



LAKE WASEOSA RATEPAYERS' ASSOCIATION

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The re-zoning of Treasure Island (Lake Waseosa), August 2019 application
A submission to the Town of Huntsville from the Lake Waseosa Ratepayers' Association
4 September 2019

This submission is being presented to the Town of Huntsville by the Lake Waseosa Ratepayers' Association. Incorporated in 1963, we are a community group for cottagers and permanent residents in the Lake Waseosa, Ripple Lake, Palette Lake and Jessop Lake areas northwest of Huntsville. We are not just a cottagers' association -- we represent both waterfront and back-lot property owners in the area.

Although there are some important changes in the proposal submitted in August 2019, substantially it is very similar to the application that was withdrawn earlier this year. We should acknowledge that the owners of these lots did hold an information meeting (outside of the planning process) in May 2019. Some very consistent concerns and suggestions were made at that time. None of these concerns and suggestions, made in good faith by members of the Lake Waseosa community, are addressed in the current proposal.

The nature of Lake Waseosa. As we show in our Lake Plan submitted to the Town in January 2016, Lake Waseosa is already over-developed. While the recreational water quality meets the current requirements of the District of Muskoka, the District Official Plan recognizes that those limits are but one factor limiting development. To quote in part:

"It is recognized that social carrying capacity of waterbodies can have important impacts on the use, enjoyment, and safety of Muskoka's waterbodies as well as indirect impacts on the environment and economy of the area. Traditionally, social carrying capacity has been addressed through the Area Municipal Official Plans and/or through lake plans adopted by Lake Associations."

This sentiment is repeated in the Huntsville Official Plan:

"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."

The social and recreational carrying capacity of Lake Waseosa has been exceeded as measured by a variety of metrics ranging from the standards set out in Ontario's "Lake Alert System" to boat density studies. The LWRA Lake Plan outlines these in greater detail, but in summary, Waseosa is a long skinny lake. The

14.8km of shoreline encompasses a mere 155 ha of surface area – less than 1/10 the surface area that a round lake of 14.8km would encircle:

The impact of lake shape on lake surface area

Long rectangle: 7.3 km x 0.1 km Area = 73 ha, Shoreline = 14.8 km

Square 3.7 km per side

Area = 1369 ha

Shoreline = 14.8 km

Waseosa:

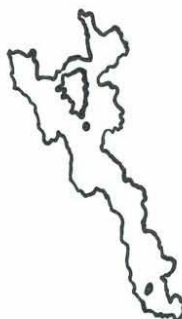
Area = 155 ha

Shoreline = 14.8 km

Circle with diameter 4.71 km

Area 1743 ha

Shoreline (circumference) = 14.8 km



Treasure Island and the purpose of zoning. Everyone on the lake has an interest in what happens in our neighbourhood. And this island is part of the neighbourhood of everyone on this lake. We respectfully submit this is what zoning is all about. When these lands were ceded by the Crown to individuals, the land owners had virtually no restrictions on what they could use the land for. Any portion could be used for a residence, raising crops and livestock, resource extraction or manufacturing. But over the last century society has evolved rules to protect the greater good and that restrict what a landowner can do on their land through Official Plans and Zoning restrictions.

Changes in zoning do not, and should not, take place, simply because a landowner wishes a new designation. The idea of zoning is to give predictability to land use and to ensure that those in the neighbourhood (in this case, all of those on Lake Waseosa) are not at the whim of individual landowners.

Changing the use of Treasure Island would undermine the purposes of the current zoning outlined in Subsection 3.1.6 of the Huntsville Official Plan. It is worth noting, in this context, that Section 3.1.12 notes that there will be cases where the impact of a proposal (such as this one) cannot be sufficiently reduced and in such cases uses may be limited to conservation. We believe that these sections describe the importance of Treasure Island to the larger community.

The history of zoning of Treasure Island. Two things about the history are unambiguous. First, the fact that prior to about 2008, development would have potentially been allowed on Treasure Island. Second, currently – and for more than 10 years -- Treasure Island has been zoned as “Conservation” land. Beyond that, there are some disagreements.

First of all, an important point needs to be remembered: The current owners were not the owners of 100 Treasure Island (or 200 Treasure Island for that matter) when the current zoning was put in place. They might have been related to the owner but they were not the owner. Hence they cannot speak for what the then owner knew when the zoning as “Conservation” was established.

Following the adoption of the 2006 Huntsville Official Plan, work began on the creation of a new comprehensive zoning by-law to implement the policies set out in the new OP. This was, of course, a very public process. Along with many individuals representing both private landowners and developers, organizations such as the LWRA participated. We have records showing that discussions about the zoning occurred between ourselves and the Town’s consultant, Rick Hunter, who drafted much of the current zoning bylaw on behalf of the Town. We submitted documents to Terry Sararas, then the Director of Development Services regarding this matter.

One can see the results of this public input process by reviewing the subsequent revisions of the various drafts that resulted. Under the old zoning by-law, most properties in the Waseosa area were zoned “Seasonal Residential” or Rural. Both of these designations disappeared under the new bylaw. Every property had to be newly designated, in accordance with both existing use and the desired future use(s). Initially, most properties surrounding Waseosa were designated Shoreline Residential 4.

It is important to note that while both Treasure Island properties were initially designated SR4 by the first draft, in the text of that first draft, the definition of SR4 was different from today. At that time, SR4 included the Conservation use.

This was refined after close examination and consideration and several more drafts. By the time things were finalized, three Lake Waseosa properties (including an unrelated parcel at the south shore) were zoned Conservation, certain others Natural Resource, one CS3 and of course most residential properties became SR5. The designation of Treasure Island as Conservation was consistent with its historical use, consistent with its lack of a waterfront landing and consistent with the principles of the Official Plan that

“Large areas that are relatively remote and undeveloped exist within the Rural designation and provide for conservation...”

and

*“The open space, natural character of the shorelines will be enhanced through efforts by the Town and by lake residents to increase the amount of land that is either in public ownership or is **permanently** preserved for conservation...”* (emphasis added)

Our point is this: The zoning was done deliberately by the town. The Town of Huntsville should not be seen as having sneaked in conservation zoning of Treasure Island. There has been some suggestion that it ‘just happened’ without any formal process. Clearly, there was a purpose. The Town of Huntsville council zoned it as conservation on the recommendation, presumably, of staff with the full knowledge of its then Director of Development Services, and such designation was consistent with its historical use.

Second, the current owners suggest that they were surprised recently to discover that both lots on Treasure Island were zoned conservation (and therefore could not be developed without rezoning). This is a difficult argument to accept given that the current owners purchased 200 Treasure Island very recently. At that time, due diligence says they knew or should have known the zoning of the land that they purchased.

The argument about what taxes they have been paying in recent years is not, we believe, relevant. If they have been paying taxes as if the land was zoned ‘seasonal residential’ then that is something that they should have taken up with the Town or MPAC. It is not relevant here. One also needs to put the assessed value in context. Lots on Lake Waseosa (without buildings on them) with only a bit more than the required 200 feet of frontage have been listed for sale at over \$250,000. The assessed value of 100 Treasure Island with approximately 3150 feet of frontage is \$278,000; the assessed value of 200 Treasure Island with 1100 feet of frontage on the lake is \$187,000. These are considerably lower than the ‘going rate’ for lake front lots on this lake that are much smaller. Presumably the taxes paid have been in proportion. In any case, as pointed out, the fact is that these properties have been zoned as ‘conservation’ without complaint until now. There were many opportunities to appeal the assessment to MPAC.

The statements made by the applicants about the nature of the proposed homes to be built on Treasure Island. The applicants state (page 7) that “Several mitigation measures identified in the ecological report can be included in a 51(26) agreement and carried forward through site plan control.”

For example, the applicant states (page 12) that “Slopes have been addressed by situating the proposed development envelopes on lower lands on the island, minimizing visual and environmental impacts.” That

sounds good but is worth nothing: The applicants are planning on selling the land, not developing it. Specifically they state (page 9) that “It is not the intent of the current owners to develop anything. The construction of any new cottage would be undertaken by future owners...”

The Lake Waseosa community has not been well served by the 51(26) process. For one thing, in a case such as this one, the negotiation of the 51(26) agreement is a private process without any outside scrutiny. To be specific, there is no legal requirement that any future homes on Treasure Island be built on “lower lands... minimizing visual and environmental impacts” as suggested in this proposal. Unless something further is done, these reassurances become irrelevant the moment the land is rezoned.

Furthermore, as Waseosa residents have been explicitly told by Town staff, 51(26) agreements are not proactively enforced by the Town: the town only responds to complaints. This is made additionally difficult because organizations such as ours do not have access to the 51(26) agreements. In other words, we don’t know what was agreed to; hence we don’t know when the agreement is being violated. And, our experience is that even if violations are discovered, nothing apparently changes.

Again, if the Town were to go against the wishes of almost all of those who living on Lake Waseosa who have spoken out on this proposal and were to approve the building of one dwelling on each of these lots, it is important that the Town develop an enforceable plan to restrict development in such a way that minimizes negative impacts on the community.

Lake Waseosa, Treasure Island and further development. We believe it is important for the Town to be realistic. The current proposal is to create two new “existing” shoreline residential lots zoned as SR5. If the Town were to do this, it is entirely predictable that the Town can expect to see an application, in due course, to divide the large eastern lot into smaller lots. After all, that lot has an estimated 9.2 hectares with considerable frontage. Essentially this would mean that by shifting the zoning from Conservation to SR-5 could, almost certainly, mean that the eastern lot could be subdivided into about nine SR-3 lots. We raise this issue now because once the Town allows Treasure Island to be zoned as shoreline residential, we will no longer be talking about “just two” houses on the island. Essentially this possibility reminds us of why the island was originally zoned as “Conservation.”

At the meeting held in May 2019 by the applicants (outside of the planning process), many Lake Waseosa residents suggested that although they opposed any rezoning, allowing two houses (one on each existing lot) on Treasure Island was better than allowing many houses. Various suggestions were made on how future subdivisions of 100 Treasure Island (in particular) might be avoided. The current owners were clear: they do not want to develop the island properties themselves. More importantly they made it very clear at the meeting that they do not want to tie the hands of any potential purchasers of this land for future subdivisions or development.

We believe that the Town should not approve this application. However, if the Town were to approve this application for rezoning, we believe that it should act in a manner consistent with the application and attempt to restrict any further subdivision of the land. This could include providing a special ‘exceptional’ zoning designation that explicitly stated that future subdivisions of the land would not be permitted.

It should be noted that if this were done, the Town would be acting entirely consistently with the applicants’ stated wishes. They explicitly state that they are applying “to permit only one single detached dwelling on

each of the lots which are existing lots of record” (page 4). We strongly urge that the Town should hold them to this.

In conclusion, the designation of Treasure Island as “Conservation” was appropriate at the time that the designation was made and continues to be so today. There is no public interest in changing this designation. We assume that we do not need to remind Council that zoning restrictions are imposed for the public good, not for the benefit of those who want to develop a particular parcel of land.

The landing on the east side of Lake Waseosa. The moving of the proposed landing from the west to the east side of Lake Waseosa should not be seen as a concession on the part of the applicants. For reasons we outlined earlier this year, the proposal for the landing on the west side was entirely inappropriate and unsustainable.

There are, however, some problems with the east side landing proposal. Most notable is that the parking areas are closer to the lake than should be permitted. Lake Waseosa is designated by the District of Muskoka as a cold water lake. The proposed landing is near Type 1 (and Type 2) fish habitats. The Muskoka Official Plan sets the target set-back as 30 meters in this situation. This is consistent with the SR5 zoning requirement that the minimum setback be 30 meters.

The Zoning by-law goes on to provide that

“Parking areas on a lot shall be located as far back as possible from the shoreline, and should not be located between the dwelling and the shorelines.”

And also

“A trailer, recreational vehicle or boat must be stored to the rear of the minimum front yard requirement.”

The normal setback for parking is at least 30 metres, not 20 metres as is being proposed. Exceptions to this setback are, of course, allowed, if a 30 metre setback were impossible. It is not. The Town should, therefore, require a minimum 30 metre setback for all parking places.

There is one other aspect of the waterfront landing which, we think, the Town should be aware of. The proposal shows 6 parking places. Each of the two lots requires 2 parking spots. This means that if a subsequent application to sever 100 Treasure Island into two separate lots (with two houses on it) no additional zoning changes would be needed for the landing. We suspect that this is a purposeful decision on the part of the applicants.

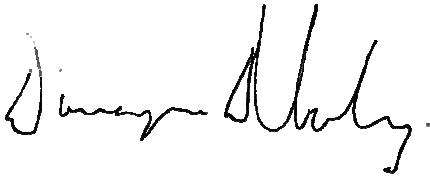
Conclusion. There is no pre-existing right to build on these lands, and most especially 200 Treasure Island, which was purchased in full knowledge of the zoning restrictions. The Town has every right to restrict a landowner’s use of their land where appropriate for the common good of all, such as preserving 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. The proponents are asking you to set a very dangerous precedent: The act of converting land set aside permanently for conservation purposes into developed land. It is a very slippery slope and an action that cannot be reversed once taken.

Were the Town to approve the building of one dwelling on each of these lots, it is incumbent on the Town to ensure that this restriction be upheld such that future subdivisions not be allowed. Furthermore, the Town must ensure from the outset that restrictions on building be put in place as part of the rezoning such that all possible mitigating restrictions be included in the approval and are made to be enforceable.

We hope that our position on this proposal is clear: We believe that the Town should not approve this application. The current zoning – conservation – was done purposefully by the Town as part of a public process. The purpose of zoning is to provide controls and predictability to land use in a local area. There is no pressing need or value – other than the short term financial interests of the landowners (who themselves are public about their desire to sell the land for future development) for the land to be rezoned.

That said, if the Town were to reverse the zoning the decision of a previous Town of Huntsville council and approve this application for rezoning, we believe that it should act in a manner consistent with the application and attempt as much as possible to restrict any further subdivision of the land. This could include providing a special ‘exceptional’ zoning designation that explicitly stated that future subdivisions of the land would not be permitted.

On behalf of the LWRA Board of Directors:

A handwritten signature in black ink, appearing to read "Dwayne Verhey". The signature is fluid and cursive, with a large initial "D" and "V".

Dwayne Verhey,
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Submitted electronically.