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# Public beachgoers spar with private cottagers over shoreline access

## The Standard

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Every summer like clockwork in Fort Erie, the same battle at the beach breaks out. Long stretches of the town's waterfront are privately owned, mostly by wealthy American cottagers. There are a few patches of publicly-owned beach in between, and at others places there are narrow road allowances still owned by the town, which the public is free to use to get to the waterfront.

The trouble comes when people want to walk between those public beaches, or from one public access allowance to the next, but there is a privately-owned stretch of beachfront in between.

Many residents believe they have the legal right to cross the private beaches, so long as they stay on the shoreline where the water meets the sand.

Many private beach owners say otherwise, and insist any crossing of their beachfront constitutes trespassing.

So which is it: does the public have a right to walk from one end of the town's beachfront to the other, regardless of who owns what, or do the private homeowners have a right to tell people to get off their property?

The answer, as with many things, is not that cut and dry.

"The answer is that there is no one answer," said Coun. Stephen Passero, who was once the president of the Ontario Shorewalk Association, a group dedicated to securing public access to beachfront property.

"It's really a case-by-case situation," said Passero as he walked down one of the town-owned beach access routes at the end of Windmill Point Road toward the beach. "For example, where we are standing right now, you have the right to walk for a considerable distance in either direction, despite the fact that these cottages are all privately owned."

All the waterfront property around Windmill Point is privately owned, however, the property lines end about 30 feet from the water's edge, and everything beyond that is public beach.

"So why is nobody here?" asked Passero, looking around at a beach that had about six people on it, despite it being a sunny Saturday afternoon in August. About a kilometre down the road at Bay Beach, thousands of people were packed onto the thin strip of public beach there, yet the sprawling public beach at Windmill Point was deserted.

"People don't know this is here," said Passero. "Most people think this is a private beach."

One problem is that years of neglect from the town allowed the public access point at Windmill Point Road to slowly get cut off by the private homeowners whose property abuts the public walkway leading to the beach. Gradually, the landowners on either side encroached further and further onto the public portion (first a compost bin, then a shed, then fencing all the way across) until there was no public access left.

"Getting this space back was a battleground," said Passero, who helped lead the charge to get the town to reclaim the public access points and allow the public to get to the beach.

Residents are now free to walk down to Windmill Point Road and access the beachfront, and walk several kilometres of Lake Erie's shoreline.

But, not all of it.

According to the town's planning director, Rick Brady, the waterfront property lines in Fort Erie are unique in that they do have what are called "water lots" which are legally owned by some cottagers.

In most parts of the country, cottage beachfront property lines end at the high watermark, while the shoreline where the water meets land is public. This has been common practice in municipal planning for more than 100 years. The problem in Fort Erie is that some cottages are more than 100 years old and have been passed down through generations of wealthy American families without ever changing hands. That means the original survey documentation, sometimes from the late 1800s, which denotes the property lines, can sometimes extend well into Lake Erie. According to Brady, in some parts of town, depending on the time of year and the water level of the lake, the end of some cottager's property lines can be 20 feet out onto the surface of the lake bed under the water.

So while residents can cross most beachfront property legally by staying along the water's edge, in other parts of town they'd be trespassing if they did the same thing. That's the point of contention that confuses most people, and further confusion exists because of a proposed provincial legislative change which almost introduced new laws around shoreline access, and would have made it so residents could legally walk the beach fronts even if historical survey documentation showed the property lines extending into the lake. That private member's bill was introduced about a decade ago at Queen's Park by former MPP Kim Craitor, and it made it through second reading and might have passed. But before getting to a final vote, an election was called and the shoreline access bill dissolved with the rest of the legislation on the floor.

"There's a lot of confusion because of that bill, and a lot of people incorrectly cite it when they talk about their rights to access the shoreline," said Passero.

At a recent council meeting, Fort Erie sought to have that bill brought back from the graveyard. However, Passero said it was largely a symbolic gesture, and any shoreline access problems should be tackled at the local level. Trying to find a one-size-fits-all access law that works across the entire province would be nearly impossible, so Passero said he would rather see town hall take the lead.

"We can find a made-in-Fort Erie solution that works for us," he said. "But we need to bring something to the table also, and that would be that we start enforcing the rules on both the public and private sides."

In talking with many of the private homeowner associations, Passero said most of them don't mind when people are just walking across private beaches. What they take issue with, he said, is when people take it a step further.

"They don't mind people going for a stroll along the beach, but when people are having bonfires, and drinking beer, driving ATVs, or setting up volleyball nets and having a party, that's when they start to have a problem," said Passero.

Moments later, a man in a small car came barreling down the sandy walkway leading to Windmill Point Beach, where he then spun out and got stuck a few feet from the lake. He spent the next few minutes spinning his tires, spraying sand all over the place as he attempted to get his car off the beach. Passero and another man eventually managed to push the man's car off the beach and back onto the road.

"This kind of thing," said Passero, slightly out of breath and sweating from pushing the car 40 feet up a sandy hill. "This is the stuff we need to get a handle on and put a stop to."

One thing Passero said he wants to see the town do is erect better signage explaining public and private access rights at the beach. Although the town has put a sign at the top of the road explaining that the public has a right to enter the beach at Windmill Point, it was missing the day we met at the beach for this interview.

"This has been happening a lot," said Passero, gesturing at the empty spot where the sign should have been. "I have no evidence to suggest who might be stealing these signs, but if I had to guess, I'd say it might be the adjacent private property owners, who don't really want people to know that this is a public beach."