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Sent: Sunday, July 18, 2021 2:43 PM

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Subject: RE: Hastings Highlands Comprehensive Zoning bylaw review- non housekeeping issues

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For your consideration:

We submit that development in Hastings Highlands will continue to grow exponentially for years to come as people seek the peace and solitude associated with waterfront property – this situation has recently been exasperated by the COVID 19 pandemic. Wanting to replace old cottages with much larger new buildings is now the norm. Many of the Lakes in the area are At Capacity Cold Water Lakes which the OP and ZBL recognize as being fragile and therefore in need of greater protection and yet the provisions of the ZBL do not differentiate At Capacity Cold Water Lakes from a “regular” Lake in any way other than through the provisions around the creation of a new lot. One wonders if there should be more stringent ZBL setbacks and requirements on At Capacity Cold Water Lakes. In our opinion the current bylaw and the proposed bylaw do not adequately address the issues around the setback of septic systems from bodies of water, the replacement of legal non-conforming buildings (tear down / build new projects) and vegetative buffers leaving many questions as to what is and is not permitted. It would seem that now is the time to get out in front of this new wave of waterfront development and put in place some clear checks and balances.

Currently there is a disconnect between the provisions of the OP (sections 4.2.4.4, 4.2.5.2, 5.4.1.2, 5.4.5.7, 5.4.5.8) and the ZBL that speak to enhanced criteria for development versus what is actually happening on our Lakes. For example, we have situations where variances are being applied for in tear down build new scenarios that would permit a screened in porch to be located closer than 30m from the Lake where 30m is the minimum while that same new dwelling is to be located in the location of an older dwelling (much closer than 30m to the Lake) and no variance is needed for that because the old cottage was at that location. We recently witnessed a new, much larger cottage be constructed no more than an 8.50m set back to the Lake. We are aware of situations on local lakes where septic systems are being installed based on 15m setbacks to the Lake when 30m is the minimum.

We ask ourselves how can this happen when the OP states that on a newly created lot a septic system must maintain a 300m minimum setback to an At Capacity Cold Water Lake Trout Lake (unless you undertake an extensive geotechnical investigation and find that the chemical makeup of the soil permits the setback to be reduced to 30m). The HH ZBL minimum set back from the Lake is 30m. 300m is one thing, 30m is another but people are building at 8.50 and no one seems concerned. We have septic systems going in based on a 15m setback when the OP and ZBL specifies 30m. It is also well recognized that in order to effect any real protection for the Lake that 30m is the minimum set back required for buildings, septic systems and the minimum depth of waterfront vegetative buffers.

The location of septic systems is a problematic area in that section 5.9.2 of the current ZBL states as follows:

5.9.2 Notwithstanding anything in this By-law, no building, structure, or septic tank installation including the weeping tile field ('no development') shall be located:

- i) within 30 metres (98.4 ft.) of the highwater mark of a waterbody or permanent watercourse, notwithstanding that such body of water or watercourse is not shown on any schedule forming part of this By-law; or
- ii) notwithstanding i) above, where it is proposed that a septic sewage disposal system is to be installed on private property between 15.0 m (49.2 ft.) and 30 m (98.4 ft.), a requirement for a minor variance to this by-law shall be waived; or
- iii) within 15 metres (49.2 ft.) of the top of bank; or
- iv) within 30 metres (98.4 ft.) of an Environmental Protection Wetland Zone.

Clearly there is a disconnect between subsections i) and ii) and in fact subsection ii) only makes sense if you read it in the context of a lot where, for whatever reason, one cannot physically comply with the 30m set back requirement – Section 5.4.4.2 of the OP speaks to this. Also factoring into the problem is the OBC minimum setback of 15m. In our opinion subsection ii) and the OBC minimum setback should only be used when all other possibilities have been exhausted (per the OP) and should be done in consultation with a qualified professional engineer who specializes in designing septic systems in problematic areas. At the moment it appears that 15m is the accepted minimum - recently 2 septic systems were installed 15m from Baptiste Lake where there was no reason the systems couldn't have been sited 30m from the Lake. We fear the same thing is and will likely happen at other locations despite the fact that in many instances there is absolutely no reason why a septic system cannot be located more than 30m from the Lake (large lots, sandy soil). In our opinion a waterfront landowner wishing to install a septic system on his property has to comply with the 30m set back by whatever means necessary – pumping /re-grading/ clearing / holding tank / tertiary system etc.

This section needs to be changed to eliminate any ambiguity between sub-sections i) and ii) - this would be an ideal time to differentiate between the setback to a "regular" Lake vrs an At Capacity Cold Water Lake with the 30m minimum being stringently applied to the later.

Replacement of legal non-conforming buildings (tear down / build new projects):

There needs to be a clear difference between reconstruction and construction in the context of Section 5.11. In our mind if one is truly adding onto an existing building or replacing an existing building that was damaged by fire, flood etc then the provisions of 5.11 apply. In the case where one tears down an old building and proposes to build an entirely new building we submit that the provisions of 5.11 no longer apply as the minute the existing building is torn down the legal not conforming use ceases to exist. Legal-Non-Conforming uses are to cease over time. Using section 5.11 to build a completely new building further entrenches the non-conforming use and significantly increases the legal non-conforming aspect of the use which is not intended.

The purpose of Section 5.11 is to recognize legal non-conforming uses to permit renovations, additions and rebuilding them within the confines of the Section when required. We do not believe that tearing down the original cottage and replacing (reconstructing) it with anything beyond what was there previously is permitted by Section 5.11. In these tear down build new cases the new dwelling in no way shape or form resembles the original building and therefore the applicant is not reconstructing anything – he is constructing a completely new and different dwelling– in our mind that is construction or new construction and that is not contemplated in Section 5.11 and construction of that new building should be in compliance with the requirements of the specific zone in question.

Interpretation of section 5.11 of the ZBL is causing a lot of the problem.

5.11 NON-COMPLIANCE OF EXISTING USES

5.11.1 Building on Existing Lots

Where a building has been lawfully erected prior to the date of the passing of this By-law on a lot having less than the minimum frontage and/or area, or having less than the minimum front yard, side yard, rear yard or usable open space required by this By-law, the said building may be enlarged, reconstructed, repaired or renovated provided said enlargement, reconstruction, repair or renovation does not serve to further reduce a required yard or required usable open space and provided all other provisions of this By-law are complied with.

HH staff are applying a long standing interpretation of this section and therefore take the position that this section of the bylaw permits a dwelling to be torn down and a new larger one to be constructed no closer to the lake than the old cottage was located. From our point of view as soon as the legal non- conforming cottage is torn down the exception vanishes. As such we take the position that Section 5.11 does not allow for HH's interpretation, that Section 5.11 is intended to be applied when one is, enlarging, reconstructing, repairing or renovating **an existing building** – not tearing the old one down and rebuilding partially in the location of the old building. Clarifying how the zoning bylaw is going to apply to tear down / build new projects in the context of section 5.11 would go a long way toward addressing this issue.

We wrote 2 letters to you last year wherein we expressed concern with how the Municipality was interpreting its Zoning Bylaw with respect to the setback of septic systems from bodies of water and the replacement of legal non-conforming buildings. The first memo was an Open Letter to Council dated July 15 and the 2nd was a set of questions dated August 12 that originated from a Committee of Adjustment hearing that was focused on the tear down /build new scenario of a legal non-conforming cottage. The Municipality has not acknowledged receipt of the Open Letter and despite advising that we could expect an answer last fall to our Aug 20 set of questions we are still awaiting same. The issues have not changed and nor have the specific sections of the zoning by law that deal with these 2 areas of concern.

Vegetative buffer

There is no definition of vegetative buffer in the proposed zoning bylaw. A vegetative buffer is merely referred to in section 5.17.3. Despite 2 recent attempts to define vegetative buffer the proposed zoning bylaw seems to set out yet another idea of what a vegetative buffer is. Staff, at Councils direction, put considerable effort into proposing the 2021 definition of vegetative buffer and we wonder why that definition has not been brought forward in the proposed zoning bylaw currently under consideration.

We note that at the end of proposed section 5.17.3, section iv) is incomplete.

We believe that now is the time to take a hard look at ZBL sections 5.9.2 and 5.11 so that Hastings Highlands will be positioned to successfully manage the unprecedented development pressure it is going to face in the coming years. Updating these 2 sections of the ZBL will make a real and immediate contribution to the long term health of At Capacity Cold Water Lake Trout Lakes. Erring on the side of caution while emphasizing Lake Stewardship and water quality when it comes to development on At Capacity Cold Water Lake Trout Lakes will benefit everyone in the long run for without clean Lakes to enjoy this area will cease to be a destination for those seeking the peace and solitude associated with waterfront property.

Geoff Aldworth

Hastings Highlands Interlake Land Use Planning Committee - Chair

