

UP GOOSE CREEK WITHOUT A PADDLE

BY CAROL SNELL

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Hungerford Township - "As is sometimes the case, what was supposed to be a simple matter becomes complicated when it reaches the Board."

The "Board" in question is the Ontario Municipal Board (OMB) which found in favour of four Hungerford residents who challenged a By-Law passed by their council. The above quotation is the opening sentence of a decision by R.D.M. Owen who made two trips for hearings in Hungerford Township Hall (one in December and one in June) in order to reach his decision.

In that decision, dated July 15, Owen writes: "Mr. (Pat) Clement, a longtime local resident, wants to build a cabin in the woods on his 100 acre piece of bush. The township indicated the zoning would not allow a dwelling and so he sought a rezoning to seasonal residential. At first, he thought that the access would be by an unopened road allowance, but a dispute as to whether such existed, led to a decision that water access, by Goose Creek, would be used. The township passed a By-Law rezoning a part of his lands for seasonal residential use. Neighbours (Ken and Lesley Grant and Elizabeth and Ross Banfill) appealed. They contend that Goose Creek is not a navigable waterway and hence the By-Law does not conform to the Official Plan. They also raised concerns about the vagueness of the By-Law, the process of

notifying other landowners of the By-Law and the inaccuracy of the original notice of intent to pass the By-Law."

Hungerford Township sought the advice of the Ministry of Natural Resources (MNR) in determining Goose Creek's navigability and the ministry found it was navigable. Owen said the MNR appears to view their decision as a question of law, in that the MNR takes the position of the bed of a navigable waterway, "vests in the Crown and so the MNR, on behalf of the Crown, has ownership".

Owen's main concern was that, although Goose Creek may be navigable from a legal standpoint, that did not necessarily make it navigable from a planning standpoint. "The Board is not satisfied," wrote Owen, "that the county or the MNR or the Moira River Conservation Authority (MRCA) have really considered the planning merits of allowing access to the property by way of Goose Creek as proper reasonable access for development purposes ... The County planner agreed that the incremental effect of a decision to declare Goose Creek navigable, and therefore acceptable for access purposes, had not been addressed. It should be."

Owen called the County's Official Plan, "poorly drafted if it intended to permit seasonal dwellings on lots with access only by navigable water-

ways." He described the issue in question as "very serious" and wrote, "the county, MNR, the MRCA, and the Ministry of the Environment should carefully and thoroughly examine the planning impacts of declaring a waterway 'navigable' and do so on the basis of looking at the entire stretch of such a waterway and the lands impacted by such a determination and the development that might result thereby."

The OMB allowed the appeal and repealed Hungerford's By-Law 90-38, a fact which pleased appellant Elizabeth Banfill. "I think it should be on the front page," said Banfill, adding, "I don't think it's going to stop there. I would be interested to know what it (the OMB hearing) cost. There's been a few taxpayers asking me about it."

Hungerford Township Deputy-Reeve Doug Mumford said he expected the matter would be discussed at council's next meeting on August 6. Asked about the possibility of the township appealing the decision, the Deputy-Reeve said, "I have never known our municipality to appeal an OMB decision. There are probably other avenues to solve the problem."

According to an OMB spokesperson, there are three avenues by which an OMB decision can be appealed. One is through application to divisional court; another involves a second OMB hearing; and the third, rarest, appeal is a petition to Cabinet.



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