

April 5, 2023

Planning Committee
Township of Muskoka Lakes
1 Bailey Street
Port Carling ON P0B 1J0

Dear Chair Bosomworth and Members of Planning Committee,

Re: MLA Research – Planning Committee Processes in Ontario

In past Planning Committee discussions, concerns have been raised regarding the current practices and timing for staff’s recommendations for approval of Planning Act applications. In discussion with councillors, MLA representatives have also raised concerns. To this end, MLA has done some investigation of practices in other municipalities.

The purpose of this letter is to provide information on potential enhancements to the development application process in the Township of Muskoka Lakes, based on examples from other municipalities. We hope that this can assist the Township in exploring alternatives. Enhancements are grouped under these general headings:

1. Timing of staff recommendation for approval
2. Public information and transparency
3. Information sharing and best practices
4. Council Direction regarding OLT Appeals

Though the Ontario Professional Planners Institute offers training and education to its members, there is no manual of practice associated with how *Planning Act* applications should be handled. Municipalities are bound by the *Planning Act* and are free to develop their own practices as long as they conform with that Act.

Timing of Staff Recommendation for Approval

Current Approach in the Township

At present, Township staff prepare a report for Planning Committee that is on the same agenda as the statutory public meeting for Zoning By-law and/or Official Plan Amendments. The report summarizes the application, includes supporting documentation from the applicant and summarizes any written comments received to date from agencies and the public. The report also typically includes a recommendation concerning approval – either approving, approving with modifications, deferring, or denying the application.

Approach in Other Municipalities

With some exceptions in the case of larger or more complex applications (for example, Starboard/Cherokee Lane, Taboo and Glen Echo in Gravenhurst), most if not all of the local municipalities in the District of Muskoka appear to typically handle staff recommendation for approval of ZBAs and OPAs in the same way – with a staff recommendation concerning approval at the time of the public meeting. However, MLA was unable to find any similar approaches to approval south of the Muskoka area.

All local municipalities in the County of Simcoe and Region of York handle applications in the same basic way. At the time of the statutory public meeting, a staff report is prepared which is informational only. Typically, it describes the application and its purpose, summarizes comments received to date and talks about its conformity with existing local, regional and provincial policies and regulations. The staff recommendation is generally along the lines of – receive for information and a report with staff recommendations will follow at a later date. Some municipalities also mention that a draft by-law will be presented to Council for consideration only after the municipality has heard from all interested parties at the public meeting.

Here are some examples of planning reports accompanying the statutory public meeting with recommendations from other municipalities:

[Township of Severn ZBA](#)

[Town of Penetanguishene ZBA](#)

[Town of Aurora ZBA](#)

Disadvantages of Township's Current Approach

Presenting a staff recommendation before the statutory public meeting, as is the current practice for the Township, presents a number of issues. First, it leaves the general public with the impression that their input at the public meeting is not important, since the matter has already been decided by staff. Second, important local knowledge that may not be immediately apparent to planning staff could be missed or diminished – sensitive habitat for example, or previous history on the property (Harry Island) or input from indigenous or other groups. Third, the position of the municipality in a later appeal process can be prejudiced if the staff report recommends approval but ultimately Council decides to deny the application (Tozser).

It is unclear why the Township and other Muskoka District municipalities take a different approach from all other municipalities that we are aware of in southern Ontario.

Public Information and Transparency

Staff reports regarding Planning Act applications typically include a generic description of comments received by the public and agencies to date and a summary of how those comments have been addressed. It is sometimes difficult for individuals and the public to understand how or if their specific

comments have been addressed. Many municipalities include a schedule with their report recommending approval which traces specific comments and exactly how those comments were addressed. An excellent example can be found [here](#) from the County of Simcoe in relation to a County initiated Official Plan Amendment for a proposed waste management facility. This is likely more complex than what the Township would require, however, it is useful as an illustration. With this tool, specific individuals can easily see how their concerns were addressed. We understand the Township has used this approach in the past and it is unclear why it is no longer a practice.

The Township recently initiated a database of building permits through the District mapping application. This provides comprehensive, up to date information on all building permits in the municipality that is accessible to the public. It is an excellent resource for any member of the public to find out what building activity is permitted. Many municipalities offer this type of information for Planning Act applications. The Town of Newmarket provides an excellent example [here](#). All files, applications, staff reports and background studies are linked to the map for easy reference, together with a summary of current status.

Information Sharing and Best Practices

Many upper tier municipalities host planning staff liaison meetings with their lower tier counterparts to discuss emerging issues (Bill 23 as an example), share best practices and coordinate planning policies and procedures. If not already underway, this might be something the District could consider with its lower tier municipalities. Outside agencies can be invited to participate to present items of interest such as representatives from MMAH regarding emerging or new legislation. In addition to information sharing, these types of meetings are useful team building tools.

Council Direction Regarding OLT Appeals

Once Council has made its decision to deny approval (or not consider the matter within a certain timeframe), applicants have the opportunity to appeal that decision to the Ontario Land Tribunal. At that point, the matter is typically left in the hands of staff and legal counsel to resolve. There appears to be little or no opportunity for Council to have input into the process, even when a settlement is negotiated with the applicant.

A recent example of this is ZBA 04/22, By-Law 2022-024 (Bot) which went to Committee for decision on June 16, 2022. Following the staff recommendation to approve, the application was denied by Council. The matter was appealed to the OLT. At least one near neighbour applied for and was granted party status. When the hearing occurred, attendees were denied any input and instructed to turn off their cameras and mute their audio. A number of days after the hearing, attendees received an email from the Township informing them that a settlement had been reached, with no reason given. In this case neither Council nor those who had spent time and money applying to be a part of the process had any input whatsoever into the settlement. Attached as Appendix I to this memo is an email from one of the neighbours to the MLA outlining her frustration with the process.

Another example of lack of input and confusion can be found in the Tozser matter. This application for a ZBA was denied by Council (also following a staff recommendation to approve). The matter went to a hearing on December 12, 2022. There were 16 participants at the hearing. Attendees were informed that a tentative settlement had been reached, however, it needed input and approval from Council because there was some confusion about building height in the proposed settlement. In discussions after the hearing, however, members of Council had no recollection of any discussion regarding building height, so it is very unclear as to what the issue was.

We would further note that, during Committee discussions on the Tozser matter, members were quite clear in what they were seeking from the applicant – a smaller footprint, reduced height, and a greater setback from the water. However, this was not recorded in Committee minutes or in the form of a recommendation to Council. During the OLT proceeding, counsel for the applicant indicated that there was no clear direction provided by the Township and therefore they were at a loss as to what revisions to offer. Had there been clearer minutes or a specific recommendation, this claim would have been difficult to make.

In both of these cases, Council had limited or no input into the settlement process. As a result, they were unaware of the terms of settlement or decision until after it had been settled or heard by the OLT. Affected neighbours, having spent time and funds trying to contribute to a satisfactory settlement were shut out of the process. Without clear minutes or recommendations, opportunities for satisfactory settlements may be lost.

We suggest it would be beneficial to have a framework to allow Council to provide staff with instructions at the outset as to settlement goals and parameters and that staff update the Chair of the Planning Committee and/or the Mayor to facilitate discussion during the settlement process. If this is not feasible, perhaps clearer minutes and/or Committee recommendations concerning what would be a satisfactory outcome could be initiated.

Summary

This letter has presented some practices in other jurisdictions for consideration to enhance the current planning application practices of the Township. Specifically, we are asking the Township of Muskoka Lakes the following questions:

1. Could the Township consider a two part approval process whereby staff presents the basics of the *Planning Act* application at the time of the statutory public meeting for information, with a follow up report and recommendations at a subsequent meeting?
2. Would it be beneficial to those interested members of the public to include a schedule in the follow up report which maps out how comments have been addressed?
3. Could a planning application database, similar to that for Building Permits, be developed which provides easy access to public information related to Planning Act applications?
4. If not already undertaken, could the District be requested to initiate a staff planning liaison group to share information and ideas?

5. Could the Township develop a practice to allow for Council instructions regarding settlement parameters and, where possible, updates/discussion during settlement negotiations?
6. Would the Township Clerk consider more detailed minutes which describe what Committee members are seeking in terms of changes to Planning Act applications and potentially include that in recommendations to Council?

We thank you for your service to the residents, businesses and visitors in the Township of Muskoka Lakes and hope that you will consider the points raised in this submission.

Sincerely

A handwritten signature in black ink, appearing to read 'Susan Eplett', with a stylized, cursive script.

Susan Eplett
President

cc: Derek Hammond, Chief Administrative Officer
David Pink, Director of Development Services and Environmental Sustainability
Crystal Paroschy, Director of Legislative Services / Clerk

Appendix I

LETTER TO MUSKOKA LAKES ASSOCIATION

TO: Susan Eplett, MLA President

CC: chelsea@mha.on.ca

RE: Bot vs. Muskoka Lakes Township

DATE: February 24, 2023

We are Fourth Generation Muskoka cottagers as well as members of the Muskoka Lakes Association. It is important to share with you an issue that is both personal and consequential to the conservation of the Muskoka Lakes.

This letter is about one person's "Application to Amend the current Zoning By-Laws" in order to build a two storey boathouse on a very narrow point of land with a shoreline of less than 300 feet.

We are the owners of the property immediately adjacent to this lot. We are also the most impacted by their proposal and their intention to bypass the very zoning laws that are in place for our protection.

This case was presented to the Planning Committee at a Hearing of the Muskoka Lakes Township on June 16, 2022. Compelling testimony against the amendment was delivered by Muskoka Land Use Planning Consultant Stephen Fahner and evidence was brought forth by several Council members who voted against it after visiting the site.

The Planning Committee DENIED the Application to amend the zoning bylaw.

Several reasons were cited, notably the following:

- Serious safety concerns due to increased boat traffic in a very narrow and shallow swim bay -
- Obstruction of view and privacy of neighbours
- Fact that the shoreline does not meet the Zoning By-law requirement of 300 feet

It should be noted here that there is an existing dock for this property on the south side of the point. That location was strongly recommended as a preferred site by Planning Consultant Mr. Fahner. Those factors include:

1. 1) Width of bay on south side 2.5 times larger
2. 2) Neighbouring cottages would be far less intruded upon, particularly ours
3. 3) Boat traffic in this bay would remain the same whereas proposed site would be considerably

more.

4. 4) Water level equally deep on both sides of the point

The Bot/ Friedmans chose to ignore this and went on to the Ontario Land Tribunal to appeal the Muskoka Township decision.

We received this Notice in mid-December 2022; our response was due by January 1, 2023.

We filed our request for Party Status following all OLT rules of Practice and Procedure. Our request was submitted on time and we received confirmation of receipt by the case coordinator for the Tribunal on December 31, 2022.

We all attended this hearing and had fully prepared our statements .

As the hearing began we were suddenly told that we **were not allowed** to participate; we were to turn off our cameras and must mute ourselves. No reason was given.

Apparently a "Settlement" had been reached between Bot/Friedmans and the Township of Muskoka Lakes just days before the hearing. We were informed of this via email on January 9, 2023. We were given no reason for such a dramatic turnaround. In fact we had no knowledge that such a "Settlement" was being discussed.

The Township had supported us. We had put our trust in the Township—but the Township had quietly struck a deal with the Bot/ Friedmans without even the courtesy of alerting us.

The results of the hearing in June should have mattered. The Councillors were careful to consider the issue, listen to both sides and even took time to visit the site.

What happened to the promise of **"Fair and Objective Action in the Best Interest of the Muskoka Lakes Community"**?

The Township let us down.

And the OLT was a Mockery of justice.