

THE CORPORATION OF  
TOWNSHIP OF WHITEWATER REGION

BY-LAW NUMBER 16-10-897

**A By-Law authorizing the Township to enter into a Road Agreement for Pettigrew Road and Voyageur Bay Road with Joseph Edward Kowalski**

**WHEREAS** Joseph Edward Kowalski is the owner of Part Lot 12 Concession 12 as in R179312 (Fourthly); Part Lot 13, Concession 12 as in R179312 (Fifthly) except; RS9591; Part 13, Concession 12, Part 1, 49R9735; Part Lot 13, Concession 12, Parts 1-4, 49R9737, Ross; Township of Whitewater Region;

**AND WHEREAS** Joseph Edward Kowalski has applied to the County of Renfrew for consent approval(s) of residential lot File Number B60/15(1), B61/15(2) and B62/15(3) and such approval(s) dated the September 16, 2016 have been granted subject to the execution and registration of a Road Agreement between the Owner and the Township be on title;

**AND WHEREAS** Section 53(12) of the Planning Act, R.S.O. 1990, c.P.13, affords council the same powers with respect to a consent as the approval authority has with respect to an approval of a plan of subdivision under Section 51 (25) of the Planning Act;

**AND WHEREAS** Section 51(26) of the Planning Act provides for the Municipality to enter into an Agreement as a condition of the approval of subdivision of a lot which Agreement may be registered on title and is enforceable by the Municipality against all subsequent purchases of the land;

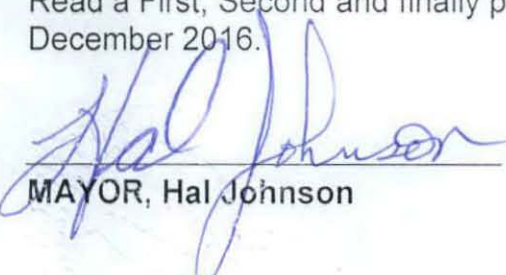
**AND WHEREAS** Joseph Edward Kowalski has asked the Council of the Corporation of the Township of Whitewater Region to enter into a Road Agreement;

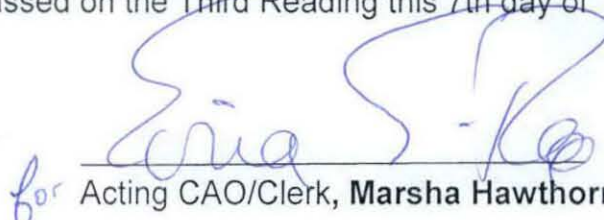
**NOW THEREFORE** the Council of the Corporation of the Township of Whitewater Region hereby ENACTS AS FOLLOWS:

1. **THAT** The Corporation of the Township of Whitewater Region enter into a Road Agreement with Joseph Edward Kowalski, of which the agreement is attached and marked as Appendix "A" to this By-law.
2. **THAT** the Council of the Township of Whitewater Region hereby authorizes the execution of the Road Agreement.
3. **THAT** the Mayor and Clerk are authorized to execute the said Road Agreement together with all documents relating thereto, and further, to make such other motions as may be necessary to complete this matter.

THIS BYLAW shall come into effect upon the passing thereof and subsequent registration at the Land Registry Office for the Registry Division for the County of Renfrew.

Read a First, Second and finally passed on the Third Reading this 7th day of December 2016.

  
MAYOR, Hal Johnson

  
for Acting CAO/Clerk, Marsha Hawthorne

THIS ROAD AGREEMENT made as of the 7 day of December, 2016.

BETWEEN:

**JOSEPH EDWARD KOWALSKI**  
(hereinafter called "the Applicant")  
(On his behalf and on behalf of Future Owners, as defined below)

OF THE FIRST PART

-and-

**THE CORPORATION OF THE TOWNSHIP OF  
WHITEWATER REGION**  
PO Box 40, 44 Main Street, Cobden ON, K0J 1K0  
(hereinafter called the "Municipality")

OF THE SECOND PART

WITNESSES THAT WHEREAS:

1. The Applicant is the owner of property located in the Municipality referred to herein as "the Voyageur Bay Property" and described in Schedule "A" to this Agreement;
2. The Applicant, for himself and the Future Owners (as defined below) and their respective successors and assigns, and successors in title to all or any part of the Voyageur Bay Property (as defined below), wishes to utilize a seasonal road under the jurisdiction of the Municipality known as "Pettigrew Road" to provide access to the Voyageur Bay Property including any residential lots which may be created by severance or subdivision, and for the provision of telephone, hydro and/or cable services to the Voyageur Bay Property;
3. The Municipality does not maintain the Roads (as defined below) and they have been deemed of satisfactory condition in order to provide the required access and emergency services to the Voyageur Bay Property or any portions thereof;
4. The Municipality has agreed to permit the Applicant to maintain and repair the Roads as required in order to maintain the current state of construction and to use the Roads for the term and on the conditions set out in this Agreement;
5. The Applicant wishes to enter into an agreement to establish rights and obligations with respect to the use, maintenance and repair of the Roads and to ensure that such agreement is binding on all Future Owners of the Voyageur Bay Property; and,

6. Pursuant to this Agreement, all Future Owners of any portion of the Voyageur Bay Property will take title subject to a covenant to be bound by the provisions of this Agreement.

NOW THEREFORE in consideration of the premises and of the mutual covenants and agreements herein contained and the sum of ONE DOLLAR (\$1.00) now paid by the Applicant to the Municipality, the parties hereto covenant and agree as follows:

## **DEFINITIONS**

1. As used in this Agreement:

- (i) "Future Owners" means the future registered owners of the Voyageur Bay Property or a portion thereof at a given time;
- (ii) "Pettigrew Road" means a seasonal municipal road known as "Pettigrew Road", located within Lot 13, Concession 3 of the former Ross Township within the Municipality, and as approximately shown in yellow on the plan attached as Schedule "B";
- (iii) "Proportionate Share" means one (1) divided by the total number of individual registered owners of all or a part of the Voyageur Bay Property. It is understood that any registered owners who share an interest as "tenants in common" or "joint tenants" shall be considered as one (1) registered owner for the purpose of the calculation of the Proportionate Share;
- (iv) "Roads" means Pettigrew Road and Voyageur Bay Road;
- (v) "Voyageur Bay Property" means those lands located in the Municipality and described in Schedule "A" to this Agreement;
- (vi) "Voyageur Bay Road" means the private road on the Voyageur Bay Property known as "Voyageur Bay Road" located within Lot 13, Concession 3 of the former Ross Township within the Municipality and as approximately shown in white on the plan attached as Schedule "B";
- (vii) "Standard" means the condition of the Roads as agreed to by the Applicant and the Public Works Manager of the Township, Bill Miseuer, and the Chief Building Official of the Township, Doug Schultz, during their joint inspection of the Roads on June 24, 2016.

## **TERM:**

2. The term of this Agreement shall commence upon the date of this Agreement and shall be fully completed and ended on that day upon which the Applicant or the Future Owners cease to comply with the terms hereof or the Municipality, in its sole discretion, assumes the Roads (the "Term");

**UNDERTAKING AND LICENSE:**

3.(1) The Applicant, on his behalf and on behalf of the Future Owners, hereby undertakes as follows:

- (i) to maintain and repair the Roads at his expense, provided that the minimum standards of the Township (as defined by the Standard) shall be met; and
- (ii) to use the Roads for the purposes of ingress and egress for persons, machinery, equipment, vehicles and trailers for access to the Voyageur Bay Property;
- (iii) to use the Roads for the purposes of locating hydro poles and related equipment to allow for hydro, telephone and/or cable service to be provided to the Voyageur Bay Property. The parties acknowledge that portions of Pettigrew Road are not registered in the name of the Municipality and are in fact forced Roads. As such, prior to performing any work on the lands adjacent to the travelled portion of the Road, the Applicant shall first obtain permission from the adjoining land owner.

(2) The Municipality hereby grants to the Applicant and to the Future Owners an irrevocable license during the Term to carry out the above undertakings on Pettigrew Road.

4. The Applicant, on his own behalf and on behalf of the Future Owners, shall maintain the Roads to the Standard (including grading and snow plowing) during the Term at his own expense, and the Municipality will never be under any duty or obligation to maintain the Roads unless and until it passes a By-Law assuming Voyageur Bay Road or specifically agrees otherwise in writing. Neither the Applicant nor any other person shall be entitled to rely upon this Agreement and the general license granted hereby as evidence of any intention on the part of the Municipality to assume Voyageur Bay Road as a public highway.

5. The Applicant and the Future Owners shall contribute their Proportionate Share to all expenses contemplated from time to time by this Agreement.

(a) The Applicant and the Future Owners acknowledge that they are not entitled to deny use of Pettigrew Road to any person, and they undertake and agree that they will not place any gate or other obstruction or barrier across or over Pettigrew Road, or by any sign or other means deter or seek to deter or prohibit any person from passing along Pettigrew Road.

(b) If requested to do so by the Municipality, the Applicant and the Future Owners undertake and agree to post and maintain in place at their expense throughout the Term at such point at either end of or along the Roads as may be directed by the Municipality a sign approved of by the Municipality indicating that the Roads are not a public highway, and that persons using them do so entirely at their own risk.

6.(1) The Applicant and the Future Owners hereby release the Municipality from any liability to the Applicant or the Future Owners and agree to indemnify and save the Municipality harmless from all actions, claims, costs, expenses and damages suffered or sustained by the Municipality or any other person arising from or attributable to:

- (i) any upgrading and improvement of the Roads;
- (ii) the maintenance of the Roads;
- (iii) the breach of contract, nuisance or negligence of the Applicant or any of the Future Owners during the Term.

(2) The Applicant shall maintain a commercial general liability policy naming The Corporation Of The Township Of Whitewater Region as an additional insured for a minimum of \$5,000,000.00 in a form satisfactory to the Municipality and shall provide proof of maintenance of this policy on an annual basis. The Applicant agrees to obtain an undertaking from the insurer to provide the Municipality with 30 days' notice prior to making any changes to the policy.

7. The obligations of the Applicant and the Future Owners relating to this Agreement shall be joint and several and shall not be limited to their Proportionate Share.

8. Should the Applicant and/or the Future Owners fail to maintain or repair the Roads as per the reasonable direction of the Municipality, the Municipality, upon reasonable written notice, may but shall not be required to perform such maintenance or repair at the expense of the Applicant and/or the Future Owners to ensure reasonable access to the Voyageur Bay Property for the Applicant and/or the Future Owners. In the event the Municipality does perform maintenance and repair at its expense, the Municipality shall, pursuant to Section 446 (3) and (4) of the Municipal Act, be entitled to add the costs of the said maintenance and repair to the tax rolls of the Applicant and Future Owners.

9. Any notice or other writing required to be given hereunder shall be sufficiently given if delivered by hand or by certified mail to the intended party. Any notice delivered shall be deemed to have been received on the date upon which it was delivered, except that any notice delivered on a day that is not a business day shall be deemed to have been received on the next business day

10. Time shall be of the essence of this Agreement.

11. This Agreement shall be construed according to and governed by the laws of the Province of Ontario.

12. This Agreement may only be modified by agreement in writing executed by both parties.

13. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

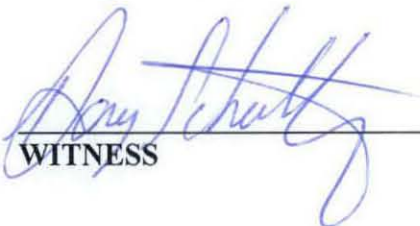
14. Any provision of this Agreement which is determined by a court of competent jurisdiction or by an arbitrator to be invalid or unenforceable is, to the extent such provision is invalid or unenforceable, deemed to be severable and does not affect any other provision of this Agreement.

15. This Agreement constitutes the entire agreement between the parties with respect to the use and maintenance of the Roads and any and all previous agreements, written or oral, express or implied, between the parties or on their behalf, relating to such are terminated and canceled.

16. The Applicant shall register a copy of this Agreement on the title of the Voyageur Bay Property and the Roads and it shall be binding on all Future Owners of the Voyageur Bay Property.

17. This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns and successors on title.

IN WITNESS WHEREOF THE APPLICANT has executed this Agreement under his own hand on his behalf and also on behalf of the Future Owners, and the Municipality has hereunto affixed its seal attested to by the signature of its Mayor and Clerk pursuant to a resolution of the Council of the Municipality.

  
\_\_\_\_\_  
WITNESS

  
\_\_\_\_\_  
JOSEPH EDWARD KOWALSKI

THE CORPORATION OF THE  
TOWNSHIP OF WHITEWATER  
REGION

Per:   
\_\_\_\_\_  
Mayor:

Per:   
\_\_\_\_\_  
CAO/Clerk:

  
\_\_\_\_\_  
MARSHA HAWTHORNE  
Deputy Treasurer  
and Commission of Oaths  
Township of Whitewater Region

**SCHEDULE "A"**  
**LEGAL DESCRIPTION OF VOYAGEUR BAY PROPERTY**

PIN 57212-0034 (LT)

Part Lot 12, Concession 12 as in R179312 (Fourthly); Part Lot 13, Concession 12 as in R179312 (Fifthly) except RS9591; Part Lot 13, Concession 12, Part 1, 49R9735; Part Lot 13, Concession 12, Parts 1-4, 49R9737, Ross; Whitewater Region



County of  
**Renfrew**  
ONTARIO, CANADA

County of Renfrew GIS

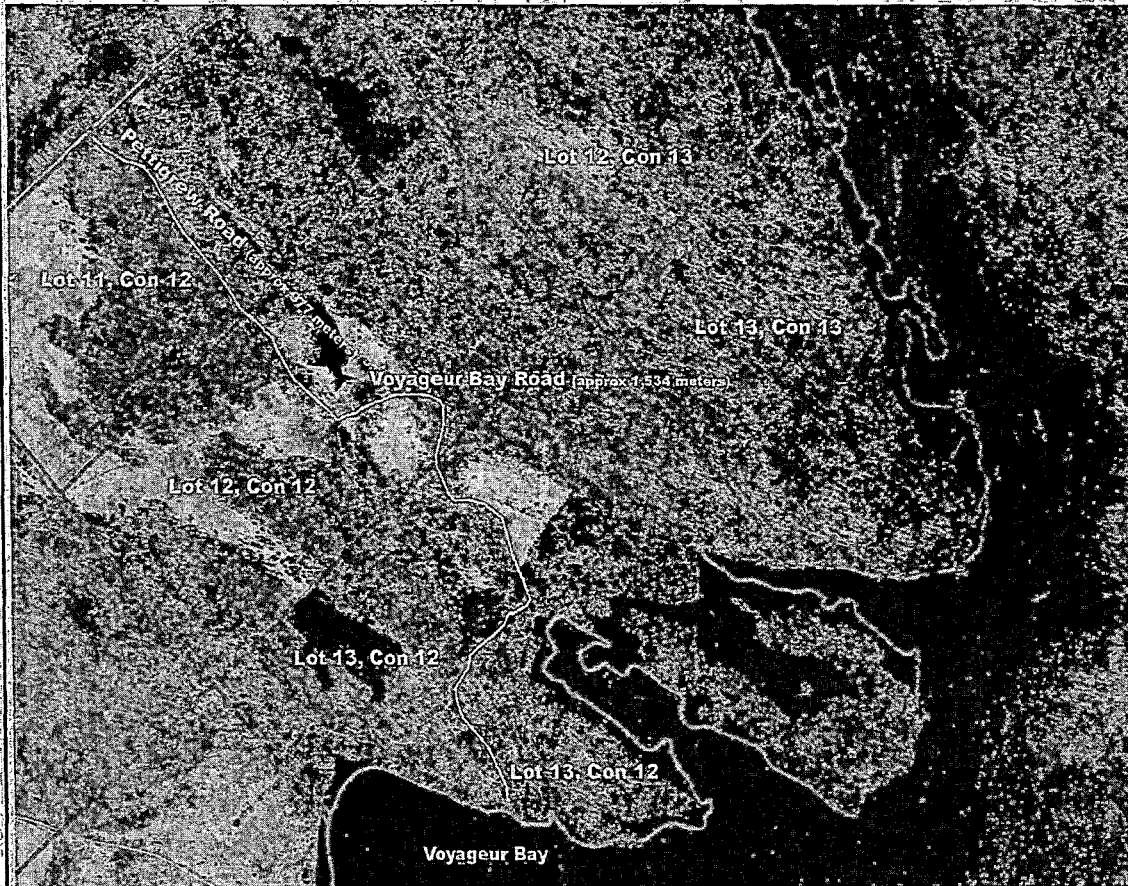
2016-07-06 10:42:46 AM

**Legend**

Lots & Concessions

**Image**

- Red: Band\_1
- Green: Band\_2
- Blue: Band\_3



Depending on the number of layers visible not all may be shown in the legend.

**Notes**

Pettigrew and Voyageur Bay Roads

730.4 0 365.20 730.4 Meters

NAD83: CSRS98 UTM Zone 18N  
© Clever's Printer for Ontario

1:14,378



With Data supplied under Licence by Members of the Ontario Geospatial Data Exchange County of Renfrew, Ontario Ministry of Natural Resources, Pembroke, Ontario Ministry of Northern Development, Mines and Forestry

This map was produced automatically by the County of Renfrew Mapping Website!

This map is illustrative only. Do not rely on it as being a precise indicator of routes, locations of features, nor as a guide to navigation. The County of Renfrew shall not be liable in any way for the use of, or reliance upon, this map or any information on this map.

PETTIGREW ROAD & VOYAGEUR BAY ROAD

SCHEDULE "B"