



Staff Report

Infrastructure & Public Works

Report To: Committee of the Whole
Meeting Date: January 29, 2018
Report Number: CSPW.18.004
Subject: Assumption of Settlers Way Road Allowance west of Craigmore Crescent
Prepared by: Jim McCannell, Manager of Roads and Drainage

A. Recommendations

THAT Council receive Staff Report CSPW.18.004 entitled “Assumption of Settlers Way Road Allowance west of Craigmore Crescent”;

AND THAT Council enacts a By-law to assume the section of Settlers Way identified by the Property Identification Number 37146-0249 (LT).

B. Overview

A portion of Settlers Way (previously known as Campbell Street) between Grey Road 19 and Craigmore Crescent (the “Settlers Way Road Allowance” or the “subject road”) has never been formally assumed by the Municipality. This Report starts the process of assuming these lands as a road allowance.

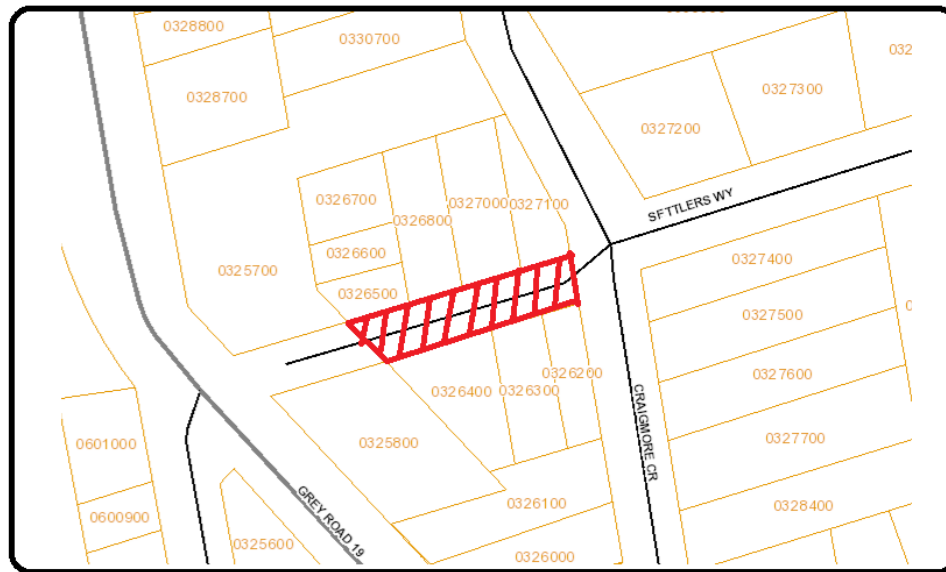
C. Background

A parcel of land, including the Settlers Way Road Allowance, was purchased in 1918 by Charles Campbell. The land was subsequently subdivided and in 1956 title for the road allowances adjoining the subject road were transferred to the Municipality. The subject road appears to be the remainder of the lands that have not been captured and transferred to the Town. (Figure 1)

The eastern portion of the Settlers Way Road Allowance (approximately 70m) was built and opened as a highway without the Municipality having assumed rights to the property as a road allowance. The lands in question have been accepted and used as the road for more than 60 years.

As depicted in Figure 1 below, the Settlers Way Road Allowance has been open, and maintained as an open highway, since the 1950s. Additionally, significant infrastructure improvements have been made by the Municipality since its opening, including: water services in 1986, sanitary services in 2000, drainage improvements in 2007, and paving in 2008.

Figure 1 – Map of Location



The subject road services 7 properties. The subject road and the fronting properties are well defined.

D. Analysis

Highways are established in Ontario by by-law, or, before January 1, 2003, by dedication and use. If there is no by-law, an assumption may be inferred from work done by the municipality, or other expenditure of public money in improving or maintaining the road.

The Municipal Act, 2001 states:

- 65.** *(1) If, before January 1, 2003, a municipality by mistake opened a highway not wholly upon the original road allowance, the land occupied by the highway shall be deemed to have been expropriated by the municipality and no person on whose land the highway was opened may bring an action in respect of the opening of the highway or to recover possession of the land. 2001, c. 25, s. 65 (1).*

Therefore, it is the opinion of Staff that the Town has assumed the Settlers Way Road Allowance in its entirety, and the subject road is deemed to have been taken by the municipality. Staff, in consultation with the Town Solicitor, will work with the Land Registry Office to update the title and records.

There is a provision in the *Municipal Act, 2001* that allows for the compensation of a land owner for lands that have been used for the purpose of a road.

(2) The person on whose land the highway was opened is entitled to compensation in accordance with the Expropriations Act as if the land were expropriated. 2001, c. 25, s. 65.

This entitlement to compensation is typically established where the ownership of the lands is clear and there is no intent to dedicate. Further, equity would require compensation where a Town has collected taxes for the lands in question. The subject road does not have a roll number assigned to it, and there are no current records of any taxes being paid against this road section. The intention of the “owner” to dedicate the subject road was clear, as was the Town’s intention to accept and assume responsibility for the subject road.

It is the opinion of Town Staff, in consultation with Solicitor Harold Elston, that there is unlikely to be any claim for compensation arising from the Town officially assuming the portion of road in question, and that if such a claim were to be made, it would not be successful.

It is in the best interest of public safety to acknowledge and assume this road section into the Town road network.

Staff recommend Council enact a By-law to assume the section of Settlers Way. A draft By-law has been provided as Attachment #1.

E. The Blue Mountains Strategic Plan

Goal #5: Ensure Our Infrastructure is Sustainable

F. Environmental Impacts

None.

G. Financial Impact

There will be no financial impact as the Town has maintained this road section for many years. No new works are required.

H. In consultation with

Harold Elston, Solicitor

I. Attached

1. Draft By-law

Respectfully submitted,

Jim McCannell

Manager of Roads and Drainage

Reg Russwurm, MBA, P.Eng

Director of Infrastructure and Public Works

For more information, please contact:

Jim McCannell

ipwinfo@thebluemountains.ca

519-599-3131 extension 271

**THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS
BY-LAW NUMBER 2018 –**

**Being a By-law to accept and assume Settlers Way as described by
PIN 37146-0249 (LT)**

WHEREAS sections 11 and 31 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, enables the council of a municipality to pass by-laws to establish and assume highways for public use;

AND WHEREAS all of the road network in PIN 37146-0249 (LT) are to be assumed for public use;

NOW THEREFORE the Council of The Corporation of the Town of The Blue Mountains hereby enacts as follows:

1. Settlers Way is hereby assumed for Public use.

ENACTED AND PASSED THIS DAY OF , 2018.

John McKean, Mayor

Corrina Giles, Clerk