

BY-LAW NUMBER 16-16

OF

THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW

A By-Law to authorize the Township of Clearview to enter a Road Access Agreement (Schmidt Road Use Agreement)

WHEREAS the Municipal Act authorizes the Township of Clearview to enact by-laws for the use of lands it owns;

AND WHEREAS the owners of the subject lands has requested that it be permitted by the Municipality the use of a portion of the road described as Part of the Road Allowance between Concession 6 & 7, for the purposes of providing access to lands located at 2629 Concession 6 S Nottawasaga (Part of Lot 11, concession 6, Nottawasaga);

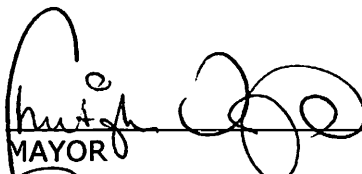
AND WHEREAS Council deems it appropriate to permit the use of a portion of the road described as Part of the Road Allowance Between Concessions 6 & 7, for the purposes of providing access to lands located at 2629 Concession 6 S Nottawasaga (Part of Lot 11, Concession 6, Nottawasaga);

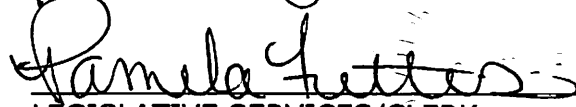
AND WHEREAS Council wishes to establish certain terms and conditions relating to the use of the road for this purpose;

NOW THEREFORE the Council of the Corporation of the Township of Clearview **HEREBY ENACTS** as follows:

1. That the agreement attached in "Schedule I" forms part of this By-law.
2. That the Mayor and Clerk are hereby authorized to execute the agreement and all documents in connection with the agreement.
3. This By-Law shall come into force and effect on the date of final passing.

By-Law Number 16-16 read a first, second and third time and finally passed this 29th day of February, 2016.


MAYOR


LEGISLATIVE SERVICES/CLERK

ROAD ACCESS AGREEMENT

THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW

and

THOMAS CARL WOLFGANG SCHMIDT

**PART OF LOT 11, CONCESSION 6, NOTTAWASAGA
(as more particularly described in Schedule "A")**

**THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW AND
THOMAS CARL WOLFGANG SCHMID
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THIS AGREEMENT made as of this 29th day of February, 2016.

BETWEEN:

THOMAS CARL WOLFGANG SCHMIDT
(hereinafter called the "Owner")

-and-

THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW
(hereinafter called the "Municipality")

WHEREAS the Owner is the registered owner of lands known municipally as 2629 Concession 6 South, in the former Township of Nottawasaga, now in the Township of Clearview which lands are more particularly described in Schedule "A" to this Agreement (the "Benefiting Lands");

AND WHEREAS the Owner has applied to the Municipality for an amendment to the Municipality's Zoning By-law 06-54 to recognize the existing use of the Benefiting Lands and the buildings located thereon as a single detached residential dwelling lot without frontage on a municipally maintained road;

AND WHEREAS the Owner has also applied for a building permit to allow construction of an addition to the residential dwelling located on the Benefiting Lands;

AND WHEREAS as a condition of approval of the amendment to Zoning By-law 06-54 and the issuance of a building permit to the Owner for construction of the addition, the Municipality has required that the Owner enter into this Agreement concerning the ownership, maintenance and use of the road allowance known as Concession 6 South, in the former Township of Nottawasaga as more particularly described in Schedule "B" (hereinafter referred to as the "Road Access");

NOW THEREFORE in consideration of the sum of Two (\$2.00) Dollars and for the other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

PART I

GENERAL

1. Intent of Agreement

The intent of this Agreement is to confirm the respective rights and obligations of the Municipality and the Owner with respect to the use and maintenance of the Road Access for vehicular and pedestrian access to and from the Benefiting Lands until such time as the Municipality determines, by by-law, to:

- a) construct the Road Access for year round public use as part of the municipal road system; or
- b) stop up, close and sell the Road Access to the Owner or, subject to the granting of appropriate road access easement rights to the Owner by the Municipality, to a third party purchaser.

Without limiting in any way the general terms of this Agreement, it is the intent that this Agreement shall be binding upon the parties and their respective heirs, successors and assigns.

2. Definitions

In this Agreement unless the context otherwise requires, the following terms will have the following meanings:

- (a) **"Agreement"** means this Agreement including all schedules attached hereto and includes the Approved Plans.
- (b) **"Benefiting Lands"** means those lands described in Schedule "A" to this Agreement and includes all easement rights and obligations granted in connection therewith;
- (c) **"Owner"** where used in this Agreement means the registered owner of the Benefiting Lands against which this Agreement has been registered from time to time;
- (d) **"Road Access"** means that portion of the road allowance under the jurisdiction of the Municipality more particularly described in Schedule "B";

3. Schedules

The following schedules are attached hereto and form part of this Agreement:

SCHEDULE "A" Description of the Benefiting Lands.

SCHEDULE "B" Road Access.

PART II

USE AND MAINTENANCE OF ROAD ACCESS

4. Use of Road Access by Owner

The Owner shall be entitled to use the Road Access for the purposes of vehicular and pedestrian access to the Benefiting Lands throughout each year for access to the private driveway located within land described as Part of Lot 11, Concession 6, Geographic Township of Nottawasaga designated as Part 2 on Plan 51R-10068 leading to and from the Road Access the Benefiting Lands as provided in this Agreement.

5. Seasonal Maintenance of Road Access by Township

The Owner acknowledges and accepts that the Road Access is under the jurisdiction of the Municipality and that it is a seasonally maintained road only with limited maintenance performed by the Municipality related to road grading when weather permits. The Owner shall not be entitled to call upon the Municipality to increase the amount of road maintenance usually performed as a result of the change in zoning designation of the Benefiting Lands or as a result of the issuance of a building permit for the addition to the residential dwelling unit on the Benefiting Lands or due to any increase in the assessed value of the Benefiting Lands. Moreover, the Owner shall not be entitled to call upon the Municipality for the construction of any improvements to the Road Access without the specific approval of Council.

6. Restriction on Maintenance or Alteration of Road Access by Owner

The Owner shall not be entitled to conduct any maintenance on or construct or complete any material alteration to the Road Access.

PART III

GENERAL PROVISIONS

7. Non-Exclusive License Provisions

Upon execution and registration of this Agreement on title to the Benefiting Lands, the Owner shall have the non-exclusive right to use the Road Access for access to and from

the Benefiting Lands by vehicles and pedestrians. This non-exclusive right does not preclude pedestrian, vehicular or other approved use of the Road Access by the general public nor does it prevent the Municipality from exercising its rights as owner of the Road Access provided the Municipality does not unreasonably interfere with the access rights of the Owner so long as this Agreement remains in effect.

8. Emergency Services

The Owner acknowledges and accepts that the Municipality may not be able to provide emergency services to the Benefiting Lands during times when access to the Benefiting Lands via the Road Access is impaired due to weather and road conditions and the Owner agrees that the Municipality shall not be liable as a result of any inability on its part to delivery emergency services as a result of the condition of the Road Access given it limited maintenance by the Municipality. The Owner hereby releases the Municipality from any claims arising from its inability to deliver emergency services to the Benefiting Lands for the reason stated in this Section and indemnifies the Municipality as a result of any claims that may arise from family members, invitees or guests accessing or present on the Benefiting Lands when emergency services are not available strictly as a result of weather or road conditions.

FINANCIAL CONDITIONS

9. Processing and Approval Fees

The Owner shall pay all reasonable costs as incurred by the Municipality for its solicitor (on a substantial indemnity basis), its administrative costs and the costs for other staff, agents, officers or consultants for the registration, administration and enforcement of this Agreement. The Owner shall be responsible for the costs and performance of all the Owner's obligations unless specifically relieved from such responsibility by this Agreement. For the purposes of this Section, reasonable costs shall not include legal fees incurred by the Municipality in any dispute between the Municipality and the Owner as to the interpretation or application of this Agreement where it is determined that costs are to be paid by the Municipality.

ENFORCEMENT

10. Default

If, in the opinion of the Municipality, the Owner has failed to fulfill the ongoing requirements of the Owner with respect the terms of this Agreement then, the Municipality shall promptly notify the Owner in writing of such default. If the default is not remedied within seven (7) clear days of such notification, then the Municipality may take reasonable steps to remedy the default on behalf of the Owner and charge the costs thereof to the Owner as a debt owing to the Municipality collectible in the same manner as taxes.

11. Enforcement and Entry by Municipality

The Owner acknowledges that the Municipality, in addition to any other remedy it may have at law, shall also be entitled to enforce this Agreement in accordance with s. 446 of the *Municipal Act, 2001*.

PART IV

ADMINISTRATION

12. Notice

- (a) If any notice is required to be given by the Municipality to the Owner with respect to this Agreement, such notice shall be mailed, delivered or sent by a confirmed facsimile transmission to:

**Thomas Carl Wolfgang Schmidt
145 Indian Road
Toronto, Ontario
M6R 2V7**

or such other address of which the Owner have notified the Municipality, in writing, and any such notice mailed, delivered or sent by facsimile transmission shall be deemed good and sufficient notice under the terms of this Agreement.

(b) If any notice is required to be given by the Owner to the Municipality with respect to this Agreement, such notice shall be mailed, delivered or sent by a confirmed facsimile transmission to:

**The Corporation of the Township of Clearview
217 Gideon Street, P.O. Box 200
Stayner, Ontario LOM 1S0
Attention: Clerk
Fax: (705) 428-0288**

or such other address of which the Municipality has notified the Owner, in writing, and any such notice mailed, delivered or sent by facsimile transmission shall be deemed good and sufficient notice under the terms of this Agreement.

13. Registration of Agreement

The Owner hereby agrees that this Agreement including any appended schedules will be registered upon title to the Benefiting Lands. The covenants, agreements, conditions and undertakings herein contained on the part of the Owner shall run with the Benefiting Lands and shall be binding upon the Owner and the Owner's successors and assigns as owner and occupier of the Benefiting Lands from time to time and this covenant shall be to the benefit of the Municipality and its lands and highways appurtenant and adjacent to the Benefiting Lands. The Owner further covenants and agrees to pay to the Municipality the cost of registration of this Agreement as well as any further costs incurred by the Municipality as a result of the registration of any other documents pertaining to this Agreement.

14. Postponement and Subordination

The Owner covenants and agrees, at the Owner's own expense, to obtain and register such documentation from all mortgagees or other encumbrancers as may be deemed necessary by the Municipality and its solicitor to postpone and subordinate their respective interest in the Benefiting Lands to the interest of the Municipality with the intent that this Agreement shall take effect and have priority as if it had been executed and registered prior to the execution and registration of the document or documents giving to the mortgagee and/or encumbrancers their respective interest in the Benefiting Lands concurrent with the registration hereof or, upon written approval of the solicitor acting for the Municipality, within thirty (30) days immediately following registration.

15. Other Applicable Laws

Nothing in this Agreement shall relieve the Owner from compliance with all applicable municipal by-laws, laws, regulations, notices or other policies or laws and/or regulations established by any other governmental body that may have jurisdiction over the Lands.

16. Interpretation of Agreement

- (a) The part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (b) This Agreement shall be construed with all changes in number and gender as may be required by the context.

- (c) Every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words “at the expense of the Owner” unless the context otherwise requires, including the payment of any applicable taxes (including HST).
- (d) References herein to any statute, regulation or by-law or any provision thereof include such statute or provision thereof as amended, replaced, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.
- (e) All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.
- (f) Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as “without limiting the generality of the foregoing” do not precede such list or reference.
- (g) The Owner and the Municipality agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.

17. Waiver

The failure of the Municipality at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Municipality of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time. The Municipality shall specifically retain its rights at law to enforce this Agreement.

18. Extension of Time

Time shall always be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of both the Owner and the Municipality, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.

19. No Challenge to Agreement

The parties covenant and agree with each other not to call into question or challenge, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the party's right to enter into and enforce this Agreement. The law of contract applies to this Agreement and the parties are entitled to all remedies arising from it, notwithstanding any provision in s. 11 or 27 of the Municipal Act interpreted to the contrary. The parties agree that adequate consideration has flowed from each party to the other and that they are not severable. This provision may be pleaded by either party in any action or proceeding as an estoppel of any denial of such right.

20. Governing Law

This Agreement shall be interpreted under and be governed by the laws of the Province of Ontario.

21. Counterparts

The parties acknowledge and agree that this Agreement and any schedules hereto may be executed in counterparts, which, taken together, shall constitute one and the same instrument. Facsimile copies of counterparts of this Agreement shall be deemed to be originals and shall be binding upon the parties executing same in the same manner as if each party had executed the original.

IN WITNESS whereof the Owner has executed this Agreement as of the date above first written.

SIGNED, SEALED AND DELIVERED

in the presence of
J. MacDonald
J. MacDonald
Witness as to the signature
of Owner

)
)
)
)
)
) *Thomas Carl Wolfgang Schmidt*
) **THOMAS CARL WOLFGANG SCHMIDT**
)

IN WITNESS WHEREOF the Municipality has affixed its corporate seal and by its proper signing officers duly authorized has executed this Agreement as of the date above first written.

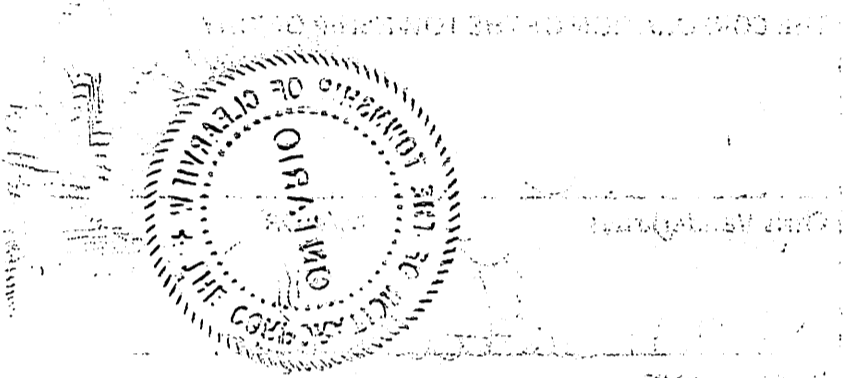
WITNESS

)
)
) **THE CORPORATION OF THE TOWNSHIP OF TINY**
)
)
)
)
) *Chris Vanderkruys*
) **Chris Vanderkruys** **MAYOR**
)
) *Pamela Fettes*
) **Pamela Fettes** **CLERK**

THE BOARD OF DIRECTORS OF THE COMPANY HAS APPROVED THE FOLLOWING RESOLUTIONS:

RESOLVED, THAT THE BOARD OF DIRECTORS OF THE COMPANY HAS APPROVED THE FOLLOWING RESOLUTIONS:

RESOLVED, THAT THE BOARD OF DIRECTORS OF THE COMPANY HAS APPROVED THE FOLLOWING RESOLUTIONS:



SCHEDULE "A"

LEGAL DESCRIPTION OF BENEFITING LAND

Part of Lot 11, Concession 6, Geographic Township of Nottawasaga, now in the Township of Clearview, designated as Part 1 on Plan 51R-10068 together with an easement as in Instrument No. RO727531 over Part 2 on Plan 51R-10068.

SCHEDULE "B"

LEGAL DESCRIPTION OF ROAD ACCESS

Part of the Road Allowance Between Concessions 6 & 7, Geographic Township of Nottawasaga, now in the Township of Clearview Lying Between the Deviation Road Through Part of Lot 14, Concession 7 and Part 1 in RO232271 being the portion of the road allowance described in PIN No. 58221-0003 (LT) lying north of the intersection of the private driveway located within Part 2 on Plan 51R-10068.