



MUNICIPALITE DU CANTON DE TINY
MUNICIPALITY OF THE TOWNSHIP OF TINY
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April 2, 2012

To Property Owners on Registered Plan 656

Dear Sir/Madam:

Re: Block B, Plan 656 and Woodland Beach

The Township is aware that certain work has been undertaken by Mr. Battaglia on the north part of Woodland Beach. The Township has been contacted by a number of residents with questions or concerns relating to that work and to the litigation between the Township, Mr. Battaglia and his numbered company. This letter addresses those questions and provides additional information about the status of the litigation.

The Township is currently the registered owner of a number of the lots and blocks on Plan 656 (including Lot 52, part of Lot 22, Block A and the portions of Block B in front of Lot 22 and Block A). Mr. Battaglia's numbered company is currently the registered owner of the remainder of Block B. In 2008, an issue arose as to the proper boundaries of Block B and the part of Woodland Beach in front of Plan 656 (the "Beach") and the proper ownership of the south half (approximately) of the Beach.

In 2010, after being unable to resolve those boundary and ownership issues amicably, the Township commenced a court application against Mr. Battaglia and his numbered company to obtain the court's guidance regarding the boundaries and ownership of Block B and the Beach. The Township also had a survey prepared which reflects what the Township believes to be the relevant boundaries of those lands. That survey has been deposited in the Simcoe Land Registry Office, as Reference Plan 51R-37338. Broadly speaking, the main issues in dispute in the application were whether Block B included the Beach and who is the proper owner of the south half (approximately) of the Beach.

The Township's application was argued before the court on dates in April and July of 2011 and the court's decision was released December 23, 2011 and is posted on the Township's website. The Court held that Block B includes the Beach and that Mr. Battaglia's numbered company is the owner of most of Block B. Other portions of Block B (in front of Lot 22 and Block A on Plan 656) are owned by the Township. The Township has appealed the decision to the Ontario Court of Appeal. The Notice of Appeal, setting out the grounds of appeal, is also posted on the Township's website. While the appeal has been commenced, the deadline by which all parties must file their materials is in early June, 2012. Thereafter, the Court will schedule a date for the argument of the appeal. Since the case is under appeal, it is not appropriate for the Township to discuss legal or factual issues which are involved in the appeal because those issues will be argued before the Court of Appeal and it will release reasons for decision determining those matters. Once the case is heard and the Court of Appeal releases a decision, that decision will be a matter of public record and will be posted on the Township's website.

The Township is aware that most owners of lots on Plan 656 have registered rights of way "for all necessary purposes" over Block B. The Township has received a number of inquiries from owners regarding the impact of the litigation and the current work being undertaken by Mr. Battaglia on their rights of way. The litigation does not address and will not affect those rights of way, except to the extent that it deals with the boundaries of Block B (to which all the rights of way apply). In particular, the application and appeal do not seek (and will not result in) the Court making a ruling on the interpretation of owners' rights of way and what uses of Block B are permitted under those rights of way.

Those issues involve the private property rights of owners on Plan 656 and are appropriately addressed by the owners and not by the Township, which focuses on issues of municipal ownership and public access to the lands in issue and, more broadly, on issues relating to the boundaries of subdivisions along Georgian Bay within the Township. Any lot owner seeking guidance on their private property rights (including any right of way over Block B) should contact his or her lawyer for advice about their rights and any remedies that may be available to them in the event of an interference with their rights.

With respect to the works currently being undertaken by Mr. Battaglia, any shoreline works in the Township are subject to the restrictions imposed by the Township's zoning by-law (which limit the nature and extent of any structures on the shore of Georgian Bay and imposes certain set-back requirements). In addition, the use, severance or subdivision of shoreline lands is subject to various restrictions under Township by-laws and other provincial legislation applied and enforced by the Township and its Committee of Adjustment. The Township also controls vehicular access to private property from Township road allowances and beaches (such as Lawson Road and the public beach at the end of that road allowance). The Township has prohibited any such access by vehicles or equipment at that location and will continue to do so, consistent with the Township's usual policy. In that regard, the Township's practice is to notify the Township's By-law Department and the OPP of any potential trespass issues.

The work on the beach is also subject to any applicable requirements of Fisheries and Oceans Canada (the "DFO"). The DFO is responsible for enforcing and dealing with any potential non-compliance with the Federal *Fisheries Act*, which addresses (among other things) works and undertakings along the shoreline of Georgian Bay that may impact fish and fish habitats or cause pollution. The DFO is aware of the works undertaken by Mr. Battaglia and will address any potential non-compliance with the *Fisheries Act*. Residents wishing information in that regard should contact the DFO.

Sincerely,

THE CORPORATION OF THE TOWNSHIP OF TINY



Doug Luker
CAO/Clerk