

**STAFF REPORT:      Engineering & Public Works Department**

**REPORT TO:**            Infrastructure & Recreation Committee  
**MEETING DATE:**      July 12, 2011  
**REPORT NO.:**          EPW.11.060  
**SUBJECT:**             Camperdown Road South – Restriction  
   of Passage  
**PREPARED BY:**        Jim McCannell, Manager of Roads and  
   Drainage Division

**A. Recommendations**

THAT upon recommendation by the Town’s Solicitor and Director of Engineering and Public Works, Council enact a By-law to restrict common law right of passage during the winter season on the deviation portion of Camperdown Road South, as detailed in Staff Report EPW.11.060, entitled “Camperdown Road South – Restriction of Passage”.

**B. Background****Development Agreement with Barbara Jones**

On September 4, 1997 the former Township of Collingwood and Barbara Jones entered into a Road Development Agreement to facilitate the issuance of a building permit to the Jones’ for the construction of a detached dwelling house on Part Lot 25, Concession 7. The Township of Collingwood Zoning By-law No. 83-40, as amended, states that a lot must front upon and have direct access to an improved public street to qualify for building permit issuance.

The Road Development Agreement sets out the parameters for the reconstructive and remedial works on the Camperdown Road South deviation road allowance on Part Lot 25, Concession 7 as shown in Attachment 1 (the “Deviation Road”) so as to bring the Deviation Road “up to municipal standard for assumption purposes and to the complete satisfaction of the Township Public Works Superintendent”.

The Deviation Road is a public highway and may be used for vehicular and pedestrian traffic by any person at present.

The Road Development Agreement further states that:

- upon completion and acceptance of the herein contemplated works that all future winter maintenance, so as to provide access on and along the Deviation Road shall be the sole responsibility of the Owner;
- the Owner agrees that the Township shall not accept or bear any responsibility for winter maintenance so as to provide access on and along the Deviation Road.

- the Owner further agrees not to pursue any claim or action against the Township with regard to winter maintenance;
- the Owner saves the municipality harmless for any claim or action that may arise as a result or consequences of the construction of the Owner's dwelling as herein contemplated; and,
- the Owner agrees that any act of summer road maintenance completed by or funds extended by the Township on the Deviation Road shall not be construed as acts of full maintenance assumption by the Township and the Owner further agrees that the matter of winter maintenance so as to provide access on and along the Deviation Road shall not be raised in the future with any council of the Corporation of the Township of Collingwood or any successor thereto.

### **Historic Road and Use**

The Deviation Road ascends the Niagara Escarpment and is described as a rural road with a challenging physiographic character. Prior to the remedial road works it was considered as a seasonal road. This road has been constructed with a narrow vehicular platform and continues to be maintained as a season road by the Town.

The Deviation Road could also be described as environmentally sensitive, given the steep slope, drainage characteristics during severe storm events and the designation of the Niagara Escarpment as a World Biosphere Reserve.

Prior to the signing of the Agreement the Deviation Road has been used by hikers and bicyclists to access the Loree Forest area and Bruce Trail loop for many years. These uses have appeared to the land owners to have increased since the signing of the Agreement.

Sometime ago the landowners that front the Deviation Road expressed concerns with respect to the significant increase in the use of the road and the related liability and security for the current residents as well as the safety of those using the road as a trail. Reference by the landowners has been made to ongoing conflict between motor vehicles and cyclists; motor vehicles and tobogganists; and motor vehicles and hikers (especially in the winter months).

### **Consideration of Closing and Selling the Deviation Road**

On July 23, 2007 a Public Meeting was held with respect to a proposal to stop-up and close and sell the Deviation Road to fronting landowners. This application was supported by four of the five fronting landowners.

Opposition to any stop-up and close was expressed by members of the community who indicated that the Deviation Road represented a key link in connectivity between the Georgian Trail and the Loree Forest trail area and provided access to a unique view shed. In addition, the road allowance permits future flexibility for the continuation of infrastructure (utilities, trails, etc) that the Town may wish to install at some time.

Since the Public Meeting to consider a stop-up and close, Town Staff have been engaged in discussions, principally with Mr. and Mrs. Jones, related to resolving the concerns of the Jones' and addressing the concerns of the community. The Jones' concerns relate primarily to the existing Development Agreement and what they perceive as increased personal liability, due to a perceived increased use of the Deviation Road.

The Road Development Agreement was authorized for amendment by Council on September 27, 2010, so as to delete references to the actual construction and assumption provisions, which appear to be of lesser importance to the Jones'. The Jones' have requested that short-term risk management provisions be implemented by the Town prior to executing the Amending Agreement.

The Jones' have recently submitted additional correspondence dated April 19, 2011, further noting and detailing their concerns with the present state of affairs regarding the road section. (Attachment 2.)

### **Options to Consider at this Time**

Staff has reviewed the Deviation Road matter and have identified three options available to Council, it being noted previous consideration to close the road section met with opposition.

#### **1. Do Nothing**

This is a standard consideration in any Environmental Assessment consideration and can be considered as a starting point in this matter. The Road Development Agreement was executed by both parties in good faith and full knowledge of the area and growth potential. The Agreement recognizes the Town (former Township) as establishing parameters that would permit a residence to be built on a substandard road section and the Jones' as wishing to construct a residence on their property. Although acceptable to Staff, this option does not address the Jones' concerns over increased liability.

#### **2. Assume Winter Maintenance on the Deviation Road**

At the present time the Town is responsible for all maintenance of the Deviation Road except winter maintenance. The Town could provide winter maintenance. Winter maintenance would be provided by a private contractor due to topographical challenges. Staff have not yet researched avenues to bill back any winter maintenance costs to benefitting landowners. Staff are not recommending this option as it would include assuming of snow removal and winter maintenance costs explicitly excluded in the Agreement. The underlying reason for that exclusion has not changed.

#### **3. Restrict Winter Passage of Non-Resident Vehicles**

The *Municipal Act, 2001* enables the Council of a municipality to pass by-laws removing or restricting the common law right of passage by the public over a highway.

Council could restrict the use of the Deviation Road to local traffic only in an effort to reduce the number motorists and non residents using the deviation road during the winter control period. Restriction of non-resident vehicular passage during the winter season only is recommended at this time, as it appears that this type of traffic presents the greatest concern to the Jones. Pedestrian traffic would not be restricted. A draft By-law to restrict the common law right of passage by non-resident motor vehicles during the winter season is recommended by Staff in this matter. (Attachment 3)

The By-law is proposed to have an expiry date of fifteen years. This is recommended to accommodate any changes in the situation that might occur over time. It should be noted Council can repeal the By-law at any time or extend it following expiry.

The By-law only restricts passage on the portion of deviation road located in Lot 25, as this is the portion addressed by the Road Development Agreement. Landowners fronting the Deviation Road in Lot 24 have been included in Schedule “A” to the By-law as occupiers and users of the Deviation Road.

Enforcement of the By-law would not be pro-active but rather limited reactive given other priorities and limited resources of Staff. The By-law will establish an offence if any person is in contravention of its provisions. Staff recommends enacting a By-law to restrict common law right of passage during the winter season on the deviation portion of Camperdown Road South.

### **C. The Blue Mountains’ Strategic Plan**

Reduction of vehicular traffic on a challenging section of road located on the Niagara Escarpment would represent efforts to further the Town’s Strategic Goal No. 3, “Preserving and enhancing natural and environmental features and cultural heritage of the community” and address the concerns of the area residents.

### **D. Environmental Impacts**

Reduction of vehicular traffic would have a positive impact in an environmentally sensitive area and may address liability concerns of area landowners.

### **E. Budget Impact**

The costs associated with the preparation and erection of signage is less than \$1000.

### **F. Attached**

1. Map showing the Deviation Road, fronting properties and the deviation road in Lot 24
2. Correspondence from Barbara and Alan Jones dated April 19, 2011
3. Draft By-law to restrict passage over the Deviation Road.

Respectfully submitted,

***Jim McCannell***

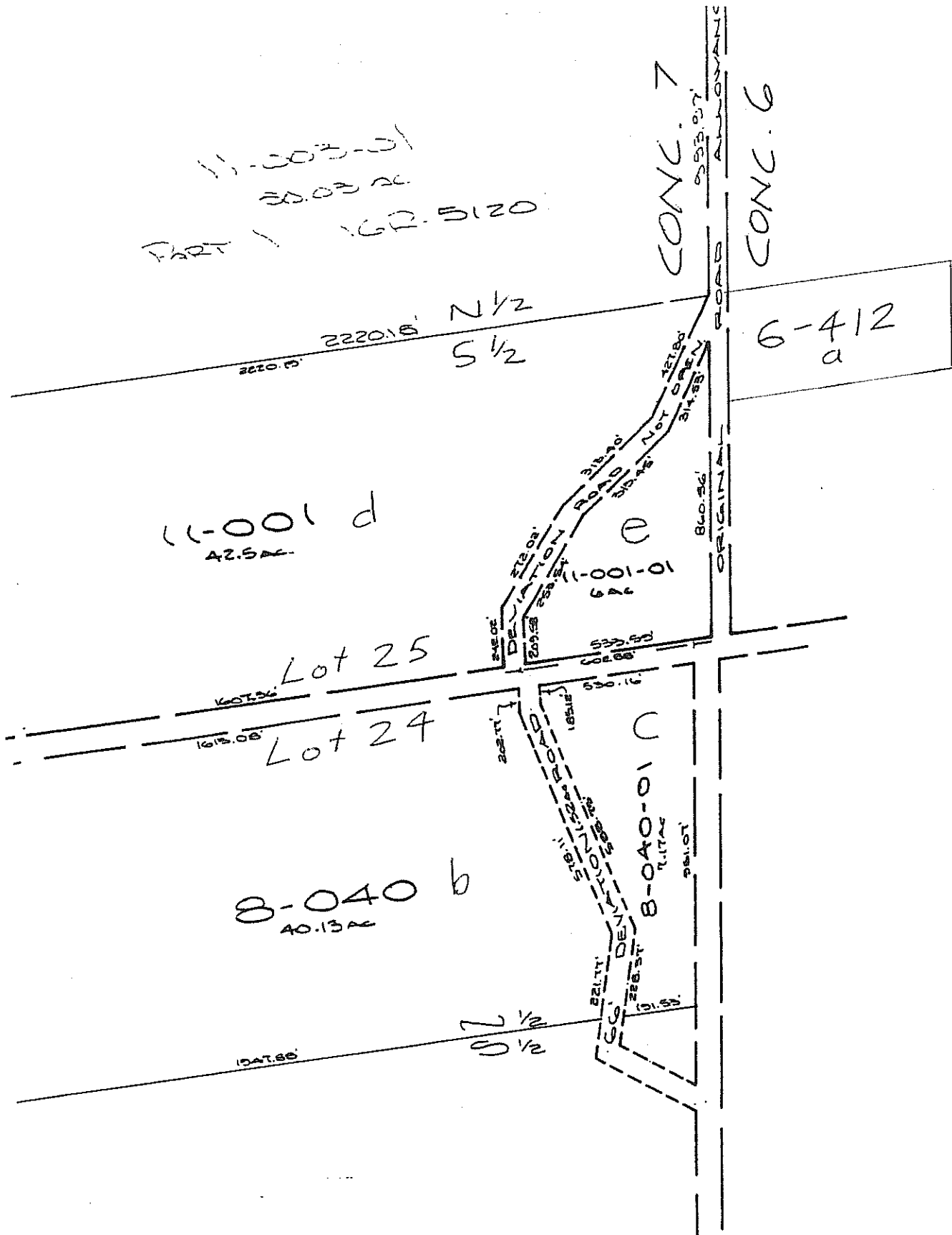
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***Reg Russwurm***

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Reg Russwurm  
Director of Engineering and Public Works



APR 20 2011

Barbara and Alan Jones  
101 Camperdown Road  
R.R. #2  
Clarksburg, ON N0H 1J0

April 19, 2011

Her Worship Ellen Anderson, Mayor  
Members of Town Council  
Acting CAO – Reg Russworm  
Town of The Blue Mountains  
26 Bridge St. E., P.O. Box 310  
Thornbury, ON N0H 2P0

**SUBJECT: CAMPERDOWN ROAD SOUTH - DEVIATION**

Mayor Anderson, Council, and Staff:

We would like to bring your attention to the long outstanding issues of liability and safety on the deviation portion of Camperdown Road South.

After having spent yet another winter with this most unpleasant experience, we have recently been advised, once again, that our “file” has been turned over to some other Town Staff member to review.

It has always been our hope that this situation could be sorted out with the Town and their staff and an acceptable agreement reached to suit all parties. We have been working toward such a solution for more than 10 years and we are no closer now. We have sent correspondence from ourselves and our lawyer explaining the situation. We have had countless meetings with many staff members who have been assigned this “file”.

We have attended public meetings at the Town’s request to address the various issues affecting this road, and still we have no resolution.

**A little History:**

In 1997/98, when we purchased our property to build our home, Camperdown Road South was an unmaintained track. We were advised by the Town that it would be our responsibility to build a road on the deviation right of way which would be constructed to municipal standards as a condition of obtaining a building permit for our home. The extent of this construction was to be from the old Wyler driveway up to a point on our property where our driveway accessed the road allowance. This agreement also included building a small turnaround area for Town vehicles. We built the road to the Town specifications, who approved the work and it was turned it over to the Town to assume for three seasons.

We were advised that we would be required to sign a document placing us responsible for the “Winter Maintenance” ( snowploughing...), and that we would be solely responsible for any activity occurring on this section of the road for the winter season.

cc: John Metas  
R. Russworm

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While we had concerns about agreeing to this, we were advised that if we did not agree, we would not be allowed a building permit. Being new to the area, we felt that the Town was acting in good faith and that this was a normal situation.

Further, since this road was only intended for the use of our family and the 3 other properties abutting this section of road (2 of which are vacant lots...), we agreed to what we felt at that time was an acceptable risk.

This is clearly no longer the case.

Approximately 10 years ago, after we had completed the required road construction, the Town, by not pressing the case, allowed Tom Kritsch, an absentee landowner of the property to the south of ours, to build a public trail on his property. It also did nothing to stop him from widening our turnaround to put in a parking area and add a driveway to his property (without a permit). This unauthorized and poorly drained driveway and culvert has caused the Town and us to deal almost yearly with the resultant spring runoff and associated road washout problems at the top of the road on the blind corner.

Mr. Kritsch's trail was promoted to the public, throughout the Town by Mr. Kritsch, himself; by Intrawest/Blue Mountain resorts to their hotel visitors and on at least one occasion during a "Trails" meeting that we attended several years ago.

This promotion immediately resulted in increased traffic, parking problems and a serious hazard for the many hikers, bikers and snowshoers using the road.

By not insisting that this trail and public parking be closed, the Town has added to our (and their,) liability exposure.

In addition, there have been several initiatives by a number of different organizations to "formalize" a trail over this section of road allowance to connect to the Loree Loop. This has naturally been met by us with great resistance because of our serious liability concerns. This initiative is at odds with the Town's official plan which states it is not allowed to have a trail on a road for obvious safety reasons. It is our understanding that Council has committed to not allow a trail to traverse this portion of the road, a position which we fully endorse.

Throughout this time, particularly during the winter months, we have experienced being forced off the road into the ditch by other vehicles; other vehicles being stuck in the ditch and at times abandoned while blocking the road to our home; pedestrians walking in the middle of the road, very nearly being hit on at least a dozen occasions by us or our visitors, particularly on the blind hill and at the blind corner. We regularly encounter families tobogganing on the road, and more recently snowmobilers and all terrain vehicles frequenting the road.

In the other three seasons, we have experienced several very close calls with bikes racing down the hill at high speeds, 2 or 3 abreast making it very difficult to miss them on such a narrow road.

**Residential Development:**

Although the trail problem and the issues it created are significant, the increased residential development approved and encouraged by the Town in the immediate area, specifically across the Camperdown “flats” has exacerbated the problem significantly. The increased traffic on this section of road, from the local homeowners and their guests, or visitors looking at real estate in the area, and those just driving up to look at the view has turned our quiet dead end roadway, which ends on our property, into a busy thoroughfare. It is not uncommon to have unfamiliar traffic drive right through our gates and into our lane up to the house. This is quite disconcerting to us, as we have no idea as to who these people are or their intentions.

During our attempts to resolve these issues, we have had several disturbing discussions over the years with Town Staff. It has been suggested that we could have portions of our property expropriated to support a trail across this section of roadway. A more recent Staff “proposal” was that if we wanted to help move things along, that we talk to our neighbour to convince them to hand over a corner of his property to the Town and they would consider taking the trail out on to the 7<sup>th</sup> Line. This manner of negotiating solutions to problems is, in our opinion, totally unacceptable.

In summary: The circumstances surrounding the original agreement have changed dramatically. We no longer have any control over what occurs on this section of roadway and this was not the original intention of this agreement.

As far as we are concerned, there are two logical and reasonable choices to resolving the current situation:

1/ The Town removes our liability and this agreement from title and assumes full responsibility for all road maintenance as it would any other local municipal road. As your winter maintenance people are aware, getting the proper equipment up and down this stretch of road in the winter months, is not a problem

OR

2/ The Town turn the road section in question over to the residents who directly abut it: The 5 families now involved are all in general agreement to condominiumizing the road, from below the “Wylers” driveway, just beyond the end of the pavement on Camperdown road.

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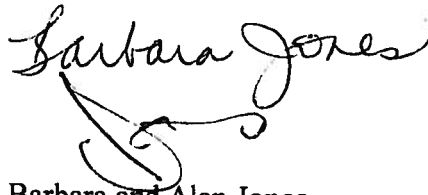
A decision needs to be made now by someone in authority because quite frankly we are running out of time and patience. We feel that we deserve better treatment than a 10 year stall in the face of legitimate concerns, and although we would like to avoid having to take this issue to a higher level we will be seeking legal remedies if we do not have a reasonable response by June 1, 2011.

We would be pleased to discuss this situation with you anytime after you have had an opportunity to review the details of our file. We can be reached at our office during the week at 519-893-1204 or via email [aljones@globestamping.com](mailto:aljones@globestamping.com) and [barbarajones@auscan.net](mailto:barbarajones@auscan.net).

We apologize for the length of this correspondence; however we wanted to make certain that the issues were properly and completely outlined so that you would have a full scope of the issue.

Thank you for your time. We look forward to your response.

Submitted with respect,

A handwritten signature in cursive script that reads "Barbara Jones". The signature is written in black ink and is positioned above the printed name.

Barbara and Alan Jones

c.c. Fred Heimbecker  
Heimbecker Law Offices

# THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

## By-law No. 2011 –

Being a By-law to restrict passage over a highway

**WHEREAS** sections 11 and 35 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, enables the council of a municipality to pass by-laws removing or restricting the common law right of passage by the public over a highway;

**AND WHEREAS** section 7 of the *Motorized Snow Vehicles Act*, R.S.O. 1990, chapter M.44, enables the Council of a municipality to pass by-laws prohibiting the operation of motorized snow vehicles within the municipality on highways or parts thereof under the jurisdiction of the municipality;

**AND WHEREAS** maintenance and liability matters relating to a portion of deviation highway located in Lot 25, Concession 7 was assumed by a private person through a development agreement executed with the former Township of Collingwood and an increased traffic volume on the portion of deviation highway has raised issues regarding maintenance and liability;

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

### 1. DEFINITIONS

“all-terrain vehicle” means an off-road vehicle that has four wheels, the tires of all of which are in contact with the ground, has steering handlebars, has a seat that is designed to be straddled by the driver, and is designed to carry a driver only and no passengers;

“motor vehicle” includes an automobile, a motorcycle, a motor-assisted bicycle and any other vehicle propelled or driven otherwise than by muscular power, but does not include a street car or other motor vehicle running only upon rails, a power-assisted bicycle, a motorized snow vehicle, a traction engine, a farm tractor, a self-propelled implement of husbandry or a road-building machine;

“motorized snow vehicle” means a self-propelled vehicle designed to be driven primarily on snow;

“occupier” includes a person who is in physical possession of the land, or a person who has responsibility for and control over the condition of land or the activities there carried on, or control over persons allowed to enter the land, even if there is more than one occupier of the same land;

“off-road vehicle” means a vehicle propelled or driven otherwise than by muscular power or wind and designed to travel on not more than three wheels, or on more than three wheels and being of a prescribed class of vehicle;

“winter control period” means the period of time beginning on November first of any year and extending to April fifteen of the subsequent year and during which winter maintenance on the deviation road in Lot 25, Concession 7 shall be performed by private persons.

2. During the winter control period, other than the occupiers of land identified by Municipal Property Assessment Corporation Assessment Roll Number on Schedule “A” to this By-law, which is hereby declared to form part of this By-law, or persons invited by occupiers of land identified on Schedule “A”, **no person shall** operate a motor vehicle, a motorized snow vehicle or an off-road vehicle on that portion of a deviation public highway located in Lot 25, Concession 7.



Schedule "A"

By-law No. 2011 -

Occupiers of Land or Persons Invited by Occupiers of Land Identified by the Municipal Property Assessment Corporation Assessment Roll Numbers Listed Below are Exempt From the Provisions of this By-law:

Parcel a	42 42 000 6 412
Parcel b	42 42 000 8 040
Parcel c	42 42 000 8 040 01
Parcel d	42 42 000 11 001
Parcel e	42 42 000 11 001 01