

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** October 09, 2020

**CASE NO(S):** PL180498

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Appellant:	Barry Glaspell
Subject:	By-law No. BL 2018-015
Municipality:	Township of North Kawartha
LPAT Case No.:	PL180498
LPAT File No.:	PL180498
LPAT Case Name:	Barry Glaspell v. North Kawartha (Township)

**APPEARANCES:**

**Parties**

**Counsel/Representative\***

Barry Glaspell

Self-represented\*

Township of North Kawartha

J. Ewart

**MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON  
SEPTEMBER 29, 2020 AND ORDER OF THE TRIBUNAL**

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[1] Barry Glaspell (“Appellant”) appealed the approval by the Township of North Kawartha (“Township”) of an amendment to the Township’s Zoning By-law No. 26-2013. The amendment is to facilitate the renovation of a boathouse on the property located at 766 Fire Route 42 (“subject property”) on Big Cedar Lake.

[2] The Tribunal held the first Case Management Conference (“CMC”) in this proceeding by video hearing on September 29, 2020. At the CMC, the Parties discussed the procedural requirements for the proceeding, opportunities for settlement, the filing of evidence, and the scheduling of a further CMC.

[3] The subject property is owned by Leonard Kennedy (“Applicant”). He is the applicant for the proposed Zoning By-law Amendment. The Tribunal did not receive a request for status from the Applicant and he did not attend the CMC.

### **PROCEDURAL BACKGROUND**

[4] The Appeal was filed on May 29, 2018 and subject to the requirements in *Bill 139, Building Better Communities and Conserving Watersheds Act* (“Bill 139”). Bill 139, which came into force in April 2018, amended the *Planning Act* and enacted the *Local Planning Appeal Tribunal Act, 2017* (“*LPAT Act*”). The legislation limited the grounds of appeal in zoning by-law amendment proceedings to consistency with provincial policies and conformity with provincial plans and applicable official plans. With the entering into force of Bill 139, the Tribunal’s *Rules of Practice and Procedure* were updated to limit parties to the filing of appeal records containing affidavits and supporting materials, case synopses containing arguments to support their requests for relief, and, if ordered by the Tribunal, final written or oral submissions. Section 42(3) of the *LPAT Act* under Bill 139 states that at an oral hearing, the Tribunal may permit parties to make final oral submissions, but no party or person may adduce evidence or call or examine witnesses. However, under s. 33(2) of the *LPAT Act*, the Tribunal itself may examine a witness in the proceeding or require a party to produce a witness for examination by the Tribunal.

[5] On September 3, 2019, *Bill 108, More Homes, More Choice Act, 2019* (“Bill 108”) came into effect. It amended the *Planning Act* and the *LPAT Act* and provided for transition regulations. Zoning by-law amendment appeals that had not yet been scheduled for a hearing on the merits as of September 2, 2019 are subject to the Bill 108 requirements. Under Bill 108, these appeals are permitted to be based on wider

grounds and the applicable statutory tests for addressing the substantive issues under appeal were revised and expanded. Bill 108's transition regulations permit appellants of a zoning by-law amendment, whose appeal had been filed but not scheduled for a hearing on the merits as of September 2, 2019, to submit a revised notice of appeal with expanded grounds. In the present proceeding, the Appellant filed a revised appeal letter on October 8, 2019 with expanded grounds.

[6] On November 15, 2019, a further transition regulation was brought into force under the *LPAT Act*. Ontario Regulation 382/19 provides that certain types of appeals, including the present appeal, will proceed from November 15, 2019 forward under the *LPAT Act* procedural requirements as they read immediately before September 3, 2019, including its restrictions on the hearing process. The application of the statutory tests under Bill 108 for addressing the substantive issues under appeal were not changed and still apply.

### **Identification of Issues, Opportunities for Settlement, and Filing of Supplementary Evidence**

[7] At the CMC held on September 29, 2020, the Appellant identified the grounds for appeal and issues that he proposes for adjudication in this proceeding. He stated that an initial ground for appeal, which questioned the completeness of the proposed Zoning By-law, has been addressed and is withdrawn. He said he wishes to pursue the others as set out in his materials. The remaining issues as set out in the Appellant's appeal letter may be paraphrased as:

- a. whether an accessory use may be permitted when the accessory structure is located on lands adjacent to those containing the principal building;
- b. whether the proposed Zoning By-law Amendment addresses the County of Peterborough Official Plan's policies on legal non-conforming uses, built form along shorelines, preservation of naturally-vegetated shorelines, and permissible boathouse locations; and

- c. whether the proposed Zoning By-law Amendment is in the public interest and represents good planning.

The Township agreed that these issues are appropriate for adjudication. However, neither the Appellant nor the Township filed evidence that fully addresses these issues, and both requested an opportunity to file further evidence. Based on the materials filed and the submissions of the Parties, the Tribunal found that additional evidence would be of assistance in adjudicating the issues. The Tribunal directed the Parties to file additional evidence focusing solely on the three issues identified above. It also found that given the incomplete evidence presently before the Tribunal, it was premature to determine the form of hearing, if any, that is required. It therefore directed the Parties to file written submissions on the form of a hearing in this proceeding. That issue will be addressed at a second CMC.

[8] Both Parties expressed interest in pursuing settlement discussions. They requested time to pursue these discussions and engage the Applicant. The Tribunal urged the Parties to pursue these discussions and to contact the Tribunal's Case Coordinator to schedule a settlement hearing should they be successful.

[9] The Tribunal set due dates for the Parties to file written submissions on what form a hearing would take and directed that the Parties provide an update in December 2020 on the status of settlement discussions. It also set due dates for the filing of supplementary evidence and scheduled a further CMC at which an oral hearing date, if necessary, will be scheduled. Given the ongoing COVID-19 pandemic and associated logistical challenges, both Parties requested that the timing of next steps be extended longer than otherwise would be the case.

## **ORDER**

[10] The Tribunal orders that:

- a. the Appellant serve and file written submissions, if any, by **Tuesday, November 17, 2020** regarding the form that a hearing of the appeal, if necessary, should take;
- b. the Township serve and file written submissions, if any, by **Tuesday, December 1, 2020**, responding to the Appellant's submissions on the form that a hearing of the appeal, if necessary, should take;
- c. the Parties provide a written update to the Tribunal Case Coordinator by **Tuesday, December 15, 2020** regarding the status of settlement discussions;
- d. the Appellant serve and file by **Monday, January 11, 2021**, a supplementary appeal record with evidence focusing on the three issues identified in paragraph [7] above;
- e. the Township serve and file by **Thursday, February 11, 2021**, a responding record with evidence responding to the supplementary appeal record to be filed by the Appellant;
- f. a further CMC will be held by video hearing on **Thursday, February 18, 2021** commencing at **9 a.m.** at which the scheduling of a hearing date, if necessary, will be addressed. Parties and Participants are to participate with video and audio enabled. Join the event from a computer, tablet or smartphone **by using this link:**  
<https://global.gotomeeting.com/join/238930301> or dial in using your phone Canada (Toll Free): **1 888 299 1889** Canada: **+1 (647) 497-9373**. When prompted, **enter the code 238-930-301** to be connected to the hearing by video.

[11] Observers of the CMC are to participate with audio only enabled. Join the event via telephone conference **by calling: +1 (647) 497-9373 or Toll Free 1 888 299 1889.**

When prompted, **enter the code 238-930-301** to be connected to the call.

[12] Individuals are directed to connect to the event on the assigned date at the correct time. It is the responsibility of the persons participating in the hearing by video to ensure that they are properly connected to the event at the correct time. Questions prior to the call may be directed to the Tribunal's Case Coordinator having carriage of this case.

[13] There will be no further notice.

[14] This Member is not seized.

*"Hugh S. Wilkins"*

HUGH S. WILKINS  
MEMBER

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**Local Planning Appeal Tribunal**

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