

**THE CORPORATION OF THE TOWNSHIP OF GILLIES  
BY-LAW # 2016-022**

**BEING A BY-LAW TO ADOPT MAINTENANCE STANDARDS FOR  
MUNCIPAL HIGHWAYS**

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# THE CORPORATION OF THE TOWNSHIP OF GILLIES

## BY-LAW # 2016-022

### BEING A BY-LAW TO ADOPT MAINTENANCE STANDARDS FOR MUNICIPAL HIGHWAYS

#### RECITALS:

1. Subsection 44(1) of the Municipal Act, 2001, S.O. 2001, c. 25, states that municipalities shall keep all highways and bridges in a state of repair that is reasonable in the circumstances including the character and location of the highway and bridge.
2. Subsection 44(4) of the Municipal Act, R.S.O. 2001 provides that the Minister of Transportation may, by regulation, establish standards for the repair of highways and bridges, or any class of them.
3. The Minister has done so. In Ontario Regulation 239/02, standards for highways in Classes 1 through 5, the class of highway being determined by criteria such as the average annual daily vehicle use on a given road, and its prescribed speed limit.
4. Ontario Regulation 239/02 did not prescribe maintenance standards for Class 6 highways. These are highways where the average annual daily vehicle use is under 50 vehicles and the maximum posted speed limit is under 80 km/hr. The Council considers it necessary to prescribe maintenance standards for Class 6 highways within Gillies.
5. Section 35 of the Municipal Act, 2001, S.O. 2001, c. 25, states that a municipality may pass By-laws restricting the common law right of passage by the public over a highway and the common law right of access to the highway by the owner of land abutting a highway.

**ACCORDINGLY**, Gillies Council enacts the following:

#### 1. CITATION AND SCHEDULES:

- 1.1 Short title: This By-law shall be cited as the "Gillies Road Status and Maintenance By-law".
- 1.2 List of Public Roads: Schedule A, appended to and forming part of this By-law, lists the Public Roads in Gillies, with their average annual daily vehicle counts, and the Class of highway the Public Road fits within.

- 1.3 Plan: Schedule B appended to and forming part of this By-law, is a plan depicting the location and extent of Public Roads of each Class within Gillies.

## 2. DEFINITIONS

- 2.1 Definitions: The definitions in the lettered paragraphs of this Section are intended to be applied to the defined terms when they appear within the text of this By-law with their initial letters capitalized.
- a) The phrase “Average Annual Daily Traffic” is represented by the acronym “AADT”.
  - b) “Council” means the elected municipal council of the Township.
  - c) “Gillies” means the geographic area under the jurisdiction of the Township.
  - d) “Township” means The Corporation of the Township of Gillies.
  - e) “Trespass Road” is a Public Road which is not located within a surveyed road allowance of which the Township is a registered owner. Further detail relating to Trespass Roads is set out in Section 6 of this By-law.
  - f) “Legacy Road” is a Public Road which was opened during its initial settlement period of Gillies in the 19<sup>th</sup> and early 20<sup>th</sup> centuries to provide access to farms, homes, railroad or riverboat stops, and other land uses which have long since been abandoned. Further detail relating to Legacy Roads is set out in Section 8 of this By-law.
  - g) “Maintenance Season” means the period of time each year which commences when the half-load restrictions on the Township Public Roads are removed and ends when the first snowfall of the winter season occurs. The term applies only to Class 6 Roads.
  - h) “Private Road” means a road that is not owned by the Township and is not a Trespass Road.
  - i) “Private Access Driveway” means a driveway opened on a Public Road Allowance with the permission of the Township and used to access one or more private properties with the understanding that the Township is not obliged to assume responsibility for its maintenance. Further detail relating to Private Access Driveways is set out in Section 9 of this By-law.
  - j) “Public Road” means a “highway” as defined in the Municipal Act, 2001, S.O. 2001, c. 25, as amended, which is under the jurisdiction of the Township.

- k) "Public Road Allowance" means a parcel of land set aside for the purposes of a highway, including:
- i. an allowance for a road surveyed by the original Crown surveyors of the Township;
  - ii. property subsequently conveyed and dedicated as a Public Road that is located within Gillies and which is recorded in the records of the Land Registry Office as being owned by the Township, or by the municipality having jurisdiction over such road allowance.

## **PART I --- GENERAL**

### **3. ROAD CLASSIFICATION**

- 3.1 Classification: Public Roads within Gillies shall be classified in accordance with Ontario Regulation 239/02, based on the following two factors:
- a) the maximum speed limit assigned to the Public Road, as defined by by-law of the Township; and
  - b) traffic volumes, as defined by the AADT.
- 3.2 Frequency of AADT Determination: Traffic counts shall be conducted at least once every five (5) years by the Township. If necessary, road classification will be reviewed at that time.
- 3.3 Seasonal Variances: For Public Roads with high seasonal traffic volumes, the AADT will be counted in both the busy season and in the off-season, and the Public Road will be assigned the more restrictive Class based on the higher of the two traffic counts.
- 3.4 Absence of Traffic Count: In the absence of traffic count, Council reserves the right to designate a classification for a road.

### **4. MAINTENANCE STANDARDS**

- 4.1 Public Roads in Classes 1 to 5: For Public Roads identified as falling within Classes 1 through 5 on Schedules A and B to this By-law, the maintenance standards shall be those set out in Ontario Regulation 239/02, as amended.
- 4.2 Other Roads Standards: For Public Roads falling within Classes 6A, 6B, 6C, and Legacy Roads or as identified on Schedules A and B, the maintenance standards shall be those prescribed in Part II of this By-law.

## 5. POLICY PRINCIPLES

- 5.1 General: In carrying out its responsibilities to maintain Public Roads, the Township will adhere to the policies set out in this Section 5.
- 5.2 Direction to staff: Operational activities of the Roads Department shall be directed to maintain the Public Roads to the standards prescribed in this By-law. Care shall be taken first to assure that the standards are maintained and secondly that such services are efficiently and effectively rendered.
- 5.3 Standards Are Minimums: The Township and its officials make no promises or assurances that Public Roads in general, or any Public Road in particular, will be maintained to a standard in excess of the standards set out in this By-law, whether now or in the future. The fact that the Township may, and indeed hopes, to exceed the standards set out in this By-law, when the resources available permit it to do so, does not change the fact that the standards prescribed in this By-law are the ones which the Township commits to undertake.
- 5.4 Class Upgrading: Notwithstanding the classification system established by the Province in Regulation 239/02, based upon the AADT, Council may re-classify all or any portion of a Public Road to a higher class than the AADT would dictate. In such cases, the Public Road (or portion of Public Road) shall be shown as belonging to a higher Class in Schedules A and B and the standards applying to that higher Class shall be the standard for that Public Road.
- 5.5 Public Input: This By-law is a public document, and the standards and road classifications within it shall be made readily available to anyone who seeks it out. The Township Council will review any concerns about the standards and their implementation that are brought to the Council's attention.
- 5.6 Operating and Capital Budgets: Budgets and Council priorities shall be set on the basis that the maintenance standards prescribed in this By-law must be met.
- 5.7 Requests for Increased Services: As a general rule, where the Township is asked to upgrade the maintenance standards of a particular Public Road, it will generally do so only if the AADT of the road has increased to an extent which would place it in a higher Class. Exceptions may be made, as noted in Section 5.4.
- 5.8 Acceptance of Private Roads: Where the Township is asked to accept a Private Road into the municipal road system, and agrees in principle to do so, it will generally require the proponents to first bring the road to specified standards as to design, roadbed, and surface, at the proponents' own expense. The decision as to whether or not a Private Road will be assumed by the Township, regardless of the condition or structure of the road, is the sole discretion of the Township Council.

## **6. TRESPASS ROADS**

- 6.1 Size of Road Allowance: The law recognizes that because a past owner of the adjoining lands gave permission for the Trespass Road to be placed in its location, the land was dedicated by that owner for road purposes. The precise width of road dedicated may be unclear. The surface rights to improvements made with public money or statute labour are owned by the Township. However, the underlying title to subsurface rights and lands adjoining such improvements remains with the adjoining landowner(s).
- 6.2 Maintenance Challenges: Trespass Roads pose a particular problem for the Township because its right to widen, straighten, ditch or otherwise improve such roads is legally constrained by complex issues of fact and law. Trespass Roads can generally not be maintained to the same standards as other roads.
- 6.3 Deeds to Trespass Roads or Portions of Trespass Roads: It shall be the policy of the Township to acquire title to a standard 66-foot wide road allowance, normally centred on any existing travelled road, where it can do so in a cost effective way as, for example, a condition of severance consent. The acquisition of such right-of-way is for prudent future planning and does not indicate any intention to improve the road at any specific time.
- 6.4 Roads with Mixed Ownership: Where part of a Public Road is a Trespass Road and the remainder is a Public Road on a Township-owned road allowance, safety may dictate that the entire Public Road be maintained consistently along its length so that inappropriate use is not encouraged.

## **PART II --- CLASS 6 ROADS, LEGACY ROADS AND PRIVATE ACCESS DRIVEWAYS**

### **7. CLASS 6 ROADS**

- 7.1 Provincial Classification: Public Roads where the average annual daily vehicle use is less than 50 vehicles and the maximum posted speed limit is 60 km/hr are Class 6 Roads in accordance with Ontario Regulation 239/02.
- 7.2 No Prescribed Standards: The Province has not prescribed maintenance standards for Class 6 roads in the Regulation. There are many Class 6 Roads within the Township.

7.3 Subclasses: The Township divides Class 6 Roads into three sub-categories, as identified on Schedules A and B:

- a) Class 6A Roads have an AADT of 25-49. They are maintained on a year-round basis.
- b) Class 6B Roads have an AADT of 0-24 and a minimum of one residence. They are maintained on a year-round basis but with limited winter service, for reasons including low traffic volume and poor road geometry;
- c) Class 6C Roads have an AADT of 0-24 and no residences. They are maintained only on a seasonal basis.

## 8. **MINIMUM MAINTENANCE STANDARDS FOR CLASS 6 ROADS**

8.1 Council determines the Subclasses: Where Public Roads are classified as Class 6A, 6B or 6C Roads, they shall remain so until Council decides otherwise through an amendment to this By-law.

8.2 Class 6A: Class 6A Roads shall be maintained to the same standard as Class 5 Roads in accordance with Ontario Regulation 239/02.

8.3 Class 6B: Class 6B Roads may have limited snow removal and limited maintenance from the first snowfall until half-load restrictions on the Township Public Roads are removed the following spring.

8.4 Class 6C: Class 6C Roads shall have no snow removal and no maintenance from the first snowfall until half-load restrictions on the Township Public Roads are removed the following spring, and shall be signed accordingly. There will be limited maintenance during the rest of the year.

8.5 Patrols for Class 6 Roads: The standard for frequency of patrolling to check for conditions mentioned in Ontario Regulation 239/02 is:

- i. once in every month for Class 6A and 6B Roads; and
- ii. immediately before, or as soon as practicable after, the commencement of the Maintenance Season, and thereafter once in every month during the Maintenance Season, on Class 6C Roads.

8.6 Correcting Conditions on Class 6 Roads: The maintenance standard for correcting conditions referenced in Ontario Regulation 239/02 on Class 6 Roads during the Maintenance Season, shall be the same time frames prescribed in the Regulation for Class 5 Roads, with a different commencement time.

The time period for correcting conditions on Class 6A Roads shall commence when all corrections of similar conditions on Township Public Roads in Class 5 or higher have been completed.

The time period for correcting conditions on Class 6B and 6A Roads shall commence when all corrections of similar conditions on Township Public Roads in Class 6A or higher have been completed.

## **9. LEGACY ROADS**

- 9.1 Policies for Legacy Roads: Schedule B lists and identifies the approximate location of the Township's Legacy Roads. The Township's policy with respect to Legacy Roads is set out in this Section.
- 9.2 General Condition: Many of the Legacy Roads were created for use by pedestrians, horses, other animals and animal drawn vehicles. Such roads have been used during the last century, if at all, on an intermittent basis by residents. They are generally unsuitable for use by ordinary vehicles engineered to be operated on modern roads.
- 9.3 Overlap with Trespass Roads: Many Legacy Roads also meet the definition of Trespass Roads. There are few or no actual records of public money or statute labour having been expended on them in the past. Physical evidence of their exact location and width is minimal and has often been destroyed by the work of private parties such as loggers, the registered landowner(s) and users of recreational vehicles. In these circumstances, the legal right of the Township to maintain and improve such roads without the consent of the current adjoining landowner(s) is in significant doubt.
- 9.4 Public Roads: The Township wishes to preserve the right of the public to use Legacy Roads, on the basis that Legacy Roads are not maintained by the Township, and their use is at the sole risk of the user.
- 9.5 Future Development: It is possible that future development of the Township may make it reasonable to reopen or improve Legacy Roads, with cooperation of the adjoining landowner(s) where they are Trespass Roads.
- 9.6 Deeds to the Road Bed: Any section of a Legacy Road that has been deeded to the Township will be treated the same as any other Legacy Road.
- 9.7 Occasional Discretionary Maintenance: The Township will not provide any ongoing maintenance of Legacy Roads, though minor maintenance may be provided from time to time at the discretion of Council. If a decision is made to provide ongoing maintenance in the future, a Legacy Road will be upgraded to the appropriate Class.



## **10. PRIVATE ACCESS DRIVEWAYS**

- 10.1 Permission Required: Only Council may grant permission for the construction of a Private Access Driveway on a Public Road Allowance. The decision of the Council is in its sole discretion. The Township's policy with respect to Private Access Driveways is set out in this Section 9.
- 10.2 Public Use Rights: The Township wishes to preserve the right of the public to use Public Road Allowances, regardless of the presence of any Private Access Driveway.
- 10.3 Form of Approval: Permission for the construction of a Private Access Driveway will always be in writing and usually in the form of an agreement registered on title to the private lands to be accessed by the driveway. The agreement will make clear that the Township is not obligated to assume responsibility for the maintenance of anything constructed on the Public Road Allowance and that the owners and their successors in title shall indemnify and save the Township harmless from any damage claims made by users of the Private Access Driveway.
- 10.4 Future Development: It is possible that future development of the Township may make it reasonable to reopen or improve these Public Road Allowances. If a decision is made to do so in the future the Public Road will be upgraded to the appropriate Class, and rights to maintain the Private Access Driveway may be revoked.
- 10.5 Discretionary maintenance: The Township may provide limited maintenance to a Private Access Driveway from time to time based on the specific use and needs of the Public Road Allowance.

## **PART III --- OFFENCES**

### **11. WORK ON PUBLIC ROAD ALLOWANCES**

- 11.1 Work without Permission: No person shall perform work or make any change or improvement on any part of a Public Road Allowance within Gillies without the prior written permission of the Council or a duly authorized staff person.

### **12. WORK ON LEGACY ROADS**

- 12.1 Work on Legacy Roads Without Permission: No person shall perform any work or make any change or improvement to a Trespass Road without the prior written permission of the Council or a duly authorized staff person, together with the prior written permission of all adjoining landowners.
- 12.2 Exemption: Section 11.1 does not apply to the Township itself or its contractors, employees or agents, when acting on behalf of the Township.

**13. INTERFERENCE WITH LAWFUL USE**

- 13.1 Barricades: No person shall erect any barricade on a Public Road, including a Legacy Road.
- 13.2 General Prevention: No person shall prevent the lawful use of a Public Road through actions or threats of action.
- 13.3 Exception: Section 12.2 does not apply to closure or direction made by or on the instructions of a peace officer or the Township for reasons of maintenance or public safety.

**14. PENALTIES**

- 14.1 Fines: Any person who contravenes any provision of this By-law is guilty of an offence and, upon conviction is liable to pay a fine of not less than \$500..
- 14.2 Individual Offences: Every occurrence of an action prohibited in this Part shall be a separate offence.

**15. ADMINISTRATIVE PROVISIONS**

- 15.1 Repeal: By-law 481 is repealed, effective upon the coming into force of this By-law.
- 15.2 Effective Date: This By-law shall come into force and take effect on the date it is passed.

Read a First, Second, and Third Time,  
Signed and the Seal of the Corporation affixed thereto and finally  
passed this 5th day of December, 2016

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REEVE.

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CLERK.

**Schedule A**  
**Public Roads**

Road Name	Length	AADT	Class
ANNALA RD	2.3	-	6B
BADGER MINE RD	1.7	-	6C
CHIMO RD	1.8	40	6A
COUCH RD	3.2	49	6A
DAVES RD	1.1	-	6B
HAYMARSH RD	0.1	-	6C
HYMERS FAIR DR	5.4	-	6A
LEEPER RD (Old Silver Mountain Rd to Hwy 588)	2.5	39	6A
LEEPER RD (Old Silver Mountain Rd to Palisades Rd)	3.0	80	5
LIDDICOAT RD (Parker Road to Couch Road)	0.8	49	6A
LIDDICOAT RD (Couch Road to South end)	0.3	-	6B
LYSAK RD	0.1	-	6B
MAIN ST	2.2	17	6A
MCKECHNIE RD	0.1	-	6B
MOORE RD	0.8	-	6B
NEVA RD (Hwy 588 to Turk Road)	2.5	54	5
NEVA RD (Turk Road to Hwy 595)	2.9	-	6B
ONEILL RD	0.6	-	6B
OLD SILVER MOUNTAIN RD	2.5	137	5
PALISADES RD	5.6	36	6A
PARKER RD (from Liddicoat Rd to East end)	2.2	-	6B
PARKER RD (from Hwy 595 to Liddicoat Rd)	1.6	69	5
PEE DEE RD	0.5	-	6B
PROUTY RD	0.6	44	6A

ROSE VALLEY RD	0.5	-	6B
SILVAGGIO RD	2.4	-	6A
TOMACK RD	0.1	-	6B
TURK RD	1.5	54	5
UNION SCHOOL RD – North section (Hwy 608 to dead end)	2.0	-	6A
UNION SCHOOL RD – South section (Hwy 608 to boundary)	1.6	62	5
WEST ST	0.1	-	6B
WHEAL RD	0.9	-	6B
WOODBECK RD	0.8	-	6B

#### Legacy Roads

- the unopened roads indicated on the Registered Plan of Subdivision for the Village of Hymers
- Neva Road east of Highway 595 for approximately 1 kilometre
- Moore Road south of the Township turn-around for approximately 1 kilometre
- Badger Mine Road east section, approximately 3 kilometres
- Haymarsh Road north of Couch Road for approximately 1 kilometre

