

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

BARRY GLASPELL

Plaintiff

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE
MINISTER OF MUNICIPAL AFFAIRS AND HOUSING, HER MAJESTY THE QUEEN
IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF NATURAL
RESOURCES, G. BRUCE MIGHTON, MUNICIPAL PROPERTY ASSESSMENT
CORPORATION, THE CORPORATION OF THE TOWNSHIP OF NORTH
KAWARTHA, TIM POWELL AND JANE DOE**

Defendants

MOVING PARTY'S SUPPLEMENTARY MOTION RECORD
(partial summary judgment, to be heard December 19, 2014)

DATE: **December 16, 2014**

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in right of Ontario and Bruce Mighton

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Counsel for The Corporation of the
Township of North Kawartha and Tim Powell

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BARRY GLASPELL

Plaintiff

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**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY
THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING, HER MAJESTY
THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER
OF NATURAL RESOURCES, G. BRUCE MIGHTON, MUNICIPAL PROPERTY
ASSESSMENT CORPORATION, THE CORPORATION OF THE TOWNSHIP OF
NORTH KAWARTHA, TIM POWELL AND JANE DOE**

Defendants

SUPPLEMENTARY AFFIDAVIT OF BARRY GLASPELL

**I, BARRY GLASPELL, of the City of Toronto in the Province of Ontario, MAKE OATH
AND SAY:**

1. This affidavit is supplementary to my affidavit sworn January 22, 2014.

Response to July 4, 2014 Tim Powell Affidavit

2. **Powell Para 4:** My first contact with North Kawartha ("NK") on these issues was by May 24, 2011 call to Jim Sangster, a NK building inspector who worked with Mr. Powell. The large dock ("Dock") had just been installed in the bay, directly in the view of

my property. At that time I did not know a building (“House”) was intended to be erected on the Dock. Mr. Sangster informed me during that call that docks needed to be 15 feet clear from the lot line extension. My May 24, 2011 email to my family, a true record of my call with Mr. Sangster, is attached and marked as Exhibit “1” hereto.

3. **Powell Para 8:** In his affidavit, Mr. Powell states that in NK no building permit is required beyond the high water mark. The Ontario Building Code does not make any such building permit exception for structures beyond the high water mark. As deposed below, most Ontario municipalities do apply by-laws and issue building permits under the Ontario Building Code for structures beyond the high water mark.
4. **Powell Para 9:** Although no discovery has taken place to this point, I understand from documents received that Mr. Powell visited the boathouse on July 22, 2011 while the House was under construction. Mr Powell in 2010 and 2011 also had a number of oral and written communications with the owner of the lot to which the boathouse is attached, regarding the planning, design and construction of the Dock and the House. I am attaching and marking as Exhibit “2” hereto true copies of emails exchanged between Mr. Powell and the owner of the lot.
5. **Powell Para 10:** The Burleigh-Anstruther zoning bylaw regulated docks, boat ports and marine facilities. Accordingly, Mr. Powell’s statement that NK zoning by-laws did not address structures completely in water or on the lake bed is incorrect.
6. **Powell Para 11:** Unregulated in-water construction is a matter of serious concern for cottagers on Big Cedar Lake. By October 24, 2011 letter to North Kawartha’s Reeve, the

Big Cedar Lake Stewardship Association Board raised this issue and asked that its membership's concerns be addressed. I am attaching and marking as Exhibit "3" hereto a true copy of the October 24, 2011 letter to the NK Reeve.

7. **Powell Para 12:** On May 19, 2012, the Toronto Star published an article on unregulated in-water construction. Mr Powell and I were interviewed by the reporter for the Toronto Star article. I am attaching and marking as Exhibit "4" a true copy of the article, which highlights, correctly as I understand it, **that two municipalities in Ontario (North Kawartha and Havelock-Belmont-Methuen) advance a "no jurisdiction" position.**

8. **Powell Para 13:** Since raising this issue with NK in 2011, I learned that Ambrose Moran, a real estate broker in Apsley Ontario, has been raising similar issues with Ontario, NK and HBM. By May 19, 2013 letter, a true copy of which is attached as Exhibit "5", **Mr. Moran wrote to NK stating that NK's no jurisdiction position is inconsistent with long established municipal practices in Ontario and in direct conflict with numerous previous court rulings on this issue.**

Response to Unsworn Trevor Harris Affidavit

9. **Harris Para 9:** Late on June 30, 2014, I received a draft Trevor Harris affidavit from Ontario's legal counsel. As of today, I do not have a sworn affidavit from Mr. Harris. I understand that Mr. Harris works with the defendant Mr. Bruce Bighton. In May 2011, **Ambrose Moran (together with John Laschinger) sought confirmation from Mr. Bighton that the Ministry of Natural Resources ("MNR") has no issue with municipalities enacting by-laws applicable to in-water construction.** A true copy of their May 19, 2011

email to Mr. Bighton; Mr. Bighton's May 20, 2011 response; and their further email exchanges in November and December 2011, which I understand set out MNR's position on these issues, are attached as Exhibit "6".

- 10. **Harris Para 16:** By November 1, 2011 and November 10, 2011 letters on the in-water regulation issues, the Ministry of Municipal Affairs referred Mr. Moran and myself back to NK and HBM re lack of enforcement of the Building Code. I am attaching and marking as Exhibit "7" true copies of the November 1 and November 10, 2011 letters. By December 5, 2011 letter Mr. Moran raised the unregulated in-water development issues with then Minister of Municipal Affairs and Housing, Kathleen Wynne. Ms. Wynne responded by May 29, 2012 email. True copies of the December 5, 2011 letter and May 29, 2012 response are attached hereto as Exhibit "8".

Other Pleadings

- 11. In my initial affidavit, I neglected to include two further pleadings. By June 14, 2012 letter Ontario's counsel demanded particulars of my statement of claim. Their letter is attached as Exhibit "9". I responded to their demand by May 31, 2013 email, attached hereto as Exhibit "10".

SWORN BEFORE ME at the City of)
 Toronto, in the Province of Ontario,)
 this 8th day of July, 2014)
 _____)
 A Commissioner for taking affidavits, etc.)

Mawit

Barry Glaspell

 Barry Glaspell

Glaspell, Barry

From: Glaspell, Barry
Sent: Tuesday, May 24, 2011 4:00 PM
To: Glaspell, Barry; Elser, Christine; justinglaspell@yahoo.ca; lukas glaspell; l glaspell
Cc: barryglaspell@yahoo.com
Subject: Hart Dock

I spoke with Jim Sangster who is a building inspector for North Kawartha.

Regarding docks, he says they have trouble precluding size, mega docks, unless they impinge boating (Min of Transport issue) or impact fishing or wildlife (Ministry of Fisheries issue). He says the dock needs to be 15 feet clear of the lot line, so if we stand on the rock, looking as an extension of our line, then there should be 15 feet clearance. I expect he runs afoul of that as it seems to be on a diagonal towards our property. If we say something, they will go and have a look at it (the Chief Officer's family has a cottage on the lake) and will send a letter if non-compliant, that says bring it into compliance. They prefer pole footings to mesh footings but tolerate both.

He says it is entirely another matter if he seeks to build a house on the dock. In that case, all of the Ministrys will be involved and it is a big deal.

B

This is Exhibit 1 referred to in the
 affidavit of Barry Glaspell
 sworn before me, this 8th
 day of July 2011
Mauit
 A COMMISSIONER FOR TAKING AFFIDAVITS

Richard Hart

From: Tim Powell <t.powell@northkawartha.on.ca>
Sent: July-26-11 8:05 AM
To: Richard Hart
Cc: j.sangster@northkawartha.on.ca
Subject: RE: Boathouse permit requirements

Good Morning Rich

I did attend your property last Friday (July 22nd) as a result of several concerns voiced. While on site it was noted that a floating boathouse was under construction, as this is beyond the high water mark it is beyond Municipal jurisdiction. I did have a conversation with the contractor he did advise that the owner had approval from the Ministry, I suggested that if that were the case that there should be a copy of that approval on site. I as well have talked with Mitch Close at M.N.R. Bancroft and was advised that he would be attending the site as a result of a side yard issue complaint, he also advised that if there was not a contact area (cribs) of more than 140 sq. ft. then an M.N.R. Work Permit would more than likely not be required. I also requested clarification of inspections and was advised that the Ministry has nothing in place for inspections of the structure by Ministry staff.

While on site it was noted that you have a hip roof and only have collar ties going in one direction and there are no ceiling joist to tie the walls together, I would re-iterate this floating structure is beyond municipal jurisdiction. If this structure was above the high water mark we would be looking for Engineering to satisfy Building Code requirements.

Sincerely Yours

Tim Powell
Chief Building Official

From: Richard Hart [mailto:rhart@hart-well.com]
Sent: July-25-11 4:38 PM
To: Tim Powell
Subject: RE: Boathouse permit requirements

Hi Tim
We spoke last October regarding our boathouse on Big Cedar Lake and the municipal requirements. It's my understanding that there was a complaint submitted and that you have done a site inspection last week. I'm not sure where it goes from here but if you are required to do a report would it be possible for a copy to be emailed to me at this address?
Hoping everything has met with your approval.
Thanks Tim
Rich Hart

Best Regards,

Richard Hart

Hart-Well
A COMMERCIAL REAL ESTATE COMPANY

This is Exhibit 2 referred to in the
affidavit of Barry Glasgow
sworn before me, this 9th
day of July 2014
Mauw
A COMMISSIONER FOR TAKING AFFIDAVITS

195 Morningside Ave., Unit 20
Scarborough, ON M1B 4Z4
Tel: 416-287-3308
Fax: 416-287-5806
Cel: 416-820-4166
www.hart-well.com

From: Tim Powell [<mailto:t.powell@northkawartha.on.ca>]
Sent: October-08-10 8:12 AM
To: Richard Hart
Subject: RE: Boathouse permit requirements

Good Morning Richard

If the boathouse is on land maximum size is 675 sq. ft. and it must be 40 feet from a property line, if it located over the lakebed beyond the high water mark it will be M.N.R. and Ocean's and Fisheries jurisdiction.

Sincerely Yours

Tim Powell

From: Richard Hart [<mailto:rhart@hart-well.com>]
Sent: October 7, 2010 4:39 PM
To: t.powell@northkawartha.on.ca
Subject: FW: Boathouse permit requirements

Hi Tim,

We exchanged voice messages with regard to a boathouse I've been planning a month or so ago, thank you for the great information. With your recommendation I've been working with the MNR and just wanted to confirm a few of the municipality requirements that you had explained on your message. I'll write down the ones that I remember but if you wouldn't mind adding the rest or directing me to the information on line that would be appreciated.

Thanks Tim

Rich Hart

- No two story buildings
- Maximum height 15' above high water
- Must be 15' from property side lot line
- Any building supported from lake bed must be approved by MNR.
- No sleeping quarters
- No plumbing or sewage

October 24, 2011

Reeve Jim Whelan
Township of North Kawartha
P.O. Box 550, 280 Burleigh St.
Apsley, Ontario.
K0L 1A0

This is Exhibit 3 referred to in the
affidavit of Barry Glasper
sworn before me, this 8th
day of July 2014
M. Dewit
A COMMISSIONER FOR TAKING AFFIDAVITS

Leo deSorcy for the
Big Cedar Lake Stewardship Association Board

Re: Building Permits for Floating Boathouses

The Big Cedar Lake Stewards Association represents **80 of the property owners** on Big Cedar Lake. Over the past several months one of the areas of concern brought to the Executive of the Association has been the regulation or lack of regulation with respect to "floating" boathouses.

Our understanding is that the Municipality currently **believes that boathouses and other buildings that are built beyond the high water mark are beyond the jurisdiction of the municipality for both building code review and zoning review.** We also understand that if the building or dock has minimal connection to the lake bottom, that the Province (MNR) does not need to give approval to the boat house, dock or other building. This **apparent gap in jurisdictional interests has created an unacceptable situation where a "floating boathouse or residence" can be built with limited connection to the lake floor and shore and avoid the building permit and zoning review associated with all buildings in North Kawartha. Is our understanding correct?**

If we can imagine this gap in regulatory interests taken to an apocalyptic ending we might imagine the construction of large and possibly habitable boat houses in front of any lakefront property with no height limit, no setback issues, no building permit for structural or water safety. What a radical change to the public face of our lake this would produce.

The directors **of** the **Big** Cedar Lake Stewardship Association supports the current Official Plan goal:

To maintain and enhance the County's quality of life through managed orderly growth and development while considering the natural environment and watersheds as a basis for the management of future development;

We would like the North Kawartha Council to find the appropriate planning and legal advice to close this regulatory gap before there is further building of "floating" boathouses on the lakes within North Kawartha such as Big Cedar Lake.

By allowing unregulated development along the Big Cedar shore line this gap creates a mockery of municipal interests. These buildings are not truly "floating" like a boat that passes through the Trent Severn system but are permanent additions to the County and its landscape. They are constructed and serviced from the main land through municipal roads and accessed and used through legal lots.

These unregulated buildings currently do not have the benefit of zoning, structural, water and servicing review that is typically delivered through the building permit process. To what standards are these buildings constructed? What happens when they fall down from structural failure? What happens when they are on fire? Who puts out the fire? In these situations who is responsible for damaged property and human injury or death because the building was not reviewed and inspected to ensure it meet building code engineering standards?

If the building has plumbing for toilets or sinks and is built without plumbing permits, who ensures that waste water does not get into the lake? Who determines if the septic system has the capacity for a hook up? What are the long term effects of water and sewer hook ups on a floating boat house and what effect does that have on water quality for the whole lake?

The habitation of boat houses is currently not permitted in the zoning by-law primarily for the water issues outlined above. Will a string of floating habitable boat houses soon line the shores of lakes in North Kawartha? What effect will that have on our water quality?

Taxes is also a significant issue. The building permit process appropriately triggers a review of the Market Value for a property. In the case of "floating" buildings there is no building permit so adjusting the value of the property would be random. How would the municipality gain the appropriate increase in tax assessment in line with increased the value and usability of the land? Shouldn't the owner of a floating boat house be accessed and taxed equitably with others on the lake who build within the planning and permitting framework?

We are aware that other Ontario Municipalities have taken appropriate planning and legal steps to close this regulatory gap. The directors of the Big Cedar Lake Stewardship Association encourages your Council to hire the necessary planning and legal minds to close this gap as soon as possible. The necessary changes to the Official plan which triggers municipal interest in buildings over the water and changes to the Zoning By-Law to set construction standards could easily be handled over the winter to avoid further construction of buildings which do not meet the intensions of the Official Plan.

We understand a Committee of Council is already reviewing changes to the Zoning By-Law. Would this not be the perfect time and process to engage the public in this important issue. We look forward to working with this Council to ensure the closing of this gap in the regulatory framework. This will assist Council in meeting the goals of the Official plan and maintain our quality of life through respect of the lake and its shoreline.

The lack of zoning regulations to deal with in water development was appealed to the OMB by Ambrose Moran and Barry Glaspell and

mater will be heard following resolution of legal claim "or" new council settling OMB appeals and proceeding with regulating in water development as was promised by some candidates during 2014 election campaign.

The Big Cedar Lake Stewardship Association was formed in May of 2011 at which time eight of us were appointed directors. As directors, we look forward to your response to the issues outlined in this letter. We are committed to respond to our membership and their concerns and we look forward to your answers to our concerns. We will be circulating your response to our members and will be considering what actions would be appropriate after receiving your response. Our next general meeting will be in spring of 2012.

Yours truly

I understand Council never responded to this letter. Ambrose



Leo deSorcy for the
Big Cedar Lake Stewards Association Board.

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705-656-4445 Ext. 258

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705-656-1850 (Res.)

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alcouncillor@northkawartha.on.ca

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Carolyn Amyotte
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Chandos Councillor, Dan Boyd
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705-656-2222 (Res.)

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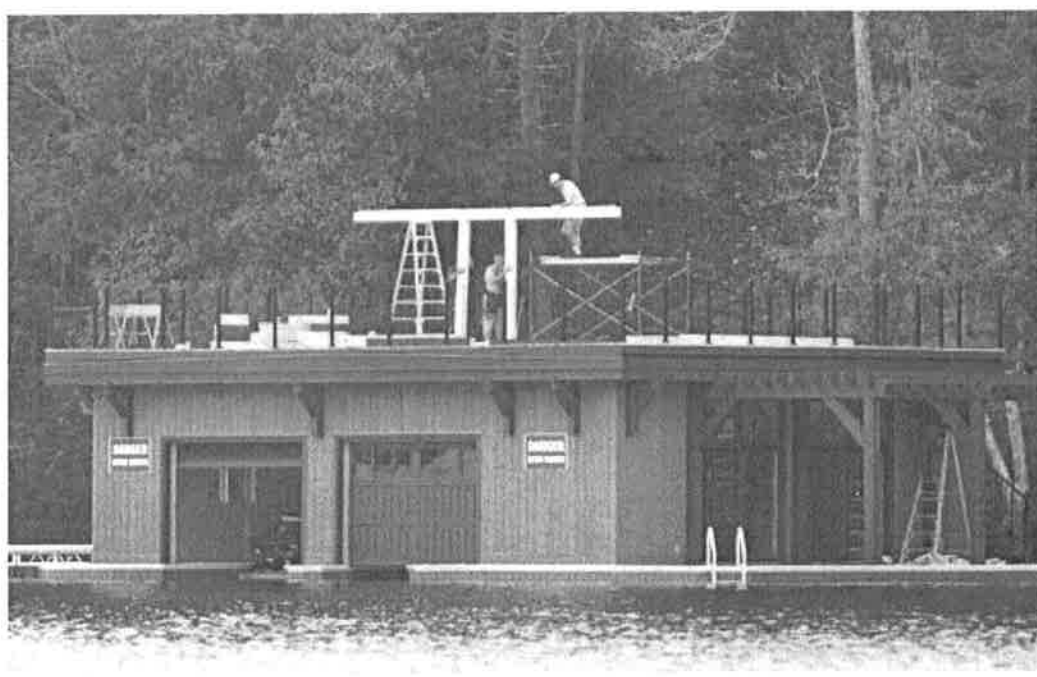
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Peterborough boathouses have neighbouring cottagers fighting mad

Two Peterborough townships allow summer homeowners to build massive boathouses. The neighbours aren't happy about it.



FRED THORNHILL / FRED THORNHILL FOR THE TORONTO S

A 2,500 sq. ft. boathouse and rooftop patio, built without a permit on Jack Lake.

By: Barbara TurnbullLife Reporter, Published on Sat May 19 2012

This is Exhibit 4 referred to in the
 affidavit of Ron Gosper
 sworn before me, this 8th
 day of July 2014
M. Duiz
 A COMMISSIONER FOR TAKING AFFIDAVITS



APSLEY, ONTARIO—Barry Glaspell and Christine Elser bought their three-bedroom wilderness dream on Big Cedar Lake in 2007, enchanted by the pristine beauty and tranquillity of the area. The realtor assured them that no boathouses or modern encumbrances were allowed on the lake, which they share with 127 other cottagers.

Their rude awakening came early last summer in the form of a 1,000-square-foot dock on their next door neighbour's waterfront, anchored by steel cables, mere metres from their property line, the first such development on the lake. Within weeks, a large boathouse — they liken it to a suburban garage — had been erected over it, with an open sitting area on the far side.

The Glaspell-Elser's dismay turned to frustration when, following repeated calls to the municipality of North Kawartha and Ministry of Natural Resources, it became clear that **neither level of government would take responsibility.**

"We were shocked," Glaspell says, in an interview at his Toronto law office, Borden Ladner Gervais, high in the Scotiabank Tower. "I'm still in shock."

Over the years, many laws and regulations have been placed on cottage-country development to protect shorelines and prevent unchecked development, with the result that Ontario cottage country is a mosaic of philosophies and rules.

The Star contacted building officials in every municipality in Muskoka, Haliburton and Peterborough. All but two have strict rules regarding docks and structures attached to the shore. In Haliburton County, boathouses and shoreline development were banned outright in the 1970s. In Muskoka, the opposite esthetic prevails: It allows strictly regulated two-storey structures on its three largest lakes and people can live on the top level. On Georgian Bay, a boathouse can't be more than 1,300 square feet.

But remarkably, in those two municipalities, both in Peterborough County, it's possible to build your own lakeside dream without a permit or permission: The townships of North Kawartha and Havelock-Belmont-Metheun claim to have no jurisdiction over the water. Municipal officials maintain that as a result of the Ministry of Natural Resource's 2004 Free Use Policy, property owners don't need permits if structures occupy less than 14 sq. metres (about 150 sq. ft.) of the lake bottom. According to one calculation, steel piles, driven into the lake bed within that acceptable area, could support a **36,000-square-foot structure.**

As a result, owners of country homes in these two municipalities with the money and inclination can build large in-water boathouses that intrude on neighbours' site lines and impose environmental and safety hazards. This isn't merely theoretical: Last fall, a covered dock, built without a permit, broke from its mooring and floated for days on Big Cedar Lake before being reined in.

Unchecked shoreline development has implications for all Ontario, indeed Canada, says Glaspell, who has launched a law suit to challenge the province and townships on the ground that they have

misinterpreted the law and, in effect, allowed private people to appropriate public space. This, he says, has public-policy implications that the courts must clarify.

"I felt that there was an important issue here that really has nothing to do with our neighbours but with the government applying the law that is already there. The issue is unregulated development on lakes and it's shocking for people who don't like uncontrolled development," he says. "If you like building boathouses on lakes, it's great."

According to Building Inspector

Tim Powell, a building official with the township, says, "We recognize it's a concern, but at the present time the jurisdiction of the municipality only goes as far as the high-water mark." He declined to comment further because he's named in Glaspell's lawsuit, along with the Ministry of Municipal Affairs and Housing, the Ministry of Natural Resources, the Municipal Property Assessment Corp. and Jane Doe, a pseudonym representing the owner of the boathouse and the owners of "every other similar structure in excess of 100 square feet installed on, over or under an Ontario lake since March 15, 2010, without any permit." (A two-year statute prevents him from going back further.)

Competing interests have made boathouses a sensitive topic on the lake. "We all want to be good neighbours," Glaspell says. "Cottages are for the long haul, right? You want to keep it for the family. This is a major policy issue for Ontario."

He wants the court to establish that municipalities and the Ministry of Natural Resources have the responsibility to regulate construction on the province's lakes. More specifically, he wants an acknowledgement that North Kawartha's bylaws apply to all in-water structures, such as boathouses, and an acknowledgement that town officials breached their duty by not informing cottagers of the laissez-faire attitude toward building them. Further, the suit calls for removal of all structures built without permits. (Were the courts to find against him, he observes, it would mean that every Ontario cottager who has gone through the inspections and permit process to build a boathouse has done so unnecessarily and may be owed a refund of permit fees.)

"The goal is that 50 or 100 years from now, Haliburton lakes still have untouched shorelines," says Patricia Martin, director of planning and development for the municipality of Dysart et al.

"That's basically why people want to come here, to look at naturalized shoreline and enjoy the water," says Scott Lucas, Gravenhurst's planner. "We will allow boathouses to be built on the shoreline, but we don't want them to be the primary focus of the waterfront. We want to keep things looking as natural as possible."

And, finally, Todd Weatherell, a Georgian Bay building official, says that limiting the size of boathouses is better for the environment and the community. "We've gone through a process that has downsized boathouses and shoreline developments. The trend is to try to preserve the shoreline and reduce structures on it."

People push the limits, of course. Many on-land boathouses have been converted to illegal guest cabins. Some cottagers violate bylaws and factor the fine they'll pay into the cost.

Stringent regulations go beyond esthetic considerations. Shorelines are fragile ecosystems, requiring buffer zones along the water's edge to remove sediment and excess nutrients, control erosion and moderate stormwater runoff. They provide habitat to species like turtles, amphibians, the loon and mink.

"A buffer has all the native shrub layers, the ground cover layer and trees and everything just as nature would have it," explains Jan McDonnell, a wildlife specialist with MNR.

Thus, all municipalities have setback requirements of 15 to 30 metres from the water for structures built on land. "That's a very important area environmentally," says Huntsville planner Chris Marshall, and most of the pressure to keep lakes clutter-free comes from lake associations, made up of longtime cottagers, he says. "There are a lot of eyes on the prize," he notes.

Which is why the boathouse free-for-all in North Kawartha and Havelock-Belmont-Metheun has sparked debate.

A couple of decades ago cottages were a financially feasible option for the average Toronto family. No longer. Today, only high-income earners can afford the cottage-country tab. In Peterborough, an Apsley-area cottage ranges from \$200,000 to \$1 million while in Muskoka, a tear-down on one of the three big lakes cost \$500,000. In Haliburton, the average cottage sold for \$350,000 last year.

Which is why there's a lot of interest in Peterborough. "People are realizing a lake is a lake is a lake," says Howard Szigeti, a Toronto entertainment producer who built his summer home on Jack Lake two years ago.

That the area is awash in money is apparent in Apsley, located in North Kawartha. All its municipal buildings are new — the administration offices, the fire hall, the library, the works department, the \$14-million community centre with its NHL-sized rink and banquet hall.

Ambrose Moran is an Apsley RE/MAX realtor who has had a cottage on Jack Lake — which is partly in North Kawartha, partly in Havelock-Belmont-Metheun — since the 1970s. He has reaped the benefits of cottage lust, earning in the six figures even in a slow year. Real estate, in his neck of the woods, "has become a sport for rich people."

Moran has been keeping an eye on local issues since the early 1990s (his website is apsleywatch.com), and is keenly interested in the unregulated boathouse issue — though his \$100,000 custom-made boat (mahogany deck with maple inlay seams, leather interior and custom hardware) sits in open water. "I'd love a boathouse, but I wouldn't do that to my neighbours," he says.

He has been on a crusade — writing letters, making calls, appearing at meetings, even complaining to the Ombudsman and Ontario Municipal Board. "We've got to put the barrier up here or we're going to destroy what we came here for, which was to get away from Muskoka-type development," he says.

On the Havelock-Belmont-Methuen part of Jack Lake, the boathouse issue has found its flashpoint on a 2,500-sq.-ft. deck and boathouse erected last year without a permit. The owner is Frank Toskan, a co-founder of M.A.C Cosmetics.

It is supported by steel piles. A bubbler system — a compressor that keeps water circulating — prevents the lake from freezing within several metres of the dock in the winter, preventing ice damage. Bubblers are unregulated in Ontario but banned in some jurisdictions because they pose environmental and safety hazards.

The flat roof on the boathouse is used as a patio — flat roofs on boathouses are banned in some areas specifically to discourage patios.

Where else in Ontario (or in the world) can you built a \$500k building on public land without a permit ?!!! 16

Property list for sale in 2014 for \$4.9 million

Reached by telephone, Toskan says he just wants to enjoy the lake with his four children but feels victimized by cottagers opposed to the development. The boathouse, he says, cost \$500,000, money that in hindsight he wish he hadn't spent on that lake.

"My understanding is that we complied with all guidelines," he says. "We're good people, with integrity."

The Toskan boathouse — the only in-water boathouse so far on Jack Lake — is the talk of Legion Hall, the hub of social life in Apsley.

"This particular boathouse and any boathouse on the water represents a blight on the landscape," says Charles Coffey, a Jack Lake cottager since 1995. "The in-water boathouse represents the first step of a Muskokaization of Jack Lake. The fact that it has been built without approval is beyond my comprehension."

The municipality issued its last boathouse permit in 2008 when, according to Linda Reed, the town's chief administrative officer, it received a verbal legal opinion that it can't issue permits for in-water boathouses on Crown land.

The municipality is currently reviewing its official plan and considering the issue of in-water boathouses, Reed says. For now, its position is that it's not the municipality's responsibility: "Water and the land under water is the responsibility of the province and is handled under the MNR."

Official :Plan and Zoning bylaw appealed to OMB for lack of in water development controls.
John Laschinger, the prominent political strategist, has been a cottager on Jack Lake since 1989. His property faces Toskan's boathouse. Another two boathouses are being built with permits on land beside his property.

He sounds defeated during a telephone interview.

"I've just been appalled at this whole exercise," he says. "We've been abandoned, we've been lied to, there is incompetence with all of the bureaucrats and politicians."

bturnbull@thestar.ca

Guardians of the lakeshore

Every level of government is involved in administering Ontario's waterways, sometimes through more than one department. Here's a capsule look at who is responsible for what:

All development — urban and rural — begins with the Ministry of Municipal Affairs and Housing, which oversees the province's Building Code and Planning Act.

Then it's up to the municipalities to create and enforce local zoning bylaws that comply with the overarching provincial legislation.

The Ministry of Natural Resources has responsibility for Crown land — which includes lakes — through the Public Lands Act.

The federal Department of Fisheries and Oceans has oversight for dock and boathouse construction, along with activities, such as dredging, that might have an impact on fish and wildlife habitat.

Finally, Transport Canada sets the rules of the road, whether on land or water.

Barbara Turnbull

May 19 2013

To: Members of North Kawartha Council and Staff

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This is Exhibit "5" referred to in the
affidavit of Barry Gaspell
sworn before me, this 8th
day of July 2014
M. D. Smith
A COMMISSIONER FOR TRADING AFFAIRS

Re: Jurisdiction to Regulate Shoreline Structures

A year ago this weekend, the Toronto Star Saturday edition featured a major news article regarding the boathouse issues in the Apsley area. The article included the background issue related to the filed legal claim regarding the position that North Kawartha (NK) Council and staff were taking that Municipalities do not have jurisdiction to regulate in water development. The Star article also identified that the municipalities of **North Kawartha and Havelock Belmont Methuen** were unique in Ontario in taking this "no jurisdiction position" resulting from in water boathouses being constructed without municipal building permits.

I attended the **Cottage Country Spring Planning Seminar** held in Haliburton on May 8th 2013 arranged by Stephen Fahner of Northern Vision Planning. Many seminar participants were anxious to hear the presentation by highly respected municipal Lawyer Harold Elston. His topics was **Shoreline Structure Jurisdiction in Ontario**.

The current legal claim By Barry Gaspell against MMAH , MNR and North Kawartha has caught the interest of the Planning and Legal Communities in Ontario. A large number of cottage country municipalities from Haliburton and Muskoka, were in attendance to get legal clarification on this important issue affecting lake development. Four Apsley area cottagers attended. No municipal township representative from either Havelock Belmont Methuen or North Kawartha attended.

I am proving a copy of the slide presentation by Harold Elston in which I have added some highlights directed to the jurisdictional issue. **Mr Elston did indicate**

in his talk that he understood that North Kawartha was apparently relying on a legal opinion to support their no jurisdiction position.

I hereby request a copy of the legal opinion which has previously been referred to by Council and Staff.

I am aware of the Council motion 11-390 on August 16 2011 in which "Council requested the Municipal Solicitor to identify any relative jurisprudence including the case in Galway-Cavendish-Harvey and ask the Solicitor to review our interpretation of Federal and Provincial jurisdiction".

I happened to be in attendance at the next NK Council meeting when in response to Motion 11-390 a staff report from the Office of the Chief Administrative Officer was present titled "Legal review regarding jurisdiction of beds of lakes and rivers."

This is not a legal opinion. It is a staff report apparently based on some input from the Municipal Solicitor which basically states the current zoning bylaw stops at the edge of the high water mark. Yes, that has often been the interpretation of NK staff and NK elected officials but the zoning bylaw does in fact regulate in water structures such as marine facilities, dock and boat ports which contradicts the township's no jurisdiction position.

What was not addressed in the staff report was whether the Municipality has jurisdiction to regulate in water development. The court case in Galway Cavendish referenced in the Council motion in fact determined that "MUNICIPALITIES HAVE THE POWER TO PASS BYLAWS TO REGULATE MATTERS ON LAND COVERED BY WATER PROVIDED THEY DO NOT PERMIT STRUCTURES WHICH WOULD INTERFERE WITH NAVIGATION". The NK staff report failed to bring this very relevant matter the attention of Council either intentionally, accidentally or for the purpose of just defending the party line. The staff report simply stated the NK zoning bylaw stops at the high water mark so the current in effect zoning bylaw does not apply to land covered by water...and beds of lakes and rivers is under the jurisdiction of neither the Provincial crown or Federal Crown.

At the seminar, Lawyer Harold Elston discussed the Galway Cavendish case and others in the contexts of the legal claim by Gaspell against North Kawartha Township and others. Mr Elston concluded his presentation with the following statement:

Many layers of legislation to consider, but there is currently no authority to suggest that municipalities cannot and should not regulate shoreline structures.

I understand North Kawartha Council intends to defend their "no jurisdiction" position in the legal claim and I also understand that the North Kawartha Lakes Association (NORKLA) representing the majority of affected tax payers has requested that council obtain another legal opinion on this matter. I fully endorse NORKLA's request and feel Council deserves the benefit of another legal opinion before authorizing further expenditure of taxpayer's money in defending a position which certainly appears to be a no winner.

Certainly in talking to many of the participants at the planning seminar, there are a lot of questions being asked as to why a municipality would spend taxpayers money trying to abdicate their responsibility and authority in land use planning. The North Kawartha "no jurisdiction" position is inconsistent with long established Municipal practices in Ontario and in direct conflict with numerous previous court ruling on this issue.



Ambrose Moran

CC list A C & D-1

This is Exhibit 6 referred to in the
 affidavit of Bruce Mighton
 sworn before me, this 8th
 day of July 2014
M. Dewitt
 A COMMISSIONER FOR TAKING AFFIDAVITS

From: Mighton, Bruce (MNR) [mailto:bruce.mighton@ontario.ca]
Sent: May-20-11 11:56 AM
To: John Laschinger
Cc: Ambrose Moran
Subject: RE: Jack Lake Boathouse

Mr. Laschinger,

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*

This means that if MNR considers an application for a development (boathouse) to be counter to municipal by-laws, MNR may refuse the application.

The Ministry of Natural Resources is also required under the *Planning Act* to have regard for municipal by-laws when making decisions on such applications. For your reference the relevant section of this act is as follows:

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. *so if twp zoning does not permit in water boathouses then MNR would not allow*

- It is generally recognized by MNR that as part of a "have regard to" obligation outlined in Sections 3 and 6 of the *Planning Act*, MNR should,
- i) consult with and consider the possible implications of MNR actions on the planning interests of municipal planning authorities, including the requirements of the official plan, zoning by-law, zoning order or other regulatory tool defined under the *Planning Act*.
 - ii) reasonably and objectively consider the comments and views of the municipality and the intent of the PPS when making a decision on a Crown activity
 - iii) incorporate recommendations or directions provided by the municipality and the PPS

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where MNR considers them reasonable and appropriate, and
iv) document reasons for not accepting a recommendation of a municipality or not adhering to the Provincial Policy Statement or the official plan process and share these with the municipality involved.

Hope this helps,

Bruce

G. BRUCE MIGHTON

Area Supervisor Bancroft-Mazinaw Area
Ontario Ministry of Natural Resources
Bancroft District
Box 500, 106 Monck Street
Bancroft, ON K0L 1C0

Tel: (613) 332-3940 ext 236
Fax: (613) 332-0608

From: John Laschinger [<mailto:JLaschinger@nsresearch.com>]
Sent: May 19, 2011 2:47 PM
To: Mighton, Bruce (MNR)
Cc: Ambrose Moran
Subject: Re: Jack Lake Boathouse

Ambrose Moran and I are finalizing a presentation to the Havelock-Belmont-Methuen council and wanted to clarify a point that you made with him regarding jurisdictional responsibilities.

If a municipality, such as HBM, were to enact a bylaw regarding boathouses in-water or an interim control bylaw freezing developments in water, would MNR / provincial government respect those bylaws?

John Laschinger

From: Mighton, Bruce (MNR) [<mailto:bruce.mighton@ontario.ca>]
Sent: December-02-11 9:25 AM
To: Ambrose Moran
Subject: RE: Permits in water development

I followed up with the MNR planner in that area and was advised that it is the practice in Muskoka that in water boathouses are constructed with Building permits under the Ontario Building Code.

Sorry for the delay with my response.

so in Muskoka boathouses are regulated and permits and INSPECTIONS take placed in accordance with the Ontario Building Code Act

Bruce

G. BRUCE MIGHTON

12/2/2011

A **Supervisor Bancroft-Mazinaw Area**
Ontario Ministry of Natural Resources
Bancroft District
Box 500, 106 Monck Street
Bancroft, ON K0L 1C0

Tel: (613) 332-3940 ext 236
Fax: (613) 332-0608

From: Ambrose Moran [mailto:ambrose@ambrosemoran.com]
Sent: November 22, 2011 7:37 PM
To: Mighton, Bruce (MNR)
Subject: RE: Permits in water development

Bruce

Appreciate your response

Still need one further clarification on Question #2 Is it the practice in Muskoka that in water boathouses are constructed with Building permits under the **Ontario Building Code**?

Ambrose Moran
4050 Crayton Rd
Naples Florida
34103
E mail Ambrose@AmbroseMoran.com
Cell phone till end Feb 239 330 0840

From: Mighton, Bruce (MNR) [mailto:bruce.mighton@ontario.ca]
Sent: November-22-11 4:16 PM
To: Ambrose Moran
Subject: RE: Permits in water development

Ambrose,

I have reviewed your questions with MNR Planners from the Bancroft office and the Parry Sound office and offer the following:

Question #1

Is there any requirement under the free use policy that a building permit be obtained by an owner or contractor to build a boathouse structure of which the foundations are supported on the bottom of lakes owed by the province of Ontario?

No. But this does not negate the owner or contractor to obtain permission, authorisation or consent that **may be required by the Municipality.**

Question #2

Is it the practice in the Muskoka area that such in water boathouses are constructed with building permits under the Ontario Building Code and inspected by the local municipality?

MNR staff in Parry Sound has indicated that such structures are **inspected at various stages of construction by the Municipality.**

Question #3

When MNR allows in-water boathouse to be built, such as recently in Jack Lake, does any government agency inspect the structure to ensure compliance with any codes or safety requirements?

Authorization was not required from the MNR, so **no inspection planned by the MNR.**

It would not be appropriate for MNR to comment on what inspections other government agencies may have completed or may conduct in the future.

If you have any questions, or require further clarification feel free to call me.

Bruce

G. BRUCE MIGHTON
Area Supervisor Bancroft-Mazinaw Area
Ontario Ministry of Natural Resources
Bancroft District
Box 500, 106 Monck Street
Bancroft, ON K0L 1C0

Tel: (613) 332-3940 ext 236
Fax: (613) 332-0608

From: Ambrose Moran [<mailto:ambrose@ambrosemoran.com>]
Sent: November 10, 2011 6:44 PM
To: Mighton, Bruce (MNR)
Subject: FW: Permits in water development

Bruce

I am being stonewalled by MMAH on getting answer to question of whether building permits are required for in

12/2/2011

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for development.

This week I received a letter from MMAH suggesting I consult with MNR on the issue which is the purpose of the attached letter.

Ambrose Moran
Direct 705 656 2000
Direct 1 888 656 2676

- Bruce- we had a brief discussions about the Peterborough Crown Game Preserve—some background info now on my web site www.ApsleyWatch.com

Ministry of
Municipal Affairs
and Housing

Building and Development Branch
777 Bay Street, 2nd Floor
Toronto ON M5G 2E5
Telephone: (416) 585-6666
Fax: (416) 585-7531
www.ontario.ca/buildingcode

Ministère des
Affaires municipales
et du Logement

Direction du bâtiment et de l'aménagement
777, rue Bay, 2^e étage
Toronto ON M5G 2E5
Téléphone : (416) 585-6666
Télécopieur : (416) 585-7531
www.ontario.ca/buildingcode



November 1, 2011

Mr. Ambrose Moran
PO Box 414
Apsley, ON K0l 1A0

Dear Mr. Moran:

Thank you for your letter of August 7, 2011 regarding your enquiry about the application of the Building Code Act, 1992 to the construction of certain in-water boathouse structures on Jack Lake.

The Ministry of Municipal Affairs and Housing (MMAH) is responsible for the administration of Ontario's Building Code Act, 1992 and the Building Code. The Building Code Act, 1992 governs the construction, renovation, demolition and the change of use of buildings. The Building Code is a regulation under the Act, and sets out technical and administrative requirements.

However, the Building Code Act, 1992 provides that **the council of each municipality is responsible for the enforcement of that Act in the municipality.** As your question relates to the enforcement of the Building Code Act, 1992 in two municipalities (the Township of North Kawartha and the Township of Havelock-Belmont-Methuen), I would encourage you to consult further with these municipalities about the concerns expressed in your letter. **Both municipalities claim they have "no jurisdiction" despite several court decisions indicating the opposite**

You may also wish to consult a solicitor who can provide you with legal advice concerning the application of the Building Code Act, 1992 in particular circumstances.

In your letter you referred to the potential application of the Public Lands Act to the construction of in-water structures. As the Public Lands Act is administered by the Ministry of Natural Resources, you may wish to direct any inquiries respecting that Act to the Ministry of Natural Resources

This is Exhibit 7 referred to in the
affidavit of Berry GIGER
sworn before me, this 8th
day of July 2011
M. G. GIGER
A COMMISSIONER FOR TAKING AFFIDAVITS

If you have any further questions related to the *Building Code Act, 1992* or the Building Code, I would encourage you to contact John Gryffyn, Acting Manager in the MMAH's Building and Development Branch. He can be reached at (416) 585-7123 or by email at john.gryffyn@ontario.ca.

Once again, thank you for bringing your enquiry to my attention. Please accept my best wishes.

Sincerely,



Alek Antoniuk, Manager, Code Development Unit
Building and Development Branch

AA/gc



Ministry of
Municipal Affairs
and Housing

Building and Development Branch
777 Bay St., 2nd Floor
Toronto ON M5G 2E5
Telephone: (416)585-7174
Fax: (416)585-7531
www.ontario.ca/buildingcode

Ministère des
Affaires municipales
et du Logement

Direction du bâtiment et de l'aménagement
777, rue Bay, 2^{ième} étage
Toronto ON M5G 2E5
Téléphone: (416)585-7174
Télécopieur: (416)585-7531
www.ontario.ca/buildingcode

November 10, 2011

Mr. Barry Glaspell
4100-40 King Street West
Toronto, ON M5H 3Y4

Dear Mr. Glaspell:

Thank you for your letter of September 8, 2011 regarding your enquiry about the application of the Building Code Act, 1992 to the construction of certain in-water boathouse structures on Jack Lake.

The Ministry of Municipal Affairs and Housing (MMAH) is responsible for the administration of Ontario's Building Code Act, 1992 and the Building Code. The Building Code Act, 1992 governs the construction, renovation, demolition and the change of use of buildings. The Building Code is a regulation under the Act, and sets out technical and administrative requirements.

However, the Building Code Act, 1992 provides that the council of each municipality is responsible for the enforcement of that Act in the municipality. As your question relates to the enforcement of the Building Code Act, 1992 in the Township of North Kawartha, I would encourage you to consult further with this municipality about the concerns expressed in your letter.

You may also wish to consult a solicitor who can provide you with legal advice concerning the application of the Building Code Act, 1992 in particular circumstances.

If you have any further questions related to the *Building Code Act, 1992* or the Building Code, I would encourage you to contact John Gryffyn, Acting Manager in the MMAH's Building and Development Branch. He can be reached at (416) 585-7123 or by email at john.gryffyn@ontario.ca.

Once again, thank you for bringing your enquiry to my attention. Please accept my best wishes.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alek Antoniuk'. The signature is fluid and cursive, with the first name 'Alek' and last name 'Antoniuk' clearly distinguishable.

Alek Antoniuk, Manager, Code Development Unit
Building and Development Branch

AA/gc

December 5 2011

Hon Kathleen Wynne
Minister of Municipal Affairs and Housing
17th Floor
777 Bay Street
Toronto Ontario M5G 2E5

Madam Minister

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This is Exhibit "8" referred to in the
affidavit of Ben Glespel
sworn before me, this 8th
day of July 2011
M. J. [Signature]
A COMMISSIONER FOR TRADING AFFAIRS

Re-Building Permits for In-water development

Background

Since April 2010 I have been attempting to get an answer to the following question:

For boathouse structures, one and two storey being built in water supported and occupying provincial lands on Jack Lake within North Kawartha or Havelock Belmont Methuen Townships, are building permits required under the Ontario Building Code?

In April 2011 I stated with a telephone call to Mr James Ross of your Building Code Branch which concluded with an understanding that I should write a letter requesting clarification on this issue which would be taken up with the Ministries legal department for a response. This letter of April 27 (Attachment #1) has never been acknowledged nor responded to. Associates of mine who have also been pushing for an answer to the above question have discussed my letter with James Ross who advised that the legal department took a position that my letter should not be answered. I was told that the government would not be anxious to deal with such a sensitive subject during an election year.

I wrote then Minister Rick Bartolucci on August 7 2011 (copy attached #2) again asking the above QUESTION. I understand from follow up discussions with James Ross that he prepared a response for the Ministers signature. I made persistent and numerous follow up telephone calls to James Ross, to the Ministers office and to the Ministers correspondence unit. Despite a litany of reason why the response was delayed, I was assured on several occasions that the Ministers response would soon be mailed to me. I never did receive a response from Minister Bartolucci.

Yes, there has been an election and now that you are the Minister; I am bringing this QUESTION to your attention.

I assumed that you would have been briefed on outstanding issues within the Ministers office which had not been dealt with based on the interruption of correspondence issues during the election campaign. Possibly you have been briefed on this issue and determined the matter was not significant and directed your Ministry staff to respond to me...or possibly you are not yet aware of this important issue/question which left unanswered leave certain lakes in the North Peterborough County area exposed to unregulated in water development.

Recent Activity

I did receive a letter on Nov 9th from staff member of the Code Development Unit Alex Antoniuk dated November 1 which did not answer the question but directed me to several other sources for answer (my Fax Response dated Nov 10 Attachment #3)

I have directed the Question to those sources and at this point

- received responses from MNR which confirmed that in Muskoka area Building permits under the Ontario Building Code are obtained for in water development (boathouses).
- Received response from MMAH legal department stating they only give legal advice to government hiding behind some requirements of the Law Society

Going Forwarded

I and many others are waiting for clarification on this important issue affecting Northern Peterborough County.

I feel strongly that this question should ANSWERED by the Minister of Municipal Affairs and Housing and hereby request the ANSWER. This is not a complicated question and answer is either YES or NO

If YES the local municipalities will have the guidance they deserve and need. If No we have a huge issue of Planning credibility which needs to be address on an urgent basis to protect our lake environments from unregulated development.

Ambrose Moran

PO Box 414

Apsley Ontario

K0L1A0

E mail Ambrose@AmbroseMoran.com

Personal web site www.ApsleyWatch.com

Phone # till March 2012 239 330 0804- Naples Florida

cc Charlie Coffey & John Lashinger

Terry Reese-FOCA

Distribution list A & D

Attachment #1

April 28- 2011

Ministry of Municipal Affairs and Housing

Attention

James Ross-Coordinator, Policy and Legislation

Dear James

Re: Requirement for Building Permits for Structure Built over Lake Beds In Ontario

This is a request to clarify the legal requirement for contractors to obtain and municipalities to require that building permits are or are not required for the construction of structures such as either one or two storey boathouses located "in water" on Lakes in Ontario.

BACKGROUND

I have noticed on MMAH web site the follow wording:

- Ontario Building Code helps builders and developers do their jobs and helps keep Ontarians safe...
- Ministry of Municipal Affairs and Housing is responsible for administering the Building Code
- Municipalities, conservation authorities are obligated to enforce the provisions of the Code in their communities
- Builders have a role in ensuring that all buildings are constructed in compliance with the Code's requirements

My Situation

I reside on Jack Lake which is located within two municipal jurisdictions being North Kawartha and Havelock Belmont Methuen. As an area Real Estate Broker with active interest in waterfront development issues, it is important to me to be knowledgeable about jurisdictional issues affecting my client's considerations in both buying and selling waterfront properties.

North Kawartha Twp

I understand from discussion with the building department that boathouses being built on Stoney Lake located within North Kawartha are constructed without any building permit under the OBC and the municipal building department takes the position that such structures located on the waterbeds beyond

the high watermark are outside municipal jurisdiction. In my opinion this is wrong and sense the township is relying advice from their solicitor which I disagree with. In 1996 I appealed a proposed comprehensive zoning bylaw for various reasons including the fact the township refused to zone the lakes. That appeal was settled following an OMB pre hearing conference with certain significant concessions to satisfy my concerns but the jurisdictional issue related to zoning water bodies was not resolved at that time.

Stony Lake is within the jurisdiction of the Trent Severn Waterway (FEDERAL) and since the boundary of the Otonabee Region Conservation Authority is uniquely in Ontario based on a political boundary up the middle of Stony Lake .. there is no conservation authority jurisdiction on Stony lake within North Kawartha. Boathouses being built on Stony Lake are supported on the bottom of the lake owned by the federal government.

Question one

For boathouse structures one and two storey being built in water supported by and occupying federal lands on Stony Lake with North Kawartha Township –is a building permit required under the Ontario Building Code?

Havelock Belmont Methuen Township

For some time I have been in discussions/debate with the Council on the matter of jurisdiction relative to permitting boathouses to be built in water beyond the high water mark. Certain lakes within this township are under the jurisdiction of the Crowe Valley Conservation Authority. Jack Lake is not under jurisdiction of any Conservation Authority.

In April 2009 the council had a statutory public meeting under the Planning Act related to proposed bylaw dealing with various waterfront zoning provisions. At that time a made a written and verbal submission including a request that the township zone the lakes to regulate structure being built supported on the bottom of lakes owned by the Province of Ontario. This mater of jurisdiction to zone lakes was debated at that public meeting between myself and the council and their planner. Council supported by their planner took the position that the municipality did not have jurisdiction to zone the lakes and in fact shockingly included in their proposed bylaw the following:

Boathouses or boat ports or any potion thereof, which are located over reclaimed lands or known lake/river beds, are considered to be beyond the jurisdiction of the Township; and therefore are not the subject of municipal regulations nor the issuance of a building permit.

The council subsequently did pass a bylaw containing this provision which I appealed to the OMB. The Council decided not to defend the bylaw and repealed it denying me the opportunity to challenge

whether the Township in fact has the authority to zone lakes and whether in fact a building permit is required under the Ontario Building Code.

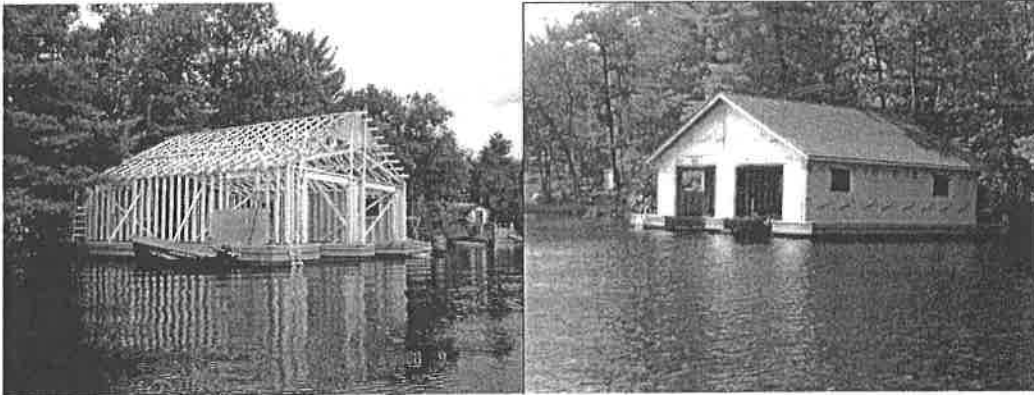
Question Two

For boathouse structures, one and two storey being built in water supported and occupying provincial lands on Jack Lake within North Kawartha Township, is a building permit required under the Ontario Building Code?

I am including some pics of a boathouse built in 2008 on Kassahbog Lake in Havelock Belmont Methuen Township without a permit based on Municipal council and staffs position that no building permit is required beyond the high water mark.

Ambrose Moran

As an individual and not representing any group



Attachment #2

Aug 7 2011

Rick Bartolucci MPP

Minister of Municipal Affairs and Housing

17th Floor 777 Bay Street

Toronto Ontario M5G 2E5

**Re: Ontario Building Code Permit Requirements for In Water
Development/Boathouses**

UNBELIEVABLE is the response when I explain the following to cottagers.

Last week, on Jack lake, within Havelock Belmont Methuen Township in Peterborough County, construction commenced on a very large in water boat house structure. This construction work is proceeding without any permit from the Federal Government, provincial Government or the Municipality of Havelock Belmont Methuen. As you can appreciate there is a lot of "HOW COME" questions being asked as anxiety levels are being raised with recognition that our area lakes are exposed to and threatened by UNREGULATED in water development.

The province of Ontario in keeping with the Provincial Policy Statement objectives to protect water quality of lakes has pressured area municipalities through the County Official Plan policies to restrict development within 30 meters of the high water. Your Ministry has approved the County of Peterborough Official Plan imposing the 30 meter set back requirement which is now entrenched in local zoning bylaws.

Despite this provincial initiative to protect water in area lakes, waterfront land owners in this area appear to be permitted to construct large in water structures out in the lakes WITHOUT ANY PERMITS. My assessment of this issue is based on four factors

1. Understaffed Fisheries and Oceans organization responsible for administration of the Fisheries Act
2. Loophole in the free use policy under Provincial Public Lands Act administered by Ministry of Natural Resources
3. Claims by the Municipality of Havelock Belmont Methuen that they as a municipality do not have jurisdiction to regulate in water development through the Planning Act zoning.
4. Claims by the Municipality of Havelock Belmont Methuen that structures built on the bottom of lakes owned by the Crown (province of Ontario) are beyond the scope of the Ontario Building Code. The following is from an e mail received through the Chief Building office for Havelock Belmont Methuen July 14 2011

The following message is sent on behalf of Travis Toms, Chief Building Official, Township of Havelock-Belmont-Methuen:

The following will respond to your question, "Are building permits required under the Ontario Building Code for large in water boat houses being built with foundations supported on bottom of lakes which are owned by the Province of Ontario?":

It is the position of the municipality that any structure being built with foundation supported solely on bottom of lakes which are owned by the Crown is beyond the scope of the Building Code Act and, therefore, no building permit or building inspection will be carried out. By adopting such a position, the municipality recognizes that the issue of building structures situated in the water which are not attached to the land is Federal jurisdiction and, therefore, beyond the scope of the Building Code Act being Provincial legislation.

Factors 1 and 2 will be further dealt with by me and others through Federal Fisheries Department and Provincial Minister of Natural Resources

Factors 3, I will continue to deal with the misunderstanding the Township has regarding their authority to zone in water development.

Factor 4 is the purpose of this letter.

So far this is what I have done in an attempt to clarify the issue

April 28 2011ⁱ

I wrote your Policy and Legislation group asking two specific questions on the requirement for building permits. Despite several follow up discussions with your staff, no response has been received. I understand these questions were discussed with your ministry legal resources and they were not prepared to provide a response. This is a crucial aspect for protecting the water quality of our lakes and implementing official plan policies in both the upper tier and lower tier official plans. An answer is required.

June 29 2011-ⁱⁱ

I completed a "Ask the Building Code or Building Code Act Question" on your ministries web site. I did receive two phone calls back from your staff and was told it was "at the discretion of the townships" whether they required a building permit for in water structures. I asked to have this confirmed in writing but did not receive.

July 5 2011ⁱⁱⁱ

I e mailed the Ontario Building Code group asking for confirmation that the requirement for a building permit for in water boathouse was up to municipalities

July 6 2011^{iv}

Received e mail from your Building Code branch indicating municipalities have jurisdiction for enforcing the Act (OBC) and should contact appropriate building official

July 7 2011^v

I e mailed Building inspector in North Kawartha and Havelock Belmont Methuen Townships asking "are building permits required for in water boat house supported on bottom of lakes owned by Province of Ontario"

July 8 2011 ^{vi}

North Kawartha Chief Building official responded by saying "municipalities jurisdiction is only to high water mark and jurisdiction over lakebeds would have to be dealt with by the Province at Ministerial level."

July 14 2011 ^{vii}

Havelock Belmont Methuen twp responded saying "structures being built on the bottom of lakes which are owned by the Crown is beyond the scope of the Building Code Act, there for no building permit or building inspection will be carried out.....land is Federal jurisdiction and therefore beyond the scope of the Building Code Act being Provincial legislation."

So

Obviously local municipalities in Apsley area under the impression and or misunderstanding that building permits are not required under the Ontario Building code

So

Our lakes are exposed to unregulated development

With foregoing background, I and others need an answer to the following question

For boathouse structures, one and two storey being built in water supported and occupying provincial lands on Jack Lake within North

Kawartha or Havelock Belmont Methuen Townships, are building permits required under the Ontario Building Code?

I would appreciate an answer as soon as possible and before August 26th in order that I have the information for a meeting of area cottager associations.

No response ever received from Minister

Ambrose Moran BA

PO Box 414 Apsley Ontario

K0L1A0

Cc list A & D

Attachment #3

Date: Nov 10 2011

To: Ministry of Municipal Affairs and Housing

Attention **Alex Antoiuk** via fax # 416 585 7531

Re: In water Development Permit Requirements

I received your letter dated Nov 1 2001 responding to my letter dated Aug 7 2001 addressed to **previously your previous Minister**. I had been given several assurances that a response to my letter was awaiting the Ministers signature prior to the election call and during the campaign but **no response was received from the previous Minister or current Minister**.

The question I raised

For boathouse structures, one and two storey being built in water supported on and occupying provincial lands on Jack Lake within North Kawartha or Havelock Belmont Methuen Townships, are building permits required under the Ontario Building Code?

needs to be answered--- not based on different interpretation by various local building officials but rather as a serious matter which needs consistent provincial application as it affect the enjoyment of lakes by thousands of cottagers throughout Ontario. After all, we do have a PROVINCIAL BUILDING CODE so it is contradictory to take position that each municipality has authority to decide whether the Ontario Building applies within their community.

When I hear of third world countries suffering from devastating earth quakes and subsequently media reports stating many building collapse based on lack of building code enforcement, it seems that we are falling into that same risk by allowing major structure to be built in Ontario without permits and associated inspections. People I explain this issue to, are shocked that in this part of Ontario, such a situation is tolerated... in Muskoka this does not happen!!

This intolerable situation is caused simply because the Provincial Ministry responsible for the ADMINISTRATION of the building code will not clarify the simple matter as to whether the Ontario Building applies to major in water structure being built on property owned by the Province of Ontario despite the same Ministry claiming on their web page that the Ontario Building code helps keep Ontarians safe and the Code applies to all structure over 100 sq ft in size

Your letter did nothing to answer the question which I submitted or clarify the situation but directed me to others for answers which I have complied with your suggestion despite intending to ultimately have your Minister provide the answer to the subject question.

The following is an update related to those you suggest I contact

- A) To the two affected Municipalities – I have written them both today asking that they answer the same question I ask your Minister
- B) To a solicitor – I have written yesterday and today to a solicitor in your Ministry who should be able to answer the question and to the solicitor of the two municipalities--- asking that they answer the same question I ask your Minister
- C) To MNR asking questions of their requirements for a building permit relative to their free use policy
- D) To John Gryffyn- e mails yesterday and today

Ambrose Moran

PO Box 414

Apsley K0L

1A0

-
- ⁱ Letter From Ambrose Moran to MMAH James Ross April 28 2011
 - ⁱⁱ Ask Building Code or Building Code Act question by Ambrose Moran June 29 2011
 - ⁱⁱⁱ E mail to codeinfo from Ambrose Moran July 5 2011
 - ^{iv} Email from John Griffyn to Ambrose Moran July 6 2011
 - ^v E mail to North Kawartha Building Inspector from Ambrose Moran July 7
 - ^{vi} E mail North Kawartha Building Inspector to Ambrose Moran July 9
 - ^{vii} E mail from Havelock Belmont Methuen for Building inspector to Ambrose Moran July 14

From: Minister (MAH) [mailto:minister.mah@ontario.ca]

Sent: May-29-12 8:50 AM

To: ambrose@ambrosemoran.com

Subject: Minister Wynne's response re: your enquiry about the application of the Building Code Act, 1992, to the construction of certain in-water boathouse structures on Jack Lake - FILE 55651

44

11-55651

May 29, 2012

Mr. Ambrose Moran

ambrose@ambrosemoran.com

Dear Mr. Moran:

Thank you for your enquiry about the application of the *Building Code Act, 1992*, to the construction of certain in-water boathouse structures on Jack Lake.

I understand that the issue of regulating in-water boathouses, and in particular the application of the act to the construction of boathouses, is currently before the Courts. Therefore, it would not be appropriate of me to comment on this matter.

I understand that through discussion with ministry staff you have been told that each municipal council is responsible for enforcing the act. As your question relates to the enforcement of the act in the Township of North Kawartha and the Township of Havelock-Belmont-Methuen, I would encourage you to consult further with those municipalities about the concerns expressed in your letter.

Once again, thank you for bringing this matter to my attention. Please accept my best wishes.

Sincerely,

Kathleen Wynne
Minister

Ministry of the
Attorney General

Crown Law Office
Civil Law

720 Bay Street, 8th Floor
Toronto ON M7A 2S9

Ananthan Sinnadurai
Tel/Tél: 416-326-4576
Fax/Télé: 416-326-4181
Ananthan.Sinnadurai@Ontario.ca

Ministère du
Procureur général

Bureau des avocats
de la Couronne Droit civil

720 rue Bay, 8^e étage
Toronto ON M7A 2S9

File No.: 43816



Ontario

VIA EMAIL

June 14, 2012

Barry Glaspell
163 Howland Avenue
Toronto, ON M5R 3B7
bglaspell@blg.com

Dear Mr. Glaspell:

Re: Glaspell v. HMQ et al, Court File No. CV-12-448912

Thank you for your letter of June 5, 2012. We require additional particulars about certain aspects of your claim. Please find the Demand for Particulars of Her Majesty the Queen in right of Ontario and Bruce Mighton enclosed, served upon you pursuant to the Rules.

Once we are in receipt of your response we will provide you with either a defence or a notice of motion within a reasonable time.

Yours truly,

Ananthan Sinnadurai,
Counsel

att.

- c. John Ewart, counsel to Tim Powell and the Corporation of the Township of North Kawartha
- Karey Lunau, counsel to MPAC

This is Exhibit 9 referred to in the
 affidavit of Barry Glaspell
 sworn before me, this 8th
 day of July 2012

 A COMMISSIONER FOR TAKING AFFIDAVITS

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BARRY GLASPELL

Plaintiff

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY
THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING, HER MAJESTY
THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER
OF NATURAL RESOURCES, G. BRUCE MIGHTON, MUNICIPAL PROPERTY
ASSESSMENT CORPORATION, THE CORPORATION OF THE TOWNSHIP OF
NORTH KAWARTHA, TIM POWELL and JANE DOE**

Defendants

**DEMAND FOR PARTICULARS
(Pursuant to Rule 25.10)**

June 14, 2012

MINISTRY OF THE ATTORNEY GENERAL
Crown Law Office (Civil)
720 Bay Street, 8th Floor
Toronto, Ontario M7A 2S9
Fax: 416-326-4181

William J. Manuel, LSUC No. 164461
Tel: (416) 326-9855
bill.manuel@ontario.ca

Ananthan Sinnadurai, LSUC No. 60614G
Tel.: (416) 326-4576
ananthan.sinnadurai@ontario.ca

Counsel for the Defendants,
Her Majesty the Queen in right of Ontario
and Bruce Mighton

TO: **Barry Glaspell**
163 Howland Avenue
Toronto, ON M5R 3B7
bglaspell@blg.com

Plaintiff in person

AND TO: **CONWAY DAVIS GRYSKI LLP**
130 Adelaide Street West, Suite 601
Toronto, ON M5H 3P5

Karey Lunau
Tel. 416-214-2882
Fax: 416-215-9915
lunau@cdglaw.net

Counsel for the Municipal Property Assessment Corporation

AND TO: **EWART O'DWYER LLP**
103-311 George St N
Peterborough ON K9J 3H3

John Ewart
705 874 0404 Ext. 226
705 874 1165
jewart@ewartodwyer.com

Counsel for The Corporation of the
Township of North Kawartha and Tim Powell

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BARRY GLASPELL

Plaintiff

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY
THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING, HER MAJESTY
THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER
OF NATURAL RESOURCES, G. BRUCE MIGHTON, MUNICIPAL PROPERTY
ASSESSMENT CORPORATION, THE CORPORATION OF THE TOWNSHIP OF
NORTH KAWARTHA, TIM POWELL and JANE DOE**

Defendants

**DEMAND FOR PARTICULARS
(Pursuant to Rule 25.10)**

The defendants Her Majesty the Queen in right of Ontario and Bruce Mighton demand the following particulars of the following allegations made in the Statement of Claim in this proceeding:

1. **Paragraph 1(a) and (b):** the provisions of the *Building Code Act*, the *Planning Act* and their respective regulations relied upon.
2. **Paragraph 1 (m):** the regulations and sections thereof of the *Public Lands Act* relied upon.
3. **Paragraph 1 (n):** the provisions of the *Public Lands Act* and regulations relied upon.
4. **Paragraphs 1 (o) and (r):** the provisions of the *Public Lands Act*, the *Building Code Act*, the *Municipal Act*, the *Planning Act*, and applicable enactments thereunder relied upon.
5. **Paragraph 4:** the regulations of the *Public Lands Act* relied upon.

6. **Paragraph 15:** the owner of the lakebed of the subject water lot.
7. **Paragraph 31:** the municipal, Ontario and federal laws relied upon and the particular provisions of any statute or regulation relied upon.
8. **Paragraph 53:** the regulations and provisions thereof under the *Public Lands Act* relied upon.
9. **Paragraph 57:** the municipal and provincial laws relied upon.
10. **Paragraph 58:** the statute and or regulation thereunder and provisions thereof relied upon in this paragraph.
11. **Paragraph 59:** the municipal, provincial and federal laws relied upon.
12. **Paragraph 60:** the provisions of the Ontario Building Code relied upon.

June 14, 2012

MINISTRY OF THE ATTORNEY GENERAL

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720 Bay Street, 8th Floor
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Counsel for the Defendants,
Her Majesty the Queen in right of Ontario
and Bruce Mighton

TO: **Barry Glaspell**
163 Howland Avenue
Toronto, ON M5R 3B7
bglaspell@blg.com

Plaintiff in person

AND TO: CONWAY DAVIS GRYSKI LLP
130 Adelaide Street West, Suite 601
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Karey Lunau
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Counsel for the Municipal Property Assessment Corporation

AND TO: EWART O'DWYER LLP
103-311 George St N
Peterborough ON K9J 3H3

John Ewart
705 874 0404 Ext. 226
705 874 1165
jewart@ewartodwyer.com

Counsel for The Corporation of the
Township of North Kawartha and Tim Powell

BARRY GLASPELL

v.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF NATURAL RESOURCES, G. BRUCE MIGHTON, MUNICIPAL PROPERTY ASSESSMENT CORPORATION, THE CORPORATION OF THE TOWNSHIP OF NORTH KAWARTHA, TIM POWELL and JANE DOE

Plaintiff

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Toronto)**

DEMAND FOR PARTICULARS

ATTORNEY GENERAL FOR ONTARIO
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Fax: 416-326-4181

William J. Manuel
Tel: 416-326-9855

Ananthan Sinnadurai
Tel: 416-326-4576
ananthan.sinnadurai@ontario.ca

Counsel for the Defendants,
Her Majesty the Queen in right of Ontario
and Bruce Mighton

This is Exhibit 10 referred to in the
affidavit of Barry Glaspell
sworn before me, this 8th
day of July 2014

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Glaspell, Barry

From: Glaspell, Barry
Sent: May-31-13 2:23 PM
To: Dada, Fatema (JUS)
Cc: jewart@ewartodwyer.com; Sinnadurai, Ananthan (JUS); s.hunter@northkawartha.on.ca; lunau@cdglaw.net; bill.manuel@ontario.ca; j.whelan@nothkawartha.on.ca
Subject: Un-Permitted Construction on Big Cedar Lake: Glaspell v. HMQ et al (CV-12-448912)

Hi Friends,

I am concerned about delay in this case getting dealt with; by the Ontario government's inaction on an important issue; and by the absurd position of North Kawartha ("NK") saying they have no jurisdiction below high water mark – NK is perfectly capable of collecting thousands of dollars in taxes every year from us when the only areas relevant, the reason we live on NK lakes, is the areas we are talking about. And NK does indeed regulate, and has the power to regulate, in water construction. So:

1. I am asking Minister's counsel to have their defence to me by June 10, 2013 please, latest.
2. I am moving for partial summary judgment on the main points of declaratory relief in the claim.
3. I am preparing summary judgment materials and will be delivering them next week.
4. I will be booking 1 day for hearing of my motion. I will be in contact with you once I deliver my notice and affidavit as we will have to get a date from Justice Low's court.
5. If MPAC intends to still move to strike the claim, its motion may be heard at the same time – likely in early 2014.
6. Please be on notice some of the issues in my claim are also now tangentially before the OMB as a result of my appeal from the NK comprehensive zoning by-law.
7. The Minister's demand for particulars (asking me, the ratepayer to tell Her Majesty what laws apply on Ontario's lakes!!!) was an obvious stall tactic, but here is my response -- you will get more detail in my affidavit next week - - to your June 14, 2012 letter:

1. I rely on all sections of the *Building Code Act* and *Planning Act* and regulations promulgated thereunder. **When a house is built on water, it needs to comply with those statutes just as when built on land.** The free use policy, in that it purports to permit non-compliance, is *ultra vires* Ontario and contrary to the statutes you mention in your letter.
2. Same as 1. I rely on all provisions of the *Public Lands Act* and I will be seeking summary declarations interpreting those provisions. If I am wrong, better to know now.
3. Same as 2.
4. All of them, same as above.
5. All of them, same as above.
6. I don't understand your para. reference (I think it is in error), but in any event, the lake's bed is owned by all of us - Ontario. Ontario owns bed from center of the lake to the shore low water mark. We own down to low water mark. High water mark, simply, plays no role.
7. Is a general request entirely in your knowledge. **You should know what laws apply on Ontario lakes.** I am not willing to narrow the scope of my pleading at this time.
8. All of them.
9. All of them relevant to building on lakes and possessing water areas on lakes in Ontario.
10. All of them.
11. All of them.
12. All of them.

That completes my response to your demand for particulars. Ontario, please defend or move by June 10. I am moving. We can have our motions heard together. I will be instructing counsel to argue the motion, which in practical terms, **will be on behalf of all residents of Ontario. I have been pleasantly surprised, buoyed, by public support for the views as pleaded.**

Have a nice weekend.

Barry

416-367-6104

Barry L. Glaspell

BARRY GLASPELL

- and -

**THE CORPORATION OF THE TOWNSHIP OF
NORTH KAWARTHA et al.**

Plaintiff

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT TORONTO**

**SUPPLEMENTARY AFFIDAVIT OF BARRY
GLASPELL**

Barry Glaspell
163 Howland Ave.
Toronto, Ontario
M5R 3B7

Tel: 416-367-6104
Fax: 416-361-7051

Court File No. CV-12-448912

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

BARRY GLASPELL

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY
THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING, HER MAJESTY
THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE
MINISTER OF NATURAL RESOURCES, G. BRUCE MIGHTON, MUNICIPAL
PROPERTY ASSESSMENT CORPORATION, THE CORPORATION OF THE
TOWNSHIP OF NORTH KAWARTHA, TIM POWELL and JANE DOE

Defendants

UNDERTAKING ANSWERS OF THE CROWN

No.	Q.#	Question	Answers – provided [DATE]
1	28	To see if we find a picture of the U-shaped dock and how Mr. Harris got the picture (the Plaintiff then adds after our undertaking: “And whether somebody made a complaint of the U-shaped dock, correspondence on the U-shaped dock”)	No pictures of a U shaped dock No complaints received about a U shaped Dock No correspondence on a U shaped doc
2	46	To produce all e-mails between Mr. Harris or Mr. Mighton or MNR and Mr. Hart or Mr. Bolton regarding the boathouse	See attached Schedule “A” found subsequent to the examination.
3	61	To check the file and see if there was any measurement of the dock or the boathouse done on the site visit.	Mitch states he did not measure
4	119	To see what other photos Mr. Harris and Mr. Close took during the site visit.	No other photos found
5	123	Review file and produce photos in file of dock/boathouse	All photos have been produced

6	129	To ask Mr. Close if he took notes during the site visit and if yes, to produce the notes	Mitch could not find any written notes
7	139	To produce the summary that Mr. Harris and or Mr. Close wrote to Mr. Mighton regarding the visit and to produce the summary that Mr. Close wrote in 2012 regarding how the structure complies with the Free Use Policy	Litigation privileged - prepared for purposes of litigation
8	145	Any email or note re a telephone call with Tim Powell	No recollection of any conversations with Powell, No documents/ emails with Powell found
9	209	Review MNR file and produce all communications/emails since 2009 with Hart from the file, whether it's a telephone call or email or memo to file.	See attached Schedule "A"
10	243	To ask MNR whether the boathouse has been assessed by MPAC. Alternatively, if it's never going to be assessed, then the Plaintiff would like to know that as well.	The Boathouse does not require tenure from MNR. Only lands under tenure or to be sold are sent to MPAC
11	247	Is it the Ministry's position that the boathouse is a chattel or real property?	The boathouse is attached to the private upland parcel and is therefore considered to be real property
12	279	To ask Mr. Mighton regarding his letter to the Plaintiff: whether there's anything in this letter that he disagrees with or that this is not the position at the MNR.	This is the Ministry's position.
13	288	The Public Land Act regulation was amended January 1, 2014. In the section re 15 square meters the word "of" is changed to "on". Provide client's position on significance if any of the change, as applied to this case	Not a significant change to the regulation language.
14		"I'm asking for your client's answer on that as well and, in particular, <u>can MNR at any point come and tell...assuming Mr. Hart owns it [to get the boathouse out of there]</u> . I don't know that. But assuming he owns it, tell him to get that out of there?"	The Free Use Policy identifies certain improvements on public land which do not require land use occupational authority, permission or the payment of a fee under the <i>PLA</i> or the regulations made thereunder.

		i.e Can MNR at any point, tell the boathouse owner to remove the boathouse?	Provided the improvement complies with this policy no formal authorization is required. The Free Use policy also states that it is a privilege to occupy Crown land, which maybe be controlled to a greater or lesser extent, from place to place, and from time to time, depending on what is perceived by the Area Supervisor to be in the broad public interest.
15	312	To confirm if it is correct that if a municipality did want to regulate this boathouse, MNR would have no problem with that as may have been stated in Mr. Mighton's letter and a December 2, 2011 e-mail from Mr. Mighton and a November 22, 2011 e-mail from Mr. Mighton.	There is no evidence that the Municipality did regulate this
16	328	To check whether it is MNR's position that it is for the municipalities to deal with a situation in which everyone on the lake builds a boathouse and dock.	See 18/19
17	330	To confirm whether MNR has any problem with North Kawartha enacting and enforcing bylaws governing permitted use on land covered by water within its geographic jurisdiction on Big Cedar Lake.	See 18/19
18	336	To confirm if it is our position that the <i>Planning Act</i> applies on Ontario lakes generally, Big Cedar Lake in particular, there being no federal jurisdiction issue in Big Cedar Lake.	The <i>Planning Act</i> generally applies throughout Ontario. However, the enactment of zoning by-laws governing land use is at the discretion of each respective municipality. A municipality may in some circumstances enact and enforce by-laws governing permitted uses on land covered by water within its geographic jurisdiction. Whether the <i>Planning Act</i> applies to any particular lake is a highly fact specific inquiry. The analysis

			depends, inter alia, on the location of the municipality's boundaries respecting adjacent water bodies, the ownership of the lake bed, and whether there is any interference with navigation and shipping.
19	337	Does the <i>Building Code Act</i> apply on Ontario Lakes generally and on Big Cedar lake?	<p>The <i>Building Code Act</i>, 1992 generally applies throughout Ontario. However, it is up to each municipality to interpret and enforce the Act. The Act does, in some circumstances, apply to boathouses and other buildings built on water.</p> <p>Whether the Act applies to any particular lake is a highly fact specific inquiry. The analysis depends, inter alia, on the boathouse's configurations, the location of the municipality's boundaries respecting adjacent water bodies, the ownership of the lake bed, and whether there is any interference with navigation and shipping.</p>
20	341-42	<p>To confirm with clients if paragraph 13 of the statement of defence means that the 15 square metre rule does not apply at all to boathouses.</p> <p>NOTE: paragraph 13 states "contrary to the plaintiffs claims, Ontario regulation 453/96 which requires a permit for the construction of a structure 'that occupies more than 15 sq meters of shore land' does not apply to 'floating structures docks or boathouse'</p>	<p>Floating boathouses or any structure (e.g. dock) or combination of structures that occupies less than 15 square metres on the bed of shore lands fronting an individual's property does not require a work permit under O. Reg. 239/13 (previously O. Reg. 453/96). Floating boathouses or any structure (or combination of structures) that occupies more than 15 square meters of shore lands fronting an individual's property does require a work permit under O. Reg. 239/13 (previously O. Reg. 453/96).</p>

			This was a floating structure that did not occupy the shore lands and therefore did not require a work permit.
21	344	Looking at the previous undertaking - whether so that's why Mr. Harris did not need to look underneath the dock because it did not matter if it was more than 15 square metres in this case.	It was apparent during the site inspection that this was a floating structure not requiring a work permit under the Public Lands Act, and therefore there was no need to measure anything.
22	351/p. 71	<p>Is MNR aware of any other municipality taking a no jurisdiction over in-water construction position?</p> <p>So only North Kawartha and Havelock Belmont Methuen - with same Lawyer!!</p>	Ontario understands the municipality of Havelock-Belmont-Methuen may have taken a somewhat similar position.
23	355	<p>Confirm that Ontario agrees with the first ground of relief stated in the NOM</p> <p>NOTE: first ground states: a declaration that the defendant the Corporation of the Township of North Kawartha (NK) has jurisdiction to enact and apply NK by-laws to any structure proposed to be built on, over, in, or under Big Cedar Lake, and a declaration that building permits under the Building Code Act are required for all such structures</p>	<p>The <i>Planning Act</i> generally applies throughout Ontario. However, the enactment of zoning by-laws governing land use is at the discretion of each respective municipality. A municipality may in some circumstances enact and enforce by-laws governing permitted uses on land covered by water within its geographic jurisdiction. The <i>Building Code Act, 1992</i> generally applies throughout Ontario. However, it is up to each municipality to interpret and enforce the Act. The <i>Building Code Act, 1992</i> does, in some circumstances, apply to boathouses and other buildings built on water. Whether the <i>Building Code Act, 1992</i> and <i>Planning Act</i> apply to any particular lake is a highly fact specific inquiry. The analysis depends, inter alia, on the boathouse's configurations, the location of the municipality's</p>

			boundaries respecting adjacent water bodies, the ownership of the lake bed, and whether there is any interference with navigation and shipping.
24	362	To let the Plaintiff know if we are taking issue with the authenticity of any of the letters, emails and other communications that he has put in evidence.	No issues

SCHEDULE A

Documents in the possession, control or power of the Crown that the defendants do not object to producing for inspection:

No	DATE (y-m-d)	AUTHOR	RECIPIENT	DESCRIPTION	# OF PAGES
1	2011-08-17	Richard Hart	Trevor Harris	Email: "Shore Reserves"	1
2	2011-08-22	Trevor Harris	Richard Hart	Email Chain: "Dock – Boathouse information"	3
3	2011-08-21	Norm Bolton	Trevor Harris	Email Chain: "Big Cedar Boathouse"	1
4	2007			M.N.R. Bancroft District Field Map	1
5				Reg'd Plan 28 Twp of Burleigh Southern Division	1
6	2011-07-22	Trevor Harris	Bruce Mighton and Mitch Close	Email Chain: Dock and Partially Built Boat House – Big Cedar Lake	2
7	2011-09-10	Trevor Harris	Richard Hart	Email Chain: Boathouse-Big Cedar Lake	3
8	2009-05-26	Trevor Harris	Richard Hart	Email Chain: Richard Hart shoreline work – Big Cedar Lake	1
9	2011-12-08	Ambrose Moran, John Gayle	Charles Coffey, Barry Glaspell	Complaint by Ambrose Moran to the Ontario Ombudsman (John, Gayle) and Mr. Gayle's response with accompanying email chain.	6

No	DATE (y-m-d)	AUTHOR	RECIPIENT	DESCRIPTION	# OF PAGES
10	2011-07-26	Mitch Close and Trevor Harris		Photo of Mr. Hart's boathouse and its proximity to the property border. Border identified on photo with red line.	1
11	2011-07-26	Mitch Close and Trevor Harris		Photo of Mr. Hart's boathouse taken directly in front of Mr. Hart's cottage.	1
12	2011-07-27	Richard Hart	Trevor Harris	Email Chain: Floating Boathouse – Big Cedar Lake	2
13	2011-07-26	Mitch Close and Trevor Harris		Photo of Mr. Hart's boathouse and its proximity to the property border.	1
14	2011-07-26	Mitch Close and Trevor Harris		Photo of Mr. Hart's boathouse taken directly in front of Mr. Hart's cottage.	1

Harris Trevor (MNR)

From: Richard Hart [rhart@hart-well.com]
Sent: August 17, 2011 4:50 PM
To: Harris, Trevor (MNR)
Subject: Shore Reserve

Hi Trevor

I'm looking for some information on the shore reserve of my neighbours property and whether or not he owns it or you do. Not sure if you remember me but I'm the guy who has the boathouse on Big Cedar Lake. We met a month or so ago. My neighbour has continued to escalate things so we feel that this information might be import to us.

How do we go about requesting this information? Our address is 1433 FR 45 north Kawartha. He is to the east of us.

Thanks again Trevor
Rich Hart

Best Regards,

Richard Hart

Hart-Well

ELECTRICAL COMPANY LIMITED

1295 Morningside Ave., Unit 20
Scarborough, ON M1B 4Z4
Tel: 416-287-3308
Fax: 416-287-5806
Cel: 416-820-4166
www.hart-well.com

Harris, Trevor (MNR)

From: Richard Hart [rhart@hart-well.com]
Sent: July 25, 2011 4:42 PM
To: Harris, Trevor (MNR)
Subject: RE: Dock - Boathouse information

Thanks Trevor,

I'm going to try and make it but I am unsure right now. I have asked that my builder Glenn Bolton be there for 1pm. If I am unable to make it my cell number is 416-820-4166. Feel free to call me if you require any clarifications. Thanks again Trevor.

Rich

BTW- while at the cottage this weekend I took the time to measure my actual shoreline distance again. From iron bar to iron bar it is 252'.

Best Regards,

Richard Hart

Hart-Well

ELECTRICAL COMPANY LIMITED

1295 Morningside Ave., Unit 20
Scarborough, ON M1B 4Z4
Tel: 416-287-3308
Fax: 416-287-5806
Cel: 416-820-4166
www.hart-well.com

From: Harris, Trevor (MNR) [mailto:trevor.harris@ontario.ca]
Sent: July-25-11 11:48 AM
To: Richard Hart
Subject: RE: Dock - Boathouse information

Hi Richard,

Were planning to take a look at your boathouse tomorrow, should be there around 1pm. If you can be there that's great but if not its not necessary and we can give you an update afterwards.

Let me know if you plan to be there.

Thanks,

Trevor Harris

Resource Management Technician
Ministry of Natural Resources
P.O. Box 500, 106 Monck Street
Bancroft, ON K0L 1C0
Phone: (613) 332-3940 ext. 243
Fax: (613) 332-0608

From: Richard Hart [mailto:rhart@hart-well.com]
Sent: July 25, 2011 7:31 AM
To: Harris, Trevor (MNR)
Subject: RE: Dock - Boathouse information

26/07/2011

Thanks again Trevor for the great info.

If you are coming to do a site visit can you drop me a message or phone my cell number below, I'd like to try and meet with you if possible.

Rich

Best Regards,

Richard Hart

Hart-Well
ELECTRICAL COMPANY LIMITED

1295 Morningside Ave., Unit 20
Scarborough, ON M1B 4Z4
Tel: 416-287-3308
Fax: 416-287-5806
Cel: 416-820-4166
www.hart-well.com

From: Harris, Trevor (MNR) [<mailto:trevor.harris@ontario.ca>]
Sent: July-22-11 2:51 PM
To: Richard Hart
Subject: Dock - Boathouse information

Richard,

As requested I've attached information for docks & boathouses from MNR and other potentially interested agencies.

MNR:

http://www.mnr.gov.on.ca/en/Business/CrownLand/2ColumnSubPage/STEL02_165788.html

http://www.mnr.gov.on.ca/en/Business/CrownLand/2ColumnSubPage/STEL02_165785.html#3_0_Public_Land_Stewardship

refer to page 6 of Free Use Policy PL 3.03.01
Waterfront and Waterway Uses section

DFO:

See attached Fisheries and Oceans Canada operational statements. Dock and Boathouse Construction and Timing Windows
If you have questions about this you can contact the DFO office in Peterborough.

Transport Canada:

<http://www.tc.gc.ca/eng/marinesafety/oep-nwpp-minorworks-menu-1743.htm>

Municipality:

- contact Township of North Kawartha

Conservation Authority:

- if applicable

Trevor Harris

Resource Management Technician
Ministry of Natural Resources
P.O. Box 500, 106 Monck Street
Bancroft, ON K0L 1C0
Phone: (613) 332-3940 ext. 243
Fax: (613) 332-0608



M.N.R. - Bancroft District Field Map



Legend

MNR Road Segment Retired

<all other values>

GUT_NUMBER

MNR Road Segment Retired

Roads

FMP_DESG_C

Data Load

Primary

Secondary

Tertiary

MNRDSEG

Runway

MNRDIST

Lake / River

GEONAME

Patent Land

Acquisition Approved MNR

Acquisition Rejected

Crown Land - MNR Unpatented Land Layer

Land Ownership

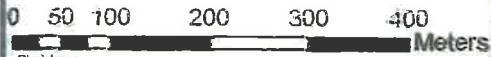
GUT_NAME

Crown Land

Federal Land, Indian Reserve

Federal Land, Other

Private Land



Disclaimer:

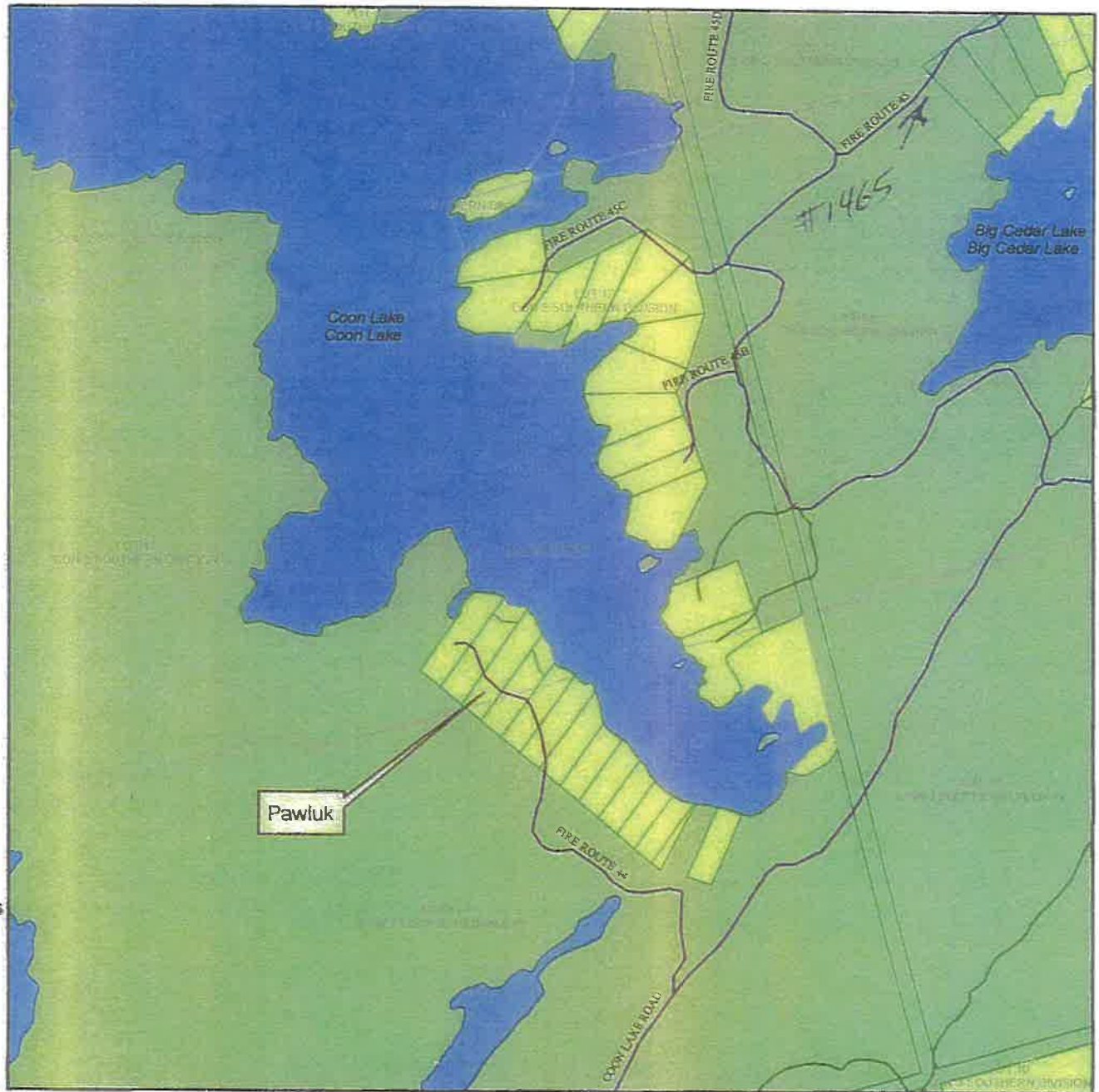
For Internal Bancroft District of the O.M.N.R. use ONLY.

This map should not be used as a precise indicator of routes or locations, nor as a guide to navigation. The Ontario Ministry of Natural Resources (OMNR) shall not be held responsible for the use of, or reliance upon, this map or any information on this map.

Source(s) of Information: OMNR survey data, historical records, stakeholder information, reports from the public, and data from other ministries.

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Printed in Ontario, Canada
Published 2007

Map Printed on March 1st, 2009, by Dennis G. Fraser from n:\osarm\m\fieldmap.mxd, Vandon 1.D.



68

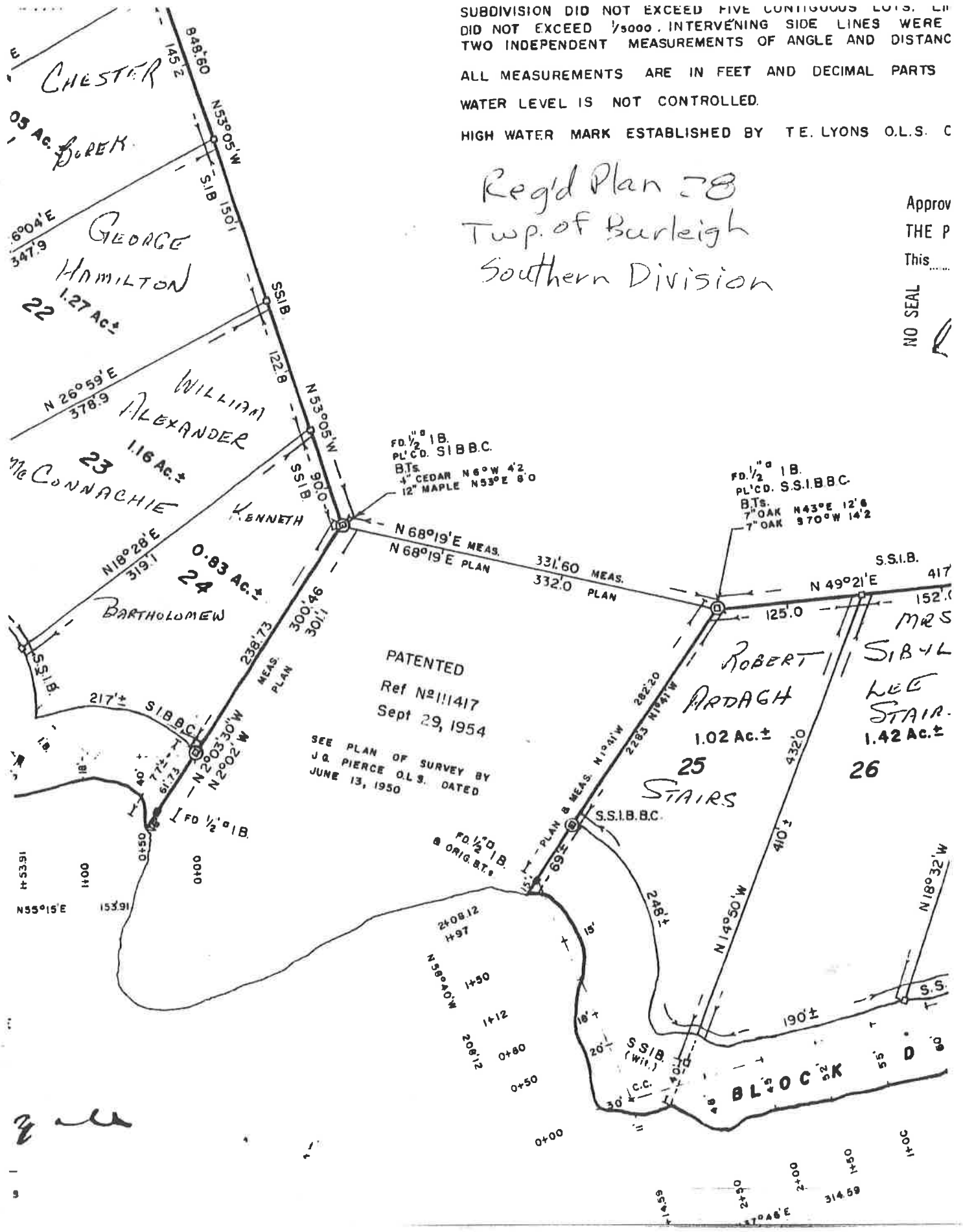
SUBDIVISION DID NOT EXCEED FIVE CONTIGUOUS LOTS. LOT DID NOT EXCEED 1/5000. INTERVENING SIDE LINES WERE TWO INDEPENDENT MEASUREMENTS OF ANGLE AND DISTANCE

ALL MEASUREMENTS ARE IN FEET AND DECIMAL PARTS WATER LEVEL IS NOT CONTROLLED.

HIGH WATER MARK ESTABLISHED BY T.E. LYONS O.L.S. C

Regd Plan 28
Twp. of Burleigh
Southern Division

Approv
THE P
This....
NO SEAL



Harris, Trevor (MNR)

From: Harris, Trevor (MNR)
Sent: July 22, 2011 11:58 AM
To: Mighton, Bruce (MNR)
Cc: Close, Mitch (MNR)
Subject: FW: Dock and Partially Built Boat House -- Big Cedar Lake
Attachments: Letter to MNR re Dock & Boat House July 21, 2011.pdf

Bruce,

Norm Bolton contacted me yesterday about this because he's building the boathouse for Richard Hart. He said the neighbour was complaining about it, also said the neighbour is a lawyer. I sent Norm a bunch of dock / boathouse info this morning. I also had emailed Richard Hart dock / boathouse info previously. **The municipality apparently told the owner that he won't require a building permit.**

I'll draft a response for this.

Trevor

From: Lawrence, Pam (MNR)
Sent: July 22, 2011 11:43 AM
To: Mighton, Bruce (MNR)
Cc: Harris, Trevor (MNR)
Subject: FW: Dock and Partially Built Boat House -- Big Cedar Lake

Hi Bruce:

Please coordinate a response for this inquiry.

Thank you.

Pam Lawrence
A/Business Services Supervisor
Bancroft District
T: 613-332-3940 x. 228
F: 613-332-0608

"In order for us to serve you better, please call ahead to make an appointment with staff."

From: NRIC, MNR (MNR)
Sent: July 22, 2011 11:20 AM
To: Lawrence, Pam (MNR)
Subject: FW: Dock and Partially Built Boat House -- Big Cedar Lake

Hello Pam,

The following e-mail was received at the Natural Resources Information Centre. Please respond directly to the customer or have someone in your area respond, and cc the NRIC for our information; alternatively, you may provide us with a response to forward to the customer.

Regards,

NRIC web reader - CG

Ontario Ministry of Natural Resources

Natural Resources Information Centre
300 Water Street, P.O. Box 7000
Peterborough, ON K9J 8M5
1-800-667-1940
TTY: 1-866-686-6072
Fax: 705-755-1677
mnr.nric.mnr@ontario.ca

From: Glaspell, Barry [mailto:BGLASPELL@blg.com]
Sent: Thursday, July 21, 2011 1:35 PM
To: NRIC, MNR (MNR)
Cc: Elser, Christine; Glaspell, Barry
Subject: Dock and Partially Built Boat House -- Big Cedar Lake

Hi ,

Kindly see our attached letter.

Thanks,

Barry

Harris Trevor (MNR)

From: Harris, Trevor (MNR)
Sent: September 10, 2010 9:29 AM
To: 'Richard Hart'
Subject: RE: Boathouse - Big Cedar Lake

I suppose I should have said the footprint on the lakebed. You are correct for work permit requirements the 15 m² is referring to the **portion of supporting structures in contact with the lakebed**. So sounds like you won't need a work permit.

However DFO does have some guidelines regarding the boathouse size, refer to their Operational Statement or maybe you have already discussed with them?

I hope that clarifies things, if not give me a call.

Trevor Harris

Resource Management Technician
Ministry of Natural Resources
P.O. Box 500, 106 Monck Street
Bancroft, ON K0L 1C0
Phone: (613) 332-3940 ext. 243
Fax: (613) 332-0608

From: Richard Hart [mailto:rhart@hart-well.com]
Sent: September 10, 2010 7:10 AM
To: Harris, Trevor (MNR)
Subject: RE: Boathouse - Big Cedar Lake

Trevor

Is the foot print different than the supporting structure? The website has the following statement which references the supports that will be in the water, not the actual boathouse. The boathouse I intend to build would be more than 15 sq M but the supports would be much less. Below is the statement I'm referring to. Let me know if you think we need to schedule a site visit.

Rich

docks or boathouses where the total surface area of the supporting structure (e.g. pipes, cribs) placed on the bed of the water body is less than 15 square metres;

From: Harris, Trevor (MNR) [mailto:trevor.harris@ontario.ca]
Sent: September-09-10 4:10 PM
To: Richard Hart
Subject: RE: Boathouse - Big Cedar Lake

Hi Richard,

If the **footprint of the boathouse is less than 15 square metres and;** is located directly in front of your property, will not interfere with your neighbours use of their property, and **is a single storey for boat storage** only.

Then it would not require approval from our office and no site visit would be needed.

If it is not consistent with these requirements I would have to inspect to determine if approval is needed.

Regards,

Trevor Harris

Resource Management Technician

14/06/2012

Ministry of Natural Resources
P.O. Box 500, 106 Monck Street
Bancroft, ON K0L 1C0
Phone: (613) 332-3940 ext. 243
Fax: (613) 332-0608

From: Richard Hart [mailto:rhart@hart-well.com]
Sent: September 9, 2010 2:32 PM
To: Harris, Trevor (MNR)
Subject: RE: Boathouse - Big Cedar Lake

Hi Trevor,
Thanks for forwarding me this information, appreciate it. After reading through the listed requirements and talking to the ministry of oceans and fisheries I don't think I require a permit but would like confirmation. I plan on building a boathouse supported on metal tubes that are approximately 6" in diameter. The total area that the supports will take up will be less than 15sq M. Do I require a site review or a letter stating that my work plan is compliant with your requirements.
Thanks Trevor.
Rich

Best Regards,

Richard Hart

Hart-Well
ELECTRICAL CONTRACTORS LIMITED

1295 Morningside Ave., Unit 20
Scarborough, ON M1B 4Z4
Tel: 416-287-3308
Fax: 416-287-5806
Cel: 416-820-4166
www.hart-well.com

From: Harris, Trevor (MNR) [mailto:trevor.harris@ontario.ca]
Sent: August-25-10 2:34 PM
To: Richard Hart
Subject: Boathouse - Big Cedar Lake

Hi Richard,

As discussed today I've attached some further information about boathouses. Please review the MNR website link for information regarding when a work permit is required:
http://www.mnr.gov.on.ca/en/Business/CrownLand/2ColumnSubPage/STEL02_165788.html

Also for further information I've attached an operational statement from Fisheries and Oceans Canada (DFO) titled "Dock and Boathouse Construction", if you have questions about this you can contact the Peterborough DFO office at (705) 750-0269.

14/06/2012

If you have any further questions please feel free to contact me.
Regards,

Trevor Harris
Resource Management Technician
Ministry of Natural Resources
P.O. Box 500, 106 Monck Street
Bancroft, ON K0L 1C0
Phone: (613) 332-3940 ext. 243
Fax: (613) 332-0608

Harris Trevor (MNR)

From: Richard Hart [rhart@hart-well.com]
Sent: May 27, 2009 8:29 AM
To: Harris, Trevor (MNR)
Subject: RE: Richard Hart shoreline work - Big Cedar Lake

Thanks very much Trevor for your time yesterday on the phone and again sending off this information.
Much appreciated

Best Regards,

Richard Hart

Hart-WellENVIRONMENTAL COMPANY LIMITED

1295 Morningside Ave., Unit 20
Scarborough, ON M1B 4Z4
Tel: 416-287-3308
Fax: 416-287-5806
Cel: 416-820-4166
www.hart-well.com

From: Harris, Trevor (MNR) [mailto:trevor.harris@ontario.ca]
Sent: May-26-09 4:51 PM
To: Richard Hart
Subject: Richard Hart shoreline work - Big Cedar Lake

Hi Mr. Hart,

As discussed you would require a work permit for shoreline stabilization. Please see the attached Work Permit Application package and the Working on Shorelands Fact Sheet for further information about MNR's requirements.

Also please find attached the Fisheries and Oceans Canada (DFO) Operational Statement for Docks and Boathouses and Timing Windows.

If you have any further questions after reviewing this information please feel free to contact me.

Trevor Harris

Resource Management Technician
Ministry of Natural Resources
P.O. Box 500, 106 Monck Street
Bancroft, ON K0L 1C0
Phone: (613) 332-3940 ext. 243
Fax: (613) 332-0608

14/06/2012

Lahaie, Emilie (MAG)

From: Mighton, Bruce (MNR)
Sent: July-10-14 3:16 PM
To: Dodds, Craig (MNR)
Subject: FW: Ambrose Response from Ombudsman
Attachments: Complaint By Ambrose Moran -Ombudsman - Copy (2).docx

From: Ambrose Moran [mailto:ambrose@ambrosemoran.com]
Sent: December-08-11 12:33 PM
To: 'Charles Coffey'; jlaschinger@nsresearch.com; Glaspell, Barry
Cc: trees@foca.on.ca
Subject: Ambrose Response from Ombudsman

Just got this response and find it hilarious

My complaint to Ombudsman was that previous Minister would not answer my letter/question

John has certainly spent a lot of time of this and it does not hurt to have his office asking questions at different levels.

I will of course respond at some point and suggest he not close the file

AMBROSE MORAN

4050 Crayton Rd
Naples Florida
34103

E mail Ambrose@AmbroseMoran.com
Cell phone till end Feb 239 330 0840
Real Estate Web Page www.AmbroseMoran.com
Personal Web Page www.ApsleyWatch.com

From: John Gayle [mailto:jgayle@ombudsman.on.ca]
Sent: December-08-11 11:40 AM
To: ambrose@ambrosemoran.com
Subject: File No. 245094

December 8, 2011

Ambrose Moran

77

ambrose@ambrosemoran.com

Dear Mr. Moran,

Re: Our File No. 245094

This e-mail is further to our most recent telephone conversation in which you complained about the response of the Ministry of Municipal Affairs and Housing (the Ministry) to your concerns about the construction of boathouse structures on Jack Lake (the Lake) within the Township of Havelock-Belmont-Methuen and the Township of North Kawartha (the Municipalities).

In your online submission to our Office on September 15, 2011, you advised that "currently in-water boat house [sic] construction is taking place on lakes in the Apsley area without any permits from federal, provincial or municipal governments." You complained that the "situation is aggravated by the [Municipalities'] council's [sic] repeated claims that they do not have jurisdiction." You further complained that the Ministry had not responded to your following question: "for boathouse structures, one and two storey being built in water supported and occupying provincial lands on Jack Lake within North Kawartha or Havelock Belmont Methuen Townships, are building permits required under the Ontario Building Code?"

As discussed, the Office of the Ontario Ombudsman has the authority to review complaints regarding the administrative actions and conduct of provincial government organizations and agencies. While the Ombudsman has expressed his desire for modernization of his mandate to include oversight of municipal governments, currently, our Office can only review complaints about closed meetings of certain municipalities.

For your information, when our Office receives complaints and inquiries about municipal matters, we typically refer the person to his/her local elected representative or to the municipal council. Where appropriate, we may also refer such a person to the Ministry. While the Ministry does not become involved in the day-to-day operations of individual municipalities, it is possible that staff there can provide you with information or assistance with your concerns.

As the Ministry falls within the mandate of our Office, we spoke with an Issues & Briefing Coordinator (the Coordinator) in the Regional Operations Division of the Ministry of Natural Resources (MNR), a Manager in the Ministry's Code Development and Advisory Unit, Building and Development Branch and an Acting Manager in the Ministry's Registration and Code Advisory Unit, Building and Development Branch about your concerns. In considering your complaint, our Office reviewed the Ministry's letter dated November 1, 2011 and, the Ministry's e-mails dated July 6, 2011 and November 10, 2011 sent to you in response to your complaint, and the relevant policies and legislation.

As discussed, the MNR's Coordinator advised us that the Lake falls within the MNR's jurisdiction and that the Crown owns the Lake's bed. The Coordinator also explained that, under Free Use Policy PL 3.03.01 (the Policy), a single storey boathouse is considered a free use if it is used only for the storage and docking of boats. The Coordinator further explained that, under the Policy, one or two storey boathouses not used only for the storage and docking of boats would require land use occupational authority.

In addition, the Coordinator advised us that paragraph 2 (1)(g) of Ontario Regulation 453/96 of the *Public Lands Act* (PLA) provides that:

2.(1) No person shall,

(g) construct or place a structure or combination of structures, or cause a structure or combination of structures to be constructed or placed, that occupies more than 15 square metres of shore lands.

The Coordinator explained that a work permit from the MNR would not be required where a (boathouse) structure occupies less than 15 square metres of Crown (shoreline or in-water) land. He also advised that your question was outside of the MNR's jurisdiction and would be better addressed by the Ministry or particular municipality.

According to the Ministry's e-mails and our discussion with the Manager and the Acting Manager, in response to your question the Ministry advised you that a "principal authority", as defined in the Building Code Act (the Act) (which definition includes "the council of a municipality"), "is responsible for the enforcement of the [Act] and the Ontario Building Code." The Ministry also advised you that it "does not supervise the principal authorities in their enforcement of the Act or the Building Code." The Ministry explained that your question "is of a legal nature that would require legal interpretation of the [Act]" and advised you that it does not provide such an interpretation. Accordingly, the Ministry suggested that you might want to seek legal advice. As the Ministry also advised you that "the local municipality is the authority having jurisdiction for enforcing the Act and its Regulations", they suggested that you contact the appropriate building official within the Municipalities.

According to the Ministry's letter, in response to your letter dated August 7, 2011, the Ministry advised you that they are responsible for the administration of the Act and the Ontario Building Code (the Code). However, they again advised you that the "council of the each municipality is responsible for the enforcement of [the] Act in the municipality." Accordingly, the Ministry encouraged you to raise your concerns to the Municipalities and again suggested that you may want to seek legal counsel.

Moreover, in the Ministry's e-mails, the Ministry suggested that you contact the MNR about your reference in your letter to the possible application of the PLA to construction of in-water structures. Therefore, for more information about the MNR, you may want to call the MNR at 1-800-667-1940 or visit the MNR's website at: www.mnr.gov.on.ca/en/. In the event that you decide to raise your concerns to the MNR and you do not receive a response or are dissatisfied with the response from the MNR, you may wish to contact our Office again as the MNR falls within our mandate.

Based on the above information, your file is being closed. If you have any questions or concerns about the information in this letter, please do not hesitate to contact me at

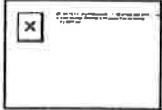
1-800-263-1830, extension 3439.

Thank you for contacting the Office of the Ombudsman of Ontario.

Sincerely,

John Gayle
Early Resolutions Officer
416-586-3439
jgayle@ombudsman.on.ca

79.



Office of the Ombudsman of Ontario | Bureau de l'Ombudsman de l'Ontario
1-800-263-1830 - Complaints Line | Ligne des plaintes
1-866-411-4211 - TTY | ATS

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Red line is projected property boundary from found survey bar at the shore of Big Cedar Lake. Projected boundary based on reference plan 45R-11766, a survey plan of the adjacent neighbour's property (former Crown Reserve Block D). Hart's boathouse on the right. Projected line approximately 10 feet from corner of dock that surrounds the boathouse. Boathouse and dock are in compliance with MNR's Free Use Policy.



Picture of Hart's boathouse taken from directly in front of Hart's cottage.

Site was inspected by Mitch Close and Trevor Harris, July 26, 2011 in regards to complaint from neighbour to the east, Barry Glaspell.

Lahaie, Emilie (MAG)

From: Harris, Trevor (MNR)
Sent: July-11-14 11:27 AM
To: Harris, Trevor (MNR)
Subject: FW: Floating Boathouse - Big Cedar Lake

From: Richard Hart [<mailto:rhart@hart-well.com>]
Sent: July-27-11 2:51 PM
To: Harris, Trevor (MNR)
Subject: RE: Floating Boathouse - Big Cedar Lake

Thank you very much Trevor for the introduction. Really appreciate the help.

I owe you one.

Rich

Best Regards,

Richard Hart

Hart-Well
ELECTRICAL COMPANY LIMITED

1295 Morningside Ave., Unit 20
Scarborough, ON M1B 4Z4
Tel: 416-287-3308
Fax: 416-287-5806
Cel: 416-820-4166
www.hart-well.com

From: Harris, Trevor (MNR) [<mailto:trevor.harris@ontario.ca>]
Sent: July-27-11 1:46 PM
To: Allison, Tracy
Cc: Richard Hart
Subject: Floating Boathouse - Big Cedar Lake

Hi Tracy,

Our office was contacted by a concerned neighbour regarding Richard Hart's recent boathouse construction at 1433 Fire Route 45 on Big Cedar Lake, Burleigh Township. Our office inspected and found the boathouse to be in compliance with MNR policies. I've attached a couple photos taken during our inspection for your review. Could you advise Mr. Hart if your office has any concerns with his floating boathouse? Thanks,

Trevor

Trevor Harris
Resource Management Technician
Ministry of Natural Resources

P.O. Box 500, 106 Monck Street
Bancroft, ON K0L 1C0
Phone: (613) 332-3940 ext. 243
Fax: (613) 332-0608

83

From: Richard Hart [<mailto:rhart@hart-well.com>]
Sent: July 27, 2011 8:49 AM
To: Harris, Trevor (MNR)
Subject: [Possible SPAM]:Site Meeting

Good morning Trevor

Nice to meet you and Mitch yesterday. Thanks for the advice and help with my situation. Further to our discussions Mitch had mentioned that he could forward me the contact information of the person over at DFO and also possibly forward your pictures and report to them for some background info.

I'm obviously very concerned about my neighbour and where things go from here. I think we are going to be proactive and invite DFO in for a site visit too. Here's to hoping we see the end of this situation soon.

All the best

Rich Hart

Best Regards,

Richard Hart

Hart-Well
ELECTRICAL COMPANY LIMITED

1295 Morningside Ave., Unit 20

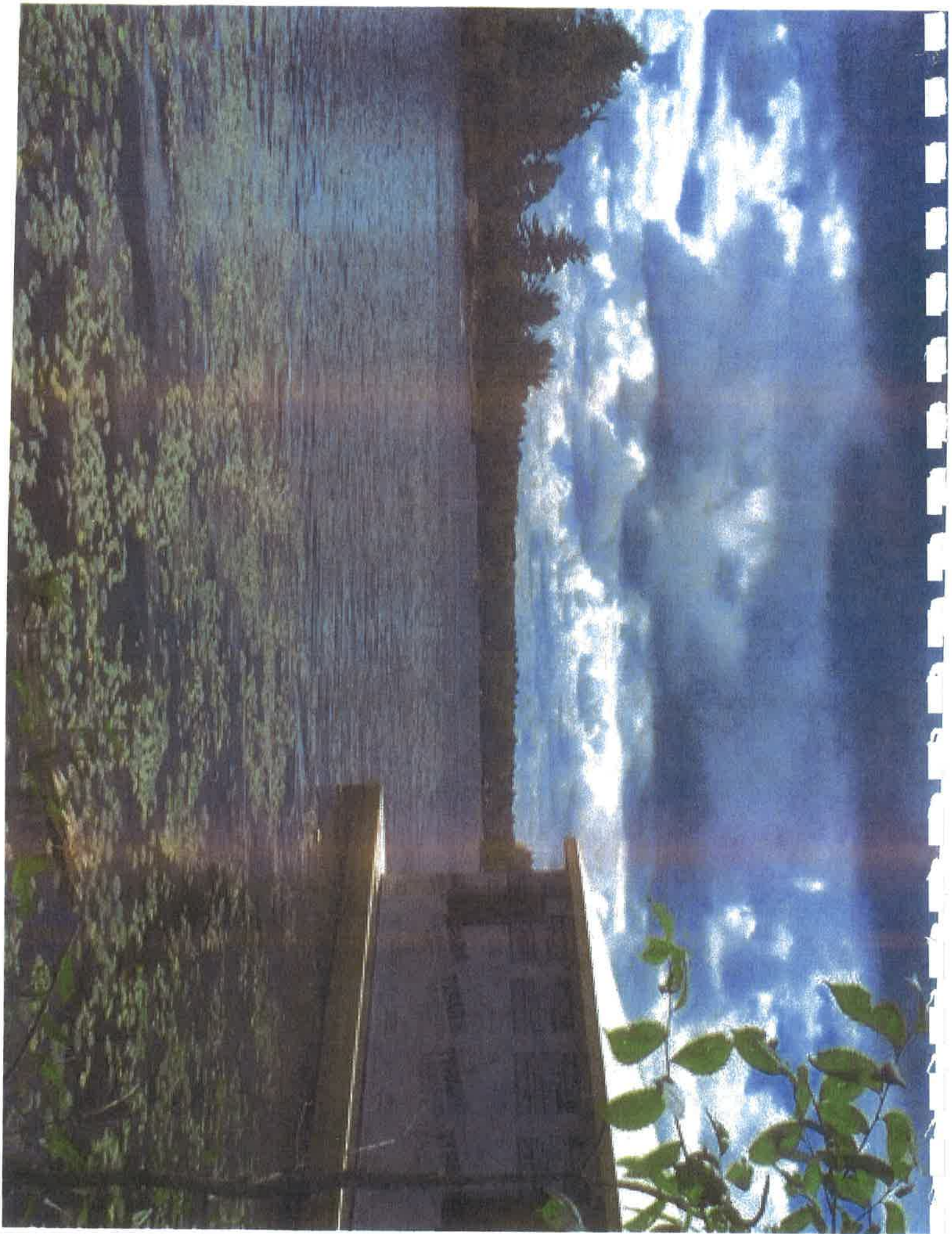
Scarborough, ON M1B 4Z4

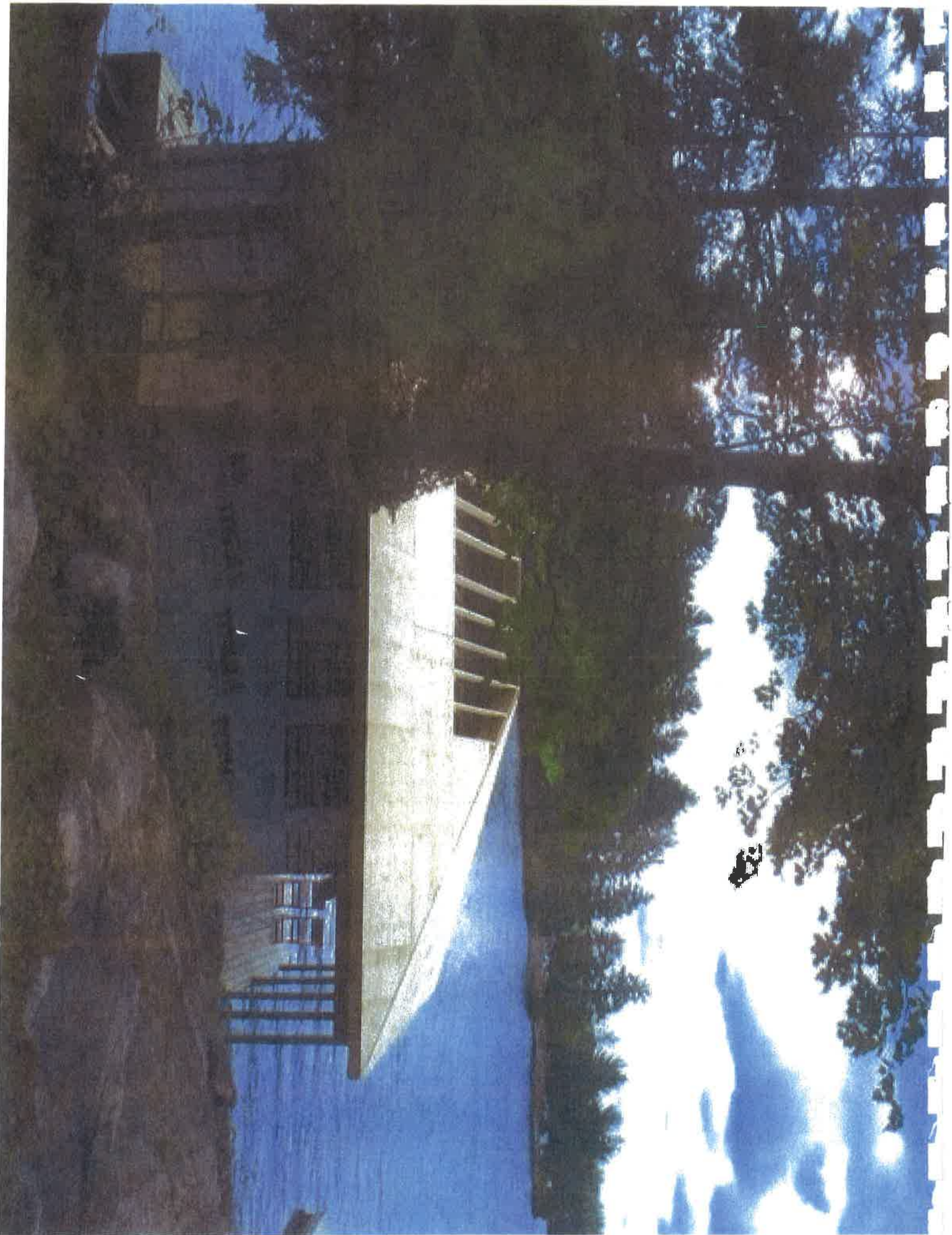
Tel: 416-287-3308

Fax: 416-287-5806

Cel: 416-820-4166

www.hart-well.com





Free Use Policy Regarding Docks and Boathouses Compliance with the Free Use Policy

Docks, breakwalls\erosion control structures with only minor⁴ backfill, single storey boathouses provided they are used strictly for private use or commercial tourism non-revenue producing purposes and are in substantial compliance with the following:

The structure **is a single storey boathouse. This** boathouse contained two bays for boats and dock around the perimeter (see tab 1).

a) are mutually considered to be a necessary adjunct to the use and enjoyment of the adjoining upland property;

This could be considered a necessary adjunct for the use and enjoyment of the upland property owner.

b) are situate directly in front of the owner's/occupier's dry upland parcel or a road allowance or Crown shoreline reserve abutting the dry upland parcel (generally between the projected lot lines) and do not interfere with neighbour's use and enjoyment of their waterfront property (e.g. blocking view of lake),

The boathouse structure is situated directly in front of the owner's upland parcel (see tab 1). The boathouse is generally between the projected lot lines (see tab 3). Lot line projection based on reference plan 45R-11766 (see tab 2). It is MNR's opinion that the boathouse does not block the neighbour's view of the lake (see tab 4 for aerial image of the approximate location of the boathouse) or interfere the neighbour's use and enjoyment of their waterfront property.

c) have been approved or exempted by Canadian Coast Guard under the Navigable Waters Protection Act, if applicable,

The boathouse is directly adjacent to the upland owner's property-navigation on the lake is not impeded.

*d) in the case of a boathouse, it is used only for the **storage and docking of boats.** Refer to Appendix 1 for examples of multi-use structures combining free use and that which requires land use occupational authority.*

When MNR inspected the boathouse on July 26, 2011, it contained only two bays for boat docking and a dock around the structure. This was consistent with using it only for the storage and docking of boats.

e) have complied with applicable permitting requirements.

This boathouse is a floating boathouse and therefore **does not require a work permit** from MNR.

⁴ Minor backfill is defined as fill that generally follows the contour of the existing shoreline and does not create dry land at the expense of the Crown lake/river bed.

Glaspell Answers to Undertakings on Cross-Examination

<u>P/Q</u>	<u>Description</u>	<u>Answer</u>
p.16, q.42	Point to sections of Planning Act or Building Code that intend to rely upon re the planning process	This will be in factum. I am relying on the provisions NK admit would apply if the House and Dock were built entirely on land. Also relying upon Peterborough County Official Plan
p.24, q.82	Find out date of meeting with Tim Powell	Wednesday, August 10, 2011 in Apsley
p.29 , q.97	When did North Kawartha tell plaintiff they were taking a no jurisdiction position and how did they tell plaintiff that	On July 12, 2011, Jim Sangster told the plaintiff by email that NK was taking a no jurisdiction position (Motion Record, page 55); Mr. Powell confirmed the same at our meeting on August 10, 2011. By that time Mr. Powell had visited the site. At the September 6, 2011 NK Council meeting, at which I attended, Building Inspector Jim Sangster confirmed his view that the Ontario Building Code does not apply to these structures so, according to him "currently, a resident could build anything over the water even if the structure was unsafe." The NK CEO Shannon Hunter stated at that September 6, 2011 meeting that NK "does not want the liability associated with approving or inspecting a structure built over the water."
p.34, q. 112	What Planning Act and Building Code provisions apply	This will be in factum. I am relying on the provisions NK admit apply if the House and Dock were built entirely on land
p.35 , q.113	Provide Municipal Act provisions that intend to rely upon	They include <i>Municipal Act, 2001</i> S.O. 2001, c. 25, s. 1 including definition of "municipality" and "rateable property"; ss. 1(2); 1(4), 2, 3, 3.1, 5(3), 8, 9, 14, 19(1), 34, 43, 69, 123, 444-446, 447.4, 451.1 and 463
p.38, q.120	Provide Planning Act, Building Code Act and Municipal Act sections rely upon	This will be in factum. I am relying on the provisions NK admit apply if the House and Dock were built entirely on land

**UNDERTAKINGS/REFUSALS ON TIM POWELL'S
CROSS-EXAMINATION, JULY 17, 2014**

<u>P/Q</u>	<u>Description</u>	<u>Answer</u>
p.8, q.41	Provide copy of building permit and site plans/survey for Stony Lake wet-slip boathouse.	Under advisement
p.13, q.65	Confirm that NK has no written instructions or policy regarding having no jurisdiction beyond high water mark.	The Corporation of the Township of North Kawartha has no written instructions or policy regarding having no jurisdiction beyond the highwater mark.
p.17, q.87	Use best efforts to obtain and provide copies of all correspondence between Mr. Hart and NK regarding boathouse.	Nothing further to produce.
p.27, q.142	Provide day-timer pages relating to Mr. Powell's visit to boathouse.	See attached.
p.47, q.258	Enquire of Mr. Sangster if he recollects a call to him on or about May 24, 2011 from Mr. Glaspell.	Mr. Sangster recalls speaking to Mr. Glaspell by telephone but does not recall the substance of the discussion. No notes exist with respect to the May 24, 2011 telephone call.
p.55, q.304	Produce response, if any, of North Kawartha to letter from Big Cedar Lake Stewardship Association.	No response was provided by the Township of North Kawartha to Big Cedar Lake Stewardship Association.
p.56, q.311	Is it North Kawartha's position that it has no jurisdiction if the boathouse were to burn down?	Refused
p.69, q.373	Inform if any attachments to affidavits not actually sent or received as indicated.	Nothing further to produce at this time.
p.72, q.382	Advise if position of North Kawartha changes with regards to no jurisdiction beyond high water mark.	Nothing further to produce at this time.

203-162

6:30	
5:00	
4:30	
4:00	
3:30	
3:00	
2:30	
2:00	GRAB ALB.
1:30	DAVE LOW
1:00	
12:30	
12:00	
11:30	
11:00	BOAT NIGHT
10:30	BIG FEED
10:00	
9:30	STOLE (OIS (RMS))
9:00	
8:30	
8:00	
7:30	
7:00	

10 11 12 13 14 15 16
 17 18 19 20 21 22 23
 24 25 26 27 28 29 30
 JULY

Glaspell, Barry

From: Glaspell, Barry
Sent: September-11-14 9:42 AM
To: Dada, Fatema (JUS) (Fatema.Dada@ontario.ca); 'M. John Ewart'
Cc: Susan Sladky
Subject: In-water construction

Counsel,

I reviewed the transcript of the July 9, 2014 cross-examination on my affidavits. The following are corrections:

Q. 3: I purchased the cottage property in 2007. I said "approximately 2008".

Q. 52, 1st line: "I've measured it, but ..." should be "I haven't measured it, but ..."

Q. 52, 3rd line: "may" should be "maybe"

Q. 113, line 12: "A" should be "Q"

Q. 113, line 25: "the impact" should be "MPAC"

Answers to undertakings will follow shortly.

B



Court File No. CV-12-448912

ONTARIO
SUPERIOR COURT OF JUSTICE

4B/mb

B E T W E E N:

BARRY GLASPELL

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY
THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING, HER MAJESTY
THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE
MINISTER OF NATURAL RESOURCES, G. BRUCE MIGHTON, MUNICIPAL
PROPERTY ASSESSMENT CORPORATION, THE CORPORATION OF THE
TOWNSHIP OF NORTH KAWARTHA, TIM POWELL and JANE DOE

Defendants

This is the Cross-Examination of BARRY GLASPELL, on
his Affidavits sworn on the 22nd day of January, 2014, and
on the 8th day of July, 2014, taken at the offices of
VICTORY VERBATIM REPORTING SERVICES INC., Suite 900, Ernst
& Young Tower, 222 Bay Street, Toronto-Dominion Centre,
Toronto, Ontario, on the 9th day of July, 2014.



A P P E A R A N C E S:

FATEMA DADA -- for the Defendants, The Queen in
Right of Ontario as represented by
the Minister of Municipal Affairs
and Housing and by the Minister of
Natural Resources, and G. Bruce
Mighton

M. JOHN EWART -- for the Defendants, The Corporation
of the Township of North Kawartha
and Tim Powell



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MR. EWART

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1 BARRY GLASPELL, sworn

2 CROSS-EXAMINATION BY MR. EWART:

3 1. Q. Good morning, Mr. Glaspell. Mr.
4 Glaspell, this is a cross-examination, sir, on an
5 affidavit that you have filed in support of a motion
6 for summary judgment. And looking at your
7 affidavit, sir, in the motion record, itself, at tab
8 B, it looks like the affidavit, itself, was sworn
9 January 22nd, 2014. Is that correct?

10 A. Correct, and then there's a
11 supplementary affidavit sworn July 8.

12 2. Q. Great. Thank you. And I don't know
13 whether, Counsel, we want to mark these as exhibits,
14 but I think we understand what documents we are
15 talking about.

16 A. Yes. I don't think we need to mark
17 anything. I'm sure as between us, we will agree as
18 to what should go before the court.

19 3. Q. Good. Thank you, Counsel. Mr.
20 Glaspell, when did you acquire title to your cottage
21 property in the Corporation of the Township of North
22 Kawartha?

23 A. Approximately 2008, but I would have
24 to check.

25 4. Q. And at the time, were your



1 neighbours Margaret Hart and a Richard Hart?

2 A. No.

3 5. Q. Do you have any information, sir,
4 when the Harts would have acquired their property?

5 A. Yes, it was a couple of years after
6 the property was actually offered to me. We looked
7 at possibly buying it together with Carolyn Holmes,
8 who is the daughter of the neighbour on the other
9 side. And so definitely before the Harts purchased
10 the property we looked at possibly purchasing that
11 property.

12 6. Q. Okay. And the property owned by the
13 Harts, and I just call them Harts rather than
14 Richard and Margaret, this is the property
15 immediately adjacent to yours, sir?

16 A. Correct.

17 7. Q. Now, in the pleadings itself,
18 there's a mention of a Jane Doe, and this is also
19 referenced in your affidavit, sir. Is the Jane Doe
20 referred to, is that the Harts?

21 A. No. The Jane Doe is the owner.

22 8. Q. That is the owner of the boathouse
23 in subject?

24 A. Well, it's pleaded a bit as a class
25 action because it's intended to be representative.



1 So it says,

2 "...each legal or natural person who owns
3 or purports to own a legal, equitable,
4 insurable interest in the dock and the
5 house defined below..."

6 And so it certainly includes whoever owns that
7 boathouse.

8 9. Q. I see. Do you have any information,
9 sir, as to the actual owner of the boathouse?

10 A. No.

11 10. Q. Have you...

12 A. Mr. Harris, today, thought it was
13 owned by Mr. Hart, and that's a possibility.

14 11. Q. You've not taken any search of any
15 sort to ascertain the legal ownership of the
16 boathouse?

17 A. So I thought about that because I
18 don't think there is a registry for boathouses on
19 lakes, and that's one my concerns. Is it real
20 property? Is it a chattel? Is it a boat? And I
21 don't...so if it was, like, a boat or a car, you
22 might be able to search title. I don't think
23 there's any way of searching title. I don't think
24 there's any way of knowing who owns that boathouse.

25 12. Q. I see. So in terms of a land



1 registry search or a review of land titles that
2 wouldn't necessarily disclose the ownership of the
3 boathouse?

4 A. I don't believe so.

5 13. Q. Have you ever spoken to the Harts as
6 to whether they own the boathouse?

7 A. There's been a number of
8 correspondence. Some of it's in the materials.
9 Like, when this first came up, I spoke with them and
10 asked what they were doing. And so there's some
11 correspondence in the materials. I don't think I've
12 ever outright asked who owns the boathouse. So, for
13 example, is the boathouse owned by a corporation?
14 Is it a property of somebody else? I don't know.
15 There's a very good probability that it's owned by
16 Richard Hart, as Mr. Harris said. That's a good
17 possibility.

18 14. Q. But in terms of actually confirming
19 that to your satisfaction, sir, you've never been
20 able to do that. Is that a fair statement?

21 A. Correct.

22 15. Q. And does that explain, Mr. Glaspell,
23 why the Harts are not named in this action?

24 A. Correct. I'm also trying not to
25 make this personal because we're neighbours, and so



1 this litigation is a question of principle.

2 16. Q. I see.

3 A. And so...but if the boathouse is
4 owned by Richard Hart, then he would be Jane Doe.

5 17. Q. And then it may become personal at
6 that point. Is that a fair comment?

7 A. I don't personally think that
8 boathouse should be there or is legal, as you know.

9 We wrote our issues out. We spoke with them. We
10 wrote out our issues. We tried to be very
11 neighbourly. In fairness, they've been neighbourly
12 back. It's a different view. When I started out, I
13 wasn't aware, obviously, of these things that
14 happened in 2009 and 2010. I was completely in the
15 cold. I didn't know that he was planning the
16 boathouse. The first thing I learned was when this
17 big U-shaped dock shows up and that started the ball
18 rolling.

19 18. Q. I see. Again, I don't want to go
20 too far off topic here. But, do the Harts, this is
21 Richard and Margaret Hart, are they aware of this
22 litigation involving Jane Doe, which may have impact
23 on them?

24 A. Yes. They've retained counsel. At
25 certain times, Jane Pepino has written letters or



1 they have retained counsel at different times in
2 this. They're certainly aware of the litigation.

3 19. Q. Okay. Thank you. I guess just on
4 that point, too, sir, if you look at paragraph 12,
5 I'm interested in knowing what you would expect
6 would have occurred? For example, in your paragraph
7 12, this is your affidavit, January, 2014, sir, you
8 talk about no advance warning was given. Do you
9 have that in front of you?

10 A. Yes.

11 20. Q. What are you referring to there and
12 what type of warning were you expecting?

13 A. So if there was a building that was
14 in excess of 100 square feet that was going to be
15 built on their land or even a deck, they would
16 follow the planning process, and the bylaw process,
17 and neighbours would be given notice, and you could
18 come and give your input. And so there was no
19 process that would have taken place had it been
20 built on land.

21 21. Q. I see. And you're talking about a
22 building permit, in this case if it's in excess of
23 104 square feet, which requires a building permit
24 under the Building Code Act. What type of notice
25 does the Building Code provide?



1 A. I'm not a legal expert, so I would
2 have to, the same as you, look that up of what the
3 process is. But it's clear that this boathouse
4 would not be permissible on his property or on my
5 property.

6 22. Q. Okay. On that point, sir, is there
7 any suggestion on your part that this boathouse is
8 in any way touching your property or is this all
9 just a case of impact of your vista?

10 A. I believe that it's on his side of
11 the property line, but I have not had it surveyed,
12 so I may have to have it surveyed at some point.
13 But I believe that it presently is on his side of
14 the lot line extension, but I don't have a real
15 basis to believe that.

16 23. Q. Okay. So in the absence of...

17 A. It's certainly very close to the
18 line.

19 24. Q. Okay.

20 A. You heard Mr. Harris say it's within
21 10 feet, but it's close to the line.

22 25. Q. But in terms of what we call
23 straight line extension of a lot line, that's never
24 been undertaken by yourself through a material land
25 surveyor, for example?



1 A. Not yet, no.

2 26. Q. Okay. Is it your intention to do
3 so?

4 A. I might at some point.

5 27. Q. Prior to the hearing of this motion,
6 sir?

7 A. No. This motion is to determine
8 these legal issues.

9 28. Q. Okay. Just going back to paragraph
10 12 again, Mr. Glaspell, we talked about advance
11 warning. Is that under the Building Code Act, sir,
12 or under any other statute?

13 A. Well, whatever process your client
14 follows when some structure is built that is in
15 excess of 104 square feet you said.?

16 29. Q. 104 square feet, sir.

17 A. I think I just showed my old age
18 with 100 square feet.

19 30. Q. And you also reference in paragraph
20 12, Mr. Glaspell, "no planning process took place".
21 What type of planning process would you have
22 anticipated?

23 A. Presumably, sketches and drawings
24 would be provided to the Municipality, permission
25 would be sought from the Municipality for any zoning



1 law variances. Presumably, there would be a public
2 consultation process where we could come and say how
3 it's going to affect or not. And this would be if
4 it was on land. Obviously, when it's on the water
5 it's a much greater obstruction. But that's the
6 normal planning process. There would also be a
7 process of whether it complies with the Building
8 Code. So it's the Planning Act, Building Code. I'm
9 no expert. I'm just a lay person on these issues.

10 31. Q. That's what I'm trying to
11 understand, sir, in terms of the planning process.
12 So no advance warning, you're talking about Building
13 Code particularly and/or Planning Act?

14 A. Yes. So North Kawartha permits
15 boathouses, as I understand it, if they're less than
16 675 square feet and 40 feet from the lot line,
17 something like that. And there are other rules in
18 the bylaws. So I wanted those bylaws to be applied
19 to this boathouse, and whatever that process would
20 be, I would have thought that you would have to
21 provide drawings or sketches before it's built, and
22 then you would have to get permission before it's
23 built. I was faced with something already built, in
24 effect, or being built in front of my eyes.

25 32. Q. Right. And again, this is for my



1 purpose for understanding as well as the Crown's,
2 the planning process, the sketches, the drawings
3 that you thought or believe should have been
4 provided, that would have been provided, in your
5 view, to the Municipality pursuant to either the
6 Planning Act or the Building Code Act?

7 A. Correct. It's whatever I own or if
8 I want to build something on my property, whatever I
9 have to provide to your client...

10 33. Q. Okay.

11 A. ...in that process. I was certainly
12 not expecting any process other than what's in the
13 bylaws of North Kawartha, absolutely.

14 34. Q. Okay. And for the purpose of the
15 bylaws, we're talking about a comprehensive zoning
16 bylaw that would have been in place at the time,
17 correct?

18 A. No. It's the Anstruther/Burley
19 bylaw, which is now become the comprehensive zoning
20 bylaw.

21 35. Q. Okay. But to be clear, we're
22 talking about a zoning bylaw, sir, that would have
23 been in place at the time, and that's what you're
24 referring to?

25 A. Right. You're right. It's the



1 comprehensive zoning bylaw for the Townships of
2 Burley and Anstruther, bylaw number 66-1996. This
3 was provided to me by your client...

4 36. Q. Right.

5 A. ...when I raised the topic.

6 37. Q. Right. And that's what is referred
7 to as the comprehensive zoning bylaw...

8 A. Correct.

9 38. Q. ...in 66-96 as amended. Again, with
10 paragraph 12, Mr. Glaspell, no permission from
11 government authorities or neighbours was obtained.
12 Now, I understand, I think your position on the
13 government authorities, for instance permits, for
14 example, from MNR. What permission for whoever
15 built this boathouse would have been obtained from
16 you, sir?

17 A. A neighbourly thing to have done
18 would have been to have spoken with myself or Mr.
19 Jones, who owns the property on the other side, and
20 say that they were thinking of building the
21 boathouse and did they have any concerns.

22 39. Q. Okay.

23 A. So there was no process like this.
24 I asked Mr. Jones when the dock was put in, and Mr.
25 Jones said that Mr. Hart told him he did have



1 permits, and I gather that what he meant by that was
2 that he didn't need permits.

3 40. Q. But in terms of permission from the
4 neighbours, is it your position that you could have
5 approved or disapproved of the construction of this
6 boathouse and that would have made any difference to
7 its construction?

8 A. Sure. I would have had an
9 involvement in the process we're just talking about
10 where he had to comply with the Planning Act, the
11 Building Code Act and the bylaws. I would have a
12 right as a neighbour as in any construction to
13 provide any comments. It's, as I understand it, the
14 Municipality's decision as to compliance in the end.
15 I don't have a veto, but I don't have a veto, as I
16 understand it. But again, that's a legal question
17 and I'm not going to...

18 41. Q. No, and I don't...

19 A. I don't want to be bound by that,
20 but my feeling is that you could not possibly build
21 something like that on land without
22 getting...involving the neighbours.

23 42. Q. Okay. And can you point me to any
24 section of the Planning Act or the Building Code Act
25 that you intend to rely upon in that position?



1 A. I will do that before the summary
2 judgment motion, absolutely. We have to go through
3 that in detail.

U/T

4 43. Q. Thank you, sir. So you will give an
5 undertaking in that regard?

6 A. Yes. Like, you're an expert on
7 these issues, so you're going to be...I'm a lay
8 person, and so I'm not expecting any processes
9 different than any other building project on Big
10 Cedar Lake.

11 44. Q. Okay, fair enough. If I can sort of
12 state that in the question. What you were expecting
13 is what anybody else would have had to go through if
14 they were building a building of this size or
15 nature, either on land or in the water?

16 A. Correct.

17 45. Q. When did you first discover that
18 this dock and boathouse was being constructed, Mr.
19 Glaspell?

20 A. Well, the dock went in...probably it
21 was in May of 2011, the big dock came in. I was up
22 there. Mr. Jones was up there. I actually saw him
23 because he was over...I met him on my property. We
24 were looking around and stuff, and we talked about
25 it. And so it was put in in May of 2011, I would



1 say. And I didn't know at the time what he was
2 doing. I was a bit concerned because of the size of
3 it, but it could have been just a dock...

4 46. Q. Okay.

5 A. ...because when it went in it looks
6 like a dock.

7 47. Q. And then you saw construction
8 occurring which...

9 A. Construction was later, yes.
10 Whether it started in June or July...certainly by
11 July the construction was in full tilt.

12 48. Q. When did it cease? When was it
13 fully erected?

14 A. Probably some time in August, but I
15 would have...I think there were some unfinished
16 parts. Like, there's windows, and I think there
17 were unfinished parts later on.

18 49. Q. Have you ever attended at the
19 boathouse to see what's in the interior of this
20 structure?

21 A. So you can look in the interior to
22 some degree if you canoe around it, so I've kind of
23 looked basically in it, but I've never stood on it.
24 I've never stood on it or gone inside it. I haven't
25 gone underneath it.



1 50. Q. I was about to ask you that because
2 I think your questions for Mr. Harris earlier were,
3 "Have you observed how it's anchored or moored or
4 connected to the lakebed", and you...

5 A. When the water goes down...the water
6 goes up and down on Big Cedar Lake. When the water
7 goes down part of that boathouse can be on the bed,
8 but anyway, I have not been in the boathouse.

9 51. Q. How far from shore is it, Mr.
10 Glaspell?

11 A. Well, it's right up to the shore.

12 52. Q. When you say "right up to the
13 shore", in terms of distance, can you give me an
14 estimate or have you actually measured that?

15 A. I've measured it, but sometimes it
16 would be, like, on the shore because the water goes
17 up and down. And sometimes it would be may a few
18 inches or a foot away from the shore, I guess.

19 53. Q. So, in fact, floating in the water?

20 A. Pardon?

21 54. Q. It's, in fact, floating in the
22 water. Is that what brings it close to the shore or
23 is it...

24 A. No. The water goes up and down on
25 Big Cedar...



- 1 55. Q. Yes.
- 2 A. ...quite a bit...
- 3 56. Q. Correct.
- 4 A. ...and when the water goes up, then
- 5 it's more likely to be floating. And if the water
- 6 is up, then it would be slightly further from the
- 7 shore, I guess.
- 8 57. Q. And when the water is down it moves
- 9 closer to the shore. Is that...
- 10 58. Q. I think the boathouse...I think the
- 11 boathouse stays in the same position. I think Mr.
- 12 Harris was correct. It's basically, permanently in
- 13 the same position, but the water goes up and down.
- 14 59. Q. And it rises and falls, of course,
- 15 with the level?
- 16 A. I guess so.
- 17 60. Q. I guess I'm trying to ask you, is it
- 18 moving at any time closer to your property or does
- 19 it at any time...
- 20 A. No.
- 21 61. Q. ...go into your property?
- 22 A. No. I think it's basically stable.
- 23 It occupies that space.
- 24 62. Q. Okay. But it just may fluctuate?
- 25 A. But when Mr. Harris and your clients



1 say that it's floating when the water is high, I
2 accept that it's floating. Like, I'm not aware of
3 it not floating, but it goes up and down.

4 63. Q. Right. And have you at any time
5 ever seen it sit or rest on the lakebed, itself, or
6 do you ever observe that occurrence?

7 A. Yes, I think it did last summer at
8 the end of the summer when the water was down. I
9 believe so, but I could not swear to it for sure.
10 You would have to ask Mr. Hart. And in particular,
11 the corner that seemed to be up was close to the
12 shore. When you look in at the boathouse on the
13 left side, so the left back corner appeared to be
14 up, but I don't know for sure.

15 64. Q. Okay.

16 A. It's obvious that the water is very
17 shallow there.

18 65. Q. How shallow is it, sir?

19 A. Well, it's shallow. It goes down to
20 nothing because it's a shore, and so the water was
21 shallow. There was lily pads in there and we...it's
22 shallow.

23 66. Q. Okay. When construction started and
24 you observed it throughout...

25 A. Yes.



1 67. Q. ...I guess, the summer of 2011, Mr.
2 Glaspell, you had contact with the Township Building
3 Department?

4 A. Yes.

5 68. Q. And I understand you contacted Jim
6 Sangster first?

7 A. Yes.

8 69. Q. And who did you understand Mr.
9 Sangster to be at the Township?

10 A. I understood he was a building
11 inspector for North Kawartha.

12 70. Q. Okay. And you contacted him to
13 advise of the construction. And did you ask him to
14 take any steps?

15 A. Well, when I initially contacted
16 him, I was trying to figure out from the dock
17 whether I could do something about that big dock
18 that just went in, and you can see that from my May
19 24 e-mail. I was trying to start to understand what
20 the rules were.

21 71. Q. Okay. Mr. Sangster, well, what did
22 he tell you at that time, Mr. Glaspell?

23 A. I don't have much recollection
24 beyond what I recorded here, and so I did this
25 e-mail shortly after I chatted with him. I was just



1 telling my family. These are all my family members.
2 I think Lucas was up there with me but, in any
3 event, when we saw it...like, this may have been the
4 weekend after we saw the dock for the first time.
5 It may have been the weekend after. like, Tuesday
6 after the long...the holiday weekend. I'm not sure,
7 but that's a real possibility.

8 72. Q. Okay.

9 A. And I don't have any recollection
10 beyond what I've got recorded there. He basically
11 said that if you're going to build a house on that
12 thing that was a big deal. He created the
13 impression for me...I mean, I'm not going to hold it
14 against him, but I had the impression that there was
15 no way they were going to allow a house to be built
16 on that.

17 73. Q. On the structure, itself?

18 A. On the dock. That's how I came
19 out...you can see my last paragraph. And so I was
20 kind of relieved by that. I sort of thought maybe
21 it was just a dock at that point.

22 74. Q. Until you saw the construction
23 proceed?

24 A. The dock, itself, would have been
25 somewhat less of a concern, but I was quite



1 concerned, because I called, because the size of it
2 was huge. It was huge already.

3 75. Q. Any further dealings with Mr.
4 Sangster after that initial contact, sir?

5 A. I think so. Whether we called him
6 to get bylaws. I got copies of the bylaws...trying
7 to figure out what the deal was.

8 76. Q. Okay. And Mr. Sangster or the
9 Building Department had send those to you?

10 A. Yes, the department.

11 77. Q. The department?

12 A. They sent that, yes. Well, I may
13 have picked it up.

14 78. Q. Okay. You went to the Township
15 office in Apsley and obtained it?

16 A. Maybe.

17 79. Q. Okay. When did you start dealing
18 with Mr. Powell on this issue?

19 A. I would have learned that he was the
20 chief building officer, and I asked to go meet with
21 him.

22 80. Q. Okay. And you had actually met with
23 Tim Powell?

24 A. I definitely met with him.

25 81. Q. And when was that, sir, and what



1 took place?

2 A. I would...I can find out the date of
3 the meeting for you if you like.

4 82. Q. Could you undertake to do that?

5 A. Yes.

U/T

6 83. Q. And what was the substance of that
7 meeting?

8 A. I was telling him what I was seeing
9 on the ground and I was asking him how the
10 Municipality would look at that.

11 84. Q. And what, if anything, was his
12 reply, Mr. Glaspell?

13 A. Let's go off the record for a
14 second.

15
16 --- DISCUSSION OFF THE RECORD

17
18 BY MR. EWART:

19 85. Q. Okay. And, Mr. Glaspell, I was
20 asking before we went off the record, what, if
21 anything, was the substance of your discussion
22 during the first meeting with Mr. Powell, who is the
23 chief building official for that Township?

24 A. We had a lengthy discussion. He
25 showed me on his computer pictures of the Jack Lake



1 boathouse, the huge one that's in the Toronto Star
2 story, and he said, "Look". As I understood it,
3 that was being built without any permission and he
4 felt that, as I understood it...and again I was
5 coming in cold and he had been living with the issue
6 for years. I understood from him that if that Jack
7 Lake boathouse could be built without any
8 permission, then, equally the boathouse beside me
9 could be built without any permission.
10 He seemed to be very focused on what was going on in
11 Havelock-Belmont-Methuen. It was a head...it was
12 something that had been going on for some period of
13 time. He had it on screen. He showed it to us. I
14 was there with my wife, and that was the focus of
15 the meeting. It was very focused on Havelock-
16 Belmont-Methuen. He had been talking with the
17 building officer there and I felt he had sort of
18 decided that if that one required no permit, then,
19 this one required no permit as well. Something like
20 that, so the...

21 86. Q. And just for clarification,
22 Havelock-Belmont-Methuen is an adjoining
23 municipality to North Kawartha?

24 A. That's how I understand it.

25 87. Q. That's what you...



1 A. And then Jack Lake is in both
2 municipalities.

3 88. Q. A common lake-shared boundary
4 between North Kawartha and...

5 A. Correct.

6 89. Q. And so he was aware of Mr.
7 Powell...and this meeting took place at his office
8 by the sounds of it?

9 A. We went up to the Apsley office and
10 we had to figure out what to do with the kids. It
11 was almost certainly in August or late July of 2011,
12 because after that we, then, made a submission to
13 the Town council. I was trying to do this in an
14 orderly way. I felt that the primary
15 responsibility...my intuition was that a building is
16 going on that the Municipality should be worried
17 about this. So we, then, made a presentation to the
18 Town council, and so your client has that
19 presentation.

20 90. Q. Okay. And at what point in time,
21 Mr. Glaspell, were you advised by the Municipality
22 that they were not going to take any steps, either
23 under the Building Code or the Planning Act? Can
24 you undertake to provide that?

25 A. I'm not sure they ever said they



1 were not going to take any steps. At some point,
2 Mr. Powell took the no jurisdiction position. I'm
3 not sure I ever got something that said "We're not
4 going to do anything for you".

5 91. Q. Okay. So you never got a letter
6 from Mr. Powell from the Building Department, either
7 from Mr. Sangster or Mr. Powell saying "We're hands
8 off" to use that term? "We're not taking any
9 position".

10 A. Well, at some point it was clear
11 either from the council meeting...we went to a
12 council meeting. We made a presentation, and then
13 they said they're going to get a legal opinion, and
14 I actually went back to a council meeting in
15 September, because I didn't realize the issue was
16 coming up again. And so the council said that they
17 were going to get a legal opinion, and I don't know
18 if they ever got the legal opinion.

19 92. Q. They never shared anything with you,
20 never advised you that an opinion was sought and
21 obtained?

22 A. The Reeve came out to the cottage at
23 one point.

24 93. Q. To your property, sir?

25 A. Yes.



1 94. Q. And that would have been Mr. Whelan,
2 Jim Whelan?

3 A. Yes, and I was swimming. I didn't
4 know he was coming. It was nice he came, but I
5 didn't realize he was coming, and so I was swimming
6 at the time. And he came and looked at the
7 boathouse and he talked about a legal opinion in the
8 sense of discussing that Galloway decision,
9 something to the effect that the Galloway decision
10 judge was dead and somehow that the...I felt that he
11 felt the Municipality is not bound by the Galloway
12 decision. I thought it was. And so there was some
13 discussion about...I don't think they ever received
14 a written legal opinion, but I have no idea. I
15 mean, I don't think I'm necessarily entitled to
16 their legal opinion.

17 95. Q. No, I wouldn't say so either. But
18 in terms of nothing was ever provided to you, either
19 by way of a legal opinion, sir, or a formal letter
20 saying "We have taken no position on this".

21 A. I'll have to look into that.

22 96. Q. Would you give that undertaking,
23 sir?

24 A. I will have to look into...because
25 more or less everything that happened around that



1 time is in this record. And they made clear at some
2 point that they were not going to do anything.

3 97. Q. Yes. I want to know when they told
4 you that and how they told you that?

5 A. By...okay. I will see what I can
6 come up with.

U/T

7 98. Q. Thank you. And in terms of Mr.
8 Powell, himself, or Mr. Sangster, being a building
9 inspector, did either of those gentlemen ever attend
10 at the property to see this boathouse?

11 A. Mr. Powell says in his affidavit
12 that he did attend the property. I think he told me
13 that he was going to go and look at it, but I...my
14 recollection is basically that he said he would go
15 look at it, but he already somehow knew that it was
16 going to be floating and he was already saying if
17 it's floating he isn't going to do anything about
18 it.

19 99. Q. Okay.

20 A. I think he was already saying that.

21 100. Q. Did he ever attend or did you ever
22 attend with him at the property? That is, I guess,
23 what I want to know is...

24 A. No.

25 101. Q. ...were you ever there when he



1 attended either the Hart property or your property,
2 Mr. Glaspell?

3 A. No, I wasn't involved when he went,
4 although he did promptly go out and look at it.
5 Like, I asked him to go look at it, as you know, and
6 he certainly promptly went out, but he also told me,
7 I think really from that time that he felt he
8 couldn't do anything about it, and that's why I went
9 to council because I didn't agree with him.

10 102. Q. And this council meeting, I'm sure
11 there's a record of it in the minutes. This was an
12 open meeting of council that you attended?

13 A. Absolutely, and made a
14 presentation...

15 103. Q. And a presentation.

16 A. ...a Powerpoint presentation.

17 104. Q. Did you submit that at the end by
18 way of slides?

19 A. It was submitted before the meeting.

20 105. Q. Okay.

21 A. I also provided a copy to Mr. Hart.

22 106. Q. Was Mr. Hart present during the
23 meeting?

24 A. No.

25 107. Q. Anyone there on his behalf? We've



1 heard of a Mr. Norm Bolton.

2 A. No, I don't think so, but it's
3 possible. I didn't really know Mr. Bolton, so we
4 would have to look at the minutes of who was there.

5 108. Q. Sure, and that would reflect that.
6 That was an open meeting?

7 A. It's very possible Mr. Bolton was
8 there, but I don't know that.

9 109. Q. And I'm just looking at, again, your
10 supplementary affidavit dated July the 8th, 2014.
11 And there was a demand for particulars put forward
12 by the Crown to yourself, sir, and that appears at
13 Exhibit 9 to your affidavit and...

14 A. I practise litigation. I don't see
15 a lot of demand for particulars.

16 110. Q. Okay.

17 A. When I receive...you know, I've been
18 in litigation for almost 25 years, and so I don't
19 receive a demand for particulars. People don't
20 usually go down that route. They usually pick up
21 the phone or they...and they don't send a demand for
22 particulars. So, frankly, I viewed this demand for
23 particulars, with all due respect, as in bad faith,
24 as a totally bad faith demand for particulars. When
25 they're asking me to explain what laws might apply



1 to that boathouse, I viewed it as...I was very
2 suspicious when I got this demand for particulars.

3 I knew they didn't want a demand...I knew they did
4 not want particulars because it's a government, and
5 they know what...they knew as the law applying, and
6 they know this is a matter for argument. I viewed
7 it...I'm very sorry to Mr. Manuel...I've dealt with
8 in other cases, but I viewed this as a bad faith
9 demand for particulars, quite frankly. And you will
10 see ultimately I felt if I didn't respond I wasn't
11 going to ever get a defence, so that's why I sent
12 the response here.

13 111. Q. Because the response you did provide
14 was in accordance with the Rules. I may agree with
15 you that's an under-used Rule, but nonetheless you
16 did respond. An it's paragraph 1 of your response,
17 and I think you may have to give an undertaking on
18 this, Mr. Glaspell, but you say you,

19 "...rely on all sections of the Building
20 Code Act and Planning Act and regulations
21 promulgated thereunder with respect to this
22 structure..."

23 Is that still your position today, sir, that the
24 Planning Act and all sections of that, including the
25 Building Code Act and its regulations are...



1 A. Yes.

2 112. Q. ...applicable to this structure or
3 do you want to narrow that down for us?

4 A. Yes. I'm going to narrow it down
5 and it's going to be in the factum. I can't give
6 you more detail today, but these issues...these are,
7 from my perspective, important issues, so we've got
8 to inform the court as best we can. I'm probably in
9 the worst position, but I'm going to do as best I
10 can, and I've counsel for Ontario and yourself will
11 help, and so hopefully all three of us together can
12 put this to the court in an honest, fair way. But
13 absolutely, I'm going to try to give the sections
14 and the appropriate law and case law.

15 I start with the proposition that public
16 land is public land and you can't put something down
17 there without compliance with the statute or some
18 licence from the Crown. So this is for our friend
19 here, that I believe I'm going to find law that says
20 that there's a presumption that you can't occupy
21 land, and then it's down to the statute. I don't
22 think they're going to say otherwise.

23 So I'm going to look at statutes and
24 regulations. You knew my view is that the free-use
25 policy...the policy is not law and, if it doesn't



1 comply with the law, it's nothing. But I'm going to
2 give you the best I can the Planning Act part and
3 the Building Code Act. And I'm happy that you're
4 involved because I know
5 you have great expertise in that area as well.

U/T

6 113. Q. And you also touched on the
7 Municipal Act. So you will be identifying the
8 relevant sections?

9 A. I will try. I looked at the
10 Municipal Act and there's questions. I think there
11 could be relevant sections, yes.

12 A. Yes. For example, I'm not trying to
13 tell you what to plead, but 272 and 273 are usually
14 your bad faith sections, so I would expect to see
15 that. But, for example, I'm not going to see when
16 you say "all sections of the Municipal Act", you're
17 not going to give me Part 11D, in the "Municipal
18 taxation", for example, Mr. Glaspell? You're going
19 to narrow it down and say, this is what's relevant
20 when we talk about building on water or buildings in
21 Planning Act contraventions, et cetera, correct?

22 A. Yes. This is a summary judgment
23 motion and there is this interesting tax issue about
24 how it's dealt with, because if it's added to the
25 assessment and the impact increases the value of the



1 attached land, then, your client gets tax dollars
2 from that. So that's a relevant thing about whether
3 if they're getting tax dollars, then, should they be
4 regulating. So there's a tie-in there. But I'm
5 absolutely going to try to get the legal part put
6 together.

U/T

7 114. Q. Yes, that's what I'm asking, sir,
8 because...

9 A. And I'm going to work with you
10 because this may not end at the Superior Court, and
11 so I want to present it as best we can.

12 115. Q. Sure. But I don't expect get, for
13 example, 239 of the Municipal Act, which deals with
14 closed sessions of meetings of council. I'm not
15 going to see that, for example. When you say "all
16 of them", you didn't mean that, I guess is my
17 question?

18 A. I absolutely did not mean them all.
19 We're very focused here on the question of whether
20 that boathouse can go on that land with no
21 permission, no prior...no permission at all.

22 116. Q. Permission either from the Crown or
23 from the Municipality is...

24 A. No permits stuck on the wall to say
25 to the neighbours, "I've got a permit to build this



1 house on the water". And so the issues I've set out
2 in the motion are whether you're right. Can you
3 actually put that building on Big Cedar Lake, in the
4 way it was done, with no permission at all from the
5 Ontario or Municipal Government. Those are the
6 issues for the summary judgment motion. And I will
7 say it right now, because if I lose that, then...and
8 he required no permission at all from you, then I'm
9 not sure I have any case left. All of a sudden you
10 have to figure out whether I have a case, so that's
11 why I've tried to be very efficient here.

12 I want everybody to be efficient, because
13 if you're right, and you have no jurisdiction, and
14 the Ontario Government is right that they can build
15 these things...and basically, as I can understand
16 it, because you can extend property lines out to the
17 centre of a lake, the entire lake can be carpet
18 covered with buildings. If that's right, then, at
19 least it will be clear for the Government and for
20 the public of what they can do, and I suppose
21 everybody will be building boathouses.

22 117. MR. EWART: Can we go off the record for
23 a second?

24
25 --- DISCUSSION OFF THE RECORD



1 BY MR. EWART:

2 118. Q. So, Mr. Glaspell, before we went off
3 the record, you're going to, then, provide to us the
4 specific sections you intend to rely upon in support
5 of your position at it pertains to the Planning Act,
6 the Building Code Act, Building Code regulations and
7 the Municipal Act? And that clearly what you're
8 saying in your reply to demand for particulars, you
9 did not mean to say that every sections of those
10 particular statutes have application here?

11 A. I was upset by their demand for
12 particulars and the intentional delay to deliver a
13 defence, honestly.

14 119. Q. Okay.

15 A. And so I thought at some point I
16 better send them something or they're never going
17 to...they're just using it as an excuse not to
18 deliver a defence, and it worked. I sent them
19 something. But you're absolutely right, to the best
20 of my ability I'm going to give you the...I want to
21 inform the court because I want the best decisions
22 we possibly can get on this issue.

23 120. Q. Perfect. So you will, then, provide
24 those, I guess, better particulars or at least the
25 undertaking to provide those specific sections?



1 A. It will, at least, be in the factum,
2 right, because we are assuming we will be up against
3 the factum. I don't think there's that many
4 sections, so if that's what you're saying, but it... U/T

5 121. Q. I agree. I just don't want to have
6 to worry about every part of the Municipal Act or
7 every section of the 72 sections of the Planning
8 Act.

9 A. Absolutely right, Counsel.

10 122. MR. EWART: Well, Mr. Glaspell, subject
11 to the undertakings, those are my
12 questions. Thank you, sir.

13 MS. DADA: I have no questions.

14 123. MR. GLASPELL: Do you mind if I just put
15 on the record...okay. Just go off the
16 record for a second.

17
18 --- DISCUSSION OFF THE RECORD

19
20 124. MR. EWART: Go ahead.

21 125. MR. GLASPELL: Mr. Powell swore an
22 affidavit on July 4, and delivered it to
23 me, and then I delivered a notice of
24 cross-examination on July 4, asking that he
25 come today to Victory Verbatim to be



1 cross-examined on his affidavit. Mr.
2 Ewart, on behalf of Mr. Powell said late
3 yesterday that he had not anticipated that
4 Mr. Powell should have to come to Toronto
5 based on the Rules or for whatever reason.
6 So Mr. Powell did not come today, and I'm
7 agreeable to go out to Peterborough to
8 examine Mr. Powell, but it just may have
9 some cost consequences because we now have
10 two days and two trips, and so I'm not
11 asking for a certificate of non-attendance,
12 but I feel that he should have come today
13 or, if he wasn't coming, that your office
14 should have told me by Monday and, frankly,
15 we would have moved everything out to
16 Peterborough so we could do it all in one
17 day, subject to what Ms. Dada would say.
18 Anyway, we will pick up with Mr. Powell
19 next week. Your office is going to provide
20 available dates.

21 126. MR. EWART: We will provide dates, Mr.
22 Glaspell, and we do expect Mr. Powell to be
23 examined in accordance with the Rules of
24 Civil Procedure.

25 127. MR. GLASPELL: Okay. Thank you very



B. Glaspell - 40

1 much.
2 128. MR. EWART: Thank you.



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REPORTER'S NOTE:

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I hereby certify the foregoing to be a true and accurate transcription of the above noted proceedings held before me on the **9TH DAY OF JULY, 2014** and taken to the best of my skill, ability and understanding.

Certified Correct:

Michelle Beck
Verbatim Reporter



BARRY GLASPELL

- and -

**THE CORPORATION OF THE TOWNSHIP OF NORTH
KAWARTHA et al.**

Plaintiff

Defendants

ONTARIO
**SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT TORONTO**

**MOVING PARTY'S SUPPLEMENTARY MOTION
RECORD**

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