

## **Private Roads By-Law and Joe Lake Road East Review**

Presented To:	City Council
Meeting Date:	May 25, 2021
Type:	Managers' Reports
Prepared by:	David Kalviainen Infrastructure Capital Planning
Recommended by:	General Manager of Growth and Infrastructure

### **Report Summary**

This report provides a recommendation regarding By-Law 2001-134A and Joe Lake Road East.

### **Resolution**

THAT the City of Greater Sudbury directs Staff to establish a new policy framework and format application process for private road assumption through the Phase 2 Official Plan Review;

AND THAT the City of Greater Sudbury directs staff to prepare a bylaw to amend By-law 2001-314A to provide that the by-law expire on December 31, 2022 and any applications under the By-law not approved by Council for adoption as of the expiry date of the by-law will also expire; as outlined in the report entitled "Private Roads By-Law and Joe Lake Road East Review", from the General Manager of Growth & Infrastructure presented at the City Council meeting on May 25, 2021.

### **Relationship to the Strategic Plan, Health Impact Assessment and Community Energy & Emissions Plan (CEEP)**

This report supports Council's Strategic Plan in the area of Asset Management and Service Excellence by reviewing the policy for private road adoption as a municipal road, and providing recommendations. This report also supports goal #1 of the Community Energy and Emissions Plan by promoting the achievement of energy efficiency and emissions reductions by creating compact, complete communities

### **Financial Implications**

This report is within prescribed budgets

### **Purpose:**

As requested under City Council Resolution CC2020-267, this report provides information to Council regarding the land use planning implications associated with the adoption of private roads, background on the status of private roads known as Joe Lake Road East and Dixon Lake Road, and, seeks Council direction

for Staff to establish a new policy framework and application process for private road assumption applications as part of the Phase 2 Official Plan review.

## **Overview / Executive Summary:**

This report provides the following information:

- i) Background information related to By-Law 2001-314A to Adopt a Private Road Assumption Policy.
- ii) Background information and recommendations/options for the City to assume part or all of Joe Lake Road East and Dixon Lake Road.
- iii) Land use planning implications of assuming private roads
- iv) Recommendations for amendments to By-Law 2001-314A (Adopt a Private Road Assumption Policy) and next steps, which include developing a new policy frame work and application process for the adoption of private roads, reviewing the engineering standards for private road adoption with public consultation being included as part of the Phase 2 Official Plan Review.

## **Background Information By-Law 2001-314A:**

Prior to amalgamation of the City of Greater Sudbury in 2001, the former City of Valley East was considering assuming ownership of the private roads known as Joe Lake Road East and Dixon Lake Road. On December 13, 2001, City of Greater Sudbury Council adopted By-Law 2001-314A which enacts the repeal of all previous policies of the former municipalities relating to private road assumption. By-Law 2001-314A specifically includes the repeal of City of Valley East resolutions 99-07, 99-08, 99-09, and 2000-01.

Under By-Law 2001-314A, no private roads developed after January 1, 2001 are eligible under the policy for consideration for adoption as a public road. The By-Law includes criteria in order to prevent the City incurring any initial capital costs, and to ensure all petitioning interest groups are treated equally. The policy states the following:

“Neither Council nor City Staff shall assume any organizing or coordinating roles in these matters when dealing with petitioning interest groups. There are often dissenting opinion, property disputes, trespass issues, and countless other problems along the way that will emerge that are not of Council’s doing, and Council will not arbitrate such matters.

Council instead has set the policy guidelines and criteria shall let the petitioners work out the problems and disputes, and in exchange, Council will accept the roads without debate if all the criteria have been met.”

A report entitled, “Private Roads – City of Greater Sudbury”, was prepared November 6, 2001 to accompany By-Law 2001-314A, and this report provides background information on the status of private roads for which requests from residents to adopt their private road as a public road had been made prior to Council approval of By-Law 2001-314A. Dixon Lake Road was not identified in this report. The list of private roads for which the City had received requests to adopt by that date include:

- i. North Shore Road
- ii. Raft Lake Road
- iii. Pine Cone Road
- iv. Donnelly Court
- v. Dill Lake Road
- vi. Joe Lake Road East
- vii. Joe Lake Road West
- viii. Frenchman Lake Road South
- ix. Bushy Bay Lake Road

The Official Plan currently contains the following language in regards to the assumption of private roads which matches By-Law 2001-314A:

Private roads provide access to residential uses in Rural Areas, but are not maintained by the City. Schedule 7, Transportation Network indicates some but not all private roads in Greater Sudbury. It is the City's overall intention not to assume control over 136 such roads beyond what is determined to be feasible. The following eligibility criteria have been established for the assumption of private roads:

- a. a registrable survey plan(s) of the road right-of-way is produced, meeting the minimum widths and geometric design standards for private roads;
- b. property ownership of the right-of-way is acquired and fully transferable to the City at no cost to the municipality;
- c. roads are constructed or improved to meet the minimum maintenance standards for assumption of private roads;
- d. the proposed road is continuous with and/or connects to an existing municipal road or provincial highway;
- e. the road must service year-round residential properties;
- f. industrial, commercial and institutional roads will not be considered; and,
- g. new private roads developed after January 1, 2001 will not be assumed by the City.

In 2003 amendments were made to the Municipal Act, 2001 (Section 31(1) whereby land may only become a highway by a By-law establishing it (and not by the activities of the municipality of any other person in relation to the land), except:

- All highways transferred under the Public Transportation and Highway Improvement Act;
- All road allowances made by the Crown surveyors that are located in municipalities;
- All road allowances, highways, streets and lanes shown on a registered plan of subdivision.

When assumption by-law is passed, minimum maintenance standards apply (s. 44). However, it is worth noting that amendment spoke only to the creation of new highways: it did not change the status of existing highways.

Since the adoption of By-Law 2001-314A, only Pine Cone Road has satisfied all of the criteria and been adopted by by-law as a municipal road. Following the adoption of Pine Cone Road as a municipal road, the residents of this former private road petitioned the City to further improve the newly established municipal road to upgrade to hard surface and to install additional guiderail. These requested upgrades were beyond what was required of the residents under By-Law 2001-314A to initially upgrade the private road to a standard for consideration for adoption as a public road.

In situations in which there is City-owned infrastructure (e.g. fire hydrant) on a private road, the City does not maintain the private road (i.e. does not provide snow clearing, road grading, etc) in order to gain access to the infrastructure (e.g. fire hydrant). The owners of the private road are responsible to maintain the private road to allow the City access to the City's infrastructure (e.g. fire hydrant). The City only maintains the actual City-owned infrastructure (e.g. fire hydrant) to keep clear of snow and other debris.

In summary, in the 20 years since the passing of By-Law 2001-314A, the City has only received two formal requests to adopt a private road. Pine Cone Road has been adopted and the process with Joe Lake Road East and Dixon Lake Road is ongoing. There have been a few inquiries on the process and the requirements to adopt a private road (for example Donnelly Court), however there has not been an investment from the residents to bring the road to the required standard.

## Background and Recommendation for Joe Lake Road East and Dixon Lake Road

Over the years, the residents (private road association) of Joe Lake Road East have carried out improvements to the road and arranged for the future transfer of the road land, should the City agree to assume the private road known as Joe Lake Road East as a municipal road. However, there are outstanding issues previously identified in both the 2001 report and a more recent 2015 assessment that need to be addressed prior to meeting the criteria outlined in By-Law 2001-314A and the City assuming Joe Lake Road East as a municipal road.

In the November 6, 2001 report entitled, "Private Roads – City of Greater Sudbury", recommendations for improvements to Joe Lake Road East are outlined in order for the City to consider it for adoption as a municipal road. The recommendations outlined in the November 6, 2001 report for Joe Lake Road East are general requirements, and include the following:

- Legal plan must be prepared defining right-of-way.
- Minor road platform widening required at narrow spots.
- Surface graveling required.
- Guiderail improvements required.
- Minor ditching required at west end hill and some realignment.
- Requires streetlighting.

In 2015, upon request from the residents, Staff carried out a detailed review of the work completed on Joe Lake Road East, and provided a specific description of the outstanding work to meet the criteria outlined in the November 6, 2001 report. As described in the July 16, 2015 letter from the City to the Joe Lake Road East private road association, the following issues remain outstanding prior to the City adopting this private road as a municipal road:

- There are no culverts under the road or at the driveway connections. It is not apparent how the road drains to the lake; however it is clear that the drainage is required to cross private property. The City will require a drainage easement over the ditches on private property that outlet to the lake registered on title in priority to any mortgage. Easements are typically 3 m in width. A transfer of easement will require a reference plan be deposited to create a registrable description. If there are current drainage issues, or locations where the water ponds, correct the issue and inform the City of these locations prior to acceptance.
- The rock face is to be sufficiently cleaned such that overburden stops falling onto the road and ditch. This requires overburden to be shaped into a stable slope (typically 3H:1V) and vegetation established on the exposed face.
- Guiderail (or other approved method of roadside protection) is to be installed in accordance with the provided sketches.
- The City acknowledges that there is plow damage to the existing guiderail and will reimburse the association for an agreed upon amount towards the cost of the repair. Prior to starting any repair work, the association must provide an estimate of the repair costs and reach an agreement with the City as to the amount to be paid to the association. Upon completion of the work, the City is to be provided with an itemized invoice for the work and materials, for review by the City and payment, if it is in order.
- Four streetlights were required. It is not clear if the streetlights installed are operational or meet the City standard for streetlights. Provide documentation regarding the purchase and installation of the streetlights to the City for review. If no documentation is available, the City will request Greater Sudbury Utilities (the City's streetlight maintenance provider) review the streetlights. The streetlights must be approved in writing by Greater Sudbury Utilities as meeting City standards before the road is accepted. Any cost to inspect or remediate will remain with the association.

- Any brush encroaching on the cleared portion of the right-of-way is to be cut back prior to acceptance. Brushing is to be completed from the roadway to the back of ditch or bottom of slope, whichever is further.
- The property ownership of the right-of-way is to be transferred to the City, free of any mortgages, and at no cost to the City.

The issues identified above remain outstanding, and are the responsibility of the Joe Lake Road East private road association to complete in order to meet the criteria for the City to adopt Joe Lake Road East as a municipal road. Once notified that the work has been completed, Staff will review the road to confirm that the outstanding issues have been completed to meet the standards required under previous correspondence and outlined in By-Law 2001-314A.

A formal review of Dixon Lake Road has not been completed under By-Law 2001-314A.

It should be noted that the City currently has an arrangement with the Joe Lake Road East private road association to turn winter control equipment around at the intersection of Joe Lake Road East and Dixon Lake Road. This arrangement benefits both the City and the private road association, as it provides the City with a larger turn-around location for winter control equipment, and provides the private road association with snow clearing on a portion of their private road. This arrangement does not infer an intent on the part of the City to assume the private road as a municipal road.

## **Planning Implications of Assuming Private Roads**

There are a number of land use planning implications associated with the formal municipal assumption of private roads. The primary issue is the potential for increased development activity (and requests for service level enhancements) in the rural areas should a private road become a public road. Currently, the Official Plan and Zoning By-law prevent new lot creation and restrict the issuance of building permits on properties that are only serviced by private roads.

The primary paths by which the City assumes new roads is by way of a draft plan of subdivision application under the *Planning Act* or through a Municipal Class Environmental Approval (MCEA). Both of these processes take into account Official Plan policies, development considerations, environmental impacts, long term financial impacts and other matters through a comprehensive process that includes public consultation.

By-Law 2001-314A currently provides another pathway, via the *Municipal Act 2001*, for historical private roads to become public outside of the above processes. The By-law includes criteria that are, for the most part, focused on the ownership, design and safety elements of the road and not on the broader land use planning and asset management goals and objectives of the City's Official Plan and Council's Strategic Plan.

As shown in Appendix A, there are a significant number of private roads that exist in the City, both in the urban and rural areas. Some of these roads are owned by private companies and are used for resource extraction, others are internal to commercial or institutional developments, while others are roads that provide access to rural areas and lakes. The majority of the private roads constructed prior to January 1, 2001, are rural in nature and located outside of the Settlement Boundary. The adoption of additional municipal roads will increase the infrastructure funding gap that currently exists for both asset renewal and operating costs.

The Official Plan has policies on lot creation in Rural Areas to limit rural development in order to mitigate the pressures inherent to unserviced development and the environmental impact of private septic systems. Given the land use planning and asset management considerations identified above, the City may want to further restrict the areas in which it would consider the assumption of private roads to areas within the settlement boundary in accordance with the intensification, sustainability of assets and rural development policies of the Official Plan. Should Council give this direction, the policy framework could be further evaluated and public consultations held as part of the Phase 2 Official Plan review.

## **Recommendations for Changes to By-Law 2001-314A**

Staff recommend that the City update the policy framework in the Official Plan and create a formal application process for requests to assume private roads and that By-Law 2001-314A be repealed on December 31, 2022.

The updated policy framework would ensure that the assumption of private roads conforms with the Official Plan and Council's Strategic Plan. This could include policies that restrict future private road assumptions to roads within settlement boundary.

By creating a new application process, Staff would be available to provide information and pre-consultation services to the public and engineering consultants, facilitate with other development applications, and implement Council's development policies and zoning by-laws, as well as highlighting other requirements. The process would conclude with a report being presented at Planning Committee for approval and authorization to enter into an agreement identifying all of the requirements for the City to adopt the road. Upon compliance with the requirements, a bylaw assuming the road would be presented to Council for passage in accordance with the requirements of the Municipal Act 2001.

One benefit of implementing a formal application process is the opportunity to include in the process a SPART (Sudbury Planning Application Review Team) meeting. The SPART meeting is a pre-consultation meeting to confirm the appropriate documentation required for the assumption of the private road, and processing timelines. The meeting minutes are distributed and clear requirements are documented. This provides greater clarity than the existing ad hoc process.

By-Law 2001-314A (Adopt a Private Road Assumption Policy) outlines the existing process for petitioning residents to apply for the CGS to assume their private road as a publicly owned and maintained road. Under By-Law 2001-314A, no private roads developed after January 1, 2001 are eligible under the policy for consideration for adoption as a public road and it is not proposed to change this criteria as all new roads are to be created through the subdivision or MCEA process.

As noted in the By-Law, the implementation of the policy is to follow a similar process of review as a development application. The current eligibility criteria is outlined the By-Law, and the current minimum standards for private roads are outlined.

If By-Law 2001-314A is repealed, the proposed process for considering the assumption of a private road as a municipal road will be by means of a development application with a policy framework and requirements established in the Official Plan. If directed by Council, Staff would establish a new application process to replace By-Law 2001-314A. The eligibility criteria and minimum standards for adoption of a private road as a municipal road will be reviewed and revised as part of the development of the new formal process, including application forms and fee structure.

### **Next Steps:**

Staff are recommending that they be given direction to update the private road assumption policies as part of the Phase 2 Official and establish a new development application process for private road assumption to replace By-Law 2001-314A (Adopt a Private Road Assumption Policy as part of the Phase 2 Official Plan Review.

As a result, it is recommended that By-Law 2001-314A be repealed on December 31, 2022. All roads eligible under By-Law 2001-314A will until that date to have their private road accepted as a municipal road under the current process and requirements defined under By-Law 2001-314A. An extensive public consultation plan is included as part of the Phase 2 Official Plan Review and it will include the changes to the adoption of private roads. In addition the engineering standards for private road adoption will be updated concurrent to this process.

## Resources Cited

- 1) City of Greater Sudbury, City Council Resolution No. CC2020-267, November 10, 2020
- 2) City of Greater Sudbury, By-Law 2001-314A (Adopt a Private Road Assumption Policy), December 13, 2001.
- 3) City of Greater Sudbury, Assumption of Private Roads Report, November 6, 2001.
- 4) City of Greater Sudbury, Letter to Mr. Dan Bazinet (RE: Joe Lake Road East), July 16, 2015.
- 5) City of Greater Sudbury, Winter Control North-East Section 2020-2021, Plow & Sand Route 4, September 12, 2020.
- 6) City of Greater Sudbury, Planning Services Division, Official Plan: <https://www.greatersudbury.ca/city-hall/reports-studies-policies-and-plans/official-plan/>
- 7) Ontario Municipal Act, 2001 <https://www.ontario.ca/laws/statute/01m25>