

Save Picton Bay July 23rd, 2019 Deputation to PEC Council

Your Worship Mayor Ferguson & Councillors:

On April 11th, 2017 Save Picton Bay (SPB) opened a Deputation in this Chamber before the previous Council as follows:

"SPB is a not for profit group made up of ordinary citizens from all walks of life, whose concern is solely water quality for County drinking/ recreation/ tourism and commerce.

We are appreciative of the democratic process and are doing our best to work with our elected representatives who we know share the same concerns.....as well as the various regulatory bodies involved.

We are respectful of anybody's right to work and grow a commercial enterprise - that is what built this country.

But all County residents are also called as stewards of this beautiful place for generations to follow. Our mutual concerns are much larger than Picton Terminals (PT); but clearly as a result of their self- demonstrated capabilities, Job #1 is proper rezoning and regulatory control assurances in order to guarantee that one day the sum of recent "smaller" issues do not add up to an enormous environmental disaster to the detriment of all who are privileged to work and play in the Bay".

The "smaller issues" referred to the March 2017 PT barge sinking; the resultant closing of the Town's drinking water system; the need to contain 1,100 litres of fuel on board the barge; the subsequent loss of tourism dollars because of this emergency; the pet coke spill; the continuous salt run off leaching into the Bay and the exposure of Picton's fresh drinking water intake pipe located in fairly close proximity to PT docks given the churning up of the Bay bed sediment by the props of an increased number of large freighters.

In recognition of the limitations on Council's jurisdiction regarding pollution and marine traffic, SPB has long been working with the Provincial & Federal government regulators - but urged Council then to withdraw its original backing of PT's plan to turn our small harbour into a Great Lakes shipping port by addressing a rezoning of its land use activities - the one area where Council does have jurisdiction.

As that previous Council voted to oppose such a withdrawal - SPB in effect took on the Council's job by asking an Ontario Superior Court Judge to interpret the land usage zoning by laws on which PT were relying to continue their shipping operation - a usage interpretation which SPB's legal counsel Eric Gillespie, a lawyer with expertise in municipal & environmental law, felt to be illegal and contrary to the existing Zoning By-Law.

In June of 2018, The Honourable Judge Wolfram Tausendfreund of the Ontario Superior Court of Justice, released his decision which from his read of the evidence certified that Legal Non Conformance (LNC) of the Zoning for the bulk storage and shipping of industrial goods is permitted in addition to the new zoning which allows quarrying on the Hallowell side.

On the Sophiasburgh side or RU1 (Rural Residential) lands, on the southerly formerly M2 Industrial, he permitted it to be used for access by storage of industrial vehicles only. Not storage of bulk goods. (This is where Picton Terminals recently stored Clinker). He certified that the balance of the property is to be used only for Rural Residential, not industrial, and ordered PT to cease using that portion of their lands for Industrial and remove portable industrial equipment and aggregate stockpiles stored on the north east portion of its Picton Bay site.

As SPB's legal counsel, Eric Gillespie, felt strongly that the Court did not necessarily appear to address certain aspects of SPB's Case. - accordingly SPB advised Council and PT that it would Appeal the decision.

In the interim a municipal election took place in November, 2018 and SPB proactively met with many candidates to understand their views on the issues. SPB is mystified why the new Council, alongside PT, aggressively acted to oppose our application for extension of time to Appeal, heard in the Court of Appeal for Ontario in front of Madame Justice Benotto, on June 5th, 2019 as we thought that the concerns of SPB's constituents and our new Council were coincidental.

Furthermore, SPB was stunned to discover, after having asked in February 2019 the new Council to rescind the old Council's opposition to our Appeal - that the Council twice met in illegally constituted meetings due to not providing any notice to SPB or the Public of the meeting agendas - in order to provide its legal counsel fresh instructions to oppose our Appeal.

Feeling abandoned by our democratically elected representatives, SPB exercised its legal right as a public litigant in filing an application for a Bad Faith Judgement against PEC Council and its legal counsel in the belief that Council in taking these measures was unaware of both the legal implications and possible impact upon our Appeal.

Notwithstanding our concern that Council's opposition to our Appeal would prejudice its chances of moving forward, on June 14th, 2019 Madam Justice Benotto released her decision to allow the extension of time to Appeal to move forward.

What has motivated SPB for the past 27 months since last making a Deputation to Council on this issue:

- Victor Lind's Deputation to Council this evening addressed the Ontario Ministry of the Environment, Conservation & Parks, (MECP's) recent Director's Order summarizing the serious, continuous & ongoing PT pollutant actions in spite of their commitments to the contrary.
- PT's appearing to not be in compliance with the Court's RU1 ruling
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- following the Bad Faith applications, the Council's solicitors reached out to suggest a proposed three way settlement negotiation between PT; Council & SPB - which in the end consumed much time but basically went nowhere

SPB has been baffled by these various mixed signals.

We know that SPB and Council share the same views about water quality in Picton Bay. In addition to drinking water concerns I am certain that you need no reminder that much of the Community and their financial well-being depends upon the natural beauty of the surroundings, its dependence upon the harvest and the welcome of visitors.

Why then would Council not only oppose SPB's request for our Appeal to be heard AND commit what must be conservatively over \$100,000 of tax payer money toward legal fees in its opposition? Particularly as we all know that PE County faces many substantive economic, social, health, environmental & infrastructure issuesand serious funding restrictions.

- Is it possible that the democratically elected members of Council overly delegated these matters to Staff & legal counsel? Or worry about liability relating to the previous Council's support of PT?

We are here this evening to respectfully ask Council to exercise its democratic leadership of these issues and to stand down from its opposition to our Appeal either by expressing its support- or at worst by declaring a position of neutrality.

17th century satirist Jonathan Swift wrote: **"Rumour is already half way around the world; while truth is still putting on its shoes"**

So let me be perfectly clear. SPB has 2 simple wishes:

1. That we can stand together and have our Appeal heard and abide by its rulings - which we hope will lead to fair regulatory rules of engagement for PT.

If we win the Appeal, then PT would have no grandfathered rights and Council can listen to what the Community wants

2. That going forward we can then work together with Council and release the positive energy and support of SPB's membership to other of these important County matters