

**THE CORPORATION OF THE MUNICIPALITY OF HIGHLANDS EAST  
BY-LAW 2007-53**

**BEING A BY-LAW TO ESTABLISH A TOWNSHIP POLICY  
ON THE USE OF UNOPENED ROAD ALLOWANCES**

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;

AND WHEREAS, Section 35 of the Municipal Act, 2001 S.O. 2001, Chapter 25, as amended provides that a municipality may remove or restrict any common law right of passage over any public highway within the boundaries of the Municipality;

AND WHEREAS the Municipality receives requests from time to time from Ratepayers and other interested parties for permission to use portions of unopened road allowances lying within the boundaries of the Municipality;

AND WHEREAS a significant portion of the municipal budget is expended on the maintenance of the road system and the only effective way to maintain control over current road expenditures and liability for future maintenance costs of the road system is to ensure that new roads are only added on a cost effective basis;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF HIGHLANDS EAST ENACTS AS FOLLOWS:

**1. SHORT FORM NAME**

1.1 THAT this By-law may be cited as “The Highlands East Township Policy on use of Unopened Road Allowances”.

**2. SCHEDULES**

2.1 Schedules attached to and forming part of this By-law

Schedule “A” - Policy on the use of Unopened Road Allowances

Schedule “B” – Application Form

2.2 THAT Schedules “A” and “B” may be amended from time to time by a resolution passed by Council for the Municipality of Highlands East without an amendment to this by-law.

**3. EFFECTIVE DATE**

3.1 THAT this By-law shall take effect upon its adoption.

**4. SEVERABILITY**

4.1 In the event that section or sections of this by-law thereof are found by a Court of competent jurisdiction to be invalid or ultra vires, such section, sections or parts thereof shall be deemed to be severable, with all other sections or parts of this by-law remaining in the full force and effect.

**READ A FIRST AND SECOND TIME THIS 9<sup>TH</sup> DAY OF OCTOBER, 2007.**

**READ A THIRD TIME AND PASSED THIS 9<sup>TH</sup> DAY OF OCTOBER, 2007.**

\_\_\_\_\_  
Dave Burton, Reeve

\_\_\_\_\_  
Irene Cook, Clerk

**SCHEDULE “A” TO BY-LAW NO. 2007-53**  
**“The Highlands East Township Policy**  
**on use of Unopened Road Allowances”.**

**POLICY RATIONALE**

**WHEREAS**, Section 2.1.3.2. of the County of Haliburton Official Plan states that road allowances or existing right-of-ways that provide access to water will be kept open and retained in municipal ownership.

**WHEREAS**, The Municipality of Highlands East Official Plan, approved by the Ministry of Municipal Affairs and Housing on December 7, 2004 provides for the Closing and Conveyance of Road Allowances under Section 4.7 of the Official Plan.

The following sections apply:

**Section 4.7.1**

Unopened road allowances will be retained by the Municipality and may be used to accommodate future transportation needs, if warranted.

**Section 4.7.2**

Notwithstanding, Section 4.7.1, Council may pass by-laws to close any portion of an opened or unopened road allowance in accordance with the Municipal Act, and in doing so, the Municipality may convey ownership of some or all of the lands.

**Section 4.7.3**

Prior to considering the closure and conveyance of any road allowance, Council will consider the following criteria:

- i) If the road allowance to be closed provides an existing or potential public access to a lake or river by leading to the water’s edge, Council must be satisfied that there is an adequate alternate public access to the water body in proximity to the road allowance to be closed; and,
- ii) If the road allowance is used or intended to be used by a formalized recreational trail organization, as indicated on the Schedules or Appendices to this Plan, it must be demonstrated that the closure will not be detrimental to the greater trail network.

**Section 4.7.4**

Where the Municipality is requested to close and convey any portion of a road allowance, Council may, as a condition of such conveyance, require any of the following:

- i) The exchange of other property to provide appropriate land or water access;

- ii) Notification of such closure and conveyance in accordance with By-law 13-2003 passed in accordance with the Municipal Act;
- iii) The subject lands to be rezoned;
- iv) The removal or structural repair of buildings or structures; or
- v) The prospective owner of such lands to assume responsibility for all costs associated with the closure including the preparation of a survey and all legal documents necessary to effect the land transfer.

AND WHEREAS, the Municipality of Highlands East deems it expedient to enact a policy relating to the use of Unopened Road Allowances;

## **POLICY STATEMENT**

1. The Corporation of the Municipality of Highlands East 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 Municipality 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 the general ratepayers of the Municipality.

## **SCOPE**

2. The Municipality will consider opening an unopened road allowance where the number of potential users warrants the expense of maintaining it and 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 Municipality.
3. The Municipality will consider permitting the location of 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.
  - (b) The number of property owners who could access the section of road allowance to be used is very limited.
  - (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 Municipality and protecting the Municipality 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 drawing and registering the agreement(s).
  - (d) The boundaries of the portion of road allowance to be used are 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.
  - (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.

- (f) Any Provincial or Federal requirements dealing with Environmental Protection or other issues are met at the expense of the Applicant.
5. No person shall erect a dock or any kind of structure on an unopened road allowance leading to the water owned by the Municipality of Highlands East.
  6. No person shall store any vehicle, boat, trailer, etc. on an unopened road allowance leading to the water owned by the Municipality of Highlands East.
  8. No person shall perform any work, remove any trees, soil or other material or erect upon or use any unopened road allowance without the specific approval of Council.
  9. Applications for permission to use an unopened road allowance shall be submitted in writing to the CAO and/or 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.
  10. If permission is granted by Council to use the unopened road allowance, the following policies shall apply, as determined by the Municipality:
    - a. The actual location of the allowance 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 Municipality's Road Superintendent 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. Where entry is upon a roadway not under the jurisdiction of the Municipality, the standards and specifications of the County of Haliburton or the Ministry of Transportation shall apply.
    - c. If brushing and clearing of the road allowance is undertaken, all wood larger than 4 inches in diameter shall be piled for pick-up by the Municipality. Alternatively, the Municipality may agree to sell the wood to the applicant at a pre-set fee per face cord, the volume of wood sold to be determined jointly by the applicant and the Road Superintendent. All brush and stumps shall be cleared to the satisfaction of the Municipality.
    - d. If the application is for the provision of an access road, driveway or right-of-way, the minimum width of clearance shall be 16 feet. This 16 feet shall be located in the centre of the road allowance, leaving an equal buffer on either side of the cleared area, unless otherwise approved by Council.
    - e. 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 Municipality. The applicant must also acknowledge in

writing that any member of the general public has the right to use the subject road allowance.

- f. The applicant must post the road allowance with a notice, in a form acceptable to the Municipality, advising all users of the road allowance that the roadway is an unassumed Municipal roadway and is used at his/her own risk.
- g. The applicant must acknowledge in writing that the Municipality assumes no liability, responsibility or obligation whatsoever to construct and/or maintain and/or repair the road allowance.
- h. The applicant must agree to indemnify and save harmless the Municipal Corporation 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.

## **SCHEDULE “B” to By-law No. 2007-53 Application Form**

### **MUNICIPALITY OF HIGHLANDS EAST**

#### **ROAD ALLOWANCES**

1. No person shall perform any work, remove any trees, soil or other material or erect upon or use any road allowance without the specific approval of Council.
2. Applications for permission to use an unopened road allowance shall be submitted in writing to the CAO and/or 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.
3. If permission is granted by Council to use the road allowance, the following policies shall apply, as determined by the Municipality.
  - a. The actual location of the allowance 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 Municipality’s Road Superintendent 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. Where entry is upon a roadway not under the jurisdiction of the Municipality, the standards and specifications of the County of Haliburton or the Ministry of Transportation shall apply.
  - c. If brushing and clearing of the road allowance is undertaken, all wood larger than 4 inches in diameter shall be piled for pick-up by the Municipality. Alternatively, the Municipality may agree to sell the wood to the applicant at a pre-set fee per face cord, the volume of wood sold to be determined jointly by the applicant and the Road Superintendent. All brush and stumps shall be cleared to the satisfaction of the Municipality.
  - d. If the application is for the provision of an access road, driveway or right-of-way, the minimum width of clearance shall be 16 feet. This 16 feet shall be located in the centre of the road allowance, leaving an equal buffer on either side of the cleared area, unless otherwise approved by Council.
  - e. 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 Municipality. The applicant must also acknowledge in writing that any member of the general public has the right to use the subject road allowance.
  - f. The applicant must post the road allowance with a notice, in a form acceptable to the Municipality, advising all users of the road allowance that the roadway is an unassumed Municipal roadway and is used at his/her own risk.
  - g. The applicant must acknowledge in writing that the Municipality assumes no liability, responsibility or obligation whatsoever to construct and/or maintain and/or repair the road allowance.
  - h. The applicant must agree to indemnify and save harmless the Municipal Corporation 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.

**ACKNOWLEDGEMENT**

To: Municipality of Highlands East  
P.O. Box 295  
Wilberforce, Ontario  
K0L 3C0  
Attention: Sharon Stoughton-Craig  
CAO/Treasurer

Re: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I/We, \_\_\_\_\_ the owner(s) of  
\_\_\_\_\_  
\_\_\_\_\_

hereby acknowledge that:

1. Any and all improvements to the original allowance for road as described above are at my/our sole expense.
2. Any member of the general public has the right to use the above-referred to road allowance.
3. The above-referred to road allowance has been posted, informing users of the road allowance that the roadway is unassumed and is used at the risk of the user.
4. I/we further acknowledge that the Municipality of Highlands East assumes no liability, responsibility or obligation whatsoever to construct and/or maintain and/or repair the said road allowance.
5. I/we hereby indemnify and save harmless the Municipal Corporation of the Municipality of Highlands East from any and all manner of actions, causes of actions, claims or demands whatsoever for or by reasons of any personal injury and/or property damage of or in any way arising out of any accident whatsoever occurring on the above-mentioned road allowance.
6. This acknowledgement shall be binding upon the parties hereto and their legal representatives, successors, and assigns. I/we agree that with respect to any sale, lease, mortgage or other disposition of my/our lands as noted above, or any part thereof, I/we shall advise the new owner, lessee, chargee/mortgagee or other party of the terms of this acknowledgement.

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_

DECLARED before me at the )  
\_\_\_\_\_ of )  
\_\_\_\_\_ )  
\_\_\_\_\_, in the )  
County of \_\_\_\_\_ )  
this \_\_\_\_\_ day of )  
\_\_\_\_\_, 20\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )

\_\_\_\_\_  
Signature of Owner(s)

\_\_\_\_\_  
Signature of Owner(s)

(A Commissioner, etc.)