

By-Law Number 2024-66

A By-Law to Establish Unopened Road Allowance Policies

Whereas Section 28(2) of the *Municipal Act*, 2001, S.O. 2001, Chapter 25, as amended, states that a local municipality has jurisdiction over all road allowances in the municipality that were made by Crown surveyors and all road allowances shown on a registered plan of subdivision;

Whereas pursuant to Section 34(1) of the *Municipal Act*, 2001, S.O. 2001, Chapter 25, the Council of the Township of South Frontenac (“Township”) may pass a by-law to stop up, close and sell any highway or part thereof;

Whereas Section 44 of the *Municipal Act*, 2001, S.O. 2001, Chapter 25, as amended, imposes on local municipalities the obligation to manage and maintain the public road system lying within the boundaries of the Municipality;

Whereas the Township receives requests from time to time from property owners and other interested parties for permission to use or purchase portions of unopened road allowances lying within the boundaries of the Township; and

Whereas the Township deems it desirable to establish a policy regarding unopened road allowances within the boundaries of the Township;

Therefore Be It Resolved That the Council of the Corporation of the Township of South Frontenac hereby enacts as follows:

1. That the Township of South Frontenac, Unopened Road Allowance Policy attached to the By-law as Schedules “A” to “D” be adopted.
2. That notwithstanding any Township by-law or policy governing notice requirements or the sale of municipal land, the procedural requirements for the use or sale of unopened road allowances shall be governed exclusively by this By-law.
3. That for the purposes of this By-law, “unopened road allowance” shall mean any public highway as defined in the *Municipal Act*, 2001, that has not been opened and assumed for maintenance purposes by the Township, and includes unopened roads on Plans of Subdivision and former municipal roads that are not presently maintained.
4. This By-law shall come into force and take effect on the date of its passage.

Given First and Second Readings: Tuesday, October 1, 2024

Given Third Reading and Passed: Tuesday, October 1, 2024

James Thompson, Clerk

Ron Vandewal, Mayor

Schedule “A”: General Policy

1. Purpose

The purpose of this document is to provide a uniform policy with respect to establishing uses of Unopened Road Allowances in the Township of South Frontenac and processing Unopened Road Allowance applications related to the following:

- a) Request to close and transfer (purchase).
- b) Licence Agreement (as defined herein).
- c) Encroachment Agreement (as defined herein).

2. Definitions

“Applicant” means any person or company applying to close and transfer (purchase) an Unopened Road Allowance, or to obtain a Licence Agreement or Encroachment Agreement.

“Council” means the Council of the Township of South Frontenac.

“Ontario Land Surveyor” means a cadastral land surveyor in good standing and registered with the Association of Ontario Land Surveyors.

“Private Lane” means any street that is not maintained by the Township.

“Settlement Area” is any lands defined as such in the Township Official Plan.

“Staff” means Clerk’s Department staff where not specifically defined.

“Township” means the Township of South Frontenac.

“Unopened Road Allowance” means any public highway as defined in the *Municipal Act, 2001*, that has not been opened and assumed for maintenance purposes by the Township. They also include unopened roads on Plans of Subdivision and former municipal roads that are not presently maintained.

3. Unopened Road Allowances – Public Use

3.1 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 and repassing only.

3.2 Motorized Vehicle Use

Motorized vehicle use is prohibited on unopened road allowances except for portions of Private Lanes, the K&P Trail, Cataraqui Trail and Rideau Trail which traverse an Unopened Road Allowance. Where the above-mentioned exemption applies, only the portion of Unopened Road Allowance over which the known lane or marked trail traverses is motor vehicle use permitted, if vehicular use allowed on that portion of Private Lane or Trail.

3.3 Other Uses

The use of unopened road allowances for the storage of materials of any sort is prohibited.

3.4 Alterations of Unopened Road Allowances

No one shall make any alterations to an Unopened Road Allowance.

3.5 Trees on Unopened Road Allowances

The Township owns all trees and other vegetation on Unopened Road Allowances. Trees and other vegetation shall not be altered in any way with the exception of Private Lanes in the Township which traverse an Unopened Road Allowance historically. In this instance, only necessary tree and vegetation removal for safety purposes shall be permitted.

3.6 Improvement of Unopened Road Allowances

The Township may permit persons to make improvements to Unopened Road Allowances for access to their properties. However, the right of access of the public to an Unopened Road Allowance is paramount and therefore the Township shall not ordinarily permit the use or improvement of a road allowance in such way as to restrict public access.

3.7 Obstructing Unopened Road Allowances

No one shall cause any Unopened Road Allowance to be obstructed, including with the use of a fence, gate, chain, parked vehicle or other item.

3.8 Defining the Location of Unopened Road Allowances

The Township has no obligation to determine the location of Unopened Road Allowances in the Township. It is the user's responsibility to ensure

they are on the Unopened Road Allowance and have not deviated onto private property.

Determining the location of any Unopened Road Allowance can only be done by an Ontario Land Surveyor.

4. Application Process - Request to Close and Convey an Unopened Road Allowance

4.1 Pre-consultation with Township Staff

- a. Submission of documentation illustrating the proposal; and
- b. Attendance at a pre-consultation appointment with staff.

4.2 Submission of a Complete Application

Which application shall include the following:

- a. Complete application form (use of metric measurements required).
- b. Complete application commissioned by a Commissioner for Taking Oaths.
- c. Payment of required fee and deposit.
- d. Sketch (or drawing) indicating the estimated length and width of the portion of the Unopened Road Allowance proposed to be closed (use of metric measurements required), and
- e. All items on the checklist within the application must be provided.

4.3 Review of Application:

- a. A site visit will be scheduled and conducted by Staff.
- b. Public notice of application will be in accordance with Section 8 of this policy.
- c. Consultation as required.
- d. Staff will prepare an initial report to Council regarding the application and a Council Meeting will be held for Council to consider the application and any comments received by the public; and

- e. Council will direct staff whether to proceed further with the application, deny the application or offer additional direction.

4.4 Survey and Agreement of Purchase and Sale (Subject to Council direction to proceed following consideration of initial staff report)

- a. The applicant shall retain an Ontario Land Surveyor to survey the pertinent portion(s) of the Unopened Road Allowance, the cost of which shall be borne by the Applicant.
- b. The Surveyor shall provide a draft survey for review by Staff prior to depositing with the Land Registry Office.
- c. Staff will determine the purchase price based on the survey measurements, purchase prices as set out in Schedule "B" and may be revised, from time to time.
- d. Staff will prepare an Agreement of Purchase and Sale on the Township's form attached as Schedule "D", to be entered into between the Township and the Applicant.
- e. Staff will prepare a report and associated By-law for consideration by Council.

4.5 Purchase of the Unopened Road Allowance

- a. Following payment of the purchase price in the form of certified funds in accordance with the Agreement of Purchase and Sale, staff will forward all relevant paperwork to the Township Solicitor. The Township Solicitor will contact either the applicant or their solicitor (as advised by the applicant) to execute all necessary documents. Once the executed documents have been returned to the Township Solicitor, registration of the transfer will be completed.

- b. The Township Solicitor will register a Parcel Consolidation merging the portion of Unopened Road Allowance with the benefitting lands.

4.6 Legal Fees

- a. The legal fee invoice for the work completed by the Township Solicitor will be paid by drawing down from the deposit. Any excess deposit will be held by the Township until all legal invoices have been received and the transaction has been completed. If legal fees exceed the remaining deposit amount, the applicant will be billed directly for the remaining balance. If the remaining balance is not paid within 60 days of the invoice, the outstanding amount will be applied to the tax roll.
- b. Once all invoices and fees have been paid, the remainder of the deposit, if any, will be returned by cheque to the applicant.

5. General Provisions

- 5.1 Road allowances leading to waterbodies directly from a Township owned and maintained road will not generally be considered for closing and transferring. It is the policy of the Township to maintain public access to waterbodies.
- 5.2 Road allowances in Settlement Areas will not generally be considered for closing and conveyance. It is the policy of the Township to keep road allowances in the Settlement Areas for potential future use as roads, trails, bridges, parking areas etc. as the Township may determine.
- 5.3 Exceptions to the above provisions 5.1 & 5.2 will only be considered in the specific situation of a structure having been inadvertently built on an Unopened Road Allowance. Evidence of the building must be presented to the satisfaction of staff, the building must have had a building permit, if

applicable and must pre-date the current Zoning By-law (have legal non-complying, legal non-conforming status).

- 5.4 The Applicant must own property directly abutting the portion of Unopened Road Allowance proposed to be purchased. The Township will only convey to the adjacent landowner, the portion of the Unopened Road Allowance which directly abuts their property. It will be a requirement that the subject portion of unopened road allowance will be merged legally with one or more abutting properties located in the Township, or an abutting Township. For clarity, the closure of an unopened road allowance shall not create a new lot of record but shall only enlarge existing land holdings. The closure and sale of a portion of unopened road allowance shall also not create a “flag” or “panhandle” shaped parcel of land.
- 5.5 The purchase of an Unopened Road Allowance should not ordinarily result in a remnant piece of Unopened Road Allowance under 250 metres in length.
- 5.6 An application must not conflict with the Township Official Plan, Zoning By-Law regulations, the Recreation, Parks and Leisure Master Plan or any other Township policies as applicable, failing which the application shall not be processed.
- 5.7 The portion of Unopened Road Allowance to be closed and purchased shall be determined by an Ontario Land Surveyor prior to Council passing a By-law.
- 5.8 HST shall be payable in addition to all road allowance purchase prices.
- 5.9 Council may, as a condition of such conveyance, require any of the following:
 - Payment of all costs.
 - Exchange of other property (if possible / if applicable).

- The subject lands to be re-zoned under the *Planning Act*.
- 5.10 Applicants and members of the public may not speak as a delegation in relation to any unopened road allowance closure matters for which an application has been received. All comments must be received, in writing.

6. Financial Considerations:

- 6.1 The Applicant is responsible for paying all administrative, legal, surveying, advertising and land acquisition costs. In the event the applicant fails to pay any costs incurred through this process within 60 days of the invoice being sent, all outstanding costs will be added to the tax roll and collected in the same manner as taxes pursuant to Section 398 of the *Municipal Act*, 2001, S.O. 2001, as amended.

The application fee and the deposit are payable at the time the application is submitted.

- 6.2 **Application Fee:** in accordance with Schedule “C”
- 6.3 **Deposit:** in accordance with Schedule “C”
- 6.4 **Title search costs:** If a title search of the Unopened Road Allowance is not provided with the application, the Township may have a title search completed and the costs of such will be deducted from the deposit, as well as an administrative fee in accordance with Schedule “C”.
- 6.5 **Advertising costs:** Advertising costs will be deducted from the deposit.
- 6.6 **Posting Signage for Notice Requirements:** A fee, in accordance with Schedule “C” will be deducted from the deposit if staff are required to place signage on the benefitting lands.

- 6.7 **Purchase Price:** The purchase price for road allowances will be as set out in Schedule “B” attached to this policy, as may be amended from time to time.

7. Public Notice

- 7.1 Following submission of a complete application, information pertaining to the request will be made available on the Township website no less than 20 days prior to the first Council Meeting.
- 7.2 All landowners abutting the portion of unopened road allowance proposed to be closed and conveyed will be sent a notice by mail to the address on file with the Municipality no less than 20 days before the first Council Meeting.
- 7.3 Notice of the application will be posted on the benefitting lands no less than 20 days prior to the first Council Meeting.
- 7.4 A summary of the Notice shall be placed in the Frontenac News at least 20 days before the first Council Meeting.
- 7.5 Members of Council will receive an email in conjunction with sections 7.1-7.4 notice pertaining to the application and information regarding the matter.
- 7.6 The notice shall include the legal description of the Unopened Road Allowance and a description of the Benefitting Lands, how to provide comments if it is believed the closure would negatively impact an individual, and the date, time and place of the first Council Meeting where comments will be considered by Council. The abutting owner notice shall include information about the potential for abutting landowners to purchase a portion of the unopened road allowance.

8. Consultation

8.1 Each application will be subject to consultation with the following internal departments:

- Public Services
 - Roads (feasibility of roads, bridges and boat launches in the area).
 - Recreation (feasibility of boat launches, parking amenities, park creation and other recreation considerations).
- Treasury and Corporate Services (property tax for the benefitting property must be up to date prior to the transfer of the road allowance).
- Development Services
 - Planning (Best planning practice review).
 - Building (Review of any structures including permits known on the Unopened Road Allowance).

8.2 Each application will be subject to consultation with the following external agencies, where applicable, and may be subject to further costs with respect to the consultation, payable to the external agency separately:

- Applicable Conservation Authority (where applicable)
- Ministry of Natural Resources and Forestry (where applicable)
- Parks Canada: ie. Rideau Waterway Development Review Team (where applicable)

Through the above, consultation staff will determine if the road allowance is eligible to be closed and transferred.

9. Application Timeline:

The estimated timeframe for completion of the closure and conveyance of an Unopened Road Allowance is one (1) year, provided that the completion time may increase should complications arise, or additional steps, such as the granting of easements, etc. be required during the process.

Applications will be deemed abandoned if inactive for a period of one (1) year, and any remaining deposit will be returned to the applicant and the file will be closed. A new application will be required, should the original application be deemed abandoned.

10. Legal

The Township Solicitor will act on behalf of the Township with respect to the closure and conveyance of all Unopened Road Allowances.

11. Agreement of Purchase and Sale

An Agreement of Purchase and Sale template to be used for the purposes of conveying an Unopened Road Allowance is attached as Schedule "D".

12. Licence Agreement

- 12.1 A Licence Agreement is a legal document entered into with the Municipality authorizing the use of Municipal Property, namely untravelled portions of Unopened Road Allowances. The most common examples of this are Licence Agreements relating to the use of an Unopened Road Allowance as a means of access to that person's property. The specifics of the use are set out in each individual agreement.
- 12.2 Licence Agreements shall be permitted on Unopened Road Allowances where the continued use requires a Licence Agreement from the Municipality. The Agreement will allow the applicant to use the lands for access to a property or other such reasons. The municipal Council must deem a new use necessary and appropriate. The granting of a new Licence Agreement may be withheld for any reason.

12.3 Process

- a) After a pre-consultation with staff an application to request a Licence Agreement is to be submitted accompanied by the applicable fee and a drawing of the Unopened Road Allowance and the current or proposed use such as the private lane, or driveway.
- b) Staff will review the application with the pertinent departments and will schedule the matter on a Council meeting Agenda.
- c) A survey sketch of the Unopened Road Allowance will be required to be used as a schedule to the Agreement showing the use of the Unopened Road Allowance.
- c) If council passes the By-law, the Agreement and By-law will be sent to the Applicant's lawyer to be registered on title to the benefitting lands. No registrations shall occur on the Unopened Road Allowance.

12.4 Fees: Application fee is due with the application.

All legal costs incurred are the responsibility of the applicant.

All costs for improving and maintaining the unopened road allowance in accordance with the Licence Agreement are the sole responsibility of the applicant.

12.5 Each Licence Agreement shall set out the parameters of how the Unopened Road Allowance can be altered and maintained. Each individual property making use of the Unopened Road Allowance will be required to enter into a separate Licence Agreement for the use, development and maintenance of the Unopened Road Allowance. A singular Agreement may be entered into at the discretion of staff if there are several parties requiring the use of the Unopened Road Allowance.

12.4 The Licence Agreement shall be approved by by-law and shall be registered on the title of the benefitting lands. No registrations shall occur on the title of the Unopened Road Allowance.

12.5 All costs shall be borne by the applicant.

12.6 Licence Agreements shall not run with title but shall be extinguished upon the sale and/or transfer of the property benefitting from the Licence Agreement.

12.7 The annual fee for a Licence Agreement shall be added to the tax roll and collected in the same manner as taxes pursuant to Section 398 of the *Municipal Act*, 2001, S.O. 2001, as amended.

13. Encroachment Agreements

- 13.1 An Encroachment Agreement recognizes an existing encroachment of a building, driveway or private lane on municipal property.
- 13.2 Encroachment Agreements shall be permitted on lands where an existing situation is occurring to formalize and legalize the continued encroachment.
- 13.2 Process
- a) After a pre-consultation with staff an application to request an Encroachment Agreement is to be submitted accompanied by the applicable fee and a sketch outlining the existing encroachment.
 - b) Staff will review the application with the pertinent departments and will schedule the matter on a Council meeting Agenda.
 - c) The Applicant will be required to produce an acceptable survey of the lands illustrating the encroachment. The sketch will be included in the Agreement as a Schedule.
 - c) If council passes the By-law, the Agreement and By-law will be sent to the Applicant's lawyer to be registered on title. No registrations shall occur on the Unopened Road Allowance.
- 13.3 Fees: Application fee is due with the application.
All legal costs incurred are the responsibility of the applicant.
- 13.4 Each Encroachment Agreement shall set out the parameters of how the encroachment can continue and any stipulations with respect to expanding on the encroachment.
- 13.5 The Encroachment Agreement shall be approved by By-law and shall be registered on the title of the benefitting lands. No registrations shall occur on the title of the Unopened Road Allowance.
- 13.6 All costs shall be borne by the applicant.
- 13.7 Encroachment Agreements shall not run with title but shall be extinguished upon the sale and/or transfer of the property benefitting from the Encroachment Agreement.

Schedule “B”: Purchase Price

The purchase price of every Unopened Road Allowance shall be set at \$16.15 per square metre (\$1.50 per square foot). All road allowances shall be treated equally in terms of costs for sale purposes.

1 acre of land is 43,560 square feet, therefore the per acreage price of an unopened road allowance shall be \$65,340 plus HST.

The minimum purchase price for a parcel of Unopened Road Allowance shall be \$2,500.00 plus HST.

Schedule "C": Fees

Application to Close and Purchase Unopened Road Allowance:

Application Fee: \$1,000

Deposit: \$3,500 to be drawn down from for expenses incurred by the Township.

Administrative Fee: \$50 for title searches and other administrative work over and above normal administration of the application.

Posting Signage for Notice Requirements: \$100 for staff to post signage.

The application fee and deposit are due at the time the application is submitted.

The deposit is drawn down from in accordance with Section 6 of this policy.

Licence Agreement of Encroachment Agreement Applications:

Application fee: \$400

Annual Licence Agreement Fee: \$10 * not subject to a yearly increase.

Schedule "D": Agreement of Purchase & Sale

Date: _____

Purchaser(s): _____

Municipality: _____

Legal Description of Lands: _____

Conditions of the Purchase (if applicable):

Purchase Price: _____

HST: _____

Total payable: _____

Signature of Purchaser(s): _____

Signature of Staff member: _____

The closing date of the transaction will be as soon as possible following the payment of the Purchase Price.

Legal Council for the Municipality: Cunningham Swan

Legal Council for Purchaser(s): _____