



OFSC TRAIL AT GERVAIS ROAD

Report from Public Works

February 8, 2024

Topics

- Purpose of the session
- Concerns brought forward by the residents
- History
- Stake Holders
- Legal Notes

Purpose of the session

- A number of complaints have been noted by the residents in the area of Gervais Road regarding the trail plan which runs along the unmaintained section of Gervais Rd.
- The goal for this presentation is to be an unbiased presentation of the facts surrounding the current trails, agreements and requirements.
- At the conclusion of the presentation there will be some time for residents who have registered to speak to the council for 10 minutes each to add to the information gathered here.

Concerns brought forward by the residents

- Vandalism on the properties
- Trespassing
 - Concerns with people going off the trail
 - Concerns that the trail is on private lands
- Hunting on private lands
- Garbage left on the property
- Drinking on the trails

Concerns Brought forward by the St. Charles Snowmobile Club

formerly the West Nipissing Snowmobile club

- This is a critical section of trail for the club
- The club brings revenue to the towns as tourism income
- The club maintains the section of road providing brushing to keep the trail from growing in which could be used as off-season access for forest fires or medical evacuation.
- The club would prefer to be off the road as it is safer
- Areas with a land use permission are covered under liability insurance
- The trail is maintained by the volunteers including garbage removal.
- Willing to work with the township to verify the trail has had all litter cleaned up as a final inspection.
- Has provided proof of insurance and proof as a member in good standing with the OFSC.
 - This information is available on request, and has not been requested as part of prior agreements.

History

- Sporadic use and maintenance of trails in the area since ~1980
- Amalgamation 1999
 - List of roads adopted from bylaw 1999-35 Establish and Rename Roads
- 2004-28 Bylaw to establish official road classifications and rate of speed within the Municipality of Markstay-Warren
 - Adopt maintenance standards – Road was not registered as a maintained road
- First land use agreement was made with Denis Turcot in 2010. Mayor was Sonya Flynn at the time.
- June 20 2016 Bylaw 2016-19 Bylaw setting roads as seasonally maintained and unmaintained.
 - Schedule B Indicates the section from Gervais Rd starting at the land fill to Langlois Road as unmaintained.
- November 15 Petition received to close the unmaintained section of Gervais Rd.
- November 24 2016 Agreement proposed with Marc David and surrounding neighbours Resolution 2016-207 that a gate be erected and the snowmobile activity is allowed to continue
- October 4th Marc David contacted the CAO regarding the status of the plan.
 - Resulted in this investigation
 - Additional complaints in the mean time
 - Spoke with stake holders and past staff regarding the resolutions made and additional details.

Excerpt from 1999-35

THE CORPORATION OF THE MUNICIPALITY OF
MARKSTAY-WARREN

BY-LAW 99-35

Being a by-law to establish road names
within the Municipality of Markstay-Warren.

READ A FIRST AND SECOND)

TIME THIS 29TH DAY OF)

SEPTEMBER, 1999.)


MAYOR


CLERK

READ A THIRD TIME AND)

FINALLY PASSED THIS 27th)

DAY OF October, 1999.)


MAYOR


CLERK

ROAD NAME	FROM	TO	OLD NAME
Firefly Road	Highway 535 Lot 1 Con. 4 Twp. of Hagar	East limit of road leading into remainder of Pcl. 24393	
Frappier Road	Munro Road Twp. of Henry	North limit of road at the turn-around in Con 2, lot 1, pcl 16107	
Front Street	Main Street South Twp. of Hagar	Northwest limit of Road into Pcl. 35523	
Gervais Road	Intersection of MacKannas Road and Nipissing Road Twp. of Dunnet	South to intersection of Langlois Road	
Gignac Road	Tex's Road at the boundary line of Con. 5 and 6 Lot 9 Twp. of Hagar	West to the Veuve River leading into Pcl. 1235	
Gratton Street	Highway 17 Con. 5 Lot 12 Twp. of Awrey	North from Highway 17 Plan M411 going East and West to Pcl. 31377 and Pcl. 35425 "A"	Elbow East and Elbow West
Griffith Road	Intersection of Munro Road at Con. 4 Lot 1 Twp. of Ratter	Westerly limit of road ending at Pcl. 11606 North limit of Lot 4	
Hagar Street	Main Street South, Twp. of Hagar	Northwest limit of road ending in the Northeast corner of Pcl. 35523	
Hawthorne Street	Main Street North, Twp. of Hagar	Spruce Street	
Hill Street	Pioneer Street West Twp. of Hagar	West limit of Road at Pcl. 37518	

Excerpt from 2016-19

THE CORPORATION OF
THE MUNICIPALITY OF MARKSTAY-WARREN



BY-LAW NO. 2016-19

BEING A BY-LAW SETTING OUT SEASONAL MAINTENANCE SERVICE LEVEL FOR CERTAIN CLASS 6 ROADS AND PORTION THEREOF AND SETTING OUT NON-MAINTAINED ROADS

READ A FIRST AND SECOND TIME

THIS 16th, DAY



OF MAY, 2016

) 
) Mayor
) 
) Clerk

READ A THIRD TIME

AND FINALLY PASSED THIS 20th, DAY

OF June, 2016

) 
) Mayor
) 
) Clerk

SCHEDULE "B"
TO BY-LAW 2016-xx
NON MAINTAINED ROADS

Road	Length(km)	From	To
Eden	2	Griffith Rd	end
Nipissing Road	1.67	2099 Nipissing Rd	Richer Rd
Gervais Rd	3	Langlois Rd	405 Gervais (Landfill Site)
Simon Rd	2.24	22 Simon Rd	End
Second Concession	2	Tex Rd	End
Cardinal Rd	0.8	Long Rd	End
Pacific Street*	.2	Main St	End
* Pacific Street if and when is confirmed as a private road, will be identified as such by means of sign at the entrance to Pacific Rd and be no longer considered a municipal road.			
Molloy Road	1.6	Rabbit Trail Rd	End

Current Agreements

- Signed on Feb 3 2021 with West Nipissing Snowmobile Club
 - For the trail crossing the lands of 405 Gervais Rd.
- Signed on Feb 5 2021 with the St. Charles West Nipissing Snowmobile Club, now the St. Charles Snowmobile Club.
 - For Richer Rd., Gervais Rd, Nipissing Rd., Pine Poultry Rd.
- Both agreements are valid until revocation. The agreement requires 60 days notice.

Stakeholders

- Landowners on either side of Gervais Rd.
- Landowners on Langlois Rd.
- West Nipissing Snow Machine Club
- St. Charles Snow Machine Club
- Ontario Federation of Snowmobile Clubs OFSC
- Ontario Provincial Police
- Municipality of Markstay-Warren
- Crown Surveyor

Legal Notes

- Validity and ownership of the road
- Validity of the agreement between the town and the snowmachine club
- Validity of the resolution passed by council on November 2016
- Process of closing a road and reverting it back to the land owners.
- Responsibility for trespassing and other illegal actions
- Requirements of the snow machine club
- Consequences of revoking the land use permission without closing the road.

Validity and ownership of the road

- The road has been adopted by bylaw during amalgamation
- The road falls within the concession lines of existing roadways
- The road has been used by the public (in the form of a trail)
- Under the Road Access Act R.S.O. 1990 Amended by 2009 Sch.23
 - This would define the road as a common road
 - Further
 - “(2) No person shall construct, place or maintain a barrier or other obstacle over a common road that as a result prevents the use of the road unless,
 - a) The person has made application to a judge for an order closing the road and has given ninety days' notice of the application to the parties and in the manner directed by this Act and the judge has granted the application to close the road; or
 - b) The closure is of a temporary nature for the purposes of repair or maintenance of the road.”

Validity and ownership of the road

- Further from case law, the following excerpt has been taken from “Russell on roads” a collection of case law regarding roads:
 - 2.5 Public Highways: Whether Opened or Not
 - Original road allowances, (i.e., concession roads, sideroads, shore road allowances, etc.) whether “opened” or “not opened”, “used” or “not used” are public highways until closed according to law. Yes, even when they extend over the most inhospitable terrain. In the original surveys of townships after the first decade of the late 1800s, most side roads were laid out at every fifth lot running at right angles to concession roads. These were one chain in width (66ft., 20.1m).
- Regardless of whether the road has an active survey, it is a valid road in the town of Markstay-Warren. It is an unmaintained road but has not been closed.

Agreement between the Municipality and the Snowmobile Clubs

- The agreement has been executed on public lands by previous CAOs which have the authority to enter into an agreement.
- Entering into an agreement provides insurance and responsibilities to be enforced on the areas crossed by the clubs.
- The agreement was further re-enforced by resolution 2016-207 to allow the club to continue access.
- The club has fulfilled the requirements of the agreement to the satisfaction of the town to this point and is willing to provide more information and allow more oversight if required.

Process of Closing a Road

- The road must be closed in court by a judge.
- A notice of an application shall be published once a week for a period of 4 successive weeks in a newspaper circulated in the area in which the proposed road closure is located, the last publication to be not less than ninety days before the date fixed for the hearing of the application, and any person who uses the road is entitled to be a party to the proceedings of the application.
- Conditions for closing the road:
 - The closure of the road is reasonably necessary to prevent substantial damage or injury to the interests of the applicant or for some other purpose in the public interest.
 - A judge may put conditions on the closing of the road as they deem reasonable.

Responsibility for trespassing and other illegal actions

- Actions which are enforced as a matter of law include:
 - Trespassing
 - Vandalism
 - Theft
 - Impaired operation of a snowmachine or other motorized vehicle
 - Hunting on private property
- These are not enforced by the Municipality and are not the legal responsibility of the Municipality. These items are enforced by police. Where individuals are acting against the law, it is important to call 911 and have the police attend.

Requirements of the Snowmobile club

- Maintain good standing with OFSC
- Maintain liability insurance for the trail system
- Insurance does not cover willful negligence on the part of the land owner
- Will have access prior to and after the winter season for the purposes of preparing and maintaining the trail and taking down the trail at the end of the season.
- Will maintain the trail in reasonably good condition for snowmobiling. This includes proper signage.
- Is authorized to cooperate with local law enforcement agencies in their efforts to supervise and enforce the uses defined within the agreement regarding the trespass act and the motorized snow vehicles act.

Consequences of revoking the land use permission without closing the road.

- The land use permit provides insurance and permission for individuals to perform maintenance along the roadway.
- Removing the land use permit does not close access to the road.
- Removing the land use permit does not prevent access by the public.

QUESTIONS FROM COUNCIL?