

## LETTER OF OBJECTION TO THE TOWNSHIP OF MUSKOKA



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Thanks to all of the Leonard Lake property owners that have sent letters to the Township of Muskoka Lakes opposing applications to sever and rezone lots 18 and 19, Concession 10 on the North Shore. The Committee of Adjustment hearing is December 14th and the Council Meeting December 16th. If you have not submitted a letter of opposition and would like to do so prior to the meetings, information has been provided below for that purpose. Feel free to craft your own letter or cut and paste the sample below into an email. If you need more information before sending a letter, drop us a note at [leonardlakemuskoka@gmail.com](mailto:leonardlakemuskoka@gmail.com) and we'll get back to you quickly.

Send the email to [dpink@muskokalakes.ca](mailto:dpink@muskokalakes.ca) (David Pink, Director of Planning, TML) and copy [bsharpe@muskokalakes.ca](mailto:bsharpe@muskokalakes.ca) (Bryce Sharpe, Planner, TML) and [aglazier@muskokalakes.ca](mailto:aglazier@muskokalakes.ca). Finally, please a copy LLSA at [leonardlakemuskoka@gmail.com](mailto:leonardlakemuskoka@gmail.com). The LLSA representatives attending the hearing and public meeting will take copies of all Leonard Lake stakeholder correspondence as a cohesive demonstration of objection.

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We (name) \_\_\_\_\_ are Leonard Lake property owners and oppose the Noonan McIntosh

applications for the severance and rezoning of part of lots 18 and 19, Concession 10 for the following reasons:

According to monitoring by the Dorset Environment Science Centre, Leonard Lake is showing negative signs of change with reduced oxygen levels and water clarity, and increased dissolved organic carbon and salt content. Small and relatively shallow, Leonard Lake needs a steady outflow to avoid stagnation, however, the lake is now stagnant for half of the year.

There is evident deterioration, and as a result, there is agreement with the District of Muskoka on the importance of an expanded study. Adding the stressors of North Shore multiple lot creation and development to so many unknowns regarding the health of Leonard Lake cannot be supported.

Waterfront lots on Leonard Lake are zoned WR4 under the Official Plan. There is no justification for the proposed zoning change other than to create an "as of right" ability to the further severance of lots with frontage over 400 feet. In addition, if granted, the rezoning could provide a precedent for other water-front rezoning requests on Leonard Lake with potential negative consequences.

It is clear that in assessing the lake's capacity to absorb the stress of development of several additional lots, the Township should give meaning to its designation of Leonard Lake as a "lake at capacity" and to the zoning which the Council saw fit to apply to properties around the lake.

Stress from development includes not only additional phosphorus sources from construction and property use, but also the increase in boat traffic associated with development, potential increase in contaminants such as road salt, and the loss of shoreline availability for fish and wildlife.

Sincerely,

(name, road and 911 lot number)

LLSA has sent the following letter of objection to the Township of Muskoka regarding the North Shore applications

## LEONARD LAKE STAKEHOLDERS ASSOCIATION

December 9, 2016

Township of Muskoka Lakes

Attention: Ms. Andrea Glazier, Secretary-Treasurer Committee of Adjustment

Dear Ms. Glazier:

RE: Objection to Proposed Severance Applications and Concurrent Rezoning Application (Noonan / McIntosh) Part of Lots 18 and 19, Concession 10, Parts 1-3, Plan 35R-10041 (in the former Township of Monck) Leonard Lake

Leonard Lake Stakeholders Association (LLSA) is a non-share capital corporation constituted under the *Corporations Act* (Ontario) that represents the interests of its stakeholders; 60% of the property owners on Leonard Lake are members of LLSA.

LLSA has been actively engaged in stewardship of Leonard Lake for more than a decade. We have:

- conducted a shoreline survey
- built and maintained loon nests on the Lake for several years in an attempt to re-introduce loons
- participated in the MLA's Water Quality Initiative
- conducted Lake benthic counts over a number of years
- conducted, and reported on, invasive species testing on the Lake
- participated in the Lake System Health Monitoring Program
- participated in the Love Your Lake program
- had members attend several different annual watershed forums
- developed and finalized a lake plan for the Lake, and
- provided input at meetings regarding proposed Official Plan Amendment 45

LLSA is currently working on a partnership with the District of Muskoka and the MOECC that would result in the collection of additional information and identification of mitigating actions regarding Leonard Lake and its health. Our stakeholders care deeply about their Lake, its health and the quality of its water.

This letter has been prepared, in part, with the assistance of Stephen Fahner, B.A.(Hon.), A.M.C.T., C.M.M.III, M.C.I.P., R.P.P., Northern Vision Planning Ltd.

LLSA submits that the proposed severance applications and concurrent rezoning application should be declined. No new lot creation should be allowed on Leonard Lake until sufficient study has been completed of the deterioration in the health and water quality of Leonard Lake and its capacity to absorb development on any new lots. LLSA also submits that the applications should be declined for failure to comply with the Township Official Plan requirements, failure to comply with the Provincial Policy Statements, and because the proposed rezoning is inappropriate.

### **LEONARD LAKE HEALTH AND WATER QUALITY CONCERNS**

Leonard Lake is a small lake. It only covers 195 hectares. Its mean depth is only 6.8 metres and its

maximum depth, approximately 18 metres. Apart from the subject property and one other lot adjacent to it, Leonard Lake has few undeveloped waterfront properties. In many areas, the waterfront is quite densely developed on lots with very small frontages.

A very important characteristic of Leonard Lake is the relatively low flow rate at which its water is refreshed or exchanged in the Lake – its “base flow”. Leonard Lake is a headwater lake, located at a high elevation relative to the surrounding area. Apart from small seasonal streams no water bodies flow into Leonard Lake, and the watershed/drainage area feeding into Leonard Lake is small. The principal sources of water for Leonard Lake are aquifer springs and precipitation.

A single stream drains out of Leonard Lake. Water only flows out during the spring months and, if the area receives moderate or heavy rains in the fall, for a few weeks in November and December until freeze-up. However, until the 1970s the outflow never stopped. Since then, the flow has gradually reduced. For the past decade, the stream has stopped flowing for at least 4 months during the summer. This year, 2016, the flow stopped on May 15 and resumed December 1. There are several possible causes for the decreased outflow. Two are obviously at play here: increased drawing of water from the lake from more full time residents, and increased evaporation due to higher temperatures (climate change). Another potential cause would be reduced flow from the aquifer springs but we have no evidence of that.

As a result of all of this, Leonard Lake has a low water exchange rate: its water is “refreshed” at a very low annual rate.

The issue arising from this low flow or refreshment level, coupled with significant evaporation over the summer months relative to water volume (because of the shallowness of the lake) and water use by residences and cottages, is the relative stagnation of the lake. As a result, Leonard Lake is much more sensitive than neighbouring, higher flow lakes to algae and other biota, even if phosphorus levels remain unchanged. In addition, aquifer spring water has low oxygen content and the low oxygen content exacerbates the risk of fish and aquatic die-off if nutrient levels in the lake rise, as increasing algae and other plant growth consume the limited available oxygen.

Other indicators of lake health are also worrisome. The Dorset Environmental Science Centre reported it has been intensively monitoring Leonard Lake since 1979 as part of a long term study. Their recent report (April 2015, “Leonard Lake Water Quality”, Ron Ingram and Andrew Paterson, Ontario Ministry of the Environment and Climate Change) shows that water quality and lake health is changing:

- In addition to measured indicia of decline in lake health and water quality, long-term Leonard Lake residents and cottagers have observed many indicia of decline in the Lake’s health and water quality over the last few decades. For example:
  - There has been a noticeable increase in mossy plant growth on rocks at the water’s edge (periphyton).
  - Loons have ceased to nest at Leonard Lake over the past several years, after having been there for

decades. As the Ontario Ministry of Natural Resources has noted, "Loons are one of the wildlife species that could be most susceptible to shoreline development and human use of lakes."

- There are significantly fewer tadpoles and frogs. Crustaceans are significantly reduced in population, if not totally gone from the Lake.
- Benthic counts are poor.

And as we all know, Leonard Lake is over threshold for phosphorous.

### **THE SUBJECT PROPERTY**

This property has significant frontage on Leonard Lake and a large acreage. It is mostly pristine wood and wilderness, and provides a significant year round habitat for deer, moose, fish and other wildlife.

### **WHY THE COMMITTEE OF ADJUSTMENT AND THE TOWNSHIP SHOULD DECLINE THESE APPLICATIONS**

In considering these applications, the Committee of Adjustments and the Township must evaluate and balance the short term and long term interests of the applicant developers, the Leonard Lake stakeholder community, and the Township itself.

The applicant developers have a short term financial interest in creating new lots.

The Leonard Lake stakeholder community is interested in the long term health and viability of the lake. Stakeholders all have significant personal financial investments in their Leonard Lake cottages / residences and all have a personal commitment to provide protection and stewardship to the lake and its wildlife.

Failure to protect lake health and water quality would have a disastrous effect on these investments and values.

The Township has a short term financial interest in allowing new development, for the fees, property taxes and building activity this would generate. But the Township's mid and long term interests are not served when development adversely affects lake health and water quality. This balance is noted in the Vision statement of the Official Plan which calls for maintaining a strong sense of community while embracing economic enhancement and growth opportunities that respect the environment and maintain a high level of protection for our lakes.

Leonard Lake is identified in the Township's Official Plan / Zoning By-law as a "special lake", a "lake at capacity", as well as a lake that is over the threshold for phosphorus. The new lots proposed, if approved, will have a significant impact on the health of Leonard Lake and the quality of its water. The applications

should be declined until sufficient study of the conditions in Leonard Lake has been completed and present deteriorating water quality trends addressed, so that a “high level of protection” can be maintained. The LLSA is working with the District to move forward with study of this point and the capacity of Leonard Lake to absorb further lot creation. We are convinced that the proposed severances, if approved, will have a serious detrimental impact on the health of Leonard Lake and the quality of its water. If the severances are approved there is no doubt that more lots will create more stress on the lake and perhaps even a tipping point causing irremediable deterioration. If further study demonstrates that new lots can be sustained, the applicant developers can always re-apply.

### **FAILURE TO COMPLY WITH THE TOWNSHIP OFFICIAL PLAN REQUIREMENTS**

The severance and rezoning applications do not comply with Sections B 6.24, B 6.25, B 5.19 and B 5.24 , of the Township Official Plan and are not otherwise in conformity with the Township’s Official Plan.

The severance and rezoning applications may contravene section B 7.4 of the Township Official Plan. This cannot be evaluated without the Environmental Impact Study required by section B 5.19, which has not been provided.

The rezoning applications are not in conformity with the intent of the Township’s Comprehensive Zoning Bylaw 2014-14.

The health of Leonard Lake does not meet the minimum water quality standards set out in Section 2.2(g) of the Provincial Policy Statement. These severances should not be granted unless and until the health of Leonard Lake is demonstrated to be sufficient to absorb the stressors arising from a development of this size and nature.

More specifically, our objection is based on the following:

#### **Township of Muskoka Lakes Official Plan**

##### (i) Report Requirements

###### A. Water Quality Impact Assessment

Section B 6.24 of the Township Official Plan provides that there is to be no lot creation on waterbodies over threshold unless connected to municipal water and sewer services. Notwithstanding the prohibition in Section B 6.24, Section B 6.25 of the Township Official Plan describes certain instances where lot creation may be considered on moderate sensitivity waterbodies such as Leonard Lake, but those circumstances detailed in Section B 6.25 have not been satisfied by these applications.

The Applicants did not submit a Water Quality Impact Assessment for the property with the applications. The policies in Section B 6.25 provide that any such severance applications will only be considered if they include a Water Quality Impact Assessment. This is a mandatory requirement of the Official Plan. The District is considering an amendment to the Official Plan that might remove this requirement, but this is only a proposed change that may or may not be enacted – and, if it is enacted, would require the Township's Official Plan to be amended, which in turn requires public consultation. A proposed amendment does not change the Official Plan unless and until it comes into force. To act as if the proposed amendment were presently in effect would be contrary to law.

The Water Quality Impact Assessment includes a requirement of a Phase 1: Site Condition Analysis to be completed for the property prior to permitting any lot creation. This Phase 1 site condition analysis must identify such features as wetlands, off-site streams and other surface water.

There are a number of other Phase 1 site condition analysis requirements to be completed prior to granting any severance for lot creation, including, for lakes such as Leonard Lake, an analysis of soil chemistry (laboratory analyses of phosphorus absorption capability, mineral content and particle size) for the native soil mantle. This analysis also provides mapping of the location and characteristics of shoreline and upland vegetation communities and provides an explanation of the site characteristics that will provide natural buffer protection for Leonard Lake from overland and subsurface flow of sediment, nutrient and other potential pollutants, among other requirements.

The law requires that a Water Quality Impact Assessment be submitted with the applications. The failure to provide the Water Quality Impact Assessment means that the applications are incomplete and the requested severances and rezonings should be refused.

B. Environmental Impact Study

The Applicants did not submit an Environmental Impact Study for the property with the applications. Section B 5.19 of the Township Official Plan requires that the Applicants submit an Environmental Impact Study for all Major Developments in waterfront areas. Section G (Definitions) of the Official Plan defines a "major development" as being one which involves 3 or more lots. This is a mandatory requirement of the Official Plan. In this application, dealing with the creation of a total of new 5 lots on landholdings of over 150 acres, it is inconceivable that this could just be ignored.

This property and its riparian zone provide significant year-round habitat for deer, moose, fish and other wildlife. Given the size and character of the property, and the widely observed use of the property by wildlife, the Environmental Impact Study would have to include identification of significant habitat of Species at Risk and, if applicable, how that would be protected if lot creation and development were to proceed; and review of significant wildlife, and fish, reptile, bird and amphibian habitat; as well as all other

factors relevant to the Lake.

The law requires that an Environmental Impact Study be submitted with the applications. The failure to submit an Environmental Impact Study means that these applications are incomplete and the requested severances and rezonings should be refused.

C. Planning Report

With a development proposal of this size, it would have been appropriate and in alignment with usual good practices for the Applicants to have provided a Planning Report for the property prepared by their planning consultant. The Applicants failed to submit a Planning Report.

In summary, the law requires that each of a Water Quality Impact Assessment and an Environmental Impact Study be submitted with the applications, and good practice would have dictated the submission of a Planning Report. None of the foregoing reports has been provided. The applications are incomplete and the requested severances should be refused.

ii) Required Official Plan Amendment

Under Section B 6.25(a), lot creation on an Over Threshold Lake requires the submission of an Amendment to the Township's Official Plan. No Official Plan Amendment has been proposed with respect to the applications. This is a mandatory requirement of the Township's Official Plan. The applications are incomplete and the requested severances should be refused.

iii) Access

Section B 5.24 of the Township Official Plan requires that for the creation of 5 or more lots, such lots shall be accessed by a publicly owned and year round publicly maintained road. The property is located on Glen Gordon Road. The Township classifies Glen Gordon Road as a Seasonal Road. That is, it is seasonally maintained from Butter & Egg Road to the top of the paved hill past the subject property. No snow ploughing is done by the Township on Glen Gordon Road. Section B 5.24(b) provides that creation of 5 or more lots may be considered on "an existing private road with the ability to handle additional traffic". There is a cottage laneway from the entrance onto Glen Gordon Road to the existing structure on the property. There is no existing private road on the property. The requirements of this part of Section B 5.24(b) are not met. Section B 5.24(c) refers to the alternative of "a new private road serving a limited number of lots where the proposal is infilling or representative of the last physical development feasible, where legal right-of-way or access can be determined". These applications do not deal with a case of "infilling" as there is no development on the two proposed lots to the west of the retained lot set out on the

severance sketch submitted as part of the applications. In addition, one of the said lots to the west of the retained lot has new lot potential, in other words, it does not represent the last physical development that could be made on the property. As a result, none of the conditions set out in Section 5.24(b) or (c) have been met in these applications and the proposed development would not be accessed by a publicly owned and year round publicly maintained road. For these reasons the requirements of Section B 5.24 cannot be met and the applications should be refused.

iii) Contravention of Official Plan Section B .4

Section B 7.4 of the Township Official Plan provides that development and site alteration shall not be permitted in areas with significant wildlife habitat, including deer wintering areas, unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions. This cannot be evaluated without the Environmental Impact Study required by section B 5.19 as noted above, which has not been provided by the Applicants. Accordingly, the severance and rezoning applications may set the stage for a contravention of section B 7.4 of the Township Official Plan, and should be rejected.

**PROPOSED ZONING BYLAW AMENDMENTS SHOULD BE REJECTED**

Application for a Change in Zoning from WR4 to WR1

The proposed rezoning to Waterfront Residential (WR1) has not been supported by appropriate background information. The proposed rezoning is not in conformity with the Township's Official Plan. ALL waterfront lots on Leonard Lake are zoned WR4 (Over Threshold). There is absolutely no justification for the proposed zoning change to WR1, and such zoning would create an "as of right" ability to further sever the two lots with frontages over 400 feet. In addition, if granted, the rezoning could provide a precedent for other waterfront rezoning requests on Leonard Lake with potential very negative consequences.

The Waterfront Residential (WR1) zoning is not appropriate for the retained and proposed new lots on this property because such zoning would permit the severance of two additional lots as of right and given the potential for such two additional lots, the development, in effect, is for up to 7 new lots. The development would then come within the definition of, and require, a Plan of Subdivision. For a Plan of Subdivision, the resulting lots would have to be serviced by a year round publicly maintained road (none exists), an application would have to be submitted to the District of Muskoka with environmental reporting as required by the District and a survey of the property in the form required by the District.

In addition, the WR1 zoning would not subject either the retained lot or the new lots to Site Plan Control.

This property should continue to be zoned WR4, whether severed or not, as are all other lots on the lake, to identify the Over Threshold aspect of Leonard Lake for public notice purposes and not enable

severances or additional severances as of right. There is no justification for rezoning to WR1 and this would contravene good planning principles and practices.

Failure to Apply for a Change in Zoning of Backlots to Open Space (OS2).

The proposed rezoning also does not conform to Section B 10.11 of the Township's Official Plan which permits only a single tier of development around the Township lakes. To satisfy this policy, the area behind the remaining and five new lots must be zoned Open Space (OS2). The Applicants must apply for rezoning of such backlot area as Open Space (OS2), and they have failed to do so.

**FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE PROVINCIAL POLICY STATEMENT**

The Provincial Policy Statement was enacted under the *Planning Act* (Ontario). The Provincial Policy Statement is paramount legislation, that is, in respect of the exercise of any authority that affects a planning matter, Section 3 of the *Planning Act* requires that decisions affecting planning matters "shall be consistent with" the Provincial Policy Statement.

These applications fail to demonstrate compliance of the proposed development with the Provincial Policy Statement.

Under Section 1.6.6.7 of the Provincial Policy Statement, storm water management must be accounted for to ensure that storm water will have a low impact. Again, the Applicants have not submitted the background reports that would address this issue.

Under Section 2.1.7 of the Provincial Policy Statement, development and site alteration is not permitted in habitat of endangered and threatened species except in accordance with provincial and federal requirements. If there is habitat for such species on site, a permit may be required under the Endangered Species Act. As noted above, the Applicants have not submitted an Environmental Impact Report which may have disclosed the presence of endangered and threatened species.

Section 2.2.1(g) of the PPS requires the Township, through its Planning Department, to protect, improve or restore the quality and quantity of water by ensuring consideration of environmental lake capacity, where applicable. Under the PPS, the phrase "quality and quantity of water" shall be "... measured by indicators associated with hydrologic function such as minimum base flow, depth to water table, aquifer pressure, oxygen levels, suspended solids, temperature, bacteria, nutrients and hazardous contaminants, and hydrologic regime". The Leonard Lake measured lake health parameters summarized in this letter and in other submissions relating to the applications demonstrate that the capacity of Leonard Lake to

absorb additional stressors will put its water quality in jeopardy and the minimum base flow of water out of Leonard Lake will not be sufficient to reverse the trend toward lake stagnation described earlier in this letter.

Section 4.7 of the PPS provides that "... the official plan is the most important vehicle for implementation of this Provincial Policy Statement. Comprehensive, integrated and long-term planning is best achieved through official plans. ... The policies of this Provincial Policy Statement continue to apply after adoption and approval of an official plan."

Section 4.9 of the PPS provides that the policies of this Provincial Policy Statement represent minimum standards for preservation of water quality and volume in lakes. These severance applications should be dismissed or stayed on the basis that the Applicants have failed to provide information sufficient to demonstrate that the minimum standards of the PPS, specifically those standards described above, minimum base flow, depth to water table, oxygen levels, suspended solids, nutrients and hazardous contaminants. The measured Leonard Lake indicia demonstrate a decline in the Lake's health and water quality. As noted above, in their own submissions to these applications, long-term Leonard Lake residents and cottagers have observed many indicia of decline in Leonard Lake's lake health and water quality over the last few decades. The severance applications should be dismissed on the basis that the Applicants have failed to provide information sufficient to satisfy the Township that this proposal meets the minimum standards of the PPS.

## **SUMMARY**

In summary, the Leonard Lake Stakeholders Association is opposed to the applications. As proposed (including the potential for additional lots), these applications do not comply with the Township's Official Plan or the intent of the Zoning Bylaw. They are not consistent with the Provincial Policy Statement. There is a complete lack of information needed to ensure that the proposed development will not be detrimental to the health of the Leonard Lake. Our concern is over-development of Leonard Lake, beyond its capacity, and the other stressors that would be introduced with this proposed development.

If you have any questions regarding the above, please do not hesitate to contact me.

Sincerely,

Mark Scarrow  
Director, Leonard Lake Stakeholders Association

c.c Cheryl Mortimer, Clerk

David Pink, Director of Planning

Steve Fawner, Northern Vision Planning

Samantha Hastings, District Municipality of Muskoka (DMM) Commissioner of Planning

Summer Valentine, District Municipality of Muskoka Director of Planning

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If you enjoy this electronic newsletter and are not currently a member of the Leonard Lake Stakeholders Association please consider joining the association or renewing your membership now. Join or renew now at [www.leonardlake.net](http://www.leonardlake.net) or mail a \$50. cheque to: Bev Leabeter, 1128 Leonard Lake Road 2, Bracebridge, ON P1L 1W8.

***Membership matters - it allows the association to speak with authority on behalf of Leonard Lake***



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