

THE CORPORATION OF THE TOWNSHIP OF GREATER MADAWASKA

BY-LAW 50-2016

Being a by-law to authorize the execution of a private road agreement between the Corporation of the Township of Greater Madawaska and Earl William Thomson

WHEREAS the Municipal Act provides that by-laws may be passed by the councils whereby a municipality may enter into an agreement with any person to construct, maintain and operate a private road;


AND FURTHER the Corporation of the Township of Greater Madawaska deems it necessary to enter into an agreement with Earl William Thomson, owner;

NOW THEREFORE the Council of the Corporation of the Township of Greater Madawaska enacts as follows:

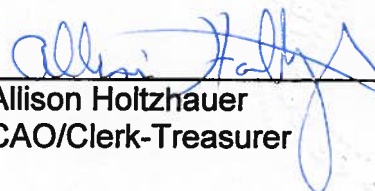
1. **THAT** the Mayor and CAO/Clerk-Treasurer are hereby authorized to execute the attached agreement with Earl William Thomson and subject to any further administrative or clerical amendments as required.
2. **THAT** this by-law shall come into force and take effect upon final passing thereof.

READ a first and second time this 23rd day of August, 2016.

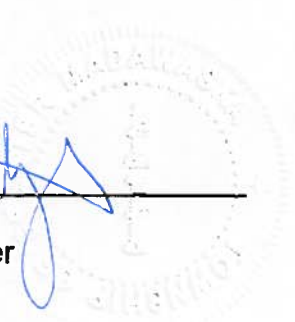
READ a third time and passed this 23rd day of August, 2016.



Glenda McKay
Mayor



Allison Holtzauer
CAO/Clerk-Treasurer



THIS AGREEMENT MADE AUGUST 23, 2016

BETWEEN:

CORPORATION OF THE TOWNSHIP OF GREATER MADAWASKA

hereinafter called the "Township"
PARTY OF THE FIRST PART

AND:

EARL WILLIAM THOMSON

hereinafter called the "Owner"
Jointly and Severally
PARTY OF THE SECOND PART

WHEREAS the Owner is the registered owners of the lands described in Schedule A attached hereto, hereinafter referred to as the Owner Lands;

AND WHEREAS the Owner has made an Application (File No. B10/12) to the County of Renfrew under section 53 of the *Planning Act*, Ontario, for consent for the creation of a registered right-of-way being the Private Road which is the subject of this Agreement, described in Schedule A attached hereto, and is owned by the Owner;

AND WHEREAS the parties hereto wish to enter into this Agreement so as to provide for road access to the Owner Lands and to ensure adequate access by any and all emergency vehicles to the Owner Lands and to ensure the Owner's responsibility to maintain the Private Road without Township liability;

AND WHEREAS the Township is authorized to enter into this Agreement with the Owner in accordance with Sections 51(26) and 53 of the *Planning Act*, Ontario;

NOW THEREFORE WITNESSETH that in consideration of the foregoing, and the mutual terms, provisos and covenants of the parties hereto, the parties agree as follows:

1. INTERPRETATION

1.1 In this Agreement:

CAO shall mean the person appointed as Chief Administrative Official of the Township of Greater Madawaska from time to time or a person designated by the CAO.

Private Road means the lands more particularly described and set out on Schedule A attached hereto.

Road Standards means the standards provided and attached hereto as Schedule B.

1.2 Words importing singular number only shall include the plural and vice versa, and words importing masculine gender shall include the feminine gender, and vice versa, and words importing persons shall include firms and corporations, and vice versa.

B - Road Standard

C - Council Resolution Dated August 27, 2013 outlining reduced road standards

3. TITLE

3.1 The Owner hereby warrants and covenants that they are the unencumbered registered owner of the lands assigned to them upon Schedule A, the Owner Lands and that the lands are properly so described. This Agreement shall be registered against title to the Private Road at the expense of the Owner.

3.2 The parties acknowledge and agree that the Private Road is and shall be as described on Schedule A attached hereto.

4. DEVELOPMENT

4.1 The Owner shall not proceed with development of the Owner lands nor any part thereof, nor shall they apply for any building permits for the Lands or any part thereof, without satisfaction and compliance with this Agreement including construction of the Private Road in accordance with this Agreement.

4.2 The Owner covenant with the Township that the obligations imposed herein shall be a burden upon the Private Road lands described in Schedule A attached hereto and shall be a covenant which shall run with the lands for the benefit of the Township's.

5. ROAD CONSTRUCTION

5.1 The Owner shall construct and maintain, solely at the Owner's expense the Private Road at all times to ensure that the road condition is adequate for access by any and all emergency vehicles and in accordance with the specifications attached hereto as Schedule B.

5.2 Notwithstanding the provisions of article 5.1 which require compliance with the Private Road Standards in Schedule B, the Township may, at its sole discretion permit a lesser standard upon application to the Township in writing by the Owner with sufficient particulars and which certifies that such lesser standard is adequate to ensure access along the Private Road by emergency service vehicles.

5.3 the Owner shall install at the Owner's expense street signs to name the street and traffic control signage prior to use of the Private Road, all of which to the satisfaction of the CAO.

5.4 The Private Road shall be named Elias Lane.

5.5 The Owner shall, upon completion of the Private Road and before use, file with the CAO a certificate signed by a registered Ontario Land Surveyor which certifies that the location of the Private Road complies with Schedule A.

5.6 Notwithstanding any of the provisions herein, when in the opinion of the CAO, acting upon professional engineering advice, it is necessary to change the grade of existing Township roads adjacent to or abutting the said Private Road, the Owner shall, on receipt of written notice, reconstruct the said Private Road adjacent to or abutting the Lands as directed by the CAO in accordance with the specifications of the Township so as to achieve integration of the Private Road with connecting Township Roads.

5.7 The Owner shall post signs upon the Private Road to the satisfaction of the CAO which advise users that the road is private, not maintained by the Township and users proceed at their own risk.

6. INSPECTION

- 6.1 The Township shall have the right, at any time, to inspect the construction and maintenance of the Private Road. If, at any time an inspection discloses that the Private Road is not constructed or maintained in accordance with the terms of this Agreement, the Owner shall be deemed in Default.
- 6.2 Resident on-site inspection by the Township is required on construction of the Private Road. The Owner shall provide to the CAO five (5) days written notice of any such construction to permit the CAO to schedule such inspections. The Owner shall reimburse the Township for its cost of such inspectors based on 120% of the actual salaries paid to the inspectors while they are on site, with such reimbursement being made by the Owner on a month-to-month basis.
- 6.3 Examination and acceptance of drawings, specifications and contract documents by the Township or Township inspections shall not relieve the Owner of their obligations to develop strictly in accordance with the terms of this Agreement.
- 6.4 Without limiting the generality of the foregoing, upon professional engineering advice, the Township may have any qualitative or quantitative tests made of any materials which have been or are proposed to be used in the construction of the Private Road including soils tests and the cost of such tests shall be paid by the Owner.

7. SUBSEQUENT CONVEYANCES

- 7.1 The Owner shall insert in any agreement of purchase and sale to which they are a party respecting a transfer of any interest of all or any part of the Owner Lands or Private Road, that the same are subject to this Agreement with the intent that all subsequent purchasers of the said Lands or any parts thereof shall be advised of the restrictions imposed by this Agreement and bound by the said covenants contained herein.

8. PRIVATE ROAD

- 8.1 The Owner acknowledge that the Private Road is and shall remain a private road and that the Township shall have no obligation to assume, accept or maintain the road, nor shall the Township be liable for any loss or damage occasioned by use of the Private Road whether as a result of its construction or maintenance of any other cause and the Owner covenant to save the Township harmless from any such liability and to fully indemnify the Township should any such liability be imposed upon the Township.

9. DEFAULT

- 9.1 If at any time the Owner is improperly maintaining the said Private Road or if at any time the Owner have failed to observe or comply with, or they are reasonably anticipated to fail or observed to comply with a covenant or obligation of the Owner provided for in this Agreement, the Owner shall be deemed in Default.
- 9.2 If the Owner is deemed in default in accordance with any of the terms of this Agreement, the CAO shall promptly notify the party in writing of such Default and if such Default be not remedied within 15 clear days after delivery of such notice, then, the CAO or the Township shall thereupon have full authority and power to immediately remedy the Default at the sole cost and expense of the party.
- 9.3 Notwithstanding the foregoing, when the Default is one of emergency, then in the absolute and sole discretion of the CAO, the Township may remedy the Default without notice to the party at the sole cost and expense of the party.

9.4 The cost and expense of any remedy shall be calculated by the CAO whose judgment shall be final. It is understood and agreed that such costs and expenses shall include an administrative fee of fifteen percent (15%) of the cost and expense, together with a fee of fifteen percent (15%) of the said sum for the dislocation and inconvenience caused to the Township as a result of such Default, it being hereby declared and agreed that the assumption by the parties of the obligations set out in this clause is a consideration without which the Township would not have executed this Agreement and the said sums are acknowledged by parties not to be excessive or punitive.

9.5 The cost and expense of remedy as provided for herein shall be paid forthwith by the Owner to the Township upon demand.

10. RISK & INDEMNITY

10.1 At all material times and notwithstanding any other provision of this Agreement, the Owner accept the risk and sole responsibility along the Private Road for access by emergency vehicles and the Owner do hereby release and forever discharge the Township from all actions, cause of action, suits, claims or demands howsoever arising from the use, construction or maintenance of the Private Road including without limiting the generality of the foregoing access by emergency vehicles and in the event of any loss occasioned thereby, they shall indemnify and save harmless the Township from any liability arising therefrom.

11. LEGAL AND EXPERT COSTS AND REGISTRATION

11.1 All legal and expert costs incurred by the Township with respect to this Agreement and the enforcement of this Agreement shall be paid by the Owner forthwith upon demand.

11.2 The Owner hereby covenants to register this Agreement and any transfer of easements or land to the Township provided for in this Agreement against title to the Private Road, forthwith at its sole expense. At the Township's discretion, the Owner's solicitor shall certify the foregoing to the Township and that at registration, the Owner is the sole registered owner of the Owner Lands.

12. NOTICES

12.1 Any notices required to be given hereunder may be given by first class pre-paid mail addressed to:

The Township at: 19 Parnell Street
P.O. Box 180,
Calabogie, ON K0J 1H0

and

The Owner at: General Delivery
Griffith, ON K0J 2R0

13. GENERAL

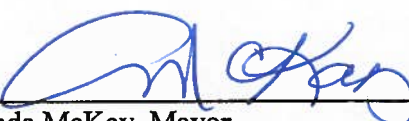
13.1 The provisions of this Agreement shall inure to and be binding upon the parties hereto, their heirs, successors, executors and assigns.

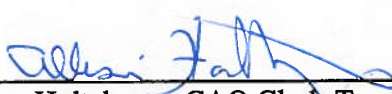
13.2 All of the parties referred to as the Owner shall be jointly and severally liable to the Township for their obligations provided for in this Agreement.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED
in the presence of

**CORPORATION OF THE TOWNSHIP OF
GREATER MADAWASKA**

Per: 
Glenda McKay, Mayor
I have authority to bind the corporation

Per: 
Allison Holtzhauer, CAO Clerk-Treasurers
I have authority to bind the corporation


Witness


Earl William Thomson

SCHEDULE A

Description of Owner Lands and Private Road

Owner's Lands

LT 14 CON 9 MATAWATCHAN, LYING S OF R81030 (2NDLY), PT 3, 49R9792, PT 1, 49R12374 & E OF PTS 1 & 2, 49R5130, PT 1, 49R4683, PTS 3, 5 & 6, 49R4130, R162139 (PARCELS 2 & 3), R210701 & W OF PT 8, 49R9195, EXCEPT PTS 2 & 3, 49R13678 & EXCEPT PTS 1 & 8, 49R16239; S/T R198705, R210090, R422174 & S/T PTS 2 & 6 PL 49R16239;(PARTIAL RELEASE OF PT 7 BY RE198734) IN FAVOUR OF PTS 1 & 8, 49R16239 AS IN RE99133 ; TWP OF GREATER MADAWASKA being all of PIN 57488-0322 LT

Private Road

Part of Lot 14, Concession 9, in the geographic Township of Matawatchan, now in the Township of Greater Madawaska, and designated Parts 2, 6, and 7 on Reference Plan 49R-16239 being Part of PIN 57488-0322 LT

SCHEDULE B
Township of Greater Madawaska
Private Road Standard
For emergency vehicle access (effective February, 2013)

<u>Number of New Lots Created</u>	<u>5 or More</u>	<u>Less than 5</u>
<u>Minimum width of Clearing</u>	12M	8M
<u>Surface</u>	Width	4M
	Granular A	150 mm
	Granular B	250 mm
<u>Grade</u>	maximum 12.5%	maximum 12.5%
<u>Cross culverts</u>	minimum 400 mm	minimum 400 mm
<u>Shoulder width (including rounding)</u>	.75 M each side	.25 M each side
<u>Geometrics</u>	Sufficient for an 11 metre emergency vehicle to be able to turn safely using a horizontal curve radius of 13 metres.	
<u>Ditches</u>	All ditches to be carried to a sufficient outlet. All materials from ditching must be either leveled or removed from site. All ditches with grades in excess of 10% to be "rip-rapped".	
<u>Turnarounds</u>	13 metre minimum radius includes 1 meter shoulder, center filled-in and constructed to the same standard as roadway.	
<u>Turnouts</u>	Turnouts shall be constructed in every 300 metre length of the roadway with the maximum distance between turnouts not to exceed 200 metres. A turn out will be attached to the shoulder of the existing roadway (the surface and shoulder included) and it will be 30 metres long and 4 metres wide with a shoulder of .25 metres, with the surface materials to be the same material and construction as the roadway.	
<u>Culverts</u>	Sufficient in number and capacity to ensure the integrity of the roadway and entrances. When an upstream culvert is larger than the minimum standard, the entrance culvert must be at least the same diameter. A minimum slope of 2:1 will be accommodated at end of pipes. Each entrance must be constructed in a manner which will prevent surface water from being discharged from the property onto the road.	
<u>Water Crossings</u>	Road constructions shall at all times comply with applicable governmental law and regulations which govern water crossing.	

SCHEDULE C

(Motion 214-13 August 27, 2013)



Corporation of the Township of Greater Madawaska

Council Resolution Form

Moved By: _____

Seconded By: _____

Thomson Private Road Agreement

That Council approves the request by Earl Thomson for relief from the Private Road Standard under Section 5.2 of the Private Road Agreement for Elias Lane so that Mr. Thomson may begin final upgrades to the road.

And furthermore that Council approves the proposed standards which are the entire portion of Elias Lane will be a minimum of 20 feet wide, except two sections which will provide enough space for turnouts.

Carried: Defeated: _____ Withdrawn: _____

Declaration of Interest: _____ Recorded Vote: _____

Abstain	Yea	Voting	Nay
		P. Emon	
		K. Lehnhardt	
		B. Hunt	
		B. Kierczak	
		G. McKay	

Mayor: _____

Date: Aug 27/13

Motion #: 214-13