

**THE CORPORATION  
OF  
THE TOWNSHIP OF SOUTH ALGONQUIN  
BY-LAW NO. 2022-699  
BEING A BY-LAW TO ESTABLISH A TOWNSHIP POLICY ON THE USE OF  
UNOPENED ROAD ALLOWANCES**

**WHEREAS**, Section 44 of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended imposes on local municipalities the obligation to manage and maintain the Public Road System lying within the boundaries of the Municipality;

**AND WHEREAS**, Section 35 of the Municipal Act, 2001 S.O. 2001, Chapter 25, as amended provides that a municipality may remove or restrict any common law right of passage over any public highway within the boundaries of the Municipality;

**AND WHEREAS** the Municipality receives requests from time to time from Ratepayers and other interested parties for permission to use portions of unopened road allowances lying within the boundaries of the Municipality;

**AND WHEREAS** a significant portion of the municipal budget is expended on the maintenance of the road system and the only effective way to maintain control over current road expenditures and liability for future maintenance costs of the road system is to ensure that new roads are only added on a cost effective basis;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF SOUTH ALGONQUIN ENACTS AS FOLLOWS:**

1. THAT this By-law may be cited as “The Township of South Algonquin use of Unopened Road Allowances”.
2. Schedule attached to and forming part of this By-law Schedule “A” - Policy on the use of Unopened Road Allowances

**THAT** Schedule “A” may be amended from time to time by a resolution passed by Council for the TOWNSHIP OF SOUTH ALGONQUIN without an amendment to this by-law.

3. **THAT** this By-law shall take effect upon its adoption.

4. In the event that section or sections of this by-law thereof are found by a Court of competent jurisdiction to be invalid or ultra vires, such section, sections or parts thereof shall be deemed to be severable, with all other sections or parts of this by-law remaining in the full force and effect.

**READ A FIRST AND SECOND TIME THIS 6<sup>TH</sup> DAY OF APRIL 2022. READ A THIRD TIME AND PASSED THIS 6<sup>TH</sup> DAY OF APRIL 2022.**

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**Jane A. E. Dumas – Mayor**

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**Bryan Martin-CAO/Clerk Treasurer**

## POLICY

### USE OF UNOPENED ROAD ALLOWANCES

#### 1.0 Background

An “unopened road allowance” as defined by the Municipal Act is a public highway that has not been opened and assumed for maintenance purposes by By-law of the Township. Unopened road allowances may accommodate seasonal (summer) traffic, private access to a farm, house, or vacant lands, logging access, or may function as a trail or public access to a water body. Where an unopened road allowance currently has some form of use it is referred to as an existing or public right of way.

A “shore road allowance” is a public highway as defined by the Municipal Act that is located along the shore of a navigable waterway.

The provisions in this policy that apply to an unopened road allowance shall apply to both unopened road allowances and to original shore road allowances.

#### 2.0 General

It is the general policy of the Township that road allowances, shore road allowances or existing public rights-of-way that provide access to water will not be obstructed and will be kept in municipal ownership for the following reasons:

1. future transportation needs where warranted;
2. public access where appropriate;
3. protection of the environment including adjacent source waters;
4. recognize and allow resolution of First Nation Treaty Rights.

From time to time the Township receives requests to privately occupy road allowances, shore 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.

The Township is aware of First Nation Land Claims which impact on the disposal of unpatented lands within the Township.

There are also existing buildings that encroach on shore road allowances and unopened road allowances constructed many years ago that should be corrected or rectified legally where the Township receives an official request in writing.

Creating or disposing of one-foot reserves on or near unopened road allowances, including shore road allowances, may be permitted by Council to control access to roadways and address minor property matters pursuant to applicable legislation so long as the creation or disposition is consistent with the intent of this policy and other applicable policies. Such requests shall be considered by Council on a case-by-case basis.

#### 3.0 Initial Screening Criteria (Closing and transferring)

Closure and conveyance of any road allowance, including a shore road allowance, may be considered by the Township only where the following conditions exist:

- 1) The person making the request owns lands containing a building or structure abutting the unopened portion of a road allowance or owns sufficient abutting lands that when added to the

unopened road allowance could create a single usable parcel as determined by the applicable zoning for the lands.

- 2) The allowance has not been identified as possibly being required or will not be required within the road or trail system identified in the Township Official Plan or similar document.
- 3) There is adequate alternate public access to any water body in proximity to the road allowance to be closed.
- 4) Access to any other lands is not impacted because of the closure.
- 5) Closure will not adversely impact on the shore, the water quality or quantity, or any other right associated with public waterways
- 6) There is a certificate of pending litigation or similar sign off from the recognized First Nation organization with jurisdiction in the area.
- 7) Shore Road Allowance are also subject to the Shore Road Allowance Closure and Sale Policy.

#### 4.0 Request to Close and Convey

Where the screening criteria outlined in this policy have been met and a written request to close and convey any portion of a road allowance is received, including confirmation as to whether the land will be used for constructing new permanent buildings or structures, Council may, as a condition of such conveyance, require any of the following:

- 1) The applicant or owner making the request to pay all costs for the Township to process the submission as stipulated by Council from time to time plus any survey or legal expenses necessary to affect the land transfer.
- 2) If possible, the exchange of other property to provide appropriate public land or water access;
- 3) Notification to the public of such closure and conveyance in accordance with the Municipal Act and Township notice by-law, including written acknowledgement of consultation with the applicable First Nations organization having jurisdiction in the area.
- 4) The subject lands to be rezoned or similar application under the Planning Act approved, including the submission of any engineering studies, environmental reports, or similar documentation that may be required by the Township.
- 5) Removal or repair of buildings or structures that may encroach on the lands.
- 6) Determination and negotiation of a purchase price if applicable.
- 7) Execution of an agreement to implement the general purpose and intent of this policy.

#### 5.0 Request to Build

Generally, the Township discourages constructing new permanent buildings or structures on or near a road or shore allowance due to the unknown implications of a certificate of pending litigation required by the First Nations organization having jurisdiction. Land claims are anticipated to be many years in discussion, and any solution would likely be at the Provincial and Federal level and could have unknown implications on the ownership of the road allowance land and any buildings, structures, or alterations on or near these lands.

Any person requesting closure of a road or shore allowance for constructing new permanent buildings or structures shall acknowledge these uncertainties in writing to the Township in the request for closure.

The use of shore road allowances should be restricted to passive enjoyment, construction of non-permanent at grade landscape features, and shall otherwise be maintained as close as possible to a natural state.

However, where a certificate of pending litigation is obtained, and the road allowance or shore allowance has been closed in accordance with the procedures set out in the Municipal Act, construction may be permitted thereon subject to the following conditions:

1. All applicable approvals are in place including applicable zoning, and a site plan or similar agreement with the Township has been executed and is registered on title.
2. A certificate of pending litigation has been registered on title.
3. An acknowledgement has been signed saving the Township harmless from any future litigation or action because of the issuance of the building permit or use or development of the lands.
4. There is no other practical alternative available to build solely on the lands to be consolidated with the road allowance or shore road allowance. Wherever possible construction shall occur primarily on the original parcel and secondarily on the road or shore allowance.
5. Permits or approvals from any other agency including the Department of Fisheries and Oceans, Ministry of Environment, Ministry of Natural Resources or similar are obtained.

## 6.0 Encroachment Agreements (All road allowances)

Where there are existing buildings or structures, including foundations, partially encroaching on to a road allowance or shore road this policy encourages relocation of said buildings, structures, and foundations off the said road allowances wherever practical and reasonable.

Where it is not practical and possible to relocate a building or structure partially encroaching on to a road allowance or shore road, this policy shall allow the encroachment to continue through an agreement with the municipality. The agreement shall specify 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 similar. As a general principle the Township will not limit continued public access to any road allowance or shore allowance even where an encroachment agreement is permitted.

This policy does not permit the expansion, redevelopment or increase in size of any existing encroachment on a road or shore allowance, whether it is recognized by an encroachment agreement or not.

Any encroachment agreement will contain a provision that on reasonable notice the Township may require the encroachment to be removed.

Any person requesting the Township to permit an encroachment to continue shall comply with the requirements of this policy including, among other matters, Section 7.0.9.

## 7.0 Additional Policies

1. Except for trails built and maintained by organizations such as the Ontario Federation of Snowmobile Clubs Association, 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 ratepayers.

2. The Township may consider permitting the opening up 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.
3. The Township will consider permitting a private driveway on an unopened road allowance where each of the following criteria are met:
  - a. The distance to be traveled along the road allowance is short generally less than 30 meters from the front of the lot except longer distances may be considered in rural areas adjacent to larger farm parcels.
  - b. The number of property owners who could access the section of 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 drive.
  - c. Each of the adjoining 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 will pay the full legal costs of the Township Solicitor in preparing and registering the agreement(s).
  - d. 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.
  - e. The proposal is completed in such a way as to prevent or discourage members of the public from using the road allowance. Such measures may include locating part of the driveway on private property so that it can be gated, and access controlled where required by the Township.
  - f. Any Provincial or Federal requirements dealing with Environmental Approvals have been obtained.
4. No person shall erect a dock or any kind of structure on an unopened shore road or road allowance leading to the water so as to have the effect of restricting public use of the unopened road allowance.
5. No person shall store any vehicle, boat, trailer, etc. on an unopened road allowance or shore road allowance.
6. No person shall perform any work, remove any trees, soil, or other material, or erect upon or use any unopened road allowance or shore road allowance without specific written approval of the Township.
7. Applications for permission to use an unopened road allowance shall be submitted in writing to the CAO/Clerk. The application must state the intended use, the applicant's interest in the allowance, and be accompanied by an accurate location and description plan as well as any other material or studies contemplated by this policy.
8. The Township will follow applicable procedures respecting disposal of real property, stopping up and closing public highways, and restricting access through an encroachment agreement including recognizing its duty to consult with Algonquins of Ontario where applicable.

9. If permission is granted by Council for use of a road allowance, or an encroachment on to either an open or an unopened road allowance, the following policies shall apply, as determined by the Township:
- a. The actual location of the road allowance must be clearly determined. This is the responsibility of the applicant and may be required to be verified by an Ontario Land Surveyor, at the expense of the applicant.
  - b. If a new entrance way is required, the approval of the Operations Department as to its location, width, size, and length of culvert to be installed and the grade at which it intersects the Township Road is required.
  - c. Where entry is upon a roadway not under the jurisdiction of the Municipality, the standards and specifications of the Ministry of Transportation shall apply.
  - d. If brushing and clearing of the road allowance is undertaken, arrangements for the disposal of brush and/or compensation for wood of value harvested on the road allowance shall be obtained in writing by the Owner from the Township.
  - e. If the application is for the provision of an access road, driveway or right-of-way, the minimum width of clearance shall be as stipulated in the Township Zoning By-law (approximately 6 metres). The driveway shall be in the centre of the road allowance wherever possible, leaving an equal buffer on either side of the cleared area, unless otherwise approved by Council.
  - f. The applicant shall acknowledge in writing that all improvements to the road allowance are at the sole expense of the applicant and all such improvements must be approved by the Township. The applicant must also acknowledge in writing that any member of the public has the right to use the subject road allowance.
  - g. The applicant must post a notice on the road allowance in a form acceptable to the Township, advising all users of the road allowance that the roadway is an unassumed municipal roadway and is used at his/her own risk.
  - h. The applicant must acknowledge in writing that the Township assumes no liability, responsibility, or obligation whatsoever to construct and/or maintain and/or repair the road allowance.
  - i. The applicant must agree to indemnify and save harmless the Township its employees and councillors from all manner of actions, causes of actions, claims or demands whatsoever for or by reason of any personal injury and/or property damage of or in any way arising out of any accident whatsoever occurring on the road allowance.