-Indigenous) faced intimidation, political marginalization and social exclusion particularly when conflicts arise over land use and traditional practices. A provincial policy must include safeguards to prevent such abuses and ensure that all citizens (Indigenous and non-Indigenous) are treated with respect and fairness.
6. **Public Access to Shared Resources:** the policy must also consider the broader public's right to access shared resources. Incidental cabins should not obstruct public access to public lands, water bodies, or other resources. The policy should aim to strike a balance that allows for both Indigenous practices and public enjoyment of shared spaces.

Recommendation:

The Corporation of Coleman Township recommend that the province establish a comprehensive policy that:

- Acknowledges and integrates the rights of Indigenous community members to engage in traditional practices on public lands within municipal boundaries.
- Ensures that incidental cabins are compliant with municipal by-laws, including zoning, official plans, property standards, and environmental regulations.
- Ensures that incidental cabins are compliant with *R.v Sundown* and that they are not private recreational cabins exerted on recreational lakes.
- Provides guidelines for minimum setbacks from lakes, rivers, and residential areas to protect sensitive ecological zones and community safety.
- Mandates standards for wastewater facilities, garbage disposal, and other public health measures to protect the well-being of residents and the environment.
- Clarifies taxation and election participation rules for occupants of incidental cabins.
- Includes safeguards to protect all citizens from political and social marginalization.

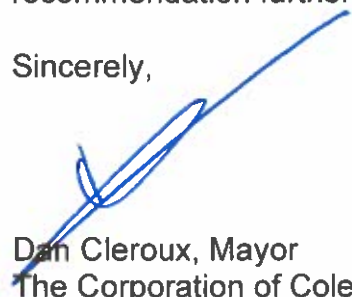
- Engages Indigenous communities, municipal governments, and other stakeholders in a collaborative consultation process.
- Balances public access to shared resources with the rights of Indigenous users.

Conclusion:

The establishment of such a policy will help balance the rights of community members with the need to protect municipal interests, public health, and the environment. It will also provide municipalities with a clear framework to manage incidental cabins effectively, ensuring that our communities remain safe, healthy, and harmonious.

Thank you for your attention to this matter. I would be pleased to discuss this recommendation further or provide additional information as needed.

Sincerely,



Dan Cleroux, Mayor
The Corporation of Coleman Township

Councillor Sue Cote
Councillor Lois Perry
Councillor Marilyn Lubbock
Councillor Patrick Rieux

c.c. Hon. Andrea Khanjin, Minister of the Environment, Conservation and Parks
Hon. Greg Rickford, Minister of Indigenous Affairs and First Nations Economic Reconciliation
John Vanthof, MPP Timiskaming - Cochrane
Temiskaming Municipal Association
Federation of Northern Ontario Municipalities
Timiskaming Heath Unit

Encl. Report 24-R-31
Appendix 2 – Bass Lake Crown Land – Pictures (Page 1 of 9)



REPORT TO COUNCIL

Meeting Date: 03/09/2024

Report Number: 24-R-31

Presented by: Suzie Fournier, Deputy Clerk

Department: Administration

REPORT TITLE

Incidental Cabin in Municipal Boundaries

RECOMMENDATION(S)

BE IT RESOLVED THAT Council acknowledges receipt of Report Number 24-R-31 entitled “Incidental Cabin in Municipal Boundaries”; and

FURTHER THAT a letter be sent to the Province recommending the establishment of a provincial policy regarding incidental cabins within municipal boundaries and forwarded to Ontario to the Minister of Natural Resources Hon. Graydon Smith, to the Minister of Indigenous Affairs and First Nations Economic Reconciliation, Hon. Greg Rickford, to the Minister of the Environment, Conservation and Parks Hon. Andrea Khanjin, the Local Provincial Member of Parliament (MPP) John Vanthof, Temiskaming Municipal Association, Federation of Northern Ontario Municipalities and the Temiskaming Health Unit.

INTRODUCTION

The purpose of this report is to recommend the province establish a provincial policy regarding incidental cabins within municipal boundaries. This policy aims to balance the rights of Indigenous community members to engage in traditional practices such as hunting, fishing, gathering, and other activities on public lands, while also respecting municipal by-laws and regulations governing land use, environmental protection, and public health within municipal boundaries.

BACKGROUND

Indigenous community members, particularly those with ancestral ties to the land, often have the right to hunt fish and conduct other traditional activities on public lands. These rights are enshrined in treaties, made with the Crown and are integral to the cultural heritage and livelihood of many Indigenous

communities.

However, the increasing presence of incidental cabins temporary or semi-permanent structures used during these activities within municipal boundaries has raised concerns related to municipal by-laws, including zoning regulations, official plans, property standards, environmental protection, public health and community safety.

INFORMATION

The Supreme Court of Canada's 1999 decision in *R.v. Sundown* provided that Indigenous peoples have the right to construct or occupy buildings on public lands that are “incidental” to the exercise of existing Aboriginal or treaty rights.

An accessory building, as contemplated in *Sundown*, means a cabin, building or structure used as a shelter associated with or reasonably connected with the exercise of an Aboriginal or treaty right. The Supreme Court's decision also recognized compelling public objectives with which these must be balanced.

The Ministry of Natural Resources recognizes that many Indigenous communities have Aboriginal or treaty rights that can be exercised on public lands. Community members may have the right to hunt, fish, or conduct other activities (e.g., gathering) on public lands, based on traditional practices and the terms of treaties they have entered with the Crown.

The development of a policy in 1999 enabled the Ministry to recognize the benefit of working closely with Aboriginal communities on the implementation of this policy and the *R.v Sundown* including the opportunity to enter consensus arrangements with Aboriginal communities and organizations where it would be mutually beneficial.

The objective of this policy was to support the procedure and any arrangement that the ministry might enter with an Aboriginal community or organization. The policy was to provide clear and consistent direction on how the ministry would accommodate the construction and occupancy of buildings on public lands incidental to the exercise of Aboriginal and treaty rights, as provided for in *R.v. Sundown*. This guidance was to ensure that the location, construction and occupancy of accessory buildings on public lands were consistent with, for example, conservation of natural resources, public safety, other public interests or land management objectives.

In accordance with the Public Lands Act (Section 14) and Provincial Parks and Conservation Reserves Act (Section 22), a work permit prior to construction of any building on public land. Work permits are used by the Ministry to ensure that sound planning and conservation decisions are made before any types of buildings are constructed on public land.

The work permit was to facilitate the exercise of existing Aboriginal and treaty rights on public lands, the Ministry was using the work permit process as an administrative mechanism to ensure the location, construction and occupancy of accessory buildings on lands.

In 2003, the Ministry of Natural Resources (MNR) attempted to stop an Aroland couple from building a hunt cabin on Ogoki Lake's Comb Island in the summer of 2003. The MNR issued a stop-work order, saying the couple needed a work permit to build at the site. Ontario appealed to the Ontario Court of Justice, and the couple won by their constitutional rights under Treaty 9. *R.v. Meshake*.

Treaty rights are rights set out in either a historic or modern treaty agreement. These rights are recognized and affirmed by Section 35 of the *Constitution Act, 1982*.

Treaties define specific rights, benefits and obligations for the signatories that vary from treaty to treaty. Treaties and treaty rights also vary depending on the time and circumstances in which they were negotiated.

As noted by an employee, Resource Liaison Specialist for the Ministry of Natural Resources in the North Bay District, the court case resulted in the MNR abandoning its policy regarding "Incidental cabins".

It is important to note that these structures MUST be incidental to hunting and Fishing and must be communal. They can not be private or for recreational purposes and may not block existing access to the public.

ISSUED AND CONSIDERATIONS

1. **Traditional Rights and Treaty Obligations:** It is essential to acknowledge the traditional rights of Indigenous community members to engage in activities on public lands, as stipulated in treaties with the Crown. These rights must be respected and integrated into any policy governing incidental cabins within municipal boundaries.

In addition, it should be established that these cabins are indeed incidental to hunting and fishing as well as communal, not private recreational establishments as per *R.v. Sundown*.

2. **Municipal By-laws and Regulations:**

Zoning By-laws: Municipal zoning regulations must be considered when establishing incidental cabins. These regulations often dictate the allowable land use, including residential, recreational, and conservation zones.

Official Plan By-law: Municipal official plans guide long-term development and land use. Any policy on incidental cabins must align with these plans to ensure the sustainable growth and community planning.

Property By-law and Building Act: These laws govern property standards, building safety, and land use. Incidental cabins must adhere to these regulations to ensure the safety of residents and the integrity of the community.

3. **Environmental Considerations:**

Minimum Setbacks and Distance to Lakes and Other Residential Dwellings: A provincial policy should establish minimum setbacks for incidental cabins from lakes, rivers, and other residential properties to protect water quality, prevent erosion, and maintain privacy and safety for all residents.

Protection of Shorelines and Sensitive Areas: Shorelines and other ecologically sensitive areas are vital to the health of local ecosystems. A policy must include provisions to protect these areas from potential harm caused by the construction and use of incidental cabins.

4. **Public Health and Sanitation:**

Wastewater Facilities: Incidental cabins should be required to have appropriate wastewater facilities to prevent contamination of the environment and ensure the health and safety of the residents, visitors and indigenous citizens.

Garbage Disposal: Proper garbage disposal methods must be enforced to prevent littering, pollution, and the attraction of wildlife to residential areas.

5. **Taxation and Election:**

Taxation: The policy should clarify the tax status of incidental cabins within municipal boundaries, ensuring that all structures contributing to municipal services are taxed appropriately.

Election Participation: Residents of incidental cabins should be granted clear guidelines regarding their participation in municipal elections particularly if these cabins are occupied seasonally or temporarily.

6. **Protection from Political and Social Marginalization:** Indigenous communities have historically faced intimidation, political marginalization and social exclusion, particularly when conflicts arise over land use and traditional practices. This situation has been exacerbated by situations where Indigenous community leaders or local governments have prioritized political interests over the protection of public rights and Indigenous rights. A provincial policy must include safeguards to prevent such abuses and ensure that all citizens (both Indigenous

and non-Indigenous) are treated with respect and fairness.

7. **Public Access to Shared Resources:**

While it is essential to protect Indigenous rights, the policy must also consider the broader public's right to access shared resources. Incidental cabins should not obstruct public access to public lands, water bodies, or other resources. The policy must balance the rights of Indigenous users with the interests of the general public in a way that promotes coexistence and mutual respect.

RECOMMENDATION

To address these issues, it is recommended that the province establish a comprehensive policy on incidental cabins within municipal boundaries that includes the following elements:

1. **Acknowledge of Traditional Rights:** The policy should explicitly recognize the rights of community members to hunt, fish, and gather on public lands as per treaties with the Crown.

In addition, it should be established that these cabins are indeed incidental to hunting and fishing as well as communal, not private recreational establishments as per *R.v. Sundown*.

2. **Consultation and Engagement with Indigenous Communities:** A provincial policy must be founded on meaningful consultation and engagement with Indigenous communities. This involves not only discussions with Indigenous leaders but also broader community involvement to ensure that all voices are heard. The policy should be co-developed with Indigenous representatives to reflect their needs, rights, and perspectives fully.
3. **Collaboration with Municipal Governments and Stakeholders:** Municipal governments, environmental organizations, public health agencies, and other stakeholders must be involved in the policy development process. This collaboration should focus on creating a framework that balances municipal responsibilities with the protection of Indigenous rights. The policy should encourage municipalities to work alongside Indigenous communities in finding solutions that are mutually beneficial.
4. **Alignment with Municipal By-laws:** the policy must require that incidental cabins comply with municipal zoning, official plans and property by-laws, ensuring that these structures are safety and appropriately integrated into the

community.

5. **Environmental Protection Measures:** Minimum setbacks from lakes, rivers and residential dwellings should be established to protect sensitive areas, shorelines, and ensure the privacy and safety of all residents.
6. **Public Health and Sanitation Standards:** Incidental cabins should be required to have proper wastewater facilities and garbage disposal systems to protect public health and the environment.
7. **Taxation and Election Guidelines:** The policy should provide clear guidelines on the taxation of incidental cabins and the rights of their occupants to participate in municipal elections.
8. **Protection Against Political Bullying and Marginalization:** To safeguard Indigenous communities from political bullying and marginalization, the policy should include strong protections against discriminatory practices and ensure that Indigenous citizens have access to legal and political support. This could involve establishing oversight mechanisms to monitor municipal actions and providing resources for Indigenous communities to advocate for their rights, while respecting the rights of non-Indigenous citizens.
9. **Public Access Considerations:** The policy should ensure that while Indigenous rights are respected, public access to shared resources is not unjustly restricted. This could involve setting clear guidelines for the placement and use of incidental cabins to ensure they do not obstruct public pathways, waterways, or other communal resources. The policy should aim to strike a balance that allows for both Indigenous practices and public enjoyment of shared spaces.
10. **Education and Awareness Initiatives:** Finally, the provincial policy should include education and awareness initiatives aimed at both Indigenous and non-Indigenous communities. These initiatives should focus on the importance of respecting Indigenous rights, the cultural significance of traditional activities, and the need for cooperation and mutual respect in resolving conflicts.

CONCLUSION

The establishment of a provincial policy on incidental cabins within municipal boundaries is essential to addressing the complex issues that arise when traditional Indigenous rights intersect with municipal governance. By prioritizing consultation, collaboration, and the protection of Indigenous citizens from political and social

marginalization, the policy can help ensure that Indigenous communities are treated with the respect and fairness they deserve. This approach will not only uphold legal and moral obligations but also promote a more harmonious and inclusive society where Indigenous and non-Indigenous communities can work together for the common good.

ATTACHMENTS

Appendix 1 – Letter to the Honorable Graydon Smith