



LAKE WASEOSA RATEPAYERS' ASSOCIATION

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

RE: Application for Zoning By-law amendment and Consent, Z/59/2008/HTE, & B/58/59/2008/HTE (Pieper)

It has been said that “he who fails to heed the lessons of history is doomed to repeat it”. So let us take a moment to review the history surrounding Lake Waseosa as context for planning its future.

The Free Grant Land Act of 1868, gave settlers one hundred acre plots of land with the option to purchase additional plots at fifty cents an acre. At that time, logging and lumbering were the most attractive activities around Lake Waseosa (or “Long Lake” as it was then known), since much of the land was unsuitable for farming. One farm was owned by the Solave family, located on what is now Camp Huronda.

Waseosa was settled piecemeal. Suitable bits of land were chopped up and developed without any overall plan. In 1926, Ernie Norton traded two pigs for 200 acres on the north end of Lake Waseosa. He operated “Waseosa Beach Resort,” which was a collection of housekeeping cottages along the lakefront. When the resort closed, Ernie simply sold off each cottage and the little plot of land it sat on. The late Marjorie Kingston used to tell her tale of building her log cabin in 1932. Ernie sold her the western edge of his holdings. There was no survey: they simply stood on the hill and agreed that she was buying a piece around the bay “from the point to the swamp and as far back as you can see”. 9 years later, she agreed to sell a portion of that land for the princely sum of \$5,000. A condition of the sale was that the land be surveyed. Unfortunately, that survey cost Marjorie \$10,000 – because the area had never been surveyed before and the closest benchmark was in Parry Sound. Widowed, her only means of raising the money to pay her debt was to divide up the rest and sell it off too.

This was the typical planning process of the time – there wasn’t any. People did what was convenient and benefited them as individuals. As a result, the only bits of land left undeveloped around Waseosa are those that are unsuitable for development. Where cottages could be built, they were packed into every available nook and cranny.

The Ministry of Natural Resources first raised the alarm in 1969. The minutes of the LWRA Annual General Meeting of July, 1970 report that “...they are worried about getting the pollution problem under control.” A 1979 letter from the Ministry advised that “To further confirm the results of the assessment made, the lake was re-tested during August of the following year (1977) at which time dissolved oxygen and water conditions (as related to fish) had deteriorated further.” And in 1983 the Ministry advised us that “Lake Waseosa which does contain some cold water species ie. lake trout, brook trout is becoming less suitable for these species. Shoreline development on the lake has had a negative impact on the fish habitat. Increased nutrient input has resulted in lower oxygen levels in the deeper areas of the lake, some weed beds

which serve as feeding and nursery areas have been eliminated and spawning areas may have been destroyed or covered with silt.”

The residents around Waseosa sat up and took notice. They realized that the damage must not only be halted, it must be reversed and they put their money where their mouths were. For example, last winter Judy Brouse pointed out that over half the building permits issued since 1972 for properties on Waseosa have been for the purpose of installing a new septic system. We have implemented education and awareness programs. Many areas of shoreline have been renaturalized. In 2002, at the urging of Town staff, we began developing the 2006 Lake Plan, hiring experts and consultants to augment in-house expertise. And last year we worked closely with Town staff and their consultant to ensure the Comprehensive Zoning By-law adequately implemented the policies set out in that Plan.

This is not to say that all development on Waseosa can or should be halted. Redevelopment of existing properties is inevitable. In the last 10 years, use as year-round residences has increased from approximately 15 to the current 43. The recent application by Camp Huronda is an example of sustainable development the LWRA supports. It is in the general public interest, augmenting public access to the resource and providing a recurring benefit to the local economy. It is located on lands that can withstand the increased use without appreciable risk to the lake. Maintenance of the infrastructure is ensured through the substantial financial resources of the Canadian Diabetes Association under the scrutiny of Provincial agencies. It is an existing and valuable component of the character of the lake.

Unfortunately, the Pieper application is none of these. The proposal before you today is a slightly modified version of Ms. Pieper's previous proposal, Z/65/2002/HTE which in turn was very similar to a previous failed application by Snow, in 1979. Her proposal was denied by the council of the day and the subsequent Ontario Municipal Board rulings. Those OMB rulings themselves have survived Ms. Pieper's attempts to have them reviewed when she eventually withdrew from a second hearing at the Ontario District Court just two months ago.

This application attempts to assert that the OT designation is inextricably linked to SR-5 zoning. This is not true. The “Holding” provision was inextricably linked to the OT designation. Removing the OT designation permits removing a “Holding” provision.

The applicant asserts that SR-5 zoning was applied to all lands surrounding Lake Waseosa “without detailed scientific justification”. This is not true. The Lake Plan (and the subsequent OMB hearings) provide ample scientific justification. Appended to this report are the expert opinions of Dr. Karl Scheifer, Dr. William Robertson, Planning Expert Jim Dymant, as well as limnological and capacity studies of Waseosa. In fact, there is a preponderance of “scientific justification”. SR-5 zoning was applied because Waseosa is overdeveloped.

The facts of the case are that the original proposal was rejected on the basis of planning evidence as well as other risks to Waseosa. During the last attempt, the Town's customary planning consultant faced a potential conflict of interest in the matter, so the Town hired an outside, independent planner to review the matter. Mr. Jim Dymant found that the perimeter of Waseosa was already overdeveloped by provincial standards. Waseosa is a long, narrow lake with little surface area compared to the circumference. To quote Mr. Dymant:

“Through extensive public consultation throughout ‘cottage country’ we have developed criteria for establishing base level densities of development based on lake size. The intent of developing these densities is to maintain the character of the

community. Typically, on lakes the size of Lake Waseosa we would use a density of 1.60 ha of lake surface area per dwelling unit. The current density (expressed as surface area per unit) on the lake is 1.15 ha per unit.”

This is very similar to the study conducted by the LWRA as part of the Lake Plan submitted to the Town in 2006, wherein the density was determined to be 1.17 ha per unit. It should be noted that Mr. Dymont’s target of 1.60 ha per unit is most generous – it mirrors the MNR target for a large lake. The MNR target under the ‘Lake Alert’ system for a small lake such as Waseosa is 4.00 ha per unit.

At the same time, Town staff came up with similar a similar conclusion, although utilizing different units of measurement. They found the total density on Waseosa was 0.870 units per ha (1.149 ha per unit) They found that lakes of similar surface area ranged from 1.28 ha/unit (Fox Lake, 155.113ha) to 2.82 (Oudaze Lake, 126.897ha). Note that in all cases, Camp Huronda was treated as a single entity. If each cabin and house, housing an average of 6 to 8 persons, was counted as a separate unit, the resultant area per unit would be 1.03 ha/unit.

Why is this important? Several reasons. First of all, as Mr. Dymont illustrates, there is the character of the community to consider. Muskoka has traditionally been known as “cottage country” not “condo country”. It is vital to maintain some variability in land use on the lake, a certain amount of space on shore and some space on the water to maintain the recreational quality of the lake and preserve the unique charm as a place to commune with nature.

Second is the ability of the lake to sustain recreational activities. This is highlighted in the LWRA boat density study presented during the OMB hearings and contained in the aforementioned Lake Plan. The primary reason for Muskoka’s popularity as a tourist destination is the water, and much of that attraction is boating. A boat alone doesn’t occupy much space or really need that much room for manoeuvring. A boat pulling a waterskiier requires more room. The wake from a boat occupies substantial space, within which there is risk of swamping canoes and swimmers. Similarly, inexperienced sailors from Camp Huronda need significant room to manoeuvre, particularly on narrow Waseosa with its challenging wind patterns. The study showed that development has already pushed Waseosa beyond it’s capacity to maintain safe distances.

The proposed Pieper development underscores this need, as it is located a mere 300 meters across the water and facing the outdoor chapel of Camp Huronda. This application asserts that “since the proposed lot frontages exceed the abutting lots, the proposed lots can be seen as being in character with the existing lots”. This is not true. If for no other reason than the adjacent lot to the north has about 50% more shoreline than the proposed new lots and the lot to the south would be the retained lot of 160 meters – almost 300% more shoreline that it’s spawn. Lot lines are not visible. What the children currently see when they look out over the lake are trees and rocks. They cannot see lot lines glowing in the dark beyond their campfire. They will see a row of houses perched on the hill. Please note the little string of evergreens along the bottom of the cover picture are the same ones that are advertised as camouflaging the existing dwelling from “the shoreline”. While it might be nice for the owner of the property not to have to see their own intrusion, the cover photograph was taken from the shoreline that matters. Not even the many small cliffs are camouflaged from the opposite shore.

In fact, this only serves to underscore the problem: Those small lots were created in a planning vacuum and would not be allowed today. It is this lack of previous planning that we must now compensate for. The purpose of zoning of an area is to consider the neighbourhood – or in our case, the lake – as a whole, not simply as a collection of individual lots where the ‘lowest common denominator’ rules.

Second, it is vital to maintain contiguous undisturbed shoreline for wildlife. The Muskoka Watershed Council and others keep highlighting the need to preserve some of what's left before it is too late. They tell us that we risk losing suitable unbroken tracts of habitat if we do not act to save them. The subject lands are one of the few remaining undeveloped tracts left on Waseosa.

On the topic of the “Over Threshold” designation, this application asserts that the reclassification of Waseosa means it is “generally viewed as a healthy lake”. This is not true. Muskoka does not have the resources to conduct an in-depth study of every lake. They have advised us that they can only afford to test the surface water quality once every two years. The Threshold calculations refer specifically and exclusively to a benchmark of recreational water quality – that is, the quality near or at the surface only.

The applicant claims that the reclassification of Waseosa shows the water quality has improved and been restored. This is not true. The readings have not reduced year over year. The decision by Muskoka centers on one phosphorous reading taken in 2001 that was the highest of 5 of measurements taken over 10 years. Up until that time, Muskoka took one measurement and recorded it. In 2002, Muskoka changed the way the measurements are recorded. Now they take two measurements and discard the highest reading.

The 2001 reading came to light during the OMB appeal process and was thoroughly explored. District representatives testified that the reading was anomalous before both the OMB and in an affidavit submitted to the Divisional Court. Since there is no way to confirm the accuracy of that reading, it was decided to discard it. Within this narrow definition then, there is no longer sufficient evidence that the surface water quality of Waseosa is bad enough to warrant the OT designation. This is not the same as saying that “Waseosa is a healthy lake”. Incidentally, the MOE, using the same procedure as Muskoka of discarding the highest reading, found the 2007 Waseosa phosphorous level to be above Muskoka's designated threshold, although Muskoka does not utilize the MOE results in their program.

The LWRA consulted with Dr. Patterson, then of the Ministry of Environment's Dorset office. Dr. Patterson used MOE computer modeling to disregard the 2001 reading, but add in the probable net effect if all remaining lots of record were developed. He advised us that, all things being equal, phosphorous levels in Waseosa would rise above the threshold. The LWRA has also consulted with Micheal Young, a retired MOE scientist, regarding the statistical analysis of the available phosphorous readings and he has advised us that the remaining data set is of insufficient size to make a meaningful determination.

The District of Muskoka Official Plan acknowledges the model addresses recreational water quality only and does not include factors to address fisheries values, stating:

“F.18 The District of Muskoka will maintain a recreational water quality model and monitoring program and will review it on an ongoing basis. This model has been designed to address recreational water quality only and does not include factors to address fisheries values.”

In a 2005 study commissioned by the LWRA, Bluewater Biosciences found that deep water conditions were still marginal and that the lake trout population was still endangered. Dr. Karl Scheifer, personally collected a number of samples of Lake Waseosa water for that report and found that the surface water phosphorus level of the lake was 12 – over the threshold set by the District.

The implications have already been closely examined within the overall context of the entire proposal and the risk to the environment and ecology of Lake Waseosa as a whole. As a result, the OMB determined

that there was a significant risk. The slide may have been halted since the MNR first raised a red flag, but it has not yet been reversed.

The LWRA recently appeared before this committee in support of Camp Huronda's development proposals. Why then does the LWRA oppose this particular proposal? The LWRA recognizes that risks must always be measured against potential benefits – this is the very nature of the planning process

The Huronda development is in the general public interest, augments public access and provides a recurring benefit to the local economy. It is located on lands that can withstand the increased use without appreciable risk to the lake. Maintenance of the infrastructure is ensured through the substantial financial resources of the Canadian Diabetes Association under the scrutiny of Provincial agencies. It is an existing and valuable component of the character of the lake. . In short, the Huronda situation is completely different.

In the Pieper case there is no benefit of public interest. The sole benefit is the enrichment of the developer who rented the property for a year before purchasing it and therefore knew or ought to have known of the ban on subdivisions.

The proposal calls for an unspecified "tertiary" septic system. There are many designs that can lay claim to being a "tertiary" system. Some are known to have failed, all are expensive and difficult to properly maintain. The tertiary design proposed for Huronda's communal system will be under provincial scrutiny but town staff do not have that resource available to them when dealing with private systems.

The applicant asserts each lot has a suitable site for a septic system. This is untrue. Leaving aside the Conservation zoning aspect, the proposed septic systems will be located on the opposite side of the ridge from the house, in shallow soils of approximately ½ meter deep. The previous application included data collected by the applicant's own agents demonstrating that in 40 of the 61 measurements they took in the area of those proposed septic systems, there is 1/3 to 2/3 of a meter of soil above bedrock.

These facts are conveniently ignored in the current application and present significant technical challenges. There is insufficient soil depth to bury the tank without blasting or importing fill. The grade from the house to the septic is uphill, requiring equipment subject to mechanical failure. In the winter, there is insufficient soil depth on top of the ridge to prevent the pipes from freezing unless a channel is blasted through the ridge or soil is imported. The applicant has failed to provide any details about the supposed "tertiary" septic system components, so it is impossible to evaluate what special challenges it will present.

During the OMB hearing process, the septic system design was hotly debated. Ms. Pieper's consultant designed a special system based on the work of Ontario's leading expert in the field, hydrogeologist Dr. William Robertson. Dr. Robertson's research is quoted in the District's "Lake System Health Program" and is the basis for portions of the Muskoka Official Plan. However, Dr. Robertson testified that his research was not applicable to the terrain of the Pieper property. He offered different possible conditions that may exist and outlined the type and nature of the studies that would need to be done. One such scenario was that the underlying bedrock was fractured, which would allow any liquid escaping from a failed septic system to flow directly into the lake without benefit of filtering through soil. Dr. Robertson opined that there was a real risk to Waseosa and that the risk was not trivial. He testified that no-one could quantify the exact level of risk until the appropriate studies had been done. To our knowledge, those studies have never been done. They are certainly not included with this application. It is interesting to note that Dr. Robertson's concerns mirror those expressed by Dr. Scheifer in his 2005 letter to the town.

At the time, the applicant's lawyer attempted to dismiss Dr. Robertson's expert opinion as mere "speculation", not worthy of serious consideration. However, in a chance discovery, the "theory" of fractured bedrock has recently been proven correct. In October of 2008, Town Council authorized Core Broadband to erect a wireless internet tower on the Right-of-Way abutting the north end of the Pieper property. The specific location chosen was a nearly-flat piece of exposed bedrock atop the infamous ridge, where it slopes down away from the subject lands. Construction required 2" diameter holes be bored about 3 feet into the rock to accommodate bolts anchoring the tower.

On January 21, 2009, during the boring process, they hit water in one of the holes, approximately eighteen inches into the rock. On January 23, 2009, the water level had dropped noticeably. It has long been known that there is often thin ice or even open water in the area of the Pieper property even in the dead of winter when elsewhere the ice is a foot or more thick. This was also clearly visible for several hundred feet along the shoreline where open water extended out 50 feet or more on January 21 – after three weeks of continuous sub-zero temperatures ranging down to -28°C . There is no surface river that could account for the phenomenon, yet the open water clearly demonstrates that there is a substantial and sustained flow of water impinging on the surface.

The applicant suggests that "to minimize the environmental impact on Lake Waseosa the septic systems are intended on the eastern side of a rock ridge running through the property, thereby directing interflow away from Lake Waseosa" This ignores completely the evidence before the OMB that water runs in a stream that goes directly into the lake when it rains. These are well established facts that the applicant chose not to put before you. Together the stream and the fractured bedrock form a virtual pipeline directly into the lake.

The applicant states that the proposal "maintains the general intent and purpose of the official plans of both the District of Muskoka, <and> the Town of Huntsville". This is not true. The Town of Huntsville Official Plan states:

"8.13.4 It is recognized that environmental, physical and social factors other than recreational water quality may also present limits to the amount of development that would be desirable for a particular lake. Therefore, the preparation of specific Lake Plans in consultation with waterfront communities is strongly encouraged to address these matters on an individual lake basis.

8.13.6 Development will be encouraged to have regard for the values, principles and stewardship features of individual Lake Plans.

and

8.13.7 Those provisions of the lake plan that are related to municipal planning policy and that may vary from the general provisions of the Huntsville Official Plan are carried forward as specific policies applicable to the Lake."

As mentioned earlier, the LWRA developed a Lake Plan in consultation with all interested area landowners. The four year process saw many revisions and two public meetings, advertised by mailings, e-mail and postings on our four local public bulletin boards. In a recorded vote at a public meeting on August 26, 2006 a motion was passed accepting the final draft and authorizing the LWRA Board of Directors to submit it to the Town. Subsequently, the Lake Plan was printed and copies filed with the Town of Huntsville and the Huntsville Public Library. An electronic copy is also posted on the LWRA website, www.lwra.net.

The Lake Plan is in compliance with and does not contradict the Town of Huntsville Official Plan that was passed later that year therefore no Official Plan Amendment is required. Additionally, the District of Muskoka has not yet conducted a “Limits to Growth” assessment as provided for under F.12 of their Official Plan. The Lake Plan is under continual review by the Lake Plan Review Committee with the intent to co-ordinate any changes with the Town’s Official Plan review process.

Among the policies and recommendations contained therein, the Lake Plan provides that

“since all of the lakes covered by this plan (Waseosa, Palette, Ripple, Jessop) are, by objective calculation of available surface area, over-developed, there shall be no further residential or other development on this lake except where there are already legally sanctioned lots which are capable of being developed. Specifically, of course, this means that there should be no additional lots created on any of these four lakes.”

This application not only fails to conform to those lake-specific policies, it completely ignores the existence of the applicable Lake Plan. Zoning is the tool for implementing policy and SR-5 zoning was applied to conform to the policies of the Muskoka and Huntsville Official Plans, and the Lake Plan.

The application seeks to rezone a narrow band along the municipal road as “Conservation”. But in the same breath, they seek an exception for multiple septic systems within that band. And presumably they will want to put in driveways, perhaps even a garage or two within that “Conservation” zone. It is not possible to predict what other variances they will request in the future. For that matter, it is not possible to predict if they will be back asking to subdivide the rest of the retained lands in the future.

The application gives the impression that this is an ordinary piece of land with the only steep slopes being near the lake and suggesting that there are “flat level plateaus towards the rear of the lots” However, there are no plateaus visible in photographs of the lake side of the ridge. They have not provided the proposed location of the houses or topography of the area where the houses are to be placed. There is no evidence whatsoever of any appropriate locations. As the OMB notes in its January 2007 decision on the earlier proposal, there are some 25% grades, and the placement of dwellings – on lots that are different from what is proposed here – would have to be done with these grades in mind.

The application claims “The owners have been a <sic> great land stewards yet the only example given is that the current owner has failed to clearcut her land. If they truly wanted to demonstrate good stewardship, they would apply to have the entirety of the 3 proposed lots zoned Conservation, right down to the waterfront. In any case, this issue is irrelevant. The plan obviously is to sell off some or all of the lots to others who may or may not be interested in voluntarily complying with good environmental practice.

This application makes repeated references to materials supporting the previous attempt without considering the impact of the lot size changes. Of particular concern is the impact on the identified Type 1 fish habitats along the shoreline. As the referenced report states “If parts or all of this habitat are harmfully altered, the lake’s productive capacity would decline.” The report further goes on to stipulate lot frontages considerably longer than that before you today. There is no indication that narrower frontages were considered during the preparation of that study or what the cumulative effect of today’s shifting lot lines would be. The lake trout population in Waseosa is already threatened and can ill afford a reduction in reproduction.

This application is a slightly modified version of the previous proposal which was originally rejected by Town Council and the OMB. The applicant attempted to appeal the OMB decision, citing new data about

the phosphorous level in Waseosa. While the OMB originally agreed to re-hear that aspect of the case, the Superior Court of Justice Divisional Court thought otherwise, ruling:

“The review Panel lifted one sentence from the original Board's decision out of context. It is apparent from looking at the Reasons of the original Board as a whole that water quality and the impact of the development on water quality was front and centre in the Board's reasoning and formed the basis of its decision.”

The applicant then abandoned the appeal process and immediately started over, filing the application before you today. It is the opinion of the LWRA that the applicant is, in effect, attempting to ask the Town to overrule both the OMB and the Divisional Court. The applicant would have you believe the sole reason they were turned down previously was the “Over Threshold” designation. The truth is that while surface phosphorous levels are high and a concern, deepwater levels, where the lake trout live, are 20 to 30 times higher.

The entire water quality question has survived the close scrutiny of our judicial system. The applicant ignores all the evidence and testimony that was presented in this process in the hopes of misdirecting your attention. To quote from the OMB decision

“It appears that the planners in this case have only focused on the Phosphorus tree to the exclusion of all the other trees or risks in the lakeshore planning forest. The issues of lake capacity and risk from other sources have not been addressed.”

We ask that you reject this application. It is the opinion of the LWRA that the correct forum to appeal an OMB decision is before the OMB and we are fully prepared to respond to all the issues in depth in that arena.

On behalf of the Lake Waseosa Ratepayers' Association

Dwayne Verhey, Vice-President