

The Township of Horton Policy and Procedures			
SECTION: TRANSPORTATION			POLICY #: T-07
POLICY: Use of Unopened Road Allowances - DRAFT			
DATE: April 2023	REV. DATE: By-Law 2023-23	COVERAGE: Transportation & Environmental Services	PAGE #: 1 of 4

POLICY STATEMENT

The Corporation of the Township of Horton is committed to ensuring the effective, efficient and equitable use of Township Unopened Road Allowances and provide policy direction regarding right of access.

BACKGROUND

Unopened Road Allowances are, by statutory definition, common and public highways.

The Municipal Act, Section 30 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.

The Municipal Act, Section 28(2) 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.

The Municipal Act, Section 44(1) and (2) requires the Corporation to keep public roads in repair and is liable in damages for default of their duty to repair. However, by subsection 31 (4), 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.

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

RIGHT OF PUBLIC ACCESS

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

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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 consent of the Municipality.

POWER OF A MUNICIPALITY TO PERMIT USE AND IMPROVEMENT

The municipality has full jurisdiction over unopened road allowances. The municipality also retains 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, this occurs under the provisions of the Registry Act and/or Land Titles Act.

APPLICATION TO MAKE IMPROVEMENTS

Members of the public require consent from the municipality, in form of agreement, if they are making improvements to an unopened road allowance such as building a road/driveway 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 shall 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 shall not be in 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 any improvements on an unopened road allowance does not deem it as an opened public highway maintained by the municipality.
4. The municipality shall know and control the extent of the work and/or improvement to the unopened road allowance.
5. The applicant, i.e. the owners of the land to be accessed by the improved unopened road allowance, shall agree to indemnify the municipality in respect of any claims.
6. The applicant shall agree that they are not entitled to nor will they demand services over the road, including maintenance of the road, snowplowing, garbage pick-up, school bus service, etc.

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7. Once the Agreement is entered into, it shall be registered against the title to the lands to be served by the unopened road allowance and shall serve as notice to anyone purchasing or mortgaging the land that the access road is not a municipally maintained road. This expense shall be borne solely by the applicant.

AGREEMENT PERMITTING IMPROVEMENT

The Municipality requires the Applicant (owner of the land) to enter into an Agreement, as attached as “Schedule A” and be adopted formally by a By-Law of Council. In any given situation there may be other matters to be included in an Agreement which can be modified accordingly, adding to the attached template. The Applicant shall be responsible for the cost of registering the Agreement on title and providing a copy of Registration to the municipality to attached to the Agreement.

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“Schedule A” – Form of Agreement