



The Right-of-Way Partnership

Township of Wilmot



**Right-of-Way Management Strategy
Gap Analysis Report**

**Final
June 19, 2024**

ROW Management Gap Analysis

Introduction

Further to our initial report of May 24, 2024 and the subsequent discussions with the Township of Wilmot (the “Township”) on May 30, 2024, The Right-of-Way Partnership (the “Partnership”) comprising of SVJR Consulting Inc. (“SVJR”), T.E.P. R-O-W Co-ordination Inc. (“TEPROW”) and **Sicotte Guilbault Legal Services**, has updated this report and the associated appendices. Please regard this report as our final version of our analysis.

Methodology

The Wheel Concept was described in the earlier report and during our meeting, with the Hub, Spokes, Rim, and Tire representing various aspects of the framework, roles, and parties involved in a ROW Management Strategy

The “Hub” of federal and provincial legislative frameworks remain unchanged. The legislation outlined in **Table 1** still apply, although we know that certain aspects of the legislation regarding some Acts may potentially change later this fall or in early 2025.

The “Spokes”, representing the governance documents, and our recommendations to the Township have changed somewhat based on our conversations. The municipal roles, characterized by the “Rim”, do not change, nor does the entities you deal with, the “Tire”.

“The Wheel Concept” Categories

The three “Wheel Concept” categories - the **Legislative Framework**, the provision of **Governance Documents** at a local level; and the general category of **Permitting** are updated as per the following sections of this report with associated recommendations.

I. Legislative Framework:

As previously noted, this framework remains unchanged at this time.

Table 1 – Legislative Framework

Legislation	Recommendation
Federal	
<i>Canadian Energy Regulator Act, SC 2019, c.28, s.10</i>	Prepare a summary of the relevant ROW management provisions, key considerations, and impacts on municipal operations.
<i>Radiocommunication Act</i>	
<i>Innovation, Science and Economic Development (ISED) Telecommunication Tower Standard Protocol</i>	
<i>Railway Safety Act, RSC 1985, c.32</i>	
<i>Telecommunications Act, SC 1993, c.38</i>	
Provincial	
<i>Building Broadband Faster Act, 2021</i>	Prepare a summary of the relevant ROW management provisions, key considerations, and impacts on municipal operations.
<i>Building Transit Faster Act, 2020</i>	
<i>Drainage Act, 1990 c. D.17</i>	
<i>Electricity Act, 1998, c.15</i>	
<i>Getting Ontario Connected Act, 2022</i>	
<i>Highway Traffic Act, 1990</i>	
<i>Less Red Tape, Stronger Economy Act, 2023</i>	
<i>Municipal Act, 2001, c.25</i>	
<i>Occupational Health and Safety Act, 1990, c.01</i>	
<i>Ontario Energy Board Act, 1998, c.15</i>	
<i>Ontario Underground Infrastructure Notification System Act, 2012</i>	
<i>Planning Act, 1990, c.P.13</i>	
<i>Public Service Works on Highways Act, 1990</i>	
<i>Public Transportation and Highway Improvement Act, 1990, c. P.50</i>	

We discussed the possibility of providing a ROW Management Impact Legal Primer for internal use to outline how each Act impacts Wilmot, as well as a summary of the relevant ROW management provisions, etc. These remain our recommendations for this category.

II. Governance Documents:

Based on our conversation on May 30, the ROW Partnership has made changes to the charts supplied in the appendices, as well as to the recommendations we discussed. The following sub-sections outline those changes.

Notes:

1. Changes are noted in red in the Governance Documents and Permits lists in the appendices.
2. Where additional review by the Township is necessary, we have indicated that the Township should review next steps.
3. Where, based on the conversation, no additional work by the Partnership and/or the Township is necessary, we have highlighted those line items in grey.
4. Where additional work is strongly recommended, we have highlighted the line item in yellow and used **bold, red text**.

a. By-laws

The by-laws list includes a number of changes or reviews that we agreed are required. Of note, we strongly recommend that a Regulation of Work and Equipment Installation by-law or equivalent be created, and that a Public Places By-law be considered. The former deals with utility installations and the regulation of work (utility-related or not) within road rights-of-way, and the latter deals with what activities can occur on road rights-of-way. A Public Places By-law can also deal with streetscaping/landscaping issues should two distinct by-laws be deemed to be the best approach.

The existing Fees and Charges By-law should include updated MAA fees for telecommunication companies, or that category be removed from the by-law and only be within the MAA template and executed agreements.

The Refreshment Vehicles and Carts By-law 1997-16 should be backed by a policy document and a permit.

A Tree Cutting By-law may be needed to support the existing Tree Management policy.

Table 2 in Appendix A has been updated to reflect our discussions.

b. Policies

The policy list in Table 3 in Appendix B has been significantly revised, with three major recommendations. Two major policy items include creating a by-law or policy about encroachments, and developing and implementing a telecommunications tower policy. The other item would be to create a new policy (and a procedure) for standard drawing submission requirements for Utility Alignment Permits because, as has been experienced, current submissions can be lacking in detail and clarity, causing unnecessary staff review and/or additional correspondence with the applicant.

Encroachments into road rights-of-way – either underground, at the surface, or aurally – can affect the Township's overall Right-of-Way Management Strategy, and a by-law or policy (or both) would be useful.

While the existing Zoning Bylaw 83-38 / 20-026 has some limited wording regarding telecommunication towers, a specific policy on these facilities would provide clarity for the administration, the tower providers (telecoms, ISP's, and/or third parties) and the public.

One gap we have noticed is the lack of specific delegation of powers and duties from Council to a department and/or a position for some Right-of-Way Management Strategy items. Delegation for MAA's, Municipal Consents (Utility Alignment Permits), and ROWWP's should be considered.

If a Public Places By-law, as recommended, is not created, we suggest that the Township develop and implement a streetscape policy to deal with such issues as broad as boulevard "improvements" by adjacent landowners up to incorporating streetscaping requirements as part of a municipal capital project.

We understand that the Township is establishing road cross-sections and road classification standards. Finalization and distribution of those details would aid in managing the rights-of-way and could give guidance for utility applications.

c. Agreements

The only major item listed in **Table 4** in **Appendix C** for agreements is the finalization of the MAA template agreement that the Partnership has supplied. Use of this agreement with any and all telecommunication companies and Internet Service Providers active in the township would constitute a major upgrade in the Township's Right-of-Way Management Strategy.

In addition to a new MAA template, we suggest that the Township should consider creating an attachment agreement to deal with telecom and/or utility attachments to municipal infrastructure since expansion into this type of deployment is being done in your area of the province.

In alignment with a recommended telecommunication tower policy, a cell tower agreement is likely needed too.

While we did not review any agreements dealing with encroachments, if an encroachment agreement template is not used (or has not been created), we suggest that the Township's liabilities and the owner's responsibilities be clarified through an agreement. We can assist with this if necessary.

III. Permitting:

In terms of permitting, the Township is in a fairly strong position at this time. Some updates or revisions would be helpful as noted in the updated **Table 5** in **Appendix D**.

Having a Utility Coordination Committee, at least on a project basis, has proven to be useful in other jurisdictions, both large and small. Developing and implementing a Utility Coordination Manual should also be considered.

Having a set of Utility Alignment Permit standards and special conditions could ease the Utility Alignment Permit process. Establishing and using a set of construction restoration standards to deal with restoration work required by a utility or an excavator. Both previous suggestions are advisable.

One way to recoup causal costs associated with investigating, inspecting or surveying utility work is to develop and implement a permit process, or include fees and conditions in a Utility Alignment Permit, cell tower agreement, attachment agreement, or an encroachment agreement as applicable.

Tied to a Road Occupancy Permit should be a Utility Construction Quality Assurance / Quality Control (QA/QC) Guideline wherein standards are outlined and adherence to it is required. This QA/QC Guideline would be beneficial for the enforcement of the Road Occupancy Permit conditions.

Recommendations

The Partnership's recommendations are summarized below, prioritized as follows:

1. Finalize the MAA template previously sent by the Partnership by having it approved at the appropriate level within the administration or by Council. *Should additional assistance with this agreement be needed, we are available at your request.*
2. Update the Fees and Charges By-law with updated MAA fees – or remove the fees for telecommunication companies from the by-law itself.
3. Have the Partnership provide the Legal Primer outlining the legislation that affects municipal actions relative to Right-of-Way Management issues.
4. Have the Partnership also provide a more detailed summary indicating how the legislation affects administration, operation, and maintenance of the Township's road rights-of-way.
5. Create a by-law about works on and installations in road rights-of-way.
6. Create a by-law or policy document about encroachments, and an agreement if one does not exist.
7. Develop and implement a telecommunications tower policy.
8. Develop an attachment agreement template.

9. Create a new policy or procedure regarding drawing submissions requirements for Utility Alignment Permit applications.
10. Develop an investigation / inspection / survey application permit.
11. Develop a Utility Construction QA/QC document.

Suggested Next Steps

As noted in our interim report and summarized earlier in this update, there are a number of by-laws, policies, agreements, permits, and permit conditions, standards, and/or documents we suggest that the Township examine further. The first two steps we suggested in the interim report have been completed, leaving the following possible steps:

- The Township should review the recommendations listed on Page 3 and take the necessary actions to implement them over the next year or two.
- The Township should also review the next steps listed in the appendices and prioritize those items that affect its overall Right-of-Way Management Strategy or items that need to be completed to align with Council's direction.
- The Township should consider what items can be done in-house, and what items may need additional support by the Partnership and/or others.
- The Partnership can review any items where our assistance is needed and then advise the Township when that work can be completed and at what cost.
- The Partnership will complete the work that the Township has requested.

Thank you for the opportunity to work with your Township. We look forward to continuing to assist the Township in areas you feel are appropriate.

Should you require any additional information or clarification on any of the information we have provided, please contact Steve Murphy at SVJR or Ed Plant at TEPROW.

Sincerely,

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Table 2 – Governance Documents – Bylaws

Documents	Does Governance Document Exist?	Governance Document Satisfactory?	Governance Document Needed?	Notes	Recommendation
By-laws					
Anti-Graffiti By-Law 2011-35	Yes	Yes	No		Further action not required.
Building By-Law 2019-052	Yes	Yes	No	Deals with construction fencing	Further action not required.
Fee and Charges 2024-006	Yes	No	Yes	Current fees in the by-law need to align with the new MAA once executed. Telecom fees may require removal from the by-law and only reside in a schedule in the MAA.	Revise Fees and Charges By-law to reflect new MAA fees for telecoms or remove telecom fees from the bylaw.
Procedural By-Law 2023-43	Yes	No	Perhaps	This by-law does not detail who within the administration can issue agreements or permits. Is there an unposted policy or other bylaw?	If delegation does not exist -- at least for permitting -- explicit permission should be sought.
Public Places By-Law or equivalent	No	N/A	Yes	Outlining what can be done on public lands (boulevards, undeveloped road r/w's, etc) would be beneficial.	Township to review next steps.
Refreshment Vehicles and Carts 1997-16	Yes	N/A	Yes	Policy might be needed, and perhaps a permit system.	Township to review next steps.
Regulation of Work and Equipment Installation or equivalent	No	N/A	Yes	A by-law or policy is needed in regards to having the ability to place utilities, etc. within Township-controlled lands. This leads to permitting, but this middle step seems to be lacking.	Create a by-law about works on and installations in road r/w's.
Removal of Snow and Ice from Sidewalks and Roofs 1984-72	Yes	N/A	No		Further action not required.
Sale of Goods on Highway By-Law 97-29	Yes	N/A	No		Further action not required.
Sign By-law 2002-68	Yes	Yes	Yes	Building Permit required; billboard signs require an annual license; portable signs do not need building permit but require a portable sign permit.	Further action not required.
Traffic and Parking 2016-52	Yes	Yes	Yes		Further action not required.
Tree Cutting By-Law or equivalent	See Tree Management in Policies	TBD	TBD	Policy could be supported by a by-law.	Township to review next steps.

Table 3 – Governance Documents – Policies

Documents	Does Governance Document Exist?	Governance Document Satisfactory?	Governance Document Needed?	Notes	Recommendation
Policies					
Banners	No	No	Yes	Banners not covered in Sign By-Law.	Revise by-law, or create a policy (if allowed) for implementation.
Construction Hoarding	No	No	No	Not a situation that the Township needs to deal with.	Further action not required.
Delegation of Powers and Duties of Council	Yes	Yes	Yes	States a by-law is required for council to delegate its authority.	Create a delegation of authority by-law for MAA, Utility Alignment Permit and/or ROWWP approval. Township to review.
Open Roads	No	N/A	No	Dependent on the size of the transportation capital construction program and utility capital programs.	Further action not required at this time.
Encroachments	No	No	Yes	Policy or by-law does not seem to exist to deal with encroachments.	A by-law or policy is needed. Township to review next steps.
Private Infrastructure Networks (e.g., sludge lines, sanitary, water service, irrigation lines, heating, etc.)	No	No	Yes	Policy or by-law does not seem to exist to deal with these types of facilities.	A by-law or policy is needed.
Radiocommunications (Wireless) Towers and Antennas (including 5G)	No	No	Yes	A telecommunication tower policy would be beneficial, particularly with the current push by the provincial government to bring broadband across Ontario. Application fees should apply for telecom tower application process. Zoning Bylaw 83-38/20-026	Develop and implement a telecommunications tower policy. Township to review next steps.
Road Classifications Guideline / Road cross sections	Yes	No	Yes	Region of Waterloo Context Sensitive Regional Transportation Corridor Design Guidelines. Utility locations in the road sections are not feasible in congested corridors. Hydro poles are shown on the road cross sections.	Township working on this at present.
Signs	No	N/A	No	Sign By-law in place	Further action not required.
Streetscaping	No	N/A	Yes	Streetscaping is expanding and utilizing more of the ROW area. A policy on how to integrate streetscaping with other ROW users would be beneficial in the mitigation of disputes for the ROW space.	Develop and implement a streetscape policy. Township to review next steps.
Telecommunications (Wireline) - see MAA's	No	No	Yes		Up-to-date MAA supplied to the Township by the ROW Partnership.
Tree Management	Yes	No	Yes	Webpage has commentary on dead tree removal, watering and care, pruning (trimming) etc.	Develop the Tree Canopy Policy Framework to a formal policy.
Utility Alignment Permit application requirements policy	No	No	Yes	Drawing submission requirements would be helpful.	Township to review the creation of a new policy or a new procedure.

Table 4 – Governance Documents – Agreements

Documents	Does Governance Document Exist?	Governance Document Satisfactory?	Governance Document Needed?	Notes	Recommendation
Agreements					
Attachment Agreements (e.g., for 5G small cell antenna attachments to municipal assets)	No	No	Yes	Having an agreement template for this would be wise.	Township to review next steps.
Cell Tower Agreements	No	No	Yes	Having a separate agreement template for this would also be wise.	Township to review next steps.
Construction Hoarding Agreements	No	No	Yes	See comments on Construction Hoarding above.	See comments on Construction Hoarding.
Encroachment Agreements	Yes	No	Yes	Application form reviewed; legal agreement has not been reviewed.	Township to review next steps.
Franchise Agreements	No	No	No	The Township may have these agreements already.	Further action not required.
Licence - Sidewalk Café	No	No	No		Further action not required.
Licences of Occupation	Yes	No	Yes		Create a policy and LOO agreement to authorize use of road r/w.
Memorandum of Understanding	No	No	No		Further action not required.
Municipal Access Agreements	Yes	No	Yes		Finalized template MAA sent by The ROW Partnership.
Pipeline Crossing Agreements	No	No	No	This might not be applicable.	Further action not required.
Pipeline Proximity Agreements	No	No	No	This might not be applicable.	Further action not required.
Railway Board Agreements	No	No	No		Further action not required.

Table 5 – Permitting

Utility Coordination / Permits	Does it Exist?	Satisfactory?	Required?	Notes	Recommendation
Utility Coordination					
Utility Coordination Committee	No	NA	No	UCC's are effective body for Wilmot to communicate upcoming capital projects with the utility companies and visa versa. They are also a good tool to identify and resolve issues between the municipality and the utility companies.	Post annual municipal capital program and large project utility coordination.
Utility Coordination Committee Process	No	NA	Yes	A UCC process is key to having an effective UCC.	Project-based utility coordination should suffice.
Utility Coordination Process Manual Municipal Capital Projects	No	NA	Yes	A Utility Coordination Manual for capital projects is a highly recommended document to manage utility risks on capital projects. Region of Waterloo does not have a UC manual.	Develop and implement a Utility Coordination Manual is advisable, Township to consider next steps.
Utility Coordination Subcommittee Municipal Capital Projects	No	NA	No	Depends on the size of Wilmot's capital construction programs. If they are not large programs, this subcommittee would not be necessary.	Project-based utility coordination should suffice.
Utility Design - Utility Alignment Permit					
Typical Road Cross Section with Utility Alignments	Yes	No	Yes	WIL-DET-22-34, WIL-DET-22-35, WIL-DET-22-36, and WIL-DET-22-37 indicate hor. alignment from PIL with no defined min. depth of cover.	Add minimum depth of cover to standard drawings.
Utility Alignment Permit Requirements Guideline	Yes	No	Yes	Municipal Consent Requirements (MCR) Manual March 2022 Version 1	Update manual to align with new MAA once executed.
Utility Alignment Permit Standard/Special Conditions	No	No	Yes		Township to review next steps.
Minimum Clearances	Yes	No	Yes	Section 10.4 in Municipal Consent Requirements Manual March 2022 Version 1, Region of Waterloo and Area Municipalities Design Guidelines and Supplemental Specifications for Municipal Services - Minimum clearance stated for sewers and water mains. Private utility clearances are not stated.	Commentary should be revised for greater clarity to the meaning of minimum clearance. Recommend a standard drawing or table be created to bring greater clarity to minimum clearances for the various types of infrastructure.
Minimum Depth of Cover	Yes	No	Yes	Section 10.4 in Municipal Consent Requirements Manual March 2022 Version 1, Region of Waterloo and Area Municipalities Design Guidelines and Supplemental Specifications for Municipal Services - Depth of cover stated for sewers and water mains. Private utility clearances are not stated.	Commentary should be revised to for greater clarity to the meaning of depth of cover.
Utility Design Guideline	Yes	Yes	Yes	MCR Manual for design	Update MCR Manual to align with new MAA when it is executed.
Road Occupancy Permit					
Accesses	Yes	Yes	Yes	Entrance Application. Also requires ROW Work Permits.	No update recommended.
Construction Restoration Standards	TBD				Township to review next steps.
Encroachments	Yes	Yes	Yes	Application for encroachment / access legal agreement	No update recommended.
Excess Loads	TBD	NA	Yes	Confirm with Wilmot that Excess Load permit applications are through the Region of Waterloo.	No update is recommended if the permit application process is through the Region of Waterloo.
Hoarding / Tie-backs	No	NA	No	Consult with Wilmot on the need for this permit.	Further action not required.
Investigation and Inspection	No	NA	Yes		Develop an investigation / inspection / survey application permit.
Private Infrastructure Networks (i.e., slug lines, sanitary, water service, irrigation lines, heating etc.)				See Policy comments.	Further action not required.
Right of Way - Work Permit General Conditions	Yes	Yes	Yes	General Conditions of Approval are located in the Right of Way Work Permit.	May require revision to align with new MAA once executed.
Signs (Permanent and Portable)	No	NA	Yes		Develop a new sign application permit.
Special Event Guideline	Yes	Yes	Yes		No update recommended.
Special Events	Yes	Yes	Yes	Road Occupancy Permit	No update recommended.
Utility Construction QA/QC Guideline	No	NA	Yes		Develop a Utility Construction QA/QC document.
Utility - New Installations	Yes	Yes	Yes	ROW-Work Permit	No update recommended.
Utility - Repair/Maintenance	Yes	Yes	Yes	ROW-Work Permit	No update recommended.