

Written questions, for Board of Directors, at Shoreline Management Plan (SMP) Update Public Information Open House in Thedford, June 17, 2017, and answers from Ausable Bayfield Conservation Authority (ABCA)

In addition to questions asked and answered at two Shoreline Management Plan (SMP) Update public information open houses held in 2017 (June 3 in Zurich; June 17 in Thedford), the ABCA received the following written questions directed to the Board of Directors. The ABCA's answers follow each question.

“Shouldn't property rights be acknowledged and incorporated into the next SMP 2018?”

Question 1:

Recognizing there remain substantial uncertainties about the science and predictions behind the Climate Change theories and models, and notwithstanding environmental concerns, endangered species, shoreline ecosystems and processes, sediment budgets, and imputed erosion rates, owners of shoreline properties remain the key stakeholders of any shoreline management plans presented by Conservation Authorities.

As stewards of these important lands, we understand the value of these properties and the need to maintain, conserve, protect, and develop them responsibly, and in a manner that does not harm our neighbors' properties. We purchased these properties in order to develop and improve them, construct residences thereon for sharing important relaxation time with our family and friends, and to marvel at the wonders of creation. We value these properties to such an extent that they represent a significant part of our net worth, and have required substantial expenditure of our time and money to improve, maintain, and repair them over time in an attempt to add value. We have willingly paid property taxes on these valuable parcels to support local municipal services, and contributed to an economy based on providing goods and services to this community that has grown and thrived over several decades.

With respect to the next Shoreline Management Plan, we have some further questions to pose to the Board with respect to the property rights of shoreline property owners:

- 1. What is the complete list of statutes, rules, and regulations that a homeowner has to consult to prove that no adverse environmental impacts will occur from further improvement or development of a shoreline parcel?*
 - *Will the same statutes, rules, and regulations apply to a riverfront or river mouth property?*
 - *Will the same statutes, rules, and regulations apply to properties on the Thedford Bog?*

Reply, from Ausable Bayfield Conservation Authority (ABCA), to Question 1:

When the ABCA considers an application it considers the tests as permitted under *Ontario Regulation 147/06* and the *Conservation Authorities Act*. These tests apply to all applications equally. Other agencies may use different tests. It is the responsibility of the landowner to determine which agencies need to be contacted.

Question 2:

2. How much money should be budgeted by a homeowner to prove to the satisfaction of ABCA or Zoning Officials that no adverse environmental impacts will occur from a proposed development or improvement, such as shoreline protection, a new cottage, an addition to a cottage, or a new shed or storage garage?

ABCA Reply to Question 2:

The municipality should be contacted for information related to Zoning Bylaw applications.

In relation to the ABCA, fees and costs vary depending on the proposal and on its location. A shed would present less concern than, say, a condominium. Applications which require the review of a technical report such as a floodline study will cost more.

Sometimes ABCA permits are not even required.

Question 3:

3. If endangered species are, by definition, so rare, what is the statistical probability of any one parcel harboring such a species? If the probabilities are high, then perhaps they aren't as endangered as supposed. If the probabilities are low, then why is the burden of proving a negative (i.e., that no adverse environmental impacts will occur) placed upon the shoreline owner?

ABCA Reply to Question 3:

The ABCA considers such environmental impacts as flooding and erosion. You should contact the federal Department of Fisheries and Oceans and the provincial Ministry of Natural Resources and Forestry to discuss issues related to Species at Risk and Endangered Species.

Question 4a:

4a. Consider that there are 223 species listed on the Ontario Endangered Species list. Shouldn't there first be verifiable evidence of an endangered species on or in the near vicinity of a proposed development or improvement before requiring that a shoreline owner bear the expense of an environmental assessment to prove that no endangered species will be affected? What section within the Conservation Authority Act requires that the entire cost and burden of proof that no adverse environmental impact will occur is borne solely by the person proposing the development or improvement? The Act is actually silent as to WHO should bear the cost and burden of proof, is that not so? (Otherwise, please cite the applicable section of the Act.) Therefore, the property owners who paid for and maintained the property should be given the benefit of the doubt since they paid for the opportunity to inhabit, develop, improve, and add value to their investment. Therefore, shouldn't the burden be upon ABCA to demonstrate that a proposed improvement WILL result in an adverse environmental impact based on actual evidence of endangered species on the involved property? Shouldn't the next SMP 2018 reflect the obligation of ABCA to first demonstrate that an endangered species actually exists where the proposed improvement is to be made instead of requiring that a property owner bear the cost burden of proving that no adverse environmental impacts will occur under any of the applicable acts?

ABCA Reply to Question 4a:

Please refer to comments for Question 3.

Question 4b:

4b. If endangered species are found on a parcel that could be negatively impacted by the proposed development, is relocation of such species not an option? Why not attempt to capture, preserve, protect the plant or animal species involved and relocate them onto the other 80% of Ontario Provincial lands instead of simply denying a building permit on private property? Wouldn't it be more intelligent to incur a small charge for capturing and relocating a particular plant or animal species rather than harming the economic welfare of the landowner by preventing any further development or improvement of his property?

ABCA Reply to Question 4b:

Please refer to comments for Question 3.

Question 5:

5. What time limits are in effect for a decision from ABCA on a parcel development request? After a reasonable time, such as 30-60 days, shouldn't there be a presumption in favor of the property owner that the proposed development will not have an adverse environmental impact? Why couldn't such an administrative rule be placed within the next SMP Plan?

ABCA Reply to Question 5:

Please refer to earlier comments with respect to environmental impact.

The ABCA strives to render a decision on permit applications within 4 to 6 weeks after receipt of a complete application. Often decisions are rendered quicker. The ABCA's goals are actually quicker than guidelines as established by a provincial group comprised of the Ministries of Natural Resources and Forestry, Municipal Affairs and Housing, Energy and Infrastructure, representatives from the development industry, municipal sector, environmental groups and Conservation Ontario. This group, in 2010, indicated that minor applications be reviewed with 4 weeks of receipt of a complete application and 12 weeks for a major application.

Please be aware that a complete application includes an application form, required application fee, drawings, plans and description of the works and other supporting documents as may be required to review the proposal. It is noted that the ABCA rarely receives a complete application at the start of a file. Information is often received in bits and pieces and substantial time can pass between receipt of different pieces of information.

If applicants have made a formal application and are unaware of its status, they are welcome to contact the ABCA for status and should not assume it has been approved.

Question 6:

6. Should regulatory delay be allowed to effectively quash a proposed development, especially in the absence of evidence that such development would indeed cause an adverse environmental impact, or otherwise violate an Ontario statute or valid regulation? If so, then ABCA would not be exercising reasonable jurisdiction over its statutory mandate. Doing nothing on an application for long periods of time does not fall within the definition of reasonable regulation, does it? If delay alone should not be considered reasonable regulation, then why are there no reasonable time limits stated for when ABCA must reach a decision on a permit application?

ABCA Reply to Question 6:

Please refer to comments provided for Question 5.