



Date 23 August 2011

City Council Committee Report

To: Mayor Canfield & Members of Council

Fr: Karen Brown

Re: Houseboats at Coney Island – Follow Up

Recommendation:

That Council hereby directs administration to work with the Ontario Provincial Police and the Ministry of Natural Resources to provide notice to the registered owners of the various vessels currently parked either on or in front of the City's water lot on the North East side of Coney Island to remove their vessel by October 31, 2011; and

That Council further direct administration to have the related vessels removed and impounded should the registered owners not comply with the City's direction as provided; and further

That administration be hereby directed take whatever further action is deemed necessary on this matter as a result of any non-compliance to the City's notice for removal of the vessels on or after November 1, 2011, following consultation with the appropriate authorities.

Background:

At the August Council meeting, a report was brought forward for discussion with regards to Houseboats at Coney Island. The report, dated 8 August 2011, has been attached for your reference (attachment #1).

During that meeting, two delegations were received with regards to the proposed relocation of these houseboats. The first delegation included reference to a "Grandfather Law". The second delegation verbally referred to a "Grandfather Clause". Copies of the delegations, as well as some additional information provided by these individuals with regards to the definition of a grandfather clause have also been attached to your reference (attachment #2).

Following the delegations, it was agreed by Council to defer this matter to allow City administration sufficient time to confirm that the City's authority as outlined in the August 8th report to Council was correct, based on the new information as presented in the delegations.

Following the delegations, City administration contacted Ms. Capri to confirm the specific sections of the legislation referred to in the delegations with regards to a grandfathering provision. Ms. Capri advised that they were not referencing any specific legislation or provisions thereof, so much as had looked up the definition of a grandfather clause on the internet. Following this, City Council Members and / or administration followed up with: Kevin Keith of the Ministry of Natural Resources (MNR), Bruce Ormiston of the Law Office and Craig Coughlin, Navigable Waters Protection Officer with Transport Canada to reconfirm the City's legal authority in this matter before proceeding further.

Kevin Keith (MNR) has confirmed that there is no grandfathering clause within the applicable legislation that would apply in this situation. Further, Kevin Keith has advised that "The Ministry of Natural Resources supports the City position in having these vessels removed to either lie directly in front of the vessel owner's private waterfront property or to an authorized commercial marina of their choosing." Detailed comments received from Kevin Keith have been appended directly to the end of this report for your reference.

Bruce Ormiston (the Law Office), has also confirmed that "there is no grandfather or squatter's rights". A copy of the follow up letter provided by the law office has been attached for your reference (attachment #3).

Both Kevin Keith and Bruce Ormiston also referred the City on to Craig Coughlin, Navigable Waters Protection Officer with Transport Canada. Craig Coughlin was also contacted and has confirmed that the City can proceed in accordance with the information as provided by the MNR for addressing the vessels currently anchored / moored on or in front of the City's water lot on Coney Island.

Based on the review, the City has confirmed that there is no applicable grandfathering or squatter's rights related to the vessels. It is recommended that the City proceed with providing notice to the registered owners with regards to the required removal of these vessels. It is suggested, however, that the notice provision be extended to October 31, 2011 in recognition that this matter has been deferred for one month.

Budget:

n/a – any costs related to relocation would be borne by the registered owners in reclaiming their houseboats.

Communication Plan/Notice By-law Requirements:

Notice of Council's decision will be sent to the registered owners of the houseboats currently located on or in front of the City's water lot on Coney Island through the OPP.

Commentary Provided by Kevin Keith of the Ministry of Natural Resources:

"Firstly, there is no grandfathering clause in our legislation (Public Lands Act) that would apply to the mooring of vessels and certainly not for the time period suggested in the deputation. The Public Lands Act does have provision for the issuance of Quit Claim Letters Patent where the Minister is satisfied that the right to bring an action on behalf of Her Majesty against a person for the recovery of land is barred by subsection 3(1) of the Real Property Limitations Act. All right, title and interest of the Crown is extinguished only after 60 years of continuous, open, adverse and quiet possession of public land.

A claim may be refused where the occupation is an act of trespass or a use equally consistent with trespass - I would suggest this scenario would fall under this category as there is no associated riparian (waterfront) interests with the occupants. We would not accept a claim that would result in the parcel lying directly in front of another waterfront property.

To further support this fact, the following are some excerpts from our Public Land Directives - Free Use Policy.

- Transient Activities - any person may freely travel about on public lands (including public lands under water) for transient activities such as hiking, boating, canoeing, cross country skiing, water skiing etc. etc.

- Navigational Uses - "activities enjoyed while TRAVELLING on navigable waterways as provided for under the public right of navigation which includes the right of reasonable moorage. The following is a guideline and interpretation of reasonable moorage:

A) vessel mooring over the Crown bed of a navigable waterway for a period not exceeding 21 days (exercised while travelling) except:

B) unlimited vessel mooring by the owner of adjacent waterfront property.

C) any mooring in addition to items A&B; required due to weather, mechanical or life threatening emergency - length of time determined by circumstance.

- Waterfront and Waterway Uses - "boat mooring buoys, positioned in front of the owner's property and which are for private use and do not interfere with the neighbors use and enjoyment of their waterfront property.

Summary

The Coney Island situation you are dealing with is clearly not reasonable moorage. The mooring is not being exercised while travelling and rather is a "Main Base" and is situate directly over and in front of City owned property. In addition for clarification, the 21 day "camping rule" does not apply in this case as the mooring is again not being exercised while travelling.

Foremost, the mooring is directly over and in front of City owned property and also impacts on other private property owners' use and enjoyment of their waterfront.

The Ministry of Natural Resources supports the City position in having these vessels removed to either lie directly in front of the vessel owner's private waterfront property or to an authorized commercial marina of their choosing.

You may wish to inquire with Craig Coughlin, Navigable Waters Protection Officer, Transport Canada as to any Federal guidelines pertaining to riparian rights and the degree to which they may extend in front of a waterfront property.

I have just reviewed the two deputations and don't have much comment other than clarifying that Transport Canada (Federal) administers the Navigable Waters Protection Act and is responsible for navigable waterways. The Ministry of Natural Resources however is the owner of the beds of most lakes and rivers in Ontario including Lake of the Woods. MNR public land free use policies as cited above are established having full regard for the paramount public right of navigation. Occupation of the bed (mooring balls) other than those scenarios described above require land use occupational authority including the payment of rent for a fair return to the Crown for a particular exclusive use of the land. MNR would however not be prepared to grant authority for random mooring of vessels but would direct them to a commercial marina. There is essentially no Crown waterfront land remaining within the City limits that could be considered for a potential new water lot or that would otherwise impact on neighboring waterfront property owners.

Regarding the "grandfathering matter" - our Public Land policies cited are not new and have reflected the public right of navigation for many years. The City's request to relocate is not based on new policy but is simply the exercising of your riparian rights and having regard for your neighbors use and enjoyment of their waterfront properties."