

McKITRICKS

October 9, 2019

Barristers and Solicitors

SENT VIA E-MAIL

Allan G. McKitrick, Q.C., J.D.

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Ben Bath
Case Coordinator, Planner
Environment and Land Tribunals Ontario
Local Planning Appeal Tribunal
655 Bay Street, Suite 1500
Toronto, ON M5G 1E5

Dear Mr. Bath:

Re: Case Number:	PL190146
File Number:	PL190146
Municipality:	City of Kenora
By-law Number:	BL 41-2019
Property Location:	Area of 543 Lakeview Drive
Applicant(s):	TCG Lake Ventures Corp
Appellant(s):	Northshore Ridge Condominium Corporation

This letter relates to the letter from Northshore Ridge Condominium Corporation to you dated September 27, 2019.

These comments are necessitated by the separate directions which this process may be seen to be going and should not be taken as a fresh step that in any way compromises the positions taken in connection with the original Notice of Appeal, which was found to be invalid by the Tribunal.

As set out in my letter to you dated September 25, 2019, it is the Municipality's position that Regulation 219/16 does not operate so as to overrule the decision by the Tribunal that the original Notice of Appeal is invalid.

Regulation 219/16 does not confer appeal rights on persons who failed to file an Appeal within the 20-day statutory appeal period and that includes persons who filed invalid appeals, so the letter referred to above cannot operate to avoid that by purporting to be a fresh Notice of Appeal.

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In the event that, contrary to our submissions, the above letter is treated as a Notice of Appeal and the Registrar issues an acknowledgment of receipt of a Notice of Appeal so that the ten-day screening period under Rule 26.05 is seen as relevant, the Municipality would wish to make submissions that the Notice of Appeal is not valid, even if it could be characterized as a fresh one authorized by Regulation 219/19.

Submissions that would be made in that eventuality would include:

- (a) The difference in the legislation is that previously the grounds were to be based on non-conformity, in this case, with the Official Plan and the Tribunal ruling was that:

"The Tribunal has made a determination that this Notice of Appeal is not valid as it fails to provide an explanation for the appeal in accordance with the legislative requirements set out in Section 34(19.0.2) of the *Planning Act*."

Section 34 (19.0.2.) cited by the Tribunal and as it then read provided that a Notice of Appeal:

"shall explain how the By-law...fails to conform with an applicable Official Plan"

and this is where the Notice of Appeal failed.

Now, Section 34 (19.0.1.) states that, if an Appellant intends to argue that the By-law is not in conformity with the Official Plan,

"it must explain how the By-law fails to conform with" it.

The previous Notice of Appeal and the current letter are essentially the same document. Res judicata and common sense should apply.

- (b) The new letter does not explain how the By-law fails to conform with the Official Plan any more than the original one did.
- (c) The document misinterprets Section 3.15.5 of the Official Plan and does not provide any information on the impact on other specified properties.

- (d) The document relies on Section 3.13.a):v of the Official Plan which does not apply to the development authorized by the By-law. The building in question is not a dock, waterfront or marine structure as referred to in the above Section of the Official Plan.
- (e) The document misconstrues the permitted use in the By-law as Multi-Unit Residential as opposed to Resort.
- (f) The document is frivolous in that it is essentially a reproduction of the Notice of Appeal found to be invalid. It fails to meet the requirements of the *Planning Act* as it existed before September 3, 2019 and after that date.
- (g) Briefly, the document does not meet the requirements of Subsection 34(25). There is no apparent land use ground; it is frivolous; it is made for purposes of delay; and it fails to provide the explanation mentioned in subsection 34(19.01).
- (h) The Municipality would make submissions similar to its Notice of Response to Motion and letter commenting on the purported "Reply" previously filed with the Tribunal, to which we would request the Tribunal refer. A further copy if enclosed herewith.

If you would like a further copy of these documents at this time, I can provide same but, in any case, I request that copies be provided to the Member dealing with this matter.

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One of the key Guiding Principles in the Official Plan is the expansion of the role of the Municipality as a Tourist Destination.

This development is most important to the Municipality in achieving that goal and ought not be further forestalled, so we respectfully ask that the Tribunal grant the relief sought in relation to the preliminary ruling and as further detailed in this letter and in my letter dated September 25, 2019, by dismissing the appeal of the Tribunal's Decision dated May 13, 2019, and determining that the provisions of Regulation 219/16 do not allow a fresh Statement of Appeal so that this process can be brought to finality at this time.

If you require anything further from me at this point, please let me know.

Respectfully submitted.

Yours very truly,

McKITRICKS

Per:



Allan G. McKittrick, Q. C.
AGMcK:po

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