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**DELIVERED BY EMAIL**

Muskoka Lakes Association  
c/o Ken Pearce, Vice President and Secretary  
65 Joseph Street, Box 298  
Port Carling, ON P0B 1J0

Dear Mr. Pearce

**Re: Muskoka Lakes Association  
Township of Muskoka Lakes  
Proposed Bylaws 2022-107 and 2022-108**

You have asked us to consider the lawfulness of two by-laws proposed to be adopted by the Township of Muskoka Lakes (“**Township**”). Specifically, the Township Council, at its August 10, 2022 meeting of Council, considered By-law 2022-107 (“**Tree By-law**”) and 2022-108 (“**Site Alteration By-law**”).

We reviewed the letter from Devry Smith Frank LLP dated August 5, 2022 on behalf of Our Muskoka Stakeholders Association (“**OMSA Letter**”). In our view, the concerns raised in the OMSA Letter are valid and both the Tree By-law and Site Alternation By-law may be susceptible to legal challenge on the basis that they include provisions more closely associated with the Township’s authority to zone lands pursuant to the *Planning Act* than the powers of the Township under s. 135 and 142 of the *Municipal Act, 2001*.

***Zoning By-laws under the Planning Act***

Section 34 of the *Planning Act* permits local municipalities to pass zoning by-laws to, among other things, (1) restrict the use of land; (2) restrict the erection, location or use of buildings; (3) regulate the height, bulk, location, size, floor area, spacing, character and, (4) regulate the use of buildings or structures to be erected or located within the municipality.

The *Planning Act* provides, among other things, specific public notice and appeal rights with respect to the consideration and enactment of proposed zoning by-laws. No such public participation and appeal rights exist regarding by-laws enacted pursuant to s. 135 or 142 of the *Municipal Act*. In light of the distinct municipal powers authorized under each of the *Planning Act* and *Municipal Act*, the courts will scrutinize, and may render invalid, those sections of the Tree By-law and Site Alteration By-law that relate to matters that are properly addressed by a zoning by-law.

***Tree By-law***

Section 135 of the *Municipal Act* enables a municipality to pass a by-law to prohibit or regulate the destruction or injuring of trees.

The Tree By-law purports to regulate matters associated with zoning by-laws, such as the number, type and size of structures on a lot within a prescribed distance from the high water mark (e.g. 3.1(w)(1)(i)).

Section 3.1(w) of the Tree By-law, in particular, appears to address matters that are more appropriately regulated by way of a zoning by-law.

***Site Alteration By-law***

Section 142 of the *Municipal Act* enables a local municipality to pass a by-law to prohibit or regulate: the placing or dumping of fill, the removal of topsoil, altering the grade of land and to require a permit to do such things.

Like the Tree By-law, the Site Alteration By-law also appears to regulate matters associated with zoning by-laws, such as the number, type and size of structures on a lot within a prescribed distance from the high water mark (e.g. 3.1(m)(1)(i)).

In particular, sections 3.1(m), 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14 of the Site Alteration By-law appear to address matters that are more appropriately regulated by way of a zoning by-law.

***Conclusion***

The provisions of the Tree By-law and Site Alteration By-law identified above may be vulnerable to a legal challenge on the basis they regulate land use in a manner governed by s. 34 of the *Planning Act* and are not permitted to be enacted under the provisions of the *Municipal Act*.

We suggest that a potential remedy would be to sever those provisions of the Tree By-law and Site Alteration By-law that are related to the powers of a local municipality to regulate land use and building standards through a zoning by-law. That is, the impugned provisions could be omitted and the by-laws enacted with the balance of their content intact.

We remain available to discuss or consider this matter further.

Regards



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RC/LE