

Municipality of Boissevain-Morton

By-Law 2022-004 - Municipal Road Allowances

Being a By-Law of the Municipality of Boissevain-Morton with respect to undeveloped, unimproved or previously cultivated road allowances or portions thereof.

WHEREAS concerns have been expressed about the decreasing amount of land in its natural state, and a decreasing amount of land available for wildlife habitat;

And WHEREAS there is an extensive portion of road allowances within the Municipality which are not at the present time required for public roads or highways;

And WHEREAS it is deemed advisable and in the best interest of the citizens of the Municipality to enact a By-law prohibiting removal and disposition of Crown timber, grass, hay, brush or weeds; for preserving timber, trees, grass, and other material in or upon road allowances within the Municipality and prohibiting encroachment or nuisances on road allowances and providing for the maintenance and preservation of any road allowance or portion thereof in its natural or uncleared state deemed by Council to be beneficial to the Municipality.

And WHEREAS Division 2 and 3 of Part 7 of The Municipal Act C.C.S.M. c. M225 provides, in relevant part, states in Section 231 that "The power given to a council under this Division to pass by-laws is stated in general terms" as follows:

- a) To give broad authority to the council and to respect its right to govern the municipality in whatever way for the council considers appropriate, within the jurisdiction given to it under this and other Acts; and
- b) To enhance the ability of the council to respond to present and future issues in the municipality";

And WHEREAS Section 232 (1) provides that "A council may pass by-laws for municipal purposes respecting the following matters:

- a) "The safety, health, protection and well-being of people, and the safety and protection of property;
- b) People, activities and things in, on or near a public place or a place open to the public, including parks, municipal roads, recreation centres, restaurants, facilities, retail stores, malls, and private clubs and facilities that are exempt from municipal taxation;
- c) The enforcement of by-laws"

And WHEREAS Section 232 (2) provides, as follows:

"Without limiting the generality of subsection (1), a council may in a by-law passed under this Division

- a) regulate or prohibit"

And WHEREAS Section 236 a by-law passed under that clause may include provisions as follows:

- a) "Providing for procedures, including inspections, for determining whether by-laws are being complied with; and
- b) Remedying contraventions of by-laws, including
 - i) Creating offences,
 - ii) Subject to the regulations, providing for fines and penalties, including the imposition of a penalty for an offence that is in addition to a fine or imprisonment, so long as the penalty relates to a fee, rate, toll, charge or cost that is associated with the conduct that gives rise to the offence, or related to enforcing the by-law,
 - iii) Providing that an amount owing under subclause (ii) may be collected in any manner in which a tax may be collected or enforced under this Act,
 - iv) Seizing, removing, impounding, confiscating and selling or otherwise disposing of plants, animals, vehicles, or other things related to a contravention,

v) Charging and collecting costs incurred in respect of acting under subclause (iv),

vi) Imposing a sentence of imprisonment for not more than six months for the commission of offences or nonpayment of fines”

And WHEREAS Section 242 (1) states “If a designated officer finds that a person is contravening a by-law or this or any other Act that the municipality is authorized to enforce, the designated officer may by written order require the person responsible for the contravention to remedy it if, in the opinion of the officer, the circumstances so require”;

And WHEREAS Section 242 (2) provides that “The order may:

- a) Direct a person to stop doing something, or to change the way in which the person is doing it;
- b) Direct a person to take any action or measure necessary to remedy the contravention of the Act or by-law, including the removal or demolition of a structure that has been erected or placed in contravention of a by-law and, if necessary, to prevent a reoccurrence of the contravention;
- c) State a time within the person must comply with the directions; and;
- d) State that if the person does not comply with the directions within a specified time, the municipality will take the action or measure at the expense of the person”;

And WHEREAS Section 243 (2) provides that “The order may;

- a) State a time within which the person must comply with the order; and
- b) State that if the person does not comply with the order within the specified time, the municipality will take the action or measure at the expense of the person;

And WHEREAS it is deemed desirable to regulate and prohibit certain activities on undeveloped road allowances within the Municipality;

NOW THEREFORE The Council of the Municipality of Boissevain-Morton, in open meeting duly assembled, enacts as follows:

SECTION I – DEFINITIONS AND INTERPRETATION

1.0 This By-Law shall be referred to as the “Municipal Road Allowances By-Law”

1.1 For the purposes of this By-Law, definitions are as follows:

“Municipal road” means land that

- (a) Has been opened under section 289 of the Municipal Act, or opened, dedicated or reserved under any other Act, as a road for public use; and
- (b) Has not been closed under section 290 of the Municipal Act or any other Act, and includes a road allowance, street lane, thoroughfare, walkway, bridge and underpass, but does not include a departmental road as defined in the Transportation Infrastructure Act.

“Road allowance” means road allowances or such portions thereof which are, at the date of enactment of the within By-Law; Undeveloped and unimproved by the Municipality as a roadway and which have not been wholly cleared or cultivated for all or part of their width; (99 ft) or Whether developed or improved by the Municipality or not have a passage way or route for pedestrian or vehicular traffic but are bordered for part or all of their width with natural grown or have not been otherwise wholly cleared or cultivated. In addition, road allowances that have been wholly cleared and cultivated are included under this definition of a road allowance.

SECTION 2 – SCOPE

2.0 This By-Law shall apply to all municipal road allowances located within the Municipality of Boissevain-Morton. See attached “Schedule A” showing a map of all road allowances in the Municipality of Boissevain-Morton that shall constitute a baseline inventory of said road allowances as of the date of this by-law. This inventory of road allowances shall be updated

every two years to establish the current state of each road allowance and to determine the infractions, if any, of this by-law.

- 2.1 The Municipality of Boissevain-Morton recognizes that several undeveloped road allowances located within the boundaries of the Municipality, are currently being used by private individuals for reasons as outlined in this By-Law, and that many undeveloped road allowances have been altered by ratepayers prior to the passing of this By-Law
- 2.2 Any individuals who wish to develop the road allowances within the boundaries of the Municipality of Boissevain-Morton may apply through the Municipality's application process therein with the understanding that any development will not restrict or hinder public use and access of said road allowance. All applications will be subject to approval by Council. See the attached "Schedule B" for the Application to Develop a Municipal Road Allowance as outlined below.

SECTION 3 - PROHIBITED

- 3.1 From the date of enactment of this By-Law those municipal road allowances portions presently in their natural state or in an uncleared or uncultivated state shall be left in such until such time as the said unused road allowances or any portion thereof are required for development of the public roads or highways within the municipal road system.
- 3.2 No person shall, without the written consent of the Municipality of Boissevain-Morton, remove any crown timber or minerals found or being in, upon or under any road allowances.
- 3.3 No person shall, without the written consent of the Municipality of Boissevain-Morton, remove any Crown timber or minerals found or being in, upon or under any road allowances. Furthermore, no person, unless duly authorized by the Municipality in writing, may remove or dispose of any grass, hay, brush or weeds found or being upon any road allowance or part thereof within the Municipality.
- 3.4 No person shall make, create, cause, leave or permit any encroachment or nuisance on or in a road allowance.
- 3.7 No person shall do any act or thing which in any way will reduce, restrict, or diminish all or any portion of the natural growth contained within or upon a road allowance nor shall any person clear or cultivate for farming or other purposes all or any portion of a road allowance.
- 3.8 No person shall fence or in any way block or impede use of a road allowance nor shall any person permit the grazing and pasturing of cattle, horses, sheep or other domesticated farm animals thereon.
- 3.9 No Person shall enter upon any road allowance or any portion thereof for the purpose of cultivating, clearing, or developing in any manner whatsoever.

SECTION 4 – EXCEPTIONS

- 4.0 The Municipality will allow for the "grandfathering" of all such situations prior to the passing of this By-Law, with no exceptions to the process to be extended past the date of the passing of this By-Law.

The "grandfathering clause" will no longer exist with a change in ownership of adjacent property, or the change of the use of all undeveloped road allowances. At that time, this enacted By-Law and process will apply to the relevant undeveloped road allowances, in its entirety.

Grandfathering will also not exist, in the situation where the works completed do not fit the criteria of this policy, and where Council would therefore not have approved the works completed in any case. This will be considered non-compliant and unapproved development and may result in legal action being pursued by the Municipality.

- 4.1 The Municipality of Boissevain-Morton may at any time take back a road allowance that has been utilized for other purposes.
- 4.2

SECTION 5 – ENFORCEMENT

- 5.0 Any person who contravenes this by-law prohibiting encroachment or nuisances on or in road allowance is guilty of an offence and is liable to a fine of not more than \$100.00 and the continuance of the encroachment of nuisance on each day is a separate offence.
- 5.1 Any person who violates, contravenes, or disobeys or refuses, omits, neglects, or fails to observe, obey, or comply with any other provision of this by-law is guilty of an offence and is liable on summary conviction to a fine of not less than \$500.00 or more than \$1,000.00.
- 5.2 Anything placed or maintained by anyone on a road allowance, and any nuisance or dangerous condition on or near a road allowance shall be removed, remedied, or abated by an authorized officer of the Municipality at the expense of the person causing or permitting same. The aforesaid removal or abatement shall be at the expense of the owner of that thing, or in the case of a projection from or object to an adjacent building or land, at the expense of the owner of the building or land.

NOW THEREFORE, be it enacted as a by-law, of the Municipality of Boissevain-Morton as follows:

1. THAT there is hereby established, the Municipal Road Allowance By-Law, to be enacted by Council of the Municipality of Boissevain-Morton
2. THAT the application attached hereto in "Schedule A" form part of this By-Law. And furthermore, that any revisions to Schedule "A" will require a resolution by Council.
3. THAT all previous by-laws as related of the Municipality of Boissevain-Morton are hereby rescinded including By-Law 83-04

DONE AND PASSED by the Council of Municipality of Boissevain-Morton in regular session assembled at the Council Chambers in Boissevain in the Province of Manitoba, this 23rd day of June 2022.

Judy Swanson
Head of Council

Leo Poulin
Chief Administrative Officer

Read a first time this 5th day of May, 2022.

Read a second time this 23rd day of June, 2022.

Read a third time this 23rd day of June, 2022.