

ROSSBURN MUNICIPALITY

BY-LAW NO. 2015-0021

BEING A BY-LAW PROVIDING GUIDELINES FOR RESIDENTS WISHING TO RECEIVE YEAR ROUND MUNICIPAL ROAD SERVICES OR USE UNOPENED ROAD ALLOWANCES.

WHEREAS the Municipality has many kilometers of roads which are, by law, classified as “public highways”;

WHEREAS the Municipal Act C.C.S.M. c. M225 imposes on Local Municipalities the obligation to manage and maintain the Public Road System lying within the boundaries of the Municipality;

AND WHEREAS the Municipality receives a request from time to time from ratepayers and other interested parties for permission to upgrade seasonal road allowances or 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 added only on a cost effective basis;

NOW THEREFORE the Council for the Rossburn Municipality hereby enacts as follows:

1. THAT the Rossburn Municipality will generally refuse to permit any person to open any unopened road allowance within the Municipality 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 road allowances and from demands that such road allowances be improved and maintained at the expense of the general ratepayers of the Municipality.
2. THAT the Municipality will consider opening an unopened or seasonal 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 and Schedule “A” attached hereto shall provide for a policy.
3. THAT the Municipality will consider permitting a private driveway on an unopened road allowance as outlined in Schedule “B”.
4. THAT the use of unopened road allowances by adjoining landowners may be allowed until they are required for road purposes but altering or conducting work on an unopened allowance requires an application and permission from the Municipality as outlined in Schedule “C”.
5. THAT this By-Law comes into force and effect on the day of passing thereof; and
6. THAT all other By-Laws and resolutions, or parts thereto, be and the same are hereby repealed.

DONE AND PASSED by Council assembled in the Council Chambers of the Rossburn Municipality at Rossburn in the Province of Manitoba, this- 13th day of July , A.D., 2015.

MAYOR BRIAN BROWN
Rossburn Municipality

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Pamela Pannagl
Interim Chief Administrative Officer
Rosburn Municipality

| READ a first time this 8th day of ~~June~~ A.D., 2015.

| READ a second time this 13th~~day~~ of July, A.D., 2015.

READ a third time and passed this 13th day of July, A.D., 2015.

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SCHEDULE "A"
TO BY-LAW 2015-0021

POLICY FOR OPENING AN UN-OPENED ROAD ALLOWANCE OR UPGRADING A
SEASONAL ROAD

Policy:

1. Any group or individual wishing to upgrade or construct a public year round road will be given the relevant specifications pertaining to the type of roadway required; cost estimates will not be provided by Municipal staff.
2. All costs associated with the road upgrades or construction to Municipal Standards will be the responsibility of the applicant (s).
3. Prior to proceeding with any work or expense a Council Resolution approving the work and acceptance by the Municipality to maintain once complete will be required.
4. Prior to proceeding with any work the Agreement attached hereto must be entered into between the parties.
5. The applicant will be responsible for any defects in the road that become apparent within the first two years after the assumption of the road by the municipality.
6. Ongoing municipal inspections will be required during the upgrade process:
 - a. An initial inspection will be completed before any work begins on the road to determine the work to be completed to the current standards.
 - b. An interim inspection will be completed when the work is in process to assume standards are being met.
 - c. A final inspection will be completed after all said work is completed and any adjustment to the work shall be completed before this inspection takes place.
 - d. This inspection schedule shall be deemed as the minimum and shall be carried out by the municipal road supervisor. Spot inspections may be carried out at any time when work is in progress.
7. After a final inspection of the roadway by the Public Works Supervisor the municipality will assume year round maintenance by By-law and the assessment office will be notified of changes in assessment of property owners on said roadway.

Standards:

As outlined in the Municipal Roads, Drains and Culvert Specifications Gravel Road Standard Policy 2015-18 as amended by Council from time to time.

Specifications may vary depending on the road area at the discretion of the Public Works Supervisor.

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AGREEMENT FOR OPENING AN UN-OPENED ROAD ALLOWANCE OR UPGRADING A SEASONAL ROAD.

BETWEEN: The Rossburn Municipality (hereinafter called the
“The Municipality”

AND: _____

Hereinafter called the “Property Owner”

WHEREAS the unopened road allowance affected by this Application is located as follows:

WHEREAS the purpose of work on the unopened road allowance is as follows:

WHEREAS the proposed work on the unopened road allowance within 12 months of the date of the agreement is as follows:

WHEREAS:

1. The Property Owner is the owner in fee simple of the land described above (the “Lands”);
2. The Rossburn District Development Plan provides that 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 with legal access to a public road.
3. In consideration of the mutual covenants and in consideration of opening a section of road allowance the parties agree:
4. Any notices required or permitted to be given pursuant to the terms of this Agreement shall be given in the manner hereinafter set out, in writing addressed in the case of:

The Municipality: Rossburn Municipality
 43 Main Street N., Box 100
 Rossburn, MB R0J 1V0

The Property Owner: _____

5. The conditions of approval required of the Property Owner by the Municipality, in addition to the terms of this agreement, shall be set out in Schedule “B”.
6. On approval of preliminary plans, the Property Owner must have an insurance policy with an insurance company satisfactory to the Municipality insuring for the joint benefit of the Property Owner and the Municipality against public liability and property damage arising out of the construction and installation of any work to be performed pursuant to this contract.

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7. The Property Owner shall be responsible for any costs incurred for installing or changing the locations of hydro poles, lines and attachments necessitated by this Agreement and:
 - a) changes in the established grades of the land;
 - b) Conflict with driveways where pole locations had been approved.
- 8) The Property Owner shall pay promptly the contractors employed for the construction and installation of the roads but shall hold back such sums as required by law and shall indemnify the Municipality against any claims, actions or demands for construction liens or otherwise in connection with the roads and services and on demand by the Municipality shall immediately discharge any construction liens for the roads and services which may have been registered.

ROADS

- 9) Detailed plans and specifications of the roads shall conform to the overall plan of the Municipality and shall be subject to the approval of the Public Works Supervisor. No work shall be commenced until the approval has been received. The approval shall not relieve the Property Owner of responsibility for errors or omissions in the plans and specifications.
- 10) The Property Owner shall construct the roads in accordance with the approved plans and specifications and in accordance with good engineering practice and minimum road standards and the Municipality shall accept the road as being completed upon the Public Works Supervisor certifying that it has been completed to his satisfaction and in accordance with the plans and specifications.
- 11) The Property Owner will ensure that a land surveyor has found or replaced all standard iron bars as shown on the registered plan before the Municipality will accept the roads.
- 12) The Property Owner shall erect street signs, traffic and speed limit signs of a design and in locations requested by the Municipality. The signs shall become the property of the Municipality upon acceptance for the road and services.
- 13) Until the Municipality has accepted the roads through a by-law of Council, the Property Owner shall be responsible for their maintenance including snow removal and any damage done to any roads during construction, and any liability to the public. If the Municipality agrees to provide snow removal, the doing of the snow removal by the Municipality shall not amount to a waiver by the Municipality of its rights to require that the other work be done by the Property Owner, nor shall the Municipality be deemed to have accepted the roads. Council agrees to pass such bylaw within 2 years subject to a successful final inspection and recommendation by the Public Works Supervisor.
- 14) The Property Owner agrees to indemnify and save harmless the Municipality, its officers and employees, with respect the services described herein, from losses due to bodily injury (including death resulting from injury) or damage to the property of others arising out the operations of the Property Owner, its employees or agents or contractors, or losses due to omissions or negligent acts in the performance of services by the Property Owner, its employees and agents or contractors under this agreement. These indemnity provisions relate to losses, damages, liabilities, or expenses based on claims by third parties and do not derogate from or limit remedies either party may have against the other for breach of this contract.
- 15) The Property Owner agrees to reimburse the Municipality for all legal, planning, and engineering costs associated with the preparation and enforcement of this Agreement and the installation of the roads.
- 16) Unless the context otherwise requires, where the Property Owner is obligated by this Agreement or the approved Plans to make any payments or install or construct or carry out any services or action the provision thereof contained herein shall be deemed to include the words "at the sole expense of the Property Owner".

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17) All work done under this agreement shall be construed in accordance with the laws of Manitoba, the laws of Canada, and Municipal By-Laws.

18) This agreement shall be binding on the parties and their respective successors and assigns,

SIGNED BY THE PARTIES HERETO.

SIGNED, SEALED AND
DELIVERED

)

PROPERTY OWNER

)

Per: _____

)

(Owner)

)

Date: _____

)

)

ROSSBURN MUNICIPALITY

)

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Per: _____

)

(Mayor)

)

Date: _____

)

)

Per: _____

)

(CAO)

)

Date: _____

)

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Appendix "A"
Description of Lands

Schedule "B"
Conditions of Approval Required by Municipality

- 1) All lots to comply with the Municipal zoning by-law.
- 2) All taxes and outstanding invoices owed to the municipality to be paid up to date.
- 3) All necessary easements for services and utilities (including but not limited to Hydro and Telephone) in satisfactory form to be granted to the Municipality.

Schedule "C"
Municipal Requirements for Roads and Services

- 1) Roads
The Property Owner must design the streets in the proposed plan to suit the ground conditions on the site, and adequate to ensure normal lifetime for municipal streets. Any roads or portion of the roads which have had excessive patching during the first two year shall be re-graveled. The Property Owner shall repair any damage caused to existing roads and shall carry out any necessary relocation and improvement of existing utilities necessitated by the development of this proposed plan.
- 2) Street Signs
The Property Owner shall supply and erect street signs on all streets within this Development and shall maintain them until the roads are accepted by the Municipality.

Description of property requiring work on roadway to gain access:

Above Property Municipal Roll # _____

Date of Survey Received: _____

Approved by Council:

Date: _____

By-law #: _____

Copy of Land Registry Document Received: _____

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SCHEDULE "B"
TO BY-LAW 2015-0021

POLICY FOR PERMITTING A PRIVATE DRIVEWAY ON AN UNOPENED ROAD ALLOWANCE:

1. The Municipality will consider permitting the location of a private driveway on an unopened road allowance where each of the following criteria is met:
 - a. The private driveway is approved by municipal resolution before any work is conducted.
 - b. The distance to be traveled along the road is short.
 - c. The number of property owners who could access the section of road allowance to be used is very limited.
 - d. Each of the adjoining owners 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 Municipal Solicitor in drawing and registering the agreement (s).
 - e. The boundaries of the portion of the road allowance to be used are marked by a Manitoba Land Survey at the expense of the applicant, prior to the commencement of any work to avoid trespassing on neighboring land.
 - f. 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 signs posted "Un-opened Road Allowance – Road Not Maintained by the Municipality"
 - g. Any Provincial or Federal requirements dealing with Environmental Protection or other issues are met at the expense of the Applicant.
 - h. No person shall commence any work on a road allowance within the Municipality including the cutting of any tree located thereon without permission from the Municipality. Persons who commence such work without a permit will be considered trespassers and prosecuted accordingly.

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**POLICY FOR USE OF UNOPENED ROAD ALLOWANCES BY ADJOINING OWNERS
(BUT NOT USED AS A DRIVEWAY)**

**THE ROSSBURN MUNICIPALITY
CONSENT TO REMOVE TREES, ALTER AND CONDUCT WORKS ON AN UNOPENED
ROAD ALLOWANCE APPLICATION**

BETWEEN: The Rossburn Municipality (hereinafter called the “Owner” of the First Part)

AND: _____

(Hereinafter call the “Party” of the Second Part)

WHEREAS the unopened road allowance affected by this Application is located as follows:

WHEREAS the purpose of work on the unopened road allowance is as follows:

WHEREAS the proposed work on the unopened road allowance is as follows:

AND WHEREAS the subject Road Allowance is a public highway under Section 285 of the Municipal Act and the title to all such highways vests in the municipality under Section 286(1) of the Municipal Act;

AND WHEREAS an adjacent landowner is required to obtain consent to alter an unopened road allowance and the public is required to obtain consent to alter an unopened road allowance and the public is required to obtain consent to remove trees from a road allowance of the Municipal Act, the Rossburn Municipality consents to the alteration of the above described unopened road allowance with conditions:

NOW THEREFORE this agreement witnesseth that in consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out, the parties hereto agree as follows:

- 1) The “Party” agrees to carry out limited brushing. Leveling and minor improvements to the unopened road allowance in accordance to the standards and specifications of Municipal regulations in order that the “Party” utilize the unopened road allowance for the purpose set out above.
- 2) The “Party” agrees to provide a sketch or rough plan of the proposed works for approval by the “Owner”.
- 3) The “Party” agrees to carry out all works at its own expense and responsibility and indemnify the “Owner” harmless of any and all liabilities for any harm or property damage of any person(s) with or without merit with respect to use or work on the roadway.
- 4) The “Party” agrees that all brush, stumps, stones and other forms of debris detrimental to the use and appearance of the roadway shall be removed and hauled away.
- 5) The “Party” acknowledges that the “Owner” has not opened or assumed the Road Allowance herein described. The “Party” shall post signs clearly marked “Use at Own Risk”. This road allowance has not been opened nor assumed by the Municipality.

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- 6) In the event that the “Party” is in contravention to any of the conditions of this Agreement, the “Owner” may, with or without notice, revoke such Agreement.
- 7) It is understood between the parties hereto, that such entry upon the roadway is considered necessary by Municipal representatives for the purpose of inspecting and/or repairing faulty work including replacement of materials, shall not be deemed for any purpose whatsoever an acceptance or assumption of the roadway.
- 8) The “Party” agrees and will forthwith pay all costs necessary for inspection and repair of the roadway including materials upon demand.
- 9) The “Party” agrees to carry out and be responsible for a required survey in connection with this matter in order to avoid deviation onto private lands. Once the survey has been completed and a copy submitted to the municipal for their file. The “Party” agrees to Register on title that the “Rossburn Municipality has an unregistered right, title, interest or equity in the lands by virtue of an agreement concerning the creation and use of an access driveway to the property pursuant to the provisions of the Municipal Act” and the “Party” at their own expense and provide a copy of the Registry document to the Municipality.
- 10) The “Party” agrees that no items such as logs, equipment, etc. shall be placed on the Road Allowance.

And In Witness Whereof the “Party” has affixed his signature and completed all pertinent information shown below:

Dated: _____ Party Signature: _____

Party Name Printed: _____

Party Mailing Address: _____

Party Phone #: _____

Description of property requiring work on roadway to gain access:

Above Property Municipal Roll # _____

Date of Survey Received: _____

Approved by Council:

Date: _____

By-law #: _____

Copy of Land Registry Document Received: _____