



Date	Wednesday, January 16, 2019
From	Rick Winters, Acting CAO/Director of Operations
Subject	Bass Lake Access/ Road Allowance
Report	No. OPS2019-05

Recommendation

That the Committee of the Whole receives report OPS2019-05 from the Acting CAO and further provides direction to the requests to stop up and close road allowance(s) surrounding Bass Lake.

Background

The Township has received written letters from two parties expressing the desire for stopping and closing up of portions of unopened road allowances surrounding Bass Lake in order to keep the public from accessing the lake.

In 2018, Council tasked the Acting CAO to bring back a report to Council describing the existing access locations.

Analysis

Bass Lake is a small inland lake located in the former Keppel Township surrounded mostly by residential properties, with the exception of the southern portion which has a campground operation and the northern portion which is bordered by agricultural properties.



There are currently only three points in which the lake may be accessed by the public. There are two 20 foot wide easements between Lakeview Drive and Bass Lake that were deeded to the Township during the development of registered subdivision plan 755 and one 66 foot wide road allowance that was created when the former Keppel Township was originally surveyed.

All of the public access points are non-improved with steep and difficult terrain. Over the years, on the 20 foot wide access adjacent to Lakeview Drive, there was a set of wooden steps that were constructed and ultimately removed due to safety concerns in 2017. The public access points are not signed and the public is in no way encourage to access the lake via these locations.

The two property owners wishing to have the access points stopped up and closed have indicated that their main objective is to prevent the public from accessing the lake and causing issues with disturbance and trespassing of the adjacent privately owned lands.

In 2015, under By-law 64-2015, the Township officially stopped and closed the unopened portion of North Bass Lake Road that in essence was a public access point to the lake.

In 2010, the Township passed a Use of Unopened Road Allowances policy.

With reference to the road allowances under review, the following subsections under Section 3.0 Initial Screening Criteria (closing and transferring) states:

- 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 alternative public access to any water body in proximity to the road allowance to be closed;
- 4) Access to any other lands is not impacted as a result 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.

Financial Impact

None at this time.

Strategic Priorities

3.5 Roads, Bridges and Culverts

Maintain roads, bridges and culverts at a high standard to protect public safety and property and to carefully evaluate the need for new road, bridge and culvert infrastructure to protect the long term interests of the Township

Consultation and Communications

N/A

Conclusion

The Township has received two requests regarding the stopping up and closing of portions of unopened road allowances in the Bass Lake area that would restrict the public's ability to access Bass Lake, as there are only three locations in which Township road allowances front directly to the lake shoreline.

Supporting Documentation

Appendix 1—Correspondence from Ms. Christy Madill dated August 22, 2018

Appendix 2—Correspondence from Mr. Donald Simpson dated October 3, 2018

Appendix 3—Policy TRA-010-10 Use of Unopened Road Allowances

Appendix 4—Survey Map of Area

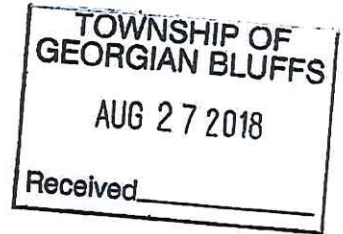
Respectfully Submitted:

Rick Winters, C.E.T.
Acting CAO/Director of Operations



BASS LAKE PARK

179629 Grey Road 17
Georgian Bluffs, Ontario
N0H 2T0



August 22, 2018

Township of Georgian Bluffs
177964 Grey Road 18, R.R. #3,
Owen Sound, ON, N4K 5N5

Attention: Rick Winters

Dear Rick,

I would like to inquire about purchasing a portion of the road access on South Bass Lake Road (the part that starts at the north edge of the private laneway and runs to the water) that abuts our property, Block A, Roll # 42036200702801000. I have enclosed a map portion highlighting the road allowance and the abutting properties. We have spoken with the neighbours on the north side of the allowance and they may be interested in purchasing half.

Can you let me know how we could proceed?

Thank you.

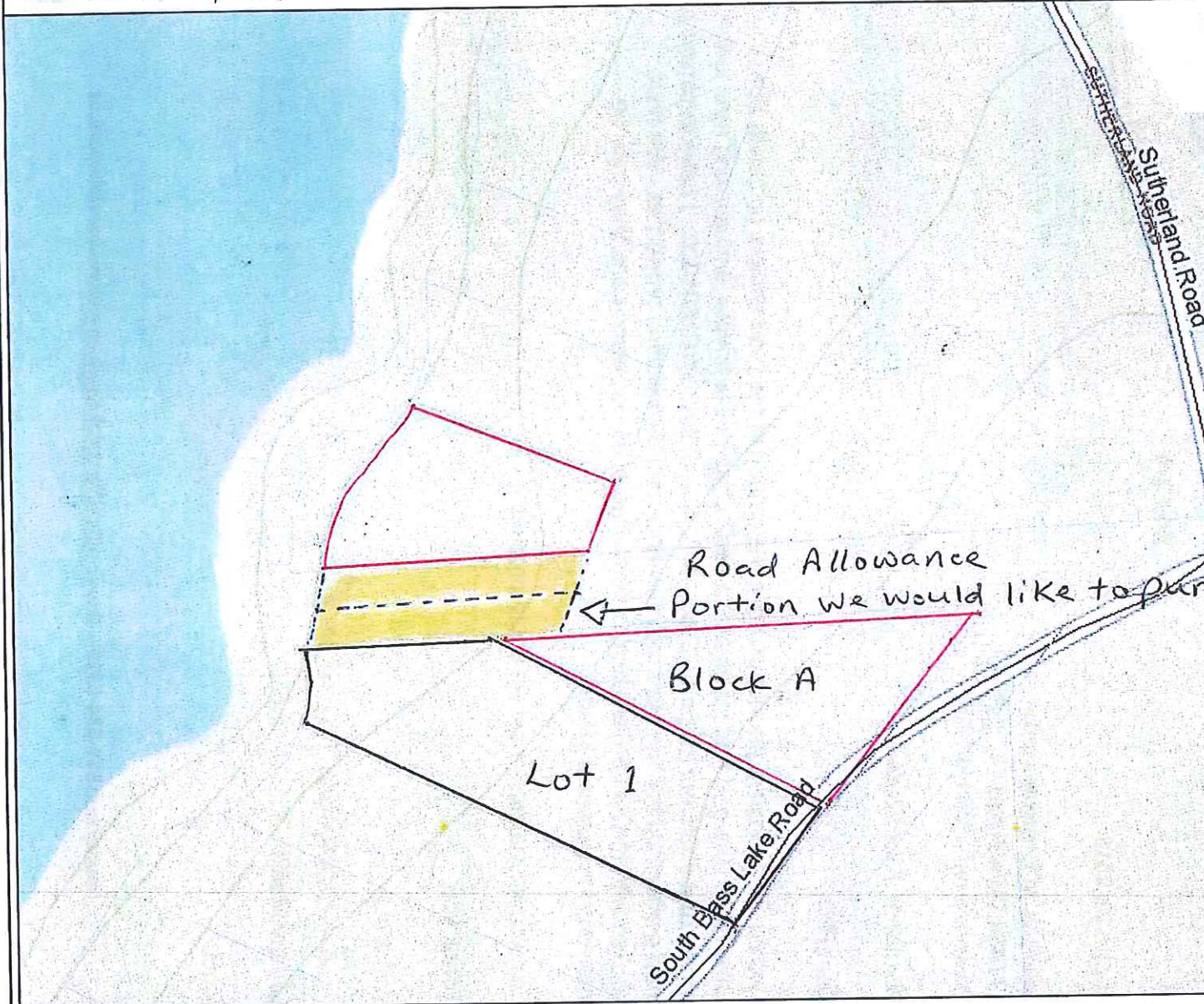
Yours truly,

Christy Madill

/encl.

Legend

- ☐ Parcels
- Large Scale Roads**
 -  Provincial Highway
 -  County Road
 -  Township Road
 -  Seasonal Road



Notes

0.08 0 0.04 0.08 Kilometers



October 3, 2018

Township of Georgian Bluffs,

Attention: Ryan Thompson

Due to continued safety concerns over the 20 foot right of way between 139 Lakeview Drive and 139 South Bass Lake Road, we the owners of these two properties, Don Simpson, Bonnie Dean and John and Karyn Beck would like to purchase it.

We have watched men climbing up and down ropes to reach the shore. Despite no one being able to have a dock or moor a boat at the said property, it is being done! Our concerns are that more people will try to put boats in the water and climb up and down ropes. If they should fall and injure themselves I fear the Township would be held liable.

Since there is no apparent control over the shore road allowance or shoreline, selling the 20 foot right of way to us would make any access illegal and remove any Township liability.

I enclose recent e-mails with John Loro who has the dock and boat in question.

Timing wise, Don Simpson and Bonnie Dean will be in Florida for the winter. We would be available for a phone link-up if necessary

John and Kayrn Beck live in Oakville and could be at any pertinent meetings

Don Simpsons Florida phone no. [REDACTED]

John Beck Oakville phone no. [REDACTED]

Donald D. Simpson

Subject: Re: Boat and dock

From: JOHN LORO [REDACTED]

Date: 10/2/2018 7:56 PM

To: Bonnie Dean [REDACTED]

[REDACTED]

The two smaller shaded orange areas are our access to the lake for anybody wanting to go on the lake that is not on the lake side. Please note the 66 feet of road allowance that goes around the lake that anyone can walk on without fear of trespassing which i would never do because that is not being neighborly. Just thought everyone should be informed when it comes to property rights. John Loro 122 lakeview

On Oct 2, 2018 5:44 PM, "JOHN LORO" [REDACTED] wrote:

I John Loro used the public access to remove my dock for the winter. I have every right to put a dock and boat in there and it will be back in the water next year. I apologize if my wife went on your property for 2 minutes it will not happen again. I do try to respect your property line. In the future if you have anything that is troubling you please feel free to call me at [REDACTED] John Loro 122 lakeview.

On Mon, Oct 1, 2018, 7:58 PM Bonnie Dean, [REDACTED] wrote:

John Loro: Today I watched a man and a woman coming onto our property to get over the cliff to bring a dock onto shore. We would ask you to not put a boat into the water next year and also take out the docks that you put in. Please get back to us with any questions.
Bonnie Dean & Don Simpson

Sent from my iPad

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Township of Georgian Bluffs

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 north of Highway 21 and on the shore and waters of Georgian Bay. There are also historic matters arising from the location of and manner of construction of Grey Road 1 in the north end of the Township. This affects Township considerations when requests to occupy road or shore allowances in that area are received. The Township may therefore establish different policies for the shore of Georgian Bay in the geographical area of Keppel than for the geographical area of Sarawak, or for inland lakes.

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 as a result 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) The location is the shore road allowance near Grey Road 1 in the geographic area of Keppel as from the southerly limit of Lot No. 26, Georgian Range, thence northerly through Lots 26 to Lot 1, both inclusive in the Georgian Range, through Block A, and thence westerly through Lots 45 to Lot 12, both inclusive, Colpoy's Range to the westerly limit of Lot No. 12, Colpoy's Range. And for greater clarity, the Township will not consider requests to close the shore road for any inland lake in the geographic area of Keppel or the Georgian Bay Shore in the geographic area of Sarawak.

4.0 Request to Close and Convey (North end of the Geographic area of Keppel)

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 effect 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 (North end of Former Keppel)

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 as a result 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, Conservation Authority, Ministry of Environment, Ministry of Natural Resources, County of Grey 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 or not it is recognized by an encroachment agreement.

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 Part 9.

7.0 Additional Policies

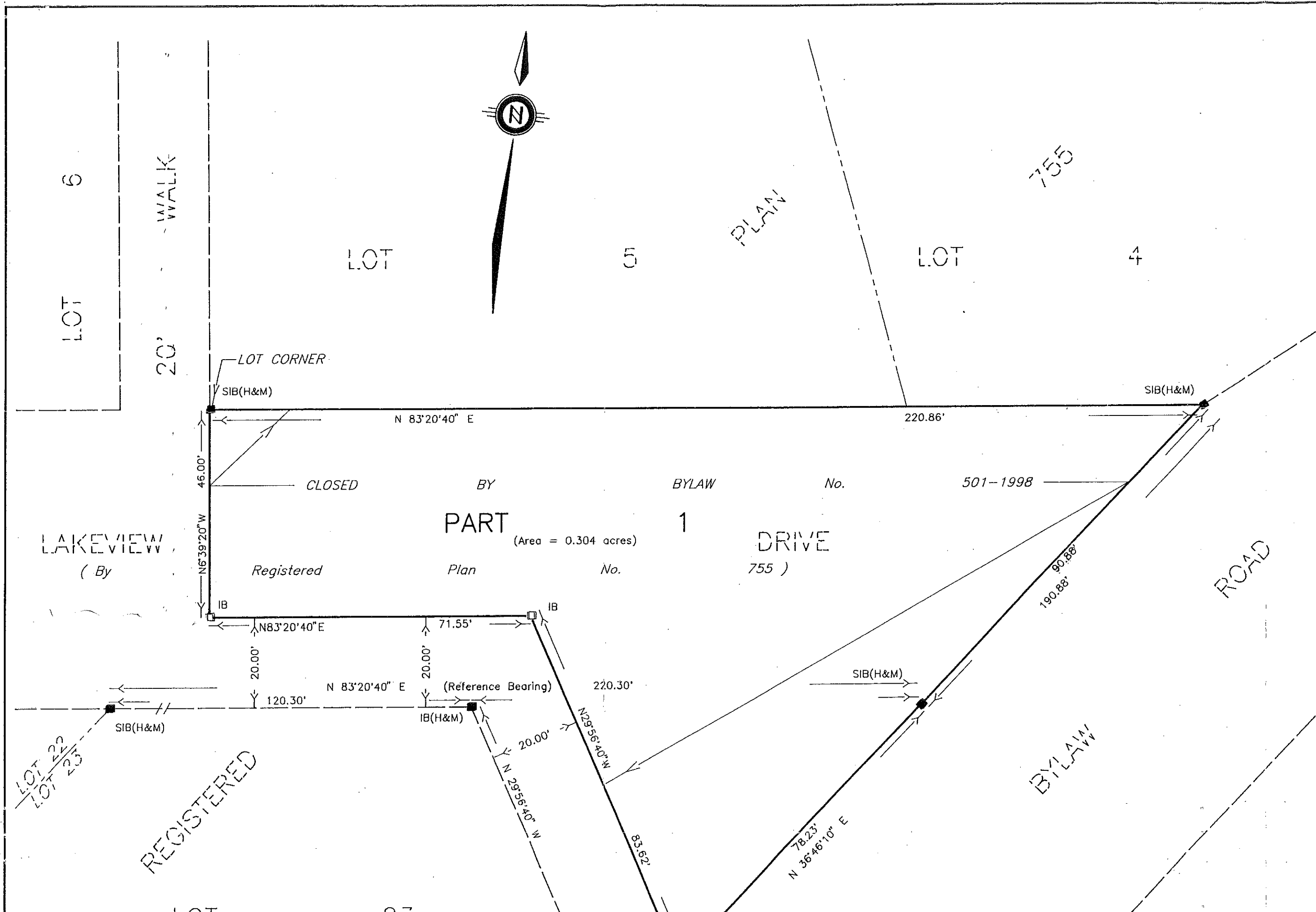
1. Except for trails built and maintained by organizations such as the Ontario Federation of Snowmobile Clubs Association, the Township will generally refuse to permit any person to open any unopened road allowance within the Township by way of a trail, driveway, or road capable of being used by any 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 metres from the front of the lot except that 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 general 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.
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 without the specific written approval of the Township.

7. Applications for permission to use an unopened road allowance shall be submitted in writing to the 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 Native Bands 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 County of Grey or 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 5 metres). The driveway shall be located 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 any and 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 general 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 any and 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.

Issued: March 24th, 2010

Repealed: N/A

Amended:



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THE REGISTRY
DATE Pre-1998
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