



“SPECIAL” COUNCIL MEETING MINUTES

Tuesday, March 28, 2023

5:30 p.m.

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

ATTENDANCE:

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

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

Regrets: None

1. CALL TO ORDER

The meeting was called to order at 5:30 p.m.
A quorum was present.

2. DISCLOSURE OF PECUNIARY INTEREST AND/OR CONFLICT OF INTEREST AND GENERAL NATURE THEREOF

None at this time.

3. MOTIONS

i) **Private Unassumed Roads – Reconsideration.**

Councillor Kendrick provided his remarks in writing – *attached, page 7.*

Councillor Jordan asked Council to consider the points made from property owners, she has major concerns with the motion and feels it should be reconsidered.

RESOLUTION #C-2023-03-28

MOVED BY: Andrew Kendrick

SECONDED BY: Korrine Jordan

“**THAT**, Resolution #C-2023-02-03 regarding Private Unassumed Roads be reconsidered as the next order of business due to new information that has come forward, an error in documentation presented and incorrect statements made during the original debate.”

DEFEATED

4. BY-LAWS

i) **Report PD-2023-08 – Zoning By-Law Amendment - Section 3.4 Public Feedback.**

The Planner reviewed the report that was attached to the agenda.

ii) **By-Law No. 2023-017 – Zoning By-Law Amendment - Section 3.4 Frontage on an Improved Street and Definition of IMPROVED STREET.**

Councillor Kendrick indicated that he sent his concerns to the Planner, CAO/Clerk and the Reeve and received no response or acknowledgement. The Planner explained that the material provided was irrelevant to the By-Law Amendment. Councillor Kendrick does not see how Council can discuss the By-Law Amendment without considering all the implications, there is a mandate to consider implications.

Councillor Kendrick provided written comments to set out his reasons for being opposed to the Zoning By-Law Amendment – *attached, page 11.*

The Reeve interrupted to state that the information being provided was not germane to the motion on the floor. Debate needs to be in keeping with the decision of adopting the Zoning By-Law Amendment, not the history as a Council Member wishes to tell it. Councillor Kendrick indicated that he would call a Point of Privilege if stopped.

The CAO/Clerk asked to speak about the procedure. Councillor Kendrick called a Point of Order and stated that the Council can debate the issue and can ask

staff questions, but staff are not part of the debate and if they want to be then they should run for elected office.

The CAO/Clerk suggested a short recess.

Council recessed at 6:04 p.m.

Council reconvened at 6:10 p.m.

Councillor Kenrick continued expressing his written comments.

Councillor Baker provided his comments in writing – *attached, page 14.*

Councillor Pierman explained she wanted the best solution for all involved, we all have the same end goal. It is all about interpretation and in 2019 it was stated in a meeting from a previous Council Member that the wording in Section 3.4 was not good. Staff have been pointed out and no one is perfect, but Staff does want what is best for the Township. Supportive of the amendment and wants it to move on, there is no perfect answer but need to do what is best for the Township.

Deputy Reeve Dobbie indicated that this has been a long process, he has listened to the lawyers, Staff and reviewed the public comments, out of all the comments only three (3) have suggested an alternate solution. Supports the amendment to the Zoning By-Law.

Councillor Thomas is in support of the amendment, has read all the comments, reports and has spoken to the two Road Associations that exist and they have had no concerns with having Road Associations. She is not discounting everyone's comments and concerns and has listened to the public, lawyer and advisors.

Councillor Jordan does not support the amendment and agrees with Councillor Kendrick. The landowners could come up with something better if given the opportunity. Approving the amendment will open up a legal battle. Building permits are being held over peoples heads like blackmail. Tay Valley Township is mounting an attack against its citizens.

Councillor Hallam has reviewed everything. Feels Councillor Baker summed it up and agrees with the Deputy Reeve that it has been going on for too long. While he respects the opinion of Councillor Kendrick this needs to be moved forward.

Councillor Kendrick stated that the positions of Council are clear. It is unfair to say the public has not come up with alternative solutions as they were not asked to. Feels this is not an end solution but only being put in place until another one is implemented and it is stopping people from improving their properties and damaging the small businesses and trades in the Township that provide that work.

RESOLUTION #C-2023-03-29

MOVED BY: Greg Hallam

SECONDED BY: Angela Pierman

“**THAT**, By-Law No. 2023-017, being a by-law to Amend Zoning By-Law No. 2002-121, (Section 3.4 Frontage on an Improved Street and Definition of IMPROVED STREET) be read a first, second and third time short and passed and signed by the Reeve and Clerk.”

(SEE RECORDED VOTE)

Councillor Baker called a recorded vote on Resolution #C-2023-03-29:

For:	Reeve Rob Rainer	1
	Deputy Reeve Fred Dobbie	1
	Councillor Wayne Baker	1
	Councillor Greg Hallam	1
	Councillor Angela Pierman	1
	Councillor Marilyn Thomas	<u>1</u>
		6

Against:	Councillor Korrine Jordan	1
	Councillor Andrew Kendrick	<u>1</u>
		2

Absent: 0

Total: 8

ADOPTED

Council recessed at 6:38 p.m.
Council reconvened at 6:45 p.m.

5. CLOSED SESSION

i) **CONFIDENTIAL: Litigation – Legal File Update.**

RESOLUTION #C-2023-03-30

MOVED BY: Fred Dobbie

SECONDED BY: Marilyn Thomas

“**THAT**, Council move “in camera” at 6:46 p.m. to address a matter pertaining to litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board regarding a Legal File Update;

AND THAT, the Chief Administrative Officer/Clerk, Planner and Deputy Clerk remain in the room.”

RESOLUTION #C-2023-03-31

MOVED BY: Fred Dobie

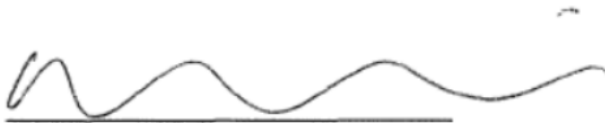
SECONDED BY: Marilyn Thomas

“**THAT**, Council return to open session at 7:13 p.m.”

The Chair rose and reported Council provided staff with direction on two legal matters.

5. ADJOURNMENT

Council adjourned at 7:14 p.m.


Rob Rainer, Reeve


Janie Laidlaw, Deputy Clerk

MOTIONS

Reconsideration of Resolution C-2023-02-03

I was required to submit the document included with the agenda in advance of the Public and Council meetings on March 21st, and so my introductory remarks tonight will include a few additional notes resulting from new materials or discussion which I and other members of Council have seen or heard since March 20th.

The Agenda for March 21st, 2023 included as Other Business my Notice of Intention to Reconsider. As noted at that meeting, this is for reconsideration of Resolution C-2023-02-03 at the subsequent meeting of Council, currently scheduled for March 28th, 2023. The Notice of Intention process is described in 1.2.2.1 of TVT's Procedural Bylaw.

The overall rationale for the reconsideration is that the Resolution was moved and adopted prior to the current and ongoing public consultation process. The consultation phase includes the public meeting, which took place on March 21st, 2023. The inputs in advance of the meeting, and the information presented at that meeting show that the original Motion warrants reconsideration on the basis that:

- new information has come forward,
- errors in the motion have been identified, and
- incorrect statements may have been made during the original debate.

These individually and collectively constitute the basis for debate of a Motion to Reconsider, as identified in TVT's Procedural Bylaw 11.2.3.3. In addition to the prescribed grounds for reconsideration, I note that many residents have expressed their belief that introducing and passing a Resolution such as this without notification or visibility was highly inappropriate and damaging to the relationship between TVT's officials and its citizens. I'll quote David Johnston, our ex-governor general and a remarkable public servant in his book **Trust: twenty ways to build a better community**

"Trust is gained through our actions and decisions, on our doing and not merely saying, on the basis of evidence that can be observed and measured rationally."

I believe we need to rebuild trust with many of our citizens by allowing them to observe a public reconsideration of the Resolution.

As specific examples of each basis for reconsideration, I cite the following:

Errors in the Motion

- The Resolution states that "since amalgamation of the former Townships in 1998, Section 3.4 in the Township Zoning By-Law prohibited the issuance of a building permit for a lot that did not have frontage on an improved street." Numerous respondents have stated that this is incorrect, and have provided many examples of building permits that have been issued. On Little Silver Lake Road alone, residents have stated that there were at least 9 building permits between 2002 and 2009, and 16 more since then. Extrapolating that out to the rest of the unassumed roads, we can assume there have been many dozen if not hundreds of permits for these properties. This is not just a few mistakes by staff. The Resolution is obviously in error.
- The Resolution states "because Private Unassumed Roads have not been assumed by the Township for maintenance purposes the owners of property along the roads are responsible for maintenance, either individually or as part of an organization or

company.” Numerous residents have stated that there is no such legal obligation, and have cited provincial legislation to explain why. TVT’s own legal opinion as posted on the website also provides a different perspective, and notes TVT’s maintenance obligations. The Resolution is obviously in error.

- The Resolution states that the objective is that “Section 3.4 of the Zoning By-Law be amended so that the intent and purpose of the section is clearer, including that the bulleted list of exceptions is not a list of exceptions that one can choose from.” Numerous residents have stated that this is not a clarification but a substantive change, with a major impact on their rights and privileges. They have explained why, using the history of building permits and the terms of the Road Access Agreement to illustrate this. The Resolution is obviously in error in calling this a mere clarification.

New Information

A wide range of new information has been provided, as evidenced by the 18 pages of “Frequently Asked Questions” which have been posted by staff to the TVT website, by the numerous written submissions, by the presentations at the Public Meeting, and by the Planner’s report to this meeting. I will not bore Council by repeating all of this new information. However, one key item is that:

- Numerous residents have complained that the process by which the Resolution has been adopted has not complied with TVT policies or with provincial law, and residents are likely to take legal action against TVT in consequence. These residents are intelligent and knowledgeable people, and I take their statements very seriously. A public reconsideration of the resolution may mitigate this risk to TVT.

Incorrect Statements during the original debate

As the Resolution was debated in closed session, I cannot repeat the nature of many these statements in this document, except when these are in the public domain through materials posted to the TVT website.

I provided one example of this in my materials as circulated. The CAO’s redacted report CAO-2023-03 states with regard to the work of the PURWG:

- “The lay Members of the Working Group, contrary to the direction of the Working Group, drafted their own report. A revised version of this report was presented to Council in September 2022 but was not supported by staff or the Council reps on the Working Group.” Four of the five members of the WG, including one of the Council reps, have stated in written submissions to Council that both aspects of this paragraph are incorrect, in that the lay members did not act contrary to direction, and that the report was supported by both lay and Council members.
- I will add a second example, drawn from ex-Councillor Darling’s written submission on March 20th. She included a 2019 from the then CAO, which refers to the current version of Zoning by-law 3.4 and states: “each of the bullet points sets out specific exemptions to the general prohibition. One has no more importance than the others. You can only build if the property meets any one of the conditions outlined in the five bullet points”. This directly contradicts the position presented in recent reports that property owners were incorrect in believing that they could pick and choose amongst these bullets. The property owners were right, and the CAO recognized this in 2019. I

am disturbed that Council may have been convinced to vote for the Resolution by being presented with incorrect information.

Motion to Reconsider

The proposed Motion is as follows:

Whereas Council adopted Resolution C-2023-02-03 on February 16th 2023,

And Whereas there has been significant expression of concern from the public regarding the passage of this Resolution without the opportunity for public review or comment,

And Whereas Council's discussion of the Resolution took place in closed session without the opportunity for the public to understand the original debate or to review minutes of its deliberations,

And Whereas new information has come forward through numerous submissions noting that the Resolution may not accurately represent the basis for its adoption on ground prescribed under Procedural By-law 11.2.3.3,

Now Therefore be it resolved that:

· Council reconsider its decision regarding the adoption of Resolution C-2023-02-03 at the meeting of Council on March 28th, 2023.

BY-LAWS

I am opposed to passing this by-law amendment.

I am one of several hundred property owners on one of the unassumed roads in Tay Valley Township. I believe that the staff will acknowledge that we still do not have a full count of how many properties this includes. Using information that has previously been published there are in the order of 280 in total, which is probably on the low side. The great majority of these have homes built on them, and the great majority of those homes pre-date the establishment of Tay Valley Township. For the owners of all those homes, the 25th anniversary of Tay Valley Township has been marked by an unjustified attack on their property rights.

How is the Township explaining this to its citizens? Let's look at the Frequently Asked Questions and answers that have been posted on the TVT website. FAQ 5 is "what is the problem the Township is trying to address?" Good question. The answer is "Confusion over how to interpret Section 3.4 Frontage on an Improved Street and the resulting reluctance to owners to enter into a RAA". Really? Where is this confusion? For over 20 years existing property owners have been using and improving their homes and cottages, and have been issued with the building permits that allowed this to happen. For over 20 years the development of vacant lots has been blocked. That in simplified form is the current status quo.

Of course, I understand that this is not really the underlying problem. The underlying problem is that TVT owns these roads, but has not taken any action to ensure that the roads are designed or maintained to any formal standard. But the proposed by-law does nothing at all to fix this. The answer to the very last FAQ in the list makes this clear. It states "The RAAs and road associations can be viewed as an *interim measure until another option is in place*, such as converting a given PUR to a private road or upgrading and assuming the road with the cost to be financed by a Local Improvement Charge." So, we are acknowledging that this by-law will not fix the problem. What will it do instead?

The proposed by-law removes all of the existing exemptions that have been used by property owners since TVT was established. The revised by-law then gets pretty scary. Let's look at the opening wording: "No lot shall be used, and no building shall be erected, on a lot in any zone, unless such lot has sufficient frontage on an improved street, etc". So, no lot shall be used – what does that mean? I have repeatedly asked staff this question, and received no meaningful answer. The latest Planner's report certainly does not clarify things. Can you live in your house? Can you draw water from your well? Staff has told me that they don't have to enforce this or any other by-law, but let's get real. Who would buy somewhere under permanent threat that the township could take action against them whenever it suits them to do so?

The second prohibition is that "no building shall be erected". It is stated in the FAQ that this will be interpreted to include anything requiring a building permit of any sort, including a new septic system, or a solar panel, in addition to more major upgrades and of course any new construction. Why does the Township want to stop a homeowner from putting in a new septic system, or reducing their carbon footprint? I am at a loss to see who benefits from this.

Either or both aspects of the by-law can be used to force homeowners to enter into a Road Access Agreement, or RAA. This Council has not really examined the RAA. The last Council

did, eventually. When they looked at what it required, they passed a Resolution to get rid of it. That resolution remains on the books, though it has not been formally implemented. It is not clear to me how this Council can just ignore a Resolution. We could reconsider it, and revoke it if that is the majority view, but we can't just pretend it does not exist.

As many members of the public stated last week, the RAA is a punitive document. The FAQs say that other municipalities have them, and cite all of the townships in Frontenac County as having "a version of a RAA". I have searched every Frontenac township website and not got a single hit for "road access agreement". The township's lawyer stated that he has drawn up a number of RAAs, but admitted that none was for a situation like that of TVT's long-established communities. Before I could vote in favour of this by-law, I would need to see if there are other directly relevant examples out there, and understand what they do require of individuals, or of road associations.

One of the many problems I have with the TVT RAA is that it can be changed at will - or at whim - without any need for consent by those affected by it, or any visibility by the Council. Our RAA has changed numerous times since it was first formulated in 2009. Every revision I have seen makes it progressively more onerous. None of these revisions appears to have been brought in front of Council.

The insurance requirements under an RAA cannot be provided by an individual. The nature of the insurance required and its other coverage provisions mean they can only be valid if signed by a corporation. As a homeowner, you will need to incorporate, and face a lifetime of corporate reports to the federal and provincial governments, including taxes and HST. This does not just apply to your lifetime, but to that of any heirs or purchasers. Then you get into the TVT requirements. You will be required not only to take out costly and comprehensive insurance, but to completely indemnify TVT against any claims that arise along your road, no matter who was at fault. You will be required to maintain the road, absolving TVT of any of its responsibilities under the Municipal Act. You may be required to upgrade the road, and meet whatever standard the township deems necessary. You will be required to pay for signage on the road. You will even be required to pay for all the township's costs in drawing up and signing the agreement. I would personally never sign a contract that is so ridiculously one-sided.

For someone foolish or desperate enough to sign, for the immediate and foreseeable future, you may be the only one of 10, 20, 30 or more properties along your road with one of these agreements, so you are not only subsidizing the township but also all of your neighbours. And the township will not provide you with a single dollar's worth of support. If you do persuade enough desperate or foolish neighbours to join you in a TVT-approved road association, then you will be offered up to \$500 a year to pay for part of the new insurance cost. That will certainly make all the difference.

I will also note at this point that the current form of the RAA is only applicable to an individual property owner. The template is meaningless for any form of road association. This makes it impossible to understand the definition attached to the proposed by-law, which reads: "*An improved street shall mean 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.” How can a street be subject to an RAA? The RAA refers repeatedly to “the owner”. The owner of each and every one of these roads is the Township. Does the township intend to enter into an RAA with itself?

We are being asked to rush through a by-law that has been poorly planned, poorly designed and poorly explained. We have been warned by many citizens, in a respectful but forceful way, that if we do pass this flawed measure, it will be challenged in the appropriate tribunals and courts. I ask my fellow councillors to consider our likelihood of winning any such cases.

I recommend to Council that we vote against the proposed by-law revision, and that instead we direct staff to develop measures for long term solutions, including options for privatizing the unassumed roads, and options for assuming them. These options should be presented to the residents of the roads, and the citizens of TVT as a whole, in an objective and balanced manner.

Fellow councillors, reeve, deputy reeve, staff and property owners of Tay Valley, I have spent many hours, researching, reading emails, listening and thinking about tonight's meeting and Unassumed roads and have come to the following conclusions.

I would like to say that I support the proposed amendments to zoning bylaw 2002-121. For many of the reasons laid out in the report provided from our Planner Noelle Reeve. Presently there is confusion from the public. And "staff in some instances", on how to interpret the current wording.

The proposed amendments are worded such that there should be no misinterpretation in reading and applying, if adopted, the amended bylaw.

Although the motion before us is not directly about Road Access Agreements, if adopted, many of the property owners along the unassumed roads feel that they may have to enter into a Road Access Agreement in which the requirement for insurance is written. Most of whom are in disagreement with.

I think that most of the property owners believe, that, in the event of a catastrophic event, they would not be held liable. Council has obtained a legal opinion that, yes the property owners could or would be held liable. The resistance from property owners to get insurance to cover oneself is a bit surprising to me, I for one, would want it.

The township via resolution 2023-02-03 has offered to work with property owners to set up Road Associations, as well as provide financial support of \$5000 to aide in doing so. Road associations acquire the necessary insurance, and the costs are shared among the members, making it much more affordable than individual insurance. Road Associations are not new to Tay Valley and apparently, work just fine. I believe that this offering by the township is quite fair.

Also, council has had two different lawyers, one at the COW meeting held on November 5th, 2019 and the other via letter dated February 6th 2023, recommend making Road Associations or implementing RAA's with insurance requirements included in them. Perhaps it is time to heed their advice.

Although as previously mentioned that this motion is not directly about Road Access Agreements, many of the comments heard at the public meeting and emails sent from property owners, were negative and I am disappointed to say that out of all the comments and emails, maybe three people offered a possible alternate solution. It is sometimes easy to criticize but much harder to offer a solution.

Once again, I will be supporting the proposed amendments to bylaw 2002-121