



PUBLIC MEETING OFFICIAL PLAN – FIVE YEAR REVIEW & UPDATE MINUTES

Tuesday, June 21st, 2022

5:30 p.m.

**Tay Valley Municipal Office – 217 Harper Road, Perth, Ontario
Council Chambers**

ATTENDANCE:

Members Present: Chair, Reeve Brian Campbell
Deputy Reeve Barrie Crampton
Councillor RoxAnne Darling
Councillor Fred Dobbie
Councillor Mick Wicklum
Councillor Gene Richardson
Councillor Beverley Phillips
Councillor Rob Rainer

Staff Present: Amanda Mabo, Acting Chief Administrative Officer/Clerk
Janie Laidlaw, Deputy Clerk
Noelle Reeve, Planner

Public Present: 20 people

1. CALL TO ORDER

The public meeting was called to order at 5:30 p.m.

2. OFFICIAL PLAN FIVE YEAR REVIEW

Forbes Symon, Senior Planner, Jp2g Consultants Inc.

The Consultant gave the PowerPoint Presentation that was attached to the agenda.

- Introduction
- New Policies Required by Provincial Policy Statement 2020
- New Ministry and Council Review
- Growth Management Policies
- Strip versus Rural Landscape
- Cluster Lot Development
- Public Comments

- Mapping

The Consultant advised that there is a revised Schedule B, it has been posted to the Township website. The organic soils layer has been updated.

3. **NEXT STEPS**

Forbes Symon, Senior Planner, Jp2g Consultants Inc.

The Consultant reviewed the next steps as outlined in the PowerPoint Presentation that was attached to the agenda.

4. **COMMENTS & QUESTIONS**

Gord Ennis

- asked for one severance on a private road to property now being told that have to have a condo road, not written in official plan currently and so asking for changes to the official plan

Gordon Hill

- had emailed a memo to Council and Staff with a number of questions - *attached, page 4*, and indicated if he will get answers tonight, he will go through them, if not he would not ask them tonight. The Planner explained that the Planning Act spells out how public comments are handled. The Township has to compile them and explain how they were addressed or why they were not addressed, and this information has to be submitted as part of a package to Lanark County, the approval authority
- in the May 28 draft with the yellow highlight and the red text crossed out, is from an earlier version but which one? The Consultant explained that the draft redline changes are being deleted from the 2016 Official Plan version and the yellow text are the changes being made to the 2016 version

Janet Smith

- if Council was sent concerns, would they be included in the public comments? The Planner explained that they would be.
- asked with it being an election year and if Council is in Lane Duck, how will the Official Plan be approved? The Acting CAO/Clerk explained that Lane Duck provisions are very specific and approving policy is not affected, the Official Plan can be adopted by Council.

5. ADJOURNMENT

The public meeting adjourned at 6:15 p.m.


Brian Campbell, Reeve


Janie Laidlaw, Deputy Clerk

MEMORANDUM OF COMMENTS, QUESTIONS AND CONCERNS

Re: draft Official Plan dated May 28, 2022

From Gordon L. Hill Q.C.

To be considered at the public meeting to be held on June 21, 2022

Definitions and Interpretation

In this memorandum, the following terms have the meanings set out beside them, respectively:

"Chairman" means the Chairman of the Working Group;

"Council" means the elected Council serving Tay Valley Township;

"current OP" means the Township's Official Plan dated February 3, 2016;

"draft OP" means the Township's draft Official Plan dated May 28, 2022;

"Jp2g" means J2Pg Consultants Inc. which carries on business in the Province of Ontario as engineers, planners and project managers and which has been retained by the Township to assist with the drafting of revisions to the current OP;

"OP" means Official Plan;

"Planner" means the Township's Planner;

"Terms of Reference" means the Terms of Reference of the Working Group as established by Township Council By-Law No 2020-045 passed on October 20, 2020;

"Staff" when capitalized means the Planner and the Township's Acting CAO /Clerk, or either of them, as the context may require;

"Township" means Tay Valley Township;

"unassumed Township road" has, and is intended to have, the same meaning as the term "private unassumed road" has in the draft OP;

"Working Group" means the Private Unassumed Roads Working Group established by the Township Council by Resolution #C-2020-06-19 passed on June 23, 2020;

"you" and "your" refer to Forbes Symon, Senior Planner at Jp2g and the Planner, collectively, or individually as the context may require.

Comments, Questions and Concerns - addressed to Jp2g and the Planner, or either of them, for reply.

PART - 1 Issues/Observations as to Form

1.1 I like that one may click on a section number in the Table of Contents and be taken automatically to that section of the text.

1.2 At the top of the unnumbered 2nd page of the draft OP, there are the two notations "Yellow highlighted text is new" and ~~Text in red represents deletions~~. New text since what date? Deletions since what date? Surely the Councillors and the public, many of whom may not have seen earlier OP drafts, should be shown how the draft OP differs for the current OP.

1.3 The current OP contains 133 pages; the April 5, 2022 draft OP contains 168 pages; the draft OP contains 144 pages. I count a total of 12 lines deleted from the main text of the draft OP (see

pages 9, 12, 20, 63) and 8 lines deleted from Schedules A, B and C . The deletions in the schedules do not affect the number of their pages, because each schedule is on only one page. If the **deletions** indicate changes from the April 5, 2022 draft OP, please explain how the deletion of 12 lines result in a reduction of 168-144 = 24 pages.

- 1.4 How do the **deletions** relate, if at all, to the current OP?
- 1.5 There are two paragraph numbered 1.3 in Table of Contents (pg 3) and also in text (pg 12).
- 1.6 Table of Contents pg 3 and text page 13 refer to the headings "15 Community Development", whereas both should refer to paragraph 1.5, not 15.
- 1.7 In section 3.2.5.1, item numbers skip from 1 to 4, omitting numbers 2 and 3.
- 1.8 Section numbers skip from 3.2.5.2 (pg 65) to 3.2.8 (pg 68) in both the Table of Contents (pg4) and the text (pg 66)-68, omitting sections 3.2.5.3 to 3.2.5.7, both inclusive. Was that omission intended? If so, why?

PART - 2 Issues as to substance

- 2.1 Deeming Plans of Subdivision Section 6.5, draft OP (pg 116)

[Identical wording is contained in Section 5.3 on the current OP (pg102).]

On October 10, 2021, I emailed the Planner with my comment and opinion that **Section 5.3 of the current OP was not in accordance with the Planning Act**. I understand that the Planner forwarded my comment (and others) to Jp2g for consideration. At the COW meeting held on December 7, 2021, Jp2g presented Version 2.1 of the draft OP with various comments thereon, including a precis of comments made by various members of the public. With respect to my comment about S. 5.3 of the current OP, the Jp2g report stated: "This is beyond the scope of the OP review and is a matter for the Township Planner and Legal to address."

The draft OP makes no change to the wording of new section 6.5 (pg 116)

Questions:

- (1) Did the Planner and Legal address the issue?
- (2) If so, what did they advise?
- (3) Did they, or either of them, provide advice in writing?
- (4) If they didn't address the issue, whose responsibility was it to follow up on this issue?

Reasons supporting my opinion:

- (a) S.50(4) of The Planning Act¹ states: "*The council of a local municipality may by by-law designate any plan of subdivision, or part thereof, that has been registered for eight years or more, which shall be deemed not to be a registered plan of subdivision **for the purposes of subsection (3)***" [Underling and bold font added for emphasis; the reference to "subsection (3)" is a reference to subsection(3) of Section 50 of the Planning Act.]

¹ The Planning Act, R.S.O. 1990, c P-13

- (b) My “Find” search on the CANLII version of the Planning Act indicates that Section 50(4) is the **only** section of the Planning Act containing the wording “deemed not to be a registered plan”.
- (c) Section 50(3) of the Planning Act is the general subdivision control tool which prevents lands from being subdivided unless at least one of the enumerated exceptions in subsections (a) to (h) of section 50(3) applies. The first of those exceptions applies if “the land is described in accordance with and is within a registered plan of subdivision”.
- (d) The exceptions in subsection 50(3) (a) to (h) do not apply in relation to any of the purposes stated in S. 6.5 of the draft OP or in S 5.3 of TVT’s current OP
- (e) See also commentary on pages 209-210 of Russell on Roads², which contains a similar view.

Since S. 50(4) of the Planning Act gives Council statutory authority to deem a plan of subdivision not to be a plan of subdivision under certain limited circumstances, there is no need to include a section in the draft OP which relates to “deeming plans of subdivision”.

2.2 Township Roads S.4.3.3; pages 76

The section contains a diagram referred to as “Typology of Roads”. The source of that diagram is stated to be “Tay Valley Township”.

Questions: To your knowledge:

- (1) Does the diagram have any legal or formal approval by a government body, court, or professional association? If so, please specify?
- (2) has the diagram been approved by Council for use by Township?
- (3) if so, when was it approved?
- (4) if the diagram has no legal or formal approval and has not been approved by Council, is the diagram merely Township Staff’s interpretation of the “Typology of Roads” in the Township.

The text of the current OP relating to Township roads – see S.4.4 on page 94 of the current OP – is substantially similar, but not identical, to that used in S.4.3.3 of the draft OP. The draft OP refers to the Access to Township’s Road Policy and the Seasonal Roads Policy which are not mentioned in the current OP.

Questions: To you knowledge:

- (5) has Council approved either or both of those two policies?
- (6) If so, when, and by what resolution or By-law?

The last sentence in S.4.4 of the current OP (g 96) states: *“For policy purposes, the Township considers unmaintained Township roads to be private roads.”*

That sentence is nowhere to be found in the draft OP.

Questions:

- (7) Why was that sentence deleted?

² Russell on Roads, 2nd ed., 2008, Thomson Canada Limited

- (8) Why was that deletion not shown in ~~red font with strike-through~~?
- (9) Was the sentence struck out because it is now recognized that unmaintained Township roads are in not "private" in any sense of that word.
- (10) If so, why do you use the term "private unassumed roads" in sections 2.2.9 and 4.3.5 of the draft OP?

2.3 Private Roads S 4.3.4 (pg 77)

Section 4.3.4 contains the sentence *"If a private road is reconstructed to a standard acceptable to the Township and at no expense to the Township, the Township may consider the assumption of the private road by By-Law, if it abuts an existing maintained Township or County Road or Provincial Highway."* The sentence is, or may be, ambiguous in that it could be read by Township Councillors or Staff to mean that the Township may do so on its own initiative and without the consent of **ALL** the owners of such a road. That is clearly not the case! The sentence should be amended by adding the words "and if all owners of the road agree in writing," immediately after the words "at no expense to the Township,".

2.4 Private Unassumed Roads section 4.3.5; Page 78

Based upon the results of my "Find" search, the term "private unassumed roads " is used only 4 time in the draft OP; in the index (pg 5), in S.2.2.9 (pg 38) and in the heading and text of S.4.3.5 (pg 78)

The term "Private Unassumed Road" is not used in the current OP, nor in Township's Zoning By-law , nor in any provincial legislation, regulation or Provincial Policy Statement (as far as I am aware), nor is it used in Russell in Roads which is generally regarded as the preeminent legal text relating to Roads in Ontario, nor is it used in the "Typology of Roads" diagram referred to above. The relevant terms used in that diagram are "unassumed subdivision roads", and "opened unmaintained road allowances and unopened & unmaintained Road allowances"

Section 4.3.5 of the draft OP defines "private unassumed road " as :

*" a road owned by the Township and **maintained by a private individual, organization, or company** rather than by the Township. Since the roads are owned by the Township, the general public is allowed to travel on them. However, because they have not been assumed by the Township for maintenance purposes, **the private individual or organization is responsible for maintenance**" [Underlining and bold font added for emphasis.]*

That definition is word for word identical to the definition of Private Unassumed Road on the Township's website.³

Questions:

³ <https://www.tayvalleytwp.ca/en/living-here/roads.aspx#Private-Unassumed-Roads>

- (1) Did Staff provide the above definition of private unassumed road to J2pg, or did it provide the definition to Staff?
- (2) Why is the word “private” used in the definition?
- (3) In what sense are these roads private?
- (4) Prior to Jp2g’s presentation to the Working Group on April 5, 2020, did Jp2g review the Working Group’s Terms of Reference to determine the scope of the its assignment?
- (5) If not, why not?
- (6) f the answer to question 4 is “Yes”, why did Jp2g use the term “private unassumed road” in the draft OP when the first instruction in the Terms of Reference is to “Clarify definitions for private and public roads, including the use of a term to replace the term “Private Unassumed Road”.” *[underlining and bold font added for emphasis]*

The online Oxford Learner’s Dictionary defines the word “private” as “not public”, “belonging to a particular person or group; not for public use”; “not owned/run by government”⁴.

That such roads are owned by the Township is not in dispute⁵; nor is it disputed that the general public is permit to travel on such roads⁶, unless and until until closed by by-law⁷.

Furthermore, such roads are under the jurisdiction of the Township⁸.

Such roads are not maintained by the Township although the Township purports to exercise exclusive jurisdiction over them by setting standards in the Township’s egregious Road Access Agreement for all but “routine maintenance” - an undefined term. If such a road is maintained at all, it is likely maintained by one or more members of the public, who probably are, but are

⁴ https://www.oxfordlearnersdictionaries.com/definition/american_english/private_1

⁵ Municipal Act, 2001, SO 2001, c 25. S. 30 “A highway is owned by the municipality that has jurisdiction over it subject to any rights reserved by a person who dedicated the highway or any interest in the land held by any other person.” *See footnote 9 regarding jurisdiction.*

Surveys Act, R.S.O 1990, c. S 30, Section 57 “Subject to the *Land Titles Act* or the *Registry Act* as to the amendment or alteration of plans, every road allowance, highway, street, lane, walk and common shown on a plan of subdivision shall be deemed to be a public road, highway, street, lane, walk and common, respectively.

1964 Registry Act Regulation O.Reg. 158/64 S 38(1) “set out a form of Owner’s Certificate to be placed on every registered plan. It required that roads within the plan of subdivision to be dedicated as public highways were to be specifically named. O Reg 43/96 sets out the form of the certificate – See Russel on Roads op. cit. at page 198.

⁶ Municipal Act, 2001, op. cit. S. 26(5) ” The following are highways unless they have been closed:
5. All road allowances, highways, streets and lanes shown on a registered plan of subdivision.

⁷ Municipal Act, 2001, op. cit. S. 35 “Without limiting [sections 9, 10 and 11](#), a municipality may pass by-laws removing or restricting the common law right of passage by the public over a highway and the common law right of access to the highway by an owner of land abutting a highway.

⁸ Municipal Act, op. cit. S. 28(2) “Except as otherwise provided in this Act or under [section 8](#) of the [Public Transportation and Highway Improvement Act](#), a local municipality has jurisdiction over,
(a) all road allowances located in the municipality that were made by the Crown surveyors; and
(b) all road allowances, highways, streets and lanes shown on a registered plan of subdivision.

not necessarily, lot owners on such road. However, unless a member of the public has contractually agreed with the Township to maintain such roads, such member has no legal or moral duty to maintain any of them, nor is any such member of the public "responsible for maintenance". Even the Township's egregious Road Access Agreement does not impose an obligation on a lot owner to maintain, or be responsible to maintain, such roads.

If it is your opinion that lot owners on unassumed Township road have a duty to maintain such roads, please cite the authority for such view. In the absence of such authority the definition of private unassumed road is inaccurate.

Regrettably, the use of the word "private" in "private unassumed roads" unnecessarily blurs the distinction between public and private roads. At the May 4, 2022 meeting of the Working Group, the Chairman stated "Before I joined Council, I had no idea of what the terms private unassumed road was driving at (last 3 words unclear). I guarantee most people out there have no idea what ... The people of the (unclear) subdivision, I guarantee you that most of them don't have a clue that they are referred to as private unassumed roads. They're called private roads".

The chairman's comment highlights the problem. The Township is using a term that many, or perhaps even most, people don't understand. It is well past time to eliminate that confusion. It would be preferable and more accurate to refer to such roads as "unassumed Township roads". That is exactly what they are! Alternatively the Township may prefer to adopt two terms:

"unassumed subdivision road" means that portion of a road which is situated within a registered plan of subdivision in the Township, but has not been assumed by the Township; and

"unassumed Township road" means that portion of an unopened road allowance or forced road which is situated, in whole or in part, within the Township but which has not been assumed by the Township.

2.5 Public Road Access (s 2.2.9 of the draft OP; pg 33)

"All new development shall have frontage on a public road that is maintained by the Township or other public authority, save and except the following:

- 1. Agriculture, forestry and conservation uses not having an accessory dwelling or any building or structure to which the public has access.*
- 2. Residential uses located on private roads or having only water access and which are zoned as Limited Services in the Zoning By-Law that implements this Plan.*
- 3. Private Unassumed Roads."*

The wording of S. 2.2.9 of the draft OP is identical to S. 2.17 of the current OP (pg 38) except that the draft OP introduces a new exception, namely "3. Private Unassumed Roads."

However, the third exception is neither logically or grammatically correct. It should read: "3. Residential uses located on lots fronting on Unassumed Township Roads" or private unassumed roads, if council prefers that term.

The first two exceptions relate to "uses". The third, as drafted, does not. It should.

Question:

- (1) Why was the addition of "3. Private Unassumed Roads." not highlighted in yellow to indicate new wording? It does not appear to have been highlighted in the April 5, 2022 draft OP to indicate a change of wording. Those reviewing only changes in the wording of the draft OP may not be aware of the addition.

- 2.6 Residential policies S 2.3.3.4, Item 7 (pg 43);
see also S.3.6.4 Item 7 of the current OP (pg 77)

The residential policies in both the current OP and the draft OP are very similar.

The last two sentences of the first paragraph of the current OP states:

"Limited Services Residential Development is defined as residential development that does not have frontage on and direct access to an opened public road which is maintained year round. Access to Limited Services Residential Development may be provided by private right of way or private road, lane and by water. The residential uses shall include both seasonal dwellings and permanent dwellings."

However, the last two sentences of the first paragraph of Item 7 in the draft OP read as follows;:

Access to Limited Services Residential Development may be provided private road, or by water. The residential uses shall only include permanent dwellings." [Underlining and bold font added to make the differences in the text stand out.]

Comments

- (1) Please explain the rationale for the changes.
- (2) To be consistent with S.2.2.9 of the draft OP, and to eliminate the undue and unreasonable hardship imposed on those who own lots on unassumed Township roads (which are not private roads), the second sentence of the above paragraph should be amended to also permit Limited Services Residential Development where access is provided by an unassumed Township road, and subparagraphs (a), (b) and (c) should be amended accordingly where the context requires. There is no apparent reason not to make such amendment. If such a reason does exist, please elaborate.
- (3) Item 7 makes reference to "Limited Services Agreement", but neither the form nor the content of the Limited Services Agreement is specified or approved in the draft op (or the current OP). Best practice requires that both form and content be specified and approve (e.g. "as set out in the attached Schedule XYZ") or that the procedure for approving the form and content be outlined in the draft OP (e.g. authorized in the Township's Zoning By-law; or approved by Council, subject to amendment by Council from time, as appropriate). Otherwise, terms may differ from one Limited Services Agreement to another at the decision or whim of Council or Staff, with the result that a lot owner cannot be assured of being treated on the same basis as other lot owners.

- 2.7 Additional Residential Units (ARU) s. 2.2.3.1.1 on pg 28

This new section permits the addition of 1 or 2 self-contained dwelling units within an existing dwelling and the addition of 1 building or structure ancillary to the principal dwelling provided

that ancillary building or structure contains its own cooking and bathroom facilities. However, *"ARUs shall not be permitted within waterfront areas, due to compatibility concerns and the potential environmental and health risks associated with the intensification of waterfront and the lack of safe access by emergency services"* [Underlining and bold font added for emphasis]

Questions:

- (1) What are the "compatibility concerns"?
- (2) What is a "waterfront area"? The term is not defined in the draft OP, but it is used in various sections of the draft OP, including: Sections 2.2.3.1.1 (pg28); 3.2.5 (pg 63); S .3.2.5.1 item 6(i) (pg 65); S. 3.2.5.2 Item 1 (pg 65); S. 3.2.5.2 Item 2 (pg 65); S 3.2.7 item 3 (pg 76); and S. 6.12 item 7(a) (pg 123);
- (3) If not defined, who or what determines whether a structure is located within a "waterfront area".
- (4) Why is it assumed that no waterfront property provides "safe access by emergency services"?
- (5) Why is it assumed that all waterfront properties will have *"compatibility concerns and the potential environmental and health risks associated with the intensification of waterfront "*. Would that necessarily be true for a 20 acre property with 300 metres of waterfront property? Why not specify minimum standards, rather than apply a blanket prohibition?

2.8 Garden Suites S 2.2.4.1 pg 2.2.4.1 (pg 29)

Garden suites are intended to be portable temporary residences ancillary to a principal dwelling. The applicant for a zoning change "shall be required to demonstrate that the garden suite can be sited in accordance with applicable zoning standards, that sewage and water services will be adequate and that there will be no unacceptable impacts on adjacent land uses."

Questions

- (1) What does "temporary" mean? Less than 1 day, 1 week, 1 month, 6 months?

2.9 Group Homes S 2.2.4.2 (pg 30)

"A group home is defined as a single housekeeping unit in a residential dwelling, in which three to ten residents (excluding staff and receiving family) live together under responsible supervision consistent with the requirements of its residents."

"Group homes shall be permitted in single-detached dwellings in any designation in which a single-detached dwelling is permitted."

Questions:

- (1) Why is there is no apparent prohibition of group home within "waterfront areas" when it is highly likely that a group home (with up to 10 residents, staff and "receiving family") will have many more residents than an ARU and most single family residences?

- (2) Are the “potential environmental and health risks associated with the intensification of waterfront and the lack of safe access by emergency services” less relevant to the establishment of group homes than they are for ARUs?
- (3) Why is the applicant for a zoning change to permit a group home **not required to demonstrate** that the group home can be sited in accordance with applicable zoning standards, that sewage and water services will be adequate and that there will be no unacceptable impacts on adjacent land uses” whereas an applicant for a zoning change to permit a Garden Suite is required to do so?