



September 6, 2008

The Honourable Chris Bentley
Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, ON
M5G 2K1

Dear Mr. Bentley:

Re: Access and Use of Tiny Township Beaches

In 1999 representatives of Save the Beaches and Tiny Resident Working Together (TRWT) met with the Honourable Jim Flaherty, who was then Attorney General of Ontario. At this meeting concerns were expressed about tensions in the community and the potential loss and increased attempts by some militant waterfront owners (not all waterfront owners believe they own the beach) to block the traditional and historic recreational public access and use to the miles of beaches located on the shores of Georgian Bay. At that meeting Save the Beaches and Pro-Bono lawyer Roderic Ferguson, shared with Mr. Flaherty a review by Dan Murphy, the successful Appellant in the case of Gibbs vs. Grand Bend, regarding the decision and how it was relative and could be applied to the shores of Tiny Township.

Save the Beaches then requested the Attorney General to make a declaration for Tiny beaches in parliament based on the Grand Bend decision and the fact that Tiny beaches showed similarities to Grand Bend through its traditional and historic public use which has been a pattern of use for the past 100 years. We felt this avenue would alleviate the existing problems in Tiny with regard to access. Mr. Flaherty told us that the office of the Attorney General has always protected public rights since the 1700's and that they were not about to stop doing that. He suggested that we had to exhaust all avenues before going to court or having a declaration made. Save the Beaches participated in good faith in the failed mediation process. We were willing to work with stakeholders but were expected to endorse an agreement to a 'walk only' proposal. Local stakeholders were encouraged to agree to a one-sided solution that would benefit waterfront property owners and effectively relinquish existing public rights and traditional use of the beaches prior to any negotiation of a settlement.

Tensions regarding Tiny's beaches have escalated continuously over the past two decades and particularly since the Rowntree court decision. During this time frame the Federation of Tiny Township Shoreline Association has dominated the political process in Tiny Township by endorsing and successfully having several slates of candidates elected for Council through of a publication "The Tiny Cottager," which is distributed free to all Tiny residents. During the last municipal election, all members elected to Tiny Council were hand-picked through an interview process and promoted by the Federation of Tiny Township Shoreline Association (FoTTSA). It is evident that there is a bias held by Tiny Township Council, particularly the Mayor, who has recently expressed opinion in recent interviews with the media that the beaches are private. We are enclosing a CD copy of a recent interview with Mayor Breckenridge on CBC Radio. We also include Memorandum from Township staff to Council following the recommendations of Judith Grant, President of FoTTSA, (May 4, 2004) regarding beach signage, etc. Our Council was requested by Attorney General Michael Bryant to work with stakeholders to resolve the beach access issue. To date Tiny Council has never attempted to assume its important leadership role to resolve beach access. Any actions taken have been derogatory to resolving the issue, (i.e., increased parking fines, signage, parking restrictions, reduced access, doing nothing to resolve the fence issues and publically declaring in the media that the beaches are private). The actions/inactions of our present Council only further exacerbates beach users and Township property owners. An increase in applications from Tiny waterfront owners to the provincial Boundaries Act for property extensions to the water's edge are also cause for concern. As we understand it, the Boundaries Act applications do not deal with land ownership, only with where boundaries might be established. To our knowledge, none of the applicant's, including the Marion's who have erected a fence at Balm Beach have applied for 'Absolute Title', nor have any of the applicants claims of ownership to the water's edge been legally tested. It is troublesome that under those circumstances our Mayor continually refers to the beaches of Tiny as being private.

This matter has divided the Tiny community for over the past 20 years while traditional public use and access enjoyed for generations is being severely eroded. We feel this matter cannot be solved at the municipal level. Not all waterfront owners want to claim ownership over the beaches. Ownership varies from beach to beach. The Township owns many portions of beach, including concession road ends and there are a number of Goessman and Canada patent lots which are dedicated to the public located along this dynamic shoreline. Many beaches have 66 foot road allowances or beach blocks running along them.

Up until three years ago, the beaches of Tiny Township were zoned OS, Open Space Parkland. There is a history of taxpayers money at the provincial and municipal level being spent on Tiny beaches. We have previously sent the Attorney General approximately eight thousand letters from citizens of Ontario requesting that their rights to continuous use and access to Tiny beaches be protected. We have collected photographs and documented proof of historic and traditional beach use.

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Since the failure of mediation we feel that our government has abandoned us. Mr. Flaherty's promise of protecting the rights of the public has vanished and the 3.2 million taxpayers dollars spent on behalf of public in on the successful Grand Bend Appeal decision have gone to waste as access to Tiny's beaches erode. In a letter to Mr. Paul Torrie, the provincially appointed mediator, from Kim Twohig, Counsel for the Attorney General's office, Ms. Twohig states "As long as the facilitation process continues, the Attorney General will not commence any legal proceedings in respect of ownership or access to the beaches unless it is necessary to do so in the public interest." We feel it is necessary to resolve this matter, especially in light of the unfortunate recent incidences involving citizen unrest at Balm Beach.

The matter of public rights to beach access effects all citizens of Ontario and the public at large who are losing access to this beautiful Ontario resource. The Attorney General's office has suggested our local community should fund a court resolution at our own expense. We question why this small Ontario community should be responsible to fund a court case that will effect the rights of all Ontarian's, especially when the government already has a precedent setting decision on public rights. Once again Save the Beaches asks that the Attorney General protect the public's interest, protect our rights to continue to enjoy the 46 miles of beaches, protect us from continued violence by declaring a public interest in the beaches of Tiny Township based on the Grand Bend decision.

We respectfully request once again to meet with the Attorney General to discuss this matter further. For further information or to set a date, please contact Donald D'Aoust at 705-549-8391 - daoust@simcoe.net or Donna Ebers at 705-322-0848 - debers@rogers.com.

Sincerely

Donna Ebers
on behalf of
Save the Beaches Inc.

cc: Dalton McGuinty
MP Garfield Dunlop, Simcoe North

Attachments:

- Letter to Mrs. Kathy Speers from Ferguson Barristers May 5, 2004
- Memorandum to Henk Blom, Mgr. Public Work, Tiny Township May 4, 2004
- Memorandum to Tiny Council, January 3, 2005
- News Release, Tiny Township, July 2006
- Election 2006 Special - Tiny Cottager
- Area Attraction Map, Tiny Township, Southern Georgian Bay Chamber of Commerce
- CD Recording - Re: Balm Beach 28/07/08 - CBC Radio Ref #10508BC-7 (09:31)
- Letter to Mr. Paul Torrie, from Kim Twohig, Ministry of the Attorney General, Feb. 19, 2003