

December 17 2012

Glenn Girven-Clerk
Township of Havelock Belmont Methuen
PO Box 101
Ottawa Street East
Havelock On K0L 1Z0

Re: Havelock Belmont Methuen Township Zoning Bylaw 2012-55

NOTICE OF APPEAL

Council of Havelock Belmont Methuen passed subject zoning bylaw November 12, 2012ⁱ

According the Notice of Passing of Zoning Bylaw dated Nov 27 2012, this bylaw is to implement Official Plan policies for a new official plan which was adopted by Council November 12, 2012 and requires approval of the County of Peterborough.

Zoning bylaws are intended to implement official plan policies and it is my position that passing of this bylaw 2012-55 is premature based on the fact that Official Plan was not approved at the time the bylaw as passed by Council.

I request that the OMB rule that the bylaw be repeal until such time as the new Official Plan is approved and then considered by passing based on the final version of the official Plan.

!

Objections to Zoning Bylaw 2012-55

Item #1

Regulating In water development

Havelock Belmont Methuen Council has for some time taken position that HBM does not have any authority to regulate in water development such as boat houses. This position is unique in Ontario as exposed in a Toronto Sun article May 19 2012ⁱⁱ. This major news article included the following

Permit, please

The Star contacted building officials in every municipality in Muskoka, Haliburton and Peterborough. All but two — North Kawartha and Havelock-Belmont-Methuen in Peterborough County — said the same thing: Docks and structures attached to the shore require a permit.



HBM council passed a bylaw related to boathouse development in 2009 which stated “..*boathouses located over lakes are considered to be beyond the jurisdiction of the township and therefore are not the subject of municipal regulations nor the issuance of a build permit*.. I appealed this bylaw to the OMB to establish clarity on in water development jurisdiction and HBM Council repealed the bylaw rather than defend their position at an OMB hearing.

As the public involvement phase on the development of the new HBM Official Plan and Zoning bylaw started, considerable concern was expressed by the cottage community about the fact that HBM lakes were exposed to unregulated development such as boathouses.

About the same time, in 2011, a property owner undertook to build a major in water boathouse in Jack Lake within Havelock Belmont Methuen without any zoning restrictions, without any municipal building permits under the Ontario Building Code Act and without any inspection by Havelock Belmont Methuen Township or any other level of government.

This structure serves today as a MONUMENT to inaction by HBM allowing uncontrolled in water development within their municipality in which they have responsibilities for regulating land use within their municipal boundaries.



The township planning consultant prepared a Background Report dealing with input from the public and agencies. In that report the townships professional planning consultant recommended to council that the new planning documents regulate both in water and on land boathouses.

Council refused to accept the recommendation of their planning consultant to regulate in water development claiming the no jurisdiction position.

The matter of prohibiting in water boathouses in the zoning bylaw was raised by myself and several others during the process including the Havelock Belmont Methuen Lake Association and Terry Reese of Federation of Ontario Cottagers. In the reportⁱⁱⁱ to council from the consultant related to public and agency input, the consultant did not directly respond to the merit of the expressed concerns and stated ***“the language proposed is based on legal position provided to the township related to land use jurisdiction--and no changes recommended at this time”***

The zoning bylaw 2012-55 does not regulate in water development such as new boat houses claiming not to have jurisdiction on Crown lands despite applying jurisdiction to regulate other types of development on crown land such as hunting camps on Crown Land Zoning per definition in section 3 and regulations per 24.11.

The new Official Plan which is not yet approved and when approved is subject to appeal states

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

BUT

The *Public Lands Act* recognizes the municipalities' right to have some control of lands covered by water. Section 14 permits the Ministry of Natural Resources to issue work permits for work along the shores of lands. Section 2(1) of Reg. 975 states 2(1) An officer shall issue a work permit to any person who applies therefore unless the officer is of the opinion that the work for which a permit is required,

b) is inconsistent with or does not conform to,

(i) an official plan as defined in the *Planning Act*

Section 6(2) of the Planning Act requires that:

A ministry, before carrying out or authorizing any undertaking that the ministry considers will directly affect any municipality, shall consult with, and **have regard for**, the established planning policies of the municipality.

ALSO MNR recently advised^{iv}

While municipalities do have jurisdiction to enact zoning by-laws that extend onto Crown land, these by-laws are only applicable to the activities of third parties on Crown land. Such zoning by-laws are not binding on the activities of the Crown or activities carried out on behalf of the Crown provided it does not interfere with navigation and does not conflict with provincial legislation....

HBM has taken steps to discourage but not prohibit in water development such as boathouses in their proposed Official Plan but has not regulated in water development such as new boat houses in their implementing zoning bylaw having allegedly relied on their township legal advisor.

Recommendation

That HBM prohibit in water boat house as was clearly expressed by the cottage community and accept the municipal responsibility to regulate all development within the boundaries of their township to protect water quality and the natural beauty of the area.

Item #2

Expansion of Non Conforming Structure adjacent to lakes

The zoning provision to regulate expansion of cottages with the water setback is crucial to protecting both water quality and the aesthetic beauty of our lakes. In 2009 HBN Council passed bylaw 2009-77 dealing with this issue which I appealed to the OMB and following a mediation meeting with a representative of the OMB, council repealed the bylaw. That bylaw was described by my retained professional planner as being “unusable or enforceable” .

My concerns regarding expansion of non-complying cottages adjacent to lakes is outlined in a previous submission ^v

The proposed bylaw 2012-55 does not have a provision to restrict development close tom lake respecting the approach of protecting our lakes with a buffer zone free of structures.

My view on this item were conveyed to HBM in my submission #4^{vi}-- Item #4

Item #3

Size of Pump Houses

The proposed official plan has the following:

Pump houses are intended to contain water intake and/or fire suppression facilities only and are not intended for general storage. Pump houses should be built to the minimum size while allowing for appropriate containment and maintenance of the system

The zoning bylaw 2015 allows for an excessively large pump house which in reality would function as another storage accessory building at the shoreline contrary to various policies as follows:

4.22 (c) The area of a pump house shall not exceed 6 sq. metres (65 sq. feet) in area and 3 metres (10 feet) in height;

Recommendation- that the following size pump house be allowed consistent with common practice and currently included in North Kawartha

2.140 PUMP HOUSE

“Pump house” means an accessory building measuring not more than 1.2 meters (4 feet) in width, 1.2 meters (4 feet) in length and 1.2 meters (4 feet) in **height** and **erected** for the purpose of mechanically drawing water from a water body for use by residents of the **dwelling unit**, or for fire fighting purposes

Item #4

On Land Boathouses- Jack Lake Methuen Township

Previous submission on this subject have outlines my concerns taking into account in effect official plan policies and the PPS.^{vii}

Jack Lake is located in the North West corner of HBM and within the Canadian Shield and within the community area of Apsley. North Kawartha (NK) township is currently finalizing their new consolidated zoning bylaw which has restrictions on boathouses for trout lakes. Jack Lake is a trout lake and currently MNR and MOE is determining the development capacity of Jack Lake. The other major lake in the Apsley area is Chandos Lake which is a trout lake and now being included in the new NK zoning bylaw as not allowing on land boat house consistent with other lake in the Apsley area. The lakes prohibiting boathouses in the North Kawartha planning documents are based on being cold water/trout lakes but not based on being at capacity trout lakes as determined my MNR/MOE.

MNR has previously asked that trout lakes be protected from near water development such as on land boathouses to protect water quality and it would be a contradiction to disallow boathouses on several Apsley area lakes including Chandos Lake but allow boat House on Jack Lake water quality is an important policy objective of the Peterborough County Official Plan.

Permitting on land boat houses invites illegal conversion to at the shore residential guest cabins. As an active real estate broker in the Apsley area, it is my experience that most on land boathouse eventually get converted to guest cabins without any municipal repercussions so not allowing such structure to be built would assist in establishing credibility to planning administration. If complaint were formally filled related to enforcing illegally converted boat houses to guest cabins, the township would be required to immediately increase their budget for litigation to deal with identified offenders.

Item #5

Water setbacks

Section 4.35 (d)

I object to establishing a 49 ft water set for lots on Jack lake. This provision in (d) would apply to most lots on Jack Lake and establishing a water set back far less than most municipality in Ontario and ½ of what applies currently in the in effect HBM zoning bylaw and in the North Kawartha in effect and proposed zoning bylaw governing the other part of Jack Lake . This set back was increased by HBM from 70 ft to 100 ft in bylaw 2009-65 to implement the direction from the County of Peterborough Official Plan.

The approach taken in this section(d) would be problematic in determining what set back applies to what properties as determining when a lot was created is challenging. An applicant for a building permit or zoning relief would not be able ask a township what setback applies to a particular property and I feel it is fundamental that a township would be in a position to provide that advise.

I do support 4.3 (C) as recommended din my submission^{viii} to HBM Council May 14 2012

Item # 6

Zoning Schedules Jack Lake Area

6A) Islands

OS Crown Land and IR The zoning schedule applicable to Jack lake indicates some islands are zoned Crown land – some Open Space and some Island Residential- the zone provision for OS do not appear to be appropriate for island- several islands that are currently developed should be zone IR recognizing that cottages exist- examples Conc 10 Lot 27 Con 9 Lot 27/28 Conc 8 Lot 26 Conc 8 Lot 23 Conc 9 Lot 23 Conc 9 Lot 22

while island too small be current development standards including a 70 ft set back should be zoned OS

and island ownership of the Crown should be zone Crown Lands.

And

A statement in the zoning bylaw should be included to address the status of any island inadvertently missed in the zoning schedules.

6B) Wrong Zoning – Conc 9 Lot 27 – and Conc 8 & 9 Lot 22 - portions of the shore lines have been zone RU by mistake

6C) Jack Lake Estates the EC area not zoned and some lot have been rezoned to remove Holding provisions

6D) Lake Zoning --- several indication that lake is zoned WS

6C) No Environmental Constraint on Jack Lake for some reason no parts of Jack lake shoreline is zoned EC despite as understand the Jack Lake Plan identified sensitive area which should be recognized

I may have other concerns about septic setbacks , allowable size of accessory building relative to main buildings and provision for attachment of accessory buildings to main building taking into account definitions of attached and detached.

General comment

Despite the foregoing concerns, I would like to acknowledge that several significant changes to the existing zoning bylaw have been made based on input by myself and others which contribute to an improved zoning bylaw for the township.

Ambrose Moran
Contact in formation
Mailing address
PO Box 414
Apsley Ontario
K0L1A0

-
- ⁱ Notice of Passing of a Zoning Bylaw dated 27th day of November 2012
 - ⁱⁱ Toronto Star – Saturday May 19 n2012-Peterborough Boathouses Have Neighboring Cottagers Fighting Mad
 - ⁱⁱⁱ Public & Ministry/Agency Submissions and Recommendations November 2012
 - ^{iv} E mail from MNR Sept 11 2012
 - ^v Submission #3 to Glenn Girven dated April 14 2009
 - ^{vi} Submission #4 by Ambrose Moran Subject Consultation and Background Report _ Waterfront Development Policies
 - ^{vii} Submission #4 May 14 – Consultation and Background Report – Waterfront Development Policies
 - ^{viii} Submission #4 Subject - Consultation and Background Report –Waterfront Development Policies