

OPEN SPACE MANAGEMENT

Encroachment Correction Policy

Background

As used in this policy statement the term “Encroachments” involve a wide variety of intrusions by landowners, including building of retaining walls and/or structures, landscaping and dumping on Town land.

Several Town bodies hold land under their jurisdiction, including the Natural Resources Commission, Board of Selectmen, Board of Public Works, School Committee, Board of Library Trustees and the Municipal Light Plant Board.

In order to ensure that there is one policy on encroachments governing all Town land, a working group comprised of representatives of all Boards with jurisdiction over Town land and the Trails Committee studied the issues relating to encroachments and have relied heavily on the work undertaken by the Natural Resources Commission with its adoption in 2006 of an “Encroachment Correction Policy”. The working group recommended that each Board with land under its jurisdiction adopt this Policy Statement along with the encroachment correction process. The working group also recommended that each Board, in its assessment of encroachments on land under its jurisdiction, classify the encroachments based on the criteria set forth below.

Policy Statement

It is the policy of the Town to protect and preserve Town land. Accordingly, as a general rule, the Town will seek to correct encroachments on Town land, to be carried out by the Board under whose jurisdiction the land is located. The encroaching party will be required to restore the land to its original condition. The encroaching party will be required to pay for all expenses related to correcting the encroachment, including, but not limited to, having the land surveyed and marked and for developing and implementing a restoration plan subject to the review and approval of such Board. In the absence of the cooperation by the encroaching party, such Board, as land owner, may develop and implement such restoration plan or seek further legal remedies, including the imposition of a municipal lien with the approval of the Board of Selectmen.

Classification

Given the variety of encroachments on Town land, the potentially significant use of staff resources and the cost of enforcing this policy and correcting encroachments, the Town recognizes the need to determine priorities for enforcement. To this end, the Town has categorized encroachments on Town land into the following three levels:

- Level III: Encroachments that pose potential or immediate safety, health or other hazardous condition
- Level II: Encroachments which impose significant intrusions on Town land by, including but not limited to, structures, landscaping, or significant dumping, that impedes the public’s ability to use and enjoy Town land; or impede the public awareness of where the Town land ends and privately owned land begins
- Level I: Other encroachments on Town property not falling within Level II or Level III.

OPEN SPACE MANAGEMENT

Encroachment Correction Process

1. a. Document alleged encroachment in Board or department log. A log template is attached.
b. Enter information regarding encroachment into Town's encroachment log on Town H Drive
2. Research: Contact Wellesley GIS office at 781-431-1019 x2289 and request creation of a GIS orthophoto printout for address of potential encroachment location and to determine approximate property boundaries. With GIS orthophoto, visit site and take photographs.
3. Classification of Level of Encroachment: Using the Levels set out in the Policy, classify the Level of Encroachment within 45 days of notice of encroachment.

NOTE: The following steps of the correction process should **only** be used if a Board confirms the encroachment and determines that correction enforcement should be taken. LEVEL III encroachments must be pursued for correction.

A Board shall pursue correction in the following way:

4. Notice Letter: Send certified letter to property owner signed by enforcing department head or designee, including the following information:
 - Inform property owner of encroachment, including description of the encroachment and specific location
 - Request property owner to call the signer of the Notice Letter to schedule a site visit within 10 days to review site for purposes of discussing development of a site plan to correct encroachment.
 - Request that property owner hire a MA Licensed Registered Land Surveyor or MA Professional Engineer to survey his/her property boundaries, if needed.
 - Advise owner that they will be required to pay for all expenses related to correction of the encroachment, including any costs incurred by the Town.
5. **If a wetland is suspected**, the NRC's Wetlands Protection Committee **must** be notified and make determination of a wetland designation
6. DPW Assistance: If property owner refuses to perform survey, make a written request to the DPW/Engineering Department to perform a survey of the area in question and document all related costs to Town.

7. Site Visit to Determine Restoration Plan: Visit site and request that owner (or Town if owner refuses) develop a restoration plan.
 - Department of Public Works must review all restoration plans
 - If wetlands involved, Wetlands Protection Committee must review as well.
 - Determine Bounds Markers to be placed by owner, to include:
 - i. permanent (stone or concrete) bounds
 - ii. installation of bounds at intervals along “shared” property line, at intervals as determined by the Town
 - iii. depth of bounds’ installation: approximately 2 feet
 - iv. bounds’ height: one foot (or more) above ground level or as appropriate for location as determined by the Town
 - v. install permanent metal “mushroom” caps or other notation in bounds, as supplied by the Town
8. Restoration Request: Send certified letter to property owner requiring restoration/correction of encroachment; in the event owner refuses to correct the encroachment, advise owner that Town will undertake the restoration and will require costs to be borne by owner and, if warranted, require property owner to sign consent agreement.

In cases of financial hardship or refusal to restore or pay expenses, the Town may proceed with restoration and place a municipal lien on property for costs incurred. Municipal liens require the approval of the Selectmen.
9. Approval Letter: Issue Board’s and/or Wetlands Protection Committee’s formal approval of restoration plan to property owner.
10. Follow-Up Site Visit: Review/confirm that encroachment has been corrected, including review of permanent boundary installation/location. Take photographs of site.
11. Closing Out the File: Enter information into the Town’s encroachment log closing out the incident.