

# **AN ACTION PLAN FOR MUNICIPAL AND PROVINCIAL GOVERNMENTS TO RESOLVE BEACH ISSUES IN TINY TOWNSHIP**

**DEPUTATION TO TINY COUNCIL: July 31, 2006**

**Presented by: Robert Buchkowsky**

## **INTRODUCTION**

Good afternoon members of Council.

The presentation that I will be making today will hopefully provide straightforward clarifications of the complex beach issues based on extensive research I have completed. In addition, details will be provided of actions that can be taken by both the municipal and provincial governments to bring an end to this long-standing acrimonious dispute that has divided our community.

A comprehensive Report has already been forwarded to the following provincial Ministers:

- Minister of Natural Resources
- Minister of Government Services
- Attorney-General of Ontario

This is similar to the Report that was provided for each member of Tiny Council as part of the Agenda package for this Committee of the Whole meeting. It is assumed that each of you has taken the opportunity to read this Report prior to the meeting.

My intention is to:

- (1) Summarize the key aspects of the beach issues that are tabled in the Report
- (2) Detail a realistic course of direct action that can be pursued by the municipality
- (3) Present a DRAFT Motion to initiate municipal action and provide formal support of Tiny Council for the proposed actions by the three provincial ministries.

While the central theme of today's presentation focuses on ownership and the preservation of the historical access and use of Tiny's beaches there is another major problem that needs to be addressed. Both the municipal and provincial governments must find ways to deal more effectively with irresponsible behaviour on the beaches regardless of whether they are publicly or privately owned.

# EXECUTIVE SUMMARY

- **Issues**
  - the 'high water mark' is deemed to be an invalid boundary as a result of the repeal of a 1940 amendment to the *Bed of Navigable Waters Act* in 1951 and subsequent court decisions
  - this creates unclear ownership of the beach area between the 'high water mark' and the water's edge for all subdivision plans that designated the 'high water mark' as a boundary as there has been no legal registration of title for this beach area
  
- **The *Boundaries Act***
  - the purpose of the boundaries Act is to determine and confirm the true position, on the ground, of one or more boundaries of a property
  - successful applications do NOT result in conveyance of real legal title
  - any rights that may exist (either registered or otherwise) across the property are NOT impacted
  
- ***Land Titles Act & Certification of Titles Act***
  - address issues of ownership
  - results in certification of the legal owner
  - address historical access and use of the property
  - describes the land and all servient and appurtenant interests and rights
  
- **Tiny Residents Raise Concerns**
  - concerns have been raised by many Tiny residents over the threat to their historical access and use of Tiny's beaches
  - successful applications under the Boundaries Act result in erroneous claims of ownership and in one instance the erection of a fence
  - a petition is signed by over 1,000 residents in a very short period of time
  
- **Proposed Actions by Province**
  - designate all beach areas with unclear ownership as being held in trust until such time as proper legal title is established
  - correct misleading results of successful applications under the *Boundaries Act* by establishing the beach area as a unique parcel of land with unclear ownership
  - investigate title of the beach area with the recently constructed fence and take appropriate action based on results
  
- **Proposed Action by Municipality**
  - provide formal support for **Proposed Actions by the Province**
  - develop a case for municipal ownership of beach areas with unclear ownership
  - coordinate evidence to support the historical access and use of these beach areas
  - file an application under the *Land Titles* or *Certification of Titles Act* that encompasses both ownership and a 'claim that a long period of use has matured into a prescriptive right'

# RECOMMENDED ACTION BY THE CORPORATION OF THE TOWNSHIP OF TINY

Engage the services of a land legal expert to provide a legal opinion on research findings contained in the Report 'AN ACTION PLAN FOR MUNICIPAL AND PROVINCIAL GOVERNMENTS TO RESOLVE BEACH ISSUES IN TINY TOWNSHIP':

## STEP 1

- for registered plans which define the 'high water mark' as a boundary of the subdivision, the ownership of the area between the 'high water mark' and the water's edge is unclear
- successful applications under the *Boundaries Act* do NOT result in confirmation of legal title
- legal ownership can only be established by successful applications under the *Land Titles* or *Certification of Titles Acts* or court processes

## STEP 2

- perform a comprehensive title search for the beach area between the 'high water mark' and the water's edge for Registered Plan 1446.

## STEP 3

- if it is confirmed that there is no legally registered title for the beach area in Registered Plan 1446 then develop the rationale for a claim for ownership by the Corporation of the Township of Tiny
- in addition, gather evidence to substantiate 'a claim that a long period of use has matured into a prescriptive right' that supports 'registration of a formal grant or acknowledgement of the right and the lands made subject to that interest' (Source: Certification of Title under the *Certification of Titles Act* and First Registration under the *Land Titles Act*- Client Guide Page 18)
- provide an opinion on the relevance of legal precedents established in *Lake of Bays Township v. 456758 Ontario Ltd.* and *Gibbs v. Grand Bend Village*
- submit an application under the *Land Titles Act* or *Certification of Titles Act*

## MEDIATION CONSIDERATION

- Tiny Council has formally requested the Attorney-General of Ontario to reconsider the decision to discontinue mediation...this may not be successful
- The recommended action that is proposed would not conflict with mediation if it is resumed
- Resolution of the issues identified in the Report "An Action Plan for Municipal & Provincial Governments to Resolve Beach Issues In Tiny Township" is completely independent of mediation and in fact would most likely assist the mediation effort
- There is no jurisdictional restriction on the municipality that would limit pursuit of the proposed courses of action detailed in the Report

## **DRAFT MOTION**

**Whereas**, there are many subdivision plans in Tiny Township where the ownership of the beach area between the high water mark and the water's edge is unclear and there have been no legal conveyances or proper recording of title, and

**Whereas**, waterfront lot owners are making Applications under the *Boundaries Act* to have their defined lot lines extended to the water's edge, and

**Whereas**, petitions have been signed by over 1,000 Tiny residents objecting to these potential extensions of ownership to the water's edge and the threat to the historical access and use of these beach areas, and

**Whereas**, a petition is current circulating that has over 600 signatures objecting to the recently constructed fence on the beach area at Balm Beach, and

**Whereas**, at least three Tiny Associations and groups have formally expressed opposition to these potential property extensions and fences, and

**Whereas**, in the absence of clear title to such beach areas the Corporation of the Township of Tiny may have a legitimate claim of ownership, and

**Whereas**, this issue is of vital importance to all Tiny residents, and

**Whereas**, Tiny Council has a duty and responsibility to represent the best interests of ALL its residents

**Therefore be it resolved that:**

Direction is provided to the Tiny Township CAO/Clerk to:

- (1) Obtain the services of a land legal expert to:
  - (a) Render an opinion on the accuracy of the contents of the Report 'AN ACTION PLAN FOR MUNICIPAL AND PROVINCIAL GOVERNMENTS TO RESOLVE BEACH ISSUES IN TINY TOWNSHIP'
  - (b) Develop a case to support municipal ownership of the beach area between the 'high water mark' and water's edge where real legal title is unclear
  - (c) Provide advice on the jurisdictional capability to file an application under the *Land Titles* or *Certification of Titles Acts* that encompasses both ownership and a claim that a long period of use has matured into a prescriptive right.
  - (d) Express an opinion on the relevance of legal precedents set in *Lake of Bays Township v. 456758 Ontario Ltd.* and *Gibbs v. Grand Bend Village*

- (2) Develop a formal communication that is to be forwarded to the appropriate provincial Ministers supporting proposed action as follows:
- (a) Designate all beach areas with unclear ownership as being held in trust by the Province until such time as proper legal title is established
  - (b) Correct misleading results of successful applications under the Boundaries Act by establishing the beach area as a unique parcel of land with unclear ownership
  - (c) Investigate title of the beach area at Balm Beach with the recently constructed fence and take appropriate action based on the results

# CONCLUSION

The current members of Tiny Council have demonstrated a capacity to represent the significant concerns of its residents even on a matter that really is outside its jurisdiction.....Site 41.

- Simcoe County is responsible for waste management
- Simcoe County owns the property for the proposed landfill
- The provincial Ministry of Environment is the approval authority

Tiny Council should be commended for creatively finding a role to play by implementing an Interim Control By- Law. While this may or may not be successful in stopping Site 41 at least Council demonstrated the political will to act on behalf of its residents on a critical issue.

The beach ownership and access/use issues are also significant concerns as expressed by over 1,000 names on a petition. In addition, there are over 600 names on a petition objecting to the fence on the beach area at Balm Beach.

All the actions that have been proposed are within the jurisdiction of the municipality. In fact, there have been at least two legal cases where municipalities in Ontario have been successful in preserving the historical access and use of beaches within their territory.

None of the actions would conflict with mediation if it is resumed. In fact, the proposed actions would provide important clarity and complement this effort.

It is hoped that Council members will give serious consideration to the proposed municipal intervention and have a thorough discussion at the next Committee of the Whole meeting.

It is now up to Tiny Council to set the wheels in motion by providing it's unanimous approval to proactively address the beach issues.