

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** May 12, 2015

**CASE NO(S):** PL140179

**PROCEEDING COMMENCED UNDER** subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellants (jointly):	Margaret Anker, Charles Selby, Nan and Dave Farwell, Don and Pat Ruddle, Barbara and Robert Falby
Applicant:	Harry Castelli
Subject:	Consent
Property Address/Description:	1092 South Clear Lake Road
Municipality:	Town of Bracebridge
Municipal File No.:	B/15/12/BR
OMB Case No.:	PL140179
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**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellants (jointly):	Margaret Anker, Charles Selby, Nan and Dave Farwell, Don and Pat Ruddle, Barbara and Robert Falby
Subject:	By-law No. 2014-072
Municipality:	Town of Bracebridge
OMB Case No.:	PL140179
OMB File No.:	PL141312

**Heard:** April 22, 2015 in Bracebridge, Ontario

**APPEARANCES:**

**Parties**

Harry Castelli

Town of Bracebridge

**Counsel**

Nicholas Roche

Harold Elston

Charles Victor Selby  
Barbara Falby  
Dave Farwell

Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. HEFFERON ON APRIL 22, 2015 AND ORDER OF THE BOARD**

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**BACKGROUND**

[1] On October 14, 2014, Committee of Adjustment for Consents (“Committee”) for the Town of Bracebridge (“Town”) granted provisional consent to Harry Castelli to sever a 0.6 hectare (“ha”) portion of his total land holding comprising approximately 1.54 ha on Clear Lake (“subject lands”). Provisional consent was granted subject to Mr. Castelli’s applying for and being granted an amendment to the Town’s comprehensive Zoning By-law No. 2006-120, as amended (“By-law”).

**MATTER BEFORE THE BOARD**

[2] Victor Selby, Barbara Falby and Dave Farwell (“Appellants”) who own and seasonally occupy residential dwellings on adjacent properties appealed both the consent and the zoning by-law amendment decisions to the Ontario Municipal Board (“Board”).

[3] Zoning By-law No. 2014-072 amends the By-law and rezones the subject lands from Shoreline Residential Type 1 (“SR1”) to Shoreline Residential Type 1 Special 63 (“SR1-63”).

[4] Zoning By-law No. 2014-072 amends the By-law and provides that all new structures on the requested severed lands, except shoreline structures, will be set back a minimum 30 metres (“m”) from the high water mark on Clear Lake. The By-law requires a minimum 20 m setback.

## **CORE ISSUE**

[5] The parties agreed that the core issue in these proceedings was the protection of the water quality in both Clear Lake and the nearby Little Leech Lake. Clear Lake is classified by the Ministry of Natural Resources and Forestry (“MNR”) as a coldwater, “lake trout lake at capacity for development”. The major threat is damage to the ecology of the lake if phosphorus from the proposed development were to leach from the septic system into the lake. MNR requires development to be a minimum 300 m from the shoreline of a lake classified as “at capacity”.

## **THE APPELLANTS’ POSITION**

[6] The Appellants had a number of concerns both with the ecology of the area and with the land use planning requirements:

- They contended that phosphorus would inevitably leach from the proposed septic system into Clear Lake causing further damage to the lake’s ecology.
- They maintained that diverting run off from the septic system to nearby Little Leech Lake as proposed would not prevent leachate from getting into Clear Lake. It would in any event damage Little Leech Lake, which they contended is also “at capacity”.
- They contended that the proposed development would result in removal of a portion of the mature forest on the requested severed lot thereby exacerbating the damage caused by climate change and natural predators on the beech and maple trees in the area.
- They contended that Clear Lake is considered to be a “narrow water body” subject to boat congestion. Watercraft from another residential dwelling on the lake would result in further boat traffic congestion.

- They contended that s. 71 of the District of Muskoka Official Plan (“DMOP”) requires a minimum of 120 m frontage for lots on a “narrow water body”.
- Finally, they contended that the frontage of the proposed severed lot does not satisfy the minimum standard in the By-law.

### **MR. CASTELLI’S POSITION**

[7] Mr. Castelli contended that the threat of damage to the lake ecosystem from phosphorus leachate would be greatly reduced and quite likely eliminated using the latest septic system technology.

[8] He also contended that whatever trees the contractor is obliged to remove to construct the proposed new residential dwelling will be replaced as per the conditions of severance imposed by the Committee and that at least 75% of the vegetative buffer along the water’s edge will be protected as per the policy in the Town of Bracebridge Official Plan (“TOP”).

[9] Finally, he pointed that only three small inlets on the opposite side of Clear Lake from the subject lands (as shown in Exhibit 2, Tab 17, Appendix A of the TOP) are considered to be “narrow water bodies” and that this point is therefore moot.

### **EVIDENCE AND FINDINGS**

[10] The Board qualified Dr. Beverly Wicks, who was retained by Mr. Castelli, to provide opinion evidence on aquatic ecology.

[11] Dr. Wicks explained that her six recommendations, as listed in her May 2013 report entitled “Lake Capacity Assessment of Clear Lake and Little Leech Lake” (prepared by RiverStone Environmental Solutions Inc.) were adopted *in toto* by the Committee when it granted provisional consent to Mr. Castelli for the requested

severance. The RiverStone report was entered to the evidence as Exhibit 2, Tab 11. The recommendations are found on pages 7 and 8 of the report.

[12] In the report she recommended that there be no development on the requested severed lot closer than 30 m of the shoreline (except for so-called shoreline development such as a dock) and she also recommended that both a stormwater management report and a “construction mitigation plan” be prepared to deal with stormwater runoff into both of the lakes.

[13] She also recommended that by locating the septic bed on the westward side of the ridge of land identified in Figure 3 of the report (Exhibit 2, Tab 11) 100% of any water runoff from the septic bed is to be directed to Little Leech Lake. And because Little Leech Lake is located at least 100 m from the outlet of the septic treatment tiles, she testified that there is little or no possibility that any of the runoff will even reach the lake. The Appellants disputed this opinion, but they had no fact-based evidence to support their claims.

[14] Although Mr. Farwell’s property has shoreline frontage on both Clear Lake and Little Leech Lake, neither he nor Dr. Wicks were able to provide fact-based information on the status or classification of Little Leech Lake. Dr. Wicks explained that this is in large part because MNRF does not provide a classification for any lakes with a surface area of less than 25 ha. The Board was told that Little Leech Lake is less than 8 ha in area.

[15] The Board accepts Dr. Wicks’ expert evidence and finds that the RiverStone proposal to direct any runoff from the outlet of the septic system to Little Leech Lake provides adequate protection, as required, to the ecology of Clear Lake.

[16] The Board qualified Bev Clark, who was retained by the Town, to provide opinion evidence on limnology (fresh water lake ecology). Mr. Clark advised that he had originally been retained by the Town to peer review the RiverStone report referenced above. He explained he has had several decades experience both as a public servant

and as a consultant dealing with protection of the lakes in this area. He testified that with the modern wastewater treatment technology proposed by Mr. Castelli, there is absolutely no danger that the harmful phosphorus leachate will get into Clear Lake. He advised that in any event, there is a considerable body of scientific evidence that phosphorus escaping from the septic system will not travel more than a few metres from the mouth of the outlet of the system before bonding with the soil and being locked therein.

[17] Although the Appellants questioned Mr. Clark on his opinion evidence respecting the protection to the lake provided by the proposed technology, his evidence was not contradicted. The Board therefore accepts Mr. Clark's evidence and finds that the proposed septic system will adequately protect Clear Lake (and Little Leech Lake) from phosphorus leachate.

[18] The Board qualified Robert List, a registered professional planner retained by Mr. Castelli, to provide opinion evidence on land use planning. Mr. List testified in great detail as to exactly how the proposed development satisfied Provincial law as set down in s. 51(24) and s. 2.0 of the *Planning Act*. Mr. List also testified that the proposal was consistent with Provincial policy as provided in the 2014 Provincial Policy Statement and took the Board to the key policies that apply to the requested consent and zoning by-law amendment.

[19] Mr. List then led the Board through a very detailed analysis of both district and local policy as provided in the DMOP and the TOP to demonstrate that the proposal was in conformity with both local and district land use planning policy.

[20] He explained in some detail how and why the proposed severed lot met the minimum frontage standard. He advised that the stretch of South Clear Lake Road that starts where the municipal portion of the road ends and continues around the lake is considered a private road. That is, it is both privately owned and maintained. This stretch of road passes in front of the subject lands as well as in front of the Appellants' lands. If there is no public road, the Town's Municipal Servicing By-law No. 82-34

provides that the frontage should be measured along the water's edge and that a minimum shoreline frontage of 114 m is required.

[21] However, a 1971 survey (Plan 35R-2239) entered to the evidence as Exhibit 2, Tab 5, shows that there is also an un-opened stretch of public shoreline road between the lake and the subject lands. Mr. List testified that the By-law provides that where a lot fronts on both a public and a private road, the frontage is measured along the public road. He averred that the unopened shoreline road is classified as a public road. Both are shown on the survey. The private road is shown as Part 6 on the survey.

[22] Although Mr. Selby and Ms. Falby, in particular, questioned Mr. List on several of his opinions asking for more detailed explanations, they did not offer any fact-based contradictory evidence.

[23] The Board also qualified Matthew Holmes, who is Manager of Planning Services, (Planning and Development Department) for the Town, to provide opinion evidence on land use planning. Mr. Holmes adopted the evidence of Mr. List and testified that he fully supported Mr. Holmes' land use planning opinions on this matter.

[24] On the evidence of these four qualified experts, the Board finds that the proposed development has adequate regard to both Provincial law and land use policy and represents good planning. While both land use planners testified that the proposal represents good planning, Mr. List provided extensive testimony on the land use planning merits of the proposal before rendering his judgment. The Board concurred with these professional opinions.

## **CONCLUSION**

[25] The Board places the highest priority on ensuring that rural development of the type proposed will not harm the ecology of our lakes, particularly the sensitive northern lakes. If this Panel were to have had the slightest doubt whatsoever that the proposed septic system or indeed the proposed alteration of the land to accommodate the

proposed development would result in serious or in any way irreversible harm to the local ecology, the application would have been refused. This is not to suggest that people using the land and the water cannot cause harm to the air, land and water with careless use of motorized equipment as well as while traveling to and from the site. It is perhaps a truism but nevertheless bears repeating that every responsible citizen today knows (or should know) that they must exercise extreme care to ensure that our environment is not irreparably harmed. Seasonal residents and visitors to the ecologically sensitive Muskoka lakes region have a special responsibility in this respect.

## **ORDER**

[26] The Board orders that the appeal of the consent is dismissed and provisional consent is given subject to the conditions set down in the January 28, 2014 decision of the Committee. These conditions were entered to the evidence as Exhibit 2, Tab 28.

[27] The Board further orders that the appeal of Zoning By-law No. 2014-072 is dismissed and this by-law (as entered to the evidence as Exhibit 2, Tab 38) is approved.

*“C. Hefferon”*

C. HEFFERON  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

### **Ontario Municipal Board**

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