

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



ISSUE DATE: June 12, 2020

CASE NO(S):

PL190446

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:	Clark Breuls
Appellant:	Charles Leo DeSorcy
Appellant:	Barry Glaspell
Appellant:	Ambrose Moran
Subject:	By-law No. BL 2019-078
Municipality:	Township of North Kawartha
LPAT Case No.:	PL190446
LPAT File No.:	PL190446
LPAT Case Name:	Bruels, DeSorcy et al v. North Kawartha (Township)

Heard: June 5, 2020 by video conference

APPEARANCES:

Parties

Counsel*/Representative

Township of North Kawartha

John Ewart*

Barry Glaspell

Self-Represented

Charles Leo DeSorcy

Self-Represented

Clark Breuls

Self-Represented

Ambrose Moran

Self-Represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY G.C.P. BISHOP AND
WILLIAM MIDDLETON AND ORDER OF THE TRIBUNAL**

[1] The Township of North Kawartha (the “Township”) passed Zoning By-law No. 2019-078 (the “By-law”) being an amendment to Zoning By-law No. 26-2013. The By-law was appealed by Barry Glaspell, Charles Leo DeSorcy, Clark Breuls and Ambrose Moran pursuant to s. 34(19) of the *Planning Act*.

[2] The Tribunal was informed that a settlement has been reached between the Township and all four parties and requested the Tribunal to convene to review the revised By-law.

[3] The appeals were not related to the overall purpose and intent of the By-law but focused on certain minor textual modifications intended to provide greater clarity in respect of specific policies. These concerns have been addressed through the amended By-law presented to the Tribunal.

[4] The Tribunal accepts the unchallenged expert testimony of Darryl Tighe, a Registered Professional Planner, who stated that the amendment to Zoning By-law No. 2019-078, as described in the minutes of the settlement reached between the parties and appended hereto as Attachment 1, maintains conformity with the County of Peterborough Official Plan, represents principles of good planning, is appropriate, and promotes the overall public interest of the community.

[5] The Tribunal allows the appeal in part to accommodate the amendments to the By-law as presented.

[6] The Tribunal so Orders.

[7] The Tribunal recognizes that amendments to certain schedules of the By-law may be required and the Tribunal may be spoken to if any issues arise between the parties.

“G.C.P. Bishop”

G.C.P. BISHOP
VICE-CHAIR

“William Middleton”

WILLIAM MIDDLETON
MEMBER

If there is an attachment referred to in this document,
please visit www.elfo.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elfo.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

The Corporation of the Township of North Kawartha By-law 2019-078

Being a by-law under the authority of Section 34 of the *Planning Act R.S.O. 1990, Chap. P. 13, as amended, to amend Zoning By-law No. 26-2013, as amended, of the Corporation of the Township of North Kawartha, in the County of Peterborough.*

Whereas Zoning By-law No. 26-2013 as amended, was passed under the authority of Section 34 of the Planning Act, R.S.O. 1990, Chap. P. 13, as amended;

And Whereas the matters herein are in conformity with the provisions of the Official Plan of the County of Peterborough as approved by the Ministry of Municipal Affairs and Housing;

And Whereas the Council of the Corporation of the Township of North Kawartha conducted a public hearing in regard to this application, as required by Section 34(12) of the Planning Act, R.S.O. 1990, Chap. P. 13, as amended;

And Whereas the Council of the Corporation of the Township of North Kawartha deems it advisable to amend Zoning By-law No. 26-2013 as amended, and under the provisions of the Planning Act has the authority to do so;

Now Therefore the Council of the Corporation of the Township of North Kawartha enacts as follows:

1. That Zoning By-law No. 26-2013, as amended, is hereby further amended in the following manner:

a. Subsection 1.2 (e) – Lands Subject to By-law, is hereby amended by adding the words “including lands covered by water. The provisions of this by-law shall not apply to those lands which are under the jurisdiction of Ontario Parks and Parks Canada. For clarity, privately owned lands and municipal lands within Ontario Parks continue to be regulated by this By-law.” to the end of the sentence.

b. Section 1.2 – Scope of By-law, is hereby amended by adding the following after Section 1.2 (e) – Lands Subject to By-law, and renumbering all subsequent subsections: “(f) Provincial Lakes and Waterbodies All lakes and waterbodies within Ontario Parks are identified for information purposes only as Park Lakes (PL) on the schedules attached to and forming part of this by-law. Park Lakes include those within Kawartha Highlands Provincial Park which maintain private shoreline ownership, specifically including Anstruther, Loon Call, Wolf, Long, Buzzard, Loucks, Crab, Cox and Cold Lakes. In addition, Park Lakes include numerous smaller lakes within Kawartha Highlands Provincial Park and Petroglyph Provincial Park. Within the Park Lakes, the provisions of this by-law shall not apply. For information regarding permitting requirements within Park Lakes, enquiries are to be directed to Ontario Parks.

(g) Federal Lakes and Waterbodies

All lakes and waterbodies under the jurisdiction of Parks Canada are identified for information purposes only as Federal Lakes (FL) on the schedules attached to and forming part of this by-law. Federal Lakes include the portion of Stoney Lake which is within the Township boundaries. Within the Federal Lakes, the provisions of this by-law shall not apply. For information regarding permitting requirements within Federal Lakes, enquiries are to be directed to Parks Canada.”

c. Subsection 1.2 (i) – Compliance with Other Restrictions, is hereby amended by deleting the sub-section and replacing it with the following: “(i) Compliance with Other Restrictions:

This by-law shall not be effective to reduce, override or mitigate any restrictions lawfully imposed by a governmental authority having jurisdiction to make such restrictions, including but not limited to the Trent Severn Waterway (Parks Canada), the Ministry of Natural Resources and Forestry under the authority of the Public Lands Act, and Ontario Parks, Ministry of the Environment, Conservation and Parks, under the authority of the Provincial Parks and Conservation Reserves Act, 2006.”

d. Subsection 1.3 (g) (iii) is hereby amended by deleting the subsection and replacing it with the following: “(iii) Zone boundaries indicated as following shorelines, shall be interpreted to be the high water mark. Zones boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such centerlines.”

e. Section 2.44 – Dock, is hereby amended by deleting the definition of a dock and replacing it with the following: ““Dock” means a structure without a roof or walls, attached to a shoreline and/or marine facility and/or the bed of a lake or waterbody on a permanent or seasonal basis, which projects into a waterbody with a finished surface above the level of the water, and which is primarily used for the mooring/dockage of watercraft and to provide access from water to land and vice-versa. A dock as defined herein shall also include any dock ramp designed to secure a dock to land and provide a means of access between land and a dock.”

f. Section 2.60 – Existing, is hereby amended by adding the following as a new subsection (a):

“(a) For docks and swim rafts, “existing” means lawfully existing as of the date of passing of By-law No. 2019-078(August 13, 2019).”

g. Section 2.112 – Marina, is hereby amended by adding the word “commercial” before “establishment” in the first sentence and deleting “containing docking facilities and located on a waterbody.”

h. Section 2 – Definitions, is hereby amended by adding a new definition after “2.112 – Marina” as follows and renumbering all subsequent sections:

“2.113 – Marina Docking System “Marina docking system” means a series of docks associated with a commercial marina which are primarily intended to provide for the mooring/dockage of multiple watercraft.”

i. Section 2.177 – Structure, is hereby amended by adding the following after the last sentence: “For clarity, a dock as defined herein shall be considered a structure.”

j. Section 2 – Definitions, is hereby amended by adding a new definition after “2.177 – Structure” as follows and renumbering all subsequent sections: “2.178 Swim Raft “Swim raft” means a seasonal in-water and non-motorized floating platform fixed to the lake bed on a seasonal basis and intended for swimming and recreational purposes. Floating toys such as trampolines, foam pads and inflatables are not considered swim rafts or structures and therefore are not regulated by the Building Code Act or the provisions of this Zoning By-law.”

k. Subsection 3.1 (l) – Docks, is hereby amended by deleting the section in its entirety and replacing the subsection with the following: “(l) Docks and Swim Rafts Where permitted in this By-law, the construction of a dock and/or swim raft shall be subject to the following conditions: i) Docks and swim rafts shall be setback a minimum of 4.5 metres (15 feet) from a side lot line or the straight line projection of a side lot line into the abutting waterbody; ii) The maximum aggregate area of all docks and all structural supports and projections, shall be 56 square metres (603 square feet); iii) The maximum aggregate area of all swim rafts shall be 9.3 square metres (100 square feet). iv) Docks and swim rafts shall only be permitted to be constructed on a navigable lake or waterway. Notwithstanding any other provision of this By-law to the contrary, the provisions of this section shall not apply to docks and swim rafts offered and intended for public use by a government authority.”

l. Section 3.18 – Non-Complying Buildings, Structures and Lots, is hereby amended by adding a new subsection after (a) as follows and renumbering all subsequent subsections: “(b) Alterations to Non-complying Docks and Swim Rafts Nothing in this By-law shall prevent the enlargement, reconstruction, renovation or repair of an existing non-complying dock or swim raft provided that the enlargement, reconstruction, renovation or repair: i) does not create any new deficiency; ii) does not increase the degree of an existing deficiency; and iii) does not enlarge the dock or swim raft beyond the maximum size permitted; save and except where the original dock or swim raft was larger than the permitted size, in which case the dock or swim raft may be reconstructed, renovated or repaired to the original size.”

m. Section 6.1 – Uses Permitted, is hereby amended by adding a new subsection after subsection (a) Residential Uses, as follows, renumbering all subsequent subsections, and removing “a dock” from the list of accessory uses: “(b) Recreational Uses: a dock”

n. Section 7.1 – Uses Permitted, is hereby amended by adding a new subsection after subsection (a) Residential Uses, as follows, renumbering all subsequent subsections, and removing “a dock” from the list of accessory uses: “(b) Recreational Uses: a dock”

o. The following new Section 19 – Lake Zone (L), is hereby added following Section 18B – Provincially Significant Wetland (PSW) Zone and renumbering all subsequent sections as follows: “SECTION 19 – LAKE ZONE (L) This zone shall apply to all lakes and waterbodies in the Township which do not form part of Kawartha Highlands Provincial Park, Petroglyph Provincial Park or the Trent Severn Waterway. The zone shall not apply in areas zoned Provincially Significant Wetland Zone (PSW) or Environmental Constraint Zone (EC).

19.1 USES PERMITTED No person shall within any Lake (L) Zone use any lake or waterbody or erect, alter, locate or use any building or structure for any purpose except one or more of the following (L) uses, namely: (a) Permitted Uses: a dock; a swim raft; marina docking system; 19.2 ZONE PROVISIONS The permitted uses in any Lake (L) Zone shall only be established in accordance with the provisions of Section 3.1(l) of this By-law and in accordance with the following provisions:

(a) Accessory Uses:

i) Marina docking systems shall only be permitted in the Lake (L) Zone accessory to a legally existing marina which is located on the abutting land above the high-water mark. Approval of any new marina docking facilities will be subject to consideration on a site-specific basis.”

2. That the schedules to By-law No. 26-2013 are hereby amended to identify Park Lakes (PL) and Federal Lakes (FL).

3. That By-law No. 2016-061 is hereby repealed in its entirety.

THAT this by-law shall come into force and effect on the day it is passed by the Council of the Corporation of the Township of North Kawartha, subject to the applicable provisions of the Planning Act, Statutes of Ontario, 1990 Chap. P. 13, as amended.

Read a first, second and third time and passed in Open Council on the 13th day of August, 2019.

JIM WHELAN, DEPUTY MAYOR

CONNIE PARENT, CLERK