

Clerk Bernice Crocker, Council Members, Roads Committee, Daryl Kramp MPP

Facts Steenburg Lake South Road

1. Tudor and Cashel Twp is the Public Authority Having Jurisdiction of Austins Bay Road (now Steenburg Lake South Road) Plan 1087, 1303 and 1399
2. Deed Sept. 2, 1966
3. By Law registered May 6, 1968 subdivision plan
4. Plan Registration No. 338173
5. Boundary Road Agreement 1957
6. Plan 1303 WR waterfront residential
7. Plan 1399 LSR Limited Service Residential (incorrect land designation, LSR is for private roads, and is a land designation not associate to road maintenance level of service)
8. Construction permits issued have been for Residential Dwellings (assumed road maintenance).

Section 44 Municipal Act, Ontario Municipal Law: A User's Manual-2016

44.(1) Maintenance, The municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge. (page 80)

Comments

“if it took reasonable steps to prevent the default from arising,” or if it meets “minimum standards for repair.” O. Reg. 239/02 (page 82)

Note that s.44 does not apply to a highway laid out or built by any person before January 1, 2003 unless it was assumed for public use by the municipality or established by by-law (s31(5)). (page 82)

Municipal Duty and Liability 44.1 (a)

(a) General principles

A road must be kept in such a reasonable state of repair that those using it may, exercising ordinary care, travel upon it with safety. What is reasonable state of repair is a question of fact, depending upon all the surrounding circumstances; “repair” is a relative term, and hence the facts in one case afford no fixed rule by which to determine another case where the facts are different. (page 83)

(3) Financial Means. Nor does it mean that a municipality may plead expense as a conclusive reason for omitting to perform its duty. (page 86)

(4) Weather It is obliged to use the means at its command to make a highway reasonably safe for travel during the winter as well as during other seasons. This obligation extends to keeping the road open the whole year. (page 86)

A municipality must take active steps to prevent disrepair from arising. (page 86)

Only a municipality, and not a public utility, can be found to have a statutory obligation to maintain a municipal highway, even where the public utility paid to have the highway built. (page 87)

44.2(e)

Although it may be appropriate for the court to consider the financial resources of the municipality in determining whether it failed to meet its statutory duty to keep the highway in repair, the municipality could not make a policy decision which would allow it to avoid compliance with its statutory obligation. (page 98)

44.3(b)

The requirement of the City in a subdivision Agreement to provide “vehicular access” to people living in the Plan does not result in the City having a contractual obligation to maintain the driveways, as opposed to roadways, free and clear of ice. (page 105)

45.1

Nuisance generally

A legislative intention to authorize such private nuisances could not be inferred from the statutory requirement that the highways “shall” be maintained. The interference with the owners’ use and enjoyment is sufficiently peculiar, sufficiently direct and of sufficient magnitude to support their action for nuisance: Schenck v. Ontario (1981). (page 113)

Tudor and Cashel Twp has a statutory obligation to maintain Municipal Highways year round, and it cannot pass a by-law which is not in compliance with the Municipal Act. Any by-law reducing service on a Municipally owned road would be passed in bad faith. As stated above “*the municipality could not make a policy decision which would allow it to avoid compliance with its statutory obligation*”.

Tudor and Cashel Twp has neglected to follow statutes and regulation on Municipal Highways. No Municipally owned highway can be only seasonally maintained. Failure to follow the Municipal Act since by-law 632 passed in 1968 has created a nuisance for residents of Steenburg Lake South Road. Residents of Steenburg Lake South Road want Tudor and Cashel Twp to acknowledge their statutory duty to maintain said road all year.

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