

SHORELINE STRUCTURE JURISDICTION IN ONTARIO

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Issue Background

- Potential issues of privacy
- Visual impact
- Increase in intensity of use at water's edge
- Fish habitat
- Lighting
- Use of Crown Land for individual benefit

Legislative Framework

- Planning Act and Provincial policy
- *Public Lands Act* and Ministry of Natural Resources policies
- Ontario Building Code Act
- Federal Department of Fisheries and Oceans

Planning Act

Regulates land use in Ontario and provides the authority to municipalities to pass Zoning By-laws.

Public Lands Act

- PLA governs the use of Crown Land
- An offence to occupy Crown Land unless in accordance with Free Use Policy
- Despite being a permitted use as per the Free Use Policy, Work Permits may be required under s. 14 of the PLA

Crown Land Free Use Policy

- The bed of a navigable waterway is Crown Land
- The public has no legal right to occupy public land except in accordance with the Free Use Policy
- Docks and single storey boathouses permitted, without any additional “land use occupational authority” (includes lease, license of occupation, land use permit, beach management agreement, and easement, but excludes a work permit)

MNR Work Permits under *Public Lands Act*

- Required for structures that will occupy greater than 15 square metres of shore lands
- Reg. 453/96 defines “Shore lands” as *lands covered or seasonally inundated by the water of a lake, river, stream or pond*. This definition includes public and private land.
- Exemption from this work permit does not mean exemption from land use occupational authority if it is not a free use of Crown land
- May also require review by Fisheries and Oceans Canada

Case Law

Galway and Cavendish (United Townships) v. Windover [1995] O.J. No. 3932

- Defendant owned a parcel of land that bordered on a navigable lake within the Township of Cavendish
- Property was zoned “Recreational Residential”
- Constructed a floating wooden dock anchored by chains to the bed of the lake
- Defendant stored his boat on the dock and then built a partial enclosure on top of the floating dock

Galway and Cavendish cont'd

- The CBO served an Order to Comply and Stop Work Order
- Defendant continued construction, did not seek a rezoning or minor variance
- Municipality sought a declaration that they had jurisdiction to pass a bylaw regulating the use of land covered by water
- Finding: enclosed dock was a floating boathouse within the meaning of the zoning by-law, building by-law, and Building Code; could not engage in construction without compliance with those by-laws and the Code.

Galway and Cavendish cont'd

- “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.”
- From *Hamilton Harbour Commissioners v. City of Hamilton et al.* (1978) 21 O.R. (2d) 459: “In my opinion, land-use control within a harbour has both provincial and federal aspects. I conclude that the City pursuant to s. 35 of the *Planning Act* may validly pass a zoning by-law affecting land use within the harbour so long as it does not explicitly attempt to prohibit or regulate the use of land for purposes related to navigation and shipping.”

Doctrine of paramountcy and conflict between municipal by-laws and PLA?

- Section 14 of the *PLA* permits the MNR to issue work permits for work along the shore lands.

Section 2(1) of R.R.O. 1990, Reg. 975 reads:

“An officer shall issue a work permit to any person who applies therefor unless the officer is of the opinion that the work for which a permit is required,

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

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

From Galway and Cavendish:

- “A paramountcy, in my judgement, only arises if there is a conflict between two pieces of legislation... I am satisfied the doctrine of paramountcy does not apply and the municipality has jurisdiction to pass a zoning by-law to govern the water lots.”

Pending litigation: Glaspell v. Township of North Kawartha et al.

- Glaspell has commenced an action against the Minister of Municipal Affairs and Housing, the Minister of Natural Resources, MPAC, the Township of North Kawartha, the area supervisor of the MNR, and the CBO of North Kawartha
- Seeking declarations that Ontario Planning Act and Building Code Act apply to all structures built on water; that municipal by-laws apply to all structures on water; amongst others.

Examples of Zoning By-law Provisions

- Setbacks
- Maximum distance from High Water Mark
- Limitation on number of structures
- Maximum shoreline frontage coverage
- Shoreline activity areas
- Maximum boathouse height

OP and ZBL Comparison Chart Highlights

Excerpt from “Official Plan and Comprehensive Zoning By-law Review”, The Corporation of the Township of Havelock-Belmont-Methuen, prepared by Landmark Associates Ltd. and FoTenn Planning and Urban Design

Comparison includes Peterborough County, Township of Rideau Lakes, Township of HBM, Township of Muskoka Lakes, Township of Dysart et al

Comparison Chart Highlights - OP

	Peterborough County	Rideau Lakes	HBM	Muskoka Lakes	Dysart et al
Boathouses	Permitted use and may encroach into the 30m setback without a m.v., provided that it does not negatively affect the waterfront development	Water setback req'ts shall not apply; dwelling units are not permitted	To be implemented through the Zoning By-law	2-storey boathouses are permitted on Category 1 Lakes, with a min. frontage of 90m, 1-storey are permitted on Cat. 1, 2, 4 lakes with min. frontage of 30m, not permitted on Cat. 3 lakes	Boathouses are not permitted in the shoreline setback or in the water

Comparison Chart Highlights - ZBL

	Rideau Lakes	HBM	Muskoka Lakes	Dysart et al
Boathouse	No min. yard or water setback provisions, except a min. side yard shall be 4.5m; lot coverage of all accessory buildings not to exceed 10%, max. height 6m	Permitted if yard abuts high water mark; min. yard setback of 3m; dwelling units are not permitted	Boathouses are permitted on land and in the water within the Waterbody Open Space and Waterfront Residential zones; regulations vary based on lake category and lake frontage; dwelling units are not permitted	Permitted accessory structure on land only; to be located entirely above the high water mark; not to be closer than 7.5m to a side lot line that is not a shoreline; front lot line shall not exceed 6m; structure not to exceed 4.5m in height

Conclusion

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

Questions?