

Type of Decision									
Meeting Date	Friday, August 12, 2011				Report Date	Wednesday, August 10, 2011			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction	x	Information Only			Type of Meeting	X	Open		Closed
REPORT TITLE									
Lentz Severance Report 12/08/11/1201									

Subject: Request for Comments concerning a land severance.

RECOMMENDATION: That Council approve the requested severance as per the Municipal Zoning By-law. Council's purpose was to encourage land division and development within the municipality; the changes made to the ZBL in 2007-15 were made to expedite severances on other than municipal roads however the Official Plan needs to be complied with.

WHEREAS the Municipal Zoning By-law section 2.12 allows for building on roads that are other than municipally maintained roads for the purposes of limited service and limited service seasonal dwellings;

AND WHEREAS the Official Plan requires that subdivision of new lots must be along municipally maintained roads except if the use is for waterfront or bush lots;

THEREFORE BE IT RESOLVED that the Council of the United Townships of Head, Clara & Maria does hereby approve the consent to sever the property known as Part of Lot 54, Concession B, Geographic Township of Maria, Township of Head, Clara & Maria (179.82m x 77.67m – 0.81 ha);

ADDITIONAL INFORMATION FOR CONSIDERATION:

The Zoning By-law of the Municipality of Head, Clara & Maria allows for hunting and fishing camps that do not front on municipally maintained streets/highways/roads (terms used interchangeably due to the *Municipal Act* and the Zoning By-law). Unfortunately this allowance applies to existing lots only, in order to sever a lot the Official Plan and the Provincial Policy Statement need to be complied with. Currently the requirements are such that newly severed lots must front on highways as defined by the *Municipal Act*. These do not include private roads or unmaintained municipal roads unless the use is for waterfront and/or bush lots.

There is some concern over whether Whiskey Jack Trail is or is not a municipal road but instead a private road. The road is not along or near any road allowance. According to the text *Russell on Roads* by W.D. Rusty Russell, Q.C. who is an expert on road issues in Ontario, because Whiskey Jack Trail originated as a bush road and also a "forced" or trespass road, and even with the municipality maintaining the road without evidence that the municipality had obtained legal conveyance from the property owner there is some doubt as to whether or not it is a municipal road.

Further, evidence obtained from both the deed and the attached MPAC maps show that the "road" in question is in fact a deeded right of way over the original owner's property to the severed portion.

The Municipal Act s. 26 states that “the following are Highways unless they have been closed” and goes on to include “1. All highways that existed on December 31, 2002.”

Did Whiskey Jack Trail exist as a highway at that date? That is the question that may require a court to determine. It is understood that some roads that were maintained by the municipality remain the responsibility of the municipality. The question then is, is the road a municipal highway and if so, is there an obligation to maintain it. I have referred this issue to Mr. Instance.

In this case, if Whiskey Jack Trail is either an unmaintained municipal road or a private road, an Official Plan amendment would still be required. I will await confirmation from Mr. Instance as to whether or not it is a municipal road and if there is any obligation to maintain it. I will also search our by-laws and roads files to determine if there is any evidence of conveyance of that road to the municipality.

Financial Implications/Budget Impact: None at this time for the municipality however the costs of an Official Plan amendment would be in the hundred’s of dollars to comply with what is already allowed in our Zoning By-Law for the property owner.

There will be legal fees involved in determining how these once maintained but now abandoned roads are to be handled. Other roads similarly abandoned are Adelard Road and the back sections of Mackey Creek Road. We need to get a definitive answer on this question.

Others Consulted: Ruth Morin, Treasurer; Noella Lebreton, Deputy Treasurer; Bruce Howarth, County Planning Department, Cecilia Beulow, MPAC; Laurel and Carl Lentz, property owners.

Approved and Recommended by the Clerk

Melinda Reith,
Municipal Clerk

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