

TOWNSHIP OF NORTH KAWARTHA
COMPREHENSIVE ZONING BYLAW PRESENTATION
NOVEMBER 20, 2012

INTRODUCTION

- My name is Stephen Fahner from Northern Vision Planning, and I am here today representing Ambrose Moran
- My mailing address is 109 Meadow Heights Drive, Bracebridge, ON, P1L 1A4

- Most people in the room have likely never heard of me but I spent the last 24.5 years as the Director of Planning at the Township of Muskoka Lakes
- It is a high volume Planning Department dealing with 300-400 planning applications per year
- I have been involved and largely responsible for numerous planning initiatives including: classification of lakes, shoreline vegetative buffers, Waterfront Density, dark sky lighting, resort commercial units (including fractional ownership), and most recently have partnered with Beacon Environmental in dealing with long term site monitoring

- Muskoka may have seen some significant cottage development over the last 20 years, but with the increase in value of property there, it is coming here, Stoney Lake is a case in point where significant money has come into the area in recent years
- It, therefore, behooves the municipality to create a bylaw that is clear and defensible at the Ontario Municipal Board and in front of the courts

COMPREHENSIVE ZONING BYLAW REVIEW

General

- Today I am here to provide comments on proposed Comprehensive Zoning Bylaw
- Firstly I would like to say that a considerable amount of work has gone into your proposed bylaw, it can be a large task for any municipality large or small
- I would also like to say that my approach will be of a positive one in trying to assist the Township in tightening up the bylaw and provide constructive criticism that may keep you out of an Ontario Municipal Board hearing or court
- With that said the bylaw is in need of some help and I'm hoping to provide some of that for you today
- I will start with some general comments and then move to the more specific ones

- Firstly, zoning bylaws are to be written in the positive, in other words what can be done on a property, the preamble in the bylaw for each zone states "no person shall within the zone, use any lot or erect or alter any structure except in accordance with the following" and yet there are a number of prohibitions in the bylaw such as the definition of Habitable Room or Marine Facility where specific items are prohibited. This makes the bylaw confusing. Typically in my previous position people would say that since something was not prohibited this means it is allowed. You always want to have so that the bylaw permits certain things and by default prohibits everything else.

- Secondly, a bylaw cannot be conditional upon someone else's approval. The bylaw is contradictory when an item is prohibited (which again it should not be written that way) and then someone else is permitted to approve it as in the case of boathouses on Chandos Lake. A zoning bylaw is what is

permitted by Council. Other approvals may be required as part of the process. This can be noted in a preamble to the bylaw that does not legally form part of the bylaw.

- Site specific matters should not be rezonings. Rezoning changes the zone from a residential zone, for example, to a new zone category. These should be dealt with as an exemption to the zoning bylaw. For those items which are of a minor nature, a minor variance should be processed.
- Definitions should not include provisions in them. The provisions for Bunkhouses should not appear in the definition. The same applies to the definition of Church. Do not put the accessory uses in the definitions.
- The Township should consider requiring a minimum Shoreline Vegetative Buffer. This may be the single most important requirement in the Zoning Bylaw. My article in the Ontario Professional Planners Institute Journal in 2004 emphasizes this point.

Specific

- The requirement for a 100 foot front yard setback could be problematic. The Ontario Building Code says you can construct a septic system 50 feet from the high water mark. By placing it in the zoning bylaw, this can be subject to Council or the Committee of Adjustment making a decision in the face of opposition from a neighbour who wants the septic system as far away from his/her property as possible. Septic systems should be a technical decision and not subject to variances being approved by Committees who are not experts. The answer to this situation is to amend the Building Code to enable municipalities to set the standard at 100 feet. The Province is not there yet. It is noted that my comment may be in conflict with the Official Plan. As a compromise, the 100 foot requirement could be amended to only apply to

newly created lots (this is what the Township of Dysart has done in Haliburton). The Town of Gravenhurst is also grappling with this matter as we speak. The Township of Muskoka Lakes proposed a 100 foot setback on lakes that were considered Over Threshold but went back to 66 feet after serious objections to the proposal.

- One item I know the Township is grappling with is the jurisdictional matters related to shoreline structures. The Township of Muskoka Lakes has regulated shoreline structures for over 45 years. There are a few court cases related to this, the most famous being the Hamilton Harbour case where the City of Hamilton passed a zoning bylaw relating to land use in Hamilton Harbour. The Hamilton Harbour Commission argued the City did not have jurisdiction. The court decided in favour of the City. The courts have found that municipalities may zone lands covered by water and in fact “land” within the Municipal Act includes land covered by water.
- Related to this then is the decision to permit boathouses or not. I have spent countless hours dealing with boathouse matters and would say that if you wish to preserve the appearance of the shoreline, maintain privacy, and reduce the impact of lighting, do not allow boathouses. It is the boathouses that you see along the shoreline, much more so than dwellings or garages. Boathouses are not just a water quality issue but should be dealt with more consistently on the lakes in the Township. On shore boathouses are also disruptive to the shoreline vegetative buffer and are used as sleeping cabins in the summer when they are not used for storage.
- The provision for dock width is problematic as I read it. Although it is limited at the shore to 8 feet in width, it can be as wide as the lot when you get out farther. There can be multiple slips at the end of the dock. Consideration should be given to defining a building envelope that docks can fit into. The Township may also wish to consider limiting the number of docks to one.

- Strong consideration should be given to having a minimum lot frontage of 200 feet instead of 150 feet as proposed in the bylaw. The 200 foot minimum is the standard in all of Muskoka (as it is stipulated in the District Official Plan) as well as other municipalities in this area (eg. Township of Havelock, Belmont, Mathuen). The 150 foot lot frontage means higher density along the waterfront, higher density of docks, and inadequate separation distances. In some areas the most common lot size is 300 feet.
- In terms of more technical items, the reference to maximum number of dwellings is inconsistently expressed. Under Section 6.2 (c) it can be argued that more than one dwelling would be permitted by virtue of the wording. The section states a Dwelling House is permitted but by virtue of Section 1.3 where words in the singular can be considered in the plural, more than one would be permitted. This can easily be fixed by stating “one” and only one is permitted. In addition, it is confusing as to whether the maximum lot coverage is 10% or 15% as it is stated in Section 6.2 (f) that the Main Dwelling is permitted to be 10% lot coverage and Accessory Structures are permitted at 5%. The most common standard is 10% with some municipalities being less than this (eg. Township of Lake of Bays). Consideration should be given to limiting coverage based on the front 200 feet of a lot to prevent addition of back lands to increase the development potential along the waterfront.
- In terms of definitions, I am unclear as to why there is a definition of Dwelling House and Dwelling Unit. Family can no longer be defined in a zoning bylaw. Screened Porch should not refer you back to Gazebo. Pits and Quarries Act has been replaced by the Aggregate Resources Act. Septic Systems should be included in the definition of Structure not Building.
- Thank you for listening to my concerns with your bylaw. If you wish to ask me any questions regarding my presentation or my experience with cottage

country Planning in Muskoka, I would be more than pleased to answer your questions