

THE CORPORATION OF THE TOWNSHIP OF  
MCMURRICH-MONTEITH

BY-LAW NO. 07 -2015

BEING A BY-LAW TO RESTRICT THE COMMON LAW RIGHT OF PASSAGE  
OVER THE UNOPENED ROAD ALLOWANCE BETWEEN CONCESSION 6 AND  
7, GEOGRAPHIC TOWNSHIP OF MCMURRICH/MONTEITH AND TO  
PRECLUDE ANY PHYSICAL ALTERATIONS TO SUCH ROAD ALLOWANCE

---

WHEREAS Section 27 of the Municipal Act 2001, authorizes the Council of a Municipality to pass by-laws concerning highways under its jurisdiction;

AND WHEREAS Section 35 of the Municipal Act, 2001 authorizes the Council of a Municipality to pass a by-law to restrict the common law right of passage by the public over a highway;

AND WHEREAS no person has the right to alter or modify an unopened road allowance without the permission of the Municipality having jurisdiction over such road allowance;

AND WHEREAS the unopened road allowance between Concession 6 and 7, geographic Township of McMurrich/Monteith is a highway under the jurisdiction of the Township;

AND WHEREAS an unauthorized alteration of the such road allowance has been undertaken within the road allowance abutting Lots 29 and 30, which includes the clearing of forested lands, the establishment of a roadway and the construction of a bridge;

AND WHEREAS Council deems it in the public interest to prohibit the use of any motorized vehicle on that section of the foregoing section of the unopened road allowance to prevent further damage to the road allowance including further environmental degradation, or potential injury or damage to public users of the road allowance;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF MCMURRICH MONTEITH HEREBY ENACTS AS FOLLOWS:

1. This by-law applies to the unopened road allowance between Concessions 6 and 7, geographic Township of McMurrich/Monteith, lying between the easterly boundary of the abutting Lots 30 and the easterly boundary of the abutting Lots 29 (hereinafter called the subject road allowance).
2. No person shall use or cause to be used on the subject road allowance any motorized vehicle or equipment.
3. No person shall undertake or cause to be undertaken any physical alteration of the subject road allowance without the express written consent of the municipality which consent may be withheld on conditions deemed appropriate by Council and such conditions may include, among other things, the requirement to enter into an agreement with the

Municipality, and supplying the Township with a Letter of Credit (or cash), for 10% of the value of the estimated cost of work to be completed. This is to protect the Municipality against construction liens.

4. The restrictions set out in section 2 and 3 do not apply to the Township, its employees or agents or any employee or agent of the Federal or Provincial Government, including without limitation, the Ministry of Natural Resources, the Federal Department of Fisheries and Oceans, or the Ontario Provincial Police.
5. The Director of Public Works is authorized to post copies of this by-law at the westerly and easterly boundaries of the subject road allowance and such other locations as are deemed appropriate by the Director.
6. Where a contravention of this by-law is discovered, the Clerk-Treasurer, upon the direction of Council, may issue an order to the person who contravened the by-law or who caused or permitted the contravention of the by-law to do work to correct the contravention. The content of such an order may include specific directions and conditions that must be satisfied including obtaining all necessary governmental approvals necessary to complete such work and to correct the contravention and the requirement to enter into an agreement with the Municipality wherein the specific work required to correct the contravention is set out in detail and providing for the necessary insurance coverage while such work is conducted.

Where a person is in default of an order issued under section 6, the Municipality may conduct the work necessary to correct the contravention. Pursuant to section 446 of the *Municipal Act, 2001*, the costs of such work done by the Municipality may be recovered from that person as provided for therein.

#### **ENFORCEMENT**

7. 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.
8. 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 this 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.
9. 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 10 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 a multiple offence, for each offence included in the multiple offences, 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.
10. 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 9 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.

This By-law shall take effect as of the date of passing.

BY-LAW read a first, second time the 9<sup>th</sup> day of February, 2015.

Read a third time and finally passed the 2<sup>nd</sup> day of March, 2015

THE CORPORATION OF THE TOWNSHIP OF MCMURRICH/MONTEITH

Original Signed by Joanne Griffiths

Reeve

Original Signed by Cheryl Marshall Marshall

Clerk-Treasurer