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**Date:** July 26, 2021

**To:** Committee of the Whole

**Author:** G.A. Plancke / Director of Infrastructure & Engineering

**RE:** Albuna Townline Road South Unopened Road Allowance

**Report No.:** IED 2021- 33

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## **RECOMMENDED ACTION**

That Council approve Bylaw 2021-76 A by-law to restrict the public use of unopened road allowances, highways, street, alleys and lanes in the Town of Kingsville and that Council provide direction to administration with respect to use the Albuna Townline South Unopened Road Allowance.

## **BACKGROUND**

Road Allowances are typically 66-foot (20m) strips of land either made by a Crown surveyor and shown on an original Town survey or identified in a registered plan of subdivision. Generally speaking, there are four types of road allowances:

Type	Description
Opened and Assumed	A public road.
Opened and Unassumed	Typically, a road under development and not yet owned by the municipality.
Unopened	A public strip of land reserved for the future development of a road.
Closed	The closing of a public road through the passing of a By-law. The municipality can retain the property or convey it to abutting property owners.

Albuna Townline Road south of Centennial Crescent is an unopened road allowance that borders Kingsville and Leamington (See Map in Appendix A). It is 66 feet (20m) wide by approximately 830 feet (253m) in length and terminates at Lake Erie. The property steeply declines as it approaches the water with an abrupt 15-foot (4.5m) drop at the lake. A majority of the road allowance is unmaintained and exists in a naturalized state.

In 1988, the Township of Gosfield South (Kingsville) entered into an agreement with three (3) property owners in the Township of Mersea (Leamington), granting them a right-of-way along the first 332.1 feet (101m) of the unopened road allowance. They constructed a paved laneway, which they use as an access point for their homes. Provisions within the agreement specify that these property owners must maintain this portion of the right-of-way at their own expense.

Several residents (Referenced as Lot 34 Owners) in the nearby subdivision own a 1/37<sup>th</sup> share of vacant waterfront property in the vicinity of the unopened road allowance. Included within the purchase agreement for the undivided 1/37 interest in Lot 34, is an easement to access the land through an easement off Centennial Drive. However, these residents have been using the road allowance as the primary access to their property. (See attached Map in Appendix A).

Recently, these two parties have disagreed on access rights to use the Town-owned unopened road allowance. Kingsville residents have brought their concerns to administration and are requesting that Town Council grant access.

## **DISCUSSION**

Generally speaking, the public has right of access to, over, and along unopened road allowances. However, this right of access does not carry with it the right to make improvements or alterations to the land without consent from the Corporation. Some municipalities have adopted by-laws limiting the modification of unimproved unopened road allowances to minimize liability claims and demands that such unopened road allowances be improved and maintained at the expense of general taxpayers.

In this case, both parties have made alterations within this road allowance without permission from the Town. In fact, this dispute escalated when trees were fallen by one party to block a rudimentary walking path constructed within the road allowance by the other party. The Town has many unmaintained unopened road allowances and properties. To discourage residents from making alterations without consent from the Town, administration is recommending that Council place restrictions on their use by the public. (Appendix B).

Concerning the request from the owners of Lot 34 to use this road allowance to access their property, several things should be considered:

- Lot 34 does not directly abut the road allowance, meaning the owners have to travel over private property to access their beach lot.
- The Town is under no legal obligation to provide beach access to the water because there is a readily established alternative. In this case, the owners of Lot 34 have deeded access through an easement off Centennial Drive (Appendix A). While it may be costly to establish an entry point through this easement, case law states that the Town is only obligated to allow public access if it is impossible to build alternate access at another location.

- There are liability concerns if the Town implicitly or explicitly allows the use of the unopened road allowance by the Centennial Residents. The property is overgrown, and there are significant grade changes as it approaches Lake Erie. O.Reg 413/12: Integrated Accessibility Standards states that beach access routes should be constructed with edge protection and have a maximum clear running slope of 1:10 (Attached in Appendix C). The pathway constructed by the owners of Lot 34 does not meet any of these standards. As such, there are legitimate risks associated with allowing residents to use this property in its current unmaintained state.

#### Options for Councils Consideration:

##### 1) Open the road allowance

Open the road allowance and allow public access to the beachfront. This would require the construction of a switchback trail that meanders down the embankment. Allowing the public to travel over the right-of-way granted to the Leamington residents could nullify the maintenance provisions within the agreement. Meaning the Town could become responsible for upkeep of the entire road allowance, in addition to the trail.

##### 2) Close the road allowance

An unopened road allowance, such as that on Albuna Townline Road S, as defined by the Municipal Act, is technically a 'Highway.' A highway under the municipality's jurisdiction, and Council has the legal authority to close it if there is no present or anticipated future public use. The Town could convey the land to abutting property owners or retain ownership of the property and restrict the public's common law right of passage over it.

##### 3) Easement Agreement

The Town could enter into an agreement with the residents who own Lot 34, granting them a right-of-way through the road allowance to the beach. The contract should include provisions indemnifying the Town from personal injury and/or property damage claims. Furthermore, the applicants should be required to acknowledge in writing that the Town assumes no responsibility whatsoever to construct and/or maintain that portion of the road allowance.

Lot 34 owners would have to travel through the existing right-of-way granted to the Leamington properties. This may nullify the original agreement between the Leamington residents and Kingsville, and absolve them of their responsibility to maintain that portion of the road allowance.

Council should also be reminded that there is a geographic gap between the end of the unopened road allowance and Lot 34. The road allowance does not provide direct

access to the property, making it necessary for residents to cross private property to access their beach lot.

## LINK TO STRATEGIC PLAN

To promote a safe community.

## Link to Council 2021-2022 Priorities

☒ No direct link to Council priorities

## FINANCIAL CONSIDERATIONS

Options	Estimated Costs	Risk and Liability
Open	<ul style="list-style-type: none"><li>- \$461,750.00 quote provided for the construction of a switchback trail meeting AODA standards.</li><li>- On-going operational costs for maintenance of the pathway and property.</li></ul>	Highest
Close	<ul style="list-style-type: none"><li>- \$250.00 for installation of no trespassing signs.</li></ul>	Lowest
Agreement	<ul style="list-style-type: none"><li>- Costs for surveying the property and drafting the agreement to be paid for by the requestors.</li><li>- Potential operational costs associated with maintaining the laneway should the existing agreement with the Leamington residents become invalid.</li></ul>	Medium

## CONSULTATIONS

Town Solicitor  
Infrastructure and Engineering Department

Respectfully Submitted,

*G.A. Plancke*

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