

**THE CORPORATION OF THE MUNICIPALITY OF NEEBING**  
**MINUTES OF THE SPECIAL MEETING OF COUNCIL**

Held at the Municipal Office  
On Tuesday, September 5, 2017

**PRESENT:** Mayor Ziggy Polkowski  
Councillor Erwin Butikofer  
Councillor Brian Wright  
Councillor Roger Shott  
Councillor Bill Lankinen  
Councillor Mike McCooeye

**REGRETS:** Councillor Curtis Coulson

Rosalie A. Evans, Solicitor-Clerk

**1. PRELIMINARY MATTERS:**

- (a) Call to Order: Mayor Polkowski called the meeting to order at 6:30 p.m.
- (b) Attendance: Attendance was recorded.
- (c) Declarations of Interest: No disclosures of interest were presented.

**2. PUBLIC MEETING REGARDING POTENTIAL ROAD CLOSURES:**

**2.1 Report from Solicitor-Clerk Regarding Road Closure Requests**

The Solicitor-Clerk overviewed the information in the Report for those in attendance.

A copy of the 1951 Subdivision Agreement and a printout from the Current CGIS software program had been posted on the wall of chambers and referred to during the overview.

The status of the (not physically existing) subdivision roads, together with the status of Memory Road as it traverses the lots on the plan of subdivision was reviewed. Considerations for Councils in considering road closure requests, as outlined in the Report, were reviewed.

**2.2 Hear from Members of the Public Regarding Proposals**

Mayor Polkowski asked any members of the audience if they wished to speak to the proposals.

Ms. Shannon Dodd-Smith introduced herself and outlined her professional planning credentials. She does not live in this neighbourhood, but wanted to express community-wide interests. She expressed her view that there is insufficient public engagement on matters of interest to the community. Her concern with respect to this proposal was that Council was proposing to dispose of public waterfront land. Even if Council is not aware today of any need for the land, she believes that the future cannot be predicted, and that all public waterfront should be maintained for any unknown-at-present future needs. She cited "Path of the Paddle" as an example of a project not foreseen until the fairly recent past.

Mayor Polkowski pointed out to Ms. Dodd-Smith that the road closures being reviewed at this meeting do not involve any disposition of land which is waterfront land. The Solicitor-Clerk pointed out the sole (undeveloped) road allowance leading to the water on the plan, which is not the subject matter of any purchase requests at this time.

Mr. Don Skochinski introduced himself. He owns property at 522 Memory Road, closer to Highway 61 than the properties on this plan of subdivision, and indicated he is not personally impacted. He expressed his view, however, that the unused road allowances in question should not be sold on any open market – but should be reserved for the lot owners adjacent to them.

Mr. Marvin McNabb introduced himself. He also owns property at 608 Memory Road (further to the west of the subdivision in question). He indicated, however, that he and his family take walks on the roads on this portion of the plan. Mr. McNabb is a surveyor who worked for the Ministry of Transportation. He indicated that he had dealt with many similar situations in unincorporated townships. The Ministry of Transportation's position was that lands in this case were transferred to the owner in exchange for the title to the travelled road – there was no "sale" involved. Procedures were followed to undertake surveying costs and legal costs. The only persons "entitled" to the unused road portion were the persons whose lands were traversed by the travelled road – and it needed to be an "all or nothing" approach to avoid isolated parcels of publicly owned land. Mr. McNabb stated his view that such a process is fair and is something that Council can consider.

He then referred to the road allowance at the east of "Reserve B". He felt that perhaps these portions of road could be "developed" as public hiking trails. He and another former resident had previously discussed volunteering their time to open up some public trails there if topography would allow it.

Dr. Graeme Marchuk commented that the Nature Conservancy will be creating hiking trails with public parking and marked trailheads, and that these are the areas to which public hiking should be directed.

Mr. Bob Popiel introduced himself. He owns property at 736 Memory Road. Mr. Popiel asked whether Council was obligated to offer the road to its mid-point to each adjacent owner. The Solicitor-Clerk noted this was the law in the Municipal Act prior to its re-write in 2001 (which took effect in 2003), but it is no longer mandatory to follow that procedure.

Ms. Lisa LeBlanc introduced herself. She owns property at 600 Memory Road. She wished to address the tennis court, located partially on the road allowance near 710 and 714 Memory Road. She suggested that the Municipality buy that portion of the private property on which the tennis courts sit and open them as a municipal facility, accessible to the public in general.

Mr. Randall Johns introduced himself. He is a lawyer. He asked whether similar consideration would be given to allow property owners west of the "Y" in the subdivision roads to purchase the unused road allowances near their properties in exchange for the travelled road bed. The Solicitor-Clerk pointed out that in this location, transfer of the unused road allowance portion would create land-locked parcels of public land to the east of the "Y".

Ms. Susan Hacquoil introduced herself. She pointed out on the subdivision plan the properties she owns (710 Memory Road and Reserve "B"). She described her history with the properties and the neighbourhood in general. The tennis court mentioned earlier was built 30 years ago and is partially on her property, partially on her neighbour's property, and partially on the municipal road allowance. She stated her family had used the tennis court for many years but that it has not been well used over the past 10 to 12 years and she enjoys the peace and quiet associated with it not being used. She feels the structure will deteriorate as time passes, and her wish is to eventually dismantle it.

Ms. Hacquoil indicated that she had requested to purchase a portion of the road allowance from the municipality, which triggered the need for the public meeting. She described having requested some survey work so that she could see where the property lines were. Once she saw the lay of the land, she extended her request to Council for an additional stretch of the road allowance. She has requested this so that her property on Reserve "B" will have better road access. Without owning the road allowance, access is limited, and additional access points would need more infrastructure (i.e. culverts). She described her well on Reserve "B" and the water line that runs from the well to her property at 712 Memory Road, going under Memory Road (both travelled and untravelled portions).

Ms. Hacquoil indicated that she has no plans for further development of the properties she owns, but wishes to clear up some of the property line issues so that her heirs will not have to deal with any of these issues at points in the future.

Ms. Hacquoil expressed an additional concern relating to the "natural severances" caused by travelled Memory Road. She fears that allowing the lot owners to purchase the municipal road allowance will create small but develop-able "lots" on the opposite side of Memory Road. Although the Solicitor-Clerk described the plan to prevent such from occurring, she feels this may happen in future, even if it is prevented "today". Because the "lots" would be so small, this would lead to trespass onto others' private property.

Ms. Gilda DiPasquale introduced herself. She and her family own 712 Memory Road, and the tennis court is partially on her property. She wanted the audience to know that the construction of the tennis courts had been a joint project between the Hacquoils and the former owner of her property, and that she had been told that the original construction costs had been shared by the families. She described having received assurances from the vendors that the tennis courts could be shared, however, the objections to her family's use of the court. She stated she and her family placed significant value on the tennis courts when they purchased the property. They are being respectful of the request not to use the site, but want to work things out so that the tennis court can continue to be used as it was used in the past. Because of the wish to maintain the tennis facility, she and her family wish to purchase the portion of the road allowance behind their lot on which a part of the tennis court is situated.

Ms. Tanya Watson introduced herself. She and her family own 722 Memory Road. She is a full time resident – most neighbours have seasonal occupancy. She noted that there is a potential (unrelated) issue involving her garage, and that she may be required to re-locate the garage in the future. Owning the land which is the unused road allowance would provide more options in terms of re-location, however, there is no wish at this point to commit to any purchase.

She related a conversation she had with the Solicitor-Clerk about liability to private property owners due to their "ownership" of Memory Road. The Solicitor-Clerk was asked to expand on this discussion.

Mrs. Evans advised that – at law (as previously indicated) – the travelled portion of Memory Road is owned by the Municipality even though there is no deed registered at the Land Registry Office to say so. This is through the common law principles that the former owners of the land had dedicated the property for public road purposes, and the municipality had accepted the dedication of land through the expenditure of public money on maintenance, repair and upkeep. Although lawsuits against rural municipalities relating to motor vehicle accidents are not as plentiful in rural areas as they are in urban settings, they are not unheard of. Should anything happen along the travelled roadway that triggered a lawsuit, the suit would likely be brought against both the municipality and the private land owner. If this occurred, unless the private landowner had done something that triggered the lawsuit – perhaps blocking the roadway in some manner – the Municipality would most likely take a position that the private property owner should be released from the lawsuit – however – this would be in the "control" of the lawyers representing the person who issued the lawsuit. In any event, private home insurance would be handling the lawsuit on the private property owner's behalf.

Ms. Watson expressed her view that she would like to sort out that legality and have the title to the roadbed transfer to the Municipality – however – she is concerned about transferring a full 66 foot width. She would be more willing if the width was less. The full 66 feet would involve significant trees on her property which, if cut down by the municipality, would impact the aesthetics of her home.

Ms. Watson suggested that perhaps the Municipality could facilitate a meeting with impacted neighbours so that some consensus might be developed on how to resolve these issues.

Mr. McNabb expressed concern that "no trespassing" signs have been placed in a manner that prevent or discourage public access to the municipal road allowances. These could be used, as mentioned, for hiking trails.

Ms. LeBlanc expressed concurrence. She feels that ATV and/or snowmobile access would benefit, and that trails would reach some harbor areas along the shoreline.

Dr. Marchuk pointed out the private properties between, meaning that even if there was public access to the road allowances, they could not be used to travel further north without trespassing on private property.

Ms. Hacquoil indicated it is very difficult, without a survey, to indicate exactly where these unopened road allowances exist.

There was a brief discussion about obligations to pay for surveys.

Ms. Dodd-Smith stated that she would be in favour of retaining the unopened road allowances as potential future connections to other lands, including the conservancy lands.

In response to an invitation from Mayor Polkowski, no further speakers came forward.

2.3 Debate the Question of Whether or not to Close the Road(s)

Councillor Shott commented that knowledge of liabilities on the municipal road allowance has crystallized the focus for him. He wants to remove any liability to the Municipality that exists today. He further expressed his personal opinion that the abutting property owners should have the first right of refusal to adjacent road allowance portions. This would be in exchange for title to the Memory Road travelled road bed.

It was noted that access to the lake is not an issue.

Councillor Lankinen indicated that the travelled portion of Memory Road in this location existed prior to the registration of the subdivision plan. It was there in the early 1940's.

On Consensus, Council decided to consider the information received this evening, together with any further comments that are directed to this issue, at the first regularly scheduled Council meeting in October.

2.4 Resolutions (If any)

Res. No. 2017-09-195

Moved by: Councillor Shott

Seconded by: Councillor McCooeye

BE IT RESOLVED THAT decision-making with respect to this matter be scheduled for Council's regular meeting on October 4, 2017.

CARRIED ✓

3. RESOLVE INTO CLOSED SESSION FOR LEGAL ADVICE AND/OR DISCUSSION OF POTENTIAL DISPOSITIONS OF LAND (IF REQUIRED)

3.1 Report from Solicitor-Clerk Regarding Legal Issues and Land Sale Issues Associated with the Requests for Road Closure

Council did not consider it necessary to resolve into closed session to discuss this report, which had been prepared for Council's information.

4. ADJOURN THE MEETING:

Mayor Polkowski notified those present that further work would be undertaken in mid-September relating to the damage caused to the chipsealed road through the accident earlier in the summer.

Mr. Popiel asked why the chipseal had not continued to the end of the road. It was pointed out that road work – particularly snow clearing involving tight turns – would cause considerable damage to chipseal, so the turn-around was left.

Ms. Watson asked whether the end of the road was rougher than the length of the road because of having had less traffic to "pack it down". She requested that the crew try to compact it better near her property.

There being no further business to attend to, Mayor Polkowski adjourned the meeting at 7:46 p.m.

SPECIAL MEETING OF COUNCIL

  
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Ziggy Polkowski  
MAYOR

  
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Rosalie A. Evans  
SOLICITOR-CLERK

