The Corporation of the Town of South Bruce Peninsula

By-Law Number 31-2017

Being a By-Law to Authorize the Mayor and Clerk to Sign an Easement Agreement with Shannon Jean Kyte Nusko

Whereas Section 8 of the Municipal Act, 2001, Chapter 25, as amended, provides that Section 8 shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

And whereas Section 9 of the Municipal Act, 2001, Chapter 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

And whereas the Corporation of the Town of South Bruce Peninsula owns property over which the adjoining property owners travel as means of access to the public street.

And whereas the Town is desirous of entering into a right-of-way easement agreement with Shannon Jean Kyte Nusko for the continued use of the Town property.

Now therefore the Council of the Corporation of the Town of South Bruce Peninsula enacts as follows:

1. That the Mayor and Clerk are hereby authorized to sign an easement agreement with Shannon Jean Kyte Nusko over property known as:

   PIN 33143-0422 (LT): Lt 13 W/S Berford St and S/S Division St PI Wiarton
   South Bruce Peninsula

   in favour of property known as:

   PIN 33143-0408 (LT): Pt Lt 13 E/S Gould St and S/S Division St PI Wiarton; Pt Lt 14 E/S Gould St and S/S Division St PI Wiarton; Pt Lt 15 E/S Gould St and S/S Division St PI Wiarton as in R370226, S/T Interest in R370226; South Bruce Peninsula

2. That the agreement shall be attached hereto and form a part of this by-law.

Read a first and second time this 4th day of April, 2017.

[Signature]
Mayor
Read a third time and finally passed this 4th day of April, 2017.

Mayor

Clerk
Right-of-Way Easement Agreement

Between

The Corporation of the Town of South Bruce Peninsula,
hereinafter called the Grantor

And

Shannon Jean Kyte Nusko,
hereinafter called the Grantee

Whereas the Grantor is the registered owner of 315 George Street (the Grantor’s Land) which shall constitute the servient tenement and shall be more particularly described in Schedule A attached hereto;

And whereas the Grantee is the owner of 295 George (the Grantee’s Land), which shall constitute the dominant tenement and shall be more particularly described in Schedule A attached hereto;

And whereas the Grantor has agreed to grant to the Grantee a right-of-way easement over the Grantor’s Land for the purpose of access to the Grantee’s land subject to the terms and conditions herein.

Now therefore, the parties agree as follows:

1. The Grantor agrees to provide for the Grantee’s, access to George Street over the property owned by the Grantor and adjacent to the Grantee’s property.

2. Subject to the terms and conditions herein, the Grantor grants to the Grantee a right-of-way easement through, along and over the Grantor’s Land for uninterrupted ingress and egress to and from the Grantee’s Land by the Grantee, her agents and all other persons authorized in that behalf, with such vehicles and equipment as may reasonably be required for the use of the Grantee’s Land for residential habitation, that portion of the Grantor’s Land consisting of Part 1 on Plan 3R-9819 and shown in the reference plan received and deposited in the Land Registry Office on July 18, 2016.

The right-of-way easement shall be used for its intended purpose only, to provide ingress and egress from the Grantee’s property to the public street known as George Street.

3. The term of this right-of-way easement agreement shall commence on the date of execution of this agreement by all parties and shall continue for as long as the right-of-way easement is required by the Grantee to provide access to the dominant tenement.
Notwithstanding the above, should the Grantor wish to provide right-of-way access for the Grantee to access the Grantee’s Land in another location on the Grantor’s Land, the Grantor reserves the right to terminate this agreement forthwith in favour of a right-of-way easement in another location.

4. Upon termination of this right-of-way easement agreement as provided herein, the rights of the Grantee shall thereupon cease.

5. The rights herein granted are not exclusive to the Grantee and the rights herein granted shall not in any way interfere with the full enjoyment of the right-of-way easement by the Grantor or those claiming through or under the Grantor, except as may be necessary from the purposes herein expressed.

6. The Grantor shall keep the right-of-way easement in reasonable repair at its sole expense and shall not be required to undertake any maintenance or make any improvements to the right-of-way easement outside of the regular and customary maintenance and improvements as established by the policies and practices of the Grantor. The Grantor shall reserve the right to request of the Grantee and receive payment for repair and maintenance to the right-of-way only if the Grantor ceases to use the right-of-way easement as a parking lot, laneway, driveway, or other similar use and then only in such proportionate share and for such repair and maintenance items as are agreed to in a written format by the parties hereto.

7. If the Grantee or any person using the right-of-way easement for access to the Grantee’s Land by way of use of the right-of-way easement damages said right-of-way easement, the Grantee will at her sole expense repair the right-of-way easement and return it to the same or better condition than prior to the damage unless otherwise consented in writing by the Grantor.

8. The Grantee will compensate the Grantor or any person claiming through or under the Grantor for any and all damage on the right-of-way easement by reason of the exercise by the Grantee of the rights granted herein.

9. The Grantor will not construct or maintain any fence, embankment, fill or any building or any structure or obstruction or excavation of any kind whatsoever on the right-of-way easement which shall in any way interfere with the rights and privileges granted to the Grantee hereunder without the prior written consent of the Grantee.

The Grantee will not construct or maintain any fence, embankment, fill or any building or any structure or obstruction or excavation of any kind whatsoever on the right-of-way easement which shall in any way interfere with the rights and privileges of the Grantor in any way without the prior written consent of the Grantor.
The Grantee may not block or in any way hinder or stop the Grantor from using the property included in the right-of-way easement as the property is used by the Grantor as a public parking lot and for ingress and egress to George Street and may from time to time be used for other purposes.

10. The Grantor consents to the registration of this right-of-way easement agreement against the title of the Grantor's property.

11. This agreement is subject to all rights now or that may hereafter be vested in the Grantor or in any utility or company in respect of the care and improvement of the Grantor's property or the construction, repair, replacement or removal of any services or utilities therein or thereon. The Grantor expressly reserves to itself the right to construct services or permit services to be constructed. The Grantee shall not be entitled to any compensation of any type by reason of the exercise of the rights contained in this agreement for any interruption of the use of the right-of-way easement while the Grantor performs any maintenance or construction therein or thereon.

12. The Grantee shall indemnify and save harmless the Grantor from and against all actions, suits, claims and demands arising out of or in connection with the exercise of the rights granted herein by the Grantee, her employees, agents, guests, contractors, licensees, heirs, successors and assigns.

13. Any notice or other communication required to be given under this right-of-way easement agreement or which either party may wish to give or to serve on the other may be effectually and sufficiently given or served if delivered or mailed:

13.1 In the case of a notice or communication to the Grantor:

Town of South Bruce Peninsula
PO Box 310, 315 George Street
Wiarton ON N0H 2T0

13.2 In the case of a notice or communication to the Grantee:

Shannon Jean Kyte Nusko
PO Box 1327,
Wiarton ON N0H 2T0

If so delivered or mailed the notice or communication shall be deemed to have been given or served when delivered or mailed on the fifth business day after the date of mailing, except in the case of a disruption of postal service, in which case it shall be deemed to have been given or served on the fifth business day after such disruption ceases.
14. In this right-of-way easement agreement, unless there is something in the subject matter or context inconsistent therewith, the singular shall include the plural and the plural shall include the singular and the masculine shall include the feminine, corporation or company where the context so required.

15. This right-of-way easement agreement shall ensure to the benefit of and be binding upon the heirs, executors, administrators, successors and permitted assigns of the parties hereto.

16. Clauses and provisions in this right-of-way easement agreement are considered to be severable.

17. In the event of any disagreement between the parties with regard to the provisions of this right-of-way easement, the parties hereto will make every effort to come to a mutually agreed upon decision. Where a disagreement cannot be settled between the parties within sixty (60) days of the commencement of the dispute, the parties shall upon the request of any party in writing, negotiate in good faith the best manner in which to resolve the dispute whether by, but not limited to mediation, arbitration, litigation or other dispute resolution process.

18. Should any provision contained herein be found to be invalid by a court of competent jurisdiction that provision will be considered to be severed from the right-of-way easement and all other provisions shall be considered to remain valid, legal and enforceable.

In witness whereof the parties have set their hands and seals.

For the Corporation of the Town of South Bruce Peninsula (Grantor)

Date

For Shannon Jean Kyte Nusko (Grantee)

Witness

Date
Schedule A

Description of the Land of the Grantor

PIN 33143-0422 (LT)

Lt 13 W/S Berford St and S/S Division St PI Wiarton South Bruce Peninsula

Description of the Land of the Grantee

PIN 33143-0408 (LT)

Pt Lt 13 E/S Gould St and S/S Division St PI Wiarton; Pt Lt 14 E/S Gould St and S/S Division St PI Wiarton; Pt Lt 15 E/S Gould St and S/S Division St PI Wiarton as in R370226, S/T Interest in R370226; South Bruce Peninsula