

The Corporation of the City of Kawartha Lakes

Committee of Adjustment Report – Harjula

Report Number COA2022-064

Public Meeting

Meeting Date: August 18, 2022

Time: 1:00 pm

Location: Council Chambers, City Hall, 26 Francis Street, Lindsay

Ward 2 – Geographic Township of Somerville

Subject: The purpose and effect is to facilitate construction of a new dwelling and agricultural building in support of a nursery business on a lot absent frontage on an improved public street.

Relief sought:

- 1) Section 18.8.1 provides that no building or structure shall be erected in any zone unless the lot upon which such building or structure is to be erected has a lot line which abuts an improved public street, where access can be obtained off such street; the existing lot abuts a municipal unassumed road.

The variance is requested at **Vacant lands, unnamed road allowance between Baseline Road (CR 42) and Woodcock Line** (File D20-2021-029).

Author: Leah Barrie, RPP, Manager of Planning **Signature:** 

Recommendations

That Report COA2022-064 – Harjula, be received;

That minor variance application D20-2021-029 be GRANTED, as the application meets the tests set out in Section 45(1) of the Planning Act.

Conditions

- 1) **That** the owner submit to the City a proposal to assume the unnamed road by service, in accordance with Council Policy CP2017-010 within twenty-four (24) months after the date of the Notice of Decision, failing which this application shall be deemed to be refused. This condition will be considered fulfilled upon receipt of the proposal.

This approval pertains to the application as described in report COA2022-064. Fulfillment of all conditions is required for the Minor Variance to be considered final and binding.

Application Summary

Proposal:	To permit construction of a +/- 85 sq m single detached dwelling and +/- 248 sq m agricultural implement storage building / workshop as part of a tree nursery business (nut orchard)
Owner:	Steve Harjula
Applicant:	Same as Owner
Legal Description:	Part Lots 16 and 17, Concession 10
Official Plan ¹ :	Rural, Specific Lake Policy Area 'SP-1', provincially significant wetland and woodlands, bedrock resource (City of Kawartha Lakes Official Plan, 2012)
Zone ² :	Rural General 'RG' (Township of Somerville Zoning By-law 78-45)
Site Size:	+/- 69.6 ha (172 ac)
Site Access:	Municipal, unassumed road
Site Servicing:	N/A (proposed: individual water and septic systems)
Existing Uses:	Vacant
Adjacent Uses:	Rural, woodlands, wetlands

Background

February 22, 2017	Lot acquired by Owner
September 30, 2020	Realty Service Division comments

- Land Management Committee (LMC) reviewed owner's request to purchase the road allowance; unable to support the request
- LMC supportive of entering into a Permission to Construct Agreement to acknowledge the development amendments to the municipal road allowance – such Agreement only covers improving access to the lot, and

¹ See Schedule 1

² See Schedule 1

requires an administrative fee of \$1,500 and provisions for insurance and securities

March 25, 2021 Minor Variance Application received

June 17, 2021 CofA Meeting #1 Memo for Deferral

- Recommendation for Deferral pending comments from Paramedic Services and PW-Roads for requirements associated with emergency vehicle accessibility, and, road widening, upgrades, and maintenance
- Committee deferred the application for up to 3 months to obtain additional comments³

September 16, 2021 CofA Meeting #2 Memo for Deferral

- Recommendation for Deferral pending recent municipal undertaking of a coordinated review of the process surrounding construction of a road within a municipal road allowance initiated by a private individual
- Committee deferred the application for up to 2 months to allow for an outcome of the review⁴

November 25, 2021 CofA Meeting #3 COA2021-038

- Committee member moved Motion to Defer pending on-going review, prior to discussion of Staff Report COA2021-038 Recommendation for Approval conditional upon registration of a development agreement
- Committee deferred the application for up to 7 months to allow for completion of the review⁵

June 16, 2022 CofA Meeting #4 Memo for Deferral

- Recommendation for Deferral pending forthcoming update on the review at the July 19, 2022 Council meeting
- Committee deferred application for up to 2 months to allow for review of Council direction⁶

July 19, 2022 Council Meeting LGL2022-012

³ See Schedule 2

⁴ See Schedule 2

⁵ See Schedule 2

⁶ See Schedule 2

- Staff Report LGL2022-012 Road Construction – Existing Lots of Record, and related Management Directive (MD), Standard Operating Procedure (SOP), By-law
- Council received the report and directed that a by-law be advanced to amend the Consolidated Fees By-law 2018-234 to provide cost recovery for staff time required to facilitate the development of roads on City-owned road allowances to service existing lots of record⁷

Application of Management Directive

Nearly every zoning by-law across the municipality, including in Somerville, requires lots to abut and obtain access from an improved public street in order for building permits to be issued. In cases where owners of lots that abut unassumed municipal road allowances proposed development of their property, the City did not have a standard that it used to justify the construction of new municipal roads to guide decision-making. In response, over the last year the City's Solicitor led a coordinated review of the complex process involved with private development adjacent to unassumed municipal road allowances. Input was considered from Divisions across municipal Departments including Realty Services, Roads, Development Engineering, EMS, and Planning, and resulted in the materials at Appendix F that includes a new Management Directive for Construction of Rural and Urban Roads to Access Existing Lots of Record.

Using the decision tree framework provided in the MD and SOP the subject unnamed road is 1) not in an urban settlement area, 2) not in the Oak Ridges Moraine, 3) not zoned Environmental Protection 'EP', and 4) not in an area regulated by a Conservation Authority. Therefore, there is not an automatic denial of consideration of road construction by the municipality.

As evidenced by the MD and SOP construction of a new road to access the subject property would require the engagement of the Environmental Assessment (EA) process in the absence of a Planning Act process that would normally trigger the necessary consultation and review of archaeological, financial, social, and environmental considerations tied to new road construction. Proceeding with an EA would need to be approved by Council before the City can determine that the construction of the road and its assumption is in the best interests of the City.

Given the layout of the existing nearest assumed and maintained roads (i.e. Baseline Road to the west and Woodcock Line to the east), it is anticipated that the contemplated EA will consider the improvement and assumption of the road allowance from its intersection with Baseline Road to its intersection with Woodcock Line in order to provide a reasonable extension of the road network. It is noted that there are some intersection irregularities at Baseline and Woodcock that would need to be corrected as part of the works to ensure proper configuration and controls are in place, as required. In total it is estimated that approximately 1,860 m

⁷ See Schedule 2

of road frontage and 2 intersection improvements are contemplated, for a return of between 1 and 6 agricultural / rural residential developments.

The City's Engineering and Corporate Assets (ECA) Department needs to conduct the EA itself, which EA informs the capital process. This is an unplanned in-year pressure on the Department's work plan, and as such would get prioritized accordingly, subject to Council approval. It is anticipated that it will take several years to complete a project using this process.

Regardless of whether or not a road will be assumed by the municipality for maintenance purposes, once a road is constructed on a road allowance, the municipality is responsible to the motoring public to ensure that the road is not constructed negligently. For this reason, the MD requires that ECA be satisfied with the construction of the road, to be maintained at the owner's expense in order to ensure continued access. The terms would be set out in a license agreement.

Accordingly, the City would consider potentially building a road in this location, on a timeline to be established by the City according to its competing capital priorities and entirely at the cost of the owner. The City will not provide further direction other than to state that \$0.5M and 5 years would be a reasonable cost and timing consideration.

Construction of roads that result in the best return on investment to the City are most likely to proceed sooner, while those that result in lesser returns are less likely to proceed in the near-term. Assigned scoring is used to prioritize road construction project requests against one another. The score for this property is considered 'low' – it results in a lesser return on investment, with better candidate projects in the queue ahead of it. In this case, cost-sharing opportunities for road construction costs could be explored with the other 5 impacted property owners⁸. If further requests for development of the subject unnamed road are received from the other 5 properties considered in this analysis, the score could be improved and would be amended.

On the basis of this framework, a minor variance application to exempt the lot frontage requirement would be denied by staff as not being 'minor' in nature or impact because of the above-noted implications, in particular costs and timing. Going forward, proponents of like-proposals would be required to make their request that the City construct a road, and if approved, that Council assume the road. Planning staff would evaluate the proposal to determine whether assumption was needed, and whether it would be appropriate to re-zone the property to a 'Limited Service Residential (LSR)' Zone (or its subject by-law

⁸ As an alternative to proceeding through this process, where several (five or more) neighbouring owners wish to have an existing unassumed or private road upgraded at the owners' expense and then assumed by the City for maintenance purposes, they may petition the City for a local improvement pursuant to the provisions and regulation under the Municipal Act, 2001 This road may then be assumed by the municipality, by by-law of Council.

equivalent), remove the lot frontage requirement and attach applicable conditions of approval concerning road construction.

Rationale

The variance is desirable for the appropriate development or use of the land, building or structure.

The subject property is located in a predominantly rural area northeast of Coboconk and northwest of Four Mile Lake. The neighbourhood consists of larger rural lots, many forested and some used for agriculture. The subject lands contain an expansive mixture of woodlot and flat, open scrub areas. The lot is currently vacant.

The owner has planted a nut orchard on the lot, and is proposing to develop a tree nursery business supported by an agricultural implement storage building / workshop and dwelling. The owner has spent the last two years clearing the land, investing in an irrigation system, other equipment and inventory, and planting thousands of trees across a 75-ac orchard, with harvesting anticipated to begin in approximately 10 years. Investment in the business is +\$200,000 to date. The agricultural building is intended to store the now right-sized trees to be processed for shipping in the spring of 2023.

According to the owner, a 45.6 sq m hunting cabin circa 1975 was present on the lot in the past, and access to the lot was from a municipal road until about 15 years ago, when it was no longer maintained by the City⁹. As per the photo at Appendix D, the road allowance has a 3 m wide sand/gravel base and ditches from when it was a maintained road. The surface is wide enough for trucks to pass through without removing any trees. The owner is prepared to maintain the surface in all seasons.

A field inspection indicates the road allowance appears to be a dirt trail well-used by all-terrain vehicles.

The variance maintains the general intent and purpose of the Official Plan.

The proposed use is permitted in the Rural designation, and the siting of the buildings and structures is outside of natural heritage features.

Section 28.6.7 of the Official Plan requires lots to have direct access onto a maintained year round municipal road or provincial highway for the City to permit development to take place. If not, the landowner must enter into an agreement or licence with the City for maintenance and/or construction of the road. Fulfillment of the recommended condition ensures this policy can be met.

The variance maintains the general intent and purpose of the Zoning By-law.

⁹ A records search is being conducted to ascertain the extent of previous municipal assumption

The proposed use is permitted in the 'RG' zone, and the siting of the buildings and structures complies with the zone provisions.

New lot creation in the 'RG' zone requires a minimum lot frontage 230 m (755 ft). Section 18.5.1 of the By-law recognizes existing lots of record and permits a reduced standard to 15 metres (50 ft). From the intersection of Woodcock Line west to 15 m along the lot frontage is approximately 169 m; the owner proposes a driveway at approximately 450 m from the intersection of Woodcock Line.

Should a road be constructed to municipal standards, the proposal achieves compliance with the intent of the By-law.

The variance is minor in nature.

The MD clarifies that variances such as these are not minor in nature. However, historically, the City has been treating these variances as minor. Accordingly, for fairness, this application will be considered under the prior framework and will be considered minor. Future variances of this nature will not make this test.

Other Alternatives Considered

An applicant can appeal to the Ontario Land Tribunal (OLT) if the Committee makes no decision within 30 days from the date of receipt of a complete application.

The Committee has three options: Approval of the application, Denial of the application, or, Deferral of the application. There does not appear to be a reason to defer the application further. Should the application be denied, the decision could be appealed to the OLT. If the OLT were to approve the application exempting the lot frontage requirement, the decision cannot compel the municipality to issue an entrance permit or require a road be constructed to a particular standard.

After careful consideration of the circumstances, and the owner's awareness of the onerous process related to development, staff concludes that a conditional approval of the subject minor variance is an appropriate approach. This outcome provides the owner with permission to proceed to the next step of a multi-step development approvals process, that includes entering into an agreement outlining road construction standards and the EA particulars, financing, and obtaining permits for entrance, building and septic.

Consultation Summary

Notice of this application was circulated in accordance with the requirements of the Planning Act. Additional consultation has taken place with staff in PW-Roads and the City Solicitor.

Agency Comments:

No additional comments received to those provided in relation to Staff Report COA2021-038.

Public Comments:

No comments received as of the writing of the staff report.

Attachments

Appendix A – Location Map

Appendix B – Aerial Photo

Appendix C – Applicant's Sketch

Appendix D – Applicant's Supplementary Photo

Appendix E – Applicant's Letter to Committee

Appendix F – Staff Report LGL2022-012 Road Construction – Existing Lots of Record (July 19, 2022), Appendices A-C

Phone: 705-324-9411 extension 1240

E-Mail: lbarrie@kawarthalakes.ca

Department Head: Richard Holy, Director of Development Services

Division File: D20-2021-029

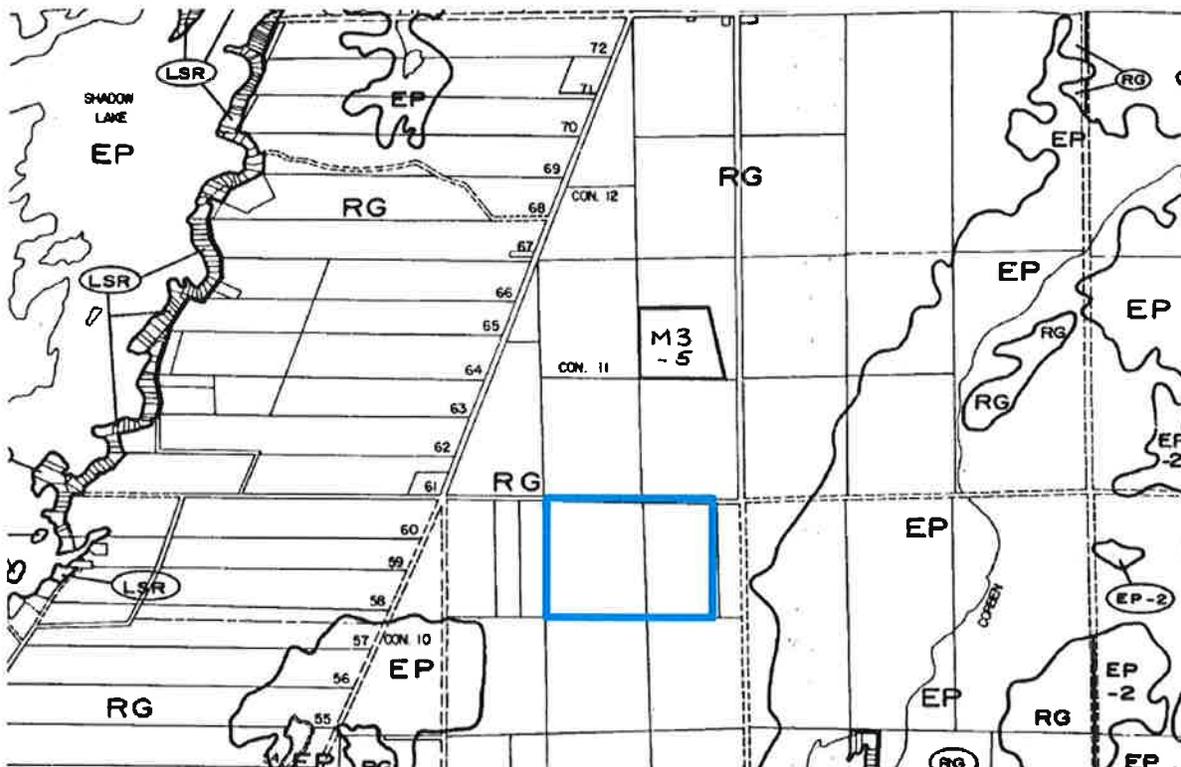
Schedule 1 Relevant Planning Policies and Provisions

City of Kawartha Lakes Official Plan



- 3.5 Natural Heritage System
- 16 Rural Designation
- 25 Bedrock Resource Designation
- 28 Infrastructure and Service Policies
- 31.3 Four Mile Lake – Specific Lake Policy Area

Township of Somerville Zoning By-law 78-45



Section 9 Rural General (RG) Zone

18.5 Existing Lot Exemption From Lot Frontage and Area Requirements

18.5.1 Notwithstanding the minimum lot area and/or the minimum lot frontage required herein, where a lot has less lot area and/or lot frontage than required herein at the date of passing of this By-law or where such lot is created as a result of expropriation or a portion of a lot is acquired by a public authority, such smaller lot may be used and a building or structure may be erected, altered or used on such smaller lot provided that the use is permitted and the setback, yard, lot coverage, parking and landscaping requirements of the zone in which it is located are complied with, and that said lot has a minimum lot frontage of 15 metres (50 ft) and a minimum lot area of 930 square metres (10,010 sq.ft). If the lot is serviced by Municipal Sanitary Sewers, then the minimum lot area can be further reduced to 370 square metres (1,215 sq.ft).

18.8 Frontage on Public Street

18.8.1 Except as provided for in this section, no persons shall erect any building or structure in any zone, unless the lot upon which such

building or structure is to be erected has a lot line which abuts an improved public street, where access can be obtained off such street.

18.8.2 Notwithstanding subsection 18.8.1, a building or structure may be erected and used on the following lots which do not have frontage on an improved public street;

- a. an island lot in a residential zone category;
- b. a lot within a registered plan of subdivision in which the street has not been assumed by the Municipality but in which the street is to be assumed under the terms of a subdivision agreement; and
- c. a lot within the "Limited Service Residential" or a "Limited Service Residential Exception" Zone.

Section 19 Definitions

STREET, IMPROVED PUBLIC means a street, assumed by the Corporation, County or Province which has been constructed in such a manner so as to permit its use by normal vehicular traffic.

Schedule 2

Relevant Committee and Council Resolutions

Committee of Adjustment Meeting June 17, 2021

CA2021-054

Moved By S. Strangway

Seconded By B. Archer

That the minor variance application D20-2021-029 be deferred for a period of not more than 3 months, returning at the latest to the September 16, 2021 meeting, to allow EMS and the Roads Division to comment on the application to enable the Committee can make an informed decision.

Committee of Adjustment Meeting September 16, 2021

CA2021-094

Moved By Councillor Yeo

Seconded By D. Marsh

That Minor Variance Application D20-2021-029 be further deferred for a period of not more that 2 months, returning at the latest to the November 25, 2021 meeting.

City staff have recently undertaken a coordinated review of the process surrounding the construction of a road within a municipal right-of-way (ROW) undertaken by a private individual in response to an increased number of inquiries and development proposals in this regard. The process is being reviewed comprehensively and requires input from several Divisions of the City (Realty Services, Roads, Engineering EMS, Planning, etc.).

The deferral is until such time to ensure the Committee of Adjustment has the benefit of the outcome of the review in its decision-making as it pertains to this application. Should a resolution to the process arise before that time, the application may be brought back to the Committee ahead of that time.

Committee of Adjustment Meeting November 25, 2021

CA2021-117

Moved By D. Marsh

Seconded By S. Strangway

That Minor Variance Application D20-2021-029 be deferred for a period of not more that seven (7) months, returning at the latest to the June 16, 2022 meeting.

The deferral is until such time to ensure the Committee of Adjustment has the benefit of the outcome of the review in its decision-making as it pertains to this application. Should a resolution to the process arise before that time, the application may be brought back to the Committee ahead of that time.

Committee of Adjustment Meeting June 16, 2022

CA2022-063

Moved By S. Strangway

Seconded By B. Archer

That Minor Variance Application D20-2021-029 be deferred for a period of not more that two (2) months, returning at the latest to the August 18, 2022 meeting in order to review public and Council comments resulting from the City Solicitor's update on the review at the July 19, 2022 Council meeting.

Regular Council Meeting July 19, 2022

CR2022-252

That Report LGL2022-012, **Road Construction – Existing Lots of Record**, be received; and

That a by-law be advanced to Council to amend the Consolidated Fees By-law 2018-234 to provide cost recovery for staff time required to facilitate the development of roads on City-owned road allowances to service existing lots of record, as at Attachment C.

to

REPORT COA2022-064

FILE NO: D20-2021-029

LOCATION MAP



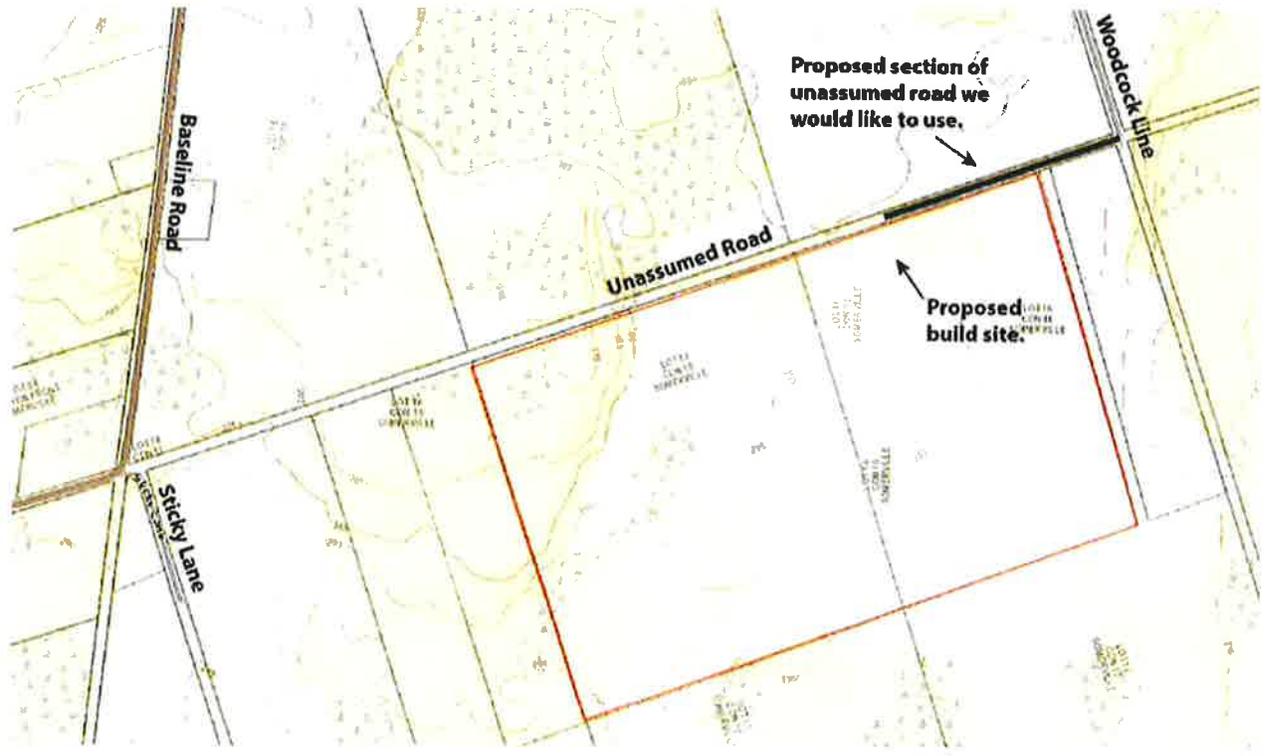
to

REPORT COA2022-064

FILE NO: D20-2021-029

AERIAL PHOTO





to

REPORT COA2022-064

FILE NO: D20-2021-029

APPLICANT'S SUPPLEMENTARY PHOTO



to

REPORT COA2022-064FILE NO: D20-2021-029**APPLICANT'S LETTER TO COMMITTEE**

May 31, 2022

Dear Committee Members,

I am writing to help provide some further context for our application.

In 2016 we purchased our 180-acre property which is accessible by an unassumed road, with the intention of developing a nut tree orchard. Although the existing "road" is not up to municipal standards, we are able to use it to provide vehicular access to our property. At the time we purchased the property, I was running an e-commerce business full-time, but when I sold my business in 2020 I was able to shift focus and decided to develop a tree nursery while we wait for the nut orchard to mature. Accordingly, we began working with the City of Kawartha Lakes to gain formal road access with the goal of being able to apply for a building permit for a home and infrastructure for the nursery.

At first we were told we could purchase the portion of the road allowance which provides access to our property, which we applied to do. Realty services replied that instead of selling us the land, the City was supportive of entering into a permission to construct agreement to develop the road. Then, on the merits of our application, the Planning department waived the pre-screening and we were allowed to apply for a minor variance. It's been over a year since we submitted the application and the approval process has been continuously deferred.

As mentioned, we are not only interested in building a home, but also the structure required to run a tree nursery. We will sell specialty fruit and nut trees Canada-wide through a website and hire at least one full-time employee plus seasonal staff. These types of businesses take time to establish and the reassurance we've received from the City during these two years has caused us to start clearing land, invest in an irrigation system, other equipment, and inventory. We have planted 1000s of trees that we will use to clone more trees from, and have established the 75-acre orchard of nut trees that we will begin harvesting nuts from in roughly 10 years. All told, we have invested more than \$200,000 in the business.

We are at a point now where we can only do so much without built infrastructure. The trees have grown to the point where they will need to be stored over the winter and we need a building to process them for shipping in spring.

Aside from the business, we have set down our own roots in the area and are eager to make the City of Kawartha Lakes our permanent home. My partner, Beth, works at the

Kawartha Lakes Food Source in Lindsay. We are both board members of the Kawartha chapter of the Ontario Woodlot Association. We have fallen in love with QEII Wildlands Provincial Park and all the backcountry camping it has to offer.

I understand the City is very close to rolling out a complete set of procedures that will inform how landowners like us can apply to gain access to their land. However it is not clear when these will be ratified and be ready for us to follow. As you know, City Planning Report COA2021-038, a copy of which is attached, recommended the granting of the Minor Variance requested on the condition that we enter into a Development Agreement within 24 months of the Notice of Decision. As noted in the report, this will ensure that we will be required to enter into an agreement regarding the development of the road allowance which incorporates the standards imposed by the City. In our view, this protects the City and ensures that we will be required to abide by the policies that are eventually implemented by the City. As such, we request that the Committee grant the Minor Variance with the Conditions recommend in City Planning Report COA2021-038. By granting the requested variance, we will be in a position to proceed with the development of the road allowance, on such terms as the City may require, without having to come back to this Committee for approval of the Minor Variance. This would expedite matters for us and ensure that we do not lose more time and valuable nursery stock.

We are a young, highly motivated couple with the desire and means to invest in the region for the long haul, through entrepreneurship and a dedication to community. We hope that you will allow us to move forward with our plans by granting us the minor variance that would give us the ability to build on our land as soon as possible.

Sincerely,

Steve Harjula



Council Report

Report Number: LGL2022-012
Meeting Date: July 19, 2022
Title: Road Construction – Existing Lots of Record
Description: Management Directive, Standard Operating Policy and related amendments to Fees By-law
Author and Title: Robyn Carlson, City Solicitor

Recommendations:

That Report LGL2022-012, Road Construction – Existing Lots of Record, be received; and

That a by-law be advanced to Council to amend the Consolidated Fees By-law 2018-234 to provide cost recovery for staff time required to facilitate the development of roads on City-owned road allowances to service existing lots of record, as at Attachment C.

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

The municipality currently allows the construction of new roads that will be transferred to the City once constructed to the engineering standards set out by the Engineering Department and located on that Department's webpage. This usually occurs as part of an application under the Planning Act: either it is the construction of a new road associated with a subdivision or a plan of condominium.

These applications all come into the Planning Department and the Planning Department takes the lead in circulating the proposal for comments (to the Ministry, First Nations, Conservation Authority, internal Departments at the City, such as the Engineering Department, and to the public).

The municipality in many cases requires existing lots of record to front on an open and municipally-maintained road pursuant to its zoning by-laws, in order to allow for a building permit to be issued for that lot. Where a lot of record exists, and zoning requires frontage on an improved (for vehicular travel) road, assumed for maintenance by the City, in order to obtain a building permit, the municipality is often asked by the lot owner how it can proceed to obtain a building permit.

The purpose of this Staff Report is to inform the public and Council as to how Staff will process these inquiries, and the rationale for same.

Rationale:

Currently, the City does not have a standard that it uses to justify the construction of new municipal roads. For example, a minimum of X persons / Y km road is affordable. Accordingly, the municipality currently allows development of new roads that will be transferred to the City as long as a developer can upfront the cost of construction, and as long as the developer satisfies the City that all archaeological, servicing, and environmental considerations can be addressed satisfactorily.

When road construction occurs through the Planning Act process, the proponent is exempt from the public notification and environmental and archaeological considerations of the Environmental Assessment Act process. This exemption is provided because the Planning Act process mirrors the same consideration and consultation process as set out in the Environmental Assessment Act process.

However, in the case at issue, there is no Planning Act process. Accordingly, construction of new roads must proceed through the Environmental Assessment Act process before the City can determine that the construction of the road as proposed is

in the best interests of the City, taking into consideration archaeological, financial, social and environmental considerations.

The costs and process to construct a new road are set out in detail in Attachments A and B. Accordingly, a proposed amendment to the Consolidated Fees By-law, By-law 2018-234, is proposed at Attachment C.

The costs and processes are the same as in instances that fall under the Planning Act purview, the only difference is that the City conducts an Environmental Assessment at the cost of the proponent prior to determination that the road will be built, in order to comply with the legislation and mirror the Planning Act consultation and consideration process.

Regardless of whether or not a road will be assumed by the municipality for maintenance purposes, once a road is constructed on a road allowance, the municipality is responsible to the motoring public to ensure that the road is not constructed negligently. For this reason, the Management Directive requires that the Engineering and Corporate Assets Department be satisfied with the construction of the road.

New roads will not be constructed within the Oak Ridges Moraine.

New roads will not be approved for construction within the urban settlement areas at this time: Currently, infill development in the urban settlement areas of Lindsay, Bobcaygeon, Omemee and Fenelon Falls is hampered by water and sewer servicing restrictions. The City is currently undergoing a Municipal Comprehensive Review, which should open these areas for development once servicing needs for growth to 2051 are identified in the Municipal Comprehensive Review, the Development Charges By-law is updated to collect the necessary fees to fund these costs, and the identified upgrades to water and sewer infrastructure have been constructed.

New roads in rural areas may be constructed, provided the proponent is willing to pay all the costs associated with completing the public review process under the Environmental Assessment Act and provided that the review process concludes that the new road and resulting additional development is feasible from an environmental, private servicing, and cost perspective.

Council approval for the commencement of the Environmental Assessment process is required.

The new road may be constructed by the City and at the proponent's costs. The timing of construction will be determined by the Engineering and Corporate Assets

Department, so as not to interfere with competing capital projects of priority. The road, once constructed, may be assumed by the municipality by by-law. If assumed by the municipality by by-law, the municipality is solely responsible for summer and winter maintenance post-assumption, as well as emergency and future capital works.

Alternatively, if the road is not required to be assumed by by-law post-construction, then the proponent will need to maintain it at its own expense in order to ensure continued access. The terms will be set out in a license agreement. Moreover, the proponent must obtain the consent of the City to conduct future capital works on the road, including emergency repairs. These future works are all at the cost of the proponent; not the City.

Other Alternatives Considered:

The City could identify all logical extensions of its road network through the background study to the DC By-law. Costs would then be borne by the development community as a whole.

Alignment to Strategic Priorities

This report aligns with the City's strategic priority of Good Government, through facilitating the growth of a Vibrant and Growing Economy in the City while doing so in a way that does not compromise a Healthy Environment or Good Government. The recommendations in this report are guided by the Guiding Principles of fiscal responsibility and service excellence and the corporate Value of teamwork, in that these development projects are interdepartmental.

Financial/Operation Impacts:

While development brings more tax dollars into the City, it also brings additional operational costs, where the zoning requires that the property be on a road assumed for maintenance purposes.

While the initial capital costs will be placed on the developer, the construction of the road as a capital project will still create an administrative operational pressure on the Engineering and Corporate Assets Department. The road construction will need to be prioritized in accordance with existing, scheduled competing capital priorities.

Operational pressures will be placed on Staff should the zoning for the property require road assumption. Specifically, Public Works will need to patrol the road for hazards, will need to repair the road as needed (i.e. potholes, brushing, grading/ patching), and will need to provide winter maintenance (snow plowing and sanding). Public Works will need to provide garbage pick up and Emergency Services (fire, paramedics) will need to

be able to access the property. If assumed for maintenance purposes, the road will need to be placed into the City's Roads Need Plan and managed as a City asset. Eventually, when the road deteriorates such that additional capital works are required, the City will be required to outlay these additional costs (capital replacement is a corporate reality).

Attachments:

Attachment A – Management Directive – Road Construction on Road Allowances to Service Existing Lots of Record



MD - Existing Lots
of Record.docx

Attachment B – Standard Operating Procedure – Road Construction on Road Allowances to Service Existing Lots of Record



Attachment B - SOP
Road Construction -

Attachment C – By-law to Amend the Consolidated Fees By-law to include Cost Recovery for Road Construction on City-owned Road Allowances not in conjunction with a Planning Act application



Attachment C -
Road Construction -

Consultations:

Director of Development Services
Director of Engineering and Corporate Assets
Manager of Planning
Manager, Development Engineering
Manager, Technical Services
Manager, Infrastructure Design

Department Head email: rcarlson@kawarthalakes.ca

Department Head: Robyn Carlson



Management Directive

Management Directive No.:	MD2022-
Management Directive Name:	Construction of Rural and Urban Roads to Access Existing Lots of Record
Date Approved by CAO:	July 19, 2022
Date Revision Approved by CAO:	n/a
Related SOP, Management Directive, Council Policy, Forms	Council Policy CP2017-010 Assumption of Private and Unassumed Roads Comprehensive City Official Plan 2012 First Nations Consultation Policy Construction of Rural and Urban Roads to Access Existing Lots of Record Standard Operating Procedure

Management Directive Statement and Rationale:

This Management Directive establishes the Staff response to requests to construct a new road on an unimproved road allowance within both the urban and the rural areas within the City of Kawartha Lakes. The zoning by-laws for all areas in Kawartha Lakes – excluding the former Laxton Digby Longford Township – require that the only uses permitted on lands with no frontage or direct access onto a road assumed for maintenance purposes by the City or the Province shall be agricultural uses with no dwelling unit associated (provided the land is zoned for agricultural uses), or limited services residential uses.

The reason for this requirement is to prevent inefficient expansion of City infrastructure. Accordingly, road construction requests are made to facilitate development on existing lots of record with no such frontage, and will very rarely be permissible.

The request may be accompanied by a request that the City assume the road post-construction. Alternatively, the request would need to be accompanied by a request to amend the zoning by-law (if the zoning by-law prohibits the development). This will not be considered, as this would not be in conformity with the general spirit and intent of the zoning by-law, official plan, or overarching planning policy.

Although requests for road construction are posed as requests to construct "driveways" to access the applicant's lot, this is a mischaracterization of the request. See the definition of "Driveway" below. "Driveways" should only be considered as private assets



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and used for the sole purpose of accessing private property. They are often short in length and not designed to accommodate traffic by the general public at high speeds. When a “driveway” is proposed to be constructed within a City road allowance, the general public is entitled to travel on that “driveway”. The City is exposed to liability for negligent construction resulting in personal injury. The greater the length of the “driveway” to be constructed, the greater the exposure.

This Management Directive only applies with respect to requests for access to existing lots of record, not for road creation on land that is originally private property (and transferred to the City as part of lot creation) associated with lot creation. This could occur in conjunction with site plan application, or may not have any corresponding Planning Act process. For road creation on land that is originally private property (and transferred to the City as part of lot creation) associated with lot creation, such as draft plan of condominium or draft plan of subdivision, see the City’s Planning and Development section of the City webpage for guidelines and process. However, there may be a case where the City’s road allowance is to be opened up to access a subdivision, severance, or plan of condominium in an urban settlement area.¹ This management directive would apply to the City’s property only in that case; not to roads created on private property.

The goal of this Management Directive is:

- a) To ensure adherence to the relevant Official Plan policies, the Growth Plan for the Greater Golden Horseshoe, and the Planning Act;
- b) To ensure adherence to the Environmental Assessment Act;
- c) To avoid passing any new development costs to ratepayers of the municipality (“growth pays for growth”);
- d) To control the means by which the City of Kawartha Lakes may allow construction of new roads, to provide fairness and consistency; and
- e) To control the development of unimproved road allowances so as to ensure the efficient expansion of the City’s road network.²

¹ No lot creation is to occur outside urban settlement areas or hamlet areas, pursuant to the Planning Act.

² Efficiencies are based on overall capital replacement and routine operations and maintenance. There is a financial cost to the municipality for expansion of the road network. The number of users on the network is related to the operational cost.



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Scope:

The City shall only consider through this Management Directive the construction of new roads on existing City owned unimproved road allowances, in order to provide access to an existing lot of record. This Management Directive does not deal with:

- the construction of a road originally on private property (to be transferred to the City) to access lots to be created by subdivision (the assumption of new roads where assumption is governed by the Subdivision Agreement), or
- assumption of existing unassumed or private roads (where assumption is governed by Policy CP2017-010).

As an alternative to proceeding through this process, where several (five or more) neighbouring owners wish to have an existing unassumed or private road upgraded at the owners' expense and then assumed by the City for maintenance purposes, they may petition the City for a local improvement pursuant to the provisions and regulation under the Municipal Act, 2001. This road may then be assumed by the municipality, by by-law of Council.

Definitions

- a) **City** – shall mean the Corporation of the City of Kawartha Lakes.
- b) **Driveway** – shall mean an access constructed from private property to an Open Road Allowance, with reference to By-law 2017-151; construction of a road on a road allowance and parallel thereto, does not result in the creation of a Driveway. Driveways are private assets used for the sole purpose of accessing private property from a municipal road that runs along the property frontage.
- c) **Highway** – Every public road is a highway. As defined in the Highway Traffic Act, a Highway includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof. As per Section 26 of the Municipal Act, 2001, the following are Highways unless they have been closed:
 1. All highways that existed on December 31, 2002.
 2. All highways established by by-law of a municipality on or after January 1, 2003.



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3. All highways transferred to a municipality under the Public Transportation and Highway Improvement Act.
 4. All road allowances made by the Crown surveyors that are located in municipalities.
 5. All road allowances, highways, streets and lanes shown on a registered plan of subdivision.
- d) **Right of Way** – means municipal property designated as Highways, Roadways, Lanes, Pathways and Walkways and includes features therein such as curbs, shoulders, boulevards, and drainage ditches.
 - e) **Road Allowance** – is a strip of land reserved for the Government by a Crown Surveyor for the purposes of accessing lots within a concession or created via registered plan of subdivision.
 - f) **Open Road Allowance** – is an improved road allowance that has been modified from its natural state to accommodate vehicular traffic. An open road allowance will have municipal road infrastructure and may have municipal and/or utility company servicing installed. In the case of a road allowance created through a plan of subdivision, the road allowance is open when the plan of subdivision is registered. In the case of a road allowance set out by a Crown Surveyor, a road allowance is open unless permanently closed by by-law prohibiting public access and a certified copy of the by-law is registered in the proper land registry office.
 - g) **Closed Road Allowance** – means a road allowance that has been permanently closed by by-law to prohibit public access and a certified copy of the by-law is registered in the proper land registry office.
 - h) **Unimproved Road Allowance** – means a road allowance in a natural state (could be closed or open pursuant to By-law). An unimproved road allowance could have trails or pathways used for public access purposes, but has not been improved by the municipality for the purposes of vehicular (car, truck) movement.
 - i) **Improved Road Allowance** – means improved by the municipality for the purposes of vehicular (car, truck) movement.
 - j) **Private Road** – means roads in existence on property held in private ownership that has not been dedicated as public highway/ road allowance or assumed by the municipality for maintenance purposes, which provides access by means of a registered right-of-way to private property; the use and maintenance of which is the responsibility of the abutting land owners.



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- k) **Unassumed Road** - means a road that is within a municipal road allowance that has not been assumed by the City through by-law. The City does not provide year round maintenance on an unassumed road. An unassumed road will be assumed by the City, once the road has been confirmed to be in a condition satisfactory to the City for assumption by the City.
- l) **Assumed Road** - means roads and highways in municipal ownership (or shown on title as being in private ownership) and that have been assumed by the municipality for year-round maintenance by the municipality. Assumed roads must be on an open road allowance or forced over private property.
- m) **Proponents** - shall mean residents or ratepayers associations who are requesting to construct an improved road on an unopened or unimproved road allowance so that the road, once constructed, becomes an unassumed road unless assumed by municipal by-law.
- n) **Seasonal Roads** – shall mean roads that are owned by the City, but on which maintenance is performed on a seasonal basis. Seasonal maintenance could include winter plowing and/or road grading. These roads are unassumed.
- o) **Development Review Team** – shall mean the Director of Development Services, Manager of Planning, Director of Engineering and Corporate Assets and Director of Public Works, as well as technical staff as determined from those individuals.

The above definitions will be adopted for purposes of future policy and by-law creation. Existing policies and by-laws will be amended for consistency.

Policy:

Planning for Development or Use of Existing Lots of Record

The Planning Division will not only plan for “growth” or lot creation; the Planning Division will also plan for and approve the orderly development (i.e. building on) or use (i.e. use for farming, forestry or recreational purposes, where no dwelling / building permit³ is required) of existing lots that currently front on unimproved road allowances.

³ Dependent on the applicable zoning by-law.

Requests from the public to construct a road to provide access to an existing lot of record will be sent to the Planning Division by email circulation for response.⁴

Road Allowances in the Oak Ridges Moraine

New roads will not be constructed within the Oak Ridges Moraine Conservation Plan area, which area is defined by the Conservation Plan itself, as well as by the City's Oak Ridges Moraine Official Plan and Zoning By-law. This policy is consistent with all 3 planning documents.⁵

Road Extension within Urban Areas with insufficient Servicing

Road extension within urban areas to lots with a "hold" zoning for servicing will not be approved, without the inclusion of adequate municipal servicing.⁶ Official Plan policy requires that, within settlement areas, municipal servicing be provided. Moreover, policy 2.2.1.2.b of the Growth Plan provides that growth will be limited in settlement areas that are not serviced by existing or planned municipal water and wastewater systems. The Environmental Assessment Act public notification and impact assessment process would be engaged and an amendment to the City's Environmental Compliance Approval from the Ministry would be required, where available.⁷ Moreover, construction could be required to a higher standard, to meet engineering standards. This could be to a full urban standard.⁸

⁴ For matters where no Planning Act process is required, such as requests where site plan approval is not required and where zoning exists except for the existence of an improved and potentially assumed road, these will be circulated by email to Planning and then from Planning to DRT, if discussion with Public Works and/or Engineering is required.

⁵ New roads within settlement areas in the ORCP area can only occur if they are for municipal/ provincial / federal purposes, which is not the case of private development within the Moraine.

⁶ Unless the hold zone itself should be removed. See comment below.

⁷ Municipal sanitary only (not water) is available in Coboconk. Municipal sanitary and limited water is available in Omemee. Municipal water only (not sanitary) is available in Woodville and Bethany. Development in these areas is subject to Hold zoning that can be removed through the Comprehensive Rural Zoning By-law process or as a result of successful applications made by individual property owners to amend the zoning by-law to remove the Hold zoning: The Provincial Plan requires development in urban areas be on full municipal water and sanitary servicing. Fenelon Falls, Bobcaygeon and Lindsay have insufficient servicing for additional infill growth to 2031, without further capital upgrades to the municipal water and sewage systems. The Municipal Comprehensive Review, underway as of June 2022, will plan for growth to 2051 and will plan for upgrades that, once incorporated into the Development Charges By-law and built, will allow infill development on unimproved road allowances to occur on existing lots of record in these areas.

⁸ Areas within urban boundaries may have a rural road cross section rather than an urban road cross section for stormwater management purposes or drainage purposes.



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Orderly expansion of Servicing – Orderly expansion of Urban Settlement Areas

In conjunction with and as part of the Planning Division's Municipal Comprehensive Review (which results in a Comprehensive Official Plan for the City) the Engineering and Corporate Assets Department will review the development pressures identified by Planning and will provide input in the form of determining existing reserve capacity in the City's water and wastewater systems in each urban settlement area within the City.

The Growth Management Strategy, Municipal Servicing Master Plan and Transportation Master Plan will be developed in consultation with one another. Servicing will be based on growth and development design.

Expansion of the road network within urban settlement areas will follow the municipal comprehensive planning and capital budgeting process. No road expansion and servicing expansion will occur within the urban settlement boundary outside this process and as contemplated by the Development Charges By-law and constructed by the City.

Cost Recovery

Engineering staff will coordinate the Environmental Assessment and building of the road through the capital program. As the road extensions are arguably local services, these costs will not be incorporated into the Development Charges Background Study, which in turn form the basis for the Development Charges By-law, which must be updated every 5 years according to the Development Charges Act. Alternatively, these costs could be recovered through agreement wherein the proponent pays for the cost of the road. A further alternative is a capital charge under Part XII of the Municipal Act, 2001.

10-year Phasing in the Official Plan

When expansion of an urban settlement area or the opening up of a rural area through road construction is forecasted through the Official Plan as occurring sometime in the next 30 years⁹, these expansions will be phased in the Official Plan into 3,10-year increments in order to meet the phasing intent of the Growth Plan and ensure that these projects are incorporated by Engineering and Corporate Assets into the Long Term Capital Plan (a 10-year plan).

Road Construction not in Accordance with the DC By-law

⁹ Approximate planning horizon as set out in the Growth Plan. Current planning horizon in the 2020 Growth Plan goes to 2051.



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Where road construction on a City-owned road allowance is not set out in the City's Development Charge By-law, and thus the costs of such construction are not set out in the City's Capital Plan or Capital Budget, but where Planning Staff are of the opinion that construction of the road demonstrates orderly and efficient expansion of the City's road network, in consultation with the City Solicitor, and is in line with planning for growth as illustrated above (see related Standard Operating Procedure for guiding criteria and process), the following process shall be followed to determine this and to allow for a road be constructed in order to facilitate access to an existing lot of record: The Planning Division will advise the proponent:

1. of the zoning by-law requirements for road frontage;
2. that an Environmental Assessment is required to confirm the construction of the road;
3. that the road is to be constructed by the City, on the City's timeline and according to the City's priorities, and at the cost of the proponent; and
4. the standards as set out in Schedule A to this Management Directive.

If the proponent is willing to meet the standards and pay the associated costs (in the hundreds of thousands of dollars), then the proponent will be directed to work with the City Solicitor and the Engineering and Corporate Assets Department for the creation of a Road Construction Financing Agreement. The Agreement will be advanced to Council for execution once the proponent has executed the Agreement.

If an individual proponent is unable to pay the full costs of road construction, but where several properties would benefit from the construction of a road along their frontage, the proponent (et. al.) could petition the municipality to complete the road works at the cost of the municipality and bill back the benefitting properties through the local improvement process set out in O. Reg. 586/06 to the Municipal Act, 2001 (voluntary payment or placement on tax roll). A capital charge levied on benefitting properties pursuant to Part XII of the Municipal Act could alternatively be requested by the proponent. If such a cost recovery method receives support from Council, then the Engineering and Corporate Assets Department will plan and budget for the road project accordingly.

Unplanned Road Construction

The request for construction by private individuals of new roadways on City-owned road allowances will in the vast majority of instances not be permitted outside the development (lot creation) process. Such construction does not conform to the Growth Plan for the Greater Golden Horseshoe, by allowing for unplanned growth and, in turn, inefficient development.

Moreover, this type of development is cost-prohibitive for most individual lot owners. The individual lot owner would be required to bear the cost of the Environmental

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Assessment process, in addition to meeting the City's design guidelines for new road construction. This is the case regardless of whether or not the City will assume a road for maintenance issues, as construction of a new road on a City-owned road allowance outside the Planning Act rezoning process engages the Environmental Assessment (EA) process. The City's Engineering and Corporate Assets Department needs to conduct the EA itself, which EA informs the capital process. This is an unplanned in-year pressure on the department's work plan. For that reason, the Engineering and Corporate Assets Department will add the project to its capital project work plan and will prioritize it appropriately, subject to Council approval. It is anticipated that it will take several years to complete each project.

Based on the City's experiences in approving all road construction requests to date, regardless of whether or not the road expansion is a logical expansion to the City's road network, City Staff have come to the conclusion that the City cannot provide a good user experience if it approves all road construction projects without discrimination. In line with the City's Strategic Priority¹⁰ of Good Government, the City should not be providing services it cannot do well in providing.

Road Assumption

The Planning Division does not consider applications to remove frontage requirements to be minor in nature.¹¹ Nor are these proposed amendments minor in impact.¹² Accordingly, these applications are not appropriately the subject of minor variances and are more appropriately made as zoning by-law amendments. Planning Division Staff have advised that they will not support applications for rezoning to remove the requirement for frontage on an improved and assumed public road.

Accordingly, a better alternative to minor variance or zoning by-law amendment is the requirement that the applicant request that the City construct a road and Council assume same road if approved by Council. Council approval is required. Except in the case where not required by zoning, a road assumption by-law will be advanced to Council once the road is constructed to the City's standards.

¹⁰ City of Kawartha Lakes Strategic Plan 2020-2023

¹¹ One of the 4 tests for a minor variance, as set out at s.45 of the Planning Act.

¹² Another of the 4 tests for a minor variance, as per s.45 of the Planning Act.

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In rare circumstances, such as access to lands for resource extraction or to build renewable energy facilities, road assumption may not be required in order to allow for the proper use of the property in accordance with the zoning by-law. In these cases, Planning Staff will consider whether or not the road construction request (resulting in a road construction financing agreement being advanced to Council) requires an assumption by-law for zoning compliance and – if so – whether or not Planning supports a zoning by-law amendment to remove the frontage (on an assumed road) requirement.¹³

Revision History:

Proposed Date of Review:

Revision	Date	Description of changes	Requested By
1.0	July 19, 2022	Initial Release	

SCHEDULE A – ROAD CONSTRUCTION REQUIREMENTS

City of Kawartha Lakes Municipal Infrastructure Guidelines

¹³ In accordance with Comprehensive Official Plan Policy 28.6.7, this would be achieved by zoning the property "limited service".

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For these guidelines, see the Planning and Development webpage on the City's website. The standards for road creation to access an existing lot of record are the same as that for a new lot of record.

The following are components for a detailed engineering design for the proposed road construction:

- Ontario Land Surveyor legal & topographic survey
- Civil detailed engineering design drawings (i.e. removals, erosion and sediment control, plan and profile, grading, drainage, utilities, municipal servicing, etc.) and cost estimate, contractor/construction actuals, engineering inspection, certification, as-built/record drawings
- Turn around including any land required
- Security – 100%
- Engineering administrative fee – 3.7%
- Geotechnical initial investigation plus ongoing testing
- Legal administrative fee of \$1,500
- Third party agency fees
- Tree removal compensation, tree preservation plan, to the satisfaction of the City's Arborist
- Environmental Assessment
- Archaeological Assessment, if road within 300 m of a water body or required by a First Nation or the Heritage Officer, to the satisfaction of the Heritage Officer

Brush and tree overhang: Minimum 5.0 metres overhead clearance and 5.0 metres total horizontal clearance (i.e. 0.5 metres beyond the edge of the road on each side) to be provided.

Drainage and culverts: Drainage must be sufficient to adequately manage typical rain events: culverts must be sized correctly and must be (and remain) structurally sound.¹⁴

All areas within the road allowance and outside the traveled portion of the road disturbed by construction shall be covered by 150mm of screened topsoil complete with seed.

¹⁴ A component of the overall engineering design requirements



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All work and material shall conform to OPSD and OPSS standards and City guidelines as approved by Council.

All employers on site will comply with the Occupational Health and Safety Act and the Workplace Safety and Insurance Board (WSIB) Act and the proponent will provide the City with a WSIB Clearance certificate prior to commencing any work.

All work shall conform to the Plan and Profile design.

All work shall conform to the Site Grading, Sediment & Erosion Control Plan.

All work to be completed to the satisfaction of the Director of Engineering and Corporate Assets or their designate.

The proponent will provide the Director of Engineering and Corporate Assets with a record (as-built) plan and profile drawing at the completion of construction.

The proponent acknowledges and agrees that this remains a public right of way and is not entitled to gate the roadway.

Compensation for City Administrative Costs

The proponent will pay a one-time fee of \$1,500 plus 3.7% of the construction costs on City property to the City, as an administrative fee to pay for the staff time to administer the license. The proponent will pay a one-time fee of \$1,000 for the arborist to administer the permit to remove trees. Of the 125% security taken for the Environmental Assessment, 25% of that is the administrative fee for the Engineering Department to administer the Environmental Assessment process, and the balance is to cover the cost of the Environmental Assessment.

Compensation for Tree Removal

The proponent shall provide compensation to the City for the removal of vegetation (mature trees and hedgerows) undertaken during construction on the Road Allowance. These funds will be used for canopy creation, maintenance, and conservation within the City of Kawartha Lakes.

Compensation shall be calculated as being equivalent to the supply and installation of four (4) new trees for each mature tree (trees being 5 inches or greater in diameter, measured at 4.5 feet from the ground) removed in the Road Allowance as part of the construction. The calculation uses the following criteria for replacement trees: deciduous trees shall be a minimum of six (6) feet in height and minimum 60mm in caliper and new coniferous trees shall be a minimum of eight (8) feet in height. The



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calculation uses the average cost of the supply and installation of trees meeting these criteria in 2017: \$425.00 per tree. Accordingly, the calculation for each tree removed is as follows: $\$425.00 \times 4 = \$1,700.00$.¹⁵

The proponent shall pay for a tree preservation plan, in order for the City to calculate the total amount of compensation owing. The City will not tender the project for construction until the tree compensation payment has been made.

Construction Liens

If any person shall register against the City's Lands a claim for lien under the *Construction Act (Ontario)* in respect of any work carried out by the proponent, the proponent shall, upon having been given notice thereof or otherwise becoming aware of same, forthwith remove and vacate such lien at its sole cost and expense within twenty (20) days. In the event that the proponent does not forthwith discharge any such lien and/or certificate registered as aforesaid within such twenty (20) day period, the City shall be entitled to do so at the sole cost and expense of the proponent.

Environmental Damages

The proponent shall be, at its own expense, responsible for any loss, costs, damages, charges or expenses whatsoever which may be sustained by the City as a result of any environmental contamination, spill or hazard as may be created by the proponent.

Environmental Assessment

The Engineering and Corporate Assets Department will schedule the completion of the necessary Class of environmental assessment under the Environmental Assessment Act for proposal in a following calendar year, which year will be determined in light of the Department's competing capital priorities. While the Engineering and Corporate Assets Department, through the use of an external contract, will administer the environmental assessment, the proponent will provide the Engineering Department with a deposit of 125% of the costs associated with the environmental assessment, and will be responsible for any overages. Full payment will be made prior to the Engineering Department tendering the work.

The scope of the Environmental Assessment will consider the servicing impact on the environment of opening up lots for development, and will consider whether or not sufficient groundwater exists for private water servicing of each affected lot.

¹⁵ See Fees and Charges By-law and Tree By-law

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The City will consult with First Nations, Conservation Authorities, the Ministry of Northern Mines and Development, Natural Resources and Forestry and the Trent Severn Waterway (all as applicable) will occur as part of the environmental assessment process and at the expense of the proponent. Consultation with First Nations will occur in accordance with the City's First Nations Consultation Policy.

Any and all third party permits must be submitted to the City to its satisfaction prior to commencement of any work.

Archaeological Assessment

If consultation with First Nations or the City's Heritage Officer identifies a potential archaeological interest in the site, or where the site is within 300 m of a water body, the proponent will be required to hire an archaeologist and complete an archaeological assessment in accordance with provincial requirements and to the satisfaction of the City and the First Nations who have identified an interest. The proponent will be responsible for all consultation costs. The proponent will be responsible for any repatriation costs, if an archaeological find is discovered.

Indemnity

The proponent shall at all times indemnify and save harmless the City, its employees, agents and members of council from and against any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever made or brought against, suffered by, or imposed on the City in respect of any loss, damage or injury to any person or property directly or indirectly arising out of, resulting from, or sustained, arising out of or occasioned by the construction, maintenance or use of the road except for the negligence or willful misconduct of the City.

The proponent further covenants to indemnify and save harmless the City with respect to any encumbrance on or damage to the property or the Corporation of the City of Kawartha Lakes occasioned by or arising from the act, omission, default, or negligence of the proponent, its officers, agents, servants, employees, contractors, customers and/or invitees.

Security

Proponent to provide Engineering with a cost estimate to confirm the amount of security to be provided to the City: 100% of total construction costs, in the form of cash or a letter of credit. The security is to be paid to the City at the time of the execution of the agreement authorizing the road construction. The City will be entitled to pay this directly to subcontractors in the case of a Construction Act claim.



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SCHEDULE B – RELEVANT COMPREHENSIVE OFFICIAL PLAN 2012 POLICIES



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28.6.7. Where lots do not have direct access onto a maintained year round municipal road or provincial highway, the City will not permit development to take place. This provision will be incorporated into the zoning by-law. The exceptions to this provision, are when:

- the lot is zoned Limited Service;
- the lot is within a plan of subdivision where the road is to be assumed by the municipality as provided for in a subdivision agreement;
- the land owner has entered into an agreement or licence with the City for maintenance and/or construction of the road; or
- access will be over a road that is part of a condominium where the owner of the lot or unit is a member of the condominium.
- The area is within DP8 (Longford Area) except if application for consent, subdivision or condominium is made.

28.6.5. There are a number of local roads that are maintained seasonally. The City will not encourage new development on these roads unless the new development contributes to upgrades to the road to bring it up to a year round municipal standard.

28.6.6. There are a number of private roads throughout the City. The City will require these to be upgraded prior to being assumed by the City. The roads right of ways should have a minimum width of 20 metres. Alternatively, the road could be part of a condominium whereby the abutting property owners would be responsible for the capital cost to upgrade the road and maintaining it.

SOP No.:	
SOP Name:	Road Construction – Existing Lots of Record
Effective Date:	July 19, 2022
Revision Date:	
Related SOP, Management Directive, Council Policy, Forms	Management Directive: Road Construction – Existing Lots of Record

Customer Services Division, Planning Division, Engineering and Corporate Assets Department, Public Works Department, Parks and Recreation Division, City Solicitor and Realty Services Division Standard Operating Procedure

General Introduction and Scope of Application

The above Divisions, Departments and Positions receive requests from the public to construct a road (sometimes described as a “driveway”) to vacant property in order to facilitate development of that property. This SOP will guide the responses and actions of these various entities in the response to these inquiries.

Authority

City of Kawartha Lakes Zoning By-laws (16; each pertaining to a former municipality)
 Fees and Charges By-law

Procedure Amendments

This procedure will be periodically reviewed and updated; updates will be carried out by the Director of Development Services in consultation with the Director of Engineering and Corporate Assets. Any operational situations within the above scope that cannot be adequately addressed using this SOP shall be immediately brought to the attention of the City Solicitor.

Administration

This process is to explain the procedures for responding to a proponent that wishes to construct a road (which the proponent may describe as a “driveway”) on City-owned road allowance.

Operating Procedure Steps

1. Request from the public received by City Staff and referred to the Planning Division for response. Contact details for written response to be requested.
2. Planning Division will request written details of nature of request (For what purpose is the road being constructed? For what associated use of the property?) and the specific property that road access is being requested for.
 - a. The Planning Division will confirm the frontage requirements per the zoning by-law (length of frontage to be improved and assumption status).
 - b. Reference will be made to the Roads Database, to determine ownership, construction standard and assumption status of the roads providing connectivity to the property in question. Public Works will be asked to confirm the findings pertaining to assumption and Realty Services will be asked to confirm the findings pertaining to ownership.
3. The member of the public will be required to have the entire frontage built as required by the zoning by-law (via the City's capital process), and will not be encouraged to submit a zoning by-law amendment or minor variance application to reduce this frontage unless the road dead ends at this property and does not provide future access to adjacent properties. If the road dead ends at this property, reduced frontage to the closer edge of the lot line plus turning radius will be permitted (i.e. reduction to 20 feet, for example) can be approved by Planning as part of the Planning application process, which must finalize in advance of commencement of construction. This will be confirmed by letter from Planning to the proponent.
4. The Manager of Planning and the Director of Development Services will meet with the City Solicitor and will draft a response in consultation with them. If required in order to make a decision following the meeting with the City Solicitor, the Director of Development Services will put the request on the next meeting of the Development Review Team ("DRT"), consisting of Planning, Engineering and Public Works development staff. This Team meets monthly. These meetings, being staff meetings, are not open to the public.
5. If the zoning for the property is on "hold" for servicing or otherwise within an urban settlement area without the requisite water and sewer infrastructure,¹ Planning will so advise the proponent following the meeting. In this case, Planning will advise that the hold may be lifted by the municipality as part of a comprehensive zoning by-

¹ As of 2022, there is no capacity for additional servicing within the urban settlement areas of Lindsay, Fenelon Falls and Bobcaygeon. A Municipal Comprehensive Review is underway, which will plan expansion of water and sewer to accommodate growth to 2051. Infill lots within these areas may be allocated servicing via this Review.



law amendment following a comprehensive servicing review and resultant construction so as to achieve additional water and sewer servicing capacity.

- i. Planning will not consider lifting servicing holds outside the above process.
- ii. The matter is at an end, and no road construction is permissible. Planning will inform the proponent of this fact.

6. If the property is in the Oak Ridges Moraine Conservation area, Planning will advise that no road construction is permissible, in accordance with the zoning by-law and Provincial Plan. The matter is at an end.

7. Planning will ascertain whether the zoning by-law requires frontage on an improved - for vehicular travel (car & truck) – public road. If this requirement applies, Planning will advise the member of the public in writing of the zoning prohibition against use of the property unless the necessary frontage is constructed.

- a. Planning will also ascertain, in consultation with the Area Road Supervisor in Public Works, whether or not the road (as proposed to be constructed) must be maintained by the City or Province. If this requirement applies, Planning will advise the member of the public in writing of this requirement, following the meeting.
- b. Planning will advise that the proponent will either need to be agreeable to having the road constructed by the City entirely at the proponent's own cost, or will need its neighbours to cost share through the local improvement process set out in the regulations to the Municipal Act, which see the City bearing the initial cost of the construction and carrying out the construction, with the benefitting properties each paying their proportionate share through lien on the tax roll to their properties.
- c. Planning will ascertain whether or not a site plan is required in conjunction with the request. If so, Planning's written response to the inquiry will advise that a site plan application to be made.

8. The stop up and close of a road allowance will not be suggested unless the road allowance provides no connectivity, as will be determined at the meeting. If Public Works is of the opinion that the road could be stopped up and closed and the road allowance sold to the proponent, Planning will direct the proponent to make an application to Realty Services, for the acquisition of the property. If this is the case, the proponent will run through the stop up close and sale process and the matter is at an end unless the Land Management Team denies the application, or Council decides not to sell the land as recommended by Staff. In either case, Realty Services will refer the



proponent back to the next meeting of DRT for consideration, at which time Planning will assume carriage of the file.

9. If Planning is of the opinion that the road construction is a logical expansion of the road network given the above considerations, Planning will notify the applicant of its recommendation, and copy Engineering and the City Solicitor. Planning will advise the member of the public that Council approval to commence the process by way of Environmental Assessment is required, if there will be no associated rezoning process. Otherwise, Planning will advise the member of the public that a rezoning application must be made.

10. Prioritization between road construction requests will be given to those projects that result in the lowest length of road improved per benefitting parcel.

11. If the Environmental Assessment process is required, and once a project has reached the top of the list as per competing road construction requests, Engineering will place the project in its Capital Projects list for prioritization.

12. Once the project has reached the top of that list such that an Environmental Assessment could be conducted in the next 2 calendar years, the proponent must pay for the City (Engineering & Corporate Assets Department) to retain a consultant to conduct the Environmental Assessment, on the City's behalf and at the cost of the proponent. Engineering will advise the proponent that the matter will go to Council by way of Staff Report, for Council's consideration and approval/ denial. The City Solicitor will provide a road construction financing agreement to the proponent for signature and return, which will go to Council for approval to execute. The Engineering and Corporate Assets Department, with the assistance of the City Solicitor if required, will author a report to Council, authorizing the execution of the agreement.

13. Once all parties have executed the road construction financing agreement, Engineering will commence an Environmental Assessment at the cost of the proponent. The City (Engineering) will tender the contract with the consultant following receipt of funding by the proponent. Engineering will dedicate a member of staff to provide sufficient assistance to the consultant to allow for the Environmental Assessment to be conducted. It may take several years for the Environmental Assessment to be tendered, based on competing priorities.

14. Engineering will provide the consultant with a copy of the First Nations Consultation Policy at the outset of the Environmental Assessment process, which the consultant will be required to follow. If any First Nation has requested an archaeological assessment, this will be completed and First Nation concerns addressed to the satisfaction of the City, all at the cost of the proponent.

15. Construction of the road to the urban or rural (location dependent) full municipal standard as set out on the Engineering webpage will be required by the Engineering & Corporate Assets Department, subject to the discretion of the Director of Engineering & Corporate Assets.

16. The Engineering & Corporate Assets Department will consider insufficient road construction standards and assumption standards to the next assumed and constructed-to-standard road, as part of the potential scope of road construction, to provide appropriate connectivity.

17. Once executed by the proponent, and the \$1,500 Legal Services admin fee is submitted to the Finance Department at the City, the Engineering & Corporate Assets Department in consultation with the City Solicitor will author the report requesting execution by the Mayor and the Clerk of the road construction financing agreement. The same report will request eventual assumption of the road, per future assumption by-law, once the road is built to Engineering Specifications and the Engineering & Corporate Assets Department has obtained as built drawings, materials sampling reports and completed its final site inspection and confirmed same, if assumption is required for zoning compliance. The Public Works Department, the Engineering and Corporate Assets Department and the Planning Division will be consultants on the report.

18. Once instruction has been received to allow execution of the road construction financing agreement and, if necessary for zoning compliance, to pass an assumption by-law following construction of the road to the Engineering & Corporate Asset Department's satisfaction, the Engineering & Corporate Assets Department will have the Mayor and Clerk execute the agreement and will return a copy of the agreement to the proponent, with direction that the proponent work directly with the Engineering & Corporate Assets Department for payment prior to commencement of construction.

19. The Engineering & Corporate Assets Department will place the project in its capital works program. When the EA is placed in the Capital Budget for the next year in accordance with the 10-year Capital Works Program, the Engineering & Corporate Assets Department will start collecting the Engineering and Arborist fees:

20. Engineering will advise the proponent to provide to Finance the necessary fees:

- a. the engineering fees related to review of engineering drawings (at 3.7% of the cost of the works)
- b. fees and securities for construction (100% of the cost of the works)
- c. fees and securities related to the Environmental Assessment (125% of the quote provided by the consultant)
- d. \$1,000 for arborist administration of a tree permit per the Tree By-law

21. The Engineering & Corporate Assets Department will have an Ontario Land Surveyor stake the property boundaries and confirm when same is complete.
22. Once Engineering has received the legal survey and layout from the City's Ontario Land Surveyor and Construction Engineer, Engineering will ask the City's arborist to attend the site and confirm that all trees meeting the definition of mature tree as per the agreement that are to be removed are flagged (Engineering & Corporate Assets Department to use a City Arborist from Parks and Recreation Division of Community Services, or agent as contracted), the arborist will confirm the number of mature trees to be removed and collect \$1,700.00 per mature tree to be removed.
23. Once the City Arborist confirms to Engineering the tree compensation amount, the City Arborist will write to the proponent advising of the tree compensation amount and directing a payment via electronic funds transfer by Finance. The City Arborist will copy Finance on this correspondence, and direct Finance to place this in the Tree Canopy Reserve. Finance will advise the City Arborist and the Engineering & Corporate Assets Department when this is complete.
24. The Engineering and Corporate Assets Department will then notify the proponent in writing that the City will proceed with construction activities. The Engineering & Corporate Assets Department will require the completed materials and as built drawings be submitted to its satisfaction from its contractor before issuing a letter to the proponent advising that the warranty period has begun, and the City will assume the road upon Engineering drafting the assumption by-law and advancing same to Council.
25. The Engineering & Corporate Assets Department will then attend the site for a final inspection following completion of the work and, if not satisfied with the construction, will issue a deficiency letter and will follow up with the constructor to ensure that the deficiencies are remedied. If and when the Engineering & Corporate Assets Department is satisfied with the construction, it will diarize the expiration of the warranty period. Prior to the expiration of the warranty period, the Engineering & Corporate Assets Department will attend and confirm any deficiencies to be remedied. Once any deficiencies are remedied, the Engineering & Corporate Assets Department will instruct Finance to release the securities exceeding cost recovery.

Process Map

Inquiry in to any Department or Division directed to Director of Development Services and the Manager of Planning.

Does the property require a rezoning? Yes – go to Planning Application for Rezoning

If No:

Does the property require a Site Plan? Yes – go to Site Plan application process

If No:

Is the property in the Oak Ridges Moraine Conservation Plan Area?

If Yes: Request to construct road is denied

If No:

Is the property in the Urban Settlement Area of Lindsay, Bobcaygeon or Fenelon Falls?

If Yes – application denied; insufficient servicing

If No:

Is the property in Omemee?

If Yes – application denied; insufficient servicing

Is the property in a rural area or hamlet area?

If Yes – Then the property will be on private servicing.

Director of Development Services and the Manager of Planning in consultation with the City Solicitor will craft a response confirming that a minor variance to reduce the road frontage will be denied, a road will need to be built and assumed.

Before sending out the response, Planning will confirm its understanding of the road assumption standards of connecting roads with the Area Road Supervisor in Public Works.

Director of Development Services, the Manager of Planning and the City Solicitor will rank the potential road construction requests as against each other, based on efficiency of development (km of road improved per property wishing to develop).

The Manager of Planning will provide its ranking to the Manager of Infrastructure and Design, Engineering & Corporate Assets, who will then place the proposal in appropriate priority, and may report out to Council the results of the ranking, and estimated timing of any development.

If an Environmental Assessment for road construction is anticipated to proceed in the following 2 calendar years, the City Solicitor will provide a road construction financing agreement to the proponent for execution and return.

The proponent will sign the agreement and send \$1,500 for legal administration to Finance. Finance will notify City Solicitor and Manager, Technical Services, of the Engineering & Corporate Assets Department that payment has been made.

The Manager, Technical Services, of the Engineering & Corporate Assets Department will get instruction from Council for the City to sign and return the agreement. Manager, Technical Services, of the Engineering & Corporate Assets Department will file a fully executed copy with the Clerks Department. Clerks Department diarizes the expiry of the agreement. Finance holds a copy of the agreement, in reference to the securities it is holding.

The Manager, Technical Services, of the Engineering & Corporate Assets Department returns a fully executed agreement to the proponent, advising that the City will advise when construction is to begin, which may be several years away.

The Manager, Technical Services, of the Engineering & Corporate Assets Department will place the road construction in its Capital Program so that it will conduct an Environmental Assessment (EA) in a subsequent calendar year. The EA will be at the proponent's cost, and will be non-refundable, even in the event that EA recommends not building the road, and the City adopts the EA and decides to not construct the road. The Manager, Technical Services, of the Engineering & Corporate Assets Department collects 125% of the quote for the completion of the Environmental Assessment, for 100% fee recovery and 25% to pay for Engineering administration of the contract.

The Manager, Technical Services, of the Engineering & Corporate Assets Department tenders the work.

The EA is conducted. As part of the consideration, the EA considers the private servicing needs of the properties that will be able to develop if the road is constructed and assumed, and the impact of that servicing on the environment.

The Manager, Infrastructure Design, of the Engineering & Corporate Assets Department will cost the project and use this to calculate the Engineering fee of 3.7% of the cost of the works on City property and the securities of 100% of the costs of the works on City property, and will collect the fee and securities.

The Manager, Infrastructure Design, of the Engineering & Corporate Assets Department will tender the construction project, in accordance with timing relative to its competing priorities, and will receive and approve the construction drawings from the contractor.

The Manager, Infrastructure Design, of the Engineering & Corporate Assets Department has an Ontario Land Surveyor stake the property boundaries and boundaries of construction, and asks proponent to submit \$1,000 to Finance for a tree permit.

The Manager, Infrastructure Design, of the Engineering & Corporate Assets Department asks a City Arborist from Community Services to complete a tree management plan via enquiry to "treebylaw@kawarthalakes.ca". Community Services may retain an arborist under contract.

The Manager, Infrastructure Design, of the Engineering & Corporate Assets Department is provided a copy of the tree management plan.

The Arborist confirms calculation for tree payment, and issues the tree permit per the Tree Preservation By-law.

The Arborist requests proponent make compensation payment by electronic funds transfer to the Corporation of the City of Kawartha Lakes, for placement into the tree preservation reserve.

The Finance Division advises the Arborist and the Manager, Infrastructure Design, of the Engineering & Corporate Assets Department once payment is made.

The Manager, Infrastructure Design, of the Engineering & Corporate Assets Department receives all Conservation Authority or provincial approvals prior to tendering construction.

The Manager, Infrastructure Design, of the Engineering & Corporate Assets Department tenders the construction contract for a following calendar year, as per competing priorities set out in the 10-year Capital Plan and annual Capital Budgets.

The Manager, Infrastructure Design, of the Engineering & Corporate Assets Department requests confirmation from contractor of as built engineering drawings, and materials testing. The Manager, Infrastructure Design, of the Engineering & Corporate Assets Department attends the site as it would any other construction on its own property, to confirm materials testing, as built, and location of the road per the boundary, and that the road is left in a clean and neat manner, with sodding and seeding completed.

The Manager, Infrastructure Design, of the Engineering & Corporate Assets Department works with the contractor to remedy any deficiencies.

The Manager, Infrastructure Design, of the Engineering & Corporate Assets Department diarizes the expiration of the warranty period and attends to confirm whether any deficiencies exist prior to the expiration of the warranty.

The Manager, Infrastructure Design, of the Engineering & Corporate Assets Department works with the contractor to remedy any deficiencies.

The Manager, Infrastructure Design, of the Engineering & Corporate Assets Department requests Finance remit remaining securities, once it has confirmed that any deficiencies are remedied and that the road can be assumed for maintenance by the municipality.

The Manager, Infrastructure Design, of the Engineering & Corporate Assets Department puts a by-law before Council to assume the road, if required per the zoning by-law. Engineering advises Public Works, so it can add the road to its maintenance schedule.

Revision History:

Revision	Date	Description of changes	Requested By
0.0	July 19, 2022	Initial Release	

Staff Sign-off:

C Purdy

R Holy

J Rojas

M Farquhar

C Sisson

L Barrie

B Robinson

J Johnson

C Shanks

Date accepted by Public Works Department	
Date accepted by Engineering & Corporate Assets Department	
Date accepted by Community Services Department	
Date of implementation	July 19, 2022
Proposed Date of Review	July 19, 2023

The Corporation of the City of Kawartha Lakes

By-Law 2022-

A By-law to Amend By-law 2018-234, being a By-Law to Establish and Require Payment of Fees for Information, Services, Activities and Use of City Property in The City of Kawartha Lakes (known as the Consolidated Fees By-law)

Recitals

1. By-laws may be passed to establish and require the payment of fees for information, services, activities and use of City property.
2. Section 391 of the Municipal Act 2001, S.O. 2001, as amended, provides for a municipality to pass by-laws imposing fees or charges on persons for services and activities provided or done by or on behalf of it, for cost payable by it for services or activities provided or done by or on behalf of any other municipality or local board, and for the use of its property including property under its control.
3. Section 398(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, authorizes a municipality to add fees and charges to the tax roll for the property and collect them in the same manner as municipal taxes.
4. By-law 2018-234 is the Consolidated Fees By-law for the City.
5. This by-law amends By-law 2018-234 by adding fees charged by the municipality in the context of private construction of a road on a City-owned road allowance not in the context of a Planning Act application.

Accordingly, the Council of The Corporation of the City of Kawartha Lakes enacts this By-law 2022- .

Section 1.00: Definitions and Interpretation

1.01 Definitions:

All defined terms in the amending By-law take their meaning from By-law 2018-234 of the City of Kawartha Lakes.

1.02 Interpretation Rules:

- (a) The Schedules attached to this by-law form part of the by-law, and are enforceable as such.

(b) The words “include” and “including” are not to be read as limiting the meaning of a word or term to the phrases or descriptions that follow.

Section 2.00: Amendment Details

2.01 Amendments:

Schedule A-4: Legal Amended to include a new row:

Service Description	Unit	Rate as of July 19, 2022	By-law
Agreement - Road Construction and Assumption – on City-owned Road Allowance – No Planning Act process	Each	\$1,500 for Legal Services Staff Time in preparation and execution of the agreement + \$1,000 for tree removal permit + \$1,700 for every 4 mature trees removed (or \$425 per mature tree removed) + 125% of the cost of the Environmental Assessment, for 100% cost recovery for consultant costs and 25% for administration of the EA process by Engineering Staff + 3.7% of construction costs for Engineering Staff Time to review drawings and inspect final works	2022-xxx

Schedule E: Development Services Amended to remove the fee of \$1,189.00 (indexed annually) plus \$520.00 (not to be indexed) for roadway construction not in conjunction with a Planning Act application.

Schedule E further amended to remove reference to additional fees that may apply and found in Schedule A-4.

This fee in Schedule E will continue to apply for agreements to implement Oak Ridges Moraine Zoning By-law provision.

As shown in Schedule A to this by-law.

Section 3.00: Administration and Effective Date

3.01 **Administration of the By-law:** The Director of the City Departments are responsible for administration of the respective department fees as approved in Schedules A to H to this by-law.

3.02 **Effective Date:** This By-law shall come into force on July 19, 2022.

By-law read a first, second and third time, and finally passed, this [redacted] day of [redacted], 2022.

Andy Letham, Mayor

Cathie Ritchie, City Clerk

Schedule A – Revised Schedule to By-law 2018-234



Copy of 2022
Consolidated Fees S