

THE CORPORATION OF THE TOWNSHIP OF FARADAY

BY-LAW NO. 8-2010

Being a By-Law to establish a Township Policy on the Use
Of Unopened Road Allowances

WHEREAS, Section 44 of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended imposes on local municipalities the obligation to manage and maintain the Public Road System lying within the boundaries of the Municipality;

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

AND WHEREAS the Municipality receives requests from time to time from Ratepayers and other interested parties for permission to use portions of Unopened Road Allowances lying within the boundaries of the Municipality;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF FARADAY ENACTS AS FOLLOWS:

1. The Use of Unopened Road Allowance Policy attached hereto as Schedule "A" is hereby approved and adopted.
2. All By-Laws or parts of By-Laws heretofore passed inconsistent with the provisions of the attached Policy respecting the Use of Unopened Road Allowances are hereby repealed.
3. This By-Law shall come into force and take effect on the 5th day of May, 2010.

**READ A FIRST, SECOND AN THIRD TIME AND FINALLY PASSED THIS THE
5th DAY OF MAY, 2010.**

Original Signed
C. A. Tinney – Reeve

Original Signed
Brenda Vader – Clerk

SCHEDULE "A"

THE CORPORATION OF THE TOWNSHIP OF FARADAY
POLICY ON USE OF UNOPENED ROAD ALLOWANCES

POLICY STATEMENT

1. The Council of the Corporation of the Township of Faraday will generally refuse to permit any person to open any unopened road allowance within the Township by way of a trail, driveway, or road capable of being used by any motor vehicle whatsoever. The purpose of this policy is to protect the Township from liability claims by persons using unimproved unopened road allowances and from demands that such unopened road allowances be improved and maintained at the expense of the general ratepayers of the Township.

SCOPE

2. The Council of the Corporation of the Township of Faraday may consider opening an unopened road allowance where the number of potential users warrants, in the sole discretion of the Council, 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 Township.
3. The Council of the Corporation of the Township of Faraday will consider permitting the location of a private driveway on an unopened road allowance where each of the following criteria are met:
 - (a) The distance to be traveled along the road allowance is short.
 - (b) The number of property owners who could access the section of road allowance to be used is very limited.
 - (c) Each of the adjoining owners mentioned in the previous sub-paragraph enters into an agreement to be registered on title and binding subsequent owners of their property not to demand future improvement of the road allowance by the Township and protecting the Township from liability claims of users of the driveway. The person applying to use the road allowance will pay the full legal costs of the Township Solicitor in drawing and registering the agreement(s).
 - (d) The boundaries of the portion of the road allowance to be used are marked by an Ontario Land Surveyor at the expense of the applicant, prior to the commencement of any work to avoid trespassing on neighbouring land.
 - (e) The proposal is completed in such a way as to prevent or discourage members of the general public from using the road allowance. Such measures may include locating part of the driveway on private property so that it can be gated and access controlled.
 - (f) Any Provincial or Federal requirements dealing with Environmental Protection or other issues are met at the expense of the Applicant.
5. No person shall erect a dock or any kind of structure on an unopened road allowance leading to the water owned by the Township of Faraday.
6. No person shall store any vehicle, boat, trailer, etc. on a unopened road allowance leading to the water owned by the Township of Faraday.
7. No person shall perform any work, remove any trees, soil or other material or erect upon or use any unopened road allowance without the specific written approval of the Council of the Corporation of the Township of Faraday.
8. Application for permission to use an unopened road allowance shall be submitted in writing to the Clerk. The application must state the intended use, the applicant's interest in the allowance, and be accompanied by an accurate location and description plan.
9. If permission is granted by the Council of the Corporation of the Township of Faraday to use the unopened road allowance, the following policies shall apply, as determined by the Township:

SCHEDULE "A" (continued)

- (a) The actual location of the allowance is the responsibility of the applicant and may be required to be verified by an Ontario Land Surveyor, at the expense of the applicant.
- (b) If a new entrance way is required, the approval of the Township's Road Superintendent as to its location, width, size and length of culvert to be installed and the grade at which it intersects the Township Road is required. Where entry is upon a roadway not under the jurisdiction of the Township, the standards and specification of the Ministry of Transportation shall apply.
- (c) If brushing and clearing of the road allowance is undertaken, all wood larger than 4 inches in diameter shall be piled for pick-up by the Township. Alternatively, the Township may agree to sell the wood to the applicant at a pre-set fee per face cord, the volume of wood sold to be determined jointly by the applicant and the Road Superintendent. All brush and stumps shall be cleared to the satisfaction of the Township.
- (d) If the application is for the provision of an access road, driveway or right-of-way, the minimum width of clearance shall be 16 feet. This 16 feet shall be located in the centre of the road allowance, leaving an equal buffer on either side of the cleared area, unless otherwise approved by the Council of the Corporation of the Township of Faraday.
- (e) The applicant shall acknowledge in writing that any and all improvements to road allowance are the sole expense of the applicant and all such improvements must be by the Township. The applicant must also acknowledge in writing that any member of the general public has the right to use the subject road allowance.
- (f) The applicant must post the road allowance with a notice, in a form acceptable to the Township, advising all users of the road allowance that the roadway is an unassumed Township roadway and is used at his/her own risk.
- (g) The applicant must acknowledge in writing that the Township assumes no liability, responsibility or obligation whatsoever to construct and/or maintain and/or repair the road allowance.
- (h) The applicant must agree to enter into an agreement in writing to indemnify and save harmless the Corporation of the Township of Faraday from any and all manner of actions, causes of action, claims or demands of every nature and kind which if any arise for any reason whatsoever and without limiting the generality of the foregoing including as a result of any personal injury and / or property damage.

SCHEDULE "B"

**THE CORPORATION OF THE TOWNSHIP OF FARADAY
APPLICATION FORM
FOR USE OF UNOPENED ROAD ALLOWANCE**

1. No person shall perform any work, remove any trees, soil or other material or erect upon or use any road allowance without the specific written approval of the Council of the Corporation of the Township of Faraday.
2. Applications for permission to use an unopened road allowance shall be submitted in writing to the Clerk. The application must state the intended use, the applicant's interest in the allowance, and be accompanied by an accurate location and description plan.
3. If permission is granted by the Council of the Corporation of the Township of Faraday to use the road allowance, the following policies shall apply, as determined by the Municipality.
 - (a) The actual location of the allowance is the responsibility of the applicant and may be required to be verified by an Ontario Land Surveyor, at the expense of the applicant.
 - (b) If a new entrance way is required, the approval of the Township Road Superintendent as to its location, width, size and length of culvert to be installed and the grade at which it intersects the Township Road is required. Where entry is upon a roadway not under the jurisdiction of the Township, the standards and specifications of the Ministry of Transportation shall apply.
 - (c) If brushing and clearing of the road allowance is undertaken, all wood larger than 4 inches in diameter shall be piled for pick-up by the Township. Alternatively, the Township may agree to sell the wood to the applicant at a pre-set fee per face cord, the volume of wood sold to be determined jointly by the applicant and the Road Superintendent. All brush and stumps shall be cleared to the satisfaction of the Township.
 - (d) If the application is for the provision of an access road, driveway or right-of-way, the minimum width of clearance shall be 16 feet. This 16 feet shall be located in the centre of the road allowance, leaving an equal buffer on either side of the cleared area, unless otherwise approved by the Council of the Corporation of the Township of Faraday.
 - (e) The applicant shall acknowledge in writing that any and all improvements to road allowance are the sole expense of the applicant and all such improvements must be by the Township. The applicant must also acknowledge in writing that any member of the general public has the right to use the subject road allowance.
 - (f) The applicant must post the road allowance with a notice, in a form acceptable to the Township, advising all users of the road allowance that the roadway is an unassumed Township roadway and is used at his/her own risk.
 - (g) The applicant must acknowledge in writing that the Township assumes no liability, responsibility or obligation whatsoever to construct and/or maintain and/or repair the road allowance.
 - (h) The applicant must agree to enter into an agreement in writing to indemnify and save harmless the Corporation of the Township of Faraday from any and all manner of actions, causes of action, claims or demands of every nature and kind which if any arise for any reason whatsoever and without limiting the generality of the foregoing including as a result of any personal injury and / or property damage.

ACKNOWLEDGEMENT

To: Township of Faraday
29860 Hwy 28 South
Bancroft, Ontario
K0L 1C0

Attention: Clerk-Treasurer

RE: _____

I / We, _____ the owner(s) of

Hereby acknowledge that:

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

Dated at _____ this the _____ day of _____, 20__

DECLARED before me at the)
)
_____ of)
)
_____, in the)
)
County of _____)
)
this the _____ day of)
)
_____, 20__)
)
_____)

Signature of Owner(s)

Signature of Owner(s)

(A Commissioner, etc.)