

2001-15

THE CORPORATION OF THE
TOWNSHIP OF CENTRAL MANITOULIN

UNOPENED ROAD ALLOWANCE POLICY

UNOPENED ROAD ALLOWANCES

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Definition

In this report an unopened road allowance shall mean a road, street, lane or highway which has not been established as a public use by the Corporation.

Creation of Unopened Road Allowances

Unopened road allowances may be created by:

1. The registration of a plan of subdivision containing a dedication of roads, streets, lanes or highways shown on the plan as public highways.
2. Road allowances show on original Crown surveys.
3. Road allowances dedicated by the Owner of land which dedication has not been accepted by the Corporation through establishing a public highway by a by-law or otherwise assuming the road for public use.

What Constitutes a Public Highway

Defined by the Ontario Municipal Act, Section 261:

Except in so far as they have been stopped up according to law, all allowances for roads made by the Crown surveyors, all highways laid out or established under the authority of any statute, all roads on which public money has been spent for opening then or on which statute labour has been usually performed, all roads passing through Indian lands, all roads dedicated by the owner of the land to public use, and all alterations and deviations of and all bridges over any such allowance for road, highway or road, are common and public highways.
R.S.O. 1980, c.302, s.257.

Unopened road allowances are thereby, by statutory definition, common and public highways.

Ownership of Unopened Road Allowances

Municipal Act, Section 262 provides the ownership of every highway is vested in the Municipality for the time being having jurisdiction over it subject to any rights reserved by the person who laid out or dedicated the highway. With some rare exceptions all unopened road allowances within the boundaries of a Municipality are owned by the Corporation.

Jurisdiction over Unopened Road Allowances

The Municipal Act, Section 263 provides that except where jurisdiction over a highway is expressly conferred upon another council the council of every Municipality has jurisdiction over all highways within the Municipality. This means that generally speaking the Council of the Corporation has jurisdiction over all unopened road allowances.

Liability for Non-Repair of Unopened Road Allowances

Municipal Act, Section 284(1) requires the Corporation to keep public roads in repair and is liable in damages for default of their duty to repair. However, by subsection 284(7) the

duty does not extend to a road unless it is established by by-law of the Council or otherwise assumed for public use by the corporation.

Section 286 provides that the registration of a plan of subdivision showing streets or highways does not render the Corporation liable for non-repair of the highway.

The Corporation, therefore, does not have a duty to repair unopened road allowances and it is not liable for non-repair.

Right of the Public to Use Unopened Road Allowances

Members of the public have a right of access to, over and along unopened road allowances for the purpose of passing or repassing only.

Right To Make Improvements on Unopened Road Allowances

The public's right of access to an unopened road allowance does not carry with it the right to make any improvements or alterations to the land to exercise that right of access without the consent of the Corporation.

Ownership of Trees on Unopened Road Allowances

This point is uncertain, as there are conflicting Court cases. It is the writer's opinion that the Corporation owns and has control over all trees and shrubs on unopened road allowances.

Power of a Municipality to Permit the Use and Improvement of Unopened Road Allowances

The Municipality has full jurisdiction over unopened road allowances. It follows that it has the right to permit persons to make improvements to unopened road allowances to use such allowances for access to their properties. However the right of access of the public to an unopened road allowance is paramount and therefore the Municipality does not have the right to permit the use or improvement of a road allowance in such way as to restrict public access to it. If the Municipality wishes to grant exclusive use of an unopened road allowance under the Municipal Act or in the case of a plan of subdivision, under the provisions of the Registry act and/or Land Titles Act.

Application to Make Improvements to Unopened Road Allowances

As indicated earlier, members of the public do not require the consent of the Municipality to travel over an unopened road allowance. It does, however, require consent of the Municipality if they are making improvements such as building a road to exercise their rights of access. On receipt of an application to improve an unopened road allowance the Municipality should address the following concerns:

1. It should be the responsibility of the applicant to determine the location of the road allowance on the ground, by Legal Plan of Survey.
2. The Municipality does not want to get itself into a position where it is deemed to have assumed a proposed road for public use and thereby incur the obligation to repair.
3. The Municipality wants to make it clear to the public that the road is not an opened public highway maintained by the Municipality.
4. The Municipality should know and control the extent of the work or improvement.

5. The applicant, i.e. the owners of the land to be accessed by the improved unopened road allowance, should agree to indemnify the Municipality in respect of any claims.
6. The applicant should agree that they are not entitled to nor will they demand services over the road, including maintenance of the road, garbage pick up, school bus service, fire protection, sewer, water, etc.
7. Registration of the agreement against the title to the lands to be served by the road would serve as notice to anyone purchasing or mortgaging the land that the access road is not a Municipality maintained road. This obviously involves an expense but it is the only way to have an agreement reflecting the Municipality's concerns bind subsequent owners of the property

Agreement Permitting the Improvement of an Unopened Road Allowance

It is suggested that the Municipality require the owner of the land to be accessed by the improved unopened road allowance, enter into an agreement in a form attached as "Schedule A". In any given situation there may be other matters to be included in the agreement and the agreement can be modified accordingly. To provide full protection to the Municipality the title to the property should be searched to ascertain the true ownership and any mortgages on title should be postponed to the event that the mortgage forecloses or sells the property pursuant to its power of sale. The applicant should be responsible for the cost of preparing and registering the agreement.

AGREEMENT

Agreement made in triplicate this day of , 2001

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF CENTRAL MANITOULIN

(Hereinafter referred to as the Township)

Of the First Part

- and -

(Hereinafter referred to as the Owner)

Of the Second Part

WHEREAS the Owner has represented to the Township that it is the owner of the lands hereinafter described:

AND WHEREAS the Owner wishes to make improvements to an unopened road allowance for the purpose of gaining access to the said land;

NOW THEREFORE in consideration of the mutual covenants contained herein the parties covenant and agree as follows:

1. The township hereby grants permission to the Owner to make the following improvements to the unopened road allowance hereinafter described:
2. The Owner acknowledges that the Owner will be solely responsible for determining the location of the road allowance and ensuring that the proposed improvements are contained wholly within the road allowance, by Legal Plan of Survey.
3. The Owner acknowledges that the entering into of this Agreement is not deemed to be an assumption of the unopened road allowance and that the Township will not be responsible for maintenance or repair of the road allowance or any improvements thereto nor assume any liability in that regard.
4. Prior to commencing work on any improvements to the road allowance the Owner shall at the Owner's expense post such signs as required by the Township and that any users of the road do so at their own risk.
5. The Owner shall use unopened road allowance only for normal access to and from the said lands by persons, vehicles and animals and acknowledges that members of the public have the right to pass and repass on the road allowance.
6. The Owner shall not erect any gates or barriers on the road allowance.

7. The Owner agrees that in respect of the said lands the Owner will not be entitled to nor will the owner demand any municipal services available to lands fronting on an opened public highway maintained by the Township and that such services may include road maintenance, garbage pick up, fire protection, public transit, school bus service, sewer and water.
8. The Owner covenants to indemnify and hold harmless the Township from any and all demands, claims, actions or judgements arising out of or in connection with the construction or use by anyone of the improvements on the unopened road allowance.
9. The Owner agrees not to alter any natural waterway on the road allowance.
10. The Owners hereby consent to the registration of this agreement against the title to their lands above described and to obtain and register postponements of any mortgages or charges effecting the land to this Agreement.
11. The Owner agrees to pay all legal expenses incurred by the Township for the preparation, attending to execution and registration of this Agreement or enforcing any of the terms thereof.
12. The Owner warrants that the Owner will obtain and keep in force comprehensive liability insurance in respect of the unopened road allowance and that upon demand the Owner shall file proof of such insurance with the Township.
13. This Agreement shall be binding upon the parties hereto and their respective executors, administrators, heirs, successors and assigns as without limiting the generality of the above described land from time to time.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this day of , 2001

THE CORPORATION OF THE TOWNSHIP OF
CENTRAL MANITOULIN

PER: _____

PER: _____

I/We have the authority to bind the Corporation

THE CORPORATION OF THE TOWNSHIP OF CENTRAL MANITOULIN

BY-LAW 2001-15

BEING A BY-LAW to establish an unopened road allowance policy


WHEREAS the Corporation of the Township of Central Manitoulin deems it desirable to establish said policy

THEREFORE the Corporation of the Township of Central Manitoulin enacts as follows:

1. That the attached unopened road allowance policy be attached as Schedule "A" and form a part of this By-law.
2. The By-law shall come into effect on date of passing

READ A FIRST, SECOND, THIRD TIME AND PASSED THE 16th DAY OF JULY, 2001


REEVE


CLERK

I, Mark Read, Clerk of the Township of Central Manitoulin, do hereby certify, that the foregoing is a true copy of by-law number 2001-15, passed by the Council of the Township of Central Manitoulin on the _____ day of _____, 2001.

CLERK