



LAKE WASEOSA RATEPAYERS' ASSOCIATION

www.lwra.net

c/o 21 COTTAGE LANE, RR # 3
HUNTSVILLE, ONTARIO
CANADA
P1H 2J4

January 16, 2019

Good afternoon. My name is Dwayne Verhey, and I am here representing the Lake Waseosa Ratepayers' Association, c/o 21 Cottage Lane, RR#3, Huntsville. P1H 2J4

I am sure that by now you are all well aware of the importance of Treasure Island to the residents of Lake Waseosa due to it's impact on the character of the lake as a dominant feature of the landscape. We touched on that in our written submission and I'm sure others here present today will expand on that.

I would like to address some points that arose as further information trickled out to us. First and foremost is perhaps the question of how and when the zoning of these properties came to be changed to Conservation in the first place.

Under the old bylaw, 74-8, Treasure Island was zoned RU1, which permitted everything from agricultural uses to cemeteries. A dwelling that might have existed on the date of passing of that bylaw would have been permitted, as would one additional single family dwelling for the purposes of housing a farm worker working on that farm. But, the Official Plan of that day still required at least a marina as a prerequisite to building a new water access residence, and none existed on Waseosa – so building on the island was not permissible.

In 2006, after a long public consultation process, our current Official Plan was passed, bringing with it the more stringent requirement of a deeded Waterfront Landing to be attached to any water access property in perpetuity. Again, this was not done for either Treasure Island property, so again, building on the island was not permissible.

Following the adoption of the 2006 Official Plan, work began on a new Comprehensive Zoning Bylaw to implement those policies. As part of that process, virtually all properties received new or redefined zoning provisions. For example, the old Seasonal Residential zone was relegated to the trash can in favour of a selection of new Shoreline Residential options that could be occupied year-round.

Terry Sararas and planning staff undertook a long and involved process to ascertain the most appropriate classification for each property considering such things as traditional use and neighbouring property uses and the intent of the Official Plan. Groups such as the Huntsville Lakes Council and the various local lake associations were consulted. The whole process was well documented and advertised in the Huntsville Forester. The LWRA played an active role and kept its membership updated through our newsletters and e-mail announcements.

Clearly the old RU1 zoning was inappropriate for the use of Treasure Island, and in the absence of access, no Shoreline Residential classification could be applied. So what was the best fit for this land?

The one appropriate permitted use under the old RU1 zoning, consistent with the historical use and the surroundings was “Outdoor Recreational”. Under the 2008 Comprehensive zoning bylaw, that is a permitted use for Commercial zones C2 through C6, Open Space O3, Natural Resource and Conservation. Clearly the island is not an appropriate site for commercial zoning, it’s too steep for a golf course and it does not abut a cold-water stream. That leaves Conservation. Given the pristine and undeveloped state of Treasure Island, the predominance of steep slopes and the lack of a mainland access point, the choice is clear.

The new Conservation zoning provision was seen as a way to encourage property owners to protect and preserve the natural heritage of the Town without relying on owners donating property to the Town or the Muskoka Conservancy. In return, property owners would pay significantly lower taxes on those parcels. At the time, the LWRA noted that owners of properties unsuitable for development would benefit through lower taxes by having them zoned as Conservation.

Of course, any property owner in the Town was free – indeed, encouraged – to provide input. Where property owners disagreed with staff’s judgement, they could ask for it to be changed. At that time, it was a fairly simple process: attend one of the many public consultations, sit down with Terry and explain the rationale. No rezoning application required, no fees payable.

And if staff and the owner could not agree, and if the owner could not convince Council of their case, there was always the option of an appeal to the OMB.

Additionally, regardless of the how these properties came to be zoned as Conservation, the proponents of this development knew or should have known it was zoned Conservation when they acquired 200 Treasure Island.

Planning and zoning have always been an evolutionary process. Zoning is the means by which a community protects itself, it is not for the benefit of the landowner. To state that they are attempting to restore lost rights is disingenuous. Building a residence on Treasure Island has been precluded since at least the 70's.

While the access to this property is technically a separate application, the two are inextricable. The Official Plan requires there to be a waterfront landing with full deeded access. In this case, the proponents propose to use the easements registered on title of the two mainland properties as access to the island properties.

However, their own legal opinion shows that this is not acceptable. Rights of way run with the land, not the owner of the land. Easements establish a right that extends only to one or more particular uses. The benefiting party cannot unilaterally use the easement for any other purpose. The benefiting party cannot extend those rights to another property, even an adjoining property.

In this case, the legal opinion obtained from Torkin and Manes is clear: The owners have unlimited rights of way over the private road known as West Waseosa Lake Road and also that portion of land shown on the drawings between the parking property (“part 4”) and the waterfront property (“parts 7 and 8”) for the purpose of access to part 4 and parts 7 and 8.

Let me repeat that: the applicants' own legal opinion shows the existing easements are for the purpose of access to the mainland properties only. They do not permit the purpose of accessing the island properties, a necessary prerequisite of development on a water access property under the Official Plan. There is no evidence that the island properties have a right of way registered on title over either of the existing easements.

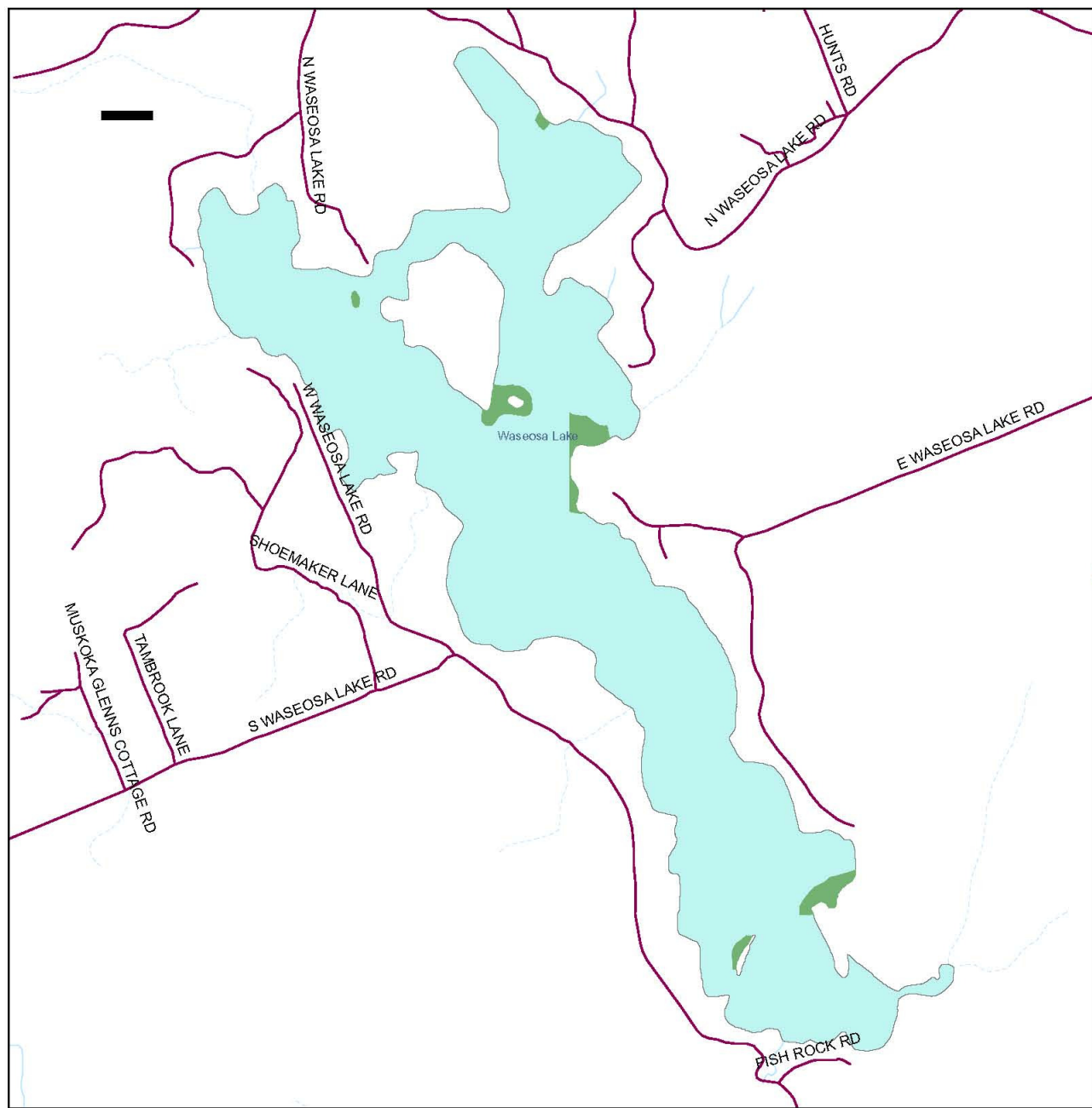
The other half of an easement is that the granting party is prevented from interfering with the reasonable use of the easement by the benefiting parties. Unless all parties to the original easements agree in writing to permit the granting party to permit expanded use (which seems highly unlikely at this point), the Town must not accept this scheme as an acceptable Waterfront Landing as envisioned under the Official Plan.

Finally, as the scale of the impact the island has is not readily apparent in the submitted documents, I will draw your attention to a scale map showing the comparative size of this landmark that towers above the lake surface (see attached map). It truly dominates the entire lake. It is visible from a very high proportion of the residences on this lake. This is a proposal that could change the experience of a high portion of the residents of Lake Waseosa.

In summary, then: There is no pre-existing right to build on these lands. The Town has every right to restrict a landowner's use of their land where appropriate for the common good of all, such as preserving important scenic sights, vistas and panoramas or reserving some land in an untouched state for the local ecosystem. The Official Plan provides that the dedication of such land for the purpose of conservation is to be encouraged, not reversed.

In any case, given the lack of deeded access that runs with the island properties themselves, this application does not meet the Waterfront Landing requirements of the Official Plan and should be denied.

Thank you for your time and attention.



Waseosa Lake
Potential Lake Trout Spawning Areas
August 2008

0 120 240 480 720 960 Meters

NOTE: This map is illustrative only. Do not rely on it as being a precise indicator of routes, locations of features, nor as a guide to navigation.



Legend

- FISH_HAB_TYPE selection
- Cold Water
- Cool Water
- Unknown
- Warm Water
- Waterbody selection