

Staff Report

2022-03 - Development Services Department



To: Mayor Koetsier and Members of Council
From: Christopher Aspila, Director of Planning
Cody Avery, Senior Municipal Law Enforcement Officer - Planning
Date: February 15, 2022
Subject: Compliance of Floating Structures within the Township of Georgian Bay's Waterways

Report Highlights

- Information report to provide Members of Council with a detailed explanation on Section 4.6 'Floating in-water Boathouses, Barges & Dwelling Units and Section 3.2 'Lands Under Water' of the Townships comprehensive Zoning By-law 2014-75, as amended.
- Overview on the Jurisdiction of the Township of Georgian Bay Waterway's and compliance of floating container structures.
- Planning Enforcement challenges on Township Waterway's with respect to marine vessels.

Recommendation

BE IT RESOLVED THAT Council receives Development Services Department Report 2022-03 for information purposes; and

THAT Council understand that there are senior levels of Government that have greater authority and tools to control floating structures within township waterways; And

THAT Council directs staff to take no further action since the senior levels of government have already taken a stance on the matter;

OR

THAT Council directs staff to bring a report to Council for further direction on the enforcement steps regarding the floating structure located in Port Severn.

Background

During the Summer of 2021 the Township of Georgian Bay received multiple complaints regarding a floating container structure that was located on Little Lake.

Following the complaints, staff did visit the floating container structure on August 11, 2021 to investigate and gather information. The objective of the site visit was to gather

information to support staff with determining whether the floating container structure complied with applicable municipal by-laws and legislation.

Based on jurisdictional challenges of waterways in the Township, staff worked with partner agencies at Provincial and Federal levels including Parks Canada (PC), the Trent Severn Water Way (TSWW), Transport Canada (TC), Ministry of Environment (MOE), Conservation and Parks (MECP), Ministry of Northern Development, Mines, Natural Resources and Forestry (MNDMNR) and the Ontario Provincial Police (OPP).

On September 15, 2021 the Township became aware that Parks Canada, the Federal agency having responsibility on the stewardship and conservation of the Trent Severn Waterway, did inform the owner of the floating container structure that the structure was not in compliance with the legislation and policies that govern the management of the Ontario Waterways Historical Canals. Parks Canada advised the owner to move the structure out of the Ontario Waterways jurisdiction.

Furthermore, on October 28, 2021 the Township became aware that Transport Canada, the Federal agency having administrative responsibility to implement policies and regulations under the *Canada Shipping Act, 2001* (CSA, 2001) defined the floating container structure as a 'vessel' (CSA, 2001).

The Township did obtain a legal opinion from external counsel on January 10, 2022. On January 11, 2022 staff were directed by Members of the Planning Council to determine the compliance of various vessels moored and anchored in the Township waterways Resolution P-2022-005. The following analysis is based on the review conducted.

Analysis

Jurisdiction of Waterways within the Township of Georgian Bay

Based on the review, three (3) agencies have the main jurisdiction over floating container structures within Township waterways – The Township of Georgian Bay “the Township”, Parks Canada (Trent Severn Waterway), and Transport Canada. The Township only has jurisdiction to regulate and enforce policies in which have been enacted by the Township.

Township of Georgian Bay

The Township of Georgian Bay’s Zoning By-law 2014-75, as amended, provides the municipality with control over land use. The Zoning By-law states and permits exactly how land within the municipality may be used and where structures and buildings can be located.

The provisions of Section 3 – Establishment of Zones apply to all lands within the limits of the Township of Georgian Bay. All lands are contained within one or more of the zones.

Section 4.6 Floating in-water Boathouses, Barges & Dwelling Units

Notwithstanding any other provisions in this By-law, no person shall use or attach any in-water boathouse, barge, marine vessel or any other floating structure or building used for a dwelling unit in any Residential (R), Shoreline Residential (SR), Shoreline Residential Island (SRI), Open Space (OS, CL & LS), and/or Environmental Protection (EP, NSC & NSI) Zone or appurtenant to such zones.

Based on the provision of Section 4.6 of the Township's Zoning By-law 2014-75, as amended, floating structures are not permitted in any of the aforementioned zones.

Section 3.2 Lands Under Water

All lands under water of the lakes and rivers within the Township are subject to this By-law in addition to the requirements of both federal and provisions legislation. All lands under the water not otherwise zoned, shall be zoned Lakeside (LS), and may be used in accordance with the zoning of abutting and appertaining lands.

Section 16 Open Space Zones

The Open Zones established in the Zoning By-law include Open Space 'OS1', Golf Course 'OS2', Crown Land 'CL' and Lakeside 'LS'.

Based on the Township's investigation, the Township can take the position that through the application of section 4.6 'Floating in-water Boathouses, Barges & Dwelling Units, the floating structure is/are prohibited if they are floating structures with a dwelling unit.

The Township's Zoning By-law prohibits the use of any in-water boathouse, barge, marine vessel or any other floating structure or building used for a dwelling unit within any Residential (R), Shoreline Residential (SR), Shoreline Residential Island (SRI), Open Space (OS, CL & LS), and/or Environmental Protection (EP, NSC & NSI) Zone.

Further, the use of 'Storage Containers', 'In-water Boathouses', and any other accessory *building* or *structure* for human habitation is not permitted.

Parks Canada

The Trent Severn is a National Historical Site administered by Parks Canada. Parks Canada is aware of the company fabricating floating container structures.

The Township did work with Parks Canada to understand the jurisdictional challenges regarding structures located within, and on the Trent Severn Waterway.

Parks Canada did contact the owner of the structure and advised that the floating container is not in compliance with the legislation and policies that govern the management of Ontario Waterways Historical Canals. The owner has been advised that

until compliance is met, the structure will need to be removed from the Ontario Waterways jurisdiction.

Transport Canada

Transport Canada oversees both recreational and commercial vessel safety, including pleasure craft, bareboat charters, and commercial passenger vessels.

The Canada Shipping Act, 2001, defines a vessel as "a boat, ship or craft designed, used or capable of being used solely or partly for navigation in, on, through or immediately above water, without regard to method or lack of propulsion, and includes such a vessel that is under construction. It does not include a floating object of a prescribed class".

Officials from Transport Canada did state that "although floating container dwellings are not designed as a typical craft, they are considered vessels by virtue of the above-mentioned definition." Vessels are required to meet obligations of the Small Vessel Regulations under the *Canada Shipping Act, 2001*.

Transport Canada did state that officials will be reaching out to the owner of the vessel to ensure they are aware of their obligations to comply with regulations under the CSA, 2001, as well as to confirm that their vessel is appropriately registered in the Vessel Data Registry.

For the purpose of this report, the following definitions have been provided for reference. The Township of Georgian Bay Zoning By-law 2014-75 defines the following:

Attached *means a building otherwise complete in itself, which depends, for structural support or complete enclosure, upon a division wall or walls shared in common with adjacent building or buildings.*

Barge *means a large marine vessel that has a flat bottom and is used to carry goods.*

Building *means a structure consisting of any combination of walls, roof and floor or any structural system serving the function thereof, including all associated plumbing, works, fixtures, service systems and carports but not including tents and awnings.*

Boathouse In-Water *means an accessory building used for the storage of marine vessels or other forms of watercraft and boating equipment that is directly accessible by water at all times, but shall not include living space for human habitation or sleeping space.*

Marine Vessel *means a craft designed to float on the water including a boat, a barge or a ship.*

Structure *means anything that is erected, built or constructed of parts joined together with a fixed location on the ground or attached to something having a fixed location on*

or in the ground and shall include buildings, walls or any sign, but does not include fences, which do not exceed six feet in height or utilities. This definition shall include septic systems swimming pools, hot tubs, and whirlpools.

For Open Space (OS, CL & LS) zones means anything that is erected, built or constructed of parts joined together that is located on the ground or attached to something having a fixed location on or in the ground and shall include buildings, walls, signs exceeding 0.25 square metres in area, fences, docks, and / or pit privies.

For the Natural State Island (NSI) zone, means anything that is erected, built or constructed or parts joined together than is located on the ground or attached to something having a fixed location on or in the ground and shall include buildings, walls, signs.

Use means:

a) Any purpose for which a building or other structure or a parcel of land may be designed, arranged, intended, maintained, or occupied; or,

b) Any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure or on a parcel of land.

Financial Considerations

Enforcement of the Zoning By-law as stated would be costly and time consuming since there is no ticket / set fines. Contraventions of the Zoning By-law need to be filed with the courts in order to obtain compliance. Additional costs of court proceedings will be incurred at that time

To enforce the removal of floating structure and to set a charge would involve access to more assets such as marine vessel and vehicle by Planning Enforcement staff.

Report Supported By

Strategic Plan:

- Protect and Preserve Our Natural Environment
- Transparency Within Government
- Municipal, Fiscal and Resident Responsibility
- Sustainable and Responsible Development
- Well Managed Infrastructure

Reviewed By

Approved By:

Christopher Aspila, Director of Planning

Julie Bouthillette, Acting Chief Administrative Officer

Karen Way, Director of Corporate Services/ Clerk

Status:

Approved - 27 Jan 2022

Approved - 31 Jan 2022

Approved - 31 Jan 2022

