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Mr. Alex Rheault
Big North Lodge
Box 24
Minaki, Ontario
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Dear Alex:

Re: Minaki on the River Inc. ECA Amendment - Environmental Registry No. 013-4986

As requested, I'm providing my comments on the above proposal to the residents of Minaki represented by you, and to Minaki Cottagers Association Inc., in support of your submissions to the Ministry of Environment, Conservation and Parks. As you know, I have been providing planning advisory services to both groups since 2016, including at the 2017 Ontario Municipal Board hearing on Minaki on the River's applications for standard and vacant land condominium descriptions at the same site.

I am offering these comments from my perspective as a professional planner, on matters on which I gave evidence at the 2017 hearing or that are otherwise within my competence. I offer no opinion on the scientific and technical aspects of this proposal.

The development area

The red outline on the enclosed map denotes the subject lands for the former condominium applications, which were refused by the Ontario Municipal Board in 2017, which refusals were upheld on appeal.

The site plan provided by the ECA applicant shows almost exactly the same lands as constituting the proposed development area to be served by the sewage works.

The enclosed map shows the current land division of the development area. The development area lies within Plan M222, which is recognized as a registered plan of subdivision. PIN 42180-2612 is owned by the applicant. There are 30 other PINs in the development area, and all of these parcels are owned by others (2262608 Ontario Inc. and 2262609 Ontario Inc.), albeit, I understand, under the same ultimate control as Minaki on the River. Regardless of who actually owns or controls these other parcels, each parcel could be conveyed to any other party at any time. PIN 42180-2612 includes shore road allowance, roads, and several whole or partial subdivision lots, and since the whole lots remain whole lots on the plan of subdivision, there is likely no obstacle to new PINs being created for them - which could result in as many as 36 conveyable lots (plus the roads and shoreline lot) in the development area.

In section 4.2 of the application, the applicant wrongly stated that it owns the entire site.

Purpose of the amendment

The current ECA, dated August 28, 2014, describes the purpose of the sewage works as "to serve a proposed seasonal residential development (formerly serving the Minaki Lodge) consisting of 104 single detached units (listed in Schedule A), 56 apartment units (listed in Schedule B) and a 128-seat restaurant".

Although the word "condominium" does not appear in the ECA, it was well known at this time that Minaki on the River had applied for condominium descriptions. The units described in the current ECA are what had been applied for.

By the time of the OMB hearing, Minaki on the River had changed its proposal, and what was before the Board was 83 single detached units plus 56 apartment units. It was recognized that if the draft descriptions were approved, the ECA would need to be amended, and this was provided for in the proposed approval conditions for the vacant land condominium.

The ownership pattern of the subject lands was not an issue at the time of application for the present ECA. Had the condominium descriptions been approved, the applicant would have been required to merge the lots, by obtaining a deeming order under section 47 of the *Planning Act*, prior to final approval. The sewage works would have then become a private communal system, a common element serving the residential units and restaurant. There was nothing improper about issuing an ECA to serve multiple lots, in contemplation of planning approvals that would have merged the lots and provided for an ownership and control structure appropriate for private communal services (aside from the difficulties posed by the situation of these services in unorganized territory that I am about to describe).

It was my evidence at the OMB that the Provincial Policy Statement does not permit private communal services in unorganized territory. This position was upheld by the Board, at least with respect to the proposed development. However, the Board's decision came three years after the last ECA approval, and whether MoECC, as it then was, should have had more regard for the Provincial Policy Statement is a moot point.

The applicant is now proposing a "seasonal recreational vehicle park, [including] a restaurant and cabin rentals". No lot creation or division or any other planning approval is required. The type of development proposed is premised on sole ownership and control by the applicant, with cabins and trailer sites rented or leased to guests. The purpose of the amendment is to recognize this change in use, presumably by amending the purpose statement and Schedules A and B, which were already outdated by the time of the condominium hearing.

Comparison of the applicant's site plan with the enclosed map shows that the water treatment plant, some (not all) of the sewage treatment plant, the restaurant, and a small portion of the cabins and trailer sites are located on PIN 42180-2612 which is owned by the applicant. Most of the cabins and trailer sites are on other PINs, none owned by the applicant.

Concerns with the application

1. Aside from the applicant's misrepresentation of the ownership situation, according to the Guide for Applying for an Environmental Compliance Approval, the applicant, as a non-owner of most of the site, should have provided "a document, such as a letter or lease, signed by the property owner indicating your authority to install and operate the facilities or store vehicles or equipment on the land".
2. Surely it is not appropriate for a private sewage works to serve multiple conveyable lots, particularly when those lots do not in any way align with the proposed development pattern. A sewage works serving a commercial tourism operation normally serves a single lot, and is considered an individual on-site sewage service under the Provincial Policy Statement, which service type is perfectly acceptable in unorganized territory. That is what has been presented to the Ministry by the applicant, but in fact this sewage works would be what is considered a private communal sewage service under the Provincial Policy Statement.
3. As mentioned earlier, and recognizing that no planning approval is required in this case, it is my opinion that the Provincial Policy Statement does not permit new development to be served by private communal water or sewage services in unorganized territory. MECP should have regard to that.
4. MECP's Procedure D-5-2 does not support private communal services in unorganized territory. "Communal services in areas without municipal organization will only be considered in the situation where they are required to address remediation of failed individual on-site services" (section 4.2), which does not apply here.
5. Procedure D-5-2 also clearly requires that private communal services be subject to responsibility agreements. This, as I said in my evidence to the OMB, is problematic given that there is no body with whom this applicant could enter into a responsibility agreement or equivalent, which is another reason why private communal services do not belong in unorganized territory. At the time of the OMB hearing, some aspects of what might be covered in a responsibility agreement would have been addressed by the *Condominium Act, 1998* which would have applied to the development if approved. Even those limited assurances would now not apply to servicing crisscrossing an existing freehold subdivision.
6. MECP's Guideline F-15 says, "At the time of initial approval, the Ministry will continue to require a municipality or, in an unorganized area, another governmental organization to enter into a responsibility agreement for the long-term operation and maintenance of communal sewage works and systems" (section 4.3.3). But, again, there does not appear to be any non-municipal body to enter into such an agreement in this case. Absent such an agreement, the Guideline requires the applicant to provide financial assurance to MECP, but the existing ECA does not provide for this.
7. The failure of the servicing for the condominium proposal to conform with the requirements of the Provincial Policy Statement, Procedure D-5-2, and Guideline F-15 were the key points cited by the OMB in its refusal of the condominium applications.

8. In support of its appeal of the OMB's refusal of the condominium applications, the applicant submitted an affidavit sworn November 14, 2017 by its present general manager, Doug Johnston, which I enclose. According to this affidavit, subsequent to the Board's decision, Mr. Johnston met MoECC staff in Kenora regarding financial assurance should condominium approval eventually be granted. The Ministry indicated it was willing to enter into a financial assurance agreement, and the applicant indicated it was willing to provide the necessary assurance. The applicant also indicated it was willing to apply to amend the present ECA accordingly. Interestingly, even though the current situation offers less financial assurance contingency than a condominium would have, the applicant did not mention or propose this in its current application.

9. I provided evidence at the OMB hearing as to the precedents for private communal services in unorganized territory, intended to demonstrate that there is no relevant precedent for allowing such services. I undertook extensive research and there appear to be no others than the following.
 - ▶ Kenora [Standard] Condominium Plan 1, on Clearwater Bay, Lake of the Woods. 20 dwelling units in five four-unit buildings. Services consist of septic tanks and a single large tile field on adjacent Crown land. This plan was registered in 1977 and, one assumes, was developed shortly thereafter. Ministry of the Environment approval was not required at that time; approval appears to have been given by the Northwestern Health Unit. There is no C of A/ECA.

 - ▶ Sudbury [Standard] Condominium Plan 5, in Willisville community, Froid Lake. 24 detached and semi-detached dwellings. Services consist of connections to a sewage treatment plant dating from the 1940s (this is a former International Nickel community) located in the condominium common elements. Because of the age of the plant it has no C of A/ECA. MoECC staff advised me in 2017 that an ECA was being developed because of problems with the system, but as of the time of writing, no ECA has been issued.

I trust this information and opinion will be helpful.

Yours sincerely,

[signed by]

Anthony Usher, RPP