

May 19 2013

To: Members of North Kawartha Council and Staff

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

