

THE CORPORATION OF THE TOWNSHIP OF SOUTH STORMONT

BY-LAW NO. 2022-038

BEING a by-law to adopt an Unopened Road Allowance Policy.

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WHEREAS the *Municipal Act, 2001*, c. 25 s. 5 (1) provides that the powers of a municipal corporation are to be exercised by its council;

AND WHEREAS the *Municipal Act, 2001*, c. 25 s. 5 (3) provides that the powers of every council are to be exercised by by-law;

AND WHEREAS Council deems it advisable to adopt an Unopened Road Allowance Policy for the Township of South Stormont.

NOW THEREFORE Council of the Township of South Stormont enacts as follows:

1. That the Unopened Road Allowance Policy attached hereto as Schedule "A" and forming part of this by-law be adopted effective May 25, 2022.
2. That any other by-law inconsistent with this by-law is hereby repealed.

READ AND PASSED in open Council signed and sealed this 25<sup>th</sup> day of May, 2022.

Mayor



D/Clerk







## TOWNSHIP OF SOUTH STORMONT

Title: Unopened Road Allowance Policy

Schedule "A" to By-law No. 2022-038

Department: Corporate Services

Date: May 25, 2022

### **1 POLICY INTENTION**

- 1.1 To regulate the use, alteration and other matters related to unopened road allowances.

### **2 APPLICATION & PURPOSE**

- 2.1 The policy is intended to regulate the use of unopened road allowances. This policy will also:
- protect the Township from liability claims relating to unopened road allowances
  - improve maintenance on road allowances; and
  - provide access for agricultural and other appropriate uses and/or operations.

### **3 SCOPE**

- 3.1 The policy applies to all unopened road allowances which may accommodate seasonal (summer) traffic, private access to a farm, house or vacant lands, logging access, access to aggregate resources, or may function as a trail or public access to a water body.
- 3.2 Notwithstanding the provisions of this policy, nothing shall fetter the absolute discretion of Council to deal with unopened road allowances on such terms as may be fixed by Council for purposes which it deems to be in the best interest of the Township.

### **4 DEFINITIONS**

- 4.1 "Council" means the Council of the Township of South Stormont.
- 4.2 "Unopened Road Allowance" means all road allowances located in the Township that were made by the Crown surveyors and all road

allowances, highways, streets, lanes shown on a registered plan of subdivision that have not been opened and assumed for maintenance purposes by By-law of the Township. Unopened road allowances may include but are not limited to road allowances, highways, lanes, streets, to accommodate seasonal (summer) traffic, private access to a farm, house or vacant lands, logging access, access to aggregate resources, or may function as a trail or public access to a water body.

## **5 GENERAL**

- 5.1 It is the general policy of the Township that road allowances or existing public right of ways that provide access to water will not be obstructed and will be kept in Township ownership for the following reasons:
- a) future transportation needs where warranted;
  - b) public access where appropriate;
  - c) protection of the environment including adjacent source waters; and to
  - d) recognize and allow resolution of First Nation Treaty Rights.
- 5.2 From time to time the Township receives requests to privately occupy road allowances or existing public rights-of-way. The *Municipal Act* provides that Council may pass by-laws:
- a) to close any portion of an opened or unopened road allowance and convey ownership of all or some of the lands, or
  - b) enter into an agreement to restrict public access to or allow for an encroachment on a road allowance.
- 5.3 Except for trails built and maintained by organizations such as the Ontario Federation of Snowmobile Clubs Association or the Ontario Federation of All Terrain Vehicles, or a similar type of organization, the Township will generally refuse to permit any person to open any unopened road allowance within the Township by way of a trail, driveway or road capable of being used by any motor vehicle whatsoever. The purpose of this policy is to protect the Township from liability claims by persons using unimproved unopened road allowances and from demands that such unopened road allowances be improved and maintained at the expense of general taxpayers.
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- 5.4 The Township may consider permitting the opening of an unopened road allowance where the number of potential users warrants the expense of maintaining it, where such potential users are prepared to pay the cost of initially constructing a road to the same standard as similar publicly maintained roads located elsewhere in the Township and where an agreement is signed between the parties respecting the opening and maintenance of the road allowance.
- 5.5 If an unopened road allowance is adjacent to crop lands held in the same ownership, the adjacent land owner may use the unopened road allowance for the planting of their crops. The Township shall provide reasonable notice to remove any crops within the unopened road allowance in the circumstance that the Township needs to open or access the unopened road allowance. If feasible, the Township should notify the adjacent land owner of the requirement to use the unopened road allowance prior to planting.
- 5.5.1 In the event that a group or individual requests the use of an unopened road allowance that runs between farmland held in the same ownership, and is under crop production, the group or individual making the requests must make their request in writing to the Clerk of the Township.
- 5.5.2 Any request to use an unopened road allowance as described in 5.5.1 will be reasonably considered prior to the adjacent land owner planting crops within the unopened road allowance.

## **6 APPLICATION TO USE, ALTER OR ENCROACH A MUNICIPAL ROAD ALLOWANCE**

### APPLICATION CRITERIA

- 6.1 Each application shall be received on the Township's Application to Use, Alter or Encroach a Municipal Road Allowance application form. Further, each application is considered on a 'case by case' analysis on any road allowance based on the following criteria:

- 6.1.1 No person shall erect a dock or any kind of structure on an unopened original road allowance owned by the Township.
- 6.1.2 No person shall store any vehicle, boat, trailer etc. on an unopened original road allowance owned by the Township.
- 6.1.3 No person shall perform any work, remove any trees, soil, or other material or erect upon or use any unopened original road allowance without specific approval from Council.
- 6.1.4 Applications for permission to use or alter an unopened road allowance shall be submitted in writing. The Applicant must state the intended use, the applicant's interest in the allowance, and be accompanied by an accurate location and description plan.
- 6.1.5 The applicant shall be required to file a Letter of Credit (or cash) in connection with the work approved by the Township. The amount of the Letter of Credit will depend on the work to be done and the circumstances of the area under consideration.

#### APPLICATION CONDITIONS IF APPROVED

- 6.2 If Council is in favour of permitting an applicant's use of an unopened road allowance, the Township shall enter into a written agreement with the applicant which shall include the following terms:
    - 6.2.1 The applicant making the request shall pay all costs for the Township to process the submission as stipulated by Council. A cost estimate of the work to be completed by the applicant shall be approved by Council. It is understood that until the work is complete, actual costs are unknown; Council will consider the application based on the estimate of costs provided.
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- 6.2.2 A survey shall be required to confirm that the proposed use will not encroach on adjacent privately-owned lands.
- 6.2.3 The applicant shall be required to prepare an outline of the work proposed to see if it is within the terms approved by Council.
- 6.2.4 The applicant shall be required to carry liability insurance with respect to their use of the road and the Township must be added as an insured on such policies. The insurance company shall give an undertaking to the Township that the policy will not be cancelled on less than 30 days' notice in writing to the Clerk of the Township. Cancellation of the insurance coverage without consent of Council shall constitute a breach of the agreement between the applicant and the Township and this By-law.
- 6.2.5 The applicant shall be required to post signs stating  
  
'Road not assumed by the municipality, use at your own risk.'
- The applicant is responsible to replace signs which are removed or destroyed. Failure to replace when notified by the Township shall constitute a breach of the agreement and this By-law.
- 6.2.6 The applicant shall be required to sign an agreement with the Township which shall:  
a) outline the work to be required;  
b) set out the security required by the Township;  
c) set out such additional matters that the Township may require.
- 6.2.7 Any breach of the agreement to be signed between the Township and the applicant will entitle the Township to cancel the contract and terminate the privileges extended in the agreement.

- 6.2.8 Permission to traverse over an unopened road allowance with farming equipment for farming purposes may, after investigation and approval by the Township, be granted by a permission letter as opposed to a formal agreement with the Township.

#### APPLICATION CONSIDERING MULTIPLE LANDOWNERS

- 6.3 In the event that multiple landowners request the maintenance of an unopened road allowance to improve access to their properties, the Township will consider the request.

- 6.3.1 If the landowners are able to come to a consensus on the division of costs and work, the Township will require them to follow Section 6.1 of the policy.

- 6.3.2 If the landowners are unable to come to a consensus on the division of costs and works, the Township may conduct the works or contract the services of a private business to conduct the works. All costs associated with the improvement of the road allowance for the sole purpose of improving access to croplands for multiple landowners will be billed out as a service of the Township to each of the land owners, as per Section 391 of the *Municipal Act*, as amended from time to time, or through a local improvement charge.

- 6.4 The policy and procedure for stopping up and conveying all or a portion of an unopened road allowance will be subject to a separate policy of the Township.

#### **7 PRIVATE DRIVEWAY**

- 7.1 The Township shall consider permitting a private driveway on an unopened road allowance where each of the following criteria are met:

- 7.1.1 The distance to be traveled along the road allowance is short, generally less than 30 metres from the front of the lot, except that longer distances may be considered in rural areas adjacent to larger farm parcels.



- 7.1.2 The number of property owners who could access the section of the road allowance to be used is very limited, no new lot creation is to be permitted and in no case will the Township assume maintenance of an unopened road allowance used as a private driveway, unless an alternate arrangement is approved by Council.
- 7.1.3 Each of the adjoining property owners mentioned in the previous sub-paragraph enters into an agreement to be registered on title and binding subsequent owners of their property not to demand future improvement of the road allowance by the Township and protecting the Township from liability claims of users of the driveway. The person applying to use the road allowance will pay the full legal costs of the Township's solicitor in preparing and registering the agreement.
- 7.1.4 Where necessary the boundaries of the portion of road allowance to be used are marked by an Ontario Land Surveyor and a Reference Plan prepared and if necessary, filed at the Land Registry Office at the expense of the applicant, prior to the commencement of any work to avoid trespassing on neighbouring land.
- 7.1.5 Any Provincial or Federal requirements dealing with Environmental Approvals (if necessary) have been obtained.

## **8 ENCHROACHMENT AGREEMENT**

- 8.1 Where there are existing buildings or structures, including foundations, partially encroaching on to a road allowance, this policy encourages relocation of said buildings, structures and foundations off the said road allowances wherever practical and reasonable.
- 8.2 Where it is not practical and possible to relocate a building or structure partially encroaching on to a road allowance, this policy shall allow the encroachment to continue through an agreement with the Township. The agreement shall specify the terms of the encroachment including required notice of termination of the agreement, rights of the

Township to use the road allowance, public access rights and other similar clauses.

- 8.3 As a general principle, the Township will not limit continued public access to any road allowance even where an encroachment agreement is permitted.
  - 8.4 This policy does not permit the expansion, redevelopment or increase in size of any existing encroachment on a road allowance, whether or not it is recognized by an encroachment agreement
  - 8.5 Any encroachment agreement will contain a provision that on reasonable notice, the Township may require the encroachment to be removed.
  - 8.6 Any person requesting the Township to permit an encroachment to continue shall comply with the requirements of this policy.
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