

# DUNCAN, LINTON LLP

————— LAWYERS —————

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July 19, 2024  
File No. 0046345

THE CORPORATION OF THE TOWN  
OF TILLSONBURG  
10 Lisgar Avenue  
Tillsonburg, ON N4G 5A5

VIA EMAIL  
([lferreira@tillsonburg.ca](mailto:lferreira@tillsonburg.ca))

Attention: Leo Ferreira

Dear Mr. Ferreira:

**Re: RDAL BTN TWP OF BAYHAM & TWP OF DEREHAM TO THE CENTER LINE; RDAL BTN TWP OF MIDDLETON & TWP OF DEREHAM BTN COUNTY RD 38 & RDAL BTN LT 14 & 15; SWOXFORD/TILLSONBURG and bearing PIN 00025-0135 (LT) in the Land Registry Office for the Land Titles Division in Oxford (No. 41) (the “Road”)**

You have asked us about entering The Corporation of the Town of Tillsonburg (the “Town of Tillsonburg”) as the owner of the Road.

### Public Authority Having Jurisdiction (“PAHJ”)

The parcel register for the Road lists PAHJ as the owner. The Land Registrar likely entered the PAHJ placeholder as the owner of the Road upon conversion of this parcel from the old Registry system to the Land Titles system, recognizing that the parcel is owned by a government authority but unable to identify the relevant authority with certainty.

A municipality may update the parcel register for a PIN whose owner is listed as PAHJ by registering an Application (General) and providing evidence supporting the municipality’s claim to ownership of the parcel. The authority for registering an Application (General) in this situation is found in subsection 152(1) of the *Land Titles Act*: “Where a street, road or lane laid out on a plan registered in a land registry office has become a public highway and

has thereby become vested in a municipal corporation, the municipal corporation may apply to the land registrar to be entered as the owner thereof.”

The Road is comprised of road allowances laid out by the Crown surveyors. As such, they constitute a public highway under section 26 of the *Municipal Act, 2001*:

**What constitutes highway**

26 The following are highways unless they have been closed:

1. All highways that existed on December 31, 2002.
2. All highways established by by-law of a municipality on or after January 1, 2003.
3. All highways transferred to a municipality under the Public Transportation and Highway Improvement Act.
4. All road allowances made by the Crown surveyors that are located in municipalities.
5. All road allowances, highways, streets and lanes shown on a registered plan of subdivision.

**Road Allowance between Town of Tillsonburg & Township of Bayham**

The firstly described lands in the legal description for the Road constitute a portion of the road allowance between two municipalities: the Township of Bayham and the former Township of Dereham. The relevant portion of the Township of Dereham was annexed to the Town of Tillsonburg effective January 1, 1975, pursuant to the *County of Oxford Act, 1974*. As such, the firstly described lands fall under the joint jurisdiction of The Corporation of the Municipality of Bayham (the “**Municipality of Bayham**”) and the Town of Tillsonburg pursuant to subsection 29(1) of the *Municipal Act, 2001*: “Subject to section 28 and to a by-law passed under section 52, the local municipalities on either side of a boundary line between municipalities have joint jurisdiction over any highways forming the boundary line.” Reference to “jurisdiction” in the context of this subsection is equivalent to ownership, even where paper title indicates otherwise.

Where a public highway falls under the joint jurisdiction of two or more municipalities, any by-law passed in respect of that public highway must be passed by all of the municipalities having jurisdiction over it in accordance with subsection 27(2) of the *Municipal Act, 2001*.

The Town of Tillsonburg can thus rely on section 26 and subsection 29(1) of the *Municipal Act, 2001* as the supporting evidence for making an Application (General) to enter the Town of Tillsonburg as an owner of the firstly described lands, but it must do so jointly with the Municipality of Bayham to the extent that the Application (General) includes the firstly described lands.

### Road Allowance within Geographic Boundaries of Town of Tillsonburg

While the secondly described lands in the legal description for the Road was originally laid out as a road allowance between two municipalities—the former Township of Middleton and the former Township of Dereham—the relevant portions of both municipalities were eventually annexed to the Town of Tillsonburg, the Township of Dereham as described earlier in this correspondence and the Township of Middleton pursuant to the *Regional Municipality of Haldimand-Norfolk Act*. The Town of Tillsonburg is the relevant PAHJ (as opposed to the upper tier municipality or another public authority) because such road allowances fall under the jurisdiction of the local municipality under subsection 28(2) of the *Municipal Act, 2001*:

#### **Local municipalities**

28 (2) Except as otherwise provided in this Act or under section 8 of the Public Transportation and Highway Improvement Act, **a local municipality has jurisdiction over,**

- (a) **all road allowances located in the municipality that were made by the Crown surveyors;** and
- (b) all road allowances, highways, streets and lanes shown on a registered plan of subdivision.

The Town of Tillsonburg can thus rely on section 26 and subsection 28(2) of the *Municipal Act, 2001* as the supporting evidence for making an Application (General) to enter the Town of Tillsonburg as an owner of the secondly described lands.

We understand that the Town of Tillsonburg has sought an opinion to have it entered as an owner of the Road because it intends to register an encroachment agreement in relation to an encroachment made by an adjoining landowner over a portion of the secondly described lands. As such, it may be possible to proceed with an Application (General) in respect of entering the Town of Tillsonburg as the owner of the secondly described lands and to have the encroachment agreement registered against title to those lands without the Municipality of Bayham's participation. If the Town of Tillsonburg were to proceed on that basis only, the owner of the firstly described lands would continue to be shown as PAHJ.

#### **Registration of Application (General)**

As discussed above, we are of the view that the Town of Tillsonburg may apply to the Land Registrar to enter itself as an owner of the Road by registering an Application (General) to enter itself as an owner of the Road. It must do so jointly with the Municipality of Bayham in respect of the firstly described lands. As such, it would be prudent for the Town of Tillsonburg to coordinate registration of this Application (General) with the Municipality of Bayham, and we have prepared the enclosed Acknowledgments and Directions for execution by both the Town of Tillsonburg and the Municipality of Bayham authorizing our firm to register the enclosed Application (General).

We would be happy to discuss this matter with legal counsel for the Municipality of Bayham to facilitate this registration.

We will tend to registration of the Application (General) upon receipt of the signed Acknowledgments and Directions. Let us know if you have any questions regarding this matter.

Yours very truly,  
DUNCAN, LINTON LLP



Adrian L. Rosu  
ALR/

Encl. Acknowledgments and Directions re: Application (General)

# ACKNOWLEDGEMENT AND DIRECTION

**TO:** Adrian L. Rosu  
(Insert lawyer's name)

**AND TO:** DUNCAN, LINTON LLP  
(Insert firm name)

**RE:** Application - Newell Road (PAHJ); The Corporation of the Town of Tillsonburg & The Corporation of the Municipality of Bayham ("the transaction")  
(Insert brief description of transaction)

**This will confirm that:**

- I/We have reviewed the information set out in this Acknowledgement and Direction and in the documents described below (the "Documents"), and that this information is accurate;
- You, your agent or employee are authorized and directed to sign, deliver, and/or register electronically, on my/our behalf the Documents in the form attached.
- You are hereby authorized and directed to enter into an escrow closing arrangement substantially in the form attached hereto being a copy of the version of the Document Registration Agreement, which appears on the website of the Law Society of Ontario as the date of the Agreement of Purchase and sale herein. I/We hereby acknowledge the said Agreement has been reviewed by me/us and that I/We shall be bound by its terms;
- The effect of the Documents has been fully explained to me/us, and I/we understand that I/we are parties to and bound by the terms and provisions of the Documents to the same extent as if I/we had signed them; and
- I/we are in fact the parties named in the Documents and I/we have not misrepresented our identities to you.
- I, \_\_\_\_\_, am the spouse of \_\_\_\_\_, the (Transferor/Charger), and hereby consent to the transaction described in the Acknowledgment and Direction. I authorize you to indicate my consent on all the Documents for which it is required.

**DESCRIPTION OF ELECTRONIC DOCUMENTS**

The Document(s) described in the Acknowledgement and Direction are the document(s) selected below which are attached hereto as "Document in Preparation" and are:

- A Transfer of the land described above.
- A Charge of the land described above.
- Other documents ~~set out in Schedule "B"~~ attached hereto.

**Dated at** Tillsonburg, **this** \_\_\_\_\_ **day of** \_\_\_\_\_, **20** 24.

**WITNESS**

(As to all signatures, if required)

\_\_\_\_\_  
THE CORPORATION OF THE TOWN OF TILLSONBURG

\_\_\_\_\_  
PER: DEB GILVESY, MAYOR

\_\_\_\_\_  
PER: TANYA DANIELS, CLERK

\_\_\_\_\_  
WE HAVE AUTHORITY TO BIND THE CORPORATION OF THE TOWN OF TILLSONBURG

This document has not been submitted and may be incomplete.

**Properties**

*PIN* 00025 - 0135 LT

*Description* RDAL BTN TWP OF BAYHAM & TWP OF DEREHAM TO THE CENTER LINE; RDAL  
BTN TWP OF MIDDLETON & TWP OF DEREHAM BTN COUNTY RD 38 & RDAL BTN  
LT 14 & 15; SWOXFORD/TILLSONBURG

*Address* TILLSONBURG

**Applicant(s)**

*Name* THE CORPORATION OF THE TOWN OF TILLSONBURG  
Acting as a company

*Address for Service* 10 Lisgar Avenue  
Tillsonburg, ON N4G 5A5

This document is not authorized under Power of Attorney by this party.

This document is being authorized by a municipal corporation Deb Gilvesy (Mayor) and Tanya Daniels (Clerk).

*Name* THE CORPORATION OF THE MUNICIPALITY OF BAYHAM  
Acting as a company

*Address for Service* 56169 Heritage Line, P.O. Box 160  
Straffordville, ON N0J 1Y0

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This document is being authorized by a municipal corporation .

**Party To(s)** *Capacity* *Share*

*Name* THE CORPORATION OF THE TOWN OF TILLSONBURG  
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*Name* THE CORPORATION OF THE MUNICIPALITY OF BAYHAM  
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**Statements**

I The Corporation of the Town of Tillsonburg and The Corporation of the Municipality of Bayham having a legal interest in the lands hereby apply under section 152(1) of the Land Titles Act to have the register for the said PIN amended by: entering the owner of the firstly described lands as The Corporation of the Town of Tillsonburg and The Corporation of the Municipality of Bayham and entering the owner of the secondly described lands at The Corporation of the Town of Tillsonburg.

I Adrian L. Rosu solicitor make the following law statement Pursuant to section 26 of the Municipal Act, 2001, S.O. 2001, c. 25 (the "Municipal Act"), the lands described in PIN 00025-0135 (LT) constitute road allowances made by the Crown surveyors and constitute public highways; Pursuant to subsection 28(2) of the Municipal Act, the local municipality has jurisdiction over all road allowances located in the municipality that were made by the Crown surveyors; Pursuant to subsection 29(1) of the Municipal Act, the local municipalities on either side of a boundary line between municipalities have joint jurisdiction over any highways forming the boundary line; The relevant portions of the Township of Dereham were annexed to the Town of Tillsonburg effective January 1, 1975, pursuant to paragraph 2(1)(c) of The County of Oxford Act, 1974, S.O. 1974, c. 57; The relevant portions of the Township of Middleton were annexed to the Town of Tillsonburg effective April 1, 1974, pursuant to subsection 2(2) of the Regional Municipality of Haldimand-Norfolk Act, R.S.O. 1980, c. 435; The Corporation of the Town of Tillsonburg and The Corporation of the Municipality of Bayham have joint jurisdiction over the firstly described lands; The Corporation of the Town of Tillsonburg has sole jurisdiction over the secondly described lands.

**File Number**

*Applicant Client File Number :* 0046345

# ACKNOWLEDGEMENT AND DIRECTION

**TO:** Adrian L. Rosu  
(Insert lawyer's name)

**AND TO:** DUNCAN, LINTON LLP  
(Insert firm name)

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**Dated at** Straffordville, **this** \_\_\_\_\_ **day of** \_\_\_\_\_, **20** 24.

**WITNESS**

(As to all signatures, if required)

\_\_\_\_\_  
THE CORPORATION OF THE MUNICIPALITY OF BAYHAM

\_\_\_\_\_  
PER:  
TITLE:

\_\_\_\_\_  
PER:  
TITLE:

\_\_\_\_\_  
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