

April 4 2013

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Township of North Kawartha
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Re: North Kawartha Zoning Bylaw #26 2013

NOTICE OF APPEAL

Council of North Kawartha passed subject zoning bylaw November March 5 2013.

The bylaw has been under development by staff and Council and a Committee of Council since 2008, During that period, I have actively participated in the process by most meeting and making 25 submissions for consideration by township staff, Committee of Council and Council. Rather than repeat all my stated concerns I will reference them through submission numbers applicable to specific objections.

Objections to Zoning Bylaw #26 2013

Item #1

Regulating In water development

North Kawartha (NK) Council has for some time taken position that NK does not have any authority to regulate in water development such as boat houses located on Crown lands being the bottom of Lakes such as Jack Lake. This position is unique in Ontario as exposed in a Toronto Star article May 19 2012ⁱ. This major news article included the insert on right.

My communications with Provincial and Federal authorities consistently indicates that townships are required to regulate development and administer the Ontario Building code within the boundaries of their municipality.

Considerable concern was expressed by the cottage community about the fact that NK lakes were exposed to unregulated development such as boathouses. The adjacent township to the south of NK being

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.



TORONTO STAR GRAPHIC

Havelock Belmont Methuen (HBM) also take the position that they do not have jurisdiction to regulate lands covered by lakes. Both townships have indicated that they are relying on legal advice. Both townships utilize the same solicitor for such advice.

The following is a recent example of unregulated in water development. In 2011, a property owner undertook to build a major in water boathouse in Jack Lake within Havelock Belmont Methuen township without any zoning restrictions, without any municipal building permits under the Ontario Building Code Act and without any inspections by Havelock Belmont Methuen Township or any other level of government.

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



The HBM township's very experienced planning consultant prepared a Background Report dealing with input from the public and agencies. In that report the townships professional planning consultant recommended HBM council regulate in water boathouses. The North Kawartha council has not had the benefit of a professional planner to provide advice on this issue.

A serious contradiction exists in the NK Council position on regulating in water development being crown lands. Council refuses to zone the lakes claiming not to have jurisdiction to regulate in water development despite having unanimously passed a bylaw which regulated Boatports - Section 3 (k) (vii) which by definition 2.13 is for docking of a watercraft obviously located in the water over crown lands. Dock also located in water are regulated by Section 3 (i). The contradiction of Council claiming not to have jurisdiction on crown lands is advanced by Council having a separate zone category #18 for Crown (CL) with permitted uses and zone provisions. Undefined hunt camps and define Recreation Camps are permitted. Recreational camps are regulated by this bylaw on Crown Land up to a net floor area of 1500 square feet.

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 advisedⁱⁱ

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....

Recommendation

That North Kawartha accepts my recommendation made in submission # 12 Dated Sept 12, 2011 and zone lake beds and further prohibit in water boat houses 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. Also reference previous submission #15 Dated Nov 9 2011

Item #2

Jack Lake On Land Boat Houses

By Council motion on March 5, 2012 Council decided to include Jack Lake in list of lake prohibiting on land boathouse based on letter dated Mar 4 2012 from NNR.

Subject bylaw Section 3.1 (k) (vi) does included Jack lake as one of the lakes prohibiting new marine facilities on land.

Unfortunately when making this last minute change to the bylaw, it appears inadvertently that Council did not delete the NOTWITHSTANDING clause # 3.1 (k) (iv) which indicate that marine facilities are allowed on Jack Lake 30 ft from the high water mark. Having reviewed this conflict with a professional planner it is my opinion that the NOTWITHSTANDING clause causes confusion as to whether in fact the bylaw clearly eliminates on land marine facilities on Jack Lake as was intended by Council motion on Mar 5th

Recommendation that the following be removed from Section 3 General Provisions 3.1 (k) (iv) ...**except on Jack's Lake where a marine facility shall be set back a minimum distance of 9.0 meters (30 feet) from high water mark**

Item #3

Define Boat house

During the development of this zoning bylaw, boathouses have been of great concern by ratepayers and zoning committee members and council members but there is no definition for a boat house in bylaw 26 2013.

My applicable previous submissions are # 2 Dated Jan 22 2009 and #17 Dated Nov 17 2012 Item 17-21 And #19 Dated Nov 12 2012 item 19-7

Currently boat house included in the far reaching definition of marine facilities which also includes boat launching facilities, boat lifts , marine railways. A boat house is a building far different

Recommendation-That Boat House be defined and not be included in the definition of marine facility.

Item # 4

Zoning Schedules

Page reference are the same handouts provided to and explained to NK Council on March 5 2012 clearly identifying errors in the zoning schedules which Council recognized as being errors but decided to pass the defective zoning bylaw –see attached new article From Bancroft Times

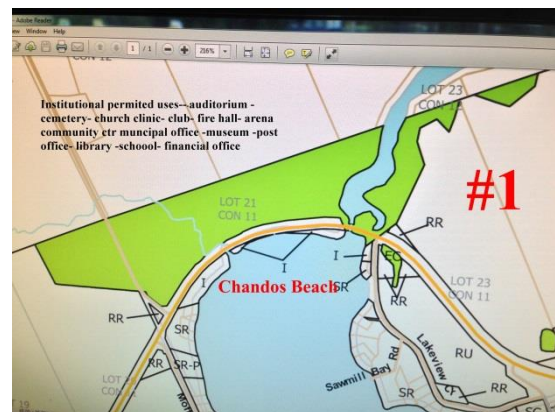
Item 4A

Page #1 This illustration is of the area long the municipal public beach at north east end of Chandos Lake The properties labelled I which is Institutional are currently more appropriately zone zoned OS in Chandos Bylaw.....

Bylaw 26-2013 in Institutional Zone permits auditoriums, cemeteries, church, clinic, fire halls, arenas, community centres, municipal office, museum, post office, library school, financial office,, Major Open Space (OS) permits beach, conservation use, forestry use, private park, public forest, public park.

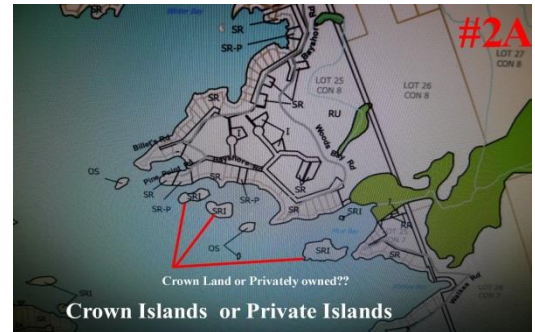
The property currently owned by the Township has an established public use as a park with washrooms and beach.

The Institutional zoning is obviously in error and should be corrected to OS as in the existing in effect zoning bylaw



Item 4B

Page #2a This illustration is an area of Chandos Lake including Winters Bay Road and Bayshore Road. The general approach to these schedules is to identify crown owned islands as OS but in this area 3 islands are zoned SRI implying these island are privately owned which is not so.



These three island should be zone OS

Item 4C

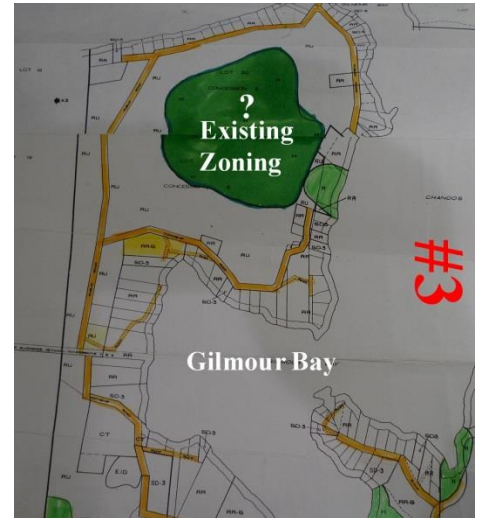
Page #2B This illustration is an area of Chandos Lake including Winters Bay Road and Bayshore Road. Current Chandos zoning bylaw zones a large waterfront section as Hazard Land and in bylaw 26--2013 this extensive wetland area has been inadvertently omitted. I am familiar with the area and definitely the area I have identified as lime green is marshy wetland and extent of it is in fact larger than I have indicated.



The ? marks on small BACKLOTS lots is need of review—Three are zoned Institutional which is obviously an error and 5 are Shoreline Residential endorsing back lot development – currently this general are in Chandos bylaw is zoned Rural. It is not be GOOD PLANNING to zone lots without roads as being either institutional of Shoreline Residential. There are approximately 150 parcels of land in this area mostly zone RU and incrementally assigning individual residential zoning to these parcels is a dangerous precedent leading to the endorsement of a Major Back Lot Development which is unlikely to have been taken into account in any lake capacity study.

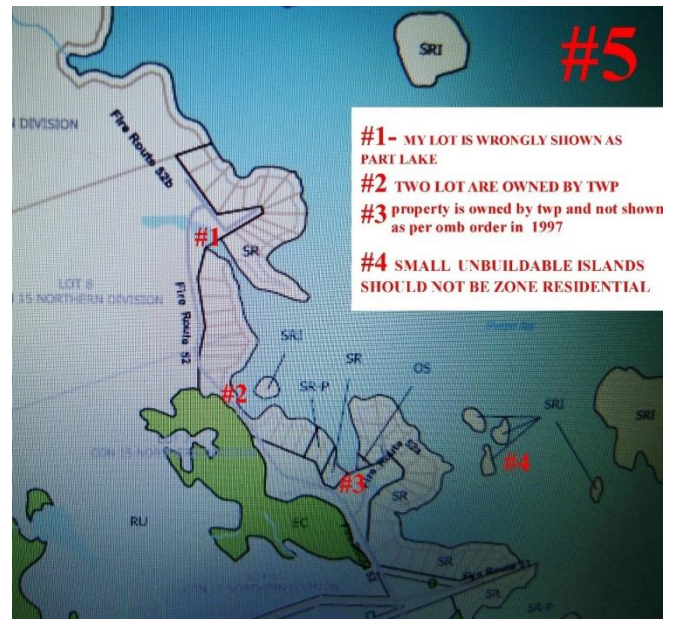
Item 4D

Page #3 & 4 This illustration applies to are between Renwick Road and Sylvan Drive. Page #3 shows dark green area which is currently zone Hazard and not shown on the new Zoning schedule-I am aware of this area and certainly the existing zoning has some validity. Illustration #4 shows a large blue are indicating lake .This is not a lake and may be more appropriately zone EC



Item 4 E

Illustration #5 applies to an area on Jack Lake adjacent to Fire Route 52- Notations 1-4 identify the concerns of the appellant.



Item #4F

Illustration # applies to a property owned by the appellant that is currently totally zoned in the Burleigh Anstruther zoning bylaw as Shoreline Residential (SR). Bylaw 26-2013 shows a totally different water frontage if fact indicating that a large portion of the appellant property being Parts #61 and # 62 of Plan R363 and 45R364 being the purchases original shore road allowances. – Registered Plan 45R364 clearly establishes the high water mark



which is considered the lake frontage which is significantly different than the Lake shore erroneously shown on illustration#6. The bed of Jack Lake is owned by the Provincial Crown which places this schedule in direct conflict with the deeded ownership of the appellant property.

Item #5

Define Kitchen

The term “kitchen” has been introduced into this bylaw without a definition and restricting one kitchen per dwelling unit. I understand the intension of this new zoning provision relates to avoiding additional dwelling units being established within dwellings but consideration should be given to allowing exterior kitchen which are become more common on executive styled cottages to support outdoor entertainment areas.

The term **kitchen** should be defined.

Item #6

Definitions Attached 2.6 & Detached 2.41

My submission #16 Dated Nov 9 2012 outlines a defect in either wording of existing Burleigh Anstruther Bylaw or interpretation of same providing loophole for avoiding the intent of the zoning bylaw by allowing new structures such as garages and guest cabins or two story garages by simply connecting the two independent structures by either a ground level deck or minor roof extension.

Recommendation that this new bylaw clearly prohibit such practices and definitions be more specific ie **Gargae-detached**

Item #7

Uses permitted should not list prohibited uses

Zoning bylaws are to be written on the positive being what can be done on a property. As explained to Council on Nov 20 by Steve Fahnerⁱⁱⁱ of Northern Vision Planning, *“the preamble in the bylaw for each zone states “no person shall within the zone, use any lot or erect or alter any structure except in accordance with the following”*

This bylaw includes several prohibitions such as in definition of Habitable Room and Marine Facility, Also in the zone provisions such as Section Major Open Space (OS) only Residential uses are prohibited and Section 18 Crown Land (CL) 18.1 (a) Residential Uses Prohibited

Recommendation that prohibitions be removed from the bylaw to contribute to clarity

Item #8

Permitted Use Section 6 Shoreline Residential Zone (SR)

Section 6.2 states

(c) Dwelling House per lot (maximum)

0 recreation dwelling house

So does this mean a Dwelling House is permitted ??

And

0 meaning none – recreational dwelling houses are permitted ??

Recommendation That clearly state what is permitted and not what is not permitted

Item #9

Singular vs Plural

Section 1.3 Interpretation of Bylaw

(a) Singular and Plural Words

In this bylaw unless the context requires otherwise

(b) Word use in the singular number include the plural

Common in this bylaw under permitted uses is the following-example 6.1

Use Permitted

a Recreational dwelling house

a bunkhouse a marine facility a dock a garage a shed

According to Steve Fahner^{iv} by virtue of using “a” dwelling house more than one dwelling can be permitted by virtue of Section 1.3 where words in the singular can be considered in the plural

And this can be resolved simply by by stating ie “one” dwelling unit

Recommendation that bylaw be revised to provide numerical reference to permitted uses in Zone Provisions

Note SRI section 7.2 (C) has it the right way -1 only

Item #10

Seasonal and Permanent Residential uses in the Shoreline Residential Zone (SR).

Bylaw 26-2013 Section 6.1 (a) permits a recreational dwelling house which is defined in 2.52(d) Recreational dwelling house/cottage ..mean a dwelling house, containing only one dwelling unit which is constructed and used as a secondary place of residence for vacationing and recreational purposes.

So according to this proposed bylaw it is not permitted to live on a permanent basis in the SR zone which applies to most properties on lakes in North Kawartha. NK Council unanimously passed this bylaw and 4 of the 5 current members of Council according to this bylaw would be living illegally at their permanent residences on waterfront properties zoned SR in North Kawartha Township.

Jack Lake is located within both North Kawartha and Havelock Belmont Methuen Townships (HBM) and in November 2012 HBM passed a new comprehensive zoning bylaw removing the previous restriction to live permanently on lakes within HBM township. It would be sensible to harmonize the bylaws to avoid a situation where it was legal to live at Jack lake in HBM township but not at Jack Lake within NK township ..after all townships in Peterborough County are regulated by policies in the a Peterborough County wide Official Plan.

I understand the County Planner takes the position that The North Kawartha section of the County OP is somewhat discretionary related to how NK Council deal with seasonal versus permanent residency in SR zone.

In the event the Council does not address this fundamental land use issue by permitting legal permanent residency at lakes in NK, in order to uphold the credibility of the zoning bylaw administration, I will be looking for the NK bylaw enforcement office to enforce the zone provision related to noncompliance with this zone provision restricting permanent residency in SR zone to all know violators including elected officials.

Reference my previous submissions # 6 Dated Jan 22 2009 and #14 Dated Nov 9 2011

Item #11

Water setback / WaterYard

Bylaw section 2.193 has a definition titled **WATER SETBACK / WATER YARD**

And then define **Water setback/water yard** as a definition of a setback and then a yard

Setback and Yards are different and should not be combined in one definition

And section 2.205 also defines **Yard, Water** differently than 2.193

Recommendation section 2.193 should be revised to not include both a yard and setback in same definition and since section 2.205 already defined Yard, water there should not be a conflicting duplication of definitions

Item #12

Definition 2.88 High Water Mark/ Normal high water mark

Section 2.88 is titled High Water Mark / Normal High Water mark and then goes on to define **High Water Mark** which is a generally accepted definition.

Recommendation that reference to Normal High water mark be deleted to avoid confusion

Item #13

Adding Decks to existing cottages

As explained in my submission #20 Dated Nov 18 2012 this provision to add deck to existing cottages should be based on existing cottages as of date explained and not situation where one can build a new cottage at 100 ft set back and then apply for the deck effectively reducing setback to 88ft

Item #14

Septic setbacks-the 30meter setback in this bylaw applies to a septic

The Ontario Building code establishes a 50 ft setbacks from water bodies for septic systems in Ontario and according to the Minister of Municipal Affairs and Housing the Ontario Building Code supersedes municipal by-laws. Since the passing of the 30 meter setback for septics It has been by observation that contractors continue to install septics at 50 ft from water bodies with approval of the Municipalities' agency (PCHU) employed to administer that section of the Building Code.

Recommendation – establish whether the zoning bylaw can impose increased set back from what is regulated in the OBC.

Item # 15

Expansion of Bunkies within water setback

When this item was being discussed at a Council meeting the building inspector who has been the author of this bylaw is quoted in the Council meeting minutes as saying expansion of bunkies would not be permitted by the in effect official plan. Since the Twp web site with minutes is not available I cannot provide at this time the reference and this comment is based on recollection only. At this point I have not determined my position on this item and will further investigate it.

Ambrose Moran BA

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Apsley Ontario

K0L1A0

ⁱ Toronto Star – Saturday May 19 n2012-Peterborough Boathouses Have Neighboring Cottagers Fighting Mad

ⁱⁱ E mail from MNR Sept 11 2012

ⁱⁱⁱ Comprehensive Zoning Bylaw review Presentation Nov 20 2012 by Steve Fahner representing Ambrose Moran

^{iv} Comprehensive Zoning Bylaw review Presentation Nov 20 2012 by Steve Fahner representing Ambrose Moran