

THE CORPORATION OF THE MUNICIPALITY OF POWASSAN

BY-LAW NO. 2011-05

Being a By-Law to enter into an agreement between the Corporation of the Municipality of Powassan and the South Shore-Restoule Snowmobile Club.

WHEREAS Council adopted Resolution no. 2010-186 at the regular Council meeting of June 1, 2010 stating that the proposal of the South Shore Restoule Snowmobile Club, as per letter dated May 7, 2010, to move the D Trail, be accepted; and

WHEREAS the Council of the Corporation of the Municipality of Powassan deems it in the best interest of the inhabitants of the municipality to enter into an agreement with the South Shore-Restoule Snowmobile Club to permit the use of certain portions of the unopened road allowances for trail purposes.

NOW THEREFORE the Council of the Corporation of the Municipality of Powassan enacts as follows:

1. That the attached agreement outlined as Appendix "A" between the Corporation of the Municipality of Powassan and the South Shore-Restoule Snowmobile Club be adopted.
2. That the Mayor and the Clerk be authorized to execute said agreement on behalf of the Corporation of the Municipality of Powassan.
3. That By-law no. 2004-10 be repealed.
4. That this by-law shall come into force upon its adoption.

Adopted February 1, 2011.

Mayor

Clerk

By-law 2011-05
Appendix A

THIS AGREEMENT made this 1st day of February, 2011

BETWEEN

THE CORPORATION OF THE MUNICIPALITY OF POWASSAN
(Hereinafter referred to as the “Municipality”) OF THE FIRST PART

AND

SOUTH SHORE RESTOULE SNOWMOBILE CLUB
(Hereinafter referred to as “the Club”) OF THE SECOND PART

WHEREAS the Club has applied to the Municipality for permission to use certain portions of the unopened road allowances, more specifically described in Schedule “A” hereto, for the purposes of construction, maintenance and use as a snowmobile trail; and

WHEREAS the Municipality has agreed to permit the said unopened road allowances to be developed and used for the above noted snowmobile trail on the understanding that the Club will assume all responsibility for the construction, maintenance and use of the snowmobile trail and for any liability arising out of the use of the unopened road allowances.

NOW THEREFORE in consideration of the premises and the mutual covenants hereinafter contained, the parties agreed as follows:

1. Description of the Unopened Road Allowance and Lands

- 1.1. The section of unopened road allowance to which this Agreement applies is described and shown in Schedule “A” attached hereto.
- 1.2. The portion of the unopened road allowance upon which the snowmobile trail shall be constructed is shown in Schedule “A” attached hereto.

2. Permission to Construct Roadway

- 2.1. Permission: The Club, at its own costs, may construct the trail over the section of unopened road allowances described in Schedule “A”, subject to the terms and condition of this Agreement.
- 2.2. Gates: The Club shall, at its own cost, erect and maintain gates at locations designated by the Municipality, to control access to the trail.
- 2.3. Fences: the Club shall, at its own cost replace and/or erect fences at locations designated by the Municipality.

- 2.4. Approvals: The Club shall be responsible for and obligated to obtain all necessary approvals for the construction and maintenance of the trail, including, but not limited to, any environmental approvals pursuant to federal and/or provincial legislation. The Municipality shall be copied on all correspondence requiring approvals and be provided with copies of all required approvals.
- 2.5. Costs: All costs related to the construction and maintenance of the unopened road allowance for use as a snowmobile trail, shall be the sole responsibility of the Club and nothing in this Agreement shall be construed to impose an obligation on the Municipality to assume the road or to accept any responsibility whatsoever for its care of use.
- 2.6. Location and Survey: The Club agrees to construct the snowmobile trail within the municipal road allowances and shall obtain a legal survey, at its own cost, showing the limits of the unopened road allowances and the location of the snowmobile trail.
- 2.7. Dimensions: The Club agrees that the snowmobile trail and any subsequent improvements thereto shall only occur within the legal limits of the sections of unopened road allowances described in Schedule “A” and shall be the width of not more than 33 feet at any point and the location of such trails shall be reviewed by the Municipality. The Club shall appoint a person known to the Municipality to maintain the gates.
- 2.8. Erection of Warning Signs: The Club shall erect signs at the approach of the unopened road allowances, which reads as follows:

THIS IS AN UNOPENED ROAD ALLOWANCE WHICH IS MAINTAINED BY THE SOUTH SHORE RESTOULE SNOWMOBILE CLUB AND HAS NOT BEEN ASSUMED BY THE MUNICIPALITY OF POWASSAN.

THIS TRAIL IS FOR SNOWMOBILE USE ONLY. ALL PERSONS SHALL USE A THEIR OWN RISK.

PERSONS ENTERING UPON THIS ROAD ALLOWANCE UPON A MOTORIZED SNOW VEHICLE MUST HAVE AN OFSC TRAIL PERMIT AND ARE SUBJECT TO ALL RIGHTS AND OBLIGATIONS EFFECTIVE UNDER SUCH PERMIT.

Community Safety Zone – Sign Zero Tolerance.

The signs shall be maintained in good condition by the Club.

- 2.9 Fees: Notwithstanding the permission set out in section 2.1. The Club may not prohibit or require any payment of the use of the road allowance or trail by the public

at large, save and except for any permit fees charged to snowmobilers as authorized by the Ontario Federation of Snowmobile Clubs of Ontario (the OFSC).

- 2.10 Condition of the Unopened Road Allowance: The Club shall maintain the unopened road allowance and/or snowmobile trail in a condition that is safe and is reasonably consistent with the volume using the trail and road allowance.

3. Liability of the Club

- 3.1. Indemnification: The Club covenants and agrees to indemnify the Municipality from all claims, costs and causes of action of any nature or kind whatsoever arising out of the construction, maintenance or use of the trail and/or road allowance or in consequence of this Agreement.
- 3.2. Insurance Coverage: Prior to the commencement of the work which is authorized by this Agreement, the Club shall deposit with the Municipality a Certificate of Insurance with an insurance company and in a form which is satisfactory to the Municipality insuring for the joint benefit the Club and the Municipality against any liability that may arise out of the construction, maintenance or use of the trail and/or road allowance or that may accrue to the Municipality in consequence to this Agreement. The policy shall:
- 3.2.1. Be kept in force during the duration of this Agreement;
 - 3.2.2. Provide coverage of at least five million dollars (\$5, 000,000.00) or such other amount as the Municipality at its discretion may require from time to time;
 - 3.2.3. Name the Municipality as an insured party;
 - 3.2.4. Contain a cross-liability clause; and
 - 3.2.5. Contain an endorsement which requires the insurer to notify the Municipality at least 60 days prior to the cancellation, termination or any change to the policy for any reason.
- 3.3. Insurance Premiums: The Club shall, as required from time to time by the Municipality, provide proof that premiums of the insurance policy have been paid as they fall due and that the insurance policy is in full force and effect.
- 3.4. Claims in Excess of Coverage: The issuance of the insurance policy required by this Agreement shall not be construed to relieve the Club in any way from its responsibility for any claims for which they are liable or against which they have indemnified the Municipality that may exceed the amount of the insurance coverage.

4. Termination of Agreement

4.1. Permission may be Withdrawn: The Municipality may at any time withdraw the permission to use or maintain the trail and/or road allowance if the Club is in breach of any of the terms of this Agreement or if the Municipality, in its sole discretion, deems that the unopened road allowances over which the trail passes is required for general public purposes or that it is in the best interests of the public to do so.

4.2. Road may be closed: Notwithstanding the terms of this Agreement, if the Municipality at any time deems it in the best interests of the Municipality to close and sell this road allowance then the Municipality may proceed with a Road Closing and Sale By-law pursuant to the provisions of the Municipal Act, 2001, of Ontario.

5. Non Assignment

The Club may not assign its rights and obligations under this Agreement without the express prior written consent of the Municipality.

6. General

This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

Dated this 1st day of February, 2011

The Corporation of the Municipality of Powassan

Mayor

CAO-Clerk

Dated this day of February, 2011

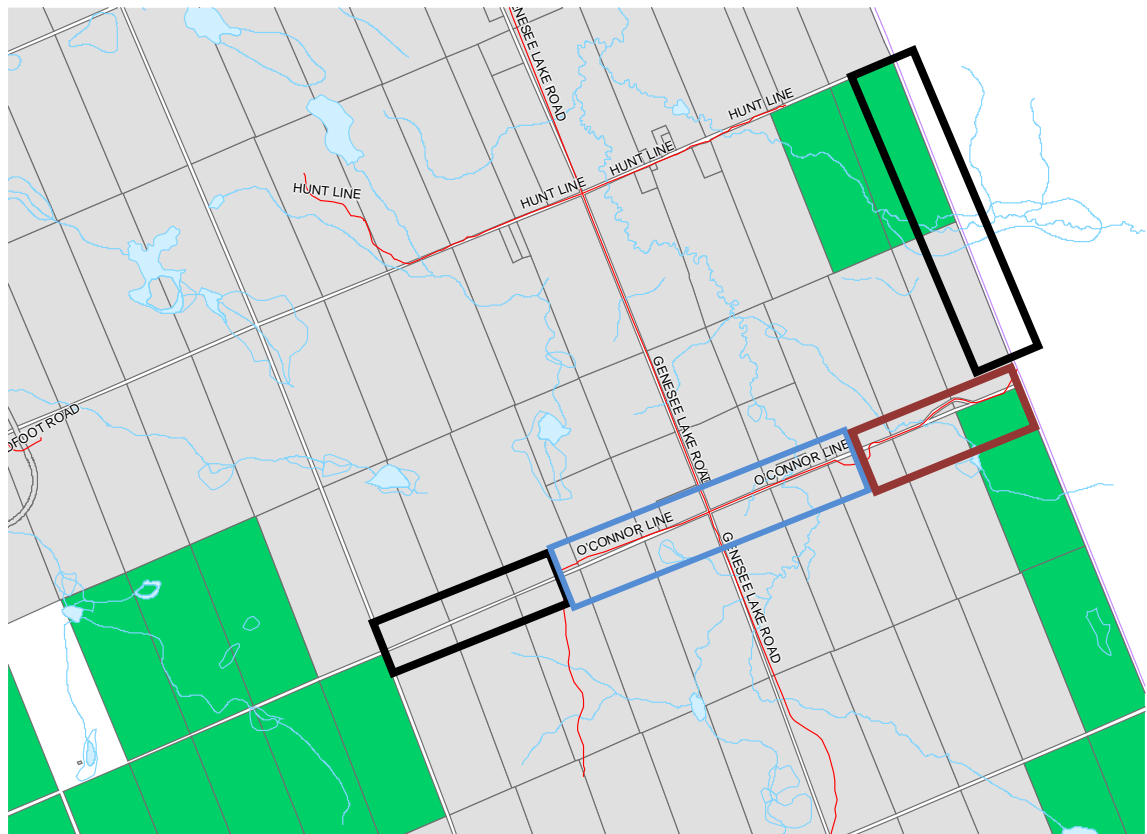
South Shore Restoule Snowmobile Club

President
(I have authority to bind the corporation)

By-law 2011-05 Schedule "A" to Agreement

Land Permissions as follows:

1. Portion of the unopened road allowance between Concession 4 and 5, lot 7 to 11 on O'Connor Line.
2. Maintained road allowance on O'Connor Line.
3. Seasonal maintained road allowance on O'Connor Line.
4. Portion of unopened boundary road allowance from concession 4 to 6.



Black: Unopened Road Allowance
Blue: Year round open road
Red: Seasonal (summer) maintained road