

*Case Name:*  
**Weir v. Gravenhurst (Town)**

**IN THE MATTER OF subsection 34(19) of  
the Planning Act, R.S.O. 1990, c.  
P.13, as amended  
Appellant: John Weir  
Subject: By-law No. 2011-157  
Municipality: Town of Gravenhurst**

[2012] O.M.B.D. No. 397

OMB Case No.: PL111338, OMB File No.: PL111338

Ontario Municipal Board

**Panel: Sylvia Sutherland, Member**

Decision: June 5, 2012.

(29 paras.)

**Appearances:**

John Weir: Ian Rowe, counsel.

William Train: Harold Elston, counsel.

Town of Gravenhurst: James Cruikshank, counsel.

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**DECISION DELIVERED BY SYLVIA SUTHERLAND  
AND ORDER OF THE BOARD**

**1** William Train (applicant) applied for a zoning by-law amendment to allow him to construct a boathouse on a narrow waterway at his property at 1232 Brydon's Bay Road, which is Part Lot 23, Concession 7 (subject property) in the Town of Gravenhurst (Town). The subject property is located

on Portage Bay on Lake Muskoka.

2 The subject property is currently zoned Residential Waterfront (RW-6A) and Residential Backlot (RB-7) under Comprehensive Zoning By-law 2010-04 as amended. The proposed by-law will add Special Provision 889 (S889) in order to change the zoning of the lands to permit the construction of a boathouse on the subject property. The following Special Provision will be applied to the property:

\* a boathouse shall be permitted on a lot with frontage on a narrow waterway.

3 On November 22, 2011, the town's council passed By-law 2011-157 (ZBLA), permitting the construction of the boathouse.

4 John Weir (appellant), who owns property to the west of the subject property, appealed the ZBLA to the Board pursuant to subsection 34(19) of the *Planning Act* for the following reasons:

1. it does not conform to the town's Official Plan (OP);
2. in does not comply to the spirit and intent of Comprehensive Zoning By-law 2010-04; and
3. the matter was previously dealt with by the Town.

## **Background**

5 A building permit for the boathouse was issued in the fall of 2010 during what a report from the Town's planning staff described as "a period of ambiguity" (Exhibit 2, Tab 4) when the town's new Comprehensive Zoning By-law 2010-04 (ZBL 10-04) was under appeal. The report explained that if a by-law is appealed to the Board, specific sections of the by-law, or the by-law as a whole, may or may not be in effect during the course of the appeal. If there is uncertainty as to whether the regulations of the old or new by-law are in effect, the municipality must issue planning approvals and building permits based on the more restrictive requirements until the appeal is resolved.

6 When the building permit was issued, it complied with the zoning requirements under Zoning By-law Amendment 94-54(ZBLA 94-54), but did not comply under the requirements of ZBL 10-04. When the Town realized this discrepancy, it was obligated to place an order to comply on the subject property until the non-compliance issue was resolved. The applicant then applied to re-establish the right to have a boathouse on the subject lands, consistent with the provisions of ZBLA 94-54.

7 The subject property is designated Waterfront on Schedule A of the town's OP.

## Witnesses

**8** Robert List and Rick Hunter gave expert land use planning evidence and opinion on behalf of the appellant and the applicant respectively.

## Evidence

**9** Mr. List testified that the owners of property in the vicinity of the subject property had agreed amongst themselves at the time of an earlier application in 1989, that, because of the narrowness of the bay where the subject property is located, they would not put boathouses on the bay (Exhibit 2, Tab 47). The suggestion at the time was that any boathouse should be located within about 100 feet of the mouth of Portage Bay. To date, this agreement has been maintained, according to Mr. List.

**10** Mr. List took the Board to the District of Muskoka Official Plan (DOP) (Exhibit 2, Tab 36), section B.2 of which states that the goal of the DOP is "to protect the quality of the cultural and natural environment of Muskoka and accommodate growth by facilitating traditional and contemporary development that recognizes the character of Muskoka."

**11** He said the DOP encourages local municipalities to look beyond its general provisions to more detailed provisions. It was his opinion that, while the application met the intent and purpose of the strategic provisions of the DOP, it did not meet the more specific policies, which encourages municipalities to develop detailed provisions beyond the general of the DOP. He stated that the town has done this in section 5.2.5.2 of ZBL 10-04, which states "that a boathouse or boat port shall not be permitted in a lot fronting on a narrow waterway." ZBL 10-04 defines a narrow waterway as "a navigable waterway where the distance from shoreline to shoreline on a lake is less than 150 metres or where the distance from shoreline to shoreline on a river is less than 30 metres."

**12** The subject property fronts onto Portage Bay which, according to town planner Cherie Leslie in an e-mail dated June 11, 2010, "is approximately 90 metres wide and therefore considered a narrow waterbody." Ms. Leslie concludes, "As a result of the above information a boathouse would not be permitted on the subject property, (Exhibit 2, Tab 14). Ms. Leslie also stated in the same document, "Our records indicate that the Original Shore Line Road Allowance has not been closed. As a result the Town would not issue a building permit for any shoreline structure, including a boathouse." Yet, a building permit for a boathouse was issued on November 24, 2010.

**13** It was Mr. List's opinion that the application did not conform to section D2.2 of the OP, and specifically to subsection f). Section D2.2 states that buildings in the Waterfront Area will be designed and constructed to blend into the natural environment and preserve the historic architectural characteristics of the area. It was his opinion that the boathouse would not blend into the natural environment. Subsection f) states that the zoning by-law implementing the official plan will include regulations that will "prevent the development of lands that are considered to be significant landscape features such as cliffs, steep slopes in excess of 40 percent, narrow channels and large areas of exposed barren rock."

**14** It was Mr. List's position that, in this instance, the narrow waterway in ZBL 10-04 equated to the narrow channel mentioned in subsection f). He took the Board to section 11.4.10, subsection b) of the OP, which states "*Boat Channel Protection Areas* include narrow channels, bays, inlets and outlets and other areas where development of the shoreline might create a hazard to water travel." Mr. List did not believe that the application represented any hazard to water travel, but rather that a narrow channel and a narrow bay were much the same thing and that each represents a narrow waterway.

**15** Mr. List pointed to the fact that the eastern shore of the bay, upon which the applicant wishes to erect his boathouse, has no boathouses on it. The applicant owns all of this eastern shoreline except 200 metres which is in public ownership. The applicant has erected a boathouse at the mouth of the bay, as was agreed upon by the neighbours in 1989, but the rest of that shore of Portage Bay is free of boathouses. Across the bay are two historic boathouses, built prior to any agreement among the neighbours or any by-law restricting boathouses on narrow waterways.

**16** Under cross-examination, Mr. List said, because of these historic boathouses, he sees the bay as having three "mini-characteristics" and that a boathouse would be out of character in that portion of the bay in which it is proposed, which is primarily open and void of boathouses.

**17** Mr. List told the Board that a site plan agreement is necessary for any development in the 6th zone, and that no site plan agreement has been entered into between the applicant and the Town despite a condition of the building permit issued on November 24, 2010, being that site plan agreement #81-2010 be in place before a boathouse or dock is permitted.

**18** Mr. List also opined that the site plan (Exhibit 2, Tab 13) submitted by the applicant did not conform to either ZBLA 94-54 or ZBL 10-04, contrary to the comments of Town staff in their staff report. Despite this, Mr. List said the applicant was told that the site plan he submitted was acceptable. He maintained that the Town's planning department should have had concerns about the site plan.

**19** Mr. Hunter told the Board that the applicant acquired the subject property in 2007 and had partially constructed a dock on the property before receiving the order to comply from the Town. He said the cottage on the property is located in a flat level area beneath a 20- to 25-metre ridge. He described the development along the shoreline in the area as being "mixed", with nine developed residential lots and two existing boathouses on the largest of the lots.

**20** It was Mr. Hunter's opinion that a boathouse and dock would be appropriate for the site, was consistent with and did not offend the Provincial Policy Statement, and would meet the intent and purpose of the OP and the DOP. He further stated that the application would be in keeping with the culture and natural environment of Portage Bay. He said the boathouse presented no danger to boating in the area. He believed the application represented good planning and was in the public interest. The Town presented no planning evidence. Counsel for the Town essentially supported the position taken by Mr. Hunter.

## **Decision**

**21** Mr. Hunted stated that the application conformed to the DOP, a position with which Mr. List agreed. Mr. List, however, emphasized that the DOP encouraged local municipalities to go beyond its general provisions to more detailed provisions, as the Town has done in section 5.2.5.2 on ZBL -10-04, which forbids a boat house on a lot fronting on a narrow waterway.

**22** In the Board's view, this is the crux of the entire matter. The fact that, as Mr. Hunter emphasized, the boathouse will be tucked into a small cove, mostly out of sight of views from neighbouring cottages, or that it will be only one storey, or that it will be of simple design, is immaterial. For reasons that reach beyond safe navigation on this narrow waterway, "it shall not be permitted."

**23** These reasons have to do with the natural environment and "culture of the area". While parts of Muskoka are well known for their boathouses, this is not true of Portage Bay. And, the boathouses for which Muskoka is known are the elaborate Victorian boathouses of the late 19th and early 20th centuries, the so-called "eye candy" being reproduced in certain areas of the district to this day.

**24** There is a growing concern in Gravenhurst, as in other areas of the province, about the challenge of maintaining a natural shoreline environment. This, in part, is what the prohibition of boathouses in narrow waterways is all about, as Mr. List pointed out. Views of the shoreline are not only from land and from other cottages, but also from the water.

**25** There was some discussion, and difference of opinion between the planners, as to the distinction among a "narrow waterway", a "narrow channel", a "boat channel protection area" and a "significant narrow waterbody". The zoning by-law, which implements the OP, refers to "a narrow waterway". That Portage Bay constitutes a "narrow waterway" by the definition of the zoning by-law, there can be no argument. The distance from shoreline to shoreline is approximately 90 metres, less than the 150 metres required to remove it from this definition. This being the case, a boathouse is not permitted.

**26** There is, in the Board's view, no reason to excuse the subject property from the standards of the zoning by-law. The fact that there are two other boathouses on the bay is irrelevant. They were built in another era, predating the passage of the zoning by-law. That they were even referred to in support of the application is illustrative of the fact that permitting a boathouse on the subject property would strengthen the case for other boathouses, not just on Portage Bay, but on other narrow waterways in Gravenhurst. The proposed boathouse may be modest in size, not intrusive, and pose no danger to navigation, but it is still a boathouse on a narrow waterway, and, whatever its other characteristics, it will not be invisible, especially from the water. It will have impact upon the natural environment the Town, through its planning instruments, is attempting to preserve.

**27** The Board Orders that the appeal against By-law 2011-157 of the Town of Gravenhurst is

allowed and the municipality is directed to repeal the said by-law.

**28** On consent of the parties, the Board further Orders that the maximum projection of a dock at the subject property shall be 10 metres from the optimal summer water level.

**29** So Orders the Board.

SYLVIA SUTHERLAND  
MEMBER

qp/e/qlspi