

Elisha Milne

Subject: FW: Wilder Lake Subdivision
Attachments: Letter Wilder Info.docx; Survey1957.pdf

From: [REDACTED]
Sent: July 19, 2021 9:54 AM
To: Clinton Stredwick <cstredwick@southgate.ca>; 'Randy Scherzer' <Randy.Scherzer@grey.ca>
Subject: Wilder Lake Subdivision

Good morning Clinton And Randy,

Once again thank you for taking 90 minutes out of your busy schedules last week to speak to us about the issues on Wilder Lake and the proposed subdivision. We've taken a few days to gather our thoughts. As we discussed there is much information to send your way that may help you formulate how the Zoning changes will proceed. We will send you several emails covering some of what we discussed. The first one is some background (see attached) on what has transpired over the last 26 months with the dock at Homestead. It was composed with the availability of the information readily at hand and with personal discussions with the developer. Also attached is a 1957 survey of the lake which includes the shoreline of what is now the golf course property. In the attached letter there is reference to the 1957 survey.

At the end is the inclusion of the information of the Glaspell vs. Ontario 2015 ruling which gives the Township jurisdiction over things like docks along the lake shore. This is an important piece for discussion and we will forward you other information on this subject in another email. Sufficed to say that it's unfortunate this ruling was not known by the Township prior to May of 2019 when the dock renovations began. Perhaps much of this could have been avoided. But regardless, the developer should have done a survey and understood who the owner of the lakebed was and followed the proper procedures and protocols.

It can be acknowledged that the developer has "checked off all the boxes" to meet the requirements of the Application. However, he has not instilled a confidence to the public that he will follow all of the conditions and recommendations. The issues with the dock construction, dock lighting, the timing of the clubhouse construction and new lighting, has shown his propensity to do things exactly as he wants, when he wants. His actions set a very bad example to the public, and are a concern moving forward with the residential-commercial mix of this subdivision.

Respectfully Tom & Heather Arnott

Background Info: Wilder Lake and Renovations of the wharf at Homestead Golf & Winter Resort

Wilder Lake: Southern Grey County in the municipality of Southgate. 1.0km by 250m, about 35 hectares (87 acres). A kettle lake formed 10,000 ago when the last glaciers retreated from this area. It has 7 year-round residents and 8 seasonal. There are 21 lots on the lake excluding the golf course and the large parcel on the south and southeastern side of the lake designated 'deferred'. Homestead Golf and Winter Resort is 121 acres in size and owns 575m of Wilder Lake shoreline and approximately 700m of Camp Creek. Wilder Lake flows into Camp Creek and eventually into the Saugeen River. Camp Creek is an outstanding cold-water ecosystem supporting healthy populations of Brook and Brown trout. Only about 18 hectares of the lake, about half, is considered 'boatable for motorized vessels', as measured 30m from shore and water greater than 1.5m in depth.

Homestead was purchased by Randharr Investments Inc of Mt Forest in or around 2018. Owned by Randy Bye who also owns Bye Construction of Mt Forest which was started by his father in 1954. Soon after the purchase he posted a billboard on the golf course advertisement a 25 lot, residential development for the golf course. No official application had been submitted to local or county officials at that time but would be in January 2020. Mr. Bye has a brother-in-law who is the Deputy Major of the Township of Southgate.

Part of Homestead shoreline on Wilder Lake includes an old wooden wharf (approx. 20mx20m), calling it a dock doesn't reflect its original use. Built in 1905 to off load dredged marl from the lake and transported by rail to the National Cement factory in Durham, Ont. where it was made into cement. This is a huge structure. For comparison: half an NHL hockey rink is 31x26m, a hospital helicopter pad is 25x25m, a baseball diamond is 28x28m, 2 tennis courts are 24x22m.

In May of 2019 large cranes and construction equipment appeared on the wharf. A permit (Permit 19-099) had been issued by the Saugeen Valley Conservation Authority (SVCA) to replace the wooden structures by surrounding it with steel piling removing some of the old dock and backfilling with gravel. The permit indicated it was for 'standard' work (other options were major or minor work). **The reconstruction of the 'new' wharf included an extension of approximately 1.5 feet beyond the footprint of the 'old' wharf.** The old wharf never had any type of lighting on it. Two **Special Conditions (4 & 5)** required the owner to contact the property owner and the owner was required to ensure all other agency and Municipal approvals were in place. Since the structure was greater than 15 sq. meters two permits from the MNR&F were required. A work permit and an occupation permit. **In late 2020 the MNRF stated there was 'no tenure or authorization from the MNRF'**. Whether a building permit was required or issued from the Township is not known.

Calls to SVCA confirmed the permit. Calls to Ministry of Natural Resources with concerns that the work was taking place during the bass spawning season and destruction of fish habitat (the old dock itself was outstanding structure for all ages of large mouth bass) were not answered immediately. Several days later they replied it was out of their jurisdiction because lake bottom was "privately owned". Here was their reply:

"From the data base that we review for determining land ownership, it is indicating that the lake bottom is privately owned for Wilder Lake..... We don't provide personal information of property owners to

other members of the public. Without the property ownership being Crown Lands the Public Lands Act does not apply.”

Search of documents at Ontario Land Registry Office (Owen Sound) showed the documentation for Wilder Lake Pin #37293 0118 was not specific to the lake but a nearby acreage privately owned by the Pidgeon family and that property had the small White Lake on it.

From a local lakeside property owner, we obtained some documentation. Back in May of 2016 they hired a land surveyor to find out lot lines and ownership of the lake bottom. One piece was a declaration from Witkar Bhatti (since retired), Office of the Surveyor General, Ministry of Natural Resources & Forestry, that lot fabric did not extend into the lake and the lake bed was ‘vested in the crown’. It would take until Sept of 2019 that our local office of the MNRF finally agreed with the finding that the lake bed of Wilder was indeed “considered Crown Lands”. As of November of 2020, the MNRF is still investigating the issue of two missing permits needed for the wharf work.

Personal ongoing discussions with the wharf owner revealed work was continued though he could not contact the lake bed owner. He said the work continued due to safety concerns because it was an old structure. It seemed someone so well connected at the municipal level couldn’t trace the OLR documents to the Pidgeon’s and contact them about ownership of the lake bed. The SVCA permit required permission from the ‘lake bed owner’ to continue the work. The lake bed was vested in the crown. The work should have ceased at that point until the issue was clarified. It continued. In conversations with the developer (June 2020), he said his lawyer had a stack of documents ‘this big’ (as indicated by his thumb & forefinger being 4” apart) about lake bed ownership as well as the ownership of the wharf and those documents were at the Township for viewing should we wish. We have copied and paste an email sent to us in June 2020 from the developer in regards to the dock ownership. Our email to the Township clerk failed to show any such documents:

“When the navigable waterways act came through the dock was already built. The navigable waterways act expropriated lands...being lake beds. The dock was not the lake bed at the time of expropriation in 1911, it was a cribbed in dock, much as it is today. That dock must belong to a parcel of land, and that parcel of land has to be the Homestead land because that’s what it’s attached to.

The dock does show up on the survey.

The surveyor thinks he saw something wrote about this in the deed and he is going to check and let me know on Monday.

PS There is no argument that the lake bed is owned by the crown with a small smidgen of unclarity that nobody seems willing to clean up.”

Note: A 1957 survey of the lake (attached) does not show the dock and the lot line is actually inland slightly where the dock is located.

At that time the owner mentioned the MNRF had told him he just might have to purchase the 18” extension of lakebed the wharf extended on. **As of July 2021, no documentation, patent or such has ever been shown to exist for the ownership of the lake bed where original wharf structure sits.**

When construction began, we had personal correspondence with the Fisheries and Ocean Canada (DFO). Our concern was destruction of fish habitat. The wharf provided an ideal cover for largemouth

bass in and around this structure. The DFO replied it was not a large enough structure for them to be concerned with. A requirement of 20 sq meters or larger needs approval. The new wharf is larger than that. The owner should have contacted the DFO with exact structure measurements to get approval or to at the very least ensure DFO best practices were followed. The owner did contact the DFO between May 31-June 4/19 as indicated in an email provided by the Mr. Bye. This was 2 weeks after reconstruction began. Email stated:

“I have gone over the information you provided with my supervisor. We do not believe that the 4 inch hole in the sheet piling will be necessary. Before the last piece of sheet piling is installed, make an attempt to push/scare any fish out from around the dock out to the lake. Once you have the dock isolated with sheet piling and have removed the old wood decking, a fine mesh net should be used to transfer any fish remaining in the isolated area and put them back in the lake as soon as possible. If you have any questions regarding this information or require clarification, let me know and I can set up a call with my supervisor. For any future in-water work projects, we recommend that you review our Self-Assessment criteria on our website: <http://www.dfo-mpo.gc.ca/pnw-ppe/review-revue-eng.html> or call and leave a message 1-855-852-8320 and someone will get back to you ASAP. In the future, please review the measures to avoid harm, including the restricted in-water timing window (<http://www.dfo-mpo.gc.ca/pnw-ppe/timing-periodes/on-eng.html>), in order to complete your project without causing harm to fish and fish habitat. If you ever have any questions about working around water, please leave a message at 1-855-852-8320 and a biologist will get back to you as soon as possible.”

January 2020 an Official Application for 29 residential lots was submitted Southgate Township and Grey County. All required studies and such were completed. The public meeting scheduled for April 1/21 was cancelled due to Covid and was held June 24/21 virtually. Although the reconstruction of the wharf is not part of the official application, the issue of lake bed ownership and the work did come up. It should be noted both Southgate and Grey County had been contacted about the admission of Mr. Bhatti of the MNRF.

We had personal correspondence, phone & email between March 18-27, 2020 with Perry A. Malloy (Coordinator, Crown Lands Survey, Office of the Surveyor General MNRF). We discussed the declaration of Witkar Bhatti MNRF and lakebed being vest in the Crown. Mr. Malloy turned the file over to Roger Grose, Crown Surveyor, Office of the Surveyor General, NMRF. We had several emails from him between April 15/20 and June 19, 2020. He confirmed Mr. Bhatti's declaration that lake bed is indeed vest in the Crown. All emails have been kept for reference.

On June 30, 2020 we had a Zoom meeting with the Saugeen Valley Conservation Authority (SVCA). The meeting included Jennifer Stevens, General Manager, Erik Downing Manager, Environmental Planning & Regulations and Michael Oberle, Environmental Planning Technician. The purpose of the meeting was to clarify the SVCA position on some of the conditions of the Permit 19-099 issued by the SVCA that were not followed by the applicant. The only take away we got from them “it is the applicant's responsibility to follow the conditions of the permit”. They stated that in the future they need to do a better job in following up with applicant to ensure compliance with the permit. There was no mention about wharf ownership. Nor was there any mention of accountability for the applicant.

The dock work for the season was completed in or around July of 2020. It included the steel piling and gravel back fill. In July of 2021 work commenced, it had been delayed during the Covid shut down. The

original SVCA Permit 19-099 issued to Randharr Inc., only mentioned steel pilings and backfill. There is no mention of surface type, lighting, landscape, associated structures built on it. When the work was completed the 20mX20m wharf was finished in concrete. With electrical outlets in the concrete along the perimeter of the wharf. We had been in constant contact with Mr. Bye regarding the installation of night sky friendly lighting and discussed at length the 5 basics of night sky friendly lighting. These are 1.) **Only on when needed** 2.) **Only light areas that needs it** 3.) **Be no brighter than necessary** 4.) **Minimize blue light emissions** 5.) **Be fully shielded-point downwards**. As the concrete work was being completed, wiring was put in along the perimeter of the dock for 7 lights posts. When the posts were installed there were 2 lights on five post, 3 on the other 2. The upper light is on the inside of the post. There is a lower set of lights are on the outside and point downward and directly into the water. They are on a dimmer but **have been on all night, every night for close to 7 months since their installation**. There are also 4 posts on the shore as you approach the dock, each with 2 lights, an upper and a lower that are on all night. On the 2 buildings that will remain on site there are at least 3 lights. **That's a total of 27 lights in and around the dock. Clearly this lighting falls far short of the 5 basics of outdoor lighting. Add in the fact some of these lights reflect off the water and snow further amplifying the night time effect.** In this age of energy conservation and runaway light pollution, how can this type of lighting be left on all night every night when it serves absolutely no purpose? Initially there was no mention of the dock as part of the Application. However, now that it is, the dock lighting is contrary to all of the principles of the Environmental Impact Study, issues of night lighting are mentioned 16 times. The use of highly reflective material (10 aluminum light posts each at least 6 – 8 ft high), excessive lighting and removal of vegetation in and around the dock all are in direct contrast to a number of the conclusions in Mr. Bye's Visual Impact Study.

On April 21, 2021 a virtual Southgate council meeting was held to vote on passing the approval of the subdivision plan (C1-20) onto the County of Grey. According to Open Forum protocol individuals could address council as the meeting began. We spoke and one of the issues I brought up was the developer not following the EIS and VIS when it came to the lighting on the dock (as well as the golf course clubhouse). There was no mention that many of the dock lights and standards are situated on the 18" that extend beyond the original footprint of the dock. It should also be noted that an additional 14 (originally there were 3) or so lights have been added to the clubhouse during the recent addition, by which much of the work was carried on during the Non-essential commercial work stop order. These lights are on all night every night as well.

On July 5/21 we received an email from the County of Grey regarding the Draft Approval of the subdivision and the upcoming meeting when this report will be presented to the Committee of the Whole on July 8th. In the lengthy document there was no mention of the ownership of the dock/lakebed it sits on. Also, of note this report now indicates that a Lot 30 has been added to the development. This lot contains the clubhouse/restaurant/parking lot. Also, in the report the dock area and access to it are referred to a Block 34. Thus, these pieces are now part of the subdivision as mentioned in this report. This would indicate Zoning change requirements to be mixed R5/C5-45.

On June 8/21 an email was received from **Sydney Chalifioux**, Land & Waters Technical Specialist, MNRF Midland office. It was the follow up of yet another request for information made to **Zack O'Krafka**, Integrated Resource Management Technical Specialist (IRM) of the Owen Sound office:

“Zack forwarded your enquiry to me in the hopes that I can provide additional clarification.

At this time, we are working with Mr. Bye to confirm ownership of the dock. Should he not have ownership of the dock, we will be ensuring that this issue is rectified and intend to sell him the portion of crown land that the dock is occupying, provided all the application requirements are met, and that our review supports it.

With regards to the Glaspell case, our legislation was amended after that case and affords additional rights to backshore property owners. In general, if they wish to build a structure that is in contact with more than 15 square metres, they will require a work permit for us. They do not necessarily require occupational authority in order to do this, depending on the structure. We have addressed the issue with Mr. Bye regarding permitting requirements for any additional work that was done to the dock, and consider that compliance issue closed. We are now actively working to rectify the tenure issue.

As for historic lands records, more information on how to obtain these records can be found here: <https://www.ontario.ca/page/search-land-property-records>

I hope this provides the clarification that you’re looking for with regards to the dock. Please let me know if you have any additional questions.”

We replied to both Sydney and Zack with a number of questions, but most importantly to the possible sale of the lakebed where the dock sits. This is very concerning, especially with the significant financial gain by the developer, and the Commercial use of the dock. How can the MNRF justify in selling this piece of public land for someone else’s financial gain?! At the least there should either be an Annual Lease or License Agreement, with 100% of the Liability to the developer. With a Lease or License Agreement, restrictions can be put in place by the Township to limit the type of Commercial events held on this dock, as well as any structures added on and to this dock. We reference the Glaspell vs Ontario 2015 ruling.

On July 13, 2021 we had a conference call with Randy Scherzer and Clinton Stredwick discussing many issues that included the dock and lighting. As of July 19, 2021 the lights on the dock and clubhouse continue to add to mankind’s carbon footprint.

Appendix A: Glaspell vs. Ontario 2015

In 2015 an Ontario Superior Court of Justice made a declaration in the Glaspell vs. Ontario case. This case involved the Township of North Kawartha, for the building of a large floating dock that was tethered to the shore. The case was to determine who had jurisdiction over the floating dock, the municipality or the Ministry of Natural Resources & Forestry (MNRF). The following is a summary of the case in question.

“Mr. Glaspell commenced an action against several parties, including the defendants involved in the summary judgment motion. Mr. Glaspell brought a partial summary judgement motion seeking only declaratory relief in response to the following 5 questions:

- 1. Does the Ontario Building Code Act, 1992 apply to construction of structures to be built on, over, in, or under Ontario lakes?**
- 2. Does the Township have jurisdiction to enact and apply by-laws to these structures?**

- 3. Do each of the dock and the boathouse require building permits, and compliance with the Township's zoning by-laws?**
- 4. Does the boathouse require an occupancy permit to occupy public lands?**
- 5. Does the boathouse require a work permit regarding the construction of a structure on shore lands?**

The Court discussed the ownership of lakes and rivers in Ontario, and reviewed the various pieces of relevant legislation. The Court then decided the motion on the merits and granted declarations answering "Yes" to all of the questions noted above".

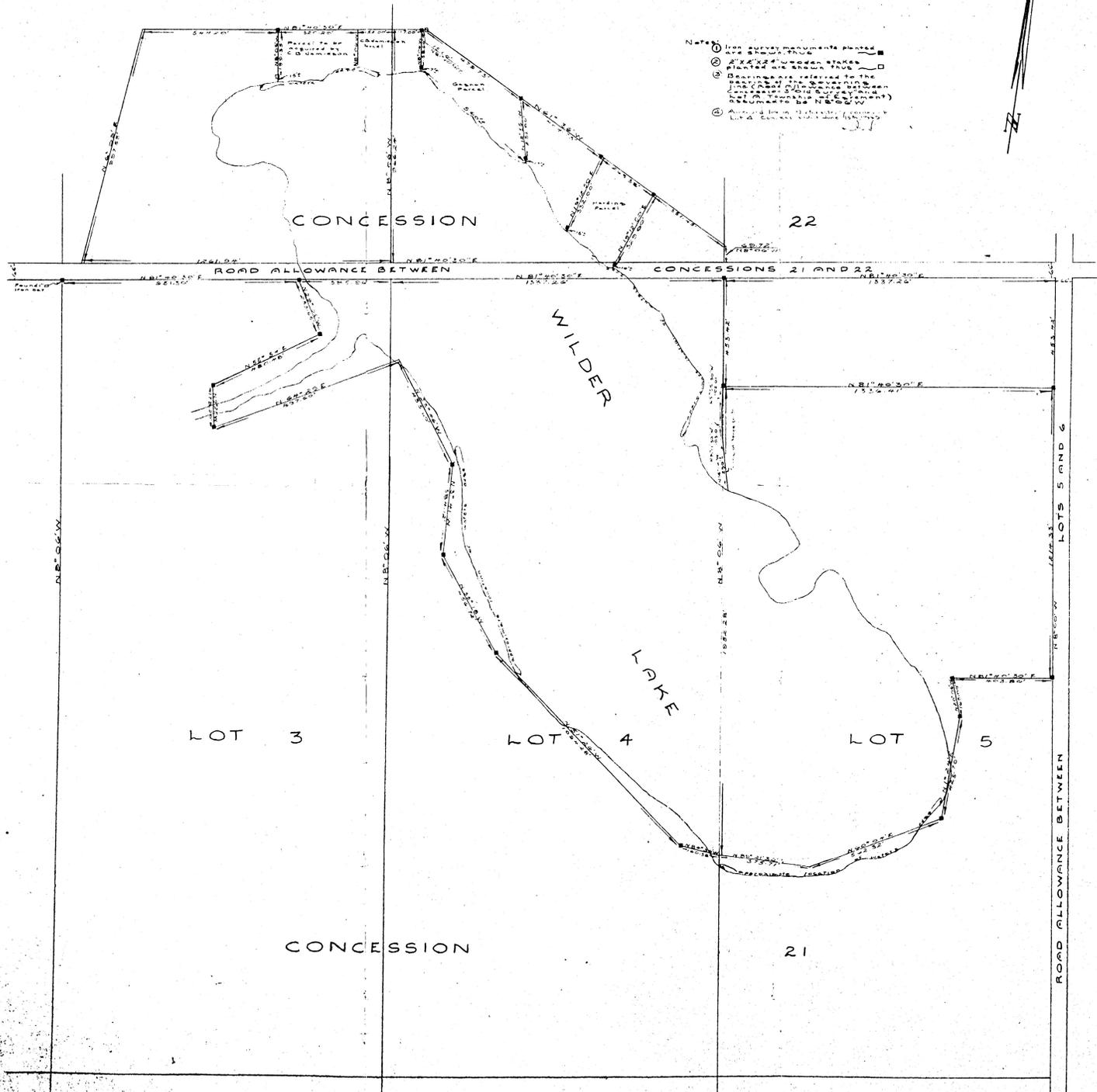
The Glaspell vs. Ontario case has given Municipalities the jurisdiction to control through bylaw. The Court held that the Township can lawfully zone the lands under the Lake because the Lake is located in the Township. The Township can regulate the type of construction and size/character/use of buildings or structures to be located within the Township. Its by-law would not apply to the Crown or its agents but it would apply to dock and boathouse construction.

PLAN OF SURVEY
LOTS 3, 4 AND 5
CONCESSION 21
AND A PART OF
LOTS 3 AND 4
CONCESSION 22
TOWNSHIP OF EGREMONT,
COUNTY OF GREY
Scale 1" = 200'

Open Bound, Ontario
September 27, 1887

J. C. Fineman
ONTARIO LAND SURVEYOR

- Notes:
- ① Iron survey monuments planted and shown thus
 - ② 2" x 2" wooden stakes planted are shown thus
 - ③ Bearings are referred to the meridian of the Section and are given in the following order: (S or N) (Angle) (Bearing) (W or E)
 - ④ All road lines, etc., shown in this plan are shown as shown.



Hewitt Diameter of Mile
Survey and Surveyors
See the Open Bound Act
Survey Fee:
Dr. D. B. Jamieson