

TOWNSHIP OF SOUTHGATE

Policy # 98

Unopened Road Allowances and Assumption of Unassumed Roads Policy Council Approval: August 6, 2025



1.0 Purpose

The Township of Southgate Use, Improvement & Assumption of Unopened Road Allowance Policy gives direction to Council, Staff, Ratepayers and Utilities on practices the Township will follow regarding use and assumption of unopened road allowances and unassumed roads. More specifically, this Policy applies to road allowances that are:

- a) located on the original Crown Survey or created prior to Land Titles coming into effect,
- b) not subject to terms of a subdivision agreement related to a draft plan approval, and
- c) not opened and assumed for year-round maintenance by the Township.

2.0 Definitions

For the purposes of this Policy:

"Improved public street" means a road that has been assumed for public use and is maintained year-round by the Township, as more specifically defined in the Township's Zoning By-law.

"Unassumed road" means an existing road located within an unopened road allowance that the Township has not assumed responsibility over and does not maintain on a year-round or seasonal basis.

"Unopened road allowance" means a surveyed road allowance that is owned by the Township but has not been assumed for public use by a municipal by-law or otherwise, and is not maintained by the Township. Unopened road allowances may provide access to natural areas, farm fields, seasonal (summer) access to private lands, or may function as a trail or natural area.

3.0 Background

1. Unopened road allowances are subject to the terms of use established by Council as authorized by law including, for example:
 - a) Limiting public access to abutting or adjacent property owners with no alternate access;
 - b) Prohibiting unauthorized buildings, structures, storage, occupancy or habitation thereon;
 - c) Executing agreements with any party regarding improvements to and/or use of the road allowance, including the granting of easements for utilities;
 - d) Stopping up, closing and selling to any party (subject to municipal policies relating to the disposition of lands and applicable legislation); and,
 - e) Assuming maintenance of a roadway upgraded to municipal standards.
2. In urban areas and settlements, an unopened road allowance is often part of an original Crown survey that for topographical, servicing or other reasons was never opened as a public highway. There are also a series of unopened road allowances that form part of small vacant lot clusters within the Township, which are referred to as "checkerboard lots" in the Township's Official Plan. Where an unopened road allowance currently has some form of use, it may be referred to in this policy as an existing or public right-of-way.

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3. The Township's Zoning By-law restricts the use and development of lots that do not have frontage along and direct access to an improved public street. Among other things, this Policy is intended to provide guidance to owners of lots that do not meet this requirement, who have frontage along an unopened road allowance and wish to use and/or develop their lots in compliance with the abovementioned zoning requirement.

4.0 General

1. Unless a municipal by-law has been passed to assume an unopened road allowance for public use, or a court of competent jurisdiction has deemed a specific road to be a public highway, the Township is not responsible for safe passage along that road allowance, nor for the repair of any unassumed roads or other improvements located thereon. Anyone who uses an unopened road allowance/unassumed road within the Township does so at their own risk.
2. Any access to a property by way of an unopened road allowance or unassumed road does not satisfy the zoning requirement for frontage along and direct access to an improved public street and may not be considered legal access for the purposes of other municipal by-laws, legislation, or any other applicable law or regulation.
3. The Township does not guarantee unfettered access to unopened road allowances under its jurisdiction and Council may exercise its right to restrict any common law right of access and/or passage, as it deems appropriate in its discretion, pursuant to s.35 of the *Municipal Act*, 2001, S.O. c. 25.
4. The Township will generally consider requests that the Township assume an unopened road allowance for public use in accordance with this Policy. Similarly, the Township will consider requests to use or improve an unopened road allowance in accordance with this Policy.
5. Public use of abutting unopened road allowances should be restricted to passive enjoyment. Users should preserve the right-of-way as close as possible to a natural state, unless the Township has expressly agreed to the contrary in writing.
6. In no case shall public access be blocked or prohibited from any unopened road allowance by a party other than Township Council, unless express consent has been given by by-law in accordance with this Policy.

5.0 Request to Use or Improve

1. Anyone who seeks to build on or occupy an unopened road allowance may only do so with the express written consent of the Township, in accordance with this Policy.
2. As a general rule, the Township will not consent to the construction of new buildings on an unopened road allowance.
3. Improvements to unopened road allowances, such as removing vegetation, building roads/driveways or installing culverts, can only be undertaken with the Township's written permission by way of an agreement.

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4. Requests to build on or occupy an unopened road allowance are subject to approval by Council, in its sole and absolute discretion, and will only be considered on a case-by-case basis where:
 - a) The applicant has acknowledged, in writing, that the Township assumes no liability, responsibility, or obligation, whatsoever, for the proposed use/improvement of the road allowance (even if approved), nor for the construction, maintenance and/or repair of the proposed improvement or the road allowance;
 - b) The applicant has acknowledged, in writing, that any and all improvements to the unopened road allowance will be made at the sole expense of the applicant;
 - c) The applicant has signed an agreement that is satisfactory to the Township, which contains indemnity and insurance clauses and shall require the applicant to obtain any necessary permits/approvals from other governments, public bodies, and agencies, such as Grey County, the Conservation Authority, and the Ministry of Environment, Conservation and Parks, as applicable, prior to commencing the activity contemplated in the agreement. The agreement will only be signed on behalf of the Township if the request to use or improve the unopened road allowance is approved by Council; and,
 - d) There is no other practical alternative available to build solely private lands. Wherever possible construction shall occur primarily on private lands.
5. The Township Municipal Road and Servicing Standards, as updated from time to time, shall apply to all roadway improvements within unopened road allowances. Such standards are generally made available on the Township website.
6. No person shall erect any feature of any kind on any unopened road allowance that has the effect of restricting common law rights of passage and/or access. For example, no person shall unlawfully park or store a vehicle, boat, trailer, etc. on an unopened road allowance.
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 Township.
8. Applications for permission to use or improve an unopened road allowance shall be submitted in writing to the Clerk's Department. The application must state the intended use/proposed improvement, the applicant's interest in the allowance, and be accompanied by an accurate location and description plan as well as any other material or studies contemplated by this Policy or requested by the Township.

6.0 Encroachment Agreements (All road allowances)

1. Where existing buildings or structures, including foundations, encroach onto a road allowance, including an open public highway, this policy encourages relocation of said

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buildings, structures and foundations off the said road allowances or highway wherever practical and reasonable.

2. Where it is not practical and possible to relocate a building or structure encroaching on to a road allowance, this policy may permit the encroachment to continue on the basis of a written encroachment agreement with the Township. The encroachment agreement shall specify terms of the encroachment including notice of termination of the agreement, rights of the Township to use the road allowance, public access rights and similar, and any other terms deemed desirable by the Township, including appropriate indemnifications and insurance requirements. As a general principle, the Township will not limit public access to any road allowance even where an encroachment is permitted.
3. Any request for an encroachment agreement shall include a registered survey prepared by a qualified Ontario Land Surveyor verifying the extent and area of the encroachment.
4. This policy does not permit the expansion, redevelopment or increase in size of any existing encroachment on a road allowance, whether or not it is recognized by an encroachment agreement.
5. Any encroachment agreement will contain a provision that on notice the Township may require the encroachment to be removed.
6. Any person requesting the Township to permit an encroachment to continue shall comply with the requirements of this policy.

7.0 Assumption of an Unopened Road Allowance

1. Upon request, and where the Township's budget permits, the Township may consider assuming an unopened road allowance. All such requests are subject to approval by Council, in its sole and absolute discretion.
2. The Township shall not generally financially support the capital cost to open an unopened road allowance and construct a new highway thereon, except for possible financing of landowner costs over a period of time by adding any unpaid charges (such as those payable pursuant to O. Reg. 596/06 Local Improvement Charges – Special Lien Status) as amounts to the tax roll. The Township may also consider providing financial support if it would help accomplish oversizing or improvements to the road system where there is an identified public benefit to extending the road, or the investment in road opening will generate financial returns to the municipality.
3. The Township may consider opening up an unopened road allowance where the number of potential users warrants the expense of maintaining it, 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, and where an agreement is signed between the parties respecting the opening and maintenance of the road allowance.

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4. When considering an assumption request, Council must be satisfied that the proposed assumption is in the public interest and that it meets the following criteria:
 - a) An agreement has been signed and security provided to ensure that private landowners benefiting from the opening of the road allowance to applicable municipal standards pay the full cost of construction to the satisfaction of the Township;
 - b) The constructed roadwork is inspected by the Township staff and verified to comply with any agreed upon terms, including with municipal road design standards and/or County or Provincial standards, as applicable;
 - c) The upgraded road to be assumed by the Township connects two existing public roads that are already maintained by the Township, or a proper "P turn" or similar is provided for that is designed to accommodate the safe turning of a Township snowplow and/or other maintenance and emergency vehicles;
 - d) The new road to be assumed can reasonably be accommodated in the existing route structure or there is sufficient development along the new road to justify expansion of plow routes, or an alternative means of winter maintenance is available and agreeable to benefiting landowners and the Township, which has been confirmed through a written agreement;
 - e) Where private land is required to facilitate needed upgrades to an unassumed road or to allow for the construction of a new road to municipal standards, the required private land has been dedicated to the Township at no cost to the Township;
 - f) Where applicable, all agencies of jurisdiction have approved the roadway according to their mandate such as the Province (Natural Resources, Environment, Transportation), County (Transportation, Ecology), Conservation Authority or other such agencies; and,
 - g) The development of the road is compliant with the Township's Official Plan.
 5. In addition to the foregoing criteria, Council may consider the following and such other factors as it deems appropriate when determining whether the Township should assume an unopened road allowance:
 - a) Does the road serve, or will it serve, five (5) or more separate and distinct private parcels of land, which are being used or are capable of being used for the purposes permitted within that zone, on a year-round basis?
 - b) Would assumption of the unopened road allowance make additional land available for agricultural purposes or promote future desirable development?
 - c) Would opening up the road allowance provide alternative roadway access that improves public safety or significantly reduces travel times?

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d) Is the natural environment enhanced or protected?

e) Would assumption of the unopened road allowance over-extend municipal roads maintenance programs, operations and resources?

8.0 Additional Considerations

1. Except for trails built and maintained by organizations such as the Ontario Federation of Snowmobile Clubs, Bona fide ATV clubs or similar, the Township will generally refuse to permit any person to use or develop 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 general ratepayers.
2. Any such clubs listed above shall be required to name the Township as an additional insured on their respective commercial liability insurance policies in the amount of \$5 million liability and to provide proof of same to the Township's satisfaction.
3. The Township will consider permitting a private driveway on an unopened road allowance where each of the following criteria are met:
 - a) The distance to be traveled along the unopened road allowance is short generally less than 30 metres from the front of the lot except that longer distances may be considered in rural areas adjacent to larger farm parcels;
 - b) The number of property owners who could access the section of unopened road allowance proposed to be used as a driveway is very limited, and no new lot creation is to be permitted;
 - c) Each of the adjoining owners mentioned in the previous sub-paragraph enters into an agreement, which may include restrictive covenants or other obligations on the Owner, 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 will pay the full legal costs of the Township Solicitor in preparing and registering the agreement(s);
 - d) Where necessary the boundaries of the portion of unopened road allowance to be used are marked by an Ontario Land Surveyor and a Reference Plan prepared and, if necessary, filed at the Land Titles Office 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 where required by the Township; and,

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- f) Any Provincial or Federal requirements dealing with Environmental Approvals have been obtained.
- 4. In no case will the Township assume maintenance of an unopened road allowance used as a private driveway.
- 5. The Township will follow applicable policies and procedures respecting disposal of real property, stopping-up and closing public highways, and restricting access through an encroachment agreement.
- 6. If permission is granted by Council for use of an unopened road allowance, or an encroachment on to an unopened road allowance, the following policies shall apply, as determined by the Township:
 - a) The actual location of the road allowance, including any unassumed road thereon, must be clearly determined. This 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 Public Works Department 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;
 - c) Where entry is upon a roadway not under the jurisdiction of the Township, the standards and specifications of the County of Grey or the Ministry of Transportation shall apply, as appropriate;
 - d) If brushing and clearing of the unopened road allowance is undertaken, prior arrangements for the disposal of brush and/or compensation for wood of value harvested on the road allowance shall be made with the Township and confirmed in writing before the work begins;
 - e) If the application is for the provision of an access road, driveway or right-of-way, the minimum width of clearance shall be as stipulated in the Township Zoning By-law (approximately 5 metres). The driveway shall be located in the centre of the road allowance wherever possible, leaving an equal buffer on either side of the cleared area, unless otherwise approved by Council; and,
 - f) The applicant must post and maintain a notice/signage on the road allowance in a form acceptable to the Township, advising all users of the road allowance that the roadway is not an assumed municipal roadway and is used at his/her own risk.