

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 12, 2024

CASE NO(S).:

OLT-23-000377

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellants: Paula Champagne, Gordon Hill, Little Silver and Rainbow Lakes Property Owners' Association
Subject: Zoning By-Law 2023-17
Description: Amendment to Comprehensive Zoning By-Law No. 2002-121 Section 3.4 Wording Clarification of "Improved Street"
Reference Number: Zoning By-Law 2023-17
Municipality/Upper Tier: Tay Valley/Lanark
OLT Case No.: OLT-23-000377
OLT Lead Case No.: OLT-23-000377
OLT Case Name: Champagne v. Tay Valley (Township)

Heard: October 31, 2024 by Video Hearing

APPEARANCES:

Parties

Counsel/Representative*

Little Silver and Rainbow Lakes Property Owners' Association	Jennifer Savini Daniel Querques* (Student-at-law)
Paula Champagne	Self-represented*
Tay Valley Township	Spencer Putnam

**MEMORANDUM OF ORAL DECISION DELIVERED BY SHARON L. DIONNE ON
OCTOBER 31, 2024 AND FINAL ORDER OF THE TRIBUNAL**

INTRODUCTION AND BACKGROUND

[1] The matters before the Tribunal are appeals of the passing of an Amending Zoning By-law No. 2023-17 (“ZBLA”) by the Council of the Corporation of Tay Valley Township (“Township”), as an amendment to Comprehensive Zoning By-law No. 2002-121, as amended (“ZBL”), regarding the Section 3.4 provisions of the ZBL and the definition of an “improved street”, and the conditions under which a building permit may be issued.

[2] At the time of the Hearing, the appellants include Little Silver and Rainbow Lakes Property Owners’ Association (“Association”) and Paula Champagne (together the “Appellants”). The Appeal filed by Gordon Hill has been withdrawn.

[3] The Parties have engaged in mediation in an effort to resolve their differences, and come before the Tribunal to present, on consent, a proposal for modifications to the ZBLA as a settlement of the issues between them.

[4] At the start of the Hearing, the Tribunal considered a request for Participant Status by Brenda and Raymond Burich, which had been made previously in accordance with the Tribunal’s *Rules of Practice and Procedure* but had not found its way to be before the Tribunal Panel (differently constituted) at the time of the second Case Management Conference. The Tribunal accepted the Participant Statement and granted the request on consent of the Parties. As a result, there are a total of 84 Participants to the matters before the Tribunal, as set out in Attachment 2 of this Decision.

[5] In accordance with Rule 12.1 of the Tribunal’s *Rules of Practice and Procedure*, the Hearing was converted to a Hearing on the merits of the settlement.

EVIDENCE AND FINDINGS

[6] The Tribunal qualified Kent Randall, a Registered Professional Planner in the Province of Ontario, and Full Member of the Canadian Institute of Planners, who was called upon to provide testimony on consent of the Parties, to provide expert opinion evidence in land use planning in respect of the matters before it.

[7] The Tribunal marked the following Exhibits as evidence in the Hearing:

Exhibit 1 – The Affidavit of Kent Randall dated July 29, 2024

Exhibit 2 – Recommended Proposed Amendments to the Zoning By-law

Exhibit 3 – A Joint Book of Documents

[8] Mr. Randall provided a detailed overview of the purpose of the ZBLA, the areas of concern of the Appellants and Participants in regard to the effect of the ZBLA, and the recommended proposed modifications to the ZBLA to rectify the areas of concern and achieve the Township's intended purpose to clarify where and under what conditions new development, re-construction of or additions to existing development, and new accessory structures, on existing lots will be permitted where the Township does not maintain the street upon which the lot has frontage.

[9] The Tribunal accepts the uncontroverted expert opinion evidence of Mr. Randall, by way of both his Affidavit and his oral testimony in the Hearing and accepts that the recommended proposed amendments to the ZBL (**Exhibit 2**) set out in Attachment 1 to this Decision are appropriate.

[10] With respect to the statutory requirements set out in the *Planning Act*, R.S.O., 1990, c.P.13 ("Act"), the Tribunal relies on Mr. Randall's expert opinion evidence, and

similarly finds that the recommended proposed amendments to the ZBL, as set out in Attachment 1 to this Decision and Order:

- i. has regard to those applicable matters of Provincial interest found in s. 2 (h) and (n) of the Act, namely that the amendments to the ZBL will provide for the orderly development of safe and healthy communities and will resolve planning conflicts involving public and private interests;
- ii. is consistent with the Provincial Policy Statement (2024), in that the amendments are very specific in dealing with access and where development can occur on existing lots of record, and that, if approved, there is no conflict with the policies of the PPS;
- iii. conform to the County of Lanark Official Plan, in that policy 4.2.1 specifically recognizes that the infrastructure in question is the responsibility of the local municipality, the County recognizes and supports on-going efforts of the local municipality to resolve local infrastructure problems, and continued efforts by local municipalities to find solutions *“are considered to be appropriate and in conformity with the policies of the County Official Plan”*;
- iv. conform to the Township of Tay Valley Official Plan, in that it aligns with the policies and the hierarchy of roads as set out in sections 2.17, 4.4 and 4.5; and,
- v. if approved, would represent good land use planning and be in the public interest.

[11] The Tribunal makes its findings, in accordance with s. 2.1 (1) of the Act, having considered that the settlement has been endorsed by the Township.

ORDER

[12] **THE TRIBUNAL ORDERS THAT** the appeals against Zoning By-law No. 2023-17 of the Corporation of Tay Valley Township are allowed in part and the Tribunal directs the Municipality to amend Zoning By-law No. 2002-121, as amended, as set out in **Attachment 1** to this Order. The Tribunal authorizes the Municipal Clerk to format, as may be necessary, and assign a number to this by-law for record keeping purposes. In all other respects, the Tribunal Orders the Appeals are dismissed.

[13] **THE TRIBUNAL ORDERS THAT** pursuant to Rule 24.3 of the Tribunal's *Rules of Practice and Procedure*, notwithstanding the eventual date of the formal issuance of this Order, it shall be, and was, effective as of October 31, 2024, which is the date that the Tribunal received and considered the evidence in support of the requested amendment to Zoning By-law No. 2002-121.

"Sharon L. Dionne"

SHARON L. DIONNE
MEMBER

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1

**THE CORPORATION OF TAY VALLEY TOWNSHIP
BY-LAW NO. 2024-XXX****A BY-LAW TO AMEND ZONING BY-LAW NO. 2002-121, AS AMENDED****Section 3.4 Frontage on an Improved Street and Definition of STREET
Amendment to Comprehensive Zoning By-Law No. 02-121**

WHEREAS the Ontario Land Tribunal in its order issued October 31, 2024, in file number OLT-23-000377, ordered the amendment of comprehensive Zoning By-Law No. 02-121 for the Municipality of Tay Valley;

The Ontario Land Tribunal by Order, hereby enacts as follows:

1. GENERAL REGULATIONS

- 1.1. THAT**, Section 3.4 (Frontage on an Improved Street) of By-Law 02-121 is hereby amended as follows:

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 frontage on an Improved Street to provide driveway access. Notwithstanding the foregoing, this provision shall not apply to:

- a) a non-residential building or structure that is accessory to an agricultural or conservation use;
- b) lands on a private road in the Limited Service Residential (LSR) Zone and accessed by water, a lane, a private road (private right-of-way) or easement;
- c) lands on a private road in the Seasonal Residential (SR) Zone and accessed by water, a lane, a private road (private right-of-way) or easement;
- d) existing uses, buildings or structures on existing lots without frontage on an Improved Street, subject to the provisions of Section 3.12 of this By-law;
- e) any repairs, restoration, reconstruction or enlargement of existing uses, buildings or structures on existing lots without frontage on an Improved Street, subject to the provisions of Section 3.12 of this By-law;
- f) construction of a structure for which no building permit under the Building Code Act is required or reconstruction of a sewage disposal system; or
- g) vacant lots fronting on an Unimproved Street.

1.2. THAT the Definitions section of By-Law 02-121 is hereby amended as follows:

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 (private right-of-way) or easement.

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.

UNIMPROVED STREET shall mean:

- a) 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; or

- b) 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.

2. ULTRA VIRES

Should any sections of this By-Law, including any section or part of any schedules attached hereto, be declared by a court of competent jurisdiction to be ultra vires, the remaining sections shall nevertheless remain valid and binding.

3. EFFECTIVE DATE

This By-Law shall be effective on the date of the Tribunal's order.

ATTACHMENT 2**PARTICIPANTS**

1	Alex Bushell
2	Allan Valk
3	Anna Janasik
4 & 5	Aveluy & Brian Ramsay
6	Allanaha Boode
7	Charles Boode
8	Brennan Lafleur
9	Bruce Henry
10	Bruce Hollebone
11	Catharine Anderson
12	Claire Rothery
13	David Tilston
14	Deborah Gemmill
15	Diane Salick
16 & 17	Ed & Diane Filby
18	Eldon Coombe
19 & 20	Frank & Sue Sammut
21	Gary Simonsen
22	Gillian Kotantoulas
23	Gregory Crain
24 & 25	Heather & David Fowler
26	Helen McCarthy
27	Henry Bruce
28	Johanna Tilston
29	John Lang
30	John Saull
31	Kathleen Dorner
32	Ken Hollebone
33	Ken Murray
34	Ken Toomey
35	Kerry Crain
36	Linda Marin
37	Linda Matheson
38 & 39	Maciej & Yoshiko Gumienny

40	Mary Victoria Townend
41	Michael Bradley Macdonald
42	Michael Leering
43	Michael Moriarty
44	Michele Noel
45	Murray Arkinstall
46 & 47	Pat & Ed Mills
48	Raymond Lam
49	Richard Greenstreet
50 & 51	Robert & Margaret Irwin
52	Shawn McAllister
53	Stacy Van Humbeck
54	Stephen Landsberg
55	Susan Avery
56	Heather Avery
57	Terrance Body
58	Thomas Ellis
59	Gordon Welby
60	Sharron Welby
61	William Deering
62	Allan Cuddihey
63	Carol Morgan
64	Ray Hewitt
65	Brent Cheff
66	Roxanne Darling
67	Tom Vilmansen
68	Glenn McCue
69	Andrew Moody
70	William Giffen
71	Ron Mitchell
72	Shannon Celeste
73	Steven Barr
74	Judy Barr
75	Richard Mosley
76	Michael Poulin
77	Richard Whittall
78	Theresa Cody
79 & 80	Teresa and Lou Perna

81	Margo Ayers
82	Heather Dobroshinsky
83 & 84	Brenda and Raymond Burich