

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** July 2, 2014

**CASE NO(S):** PL131336

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant:	Clark Breuls
Appellant:	Ambrose Moran
Appellant:	Bill Rasberry
Subject:	By-law No. 95-13
Municipality:	Township of North Kawartha
OMB Case No.:	PL131336
OMB File No.:	PL131336

**PROCEEDING COMMENCED UNDER** subsection of the Ontario Municipal Board Act, R.S.O. 1990, c. O.28, as

Motion By:	Township of North Kawartha
Purpose of Motion:	Request for an Order Dismissing the Appeals
Appellant:	Clark Breuls
Appellant:	Ambrose Moran
Appellant:	Bill Rasberry
Subject:	By-law No. 95-13
Municipality:	Township of North Kawartha
OMB Case No.:	PL131336
OMB File No.:	PL131336

Heard: June 20, 2014 by telephone conference call

**APPEARANCES:**

**Parties**

**Counsel**

Township of North Kawartha

John Ewart

Ambrose Morin, Clark Breuls, Bill Rasberry, Rick Woodcock

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. HEFFERON ON  
JUNE 20, 2014 AND ORDER OF THE BOARD**

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**INTRODUCTION**

[1] The subject hearing considered the motion of the Township of North Kawartha (“Township”) to dismiss an appeal of the Township’s decision of November 5, 2013 without a hearing. The appeal was made by Ambrose Morin, Clark Breuls, Bill Rasberry, and Rick Woodcock. The hearing was conducted via telephone conference call.

**BACKGROUND**

[2] Janna Brinkman proposed to demolish an existing lakefront seasonal recreational residence on Chandos Lake and replace it with new seasonal recreational residence. The subject lands are municipally known as 539 Renwick Road (Concession 5, Part lot 20) Township of North Kawartha. Although the proposed new structure will be located on the generally same footprint as the demolished building, it will be some 40 per cent larger.

[3] Four local residents, Ambrose Morin, Clark Breuls, Bill Rasberry, and Rick Woodcock proposed to appeal to the Ontario Municipal Board (“Board”) the November 5, 2013 decision of the Township approving Zoning By-law No. 95-13, a site specific zoning by-law which amends the Township comprehensive Zoning By-law No. 524/76, as amended.

[4] Zoning By-law No. 95-13 would allow development of the proposed new seasonal recreational residence.

[5] Messrs. Bruels, Morin, Rasberry and Woodcock contended that at less than 2 metres (“m”) from the average high water mark or shoreline, the proposed new residence is too close to the water and would pose a hazard to water quality.

[6] They also contended that Zoning By-law No. 95-13 is contrary to the intent of Township comprehensive Zoning By-law No. 524/76, as amended, which prohibits new construction within approximately 9 m (29 feet) of the shoreline of the lake.

## **ARGUMENTS AND ANALYSIS**

[7] The basis of the Motion was that the Appellants had failed to meet the statutory requirement of making oral or written submission to the Township prior to the passing of the by-law. Messrs. Bruels, Morin, Rasberry and Woodcock contended that they had on numerous occasions made both oral and written representation to Township Council on the potential adverse impact on water quality of development located too close to the shoreline. They maintained that their views on this matter were very well known to both planning staff and Council, and so it was not necessary for them specifically to address Zoning By-law No. 95-13 by way of either oral or written submission when it was being considered by Council.

[8] Mr. Ewart on behalf of the township argued that since the passage of Bill 51 in 2006, s. 34(19)(2) of the *Planning Act* requires that before an appeal of a zoning by-law may be made an oral submission on this specific application must have been made at a public meeting or a written submission to Council before the by-law was passed.

[9] He also contended that the law does not allow the Board any discretion on this matter. If it cannot be demonstrated that s. 34(19)(2) has been satisfied, the Board has no choice but to dismiss the appeal without a hearing. Mr. Ewart submitted examples of six recent Board decisions upholding this principle.

[10] Messrs. Bruels, Morin, Rasberry and Woodcock could not demonstrate that they had fulfilled the provisions of this section.

## **ORDER**

[11] The Board orders that the Motion is granted and therefore, the appeal of Messrs. Morin, Bruels, Woodcock and Rasberry of Zoning By-law No. 95-13 is dismissed without a hearing. The Board further orders the by-law is therefore approved.

*"C. Hefferon"*

C. HEFFERON  
MEMBER

**Ontario Municipal Board**

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