

April 8, 2009

Kathy Coulthart-Dewey
Chief Administrative Officer
Tay Valley Township
217 Harper Road
R.R. No. 4
Perth, Ontario K7H 3C6

BY EMAIL

Dear Ms. Coulthart-Dewey:

**Reference: Amendment to Road Access Requirement of Section 3.4, Comprehensive Zoning By-law
Our File: 98096**

BACKGROUND & ISSUE:

Section 3.4 in the Township Zoning By-law prohibits the issuance of a building permit for a lot that does not have frontage on an improved street. The provision reads as follows:

“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 located in a Limited Services Residential zone;*
- *An existing seasonal dwelling in a Seasonal Residential zone”*

The Maberly Pines subdivision (PI 21), located in Lot 13, Concession 5 and 6, in the geographic Township of Sherbrooke, was registered in the 1980s. A subdivision agreement between the owner, Lakeside Living Ltd., and the Township of Sherbrooke included a provision that the roads in the subdivision were to remain private roads until the roads were brought to municipal standards and assumed by the Corporation of the Township of South Sherbrooke.

Lakeside Living was to deposit a fully executed deed for Lot 9 to be used as security for completing the roads in the event that Lakeside Living Ltd. did not complete construction of the roads to municipal standards within 3 years of the registration of the subdivision agreement. According to Township files, there was no financial commitment received from Lakeside Living Ltd., and today the roads remain as unimproved streets owned by the municipality.

Given the status of the roads in the Maberly Pines subdivision and the effect of the above-noted zoning by-law provision, it is not possible to obtain a building permit. According to Township files

M:\1998\98096\DATA\MABERLY PINES\GENERAL PROVISION 3.4\20090408-AMENDMENT TO SECTION 3.4 REPORT.DOC

and additional research conducted by Township staff, there are other pre-2002 subdivisions with vacant lots where Zoning By-law provision 3.4 prohibits the issuance of a building permit.

Following previous public meetings and Council/Committee discussion regarding approaches to resolve the Maberly Pines matter, it was decided that a zoning by-law amendment be brought forward to amend Section 3.4 of the Zoning By-law to provide an additional exemption.

Purpose of the Zoning Amendment:

The purpose of this zoning amendment is to add an additional provision to Section 3.4 of the Zoning By-law that would provide an exemption to the requirement to have frontage on an improved street in the case where an owner in a subdivision registered prior to December 10, 2002 has entered into a road access agreement to the satisfaction of the Township.

The effect of the zoning by-law amendment would be to permit development on a lot without frontage on an improved street under certain circumstances where the Township is satisfied that suitable arrangements have been made for dependable access to the property.

(A road access agreement has been prepared by the Township's solicitor. The agreement serves as a pre-condition to obtaining a building permit on vacant lots where lot frontage is on an unmaintained public road).

DISCUSSION

Official Plan

Official Plan policy 2.16 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".*

This policy mandates that all new development shall have frontage on a public road, and is implemented through Section 3.4 of the Zoning By-law. Section 3.4 includes certain exceptions that would enable development under circumstances. The proposed amendment would add an additional exception to Section 3.4.

It is our opinion that this amendment is in conformity with Official Plan. The amendment would have the same effect as the requirement for entering into a Limited Services Agreement when rezoning a property from the Seasonal Residential (RS) zone to the Residential Limited Services (RLS) zone. It should be noted that this does not constitute the creation of a new private road, but rather, it implements a new zoning provision to resolve a zoning matter with respect to existing,

municipally-owned roads within approved subdivisions where the intent was to bring the streets to municipal standards.

Details of the Proposed Amendment:

This proposed amendment to the Zoning By-law, as advertised, would only revise Section 3.4 in the General Provisions section of the Zoning By-law. Section 3.4 (Frontage on an Improved Street) of Zoning By-law No 02-121 would be amended inserting the following new bullet immediately after the second bullet:

“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;”

The above-noted amendment, as drafted, does not provide site-specific zoning for all undeveloped subdivision lots with frontage on unmaintained roads, such as in the case of Maberly Pines. Accordingly, the zoning of the properties would remain as Residential (R). There would be no ‘flag’ or trigger mechanism in place on the zoning schedule that would identify the requirement to enter into Road Access Agreement prior to development. It should be noted that all zoning by-law provisions (including those within Section 3 (General Provisions)), remain applicable, and therefore all new development must comply with all relevant provisions. Although certain zoning provisions only appear in the ‘General Provisions’ section of the Zoning By-law (e.g. parking requirements, open storage), this does not exempt their applicability with regards to new development.

Council had previously considered the implementation of a ‘holding provision’ that could only be removed on the condition that a Road Access Agreement is executed prior to issuance of a building permit. It is understood that Council has decided that the holding provision was not a desirable zoning approach and prefers not to introduce a holding provision as a means to flag a requirement to comply with Section 3.4.

Should Council wish to incorporate a mechanism on the zoning schedule to clearly indicate the requirement for compliance with Section 3.4, it would be necessary to re-advertise for another public meeting, and include a more precise indication of which lots are to be rezoned. It is our opinion that there would be significant risk of an appeal to the amendment if the zoning amendment had the effect of rezoning certain lots without giving notice of which lots were to be rezoned.

It is our opinion that the amendment, as drafted, is appropriate and that there is no need to provide any further indication in the zoning by-law that refers readers to Section 3.4. This approach is in keeping with the overall structure of the Zoning By-law and the requirement for all development to comply with all relevant sections of the document.

Consultation:

Notice of the Public Meeting was given in accordance with the requirements of Ont. Regulation 545/06. The notice of public meeting was appeared in the Perth Courier on March 24th, 2009, and was mailed to owners of lots in the Maberly Pines subdivision and Bennett Lake Estates.

As indicated above, the notice of public meeting indicates that the proposed amendment affects Section 3.4 of the Zoning By-law. It does not provide clear indication of any specific lots that would be affected.

As of the date of this report, the following comments have been received with respect to this proposed amendment:

- Submission from Antonin Wild, letter dated April 7, 2009 (attached)

RECOMMENDATION:

This is a general amendment to the Township Zoning By-law with the intent that it addresses site-specific circumstances affecting certain subdivision lots in the Township. The amendment has been written in a manner that it is keeping with the structure of zoning by-law document, and therefore no site-specific zoning is required.

It is recommended that the Township Zoning By-law No. 02-121 be amended, as drafted.

Please let me know if you have any questions.

Yours truly,

NOVATECH ENGINEERING CONSULTANTS LTD.



Steve Pentz, MCIP RPP
Planner