



PROCEEDINGS

for a Public Meeting

to discuss an Application for Temporary Use Bylaw

(Re: Unaddressed Property, Lot 1, Plan 23M966, Bell's Point Road, PIN 42134-0552)

Tuesday, November 9, 2021

1:16 p.m.

City Hall Council Chambers

*Due to COVID-19 and the requirement for physical distancing, the meeting is livestream and the public can access the recording at:

<https://kenora.civicweb.net/Portal/>

PRESENT: Mayor D. Reynard
Councillor G. Chaze
Councillor M. Goss
Councillor R. McMillan
Councillor A. Poirier
Councillor S. Smith
Councillor C. Van Wallegghem

Staff: Kyle Attanasio, CAO
Heather Pihulak, Director of Corporate Services/City Clerk
Kevan Sumner, City Planner
Adam Smith, Director of Development Services

Land Acknowledgement

As we gather, we recognize that we are on Treaty Three Lands which are steeped in rich Indigenous history and home to many First Nations and Metis people today. We continue to be thankful for the partnerships with our Indigenous people.

Mayor Reynard opened the meeting and declared the purpose of public meetings is to present planning applications in a public forum as required by The Planning Act. Following presentations by the applicant and our City Planner, any members of Council will be afforded an opportunity to speak and at that time, the meeting will then be opened to the public for comments and questions. The public is encouraged to read the City Planner's planning report in advance of the public meeting which may clarify questions in advance of the public meeting. Interested persons are requested to give their name and address for recording in the minutes.

Personal information collected as a result of this public hearing and on the forms provided at the meeting are collected under the authority of the Planning Act and will be used to assist in making a decision on this matter. All names, addresses, opinions and comments may be collected and may form part of the minutes which will be available to the public. Questions regarding this collection should be forwarded to the City Clerk.

Notice was given by publishing in the Daily Miner and News which in the opinion of the Clerk of the City of Kenora, is of sufficiently general circulation in the area to which the proposed by-law amendment would apply, and that it would give the public reasonable notice of the public meeting.

No decisions are made at public meetings concerning applications, unless otherwise noted. The public meeting is held to gather public opinion. The Council of the City of Kenora will have the opportunity to consider a decision at a future meeting of Council.

Herein the applicant will have the opportunity to speak on behalf of their application, and the City Planner will provide a summation of the report and recommendation, after which anyone who wishes to speak either for or against the application, will be given the opportunity to do so, and a record will be kept of all comments.

If anyone wishes to receive the Notice of the Decision of Council, please leave your name and address with the City Planner.

The applicant was not present and did not present a planning rationale as part of the public process.

Kevan Sumner, City Planner presented the planning report for the zoning amendment application:

Introduction

An application has been received, requesting Temporary Use approval for the use of the subject property as a campground for a single camper, for a period of up to three (3) years, in the "BSL" Black Sturgeon Lake (Restricted Development Area) Zone.

While the use of a property in the BSL zone as a campground is not normally permitted, Section 39 of The Planning Act gives councils the right, through a temporary use by-law, to authorize the temporary use of land, buildings, or structures for any purpose that is otherwise prohibited by the zoning by-law. A temporary use may not be authorized for more than three years, but may be extended with a new application.

Description of Proposal

The applicants intend to locate a camper on the subject property for a period of up to three years, until a dwelling can be built on the property.

Existing Conditions

The subject property was created as part of a 23-lot subdivision in 2012. In 2014, the City approved a Site Plan Control application for a dock at the southeast corner of the property and associated easements so that a portion of the property could be used for docking, access, and parking for owners of backshore lots in the development (Figure 1). Since that time, the City of Kenora has not received any permits or related applications for development of the property.

As a result of a complaint from the public, the Development Services department was made aware that campers were located on the property. An inspection of the property by a By-law Enforcement officer on July 26, 2021 confirmed this and the property owners were contacted with a request to bring the property into compliance with the zoning by-law. A review of aerial imagery from the City's GIS system revealed evidence that a trailer has been located on the property as far back as 2019, though that may be a different trailer and/or in a different location than the one that is currently on the property.

A follow-up inspection of the property was conducted by a By-law Enforcement officer on August 26, 2021. This inspection documented two campers on the property and that an unpermitted shoreline dock had been constructed on the shoreline with adjacent landscaping work at the southwest corner of the property. Photos taken by the officer also revealed evidence of release of wastewater from the campers on to the property.

A review of documents related to the original subdivision of the property revealed that there is an archaeological site on the property. A Stage 3 Archaeological Assessment completed for the site in October, 2011, determined that there is a culturally historic value to this site as it enhances the understanding of past human settlement. The assessment noted the fact that portions of the site, at that time, were still intact allows for the recovery of artifacts *in situ*, thus contributing to the greater archaeological knowledge of Northern Ontario. The recommendations submitted to the Ministry of Culture were:

1. The recommended Stage 4 mitigation for this site is protection and avoidance. The site is subject to long term protection. As per 4.1.1 Ontario 2011: 68-69 the documented area of site DkKo-15 (45m x 45m grid area) requires a protective buffer of 20m around Woodland village sites.
2. A temporary barrier around the area to be avoided and a "no go" instructions to all on-site construction crews is required. The location to be avoided is to be drafted into all contract drawings, with explicit instructions for avoiding the area.
3. The site could be further protected by an eight foot chain link fence around the site (including the buffer area) until a point in time when/if the site is excavated by a qualified archaeologist.
4. No tree removal, landscaping, gardening, road or trail development or utilities installation can occur with the fenced are of Stage 3 investigation until the site is excavated by a qualified archaeologist.
5. Any transfer of property through sale or inheritance must have a clause in the transaction that provides documentation confirming awareness of obligations for the archaeological site and the owner's willingness and capacity to fulfill those obligations.

Figure 9 below is an illustration from the Archaeological Assessment, showing the test grid and 20m buffer referenced above.

A fisheries assessment has been completed for the shoreline in this area, and is attached to this report. The assessment concluded that shoreline development in this area would not adversely impact upon critical spawning habitat.

Consistency with Legislated Policy and City Directives

a) Provincial Policy Statement (PPS) 2020

The PPS states that development that is compatible with the rural landscape and can be sustained by rural service levels should be promoted (Policy 1.1.5.3).

Development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved (Policy 2.6.2).

Planning authorities shall not permit development and site alteration on adjacent lands to protected heritage property except where the proposed development and site alteration has been evaluated and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved (Policy 2.6.3).

b) City of Kenora Official Plan (2015)

The land use designation of the property is Rural Area (Figure 10). Policy 4.1 of the Plan states that permitted uses shall include a variety of agricultural, residential, industrial, commercial, recreational, tourism, and open space uses.

Most of the property is also designated as Black Sturgeon Lake (Restricted Development Area) special policy overlay. Shoreline development is restricted to 25% of the lot frontage. This applies to, but is not limited to, all structures, removal of vegetation, pathways, decks and docks.

The Official Plan requires that any alterations to known archaeological sites shall only be performed by licensed archaeologists, as per Section 48 of the Ontario Heritage Act (Policy 5.2.2(c)).

The Official Plan stipulates that Site Plan Control may be used for any development on Black Sturgeon Lake, or any navigable waterway in the City, in order to protect natural resource value. This is reflected in the Site Plan Control By-law No. 189-2010.

The Official Plan, in guiding the implementation of the Zoning By-law, allows that Council may pass a by-law to allow the temporary use of lands that do not comply with the Land Use designations of the Plan provided that:

- a) The temporary use does not require major capital investment or alteration to the existing landscape;
- b) The proposed use is compatible with surrounding land uses;
- c) The proposed use does not require the extension of municipal services;
- d) The developer has entered into an agreement with the municipality specifying the conditions under which the use may be permitted; and,
- e) The by-law shall specify a maximum time period for which the use may be permitted. (Section 8.3.2)

c) Zoning By-law No. 101-2015

Most of the subject property is currently zoned "BSL[29]" Black Sturgeon Lake (Restricted Development Area) Zone (Figure 11). This zone implements the Black Sturgeon Lake

(Restricted Development Area) Special Policy Overlay in the City’s Official Plan (Section 4.18). The exception [29] is in place on all of the properties associated with the original 23-lot subdivision to allow Lot 5 to have a reduced frontage of 46m (By-law No. 11-2013).

The southwestern point of the property is zoned “EP” Environmental Protection Zone. This zone provides protection to those areas which have historical and natural significance such as First Nation burial grounds, fish and wildlife habitat. The only permitted use in the EP zone is wildlife conservation reserve. The cutting, removal or burning of trees and other natural vegetation is prohibited in this zone, as is the placement or removal of topsoil. The unpermitted shoreline structures, clearing of vegetation, and associated landscaping documented by By-law Enforcement are located in the EP zone. In 2019, a trailer appears to have also been located in the EP area. It is not known if the trailers photographed by By-law Enforcement in the summer of 2021 are located within the EP area.

Under the by-law, campers, tents, and recreational vehicles are only permitted to be occupied in camp sites in a campground, which is normally only permitted in the “TR” Tourist Recreational Zone (Section 4.8.4). No other zoning use category permits the occupation of campers, tents, and recreational vehicles, even temporarily. Trailers may be parked and stored on a lot in any zone with an existing permitted use, but may not be occupied during storage (Section 3.6). Therefore this temporary use by-law must be approved if the applicants wish to have even a single camper located on the property.

Results of Interdepartmental and Agency Circulation

The application for temporary use was circulated for comment on September 27th, 2021. The following is a summary of comments received in response.

Building Department	Allowing this use will set precedent for further/future requests. The three year timeframe to decide where to build is a stretch, then add the period for the build, this could go on for years.
By-law Enforcement / City Clerk	<p>There are concerns with granting a 3 year Temporary Use Provision without actual plans in place to build a cabin/dwelling. The owners indicate they took possession of the property over a year ago (Aug 28/20) and at this time do not yet have a plan to build, the application indicates they plan to develop in the near future with no proposed timeline. The camper is currently parked on the property and was occupied during the summer months in contravention of the zoning bylaw. It has a more permanent ground level wooden deck structure installed which suggests that it was intended for the camper to be placed initially for long term use.</p> <p>Bylaw Enforcement and Development Services receive many reports each summer season to investigate and enforce similar situations in which vacant properties (mainly lakefront) that have been acquired and campers placed to be used as seasonal cottages/cabins with no signs of building activity. If a temporary</p>

	<p>use provision is permitted in this case, we could expect many more applications from property owners for the same permissions for a 3 year duration and beyond. I am very concerned about the precedence this will set and the long-term 'approval' that will become permanent.</p> <p>If a temporary use provision is granted it is suggested that this comes with conditions and a staged construction schedule, including a deadline for having a building permit issued, demonstrating progressions to ensure completion by the expiry of the temporary use provision. This would be consistent with temporary use provisions granted in the past by the City. It would be required that all Temporary Use Provisions issued are monitored and tracked, and that scheduled inspections occur at each deadline to ensure compliance. These timelines should be much shorter than three years, and in this particular case, they have already had one year (or more).</p> <p>I am opposed to any temporary use permitting without active building plans in place. We have seen an increased presence of mobile trailers and the long term presence of these trailers with no intentions of building. I don't believe providing a temporary use permit for these locations will solve the increasing problem, but add to the perception that they will be permitted especially in the long run.</p>
Fire and Emergency Services	No concerns from Fire unless the applicants try to rig electrical and/or heating systems for the winter. Main safety concerns would be such a system, as most trailers are not designed for permanent residency and are not very forgiving in fires. Agree with Building comments, and there is more of a push on for people using trailers or tiny homes on these types of properties.
Roads Division	No concerns
Hydro One	No concerns
Engineering	No concerns
Water Wastewater Division	Require a NWHU approved treatment system in place, which allows for a number of options: holding tank, greywater pit, outhouse, etc.
Ministry of Heritage, Sport, Tourism and Culture Industries	The important thing from the Archaeological Assessment is Map 8. If this is the property they are referring to in the application, these owners can't do anything to alter the land around their shoreline. The Ontario Heritage Act only brings charges on activities like site looting or disturbance when someone knowingly disturbs a site. The previous land owner should have informed the new buyers about the site. If the site has been disrupted by these activities the next step would be for the property owners to hire a licensed professional archaeologist to assess the damage and provide recommendations for going forward from there.

Ministry of Northern Development, Mines, Natural Resources, and Forestry	The impact of a single camper on this lot (provided waste is properly disposed of) are likely significantly less than the impact of developing it for a permanent dwelling. Those impacts would already have been considered by NDMNRF during the planning of the subdivision. Therefore there are no concerns. There are other properties on or near Black Sturgeon Lake with no primary dwelling that currently have people living in campers. This decision could set precedent for other residents requesting to live in campers. The biggest issue with this would likely be ensuring that waste water was being properly disposed of.
Northwestern Health Unit	If the camper will be staying there for any extended period of time (more than a week), a permitted sewage system would be required for the property. The onboard tanks aren't meant for a long-term solution.

Public Notice and Comments

Notice of the application was given in accordance with Section 34 of the Planning Act, whereby it was circulated on October 5th, 2021 to property owners within 120 metres, published in the Municipal Memo of the Newspaper on October 7th and 14th, and circulated to persons and public bodies as legislated.

The notice also stated that the Planning Advisory Committee would have the opportunity to consider recommendation for the application to Council at their meeting on October 19th, 2021. At that meeting, the Committee voted not to recommend approval of the temporary use by-law. The minutes and relevant resolution from the meeting are attached to this report.

As of the date of this report (October 29^h, 2021), nine written comments have been received from members of the public. These comments appear to be evenly split between letters of support (4) and opposition (4), with one appearing to offer no clear preference, and represent a range of opinions regarding the proposed temporary use and the general use of campers as residences in the area.

Letters of support generally express approval for property owners to be able to inhabit trailers as primary use of property, especially when there are plans to eventually build a permanent dwelling on the site.

Letters of opposition generally note concern in regards to activities on the property already documented in this report. Some are supportive of the idea of allowing regulated campers as a temporary use in advance of or during construction of a permanent dwelling, but are opposed to approval of this application for reasons specific to this property.

Some of the letters, both supportive and opposed, point out that the applicants are not the only property owners in the area who are inhabiting campers on their property.

Evaluation

It appears that since at least 2019, the subject property has been in use as a campground, with associated clearing of vegetation, preparation of a camping site, unpermitted shoreline structures, landscaping, and onsite disposal of wastewater.

These developments did not receive the necessary planning approvals, including Site Plan Control approval for development of a property on the shoreline of Black Sturgeon Lake, or building permits for shoreline structures. Significant portions of the development are located on a known, documented archaeological site where such development would not have been permitted even if applications had been received. Additionally, the property owners have shown a disregard for the environment and the water quality of the lake by releasing wastewater directly on to the property with no septic system in place.

Given the nature of the issues identified with the unpermitted development and use of the property, I am unable to recommend approval of a temporary use by-law at this time. It is my further recommendation that no future approvals should be considered for any development or use of the property until existing unpermitted structures have been removed, the areas of the property zoned Environmental Protection have been restored to a natural state, and the applicants have taken the necessary step of hiring a licensed professional archaeologist to assess the damage and provide recommendations and conditions for future development.

Recommendation:

That Council hereby denies an Application for Temporary Use, File No. D14-21-09, to permit the temporary use of the property legally described as PIN 42134-0552, for a campground for a period of up to three (3) years, in the "BSL" Black Sturgeon Lake (Restricted Development Area Zone).

Any person may express his or her views of the amendment and a record will be kept of all comments.

Mayor Reynard questioned if there was anyone who wished to speak in favour of the application?

There were none.

Mayor Reynard questioned if there was anyone who wished to speak in opposition of the application?

Ms. Gloria Mejia of 214 Wyder Drive. Ms. Mejia supports the refusal of the application. As City Council members you have the power to go further than just requesting property owners to just comply. The dock built must be removed and given a monetary fine. The piece of property is protected. Our bylaw officers must be able to respond and fine these people. Work with other agencies such as MNR and bylaw officers should not rely on complaints to see other properties not in compliance and would allow people to approach and ask for compliance. It is a cop out when saying its too much paperwork and we don't have the manpower to look after these. There are so many of these campers and is bringing down the value of permanent residences. It is not ok to have a camper trailer on properties. With the new zoning plan being created it

must address the trailer camper issues. Including monetary and legal consequences of these trailers. They are putting their waste water on the properties. There should be consequences to follow the bylaws.

Mayor Reynard asked if there were any questions?
There were none.

As there are no further questions, Mayor Reynard declared this public meeting CLOSED at 1:40 p.m.