

Municipality of Huron Shores

Meeting Date: September 8, 2021

Agenda Item: Staff Report

Report Title: Driveway Access on Unopened Road Allowance

Submitted By: Deputy Clerk Roberts

Subject: Driveway Access to Lot off Unopened Richard Avenue

Recommendation:

Proposed Motion:

None at this time.

Background Summary:

At the August 11th Regular Council Meeting, Council received a request from property owners of the property described as Gladstone CON 2 LOT 3 SPT, off Richard Avenue (Unopened), for a driveway access. The owners have offered to maintain the roadway from its entrance from Warnock Road to their property.

Staff have determined that the unopened road is under the ownership of the Municipality, with a 1 ft. reserve to the west of the unopened road being held under private ownership.

Upon further investigation, it appears that Council has deliberated this same matter in 2008. Below is an excerpt of the Council discussion and resolution (shown in bold) to proceed with investigating the preparation of a legal agreement for this private driveway use.

"9-10. Ted Linley Jr. – Driveway Access to Lot

Mayor Linley declared a pecuniary interest with respect to this matter under the Conflict of Interest Act.

Council deliberated over the matter for some time and agreed to amend the Dedicated Unassumed Public Highway Policy to include a provision for driveway access over said roads when deemed appropriate. Matters to be addressed in the legal agreement include but are not limited to: no municipal maintenance, owner's liability requirement, monies spent by the

owner are lost should the Municipality choose to upgrade the road, if the owner wishes to subdivide in the future, the road would have to be brought to an acceptable standard, legal fees at owner's expense, disclosure clause, and driveway design requirements.

Resolution No. 08-17-28

Moved by D. Ratz

Seconded by A. Pritchard

THAT Staff proceed with investigation into preparation of a legal agreement with Ted Linley Jr. to allow for driveway access over the dedicated un-assumed portion of Richard Avenue. CARRIED."

The investigation resulted in the Municipal Solicitor providing staff with a list of terms that must be considered and agreed upon, prior to executing an agreement. The list of terms is noted below.

An agreement was not reached. Hence, an amendment to the Dedicated Unassumed Public Highway Policy, discussed in 2008, was not brought back before Council for adoption.

Staff has reopened the 2008 file and will continue with the research commenced at that time.

Terms of Legal Agreement to be considered and agreed upon:

1. Proponent will have to survey the road allowance to be sure that the proposed use will not encroach on adjacent lands. Proponent will have to agree to get the survey.
2. All work is to be done at Proponent's expense. Proponent should provide the Municipality with a cost estimate prior to any work commencing as well as file security for the value of the work.
3. Proponent is to provide the Municipality with an outline of the work proposed to see if it is within the terms approved by Council. Municipal Solicitor will then prepare an agreement between Proponent and the Municipality, which will state that the Municipality takes no responsibility for the design or adequacy of the work to be done, notwithstanding that the outline of the work was review by the Municipality.
4. Proponent must obtain adequate insurance coverage insuring anyone using the road and the municipality should be added as an insured. The Municipality will require an undertaking from the issuing agent

that the insurance will not be cancelled without 30 days notice to the Municipality.

5. Proponent is to file a Letter of Credit (or cash) with the Municipality for a minimum of 15% of the value of the work contracted. If the Proponent doesn't pay one of the contractors they can process a construction lien against the Municipality as owner of the road so therefore the Municipality will require this reserve. A Bank Letter of Credit or cash is the only thing that the Municipality will accept.
6. The Municipality will have to inspect the work only to the extent of making sure that the Proponent has followed Council's directions.
7. The Proponent must post signs stating "Road not assumed by the Municipality, use at your own risk". If these signs are removed for any reason, they must be immediately replaced otherwise permission will be cancelled.
8. Council should then pass a by-law containing recitals outlining the application and the Municipality's response, as well as specifically reciting that the Municipality does not "assume" the road for "maintenance purposes" and that the road is to be "used at the user's risk".
9. There is case law stating that a municipality is also trustee for the public interest in environmental issues, therefore if the municipality builds a road it has an environmental responsibility. A similar responsibility would rest with those privately opened, motor vehicle passages on unopened road allowance.
10. Further inasmuch as access to Richard Avenue can be from the south, the one-foot reserve will not impact the agreement.