



# THE MUNICIPALITY OF CALVIN

## PUBLIC WORKS DEPARTMENT

To: Council

Subject: Road Use Agreements

Author: Ann Carr, Public Works Superintendent

Date: October 29th, 2024

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### **PURPOSE:**

The Municipality of Calvin is currently reviewing the policies and by-laws that are in place to make transparent decisions regarding the consideration of Road Use Agreements.

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### **BACKGROUND:**

1. Resolution 2024-77 February 27, 2024, was passed and carried.

**That** Council discontinue the practice of receiving requests for and issuing road use or maintenance agreements.

2. Resolution 2024-98 March 12, 2024, was passed and carried.

**WHEREAS** by resolution 2024-77 passed February 27, 2024, Council agreed to discontinue the practice of receiving requests for and issuing road use maintenance agreements,

**AND WHEREAS** while the Municipality has issued road use agreements for the maintenance of seasonally maintained roads and citizens in the past, including recently, these have been considered and or issued by Councils of the Municipality without any formal or transparent processes,

**NOW THEREFORE** be it resolved that in the absence of any process, policy or by-law that outline the circumstances under which Council will receive or consider requests for seasonal road use or maintenance agreement for municipal roads not maintained all year long by the Municipality, that staff be directed to research and bring forth to Council before August 2024, guidelines and policies which would establish formal processes and conditions under which the Council might consider such requests, it is understood this research will be comprehensive and will necessitate staff collaboration with our insurer, planner of record and legal department.

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### **LEGAL AUTHORITY/HISTORICAL AND PRESENT:**

**Municipal Act, 2001, SO 2001, c 25**

#### **By-law necessary**

(2) After January 1, 2003, land may only become a highway by virtue of a by-law establishing the highway and not by the activities of the municipality or any other person in relation to the land, including the spending of public money. 2001, c. 25, s. 31 (2); 2006, c. 32, Sched. A, s. 16 (2).

#### **Certain highways not affected**

(3) Subsection (2) does not apply to highways described in paragraphs 3, 4 and 5 of section 26. 2001, c. 25, s. 31 (3).

**35** Without limiting sections 9, 10 and 11, a municipality may pass by-laws removing or restricting the common law right of passage by the public over a highway and the common law right of access to the highway by an owner of land abutting a highway. 2006, c. 32, Sched. A, s. 18



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### Maintenance

44 (1) The municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge. 2001, c. 25, s. 44 (1).

### Liability

(2) A municipality that defaults in complying with subsection (1) is, subject to the Neqliqence Act, liable for all damages any person sustains because of the default. 2001, c. 25, s. 44 (2).

### Defence

(3) Despite subsection (2), a municipality is not liable for failing to keep a highway or bridge in a reasonable state of repair if,

- (a) it did not know and could not reasonably have been expected to have known about the state of repair of the highway or bridge;
- (b) it took reasonable steps to prevent the default from arising; or
- (c) at the time the cause of action arose, minimum standards established under subsection (4) applied to the highway or bridge and to the alleged default and those standards have been met. 2001, c. 25, s. 44 (3).

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### O. Reg. 239/02: MINIMUM MAINTENANCE STANDARDS FOR MUNICIPAL HIGHWAYS

(2) For the purposes of this Regulation, every highway or part of a highway under the jurisdiction of a municipality in Ontario is classified in the Table to this section as a Class 1, Class 2, Class 3, Class 4, Class 5 or Class 6 highway, based on the speed limit applicable to it and the average daily traffic on it. O. Reg. 239/02, s. 1 (2); O. Reg. 366/18, s. 1 (3).

(3) For the purposes of subsection (2) and the Table to this section, the average daily traffic on a highway or part of a highway under municipal jurisdiction shall be determined,

- (a) by counting and averaging the daily two-way traffic on the highway or part of the highway; or
- (b) by estimating the average daily two-way traffic on the highway or part of the highway. O. Reg. 239/02, s. 1 (3); O. Reg. 23/10, s. 1 (2); O. Reg. 366/18, s. 1 (3).

(4) For the purposes of this Regulation, unless otherwise indicated in a provision of this Regulation, a municipality is deemed to be aware of a fact if, in the absence of actual knowledge of the fact, circumstances are such that the municipality ought reasonably to be aware of the fact. O. Reg. 366/18, s. 1 (4).



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### Application

2. (1) This Regulation sets out the minimum standards of repair for highways under municipal jurisdiction for the purpose of clause 44 (3) (c) of the Act. O. Reg. 288/03, s. 1.

(2) REVOKED: O. Reg. 23/10, s. 2.

(3) This Regulation does not apply to Class 6 highways. O. Reg. 239/02, s. 2 (3).

### Purpose

2.1 The purpose of this Regulation is to clarify the scope of the statutory defence available to a municipality under clause 44 (3) (c) of the Act by establishing maintenance standards which are non-prescriptive as to the methods or materials to be used in complying with the standards but instead describe a desired outcome. O. Reg. 366/18, s. 2.

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### What is a Zoning By-Law?

A zoning bylaw controls the use of land in your community. It states exactly:

- how land may be used
- where buildings and other structures can be located
- the types of buildings that are permitted and how they may be used
- the lot sizes and dimensions, parking requirements, building heights and densities (the number of people, jobs and building floor area per hectare), and setbacks from the street

An official plan sets out your municipality's general policies for future land use. Zoning bylaws put the plan into effect and provide for its day-to-day administration. They contain specific requirements that are legally enforceable. Construction or new development that doesn't comply with a zoning bylaw is not allowed, and the municipality will refuse to issue a building permit.

Many municipalities have a comprehensive zoning bylaw that divides the municipality into different land use zones, with detailed maps. The bylaw specifies the permitted uses (for example, commercial or residential) and the required standards (for example, building size and location) in each zone.

Some rural municipalities may have a free-standing zoning bylaw that covers only a specific property that an owner proposes to develop.

### Why you need a zoning bylaw.

A zoning bylaw:





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- implements the objectives and policies of a municipality's official plan (See section 2, Official plans)
- provides a legal and precise way of managing land use and future development
- in addition to the official plan, protects you from conflicting and possibly dangerous land uses in your community

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### Zoning By-Law 2000-011

#### 4.11 Frontage on a Public Street or Private Road

**4.11.1** No person shall erect any building or structure in any zone unless the lot upon which such building or structure is to be erected has sufficient frontage on a public street or private road as per the requirements of the respective zone within which the lot is situated except:

- (a) for any permitted use on an island provided a public access point is available on the main land
- (b) infill on a private road existing on the day of the passing of this by-law
- (c) **a camp**
- (d) a resource related use on Crown Land
- (e) a communications facility
- (f) a public utility
- (g) a wayside pit or quarry
- (h) a passive outdoor recreational use of activity such as skiing, snowmobiling, hiking, mountain biking or similar activities.

#### 4.11.2 Exception for Existing Agreements

- (a) Despite Section 4.11.1, where a maintenance agreement exists between the municipality and a land owner **and is registered on title**, frontage on an unopened road allowance or unmaintained public right-of-way shall be deemed to conform to the provisions of this section, provided that such frontage is in conformity with the standards set out in the corresponding zone or any exception thereto.
- (b) Despite Section 4.11.1, where an access agreement **registered on title** between or amongst landowners that provides for a right-of-way to an existing lot which is developed for a single detached dwelling or seasonal dwelling as of the date of the passing of this By-Law, such uses shall be deemed to conform with the provision for access of this By-Law.





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### Zoning By-Law 2010

#### Definitions

**Dwelling Unit-Seasonal** means a dwelling constructed as a secondary place of residence and is not the principal place of residence of the owner or occupier thereof. A seasonal dwelling shall include a Park Model Trailer.

**Private Road**-means a private right-of-way over private property which affords access to at least two abutting lots and which is not maintained by the public authority.

**Public Street**- means a public or common highway affording the principal means of access to abutting properties which has been assumed by the public authority.

**Street Line**-means the limit of the road or street allowance and is the dividing line between a lot and a Public Street or Private Road.

#### 4.11 Frontage on a Public Street or Private Road

4.11.1 No person shall erect any building or structure in any zone unless the lot upon which such building or structure is to be erected has sufficient frontage on a public street or private road as per the requirements of the respective zone within which the lot is situated except:

- (a) For any permitted use on an island provided a public access point is available on the main land;
- (b) Infill on a private road existing on the day of the passing of this by-law;
- (c) **A Camp**;
- (d) A resource related use on Crown Land;
- (e) A communications facility
- (f) A public utility
- (g) A wayside pit or quarry; and
- (h) Any passive outdoor recreational use or activity such as skiing, snowmobiling, hiking, mountain biking or similar activities.

#### 4.11.2 Exception for Existing Agreements

- (a) Despite Section 4.11.1, where a maintenance agreement exists between the municipality and a land owner and is registered on title, frontage on an unopened or unmanitained public right-of-way shall be deemed to conform with the provisions of this section, provided; that such frontage is in conformity with the standards set out in the corresponding zone or any exception thereto;
- (b) Despite Section 4.11.1, where an access agreement registered on title between or amongst landowners provides for a right-of-way to an existing lot of record, or the lot of record, or the lot of record has water access only, the access requirements shall be deemed to conform with the provisions for access of this By-Law.



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### Zoning By-Law 2022-19

#### Definitions:

**Street Means** an improved public thoroughfare, lane, road or highway affording principal means of access or entrance to abutting properties, and which has been assumed and is maintained year-round by a public authority.

**Dwelling – Seasonal Means** a dwelling constructed as a secondary place of residence which is not intended for, or used for, or constructed for year-round living (i.e. is not winterized or insulated) and is not the principal place of residence of the owner or occupier thereof (e.g., cottage) and such dwelling shall only receive seasonal road maintenance where located on a Municipal road classified for seasonal maintenance only.

**Camp (Hunt Camp, Fishing Camp) Means** a building or structure intended to provide basic shelter and accommodation on a temporary basis for persons engaged in such activities as hunting, fishing, snowmobiling, hiking or other similar forms of recreation but **does not include a seasonal dwelling.**

#### Section 1 ADMINISTRATION

**1.2 Application and Building Permits** In addition to the requirements of the Municipality of Calvin Building By-law, every planning application or application for a building permit shall be accompanied by information required to determine compliance with this By-law. The regulations of this By-law must be met before a building permit is issued by the Municipality for the erection of any building or structure.

**1.3 Defined Area** The provisions of this By-law shall apply to all lands within the municipal boundaries of the Corporation of the Municipality of Calvin.

**1.4 Enforcement** This By-law shall be enforced by the Clerk or such other persons as may from time to time be designated by Council, and no permit for the use of land or for the erection or use of any building or structure or approval of application for any municipal license within the jurisdiction of the Council shall be issued or given where the proposed building, structure or use would be a violation of any provision of this By-law.

**1.5 Penalty** Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to the fine(s) as provided for under the Planning Act, R.S.O., 1990, c. P.13, as amended.

**2.1 Compliance** No land, building or structure shall be used, and no building or structure shall be erected or enlarged, altered or placed for any purpose within the area defined by this By-law, except as specifically, or by necessary implication, authorized by this By-law and in conformity with all the applicable provisions of this By-law.

#### 4.11 Frontage on a Public Street or Private Road

No person shall erect any building or structure or use any land in any zone unless the lot upon which such building or structure is to be erected or the land to be used has access to and meets the minimum lot frontage on a street.

**4.11.1 Exceptions** Despite the above, access to a lot shall be permitted:





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1. For a permitted use located on an existing private road, existing easement and for a permitted use located in a registered condominium located on an internal private road;
2. For any permitted use on an island provided a public access point is available on the main land;
3. Infill on a private road existing on the day of the passing of this by-law;
4. **A camp;**
5. For a farm field;
6. For a resource related use located on Crown Land;
7. For a communications facility;
8. For a public utility;
9. For a wayside pit or quarry;
10. For a water access lot;
11. For any passive outdoor recreational use or activity such as skiing, snowmobiling, hiking, mountain biking or similar activities, and
12. Provided all other applicable zone regulations are met.

### 4.11.2 Road Maintenance Agreements

**1. In addition to Section 4.11.1, development including the issuance of a building permit shall only be permitted where frontage is on a road that is defined in By-law No. 2016-020 and is maintained by the Municipality or is maintained under a road maintenance agreement approved by the Municipality.**

2. In addition to Section 4.11.1, where a road maintenance agreement **exists** between the municipality and one or more land owner and **is registered on title**, frontage on a private road, a private unassumed road, an unassumed road or unopened road allowance shall be deemed to conform to the provisions of this section, **provided that such frontage is in conformity with the standards set out in the corresponding zone or any exception thereto;**

### 4.11.3 Exception for Access Despite Section

4.11.1, where an access easement **registered on title** between or amongst one or more landowners provides for a right-of-way to an existing lot of record, or the lot has water access only, the access requirements shall be deemed to conform to the provisions for access of this By-law.

**Example: a road classified as a “seasonal road” will only be maintained on a seasonal basis (i.e., summer season) and development on the road shall only be permitted where the road is maintained by the Municipality or under an authorized road maintenance agreement approved by the Municipality. The Municipality assumes no responsibility for providing maintenance or emergency services in the off-season.**

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### What is an Official Plan?

An official plan describes your upper, lower or single tier municipal council or planning board's policies on how land in your community should be used. It is prepared with input from your community and helps to ensure that future planning and development will meet the specific needs of your community.

An official plan deals mainly with issues such as:

- where new housing, industry, offices and shops will be located
- what services like roads, watermains, sewers, parks and schools will be needed
- when, and in what order, parts of your community will grow
- community improvement initiatives

### East Nipissing Planning Board Official Plan-2021

#### 1.2 Growth and Development Concept

The intent of the Plan is to plan for a stable population over the planning period (2021-2046). The population of the Planning Area has marginally declined by 120 over the last decade (2006-2016) from 1,813 to 1,693. However, the number of dwellings increased by 80 over the same period. New housing starts have ranged from 7-11 per year (2011-2015) based on Municipal building permit records and is projected to continue at this rate of growth. The land supply for housing remains constant at about 150 rural residential building lots ranging from 0.4 ha to 2 ha. The intent of the Plan is to maintain is to maintain the rural character of the Planning Area where low density residential development will prevail intermixed with resource-based activities, resource-based recreational uses, and other rural land uses.

Development is intended to occur on large lots (having a minimum of 0.8 ha) with large frontages of 30 meters. **The focus of new development in the Rural Policy Area will be infill on vacant lots of record and in areas serviced by existing roads and municipal services.**

Waterfront development will continue as a mainstay activity on the Ottawa and Mattawa Rivers and on inland lakes where such development is proven to be sustainable with respect to the biological capacity of a lake, the retention and or restoration of shorelines and the conservation of the cultural heritage landscapes and archaeological resources in and adjacent to these waterbodies. The designated Rural Mixed-Use Area will continue to be the focus for new major commercial and industrial development. Home base business will continue to provide local services to residents through out the Rural Policy Area. Four-season tourist facilities and services are land uses that are location-sensitive for their success and the intent of the plans is to leverage rural amenities and assets to their benefit. The development of the former CPR rail line as a multi-use recreational trail will act as an anchor to potential new tourism development in the Planning Area and will continue to depend on the public service facilities of Mattawa and North Bay in meeting the educational, health care and to a lesser extent recreational and social services needed by area residents and businesses.

Emergency and protective services will continue to be delivered individually and on a cost-shared basis among area Municipalities. **Development will continue to be directed to the existing network of roads whose service levels, life-cycle maintenance, and reconstruction is governed by Municipal Asset Management Plans.**



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### 2.6 Lot Access Criteria

Access to development shall be by one of the following means:

**Frontage on an improved road year-round maintained municipal road;**

**Frontage on a seasonally maintained Municipal Road for seasonal land uses only;**

Frontage on a provincial highway subject to obtaining all required approvals from MTO for land use, entrances, drainage and implementing any highway or entrance improvements resulting from any required traffic or drainage or stormwater management studies;

Applicants shall pre-consult with the North Bay Mattawa Conservation Authority in planning, design and review of site conditions for any sewage and stormwater facilities on lands affected by Conservation Authority regulations. See also 2.7 of the East Nipissing Official Plan Page 21.

Wherever feasible, access shall be via an interconnecting **improved Municipal Road**.

**Frontage for infill development on an existing private road or legal right-of-way/easement, or unassumed road allowance, which meets appropriate maintenance standards right-of-way width, travelled surface width, height clearances and slope required for regular and emergency vehicle use. A Municipality of the Planning Board may require a maintenance agreement or may govern any matters under Section 35 of the Municipal Act as a condition of development.**

#### **Municipal Act Section 35:**

##### **Restricting common law right of passage**

**35** Without limiting sections 9, 10 and 11, a municipality may pass by-laws removing or restricting the common law right of passage by the public over a highway and the common law right of access to the highway by an owner of land abutting a highway. 2006, c. 32, Sched. A, s. 18

Frontage on a private road servicing a condominium where a private road connects directly with an improved public road and meets appropriate construction and maintenance standards.

Frontage may be exempted for **land uses for infrequent or private access. ( i.e. Farm fields, hunt/fish camps, public utilities, communications facility, passive recreation use)**

**Landlocked access for new development shall not be permitted.**

Access may be exempted for development on an island or water access only where access to a parking area on the mainland or same lake, owned or described in a registered easement and being in the same name and interest as the island or water-access lot.

A Municipality may establish a by-law to classify roads for the purposes of controlling access. For the purposes of the Plan, the road classification for the Township of Papineau-Cameron and the Municipality of Calvin is set out in the Appendix 4 to this Plan.





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### 5.3.2 Township Roads

1. In addition to the policies of Section 2.6, **the primary access for development in the Planning Area will be via the existing Municipal Road network. Municipalities are authorized to classify roads and restrict or control access for any development or a change of land use on the basis of the classification** (see road classification for the Township of Papineau-Cameron and the Municipality of Calvin in Appendix 4). The classification may include the designation of roads for scenic or cultural resource purposes including measures to govern or conserve a cultural heritage landscape. The land use schedules to the official plan set out a road classification system which generally coincides with the road classification set out in by-laws passed by the Municipality of Calvin (By-Law 2016-020) and the Township of Papineau-Cameron (By-Law 2018-04) For the purposes of the official plan, the by-laws shall be used in correlating land use decisions with the accessibility requirements and standards of the respective Municipality.
2. Municipalities may exercise any authority granted by the Municipal Act for the design and use of roads as a means to convey people and goods, provide emergency and public services and serve as infrastructure corridors. Municipalities may govern the use of road rights-of-way traffic, sidewalks, crosswalks, boulevards, street signs, private signage, garbage collection, snow plowing, parking and loading, and utilities.
3. Entrance permits may be required for the design and construction of entrances and the installation of culverts. Culverts may be installed by a Municipality at the owner's expense or by the owner under Municipal supervision.
4. **Municipalities may require or undertake a traffic impact study, drainage study or heritage impact study prior to the approval of any road construction including new roads, road lane, intersection and entrance improvements, road widening, cycling lanes, car parks for carpooling, and landscaping or right-of-way improvements.**
5. Standards, timing, phasing for the maintenance and reconstruction shall be in accordance with the respective Municipal Asset Management Plan using the life-cycle costing.
6. **Municipalities may require a cost-benefit analysis including lifecycle costing prior to considering the acquisition of any private or other road proposed for public use for the construction of any new road proposed for dedication and assumption to a Municipality.**
7. **Municipalities may require land to be conveyed to the appropriate road authority at no cost for the purpose of widening an existing road as a condition of severance, subdivision or site plan approval. Land for widening of a road right-of-way shall generally be sought equally from both sides of the right-of-way be exempted or modified to reflect constraints such as natural heritage or cultural resources, existing physical development or encroachments, placement of buildings, scale of the proposed development and pedestrian safety.**
8. Municipalities may establish a road, street or highway under the 5% reserve provision of Section 64 of the Municipal Act where there is a 5% reserve in the patent for the original parcel that has not already been used and without compensation to the abutting landowner. Such acquisition may be registered and may be for the benefit of providing access to landlock parcels.





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#### 5.3.3 Unopened Road Allowances

An unopened road allowance means a road, street or lane owned by the Municipality. Municipalities under Section 35 of the Municipal Act may remove or restrict the common law right-of-passage and access of an unopened road allowance and are authorized to regulate any improvements, maintenance, access, cross-over, land use or encroachments, or cutting of trees, removing obstructions, grading and hosting social or any social, recreational or sporting events/use of an unopened road allowance.

**Municipalities may as a condition of use, require a legal plan of survey, may enter into an agreement, may require liability insurance, may provide that permission for use may be cancelled, that permission is not assignable and may be exclusive, and may require installation of signage cautioning use or access to the road allowance. Municipalities may also provide input from neighbours or other users of the road before granting use and may require the right to inspect for compliance with any conditions imposed in the use of the unopened road allowance.** See appendix 4 for Municipal Road Classifications.

#### 5.3.4 Private Roads

1. A private road is defined as a road or easement under private ownership which serves two or more legally conveyable lots. The locations and the rights of use must be sufficiently identifiable including the owner of the land (servient tenement or one over whose land the easement or right-of-way will extend), the user (dominant tenement or the one benefitting from the easement) the location of the route or alignment on the landscape (to excluding the notion of wandering at large), and the rights conferred on the use (e.g. type of traffic permitted, exclusive or shared use), width and height clearances of the road, material use, maintenance, what can be constructed on the easement (i.e. utilities, fences, poles, drains), also how the parties are to notify each other, the right of Municipal access and level of services which may or may not be offered, tree removal or trimming, signage and speed controls and indemnity of a Municipality from actions. Note: A driveway provides access to only one property or legally conveyable lot, despite the length of the driveway.

**2. A Municipality has no legal obligation to maintain or repair any private road or otherwise provide services to any development located on a private road nor is there any responsibility acknowledged for the provision of school bussing.**

**3. New private roads shall not be permitted except for a condominium where the internal private road has direct access to a public road.**

**4. Municipalities or the Planning Board may permit new lot creation or development on an existing lot on an existing private road and may as a condition of approval require the upgrading and maintenance of the private road to an acceptable municipal standard and a standard which meets the access requirements for emergency vehicles in accordance with the Ontario Building Code, and may require one or more signs to be installed indicating that the road is used at the risk of the user. The Municipal Act may be used for any agreements related to the construction, maintenance and use of the private road.**

**5. A private road may be dedicated and assumed by a municipality subject to Section 5.3.2.6.**

6. A lot may be used or developed for a use permitted by this Plan and the zoning by-law which does not have frontage on a public road provided the lot has an existing legal access.



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**7. The provisions of this section shall not be deemed to prohibit the blockage of an existing road over one person's land which provides the only motor vehicle access to another person's land or boat docking facility where otherwise permitted under the auspices of the Road Access Act.** The Road Access Act does not apply to land not owned by a Municipality.

### 5.3.5 Roads on Crown Land

Roads across crown land are intended to provide access to resource-based land uses such as forestry, mineral or mineral aggregate extraction, subject to approval by MNRF, and do not have guaranteed maintenance, consequently Crown Land Roads are not considered acceptable access for the purposes of providing or approving access to residential or commercial land uses.

### 5.3.6 Shoreline Road Allowances

1. Shoreline road allowances are intended to be kept in the public domain but may also be sold to an abutting shoreline property owner to provide riparian rights and access to the abutting water body.
2. This Plan is not deemed to convey any right by a property owner for the construction of any dock, building or structure on a shoreline road allowance without prior permission from a Municipality. Municipalities may enter into encroachment agreements for any use of a Municipally owned shoreline road allowance.
3. Shoreline road allowances are intended to be retained in the public domain where they conserve a public access to a waterbody, serve to conserve a cultural heritage landscape or are required to protect a natural heritage feature and area or a vulnerable or sensitive ground water feature.

### 7.20 Land Division, Part-Lot Control and Deeming (Sections 50-53, Planning Act)

The creation of all new lots by plan of subdivision or consent shall comply with the following general requirements and the specific requirements of the applicable land use designation of this Plan (see Sections 2.3 - 2.7)

**6. Lots shall have frontage on and direct access to a year-round maintained public road, except for islands or water access only lots and where applicable to a provincial highway or as otherwise provided by Section 2.6 of this Plan.**

8. Adequate infrastructure shall be available (see Sections 2.7 and 5.3).

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## PLANNING ACT, PART V LAND USE CONTROLS AND RELATED ADMINISTRATION

### Zoning by-laws

34 (1) Zoning by-laws may be passed by the councils of local municipalities:

#### Restricting use of land

1. **For prohibiting the use of land, for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or abutting on any defined highway or part of a highway.**





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### Restricting erecting, locating or using of buildings

2. For prohibiting the erecting, locating or using of buildings or structures for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or upon land abutting on any defined highway or part of a highway.

### Construction of buildings or structures

4. For regulating the type of construction and the height, bulk, location, size, floor area, spacing, character and use of buildings or structures to be erected or located within the municipality or within any defined area or areas or upon land abutting on any defined highway or part of a highway, and the minimum frontage and depth of the parcel of land and the proportion of the area thereof that any building or structure may occupy.

### Certificates of occupancy

(6) A by-law passed under this section may provide for the issue of certificates of occupancy without which no change may be made in the type of use of any land covered by the by-law or of any building or structure on any such land, but no such certificate shall be refused if the proposed use is not prohibited by the by-law. R.S.O. 1990, c. P.13, s. 34 (6).

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### Occupier's Liability Act, R.S.O. 1990, Chapter 0.2

#### Definitions

1. In this Act, "occupier" includes;
  - a) A person who is in physical possession of premises, or
  - b) A person who has responsibility for and control over the condition of premises or the activities there carried on, or control over persons allowed to enter the premises.

#### Occupier's Duty

3.(1) An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that person entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises.

#### Idem

(2) The duty of care provided for in subsection (1) applies whether the danger is caused by the condition of the premises or by an activity carried on the premises.

#### Premises referred to in subs. (3)

(4) Premises referred to in subsection (3) are;





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(d) unopened road allowances.

(e) private roads reasonably marked by notice as such.

### **Restriction of duty or liability**

5 (1) The duty of an occupier under this Act, or the occupier's liability for breach thereof, shall not be restricted or excluded by any contract to which the person to whom the duty is owed is not a party, whether or not the occupier is bound by the contract to permit such person to whom the duty is owed is not a party, whether or not the occupier is bound by the contract to permit such person to enter or use the premises.

### **Extension of liability by contract**

(2) A contract shall not by virtue of this Act have the effect, unless it expressly so provides, of making an occupier who has taken reasonable care, liable to any person not a party to the contract, for dangers due to the faulty execution of any work of construction, maintenance or repair, or other like operation by persons other than the occupier, employees of the occupier and persons acting under the occupier's direction and control.

### **Liability where independent contractor**

6(1) Where damage to any person or his or her property is caused by the negligence of an independent contractor employed by the occupier, the occupier is not on that account liable if in all the circumstances the occupier had acted reasonably in entrusting the work to the independent contractor, if the occupier had taken such steps, if any, as the occupier reasonably ought in order to be satisfied that the contractor was competent and that the work had been properly done, and if it was reasonable that the work performed by the independent contractor should have been undertaken.

### **Idem**

(2) Where there is more than one occupier of the premises, any benefit accruing by reason of subsection (1) to the occupier who employed the independent contractor shall accrue to all occupiers of the premises.

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### **Russel On Roads**

W.D. (Rusty) Russel, Q.C., B.A., L.L.B., of the Ontario Bar, was the founder and Senior Member of the Orillia law firm of Russell, Christie, LLP. He had wide experience in municipal and planning law. In 2005, he was the recipient of the Award of Excellence in Municipal Law awarded by the Municipal Law Section of the Ontario Bar Association. He was a frequent speaker at municipal conferences across the province of Ontario. He would often work with Law Society of Upper Canada, Ontario Land Surveyors, Ontario Good Roads Association and various municipal associations.



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Rusty Russel was the “guru” of legislation, planning and roads. He developed 3 editions of books titled “Russell on Roads”. In these books he discusses the principles of roads and uses case law to teach municipalities what and what not to do and what legislation can be used to protect the municipality.

### Road Principle 3 Highways: Ownership and Jurisdiction

#### 3.10 “Ownership” does not mean an “Assumption”

Municipal “ownership” of the soil and freehold of a highway is one thing, “assuming” the highway for maintenance purposes is another. Most non-urban municipalities have many kilometers of unopened, unassumed road allowances that were laid out in the original Crown surveys, or a Registered Plan of Subdivision.

These are, nevertheless, public highways. It has been long established that a municipality has no obligation to open or “assume” original road allowances, or roads on Registered Plans of Subdivision, or to make passage over them easier for the public. This is set out in the Municipal Act section 31 (4).

### Road Principle 28-Building Permits and Road Requirements

#### 28.1 Official Plans and Comprehensive Zoning By-Laws

An organized municipality, under section 16 of the Planning Act, can prepare an Official Plan setting out its goals, objectives and policies. These policies are implemented in detail in a Comprehensive Zoning By-Law under Section 34 of the Planning Act.

Official Plans (occasionally) and Comprehensive Zoning By-Laws (always) have provisions specifying the type of road that a building lot must abut in order to be eligible for a building permit. For the purpose of issuing building permits, the wording contained in these documents is critically important. In some municipalities the wording is poorly drafted (a recipe for problems), resulting in the municipality having to issue permits for buildings on roads they had not intended to maintain.

28.2 For building permit purposes, these planning documents usually address three categories of roads.

Category 1	Category 2	Category 3
Roads assumed by the municipality for year-round maintenance.	Roads assumed by the municipality for part-year maintenance (usually excludes winter maintenance)	Roads owned but not assumed by the municipality for maintenance purposes.
Chief Building Official (CBO) must issue permit if Application complies with “all applicable law” i.e. zoning category, setbacks, lot area, frontage etc.	CBO may or may not issue building permit depending on the wording in the Official Plan or Zoning By-Law.	CBO under no obligation to issue a building permit.





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	If verbiage is vague, this can be “iffy”, in terms of the CBO being able to refuse a building permit.	This too could be “iffy” if the wording is not precise in saying that no building permits will be issued on unassumed roads.
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28.3 The following are examples of the wording often found in comprehensive zoning by-laws:

### Example One:

**.... No person shall erect or use any building or structure for permanent year-round or full time use on any lot or parcel that has frontage on municipally owned road.**

The wording “municipally owned road” is useless. Excluding private roads, provincial highways, local municipalities own many kilometers of roads-some assumed for maintenance purposes, and others not assumed. Nevertheless, they are all owned by the municipality. This wording gives no protection to a municipality that chooses not to issue a building permit for a lot on an unmaintained road.

### Example Two:

**No person shall erect any building or structure in any zone unless the lot upon which such building or structure is to be erected fronts upon which such building or structure is to be erected fronts upon an improved public street or road.**

In cities and towns, this verbiage is probably sufficient to protect the municipality should it wish to refuse a building permit. However, in rural areas, roads may be maintained in the spring, summer and fall, but not in the winter. In those situations, the use of the word “improved” is a little benefit to a municipality unless the word is defined more precisely in the by-law, such as meaning “a year-round maintained road.”

### Example Three:

**No person shall erect any building or structure unless the lot upon which building or structure is to be erected fronts upon, and is directly accessible from, an improved public street or road-maintained year-round by the municipality or the province.**

Now this terminology has teeth. The Chief Building Official knows exactly where they stand in determining whether to issue a building permit. Keep in mind that the standard of maintenance is that which is reasonable in the circumstances, having regard to the character and location of the highway. Naturally, as more building permits are issued on the subject road, and traffic increases, the required maintenance standard also increases. Plans of Subdivision and plans of condominiums are exempt as they are a separate legal agreement of development.

### Judicial Decisions

**Sauder v. Scugog (2004)**





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**FACTS:** The Chief Building Official refused to issue a building permit for the construction of a dwelling on a road that was not municipally maintained in the winter.

The Township of Scugog zoning by-law stated (emphasis added) : “No person shall erect any building on a lot unless the lot fronts upon a improved public street maintained year round.”

The Term “improved public street” was defined in the same by-law as meaning:

A street or road under the jurisdiction of the Township of Scugog which is maintained as to allow normal vehicle access to adjacent properties throughout all seasons of the year.

The subject road was municipally maintained, but not in the winter. The evidence was that, in the wintertime, the applicants could reach their place by snowmobile on a trail located on the road allowance. The court held that snowmobile trails were not maintained by the municipality, but rather by the snowmobile club; and this did not constitute year-round maintenance. The court further noted that “normal vehicle access” would include use by school buses and large transport trucks, and there was no intention that these service standards would be available in the winter months.

**Sidebar:** The use of the words “improved public street or road” can have one interpretation under the Municipal Act, R.S.O. 1990, and a much different interpretation under the Municipal Act, 2001.

Under the Municipal Act, R.S.O. 1990 and its predecessors, if a municipality spent public monies “improving” an unassumed road (something greater than “an isolated act” of maintenance, the court could “deem” that the municipality had “assumed” the road for permanent maintenance purposes.

Under section 31(2) of the Municipal Act, 2001 (slightly changed in the Amendment of 2006), a municipality could spend large sums of public money improving part of an unassumed road, but, unless it passes a by-law saying that it intends to “assume” the road for “permanent maintenance”, it remains an “unassumed” road.

If a municipality plays games with Section 31(2) of the Municipal Act, 2001 as amended, by doing extensive work on a road and then refusing to pass a by-law to “assume it for year-round maintenance”, the court may still be able to make an Order declaring the road to be “assumed” for maintenance purposes. Again, it is a question of the facts in the case.

### **ANALYSIS:**

Firstly, it should be recognized that municipal assets are in the nature of a public trust and are to be used for the benefit of the public. The question needs to be asked, does the granting of a particular agreement in some way impair a municipality’s ability to do its job or restrict it from providing some service that it considers necessary or desirable for the public?



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Secondly, is the municipality assuming some additional liability by granting the agreement? Municipalities are sometimes asked to allow for special circumstances to occur on unopened road allowances, such as gates to prevent recreational use of off-road vehicles. Liability for highways that have been assumed by the municipality is governed by the Municipal Act; however, for unassumed highways or other property owned by a municipality the Occupier's Liability Act needs to be considered. Municipalities are "occupiers" as defined in that Act. If they are in physical possession of certain premises or have control of premises or control of the activities permitted on the premises. Municipalities are occupiers and are subject to a lower standard of care with respect to unopened road allowances and recreational trails, however By-Law 2016-020, "Being a By-Law to Provide for Highway (Road) Classifications, Definitions and Signage and For Adopting Of Minimum Maintenance Standards for Highways (Roads) Under the Jurisdiction of the Municipality of Calvin" (which is attached to the Zoning By-Law as an appendix) has provided that the Municipality has jurisdiction over the highways that have been identified within the By-Law including that of seasonal maintained roads.

The Municipal Act, 2001, Section 44, "the municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge." Therefore, the municipality would be required to the standard of maintenance that would be sufficient for the requirements of the traffic going over it.

The Municipality has indicated in By-Law 2016-020 that "seasonal roads" are classified as Class 6 roads and the Maintenance Standards identified in Ontario Regulation 239/02 Section 2(3) "This regulation does not apply to Class 6 Highways". Which provides for the third question, what is expected for the municipality to ensure that it is carrying out its statutory duty?

To confuse matters, agreements and easements have similar characteristics. In both cases they grant limited use of property and are not exclusive such as a lease. Easements are more permanent than an agreement and can be registered to the title. Easements are commonly used to allow for municipal and utility services and for rights-of-way. The document may be called a Road Use Agreement but if it has the characteristics of an easement such as benefitted lands and servient lands, then it can create an interest in the lands and be registered on title if it has a proper legal description.

Permitting residential development on seasonal or unassumed roads is not good planning. Once the landowners start to pay taxes on the assessment value, the ratepayer feels that they pay taxes for no services and begin to approach Council for the assumption of the road as well as the maintenance thereof. The current language associated with the current zoning by-law makes for confusion for the Chief Building Official as referred to in 28.2 of the "Russel on Roads" included in this report.

Since 2000 the Zoning By-Law has provided the requirements for residential development to occur on municipally year-round maintained roads. The only permitted building/use was that of a camp or passive recreational use. The Zoning By-Laws for 2000, 2010 and the current by-law adopted in 2022, have provided the same language, "No person shall erect any building or structure in any zone unless the lot upon which such building or structure is to be erected has sufficient frontage on a public street or private road as per the requirements of the respective zone within the lot is situated except: a camp.





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The Zoning By-Laws also provided that there was an exception for **existing** agreements that were **registered on title**. This provision is for the purpose of allowing conformity to the by-law where previous agreements were in place. It was not for the provision to continue the practice of allowing road use agreements to continue.

In the 2022 Zoning By-Law (current) the definition of street is defined as “an improved public through fare, lane, road or highway affording principal means of access or entrance to abutting properties, and which has been assumed and is **maintained year-round by a public authority.**”

The one change that occurred in the 2022 Zoning By-Law is under the provision of 4.11.2.1 **“In addition to section 4.11.1, (a permitted camp), development including the issuance of a building permit shall only be permitted where frontage is on a road that is defined in By-Law 2016-020 and is maintained by the Municipality or is maintained under a road maintenance agreement approved by the Municipality.”** Further exceptions, like the previous zoning by-laws, provide for existing agreements to ensure conformity to the current zoning by-law.

The East Nipissing Planning Board Official Plan adopted in 2021 further stipulates that development will only be permitted on existing roads and municipal services. 2.6 describes Lot Access Criteria. **“Frontage on a improved road year-round maintained municipal road and frontage on a seasonally maintained Municipal Road for seasonal land uses only.”**

The above provisions in the Official Plan as well as the Zoning By-Law have created uncertainty for the Chief Building Official and the Planning Board. The zoning by-law and the Official Plan has the guidelines for what is permitted and should have been considered by Council when allowing the continued use of road use agreements. What is permitted to be built on a “seasonal road” and the provided language could be challenged through the Ontario Land Tribunal if the Chief Building Official was to not permit a residential building on a “seasonal road”.

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#### **OPTIONS FOR COUNCIL CONSIDERATION:**

**Cease permitting road use agreements.** The provisions in the Zoning By-law and the Official Plan regarding seasonal roads provide recreational uses/development only. The wording “**shall**” should not be used with an exception for road use agreements. Existing road use agreements conform to the zoning by-law, however, were not permitted to be continued to be granted until the zoning by-law adopted in 2022. (It is like the municipality is saying that we **shall** not permit residential buildings on seasonal roads...BUT...) Not clear for municipal staff nor the public and could be challenged at the Ontario Land Tribunal.

**Zoning and Official Plan Amendments** for the current zoning and official plan to amend them to not issue road maintenance agreements for residential development on seasonal maintained roads moving forward. The permitted use only being that of a camp which provides a recreational “seasonal” use.

**Stop Up and Close** the current seasonal roads. The Municipal Act provides in Section 35 Without limiting **sections 9, 10 and 11**, a municipality may pass by-laws removing or restricting the common law right of passage by the public over a highway and the common law right of access to the highway by an



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owner of land abutting a highway. 2006, c. 32, Sched. A, s. 18. This by-law could prevent the public use of the allowance. Sometimes if the permitted use is intended to be permanent a municipality may consider actually carrying out a road closing and conveyance of the road allowance to the abutting landowners. However, this is expensive and in particular, the requirement of a survey for the portion of the road allowance to be closed so that the road closing by-law can be registered on title and rights-of-way issued to the servient tenants of the lands.

**Assume Stewarts Road and Latimer Road up to the residential developments for year-round maintenance.** This would mitigate the risk and liability to the Municipality and should only be executed after the amendments to the Official Plan and Zoning By-Law. This option is expensive, and a discussion would need to be had with the Council as well as the abutting landowners as there is a current by-law, 2017-015 "Being a By-Law to Establish Guidelines for Property Owners Requesting Year-Round Municipal Road Services on Existing Gravel Seasonal Roads, Unassumed Road Allowances or Private Roads. This by-law describes the Policy and Guidelines to request year-round maintenance and would need to be further discussed.

**Keep the Road Use Agreements that exist to this date and not provide winter maintenance.** The Municipality can not undo what is done by permitting residential development on seasonal roads. The Council should direct staff to ensure a new agreement is written to reduce or manage the risk of liability to the municipality. Standard provisions should be implemented into the agreement:

1. The permitted use
2. The term of the agreement
3. A fee to provide cost recovery of administration
4. Restrictions on Use
5. Required Signage
6. Construction to be approved including alterations and additions
7. Maintenance and Repair
8. Indemnity Clause
9. Insurance naming the Township as a third party and proof thereof
10. Assignment and Transfer of the agreement
11. Early Termination
12. Registration of the Licence and proof thereof.
13. Notice of default or termination
14. Legal Costs

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#### **RECOMMENDATION:**

**WHEREAS** resolution 2024-98, passed and carried at the Council meeting on March 12<sup>th</sup>, 2024 **resolved** that in the absence of any process, policy or by-law that outline the circumstances under which Council will receive or consider requests for seasonal road use or maintenance agreements for municipal roads not maintained all year long by the Municipality, that staff be directed to research and bring forth to Council before August 2024, guidelines and policies which would establish formal processes and conditions under which the Council might consider such requests, it is understood this research will be comprehensive and will necessitate staff collaboration with our insurer, planner of record and legal department,





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**AND WHEREAS** in the absence of a Public Works Superintendent the time allowed to produce such guidelines was extended into October, 2024;

**AND WHEREAS** the Public Works Superintendent in collaboration with the CAO has investigated the issuance of road use maintenance agreements on seasonal roads,

**AND WHEREAS** the Zoning By-Law 2022-19 and the East Nipissing Planning Board Official Plan provides direction that shall not permit residential development on a street that is not maintained year-round by a public authority;

**AND WHEREAS** mention for exceptions of road use agreements in the Official Plan and Zoning By-Law creates ambiguity for the East Nipissing Planning Board, the Chief Building Official and the Council of the Municipality of Calvin;

**THEREFORE** the Public Works Superintendent recommends to Council to apply for a Zoning Amendment and an Official Plan amendment to remove language in the East Nipissing Planning Board Official Plan and the Comprehensive Zoning By-Law 2022-19 for the Municipality of Calvin to remove the language to allow road use agreements for providing future residential development on seasonal, unassumed or private roads;

**AND FURTHERMORE**, that existing road use agreements be amended to provide less exposure of risk to the Municipality and be reviewed by the Municipal Lawyer;

**AND FURTHERMORE**, the Council directs staff to seek cost/benefit analysis of assuming the “seasonal roads” that have residential development for year-round maintenance;

**BE IT HEREBY RESOLVED** that the Council of the Municipality of Calvin accepts this recommendation.

Respectfully yours,

Ann Carr

Public Works Superintendent

I concur with this report,

Donna Maitland

CAO, Clerk

**Appendix:** Frequently asked Questions for Seasonal and Summer Roads by Risk Management Centre of Excellence-Intact Insurance



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# Frequently Asked Questions for Seasonal and Summer Roads

## What is the definition of a Seasonal/Summer Road?

- There is no definition of a "Seasonal/Summer Road" in the *Municipal Act*. Many municipalities have roads that are considered seasonal/summer and no winter maintenance is performed. Traditionally they are a Class 6 category with AADT less than 49 vehicles per day.

## What happens when they are closed for the winter season?

- Most municipalities pass a by-law declaring which roads are seasonal/summer roads. Here is a sample of a clause we have seen: "*All Municipal maintenance that applies to seasonal/summer roads will cease November 1 to April 30.*"
- We often see a remedial action clause: "*Remedial action by the Municipality on a seasonal/summer road from November 1 to April 30 will only be performed when there is an immediate danger or hazard that may cause personal injury, loss or damage to public or private property.*"

## Can the municipality be sued if someone is injured during the time the road is closed?

- Yes, the municipality can be brought into a law suit if someone is injured during the time when the road is

closed. Our defence is to look at the risk management steps the municipality took to make sure everyone is aware that the roads are not maintained during the specified time frame.

## What should the municipality do to protect themselves?

- Have a by-law declaring and naming your seasonal/summer road policy.
- In the by-law outline the affected roads.
- The level of service policy should outline what roads are not maintained.
- All seasonal /summer roads need to be signed by the municipality indicating the status of the road and the duration of the closure. Without signage you could have visitors to your community and they would not be aware of the closures.
- Regular inspections, at least annually should be performed to make sure these signs are visible. Document all inspections that have been performed.
- A notice should go out to all affected landowners before the winter season begins, publish the information in the local newspaper and your website. This needs to be done every year because landowners can change.



## **What should the municipality do to protect themselves if the individuals wish to provide their own winter maintenance on these roads?**

- Landowners should make written application to the corporation for permission.
- Once permission is granted landowners will be made aware that they will be held responsible for any damages that occur on municipal property because of the actions of private snow removal equipment.
- A waiver should be signed by the landowners. Have your legal counsel draft the appropriate waiver.
- A contract should be in place between the landowner and the snow plough contractor and if possible have the municipality's name added as an additional insured.

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