

ISSUE DATE:

JUNE 16, 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 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 the subject lands to be developed as a residential waterfront lot.

OMB File No. PL070667-Z070090

OMB Case No. PL070667-Z070090

Roger Kolbuc has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to the Official Plan for the Township of Archipelago to redesignate land at Lot 11, Conc. 10, Block 17, RP 42M-544 to permit the subject lands be developed as a residential waterfront lot.

OMB File No. PL110198-PL110198

OMB Case No. PL070667-Z070090

APPEARANCES:

Parties

Roger Kolbuc

Township of Archipelago

Counsel

D. Trinaistich

C. Tzekas

MEMORANDUM OF ORAL DECISION DELIVERED BY C. HEFFERON ON APRIL 18, 2011 AND ORDER OF THE BOARD

Background

Mr. R. Kolbuc, the applicant/appellant, proposes to develop a 0.86 ha portion of Block 17, Plan 42M-544, which comprises approximately 6.9 ha (17 acres) of waterfront land located on Blackstone Lake.

Block 17, Plan 42M-455 is part of a 16 lot registered plan of subdivision that together with an adjacent 14 lot registered plan of subdivision was the subject of a 1985 Ontario Municipal Board ("Board") hearing that approved the two plans of subdivision totalling 30 lots. Based on the evidence presented, Block 17, Plan 42M-544 was

considered by the Board at that time, to be unsuitable for development because it had been determined to be a Type 1 fish habitat.

Zoning By-law A115-85 amended the Township's then comprehensive Zoning By-law to implement that 1985 Board Decision and zoned Block 17, Plan 42M-544 as "Natural State (NS)". The lands are currently zoned NS and "Environmentally Sensitive (ES)" in the Township's current comprehensive Zoning By-law A2000-07. The majority of the shoreline adjacent to the property is zoned "Environmentally Sensitive One (ES1)".

Matter before the Board

The matter before the Board concerns Mr. Kolbuc's appeal against the February 18, 2011 decision of Council refusing his application to amend the Official Plan of the Township of the Archipelago. Proposed Official Plan Amendment 57 ("OPA 57") amends section 5 of the Official Plan to re-designate Block 17, Plan 42M-544 for the specific recreational residential use proposed by Mr. Kolbuc (Exhibit 5). Section 5 also lists certain conditions of development that are to be included in the required site plan agreement.

Mr. Kolbuc has also appealed to the Board against the July 20, 2007 decision of Council refusing his application to amend Zoning By-law A2000-17 to permit development of a recreational residence on a 0.86 ha parcel of Block 17, Plan 42M-544 as shown in Exhibit 4, Tab 39, page 5. Mr. Kolbuc seeks to amend the zoning on this 0.86 parcel from the current NS, ES and ES1 to "Inland Lakes Residential (IR)".

There is a considerable time span between Council's decision on Mr. Kolbuc's zoning by-law amendment application and the Board hearing of Mr. Kolbuc's appeal, which was convened April 18, 2011. The Board was told that Mr. Kolbuc appealed the July 20, 2007 decision to the Board on August 2, 2007, which satisfied the requirements of subsection 34(11) of the *Planning Act*. The delay resulted because negotiations on the proposed development continued between representatives of Mr. Kolbuc and the Township during the four intervening years.

The Board consolidated the two files on March 16, 2011.

Chronology

The chronology at Exhibit 4, Tab 14 shows that the history of the Kolbuc application is closely tied to the history of the Black Rock Estates. I have included some of what I consider to be the critical junctures here.

Black Rock Estates is a 20-year old, 30-unit recreational residential development situated on the shores of Blackstone Lake. The lots are located on either side of Block 17, Plan 42M-544. The draft Plan of Subdivision for the Black Rock Estates approved in March 1985 provides for Block 17, Plan 42M-544 to be zoned “Environmentally Sensitive (ES)” and “Natural State (NS)”. These zones prohibit the construction of either a dwelling or a dock.

The chronology shows that Mr. Kolbuc acquired a contractual interest in Block 17, Plan 42M-544 on July 16, 1990. On September 19, 2003, Mr. Kolbuc submitted an application to amend the By-law to rezone Block 17, Plan 42M-544 from ES and NS to “Special Provision” to allow for construction of a dwelling. Also on September 19, 2003, a “Fisheries Habitat Assessment” was submitted along with the application by Michalski, Neilsen Associates Ltd. This document identified an area of the shoreline along Block 17, Plan 42M-544 as suitable for docking.

On September 23, 2003, the Ministry of Natural Resources (“MNR”) was asked to peer review the Fisheries Habitat Assessment. As part of the peer review, a site inspection was carried out. One result of this peer review was that a portion of the shoreline comprising the fish habitat along the shoreline of Block 17, Plan 42M-544 was downgraded from Type 1 to Type 2.

On May 18, 2004 Mr. Kolbuc was informed of the need for an environmental assessment (“EIA”) of the property to determine its suitability for development. In August 2005, a survey of the water quality and wetlands in Blackstone Lake was completed by Dr. Patricia Chow-Fraser, and in September 2006, an EIA was completed by Michalski, Neilsen Associates Ltd. In February 2007, a peer review of the EIA was completed by French Planning Services.

A Township planning staff report dated July 17, 2007 recommends that the rezoning application be denied. At the meeting of Council held July 20, 2007, the Kolbuc application to amend the zoning by-law was refused.

In January 2011, Mr. Kolbuc submitted an application to amend the Official Plan. This application was refused on February 18, 2011.

On March 2011, Beacon Environmental submitted a response to the peer review of June 2007 that had been prepared by French Planning Services.

Evidence & Analysis

At the hearing on April 18, 2011 into Mr. Kolbuc's appeal of Council's February 18, 2011 decision to amend the Official Plan, the Board was informed that the Township would "not enter any evidence". Legal counsel for the Township explained that this did not mean that the parties had settled but merely that the Township would not continue to oppose Mr. Kolbuc's applications to amend the Official Plan and the By-law.

Mr. J. Jackson was qualified by the Board to give opinion evidence on land use planning matters. Mr. Jackson was retained by Mr. Kolbuc in June 2006.

He told the Board that he had acted as land use planner for the Township during the period in the early 1980s when the Black Rock Estates draft plan of subdivision was being processed. He explained that the aerial photos, which were examined to determine the suitability of the site for recreational residential development, appeared to show the presence on the shoreline abutting Block 17, Plan 42M-544 of a Type 1 fish hatchery. For this reason, the entire Block 17, Plan 42M-544 was determined to be environmentally sensitive and no development would be permitted there.

He explained that he is now able to support the Kolbuc proposal because a report prepared by Eric McIntyre of MNR in October 2003 demonstrated that the fish habitat along the shoreline was Type 2, not Type 1 as previously thought. He said the fish habitat mapping had been revised to reflect this new information.

Mr. Jackson testified that there is no opposition to the Kolbuc proposal from the immediate neighbours but conceded that there was some opposition from people and

groups concerned about protecting of the shoreline and the “pristine” waters of Blackstone Lake.

Mr. Jackson said that the proposed OPA 57 designates the site as “Recreational”, which is the designation of all 19 of the neighbourhoods comprising the Archipelago. This designation permits residences and docks. He explained that OPA 57, which applies exclusively to Block 17, Plan 42M-544, allows certain site specific exceptions if required.

He told the Board that all development will be confined to the 0.86 ha parcel and that the remainder of Block 17 will remain in the NS zone.

He testified that the proposed OPA 57 has regard to the relevant provisions of Provincial Policy Statement 1997 and is consistent with the relevant provisions of Provincial Policy Statement 2005. Further, he testified, it complies with the intent and specific provisions of other applicable legislation, including the *Species at Risk Act*.

Finally, he gave his professional opinion that the proposed OPA 57, which amends the Official Plan and the proposed Zoning By-law A2034-11, which amends Zoning By-law A2000-07 represent sound planning. This opinion evidence was not opposed by the Township.

General Finding

The Board adopts and relies on the opinion evidence of Mr. Jackson and finds that the proposed OPA 57 (Exhibit 5), which amends the Official Plan and the proposed Zoning By-law A2034-11 (Exhibit 6), which amends Zoning By-law A2000-07 are consistent with PPS 2005, represent good planning and are in the public interest as set down in section 2.0 of the *Planning Act*.

Disposition & Order of the Board

The Board Orders that Mr. Kolbuc’s appeal against the February 18, 2011 decision of the Council of the Township of the Archipelago is allowed, and that OPA 57 amending the Official Plan of the Township of the Archipelago is approved.

The Board Orders that Mr. Kolbuc's appeal against the July 20, 2007 decision of the Council of the Township of the Archipelago is allowed, and that Zoning By-law A2034-11, which amends Zoning By-law A2000-07, is approved.

So Orders the Board.

"C. Hefferon"

C. HEFFERON
MEMBER