

Township of Muskoka Lakes
1 Bailey Street
P.O. Box 129
Port Carling, ON P0B 1J0

August 10, 2021

Dear Chair Bridgeman and Planning Committee Members,

**Re: Agenda Item 11a –
Report from Director of Development Services and Environmental Sustainability -
By-law Enforcement, Site Alteration and Tree Preservation By-laws**

The Muskoka Lakes Association (MLA) would like to thank Staff and Planning Committee for the prompt response to concerns we expressed in our delegation of July 15th. We have had the opportunity to review the report from Director Pink regarding the Township's by-law enforcement, site alteration and tree preservation by-laws. Our community remains deeply concerned about the egregious amount of blasting, tree clearing and site alteration at Sugarloaf Island and other waterfront properties, and welcome Committee's attention to addressing it. We appreciate that Staff had little time to pull together this report and that it is just a start in refining the process and tools that can be used comprehensively to deliver on the vision for shoreline development outlined in the Official Plan. The following comments offer some additional thoughts to contribute to the next steps we believe are important for Council and Staff to pursue.

Enforcement Tools

We are convinced that the best enforcement tool the Township has is to cause a construction delay. In the view of many of our members, a delay in the build is the only thing that will motivate some landowners and contractors to comply with the bylaws or orders to remediate.

Enforce the Site Plan Agreement

We appreciate Planning Staff obtaining a legal opinion on the question of whether the Township may revoke or delay issuing a building permit if there is a breach of the tree preservation or site alteration bylaws.

However, one important legal question remains that has not been answered – what steps can the Township take when there is a breach of the bylaws or Site Plan Agreement (SPA)?

We believe there is a simple and clear option – the Township should take legal steps to enforce the SPA.

We believe a number of sections of the SPA for Sugarloaf Island have been breached, including:

- “The Owner shall preserve and maintain all natural vegetation, healthy trees...which are located beyond building sites as seen on the Approved Plans...” (Section V2)
- “Tree removal and site alteration will comply with the Townships Tree Preservation and Site Alteration By-laws” (Schedule B, Note b)
- “Pathways shall .. meander through existing trees and shall not result in the removal of trees” (Schedule B, Note c)
- “Sediment fencing shall be installed before construction commences .. until construction ceases ...” (Schedule B, Note d)

We urge the Township to obtain legal advice as to what steps it is permitted to take to enforce the Sugarloaf SPA as soon as possible. Since monetary damages are inadequate to compensate for the degree of environmental damage done, two options for extraordinary remedies may be available:

1. an order for specific performance, requiring the landowner to comply with the SPA’s terms, for example: regenerate and plant further trees from time to time, starting this fall and directed by qualified professionals (section V4); install effective sediment and erosion control measures (section V21 and Schedule B); and take such other steps as the Township’s legal counsel may recommend; and
2. an order for an injunction prohibiting any further work on the “Lands”, which would override the building permit and septic permit (Section V1 – “no work will be performed on the Lands except in conformity with all provisions of this Agreement.”)

We urge Planning Committee to pass a resolution on August 12, 2021, directing that legal advice be obtained on these and any other steps that the Township can take to enforce the Sugarloaf SPA as expeditiously as possible.

We also repeat our request made in our delegation on July 15th that the Township obtain legal advice as to what terms can be included in future SPA’s that will assist the Township in delaying construction where the bylaws are breached.

We note that Staff's report states that if a SPA is breached, the "first legal course of action, acting reasonably, would be to enforce the SPA. ... If a landowner does not cooperate,

the Township could revoke the site plan approval, which could trigger a corresponding revocation of the Building Permit." However, since the SPA is a contract, it is not possible for the Township to revoke it. The only option available to the Township is to enforce the SPA.

Additional Securities

We note that section VI(10) of the Sugarloaf SPA describes what the Township is entitled to do if the landowner defaults on its obligations. For example, the Township is entitled to draw on the securities posted by the landowner (\$27,500) to remediate the property itself, and if the cost exceeds the amount of the securities -- which it most likely will in the case of the devastation at Sugarloaf -- the Township is allowed to recover the extra amount as if it were a municipal tax owing by the landowner. It is clear that this amount of securities will not be nearly enough to fully remediate Sugarloaf, and we urge the Township to take additional securities before approving the remediation plan.

Orders to Remedy

We agree with Staff's suggestion that Orders to Remedy should include timelines and conditions.

We also believe it is important that Orders to Remedy require remediation plans to be prepared by qualified professionals, who indicate specific tree planting, soil replacement and other remediation terms to fully remediate the site (eg. arborists, soil experts and not professional planners). The Orders should also require a comprehensive budget to complete the remediation, for purposes of setting securities to be posted with the Township.

Improvement Initiatives for Bylaws, Policies and Processes

We appreciate the effort made by Planning Staff to identify areas where the existing bylaws, policies and processes can be improved, as listed in Appendix 1, and Staff's undertaking to bring these forward in the future 'as time permits'.

We also appreciate that there are many demands on Staff's time, including important initiatives such as the Minett OPA and Official Plan Review where a consultant has been retained to assist. However, we believe that there are additional actions that are important to include in the suite of measures applied to development applications.

Licensing Contractors and Blasting Permits

Two of our key recommendations were not included in Staff's list: licensing contractors and a blasting permit.

A number of Councillors expressed support for these at the July Planning Committee meeting, and we ask Committee to move ahead with them without delay. At a minimum, licensing of excavators, blasting contractors and arborists, together with a building permit requirement that any contractor engaged to remove trees or blast must be licensed. There are applications you are considering even today where our shorelines are at risk.

Policy re Meaning of 'Detrimental Effect on the Natural Environment'

The Staff report notes that the existing site alteration bylaw has language dealing with blasting and questions the need for an additional blasting bylaw. However, the existing site alteration bylaw provides that the Director of Planning shall only issue a site alteration permit if satisfied that the altering of grade will not result in "a detrimental effect on the natural environment of the area" (section 7(a)). We urge Planning Committee to establish a policy defining what 'detrimental effect on the natural environment' means – such a policy could have prevented a site alteration agreement being given for Sugarloaf Island.

Tree Preservation By-law

We agree with Staff's suggestion that the Tree Preservation By-law be revised to expand the area to which it applies and consider the list of exemptions. We believe that tree preservation must extend to all lands within the property. It does not mean that every tree is protected but that a reasonable plan is prepared that prioritizes the forest and not excessive amenity areas.

In addition, the treatment of trees within the shoreline buffer requires stronger prohibitions so that stripping limbs from trees and replacement of native soils and vegetation with mulch and gardens is limited to small areas of access or disturbance. This is becoming more common, creating an unnatural appearance and destroying natural habitat and buffering capabilities of the shoreline buffer.

Site Alteration By-law

We applaud Staff's recommendation to potentially increase the area of coverage to include a greater area of waterfront properties.

We also urge Planning Committee to provide that blasting of the Precambrian shield will not be allowed where it will not only damage the natural environment but change the character of the property. Blasting should never be allowed where the change in the landscape caused by blasting will be visible from the lake.

Site Plan Control for Islands

Staff's list also does not include making all of islands subject to Site Plan Control, which a number of Councillors stated they would support at the July meeting. We ask that Planning Committee also move ahead with this without delay.

Maximum Fines

Staff made an excellent suggestion that the bylaws be reviewed to ensure they include the maximum permissible fines. However, rather than Staff doing this 'over time', we ask that Planning Committee expedite this review.

Bylaw Enforcement Policy

Staff also stated it will be creating a Bylaw Enforcement Policy 'in the coming months' that will provide more clarity on Orders to Remediate and injunctions. We welcome this initiative and urge Planning Committee to expedite it since we urgently need stronger enforcement of the bylaws, especially tree preservation and site alteration bylaws.

Site Plan Control

Good outcomes for the development begin with good planning on the ground. This planning needs to be supported by good site information (e.g tree inventory, topography, bedrock, base mapping) and clear limits to the development. Staff's report notes that the existing site plan control process can be used to implement tree inventories, sediment barriers and building envelopes. We agree and believe these items and others should be part of every site plan control process and, if necessary, the site plan control bylaw should be amended to provide for this.

For example, the area to be developed and cleared should be staked and surveyed, and tree protection barriers installed. There were many other excellent recommendations in Staff's Feb 14, 2020, report to Planning Committee, as we mentioned in our July 15th delegation.

The MLA would welcome the opportunity to help convene a round table of experts to review the current site planning process and identify ways to address some of the concerns and solutions expressed in this letter and as outlined in the Staff reports.

Communication and Education

Staff's report recommends that communication of municipal bylaws and education of the community should occur, and that additional resources devoted to bylaw enforcement through the 2021 budget will be used for this. We agree that better communication of the Township's bylaws is needed but urge Council to not take resources away from bylaw enforcement to pay for creating these communications.

The MLA would be pleased to help with the Township's communications and education by circulating the Township's materials to our members and hosting a webinar where representatives of the Planning Department could explain the bylaw requirements.

The Planning Department may also wish to host an online presentation similar to the one hosted by Seguin's Planning Department in May 2019, explaining the planning and building regime. Seguin's powerpoint presentation 'Building in Seguin' is available on its website and is an excellent resource for contractors and landowners in Seguin:

<https://www.seguin.ca/en/business-development/resources/Building/Building-Dept-Workshop-2019-website.pdf>

However, we should not kid ourselves that the devastation at Sugarloaf would have been prevented by a communications effort. It is wishful thinking to believe that the type of landowner, builder and contractor who is destroying Muskoka's shorelines will be dissuaded simply by being told the rules and fines.

By-law Compliance

Staff's report concludes that there's a by-law compliance rate of 97% in the community, based on the number of infractions they've found

Although this is a glowing number, we point out that this is based only on situations where a complaint has been made, and there are other infractions where people haven't complained, often because neighbours are trying to keep on good terms with each other.

Most important, enormous damage can be done by a small number of developments, as Sugarloaf Island demonstrates. Even 3% is too high if we are going to preserve what is beautiful about Muskoka.

Thank you for considering our comments, and for your continued efforts to deal with the devastation at Sugarloaf Island and prevent similar destruction from ever occurring again on Muskoka's shorelines. We look forward to being able to assist in efforts to improve the site planning process and understanding of how to do it sensitively and responsibly.

Sincerely,

A handwritten signature in black ink, appearing to read 'Susan Eplett', written in a cursive style.

Susan Eplett
Chair, Government and Land Use Committee

cc. David Pink, Director of Development Services and Environmental Sustainability