

To: Council of Township of East Ferris

C2: Pauline Rochefort – Mayor, Township of East Ferris

Date: June 1, 2022

From: Glenn & Karen Brophy – Residents at 214 One Mile Road

Re: Ongoing concerns regarding maintenance and legal status of One Mile Road.

Dear Council Members,

As you know, Council and the residents of One Mile Road have been discussing the issues around the maintenance and ownership of One Mile Road for quite some time. Now two additional layers of issues are presenting themselves, the construction traffic associated with the upcoming Degagne subdivision and the second season of “The Lake” TV series, so we thought it timely to write to Council.

In addition, on your Meetings and Agendas website I noticed that Council had adopted a motion directing staff to draft an Assumption of Private and Unassumed Roads Policy. For your ease of reference, I have attached to this letter that motion and a previous council motion from September 8th, 2020, that seems to express a similar intent.

This letter is being written with an intent to register my concerns and to hopefully help with ensuring that the forthcoming Assumption of Private and Unassumed Roads Policy comprehensively covers our concerns. I’ve attempted to categorize the concerns to make them easier to deal with, but please note that some issues overlap into each other thereby creating their own complexities.

a) Concerns around the untenable legal situation

Currently, there is not any solid legal position that directs the township or the residents as to how One Mile Road is to be constructed or maintained, resulting that together we are in what we might refer to as a legal No Man’s Land *.

(*Legal No-Man’s Land is defined by Merriam-Webster dictionary as “: an anomalous, ambiguous, or indefinite area especially of operation, application, or jurisdiction)

To help lay out the evidence of our less-than-optimal legal position, we begin with an excerpt from your official plan from April 25, 2016

“8.2.3– Minister’s copy

2. Standards for new road construction will include a minimum of 20 metres (66 feet) right-of-way, engineered design and layout, appropriate drainage and construction. Roads on lands under plan of subdivision may be assumed by the Municipality provided the standards for road construction have been satisfactorily met. No construction, alteration

or maintenance of the Municipal roadway shall be permitted without the expressed permission of the Municipality.”

The road was not brought up to these expressed standards, so this official plan was ignored when the township acquired the road. This was further clarified in the motion from the Sept 8th 2020 minutes.

‘MOTION NO. 2020-223, NOTICE OF MOTION PREPARED BY MAYOR ROCHEFORT AT THE REGULAR MEETING OF SEPTEMBER 8TH, 2020, DEFERRED TO A LATER DATE

WHEREAS the Municipality of East Ferris’ Official Plan states that unless it is clearly in the public interest for the Municipality, it is not intended that existing private roads will be assumed by the Municipality and no responsibility for access, snow removal, maintenance or use by school buses is acknowledged.

Where, however, the Municipality chooses to assume a private road, the road must first be improved to the standards for Municipal roads.’

This motion was not followed either as the road was assumed by the municipality and then never brought up to the identified standard as expressly directed in the motion.

The legal conundrum is extended further as it relates to the question of ‘authorized’ maintenance.

You’ll note that in the official plan, ‘No construction, alteration or maintenance of the Municipal roadway shall be permitted without the expressed permission of the Municipality’,

and from the Sept 8th motion,

‘AND WHEREAS the Municipality’s Official Plan states that no construction, alteration or maintenance of the Municipal roadway shall be permitted without the expressed permission of the Municipality.

AND WHEREAS the Municipality of East Ferris has three roads (Birch Hill, Gauthier and Ashwood) that form part of its Municipal Road Inventory that are not up to municipal standards, are being maintained by residents, and for which no expressed permissions of use have been authorized;

AND WHEREAS the Municipality of East Ferris owns a parcel of land that was transferred to the Municipality in 2015 which was and continues to be used as a road (One Mile Road) and maintained by residents, and for which no expressed permissions of use have been authorized;.....’

Council recognized in this motion in 2020 the legal jurisdictional issue as it pertains to the Township. As residents, we also have an issue as we do not have ‘authorized permission to maintain’ (nor do we want it, nor are we a corporate entity that can assume it as a group), yet our deeds for all of our properties provides us with the ‘rights of access’. Snowplowing is the obvious example of the problem in that for us to have ‘access’, and receive emergency services

the road must be plowed, but we don't have 'authorization' to maintain the road. I think a 'Legal No-Man's Land' is a good descriptor of this situation for both the township and the residents.

This is not a good place for any of us to be.

b) Liability concerns

In the event of an accident in the upcoming construction zone wherein maintenance was held to be an issue, can we get a written statement from the township absolving the residents of any liability as we neither maintain or own that portion for the road? In the best case, this would also apply to the remainder of the road as we do not own any of it.

Until a turnaround is established, who is responsible for repairing damage to our driveways by construction equipment turning around in them?

In the event, snowplowing or maintenance is not performed sufficiently to allow for use by emergency services, who will be responsible for the liability of any resulting damages?

In any case, I think it would be prudent for the township to try to reduce use of the road by too many drivers by placing a 'Use at Your Own Risk' sign at the top of the road. This may serve to discourage some lawsuits.

c) Maintenance concerns

The new subdivision will require that a construction zone be declared for which we are assuming someone else will be responsible for snow plowing, damage repair from construction, tree removal, grading etc., This then begs the question, where does this zone start/end? and when will it be transferred and to who? And will it be in writing, so that we know when it is effective?

Once winter arrives, a concern arises around snow removal and storage. We need to know that the construction zone will find some place to store 'their snow' so that we can continue to have access and that they will maintain it well enough for us to access our properties even if their construction zone is not active.

d) Garbage pickup concerns

Your policy states that pickup will be at the nearest township-maintained road. Does the construction zone qualify as township-maintained? If so, will a widened section be provided for a place for our 14 residences to drop off garbage?

e) "The Lake" Filming concerns

The road in front of all the existing properties along Trout Lake are only one lane in width so only one lane traffic should be permitted in this section of the road. As you know, there isn't room for two lanes, and so we think it's reasonable to ask the filming personnel to stop driving on our lawns so that they can pass each other like they did last year. In the section just west of

our property, they drove in the ditch to accomplish two-way traffic and the resulting damage is still there.

In addition, we do not have any interest in the high traffic volumes associated with the film production using our driveway to bypass each other and we're sure other One Mile property owners will feel the same way.

Will the movie folks be providing flag people to restrict vehicles to one lane traffic any time they are using the road? or how will this be handled?

As you see, there is a long list of concerns we have about our road. We have invested much time, effort and cash creating this road and we believe it is only fair that you begin to address these legitimate concerns in a timely manner. The issue has been percolating since 2015 and given the increasing activity on the road, the window for avoiding potential legal complications may be drawing ever closer.

Please acknowledge receipt of this letter and let us know what the plans are to address these issues.

Yours truly,

Glenn & Karen Brophey,
Residents, 214 One Mile Road

Attached Motions:

Notice of Motions

a. Resolution No. 2020-223 of meeting of September 8th, 2020, deferred to a later date

2020-248

Moved by Councillor Kelly

Seconded by Deputy Mayor Voyer

MOTION NO. 2020-223, NOTICE OF MOTION PREPARED BY MAYOR ROCHEFORT AT THE REGULAR MEETING OF SEPTEMBER 8TH, 2020, DEFERRED TO A LATER DATE

WHEREAS the Municipality of East Ferris' Official Plan states that unless it is clearly in the public interest for the Municipality, it is not intended that existing private roads will be assumed by the Municipality and no responsibility for access, snow removal, maintenance or use by school buses is acknowledged. Where, however, the Municipality chooses to assume a private road, the road must first be improved to the standards for Municipal roads. Roads on lands under plan of subdivision may be assumed by the Municipality provided the standards for road construction have been satisfactorily met;

AND WHEREAS the standards for new road construction include a minimum of 20 metres (66 feet) right-of-way, engineered design and layout, appropriate drainage and construction;

AND WHEREAS the Municipality's Official Plan states that no construction, alteration or maintenance of the Municipal roadway shall be permitted without the expressed permission of the Municipality;

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AND WHEREAS the Municipality of East Ferris has three roads (Birch Hill, Gauthier and Ashwood) that form part of its Municipal Road Inventory that are not up to municipal standards, are being maintained by residents, and for which no expressed permissions of use have been authorized;

AND WHEREAS the Municipality of East Ferris owns a parcel of land that was transferred to the Municipality in 2015 which was and continues to be used as a road (One Mile Road) and maintained by residents, and for which no expressed permissions of use have been authorized;

NOW IT IS HEREBY RESOLVED THAT staff be directed to examine the options to move forward and suggest a plan of action with proposed timelines. Note in passing this Motion, Council understands the financial implications and therefore directs staff to identify only immediate priorities. A longer term horizon as well as a staged approach is encouraged where future action is deemed appropriate and necessary.

Carried Mayor Rochefort

.....And

From Feb 22, 2022 – Regular Council Meeting

Policy - Assumption of Unmaintained Municipal Roads and Private Lanes

- 2022-70

Moved by Councillor Champagne

Seconded by Deputy Mayor Trahan

THAT Council for the Corporation of the Municipality of East Ferris direct staff to draft an Assumption of Private and Unassumed Roads Policy and that the said Policy be reviewed by the Public Works and Infrastructure Committee prior to Council's consideration.

Carried Mayor Rochefort