



**April 22, 2013**

## **City Council Committee Report**

**TO: Mayor and Council**

**FR: Tara Rickaby, Planning Administrator**

**RE: Black Sturgeon Lake – Request for Moratorium**

### **Recommendation:**

**That** the Council of the City of Kenora directs staff to advise interested parties that the City will not place a moratorium on development on Black Sturgeon Lake as the City's Official Plan and Zoning By-law provide policies and implementing provisions for limited development on the lake; and

That staff also advise interested parties that should they wish to proceed with further restrictions on Black Sturgeon Lake, an application for an amendment to the Official Plan, complete with appropriate reports, can be submitted to the City of Kenora for processing, by any interested party.

### **Background:**

In 2006, City Staff and the Kenora Planning Advisory Committee recognized that Black Sturgeon Lake would be coming under pressure by development. Council approved the commissioning of a study to undertake research on the water quality, natural resource values and aesthetic properties of the lake.

Further, the study examined historical development patterns, current land use and projected growth in the watershed. It also documented the existing planning tools, and analyzed their effectiveness in managing development on the lake. The recommendations in the report formed the basis for an Official Plan amendment (No.2). This has now been incorporated into the City of Kenora Official Plan (2010).

A few of the key elements of the scope of work included:

- a) An inventory of the land ownership patterns on the lake;
- b) An inventory of the current residential, commercial and industrial uses associated with the lake;
- c) An inventory of the existing land use planning policies and by-laws (ie. Zoning By-law No. 160-2004), along with an analysis of their effectiveness in managing development on the lake;
- d) Identification of trends and development patterns that will have a potential impact on lake sustainability;

- e) Working with affected stakeholders to determine objectives, or indicators, that reflect a healthy and sustainable lake system;
- f) Making recommendations with respect to the level of development that can be sustained by the watershed, along with actions that should be taken to protect water quality, and ensure the long term health of the lake ecosystem;
- g) Identification of the key stakeholders, their ongoing roles and responsibilities and a management strategy for lake management.

The steering committee for this project included: the President (and Vice-President) of the Black Sturgeon Lake Property Owners' Association, a senior representative of the Ministry of Natural Resources, a member of Council, a resident of the Lawton Drive subdivision, an employee of the Department of Fisheries and Oceans, a resident of the Peterson Road area, and a representative of the Kenora Planning Advisory Committee.

There was opportunity for public consultation as part of the study; the public meeting was very well attended.

"Social crowding" was identified as a concern of the residents of the day. Policies and provisions were developed to ensure that lot frontages were wider and that backshore lots were larger; both tools to reduce density on Black Sturgeon Lake.

Additionally, provisions to reduce development on the "foreshore" areas were included. This also may aid in maintaining water quality, as well as provision of privacy.

Public access is now restricted and any road allowances leading to the lake shall be retained by the City.

The provisions below form a part of the City of Kenora Official Plan (2010) (OP) which was reviewed in 2009/2010. There was no request for a review of the Black Sturgeon Restricted Development Area policies/provisions at that time. The Minister of Municipal Affairs and Housing approved the OP based on provincial policy as well.

### **5.3 BLACK STURGEON LAKE (RESTRICTED DEVELOPMENT AREA)**

Although there are no known immediate threats to water quality in the lake, the pace of development and proximity of Black Sturgeon Lake to the urban centre of the City have raised concerns as to the sustainability of the lake experience. The City of Kenora has undertaken a detailed scientific analysis of the lake system, and developed the following land use policies which will:

- Guide future development in an orderly fashion; and,
- Ensure that the future development is managed to prevent detrimental impacts to water quality, fish and wildlife and their habitat, other aspects of the natural environment and the human amenity values associated with recreation on Black Sturgeon Lake.

#### **5.3.1 Water Quality**

- a) It is recognized that the protection of water quality is of paramount importance for Black Sturgeon Lake, and it is the objective of this Plan to:
  - Maintain a high level of water quality;
  - Acknowledge that water quality is a key limiting factor to development;
  - Acknowledge that water quality is the keystone resource for the health of other resource values;
  - Recognize that development must be sensitive to the protection water quality through natural shorelines, increased setbacks, and new abatement technology;
  - Encourage shoreline stewardship; and
  - Encourage septic inspection program.
- b) The City of Kenora shall update, and monitor, the water quality of Black Sturgeon Lake by:
  - (i) the establishment of a water quality monitoring program, (ii) encouraging landowners to take part in MOE's Lake Partner program, (iii) Coordinate water quality testing with MOE on a regular basis, (iv) work with citizen groups to coordinate water clarity and bacterial testing; and, (v) report water quality monitoring results in the City website.

- c) The City of Kenora shall work cooperatively with federal and provincial environmental protection agencies to encourage the implementation of septic system inspection, and follow up compliance, for the entire lake. The City shall promote awareness of threats to water quality through education and best management practices with local and provincial cottager associations.
- d) The City may consider the implementation of bylaws prohibiting the use of fertilizers or pesticides on waterfront properties.

### **5.3.2 Permitted Uses**

- a) Industrial uses, new marinas, waterfront landings, or other public docking facilities shall not be permitted.
- b) Notwithstanding any other policy in this Official Plan, development shall be limited in the Black Sturgeon Lake (Restricted Development Area) as illustrated on Schedule "A" of this Official Plan.
- c) As lots are created, the City will monitor lot creation. Residential uses shall be permitted but not more than 142 new residential lots shall be created during the life of this Plan. Developments of more than 5 lots should be consistent with MOE's *Procedure D-5-4 Technical Guidelines for Individual On-Site Sewage Systems: Water Quality Impact Risk Assessment*.
- d) The City's Zoning By-law shall implement the Official Plan policies through appropriate zones the permitted uses and shall establish the appropriate lot sizes and densities.
- e) Notwithstanding any other policy in this Official Plan, back lot development on Black Sturgeon Lake shall generally reflect the same or less density of the foreshore development.

### **5.3.3 Fish and Wildlife Values**

- a) The City of Kenora shall update Schedule "A" of the Official Plan to ensure that fish and wildlife values reflect the most recent data available in the Ministry of Natural Resources "NOI" database. The City shall also update natural values mapping whenever new information is provided to the City.
- b) 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 values.
- c) Citizen groups shall be encouraged to participate in Provincial fish and wildlife monitoring programs.

### **5.3.4 Shoreline Naturalization, Preservation and Wetlands**

- a) The City of Kenora shall restrict shoreline disturbance for any property on Black Sturgeon Lake to a maximum of 25% of the lot frontage. This applies to, but is not limited to, all structures, removal of vegetation, pathways, decks and docks.
- b) The undeveloped islands of Black Sturgeon Lake are recognized to be an integral part of the amenity value that comprises the visual landscape. Only one lot of record shall be permitted on any island in order to preserve this unique viewscape.
- c) Limited development, compatible with wetland areas, may be permitted where the integrity of the wetland resource can be preserved and the suitability of the proposed development is confirmed by an Environmental Impact Statement (EIS) report.

### **5.3.5 Public Access**

- a) Water corridors, routes and associated portages shall be preserved, and protected from future development.
- b) The City of Kenora shall retain all road allowances leading to the lake, unless there is no possible future use, or access due to physical barriers or terrain constraints.

## **Limits to Development – Water Quality Based**

The model was run initially assuming that lots were used as cottages (“extended seasonal” use) and then again assuming all lots are occupied year round (permanent use). Water quality based limits to development were: 165 additional permanent lots or 543 additional cottage lots

**Conclusion – Substantial additional development of Black Sturgeon Lake is possible without threatening water quality. Development up to the 20 µg/L PWQO limit would allow total development of 370 permanent homes or 758 seasonal use cottages on the lake.**

***It is noted that this conclusion is based on the very conservative assumption that all septic system phosphorus will migrate to the lake. In reality, some phosphorus will be retained by soils in the tile fields and the catchment, such that the actual development capacity could be considerably higher.***

As of today, there are 142 lots (down from the 165 lots identified in the study). There have been 23 lots created by consent, over the past seven years. There are four subdivisions which have draft approval: S01/10 Coker – 13 lots and S03/11 – Lafreniere – 15 lots, Bell – 23 lots and Wright – 15 lots for a total of 66 potential lots. None of these has final approval, however it is anticipated that Coker and Bell will both receive final approval in 2013. That would release 36 new lots and reduce the number from 142 to 106 lots to be developed.

Year	Property Owner	No. of Lots
2006-2012	Various	23
2010 (Draft approval)	Coker	13
2011 (Draft approval)	Lafreniere	15
2012 (Draft approval)	Bell	23
2012 (Draft approval)	Wright	15
Total approved or in draft to date		89
Total capacity 165 lots less 89=76 lots left to be developed based on 2006 recommendation		

If all of these applications are given final approval (subdivision approval lapses after 3 years) then there would be 76 lots remaining, based on the original report/recommendation in 2008.

The Kenora Planning Advisory Committee requires that developers provide fish habitat and archeological reporting as well as the results of scans for species at risk. The Northwestern Health Unit is always consulted and comments are required to ensure that the lots are large enough to accommodate private sewage systems.

Each lot approved will be counted into the inventory of new lots created on Black Sturgeon Lake.

The lake is being developed as staff and the Kenora Planning Advisory Committee predicted. The recommendations for larger frontages and backshore lots are being implemented. Site plan control and zoning is being used to restrict development on specific lots and in order to protect natural heritage values.

The City of Kenora did accept the report and recommendations in the Black Sturgeon Lake Capacity and Management Study and has incorporated policies and provisions into the Official Plan and Zoning By-law. There was not a budget item considered for a review of the lake for 2012.

In April of 2012, Council received a letter from the President of the Black Sturgeon Property Owners Association requesting a review of the study recommendations and the Official Plan policies associated with lands surrounding Black Sturgeon Lake. As noted above, the Official Plan was reviewed in 2009/2010 and approved by both the Minister of Municipal Affairs and Housing and Council. There was significant opportunity for public consultation at that time.

There is no budget for a review of the report/recommendations. If all of the applications on file to date are given draft approval, the number of lots left from the recommended 165 would be 68. The next phase of the lake capacity and management of Black Sturgeon Lake should take place as planned. The Province should be included in a review of the capacity of Upper Black Sturgeon Lake and the neighbourhoods on Black Sturgeon encouraged to participate in water monitoring programs available.

Council received another request, in April of this year, for a complete moratorium on development on the lower part of Black Sturgeon Lake. The current Official Plan policies guide development on the lake, and the zoning by-law provisions implement those policies.

In order to ban development, the Official Plan would have to be amended. An amendment application would have to include supporting studies/evidence. The expensing of such reporting has not been budgeted.

The costs of the Black Sturgeon Lake Management and Capacity Report, adopted by Council five years ago, were to be paid through a levy associated with development. To date there has been approximately \$6300 paid against the original cost of \$ 45,557.00 + GST. \$275 per lot is charged to each developer for lots on Black Sturgeon to offset this cost. The anticipated aggregate, if all of the lots which are currently within the system are given final approval is \$18,150 (66 lots @ \$275). If the additional 76 lots were developed (per the recommendation of the original study) another \$20,900 in fees would be collected and the original invoice amount accounted for.

**Budget: N/A**

**Communication Plan/Notice By-law Requirements: Notice by agenda of Property and Planning Committee and Council, Kenora Planning Advisory Committee, Black Sturgeon Lake Property Owners Association**