

April 23 2014

County of Peterborough  
County Court house  
470 Water Street  
Peterborough Ont  
K9H 3M3  
Att Bryan Weir , Director of Planning

## Re: Havelock Belmont Methuen Township (HBM) Official Plan File 15OP-12011

### Objections to HBM Official Plan

#### Item #1

#### Regulating In water development

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

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permit..*** I appealed this bylaw to the OMB to establish clarity on in water development jurisdiction and HBM Council repealed the bylaw rather than defend their position at an OMB hearing.

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

#### Permit, please

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



About the same time, in 2011, a property owner undertook to build a major in water boathouse in Jack Lake within Havelock Belmont Methuen without any zoning restrictions, without any municipal building permits

under the Ontario Building Code Act and without any inspection by Havelock Belmont Methuen Township or any other level of government. This would not happen in a third world country! In Muskoka, Sequin Township now has an Appeal Court Of Ontario decision to have such a building demolished if not removed by owner by April 30 2014.

This HBM structure serves today as a MONUMENT to inaction by HBM allowing uncontrolled in water development within their municipality in which they have responsibilities for regulating land use within their municipal boundaries. Now the County of Peterborough is supporting HBM position.



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

Council refused to accept the recommendation of their planning consultant to regulate in water development claiming the “no jurisdiction” position. The new County approved Official Plan section 3.3.4.2 Marine Facilities a)

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

The new HBM Official Plan as adopted by HBM Council stated:

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

The County Approved HBM Official Plan per modification # 90 states

**a) On-Water Structures**

In general, the beds of most lakes and rivers are owned by the Crown and as such are subject to the Public Lands Act, as amended, and administered by the Ministry of Natural Resources. By virtue of their status, the ultimate use of Crown Lands can only be determined by the Province of Ontario. Consequently, the following provisions provide direction to the Province.”

BUT

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

b) is inconsistent with or does not conform to,

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

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

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

ALSO MNR recently advised<sup>iv</sup>

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

County of Peterborough approval of HBM OP through modification #90 attempts to discourage the Province of Ontario from approving on water boat houses. In order for MNR to prohibit boathouses in Havelock Belmont Methuen MNR would require legislative changes to the Public Land Act. That Act allows for certain boathouses single story boathouses **up to 36000 sq ft** but also requires regard for municipals controls such as OP policies. The Havelock Belmont Methuen Council now supported by Peterborough County Council is abrogating municipal responsibility for regulating in water development and exposing lakes within HBM to unregulated development.



# Boathouse construction key issue in official plan amendment

Mark Hoult  
Community Press

**Havelock-Belmont-Methuen** — The municipality is seeking input from lake residents as it moves forward with a compressive zoning bylaw and official plan amendment.

Council met with representatives of the Havelock-Belmont-Methuen Lakes Association last week to discuss concerns of waterfront property owners and members of different lake associations, such as the contentious issue of boathouse construction on the shoreline and over the water.

The meeting is part of the municipality's movement to "open dialogues and avenues of communications" with community groups and residents, said Reeve Ron Gerow.

Local lake residents have been asking since 2009 for amendments to the municipality's zoning bylaw to disallow the construction of boathouses that extend over the water. They say such permanent boathouses take away from the natural beauty of a lake and block light from the water, preventing the growth of aquatic vegetation that is essential to the ecosystem of shoreline waters.

**Appealed to OMB by Ambrose**

In the face of opposition, council backed off a scoped bylaw last year that would have set a maximum size for boathouses of 800 square feet and prohibited their use for cooking, sleeping and recreation. Council now plans to handle the boathouse issue through the comprehensive zoning and official plan amendment process, during which the lakes associations can provide information and the viewpoints of their members, Gerow said.

"We certainly want to provide an opportunity for the lake associations groups to have their input and say in terms of how we move forward," he said.

CAO Linda Reed said the implementation of an interim control bylaw would be a long process requiring a 60-day appeal period, which brings with it the possibility of an Ontario Municipal Board hearing.

"That's why council feels that rather than go through that whole process, it would be better and more efficient to get to the final product, an amendment to the official plan," she said.

Reed said council agreed in early July to go ahead with the official plan amendment process, beginning with meetings with planning consultant Michael Keene, of FoTenn Planning and Urban Design in Kingston. She said public consultations will take place in August and early September, followed by the completion of a policy document and a review process involving the province and various agencies. The goal is to complete the process in the fall of 2012, Reed said.

"We feel this is a very efficient way to move forward," she said. "This allows us to produce something based on public consultation that we can defend. This is a fairly aggressive timeline for a

**“We've been dealing since 2009 with boathouse issues. People are rushing to do things that are environmentally unfriendly, and our lakes are at risk. We're concerned about our water, our local natural heritage and the visual impact.”**

— Ruth Pezzack

full revision of the official plan and the zoning bylaw and an interim control bylaw would just be a band-aid solution and delay the entire process.”

Gerow said council wants to “hear what the issues are and get them on the table.” He added he has received numerous e-mails from lake residents about the boathouse issue, and stressed the municipality and the lakes association should “move forward together” to find a solution to the issue through the official plan and zoning bylaw amendment process.

But lakes association member Ruth Pezzack said she was “personally not happy at all” with council's decision to not put an interim control bylaw in place.

“We've been dealing since 2009 with boathouse issues. People are rushing to do things that are environmentally unfriendly, and our lakes are at risk. We're concerned about our water, our local natural heritage and the visual impact.”

Gerow said council has made its decision on how to proceed with the boathouse issue, stressing the consultation process must involved the entire municipality.

“The bottom line is we need to hear from everybody, and when we develop strategies and documents it's for the whole municipality,” he said.

Gerow added the municipality is receiving applications for the construction of boathouses, which means not all lake residents are opposed to them.

“And those people have a right to put their position on the table,” he said.

The lakes association is distributing a survey to its members to get their input on issues affecting the official plan and zoning bylaw process.

Belmont Lake resident and lakes association member Pete White said lake residents and the municipality as a whole “have a common interest” in completing the amendment process.

“We need the official plan and zoning bylaw that's best for the municipality and for the lakes,” he said.

Gerow agreed.

“If we move forward together we accomplish some great things.”



## REQUESTED CHANGE

That HBM OP prohibit in water boat houses as was clearly expressed by the cottage community and accept the MUNICIPAL RESPONSIBILITY to regulate all development within the boundaries of their township to protect water quality and the natural beauty of the area. HBM council is on record agreeing that boathouse should be prohibited so should accept responsibly to regulate in water development as other Ontario municipalities do. This HBM Official Plan update is the opportunity for Havelock Belmont Methuen and Peterborough County to accept responsibility to regulate in water development as exercised in Haliburton and Muskoka and supported by numerous Court decisions when challenged.

### Item #2

#### Sharpes Bay ( Jack Lake)

##### Modification 99

Section 3.3.4.10 was modified by adding

e) the following lake(s) have been identified as being at capacity lake trout lakes:

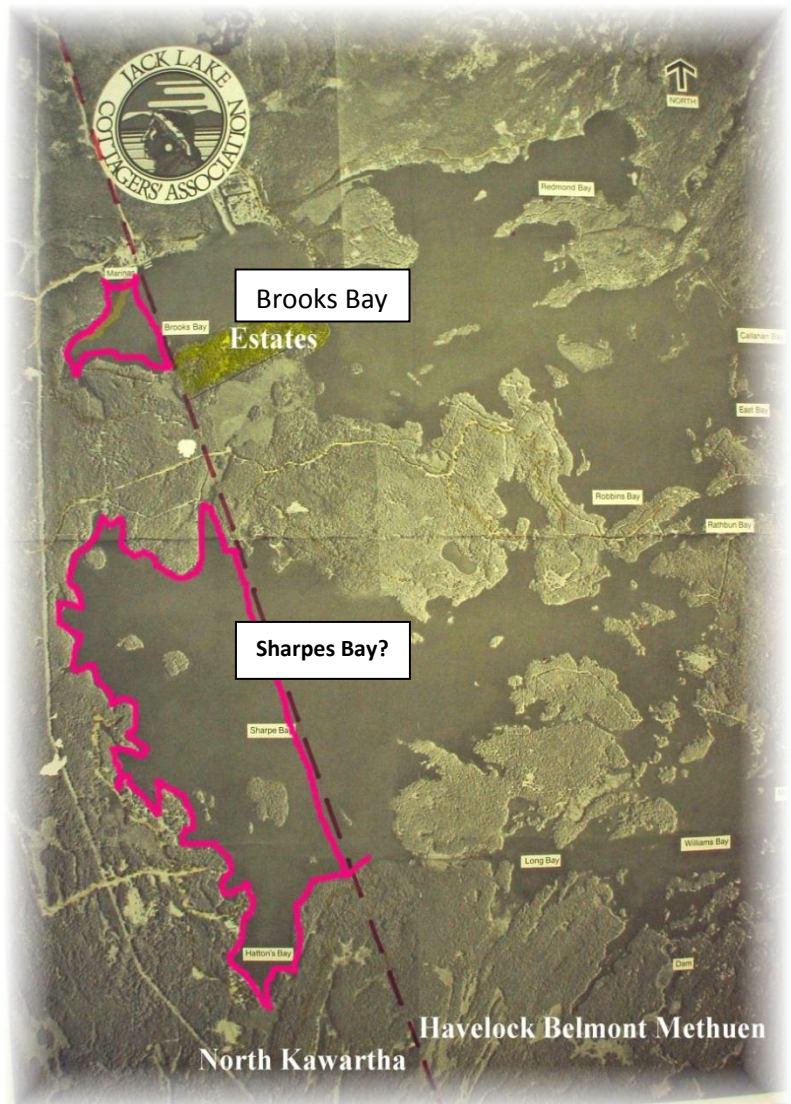
Sharpes Bay ( Jack Lake) as confirmed by MNR

For several years in cooperation with the Jack Lake Cottage Association studies have been underway my MOE and MNR to determine if Jack Lake is to be categorized as a Lake Trout Lake and its subsequent capacity classification.

Jack Lake is located within two municipalities both of which have been updating planning documents.

North Kawartha Twp in Mar 2013 passed a new comprehensive zoning bylaw which included a “new” provision that Jack Lake, within their jurisdiction, was a Cold Water Lake and imposed prohibition of on land boat houses. This North Kawartha zoning bylaw 26-2013 regulates part of Jack Lake and part of Brooks Bay as being Cold Water Lake at capacity. The boundaries of this North Kawartha zone provision is clearly as per outline on attached map

The HBM OP policy is inconsistent with the North Kawartha development restrictions being that it does not apply to Jack Lake but just to Sharpes Bay and the **boundaries** of



Sharpes Bay are not identified nor commonly accepted

**REQUESTED CHANGE:** That HBM OP is amended to identify extent of at capacity lake trout status to Sharpes Bay by providing an illustration of boundaries

### **Item #3**

#### **Private Roads 2.1.5.4**

It is noteworthy that on Jack Lake all cottages are located on private roads and most new lot creation is likely only practical on new private roads.

Most private roads are built on Crown Lands around Jack Lake and other lakes in this area and such roads are allowed to be constructed through permits under the Public Lands Act. Would this OP policy stop or intend to stop construction of roads on Crown Lands? If the policy of no new roads is to apply only to private land does the Planning Act regulate construction of roads?

Subject to appellant obtaining and reviewing any provincial policy of Private Roads the following changes are requested:

#### **REQUESTED CHANGES:**

**That: prohibition of new private roads be removed from section 2.1.5.4**

**That: reference to qualification of road designer and builder be removed from section 2.1.5.4**

**That: wording new development along shorelines should be generally occur on lots containing frontage on municipally maintained roads be removed from section 2.1.5.4**

**That: Road access 2.1.5 be modified which states “where development is permitted, it will have direct access onto Provincial Highway, a County Road or Municipal Road that is maintained year round by a public authority .Note: as all lots on Jack lake are serviced by private roads and development is include in OP Glossary of Term to include construction of buildings and structures or a significant addition thereto.....this would mean that generally no construction could take place on Jack Lake.**

**That: modification #6 re 2.1.5.4 be reviewed to determine, if in fact, a vacant land condominium development is required to have direct access to a public road..if so if future developments such as the Jack Lake Estates could not have been be approved which is unlikely the intension of either the Township or County.**

#### Item #4

### ENVIRONMENTAL PROTECTION

County of Peterborough OP section 4.2.4 Natural Heritage Features states that:

*In their local plans, Local municipalities are encouraged to designate on map schedules and protect other natural features and area, and to otherwise go beyond the policies of Section 4.1.3.4 in seeking to protect natural heritage features and areas from incompatible development.*

The approved HBM OP section 1.2.4 **The Natural Environment** and the Lakes states

*It is a priority of this Plan to protect the natural resources of the Municipality.....Council will place high priority on the protection of lands with significant environmental features and their associated functions*

The approved HBM OP section 1.2.5 **Sustainability** states:

1.2.5.1 This plan identifies a number of defining environment and topographical features that contribute to the Township's extensive natural heritage system.

**Environmental Protection** section 1.3.6 indicates that this designation only applies to significant features identified by MNR through their Natural Resources Verification System(NRVIS) which in fact has been replaced by the Land Information Ontario (LIO) system. This proposed approach of relying only on MNR strategically excuses the township from being responsible for identifying and protecting sensitive heritage features such as wetlands commonly found on the shore lands of lakes such as Jack Lake.

The current in effect HBM OP has Environmental Protection category on land use legend on Schedules A1 & A2 which identified several EP areas on Oak, Crowe and Round Lakes but none on Kashabog or Jack Lakes –

The County approved HBM OP does not identify **any wetlands or sensitive areas** such as wetlands as being EP on the shores of Jack Lake which definitely exist and should be both identified and protected.

North Kawartha new zoning bylaw which included part of Jack Lake has EP zoning defined on schedules produced by the County of Peterborough and this information was based on GIS mapping. Jack Lake EP protection should also be available to the part of Jack Lake in Methuen Township

**REQUESTED CHANGE - at least the existing know sensitive areas on HBM in effect zoning bylaw for Jack Lake should be identified EP or wetlands on the new OP**

Item #5

**On Land Boat Houses Trout Lakes**

Jack Lake is located in the North West corner of HBM and within the Canadian Shield and within the community area of Apsley. North Kawartha (NK) Township in cooperation with MNR prohibits on boathouses for trout lakes. Jack Lake has been determined by MOE and MNR as being a trout lake either in whole or in part. The new NK zoning bylaw, currently under appeal to OMB, does not allow on land boat house on trout Lakes such as say Jack Lake. This is consistent with other trout lake in the Apsley area such as Chandos Lake. The lakes prohibiting boathouses in the North Kawartha planning documents are based on being cold water/trout lakes but not based on being at capacity trout lakes as determined by MNR/MOE.

MNR has previously required that trout lakes be protected from near water development such as on land boathouses to protect water quality.

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

**REQUESTED CHANGE: subject to further review by appellant – That HBM OP be modified to prohibit near water development such as boat houses on all lots on Jack lake or part of Jack lake determined to be a trout lake or trout lake at capacity**

Item #6

**Recreational Camps**

2.1.6.1 states that a recreational camp may not be occupied for more than 90 days in any 12 month period

**REQUESTED CHANGE- subject to appellant better understanding the authority of a land use being authorized to time limits other than through passing temporary bylaws – the time restriction should be reviewed/removed**

**Lot area**

Sates recreational camp shall be 40 acres

**REQUESTED CHANGE: that the lot area should only be as per zoning bylaw and not included in OP policy-this is a regulation not policy**



**Item #7**

**Non Conforming Uses 2.1.20 states**

The term “zoned as non conforming” should be reviewed- not aware that zoning bylaws ZONE non conforming

And states

The development of existing undersized lot on private services may be permitted....provided the size and soils appropriate for a well and sewage disposal system approved by appropriate authorities

**REQUESTED CHANGE- remove reference to a well**

And state

The minimum lot size for development on private water and sewage will be 21,528 sq ft----So this would result in no addition to a lot less than this size---if this is the intent --such lots should be identified on zoning bylaw to avoid any misunderstandings.

**Item #8**

**Crown Lands**

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

**REQUESTED CHANGE**

**As this statement is factually wrong that it be deleted**



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<sup>i</sup> Toronto Star – Saturday May 19 2012-Peterborough Boathouses Have Neighboring Cottagers Fighting Mad

<sup>ii</sup> Community Press article July 21 2011 Boathouse construction key issue in official plan amendment

<sup>iii</sup> Public & Ministry/Agency Submissions and Recommendations November 2012

<sup>iv</sup> E mail from MNR Sept 11 2012