



## **PUBLIC MEETING ZONING BY-LAW AMENDMENT MINUTES**

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**Tuesday, March 21<sup>st</sup>, 2023**

**5:30 p.m.**

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

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### **ATTENDANCE:**

**Members Present:** Chair, Reeve Rob Rainer  
Deputy Reeve Fred Dobbie  
Councillor Wayne Baker  
Councillor Korrine Affleck  
Councillor Andrew Kendrick  
Councillor Angela Pierman  
Councillor Greg Hallam

**Staff Present:** Amanda Mabo, Chief Administrative Officer/Clerk  
Janie Laidlaw, Deputy Clerk  
Noelle Reeve, Planner  
Ashley Liznick, Treasurer

**Public Present:** 52

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### **1. CALL TO ORDER**

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

### **2. INTRODUCTION**

The Reeve gave the following welcome and explanation of the Public Meeting:

*Good evening, welcome to the official onset of spring, and thank you for being on hand for this Public Meeting of Tay Valley Township. In a moment I will express formal preliminary remarks required for this meeting, but prior to doing that I wish to say the following.*

*This is a Public Meeting as legislated under provincial law. It is not a meeting of Council or the Committee of the Whole. This is the time for members of the public who wish to speak tonight to indeed speak, within time limits which are reasonable for the completion of the meeting and with respect to a Council meeting which will*

*immediately follow the Public Meeting. After our Planner, Noelle Reeve, gives her presentation on the subject matter at hand, I will ask for a show of hands to indicate how many people will wish to speak. In anticipation that there could be many speakers, we are asking people who wish to speak to limit the time of their comments and questions to about three minutes. Exceptions are for people who will speak on behalf of applicable groups of people, in which case such representatives will have up to 10 minutes to speak. As Chair, I will signal when these respective time limits are approaching and when they have been reached. The expectation is that speakers will adhere to those limits, respecting that there are more people yet to be heard.*

*Our Deputy Clerk, Janie Laidlaw, will be taking copious notes including the names of speakers so that such names are documented in the minutes. Members of Council may pose questions of clarification, if and when necessary. However, as this is not a Council meeting, neither Council or staff will engage in discussion or debate. As well, questions posed tonight by the public will not be answered on the spot, but rather can and would be answered in the coming days or into early next week, if such questions have not already been answered by the Township, such as are available on the Township website.*

*As the meeting unfolds, we ask that decorum be observed and respected at all times. It will be part of my job to ensure that that occurs. In the event that a short recess may be needed, I will not hesitate to call for that. We also anticipate a bathroom and stretch break at about 7:00 PM or so, in anticipation that the Public Meeting may run two to three hours if not a little longer.*

*And with that, I shall move to the official preliminary remarks prior to turning the microphone over to Noelle.*

The Chairman provided an overview of the Zoning By-Law application review process to be followed, including:

- the purpose of the meeting
- the process of the meeting
- all persons attending were encouraged to make comments in order to preserve their right to comment should the application(s) be referred to the Ontario Land Tribunal (OLT)
- the flow and timing of documentation and the process that follows this meeting
- any person wanting a copy of the decision regarding the applications on the agenda was advised to email [planningassistant@tayvalleytwp.ca](mailto:planningassistant@tayvalleytwp.ca)

The Chairman asked if anyone had any questions regarding the meeting and the process to be followed. Given that there were no questions, the meeting proceeded.

### 3. APPLICATIONS

#### i) **FILE #ZA23-02: Tay Valley Township**

##### a) **PLANNER FILE REVIEW & PROPOSED BY-LAW**

The Planner gave a PowerPoint Presentation - *attached page 9.*

##### b) **PUBLIC COMMENTS**

**Frank Johnson**, Little Silver and Rainbow Lakes Property Owners Association gave a PowerPoint presentation – *attached, page 17.*

**Gordan Hill**, Christie Lake Association  
Provided written comments of his presentation – *attached, page 23.*

**Cathy Anderson**, Little Silver Lake Road – *attached, page 27.*

**Margo Ayers**, Little Silver Lake Road

- echoes Frank Johnson and Gordon Hill's comments
- the proposed amendment will restrict them making any changes to their homes or cottages
- building permits have been being issued for the last 20 years without Road Access Agreements, to now add that requirement will negatively affect the value of their properties and increase expenses before getting a building permit
- asking Council to vote against the amendment

**M.J. Barrett**, Rainbow Lane – *attached, page 28.*

**Tom Ellis**, Rainbow Lane – *attached, page 29.*

**Carol Morgan**, Silvery Lane

- their deed did not say they were responsible for the road, received a nice welcome package from Township, but no mention of being responsible for the road, would not have bought had they known
- building permits have been given and property owners expect to be able to improve their properties, have been told the permits issued was a mistake
- permits have been issued without Road Access Agreement which has set a precedent and owners should not have to pay for a mistake and now the Township is re-wording the By-Law to fix the mistakes that were made
- asking Council to take close look at this, there is about 500 people affected, they share her opinion. they do not want Road Access Agreements or to fight this, want to know it will be revisited by Council

- asking Council to reconsider the vote and the impact on their constituents.

**Brad Morrison, Silvery Lane**

- was assured not to worry as the amendment does not change that the Road Access Agreements are required
- concerns that Council has put forth clarification without language for a way forward
- as outlined in the FAQ, the result is harm to taxpayers
- even with getting individual roads set up with Road Associations, as mentioned in the FAQ, it is a multi year undertaking, he cannot wait for that process, he needs to do work on his home now and based on legal advice signing a Road Access Agreement is not an option
- hope and expect if Council believes the options in the FAQ are appropriate that Road Access Agreements be set aside until they are engaged with groups to work through the options

**Richard Mosley, Little Silver Lake Road**

- has never felt Council was working against their best interests until now
- has built and never had a problem, he is on the Private Road section of the road, so not in the subdivision
- could not sit back and watch neighbours be coerced in this situation to help the Township fix their problem
- if Council proceeds they are in for a fight and it will not end soon
- does not understand the rational behind the materials provided

**Michael Poulin, Silvery Lane**

- agrees with previous comments so far, does not agree with the amendment
- built his home in 2010, in 2019 built a carport never had a Road Access Agreement, does not believe the need for one
- the Township needs to permanently resolve the issue on these roads, to transfer the liability or responsibility does not fix the problem

**Frank Sammut, Little Silver Lake Road**

- submitted letters to the Township, the Reeve explained the purpose of the meeting tonight was not for citizens to express their views of Private Unassumed Roads or Road Access Agreements
- Staff and the Reeve should be congratulated for having stopped developed on Private Unassumed Roads, they no longer have to issue permits to those landowners if Council adheres to this
- permits were issued without Road Access Agreements, many permits have been issued to date so not just a couple of mistakes

- forcing us to sign Road Access Agreements as individuals or as part of a group
- if the amendment is passed as written all will be in violation and will not be able to use their properties for anything
- a class action lawsuit will not be cheap
- asked Council if they would sign one and if not, think about the decision
- the Township is not a private corporation set out to make as much money as possible, but rather to work for and with the people

**Glenn McCue, Little Silver Lake Road**

- objecting to the amendment, it is a way for the Township to avoid dealing with their negligence of not enforcing the subdivision agreements with the developers, they did not use their authority to make the developers upgrade roads and now are changing the rules mid-problem since they do not want to deal with it
- management will change the exemptions as a work around to accommodate the negligence of the Township

**Mick Wicklum**

- all comments extremely relevant, pertinent and well thought out
- Council inherited the problem, the previous Council tried not to give this Council this problem. The previous Council voted to get rid of the Road Access Agreements and for whatever reason it was not implemented. The Resolution is still on the books but was not implemented. Have to ask yourself why it is back here? What is driving this? The last Council voted to be done with Road Access Agreements and the current Councillors have to ask themselves, what is driving this? Who is bringing it back and why?
- This amendment should be voted down and Council should pass another motion to stop requiring Road Access Agreements

**Teresa Perna, Maberly Pines Subdivision**

- purchased their lot when it had a holding zone placed on it. The Planner has been excellent to help them. Thought they were ready and then the Road Access Agreement came and they did some digging about it, there are many reasons for the agreement not to exist and they are not signing it
- the Township is responsible to maintain the road, they own it and you are responsible for what you own
- referred to question and answers for No. 3 and 5 under Subdivision Agreement Questions in the FAQ's on the Township website
- not responsible for road maintenance did not consent to that and not liable or responsible in law even if it was not brought to their attention when purchasing. There was a contract between the Township and

the developer and landowners are not liable, cannot hold the landowners responsible

- the Private Unassumed Roads Working Groups conclusion was that the Township was negligent as they did not hold the developer responsible. Feels there is a clear indication that the Working Group conclusion is legally feasible and is the core of this issue

**Gordon Wallace, Little Silver Lake Road**

- responsibility and accountability are important, safety of the roads is a concern and the Township should be held accountable to maintain the roads
- urged Council to defeat the amendment and get a sufficient legal opinion on where you stand

**Shannon Celeste, Maberly Pines Subdivision**

- just a general comment, the Maberly Pines Subdivision agreement had securities in the form of lots so that if the roads were not brought up to standards they could be sold and the money used to bring the roads up, the lots were declared surplus and sold with the funds going to general revenue, they should have been held onto until 2020 and then would have netted a lot more money and could have brought the roads up

**Alex Bushell, Maple Lane**

- looked into insurance that is required under the Road Access Agreement and his broker told him it was the first she had every heard of a person insuring a road and that Municipalities are the ones that insure roads not people

**Michael Leering, Rainbow Lane**

- would not enter into a Road Access Agreement but would like to build a garage, looked for a resolution to the exemptions, would have been allowed before and would not be allowed under this new amendment
- that the vote is next week is concerning
- discussed the financial picture to upgrade the roads and assume them, 12 years pay back after the upgrade of roads. The values of the lots would double if the roads were brought up
- can see it was the developer that was to do it and no one held them responsible
- in the FAQ Subdivision Agreement Question read No. 6 and disagrees with that answer based on increased property values in those subdivision, the statement is disappointing, he was not aware until after purchasing
- request that Council defeat this amendment

- question about the number of permits issued and how many have been issued since 2002 without a Road Access Agreement

**John Lang, Little Silver Lake Road**

- point was not made that if the Road Association takes on the insurance, the Road Access Agreement requires 5 million and if there is an incident on the road resulting in a claim that is 7 million, who pays for that? Who would purchase on a road with that liability?
- the amount the Township is offering to pay towards the cost of a Road Association is \$105,000
- wrote to Council in August last year, can send Council a copy of that letter
- in 2019 the resolution of Council was approved but not implemented, it is the Clerk's job to follow the orders of Council. Why did the Clerk disobey a direct order of Council?

c) **RECOMMENDATION**

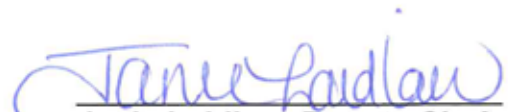
That the proposed amendments to Zoning By-Law No. 02-021 be approved.

**4. ADJOURNMENT**

The public meeting adjourned at 7:06 p.m.



**Rob Rainer, Reeve**



**Janie Laidlaw, Deputy Clerk**

# APPLICATIONS



## Zoning By-law Amendment Section 3.4 and Definition of IMPROVED STREET

### **Public Notice**

Pursuant to the Planning Act, Notice of public meeting is to be provided a minimum of 20 days prior for a Zoning By-law Amendment. Notice was duly given by posting in the newspaper.

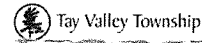
### **Ontario Land Tribunal**

Please be cautioned that if, at a later date, a person or public body choose to appeal Council's decision on this matter to the Ontario Land Tribunal, the Tribunal may dismiss all or part of an appeal without holding a hearing if the reasons set out in the appeal do not refer to land use planning grounds offended by the decision, the appeal is not made in good faith, or is frivolous or vexatious or made only for the purpose of delay.

The Tribunal may also dismiss the appeal if the appellant did not make oral submission at the public meeting or did not make written submission before the plan or amendment were adopted.

If you choose to appeal, you must submit written reasons, the prescribed fee and any other background material requested. This notice is not intended to discourage your objection in any way. It is intended only to inform you of your rights and obligations and to encourage early participation.

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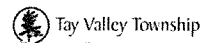


1

## Zoning By-law Amendment Section 3.4 and Definition of IMPROVED STREET

- The application is a general amendment to the text of Zoning By-law 02-121, rather than a site-specific zoning change.
- The purpose of the amendment is to clarify the application of Section 3.4 Frontage on an Improved Street.
- Currently the wording of Section 3.4 contains references to a mixture of buildings, lots and zones.
- To clarify the application of Section 3.4, a revised definition of IMPROVED STREET is also proposed.
- The effect of the amendment is to provided consistency in the application of Section 3.4.

2



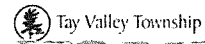
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## Zoning By-law Amendment Section 3.4 and Definition of IMPROVED STREET

Currently Zoning By-law 02-121 Section 3.4 states "No lot shall be used and no building or structure shall be erected on a lot in any zone unless such lot has sufficient frontage on an improved street to provide driveway access. Notwithstanding the foregoing, this provision shall not apply to:

- A non-residential **building** or structure accessory to an agricultural or conservation use;
- A **lot** on a registered plan of subdivision and with frontage on a street which **will become an improved street** pursuant to provisions in, and financial security associated with, a subdivision agreement that is registered on the title to the lots;
- A **lot** on a plan of subdivision registered before December 10, 2002, that has frontage on a street that is **not an improved street**, where the owner has entered into a Road Access Agreement to the satisfaction of the Township;
- A **lot** located in a Limited Services Residential **zone**;
- An existing seasonal **dwelling** in a Seasonal Residential **zone**"

3



3

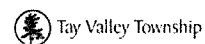
## Zoning By-law Amendment Section 3.4 and Definition of IMPROVED STREET

The amended Section 3.4 proposes the following wording:

### **3.4 Frontage on an Improved Street**

No lot shall be used, and no building or structure shall be erected, on a lot in any zone unless such lot has sufficient frontage on an improved street to provide driveway access. Notwithstanding the foregoing, this provision shall not apply to a non-residential building or structure that is accessory to an agricultural or conservation use.

4



4

## Zoning By-law Amendment Section 3.4 and Definition of IMPROVED STREET

The current definition of STREET (shown below) is not proposed to change. The current definition of IMPROVED STREET (shown below) is proposed to change.

"STREET shall mean a public thoroughfare under the jurisdiction of either the Corporation, the County or the Province of Ontario. This definition does not include a lane, a private road or private right-of-way."

"IMPROVED STREET shall mean a street which has been assumed by the Corporation, the County or the Province and is maintained on a regular, year-round basis."

5



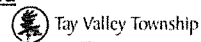
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## Zoning By-law Amendment Section 3.4 and Definition of IMPROVED STREET

The amended definition of IMPROVED STREET proposes:

IMPROVED STREET shall mean a street which has been assumed by the Corporation, the County or the Province and is maintained on a regular, year-round basis. Notwithstanding the generality of the foregoing, in the circumstances listed below an Improved Street shall be defined to include:

- a street which is intended to become an Improved Street pursuant to provisions in, and financial security associated with, a subdivision agreement that is registered on the title to the lot in a plan of subdivision registered after December 10, 2002;
- a street that is within a plan of subdivision registered before December 10, 2002, where the street is subject to a Road Access Agreement entered into to the satisfaction of the Township;
- a private road in a Limited Services Residential zone; and
- <sup>6</sup> a private road in a Seasonal Residential zone.



6

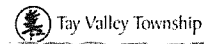
## Zoning By-law Amendment Section 3.4 and Definition of IMPROVED STREET

"No lot shall be used and no building or structure shall be erected on a lot in any zone unless such lot has sufficient frontage on an improved street to provide driveway access. Notwithstanding the foregoing, this provision shall not apply to:

- A non-residential **building** or structure accessory to an agricultural or conservation use;
- A **lot** on a registered plan of subdivision and with frontage on a street which **will become an improved street** pursuant to provisions in, and financial security associated with, a subdivision agreement that is registered on the title to the lots;
- A **lot** on a plan of subdivision registered before December 10, 2002, that has frontage on a street that is **not an improved street**, where the owner has entered into a Road Access Agreement to the satisfaction of the Township;
- A **lot** located in a Limited Services Residential zone;
- An existing seasonal **dwelling** in a Seasonal Residential zone"

IMPROVED STREET shall mean a street which has been assumed by the Corporation, the County or the Province and is maintained on a regular, year-round basis. Notwithstanding the generality of the foregoing, in the circumstances listed below an Improved Street shall be defined to include:

- a street which is intended to become an Improved Street pursuant to provisions in, and financial security associated with, a subdivision agreement that is registered on the title to the lot in a plan of subdivision registered after December 10, 2002;
- a street that is within a plan of subdivision registered before December 10, 2002, where the street is subject to a Road Access Agreement entered into to the satisfaction of the Township;
- a private road in a Limited Services Residential zone; and
- a private road in a Seasonal Residential zone.



7

## Zoning By-law Amendment Section 3.4 and Definition of IMPROVED STREET

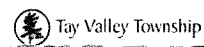
### Planning Act

- Section 34 Zoning By-laws - allows municipalities to pass zoning by-laws "restricting the use of land".

### Provincial Policy Statement (PPS)

- Section 1.1.5.5 Rural Lands in Municipalities states that, "Development shall be appropriate to the infrastructure which is planned or available and avoid the need for unjustified and/or uneconomical expansion of this infrastructure".

8



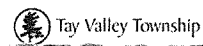
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## Zoning By-law Amendment Section 3.4 and Definition of IMPROVED STREET

### County Sustainable Communities Official Plan

- Section 4.2.1 Local Infrastructure Planning states, "Continued efforts to find solutions to local infrastructure problems by local municipalities are considered to be appropriate and in conformity with the policies of the County Official Plan".

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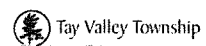
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## Zoning By-law Amendment Section 3.4 and Definition of IMPROVED STREET

### Tay Valley Official Plan

- Section 2.17 Public Road Access states: "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."
- Section 4.4 Township Roads identifies: roads owned and maintained by the Township; minimum right of way standards for Township roads; and Township Unassumed Roads as private roads (for the purposes of Section 4.5 – not maintained by the Township).

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10

## Zoning By-law Amendment Section 3.4 and Definition of IMPROVED STREET

- ◆ The municipality established the principle of development for subdivisions by its approval of the subdivision agreements.

11



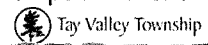
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## Zoning By-law Amendment Section 3.4 and Definition of IMPROVED STREET

### Zoning By-law

- Section 3.4 Frontage on an Improved Street and the Definition of an IMPROVED STREET are proposed to be amended to provide consistency with the intent of the original 2009 amendment to Comprehensive By-law 02-121.
- The amendment provided a way for building permits to be issued to lots in subdivisions that did not have improved roads.
- These lots had been legally unbuildable between 2002 and 2009, despite four exemptions to Section 3.4 being available.
- The fifth exemption proposed by the 2009 amendment was the only one available to subdivisions built prior to December 2002.
- It was not a choice added to a "pick your own exemption" menu.

12



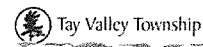
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## Zoning By-law Amendment Section 3.4 and Definition of IMPROVED STREET

### Public Comments

- The majority of the comments expressed opposition to change to Section 3.4 based on concerns about the nature and implementation of Road Access Agreements (RAAs).
- However, the amendment changes nothing about RAAs. It simply clarifies the original intention of the 2009 Novatech amendment.
- A few commenters raised specific areas of concern unrelated to the proposed Zoning amendment:
  - That their property value would decrease because contractors would not want to bear a portion of the liability for maintaining these roads; This has already happened in the Township and is why the Bennett Lakes Estates and Dokken Rd have created Road Associations.
  - Is a subdivision agreement valid if the original developer did not complete all requirements. Yes

13



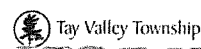
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## Zoning By-law Amendment Section 3.4 and Definition of IMPROVED STREET

### Recommendation

"THAT, Zoning By-Law No. 2002-121 be amended to clarify the application of Section 3.4 Frontage on an Improved Street and clarify the definition of IMPROVED STREET ."

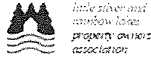
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# **PUBLIC COMMENTS**



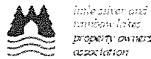


# Little Silver and Rainbow Lakes Property Owners' Association

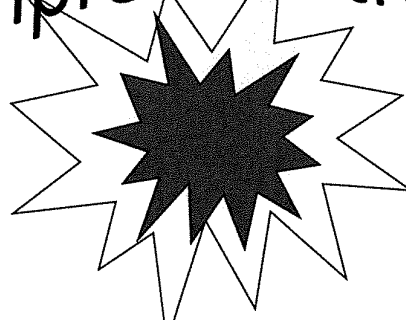
Dr Frank Johnson PhD PEng  
President

Public Meeting TVT 21<sup>st</sup> March 2023

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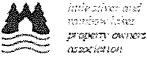
## **A pair of “minor” changes...** **Road Access Agreements** **Improved Streets**



2



3



An Improved Street is needed because...


**No lot shall be used, ..... including walking or camping.**

**No Building or structure erected...** Renovations; wood stoves; septic systems.

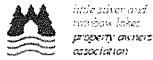
So, "How do we become an Improved Street?"

You need a

Road Access Agreement



4

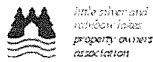


## Key Clauses in the 2022 Road Access Agreement

- (e) Insurance of \$5M liability and \$5M non-owned automobile.  
-- and this must be kept in force forever.
- (h) Contractors also must be indemnified.
- (i) TVT is not responsible for maintenance.
- (k) And TVT can use this clause to enforce complete upgrade.
- (o) Transfers all responsibility to property owners.  
...And the RAA can be changed whenever TVT desires

**No owner in their right mind would sign**

5



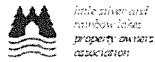
## Where does this leave us?

**Either sign an RAA,  
Or form a road assoc. and sign an RAA.  
Either way: Pay to improve the road.**



**\*Hobson's choice?  
\*Negotiation under  
duress?**

6

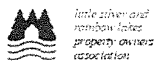


## Why are we Punishing the People?

F. Dobbie 2019



7



## "Return to the Status Quo"?

How many building permits have been issued since 2002?

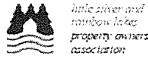
On LSL Road alone

2002-2009 -- 9

2009-2022 -- 16



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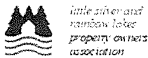
## All are Planner's mistakes

"... There has been **uninformed under-enforcement of the RAA requirement by me**. When I started at the Township we had 3 colours of roads in the GIS mapping system - **blue** for County-owned, **red** for Township-owned, and **green** for private roads. I issued minor variances and in one case a rezoning for a vacant lot in error thinking the properties were on private roads. It wasn't until our current CAO was hired and started to look at roads based on her previous experience, that unassumed roads were tracked down and the GIS system added a new colour, orange, for unassumed roads. **That's when it became somewhat painfully clear to me that I had made mistakes.** To Alison Bentley, 20 March 18:44

"... Your variance and BP would have been approved by me. I **made a mistake**. When the Current CAO joined the Township she brought with her experience of unassumed roads from her previous municipality. It wasn't until after she had been here for a while that our GIS system has a new road category added to it – unassumed roads (**orange** on our GIS maps). When you got your variance, the GIS system classified your road as a private road (**green** on the map). To Bob Irwin, 19 March 21:32

- The Planner joined TVT in December 2009 after 9 years as Senior Planner in New Jersey.
- The CAO joined TVT in August 2011 from Lanark Highlands Township.
- GIS map taken from <http://cgis.com/cpal/Default.aspx?Map=Tay%20Valley> Bicentennial project, 2016.
- No road colour layer detected. Zoning RS or RLS clearly marked.
- Exemptions in S3.4 are based on zoning.

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## Professional opinions no longer count:

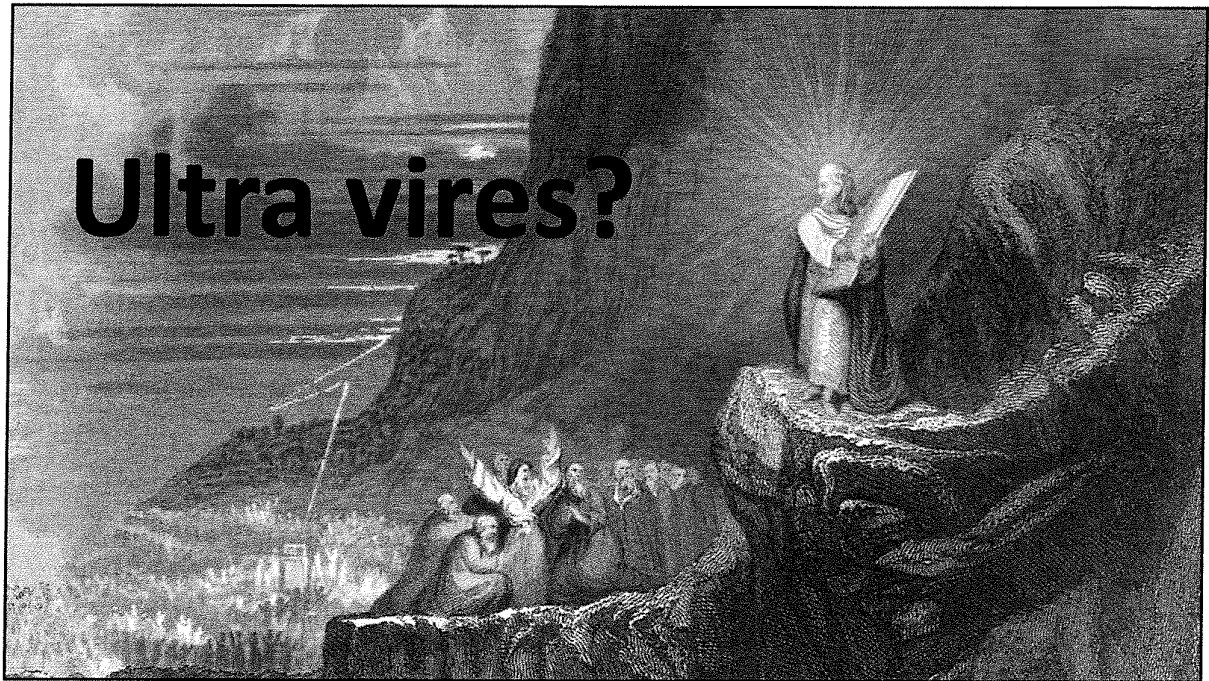
**Legal opinion** (Tony Fleming, 6 Feb 2023):

"What [the Municipal Act] means in practical terms is that the unassumed roads are subject to section 44 and the Township **must maintain them in a state of repair that is reasonable in the circumstances.**"

**Insurer's Recommendation** (Halpenny, August 2021)

- It is our recommendation that Tay Valley **retain {PUR} ownership and should assume responsibility for maintaining the roads.**
- This would reduce potential liability as the Township would be maintaining the road to Minimum Maintenance Standards and keeping records in the event of a claim.

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Presentation (V5) at Public meeting March 21, 2023

By Gordon L. Hill

Amendment to zoning By-law

Thank you Mr. Chairman and a warm welcome to all Councillors, Members of staff and the many member of the public who are here to witness municipal government in action. It will be most interesting to see if “in action” is one word or two.

I would like to start with two short, but poignant, quotes:

On page 26 of his 2019 book, “A Republic, If You Can Keep It”, Neil Gorsuch, a Justice of the Supreme Court of the United States opines:

**“The United States is a nation established on the idea that government exists to serve the people, not the other way around.”**

That would seem to be a sound concept for Canadian federal, provincial and municipal governments as well.

**Edward Paul Abbey**, an American author, essayist, and environmental activist of the late 20<sup>th</sup> century is reputed to have authored the quote:

**“A patriot must always be ready to defend his country against his government.”**

There are many patriots here tonight.

Let us begin in earnest. What is a “private unassumed road”, often referred to a “PUR”?

The Township’s website defines it 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.”**

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

The last sentence of this definition is crucial to the reason we are here this evening. I am here to explain why that last sentence is inaccurate.

The amending by-law not only changes S. 3.4 of the Township’s Zoning By-Law (“the Zoning By-law”), but also, in section 2 of the Zoning by-law, it changes the definition of “Improved Street” (which itself is a sub-definition of “Street”). The definition of “Improved Street” includes a reference in the 3<sup>rd</sup> bullet point to “Road Access Agreement”. Since the Road Access Agreement is mentioned in the amending by-law, its effect on Township residents is a relevant and proper subject for discussion at tonight’s meeting.

The Township's Road Access Agreement ("RAA") lies at the very heart of the public's objection to the amending by-law. We know that the RAA has little to do with road maintenance or repair, because the RAA does not require owners of lots on PURs to maintain them. It is, in my view and that of many members of the public here tonight, that the main purpose of the RAA is to transfer any and all liability that the Township may incur as a result of an accident on a PUR from the Township to lot owners on such roads by means of the indemnity and insurance requirements in the RAA.

It is quite clear that the Township has exposure to liability for accidents on PURs.

Section 44(1) of the Municipal Act requires the Township to keep such roads "in a state of repair that is reasonable in the circumstances".

Section 44(2) states: "A municipality that defaults in complying with subsection (1) is, subject to the *Negligence Act*, liable for all damages any person sustains because of the default".

The Township's position, as I understand it, is this.

Owners of lots on PURs are currently "responsible to the Township for road maintenance". A number of subdivision agreements say as much. For that reason, there is no need to impose road maintenance obligations in the RAA. Furthermore, since owners of lots on PURs are currently responsible to the Township for road maintenance, they are currently liable to the Township for breach of that responsibility should the Township incur any loss or damage as a result of accidents on a PUR, assuming that the condition of the PUR in issue is the cause, or a cause of the accident. Consequently, liability is not being transferred from the Township to those who sign RAAs. That liability currently exists.

I hope I have understood the Townships' argument correctly, I shall now set out four reasons why the Township's argument is incorrect. The last of the four reasons is the most important. Those four reasons include:

- 1 The Township is aware of 9 subdivisions with PURs (Plans 1, 2, 4, 6, 9, 21, 29, 30, and 4259). The Township also states that Silvery Lane, which is not within a registered plan of subdivision, is owned by the Township and confirms that the Township does not maintain it. Regrettably, the Township has provided no evidence that it owns Silvery Lane or how it came to own it. But let's overlook that omission for now and assume that Silver Lane is a PUR. The Township's website provides copies of only 4 subdivision agreements for the 9 subdivisions mentioned above. Those 4 subdivision agreements relate to plans 6, 21, 29 and 30). The Township's website also provides a copy of a road maintenance Agreement (not a subdivision agreement) relating to Silvery Lane ("the Silvery Lane Agreement"). It is dated June 9, 1980 and was registered on title on July 10, 1980 as No 78641. One of the 4 subdivision agreements (Plan 29-Maberly Pines) does NOT impose a responsibility on lot owners to maintain PURs. That responsibility lies solely with the



developer. The other three subdivision agreements purport to impose such responsibility on lot owners, as does the Silvery Lane Agreement.

Silvery Lane is shown on Plan 27R1943 (copy attached) which was “deposited”, under the Registry Act on June 26, 1980. It is not a registered plan of subdivision, but it contains a graphic or pictorial display of Silvery Lane. All of the individual lots depicted on Plan 27R1943 contain 5 digit instrument numbers which, by their numerical order, indicate the order in which the lots were first transferred from Jacques Albert Noel or Lakeside Living Limited to various purchasers. Since instrument numbers under Registry System are allotted chronologically, the smaller numbers indicate registration dates which are earlier than the larger numbers. All of those instrument numbers shown on Plan 27R 1943 are lower than instrument no. 78641 - the Silvery Lane Agreement, indicating they were registered before the Silvery Lane Agreement was registered. The inescapable conclusion: All lots on Silvery Lane were sold to purchasers before the Silvery Lane Agreement was signed and registered. Consequently, in the summer of 1980, Lakeside Living Limited had no authority to bind lot owners to the maintenance requirements set out in the Silvery Lane Agreement without the approval of each of the lot owners. In the absence of evidence of such approval, the Silvery Lane Agreement is of no validity or legal consequence.

The Township is basing its argument that lot owners are “responsible for maintenance” on the wording of 3 of 9 subdivision agreements and the discredited Silvery Lane Agreement. There is no principle of law by which the Township is authorized or permitted to impose the responsibility to maintain roads on all lot owners in all subdivisions having PURs when 5 subdivision agreements (for Plans 1, 2, 4, 9 and 4259) have not been seen and, therefore, their respective terms are unknown, and a sixth (Plan 29) indicates that no such responsibility has been imposed on lot owners in that subdivision. And, as already noted, the Silvery Lane agreement is totally inconsequential because it was registered only after all lots on Silvery Lane had been sold.

- 2 Restrictions or burdens which are not registered on title do not bind a purchaser unless it can be demonstrated that the purchaser was aware of the restrictions or burdens before completing the purchase. [*Land Titles Act R.S.O. 1990 Chap. L.5 Section 72(1)*]

TVT has provided no evidence to show that:

- (a) the current registered title to any of the lots on PURS is subject to a duty or responsibility to maintain roads, or
- (b) any purchaser of a lot on a PUR was aware of unregistered restrictions or burdens before completing the purchase.

In the absence of such evidence, the Township has failed to prove its case.

- 3 It defies logic that all members of the public may use PURs, may travel on them all day long if they wish, but only those who own lots on PURS and have signed RAAs are responsible to indemnify the Township for any loss it may incur for accidents that occur on the PURs

whether or not they are absentee owners who use their respective properties only a few weeks per year.

- 4 Finally, and most importantly, a promise or obligation to do something (e.g. maintain roads) is referred to in real estate law in Ontario as a “positive covenant”. A promise not to do something (e.g. not to build a privy with 50 feet of my property line) is referred to as a “negative covenant”. It is well settled law in Ontario that:
  - (a) negative covenants which are registered on title attach to the land and are binding on subsequent purchasers; whereas
  - (b) positive covenants do not bind subsequent purchasers even if such covenants are registered on title.

In Heritage Capital Corp. v. Equitable Trust Co., 2016 SCC 19 (CanLII); [2016] 1 SCR 306 the Supreme Court of Canada held that positive covenants do not run with the land to bind future owners, on the principle that, at common law, one cannot be made liable on a contract unless he or she was a party to it.

<https://www.canlii.org/en/ca/scc/doc/2016/2016scc19/2016scc19.html>

In 2017, the Ontario Court of Appeal in Black v. Owen 2017 ONCA 397 confirmed that the rule against positive covenants running with title continues to be good law.

The Township has not provided any evidence that any of the current lot owners on PURs have, by contract, agreed to accept responsibility for maintaining PURs. Approximately 10 lots owners have signed RAAs since April 2009, but, as far as I am aware, none those RAAs require lot owners to maintain PURs or bring them up to a municipal standard.

All of the stated “responsibilities” to maintain roads are positive covenants. According to the Supreme Court of Canada and the Ontario Court of Appeal those “responsibilities” do not run with the land or bind future owners. Consequently, the statement that “is both inaccurate and unsupportable. No private individual or organization is responsible for maintenance.

## Conclusion

If owners of lots on PURs are not responsible to the Township to maintain iPURs, (as indicated by the reasons set out above), then there is no rationale for subjecting them to the liability which has been imposed on municipalities by the Municipal Act. In short, there is no rationale for requiring indemnities and liability insurance coverage in RAAs for the benefit of the Township.

Thank you for time and attention.  
Gordon L. Hill

Hello. My name is Catherine Anderson and I do NOT support the passing of this proposed amendment to the Zoning bylaw.

I live on one of Tay Valley Township's Unassumed Roads. It is now my permanent, year-round home since retiring in 2018. Since that time, I have completed **two** major building projects, both duly permitted by the Township. **Neither** one required me to sign a Road Access Agreement.

As a senior citizen and pensioner, I am now worried that I won't be able to afford to live out my retirement years in the beautiful place where my family has owned property since 1977, because of the increased costs that are likely to land on property owners if this proposed amendment to the Zoning Bylaw passes.

Tay Valley Township has a higher-than-average percentage of senior citizens within its population. You claim to care deeply about our future housing needs. But I don't see that concern reflected in this proposed amendment.

And I don't see concern for property owners in general, in the way that the Township has handled this proposed amendment. It didn't identify a clear problem and then involve stakeholders in the process of generating potential solutions. Instead, the Township put the cart before the horse by starting with a solution that would best serve its interests, then looking for ways to justify that decision.

For example, Township staff may surmise what the authors of the Novatech report in 2009 **meant** to say. But careful review of the report itself simply does not support their interpretation. That risks putting limits on the ability of you, our elected representatives, to practise due diligence as you vote on this amendment.

This proposal is **not** just about clarifying definitions and improving language, as we have been told by the Reeve and others before this meeting. It is about much more than that. This "amendment" feels like a weapon being used to shift costs and responsibility onto tax-paying property owners, not a tool for problem-solving.

Both this process and this proposal go against everything I believe good governance in a democracy should be.

Please, members of Tay Valley Council, slow down. Do not rush this amendment through as currently written. Allow for meaningful consultation with stakeholders. Allow for consideration of alternate solutions. That would go a long way towards reestablishing the trust that we are currently losing in Tay Valley Township and its leaders.

**M.J. Barrett, PhD. Presentation to Tay Valley Town Council, May 21, 2023.**

I am a social scientist and associate professor at University of Saskatchewan. I am working remotely from my home on Rainbow Lane and now live here permanently.

1/ I would like to remind you of some facts:

1. LSR zoned lots are an existing exemption in Section 3.4;
  - a. Building permits have been issued on LSR lots both before and after the 2009 amendment to section 3.4);
2. The Novatech report clearly states that “the proposed amendment would add an additional exemption.” It does not state that it would replace or take precedence over any of the existing exemptions.

As the township’s actions clearly demonstrate, LSR lots, including those on Rainbow, Silver Lake and Silvery Lane were, and still are, covered under an existing exemption. The exemption is clear. It is not confusing as the TVT is claiming.

2/ Wishing something was the case, doesn’t mean that it is true. The township may wish that those living on LSR’s were required to sign a road access agreement under the 2009 amendment, but this simply not true. The only evidence they have to suggest that this is the case are private conversations, and inference. This does not count as evidence. Furthermore, the actions of the township both before and after the 2009 amendment undermine any attempt to make this a fact-based claim. So does the limited scope of the Novatech report and its content which is the main source of evidence. The report clearly states that its focus is on creating a provision for lot development in Maberly Pines, which was zoned residential, not LSR.

3/ I agree, there are important issues that need to be addressed. AND, there are better ways to handle this situation.

You are a new group of councillors who have the capacity to do this right. You have inherited a difficult problem. We would like to trust you and work together to come up with a solution. Voting no to this by-law amendment is a critical first step to building this trust. The alternative, as has already been demonstrated by other property owners, is a divisive process and long drawn out legal fight with your constituents.

Please use the power we have invested in you, as our elected officials to create the conditions for us work together, and to work with the facts.

If you have a group of individuals with diverse voices, willing to sit down together to work out a solution, *and* a complete set of facts, analyzed and presented without the biased desire for a particular outcome – it is surprising what solutions can be found.

BUT, this can only be done when we – as property owners – can trust the people in charge, and trust that what is being told to us, is indeed the complete picture, supported by clear evidence.

I fear, the alternative is an appeal and lawsuits, which will cost taxpayers even more, and neither make the roads safer, nor secure an appropriate way to insure them.

Thank you.

Hello, my name is Tom Ellis and I have recently moved to Rainbow Lane. I would like to provide an example to illustrate the concerns expressed by my fellow citizens.

I am inspired by the words of David Suzuki: Think globally and act locally, so I would be interested in installing solar panels at our property. I was shocked to see a recent posting on the TVT website stating that I am not able to do so because I live on an unassumed road and I haven't signed a road access agreement.

So I did some research. I studied the relevant By-law and found that I have the right zoning that would allow me to be granted a building permit, based on an exemption in Section 3.4.

But the Township's position is, no, the Township believes that it can only grant me a building permit if I live on a private road.

I did more research. I discovered that there is nothing actually in Section 3.4 that says I can only get a building permit if I live on a private road. Research also showed that the Township has historically issued many building permits to others living on unassumed roads.

Faced with this evidence, the Township position is still no, and directed me to read the 2009 Novatech report which explains a 2009 amendment to the By-law.

So I did more research. I found that there is nothing in the Novatech report that says the original exemptions in the By-law only apply to private roads. The 2009 By-law amendment added an additional exemption, which was clearly needed for those living on unassumed roads if they were zoned Residential. That was the only problem that was studied in the Novatech report. But my property isn't zoned Residential.

But the Township's position is, no, rather than trusting any written evidence I need to rely on a private communication that they have had with Novatech which was meant to clarify Novatech's intentions. I could go on, but here is the key point. None of this has produced any evidence whatsoever to support the claim that the Township is legally constrained by the wording of the original 2002 By-law, namely, that the two exceptions in Section 3.4 only apply to private roads.

So where does that leave us? In the absence of any evidence to support the Township's position, it is now proposing simply to re-write the By-law in order to restrict the two exemptions to private roads, thereby excluding unassumed roads.

**THIS IS NOT A SOLUTION TO ANYTHING!** I urge Council to defeat this By-law amendment so that we can all put our time, energy and resources into identifying the actual problems, and coming up with realistic and cost-effective solutions. Thank you.