

Friends and Neighbours,

AIM

SF Township Planning Department recently proposed a number of changes to the Comprehensive Zoning Bylaw (CZBL). They did this as part of a routine "Housekeeping Amendment". I would suggest that the proposed changes to s.5.10 and s.5.11 of the CZBL are not routine and not simple "housekeeping". If passed they will have significant ramifications for those of you who have legal non-complying structures on the water.

The intent of this email is three-fold:

- 1 - If you are not already aware, to inform you of the recent proposed SF Township Bylaw Amendment,
- 2 - To offer you my (unsolicited) opinion on the matter,
- 3 - To offer suggestions on what you can do if you share my concerns.

Please note that the following opinion is strictly mine. I welcome/encourage anyone to contact me if they have any questions, or want to discuss, or disagree. My intent is to encourage better decision making through informed dialogue

BACKGROUND - WHAT DO I THINK?

Currently any new build has to be constructed outside the 100ft setback. However, there are many "legal non-complying structures" within the setback. These are structures that were already in existence at the time the CZBL was enacted. For example, they include houses, cottages, boathouses, & bunkies. (I will refer to these as "grandfathered" structures). If the bylaw passes, the proposed changes would seriously affect the rights of property owners who have one of these grandfathered structures on their property. My best guess is that this would affect approx 30-35% of the residents on Sydenham Lake.

I have attached the proposed "Housekeeping" Amendment below. Please read.

This is my assessment of the changes:

s.5.10.2 - The township is proposing additional language be inserted in this Section to provide clarity. I believe the proposed additional language would make it easier for SF to extinguish grand-fathered rights once a wall is removed from a grandfathered structure. I do not have any issue with this policy if the building is derelict and has not been used for a period of time. However, most grandfathered structures are used. There are many reasons why the owner might want to remove a wall. For example - install new windows, update from 2x4 to 2x6 construction and/or replace a log in the wall.

I have personally been involved in a file where an applicant simply wanted to put in 2 big windows. They were told, that since the windows were so large, it meant a wall would essentially be removed, and therefore the grandfathered footprint would be lost.

This proposed amendment goes too far. If the concern is derelict structures, then the bylaw should be written that way. It should not be so broad as to affect all of us who have used our structures consistently and just want to update them.

s.5.11 - The township wants to remove this section of the CZBL. This section allows for any grandfathered structures to be re-built in the event an Act of God (Fire, Fallen Tree, etc) in the same location as long as it keeps the same footprint. The proposed changes would take away this automatic right of rebuild. Instead, property owners would have to make an application before the Committee of Adjustment (CoA) and seek its approval prior to any re-build. Going to the CoA costs money (approx 1k without a lawyer) and takes time (best case 2 months, but not unusual to take 6 months +). In the end your right to rebuild is not automatic and the CoA may deny your application and recommend moving your structure to another location. From having gone through the CoA process and having followed it for the last 7-8 years, my opinion is that if there is another footprint available, planning staff will recommend that the building be moved.

WHAT DOES THE LAW SAY?

As many of you know I am a lawyer. Full disclosure: I am not a property/planning lawyer, nor do I profess to be one. I cannot/will not give anyone legal advice on this matter. However, I have done extensive research on this issue over the past 5 years.

My assessment is that the law is on our side. I have attached an article that I used as part of an OMB file I was involved in a couple of years ago. It is a nice summary of this situation. Please read. It explains the law better than I can.

In summary - s.34.9 of the The Planning Act says that no Municipal By-law can be passed:

(a) **to prevent the use of any** land, building or **structure** for any purpose prohibited by the by-law if such land, building or structure was lawfully used for such purpose on the day of the passing of the by-law, so long as it continues to be used for that purpose.

OMB and Court decisions have provided clarity to this issue and have confirmed that grandfathered rights cannot be frustrated through the drafting or rigid interpretation of municipal bylaws. As long as a land owner can demonstrate consistent use of a structure, they are able to continue to use and improve. Many of our existing bylaws (and their interpretation) already violate this section of the Planning Act.

Looking at the other side of the story, there is some case-law where grandfathered rights were extinguished. However, if you look at the facts of those cases, they are easily distinguishable because there was not consistent use. For example, in the Ontario Court of Appeal decision, *Feather v Bradford (Town)*, the applicants had submitted an application to raise a sunken boathouse which had been uninhabitable for over 14 years. The applicants were not the original owners at the time the boathouse sank, and the property had changed hands numerous times in the successive years. In this case, the court held that the "intention to use" was not good enough to maintain the grandfathered right. Instead, owners must demonstrate continuous use. I have no problem with this decision and think it is an excellent example of when we can deem a structure as having lost its grandfathered status.

Bottom-line - as long as you can demonstrate consistent use of a grandfathered structure, then you should have the ability to renovate/reconstruct as long as the use/footprint remain the same. Any Bylaws, or interpretation of Bylaws that frustrate this right should be voided.

WHAT ARE OTHER MUNICIPALITIES DOING?

In preparation, I have done research across multiple Ontario jurisdictions, predominately in cottage country. I am confident that South Frontenac has one of the strictest CZBL regarding shoreline development. In addition, how these CZBL are interpreted and applied by staff are also more strict.

Generally, I think this is a good thing. As waterfront owners, we are all stakeholders in the environment.

However, I do believe a balance can be achieved between the environment and the rights of property owners

MY PROPOSAL

This issue reveals the tension between property rights and environmental concerns. I do think the two can be balanced. I would suggest the following approach with the Township:

- 1 - We agree on the importance of the environment,
- 2 - SF recognizes the legal rights of grandfathered property owners and our ability to use/maintain them,
- 3 - We concede that derelict buildings, which have not been used or maintained for a period of time (i.e no consistent use) have lost their grandfathered rights,
- 4 - We agree that any time you re-construct/renovate your grandfathered structure, best building/environmental practices are to be used. For example, attach conditions ensuring septics are updated, run-off water collection is installed, steel roofings, etc.

SO WHAT? - WHAT CAN YOU DO?

I was recently informed that SF Council will hear delegations on this issue at their next Committee of a Whole Meeting on 26 April and 10 May (if required). A decision will be made at the Council Meeting on 17 May.

I have to be honest. The cards are stacked against us. At this point in time, I think we may only have 1-2 councillors who are receptive. We need to make them aware that this issue is extremely important to us and may determine how we vote.

How can we do this?

1 - Become informed

2 - If you are not a public speaker or you are a seasonal resident - Email/Write your councillor and Town CAO (Take a look at the SF website to get their email address)

SF CAO - Wayne Orr <worr@southfrontenac.net>

3 - Ask to be a delegation at one of the upcoming CoW Meetings. (You will have 10 minutes)

The full process for attending as a delegation can be found on the SFT website at: <http://www.southfrontenac.net/en/town-hall/delegations-and-deputations.asp?mid=13131>

Basically, you need to do the following

1. Submit a letter to the CAO stating that you would like to appear before Council with a summary of your concerns. E-mail to worr@southfrontenac.net
2. Provide a written summary of your presentation by 12:00 noon on Thursday, April 21st.

Many delegations across the districts will hold weight

4 - Attend the CoW meeting and show your support.

5 - Please fwd this email to your lake associations/friends/neighbours in SF. Spread the word.

This is a real opportunity to have your voice heard and effect change.

Sincerely,

Jeff Peck