

# **REVISED AGENDA**

## **COMMITTEE OF THE WHOLE**



**Thursday, March 10, 2022**

**9:15 a.m.**

**Via Zoom Meeting**

**9 James Street, Parry Sound, Ontario**

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To ensure the practice of proper social distancing measures, and to help prevent the spread of COVID-19 in the community, Council Meetings will be held electronically in accordance with section 238 of the Municipal Act, 2001. All Meetings will be recorded, and posted on the Township website for members of the public to view.

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### **(Add-on)**

#### **9:15 a.m. FINANCE AND ADMINISTRATION (O)**

##### **1. 2022 Capital Budget Summary**

Pages: 1-4

##### **2. 2022 Capital Project Details**

Pages: 5-15

##### **3. 2022 Federation of Northern Ontario Municipalities (FONOM) Annual Conference – May 9<sup>th</sup> - 11<sup>th</sup>, 2022**

Pages: 16-17

##### **4. West Parry Sound Joint Election Compliance Audit Committee**

Pages: 18-33

##### **5. Legal Update (no matters to report)**



##### **6. Update on Re-Opening Municipal Facilities**

Classification: Closed (C) - Closed to the Public Open (O) - Open to the Public

Please note, the timing of matters listed above are approximate and the order in which they are discussed is subject to change.

**10:15 a.m. PLANNING AND BUILDING (O)**

- 1. Agreement for Registration on Title  
(Prentice Committee of Adjustment Application No. A23-21)**

Pages: 34-41

- 2. Ministry of Northern Development, Mines, Natural Resources and Forestry. Seeking input on the use of floating accommodations on waterways over Ontario's public lands**

Pages: 42-75

- 3. Building Permit Summary**

Pages: 76-79

**11:00 a.m. THE ARCHIPELAGO AREA PLANNING BOARD (O)**

**11:30 a.m. PUBLIC WORKS (O)**

- 1. Operational Services Update**



Pages: 80-91

**12:30 p.m. LUNCH**




## Capital Budget Summary


<b>Revenue</b>	Transfer from Reserves	334,100
	Borrow from Reserves	628,200
	Covid-19 Funding	167,870
	Ontario Community Infrastructure Fund	60,000
	NOHFC	135,000
		<b>1,325,170</b>
<b>Expenses</b>	Administration/Council	107,870
	Waste & Recycling	451,000
	Access Points	74,800
	Transportation	464,100
	Facilities	227,400
		<b>1,325,170</b>
	<b>Capital Budget Surplus/(Deficit)</b>	<b>-</b>



## Departmental Budget Summary

		Administration/Council	
	<b>Revenue</b>	Covid-19 Funding	<b>107,870</b>
	<b>Expenses</b>	Escribe Meeting Software	12,870
		Council Chambers Modernization	80,000
		New Council Devices	15,000
			<b>107,870</b>
		<b>Administration/Council Surplus/(Deficit)</b>	<b>-</b>

		Waste & Recycling	
	<b>Revenue</b>	Transfer from Reserves	300,000
		Borrow from Reserves	151,000
			<b>451,000</b>
Gen. 	<b>Expenses</b>	Waste Containers - 2 x 40 yard	22,000
		Roll-off truck	330,000
South 		Staff building at Healey Lk Transfer Station	25,000
		Foam Dock Replacement- Devil's Elbow	15,000
North 		Switch Site 9 compactor motor - gas to electric	4,000
		Pointe au Baril Rock Face Scaling - Transfer Station	40,000
		Scale house building for Site 9	15,000
			<b>451,000</b>
		<b>Waste &amp; Recycling Surplus/(Deficit)</b>	<b>-</b>

		<b>Access Points</b>	
	<b>Revenue</b>	Transfer from Reserves	25,000
		Borrow from Reserves	49,800
			<b>74,800</b>
South			
	<b>Expenses</b>	Kapikog Foam Dock Replacement	25,000
		Pre-Cast boat ramp for Kapikog Boat Ramp	7,400
		Woods Bay Foam Dock Replacement	20,000
North			
		Bayfield Foam Dock Replacement	15,000
		Pre-Cast boat ramp for PaB Boat Ramp	7,400
			<b>74,800</b>
		<b>Access Points Surplus/(Deficit)</b>	<b>-</b>

		<b>Transportation</b>	
	<b>Revenue</b>	Transfer from Reserves	9,100
		Borrow from Reserves	395,000
		Ontario Community Infrastructure Fund	60,000
			<b>464,100</b>
Gen	<b>Expenses</b>	Excavator with attachments / brushing/ditching	255,000
		AVL GPS system for fleet	9,100
		Triaxle Equipment Trailer	40,000
South			
		3 Legged Lake Road work with Seguin	10,000
		Blackstone Crane resurfacing with Seguin	90,000
North			
		Shawanaga Landing Road Intersection	60,000
			<b>464,100</b>
		<b>Transportation Surplus/(Deficit)</b>	<b>-</b>

		Facilities	
	<b>Revenue</b>	Borrow from Reserves	32,400
		NOHFC	135,000
		Covid-19 Funding	60,000
			<b>227,400</b>
	<b>Expenses</b>	Pre-Cast boat ramp for Holiday Cove Marina	7,400
		Pointe au Baril Window and Door upgrades	150,000
		HRV system for 9, James Street	60,000
		PAB Bob Murray Sculpture	10,000
			<b>227,400</b>
		<b>Facilities Surplus/(Deficit)</b>	<b>-</b>

 Green Initiative

## 2022 Capital Project Details

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### Department: Administration/Council

Project Title: Escribe Meeting Software  
Asset Class: Software  
Purchasing Policy: Documented Quotes  
Strategic Priority: Leadership & Communications

Project Type: Previously Approved  
Department: Administration  
Green Initiative 🌱: Yes

Escribe is a meeting management system that will improve internal reporting, agenda and minute preparation processes, meeting controls, and document accessibility and security. Moving to paperless agendas benefits the Township by reducing Staff time in preparing agenda materials for meetings, provides easier access to information, reduces paper waste and supports a more ecofriendly environment.

Expense	2022	Total
<b>Funding</b>		
COVID-19 Funding	12,870	12,870
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$9,900	\$9,900

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Project Title: Council Chambers Modernization  
Asset Class: Hardware  
Purchasing Policy: Documented Quotes  
Strategic Priority: Sustainable & Cost Effective Services

Project Type: Previously Approved  
Department: Administration  
Green Initiative 🌱: No

In order for Council to return to in-person and/or hybrid meetings, a full technological modernization of the Council Chambers will be required. These upgrades would allow hybrid meetings (virtual and in-person components) to ensure an open and transparent democratic process, while also permitting Members of Council to return to the chambers, while allowing the public to view the meeting on-line.

Expense	2022	Total
<b>Funding</b>		
COVID-19 Funding	\$80,000	\$80,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$0	\$0

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## 2022 Capital Project Details

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Project Title: New Council Devices  
Asset Class: Hardware  
Purchasing Policy: Documented Quotes  
Strategic Priority: Leadership & Communications

Project Type: Recommended  
Department: Administration  
Green Initiative 🌱: Yes

In addition to the audio and video upgrades to the Council Chambers, Members of Council will require a device to allow for participation in meetings when attending virtually, as well as access to their agendas during meetings.

Expense	2022	Total
<b>Funding</b>		
COVID-19 Funding	\$15,000	\$15,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$1,100	\$1,100

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## Department: Waste & Recycling

Project Title: Waste Containers – 2 x 40 yard  
Asset Class: Hardware  
Purchasing Policy: Documented Quotes  
Strategic Priority: Sustainable & Cost Effective Services

Project Type: Recommended  
Department: Waste  
Green Initiative 🌱: No

Additional containers will help support the additional levels of service to rate payers, such as abandoned dock days, and free dock disposal, reducing the need to rent bins.

Expense	2022	Total
<b>Funding</b>		
Transfer from Reserves	\$22,000	\$22,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$0	\$0

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## 2022 Capital Project Details

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Project Title: Roll-off truck  
Asset Class: Fleet/Vehicle  
Purchasing Policy: Tender  
Strategic Priority: Sustainable & Cost Effective Services

Project Type: Previously Approved  
Department: Waste  
Green Initiative 🌱: Yes

A replacement roll-off was previously approved (2019), but was deferred at the time due to uncertainties surrounding the blue box transition. Irrespective of what transpires with the blue box program The Archipelago still needs to haul household garbage, construction and demolition waste, large item waste and scrap metal. The current roll-off truck dates back to 2009 and has had reliability issues – will likely need to dispose of it within the next 2-3 years. The Archipelago needs a reliable back-up. New vehicle will be more environmentally friendly (higher tier emissions control system), and economical. Having two units for a period of time will also enable operations to place one unit in the North (at Site 9), and one unit in the South (at the shop), thereby reducing operating expenses driving a truck from North to South. Having a second truck also allows operations to bring more activities in-house, further reducing transportation costs, as the department has the staff available to operate the equipment.

Expense	2022	Total
<b>Funding</b>		
Transfer from Reserves	\$300,000	\$300,000
Borrow from Reserves	\$30,000	\$30,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$5,000	\$5,000

Project Title: Staff Building at Healey Lk Transfer Station  
Asset Class: Buildings  
Purchasing Policy: Documented Quotes  
Strategic Priority: Sustainable & Cost Effective Services

Project Type: Recommended  
Department: Waste  
Green Initiative 🌱: Yes

Current building is rotting and failing. New building will be large enough to support a separate WC complete with a composting toilet as part of an environmental pilot project.

Expense	2022	Total
<b>Funding</b>		
Borrow from Reserves	\$25,000	\$25,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$200	\$200

## 2022 Capital Project Details

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Project Title: Foam Dock Replacement- Devil's Elbow  
Asset Class: Hardware  
Purchasing Policy: Documented Quotes  
Strategic Priority: Protect & Preserve

Project Type: Recommended  
Department: Recreation  
Green Initiative 🌱: Yes

This project will replace the foam dock at the Devil's Elbow transfer station site.

Expense	2022	Total
<b>Funding</b>		
Borrow from Reserves	\$15,000	\$15,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$250	\$250

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Project Title: Switch Site 9 Compactor Motor  
Asset Class: Hardware  
Purchasing Policy: Documented Quotes  
Strategic Priority: Sustainable & Cost Effective Services

Project Type: Recommended  
Department: Waste  
Green Initiative 🌱: Yes

It is proposed to replace the current gas powered compactor motor with an electric one, affording increased reliability, more environmentally friendly and reduced maintenance and operating costs.

Expense	2022	Total
<b>Funding</b>		
Borrow from Reserves	\$4,000	\$4,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$	\$less than current

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## 2022 Capital Project Details

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Project Title: Pointe au Baril Rock Face Scaling  
Asset Class: Hardware  
Purchasing Policy: Documented Quotes  
Strategic Priority: Sustainable & Cost Effective Services

Project Type: Health & Safety  
Department: Waste  
Green Initiative 🌱: No

The rock face where the Pointe au Baril transfer station is located needs to be scaled, as loose rock and debris is falling to the ground. This activity has not been performed before and costs are therefore very approximate. Rock face scaling should take place on a regular basis as ongoing freeze/thaw cycles inevitably continue to fracture the rock face. **This work could be done in-house with the purchase of the excavator and staff training for the project.**

Expense	2022	Total
<b>Funding</b>		
Borrow from Reserves	\$40,000	\$40,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$0	\$0

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Project Title: Scale house building for Site 9  
Asset Class: Buildings  
Purchasing Policy: Documented Quotes  
Strategic Priority: Sustainable & Cost Effective Services

Project Type: Recommended  
Department: Waste  
Green Initiative 🌱: No

Some additional funding may be required over and above what was allocated during the 2021 budget to cover to full cost of a scale house building. Use of the existing building is logistically challenging and would likely cost as much money converting it.

Expense	2022	Total
<b>Funding</b>		
Borrow from Reserves	\$15,000	\$15,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$200	\$200

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## 2022 Capital Project Details

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### Department: Recreation – Access Points

Project Title: Foam Dock Replacement Program  
Asset Class: Hardware  
Purchasing Policy: Documented Quotes  
Strategic Priority: Protect & Preserve

Project Type: Previously Approved  
Department: Recreation  
Green Initiative 🌱: Yes

This project will replace all three remaining foam docks within The Archipelago. The locations are Kapikog, Woods Bay and Bayfield.

Expense	2022	Total
<b>Funding</b>		
Transfer from Reserves	\$25,000	\$25,000
Borrow from Reserves	\$35,000	\$35,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$1,000	\$1,000

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Project Title: Pre-cast Boat Ramps  
Asset Class: Hardware  
Purchasing Policy: Documented Quotes  
Strategic Priority: Sustainable & Cost Effective Services

Project Type: Recommended  
Department: Recreation  
Green Initiative 🌱: No

Several Archipelago locations would benefit from improved ingress/egress at our launch sites. The concrete pre-cast ramps will provide trucks with additional stability and improved grip when launching and retrieving boats. The locations are Pointe au Baril Wharf boat ramp and Kapikog Launch. Each location will use two pre-cast units at a cost of \$7,400 per location. The units will be installed in-house by public works staff to reduce costs.

Expense	2022	Total
<b>Funding</b>		
Borrow from Reserves	14,800	14,800
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$0	\$0

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## 2022 Capital Project Details

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### Department: Transportation

Project Title: Excavator with attachments/brushing/ditching Project Type: Recommended  
Asset Class: Vehicle Department: Roads  
Purchasing Policy: Tender Green Initiative 🌱: No  
Strategic Priority: Sustainable & Cost Effective Services

Purchase of this piece of equipment will enable The Archipelago to carry out multiple activities that have been subcontracted out, including; brushing, ditching, culvert replacements and some grading activities. These activities cost The Archipelago around \$60,000 in invoices each year. It is proposed to sell an existing backhoe (for around \$75k), to subsidize the purchase price of the new unit (\$330k). The excavator may also be able to carry out some scaling that will be required of the rock face at the Pointe au Baril transfer station (see previous item) and provide efficiencies when loading our trucks with material.

Expense	2022	Total
<b>Funding</b>		
Borrow from Reserves	\$255,000	\$255,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$5,000	\$5,000

Project Title: AVL GPS system for fleet  
Asset Class: Hardware  
Purchasing Policy: Documented Quotes  
Strategic Priority: Sustainable & Cost Effective Services

Project Type: Previously Approved  
Department: Roads  
Green Initiative 🌱: No

Some of the Municipal fleet is tagged with GPS monitoring. This project captures the remainder of the fleet and, more importantly, will keep track of when the winter control plows operate their sanding units and drop their blades. This is a good feature to include for liability or insurance claims purposes. The maintenance cost is the annual subscription renewal for the service. The Archipelago has already been paying for this service for some of its fleet.

Expense	2022	Total
<b>Funding</b>		
Transfer from Reserves	\$9,100	\$9,100
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$2,000	\$2,000

## 2022 Capital Project Details

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Project Title: Triaxle Equipment Trailer  
Asset Class: Fleet/Vehicle  
Purchasing Policy: Documented Quotes  
Strategic Priority: Sustainable & Cost Effective Services

Project Type: Recommended  
Department: Roads  
Green Initiative 🌱: No

The Archipelago owns a dual axle equipment trailer dating back to 1998. As newer equipment is purchased it is becoming bulkier and heavier. The existing trailer is reaching its maximum capacity and it is recommended to trade the dual axle trailer in for a tri-axle trailer that will fit the needs of The Archipelago for the next 20 years. If the excavator is purchased it would require a triaxle trailer to mobilize it. Purchase cost noted below includes proceeds from the sale of the existing trailer (valued at approximately \$10,000).

Expense	2022	Total
<b>Funding</b>		
Borrow from Reserves	40,000	40,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$500	\$500

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Project Title: Road Rehabilitation Partnership  
Asset Class: Hardware  
Purchasing Policy: Documented Quotes  
Strategic Priority: Effective Relationships & Partnerships

Project Type: Recommended  
Department: Roads  
Green Initiative 🌱: No

The Archipelago has historically worked with the Township of Seguin to rehabilitate roads that run through Seguin, where the majority of road users are Archipelago rate-payers. The model is based on a 50% cost sharing basis. For 2022 it is planned to surface treat Blackstone-Crane Lake Road at a cost of \$90,000 from Black Road to the Archipelago boundary and to surface treat 3 Legged Lake Road \$10,000. Seguin will administer both projects. It is recommended that we enter into an agreement or memorandum of understanding with the Township of Seguin for these projects.

Expense	2022	Total
<b>Funding</b>		
Borrow from Reserves	\$100,000	\$100,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$0	\$0

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## 2022 Capital Project Details

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Project Title: Shawanaga Landing Road Intersection  
Asset Class: Hardware  
Purchasing Policy: Documented Quotes  
Strategic Priority: Effective Relationships & Partnerships

Project Type: Health & Safety  
Department: Roads  
Green Initiative 🌱: No

The intersection of Shawanaga Landing Road and Skerryvore Community Road is partially hidden and it would benefit from some brush clearing, rock grubbing and blasting.

Expense	2022	Total
<b>Funding</b>		
Ontario Community Infrastructure Fund	\$60,000	\$60,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$	\$

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## Department: Facilities

Project Title: Pre-cast Boat Ramp  
Asset Class: Hardware  
Purchasing Policy: Documented Quotes  
Strategic Priority: Sustainable & Cost Effective Services

Project Type: Recommended  
Department: Recreation  
Green Initiative 🌱: No

Several Archipelago locations would benefit from improved ingress/egress at our launch sites. The concrete pre-cast ramps will provide trucks with additional stability and improved grip when launching and retrieving boats. The Holiday Cove Marina location boat ramp will be installed in-house by public works staff to reduce costs.

Expense	2022	Total
<b>Funding</b>		
Borrow from Reserves	7,400	7,400
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$0	\$0

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## 2022 Capital Project Details

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Project Title: Community Centre Windows & Doors  
Asset Class: Hardware  
Purchasing Policy: Documented Quotes  
Strategic Priority: Sustainable & Cost Effective Services

Project Type: Recommended  
Department: Recreation  
Green Initiative 🌱: Yes

Should NOHFC funding be approved, it is proposed to replace the windows and doors at the Pointe au Baril Community Centre with more energy efficient ones. The amount would cover off 10% of the overall cost for the project, the remaining 90% being funded with grant monies.

Expense	2022	Total
<b>Funding</b>		
Borrow from Reserves	\$15,000	\$15,000
NOHFC	\$135,000	\$135,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$	\$less than current

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Project Title: HRV System at 9 James St  
Asset Class: Equipment  
Purchasing Policy: Documented Quotes  
Strategic Priority: Sustainable & Cost Effective Services

Project Type: Health and Safety  
Department: Facilities  
Green Initiative 🌱: Yes

The main office has no ventilation for air exchanges and there are a limited number of opening windows. In light of Covid-19, this installation would allow for energy efficient fresh air exchange, providing for a healthier breathing work environment.

Expense	2022	Total
<b>Funding</b>		
COVID-19 Funding	\$60,000	\$60,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$2000	\$2000

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## 2022 Capital Project Details

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Project Title: Bob Murray Sculpture  
Asset Class: Buildings  
Purchasing Policy: Documented Quotes  
Strategic Priority: Effective Relationships & Partnerships

Project Type: New Initiative  
Department: Recreation  
Green Initiative 🌱: No

Installation of a donated work of art in Pointe au Baril or surrounding area. Valued at \$250-300k, the Bob Murray sculpture would become a federally and internationally recognized piece of cultural property.

Expense	2022	Total
<b>Funding</b>		
Borrow from Reserves	\$10,000	\$10,000
<b>Operating Impact of Capital</b>		
Maintenance Cost (annual)	\$0	\$0

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DRAFT

## COVID-19

Find out about the latest provincial public health measures, advice and restrictions here.

## FONOM



[Home](#) / [Our Community](#) / [Festivals & Events](#) / FONOM

**May 9th, 10th and 11th, 2022**

**Best Western, 700 Lakeshore Drive, North Bay, ON**

Preparations are now underway for the upcoming 2022 FONOM Northeastern Municipal Conference. This annual conference is the perfect opportunity to gain valuable insight into various municipal issues while reconnecting with municipal colleagues from across Northeastern Ontario.

Conference Highlights Include:

- Information and insight on topical municipal issues
- Update on provincial legislation
- Ministers' Forum Banquet
- Annual Awards Presentation
- Annual FONOM Business Meeting



# FONOM

Federation of Northern Ontario Municipalities

### Accommodation

#### Best Western:

Room Rate \$114.99 per night plus tax

[https://www.bestwestern.com/en\\_US/book/hotel-rooms.66058.html?groupId=F94NF4U4](https://www.bestwestern.com/en_US/book/hotel-rooms.66058.html?groupId=F94NF4U4)

Upon booking please mention you will be with the **FONOM conference** to secure this rate.

Reservations: 1-800-461-6199

#### Comfort Inn

Comfort Inn  
676 Lakeshore Dr.  
North Bay, ON  
P1A 2G4

<https://www.choicehotels.com/reservations/groups/>

### Forms

- [2022 Exhibitor Form Fillable](#)
- [2022 Delegate Registration Form](#)
- [2022 Sponsor form fillable](#)

**Subject:** Call for Debate Questions  
**From:** "FONOM Office/ Bureau de FONOM" <fonom.info@gmail.com>  
**Date:** 2022-02-02, 3:40 p.m.  
**To:** undisclosed-recipients;;  
**BCC:** mweaver@thearchipelago.on.ca

Good afternoon, please share with your Council and Senior Team.

During the FONOM Conference Hosted by the City of North Bay in May, FONOM will be hosting a Northern Leaders Debate. The FONOM Board would like to solicit our members for questions they would like to have asked during the debate. We would ask that the question be submitted **by Friday, April 29th**. The FONOM Executive Committee will review the questions for consideration. Please ensure the question is of regional importance.

Happy to answer any questions you may have

Talk soon, Mac

Mac Bain  
Executive Director  
The Federation of Northern Ontario Municipalities  
615 Hardy Street North Bay, ON, P1B 8S2  
Ph. 705-498-9510

P.S. FONOM GoNorth Promotional Videos

<https://www.youtube.com/watch?v=C3FQKMBzS6E> **NEW**

[https://www.youtube.com/watch?v=1\\_q0PBPCPZQ&authuser=0](https://www.youtube.com/watch?v=1_q0PBPCPZQ&authuser=0)

<https://www.youtube.com/watch?v=X81-vtsgs0w>

<https://www.youtube.com/watch?v=LUeGyXL2AXk>

[www.youtube.com/watch?v=qkEeQSnLHnA](https://www.youtube.com/watch?v=qkEeQSnLHnA)

<https://www.youtube.com/watch?v=DLV-SUC1J9c>

<https://www.youtube.com/watch?v=7rlrggxng-0>

# **The Township of The Archipelago**

## **Recommendation Report to Council**

**Report No.:** Clerk-2022-02

**Date:** March 10, 2022

**Originator:** Maryann Martin, Clerk

**Subject:** West Parry Sound Joint Election Compliance Audit Committee

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### **RECOMMENDATION**

That Council authorize the establishment of a West Parry Sound Joint Election Compliance Audit Committee and to repeal By-law No. 2018- 05.

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### **BACKGROUND**

In accordance with the provisions of the Municipal Elections Act (MEA), Council is required to establish a Compliance Audit Committee prior to October 1<sup>st</sup> in an election year.

The (MEA) states that an elector who is entitled to vote in an election and believes on reasonable grounds that an election participant (including candidates, third party advertisers, and campaign contributors) has contravened a provision of the MEA relating to election campaign finances may apply for a compliance audit.

In previous years, the West Parry Sound Joint Election Compliance Audit Committee included six West Parry Sound municipalities (The Archipelago, Carling, McDougall, McKellar, Parry Sound and Seguin). The Municipality of Whitestone has made a request to the Area Clerks to become a member of the Committee. (see attachment).

Attached for Council's consideration is a revised Joint Election Compliance Audit Committee Terms of Reference to include the Municipality of Whitestone.

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### **FINANCIAL IMPLICATIONS**

Each member, including the alternate, will receive an annual retainer of \$600.00. The retainer fees shall be shared equally amongst the participating municipalities.

Members will receive remuneration of \$75.00 per diem for attendance at meetings, plus mileage at the rate of the host municipality upon receipt of the request for reimbursement from the committee member. Per diem and mileage are to be paid by the host municipality where the request for a Compliance Audit was filed, except in the case of the initial meeting, for which payment of those monies shall be shared equally between the participating municipalities.

Annual Retainer for Committee Members (\$600 x 4) - Archipelago's annual share would be \$342.86.

Staff resources will be required to support the Compliance Audit Committee and the process. The amount of staff time required is unknown at this time and is dependent on the complaints received.

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### **ANALYSIS/OPTIONS**

#### **Option 1**

Approve the request from the Municipality of Whitestone to join the West Parry Sound Joint Election Compliance Audit Committee and authorize the establishment of a West Parry Sound Joint Election Compliance Audit.

#### **Option 2**

Not approve. This option is not recommended.

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### **STRATEGIC PLAN**

The creation of the West Parry Sound Joint Election Compliance Audit Committee fall in line with the following Strategic Priorities and Goals of the Township's Strategic Plan:

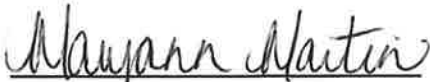
- **Sustainable & Cost-Effective Service**
- **Effective Relationships & Partnerships**

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### **CONCLUSION**

That Council approve the addition of the Municipality of Whitestone to the West Parry Sound Joint Election Compliance Audit Committee, to be effective the term of Council beginning November 15, 2022.

Respectfully Submitted,



Maryann Martin  
Clerk

I concur with this report  
and recommendation,



John B. Fior  
Chief Administrative Officer

#### **Attachments:**

- Request from the Municipality of Whitestone to join the West Parry Sound Joint Election Compliance Audit Committee.
- Proposed By-law and Terms of Reference



21 Church Street  
Dunchurch, Ontario P0A 1G0  
Phone: 705-389-2466 ~ Fax: 705-389-1855

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E-mail: [info@whitestone.ca](mailto:info@whitestone.ca)

May 31, 2021

West Parry Sound Clerks:

Maryann Weaver, Township of the Archipelago  
Kevin McIlwain, Township of Carling  
Lori West, Municipality of McDougall  
Lance Sherk, Township of McKellar  
Rebecca Johnson, Town of Parry Sound  
Craig Jeffery, Township of Seguin

Dear Clerks:

**Re: West Parry Sound Joint Election Compliance Audit Committee**

Further to our recent conversations, the Municipality of Whitestone is requesting your consideration that Whitestone become a member of the West Parry Sound Joint Election Compliance Audit Committee. Should you be agreeable, the intention would be that membership would commence as of November 15, 2022 (the first day of the next Term of Office).

Thank you for your consideration.

Regards,

  
Michelle Hendry  
CAO/Clerk  
MUNICIPALITY OF WHITESTONE

THE CORPORATION OF  
THE TOWNSHIP OF THE ARCHIPELAGO

BY-LAW NO. 2022 -

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A By-law to authorize the establishment of the West Parry Sound Joint Election  
Compliance Audit Committee and to repeal By-law #2018-05

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**WHEREAS** Section 88.37(1) of the *Municipal Elections Act, 1996*, as amended (the Act), states that a council or local board shall, before October 1 of an election year, establish a committee for the purposes of the Act; and,

**WHEREAS** Section 88.37(6) of the Act states that the Clerk of the municipality or the secretary of the local board, as the case may be, shall establish administrative practices and procedures for the committee and shall carry out any other duties required under the Act to implement the committee's decisions; and,

**WHEREAS** the Councils of the Township of The Archipelago, the Township of Carling, the Municipality of McDougall, the Township of McKellar, the Town of Parry Sound, the Township of Seguin and the Municipality of Whitestone deemed it advisable to establish the West Parry Sound Joint Election Compliance Audit Committee and to set out the terms of reference of the committee;

**NOW THEREFORE THE COUNCIL FOR THE CORPORATION OF THE TOWNSHIP OF THE ARCHIPELAGO ENACTS AS FOLLOWS;**

1. That the Council of the Corporation of the Township of The Archipelago adopts the Terms of Reference for the West Parry Sound Joint Election Compliance Audit Committee, attached hereto as Schedule "A" to meet the requirements of Section 88.37(1) of the *Municipal Elections Act, 1996*, as amended;
2. That By-law 2018-05 is hereby repealed; and,
3. That this By-law shall come into force and take effect on November 15, 2022.

**READ and FINALLY PASSED in OPEN COUNCIL this 11<sup>th</sup> day of March, 2022.**

**THE CORPORATION OF THE TOWNSHIP OF THE ARCHIPELAGO**

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Bert Liverance, Reeve

---

Maryann Martin, Clerk

**The Corporation of the Township of The Archipelago**

**By-law No. 2022-**

**Schedule 'A'**

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**West Parry Sound Joint Election Compliance Audit Committee**

**Terms of Reference**

1. Definitions

**Act** – means the *Municipal Elections Act, 1996*, as amended.

**Clerk** – The administrative staff member, generally known to be the Clerk, CAO/Clerk or Clerk-Administrator, from any municipality listed in section 2 of these Terms of Reference for which an application for a compliance audit (Schedule A) has been received and who carries out the business of the Council for his or her respective municipality.

**Committee** – The West Parry Sound Joint Election Compliance Audit Committee as established by the respective Councils of those municipalities listed in section 2 of these Terms of Reference and which have passed a By-law or resolution of participation.

**Contributor** – A resident of Ontario who makes a contribution to the election campaign of a candidate to support his/her candidacy for municipal election, which may include the candidate and his/her spouse.

**Registered Third Party** – means, in relation to an election in a municipality, an individual, corporation or trade union that is registered under section 88.6 of the *Municipal Elections Act*.

2. Name and Representation

The name of the Committee is the West Parry Sound Joint Election Compliance Audit Committee. The Committee will represent the Township of The Archipelago, Township of Carling, the Municipality of McDougall, the Township of McKellar, the Town of Parry Sound, the Township of Seguin and the Municipality of Whitestone as required under sections 88.33 through 88.37 inclusive of the Act.

3. Term

The Committee shall serve their terms consistent with the terms of Council, namely November 15, 2022 onward, to consider applications originating from the 2022 and subsequent elections and any by-elections during those terms. The Committee will meet as needed with meetings to be scheduled when a compliance audit application is received and requires disposition. Within 30 days of a vacancy becoming available on the Committee, the Clerks will provide a recommendation to their respective Council regarding the vacancy.

4. Mandate

- (a) The Joint Election Compliance Audit Committee is not a local board; it is an independent and impartial decision-making body with a mandate that is part of the Legislature's oversight of municipal elections. Its purpose, as set out in the Act, is to make certain decisions that form part of the enforcement of election finance provisions in the Act, for which it is distanced from the municipalities in a manner that is inconsistent with a municipality's power to dissolve a local board.



**The Corporation of the Township of The Archipelago**

**By-law No. 2022-**

**Schedule 'A'**

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- (b) The Committee shall ensure that the provisions relating to election campaign finances under the Act, are not contravened, and shall follow the necessary procedures to ensure compliance when requested.
- (c) The Committee shall abide by any terms and conditions which may be set out by the respective municipality' solicitor, auditor, and/or insurer, for any business relating to a compliance audit, in accordance with the procedural By-law for the respective municipality.
- (d) The Committee will perform all required functions relating to all compliance audit applications. This shall include the following:
  - i. The meetings of the Committee shall be open to the public and reasonable notice shall be given to the candidate, the applicant and the public [section 88.33(5)];
  - ii. Within 30 days of receipt of an application for a compliance audit (Schedule A) from the Clerk, Committee members shall consider the application and decide whether to grant or deny the request [section 88.33(7)];
  - iii. The decision of the Committee to grant or reject the application, and brief written reasons for the decision, shall be given to the candidate, the Clerk with whom the candidate filed his or her nomination, the secretary of the local board, if applicable, and the applicant [section 88.33(8)];
  - iv. If an application is granted, the Committee shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances. [section 88.33(10)];
  - v. Within 10 days after receiving the audit report, the Clerk of the municipality shall forward the report to the Committee [section 88.33(14)];
  - vi. Give consideration to the auditor's report within 30 days of receiving it, to determine if legal proceedings should be commenced against the candidate [section 88.33(17)];
  - vii. The decision of the Committee under clause 4(d)vi and brief written reasons for the decision, shall be given to the candidate, the Clerk with whom the candidate filed his or her nomination, the secretary of the local board, if applicable, and the applicant [section 88.33(18)];
- (e) The Committee will perform all functions related to receiving a report from the Clerk regarding the review of contributions to candidates as required under sections 88.34(4) or 88.34(7) of the Act. This shall include the following:
  - i. Within 30 days after receiving a report from the Clerk, the Committee shall consider it and decide whether to commence a legal proceeding against a Contributor for an apparent contravention [section 88.34(8)];
  - ii. The meetings of the Committee shall be open to the public and reasonable notice shall be given to the Contributor, the applicable candidate and the public [section 88.34(9)];
  - iii. The decision of the Committee under clause 4(e)i and brief written reasons for the decision, shall be given to the Contributor, the Clerk of the municipality or the secretary of the local board, if applicable [section 88.34(11)].

**The Corporation of the Township of The Archipelago**

**By-law No. 2022-**

**Schedule 'A'**

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- (f) The Committee will perform all functions related to receiving a report from the Clerk regarding the review of contributions submitted by a registered third party as required under section 88.36(4) of the Act. This shall include the following:
- i. Within 30 days after receiving a report from the Clerk, the Committee shall consider it and decide whether to commence a legal proceeding against a Contributor for an apparent contravention [section 88.36(5)];
  - ii. The meetings of the Committee shall be open to the public and reasonable notice shall be given to the Contributor, the registered third party and the public [section 88.36(6)];
  - iii. The decision of the Committee under clause 4(f)i and brief written reasons for the decision, shall be given to the Contributor and the Clerk of the municipality [section 88.36(7)].

**5. Membership Composition & Selection**

The Committee will be composed of three (3) members and one (1) alternate member, with membership drawn from the following stakeholder groups:

- (a) accounting and audit – accountants or auditors with experience in preparing or auditing the financial statements of municipal candidates;
- (b) academic – college or university professors with expertise in political science or local government administration;
- (c) legal;
- (d) professionals who in the course of their duties are required to adhere to codes or standards of their profession which may be enforced by disciplinary tribunals; and,
- (e) other individuals with knowledge of the campaign financial rules of the Act.

Members of Council, municipal staff, and candidates running in the election and any persons who are registered third parties in the municipality in the election for which the Committee is established are not eligible to be appointed to the Committee as stipulated in section 88.37(2) of the Act.

All applicants will be required to submit a letter outlining their qualifications and experience. The municipal Clerks (or designates) from the participating municipalities will make recommendations to the municipal Councils for the appointment, by Council resolution, of members to the Committee.

The selection process will be based upon clearly understood and equitable criteria. Members will be selected on the basis of the following:

- (a) demonstrated knowledge and understanding of municipal election campaign financing rules;
- (b) proven analytical and decision-making skills;
- (c) experience working on a committee, task force or similar setting;
- (d) availability and willingness to attend meetings;

**The Corporation of the Township of The Archipelago**

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**Schedule 'A'**

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- (e) excellent oral and written communication skills; and
- (f) other skills as deemed necessary.

To avoid possible conflicts of interest, care must be taken that any auditors or accountants or legal counsel appointed to the West Parry Sound Joint Election Compliance Audit Committee do not audit or prepare the financial statements of any candidate running for office in the municipal election, or provide counsel to any candidate running for office. Accordingly, any auditor, accountant or legal counsel appointed to the committee will have to agree, in writing, to not undertake the audits or preparation of the financial statements of any candidates, or provide any counsel to any candidates, seeking election (Schedule B). Failure to adhere to this requirement will result in the individual being removed from the Committee.

Appointment to the committee shall be confirmed when the Councils of a majority of the participating municipalities have passed resolutions appointing members to the committee.

**6. Chair**

The Committee members will select a Chair from amongst its members at its first meeting.

**7. Staffing and Funding**

Staff from the host municipality where an application for an audit has been filed will provide administrative support to the Committee. The Clerk or designate from the host municipality shall act as Recording Secretary for the Committee. Any responsibility not clearly identified within the Terms of Reference shall be in accordance with sections 88.33 through 88.37 inclusive of the Act.

Each member, including the alternate, will receive an annual retainer of \$600.00. The retainer fees shall be shared equally amongst the participating municipalities. Members will receive remuneration of \$75.00 per diem for attendance at meetings, plus mileage at the rate of the host municipality upon receipt of the request for reimbursement from the committee member. Per diem and mileage are to be paid by the host municipality where the request for a Compliance Audit was filed, except in the case of the initial meeting, for which payment of those monies shall be shared equally between the participating municipalities.

Administration costs for such items as printing and mailing will be absorbed by the host municipality where the request for a compliance audit was filed.

**8. Meetings**

The Committee shall hold one initial meeting. Subsequent and additional meetings shall be in response to application(s) for compliance audit(s), to a maximum of four (4) meetings per application, in consultation with the Clerk of the respective municipality. The alternate member shall attend all meetings, even if not required to stand in for a regular member.

**The Corporation of the Township of The Archipelago**

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Meetings shall be conducted using guidelines established in the Procedural By-Law for the municipality from which an application originated. Meetings of the Committee shall be open to the public but the Committee may deliberate in private when making decisions. Should a closed session be required, all attendees who are not Committee members, or the Clerk, or individuals expressly requested by the Committee to remain, shall vacate the meeting premises. Members of the public may return to the meeting once the closed session has concluded.

The Chair shall cause notice of the meetings, including the agenda for the meetings to be provided to members of the Committee a minimum of three (3) business days prior to the date of each meeting. Quorum for meetings shall consist of a majority of the members of the Committee.

Minutes shall be recorded at each meeting and shall outline the general deliberations and resulting actions and recommendations.

The location of the meetings shall be set by the Committee.

Financial consideration shall be as per section 7.

9. Conflicts of Interest

Committee members shall be bound by the *Municipal Conflict of Interest Act, 1990*, as amended, with respect to financial interest, and shall disclose any possible pecuniary interest to the Recording Secretary. That member shall then remove himself or herself from that portion of the meeting at which the matter for which the possible pecuniary interest was declared is discussed.

10. Role of the West Parry Sound Clerks, or Designates

The Clerks, or designates, of the participating West Parry Sound municipalities will work together to promote, interview and make recommendations to Councils for appointment to the Committee.

11. Acceptance of Terms of Reference

Appointed Committee members shall be asked to sign an acknowledgement accepting terms and conditions outlined in the above Terms of Reference and the Act (Schedule C).

West Parry Sound Joint Election Compliance Audit Committee

**SCHEDULE A**

**APPLICATION FOR COMPLIANCE AUDIT**

**Applicant Information:**

Name: \_\_\_\_\_  
(Please Print Full Name)

Mailing Address: \_\_\_\_\_

Address of property that qualifies the applicant  
as an elector in West Parry Sound  
(if different from Mailing Address): \_\_\_\_\_  
\_\_\_\_\_

Email Address: \_\_\_\_\_ Phone Number: \_\_\_\_\_

**Audit Request Information:**

Name of Candidate: \_\_\_\_\_  
(Please Print Full Name)

Candidate for office of : ☐ Mayor/Reeve ☐ Councillor **OR** ☐ a Registered Third  
Party Advertiser

For the Township/Municipality/Town of:

☐ The Archipelago ☐ Carling ☐ McDougall ☐ McKellar ☐ Parry Sound ☐ Seguin  
☐ Whitestone

Date of election: \_\_\_\_\_

Which section(s) of the *Municipal Elections Act, 1996*, as amended, relating to election  
campaign finances to you believe have been contravened?: \_\_\_\_\_

Reason(s) for Compliance Audit Request (attach supporting documentation or additional  
pages, if any):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Declaration:**

I, the undersigned applicant:

(1) am an elector as defined under section 17(2) of the *Municipal Elections Act, 1996*, as amended, namely a person who:

- a) resides in the \_\_\_\_\_ of \_\_\_\_\_ or is the owner or tenant of land there, or the spouse of such an owner or tenant;
- b) is a Canadian citizen;
- c) is at least 18 years old; and,
- d) is not prohibited from voting under section 17(3)<sup>1</sup> or otherwise by law;

(2) have reasonable grounds for believing that the candidate has contravened the *Municipal Elections Act, 1996*, as amended, relating to the candidate's election campaign finances; and,

(3) believe the facts and information submitted above to be true, and I request a compliance audit of the candidates' election campaign finances.

I, \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_

solemnly declare that all the statements contained in this application are true and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

Declared before me at the \_\_\_\_\_ of \_\_\_\_\_ )  
in the \_\_\_\_\_ )  
of \_\_\_\_\_ )  
this \_\_\_\_\_ day of \_\_\_\_\_ )  
\_\_\_\_\_, 20\_\_\_\_ )

\_\_\_\_\_  
A Commissioner, etc.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

<sup>1</sup>Section 17(3) of the *Municipal Elections Act, 1996*, as amended:

The following are prohibited from voting:

1. A person who is serving a sentence of imprisonment in a penal or correctional institution.
2. A corporation.
3. A person acting as an executor or trustee or in any other representative capacity, except as a voting proxy in accordance with section 44.
4. A person who was convicted of the corrupt practice described in subsection 90(3), if voting day in the current election is less than five years after voting day in the election in respect of which he or she was convicted.

## **INFORMATION GUIDE APPLICATION FOR COMPLIANCE AUDIT**

As per Section 88.33(1) of the *Municipal Elections Act, 1996*, as amended (the "Act"), an elector who is entitled to vote in an election and believes on reasonable grounds that a candidate/third party advertiser has contravened a provision of this Act relating to election campaign finances or contributions may apply for a compliance audit of the candidate's/third party advertiser's election campaign finances. A copy of the Act can be found at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca).

**Completed applications for a Compliance Audit must be submitted to the Clerk of the municipality where the candidate/third party advertiser in question conducted their campaign.**

As per Section 88.33(3), the application must be made within 90 days after the latest of:

1. The filing date under Section 88.30;
2. The date the candidate/third party advertiser filed a financial statement, if the statement was filed within 30 days after the applicable filing date under section 88.30.
3. The candidate's/third party advertiser's supplementary filing date, if any, under section 88.30.
4. The date on which the candidate's extension, if any, under subsection 88.23(6) expires, or the date on which the third party advertiser's extension, if any, under subsection 88.27(3) expires.

Once a completed application has been submitted to the Clerk, the Clerk must forward the application to the Joint Election Compliance Audit Committee (the "Committee") within 10 days.

Within 30 days after receiving the application, the Committee shall consider the application and decide whether it should be granted or denied. The decision of the Committee and brief written reasons for the decision will be given to the candidate/third party advertiser, the Clerk of the relevant municipality and the applicant. The decision of the Committee to grant or deny the application may be appealed to the Superior Court of Justice with 15 days after the decision is made.

If the Committee decides to grant the application, it shall appoint an auditor to conduct a compliance audit of the candidate's/third party advertiser's election campaign finances. The auditor shall promptly conduct such an audit and shall prepare a report outlining any apparent contravention by the candidate/third party advertiser. The auditor shall submit the report to the candidate/third party advertiser, the Clerk of the relevant municipality and the applicant.

Within 10 days of receiving the report, the Clerk shall forward the report to the Compliance Audit Committee. The Committee shall consider the report within 30 days after receiving it and may, if the report concludes that the candidate/third party advertiser appears to have contravened a provision of the Act relating to election campaign finances, commence a legal proceeding against the candidate/third party advertiser for the apparent



contravention.

The decision of the Committee and brief written reasons for the decision will be given to the candidate/third party advertiser, the Clerk of the relevant municipality and the applicant.

Notwithstanding the Joint Compliance Audit Committee process, any person may take legal action at any time with respect to an alleged contravention of a provision of the Act relating to election campaign finances or contribution limits.

West Parry Sound Joint Election Compliance Audit Committee

**SCHEDULE B**

**Acknowledgement – Candidates' Financial Statements**

I, \_\_\_\_\_, understand that the *Municipal Elections Act, 1996*, as amended, prohibits a member of an election compliance audit committee from preparing or auditing the financial statements of any candidate running for office in a municipal election. I agree to not undertake any audits or preparation of the financial statements of any candidates, or provide any counsel to any candidates, seeking election. I understand that failure to adhere to this requirement will result in my immediate removal from the West Parry Sound Joint Election Compliance Audit Committee.

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Date

West Parry Sound Joint Election Compliance Audit Committee

**SCHEDULE C**

**Acceptance of Terms of Reference**

I, \_\_\_\_\_, have read and understand the West Parry Sound Joint Election Compliance Audit Committee Terms of Reference and agree to undertake my role as a Joint Election Compliance Audit Committee Member in accordance with these terms.

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Date



**TO:** Chair Frost and Members of the Planning & Building Committee

**FROM:** Cale Henderson, MCIP, RPP  
Manager of Development & Environmental Services

**DATE:** March 10, 2022

**RE:** Agreement to be Registered on title  
Condition of Committee of Adjustment Decision  
For Application No. A23-21  
Concession 4, Part Lot 41, being Parts 1 and 2 on Plan PSR-1178  
And Part 6 on Plan 42R-9062, designated as Parcels 19169 and  
15266 PSSS, in the geographic Township of Conger

**OWNERS:** PRENTICE, Michael and Evelyn

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### **BACKGROUND**

The owners of the subject property, submitted an application to the Committee of Adjustment, which was approved on February 18, 2022. One of the conditions included in the Decision, was that the owners enter into an agreement, to be registered on title. This agreement is to ensure that native vegetation is planted and maintained on the property, between the building and water, in order to help buffer and reduce visual impacts.

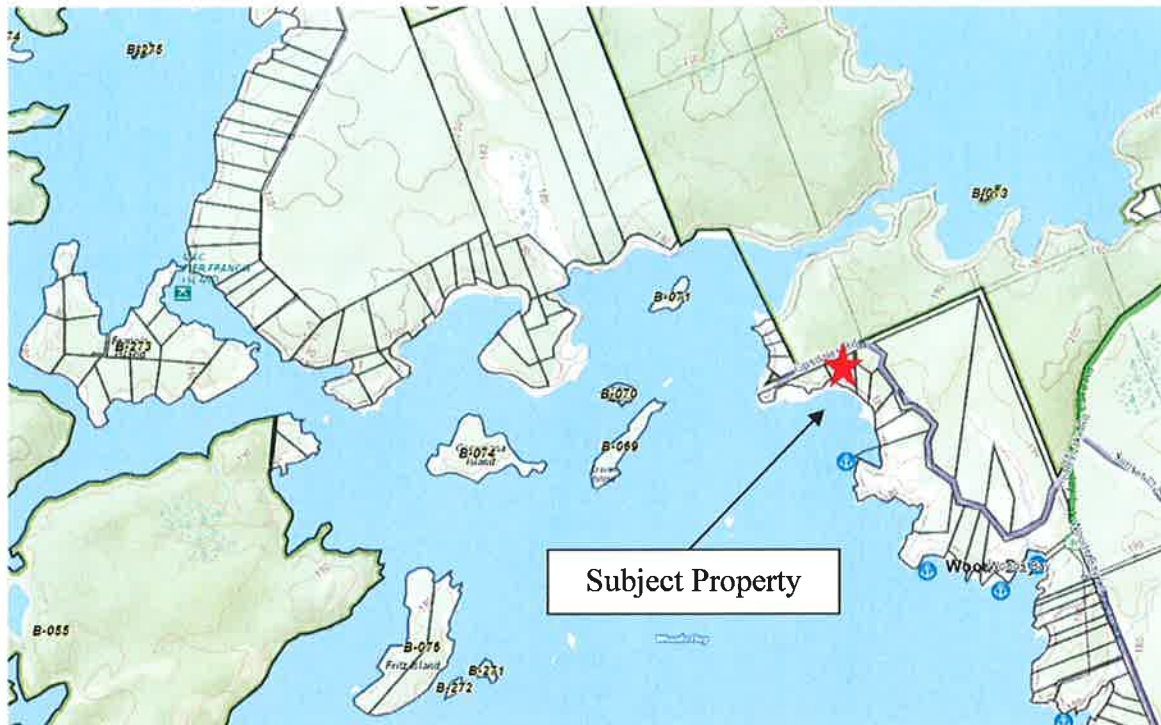
A draft copy of the Agreement is attached as Appendix A.

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### **PLANNING INFORMATION**

Ward:	4
Official Plan Neighbourhood:	Woods Bay
Zoning:	Coastal Island Residential (CR)
Access:	Grisdales Road (Private)

## **LOCATION MAP**



## **RECOMMENDATIONS**

It is recommended that Council enters into the attached agreement to be registered on title to the subject lands.

Respectfully submitted,

Cale Henderson, MCIP, RPP  
Manager of Development  
& Environmental Services

**APPENDIX 'A'**  
**AGREEMENT**

# THE CORPORATION OF THE TOWNSHIP OF THE ARCHIPELAGO

## SECTION 45 AGREEMENT

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**B E T W E E N:**

**PRENTICE, MICHAEL AND EVELYN**  
(hereinafter called the "OWNERS")

- and -

**THE CORPORATION OF THE TOWNSHIP OF THE ARCHIPELAGO**

(hereinafter called the "TOWNSHIP")

**WHEREAS** the OWNERS are the owner in fee simple of the subject lands in the Township of The Archipelago, in the District of Parry Sound, more particularly described in Schedule "A" attached hereto;

**AND WHEREAS** the OWNERS applied to the COMMITTEE OF ADJUSTMENT for the TOWNSHIP, to permit the construction of a garage on the OWNERS's lands;

**AND WHEREAS** pursuant to Section 45 (9.1),(9.2) of the Planning Act, R.S.O. 1990, c.P.13, as amended (the "Planning Act"), the Council of the TOWNSHIP, is authorized to require the owner of the land to enter into an agreement dealing with some or all of the terms and conditions as set out in the decision of the Committee of Adjustment, and has the ability to register said agreement against the land to which it applies;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that, in consideration of the sum of Two Dollars (\$2.00) now paid by each of the parties to the other (the receipt whereof is hereby acknowledged), and other good and valuable consideration, the parties agree as follows:

### SECTION 1: LANDS SUBJECT TO THE AGREEMENT

- 1.1 The lands to be bound by this Agreement (hereinafter referred to as "the subject lands"), are described in Schedule "A" hereto.

### SECTION 2: COMPONENTS OF THE AGREEMENT

- 2.1 The text, consisting of Sections 1 through 8, and the following Schedules, which are annexed hereto, constitute the components of this Agreement:

Schedule "A"- Legal Description of the Lands.

Schedule "B"- Site Plan.

### **SECTION 3: REGISTRATION OF THE AGREEMENT**

- 3.1 The OWNERS agree that all documents required herein shall be submitted in a form suitable to the TOWNSHIP and suitable for registration.
- 3.1 The Agreement shall be registered on title to the subject lands as provided for by Section 45(9.2) of the Planning Act, by the Township, at the expense of the OWNERS.

### **SECTION 4: ISSUANCE OF BUILDING PERMITS**

- 4.1 The OWNERS agree to not request the Chief Building Official to issue a building permit to carry out the development until the Agreement has been registered on title to the subject lands and a registered copy of same has been provided to the TOWNSHIP.
- 4.2 It is agreed that if the OWNERS fail to apply for a building permit or permits to implement this Agreement by February 18<sup>th</sup>, 2024, then the TOWNSHIP, at its option, has the right to terminate the Agreement and require that a new Agreement be submitted for approval and execution.

### **SECTION 5: PROVISIONS**

- 5.1 The OWNERS agree to develop the subject lands in accordance with the Site Plan being Schedule "B" attached hereto, and agree that no work will be performed on the subject lands except in conformity to all provisions of this Agreement.
- 5.2 The OWNERS agree to plant and maintain sufficient native vegetation, in the area fronting the garage, as shown on Schedule B, to reduce visual impacts.

### **SECTION 6: OTHER REQUIREMENTS**

- 6.1 The OWNERS agree that nothing in this Agreement shall relieve him or her from complying with all other applicable by-laws, laws or regulations of the TOWNSHIP or any other laws, regulations or policies established by any other level of government. Nothing in this Agreement shall prohibit the TOWNSHIP or its Chief Building Official from instituting or pursuing prosecutions in respect of any violations of the said by-laws, laws or regulations.

### **SECTION 7: SECURITIES, BINDING PARTIES, ALTERATION, AMENDMENT, EFFECT, PENALTY**

- 7.1 The OWNERS agree to submit securities, in the amount of \$1500.00. The OWNERS shall contact the Planning Department when the landscaping is completed. If the vegetation has been planted, 50 percent of the security amount will be refunded. If the vegetation survives and is maintained for two full years, the remainder of the security amount will be released.
- 7.2 If the OWNERS fail to complete the planting of vegetation within two years of the date of registration of this agreement, you will be notified of the TOWNSHIP's plans to use the posted securities to pay for any outstanding vegetation costs.
- 7.3 This Agreement may only be amended or varied by a written document executed by the parties hereto and registered against the title to the subject lands.
- 7.4 Following the completion of the works, the OWNERS shall maintain to the satisfaction of the TOWNSHIP, and at his or her sole expense, all the facilities or works described on Schedule "B".



- 7.5 This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of each of the PARTIES hereto.
- 7.6 The OWNERS acknowledge that the Agreement is entered into under the provisions of Section 45(9.1) of the Planning Act, and that the expenses of the TOWNSHIP arising out of the enforcement of this Agreement may, in addition to any other remedy the Township may have at law, be recovered as taxes under section 427 of the Municipal Act, S.O. 2001, c.25, as amended.
- 7.7 The Agreement shall come into effect on the date of execution by the TOWNSHIP.

**SECTION 8: NOTICE**

- 8.1 Any notice, required to be given pursuant to the terms hereto, shall be in writing and mailed or delivered to the other at the following addresses:

OWNERS's NAMES AND ADDRESS: Michael and Evelyn Prentice

TOWNSHIP:

Clerk  
Township of The Archipelago  
9 James Street  
Parry Sound, ON P2A 1T4

IN WITNESS WHEREOF the OWNER and the TOWNSHIP have caused their corporate seals to be affixed over the signatures of their respective signing officers.

SIGNED, SEALED AND DELIVERED  
In the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature of OWNER

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature of OWNER

THE CORPORATION OF THE  
TOWNSHIP OF THE ARCHIPELAGO

\_\_\_\_\_  
Reeve  
Bert Liverance

\_\_\_\_\_  
Clerk  
Maryann Martin

**SCHEDULE "A"**

**LEGAL DESCRIPTION OF THE LANDS**

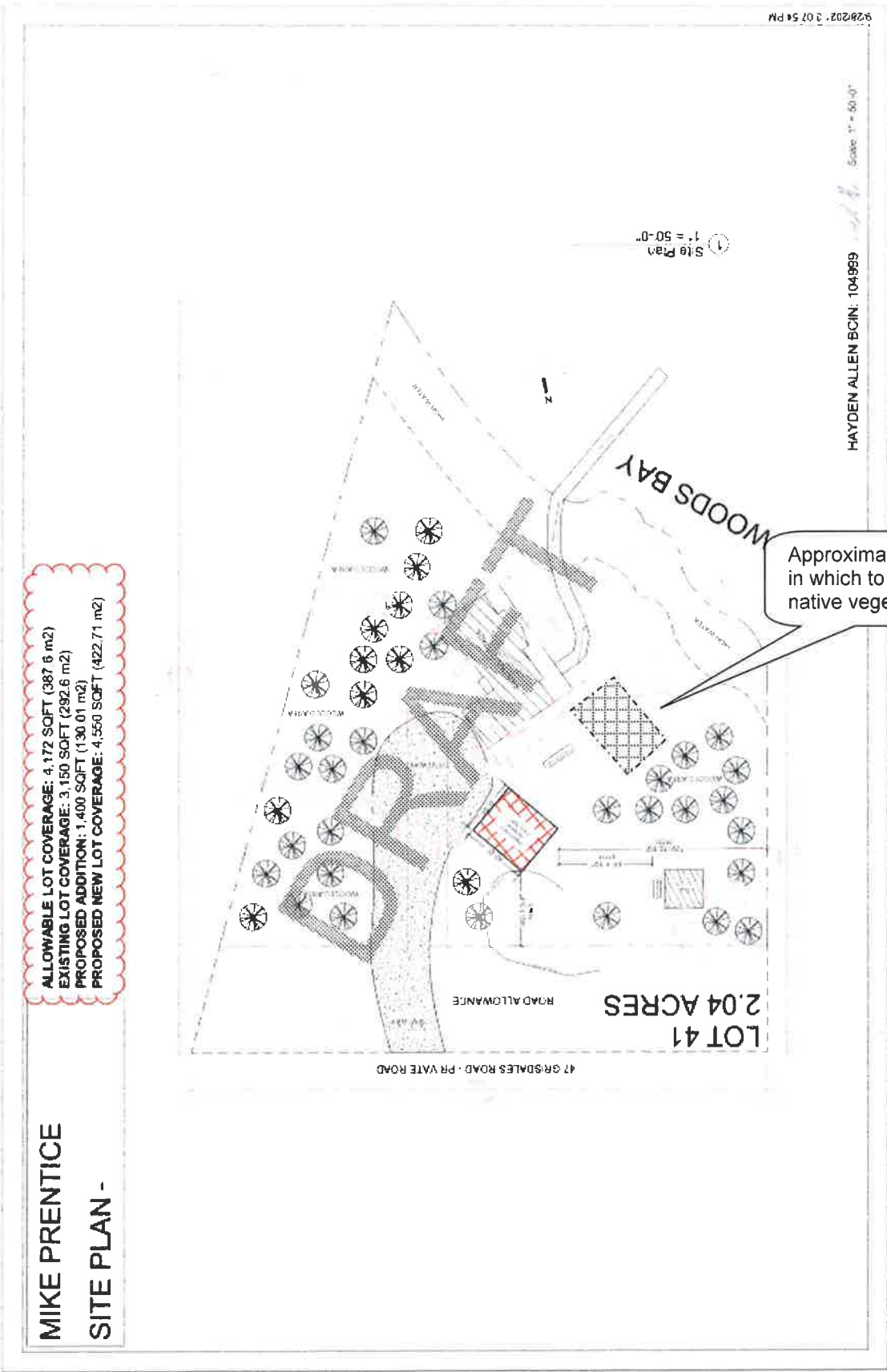
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**47 GRISDALES ROAD**

PART OF LOT 41, CONCESSION 4, BEING PARTS 1 AND 2 ON PLAN PSR-1178, AND  
PART 6 ON PLAN 42R-9062, DESIGNATED AS PARCELS 19169 AND 15266 PSSS, IN  
THE GEOGRAPHIC TOWNSHIP OF CONGER

SCHEDULE "B"

SITE PLAN



Policy Division

Division de la politique

Director's Office  
Crown Forests and Lands Policy Branch  
70 Foster Drive, 3<sup>rd</sup> Floor  
Sault Ste. Marie, ON P6A 6V5

Bureau du directeur  
Direction des politiques relatives aux forêts et  
aux terres de la Couronne  
70, rue Foster, 3<sup>e</sup> étage  
Sault Sainte Marie, ON P6A 6V5

March 03, 2022

Re: Seeking input about the use of floating accommodations on waterways over  
Ontario's public lands

Greetings,

The Ministry of Northern Development, Mines, Natural Resources and Forestry (NDMNRF) would like to make you aware of a Bulletin recently posted to the Environmental Registry of Ontario [<https://ero.ontario.ca/notice/019-5119>].

We are seeking to engage municipalities on potential ideas and approaches to manage "camping" and the use of floating accommodations on waterways over Ontario's public lands. The ministry is seeing increased interest in the use of waterways by various types of vessels (i.e., watercrafts equipped for overnight accommodation). In some cases, the ministry has heard concerns relating to vessels that are primarily designed for accommodation and not navigation.

We are seeking input from the public, Indigenous communities, and municipal associations, and various stakeholders including your organization **by April 19, 2022**.

Input from this process will inform consideration of potential future changes intended to address growing concerns around the impacts of this activity on Ontario waterways and those who use them.

Please note, no regulatory changes are being proposed at this time. Any regulatory or policy changes that may be considered in the future would be posted on the Environmental Registry for consultation purposes.

If you have any questions, please reach out to Julie Reeder, Sr. Program Advisor, Crown Lands Policy Section at [Julie.reeder@ontario.ca](mailto:Julie.reeder@ontario.ca).

Sincerely,

Peter D. Henry, R.P.F.  
Director  
Crown Forests and Lands Policy Branch

- c. Pauline Desroches, Manager, Crown Lands Policy Section  
Julie Reeder, Sr. Program Advisor, Crown Lands Policy Section

**Subject:** Floating Cottages - Grey Water

**From:** <rkindersley@georgianbay.ca>

**Date:** 2022-03-03, 4:57 p.m.

**To:** <bertliverance@vianet.ca>

**CC:** "Maryann Martin" <mmartin@thearchipelago.ca>, "Fior, John" <jfior@thearchipelago.on.ca>, "Heather Sargeant" <heather.sargeant@gbf.org>, "Peter Koetsier" <pkoetsier@gbtownship.ca>, "Allan Hazelton" <a-hazelton@rogers.com>

Hi Bert

Many thanks for forwarding the MNR request for input on floating cottages etc. I have copied in the mayor and councilor Hazelton from TGB as this could also be, I believe, highly relevant to issues they are dealing with, as below.

Yesterday I had a long discussion with Gloucester Pool Association who experienced a floating cottage in their Little Lake area last summer as I think you know.

There was a recent Ontario Supreme Court decision (attached together with their notes) which they believe opens the door for municipalities to regulate anything that is attached to the lakebed within the municipal boundaries and pass bylaws in that respect.

Clearly this would require more investigation and legal input, but I suggest it is worth investigating and could have a bearing on how we all respond to the MNR request for input. My thought is that it would also be worthwhile exploring the potential to put together a consortium of interested parties and reach agreement to work together to fully exploit this legal decision, because it would appear to also have a bearing on regulating grey water discharges from all vessels and the mooring buoy issue that is becoming a problem in TGB. I do not think this removes the need to also advocate to Transport Canada to try and stop them issuing vessel licenses to floating cottages, or DFO and MNR to ensure that we get this fully sorted out, but such a consortium could also work together on that too. One important consideration is to avoid multiple parties employing legal counsel to achieve the same objective by acting together. This really applies whether or not the Kawartha Lake decision is of any value.

If you like this idea, I suggest we start by holding an informal zoom call strategy session with interested stakeholders, but limit the size of the gathering so everyone can provide input. I would be prepared to organize that and pull in the coastal municipalities interested in participating, affected associations, FOCA, perhaps GLSLC! (I am speaking to Phil on Monday, he and I have agreed to extend the discussion organized by GBF, and I intended to raise this with him) and, Heather, GBF too, if you are interested.

One party we should try and get onside, but it may be a challenge, is Boating Ontario. We have a strong relationship with them which we can leverage and I am attending their in-person regional meetings in Penetang and Parry Sound on March 10 and 31, at which there may be an opportunity to gently sound them out on these matters.

Please let me know.

Many thanks

All the best

Rupert

(416) 985-7378

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**From:** bertliverance@vianet.ca <bertliverance@vianet.ca>

**Sent:** March 3, 2022 1:58 PM

**To:** rkindersley@georgianbay.ca; 'Heather Sargeant' <heather.sargeant@gbf.org>

**Cc:** 'Maryann Martin' <mmartin@thearchipelago.ca>; 'Fior, John' <jfior@thearchipelago.on.ca>

**Subject:** FW: Seeking input about the use of floating accommodations on waterways over Ontario's public lands/ à l'utilisation aux hébergements flottants sur les voies navigables situées sur les terres publiques de l'Ontario

Hi Rupert and Heather,

If the GBA and GBF have any input, now would be a good time to make your voice heard. If you have any information you would like to share with council please pass it along to Maryann.

Thanks,  
Bert  
Bert Liverance  
[bert@bertliverance.com](mailto:bert@bertliverance.com)  
[www.bertliverance.com](http://www.bertliverance.com)  
905 424 8551

**From:** Maryann Martin <[mmartin@thearchipelago.ca](mailto:mmartin@thearchipelago.ca)>

**Sent:** March 3, 2022 1:50 PM

**To:** undisclosed-recipients:

**Subject:** Fwd: Seeking input about the use of floating accommodations on waterways over Ontario's public lands/ à l'utilisation aux hébergements flottants sur les voies navigables situées sur les terres publiques de l'Ontario

Council,

On behalf of John, please see message below and attachment.

I am forwarding this correspondence for Council's information. It is both interesting and good to see the province asking for input on the issue of accommodations on waterways.

Staff will post this notice to our website, circulate it to our Associations and add it to next week's Agenda for discussion.

We will also review the information and prepare feedback for submission prior to the April 19th deadline date.

Please call if you have any questions.

Maryann

----- Forwarded Message -----

**Subject:** Seeking input about the use of floating accommodations on waterways over Ontario's public lands/ à l'utilisation aux hébergements flottants sur les voies navigables situées sur les terres publiques de l'Ontario

**Date:** Thu, 3 Mar 2022 17:50:06 +0000

**From:** Powley, Leigh (NDMNRF) <[Leigh.Powley@ontario.ca](mailto:Leigh.Powley@ontario.ca)>

**To:** Powley, Leigh (NDMNRF) <[Leigh.Powley@ontario.ca](mailto:Leigh.Powley@ontario.ca)>

**CC:** Desroches, Pauline (NDMNRF) <[Pauline.Desroches@ontario.ca](mailto:Pauline.Desroches@ontario.ca)>, Reeder, Julie (NDMNRF) <[Julie.Reeder@ontario.ca](mailto:Julie.Reeder@ontario.ca)>, Cappelli, Katrina (NDMNRF) <[Katrina.Cappelli@ontario.ca](mailto:Katrina.Cappelli@ontario.ca)>

***Please see attached sent on behalf of Peter Henry, Crown Forests and Lands Policy Branch Director.***

***Veillez consulter la pièce jointe envoyée au nom de Peter Henry, Directeur, Direction des politiques relatives aux forêts et aux terres de la Couronne.***

Thank you, Merci, Miigwech,  
Leigh Powley (she/her)  
[Hear my name](#)  
Administrative Assistant  
Crown Forests and Lands Policy Branch  
70 Foster Drive, 3<sup>rd</sup> Floor  
Sault Ste. Marie ON P6A 6V5  
705-943-7516



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— Attachments:

synopsis of Kawartha Lake supreme court decision.docx	33.7 KB
kawartha lake ON supreme court decision.pdf	1.5 MB
NDMNRF-PLA bulletin- Municipal_en_2022-03-03e.pdf	22.0 KB



**Floating Cottages and grey water  
Notes on Kawartha Lake Decision  
Gloucester Pool Association**

Just a bit of insight that we think there is a bread crumb trail that we follow in this supreme court decision that points to a strategy for municipal regulation oversight in the matter of floating homes....

Ontario supreme court decision.... <https://foca.on.ca/wp-content/uploads/2015/06/Boathouse-in-water-jurisdiction-DECISION.pdf>

Here is a note to draft to capture CR thinking and conclusions from superior court decision on floatingdock/boathouse...

This document is a draft and will be modified / updated from time to time....

Conclusion: there is a pathway for municipalities to enforce their by-laws on structures that are floating above lakebeds

**Questions the court was asked to answer:**

1. Does the Ontario Building Code Act 1992 apply to construction of structures (eg docks, marine facilities, houses) to be built on, over, in, or under Ontario lakes, and in particular, Big Cedar Lake? [CR NTD; we believe that we are dealing with exactly this issue, a house built over Ontario Lakes]
2. Does the Township have jurisdiction under the Planning Act and Municipal Act to enact and apply by-laws to these structures (eg docks, marine facilities, houses) to be built on, over, in, or under Ontario lakes [CR NTD; our thesis is that Severn Township needs to be given explicit legal approval to proceed to govern these structures]
3. Do each of the dock and the house require building permits, and compliance with the comprehensive Township zoning by-laws, as they are each attached or anchored to land without a permit contrary to applicable by-laws [CR NTD; our structures are anchored to land and that land is crown land not private property]
4. Does the boathouse built on Big Cedar Lake require an occupancy permit under the Public Lands Act to occupy public lands [CR NTD we have the same issue / question]
5. Does the boathouse built on Big Cedar Lake require a work permit under the Public Lands Act regarding construction of a structure on shore lands [CR NTD we have the same issue / question]

**Key Decisions / Assertions made by judge:**

- i. Lakebeds are owned by the crown
- ii. Municipalities have the express right to govern all lands within their jurisdiction including lakebed lands with building by-laws, said another way, municipal zoning bylaws apply to both structures on land and lands underwater ie lakebeds or structures that float over lake/river beds and/or are tethered to a shoreline

**Relevancy to our issue:**

- a. Regardless of classification if a floating object fits under the rules of a building, it is a building and if it is greater than 15 square meters in footprint, it is governed by the building code act
- b. Regardless of classification as a floating object, the township can govern with by-laws the use and erection of structures on or over lands they control... ie structures that exist over land that is controlled by the municipality are subject to zoning by-laws of the municipality, and lakebed lands are controlled by the municipality

**Concerns or issues that could arise that are not dealt with in decision:**

- a. This judgement was clearly focused on structures floating and was not 'poisoned' by the fact that this structure we are dealing with has a classification as a vessel
- b. The notion of who controls waterway is moot, our Trent Severn is controlled for navigable purposes by Federal, but the Provincial crown owns the lands under our lakes, and the municipality has the right to zone the use of those lands

**Context setting made by judge:**

- a. Para 4 – MNR is the Ontario government ministry responsible for management of Crown Land which includes shore lands and the beds of most lakes and rivers.
- b. Para 6 – this structure floats and is anchored to shoreline and not touching lake bed [CR NTD; does not touching lakebed invalidate our use of this judgement as a roadmap to a judgement of our issue]
- c. Para 11 – owners contacted township building dept and were told if the boathouse is located over the lakebed beyond the high water mark it was exclusively MNR jurisdiction. MNR was contacted and decided that owners did not require a work permit or occupancy permit
- d. Para 15 – MNR interprets Public Lands Act so that boathouses that have a shadow on the lakebed but that have no matching physical presence on the lakebed do not require a permit

e. Para 16 & 17 – Free Use Policy directive Relying on the MNR's Free Use Policy, a written directive made by the Minister with authority under the Public Lands Act, the MNR decided that the construction of the dock and boathouse on Crown lands did not require authorization under the Public Lands Act. The MNR's Free Use Policy identifies recreational, commercial, and industrial uses of public land that do not require an occupancy permit. It allows for certain improvements such as docks and single-storey boathouses to be placed on public lands without a permit from the MNR. Under the MNR's Free Use Policy, to be a permitted free use, a dock and single-storey boathouse, used strictly for private use or commercial tourism non-revenue producing purposes, must be in substantial compliance with the following. It must: (a) be a necessary adjunct to the use and enjoyment of the adjoining upland property; (b) be situated 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 and not interfere with neighbour's use and enjoyment of their waterfront property (e.g. blocking view of lake); (c) have been approved or exempted by the Canadian Coast Guard under the Navigable Waters Protection Act, if applicable; (d) in the case of a boathouse, be used only for the storage and docking of boats; and (e) have complied with applicable permitting requirements.

f. Para 20 – Plaintiff asserts the Township has jurisdiction to zone the dock and boathouse to enforce the Building Code Act; Plaintiff argues that MNR should have required owners to comply with the Public Lands Act

g. Para 21 – The township asserts that since boathouse is over the lakebed and over the high water mark (anchor to shore) that the township has no authority to enforce the Building Code Act or its relevant zoning by-laws; further township asserts that its zoning by-laws are only in force if boathouse / anchors were placed partially above the high water mark

h. Para 22 – The Crown's (MNR's) position, with which the owners agree, is that it is up to each municipality to determine whether and how the Building Code Act, 1992 and zoning applies to Crown land, although the Crown itself is immune from zoning and Building Code regulation. Further, it is the MNR's position, with which the owners agree, that the dock and boathouse do not require a work permit or occupancy permit under the Public Lands Act

### **Ownership of Lakes and Rivers in Ontario**

a. Para 31, 32, 33 – since confederation, the title to beds of navigable rivers and lakes has been vested in the Crown in right of province; confirmed in Beds of Navigable Waters Act 1990, unless there is an express grant in the Crown Patent of the bed a navigable body of water or stream bordering on or passing through a property, title to the bed of that body of water belongs to the Crown

b. Para 34 – the Crown can expressly grant the title of the bed of a body of water in a Crown patent

c. Para 37 – Under section 20 of the act, the minister may also issue licenses of occupation...20.

(l) The Minister may issue under his or her hand and seal a licence of occupation to any person who has purchased, or is permitted to occupy, or is entrusted with the care or protection of any public lands or who has received or been located on any public lands as a free grant. Effect of licence of occupation Such person or the person's assigns may take possession of and occupy the land for which the licence is issued, subject to the conditions of the licence, and may under it, unless it has been revoked or cancelled, maintain actions against any wrongdoer or trespasser, as effectually as the person could under letters patent from the Crown.

d. Para 39 – since there is no representation that the Crown has issued licenses of occupation for the lands under Big Cedar Lake, it has been assumed that the Crown owns and controls the use of the lands under Big Cedar Lake in the township

e. Para 40 – the Crown has the ownership of the bed of body of water and it also owns title to the foreshore between the low and high water marks

f. Para 41 – Riparian rights are different and not the same as ownership of the bed of the lake, river and depend on access to the water

### **Regulations of Structures on Bodies of Water**

g. Para 47 & 48 - [47] It is important to note that although the subject of zoning by-laws is land and zones are defined on the ground, zoning by-laws operate on the person using the land not the land itself: Re Gay (1959), 20 D.L.R. (2d) 170 (C.A.), discussed below. [48] A body of water can be located on the land within a municipality, as is the situation in the case at bar, where Big Cedar Lake is located in the Township of N01th Kawartha. Thus, subject to a qualification, discussed below, a municipality is empowered to enact by-laws that regulate the use of land in the municipality including land in the municipality covered by water

h. Para 50 – this section may assist the Township of Severn in dealing with squatters in trailers on Tower Line Road

i. Para 54 – great example of defendant got Federal approval to build a dock from Minister of Transport but the plaintiff Township's territory extended into the river i.e. Crown Lands, and the plaintiff argued that the approved dock from Min of Transport was against its zoning by-laws and won the injunction [CR NTD this is a huge example of the township needs to create zoning by-laws for the use and purpose of crown lands]

j. Para 55 & 56 THE BEST EXAMPLE OF OUR PRECEDENT WE ARE SEEKING.... An example of a municipality zoning lands covered by water. In this case the court recognized that municipalities have the power to pass by-laws to regulate matters on land covered by water, provided they do not permit structures which would interfere with navigation. In the Galway case, dock and boathouse were on top of Mississauga Lake part of Trent Severn Waterway in townships of Galway and Cavendish. The defendants built structure without muni, provincial or federal permits, court declared township able to pass by-laws concerning the waters of Mississauga Lake and that structure built did not conform

k.                                Para 59 – Turning to the case at bar and applying the above principles of law, the Township can lawfully zone the lands under Big Cedar Lake and regulate the type of construction and the height, bulk, location, size, floor area, spacing, character and use of buildings or structures to be erected within the township

l.                                Para 60 – The township is fully able to enact their by-laws in this case [CR NTD we need to understand if the presence of object as vessel causes the township a problem in invoking its building by-laws]

m.                                Para 62 – spells out very clearly that the by-laws which govern docks, boathouses and houseboats apply to lands that are lakebeds and property within the boundaries of the township

n.                                Para 63 – if the anchor line connected above the high water line then the township believed that the structure was within their by-laws, with the anchor line between the low and high water levels they did not feel their building regulations were applicable

o.                                Para 66 – the judge asserts that the zoning by-laws are enforceable regardless of where on the shore line the anchors are attached

CITATION: Glaspell v. Ontario, 2015 ONSC 3965

COURT FILE NO.: CV-12-448912

DATE: 20150618

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,  
RICHARD HART, MARGARET HART  
and JANE DOE

Defendants

)  
)  
) *Barry Glaspell*, self-represented  
)  
)  
)

) *Fatema Dada and Jonathan Sydor* for the  
) Defendants, Her Majesty the Queen in Right  
) of Ontario and G. Bruce Mighton  
)

) *John Ewart* for the Defendants the  
) Corporation of the Township of North  
) Kawartha and Tim Powell  
)

) *Pamela Miehl and Jody E. Johnson* for the  
) Defendants, Richard Hart and Margaret Hart  
)

)  
)  
) HEARD: May 11, 2015  
)

PERELL, J.

REASONS FOR DECISION

A. INTRODUCTION

[1] The Plaintiff, Barry Glaspell, brings a partial summary judgment motion against: (a) the Corporation of the Township of North Kawartha; (b) its Chief Building Official, Tim Powell; (c) Her Majesty the Queen in Right of Ontario ("the Crown"), as represented by the Minister of Natural Resources ("MNR") and the Minister of Municipal Affairs and Housing ("MAH"); (d) G. Bruce Mighton, the Area Supervisor for MNR; and (e) Richard Hart and Margaret Hart.

[2] It is not evidence that I shall rely on, but a feature length news article written by the late Barbara Turnbull with the headline "*Peterborough boathouses have neighbouring cottagers fighting mad*" (*Toronto Star*, May 19, 2012) explains the emotive and some of the legal

background to this summary judgment motion, and Ms. Turnbull's article also explains why the outcome of this motion will be of some considerable interest to many. The article begins:

ASPLEY, ONTARIO – Barry Glaspell and Christine Elser bought their three-bedroom wilderness dream on Big Cedar Lake in 2007, enchanted by the pristine beauty and tranquility 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. ....

Unchecked shoreline development has implications for all Ontario, indeed Canada, says Glaspell, who has launched a lawsuit 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. ....

[3] On this partial summary judgment motion, Mr. Glaspell seeks only declaratory relief. He asks the court to answer five questions and then to make declaratory orders. The five questions are:

Q.1 Does the Ontario *Building Code Act, 1992* apply to construction of structures (e.g., docks, marine facilities, houses) to be built on, over, in, or under Ontario lakes, and in particular, Big Cedar Lake?

Q.2 Does the Township have jurisdiction under the *Planning Act* and *Municipal Act* to enact and apply by-laws to these structures (e.g., docks, marine facilities, houses) to be built on, over, in, or under Big Cedar Lake?

Q.3 Do each of the dock and the house require building permits, and compliance with the comprehensive Township zoning by-laws, as they are each attached or anchored to land without a permit contrary to applicable by-laws?

Q.4 Does the boathouse built on Big Cedar Lake require an occupancy permit under the *Public Lands Act* to occupy public lands?

Q.5 Does the boathouse built on Big Cedar Lake require a work permit under the *Public Lands Act* regarding construction of a structure on shore lands?

## **B. FACTUAL AND PROCEDURAL BACKGROUND**

[4] In the case at bar, the Crown, i.e., the provincial government, is present through MNR and MAH. MNR is the Ontario government ministry responsible for management of Crown land, which includes shore lands and the beds of most lakes and rivers. MAH administers the *Planning Act* and the *Building Code Act, 1992*, but municipalities are responsible for the enforcement of their zoning by-laws and for enforcing the *Building Code Act, 1992* in their territories.

[5] Mr. Glaspell owns a waterfront property on Big Cedar Lake in the Township of North Kawartha. Margaret Hart and Richard Hart also own a nearby waterfront property on the lake, where they have constructed a boathouse on a floating dock.

[6] In May 2011, without notice to Mr. Glaspell or any of their neighbours, the Harts constructed a dock. A thick steel cable runs from the dock to the shore at a point beyond the high water mark. The dock floats and is not anchored to the bed on the lake, but it is tethered to the land by a steel cable. The dock is approximately 1,000 square feet in size. The Harts built a boathouse on the dock. The evidentiary record for this motion does not reveal the size of the boathouse built on the dock. The boathouse is located in front of the Harts' property and 10 feet from Mr. Glaspell's projected property line.

[7] The dock and its boathouse were constructed without a building permit from the Township or an occupancy or work permit from MNR. Mr. Glaspell believes that the Harts' dock and boathouse do not comply with: (1) the *Building Code Act, 1992*, S.O. 1992, c. 23; (2) municipal by-laws under the *Municipal Act, 2001*, S.O. 2001, c. 25; (3) zoning by-laws under the *Planning Act*, R.S.O. 1990, c. P.13; and (4) the *Public Lands Act*, S.O. 2001, c. 25. He seeks the removal of the Harts' dock and boathouse.

[8] Apart from Mr. Glaspell's noting that the *Municipal Act, 2001*, defines a municipality as having a geographical or territorial jurisdiction and his dissertation about a municipality's jurisdiction to pass by-laws and communicate with senior levels of government about planning and various matters that might involve land, water, the environment, and activities in the municipality, none of the parties informed me what, in particular, there was in the *Municipal Act, 2001* that concerned the Harts' dock and boathouse, and, therefore, as the Crown suggested, I decline to say anything more about the *Municipal Act, 2001*, but I shall go on to consider the other statutes.

[9] In 2011, Mr. Glaspell asked all of the Township, its Chief Building Official, Mr. Powell, the MNR, Mr. Mighton of MNR, and the MAH to do something about the Harts' dock and boathouse, but they respectively took the position that the Harts were within their legal rights in constructing the dock and boathouse.

[10] Unsatisfied with this response, Mr. Glaspell sued the Crown, Mr. Mighton, the Township, Mr. Powell, and Jane Doe, who was the stand-in for the Harts. I subsequently ordered the Harts joined as parties. Mr. Glaspell also sued the Municipal Property Assessment Corporation, but he claims no relief against them on this summary judgment motion. Mr. Glaspell's Statement of Claim alleges that the presence of the floating dock and boathouse is a nuisance and advances claims of negligence, bad faith, misfeasance in public office, and abuse of statutory powers.

[11] The more detailed explanation as to how the boathouse was built without a permit is that in 2010, the Harts contacted the Township's Building Department and were told that if the boathouse is located over the lakebed beyond the high water mark it was exclusively within the MNR's jurisdiction. The Harts contacted the MNR to determine what, if any, permissions or permits were necessary to construct a floating boathouse. The Harts were told by the MNR that the planned boathouse did not require a work permit or occupancy permit.

[12] After their communications with the municipal and provincial officials, the Harts set about to build their dock and boathouse.

[13] Mr. Glaspell saw the construction, and between July 12, 2011 and July 21, 2011, he wrote Tim Powell, who as noted above is the Township's Chief Building Official, and asked him to review the dock and the boathouse then under construction, and to issue a cease construction order. On July 22, 2011, Mr. Powell visited the Harts' property. The Township decided not to



issue a cease construction order.

[14] Mr. Glaspell also asked the MNR to review the dock and the boathouse to determine whether there had been compliance with the *Public Lands Act*. The MNR sent land technician Trevor Harris and senior land technician Mitch Close to investigate the Harts' property. Messrs. Harris and Close did not examine the building plans for the boathouse, but they visited the Harts' property to determine whether the dock and its boathouse were constructed upon or anchored to the lakebed, which was not the case.

[15] As noted above, the structure of the boathouse did not have any direct contact with the bed of the lake, and the boathouse's steel cable was anchored beyond the high water mark; thus, in Messrs. Harris and Closes' opinion, the structure did not occupy more than 15 square metres of shore lands, and they concluded that a work permit was not required under the *Public Lands Act* and its Regulations. The position of the MNR is that because the Harts' boathouse was floating, it did not require a work permit from the MNR. This policy interprets the Regulations under the *Public Lands Act* so that boathouses that have a shadow on the lakebed but that have no matching physical presence on the lakebed do not require a permit.

[16] Relying on the MNR's *Free Use Policy*, a written directive made by the Minister with authority under the *Public Lands Act*, the MNR decided that the construction of the dock and boathouse on Crown lands did not require authorization under the *Public Lands Act*. The MNR's *Free Use Policy* identifies recreational, commercial, and industrial uses of public land that do not require an occupancy permit. It allows for certain improvements such as docks and single-storey boathouses to be placed on public lands without a permit from the MNR.

[17] Under the MNR's *Free Use Policy*, to be a permitted free use, a dock and single-storey boathouse, used strictly for private use or commercial tourism non-revenue producing purposes, must be in substantial compliance with the following. It must: (a) be a necessary adjunct to the use and enjoyment of the adjoining upland property; (b) be situated 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 and not interfere with neighbour's use and enjoyment of their waterfront property (e.g. blocking view of lake); (c) have been approved or exempted by the Canadian Coast Guard under the *Navigable Waters Protection Act*, if applicable; (d) in the case of a boathouse, be used only for the storage and docking of boats; and (e) have complied with applicable permitting requirements.

[18] From the Site Inspection on July 26, 2011, the MNR technicians found that the boathouse was a single-storey structure which contained only two bays for boat docking, as well as the surrounding dock, consistent with private use. The dock and boathouse were found to be situated directly in front of the owner's dry upland parcel. In the opinion of the MNR, the dock and boathouse did not block the neighbour's view of the lake or interfere with the neighbour's use and enjoyment of their waterfront property. The MNR concluded that the dock and boathouse were in compliance with the *Free Use Policy* and did not require authorization under the *Public Lands Act*.

### **C. POSITION OF THE PARTIES**

[19] The positions of the parties seemed to be fluid right up to and including the argument of Mr. Glaspell's summary judgment motion, and I understand that the Harts' ultimate position to

be that the Township was correct in concluding that it did not have jurisdiction to enforce the *Building Code Act, 1992* or its zoning by-law on Crown land and that the MNR was correct in concluding that the boathouse does not require a work permit under the Regulations or an occupancy permit under the *Public Lands Act* because it was within the MNR's *Free Use Policy*.

[20] Mr. Glaspell's position is that the Township has jurisdiction to zone the Harts' dock and boathouse and to enforce the *Building Code Act, 1992* and its zoning by-law with respect to their construction. He argues further that the MNR should have required the Harts to comply with the *Public Lands Act*.

[21] The Township's position is that because the boathouse is located over the lakebed beyond the high water mark; *i.e.*, the boathouse including its anchoring cable is built on Crown lands, the Township has no authority to enforce the *Building Code Act, 1992* or its own zoning by-law to regulate the construction of the Harts' dock and boathouse. The Township says that the zoning by-law and the *Building Code Act, 1992* only apply if the boathouse were to be placed at least partially above the high water mark.

[22] The Crown's (MNR's) position, with which the Harts agree, is that it is up to each municipality to determine whether and how the *Building Code Act, 1992* and zoning applies to Crown land, although the Crown itself is immune from zoning and *Building Code* regulation. Further, it is the MNR's position, with which the Harts agree, that the dock and boathouse do not require a work permit or occupancy permit under the *Public Lands Act*.

## **D. DISCUSSION AND ANALYSIS**

### **1. Introduction and Methodology**

[23] At its most general level, the question to be decided by Mr. Glaspell's motion is what rule of law governs the construction and use of docks and boathouses on Ontario's lakes and rivers. There are considerable differences of opinion about the how, where, when, who, and why aspects of this general question, and Mr. Glaspell, the Township, the Crown/MNR, and the Harts all have different views. Apparently, there is also no consensus amongst municipalities because there are other municipalities that differ from the opinion and approach of the Township about a municipality's authority to zone and enforce the *Building Code*.

[24] Before I can wade into these murky waters of Big Cedar Lake to provide my opinion, the Crown raises a preliminary objection about Mr. Glaspell's standing to bring this partial summary judgment motion for a declaration. I shall address this objection in this introductory section, and I will explain why I disagree with it.

[25] Then, I shall go on to decide the motion. In the section that immediately follows this Introduction, I shall discuss the nature of the ownership of lakes and rivers in Ontario, which, as will appear, is relevant to the rules of law that govern the construction and use of docks and boathouses on Ontario's lakes and rivers. Then, in the subsequent sections, I shall explain my own analysis and answer the general question of how the law of Ontario regulates docks and boathouses constructed on rivers and lakes. In the course of doing so, I will address some particular questions raised by the competing positions and arguments of the parties. For reasons that will become apparent, I will begin the discussion by discussing zoning, then move to the *Building Code* and will finish with the *Public Lands Act*. By the end of the discussion, I will

have answered the questions raised by Mr. Glaspell's motion seeking declaratory relief.

[26] Turning then to the Crown's preliminary objection to Mr. Glaspell's standing, the Crown submits that the court should not exercise its discretion to make declaratory orders in the circumstances of this case.

[27] Under section 97 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, the Superior Court may make binding declarations of right, whether or not any consequential relief is or could be claimed. Declaratory orders are in the discretion of the court: *CTV Television Network Ltd. v. Kostenuk*, [1972] 3 O.R. 338 (C.A.) at para. 5.

[28] The court's discretion to make a declaration should be exercised sparingly and with extreme caution: *Re Lockyer*, [1934] O.R. 22 (C.A.). As a general policy, the court will not make a declaratory order or decide a case when the decision will serve no practical purpose because the dispute is theoretical, hypothetical or abstract, and the remedy of declaratory relief is not generally available where the dispute or legal right may never arise: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342; *Green v. Canada (Attorney General)*, 2011 ONSC 4778 (S.C.J.).

[29] Being a discretionary remedy, the court will withhold the exercise of its discretion to grant a declaration in circumstances in which a declaration cannot meaningfully be acted upon by parties; a declaration must have some utility: *Solosky v. The Queen*, [1980] 1 S.C.R. 821; *Giacomelli v. Canada (Attorney General)*, 2010 ONSC 985.

[30] I appreciate that the court has a discretion to refuse to grant declaratory relief and that granting such relief should be done sparingly, but, in my opinion, it would be to shirk the court's duty to the public to dismiss Mr. Glaspell's summary judgment motion based on the pretence that his grievances are academic and theoretical and do not affect his legal rights. In my opinion, there is a genuine dispute, and both Mr. Glaspell's and the Harts' legal rights are engaged as are the legal duties of the Township and of the Crown. I shall, therefore, exercise the court's discretion and decide this motion on the merits.

## **2. The Ownership of Lakes and Rivers in Ontario**

[31] In order to understand what law applies to docks and boathouses on Ontario lakes and rivers, it is necessary to understand some aspects of the law about their ownership and use.

[32] Since Confederation, the title to beds of navigable rivers and lakes has been vested in the Crown in right of the province: *Reference re Provincial Fisheries* (1895), 26 S.C.R. 444, aff'd [1898] A.C. 700 (P.C.); *Canada (Attorney General) v. Perry* (1865), 15 U.C.C.P. 329.

[33] As confirmed by s. 1 of the *Beds of Navigable Waters Act*, R.S.O. 1990, c. B.4, unless there is an express grant in the Crown patent of the bed of a navigable body of water or stream bordering on or passing through a property, title to the bed of that body of water belongs to the Crown. Section 1 of the *Act* states:

### *Grant to be deemed to exclude the bed*

1. Where land that borders on a navigable body of water or stream, or on which the whole or a part of a navigable body of water or stream is situate, or through which a navigable body of water or stream flows, has been or is granted by the Crown, it shall be deemed, in the absence of an express grant of it, that the bed of such body of water was not intended to pass and did not pass to the grantee.

[34] In *Real Estate Practice in Ontario* (4<sup>th</sup> ed.) (Toronto: Butterworths, 1990) at p. 29, D.J. Donahue and P.D. Quinn, discuss the *Beds of Navigable Waters Act* and state:

There is no definition in the Act of a navigable water or stream. A navigable water or stream has been defined as one capable of being traversed by craft of some sort, as small as canoes, skiffs or rafts, or capable of being used to float logs. Such use need not be continuous; it may fluctuate seasonally. The issue of whether a stream is navigable is to be determined as of the date of the Crown grant (see *Coleman et al. v. Attorney General for Ontario et al.* (1983), 27 R.P.R. 107).

The Act does not, however, apply to mill ponds or small lakes which have no navigable outlet or inlet; they have been found to be not navigable and the boundaries of lots on which such bodies of water are located follow the original lot lines notwithstanding the water lying thereon, (see *William v. Salter and Karwick* (1912), 23 O.W.R. 34.)

[35] An obvious deduction from s. 1 of the *Beds of Navigable Waters Act* is that the Crown can expressly grant the title of the bed of a body of water in a Crown patent. This deduction is supported by the case law that holds that the Crown can grant title subject to the public's right of navigation: *R. v. Harran* (1912), 3 O.W.N. 1107 (H.C.J.); *Barber v. Andrews* (1921), 20 O.W.N. 239 (H.C.J.); *Rice Lake Fur Co. v. McAllister* (1925), 56 O.L.R. 440 (C.A.).

[36] The fact that the Crown can sell or convey Crown lands is also confirmed by ss. 15, 16, and 17 of the *Public Lands Act*, which state:

*Regulations re sale or lease of public lands*

15.(1) The Lieutenant Governor in Council may make regulations,

(a) prohibiting or regulating and controlling the sale or lease of public lands for any specified purpose or use, other than agricultural purposes, and fixing the prices or rentals and the terms and conditions of sale or lease;

(b) fixing the periods for which the Minister may extend the time for performance of a term or condition of a sale or lease under subsection 23 (2) and prescribing the fee therefor.

....

*Reservation of mines and minerals*

(6) In every sale or other disposition of public lands for summer resort locations there shall be reserved to the Crown all mines and minerals thereon or thereunder, and the instrument of sale or other disposition shall so provide.

*Sale, etc., of public lands not otherwise provided for*

16. Where the sale or lease of any public lands is not otherwise provided for in this or any other Act or the regulations, the Minister may direct the sale or lease of any such public lands at such price or rental and upon such terms and conditions as the Minister considers proper.

*Quit claim letters patent*

17. (1) Where the Minister is satisfied that the right to bring an action on behalf of Her Majesty against a person for the recovery of land is barred by subsection 3 (1) of the *Real Property Limitations Act*, the Minister may direct the issue of quit claim letters patent in respect of the land to that person or to that person's predecessor in possession if the right of recovery was barred against that predecessor upon such conditions as the Minister considers proper.

....

[37] Under s. 20 of the *Act*, the Minister may also issue licences of occupation. Section 20 states:

*Licences of occupation*

20. (1) The Minister may issue under his or her hand and seal a licence of occupation to any person who has purchased, or is permitted to occupy, or is entrusted with the care or protection of any public lands or who has received or been located on any public lands as a free grant.

*Effect of licence of occupation*

(2) Such person or the person's assigns may take possession of and occupy the land for which the licence is issued, subject to the conditions of the licence, and may under it, unless it has been revoked or cancelled, maintain actions against any wrongdoer or trespasser, as effectually as the person could under letters patent from the Crown.

*As evidence*

(3) The licence of occupation is proof, in the absence of evidence to the contrary, of the right to possession by such person and the person's assigns of the land, but has no force against a licence to cut pine trees existing at the time of its issue or where the pine trees are reserved to the Crown against a licence to cut such trees then existing or thereafter issued.

[38] Sections 37 and 38 of the *Act* address Crown grants. Sections 37 and 38 state:

*Grants, etc.*

*Definition*

37. (1) In this section,

"Crown grant" means a grant of a freehold or leasehold interest in unpatented public lands or of an easement in or over unpatented public lands made under this or any other Act.

*Crown grants, release, grants of minerals registered in land registry offices*

(2) If a Crown grant of public lands, a release under subsection 58 (6) or a grant under *The Canada Company's Lands Act*, being chapter 24 of the *Statutes of Ontario, 1922*, is given, the Minister shall forward the instrument by which the release or grant is given to the proper land registry office.

*Registration*

(3) Upon receipt of an instrument under subsection (2), the land registrar shall, without fee or other charge, register the instrument, note particulars of registration on a copy and forward the copy to the grantee at the address furnished by the Ministry.

....

*Certificate that land is public lands*

*Definition*

38. (1) In this section,

"Crown" means Her Majesty the Queen in right of Ontario as represented by the Minister.

*Certificate forwarded for registration*

(2) When the Crown becomes the registered owner of land that has been patented or otherwise

disposed of or when land reverts to or vests in the Crown, the Minister may forward to the proper land registry office a certificate stating that the land is deemed to be public lands.

*Registration*

(3) The land registrar shall, without fee or charge, register every certificate received under subsection (2).

*Effect of registration*

(4) Upon registration of a certificate under subsection (3),

(a) the *Land Titles Act* or the *Registry Act*, as the case may be, ceases to apply to the land described in the certificate and the land registrar shall note that fact in the appropriate register or abstract index; and

(b) the land described in the certificate may be granted, sold, leased or otherwise dealt with in the same manner as other public lands.

....

[39] I was not enlightened by the parties to the case at bar as to whether the Crown has made any grants, sales, leases, or licences, and as far as I can determine, it has been simply assumed or admitted that the Crown owns and controls the use of the lands under Big Cedar Lake in the Township.

[40] The Crown, *prima facie*, has the ownership of the bed of body of water and it also owns title to the foreshore between the low and high water marks, although a subject may establish a title by proving an express grant or by establishing title by adverse possession and the presumption of a lost grant: *Attorney General v. Emerson*, [1891] A.C. 649 (H.L.).

[41] To avoid misunderstandings, it is worth noting that riparian rights are different from ownership of the bed of the lake or river and rather depend upon access to the water. The authors of the title *Waters and Watercourses (Ontario)*, *Riparian Rights*, in the *Canadian Encyclopedic Digest* state at paragraph 61:

The Ontario courts have laid down the following well-established rules: a riparian owner's rights are not founded on ownership of the bed of the lake or river, but on access to the water; a grant of land to the water carries with it to the grantee the right of access to and from the water from any point of his or her own lands; any grantee of the Crown must take subject to the right of navigation; a riparian owner has the right to the natural flow and quality of water, subject to the same rights as his or her riparian neighbours; a riparian owner is entitled to accretions; a riparian owner and the public have the right of navigation in navigable waters; and the right to navigation is a public right, but may be connected with a right to exclusive possession to particular land on the bank. The latter right is a private one, invasion of which may form a ground of action for damages. *Snow v. Toronto (City)* (1924), 56 O.L.R. 100 (C.A.); *Canada (Attorney General) v. Higbie*, [1945] S.C.R. 385.

### **3. The Regulation of Structures on Bodies of Water**

#### **(a) Zoning**

[42] I turn now to how docks and boathouses are regulated by a municipality's zoning by-laws. Pursuant to s. 34 of the *Planning Act*, zoning by-laws may be passed by the councils of municipalities. The scope of zoning by-laws is described in s. 34 (1) of the *Planning Act*, which

states:

*Zoning by-laws*

34(1) Zoning by-laws may be passed by the councils of local municipalities:

*Restricting use of land*

1. For prohibiting the use of land, for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or abutting on any defined highway or part of a highway.

*Restricting erecting, locating or using of buildings*

2. For prohibiting the erecting, locating or using of buildings or structures for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or upon land abutting on any defined highway or part of a highway.

*Marshy lands, etc.*

3. For prohibiting the erection of any class or classes of buildings or structures on land that is subject to flooding or on land with steep slopes, or that is rocky, low-lying, marshy, unstable, hazardous, subject to erosion or to natural or artificial perils.

*Contaminated lands; sensitive or vulnerable areas*

3.1 For prohibiting any use of land and the erecting, locating or using of any class or classes of buildings or structures on land,

- i. that is contaminated,
- ii. that contains a sensitive groundwater feature or a sensitive surface water feature, or
- iii. that is within an area identified as a vulnerable area in a drinking water source protection plan that has taken effect under the *Clean Water Act, 2006*.

*Natural features and areas*

3.2 For prohibiting any use of land and the erecting, locating or using of any class or classes of buildings or structures within any defined area or areas,

- i. that is a significant wildlife habitat, wetland, woodland, ravine, valley or area of natural and scientific interest,
- ii. that is a significant corridor or shoreline of a lake, river or stream, or
- iii. that is a significant natural corridor, feature or area.

*Significant archaeological resources*

3.3 For prohibiting any use of land and the erecting, locating or using of any class or classes of buildings or structures on land that is the site of a significant archaeological resource.

*Construction of buildings or structures*

4. For regulating the type of construction and the height, bulk, location, size, floor area, spacing, character and use of buildings or structures to be erected or located within the municipality or within any defined area or areas or upon land abutting on any defined highway or part of a highway, and the minimum frontage and depth of the parcel of land and the proportion of the area thereof that any building or structure may occupy.

*Minimum elevation of doors, etc.*

5. For regulating the minimum elevation of doors, windows or other openings in buildings or structures or in any class or classes of buildings or structures to be erected or located within the municipality or within any defined area or areas of the municipality.

*Loading or parking facilities*

6. For requiring the owners or occupants of buildings or structures to be erected or used for a purpose named in the by-law to provide and maintain loading or parking facilities on land that is not part of a highway.

[43] Pursuant to s. 34 of the *Planning Act*, zoning by-laws may be passed by the councils of local municipalities. The word 'may' indicates that municipalities are empowered but not obliged to pass zoning by-laws. In the case at bar, the Township has enacted a zoning by-law, but it says that as a matter of interpretation or application, it does not apply to the Crown lands where the Harts' dock and boathouse have been built.

[44] I pause here to say that there was some discussion in the parties' arguments about a municipality's discretion to enforce its by-laws. Since that discretion is not relevant to the issues of whether or not the zoning applies to lands covered by water, I shall say nothing more about these arguments.

[45] I also pause to say that I should not be taken as ruling on whether or not the Harts' dock and boathouse comply with the zoning by-law or with the requirements of the *Building Code Act*. The focus of this motion has been on the predicate issues of whether and how any laws might apply to their dock and boathouse.

[46] Returning to those issues, it may be noted that a municipality's authority to zone under s.31 of the *Planning Act* has a locative or territorial limitation. A municipality may zone "within the municipality or within any defined area or areas or abutting on any defined highway or part of a highway." Zoning by-laws regulate the use of land by delineating an area and prohibiting uses of land within that area.

[47] It is important to note that although the subject of zoning by-laws is land and zones are defined on the ground, zoning by-laws operate on the person using the land not the land itself: *Re Gay* (1959), 20 D.L.R. (2d) 170 (C.A.), discussed below.

[48] A body of water can be located on the land within a municipality, as is the situation in the case at bar, where Big Cedar Lake is located in the Township of North Kawartha. Thus, subject to a qualification, discussed below, a municipality is empowered to enact by-laws that regulate the use of land in the municipality including land in the municipality covered by water.

[49] The qualification is that the Provincial Crown and Crown Agents are immune from a municipality's zoning authority. See: *Re Gay, supra*; *College d'arts appliques et de technologie La Cite collegiale v. Ottawa (City)* (1994), 20 O.R. (3d) 541 (Gen. Div.); *Toronto Area Transit Operating Authority v. Mississauga (City)*, [1996] O.J. No. 843 (Gen. Div.).

[50] It is helpful in understanding this qualification to recall that zoning by-laws operate on the person using the land. The subtleties here are demonstrated by *Re Gay, supra*. In *Re Gay*, Mr. Gay was a squatter on Crown lands in the Improvement District of Elliot Lake, and he was convicted for occupying the lands and using them for a purpose other than permitted by the municipality's zoning by-law.



[51] On his appeal, Mr. Gay argued that the lands he was using without permission were admittedly lands owned by the Crown in the right of the Province of Ontario and, therefore, the municipality's by-law could not apply to the lands by virtue of s. 11 of the *Interpretation Act*, R.S.O. 1950, c. 184, which provided that "No Act shall affect the rights of His Majesty, His Heirs or Successors, unless it is expressly stated therein that His Majesty shall be bound thereby."

[52] (See now *Legislation Act*, S.O. 2006, c. 21 Sch. F at s. 71, which states: "No Act or regulation binds Her Majesty or affects Her Majesty's rights or prerogatives unless it expressly states an intention to do so.")

[53] The Court of Appeal, however, held that although the Crown, its servants and agents were not bound by the by-law, Mr. Gay was personally subject to the by-law. Justice Morden explained for the Court that the description of the zones defines the area in which the conduct of persons (other than the Crown and its agents) is regulated. Thus, Justice Morden stated at para. 8 of the Court's judgment:

The duties and liabilities created by by-laws passed under the powers conferred by Sec. 390 of The *Municipal Act* are imposed upon persons. These duties are not imposed upon land. The section refers to the user of land, the erection of buildings, etc. - matters which are the result of the actions and conduct of persons. The zoning by-law, the application of which we are considering, provides that

"No person shall use any land or erect or use any building or structure for any purpose except one or more of the following uses ..."

An earlier section of the by-law states:

"The provisions in this by-law shall apply to all of the lands included in the Improvement District of Elliot Lake, the boundaries of which are shown on the zoning map attached."

The purpose and effect of this section is merely to define the area in which the conduct of persons, true in respect of lands is to be regulated. By virtue of Sec. 11 of The *Interpretation Act*, the Crown and its servants and agents upon the Crown lands are not bound by the by-law. I know of no principle which extends this immunity of the Crown to a squatter on its lands and I should say in fairness to Mr. Brewin's able argument that he did not argue that any such principle existed.

[54] *Township of Moore v. Hamilton* (1979), 23 O.R. (3d) 156 (C.A.) is another demonstration that a zoning by-law can apply to persons using land owned by the Crown. Under the *Territorial Divisional Act*, R.S.O. 1970, c. 458, the boundaries of townships lying on the St. Clair River extend to the boundary of the Province of Ontario in the river. Thus, the plaintiff Township's territory extended into the St. Clair River. The defendant obtained a permit from the federal Minister of Transport pursuant to the *Navigable Waters Protection Act*, R.S.C. 1970, to build a dock into the St. Clair River; *i.e.*, over Crown lands. The Township of Moore, where the dock was being built, sought an injunction because the proposed use was contrary to its zoning by-law. Reversing the motions judge, the Court of Appeal granted the injunction and enforced the by-law. See also *Humphrey (Township) v. Robinette*, [1993] O.J. No. 1995 (Gen. Div.).

[55] *Galway and Cavendish (United Townships) v. Windover*, [1995] O.J. No. 3932 (Gen. Div.), is another example of a municipality zoning lands covered by water. In this case, the court recognized that municipalities have the power to pass by-laws to regulate matters on land covered by water provided they do not permit structures which would interfere with navigation.

[56] The dock and boathouse in *Galway* were similar to the dock and boathouse in the case at bar. The boathouse was built on top of the dock which floated above the bed of Mississauga Lake, a navigable body of water and part of the Trent Severn Waterway in the United Townships of Galway and Cavendish. The dock was anchored by a chain attached to stakes driven into the lakebed or into the shore of the lake. The defendant Windover built the dock and boathouse without permits from the municipality, the province, or the federal government. The Townships successfully brought an action for a declaration that they had jurisdiction to pass a by-law concerning the waters of Mississauga Lake and that Mr. Windover's dock and boathouse were a structure that did not conform with the municipality's building by-law and the *Building Code Act*.

[57] See also *R. v Black*, [2002] O.J. 3049 (O.C.J.), where the defendant was convicted for non-compliance with the municipal zoning by-law for construction of a dock and *Seguin (Township) v. Bak*, 2013 ONSC 5788, where in an application brought by the Township of Seguin, Mr. Bak was ordered to remove a boathouse at his cottage property that he unsuccessfully argued was an aerodrome and thus exempt from provincial and municipal building, planning, zoning and environmental laws, by-laws and regulations.

[58] Before explaining the application of the above law to the circumstances of the case at bar, it should be recalled, as noted earlier, that the province can convey its ownership of public lands to private citizens (or municipalities for that matter), in which case, the zoning by-law would simply apply to the owner of what was formerly Crown lands.

[59] Turning to the case at bar and applying the above principles of law, the Township of North Kawartha can lawfully zone the lands under Big Cedar Lake and regulate the type of construction and the height, bulk, location, size, floor area, spacing, character and use of buildings or structures to be erected or located within the Township. Its by-law, however, would not apply to the Crown or its agents. However, the by-law would apply to the Harts who are not a Crown agent.

[60] The Township of North Kawartha is, therefore, mistaken in thinking that simply because Crown lands are involved it cannot enact or enforce its by-laws over the Crown lands.

[61] Indeed, in my opinion, although the Township apparently thinks that it has not zoned the land associated with the Harts' boathouse, the applicable zoning by-law (By-law No. 66-1996) (Comprehensive Zoning By-law for the Townships of Burleigh and Anstruther) already is applicable to that boathouse.

[62] Section 1.2 (a) of By-law No. 66-1996 provides that it shall apply to all lands within the corporate limits of the Township. Regardless of who owns it, Big Cedar Lake is within the corporate limits of the Township as are the Hart and Glaspell cottages. Section 1.2 (b) of By-law No. 66-1996 provides that no building or structure shall be erected nor shall the use any building, structure, or lot be changed in whole or in part except in conformity with the provisions of the by-law. The by-law defines "dock" to mean a structure, attached to a shoreline and/or boathouse on permanent or semi-permanent basis, which projects into a body of water, with a finished floor area elevated above the level of the water. The by-law defines "marine facility" to mean a "building or structure attached built or anchored to land, which is used to place a boat into or take a boat out of a water body; or to moor, to berth or to store a boat." The definition of marine facility goes on to say that it may include a boathouse. The by-law specifies the permitted uses for docks and regulates building area and height and setbacks for boathouses and docks. The by-

law specifies certain lakes that are to be free of boathouses. In my opinion, the Township's by-law applies on and to the lands being used by the Harts for their dock and boathouse and it applies to the Harts who are using the dock and boathouse.

[63] Apparently because the Township did not want to expose itself to the liability for a duty of care in inspection (see *Kamloops (City) v. Nielsen*, [1984] 2 S.C.R. 2.), it has interpreted its by-law as not applying to Crown lands and, therefore, as not applying to structures built on Crown land as measured by the high water mark of Big Cedar Lake. The result is that some but not all boathouses are being regulated by the Township's zoning by-law. In my opinion, the Township's interpretation is wrong. The result of the Township's interpretation of its zoning by-law is that had the anchor cable for the Harts' boathouse been moved past the high water mark onto the Harts' property by even an inch, then the boathouse would have had to comply with the zoning by-law's size and location restrictions.

[64] I assume that the Harts have been responsible and did not construct an unsafe structure, but if the Township's interpretation were correct, then provided the Harts keep their dock and boathouse within the high water mark, they could have constructed any structure and one that would be unregulated as far as the *Building Code* is concerned.

[65] Relying on *Harrison v. Toronto (City)* (1982), 39 O.R. (2d) 721 at p. 724 as authority for the proposition that it is the duty of the court, if reasonably possible, to construe a by-law to give effect to the object intended by council, the Township argued that its council never intended to have its by-laws apply to structures built entirely beyond the high water mark and, therefore, any ambiguity as to how the by-law applies should be resolved in favour of the by-law not applying beyond the high water mark.

[66] With respect, the Harts do not enjoy Crown immunity and the location of the anchor of the steel cable does not make any difference to their exposure to the zoning by-law. Whatever the subjective intent of council members, I cannot reasonably construe the by-law in the manner suggested by the Township. And, having regard to the public safety aspects of zoning and construction by-laws, I cannot responsibly interpret the by-laws that would allow the municipality to abdicate its governance responsibilities over zoning or the *Building Code Act*, to which I now turn.

#### **4. The Building Code Act, 1992**

[67] The next issue is the matter of the application of the *Building Code Act, 1992* to docks and boathouses on the rivers and lakes of Ontario.

[68] Pursuant to s. 8. (1) of the *Building Code Act, 1992*, no person shall construct a building or cause a building to be constructed unless a permit has been issued therefor by the chief building official. Cottage owners, like the Harts, are persons subject to the *Act* and their dock and boathouse could, and most likely does, qualify as a building as defined by the definitions found in s. 1(1) of the *Act*.

[69] Under s. 1(1), "building" and "building code" are defined as follows:

1.(1) In this Act,

"building" means,

(a) a structure occupying an area greater than ten square metres consisting of a wall, roof

and floor or any of them or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto,

(b) a structure occupying an area of ten square metres or less that contains plumbing, including the plumbing appurtenant thereto,

(c) plumbing not located in a structure,

(c.1) a sewage system, or

(d) structures designated in the building code

“building code” means regulations made under section 34.

[70] Pursuant to s. 1.1 (1) of the *Act*, cottage owners constructing buildings, which may include docks and boathouses, are obliged to construct in accordance with the *Act*. Section 1.1 (1) states:

*Role of various persons*

1.1 (1) It is the role of every person who causes a building to be constructed,

(a) to cause the building to be constructed in accordance with this Act and the building code and with any permit issued under this Act for the building;

(b) to ensure that construction does not proceed unless any permit required under this Act has been issued by the chief building official; and

(c) to ensure that construction is carried out only by persons with the qualifications and insurance, if any, required by this Act and the building code.

[71] Pursuant to s. 3 (1) of the *Act*, the council of the municipality is responsible for the enforcement of the *Act*, and pursuant to s. 3 (2) the council is obliged to appoint a chief building official and inspectors as are necessary for the enforcement of the *Act*. Pursuant to s. 7 (1) of the *Act*, the council of the municipality may pass by-laws for the enforcement of the *Act*. Pursuant to s. 1.1 (6) of the *Act*, it is the role of the chief building official, among other things, to oversee the enforcement of the *Act* and the building code within the municipality. Section 1.1 (6) states:

*Role of chief building officials*

1.1 (6) It is the role of a chief building official,

(a) to establish operational policies for the enforcement of this Act and the building code within the applicable jurisdiction;

(b) to co-ordinate and oversee the enforcement of this Act and the building code within the applicable jurisdiction;

(c) to exercise powers and perform the other duties assigned to him or her under this Act and the building code; and

(d) to exercise powers and perform duties in accordance with the standards established by the applicable code of conduct.

[72] Pursuant to the municipality's by-law making authority, the municipality may, among other things, prescribe class of permits and provide for applications for permits requiring the application to be accompanied by plans, specifications, and other information. Section 7(1) of the

*Act states:*

*By-laws, resolutions, regulations*

7. (1) The council of a municipality or of an upper-tier municipality that has entered into an agreement under subsection 3 (5) or a board of health prescribed for the purposes of section 3.1 may pass by-laws, a planning board prescribed for the purposes of section 3.1 may pass resolutions and a conservation authority prescribed for the purposes of section 3.1 or the Lieutenant Governor in Council may make regulations, applicable to the matters for which and in the area in which the municipality, upper-tier municipality, board of health, planning board, conservation authority or the Province of Ontario, respectively, has jurisdiction for the enforcement of this Act,

- (a) prescribing classes of permits under this Act, including permits in respect of any stage of construction or demolition;
- (b) providing for applications for permits and requiring the applications to be accompanied by such plans, specifications, documents and other information as is prescribed;
  - (b.1) subject to the regulations made under subsection 34 (2.1), establishing and governing a program to enforce standards prescribed under clause 34 (2) (b), in addition to any programs established under subsection 34 (2.2);
  - (b.2) subject to the regulations made under subsection 34 (2.2), governing a program established under subsection 34 (2.2);
- (c) requiring the payment of fees on applications for and on the issuance of permits, requiring the payment of fees for maintenance inspections, and prescribing the amounts of the fees;
  - (c.1) requiring the payment of interest and other penalties, including payment of collection costs, when fees are unpaid or are paid after the due date;
- (d) providing for refunds of fees under such circumstances as are prescribed;
- (e) requiring a person specified in the building code to give notice to the chief building official or an inspector or to a registered code agency if one is appointed, of any of the stages of construction specified in the building code, in addition to the stages of construction prescribed under subsection 10.2 (1) and prescribing the period of time after such notice is given during which an inspection may be carried out;
- (f) prescribing forms respecting permits and applications for permits and providing for their use;
- (g) enabling the chief building official to require that a set of plans of a building or any class of buildings as constructed be filed with the chief building official on completion of the construction under such conditions as may be prescribed in the building code;
- (h) providing for the transfer of permits when land changes ownership;
- (i) requiring the person to whom a permit is issued to erect and maintain fences to enclose the site of the construction or demolition within such areas of the municipality as may be prescribed;
- (j) prescribing the height and description of the fences required under clause (i).

[73] Section 8 of the *Building Code Act, 1992* establishes the regime for the application and

issuance of building permits for construction and demolition. Section 8 states:

*Construction and Demolition*

*Building permits*

8. (1) No person shall construct or demolish a building or cause a building to be constructed or demolished unless a permit has been issued therefor by the chief building official.

*Application for permit*

(1.1) An application for a permit to construct or demolish a building may be made by a person specified by regulation and the prescribed form or the form approved by the Minister must be used and be accompanied by the documents and information specified by regulation.

*Issuance of permits*

(2) The chief building official shall issue a permit referred to in subsection (1) unless,

- (a) the proposed building, construction or demolition will contravene this Act, the building code or any other applicable law;
- (b) the applicant is a builder or vendor as defined in the *Ontario New Home Warranties Plan Act* and is not registered under that Act;
- (b.1) the *Architects Act* or the *Professional Engineers Act* requires that the proposed construction of the building be designed by an architect or a professional engineer or a combination of both and the proposed construction is not so designed;
- (c) a person who prepared drawings, plans, specifications or other documents or gave an opinion concerning the compliance of the proposed building or construction with the building code does not have the applicable qualifications, if any, set out in the building code or does not have the insurance, if any, required by the building code;
- (d) the plans review certificate, if any, required for the application does not contain the prescribed information;
- (e) the application for the permit is not complete; or
- (f) any fees due have not been paid.

....

*Decision*

(2.2) If an application for a permit meets the requirements prescribed by regulation, the chief building official shall, unless the circumstances prescribed by regulation apply, decide within the period prescribed by regulation whether to issue the permit or to refuse to issue it.

*Same, reasons for refusal*

(2.3) If the chief building official refuses to issue the permit, he or she shall inform the applicant of all of the reasons for the refusal of the permit and shall do so within the period prescribed by regulation.

....

*Revocation of permits*

(10) Subject to section 25, the chief building official may revoke a permit issued under this Act,

- (a) if it was issued on mistaken, false or incorrect information;
- (b) if, after six months after its issuance, the construction or demolition in respect of which it was issued has not, in the opinion of the chief building official, been seriously commenced;
- (c) if the construction or demolition of the building is, in the opinion of the chief building official, substantially suspended or discontinued for a period of more than one year;
- (d) if it was issued in error;
- (e) if the holder requests in writing that it be revoked; or
- (f) if a term of the agreement under clause (3) (c) has not been complied with.

*Prohibition*

(11) No person shall construct or demolish a building or cause a building to be constructed or demolished except in accordance with this Act and the building code.

*Notice of change*

(12) No person shall make a material change or cause a material change to be made to a plan, specification, document or other information on the basis of which a permit was issued without notifying, filing details with and obtaining the authorization of the chief building official.

*Prohibition*

(13) No person shall construct or demolish a building or cause a building to be constructed or demolished except in accordance with the plans, specifications, documents and any other information on the basis of which a permit was issued or any changes to them authorized by the chief building official.

*Restriction*

(14) If a request for authorization referred to in subsection (12) or (13) is accompanied by a change certificate that contains the prescribed information, the chief building official is not entitled to refuse to authorize the change on the grounds that the construction of the building to which the certificate relates does not comply with the building code.

[74] Subject to an argument advanced by the Township that I shall shortly reject (which argument is again connected to the legal principle that the Crown is immune from legislation unless expressly made binding on the Crown), the application of the above provisions of the *Building Code Act, 1992* leads to the conclusions that the Harts and others constructing docks and boathouses in the Township must apply for and obtain a building permit before constructing their dock or boathouse and that the Township is obliged to enforce its zoning and the *Building Code Act, 1992*.

[75] The Township's arguments to the contrary is set out in paragraphs 11-15 of its factum, which state:

11. Further and in the alternative, if individuals other than the Crown building on lakes are not agents of the Crown or building on her authority, North Kawartha would have no jurisdiction to issue building permits to them and all building on lakes in Ontario would need to cease.

12. Pursuant to section 8 (1.1) of the *Building Code Act*

An application for a permit to construct or demolish a building may be made by a person

specified by regulation and the prescribed form or the form approved by the Minister must be used and be accompanied by the documents and information specified by regulation

Reference: *Building Code Act, 1992*, S.O. 1992 c. 23 at s. 8(1.1)

13. Pursuant to section 1.3.1.2 of the *Building Code*:

(1) An application for a permit under section 8 of the Act to construct or demolish a building shall be made by,

(a) the owner of the property on which the proposed construction or demolition is to take place, or

(b) the authorized agent of the owner referred to in Clause (a).

Reference: *Building Code, O-Reg 332-12*, at s. 1.3.1.2

14. The fact that an owner of the land needs to be the one who applies for a permit is confirmed by the case of *Matwijow v Pelham (Town)*, where the Court states that, only the owner of land or someone authorized by him is entitled to make an application for a building permit.

Reference: *Matwijow v Pelham (Town)*, 2013 ONSC 2079 at Para 25

15. Since almost no one or in fact no one living upon Ontario lakes is either the owner of the lake upon which their property sits, or an authorized agent of the Crown. All applications for a building permit on Ontario lakes would need to be denied.

[76] I reject the Township's argument precisely because its interpretation of the *Act* leads to an absurd result that could not have been intended by the Legislature and further is not a necessary interpretation of section 1.3.1.2 of the *Building Code*.

[77] It is presumed that the legislator does not intend absurd consequences and an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or it is incompatible with other provisions or with the object of the legislative enactment. Where there are competing plausible constructions, a statute should be interpreted in a way that avoids absurd results: *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at para. 27; *Blue Mountain Resorts Ltd. v. Bok*, 2013 ONCA 75 at para. 43.

[78] Where the grammatical and ordinary sense of words when read in their context including the purpose and objective of the statute leads to some consequence that is repugnant or inconsistent with the purposes of the statute, the ordinary meaning may be departed from but only if there is a plausible alternative within the language used by the legislator: *Victoria City v. Bishop of Vancouver Island* (1921), 59 D.L.R. 399 (P.C.) at p. 387; *R. v. McIntosh*, [1995] 1 S.C.R. 686 at para. 20; *Grey v. Pearson* (1857), 6 H.L.C. 61 at p. 106; *Abbott v. Middleton* (1858), 7 H.L.C. 67 at p. 114; *Pinner v. Everett*, [1969] 3 All E.R. 257 at p. 258.

[79] In my opinion, section 1.3.1.2 of the *Building Code* should be interpreted to mean the owner of the property on which or for which the proposed construction or demolition is to take place.

[80] For reasons similar to those about the application of the zoning by-law, I conclude that the Harts' dock and boathouse are subject to regulation under the *Building Code Act* and any



associated by-laws and regulations.

## **5. The Public Lands Act**

[81] The *Public Lands Act*, regulates the use of “public lands,” which are defined by s. 1 of the *Act* to include lands designated as Crown lands.

[82] Section 14 of the *Act* authorizes the enactment of regulations, among other things, to govern activities that may be carried out on public lands and on shore lands and governing the issue of work permits. Section 14 states:

### *Regulations re work permits*

14.(1) The Lieutenant Governor in Council may make regulations,

- (a) governing activities that may be carried out on public lands and on shore lands, including requiring that such activities be carried out in accordance with the regulations and prohibiting certain activities on public lands or shore lands unless the activity is carried out in accordance with the terms and conditions of a work permit;
- (b) defining “shore lands” for the purpose of clause (a);
- (c) governing the issue, refusal, renewal and cancellation of work permits and prescribing their terms and conditions;
- (d) providing for and governing appeals from a refusal to issue or renew a work permit, from the cancellation of a work permit or from the imposition of terms and conditions in a work permit;
- (e) exempting any person or class of person from the requirement of obtaining a work permit to carry out an activity on public lands or shore lands.

### *General or particular*

(2) A regulation under subsection (1) may be general or particular in its application.

### *Fee*

(3) The Minister may charge such fee as he or she considers appropriate for the issuance or renewal of a work permit.

### *Offence*

(4) A person who contravenes a regulation made under clause (1) (a) is guilty of an offence.

### *Order to stop activity*

(5) An officer who finds that an activity is being carried on in contravention of the regulations made under clause (1) (a) without the necessary work permit may order that the activity cease until the work permit has been obtained.

....

[83] Section 26 of the *Act* imposes a penalty for unlawfully taking possession of public lands and erecting buildings and improvements, etc. Section 26 states:

### *Penalty for unlawfully taking possession of public lands and erecting buildings, etc.*

26.(1) Any person who enters into possession of public lands without lawful authority and erects any building or structure or makes any improvements thereon is liable to a penalty of an amount

equal to twice the market value of the public land so entered as determined by the Minister.

*Recovery of penalty*

(2) A penalty imposed under subsection (1) is recoverable at the suit of the Minister in any court of competent jurisdiction.

*Idem*

(3) If a person fails to pay a penalty imposed under subsection (1) and the Minister brings an action for the recovery of the penalty, it is the duty of the court,

- (a) to determine whether such person is liable to a penalty under subsection (1);
- (b) if it is determined that the person is liable to a penalty, to confirm or vary the amount thereof claimed by the Minister;
- (c) to give such judgment as it considers proper; and
- (d) to make such order as to costs or otherwise as it considers proper.

*Saving*

(4) Nothing in this section limits or in any way affects any right or remedy of the Minister or the Crown at common law or under any statute.

[84] Ontario Regulation 239/13 (Activities on Public Lands and Shore Lands – Work Permits and Exemptions), enacted pursuant to the *Public Lands Act*, prohibits activities on Crown lands unless carried out in accordance with a work permit. Section 2 (1) of the Regulation states:

PROHIBITED ACTIVITIES AND REQUIREMENT TO OBTAIN A WORK PERMIT

*Activities prohibited unless carried out in accordance with work permits*

2.(1) No person shall carry out any of the following activities except under the authority of and in accordance with the terms and conditions of a work permit that authorizes the activity:

- 1. Construct or place a building on public land.

...

- 6. Construct or place a structure or combination of structures that occupies more than 15 square metres on shore lands.

[85] Under s. 1(1) of the Regulation buildings are defined not to include “floating structures, docks, boathouses, tents, or ice hunts.” But a dock or boathouse could come within paragraph 6 of s. 2 (1) as a structure or combination of structures that occupies more than 15 square metres on shore lands. “Shore lands” are defined to mean “lands covered or seasonally inundated by the water of lake, river, stream or pond.”

[86] As noted above, in the case at bar, the MNR’s position is that because the Harts’ boathouse floats above the lakebed and is only tethered to a point above the high water mark, it does not “occupy more than 15 square metres on shore lands” and, therefore, the Harts do not require a work permit under s. 2 (1) of the *Act*.

[87] In my opinion, this interpretation of regulation is fallacious. Shore lands include the lands covered by the water of Big Cedar Lake and assuming that the dock and boathouse displaces more than 15 square metres of the water, it occupies the shore lands. The *New Concise Oxford*

*English Dictionary* (11<sup>th</sup> ed.) defines the verb “occupy” as follows:

**Occupy v.** (occupies, occupying, occupied) ... 2 Fill or take up (a space or time). 3 hold (a position or job) ... 5 take control of (a place) by military conquest or settlement – enter and stay in a (building) without authority, especially as a form of protest

[88] *Black’s Law Dictionary* (8<sup>th</sup> ed.) defines “occupancy” as follows:

**Occupancy** 1 The act, state or condition of holding, possessing or residing in or on something; actual possession, residence or tenancy, especially, of a dwelling or land. In this sense, the term denotes whatever acts are done on the land to manifest a claim of exclusive control and to indicate to the public that that actor has appropriated the land. Hence, erecting and maintaining a substantial enclosure around a tract of land usually constitutes occupancy of the whole tract. ....

[89] The action of occupying or the state of occupancy describes what the Harts are doing with their boathouse. I, therefore, conclude that the Harts and others with plans for docks or floating boathouses that displace more than 15 square feet of water are required to obtain work permits to construct their docks or boathouses.

[90] Regulation 975 of R.R.O. 1990 governs the issuance of work permits. Section 2 (1) of R.R.O. 1990/975 states:

2. (1) An officer shall issue a work permit to any person who applies for it and pays the prescribed fee unless the officer is of the opinion that the work for which a permit is required,

(a) is contrary to law;

(b) is inconsistent with or does not conform to,

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

(ii) a Ministry Resource Management Plan,

(iii) the Ministry District Land Use Guidelines,

(iv) a policy and procedure directive of the Ministry of Natural Resources; or

(c) is likely to create a threat to public safety or to a natural resource including Crown lands, waters and watercourses, forests, flora, wildlife and fisheries

[91] In my opinion, the officer issuing permits should not issue a permit that contravenes the local municipality’s zoning by-law because the work permit would authorize work contrary to law and be inconsistent with an official plan as defined in the *Planning Act*. See *Humphrey (Township) v. Robinette, supra*. It remains to be determined whether a work permit can be issued for the Harts.

[92] This brings me to the final issue of whether the Harts are subject to s. 26 of the *Public Lands Act* which makes it unlawful to take possession of public lands and erect improvements without lawful authority. Relying on its *Free Use Policy*, the Ministry’s position is that taking possession of public lands without an occupancy permit to build a floating dock and boathouse tethered to the shore land but not physically touching the lakebed is not erecting an improvement to the public lands. In my opinion, this is a fallacious and indeed foolish interpretation that is also inconsistent with the operation of the work permit provisions of the *Act*.

[93] For the MNR to have its *Free Use Policy* interpret s. 26 in this way is also inconsistent with the policy of the *Act* of having the MNR manage and control the use of Crown lands.

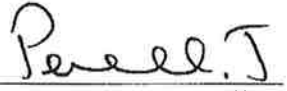
[94] I conclude that an occupancy permit is required in the circumstances of this case. It

remains for the MNR to determine whether or not it will grant one to the Harts.

**E. CONCLUSION**

[95] Declarations should issue in accordance with these Reasons for Decision.

[96] I order costs in the cause.

  
\_\_\_\_\_  
Perell, J.

Released: June 18, 2015

**CITATION:** Glaspell v. Ontario, 2015 ONSC 3965  
**COURT FILE NO.:** CV-12-448912  
**DATE:** 20150618

**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, RICHARD HART, MARGARET HART  
and JANE DOE**

**Defendants**

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**REASONS FOR DECISION**

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**PERELL J.**

Released: June 18, 2015

**Permit Comparison Summary**

Issued For Period FEB 1,2022 To FEB 28,2022

Type	Number	Property
-SEASONAL DWELLING	2022-0019	1670 GEORGIAN BAY WATE
-LIVING ADDITION	2022-0020	123 HEALEY LAKE
-SEWAGE CLASS 4	2022-0021	87 CRANE LAKE
-SEASONAL DWELLING	2022-0022	9 A530 ISLAND
-GARAGE/STORAGE BUILDING	2022-0023	6 MOONLIGHT CRT
-RENOVATION	2022-0024	1 A310 ISLAND
-GARAGE/STORAGE BUILDING	2022-0025	1 B295 ISLAND
-ACCESSORY BUILDING	2022-0026	1 A374 ISLAND

**Permit Comparison Summary**

Issued For Period FEB 1,2022 To FEB 28,2022

	<b>Previous Year</b>			<b>Current Year</b>		
	<b>Permit Count</b>	<b>Fees</b>	<b>Value</b>	<b>Permit Count</b>	<b>Fees</b>	<b>Value</b>
-ACCESSORY BUILDING	1	379.00	34,500.00	1	1,210.00	110,000.00
-DEMOLITION	4	200.00	0.00	0	0.00	0.00
-DOCK	3	150.00	40,000.00	0	0.00	0.00
-GARAGE/STORAGE BUILDING	0	0.00	0.00	2	2,345.00	213,200.00
-LIVING ADDITION	0	0.00	0.00	1	391.00	35,550.00
-RENOVATION	0	0.00	0.00	1	9,350.00	850,000.00
-SEASONAL DWELLING	0	0.00	0.00	2	7,158.00	650,850.00
-SEWAGE CLASS 4	0	0.00	0.00	1	500.00	20,000.00
-SEWAGE CLASS 5	1	250.00	10,000.00	0	0.00	0.00

	<b>Previous Year</b>	<b>Current Year</b>
Total Permits Issued	9	8
Total Dwelling Units Created	0	1
Total Permit Value	84,500.00	1,879,600.00
Total Permit Fees	979.00	20,954.00
Total Compliance Letters Issued	0	2

## BUILDING PERMIT SUMMARY (comparison 2021 to 2022)

### 2021

Month	Total No.	Value	Fees	Permit Area (Sq. Feet)
JAN	20	1,569,940.00	17,196.00	10,561
FEB	9	84,500.00	979.00	3,442
MAR	24	1,547,330.00	17,065.00	12,387
APR	22	855,000.00	11,085.00	11,037
MAY	34	3,968,000.00	46,522.00	12,348
JUN	49	4,127,550.00	49,212.00	20,880
JUL	37	3,836,630.00	46,398.00	16,423
AUG	47	4,236,950.00	52,620.00	8,417
SEP	36	4,935,245.00	56,903.00	28,045
OCT	25	1,114,344.00	14,574.00	12,318
NOV	12	1,385,614.00	16,217.00	12,568
DEC	7	1,302,320.00	14,654.00	5,776
<b>TOTALS</b>	<b>322</b>	<b>\$28,963,423.00</b>	<b>\$343,425.00</b>	<b>154,202</b>

### 2022

Month	Total No.	Value	Fees	Permit Area (Sq. Feet)
JAN	18	2,392,760.00	24,934.00	19,585
FEB	8	1,879,600.00	20,954.00	7,708
<b>TOTALS</b>	<b>26</b>	<b>\$4,272,360.00</b>	<b>\$45,888.00</b>	<b>27,293</b>



### 10 Year Building Permit Comparison

Inspectors	Year	Total Number	Construction Value	Permit Fees	Permit Area (Sqft)
2	2021	322	\$28,963,423	\$343,425	154,202
2	2020	217	\$14,485,336	\$170,470	97,798
2	2019	229	\$17,583,215	\$206,557	111,251
2	2018	243	\$13,384,210	\$158,586	97,049
2	2017	253	\$12,079,625	\$158,298	112,450
2	2016	255	\$14,263,575	\$190,799	97,112
3	2015	251	\$10,181,075	\$141,225	104,769
3	2014	203	\$8,683,875	\$116,569	71,947
3	2013	238	\$8,357,912	\$110,466	87,848
3	2012	280	\$10,861,525	\$147,012	95,280
Average 2012-2021		249	\$13,884,377	\$174,341	102,971
Jan 1 - Feb 28, 2022		26	\$4,272,360	\$45,888	27,293

# The Township of The Archipelago

## Information Report to Council

**Report No.:** Operational Services 2022-004

**Date:** 10<sup>th</sup> March 2022

**Originator:** Greg Mariotti, Manager of Operational Services

**Subject:** Operational Services Update

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### Public Works and Environmental Services Update

A small number of staff have contracted Covid-19 from outside of the workplace. Protocols in place have prevented spread to other members of the team.

The ice storm towards the end of February was a challenge for winter control and also caused damage to the surface of the rink.

A pin-hole water leak was discovered in the washroom adjacent to the kitchen at the Pointe au Baril Community Centre (see image below), causing water damage. Inspection of the pipework shows signs of corrosion (green staining). Any additional corroded pipework that is easily accessible will be replaced with cross-linked polyethylene (PEX) tubing. A more extensive replacement program may be needed in the coming years, as this is the second pin-hole leak in 2 years.



Electrical contractors have started the LED light replacement program at the community centre. The twenty lights in the main hall alone will reduce consumption from 500W each to 75W (10,000W down to 1,500W) and dropping the amperage down from around 50 Amps to 10 Amps. The seven emergency exit lights have also been upgraded with LED units, dropping consumption from 30W each to 5W (210W to 35W). Such changes will significantly benefit the solar panel and emergency generator battery back-up system.

New marina software system is being commissioned and renewal notices for marina patrons issued. Once fully commissioned, renewal notices and invoicing will be automatically generated and electronically mailed.

#### Update to Waste Management By-law #12-19

A final draft of an updated Waste Management By-law (attached), is being put forward for Council to adopt. Following feedback from the last Council meeting there have been some revisions, namely:

- Modification to the charges for boat disposal from a fixed \$25 per boat (up to 21'), to a \$5 per linear foot charge. Only boats up to 19' will be allowed at select transfer stations (due to size of haulage bin), whereas boats up to 30' will now be allowed at Site 9; and
- Clean, separated roof shingles has been added as a separate waste disposal stream, attracting a reduced disposal rate compared with regular C&D waste, to promote the fact this waste can be recycled.

Here below is a proposed resolution for Council:

"That Council adopt Waste Management By-law 22-XX, for implementation June 1<sup>st</sup> 2022 following a communication strategy as outlined in the February Operational Services Update report # 2022-002".

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### Northern North Crime Stoppers Signage

At the January Council meeting, Council inquired about installing "Crime Stoppers" signs at our waste management facilities. The cost to purchase ten, 4'x4' signs as drafted below is \$1,740.



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Respectfully Submitted,

  
\_\_\_\_\_  
Greg Mariotti  
Manager of Operational Services

I concur with this report,

  
\_\_\_\_\_  
John B. Fior  
Chief Administrative Officer

THE CORPORATION OF  
**THE TOWNSHIP OF THE ARCHIPELAGO**

By-law No. **XX - XX**

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To Regulate the Use of the Waste Management System

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**WHEREAS** Section 11(3)3 of the Municipal Act, 2001, S.O. 2001, c. 25 as amended authorizes municipalities to pass By-laws to prohibit or regulate the use of any part of a waste management system within the municipality;

**AND WHEREAS** the Township of The Archipelago wishes to pass a By-law to establish user fees for the deposit of non-household waste at staffed transfer stations and landfill sites;

**AND WHEREAS** the Township of The Archipelago wishes to prohibit the depositing of all non-household waste at any non-staffed transfer station or landfill site;

**NOW THEREFORE BE IT RESOLVED** that the Council of The Corporation of the Township of The Archipelago enacts as follows:

1. Definitions:

**"Attendant"** shall mean any employee of The Archipelago trained to staff, operate and implement the requirements of this By-law at a waste site/station.

**"(Clear) Bag "** shall mean a transparent or "see through" plastic bag for containing either household waste, garbage or recyclables of a size not to exceed 175 litres in volume.

**"(Black) Bag"** shall mean any plastic bag that is not transparent or "see through".

**"Boats"** shall mean wooden, fibre glass, or other material of construction with all engines, components, tanks and all fluids removed, including other small watercraft such as paddle boards and paddle boats. Aluminum or steel boats will be classed as scrap metal.

**"Brush"** shall include tree limbs, branches, shrubs and twigs.

**"C&D (Construction and Demolition) Waste"** shall mean clean construction, demolition and renovation materials, including the following: pieces of plaster, lumber, broken concrete, excavated material, wall board, siding, sinks, toilet bowls, or any other waste material resulting from the construction, alteration, repair, demolition or removal of any building or structure, including a fence, and shall not contain any recyclables.

**"Chippable Wood Waste"** shall include brush, branches and limbs greater than 1 inch in diameter and over 1 foot in length, and tree stumps.

**"Collection"** shall mean the activity of removing municipal waste or resource materials that originate from premises within The Archipelago by employees, or persons, firms or corporation under contract with The Archipelago.

**"Commercial enterprise"** shall mean any establishment set up for the purposes of providing goods and/or services for profit. This shall include short-term and long-term property rentals and condominiums.

**"Commercial premises"** shall mean a specific property under registered ownership, including all buildings and accessory structures thereon, at which a commercial enterprise is conducted. This shall include, but not be limited to; hotels, motels, restaurants, retail stores, apartment homes, condominiums and all residential buildings operating full-time or part-time in a commercial capacity.

**"Commercial waste"** shall mean waste incidental to a commercial enterprise or operation, including waste produced directly from a retail activity or as the result of a service or undertaking but shall not include waste as a by-product of a manufacturing operation or process.

**"Condominium"** shall mean individual residential condominium units.

**"Container"** shall mean a plastic or metal container that can be used to dispose of household waste or recyclables. The container itself shall be reused and not disposed of and the dimensions of which shall not exceed 75 centimetres meter in height and 50 centimetres in width and length, or a volume of 190 litres.

**"Contaminated Recyclable"** shall mean any non-recyclable item placed in a recycling bin or bag is considered contaminated.

**"Cubic Yard"** for the purpose of this By-law, one (1) cubic yard shall also be the equivalent of the bed of a pick-up truck, the trunk of a Sport Utility Vehicle, a small trailer (single axle), or the volume of waste that can be safely transported on a small (<18ft) boat. The calculation of the appropriate volume to be charged shall be at the sole discretion of the attendant.

**"(Old/Wayward) Docks"** shall mean docks originating from a private residence and not a commercial premises or enterprise, or found in a waterway of The Archipelago that have been cut into pieces less than 2m in length and less than 1.5m in width, with the wood component separated from the foam and any metal.

**"Freon"** is an ozone depleting gas present in equipment such as fridges, freezers, chillers, wine coolers, air conditioning units and similar. Upon disposal, such units need to be decommissioned by a licensed professional in order to safely remove the gas.

**"Garbage, or Household Waste"** means all waste generated within the household, including all drained animal and vegetable waste material from the preparation of food, sweepings, ashes, discarded household utensils and wearing apparel, ceramics, multi-material products and packages, non-recyclable glass containers, dog, cat and other pet feces and litter placed inside a sealed and leak-free bag, diapers placed in a sealed and leak-free bag, and other materials as designated by The Archipelago, with the exception of bulky items, such as furnishings, carpets, mattresses, etc., or any material used in the construction or renovation of buildings.

**"Household Waste"** is waste that is generated as a result of the ordinary day-to-day use of a household premise.

**"Household Hazardous Waste"** shall include aerosol cans containing product, bleach, cleansers, drain cleaners, flashlight batteries, flea powder, medicine, nail polish and remover, oven cleaners, photographic chemicals, thermometers/thermostats, antifreeze, car batteries, brake fluid, gasoline, glues, motor oil, oil filters, paint, paint thinners, solvents, turpentine, fertilizers, herbicides, insecticides, pesticides, pool chemicals, propane tanks and propane cylinders.

**"Invasive Plant"** shall mean a plant that causes ecological or economic harm in a new environment where it is not native to The Archipelago, an example of which is *Phragmites Australis*. Transportation and disposal of invasive plants shall only occur by following proper guidelines, which can be found on The Archipelago website.

**"Leaf and Yard Waste"** shall include garden trimmings, hedge trimmings, leaves, fall leaves, sticks and branches less than 1 inch in diameter and less than 1 foot long, Christmas trees and vegetable and plant matter. Leaf and yard waste does not include grass clippings.

**"Large Items"** shall mean weighty or bulky materials or articles including furniture, mattresses, cloth covered box springs, small area rugs, carpets cut in 1.2 metre (4 foot), lengths and bundled, crates, barrels, non-collapsible boxes, non-metal bath tubs, and any other materials and articles which would normally accumulate at a household excluding garbage and resource materials.

**"MT"** shall mean a metric tonne or 1,000 kilograms.

**"Non-Household Waste"** is any waste that is generated outside of a domestic household.

**"Occupant"** shall include any lessee, tenant, owner, agent of a lessee, tenant owner, or any person in control of a premise.

**"Premises"** shall include any building, dwelling place, room, apartment, condominium, townhouse, hotel, motel, restaurant, shop, store, office, parking area and any place which is under separate occupation or control.

**"Private Contractor"** shall mean any person, firm, or corporation who collects municipal waste or resource materials from premises within The Archipelago and includes all persons who dispose of waste from their own

premises, but does not include municipal employees or persons, firms or corporation under contract with The Archipelago for the collection of municipal waste or resource materials.

**"Recyclables"** shall mean material designated from time to time by The Archipelago as recyclable and for which alternative collection regulations apply.

**"Scrap Metal"** shall include but not be limited to water tanks, metal lawn furniture, bicycles, barbecues and auto parts.

**"Roof Shingles"** shall mean residential asphalt shingle waste from a household roof that is clean and free of contaminants, such that it may be recycled.

**"Tag"** shall mean a purchased sticker, tab, tie or label approved by The Archipelago for the purpose of disposing of certain chargeable items in accordance with the fee schedule in Appendix 'A'.

**"Transfer Station"** means a site where recyclables and garbage are collected and transferred to a secondary location in preparation for processing or landfilling.

**"Waste Card"** shall mean a card, permit or sticker that can be affixed to a windshield, allowing an Archipelago ratepayer to dispose of waste at one of the authorized sites/stations within the municipality or an approved location outside of the municipality where an agreement exists between the third party municipality and The Archipelago.

## 2. Authorized Sites/Stations:

The Township has established the following sites and stations for the disposal of waste in the municipality:

1. North Area Landfill Site No. 9
2. Bayfield Transfer Station
3. Skerryvore Transfer Station
4. Pointe au Baril Transfer Station
5. Crane Lake Transfer Station
6. Healey Lake Transfer Station
7. Woods Bay Transfer Station
8. Devil's Elbow Transfer Station
9. Sheep Head Bay Transfer Station

Ratepayers may dispose of household waste and recyclables only at the MacFarlane transfer station in Parry Sound, or the 12 Mile Depot in Georgian Bay Township (summer only) for as long as agreements remain in good standing between municipalities.

Note that most of the transfer station locations have storage limitations due to the small footprint of the location. Therefore, for any non-household waste, such as commercial or C&D waste, there is a restriction in the amount that can be disposed of, per day, to one cubic yard, or the equivalent of the back of a pick-up truck. There are no restrictions if disposing of non-household waste at the North Area Landfill Site No. 9. Ratepayers in the South Archipelago may also inquire with neighbouring landfills as to their fees and ability to accept waste from non-residents.

Household hazardous waste can only be disposed of at the MacFarlane transfer station in Parry Sound.

Anyone disposing of any type of waste at any authorized site/station must carry a valid waste card to be available for inspection upon request of the site attendant. The waste card may be an original or a facsimile.

## 3. Disposal Options at Authorized Sites/Stations

Everyone entering a waste disposal location must first see the attendant.

**The attendant has the authority to inspect, charge for, and reject loads, at their sole discretion. Any attempt by a ratepayer to coerce, intimidate or make threats to a site attendant will result in their immediate prohibition to access any Township of The Archipelago waste locations.**

The following items are allowed to be disposed of at each location. Some are chargeable and are

identified with an asterisk (\*). See Schedule 'A' for applicable tipping fees.

- i) North Area Landfill Site No. 9
  - Household waste
  - Recyclables
  - Scrap metal
  - Empty/expired 20lb propane tanks
  - Batteries and cell phones
  - Electronic waste (e.g. TV's, computers, batteries)
  - Re-use items
  - Invasive plants (see Township website under "Site 9" for handling requirements)
  - Clothing and textiles
  - Old or wayward docks cut into <2m lengths (wood separated from foam and metal)
  - Freon containing items (e.g. fridge/freezers, AC units) (\*)
  - C&D waste (\*)
  - Clean roof shingles (\*)
  - Commercial waste (\*)
  - Large items (\*)
  - Boats (\*) only between the first open day in June and the last open day in October
  - Leaf & yard waste
  - Chippable Wood Waste (\*)
- ii) Bayfield Transfer Station
  - Household waste
  - Recyclables
  - Batteries and cell phones
- iii) Skerryvore Transfer Station
  - Household waste
  - Recyclables
  - Batteries and cell phones
- iv) Pointe au Baril Transfer Station
  - Household waste
  - Recyclables
  - Batteries and cell phones
- v) Crane Lake Transfer Station
  - Household waste
  - Recyclables
  - Electronic waste
  - Scrap metal
  - Empty/expired 20lb propane tanks
  - Re-use items
  - Clothing and textiles
  - Old or wayward docks cut into <2m lengths (wood separated from foam and metal)
  - Batteries and cell phones
  - C&D waste (\*)
  - Commercial waste (\*)
  - Large items (\*)
  - Boats (\*) only between the first open day in June and the last open day in October and by prior appointment only
- vi) Healey Lake Transfer Station
  - Household waste
  - Recyclables
  - Electronic waste
  - Scrap metal
  - Empty/expired 20lb propane tanks
  - Re-use items
  - Clothing and textiles
  - Old or wayward docks cut into <2m lengths (wood separated from foam and metal)



- Batteries and cell phones
  - C&D waste (\*)
  - Clean roof shingles (\*)
  - Commercial waste (\*)
  - Large items (\*)
  - Boats (\*) only between the first open day in June and the last open day in October and by prior appointment only
- vii) Woods Bay Transfer Station
- Household waste
  - Recyclables
  - Electronic waste
  - Scrap metal
  - Empty/expired 20lb propane tanks
  - Re-use items
  - Clothing and textiles
  - Old or wayward docks cut into <2m lengths (wood separated from foam and metal)
  - Batteries and cell phones
  - C&D waste (\*)
  - Commercial waste (\*)
  - Large items (\*)
- viii) Devil's Elbow Transfer Station
- Household waste
  - Recyclables
  - Scrap metal
  - Re-use items
  - Old or wayward docks cut into <2m lengths (wood separated from foam and metal)
  - Batteries and cell phones
  - C&D waste (\*) – limited to 1 cubic yard per week
  - Large items (\*) – limited to 1 cubic yard per week
- ix) Sheep Head Transfer Station
- Household waste
  - Recyclables
  - Scrap metal
  - Re-use items
  - Old or wayward docks cut into <2m lengths (wood separated from foam and metal)
  - Batteries and cell phones
  - C&D waste (\*) – limited to 1 cubic yard per week
  - Large items (\*) – limited to 1 cubic yard per week
- x) MacFarlane Transfer Station (while agreement is in effect)
- Household waste
  - Recyclables
  - Household hazardous waste
- xi) 12 Mile Depot (while agreement is in effect)
- Household waste
  - Recyclables

#### 4. Prohibitions:

- a) No person shall deposit any non-household or commercial waste at the following municipally operated locations:
- i) Pointe au Baril Transfer Station
  - ii) Bayfield Transfer Station
  - iii) Skerryvore Transfer Station
- b) No person shall deposit any waste in any location except at a waste disposal site/station

established in accordance with this By-law.

- c) No person shall deposit or otherwise dispose of any waste brought in from outside the limits of the Township of The Archipelago, upon any lands, whether publicly or privately owned, including any waste disposal sites/stations established by the Township of The Archipelago
- d) No person shall deposit or otherwise dispose of waste, as herein defined, at any transfer station or landfill site, inside or outside, except during the hours of operation of the transfer station or landfill site, established in accordance with this By-law.
- e) No person shall scavenge, interfere with, remove, exchange or scatter any waste found at a transfer station or landfill site, without the prior approval of the Municipality, in writing.
- f) No person shall deposit or otherwise dispose of the following items at any waste disposal or transfer stations within the municipality:
  - i) liquid, toxic or hazardous waste of any type;
  - ii) oils;
  - iii) solvents;
  - iv) distillates;
  - v) raw sewage;
  - vi) condemned or dead animals;
  - vii) used cars or car parts;
  - viii) boat shrink wrap.
- g) Only clear plastic bags and approved containers are allowed to be used. Black bags are not allowed and shall be refused by the site attendant.

#### 5. Tipping Fees

- a) Non-household waste may be deposited at the following municipally operated sites subject to the payment of a tipping fee as set out in Schedule 'A' attached to this By-law:
  - i) Healey Lake Transfer Station
  - ii) Woods Bay Transfer Station
  - iii) Crane Lake Transfer Station
  - iv) North Area Landfill Site No. 9
  - v) Devil's Elbow Transfer Station
  - vi) Sheep Head Bay Transfer Station
- b) Non-household waste may only be deposited by residents of The Archipelago, limited to one cubic yard per day (or equivalent to a truck/SUV load, a small trailer load or a boat load), at all Transfer Stations. This restriction is not applicable to North Area Landfill Site No. 9.
- c) Contractors, for the purposes of disposing of C&D waste or other building and renovation activities, are not permitted to use Devil's Elbow or Sheep Head.
- d) Household waste, not including recyclables, generated by a commercial operation (for example, a cottage rental), shall be subject to a tipping fee per bag/container. See Schedule 'A'. Clean recyclables resulting from a commercial operation are not subject to a tipping fee. Contaminated recyclables will be classified as regular household waste and will be charged a tipping fee.

#### 6. Penalties

- a) All waste disposal sites/stations are under video surveillance. Video evidence will be used to assist with the issuance of set fines, clean-up fees, or any other fees, or potential prosecution.
- b) Anyone observed contravening any provision of this By-law shall be issued a ticket with a set fine of \$300.00 for a first offence and/or a clean-up fee of \$150.
- c) Non-payment of the set fine and/or clean-up fee within thirty (30) days of The Archipelago having delivered or sent by prepaid registered post an invoice, shall incur interest on the amount due at the rate of 1.5% per month plus an administration fee of \$20 per additional

notice of payment that is issued.

- d) Unpaid invoices after 6 months will be referred to a Private Collection Agency for recovery.
- e) Every person who contravenes any provision of this By-law shall be liable upon conviction to a maximum fine of \$5,000.00 exclusive of costs for a second and subsequent offence and every such penalty shall be recoverable under the Provincial Offences Act, R.S.O. 1990.
- f) An offence shall be deemed to occur for each day or part thereof for which a contravention of the By-law continues.
- d) The imposition of a penalty for a contravention of this By-law shall not excuse the condition or permit it to remain or continue and the person who has contravened the By-law shall rectify any condition or matter resulting therefrom.

Nothing herein contained shall in any way modify, affect or derogate from any other remedy available to the Corporation of the Township of The Archipelago with respect to such contravention.

7. Severability

If any section or part of this By-law is found to be illegal or beyond the power of The Township Council to enact, such section or part or item shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent therefrom and to be enacted as such.

8. Repeal

- a) By-law 12-19 shall be repealed at midnight, May 31<sup>st</sup>, 2022.

9. This By-law shall come into force and effect on June 1<sup>st</sup>, 2022.

**READ and FINALLY PASSED in OPEN COUNCIL this 11<sup>th</sup> day of March, 2022.**

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Reeve

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Clerk

## SCHEDULE 'A' to By-law No. XX - XX

**Transfer Station Disposal Fee Schedule****Residents**

<b>Household waste:</b>	Free
<b>Recyclables:</b>	Free
<b>Old/Wayward Docks (clean/separated):</b>	Free
<b>Non-separated Old/Wayward Docks:</b>	10 tags (\$25) per cubic yard
<b>Contaminated Recyclables:</b>	2 tags (\$5) per bag/container
<b>C&amp;D waste (clean):</b>	10 tags (\$25) per cubic yard
<b>C&amp;D waste (clean) with &gt;25% concrete:</b>	20 tags (\$50) per cubic yard
<b>C&amp;D containing recyclables:</b>	30 tags (\$75) per cubic yard
<b>Clean Roof Shingles:</b>	8 tags (\$20) per cubic yard
<b>Mixed C&amp;D waste:</b>	20 tags (\$50) per cubic yard
<b>Large Items (inc. mattresses):</b>	8 tags (\$20) per item
<b>Items containing Freon:</b>	12 tags (\$30) per item
<b>Boats (up to 19ft at transfer stations):</b>	2 tags (\$5) per linear foot
<b>Household Hazardous Waste:</b>	Not Accepted

**Commercial Waste**

<b>Household Waste:</b>	1 tag (\$2.50) per bag or container
<b>Recyclables:</b>	Free
<b>Household Waste:</b>	1 tag (\$2.50) per bag or container
<b>Contaminated Recyclables:</b>	2 tags (\$5) per bag or container
<b>C&amp;D waste (clean):</b>	10 tags (\$25) per cubic yard
<b>C&amp;D waste (clean) with &gt;25% concrete</b>	20 tags (\$50) per cubic yard
<b>C&amp;D waste containing recyclables:</b>	30 tags (\$75) per cubic yard
<b>Clean Roof Shingles:</b>	8 tags (\$20) per cubic yard
<b>Mixed C&amp;D waste:</b>	20 tags (\$50) per cubic yard
<b>Items containing Freon:</b>	12 tags (\$30) per item
<b>Boats (up to 19ft at transfer stations):</b>	2 tags (\$5) per linear foot

## SCHEDULE 'A' to By-law No. XX – XX (Continued)

**North Area Landfill Site No.9 Disposal Fee Schedule**

<b>Household Waste (Residents):</b>	<b>Free</b>
<b>Household Waste (Commercial):</b>	<b>\$125/MT (\$10 min. charge)</b>
<b>Recyclables:</b>	<b>Free</b>
<b>Scrap Metal:</b>	<b>Free</b>
<b>Old/Wayward Docks (clean/separated):</b>	<b>Free</b>
<b>Invasive Plants:</b>	<b>Free</b>
<b>Leaf and Yard Waste:</b>	<b>Free</b>
<b>Chippable Wood Waste:</b>	<b>\$125/MT (\$10 min. charge)</b>
<b>Non-separated Old/Wayward Docks:</b>	<b>\$125/MT (\$10 min. charge)</b>
<b>Contaminated Recyclables:</b>	<b>\$200/MT (\$15 min. charge)</b>
<b>C&amp;D waste (clean):</b>	<b>\$140/MT (\$10 min. charge)</b>
<b>C&amp;D waste containing recyclables:</b>	<b>\$200/MT (\$15 min. charge)</b>
<b>Mixed C&amp;D waste:</b>	<b>\$200/MT (\$15 min. charge)</b>
<b>Clean Roof Shingles:</b>	<b>\$125/MT (\$10 min. charge)</b>
<b>Items containing Freon:</b>	<b>\$30 per item</b>
<b>Large Items (inc. mattresses):</b>	<b>\$20 per item</b>
<b>Boats (up to 30ft):</b>	<b>\$5 per linear foot</b>
<b>Contaminated Soils or Materials:</b>	<b>Not Accepted</b>
<b>Asbestos:</b>	<b>Not Accepted</b>
<b>Household Hazardous Waste:</b>	<b>Not Accepted</b>