

Corporation of the Township of McMurrich/Monteith

Bylaw 09-2015

Being a Bylaw to establish policies for the use of unopened road allowances for motor vehicle travel

WHEREAS the Township of McMurrich/Monteith is the owner of all road allowances within its jurisdiction;

AND WHEREAS the Township of McMurrich/Monteith, from time to time receives applications from ratepayers to use parts of original road allowances for motor vehicle passage purposes;

AND WHEREAS, Municipal consent is required to improve unopened road allowances;

AND WHEREAS the purpose of this By-law is to establish policies with respect to the requirements of the Township of McMurrich/Monteith, if Council approves of an unopened road allowance being used for vehicle purposes.

This By-Law repeals By-Laws # 13-2014.

BE IT ENACTED as a By-Law of the Township of McMurrich/Monteith as follows:

**1. Policy**

It is the policy in the Township of McMurrich/Monteith that no person shall use any unopened road allowances for motor vehicle travel purposes, and that any cutting down of trees or grading or removing of rocks or fill on unopened road allowances is prohibited without the express approval of Council. Any unauthorized work will be considered trespassing and will be prosecuted accordingly.

**2. Applications**

If Council decides that an Application to use an unopened road allowance merits consideration, and approves of such use, the following are the conditions of approval;

**2.1 Survey**

Applicants are required to, at their expense; have an Ontario Licensed Surveyor survey the road allowance to be sure that the proposed use will not encroach on adjacent lands. A copy of the survey is to be provided to Municipal Office prior to commencement of work.

**2.2 Applicant's Expense**

All work shall be done at the Applicant's expense. The Applicant shall file a cost estimate prior to the work taking place and file security for the value of the work.

**2.3 Outline of Proposed Work**

The Applicant shall prepare, and submit to Council for approval, a summary of the proposed work program including width, and care to be taken with respect to any environmentally sensitive areas. The work shall be completed within one year with a possible extension of one additional year.

#### **2.4 No Assumption by the Township of McMurrich/Monteith**

Once the work is completed and motor vehicle access is possible, it is not a road which is “assumed” by the Township of McMurrich/Monteith.

#### **2.5 Letter of Credit**

The Applicant shall file a Letter of Credit (or cash) with the Township of McMurrich/Monteith for 100% of the value of the estimated cost of the work. This is to protect the Township of McMurrich/Monteith against construction liens.

\*\*\* The Letter of Credit (or cash) will be returned to Applicant upon successful completion and approval of work. If the work is not done to the satisfaction of the Roads Foreman and additional work is required by the Township of McMurrich/Monteith, any expense will be deducted from the Letter of Credit (or cash).

#### **2.6 Inspection**

The Township of McMurrich/Monteith will inspect the work only to the extent to make certain that the Applicant has followed Council’s direction.

#### **2.7 Posting of Sign**

The Applicant shall be required to post signs “ROAD NOT ASSUMED BY THE TOWNSHIP OF MCMURRICH/MONTEITH, USE AT OWN RISK”. If these signs are removed they shall immediately be replaced by the Applicant.

#### **2.8 Group Application**

If the Application is by a group of people who wish to make a road along an unopened road allowance, consideration should be given to the forming of a Corporation that would be responsible for the maintenance of the road.

#### **2.9 Insurance**

The Applicant shall obtain liability insurance (minimum \$5,000,000.00 five million dollars), with respect to the use of the road, and file a copy with the Township of McMurrich/Monteith. The Township of McMurrich/Monteith must be added as an insured on the policy. The insurance company must give an undertaking that the policy will not be cancelled or terminated without 30 days’ notice to the Township of McMurrich/Monteith. A copy will be provided to the Municipal Office on an annual basis.

#### **2.10 Waiver of Liability**

The Applicant must enter into an Agreement with the Township of McMurrich/Monteith waiving, releasing and discharging the Township of McMurrich/Monteith of and from all claims, actions, causes of actions and damages for death, personal injury or damage to property arising out of the use of, the unopened road allowance.

#### **2.11 Removal of Timber**

Timber removal from the road allowance is the property of the Township of McMurrich/Monteith and must be purchased from the Township of McMurrich/Monteith at the determination of the Township of McMurrich/Monteith Roads Foreman. All stumps and trees must be removed. If necessary, brush and ditch.

## **2.12 Standards of Construction**

The roadway is to be built to standards imposed by any Federal or Provincial Ministries and by the Municipality. The road surface is to be a minimum of 12 feet in width; cleared width is minimum 20 feet. Turn-around to be built sufficient to allow Emergency vehicles to maneuver. All imported material is to be granular. A minimum of 8 inches of pit run (B Grade) gravel is required.

## **3. Private Roads/Driveways Crossing Unopened Township Road Allowances**

- 3.1 This policy does not prevent a private road or driveway from crossing an unopened township road allowance but no bends shall be permitted in that portion of the private road or driveway without Council approval.
- 3.2 All private road or driveway crossings of unopened township road allowances shall be at 90 degrees to the road allowance unless extreme mitigating circumstances require otherwise.
- 3.3 Maintenance of all crossings of unopened township road allowances shall be at the expense and responsibility of the owner of the private road or driveway making the crossing.
- 3.4 Where any part of a private road or driveway is intended to cross an unopened township road allowance and also cross Crown land, the proponents must provide written confirmation that the Province of Ontario has no objection to the road application.

## **4. Enforcement**

- 4.1 The provisions of this By-law shall be enforced by Municipal Enforcement Officers duly appointed by the Township and may also be enforced by members of the Ontario Provincial Police.
- 4.2 Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided in the *Municipal Act, 2001*. Pursuant to Subsection 429(2) (a) of the *Municipal Act, 2001*. All contraventions of the By-law are designated as multiple offences and continuing offences. A multiple offence is an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of a By-law.
- 4.3 On conviction of an offence under this By-law, a person is liable to a fine in accordance with Section 429 of the *Municipal Act, 2001* as follows:
  - a. The minimum fine for any offence is \$400.00.
  - b. The maximum fine for an offence as set out in Subsections (c) and (d) below does not apply to special fines as provided for in Section 4.4 of this By-law.
  - c. In the case of a continuing offence, for each day or part of a day that the offence continues, the minimum fine shall be \$400.00 and the maximum fine shall be \$10,000.00. The total of all daily fines for the offence is not limited to \$100,000.00; and

- d. In the case of multiple offences, for each offence included in the multiple offence, the minimum fine shall be \$400.00 and the maximum fine shall be \$10,000.00. The total of all fines for each included offence is not limited to \$100,000.00.
- 4.4 On conviction of an offence under this By-law, a person is liable to a special fine in accordance with subsection 429(2) (d) of the *Municipal Act, 2001*. The amount of the special fine will be the minimum fine as provided for in Section 4.3(a) of this By-law to which may be added the amount of economic advantage or gain that the person has obtained or can obtain from the contravention of the By-law. Pursuant to subsection 429(3) (1) of the *Municipal Act, 2001*, a special fine may exceed \$100,000.00.

**5. Further Conditions**

Council shall add such additional conditions as it deems necessary having regard to the circumstances and area in which the proposed work is located.

Read a first and second time this 9th day of February, 2015

Read a third and final time and passed this 2nd day of March, 2015.

Original Signed by Joanne Griffiths  
Reeve

Original Signed by Cheryl Marshall  
Clerk/Treasurer

Township of McMurrich/Monteith

PERMIT FOR THE USE OF ROAD ALLOWANCE

PROPERTY DESCRIPTION: \_\_\_\_\_

NAME OF APPLICANT: \_\_\_\_\_

DATE OF APPLICATION: \_\_\_\_\_

The following are the conditions as outlined in By-Law 09-2015. ALL CONDITIONS MUST BE COMPLIED WITH OR THE PERMIT IS CANCELLED IMMEDIATELY, AND ALL WORK SUSPENDED.

The Applicant will be responsible for all costs of opening the road allowance.

No person shall commence any work on a boundary road allowance including the cutting of any tree located thereon, without a permit from the Township of McMurrich/Monteith. Persons who commence such work without a permit will be considered trespassers and prosecuted accordingly.

Signage will be provided and posted by the Applicant (that meets provincially mandated standards) with the wording: "ROAD NOT ASSUMED BY THE MUNICIPALITY, USE AT OWN RISK" If the sign(s) is removed, it is to be immediately replaced; otherwise permission to use the road allowance will be cancelled.

Third party liability insurance naming the Township of McMurrich/Monteith as additional insured, for a minimum amount of \$5,000,000.00 (five million dollars) is required before the commencement of work. A copy is to be provided to Municipal Office on an annual basis.

Owners and future owners of property adjacent to the road allowance will not demand future improvement of the road allowance by the Municipality. This agreement will indemnify the Township of McMurrich/Monteith of all responsibility for any maintenance of the road and all liability for any use of the road and alleged failure to provide emergency services or any other public services that were not being provided at the time of the creation of the road.

The boundaries of the portion of road allowance to be used are to be marked by an Ontario Land Surveyor at the expense of the applicant prior to the commencement of any work to avoid trespassing on neighbouring land. A copy is to be provided to Municipal Office prior to commencement of work.

Any and all Provincial and Federal requirements dealing with environmental protection or other issues are to be met at the expense of the applicant. Copies of all applicable permits are to be given to the Municipal Office.

The proposal is to be completed in such a way as to prevent or discourage members of the general public from using the road allowance. Such measures may include locating part of the roadway on private property so that it can be gated and access controlled or the beginning of the road to be narrow or other means approved by the Municipality to discourage use.

The roadway is to be built to standards imposed by any Federal or Provincial Ministries and by the Municipality. The road is not to exceed 12 feet in width; cleared width is minimum 20 feet. Turn-around to be built sufficient to allow Emergency vehicles to maneuver. All imported material is to be granular. A minimum of 8 inches of pit run (B Grade) gravel is required.

No maintenance of this road allowance will be provided by the Township of McMurrich/Monteith.

I hereby agree to the conditions of this Permit:

\_\_\_\_\_  
Applicant Signature:

\_\_\_\_\_  
Date:

Permission to use the road allowance noted above is hereby granted:

\_\_\_\_\_  
Reeve:

\_\_\_\_\_  
Date: