

May 18 2014

To: Members of North Kawartha Council

## **Re: Jurisdiction to Regulate Shoreline Structures**

I am attaching a letter I wrote to members of Council a year ago today.

Following receipt of this letter it was discussed by Council in an open session at a subsequent Council meeting and as I recall a Council motion was passed to send my letter to the township solicitor for a response.

To date I have not received any response.

**Can you advise if the township received a response from your municipal solicitor and if so can you provide me with a copy?**

### **Also**

Since last year, a development associated with municipal jurisdiction to regulate in water structure has been playing out on Lake Roseau in Sequin Township.

A property owner applied for a Planning Act zoning amendment in Aug 2008 to the waterfront EP zoning of his property to permit the construction of a large in water boat house. Sequin Township does zone beds of lakes which I have been advocating for since the early 90's.

Sequin township denied the zoning application in Nov 2008 and the owner appealed the Council decision to the OMB in Dec 2008 but in January 2010 withdrew the OMB appeal and proceeded with the boathouse construction in July 2011 without Planning Approval under the in effect township zoning bylaw regulating such in water development under the Planning Act.... or a building permit under the Ontario Building Code Act.



In July 2011 Sequin Township issued a stop work order which was ignored by the owner and the structure including approximately 1100 sq ft of living accommodation on the second level was substantially completed by Jan 2012.

Sequin Township commenced court action against the property owner in Feb 2012. The case was heard at Superior Court of Justice in June 2013 and township was successful in getting a court order requiring **the property owner to demolish the structure in 90 days.**

The property owner the filed an appeal to the Ontario Court of Appeal which heard the case and upheld the earlier Court Order to have the structure demolished setting a new date of April 30 2014

The township has went out to tender to obtain quotes for demolition of the structure. Tenders closed May 8<sup>th</sup>

I am not sure of the details but over the long weekend the structure is in the process of being removed according to reports I have received from friends who have cottage in that immediate area of Lake Rosseau.

**So**

Sequin Township seems to have authority under Planning Act and Ontario Building Code Act to regulate in water development.

**Two levels of Court have passed judgements to enforced municipal jurisdiction to regulate in water development.**

Owners lawyer Leo Longo, who is prominent in municipal law, tried to rely on some scheme that the structure was only regulated by federal law being an aerodrome –but has certainly not advanced any defence that municipalities do not have authority to regulate in water development.

**So**

This is just another of the long list of Court decisions confirming that municipalities have authority to regulate in water development. You may wish to refer to an excellent report on this subject authored by Planner **Chris Jones** which I previously send to you and again attach in which **Chris Jones advised his client at the time, being Municipality of Highland East, that Council should amend their Zoning Bylaw to include “PROVISIONS TO REGULATE THE PLACEMENT OF BUILDINGS AND STRUCTURES ON LAKES OR LAKE BEDS”** That recommendation followed his analysis of 4 Provincial Court decisions which according to his report **”ALL LEND SUPPORT TO THE NOTION THAT A MUNICIPALTY HAS THE LEGAL ABILITY TO RESTRICT LAND USE IN WATER”**

**So**

Why would North Kawartha Council, allegedly supported by their solicitor, take a position that they alone with one other municipality in Ontario, being Havelock Belmont Methuen, do not have jurisdiction to regulate in water development? Havelock Belmont Methuen utilizes the services of the same lawyer.

**Again I feel strongly that North Kawartha should get another legal opinion on this fundamental jurisdictional issue before authorizing any further legal expenditure on a Court challenge which is both non-productive and attempts to abdicate basic municipal responsibility to protect North Kawartha Lakes which form the basis of our local economy.**

**Ambrose Moran**

**Attached**

**Letter to NK Council from Ambrose Moran May 18 2013**

**Meridian Report dated July 4 2006 By Senior Planner Chris Jones**

