

CAO/Treasurer Ray Morrison's responses to Darlene Banning's delegation comments of 23Apr2018 are highlighted below:

Questioning council's recent and past precedent setting decisions in the choices they have made according to reporting out of in camera. When a precedent is set it leaves taxpayers, the municipality and future councils facing a possible negative impact when similar requests come before council. Repercussions resulting from such an action are and can be very damaging and costly in many ways. Similar decision results become an expectation or a justification to expect similar decisions when a precedent has already been set.

Response: We understand and agree with this point and considered it at length during the negotiations.

As a council, you have the authority to set a precedent. The question is, "if you decide to set a precedent have you considered possible repercussions in relation to risk to taxpayers in the future?" legal advice on occasion can and should be questioned to gain further information.

I would first like to state that I fully support the development of the 1000 Islands Village and wish them continued success. I have visited and admired the changes that have and continue to improve the site. A private development should not presume to substitute private responsibilities for services to Augusta taxpayers. Having said this I feel Augusta Township council has erred in their decision to sign a responsibility agreement with 1000 Islands Village.

When I attended the January 19 2018 7 p.m. Budget/in camera meeting the out of camera resolution stated

Moved by councilor Wynands and seconded by Councillor Conklin

BE IT RESOLVED THAT Council authorize the Mayor and CAO to sign a Municipal Responsibility Agreement with 1000 Islands Village for the Communal Services System.

Carried

I was very concerned first: This all took place in camera. No public scrutiny or opportunity to have any input prevented taxpayers concerns from being stated

2nd. having dealt with signing any responsibility agreement while I sat on that side of the table I knew council of the day had been warned of possible legal repercussions that might follow by signing such an agreement upon the municipality and tax payers alike. Also in risk management training by Cowan's insurance and AMO the possible danger of setting precedents needed very careful consideration as a red flag. Expressed my concerns by asking for a copy of the responsibility agreement and received it on January 23 2018.

I cannot begin to understand having read the agreement how council would enter into and sign this agreement.

The municipality is now an agent for the developer and as such entrusted to be responsible for the agreement. The communal service will be rented by the developer from New Terra not own system as such New Terra will be the one responsible for meeting water and sewage standards set by the Province of Ontario under numerous acts.

Institutional use of the lands? This conversion alone from Townhouse Development to Institutional is not what triggered this agreement but the developer may convert into private residential shall require the provisions of the Communal Services System would.

The township acknowledges in the agreement that the developer may convert the Townhouse development into residential dwellings for sale or rent to the public at some time presents a

Completely new list of legal concerns. As indicated under section 62 of the OWR act the director may do such and such. In past practice, the ministries have concluded that small rural communities are not able to support the costs involved in taking on responsibility for a communal service and as such cannot afford to take on this responsibility. Thus, why would this council sign such an agreement? Water and sewer have always and to this date been on a user pay legislated rule.

Who best benefits most by this agreement the developer or the township given the legal implications of having signed this agreement?

Response: All parties benefit. The developer can proceed to improve his project, adding significant market value which in turn benefits the municipality through assessment increases, local job creation and local economic development spin offs as the site becomes an attraction to the area for tourist and compatible business and tourism opportunities.

The resolution refers to 1000 Island Village now a numbered company 1902408. Two parcels of land exist and just what part does this agreement define Townhouse Development or 1000 Islands village? On the other hand, both. The resolution stated the agreement would be with 1 000 Island Villages.

In councils, opinion is this agreement in the best interest of the township and as such the taxpayers given the fact that this agreement is with the developer for a system that they will not own but rather rent from a third party New Terra.

Response: While not the best agreement the Township had hoped to negotiate, i.e. no security funds set aside up front, it is considered the best we could negotiate. Costs of installation and ongoing operation have decreased significantly since previous negotiations involving Mrs. Banning occurred, an insurance agreement is in place and a reserve fund with contributions approximating amortization of the assets in use will build over the years to offset future capital requirements. The third party, Newterra is a very stable company with many years of experience and installations throughout North America. The risk related to the company itself and its product failing is very low. If the developer fails, the Township is responsible to operate the system as an agent only, costs are fully recoverable and can be assigned to the tax roll. Repayment of these costs by any future developer replacing the current one would be nominal compared to the value of the property and would be paid first before ownership transfers. As such, other than cash flow management related to temporary lease payments related to the system, costs and risk are considered low. In addition to this information, Council was provided with legal and accounting advice and made its decision based on all factors.

As of the signing, exactly what security funds are in place now to protect the township and taxpayers?

Response: None. Leasing of the systems significantly reduces the risk for both the developer and municipality.

According to the agreement a possible in and out of responsibilities given a number of circumstance-involved default etc. the ownership remains with the developer. Given the back and forth responsible potential, the developer retains all assets including the capital reserve fund held in trust and invested.

All of these concerns now are after the fact given councils lack of transparency and lack of involving committee involvement as well prior to signing.

I would like council to consider and think about the possible consequences of their actions taken on this matter. Economic development has always been an important consideration at any council table but consideration at what cost. If there are not appropriate safe guards in place to protect the taxpayers when developers default leaving them to hold the bag and be financially responsible for taking over a win win turns into a what do we do now. Decisions made in haste and without forethought, and total transparency hurt us all.

Response: For the reasons noted above, staff and Council believe adequate safeguards are in place to protect the development, residents thereof, the municipality and its taxpayers, in the event of the developers default.

Second precedent worth mentioning. Special COW meeting March 19

Moved by Councillor Wynands, seconded by Councillor Conklin

BE IT RESOLVED THAT the Council authorize the Mayor and CAO to enter into a loan agreement with Gold in the Net. Carried

I personally never remember such an act other than loaning money to a township owned building to do improvement to it by recreation committee. I might add repaid by the committee by their volunteer efforts. I am sure given my experience on council there was extenuating circumstances but never the less sets precedence.

Response: Agreed. Council sought legal advice before proceeding. The resulting contract includes recovery provisions, provides a new recreation service opportunity for the municipality and protects a significant tax assessment from being reduced. Council took all these factors into account before approving the action.

Third example repaying resident group who improve a private road. A definite no no. I am not sure which issue this relates to. *Response: The Township pays a private road allowance to two bonafide private road associations (East Blakey's Point and Keeler Terrace, as authorized by the Policy Statement re Private Roads grant, approved by Resolution in August 2015, copy attached. It excludes private roads without a bonafide association or serving private business ventures (i.e. rented cottages or mobile home parks). Otherwise, the Township does not "pay resident groups who improve a private road".*

For reference, as noted above re OWR Act 1990:

Report by Director, water or sewage works

62 (1) Where a Director reports in writing to the clerk of a municipality that he or she is of the opinion that it is necessary in the public interest that water works or sewage works or any part thereof be established, maintained, operated, improved, extended, enlarged, altered, repaired or replaced, the municipality shall forthwith do every act and thing in its power to implement the report of the Director. R.S.O. 1990, c. O.40, s. 62 (1); 2001, c. 9, Sched. G, s. 6 (27).

Implementation of report

(2) If the municipality fails to do everything in its power to implement the report forthwith after receiving it, and the time for taking an appeal has passed or there has been a final disposition of an appeal confirming or altering the report, the Director, with the approval of the Local Planning Appeal Tribunal, may direct that whatever is necessary to implement the report or the report as confirmed or altered be done at the expense of the municipality, and may arrange for the Agency to do it. 1993, c. 23, s. 73 (17); 2017, c. 23, Sched. 5, s. 75.

Recovery of expense

(3) The Minister or the Agency may recover the expense incurred in implementing the report, with costs, by action in a court of competent jurisdiction, as a debt due to the Crown or the Agency, as the case may be, by the municipality. 1993, c. 23, s. 73 (17).

Section Amendments with date in force (d/m/y)

1993, c. 23, s. 73 (17) - 15/11/1993

2001, c. 9, Sched. G, s. 6 (27) - 29/06/2001

2017, c. 23, Sched. 5, s. 75 - 03/04/2018