

Havelock Belmont Methuen (HBM) Official Plan

Submission #4 to Peterborough County Planning

Department by Ambrose Moran Dated May 21 2013

Jurisdiction on Crown lands- in water development including boat houses

BACKGROUND

Havelock Belmont Methuen (HBM) Council, claiming to rely on legal advice, are along with North Kawartha (NK) Council unique in Ontario in taking position that they do not have jurisdiction to regulate in water development. This position of refusing to accept their authority under the Planning Act through development of Official Plan Policies and zoning regulations has left lakes such as Jack Lake and others exposed to **unregulated development** which discredits the quality of governance in the North Peterborough County area.

Ministry of Natural Resources (MNR) has repeatedly indicated that “*While municipalities have jurisdiction to enact zoning bylaws that extend onto Crown land, these bylaws are only applicable to the activities of third parties on Crown Land*”.ⁱ MNR are required under the Planning Act to comply with local municipal official plan policies. Section 14 of the Public Land Act (PLA) require MNR to issue permits for works along shore lands unless the work for which the permit is required does not conform with an official plan. MNR Free Use Policy provides for significant exemptions permitting exemption requirement under the Public Lands Act so it is important that the municipalities regulate in water development. A 36000 square foot pile supported in water boat house, could be built on Jack Lake without any permit requirement from MNR or any need according to both NK and HBM townships to obtain a building permit or require any inspections. Therefore the need exist for municipalities to regulate in water development through clear OP policies.

Transport Canada has recently deregulated the Navigable Waters Protection Act (NWPA)–Until recently the NWPA had some federal authority over the placement of in water structures. Now the Navigable Water Act (NWA) does not regulate development on lakes in NK and HBM. The Minister of Transport has made public statement that such development is regulated by provinces and municipalities.

Several court cases have ruled that municipalities have authority to regulate lands covered by water through the Planning Act and Ontario Building Code Actⁱⁱ

At a recent Cottage Country Planning Seminar, a prominent Lawyer's presentation on Shoreline Structure Jurisdiction in Ontario was conclude by summary statement ***"..there is no authority to suggest that municipalities cannot and should not regulate shoreline structures"***

COMMENTS

County of Peterborough Official Plan Consolidation Includes OPA #1 and OPA #2(March 2006)

2.3 Local Official Plans

.....local official plans shall conform to this plan...

4.4 Shoreland Areas and Waterfront

4.4.1` Goal to improve and protect waterfront area in Peterborough County....

4.4.2 Objectives—to recognize and preserve to the greatest extent possible the character of waterbodies.....to ensure that the built form along the shoreline is not overly concentrated or dominated to the detriment of the natural form

4.4.3 Policies development occurring in the Shoreline Areas should enhance and protect where possible those qualities that contribute to the area's character

-lands which form the bed of a water body should generally be open free and clear from buildings or structures

Adopted OP of HBM November 2012

3.3 Shoreline

3.3.2.2. Visual, Scenic and Aesthetic Qualities sates development shall be located and designed so as to protect the character and prominence of public views and features

3.3.4.2 a) On Water Structures

States the **ultimate use of Crown lands can only be determined by the Province of Ontario**

ii) Due to the high regard for the natural systems that occur in the Township, the Township strongly discourages and otherwise does not support the Province in approving on-water boathouse structures

COMMENT

HBM council has repeatedly indicated at public meeting during the development of the new OP and Zoning Bylaw that they do not want to permit on water boathouses

Council also has in collusion with North Kawartha (NK) taken position they do not have jurisdiction to regulate in water development

HBM council refused to accept the written recommendation of their Planning Consultant to regulate in water development. Their Planning consultant accepts and supports the fact that municipalities through the Planning Act do have authority to regulate in water development. The HBM Township will be in a very difficult position in the event of an OMB appeal to defend their "no jurisdiction" position, which is in concert with NK, is unique in Ontario.

3.8 Crown Land

3.8.1 Purpose

The purpose of the Crown Land designation is to identify lands in the Municipalityⁱⁱⁱ which, pursuant to the Public Lands Act....are administered by MNR

The Municipality has no regulatory control over these lands in accordance with The Planning Act.

3.8.4 Implementing Bylaw

All lands within the Crown land designation shall be placed in a separate category in the implementing bylaw.

Comments

The statement that “Municipality has no regulatory control” is factually wrong and not likely the position of the author of this OP but rather based on direction from HBM Council who do not accept responsibility for regulating in water development. Past court cases and The Planning Act section 6.2 clearly address the fact that townships do have regulatory control for in water development on Crown Land

RECOMMENDATION

That Peterborough County Planning department continues to support the established fact, which has been clarified by several court decisions, that municipalities have authority through the Planning Act to regulate land covered by water. The Peterborough County OP has policies related to lands which form the beds of water bodies. The HBM OP must comply with the County OP.

and

That the new HBM OP properly reflects the stated position of the ratepayers to prohibit in water boathouses.

and

Whereas the stated position that HBM council opposes in water boathouses and the MNR is require under the Planning Act ^{iv}to comply with Municipal OP policies

Be it resolved that:

The HBM OP clearly state that in water boathouse are not permitted.

Suggested modified 3.3.4.2

a)ii Due to the high regard for the natural systems that occur in the township and desire to preserve the natural beauty of the township lakes, on water boathouses are prohibited.

And further RECOMMENDATION

That section 3.8 be modify to eliminate the stated error that Municipality has no regulatory control over Crown Lands and the land covered by water be both designated in the HBM OP and zoned in the Implementing bylaw.

Ambrose Moran

Jack lake

ⁱ E mail from MNR Sept 10 2012

ⁱⁱ Report by

ⁱⁱⁱ Municipal Act define land to also including lands under water

^{iv} Planning Act Section 6(2)