

THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN

BY-LAW 2020 - 52

BEING A BY-LAW TO PROVIDE FOR THE EXECUTION OF AN AGREEMENT WITH THE LICENSEE OF THE LANDS – (HENRY WIENS) KNOWN AS MINKLERS LANE AND ARE LEGALLY DESCRIBED AS CON 1 PT LOT 9 RP 42R10938 PART 1 PCL 23503 SS PCL 2353 SS, IN THE MUNICIPALITY OF MAGNETAWAN

AND WHEREAS, the Licensee has sought permission to obtain access via an unopened and unassumed road known as Minklers Lane to provide access to Minklers Lane from lands at CON 1 PT Lot 9 RP 42R10938 PART 1 PCL 23503 SS PCL 2353 SS;

AND WHEREAS, Council has passed Resolution #2020-196 and agreed to permit the Licensee to upgrade Minklers Lane to provide access to the Crown Land North-East of the property subject to the requirement that the Licensee enter into an agreement with the Municipality;

AND WHEREAS, Council is satisfied that the proposed development of the lands is appropriate and in conformity with the Municipality's requirements;

AND WHEREAS, the previous agreement signed with By-law 2018-13 has been rescinded due to non-compliance.

NOW THEREFORE the Council of the Corporation of the Municipality of Magnetawan hereby enacts as follows:

1. That the Municipality of Magnetawan enter into this agreement substantially in the form attached hereto as "This Agreement."
2. That the Mayor and the Clerk are hereby authorized to execute the Agreement and all documents in connection with the Agreement.
3. The Municipality's solicitor is hereby authorized to register the Agreement against the title of the lands to which it applies.
4. That By-law 2018-13 is hereby repealed in its entirety

READ A FIRST, SECOND, AND THIRD TIME, passed, signed and the Seal of the Corporation affixed hereto, this 2nd day of September, 2020

THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN

Mayor

CAO/Clerk

/THIS AGREEMENT MADE BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN

(hereinafter called the "Municipality")
OF THE FIRST PART

- and -

HENRY WIENS AND ANNA LISA WIENS

(hereinafter jointly called the "Licensee")
OF THE SECOND PART

WHEREAS the Licensee is the owner of land on Horn Lake and which is all border by Crown Lands which are legally described in Schedule A, Paragraph 1 (the Licensee's Lands);

AND WHEREAS the owner has sought permission from the Municipality to establish a driveway on the unopened road allowance between Lots 10 and 11, Concessions 1 and 2 in the geographic Township of Chapman (the Municipality's Lands);

AND WHEREAS the owner of land has sought permission from the Province of Ontario to construct a driveway on Crown Lands to connect the proposed land driveway located on the Municipality's Lands to the Licensee's Lands;

AND WHEREAS the Municipality has agreed to permit the Licensee to construct such a driveway subject to the requirement that the Licensee enter into an agreement with the Municipality;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT IN CONSIDERATION OF THE PREMISES AND THE COVENANTS HEREINAFTER SET FORTH, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO COVENANT AND AGREE WITH EACH OTHER AS FOLLOWS:

1. LICENCE

The Municipality hereby permits and consents to the Licensee to establish and maintain a driveway upon the Licensed Area, which is more particularly described in Schedule "B" for the purpose of providing access to the lands described in Paragraph 1 of Schedule "A".

This license is granted for the sole purpose of providing driveway access to the Licensee's Lands for seasonal residential use.

2. INDEMNIFICATION FROM LIABILITY AND RELEASE

The Licensee covenants and agrees with the Municipality that the Licensee will indemnify and save harmless the Municipality, its officers, servants, officials and agents from any claim or demand, loss, cost, charge or expense which the Municipality may incur or be liable for in consequence of the permission hereinbefore granted and/or the exercise by the Licensee of such permission.

The Licensee hereby releases and forever discharges the Municipality, its officers, servants, officials and agents from any claim, demand, loss, cost, charge or expense which may arise as a result of the Municipality performing any municipal work in or upon the Licensed Area.

3. TERM

- (a) Term - This License Agreement shall be effective upon the date of execution by the Municipality and shall continue from year to year subject to the termination provisions hereinafter set forth.
- (b) Annual Fee - The Licensee shall pay the applicable fee (as established by the Municipality's then applicant Fees and Charges By-law) prior to the execution of this agreement and each year thereafter on or before February 1st. Should such amount remain unpaid on the 2nd of February in each calendar year, the Municipality may add the amount owing to the Tax Roll of the Licensee's Lands. (Note: There shall be no pro-rating of applicable fee.)
- (c) Municipal Taxes/Permits - It is a condition of this license agreement that:
 - (1) the Licensee shall maintain the property tax account for the Licensee's Lands in good standing. For the purposes of this agreement "in good standing" shall mean that all property taxes imposed upon the Licensee's Land for the then current tax year shall be paid in full no later than 1st of November of that tax year and if such property taxes are not in good standing the Licensee is deemed to be in default of this Agreement; and
 - (2) the Licensee has a valid and continuing authorization (Land Use Permit, Work Permit) related to the construction of the driveway upon Crown Lands that is intended to connect the Licensee's Lands to the Licensed Area.

4. TERMINATION OF AGREEMENT

- (a) This Agreement may be terminated by the Municipality:
 - (1) Discretionary - upon six (6) months' notice in writing by the Municipality, with or without reason, to the Licensee at the Municipality's sole discretion; or
 - (2) Default - upon default of the Licensee of the terms of this agreement; as a condition precedent to giving such notice of termination the Municipality shall provide written notice of default and the Licensee shall have fifteen (15) days from the date of the notice to remedy the identified default(s) to the satisfaction of the Municipality; where such default has not been remedied the Municipality may, in addition any other remedies, terminate the agreement as of a date specified in writing and require the Licensee to remove the encroachment within a reasonable time and take such measures to restrict use of the Licensed Area as Council determines appropriate.
- (b) This Agreement will automatically terminate:
 - (1) upon the registration of a transfer of the ownership of the Licensed Area from the Municipality to the Licensee;
 - (2) upon the removal of the driveway and the restoration of the Licensed Area to a condition satisfactory to the Municipality.

5. CONDUCT OF WORK

- (a) In consideration of the permission and consent hereby given, the Licensee:
 - (1) shall, at its own expense, construct and maintain the driveway within the Licensed Area;
 - (2) shall not pave or otherwise hard surface the driveway;

- (3) shall, at its own expense, obtain all required governmental approvals for the construction of the driveway;
 - (4) shall, at its own expense, keep and maintain the driveway in a safe, good and proper repair and condition; and
 - (5) shall, upon termination of this Agreement, forthwith remove the driveway and repair any damage caused thereby at the sole expense of the Licensee without being entitled to any compensation whatsoever.
- (b) The Licensee acknowledges that it is the Licensee's obligation to ensure that works authorized hereunder does not encroach upon abutting privately owned lands. The Licensee shall be responsible for obtaining the assistance (if necessary) of a professional surveyor for such purpose and the cost thereof.
- (c) In addition to any other remedy at law or hereunder, if the Licensee fails to maintain in the Licensed Area in a safe condition, or to repair or remove the driveway as required by this Agreement, the Municipality may alter, repair or remove the same at the expense of the Licensee and the Certificate of the Clerk of the Municipality as to the expense thereof shall be final and binding upon the Licensee, and the Municipality may recover the same from the Licensee in any court of competent jurisdiction as a debt due and owing to the Municipality.

6. NO INTEREST IN LAND AND NON-EXCLUSIVE LICENSE

- (a) The Licensee acknowledges that this Agreement shall in no way create any interest in land or easement rights. The Licensee further acknowledges that a portion of the Licensed Area (being a portion located between Lots 10 and 11 in Concession 1) is subject to a License Agreement entered into between the Municipality and the owner of PIN 52079-0149.
- (b) The Licensee acknowledges and agrees that the Licensed Area remains a component of an unopened road allowance over which the public is entitled to travel. Accordingly the license granted herein is non-exclusive and the Licensee may not prohibit or interfere with the public travel along the unopened road allowance.
- (c) The Licensee acknowledges and agrees that:
- (1) access to the Licensed Area is from the seasonally maintained public highway known as Minkler's Lane;
 - (2) Minkler's Lane does not receive winter maintenance from the Municipality;
 - (3) members of the public, including the Licensee, are not permitted to undertake any maintenance activities on an open public highway and specifically are not permitted to undertake any maintenance activities (e.g. snow ploughing) of Minkler's Lane to gain access to the Licensed Area or the Licensee's Land.

7. ERECTION OF WARNING SIGNS

The Licensee shall erect and maintain signs at the approach of the unopened road allowance which read as follows:

"THIS UNOPENED ROAD ALLOWANCE HAS NOT BEEN ASSUMED FOR PUBLIC USE BY THE MUNICIPALITY. MEMBERS OF THE PUBLIC MAY STILL USE THIS UNOPENED ROAD ALLOWANCE, BUT DO SO AT THEIR OWN RISK".

8. INSURANCE CERTIFICATE AND POLICY

- (a) Policy of Insurance - The Licensee shall lodge with the Town, on or prior to the execution of the Agreement, an insurance certificate with an Insurance Company satisfactory to the Town, and insuring for the joint benefit of the Licensees and the Town against any liability that may arise as a result of any use or occupation of the land and/or in relation to or as a consequence of the exercise of the authorization granted hereunder.
- (b) Comprehensive General Liability - Such policy shall carry limits of liability in the amount to be specified by the Town, but in no event shall it be less than \$5,000,000.00 inclusive comprehensive general liability and such policy shall contain:
 - (1) a cross-liability clause;
 - (2) product/completed operation coverage;
 - (3) shall not have an exclusion pertaining to blasting, provided that any blasting required to be done shall be done by an independent contractor duly qualified to do such work or where no blasting will occur, such clause may be included where the Town has received to its satisfaction, a Statutory Declaration from the Licensees that no blasting will occur on the lands subject to this agreement;
 - (4) shall include the Corporation of the Municipality of Magnetawan as an additional insured;
 - (5) Notice of Cancellation - a provision that the insurance company agrees to notify the Town 15 days in advance of any material change or cancellation of the said insurance policy.
- (c) Certificate of Coverage - Any certificate of coverage filed with the Municipal solicitor shall specifically contain confirmation that the coverage as specified in paragraphs (i) – (v) above is in effect.
- (d) Confirmation of Premium Payment - The Licensees shall, from time to time as required by the Town, provide confirmation that all premiums on such policy or policies of insurance have been paid, and that the insurance is in full force and effect. The Licensees shall file a copy of the policy with the Town.
- (e) Claim in Excess of Policy Limits - The issuance of such Policy of Insurance shall not be construed as relieving the Licensees from responsibility for other or larger claims, if any, and for which it may be held responsible.

9. DEPOSITS

- (a) The Licensee shall lodge with the Municipality, as applicable, those cash deposits more particularly described in Schedule "C", prior to the date of execution of this Agreement by the Municipality.
- (b) Without limiting the generality of section 10, in the event any expenses incurred by the Municipality in the preparation and administration or enforcement of this agreement, exceeds the deposit, the Licensee shall pay such additional amounts to the Municipality as invoiced. Failure to pay such invoices within the time periods set out in this agreement or in the invoices shall be considered a default of this agreement.

10. EXPENSES TO BE PAID BY THE LICENSEE

- (a) Every provision of this Agreement by which the Licensee is obligated in any way shall be deemed to include the words "at the expense of the Licensee" unless the context otherwise requires.
- (b) The Licensee shall pay such reasonable fees as may be invoiced to the Municipality by its Solicitor, its Planner, and its Municipal Engineer in connection with all work to be performed as a result of the provisions of this Agreement.
- (c) All expenses for which demand for payment has been made by the Municipality, shall bear interest at the rate of 12% per annum commencing 30 days after demand is made.
- (d) In the event that the Municipality finds it is necessary to engage the services of an engineer or technical personnel not permanently employed by the Municipality to review the plans of the Licensee and/or carry out on-site inspections of the work performed, the Municipality will advise the Licensee accordingly of this need, and the costs of such outside engineers so engaged shall be the responsibility of the Licensee. The Municipality may require a deposit for this purpose.

11. LICENCE NON-TRANSFERABLE

The license hereby granted may not be transferred by the Licensee without the prior consent in writing of the Municipality.

12. NOTICE

For the purpose of This Agreement, notice may be given to the Licensee by prepaid registered mail to the address shown on the last transfer registered against the Licensee's Lands and such notice shall be deemed to have been given and received on the fifth day after mailing.

Remainder of Page Intentionally Blank

13. ESTOPPEL OF LICENSEE

The Licensee agrees to not call into question directly or indirectly in any proceeding whatsoever, in law or in equity, or before any administrative tribunal, the right of the Municipality to enter into This Agreement and to enforce each and every term, covenant and condition herein contained and This Agreement may be pleaded as an estoppel against the Licensee in any such proceedings.

This AGREEMENT SHALL enure to the benefit of and be binding upon the parties hereto and their permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed and set their hands and seals on This Agreement:

By the Municipality on the 02 day of Sept, 2020.

THE CORPORATION OF THE
MUNICIPALITY OF MAGNETAWAN

Per: _____

Per: Kesteven

By the Licensee on the _____ day of _____, 2020.

Anna Lisa Wiens

Henry Wiens

THIS IS SCHEDULE A TO THE LICENSE AGREEMENT BETWEEN THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN AND HENRY WIENS/ANNA LISA WIENS

SCHEDULE "A"

1. LICENSEE'S LANDS

Part of Lot 9, Concession 1, Chapman being Part 1, 42R10938 (PIN 52079-0044)

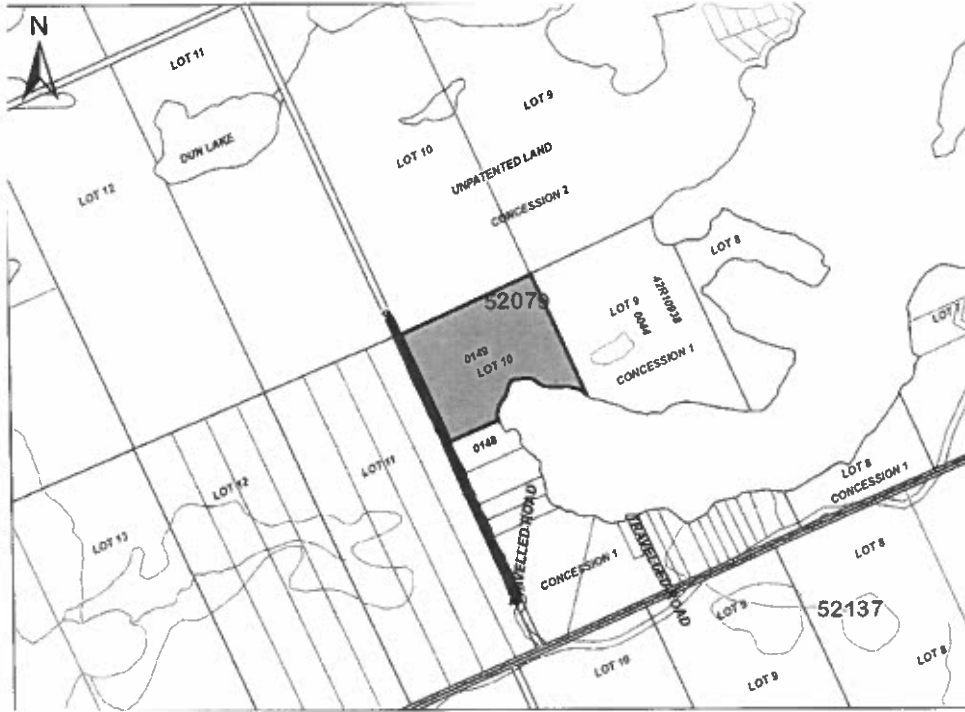
2. MUNICIPALITY'S LANDS

Road Allowance between Lots 10 and 11, Concessions 1 and 2, Chapman (PIN 52079-0472).

THIS IS SCHEDULE B TO THE LICENSE AGREEMENT BETWEEN THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN AND HENRY WIENS/ANNA LISA WIENS

SCHEDULE B – LICENSED AREA

The Licensed Area is that portion of the unopened portion of the road allowance between Lots 10 and 11, Concession 1 and 2, Chapman commencing at the end of the seasonally maintain road known as "Minkler's Lane" and which is shown as a heavy black line on the map below.



THIS IS SCHEDULE C TO THE LICENSE AGREEMENT BETWEEN THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN AND HENRY WIENS/ANNA LISA WIENS

SCHEDULE "C"

CASH DEPOSITS AND SECURITY

The Licensee shall, on the dates specified herein, lodge with the Municipality, the following described cash deposits and security.

1. TYPE OF SECURITY

Any security required to be filed under this Agreement, shall be by Certified Cheque or Bank Draft in the amount or amounts hereinafter set out.

2. CASH DEPOSITS

The following cash deposits are estimates only and are to be paid to the Municipality, as applicable, prior to the execution of this Agreement by the Municipality. In the event that the actual costs incurred by the Municipality exceed the deposits, such excess shall be invoiced to the Licensee and be due and payable 30 days after demand.

For legal, planning and engineering expenses and disbursements in connection with this Agreement, a deposit of \$ 1,000.00