

Rosburn Municipality

POLICY MANUAL

SECTION: Public Works - Roads

NUMBER: 2022-01

TITLE: Undeveloped Road Allowance Policy

RES# 2022-052

DATE: Feb 15, 2022

PURPOSE

The purpose of this policy is to outline the terms and conditions of the *Undeveloped Road Allowance Policy* as adopted by the Rosburn Municipality.

DEFINITIONS

1. *Municipal Road* – for the purpose of this Policy, is defined as land that has been opened under *The Municipal Act*, or any other *Act*, as a road for public use. A Municipal Road includes a road allowance, street, lane, thoroughfare, walkway, bridge, underpass and also includes an Undeveloped Road Allowance as shown in the Dominion Government Survey.

2. *Undeveloped Road Allowance* – for the purpose of this Policy, is defined as a Road Allowance which has not been established as a public Municipal Road by a by-law of Council, or otherwise assumed for public use by the Rosburn Municipality.

RECOGNITIONS

Municipal Roads are owned by Her Majesty the Queen and are dedicated to the public for public use and access. Municipalities must therefore ensure that the public's right to use a Municipal Undeveloped Road Allowance is not interfered with, to any substantial extent. The Municipality believes that the granting/permitting of any permission to use, or occupy a Municipal Road, including an Undeveloped Road Allowance, cannot be limited or indefinite.

The Municipality recognizes that *The Municipal Act* gives municipalities wide-ranging authority over Municipal Roads within their jurisdictions. This authority includes the direction, control and management of all Municipal Roads and Undeveloped Road Allowances within their boundaries and requires them to maintain these Roads. *The Municipal Act* also gives municipalities the power to grant certain rights to private individuals.

The Municipality recognizes that all stakeholders' interests must be balanced, thereby taking the right of the public, as well as the nature of the Municipal Undeveloped Road Allowance, into account. The Municipality also recognizes that the more an Undeveloped Road Allowance is developed and used by the public, the more limited in nature of rights the Municipality can grant/permit. The less an Undeveloped Road Allowance is developed, the greater the nature of the rights the Municipality can grant/permit.

APPLICATION AND APPROVAL

1. The Municipality may from time to time receive a request from a ratepayer for the private use, or to make alterations or improvements, to a specific Undeveloped Road Allowance located within the boundaries of the Rosburn Municipality.

2. The ratepayer must complete and submit to the Administration a signed application. The application must be in the form set out in Schedule A and include all relevant information.

3. The applicant agrees that they shall not use the Undeveloped Road Allowance for purposes which are unlawful or in contravention of Municipal, Provincial or Federal legislation.

4. Upon receiving the application and fee (\$50.00) the Municipality (Administration and/or Public Works Department) will review the application then place it on the agenda of the next regular Meeting of Council for consideration and a decision by Resolution of Council.

5. The approved applicant shall have no rights or claim to the Undeveloped Road Allowance.

6. The approved applicant shall agree to follow all terms of this Undeveloped Road Allowance Policy.

TERM

For private use of an Undeveloped Road Allowance approval shall commence from the date of the approving Resolution of Council, for a one-year period, and shall automatically renew for consecutive annual terms until terminated by either party.

For alterations or improvements of an Undeveloped Road Allowance approval shall commence from the date of the approving Resolution of Council for a one-year period and shall approve the work on a one-time only basis. Extensions to complete the permitted alterations or improvements past the one-year period, may or may not be granted by Resolution of Council.

PERMITTED PRIVATE USE OF UNDEVELOPED ROAD ALLOWANCES

1. The application request for the private use of adjacent Undeveloped Road Allowance(s) may be for cultivated crops, to be fenced for pasturing livestock, haying, bee farming, access to lands, and for other private purposes to be undertaken within the boundary of the Municipality.

2. Each application request for private use on an Undeveloped Road Allowance will depend on its own circumstances, and be considered independently of others in order to consider the following:

- a. The right of the public to access the Road;
- b. The nature of the actual *current* use of the Road;
- c. The requirement of other members of the public to access the Road; and
- d. The specific proposed private use as outlined in the application.

3. All permitted private use of Undeveloped Road Allowances, are to be subject to termination of the Municipality if it decides permission should no longer be provided, including the possible future development of the Undeveloped Road Allowance, by the Municipality.

4. The permitted use of an Undeveloped Road Allowance as outlined in this Policy, does not at any point and for any reason create an interest in the land, and is only granting permission to use the Undeveloped Road Allowance on certain limited terms.

5. The Applicant agrees that they shall be responsible for operating and maintaining the Undeveloped Road Allowance at their expense, and to remove any fencing or other obstructions on the Undeveloped Road Allowance, upon the termination of the approval.

6. Any private use of an Undeveloped Road Allowance must be approved by Resolution of Council, prior to the commencement of the same use, without exception.

PERMITTED IMPROVEMENTS OR ALTERATIONS TO UNDEVELOPED ROAD ALLOWANCES

1. The application request to make improvements or alterations to an Undeveloped Road Allowance(s) may be for tree trimming or removal, brushing, levelling, stone or stump removal, or other private works.

2. Each request for individuals to undertake to make improvements or alterations to Undeveloped Road Allowances will depend on its own circumstances, and be considered independently of others in order to consider the following:

- a. The specific proposed alteration or improvement, as outlined in the application;
- b. The long-term effect of the alteration or improvement once complete, and the ability for the public to continue to access the Road; and

c. Any potential negative effect of the alteration or improvement, regarding drainage of adjacent properties.

3. All permitted improvements or alterations to be undertaken by individual ratepayers on Undeveloped Road Allowances, granted by the Municipality, are permitted for one time only, and not to be considered as granting ongoing permission for the same.

4. The Permitted alteration or improvement to an Undeveloped Road Allowance as outlined in this Policy, only grants permission under certain limited terms. The applicant shall be responsible for all costs associated with the alteration or improvements unless determined otherwise, by Resolution of Council. Application approval does not make the Municipality responsible for a future obligation to repair or maintain the same.

5. In an instance where the legal determination of the location of the Undeveloped Road Allowance is deemed necessary for the alteration or improvement to be completed, it remains the responsibility of the Permittee to obtain a legal surveyor to determine the same, with all costs incurred to be beared by the Permittee, and not the Municipality.

6. All approved alterations or improvement made must be completed to a standard acceptable to the Municipality. The Municipality's Public Works Coordinator must be notified of the Ratepayer's intention to begin any/all alterations or improvements, 48 hours prior to the commencement of the work.

7. Concerning all approved alterations or improvements to the property, the Permittee must ensure that all reasonable steps are taken to arrange for safe workplace procedures as legislated by the Province, under the *Workplace Safety & Health Act*, for the duration of the works to be completed.

8. No debris for the alteration or improvement of an Undeveloped Road Allowance can be left onsite – this includes all brush and trees which must be disposed of offsite or taken to the Municipal Waste Disposal Grounds and deposited at the clean burnables location.

9. Any alteration or improvement made to an Undeveloped Road Allowance must be approved by Resolution of Council, prior to the commencement of the works, without exception.

DAMAGE

In the event that damage occurs to the Undeveloped Road Allowance, during the alteration or improvement or private use permitted by Council, all costs to restore the Undeveloped Road Allowance to a condition deemed similar and equal in nature to what existed prior to the commencement of the permitted alteration, improvement, or use are to be that of the applicant/ratepayer.

MUNICIPAL RIGHT OF ACCESS

The Municipality retains the right of access of the Undeveloped Road Allowance for the purpose of inspecting and/or maintaining the Undeveloped Road Allowance at any time, as the Owner of the Undeveloped Road Allowance as outlined in *The Municipal Act*.

TERMINATION

Should the Municipality feel that at any time it is in the best interest of the Municipality to develop an Undeveloped Road Allowance for the purpose it deems necessary, they retain the right to terminate the approval by giving the applicant six (6) months' notice, or less if mutually agreeable.

The Municipality has the right to terminate the approval without notice by Resolution of Council if the applicant acts outside of this Undeveloped Road Allowance Policy.

GRANDFATHER CLAUSE

The Municipality recognizes that several Undeveloped Road Allowances located within the boundaries of the Municipality, are currently being used by private individuals for reasons as outline in this Policy, and that many Undeveloped Road Allowances have been altered by ratepayers prior to the passing of this

Policy. The Municipality therefore will allow for the “grandfathering” of all such situations, with no exceptions to the process to be extended past the date of the passing of this Policy.

Grandfathering will no longer exist with the change in ownership of adjacent property, or the change of use of Undeveloped Road Allowances. At that time, this Policy and Procedures will apply to the relevant Undeveloped Road Allowances, in its entirety.

Grandfathering will also not exist, in the situation where the works completed do not fit the criteria of this Policy, and where Council would therefore not have approved the works completed in any case. This will be considered non-compliant and unapproved development and may result in legal action by the Municipality if Council deems it necessary.

ADJACENT LANDOWNER DISPUTES/CONFLICTS

Should unresolved conflicts exist between adjacent landowners who may both benefit from the private use of Undeveloped Road Allowances, the Municipality reserves the right to terminate the private use of Undeveloped Road Allowances by both parties, effective immediately and without notice of termination.

INDEMNIFICATION OF THE MUNICIPALITY FOR ALL CLAIMS

The applicant indemnifies and saves harmless the Municipality, its officers and employees, for any claims for loss, damage, or injury made against it as a result of the private use of the undeveloped road allowance, or for any alteration or improvement completed by the applicant.

NON-COMPLIANCE

Non-compliance of this Policy will not be accepted and may result in legal action being pursued by the Municipality.

**ROSSBURN MUNICIPALITY
UNDEVELOPED ROAD ALLOWANCE POLICY APPLICATION**

FOR PRIVATE USE OF - OR - ALTERATIONS/IMPROVEMENTS

Applicant Name: _____ Application Date: _____

Applicant Mailing Address: _____

Applicant Phone # and Email: _____

Landowner (if different from applicant): _____

Legal Location Requested (include road #'s): _____
(Include shown on map attached)

PRIVATE USE OF THE UNDEVELOPED ROAD ALLOWANCE _____ (check if applies)

The Applicant applies to Council for a *Permit for Private Use of the Undeveloped Road Allowance* for the following purposes (check all that apply):

- Fencing for the purpose of pasturing livestock
- Cultivated crop land
- Haying
- Bee farming
- Access purposes
- Other (describe): _____

ALTERATION OR IMPROVEMENTS OF THE UNDEVELOPED ROAD ALLOWANCE _____ (check if applies)

The Applicant applies to Council for *Alterations or Improvements of the Undeveloped Road Allowance* for the following purposes (check all that apply):

- Tree trimming
- Tree removal
- Brushing or pushing bush
- Levelling
- Removal of stumps, stones, and other forms of debris
- Other (describe): _____

The Applicant agrees that they shall not use, alter or improve the Undeveloped Road Allowance for purposes which are unlawful or in contravention of Municipal, Provincial or Federal legislation.

The Applicant agrees that they shall be responsible for all costs associated with the private use of or the alterations/improvements of the Undeveloped Road Allowance.

The Municipality has the right to terminate approval without notice by Resolution of Council, if the Applicant acts outside of the *Undeveloped Road Allowance Policy*, which the Municipality reserves the right to alter from time to time.

The Applicant agrees they have no rights or claim to the Undeveloped Road Allowance.

By signing below, the Applicant has read and understood the Undeveloped Road Allowance Policy and agrees to all terms of the Policy. As applicant I undertake to observe all provisions of the policy; and all specifications or instructions issued by the Municipality in respect of the application; and to indemnify the Municipality against all losses, costs, or damages caused by or arising out of anything done pursuant to this application.

Applicant/s: _____

Landowner/s (if different from applicant): _____

Resolution # _____ Date Approved: _____

Chief Administrative Officer: _____