

RM of Oakview

TITLE: **UNDEVELOPED ROAD ALLOWANCE POLICY**

POLICY NO: 2019 - 4

Approval Date - October 10th, 2019
Resolution # - #450/19
Reference - Roads
Implementation -

PURPOSE

The Rural Municipality of Oakview has adopted this policy to outline the conditions of the *Undeveloped Road Allowance Policy* as adopted by the RM of Oakview. The terms of this Policy are for “Undeveloped Road Allowances” for which the Municipality has the direction, control and management under *The Municipal Act*, and as defined within this Policy.

DEFINITIONS:

1. ***Municipal Road*** – for the purpose of this Policy, is defined as land that has been opened under *The Municipal Act*, or any other *Act*, as a road for public use. A Municipal Road includes a road allowance, street, lane, thoroughfare, walkway, bridge, underpass and also includes an Undeveloped Road Allowance as shown in the Dominion Government Survey.
2. ***Undeveloped Road Allowance*** – for the purpose of this Policy, is defined as a Road Allowance which has not been established as a public Municipal Road by a bylaw of Council, or otherwise assumed for public use by the Rural Municipality of Oakview.

PROCEDURE

1. The Municipality may from time to time receive a request from a ratepayer, for the private use of a specific Undeveloped Road Allowance located within the boundaries of the RM of Oakview.

All such requests must be made on the Municipality’s *Permit for Private Use of Undeveloped Road Allowance Application Form (Schedule A of this Policy)*.

2. The Municipality may from time to time receive a request from a ratepayer, to make alterations or improvements to an Undeveloped Road Allowance located within the boundaries of the RM of Oakview.

All such requests must be made on the Municipality's *Permit for Alterations or Improvements of an Undeveloped Road Allowance Application Form (Schedule B of this Policy)*.

3. Once submitted by a Ratepayer, all Applications received by the Municipality will be forwarded to the next scheduled regular meeting of Council for consideration, and a decision to be made by Resolution of Council.
4. All approved alterations or improvements made by the Permittee, must be completed to a standard acceptable to the Municipality. The Municipality's Public Work's Supervisor must be notified of the Ratepayer's intention to begin any/all alterations or improvements 48 hours prior to the commencement of the same.
5. Concerning all approved alterations or improvements to the property, the Permittee must ensure that all reasonable steps are taken to arrange for safe workplace procedures as legislated by the Province, under the *Workplace Safety & Health Act*, for the duration of the works to be completed.
6. No debris for the alteration or improvement of an Undeveloped Road Allowance can be left onsite – this includes all brush and trees which must be disposed of offsite or burned during appropriate times and in compliance with the Municipality's *Fire Ban Bylaw*.
7. In the event that damage occurs to the Undeveloped Road Allowance, during the alteration or improvement permitted by Council, all costs to restore the Undeveloped Road Allowance to a condition deemed similar and equal in nature to what existed prior to the commencement of the permitted alteration or improvement of the same, are to be the responsibility of the Permittee.
8. The Municipality retains the right of access of the Undeveloped Road Allowance for the purpose of inspecting and/or maintaining the Undeveloped Road Allowance at any time, as the Owner of the Undeveloped Road Allowance as outlined in *The Municipal Act*.
9. Should the RM of Oakview feel that at any time it is in the best interest of the Municipality to develop an Undeveloped Road Allowance for any purpose it deems necessary, they retain the right to terminate the Permit by giving the Permittee six (6) months' notice, or less if mutually agreeable.

POLICY

The RM of Oakview understands that all Municipal Roads are owned by Her Majesty the Queen and are dedicated to the public for public use and access. Municipalities must therefore ensure that the public's right to use a Municipal Undeveloped Road Allowance is not interfered with, to any substantial extent. The RM of Oakview believes that the

granting/permitting of any permission to use, or occupy a Municipal Road, including an Undeveloped Road Allowance, cannot be limited or indefinite.

The RM of Oakview recognizes that *The Municipal Act* gives municipalities wide-ranging authority over Municipal Roads within their jurisdictions. This authority includes the direction, control and management of all Municipal Roads and Undeveloped Road Allowances within their boundaries and requires them to maintain these Roads. *The Municipal Act* also gives municipalities the power to grant certain rights to private individuals.

The RM of Oakview recognizes that all stakeholders' interests must be balanced, thereby taking the rights of the public, as well as the nature of the Municipal Undeveloped Road Allowance, into account.

Permitted Private Use of Undeveloped Road Allowances:

The Municipality may from time to time be approached by ratepayers, to request to have the private use of adjacent Undeveloped Road Allowance(s) for cultivated crop land, to be fenced for pasturing of livestock, haying, bee farming, access to oil leases, and for other private purposes to be undertaken within the boundaries of the RM of Oakview.

The RM of Oakview recognizes the following:

1. The more a Municipal Undeveloped Road Allowance is developed and used by the public, the more limited the nature of rights the Municipality can grant/permit. The less a Municipal Undeveloped Road Allowance is developed, the greater the nature of the rights the Municipality can grant/permit.
2. Each request for private use on an Undeveloped Road Allowance will depend on its own circumstances and be considered independently of others in order to consider the following:
 - a. the right of the public to access the Road;
 - b. the nature of the actual *current* use of the Road;
 - c. the requirement of other members of the public to access the Road; and
 - d. the specific proposed private use as outlined in the Municipality's *Permit for Private Use of Undeveloped Road Allowance Application Form (Schedule A of this Policy)*.
3. All permitted private use of Undeveloped Road Allowances, are to be subject to termination by the Municipality if it decides permission should no longer be provided, including the possible future development of the Undeveloped Road Allowance, by the Municipality.

4. The permitted use of an Undeveloped Road Allowance as outlined in this Policy, does not at any point and for any reason, create an interest in the land and is only granting permission to use the Undeveloped Road Allowance on certain limited terms.
5. Any private use of an Undeveloped Road Allowance must be approved by Resolution of Council, prior to the commencement of the same use, without exception.

Permitted Improvements or Alterations to Undeveloped Road Allowances:

The Municipality may from time to time be approached by ratepayers, to make improvements or alterations to Undeveloped Road Allowances located within the boundaries of the RM of Oakview.

The RM of Oakview recognizes the following:

1. The more a Municipal Undeveloped Road Allowance is developed and used by the public, the more limited the nature of rights the Municipality can grant/permit. The less a Municipal Undeveloped Road Allowance is developed, the greater the nature of the rights the Municipality can grant/permit.
2. Each request for individuals to undertake to make improvements or alterations to Undeveloped Road Allowances will depend on its own circumstances and be considered independently of others in order to consider the following:
 - a. the specific proposed alteration or improvement, as outlined in the Municipality's *Permit for Alterations or Improvements of an Undeveloped Road Allowance Application Form (Schedule B of this Policy)*;
 - b. the long-term effect of the alteration or improvement once complete and the ability for the public to continue to access the Road; and
 - c. any potential negative effect of the alteration or improvement, regarding drainage of adjacent properties.
3. All permitted improvements or alterations to be undertaken by individual ratepayers on Undeveloped Road Allowances, granted by the Municipality, are permitted for one time only and not to be considered as granting ongoing permission for the same.
4. The permitted alteration or improvement to an Undeveloped Road Allowance as outlined in this Policy, only grants permission under certain limited terms. All

costs for the proposed alterations or improvements are to be at the expense of the Permittee, unless determined otherwise, by Resolution of Council.

5. In an instance where the legal determination of the location of the Undeveloped Road Allowance is deemed necessary for the alteration or improvement to be completed, it remains the responsibility of the Permittee to obtain a legal surveyor to determine the same, with all costs incurred to be borne by the Permittee and not the Municipality.
6. Approved alterations or improvements to an Undeveloped Road Allowance by no means provides the Municipality with a future obligation to repair or maintain the Undeveloped Road Allowance, to an extent beyond its prior condition. Approved alterations or improvements, completed by a Permittee, does not change the status of the Undeveloped Road Allowance and at no time can the Permittee assume the Undeveloped Road allowance has been opened by the Municipality.
7. Any alteration or improvement made to an Undeveloped Road Allowance must be approved by Resolution of Council, prior to the commencement of the works, without exception.

Grandfather Clause:

The RM of Oakview recognizes that several Undeveloped Road Allowances located within the boundaries of the Municipality, are currently being used by private individuals for reasons as outlined in this Policy, and that many Undeveloped Road Allowances have been altered by ratepayers prior to the passing of this Policy.

The Municipality therefore will allow for the “grandfathering” of all such situations, with no exceptions to the process to be extended past the date of the passing of this Policy.

Grandfathering will no longer exist with the change in ownership of adjacent property, or the change of use of all Undeveloped Road Allowances. At that time, the new Policy and Procedures will apply to the relevant Undeveloped Road Allowance, in its entirety.

Grandfathering will also not exist, in the situation where the works completed do not fit the criteria of this Policy and where Council would therefore not have approved the works completed in any case. This will be considered non-compliant and unapproved development and may result in legal action being pursued by the Municipality.

Adjacent Land Owner Conflicts/Disputes:

Should unresolved conflicts exist between adjacent landowners who may both benefit from the private use of Undeveloped Road Allowances, the RM of Oakview reserves the right to terminate the private use of Undeveloped Road Allowances by both parties, effective immediately and without notice of termination.

Indemnification of the Municipality for all Claims:

The Permittee indemnifies and saves harmless the RM of Oakview, its officers and employees, for any claim made against it as a result of the private use of the road, or for any alteration or improvement completed by the Permittee.

Non-Compliance:

Non-compliance of this *Policy* will not be accepted and may result in legal action being pursued by the Municipality.



PERMIT FOR PRIVATE USE OF UNDEVELOPED ROAD ALLOWANCE
APPLICATION FORM – SCHEDULE A

Applicant: _____

Applicant Mailing Address: _____

The Applicant applies to Council for a Permit for Private Use of the Undeveloped Road Allowance as listed here, and as shown on the attached map as:

The Applicant applies to Council for a Permit for Private Use of the Undeveloped Road Allowances for the following purposes (check all that apply)

- a) Fencing for the purpose of pasturing livestock
b) Cultivated crop land
c) Haying
d) Bee farming
e) Oil production access purpose
f) Other (describe) _____

- 1. The Applicant agrees that they shall not use the Undeveloped Road Allowance for purposes which are unlawful or in contravention of the Municipal, Provincial or Federal Legislation.
2. The Applicant agrees that they shall be responsible for operating and maintaining the Undeveloped Road Allowance at their expense, and to remove any fencing or other obstruction on the Undeveloped Road Allowance, upon the termination of this Permit.
3. The Applicant agrees to indemnify and save harmless the RM of Oakview, its officers and employees, for any claims for loss, damages or injury arising out of the Applicant's use of the Undeveloped Road Allowance.
4. The terms of this Permit shall commence from the date of the approving Resolution of Council, for a one-year period, and shall automatically renew for consecutive annual terms until terminated by either party.
5. The RM of Oakview has the right to terminate the Permit by providing the Permittee six (6) months' notice, or less if mutually agreeable. The RM of Oakview may terminate the Permit without notice by Resolution of Council, if the Permittee acts outside the Municipality's Undeveloped Road Allowance Policy, which the RM of Oakview reserves the right to alter from time to time.
6. The Permittee agrees they have no rights or claim to the Undeveloped Road Allowance, now or at some point in the future.
Note: There will be a 15 Ft. setback from the edge of the road, of any of the above purposes.
7. By affixing of signatures below, the Applicant (known as the Permittee upon Approval of Council), agrees to all above terms of the Permit, as of the date signatures are executed.

Applicant/Permittee

RM of Oakview

Reeve

Chief Administrative Officer

For Office Use Only:

Date Approved: _____ Approving Resolution No.: _____ Permit No.: _____



**PERMIT FOR PRIVATE USE OF UNDEVELOPED ROAD ALLOWANCE
APPLICATION FORM – SCHEDULE B**

Applicant: _____

Applicant Mailing Address: _____

The Applicant applies to Council for a *Permit for Alterations or Improvements of the Undeveloped Road Allowance* as listed here, and as shown on the attached map as:

The Applicant applies to Council for a *Permit for Private Use of the Undeveloped Road Allowances* for the following purposes (check all that apply)

- a) Tree trimming
- b) Tree removal
- c) Brushing or pushing bush
- d) Levelling
- e) Removal of stumps, stones and other forms of debris
- f) Other (describe) _____

1. The Applicant agrees that they shall alter or improve the Undeveloped Road Allowance for purposes which are unlawful or in contravention of the Municipal, Provincial or Federal Legislation.
2. The Applicant agrees that they shall be responsible for all costs associated with the alterations or improvements of the Undeveloped Road Allowance, and that permitting of these alterations or improvements does not make the Municipality responsible for a future obligation to repair or maintain the same alterations or improvements, to an extent beyond its prior condition.
3. The Applicant agrees to indemnify and save harmless the RM of Oakview, its officers and employees, for any claims for loss, damages or injury arising out of the Applicant's use of the Undeveloped Road Allowance.
4. The terms of this Permit shall commence from the date of the approving Resolution of Council, for a one-year period, and shall approve the work on a one-time only basis. Extensions to complete the permitted alteration or improvements past the one-year period, may or may not be granted by resolution.
5. The RM of Oakview has the right to terminate the Permit without notice by Resolution of Council, if the Permittee acts outside the Municipality's *Undeveloped Road Allowance Policy*, which the RM of Oakview reserves the right to alter from time to time.
6. The Permittee agrees they have no rights or claim to the Undeveloped Road Allowance, now or at some point in the future.
 - Note: There will be a 15 Ft. setback from the edge of the road, of any of the above purposes.
7. By affixing of signatures below, the Applicant (*known as the Permittee upon Approval of Council*), agrees to all above terms of the Permit, as of the date signatures are executed.

Applicant/Permittee

RM of Oakview

Reeve

Chief Administrative Officer

For Office Use Only:

Date Approved: _____ **Approving Resolution No.:** _____ **Permit No.:** _____