

For many years, the subject section of the 6/7 Sideroad has been used to access farm and logging lands and as a recreational access. One landowner in the area fronting the subject road section, Mr. Douglas Mathews, has in the past requested improvements to the road to better facilitate logging and agricultural vehicle access to his properties. The most recent correspondence dated October 7th 2010 in this regard is attached as Attachment 2.

The subject road section has also recently been utilized as part of an off-road vehicle tour route.

There are no buildings or homes accessed by the road section proposed for closure. Existing residential properties in Concessions 1 and 2 currently front the portions of 6/7 Sideroad that are fully maintained. The easterly Mathews property in Concession 1 would have frontage on the maintained portion of the 6/7 Sideroad. The westerly Mathews property in Concession 1 and the lane way to the Osler Bluff Ski Club will continue to front a seasonal road. The westerly Schooner Corporation property created by the deviation road in Concession 1 (in which Mr. Mathews has an interest) does front the portion of highway allowance and deviation road proposed to be closed.

The municipality has an obligation to maintain the road section in a state of repair that is reasonable in the circumstances, including consideration of the character and location of the highway if it is retained in the highway inventory. Reconstruction of the subject road section to allow full maintenance would represent a significant cost for what would be a very low traffic volume road section.

Options to Consider at this Time

Staff have reviewed the subject road section and have identified three options available to Council.

1. Do Nothing

This is a standard consideration and can be a starting point in this matter. The subject road section provides access to a single landowner with no residential development on said lands. The “do nothing” option does not address the property owner’s concerns around access. At the same time it does not address the Town’s liability or responsibility for future road maintenance. Therefore, this option is not recommended.

2. Close and Sell the Subject Road Section Allowance

The subject road section could be considered for closing and sale, however, sale of the deviation and original road allowance section would prevent the municipality from considering any future uses such as a recreational or infrastructure corridor over the escarpment, and for those reasons, this option is not recommended.

3. Close the Subject Road Section as a Public Highway

The *Municipal Act, 2001* enables the Council of a municipality to pass by-laws to close any portion of a public highway. The road section east of the Osler entrance, shown in red on attachment #1, will be captured with this proposed By-law and will be Closed. If Closed, the Deviation and Original Road Allowance portions would no longer be public highways within the meaning of the Municipal Act but would remain as Town owned lands, subject to any land use agreement(s) Council might consider. It should be noted vehicular use of these lands would only be permitted by land use agreement. The agreements would detail the responsibility of the second party as to maintenance, security liability and the process to construct any improvements desired. The agreements would also require the second party to provide a minimum of \$5,000,000 insurance coverage with the Town named as an additional insured and to indemnify and save the Town harmless regarding their use of the subject road section.

The lands above the escarpment ridge can be kept passable for emergency vehicles at the discretion of the Roads and Drainage Manager. This area is shown in yellow on Attachment #1. The estimated one time cost for gravel and brushing for this purpose is estimated to be \$6700 and can be absorbed in the operating budget. Several large stones will also be placed at the end of the seasonal road section to have the same purpose as the stones placed along the Georgian Trail.

Staff Report EPW.11.061 recommending this option was first considered by Committee on June 14, 2011. The Committee directed Staff to further review the matter and report back to Committee because the adjacent land owner, Mr. Douglas Mathews sought ownership of the road allowance or a unique land ownership transfer agreement. Staff subsequently met with Douglas Mathews and his solicitor, Vic Vandergust. The identified options were reviewed and further considered.

Following the aforementioned meeting, Staff concurred that the original recommendation to close the subject portion of 6/7 Sideroad east in Concession 1 (shown in red, Attachment #1) would remain the favoured action in moving forward in this situation. The closure and sale of the road allowance are not considered to be in the Town's best interests as the lands may be needed in the future as a transportation linkage or utility corridor over the escarpment. Exclusive use of the lands by a single landowner is complicated and will restrict access by others. As well, enforcement of such an agreement could be difficult and costly. Any unique land ownership transfer agreement will be administratively difficult to monitor and may become lost to corporate memory as time goes by. Furthermore, Mr Mathews does have access across to his lands from the 6/7 Sideroad both above and below the escarpment ridge. Mr Mathews may need to consider the use of internal roads to secure exclusive use.

In the case of the off-road vehicle tour operator, it is not believed any road improvements would be sought as part of a land use agreement. Mr. Matthews however may wish to undertake improvements under such an agreement may result in incompatible land use.

At this time Staff recommend enacting a By-law to close a portion of 6/7 Sideroad east in Concession 1 and entering into a land use agreement with interested parties who wish to utilize the Town lands. A draft by-law is provided as Attachment 3.

C. The Blue Mountains' Strategic Plan

The enactment of this By-law furthers the Town's Strategic Goal #2, "Addressing the Town's municipal infrastructure needs" and furthers the Town's Strategic Goal #3 "Preserving and enhancing natural and environmental features and cultural heritage of the community".

D. Environmental Impacts

Formally closing the subject road section will result in less vehicular activity than at present and therefore less impact on a sensitive area would be realized.

E. Financial Impact

The costs associated with the preparation and erection of signage is less than \$1000. The cost of one time access improvements to lands above the escarpment ridge for emergency vehicle access to the intersection with the Bruce Trail are \$6700 as defined below.

Brushing and tree removal	
Tractor (9hrs)	\$900
Chipper (9hrs)	\$400
3 labours (9hrs)	\$1200
Gravel	\$2,000
Trucking	\$1,700
Backhoe	\$500
Total	\$ 6,700

These costs will be absorbed in the 2012 Roads and Drainage Operations Budget.

F. In Consultation With

The Town's Solicitor

G. Attached

1. Map of 6/7 Sideroad- Area of Interest Map.
2. Correspondence from Victor L. Vandergust, solicitor, on behalf of Douglas Mathews dated October 7, 2010.
3. Draft By-law to close the subject road section.

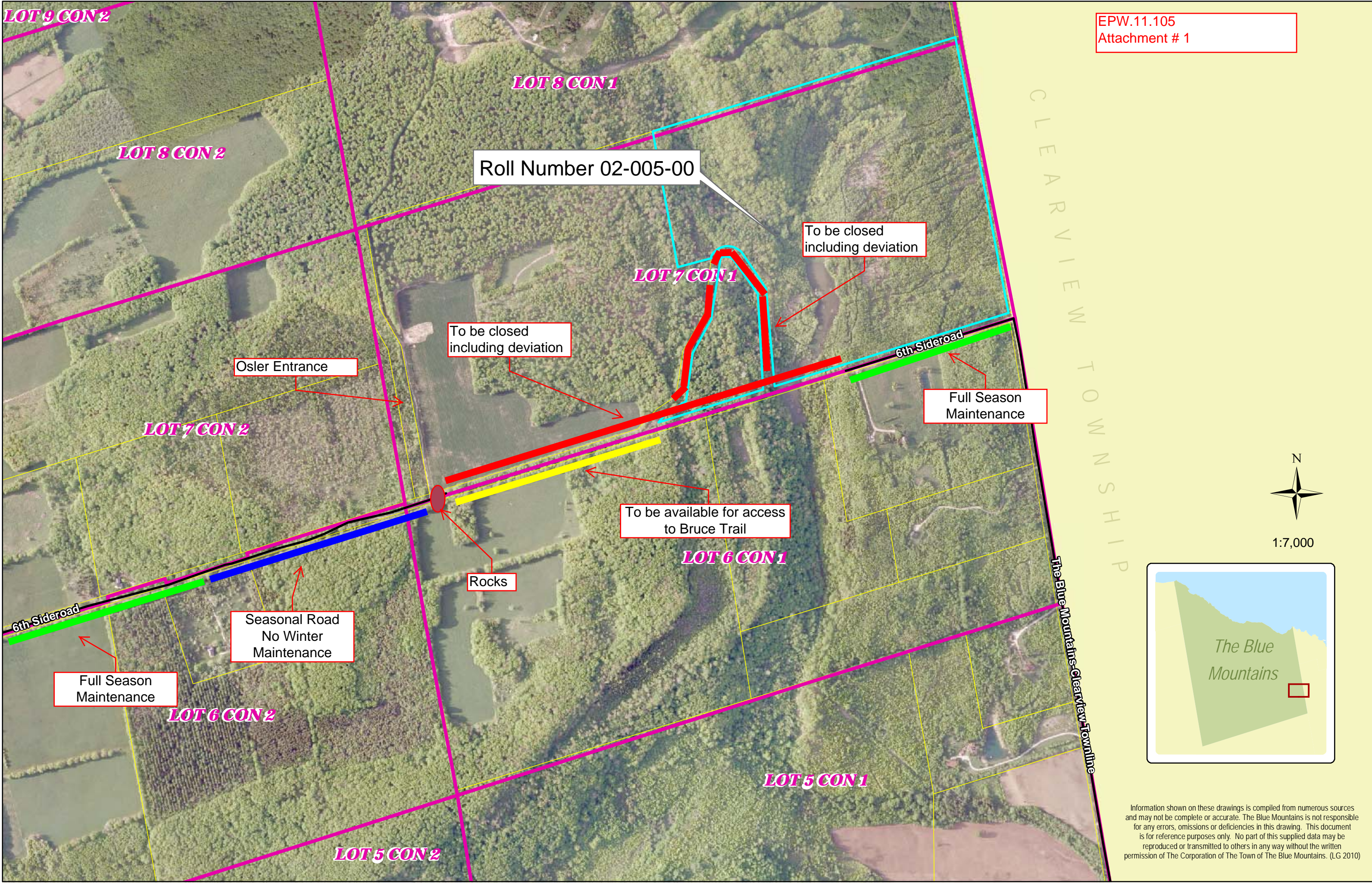
Respectfully submitted,

Jim McCannell

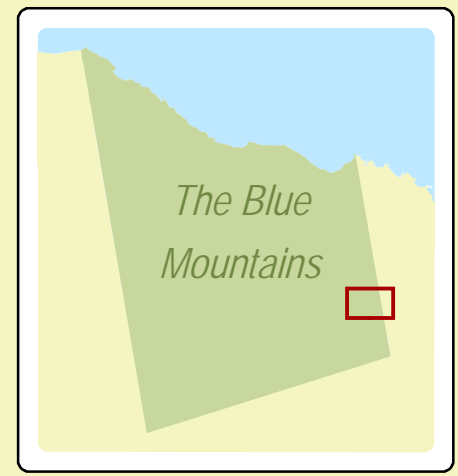
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Reg Russwurm

Reg Russwurm
Director of Engineering and Public Works



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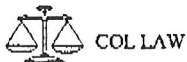


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VICTOR L. VANDERGUST
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October 7, 2010

By fax to 519-599-7723 ✓

Town of the Blue Mountains
Box 310, 26 Bridge Street East
Thornbury, ON N0H 2P0

Attention: *Clerk*
and to:
Chair of Infrastructure and Recreation Committee

Dear Sirs:

RE: **DOUGLAS C. MATTHEWS – 6/7 SIDEROAD AND DEVIATION ROAD, LOT 7, CONCESSION 1, TOBM**

RECEIVED
OCT 14 2010
ENGINEERING & PUBLIC WORKS
TOWN OF THE BLUE MOUNTAINS

I have been retained by Douglas Matthews with respect to the above.

I understand that there is an Infrastructure and Recreation Committee meeting to be held from 7:00 p.m. to 9:00 p.m. on November 9, 2010 at which time Mr. Matthews and I will attend if matters are not resolved prior. If there is a change once again in this date, please advise promptly.

With respect to the merits of the matter, I would be obliged if Mr. Matthews and I in advance of the meeting could meet with the Municipal solicitor and someone from the roads department with knowledge of the matter.

It would appear to me that this road is required by him for access with his farm equipment and vehicles to maintain the farm in that area. Of course, you would be aware that he received a Building Permit on what once used to be a well traveled road and the maintenance is now minimal or none. It is simply not understood why he cannot at least receive minimal maintenance to access his farm and I would hope that institution of legal action in this regard, and the expense involved, would not be required.

Can you pass this onto your solicitor and see if we can arrange a meeting but still keep it on the agenda in the meantime.

Yours very truly,

VICTOR L. VANDERGUST

VLV:tc

cc Douglas Matthews (by fax to 444-5460) ✓

✓
CC: R. Russworm
J. McCarne U

**THE CORPORATION OF THE TOWN OF
THE BLUE MOUNTAINS**

By-law No. 2011 –

Being a By-law to close a portion of public highway

WHEREAS sections 11 and 34 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, enables the council of a municipality to pass by-laws to close public highways or a portion thereof;

AND WHEREAS it is deemed expedient to close a portion of the 6/7 highway allowance and the deviation highway portion in Concessions 1 and 2 as a result of one portion never having been formally assumed for maintenance purposes and the other portion never having received winter maintenance, both due to historic, substandard construction and challenging topography;

AND WHEREAS notice of Council intent to consider the subject By-law was given in accordance with Corporate Policy POL.COR.07.03, Provision of Notice and Manner of Giving Notice to the Public;

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

1. The 6/7 public highway allowance and deviation highway portion in Concession 1 is hereby closed between the following two points:
 - i) a point 375 metres west of The Blue Mountains – Clearview Townline, and
 - ii) a point 1,400 metres east of The Blue Mountains 2nd Line.
2. This By-law shall not take effect until a certified copy is registered in the proper Land Registry Office.

Enacted and passed this day of , 2011

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Ellen Anderson, Mayor

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Corrina Giles, Clerk