

ISSUE DATE:

Feb. 02, 2011



PL070667

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Roger Kolbuc has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law A2000-07 of the Township of Archipelago to rezone lands respecting Lot 11, Conc. 10, Block 17, RP 42M-544 to permit a cottage and dock.
OMB File No. Z070090

APPEARANCES:

Parties

Roger Kolbuc

Township of the Archipelago

Counsel

D. Trinaistich

C. Tzekas

**MEMORANDUM OF DECISION DELIVERED BY D. R. GRANGER ON
JANUARY 28, 2011 AND PROCEDURAL ORDER OF THE BOARD**

This is a Pre-hearing Conference being held by Telephone Conference Call with the above noted Parties connected.

The matter relates to the appeal by Roger Kolbuc (Applicant) from the refusal of the Council of the Township of the Archipelago (Township) to enact a proposed amendment to By-law A2000-07 (By-law) to permit a cottage and dock (Proposal) on Block 17, RP 42M-544 on Blackstone Lake (Subject Property).

A draft Procedural Order has been filed as Exhibit No. 1. The final Procedural Order resolved on consent of the Parties is now Attachment "1" to this Decision.

The Applicant has now filed an application for amendment to the applicable Township Official Plan (OP). The Township expects to formally deal with the application by mid February, 2011. The Parties consent to any subsequent appeal regarding the OP being consolidated with the By-law appeal if perfected at the Board. The issues remain the same.

The Board was advised that efforts are continuing to resolve the dispute.

The hearing will still proceed commencing on **Monday, April 18, 2011 at 10:30 a.m.** at the **Council Chambers, Township of Archipelago, 9 James Street South, Parry Sound, Ontario.** Up to eight (8) days have been scheduled.

No further notice is required.

This Board Member is not seized.

The Board can provide for alternative dispute resolution in the form of mediation at the formal request of the Parties.

The Board so Orders.

"D. R. Granger"

D. R. GRANGER
VICE CHAIR

ATTACHMENT 1

ONTARIO MUNICIPAL BOARD

Roger Kolbuc has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law A2000-07 of the Township of The Archipelago to rezone lands respecting Lot 11, Conc. 10, Block 17, RP 42M-544 to permit a cottage and dock.
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PROCEDURAL ORDER

1. The Board may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing will begin on Monday, April 18, 2011 at 10:30 a.m., in the Council Chambers of the Township of the Archipelago, 9 James Street South, Parry Sound, Ontario.

3. The length of the hearing will be eight days.

4. The parties and participants identified at the prehearing conference are set out in Attachment 1. The order of proceedings is also set out in Attachment 1.

5. The issues are set out in the Issues List, attached as Attachment 2. There will be no changes to the Issues List unless the Board permits, and a party who asks for changes may have costs awarded against it.

6. Any other person intending to participate in the hearing should contact counsel for the Township of the Archipelago. If other persons wish to participate in the hearing, the Board will consider scheduling a second Pre-hearing Conference.

Requirements Before the Hearing

7. On or before March 4, 2011, the parties will file a joint document brief with the Board, containing those documents that the parties agree can be produced without further proof.

8. On or before March 31, 2011, the parties will exchange and file with the Board a copy of their experts' reports, experts' witness statements and witness statements (for those witnesses who are not experts). On or before this same date, all the participants will provide to the parties and file with the Board a participant's statement, briefly describing the evidence they expect to present to the Board.

9. On or before April 8, 2011, the parties will exchange and file with the Board a copy of their experts' reply reports or experts' reply witness statements, if any.

10. A person wishing to change written evidence, including witness statements, must make a written motion to the Board. (see Rules 34 and 35 of the Board's Rules, which require that the moving party provide copies of the motion to all other parties 10 days before the Board hears the motion.)

11. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board at least 7 days before the hearing that the written evidence is not part of their record.

12. Documents may be delivered by personal delivery, facsimile, registered or certified mail, e-mail or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rules [26-31] on this subject. The delivery of documents by e-mail shall be deemed to have been received the same day, if sent before 4:30 p.m., or the next day, if sent after 4:30 p.m. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

13. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.

This Member is not seized.

So orders the Board.

ONTARIO MUNICIPAL BOARD

ATTACHMENT 1

PARTIES AND PARTICIPANTS

PARTIES AND PARTICIPANTS

1. Roger Kolbuc – Appellant (Mr Dennis Trinaistich, counsel)
2. Township of the Archipelago – Municipality
3. Collin McFayden – Participant
4. Carolyn Rymell – Participant
5. Pat Koran – Participant.
6. Andy Metalka – Participant.

ORDER OF PROCEEDING

7. The appellant.
8. Any other participants in support of the appellant's position.
9. The Township of the Archipelago.
10. Any other participants in support of the Township's position.
11. Reply evidence from the appellant.

ONTARIO MUNICIPAL BOARD

ATTACHMENT 2

ISSUES LIST

1. Whether the application for a zoning by-law amendment (the "**ZBLA**") (and, if considered by Council and appealed, the application for an Official Plan amendment (the "**OPA**")) has regard to or is consistent with the Provincial Policy Statements (the "**PPS**").
2. Whether the ZBLA conforms to the Township of the Archipelago's existing Official Plan.
3. In the event that an OPA is considered and appealed, whether that application constitutes good planning, and whether the ZBLA conforms to it.
4. Whether the OPA and the ZBLA are appropriate, given the planning history of the subject property, and in particular, the 1985 decision made by the Ontario Municipal Board with respect to it.
5. Whether the OPA and the ZBLA are appropriate, given the environmental characteristics of the subject property. If the residential development is considered appropriate, what terms, conditions and limitations, if any, should be imposed to protect the lands' environmental characteristics.
6. Whether a dock can be accommodated on the lands, given their environmental (fish habitat) designations. If no dock can be accommodated, whether residential development is appropriate. If a dock can be accommodated, what terms, conditions and limitations, if any, should be imposed with respect to the subject property to protect the fish habitat.

7. Whether Blackstone Lake has any other environmental or transportation (boating) constraints that would make the residential development of these lands inappropriate.