

STAFF REPORT: ENGINEERING AND PUBLIC WORKS DEPARTMENT

REPORT TO: Infrastructure and Recreation
 Committee

MEETING DATE: September 10th 2013

REPORT NO.: EPW.13.075

SUBJECT: Camperdown Road South –
 Winter Restriction of Passage
 until 2019

PREPARED BY: Jim McCannell, Manager Roads and
 Drainage

A. Recommendations

THAT Council receive Staff Report EPW.13.075 entitled “Camperdown Road South – Winter Restriction of Passage until 2019”;

AND THAT Council enact a By-law to restrict common law right of passage during the winter season on the deviation portion of Camperdown Road South until May 15 2019 upon recommendation by the Town’s solicitor and Director of Engineering and Public Works.

B. Background

The Town has enacted By-laws 2011-72 and 2012-67 to restrict the passage of vehicles on the deviation portion of Camperdown Road South during the winter months in response to requests by Alan and Barbara Jones to lessen their liability and obligations to provide winter maintenance activities on Camperdown Road South. Attachment 1 (Report EPW.11.093) is provided as background. The current By-law is set to expire on October 29, 2013.

Since the enactment of the by-laws several meetings have taken place with Mr. and Mr. Jones to determine if there are other means to lessen their responsibilities. The Town’s solicitor has researched alternatives and cannot identify a methodology that would enable the Town to require the responsibility to be shared with the other properties on the seasonal road while still achieving the Town’s goals of permitting the free non-winter movement of vehicles, cyclists and pedestrians on the road allowance. Nor is Staff willing to recommend the Town undertake the responsibility for winter maintenance on the seasonal section of Camperdown Road South.

Staff feel that opportunities exist to re-visit transferring the road allowance to the adjacent property owners in the form of a condominium or similar once a suitable trail has been constructed from the top of Camperdown South to George McRae Road (Ridge Estates Entrance). Public vehicles would then not be able to drive to the top of Camperdown Road South but pedestrians and cyclists would have a convenient and viable alternative along the built trail.

Given that there are no agreeable alternatives to the current situation, Staff recommend enacting a similar by-law to those previously enacted to restrict the passage of vehicles during the winter control season (Nov 1 – April 15) on Camperdown Road South for another five winter control seasons until May 15, 2019. An extension of five years is recommended because it is a reasonable period after which to reassess the status of the trail linkage or if other changes have taken place that could affect the underlying situation. The draft by-law is provided as Attachment 2.

C. The Blue Mountains' Strategic Plan

Reduction of vehicular traffic on a challenging section of road located on the Niagara Escarpment would represent efforts to further the Town's Strategic Goal No. 3, "Preserving and enhancing natural and environmental features and cultural heritage of the community" and address the concerns of the area residents.

D. Environmental Impacts

Reduction of vehicular traffic would have a positive impact in an environmentally sensitive area and may address liability concerns of area landowners.

E. Financial Impact

The costs associated with the preparation and erection of signage is less than \$1000.

The signs are currently in storage and can be used again. The cost to change the date and by-law number will be minimal.

F. In Consultation With

John Metras, Town' solicitor
Reg Russwurm, Director of Engineering and Public Works

G. Attached

1. Report EPW.11.093: Camperdown Road South – Restriction of Passage with attachments
2. Draft By-law to restrict passage over the Camperdown South Road deviation.

Respectfully submitted,

Jim McCannell

Jim McCannell
Manager, Roads and Drainage

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Reg Russwurm

Reg Russwurm
Director, Engineering and Public
Works

- the Owner further agrees not to pursue any claim or action against the Township with regard to winter maintenance;
- the Owner saves the municipality harmless for any claim or action that may arise as a result or consequences of the construction of the Owner's dwelling as herein contemplated; and,
- the Owner agrees that any act of summer road maintenance completed by or funds extended by the Township on the Deviation Road shall not be construed as acts of full maintenance assumption by the Township and the Owner further agrees that the matter of winter maintenance so as to provide access on and along the Deviation Road shall not be raised in the future with any council of the Corporation of the Township of Collingwood or any successor thereto.

Historic Road and Use

The Deviation Road ascends the Niagara Escarpment and is described as a rural road with a challenging physiographic character. Prior to the remedial road works it was considered as a seasonal road. This road has been constructed with a narrow vehicular platform and continues to be maintained as a season road by the Town.

The Deviation Road could also be described as environmentally sensitive, given the steep slope, drainage characteristics during severe storm events and the designation of the Niagara Escarpment as a World Biosphere Reserve.

Prior to the signing of the Agreement the Deviation Road had been used by hikers and bicyclists to access the Loree Forest area and Bruce Trail loop for many years. These uses have appeared to the land owners to have increased since the signing of the Agreement.

Sometime ago the landowners that front the Deviation Road expressed concerns with respect to the significant increase in the use of the road and the related liability and security for the current residents as well as the safety of those using the road as a trail. Reference by the landowners has been made to ongoing conflict between motor vehicles and cyclists; motor vehicles and tobogganists; and motor vehicles and hikers (especially in the winter months).

Consideration of Closing and Selling the Deviation Road

On July 23, 2007 a Public Meeting was held with respect to a proposal to stop-up and close and sell the Deviation Road to fronting landowners. This application was supported by four of the five fronting landowners.

Opposition to any stop-up and close was expressed by members of the community who indicated that the Deviation Road represented a key link in connectivity between the Georgian Trail and the Loree Forest trail area and provided access to a unique view shed. In addition, the road allowance permits future flexibility for the continuation of infrastructure (utilities, trails, etc) that the Town may wish to install at some time.

Since the Public Meeting to consider a stop-up and close, Town Staff have been engaged in discussions, principally with Mr. and Mrs. Jones, related to resolving the concerns of the Jones' and addressing the concerns of the community. The Jones' concerns relate primarily to the existing Development Agreement and what they perceive as increased personal liability, due to a perceived increased use of the Deviation Road.

The Road Development Agreement was authorized for amendment by Council on September 27, 2010, so as to delete references to the actual construction and assumption provisions, but this appears to be of lesser importance to the Jones'. The Jones' have requested that short-term risk management provisions be implemented by the Town prior to executing the Amending Agreement.

The Jones' have recently submitted additional correspondence dated April 19, 2011, further noting and detailing their concerns with the present state of affairs regarding the road section. (Attachment 2.)

Options to Consider at this Time

Staff has reviewed the Deviation Road matter and have identified three options available to Council, it being noted previous consideration to close the road section met with opposition.

1. Do Nothing

This is a standard consideration in any Environmental Assessment consideration and can be considered as a starting point in this matter. The Road Development Agreement was executed by both parties in good faith and full knowledge of the area and growth potential. The Agreement recognizes the Town (former Township) as establishing parameters that would permit a residence to be built on a substandard road section and the Jones' as wishing to construct a residence on their property. Although acceptable to Staff, this option does not address the Jones' concerns over increased liability.

2. Assume Winter Maintenance on the Deviation Road

At the present time the Town is responsible for all maintenance of the Deviation Road except winter maintenance. The Town could provide winter maintenance. Winter maintenance would be provided by a private contractor due to topographical challenges. Staff have not yet researched avenues to bill back any winter maintenance costs to benefitting landowners. Staff are not recommending this option as it would include assuming of snow removal and winter maintenance costs explicitly excluded in the Agreement. The underlying reason for that exclusion has not changed.

3. Restrict Winter Passage of Non-Resident Vehicles

The *Municipal Act, 2001* enables the Council of a municipality to pass by-laws removing or restricting the common law right of passage by the public over a highway.

Council could restrict the use of the Deviation Road to local traffic only in an effort to reduce the number motorists and non residents using the deviation road during the winter control period. Restriction of non-resident vehicular passage during the winter season only is recommended at this time, as it appears that this type of traffic presents concern to the Jones. Pedestrian traffic would not be restricted. A draft By-law to restrict the common law right of passage by non-resident motor vehicles during the winter season is recommended by Staff in this matter. (Attachment 3)

The By-law is proposed to have an expiry date of fifteen years. This is recommended to accommodate any changes in the situation that might occur over time. It should be noted Council can repeal the By-law at any time or extend it following expiry.

The By-law only restricts passage on the portion of deviation road located in Lot 25, as this is the portion addressed by the Road Development Agreement. Landowners fronting the Deviation Road in Lot 24 have been included in Schedule “A” to the By-law as occupiers and users of the Deviation Road.

Enforcement of the By-law would not be pro-active but rather limited reactive given other priorities and limited resources of Staff and OPP. The By-law will establish an offence if any person is in contravention of its provisions. Staff recommends enacting a By-law to restrict common law right of passage during the winter season on the deviation portion of Camperdown Road South.

Staff Report EPW.11.060 (Attachment 4) was first considered by Committee on July 12, 2011, and the Committee directed Staff to further review the matter and report back to Committee. On September 12, 2011, Staff met with proponent Alan Jones and his solicitor, Fred Heimbecker. Other options including closing the road section and having area residents be responsible for all maintenance as well as further researching condominium conversion of the road section with area residents purchasing the road section were considered, together with the Options detailed in this Report.

Following the September 12 meeting, Staff concurred that the original recommendation to restrict common law right of passage during the winter season on the deviation portion of Camperdown Road South would remain the favoured action in moving forward in this situation.

C. The Blue Mountains’ Strategic Plan

Reduction of vehicular traffic on a challenging section of road located on the Niagara Escarpment would represent efforts to further the Town’s Strategic Goal No. 3, “Preserving and enhancing natural and environmental features and cultural heritage of the community” and address the concerns of the area residents.

D. Environmental Impacts

Reduction of vehicular traffic would have a positive impact in an environmentally sensitive area and may address liability concerns of area landowners.

E. Financial Impact

The costs associated with the preparation and erection of signage is less than \$1000.

The associated cost of winter maintenance is estimated at \$4225 for plowing and \$625 for sanding for a total cost of \$4850. The current snowplowing budget would need to be increased by \$5000.

F. In Consultation With

This Report has been prepared in consultation with the Town's Solicitor.

G. Attached

1. Map showing the Deviation Road, fronting properties and the deviation road in Lot 24
2. Correspondence from Barbara and Alan Jones dated April 19, 2011
3. Draft By-law to restrict passage over the Deviation Road.
4. Report EPW.11.060 Camperdown Road South – Restriction of Passage, as presented to Committee on July 12th 2011

Respectfully submitted,

Jim McCannell

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Reg Russwurm

Reg Russwurm
Director of Engineering and Public Works

APR 20 2011

Barbara and Alan Jones
101 Camperdown Road
R.R. #2
Clarksburg, ON N0H 1J0

April 19, 2011

Her Worship Ellen Anderson, Mayor
Members of Town Council
Acting CAO – Reg Russworm
Town of The Blue Mountains
26 Bridge St. E., P.O. Box 310
Thornbury, ON N0H 2P0

SUBJECT: CAMPERDOWN ROAD SOUTH - DEVIATION

Mayor Anderson, Council, and Staff:

We would like to bring your attention to the long outstanding issues of liability and safety on the deviation portion of Camperdown Road South.

After having spent yet another winter with this most unpleasant experience, we have recently been advised, once again, that our “file” has been turned over to some other Town Staff member to review.

It has always been our hope that this situation could be sorted out with the Town and their staff and an acceptable agreement reached to suit all parties. We have been working toward such a solution for more than 10 years and we are no closer now. We have sent correspondence from ourselves and our lawyer explaining the situation. We have had countless meetings with many staff members who have been assigned this “file”.

We have attended public meetings at the Town’s request to address the various issues affecting this road, and still we have no resolution.

A little History:

In 1997/98, when we purchased our property to build our home, Camperdown Road South was an unmaintained track. We were advised by the Town that it would be our responsibility to build a road on the deviation right of way which would be constructed to municipal standards as a condition of obtaining a building permit for our home. The extent of this construction was to be from the old Wyler driveway up to a point on our property where our driveway accessed the road allowance. This agreement also included building a small turnaround area for Town vehicles. We built the road to the Town specifications, who approved the work and it was turned it over to the Town to assume for three seasons.

We were advised that we would be required to sign a document placing us responsible for the “Winter Maintenance” (snowploughing...), and that we would be solely responsible for any activity occurring on this section of the road for the winter season.

cc: John Metas
R. Russworm

Page 2 –Camperdown Road South – Deviation

While we had concerns about agreeing to this, we were advised that if we did not agree, we would not be allowed a building permit. Being new to the area, we felt that the Town was acting in good faith and that this was a normal situation.

Further, since this road was only intended for the use of our family and the 3 other properties abutting this section of road (2 of which are vacant lots...), we agreed to what we felt at that time was an acceptable risk.

This is clearly no longer the case.

Approximately 10 years ago, after we had completed the required road construction, the Town, by not pressing the case, allowed Tom Kritsch, an absentee landowner of the property to the south of ours, to build a public trail on his property. It also did nothing to stop him from widening our turnaround to put in a parking area and add a driveway to his property (without a permit). This unauthorized and poorly drained driveway and culvert has caused the Town and us to deal almost yearly with the resultant spring runoff and associated road washout problems at the top of the road on the blind corner.

Mr. Kritsch's trail was promoted to the public, throughout the Town by Mr. Kritsch, himself; by Intrawest/Blue Mountain resorts to their hotel visitors and on at least one occasion during a "Trails" meeting that we attended several years ago.

This promotion immediately resulted in increased traffic, parking problems and a serious hazard for the many hikers, bikers and snowshoers using the road.

By not insisting that this trail and public parking be closed, the Town has added to our (and their,) liability exposure.

In addition, there have been several initiatives by a number of different organizations to "formalize" a trail over this section of road allowance to connect to the Loree Loop. This has naturally been met by us with great resistance because of our serious liability concerns. This initiative is at odds with the Town's official plan which states it is not allowed to have a trail on a road for obvious safety reasons. It is our understanding that Council has committed to not allow a trail to traverse this portion of the road, a position which we fully endorse.

Throughout this time, particularly during the winter months, we have experienced being forced off the road into the ditch by other vehicles; other vehicles being stuck in the ditch and at times abandoned while blocking the road to our home; pedestrians walking in the middle of the road, very nearly being hit on at least a dozen occasions by us or our visitors, particularly on the blind hill and at the blind corner. We regularly encounter families tobogganing on the road, and more recently snowmobilers and all terrain vehicles frequenting the road.

In the other three seasons, we have experienced several very close calls with bikes racing down the hill at high speeds, 2 or 3 abreast making it very difficult to miss them on such a narrow road.

Residential Development:

Although the trail problem and the issues it created are significant, the increased residential development approved and encouraged by the Town in the immediate area, specifically across the Camperdown “flats” has exacerbated the problem significantly. The increased traffic on this section of road, from the local homeowners and their guests, or visitors looking at real estate in the area, and those just driving up to look at the view has turned our quiet dead end roadway, which ends on our property, into a busy thoroughfare. It is not uncommon to have unfamiliar traffic drive right through our gates and into our lane up to the house. This is quite disconcerting to us, as we have no idea as to who these people are or their intentions.

During our attempts to resolve these issues, we have had several disturbing discussions over the years with Town Staff. It has been suggested that we could have portions of our property expropriated to support a trail across this section of roadway. A more recent Staff “proposal” was that if we wanted to help move things along, that we talk to our neighbour to convince them to hand over a corner of his property to the Town and they would consider taking the trail out on to the 7th Line. This manner of negotiating solutions to problems is, in our opinion, totally unacceptable.

In summary: The circumstances surrounding the original agreement have changed dramatically. We no longer have any control over what occurs on this section of roadway and this was not the original intention of this agreement.

As far as we are concerned, there are two logical and reasonable choices to resolving the current situation:

1/ The Town removes our liability and this agreement from title and assumes full responsibility for all road maintenance as it would any other local municipal road. As your winter maintenance people are aware, getting the proper equipment up and down this stretch of road in the winter months, is not a problem

OR

2/ The Town turn the road section in question over to the residents who directly abut it: The 5 families now involved are all in general agreement to condominiumizing the road, from below the “Wylers” driveway, just beyond the end of the pavement on Camperdown road.

Page 4 –Camperdown Road South – Deviation

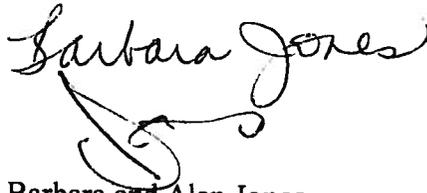
A decision needs to be made now by someone in authority because quite frankly we are running out of time and patience. We feel that we deserve better treatment than a 10 year stall in the face of legitimate concerns, and although we would like to avoid having to take this issue to a higher level we will be seeking legal remedies if we do not have a reasonable response by June 1, 2011.

We would be pleased to discuss this situation with you anytime after you have had an opportunity to review the details of our file. We can be reached at our office during the week at 519-893-1204 or via email aljones@globestamping.com and barbarajones@auscan.net.

We apologize for the length of this correspondence; however we wanted to make certain that the issues were properly and completely outlined so that you would have a full scope of the issue.

Thank you for your time. We look forward to your response.

Submitted with respect,

A handwritten signature in cursive script that reads "Barbara Jones". The signature is written in black ink and is positioned above the printed name.

Barbara and Alan Jones

c.c. Fred Heimbecker
Heimbecker Law Offices

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

By-law No. 2011 –

Being a By-law to restrict passage over a highway

WHEREAS sections 11 and 35 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, enables the council of a municipality to pass by-laws removing or restricting the common law right of passage by the public over a highway;

AND WHEREAS section 7 of the *Motorized Snow Vehicles Act*, R.S.O. 1990, chapter M.44, enables the Council of a municipality to pass by-laws prohibiting the operation of motorized snow vehicles within the municipality on highways or parts thereof under the jurisdiction of the municipality;

AND WHEREAS maintenance and liability matters relating to a portion of deviation highway located in Lot 25, Concession 7 was assumed by a private person through a development agreement executed with the former Township of Collingwood and an increased traffic volume on the portion of deviation highway has raised issues regarding maintenance and liability;

NOW THEREFORE the Council of the Corporation of the Town of The Blue Mountains hereby enacts as follows:

1. DEFINITIONS

“all-terrain vehicle” means an off-road vehicle that has four wheels, the tires of all of which are in contact with the ground, has steering handlebars, has a seat that is designed to be straddled by the driver, and is designed to carry a driver only and no passengers;

“motor vehicle” includes an automobile, a motorcycle, a motor-assisted bicycle and any other vehicle propelled or driven otherwise than by muscular power, but does not include a street car or other motor vehicle running only upon rails, a power-assisted bicycle, a motorized snow vehicle, a traction engine, a farm tractor, a self-propelled implement of husbandry or a road-building machine;

““motorized snow vehicle” means a self-propelled vehicle designed to be driven primarily on snow;

“occupier” includes a person who is in physical possession of the land, or a person who has responsibility for and control over the condition of land or the activities there carried on, or control over persons allowed to enter the land, even if there is more than one occupier of the same land;

“off-road vehicle” means a vehicle propelled or driven otherwise than by muscular power or wind and designed to travel on not more than three wheels, or on more than three wheels and being of a prescribed class of vehicle;

“winter control period” means the period of time beginning on November first of any year and extending to April fifteen of the subsequent year and during which winter maintenance on the deviation road in Lot 25, Concession 7 shall be performed by private persons.

2. During the winter control period, other than the occupiers of land identified by Municipal Property Assessment Corporation Assessment Roll Number on Schedule “A” to this By-law, which is hereby declared to form part of this By-law, or persons invited by occupiers of land identified on Schedule “A”, **no person shall** operate a motor vehicle, a motorized snow vehicle or an off-road vehicle on that portion of a deviation public highway located in Lot 25, Concession 7.

3. This By-law shall come into force upon the installation of appropriate signage identifying the restrictions contained in Clause 2 of this By-law.
4. All emergency vehicles and Town Staff and agents of the Town operating vehicles while performing routine and prescribed inspection and maintenance are exempted from the provisions of this By-law.
5. Any person who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for in the Provincial Offences Act.
6. This By-law shall expire fifteen (15) years from the date of enactment and passing.

Enacted and passed this day of , 2011

.....
Ellen Anderson, Mayor

.....
Corrina Giles, Clerk

Schedule "A"

By-law No. 2011 -

Occupiers of Land or Persons Invited by Occupiers of Land Identified by the Municipal Property Assessment Corporation Assessment Roll Numbers Listed Below are Exempt From the Provisions of this By-law:

Parcel a	42 42 000 6 412
Parcel b	42 42 000 8 040
Parcel c	42 42 000 8 040 01
Parcel d	42 42 000 11 001
Parcel e	42 42 000 11 001 01

- the Owner further agrees not to pursue any claim or action against the Township with regard to winter maintenance;
- the Owner saves the municipality harmless for any claim or action that may arise as a result or consequences of the construction of the Owner's dwelling as herein contemplated; and,
- the Owner agrees that any act of summer road maintenance completed by or funds extended by the Township on the Deviation Road shall not be construed as acts of full maintenance assumption by the Township and the Owner further agrees that the matter of winter maintenance so as to provide access on and along the Deviation Road shall not be raised in the future with any council of the Corporation of the Township of Collingwood or any successor thereto.

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D. Environmental Impacts

Reduction of vehicular traffic would have a positive impact in an environmentally sensitive area and may address liability concerns of area landowners.

E. Budget Impact

The costs associated with the preparation and erection of signage is less than \$1000.

F. Attached

1. Map showing the Deviation Road, fronting properties and the deviation road in Lot 24
2. Correspondence from Barbara and Alan Jones dated April 19, 2011
3. Draft By-law to restrict passage over the Deviation Road.

Respectfully submitted,

Jim McCannell

Jim McCannell
Manager of Roads and Drainage Division
Engineering and Public Works
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jmccannell@thebluemountains.ca

Reg Russwurm

Reg Russwurm
Director of Engineering and Public Works

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

By-law No. 2013 –

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“occupier” includes a person who is in physical possession of the land, or a person who has responsibility for and control over the condition of land or the activities there carried on, or control over persons allowed to enter the land, even if there is more than one occupier of the same land;

“off-road vehicle” means a vehicle propelled or driven otherwise than by muscular power or wind and designed to travel on not more than three wheels, or on more than three wheels and being of a prescribed class of vehicle;

“winter control period” means the period of time beginning on November first of any year and extending to April fifteen of the subsequent year and during which winter maintenance on the deviation road in Lot 25, Concession 7 shall be performed by private persons.

2. During the winter control period, other than the occupiers of land identified by Municipal Property Assessment Corporation Assessment Roll Number on Schedule “A” to this By-law, which is hereby declared to form part of this By-law, or persons invited by occupiers of land identified on Schedule “A”, **no person shall** operate a motor vehicle, a motorized snow vehicle or an off-road vehicle on that portion of a deviation public

highway located in Lot 25, Concession 7.

3. This By-law shall come into force upon the installation of appropriate signage identifying the restrictions contained in Clause 2 of this By-law.

4. All responding emergency vehicles and Town Staff and agents of the Town operating vehicles while performing routine and prescribed inspection and maintenance are exempted from the provisions of this By-law.

5. Any person who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for in the Provincial Offences Act.

6. This By-law shall expire on May 15, 2018.

Enacted and passed this day of 2013

.....
Ellen Anderson, Mayor

.....
Corrina Giles, Clerk

2.
Schedule "A"

By-law No. 2011 -

Occupiers of Land or Persons Invited by Occupiers of Parcels of Land Identified by the
Municipal Property Assessment Corporation Assessment Roll Numbers Listed Below
are Exempt From the Provisions of this By-law:

Parcel a	42 42 000 6 412
Parcel b	42 42 000 8 040
Parcel c	42 42 000 8 040 01
Parcel d	42 42 000 11 001
Parcel e	42 42 000 11 001 01

DRAFT