

June 12, 2020

Mayor Smith and Members of Council
The Corporation of the Town of Bracebridge
1000 Taylor Court, Bracebridge
Ontario, P1L 1R6

VIA EMAIL ONLY

Attention:

Matt Holmes, Manager of Planning Services: mholmes@bracebridge.ca

Cheryl Kelley, Director of Planning and Development: ckelley@bracebridge.ca

Dear Mayor and Members of Council:

Re: Muskoka Royale Development Inc. Applications for Official Plan Amendment (D09-08/18) and Rezoning (D14-17/18) (the “Applications”) Important Wetlands Evaluation and new Species at Risk Considerations

We write on behalf of the South Bracebridge Environmental Protection Group Inc. (SBEPG).

We want to draw your attention to the numerous errors and omissions in the March 12, 2020 letter from the Developer’s consultant [Michalski Nielsen Associates Ltd. (MNAL)] pertaining to the need for a wetlands’ evaluation of the Muskoka Royale property. In short, the opinions expressed are contrary to the law in Ontario and are not supported by the facts, by wetlands science and current environmental protection policies.

By now you have recently received 4 separate letters, 3 from our professional advisors and a fourth from a world-renowned expert in wetlands science, representing separate areas of expertise. Each of these letters concludes that there are numerous errors and omissions in the MNAL letter. Law firm Thomson Rogers, ecological consultants Dougan & Associates (“Dougan”), and wetlands scholar Dr. Barry Warner have all provided Council with their written opinions as to the deficiencies in MNAL’s March 12 letter (the “Letter”). In particular, Thomson Rogers concludes that they view the Letter merely as an “advocacy piece that would be inadmissible if this matter were to proceed to a hearing before the Local Planning Appeal Tribunal.”

You will have noted that Thomson Rogers has provided their opinion (see letter of May 26, 2020) that statements made in the MNAL Letter are simply incorrect at law. In particular, MNAL’s assertion that “there is no basis” for a wetland evaluation of the subject property under the Provincial Policy Statement (“PPS”) is inaccurate under Ontario law. MNAL has ignored the most salient section of the PPS pertaining to wetland conservation, namely section 2.1.4, which

expressly precludes any development or site alteration in a significant wetland, without exception. Without carrying out an OWES evaluation of the wetland complex on the subject property, the Developer, and by extension Council, risks this proposed development being found in violation of PPS rules surrounding development on Ontario wetlands.

As you know, we have been dissatisfied by the MNAL work on Species at Risk on the property, so we retained Dougan & Associates to do some review. We provided you with their June 2, 2020 letter, indicating that 4 reptile and 14 bird species that are considered by government authorities to be at risk have been formally observed in the Henry Marsh and the adjacent subject property.

Please be advised that in particular, 2019 Natural Heritage Information Centre (NHIC) records indicating the presence of Blanding's Turtle in Henry Marsh and the adjacent property indicate that either "Reproductive Habitat for an Endangered or Threatened Species" or "Migration, Feeding, or Hibernation Habitat for an Endangered or Threatened Species" is present. Please also be advised that where these habitats are present, they result in an elevated Ontario Wetland Evaluation System (OWES) score for the wetland being evaluated. As such, Dougan concludes that it is highly likely that if an evaluation of the Henry Marsh wetlands and the broader Beaumont Wetland Complex was undertaken, these wetlands would be designated as Provincially Significant.

Our third source for independent validation, Professor Barry Warner, a Professional Wetlands Scientist and scholar from the University of Waterloo with over 35 years of expertise in this area, also provided you with his feedback on the MNAL work (see letter dated May 28, 2020). Professor Warner refutes MNAL's statement that there "is no Precedent for a Municipality Requiring a Wetland Evaluation in Relation to a Land Use Planning Application", indicating that "this statement is flat wrong." Professor Warner further questions MNAL's lack of professional wetland credentials, in light of the number of errors in the Letter.

As Thomson Rogers reminds us, the PPS (at 2.1.4) bans all development and site alteration in significant wetlands, without exception. It also (at 2.1.8) precludes development and site alteration on lands that are adjacent to significant wetlands, unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the significant wetlands.

It should therefore be clear to Council that:

- a) if evaluated under the OWES, the wetlands and documented observations of Species at Risk (SAR) on the subject property would be designated as Provincially Significant;
- b) if it rezones the subject property as requested by the Developer, Council risks making a decision that is non-compliant with provincial law; and
- c) an OWES evaluation of the subject property must be conducted, as soon as possible, in order to understand what limitations to development exist on the property. Further decisions regarding the property, without such an evaluation, would be to proceed

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without having conducted the appropriate due diligence in order to make an informed decision on this application.

In Summary, the South Bracebridge Environmental Protection Group restate our urgent recommendation, supported by experts, that the Town of Bracebridge demonstrate the required level of due diligence on this file, and insist that the developer fund an OWES prior to proceeding with any further considerations pertaining to this development.

Sincerely,



Michael Appleby
President, SBEPG Inc.



Michael Hart
Vice-President, SBEPG Inc.