

THE CORPORATION OF THE TOWNSHIP  
OF GALWAY-CAVENDISH AND HARVEY

**BY-LAW NUMBER B2011-55**

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

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**WHEREAS** Section 44 of the Municipal Act, 2001, S.O. 2001, c. 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, c. 25 as amended, provides that a municipality may remove or restrict any common law right of passage over any public highway within the boundaries of the municipality;

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

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

**NOW THEREFORE** the Council of the Township of Galway-Cavendish and Harvey hereby enacts as follows:

**1. SHORT FORM NAME**

1.1 THAT this by-law may be cited as the "Township of Galway-Cavendish and Harvey Policy on the Use of Unopened Road Allowances".

**2. SCHEDULES**

2.1 Schedules attached to and forming part of this by-law:

- Schedule "A" - Policy on the Use of Unopened Road Allowances
- Schedule "B" - Application Form

**3. EFFECTIVE DATE**

3.1 THAT this by-law shall take effect upon adoption.

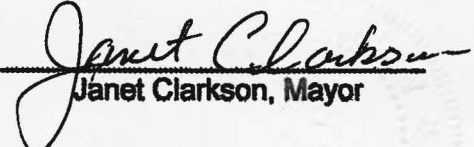
**4. SEVERABILITY**


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

**READ A FIRST TIME THIS 19<sup>TH</sup> DAY OF JULY, 2011.**

**READ A SECOND TIME THIS 19<sup>TH</sup> DAY OF JULY, 2011.**

**READ A THIRD TIME AND FINALLY PASSED THIS 19<sup>TH</sup> DAY OF JULY, 2011.**

  
Janet Clarkson, Mayor

  
Natalie Garnett, Clerk

## SCHEDULE "A" TO BY-LAW NO. B2011-55

### The Township of Galway-Cavendish and Harvey Policy on the Use of Unopened Road Allowances

#### **POLICY RATIONALE**

1. Road allowances that provide access to water **will** be retained in municipal ownership and available to the public.
2. Unopened road allowances will be retained by the Municipality and may be used to accommodate future transportation needs or any other municipal purposes.
3. Notwithstanding section 1 and 2, Council may pass by-laws to close any portion of an opened or unopened road allowance in accordance with the Municipal Act, 2001, S.O. 2001, c.25 and in so doing, may convey ownership of some or all of the lands.
4. Prior to considering the closure and conveyance of any road allowance, Council will consider the following criteria:
  - a. If the road allowance to be closed provides an existing or potential public access to a lake or river by leading to the water's edge, Council **must** be satisfied that there is adequate alternate public access to the water body in proximity to the road allowance to be closed; and
  - b. If the road allowance is used or intended to be used by a formalized recreational trail organization, it must be demonstrated that the closure will not be detrimental to the greater trail network.

5. Where the Municipality is requested to close and convey any portion of a road allowance, Council may as a condition of such conveyance, require any/all of the following:
  - a. The exchange of other property to provide appropriate land or water access,
  - b. The subject lands to be rezoned,
  - c. The removal or repair of buildings or structures,
  - d. The prospective owner of such lands to assume responsibility for all costs associated with the closure including the preparation of a survey and all legal documents necessary to effect the land transfer,
  - e. Payment of a fee equal to the value of the property.

### **POLICY STATEMENT**

The Corporation of the Township of Galway-Cavendish and Harvey 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. The purpose of this policy is to protect the Municipality from liability claims by persons using unimproved unopened road allowances, from demands that such unopened road allowances be improved and/or maintained at the expense of ratepayers, and to ensure that unopened road allowances be available to all members of the public equally.

### **SCOPE**

1. The Municipality will consider opening an unopened road allowance where the number of potential users warrants the expense of maintaining it and where such potential users are prepared to pay the cost of initially constructing a road to the municipal standard.

2. The Municipality will consider permitting the location of a private driveway on an unopened road allowance where each of the following criteria are met:
  - a. The distance to be traveled along the road allowance is short, and
  - b. The number of property owners who could access the section of road allowance to be used is very limited, and
  - c. Each of these property 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 allowance will pay the full legal costs of the Township Solicitor in drawing and registering the agreement, and
  - d. The boundaries of the portion of road allowance to be used are marked by an Ontario Land Surveyor at the expense of the applicant, prior to the commencement of any work, and
  - e. The municipal road allowance shall not be gated and individuals and/or the Municipality shall not be prevented from using the road allowance, however public access is not be encouraged by the adjacent property owner, and
  - f. Any Provincial or Federal requirements dealing with Environmental Protection or other issues are met at the expense of the applicant.
3. No person shall erect a dock or any kind of structure on an unopened road allowance.

4. No person shall store any vehicle, boat, trailer, etc. on an unopened road allowance.
5. No person shall perform any work, remove trees, soil or other materials or erect upon or use any unopened road allowance without specific written approval of Council.
6. Applications for permission to use an unopened road allowance shall be submitted in writing to the Clerk who will bring forward the request as part of a Council agenda. The application must state the intended use, the applicant's interest in the allowance, and be accompanied by an accurate location and description plan.
7. If permission is granted by Council to use the unopened road allowance, the following policies shall apply, as determined by the Municipality:
  - a. The actual location of the allowance is the responsibility of the applicant and may be required to be verified by an Ontario Land Surveyor, at the expense of the applicant, and
  - b. If a new entrance way is required, the approval of the Municipality's Public Works Superintendent as to its location, width, size and length of culvert to be installed and the grade at which it intersects the Township Road is required. Where entry is upon a roadway not under the jurisdiction of the Municipality, the standards and specifications of the County of Peterborough shall apply, and
  - c. If brushing and clearing of the road allowance is undertaken, all wood larger than 4" in diameter shall be piled for pick-up by the Municipality. Alternatively, the Municipality may agree to see 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 Public

Works Superintendent. All brush and stumps shall be cleared to the satisfaction of the Municipality, and

- 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 center of the road allowance, leaving an equal buffer on either side of the cleared area, unless otherwise approved by Council, and
- e. The applicant shall acknowledge in writing that any and all improvements to the road allowance are at the sole expense of the applicant and all such improvements must be approved by the Municipality. The applicant must also acknowledge in writing that any member of the general public has the right to use the use the subject road allowance, and
- f. The applicant must post the road allowance with a notice, in a form acceptable to the Municipality, advising all users of the road allowance that the roadway is an unassumed Municipal roadway and is used at his/her own risk, and
- g. The applicant must acknowledge in writing that the Municipality assumes no liability, responsibility or obligation whatsoever to construct and/or maintain and/or repair the road allowance, and
- h. The applicant must agree to indemnify and hold harmless the Municipal Corporation from any and all manner of actions, causes of actions, claims or demands whatsoever for or by reason of any personal injury and/or property damage of or in any way arising out of any accident whatsoever occurring on the road allowance, and
- i. That the applicant and Municipality enter into a biennial renewable agreement and subject to the payment of a fee(s).