



# Staff Report

## Legal Services

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**Report To:** Committee of the Whole  
**Meeting Date:** June 15, 2021  
**Report Number:** FAF.21.118  
**Title:** Plan 529 Issues and Options  
**Prepared by:** Will Thomson, Director of Legal Services

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### A. Recommendations

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THAT Council receive Staff Report FAF.21.118, entitled "Plan 529 Issues and Options";

AND THAT Council direct Staff to pursue Option \_\_\_\_ as outlined in this report;

AND THAT Council approve an upset budget of \$2,500.00 to increased signage and communications as outlined in this report.

### B. Overview

Given increasing public interest in the water access points within Plan 529, Staff are seeking Council's direction on a path forward to address and mitigate issues in that area of Town.

### C. Background

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Plan 529 is a Judge's Plan created in 1956 which subdivided large portions of land in the Craighleith-Brophy's-Long Point area of the Town. When it was created the Plan dedicated certain lands to the Township of Collingwood (now Town of The Blue Mountains) for the use of the "Owners" in Plan 529 as "access areas" and/or "areas of user common".

Over the years use of the water access areas within Plan 529 have been an ongoing and challenging issue, and the issue became much more acute during the Summer of 2020 and the pressure Covid-19 placed on all water access points throughout the Town.

A map outlining the boundaries of Plan 529 is attached at Schedule "A" to this report.

### D. Analysis

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John Daniel Fraser was the historic owner of large portions of land within Plan 529, when the Plan was created, Mr. Fraser dedicated blocks A, B, and D and all lanes and rights of way to the Township of Collingwood "for the use of the owners of lands hereon as access areas"; furthermore, Mr. Fraser dedicated blocks C,E,F and G and Lots 63 and 70 "to the said corporation as area of user common to the said owners".

The Town continues to own the lots and blocks, subject to the dedications made on the Judge's Plan; in effect, the Town owns these pieces of land but cannot derogate from the rights granted to the "Owners" on the Plan.

Historically, staff understand that these areas were managed informally; the Town would do some minor maintenance and post some basic signage and the owners and homeowners association provided some amenities and additional signage. This arrangement seems to have, by and large, worked reasonably well until Summer 2020 when the areas became inundated with users who were not owners within Plan 529. This raised concern about social gatherings as it related to Covid-19 as well as overall crowding and overuse of these relatively small areas (an issue exacerbated by low water levels).

By way of Background, Judge's Plans are a historic alternative to a Plan of Subdivision in which a Judge would simply divide the land and create a Plan accordingly. In doing so, various dedications may be made on the Plan; in this case, certain dedications were made to the Township of Collingwood (now TBM) for the benefit of the "Owners" on Plan 529.

"Areas of user common" is not a common, but not unknown concept in law. The Ontario Superior Court considered this in *Audze et al. v. Township of Innisfil, 1973 CanLII 516 (ON SC)*, the notion was further considered by the Court of Appeal in *Hoggarth v. MGM Farms and Fingers Limited, 2015 ONCA 908*. While each case dealt with specific and unique facts, the 'big-picture' conclusion was (specifically in the *Audze* case) that where the Municipality owns parcels of land subject to a right on the Plan, they cannot derogate from those rights.

That means, in short, that the Town owns these lands, but cannot do anything which would limit the Owners rights of access or use as "areas in common". That being said, the Town does not have a converse responsibility to actively manage these lands; the Town simply cannot deprive the Owners of said rights.

Furthermore, of note, the Plan dedicated these rights to the "Owners" but did not specifically define who or what were "Owners" as it relates to the Plan. Staff suggest that "Owners" means those who are the registered owner of land as shown on a deed for a parcel of land within Plan 529.

The question of *who* is an Owner and is thus entitled to use the "areas of user common" has been an important and contentious issue for those who are indeed registered owners within Plan 529. Given that the Plan does not define "Owners", Staff expect there will be competing opinions as to who or what qualifies as an "Owner" and is thus entitled to the benefit afforded by the Plan. On this note, it is critical to note that the Town **does not** enforce issues of trespass, and thus cannot enforce the use of these lands based on the definition of "owner".

In light of all the above and the ongoing issues in the area, Staff are seeking Council direction to pursue further options to assist in protecting the rights of the Owners in Plan 529 as dedicated on the Plan.

As a note, these access areas have been considered by the Leisure Activities Plan and we anticipate the Committee will propose that they be labelled Class 5, being:

- *Property is limited to specific residents through deeded access, Master Development Agreements, or other legal obligations. May incorporate the establishment of no on-street or time limit parking by -laws, required signage and enforcement.*
- *Intended Use: Resident use only, specific to the agreement, plan, or easement.*

Staff feel that this is an appropriate classification and aligns with the dedicated rights contained in the Plan and the rights of the Owners within Plan 529.

Staff have received numerous concerns and complaints from residents within Plan 529 and it is clear that further effort must be made to address the rights and concerns of the owners.

As such, Staff are proposing two options for Council's consideration:

1. Increased Signage and Communication

- a. This plan would see the Town install new, large, and clear signage at each of the access areas indicating that the areas are for the sole exclusive use of owners within Plan 529. Staff would couple this effort with a communication and education program in coordination with the Communications Department.
- b. Staff are seeking Council's direction to spend an upset limit of \$2500.00 on such signage, which is currently unbudgeted.

2. "Owner" Passes

- a. Similar to the Town's "Resident Passes" Staff are considering a program in which the Town would issue a pass to each registered "Owner" in Plan 529 (being the named person on the deed).
- b. This program would provide registered owners with a simple tool to identify their ownership on Plan 529.
- c. To be clear, such passes would be an informational tool only, and not an enforcement mechanism or valid piece of identification which may be required by the Ontario Provincial Police.
- d. Moreover, as Town By-law staff **do not** enforce issues related to trespass, these passes would not assist officers in any active management of the areas.

Staff recommend that Council pursue Option 1 as outlined above as a preliminary step. Under this plan, Staff would add additional signage and review how and if such signage helps to alleviate or address the issues. While Owner Passes is perhaps a compelling option, Staff believe it is premature.

## **E. Strategic Priorities**

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### **3. Community**

We will protect and enhance the community feel and the character of the Town, while ensuring the responsible use of resources and restoration of nature.

### **4. Quality of Life**

We will foster a high quality of life for full-time and part-time residents of all ages and stages, while welcoming visitors.

## **F. Environmental Impacts**

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Appropriate and sustainable management of Town owned lands

## **G. Financial Impacts**

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An upset limit of \$2,500.00.

## **H. In Consultation With**

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Ryan Gibbons, Director of Community Services

Wayne DeWitt, Supervisor of By-law Services

Tim Hendry, Manager of Communication and Economic Development

Shawn Everitt, CAO

## **I. Public Engagement**

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The topic of this Staff Report has not been the subject of a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required. However, any comments regarding this report should be submitted to Will Thomson, Director of Legal Services at [directorcs@thebluemountains.ca](mailto:directorcs@thebluemountains.ca).

## **J. Attached**

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1. Att. 1 Map of Plan 529.

Respectfully submitted,

Will Thomson  
Director Legal Services

For more information, please contact:  
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**Report Approval Details**

Document Title:	FAF.21.118 Plan 529 Issues and Options.docx
Attachments:	- Att. 1 Plan 529.pdf
Final Approval Date:	Jun 9, 2021

This report and all of its attachments were approved and signed as outlined below:

**Wayne DeWitt - Jun 8, 2021 - 10:21 AM**

**Tim Hendry - Jun 8, 2021 - 11:15 AM**

**Ryan Gibbons - Jun 8, 2021 - 5:01 PM**

**Will Thomson - Jun 9, 2021 - 10:42 AM**

**Shawn Everitt - Jun 9, 2021 - 11:08 AM**