



**Subject:** *Johnson Road Petition, East Uniacke*  
**To:** CAO for Planning Advisory Committee, March 9, 2021  
**Date Prepared:** February 25, 2021  
**Related Motions:** C20(363)  
**Prepared by:** Tippy Scott, Planning & Development Technician  
**Approved by:** John Woodford, Director of Planning and Development

### Summary

The Municipality received a petition package from the property owners of Johnson Road, East Uniacke seeking Council's approval for a full and proper review of the lack of vehicular and emergency access to the peninsula of Lewis Lake. Council is asked to consider the *Private Ways Act* to allow road access to be extended from Johnson Road/Woodland Park. On December 16<sup>th</sup>, 2020 Council passed a motion directing staff to prepare a report and provide options to extend Johnson Road/Woodland Park over a right-of-way onto the peninsula. Staff are recommending Council approve the petition and proceed by entering into an agreement with the applicants, and appointing a Commissioner to review the proposed right-of-way as per the *Private Ways Act R.S., c. 358, s. 1*.

### Financial Impact Statement

There is no immediate financial impact from the recommendations in this report. However, should the petition be accepted, any costs associated with the petition process are to be paid by Council, but may be recovered in whole or in part from the applicants via an agreement at Council's discretion.

### Recommendation

Planning Advisory Committee recommends that Council:

- accept the petition for right-of-way access from East Uniacke Rd, East Uniacke to the properties on the Johnson Road peninsula as outlined as the petitioning properties on the map in Appendix C of the February 25, 2021 Staff Report, including PID 45146206 pending approval; and
- to authorize staff to enter into an agreement with the applicants for reimbursement to the Municipality of any and all expenses incurred by the Municipality as the result of the petition.
- appoint the Municipal Solicitor, Marc Dunning as Commissioner pursuant to Section 17 of the Private Ways Act, to consider the petition of the Johnson Road peninsula property owners.

### Recommended Motion

*Planning Advisory Committee recommends that Council:*

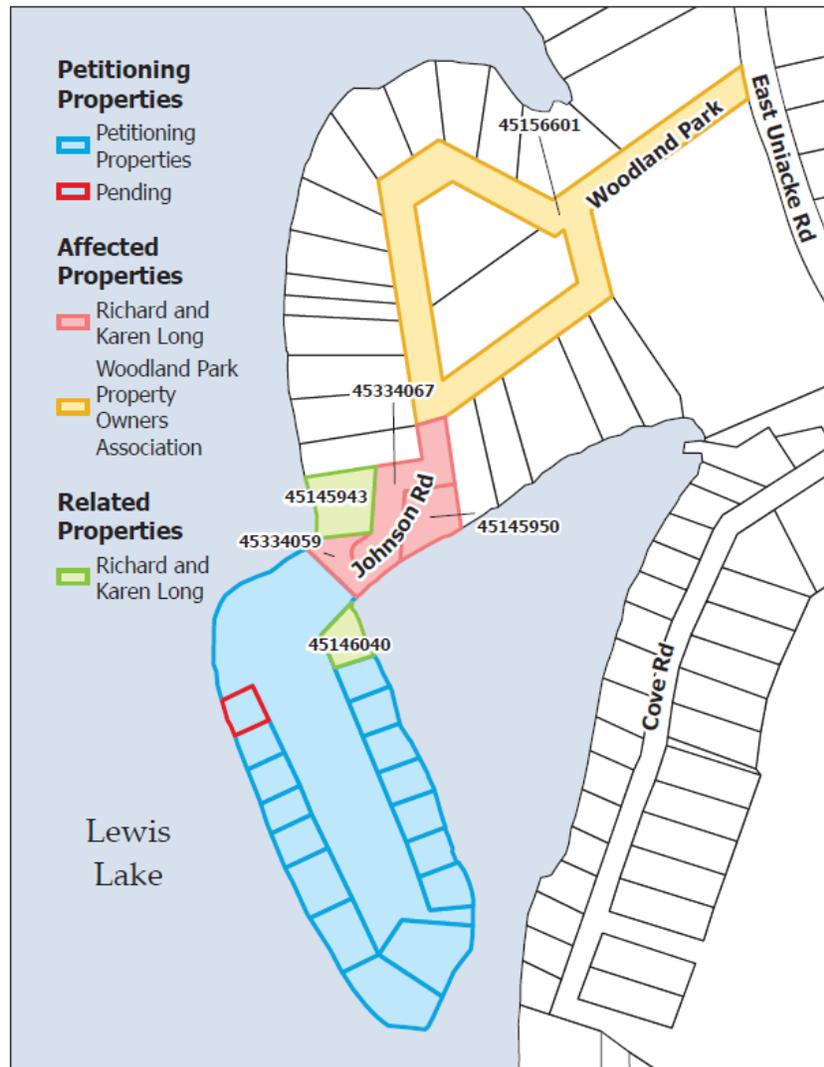
- *accept the petition for right-of-way access from East Uniacke Rd, East Uniacke to the properties on the Johnson Road peninsula as outlined as the petitioning properties on the map in Appendix C of the February 25, 2021 Staff Report, including PID 45146206 pending approval; and*
- *to authorize staff to enter into an agreement with the applicants for reimbursement to the Municipality of any and all expenses incurred by the Municipality as the result of the petition.*
- *appoint the Municipal Solicitor, Marc Dunning as Commissioner pursuant to Section 17 of the Private Ways Act, to consider the petition of the Johnson Road peninsula property owners.*

## Background

On December 2, 2020 the Municipality received a petition package (see Appendix A) from the property owners of the Johnson Road peninsula, East Uniacke seeking Council's approval for a full and proper review of the lack of vehicular and emergency access to the peninsula of Lewis Lake. Council is asked to consider Part II of the *Private Ways Act R.S., c. 358, s. 1* (see Appendix B) to allow road access to be extended from Johnson Road/Woodland Park. On December 16<sup>th</sup>, 2020 Council passed a motion C20(363) directing staff to prepare a report and provide options to extend Johnson Road/Woodland Park over a right-of-way onto the peninsula. On January 29<sup>th</sup>, 2021 Staff received a revised petition from the Johnson Road peninsula property owners further refining their request.

The property owners on the Johnson Road peninsula have filed a petition pursuant to Part II of the *Private Ways Act (PWA)* to Council for the laying out of a private way across the following properties:

1. PID 45334059 lands of Richard and Karen Long
2. PID 45334067 lands of Richard and Karen Long
3. PID 45145950 lands of Richard and Karen Long
4. PID 45156601 lands of the Woodland Park Property Owners Association



(see Appendix C - Map of Petitioning and Affected Properties for a larger view of the above map)

There are currently seventeen (16) properties on the peninsula involved in the petition. Staff are attempting to contact one additional property owner of PID 45146206 who would otherwise be the only property on the peninsula not included in the petition. Only two (2) of the petitioning properties have clearly deeded access over a series of privately owned parcels crossing over Johnson Road and Woodland Park to East Uniacke Rd, East Uniacke. The remaining properties have access by boat via a right-of-way over the nearby Cove Road.

The only portion of Johnson Road that is passable by vehicles starts at PID 45334067 and ends around PID 45145950 both owned now by the Longs. As found in many of the letters included in the petition package, there is anecdotal evidence that historically some property owners were given permission by the property owners at the time to park on PID 45145950, and walk in to their properties from there (*also see Appendix D for further evidence*). Staff also understand that some property owners on the peninsula have paid dues to the Woodland Park Property Owners Association for the right to use Woodland Park road (PID 45156601) as access to the above-mentioned “parking area”.

In 2019 the Longs purchased PIDs 45146040, a cottage lot on the peninsula, and PID 45145950, the former described parking area. At that time, they already owned a house at PID 45145943, and the adjacent parcel PID 45334059 abutting the end of Johnson Rd for approximately twenty (20) years. Staff have been told that the Longs have since gated their property near the former parking area, and are only allowing parking and access to the property owner of both PIDs 45146057 and 45146065 who have a clearly deeded right-of-way access.

The lack of vehicular access to the properties on the Johnson Road peninsula not only presents practical issues for the property owners, but also concerns around emergency access when someone requires EHS, Fire or 911 services on the peninsula. The petition has been brought forward in light of those concerns and due to the recent developments on the properties owned by the Longs. If Council decides to grant the right-of-way access to the peninsula properties, it is the intention of the applicants to construct a 15ft wide continuation of Johnson Road over the affected PIDs, as well PID 45156155 lands of Lillian Johnson (*see Appendix E*). This would allow direct vehicular access to their properties, and would not require any additional parking area. Ms. Johnson has provided a letter of support (*see Appendix F*), noting that she is already prepared to grant all of the peninsula property owners right-of-way access across her property outside of this petition process. The applicants also reached out to the Woodland Park Property Owners Association asking if they would grant right-of-way access over their private road outside of the petition process. The Association indicated they did not think their members would be in favour; therefore, the Woodland Park road parcel PID 45156601 has been included in the petition.

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## Process

Part II of the Act provides a means whereby landlocked property owners can acquire a right-of-way across neighboring lands. Under the Act, a property owner may apply to Council asking for the laying out of a private way or road. Council must hear the application, but has the discretion as to whether or not to grant it. If Council is not satisfied that the application should be granted, that is the end of Council’s involvement.

If Council decides to grant the application, then the next steps are as follows:

1. **Agreement/Bylaw** - Council authorizes staff to enter into an agreement with the applicants for reimbursement to the Municipality of any and all expenses incurred by the Municipality as the result of the petition. Section 29A(1) of the PWA allows Council to develop a separate bylaw to recover the costs specifically related to the compensation ascertained and the expenses incurred in respect thereto.
2. **Commissioner Review** - Once an agreement has been implemented, the appointed Commissioner will then be engaged. Staff recommend that Council appoint the Municipal Solicitor, Marc Dunning with Wickwire Holm as the Commissioner. The Commissioner is to:

- a) Examine whether the proposed private way or road is the most practicable and reasonable means of access for the person petitioning for the way or road to their land;
- b) If satisfied that the proposed private way or road is the most practicable and reasonable means of access, the Commissioner is to lay out the private way or road in the manner most advantageous to the person applying for the private way or road and least detrimental to the owner of the land through which the private way or road shall pass; and
- c) Work with the owners of the property over which the right of way will pass and the petitioner under the Act, to attempt to reach an agreement as to the compensation to be paid for the land.

Staff note that any costs associated with the Commissioner's review will be calculated separately from any legal advice required by Staff for Mr. Dunning's services as Municipal Solicitor related to this petition.

3. **Arbitration (if necessary)** - If the Commissioner cannot get the parties to agree to compensation, there is a procedure under the *PWA* for determining the amount to be paid. This procedure involves the appointment of three arbitrators: one appointed by the Commissioner; one by the affected property owners; and one by the Warden.
4. **Commissioner Report and Council Decision** - Once the Commissioner has fulfilled their duties and either an agreement is reached or an award for compensation is made, the Commissioner will prepare a report to Council, setting out their findings and recommendations. Council may accept or reject any recommendations contained in the report, including recommendations made with respect to compensation. If a private way is ultimately granted to the petitioner by Council, a copy of the plan setting out the private way shall be registered in the Registry of Deeds.
5. **Appeal** - As per Section 32(1) of the *PWA* both the applicants and the affected property owners have the opportunity to appeal to the County court within ten days of the decision of Council.

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## Budget Implications

The potential costs associated with the process, and to be paid by Council, pursuant to the *Private Ways Act* are as follows:

1. The remuneration of the Commissioner, in an amount as allowed by council.
2. If an agreement for compensation cannot be reached, all costs relating to arbitration and any expenses associated with this work.
3. Should a right-of-way be granted to the property owners on the peninsula over the aforementioned four parcels, the compensation payable to the Longs and the Woodland Park Property Owners Association.
4. If any party chooses to appeal Council's decision, any associated legal fees.

Section 29 and 29A(1) of the *Private Ways Act* allows Council create a bylaw to recover the costs specifically related to the compensation ascertained and the expenses incurred in respect thereto. These costs may be recovered from any polling district in which such private way or road is made, or in whole or in part from the applicant, as Council may direct.

Section 47(5) of the *Municipal Government Act* authorizes Council to “carry out a contract... for which the municipality or council is authorized by an Act of Legislature to spend or borrow money”. The *Private Ways Act* authorizes council to spend money with respect to an application under the *Private Ways Act*. Therefore, Council may enter into an agreement with the applicants to recover any costs incurred throughout the petition process.

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## Options

1. Council may choose to accept the petition; authorize staff to enter into an agreement with the applicants for reimbursement of any and all related expenses; and appoint the Municipal Solicitor, Marc Dunning of Wickwire Holm the Commissioner.
2. Council may choose to accept the petition; authorize staff to enter into an agreement with the applicants for reimbursement of **some** related expenses, but not all; and appoint the Municipal Solicitor, Marc Dunning of Wickwire Holm the Commissioner.
3. Council may choose not to grant a right-of-way access from East Uniacke Rd to the properties on the Johnson Road peninsula, East Uniacke.

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## Conclusion

The property owners of Johnson Road have submitted a petition asking Council to approve right-of-way access over PIDs 45156601, 45334067, 45145950, and 45334059 to the properties on the Johnson Road peninsula pursuant to the *Private Ways Act*. Upon thorough review of the information provided by the applicants, Staff recommend that Council accept the petition, authorize staff to enter into an agreement with the applicants to recover any costs incurred by Council in the process, and appoint Marc Dunning of Wickwire Holm as Commissioner to review the proposed right-of-way and negotiate compensation as per the *PWA* process.

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## Recommendation

*Planning Advisory Committee recommends that Council:*

- *accept the petition for right-of-way access from East Uniacke Rd, East Uniacke to the properties on the Johnson Road peninsula as outlined as the petitioning properties on the map in Appendix C of the February 25, 2021 Staff Report, including PID 45146206 pending their approval; and*
- *to authorize staff to enter into an agreement with the applicants for reimbursement to the Municipality of any and all expenses incurred by the Municipality as the result of the petition and which are recoverable under the Private Ways Act.*
- *appoint the Municipal Solicitor, Marc Dunning as Commissioner pursuant to Section 17 of the Private Ways Act, to consider the petition of the Johnson Road peninsula property owners.*

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## Appendices

*Appendix A - Johnson Road Petition Package (updated)*

*Appendix B - Private Ways Act*

*Appendix C - Map of Petitioning and Affected Properties*

*Appendix D - Statutory Declarations*

*Appendix E - Proposed Right-of-Way Access and Road Extension*

*Appendix F - Letter of Support from Ms. Johnson*