

Conservation
Review Board

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ISSUE DATE:

March 13, 2013

CRB1109

CONSERVATION REVIEW BOARD

RE: THE CORPORATION OF THE TOWNSHIP OF MUSKOKA LAKES – INTENTION TO DESIGNATE THREE PROPERTIES KNOWN AS TOWNSHIP DOCK AT LAKE MUSKOKA; PORTAGE LANDING AT MOON RIVER; AND SHIELD PARKING LOT, IN THE TOWN OF BALA.

Su Murdoch, Chair
Stuart Kidd, Member

This Hearing was convened under s. 29(8) of the *Ontario Heritage Act, R.S.O. 1990, Chapter O.18, amended to 2009 (“Act”)*, for the purpose of reporting to the Council of the Township of Muskoka Lakes (“Township”), whether, in the opinion of the Conservation Review Board (“Review Board”), on the basis of the evidence it heard, three properties known as Township Dock at Lake Muskoka; Portage Landing at Moon River; and Shield Parking Lot, all in the Town of Bala, Township of Muskoka Lakes, should be protected by bylaw(s) under s. 29 of the Act. The legal descriptions and survey maps for these properties are contained in Exhibit 2 and in the *Analysis: Issue 6* section of this Hearing Report. These properties are separate and distinct from each other. All are owned by the Corporation of the Township of Muskoka Lakes.

Notice of this Hearing was served by the Review Board on the Parties and was published in the *Bracebridge Examiner* and the *Gravenhurst Banner* on December 12, 2012, in the manner required under the Act. The Statement of Service was filed as Exhibit 1.

The Hearing convened at 10 a.m. on January 7, 2013, at the Township of Muskoka Lakes municipal office at 1 Bailey Road, Port Carling. The Hearing ended on Thursday,

January 10, 2013, at about 5:15 p.m.

The Township originally proposed the protection of six properties under s. 29 of the Act. Two properties were withdrawn and all objections to a third property were withdrawn, leaving three properties for the Review Board's consideration. Prehearing conferences (and a site visit to Bala) were held in person on September 5 and October 9, 2012. These were attended by Ms. Murdoch, but not Mr. Kidd (who had not viewed the properties by the start of the Hearing).

AT ISSUE

The Township of Muskoka Lakes, Swift River Energy Ltd., and Paul Davidson (the "Parties") disagree on whether the properties known as Township Dock at Lake Muskoka; Portage Landing on Moon River; and Shield Parking Lot, all in the Town of Bala, Township of Muskoka Lakes, satisfy the test of *Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest* ("Regulation 9/06") for protection under s. 29 of the Act. Swift River Energy Ltd. also contends that the Township is in violation of the requirements for the Notices of Intention to Designate as prescribed by s. 29(3), s. 29(4), and s. 29(4.1) of the Act.

COUNSEL IN ORDER OF APPEARANCE

Township of Muskoka Lakes:

Harold Elston, Elstons LLP

Assisted by Aynsley Anderson, Elstons LLP

Swift River Energy Ltd.:

Steven C. Ferri, Loopstra Nixon LLP

Assisted by Jason Cicchetti, Loopstra Nixon LLP

Karen McGhee, MKE Ltd. Consulting Engineers, on behalf of Swift River Energy Ltd.

Paul Davidson (Self Represented Party) Non Attendance:

Mr. Davidson informed the Review Board in writing on December 9, 2012, that for compassionate reasons, he was unable to comply with the December 17 deadline for disclosure submissions. He did not attend the Hearing for the same reasons. As permitted under s. 7(1) of the *Statutory Powers Procedure Act* regarding non attendance of a Party that was given proper Notice, the Review Board continued with the Hearing in his absence. Mr. Davidson was notified through the Township by telephone and email on January 7 that the Review Board would "accept a written submission from you provided they [Review Board] receive it by the end of the week."

Mr. Davidson responded January 8 with direction to consider his original letter of objection dated August 23, 2011. Copies of this email correspondence were filed with the Case Coordinator. As no further submissions were received from Mr. Davidson, by which the Review Board could fully understand his objections, no further action will be taken.

PUBLIC STATEMENTS

The Review Board and the Parties agreed that given the distance driven by many to attend, and the winter driving conditions, that Public Statements would be heard at the start of the proceeding, instead of immediately prior to closing. The Review Board also agreed to accept written submissions from the Public until January 17, 2013, at 4 p.m., the deadline for the final written submissions from the Parties.

Members of the Public in Order of Appearance:

The following gave their residence (permanent or seasonal) as Bala, except as otherwise noted:

Mr. Mark Gidley
Ms. Liz Lundell, Glen Orchard
Ms. Anne Polewski
Mr. Bruno Polewsik
Ms. Nora Fountain, Torrance
Mr. Michael Webb (formerly a Party)
Ms. Anna Mallin (formerly a Party)
Ms. Gunta Towsley, Ullswater
Ms. Linda Jackson Hutton (formerly a Party)
Mr. Brad Burgess, Councillor Township of Muskoka Lakes
Mr. Terry McFadden
Mr. Allan Turnbull
Mr. Sandy Currie
Ms. Deborah Ylanko
Mr. Bill Purkis
Ms. Ruth Nishikawa, Torrance, Councillor Township of Muskoka Lakes

WITNESSES IN ORDER OF APPEARANCE

Catherine Nasmith, heritage consultant, on behalf of the Township of Muskoka Lakes

Christopher Andreae and Marcus Letourneau, heritage consultants, as a witness panel

on behalf of Swift River Energy Ltd.

JURISDICTION OF THE BOARD

All Parties were reminded that the jurisdiction of the Review Board under s. 29 of the Act is to hear evidence within the framework of Regulation 9/06. Of particular note is that the Review Board does not address any applications or issues that are under the jurisdiction of the *Planning Act* or other legislation. Evidence of this kind will be heard if it gives context to the discussion of cultural heritage value or interest and/or the integrity of any heritage attributes that may support that value or interest.

IDENTIFIED ISSUES

The evidence presented at this Hearing raised a number of issues which this Hearing Report will consider under the section *Analysis: Issues*:

Issue No. 1

Is the Township of Muskoka Lakes in violation of the requirements for the Notices of Intention to Designate (“NOID”) under s. 29(3) and s. 29(4) Contents of Notice to be served on the property owner and the Ontario Heritage Trust (“Trust”); and under s. 29(4.1) Contents of Notice to be published?

Issue No. 2

What constitutes a reasonable amount of change in “scope and intent” following the issuance of the Notice of Intention to Designate?

Issue No. 3

Can a view be identified as a heritage attribute of a property for purposes of a bylaw under s. 29 of the Act? When does a view support and contribute to the cultural heritage value interest of a property, as opposed to being an aesthetic?

Issue No. 4

Can sounds be identified as heritage attributes of a property for purposes of a bylaw under s. 29 of the Act?

Issue No. 5

When does a use hold cultural heritage value or interest?

Issue No. 6

Does each property meet the test of Ontario Regulation 9/06: Criteria for Determining

Cultural Heritage Value or Interest?

MEMBERS OF THE PUBLIC

In Favour of Protection under the Act:

Mr. Mark Gidley, a business owner, discussed the importance of preserving history. He knows firsthand that the Town Dock is a busy place “then and now.” He explained that the positioning and terrain of Burgess Island (also known as Portage Island) “makes this the logical portage.” Although finding evidence is “difficult,” he believes it has been “traversed since the early explorers.” The Shield Parking Lot has a rock face exposed by rail and road construction and is “more than a parking lot.” Mr. Gidley submitted information in writing (No. 1).

Ms. Liz Lundell is an educator, historian, and writer who served on the Township Municipal Heritage Committee (“MHC”). She researched and wrote statements of cultural heritage value for the subject (and other) properties for listing on the Township’s Inventory [now the Register of Cultural Heritage Properties]. She considers the protection of the cultural heritage landscape(s) of Bala to be important, especially given the significance of tourism to the area. Ms. Lundell submitted information in writing (No. 2).

Ms. Anne Polewski is a member of the MHC and has a background in freshwater biology. She and Mr. Bruno Polewski circulated a selection from their postcard collection of Bala, explaining that these cards demonstrate how visitors shared the beauty of the area with others around the world. The Polewskis submitted copies of some postcards, which were later entered by the Township as Exhibit 14.

Ms. Gunta Towsley is president of the Muskoka Branch of the Architectural Conservancy of Ontario and a former member of the MHC. She has fond memories of the area and in 2009 promoted the Bala Falls area as a cultural heritage landscape or Heritage Conservation District [under Part V of the Act]. She does not want the area “sacrificed on the altar of green energy.”

Ms. Linda Jackson Hutton is the curator/owner of the Bala Museum. Her family has been in Bala since the 1880s. The date at which the church was named Burgess Church likely coincides with the substitution of the name Burgess Island for the traditional name of Portage Island. By calling it Burgess Island, its significance as a portage, hence the name Portage Island, is being lost.

Mr. Brad Burgess is the great grandson of Thomas Burgess who founded Bala in 1868. The word “Bala” means in Welsh “outflow of water.” The long standing use of the Town Dock as a centre of water transportation from the steamboat era to today is integral to Bala’s history. Portage Island has been used as a portage route “for at least a century.” There are hundreds of canoeists from YMCA Camp Pinecrest using the route today. The Shield Parking Lot is an “extraordinary” display of the Canadian Shield. He personally maintains the gardens at the site.

Mr. Terry McFadden is a real estate agent. In his profession, “he sells heritage” in the region. He is aware that Portage Landing is the shortest route for canoes.

Mr. Allan Turnbull lives on Moon River a short distance from Bala Falls. In season, he observes the portage being used three to four times a week by various groups of canoeists. His neighbour can recall portaging there over fifty years ago. Mr. Turnbull submitted copies of some postcards, which were later entered by the Township as Exhibits 13(a) and 13(b).

Mr. Sandy Currie spoke on behalf of the Moon River Property Owners’ Association, an organization of about 196 families in or around Moon River, of which he is president. Some members can recall stories of Bala dating back to their ancestors in the 1860s. MRPOA is of the opinion that the Ontario Heritage Act is about recognizing what came before and protecting this for the future. The Town Dock is an important historical feature and part of the Moon River and Bala experience. It is a meeting place and site of the annual regatta. From there, you can walk to Shield Parking Lot, where hundreds of cars park annually to view the Precambrian Shield, read the plaque, start along the walkway at the north end, and view the falls. Portage Landing is a good landing spot with safe access from land or water into town. It is a popular location for swimming, especially for the public which otherwise has no water access. You can view the falls and the “First Nations marker tree.” The whole core of Bala is a tourist economic hub. These places must be protected for the sake of Bala as a community. He submitted information and a map (No. 13).

Ms. Deborah Ylanko has for fifty years considered Bala to be her second home. She explained that Bala Falls is the confluence of the entire Muskoka watershed to Georgian Bay, with waters from as far away as Quebec. All travellers to/from Georgian Bay passed through the portage at Bala. Ms. Ylanko submitted information in writing (No. 14 and later submitted).

Mr. Bill Purkis lives close to the falls and is the owner of Purk’s Place for thirty years. This was formerly called the Portage Boat House and was relocated when the Canadian

Pacific Railway line was built through Bala in 1907. The Shield Parking Lot is an early example of the drill – blast – fill method of highway construction. It is an important community use space where people can experience “rivers, railroads, and automobiles.” Portage Landing has been used for centuries as a portage, including by 1830s surveyor David Thompson and by Camp Pinecrest. He has portaged there. A 17th century, French made axehead was found down river from this location. The Ministry of Natural Resources’ new fencing is positioned to allow continuing access to the portage landing. The Township Dock is “linked by tradition and family heritage.” Mr. Purkis submitted letters from Carrie Bain and Mike Manchee dated January 3, 2012 [2013]; Jane Manchee dated January 4, 2013; and Stephen T. Manchee dated January 8, 2012 [2013] (No. 15).

Ms. Ruth Nishikawa is a councillor with the Township of Muskoka Lakes whose family arrived in the area in 1863. Her ancestor was a “chauffeur” transporting people around the lakes. She became involved in local heritage in the 1990s, is the past president of the Muskoka Branch of the Architectural Conservancy of Ontario, and was Chair of the MHC in 2010. The MHC’s goal has been to establish in the Township, three Heritage Conservation Districts under Part V of the Act, including the core area of Bala. It was decided that the best approach is to begin with the protection of individual properties.

Not in Favour of Protection under the Act:

Ms. Nora Fountain lives near the falls. She disagrees with the protection of the Shield Parking Lot and of Portage Landing. Parking is not “significant” in terms of cultural heritage value or interest. The “full heritage” of Portage Landing has yet to be disclosed. This is not a heavily used portage site. There has not been mention of the hydroelectric plant that was there earlier in the 20th century. She believes the Act should be used “correctly” and not as currently proposed by the Township.

Mr. Michael Webb was formerly a Party to this proceeding. His family has been associated with Moon River since 1905. He objects to the process by which the Township changed the descriptions of heritage attributes and withdrew Notices of Intention to Designate, without giving reasons for these actions. He finds the Township is poorly prepared and has provided confusing data. He wonders if this is all really about opposing the proposed hydroelectric plant. Mr. Webb submitted information in writing (No. 6).

Ms. Anna Mallin was formerly a Party to this proceeding. She objected based on the fact that there are no structures or buildings on two of the properties and the dock on the Township Dock property is new. The sites are already commemorated. Ms. Mallin

submitted information in writing (No. 7).

Additional Correspondence Received from the Public

Ann Sheffar, January 10, 2013 (in favour)

Elizabeth Laing, January 10, 2013 (in favour)

Wendy de Gomez, January 10, 2013 (in favour)

CASE FOR THE MUNICIPALITY

Exhibit 4: Township Document Book was entered by the Township.

WITNESS – CATHERINE NASMITH

Ms. Nasmith was sworn as an expert in cultural heritage. She is the principal in Catherine Nasmith Architect specializing in heritage architecture, heritage planning, and heritage conservation education. She has lived part time in Bala since 1994 and has restored some local heritage buildings. Her Curriculum Vitae is in her Witness Statement at the start of Exhibit 4, and as Exhibit 4, Tab A.

Ms. Nasmith was retained by the Township shortly after the Notice of Intention to Designate was published on August 17, 2011, for the original six properties (Exhibit 4, p. 46) and Objections were filed. Exhibit 3 is her signed *Acknowledgement of Duty as an Expert Witness*.

Methodology

The Witness Statement (Exhibit 4, p. 5; E: *Work Undertaken to Date*) outlines the steps taken by Ms. Nasmith in collaboration with the Township. At the start of her involvement, she concluded that the draft Statements of cultural heritage value or interest and the descriptions of heritage attributes (Exhibit 4, Tabs C, D, and E) are “well researched and presented” but do not meet the “format” of Regulation 9/06. She attributes this to the inexperience of the Township’s Municipal Heritage Committee (as defined under s. 28 of the Act; “MHC”) at drafting these requirements. In her opinion, the “substance of the designation(s) is strong” and the heritage of these properties is “unquestionably valued by the community.”

Ms. Nasmith’s primary task was then to determine the meaning and intent of the “key ideas” in the draft Statements and descriptions of heritage attributes and carry these forward into the scope of Regulation 9/06. As stated in section E. *Work Undertaken to Date*, No. 8 (Exhibit 4, p. 5), this involved a “review of materials identified in the

bibliographies of the Draft Designation Statements, including interviews with authors to determine sources of information”; and No. 10, “Review of Local Heritage Collections at the Township of Muskoka Lakes Public Library, Port Carling Branch.” Copies of some reference materials are in Exhibit 4.

Ms. Nasmith considers each of the subject properties to be a cultural heritage landscape, within the larger cultural heritage landscape of Bala. She is aware that the MHC originally contemplated the protection of a larger area within Bala as a Heritage Conservation District under Part V of the Act (“HCD”). The Township made the decision to instead protect individual properties, bearing in mind the potential for including s. 29 properties within a future HCD. Ms. Nasmith endorses this strategy, given that amendments to the Act in 2005 now permit the inclusion of a Part IV property within a Part V HCD.

Ms. Nasmith visited the properties and collaborated with the Township in complying with the Review Board Order of October 10, 2012, which resulted in a document submitted by the Township: “Survey Sketch and Confirmation of Heritage Attributes Package dated October 31, 2012” (Exhibit 2). It provides the legal descriptions, property surveys, and descriptions of heritage attributes for each subject property. Through this process, it was determined that the Bala cenotaph is not on the property proposed for protection under s. 29 and that property was withdrawn. The Township also withdrew the Township Dock at Moon River property. This October 31 document and the “Designation Statement” for each property (Exhibit 4, Tabs Q, R, and S) were the starting point for the Review Board’s consideration at the Hearing.

Policy Framework: Provincial

To explain her approach to the subject properties, Ms. Nasmith gave an overview of the policy framework for heritage conservation in Ontario and how documents such as the International Council on Monuments and Sites 2008 *Quebec Declaration on the Preservation of the Spirit of Place* (Exhibit 4, Tab K); and Parks Canada’s *Standards and Guidelines for the Conservation of Historic Places in Canada (Second Edition, 2010)* (Exhibit 4, Tab J) continually influence heritage conservation policy and practice.

Section 2.6: *Cultural Heritage and Archaeology* of the Provincial Policy Statement of the Ontario Planning Act, 2005 (“PPS”) was reviewed, noting the definitions for “heritage attributes” and “cultural heritage landscapes” and the emphasis on the phrase “valued by the community.” (The Review Board disallowed discussion of the PPS Draft Policies September 2012 as these are not adopted.) The differences between the definition for “heritage attributes” in the PPS vs. the Act, and the lack of a definition in the Act for cultural heritage landscapes were noted.

In Ms. Nasmith's opinion, the PPS and the Act endorse "community," however defined, as the authority in determining what holds local cultural heritage value or interest and which "traditions" are multi generational. This community approach is sanctioned in the *Heritage Tool-Kit* developed by the Ministry of Tourism, Culture and Sport in 2006 as a municipal guideline for the implementation of the PPS and Regulation 9/06. She commented that community interest and concern in the subject properties is evident by the number of Public Statements and attendance at this Hearing. The postcards (Exhibit 14) demonstrate how the beauty of Bala is shared around the world.

Heritage Policy Framework: Township of Muskoka Lakes

Ms. Nasmith referenced the *Report of the Master Plan of Archaeological Resources of the District Municipality of Muskoka and the Wahta Mohawks, Volumes 1 and 2*, assembled by Archaeological Services Inc. in 1994 (Exhibit 4 Tab L) ("*Master Plan*"). This document has not been officially adopted by the District but is cited in Township policy documents and consulted "daily" by staff.

Master Plan Vol. 1, Subsection 3.1: *The Approach to Planning for Built Heritage and Cultural Landscapes* (Exhibit 4, Tab M) explains the Theme Significance and Theme Ratings A, B, C (A is highest; C lowest or minor) approach used for evaluating the cultural heritage resources of the District (Exhibit 4, Tab M, p. 202). Ms. Nasmith applied this thematic approach to the subject properties and found that aspects of Bala's history are within several Themes including early land surveys; steamboat navigation; resort era; autos and summer cottages; public parks; and rural villages (Exhibit 4, pps. 34-36). This finding supports the Township's argument for protection under the Act. She considers the aspect of power generation to be a minor Theme (Rating C).

Through cross examination, Mr. Ferri queried the validity of taking direction from the *Master Plan* and of using a Themes approach. Page 81 of the *Master Plan* (Exhibit 8; see also Exhibit 7) states: "The mapping of individual historical themes (documentary history), in and of themselves, are not useful management tools for day-to-day heritage conservation planning." (The Witness Panel for Swift River Energy Ltd. stated that the *Master Plan* was intended for use at the District, not Township level. Its Themes approach is "out of date" and superseded by Regulation 9/06 (Exhibit 5, Tab W, *Golder Assessment*, pps. 14-15).)

The *Township of Muskoka Lakes Official Plan (Consolidation June, 2010)* contains Section C - *Urban Centres*, Subsection 4.4 *Culture/Heritage Conservation* (Exhibit 4, Tab H). Ms. Nasmith considers this subsection to be confirmation of the Township's

commitment to cultural heritage conservation and proper use of the process and provisions of the Act. Subsection 4.4.3 emphasizes that “Locally significant buildings, places, and attractions, should be identified as being important to the character of the municipality.”

The Township of Muskoka Lakes 4 Year – Strategic Plan, Approved February 13, 2012: Cultural Heritage: Heritage Properties, Creative Muskoka (Exhibit 4, Tab I) was also noted. The “Strategic Plan Implementation Matrix, Draft: February 7, 2012” (Exhibit 4, Tab I, p. 183) lists “Identify priority community areas for consideration as heritage districts and conduct site visits of each of these communities in conjunction with the review of Heritage Inventory: Bala, Windermere, Port Carling.” This Matrix begins in 2011 and indicates progress on this objective as “ongoing.”

In reviewing minutes starting March 14, 2011, of meetings of the MHC and Council regarding the protection of the subject properties (Exhibit 4, pps. 28-30), Ms. Nasmith concluded that the process undertaken by the Township complies with the Act. The original six properties are listed individually on the Township’s Register of Cultural Heritage Properties (as defined by s. 27 of the Act).

In her Witness Statement: *F. Summary of My Opinion* (Exhibit 4, pps. 5-6), Ms. Nasmith concludes, “In designating these properties the municipality is following through on a course outlined in both its Strategic Plan and Official Plan.” The three subject properties “are valued by the community, and their value is reflected in the desire expressed through their Council to protect them under the Act. The properties meet one of more of the criteria in Regulation 9/06, making each eligible for protection under s. 29.”

In cross examination by Mr. Ferri, Ms. Nasmith stated that she does not believe the designation process under s. 29 was initiated in response to the Swift River Energy Ltd. hydroelectric development proposal for the Crown land between the north channel of Bala Falls and the Portage Landing on Moon River property. Her 2010 presentation to the MHC about HCDs under Part V of the Act only references the requirement under the Renewable Energy Approval process of the *Green Energy Act* to identify any impact on cultural heritage resources (Exhibit 6).

Ms. Nasmith’s research and evaluation of each property under Regulation 9/06, and the resulting Statements and descriptions of heritage attributes are addressed in the Analysis: Issue 6 section of this Hearing Report.

CASE FOR THE OBJECTOR (SWIFT RIVER ENERGY LTD.)

Exhibit 5: Document Book, Volumes 1, 2, 3, and 4, including a flashdrive of sounds was entered by Swift River Energy Ltd. (“Swift River”).

WITNESS PANEL – MARCUS LETOURNEAU AND CHRISTOPHER ANDREAE

Dr. Letourneau was sworn as an expert in cultural heritage. He has been the Senior Cultural Heritage Specialist with Golder Associates Ltd. (“Golder”) since 2011 and has extensive prior experience in municipal heritage planning. His Curriculum Vitae is contained in Exhibit 5, Volume 1, Tab S. Exhibit 9 is his signed *Acknowledgement of Duty as an Expert Witness*.

Dr. Christopher Andreae was sworn as an expert in “built heritage,” which was later accepted as encompassing expertise in cultural heritage. He has been the Associate Built Heritage Specialist with Golder Associates Ltd. since 2009. Prior to this he was president of Historica Research Ltd. (1980 to 2009). He has extensive experience in architectural assessment, heritage planning, and cultural landscapes, with particular attention to public works and transportation (railways, roads, bridges, water, hydroelectric power) and natural resources. While with Historica, Dr. Andreae compiled for Swift River the January 2009 *Heritage Impact Assessment of the Bala Falls, Bala, Ontario* (Exhibit 5, Vol. 1, Tab W: Appendix E). His Curriculum Vitae is contained in Exhibit 5, Volume 1, Tab U. Exhibit 10 is his signed *Acknowledgement of Duty as an Expert Witness*.

Golder Associates Ltd. was first retained in 2011 by MKE Ltd. Consulting Engineers to advise on whether Swift River Energy Ltd. should object to the Notice of Intention to Designate for the original six properties. Golder was again retained in August 2012 to consider the descriptions of the properties, Statements of cultural heritage value or interest, and descriptions of heritage attributes, as of October 31, 2012. Dr. Letourneau is the lead author of the resulting December 2012 *Cultural Heritage Assessment, Bala Falls, Township of Muskoka Lakes, Ontario* (“*Golder Assessment*”) (Exhibit 5, Tab W) but it was Dr. Andreae who applied Regulation 9/06. Both conducted site visits and consider the *Golder Assessment* to be a team collaboration. As such, the Witnesses gave evidence as a panel.

Golder Comment on Township Process and Methodology

For a heritage conservation process to be “fair and transparent,” Doctors Letourneau and Andreae (“Golder Panel”) believe that the “legislative and policy designation framework” established by the Province and entrenched at the municipal level must be followed. In their opinion, the Township did not adhere to this framework, and notably, is in violation of the requirements for the published NOID under subsection 29(4.1) of the

Act (See *Analysis: Issue 1* of this Hearing Report).

Overall, the Golder Panel believes that the Township is confused between the concepts of heritage commemoration and protection under the Act. The Township's use of the term "cultural heritage landscape" is inconsistent with the "defined geographical area" definition of the PPS and is somewhat confused with the HCD concept under Part V of the Act. In addition, a s. 29 bylaw cannot regulate views not on the subject property, use, sounds, natural features, or water levels by describing them as heritage attributes. All heritage attributes must be on the real property. (These issues are considered in *Analysis: Issues 3, 4, and 5* of this Hearing Report.)

Overall, the Golder Panel also finds the Township's historical research lacking. For example, there is no geographic analysis of the 1830s Thompson survey journal. There was no aboriginal consultation regarding the traditional use of any portage or landing(s) on Portage/Burgess Island; or of the direct relationship of the Mohawk to the Portage Landing on Moon River site during the 1881 relocation from Oka, Quebec. (Golder also did not undertake aboriginal consultation.) There is a need for marine and terrestrial archaeological fieldwork for the Township Dock area. Important details about highway construction methods in the context of Shield Parking Lot are lacking. Some historical details and descriptions of the properties are in error.

Golder Methodology

The Golder Panel explained that their *Assessment* adheres to the guidelines of the *Heritage Tool-Kit*, the definitions contained in the Act, and the criteria of Regulation 9/06. They cautioned that when applying Regulation 9/06, it is important to note the emphasis on qualifiers such as rare, unique, early, and high degree for Design or Physical Value; the key word of direct in (i) "direct associations," meaning there must be a real connection to subject property under Historical or Associative Value; and that Contextual is about systems and relationships which may cross properties but have a real connection to the specific property. The Golder Panel believes the Township ignored these important qualifiers.

Based on their methodology, the *Golder Panel* concludes that only the Township Dock on Lake Muskoka could meet the test of Regulation 9/06, and not for the reasons given by the Township.

The Golder Panel research and evaluation of each property under Regulation 9/06 compared to that of the Township is addressed in the Analysis: Issue 6 section of this Hearing Report.

ANALYSIS OF ISSUES

ISSUE NO. 1

Is the Township of Muskoka Lakes in violation of the requirements for the Notices of Intention to Designate (“NOID”) under s. 29(3) and s. 29(4) Contents of Notice to be served on the property owner and the Ontario Heritage Trust (“Trust”); and under s. 29(4.1) Contents of Notice to be published?

The Act prescribes the requirements for a Notice of Intention to Designate (“NOID”) under s. 29(3) and s. 29(4) *Contents of Notice* to be served on the property owner and the Ontario Heritage Trust (“Trust”); and under s. 29(4.1) *Contents of Notice* to be published.

In its September 14, 2011 letters of objection, Swift River objects to the protection of these properties for several reasons, among which is that the NOID published by the Township “does not fulfill the requirements” of the Act. The NOID “is without clarification and the limits of the area are not sufficiently defined”; ownership is not specified; and the Statements of cultural heritage value or interest and descriptions of heritage attributes are not clear.

It is evident in these letters that Swift River interchanges the requirements of s. 29(4) and s. 29(4.1). In its *Written Final Submission January 17, 2013*, Swift River elaborates in *IV: Issue 1* on the issue of NOID more fully than in the letters of objection or as evidence heard during the Hearing. Of note, are its improved delineation between the two NOID requirements and its expanded argument that the Township as the property owner was not properly served Notice under s. 29(3).

Sections 29(3) and 29(4) Contents of Notice to the property owner and the Ontario Heritage Trust

In considering the matter of s. 29(3) and s. 29(4) Notice to the property owner and the Ontario Heritage Trust, the initial referral to the Review Board contains an Affidavit signed by Cheryl Mortimer, Clerk, Corporation of the Township of Muskoka Lakes, stating that the Registrar, Ontario Heritage Trust, and Linda and Jack Hutton (owners of the Bala Museum property to which all objections were later withdrawn) were notified by letters dated August 12, 2011 (Exhibit B of the Affidavit). Each letter identifies the properties and provides as enclosures the draft “Designation Statements” and “Descriptions of Heritage Attributes.”

The Review Board is satisfied that the Township met the requirements of s. 29(3) and s.

29(4); and finds that Swift River's argument that the Township failed to inform itself in writing as owner of all other subject properties is redundant.

Section 29(4.1), *Contents of Notice to be published*

The principal evidence heard from Swift River was directed at whether the Township complied with s. 29(4.1), *Contents of Notice to be published*. Swift River and some other Objectors (withdrawn) queried the content of the published NOID. Swift River contends that confusion compounded when the NOID was "read in conjunction with the Draft Designation Statements" (*Written Final Submission January 17, 2013, IV: Issue 1*).

There are four components to this NOID:

- 29(4.1) Notice of intention to designate property that is published in a newspaper of general circulation in a municipality under clause (3) (b) shall contain,
- (a) an adequate description of the property so that it may be readily ascertained;
 - (b) a statement explaining the cultural heritage value or interest of the property;
 - (c) a statement that further information respecting the proposed designation is available from the municipality; and
 - (d) a statement that notice of objection to the designation may be served on the clerk within 30 days after the date of publication of the notice of intention in a newspaper of general circulation in the municipality under clause (3) (b).

Description of the Property

The Review Board recognizes that the landform boundaries used to describe the properties in the NOID led to confusion, in particular in the distinction between the Township and Crown owned lands. The Portage Landing property owned by the Township is not bounded by the north falls as indicated in the NOID. The Township owns only the south part of Shield Parking Lot.

In receiving the referral, the Review Board requested clarification from the Township of the property boundaries and ownership, particularly for lands that may be owned by the Crown and, as such, exempt from the Act. This is a standard review practice. The Township clarified that it owns the Portage Landing property which abuts the south boundary of the Crown land abutting the south side of the north channel of Bala Falls. The Township owns the south part of the Shield Parking Lot site. Only the Township owned lands are being proposed for protection under s.29 of the Act. Presumably after conducting its own property Title search, the Ministry of Natural Resources withdrew its objection. It was also determined that no Canadian Pacific (Railway) lands were included and that Objection was withdrawn.

It was later found by the Township that the Bala Cenotaph is not on the identified

property, and that property was withdrawn. The Township Dock at Moon River property was also withdrawn.

The test of s. 29(4.1) is whether there was “(a) an adequate description of the property so that it may be readily ascertained.” In this case, it is evident by the numbers of Objectors and Public Statements at the Hearing that the use of common property identifiers – Township Dock on Lake Muskoka, Shield Parking Lot, and Portage Landing on Moon River – was sufficient for the subject properties to be “readily ascertained.” Using the legal descriptions of these properties may have proven less effective for the purpose of local identification.

The Review Board finds the description provided in the NOID to be “adequate” for the intended purpose of public identification of the subject properties.

Statement of Cultural Heritage Value or Interest

The Review Board is satisfied that the NOID contains “a statement explaining the cultural heritage value or interest” for each property. As opposed to s. 29(4), there is no requirement in s. 29(4.1) to publish a description of the heritage attributes of the property, and none was included.

Further Information Available

As required under s. 29(4) of the Act, “Designation Statements” and “Descriptions of Heritage Attributes” were provided by the Township to the Trust and the Huttons on August 12, 2011. This confirms that these were available when the public NOID was published on August 17. At the prehearings, Township Interim Director of Planning Mr. David Pink had the designation files for the original six properties in his possession and commented that “no one had asked to see them.” (Swift River stated that this information was available on the Township website, for possibly only part of the appeal period.)

As required, the published NOID includes “a statement that further information respecting the proposed designation is available from the municipality” and it is proven that further information did exist during the appeal period.

Serving an Objection

The required “(d) a statement that notice of objection to the designation may be served on the clerk within 30 days after the date of publication” is in the NOID.

For the reasons given above, the Review Board does not find the Township in violation of s. 29(4.1) *Contents of Notice* to be published.

ISSUE 2

What constitutes a reasonable amount of change in “scope and intent” following the issuance of the Notice of Intention to Designate?

In this proceeding, the Township issued a series of revised Statements of Cultural Heritage Value or Interest and descriptions of heritage attributes. Swift River (and others) expressed concern that the scope and intent of these changed substantially between the August 17, 2011 NOID, the October 31, 2012 document (Exhibit 2), and as submitted in evidence at the Hearing (Exhibit 4, Tabs Q, R, and S).

Under s. 29, the Act requires that before issuing the NOID, the municipality must determine that the candidate property holds cultural heritage value or interest as prescribed by Regulation 9/06. The Statement of cultural heritage value or interest and description of heritage attributes flow from this evaluation. Based on the evidence heard, the Review Board is satisfied that the Township undertook this evaluation process and summarized the findings in the NOID.

The Act does not address the issue of how the Statement and description of heritage attributes may evolve throughout the course of the proceeding. Presumably by requiring notification to the property owner and the Trust, and by providing for a thirty day appeal period and a hearing, the Act anticipates input into the scope and intent before the municipality either withdraws the NOID or passes the s. 29 bylaw.

On August 13, 2012, the Township sought general direction from the Review Board on when revisions to the “Designation Statements” would require a new NOID. The Review Board advised that “when addressing the issue of a revised NOID, the practice of the CRB is to apply the test of whether the proposed change(s) alter the original scope or intent [giving examples]” (Exhibit 4, p. 2). There was no further correspondence from the Township on this matter. At the Hearing, Ms. Nasmith demonstrated her process of identifying and carrying forward the initial “key ideas” of the cultural heritage of each property to the Statements and descriptions of heritage attributes. She concluded that the proposed revisions did not constitute a substantive change in the “scope and intent” and, therefore, she had recommended to the Township that no new NOID was necessary.

While revisions, clarifications, and the withdrawal of a property are poor practice, in this case, the important initial query of whether Crown and Canadian Pacific owned lands

were included was settled at the start of the proceeding. There was no change in the intent of the Township to protect the identified properties for the “key” cultural heritage value or interest reasons identified at the start of the process. The description of heritage attributes is not a requirement for the published NOID.

The Township states in its *Written Argument of January 17, 2013* (No. 9, p. 4) that “While we do not claim that the steps leading up to the designation statements in their final form could not have been improved, Council, its Heritage Committee, staff and advisors, at all times acted in good faith, in a fair and transparent process, that satisfied the requirements of the Act and its Regulation.” The Review Board agrees.

ISSUE NO. 3

Can a view be identified as a heritage attribute of a property for purposes of a bylaw under s. 29 of the Act? When does a view support and contribute to the cultural heritage value or interest of a property, as opposed to being an aesthetic?

In the Review Board’s experience, the question of how to protect a view under s. 29 of the Act is widely debated. Sometimes this is rooted in initially approaching heritage conservation as the protection of the “sense or spirit of the place” (as described by Ms. Nasmith); and then having to translate this into the mechanics of the heritage conservation legislation. Views frequently appear in Statements of cultural heritage value or interest and/or in the description of heritage attributes. The three subject properties have views listed in the Statement and as heritage attributes.

The Act defines heritage attributes as meaning “in relation to real property, and to the buildings and structures on the real property, the attributes of the property, buildings and structures that contribute to their cultural heritage value or interest.” The description of a heritage attribute must be clear in the s. 29 bylaw if the conservation provisions of the Act (and other legislation) are to be applied as intended.

In the opinion of Dr. Letourneau, a view must be internal to the property and inside its perimeter boundary, if it is to be described as a heritage attribute and, thereby be protected by the s. 29 bylaw. This makes the view, as a heritage attribute, subject to the provisions of s. 33 *Alteration*, of the Act. In his opinion, views off a property, for example the view of the CPR bridge from the Township Dock, cannot be protected under s. 29. Only mechanisms within the *Planning Act* and a municipal Official Plan can protect that “off the property” view.

Ms. Nasmith is of the opinion that a view within, to, or from a property can be described

as a heritage attribute. In her experience, describing a view as a heritage attribute in the s. 29 bylaw is important to accessing provisions of the *Planning Act* and a municipal Official Plan. She gave the example: If a cottage owner is building a new dock that affects the identified view, the cottage owner does not apply under s. 33 *Alteration*, of the Act; but the municipality may apply the *Planning Act* to protect the view identified as a heritage attribute in the s. 29 bylaw governing the affected (protected) property. Ms. Nasmith stated that this approach is endorsed in the PPS subsection 2.6.3, which recognizes the need to demonstrate that the heritage attributes of a protected property will be conserved in instances of development and site alteration on lands adjacent.

In considering s. 33.(1) of the Act, the provision is specific: “No owner of property designated under section 29 shall alter the property or permit the alteration of the property if the alteration is likely to affect the property’s heritage attributes, as set out in the description of the property’s heritage attributes.” As such, the decision of how a view is identified in the s. 29 bylaw (in the Statement and/or in the description of heritage attributes) is critical to whether the provisions of s. 33 are applicable. Compounding this situation is that other legislation in Ontario may only prescribe that consideration be given to a “protected property” or “cultural heritage resource,” without differentiating between what is in the Statement and what is described as a heritage attribute.

It appears to the Review Board that apart from this on/off the property debate, there is a more fundamental need to determine: *When does a view support and contribute to the cultural heritage value interest of a property, as opposed to being an aesthetic?*

Views are identified by the Township as heritage attributes for the three subject properties:

Township Dock on Lake Muskoka (Exhibit 4, Tab Q)

Historical and Associative

- Visual and acoustical association with CPR railway

Contextual

- Scenic views across to Bala Bay (Lake Muskoka) and to forest and cottages
- View to the south to the CPR bridge and the Lake Muskoka Portage Landing

In applying this question of support and contribute to vs. aesthetic, there was evidence given that the construction of a swing bridge at Bala allowed steamboats to enter Lake Muskoka beginning in 1870. Navigational reasons dictated the location of the wharf and Township Dock. This suggests the site is functional and not chosen for its aesthetics. As such, it is difficult to accept the “scenic views across to Bala Bay (Lake Muskoka) and to

forest and cottages” as a heritage attribute that supports and contributes to the identified cultural heritage value or interest of this property. The view is aesthetic.

The connection between the Township Dock and the railway originated in 1907 with the construction of the trackline, berm, bridge, summer station, ramp, and other infrastructure. This relationship of water to rail transportation is appropriate for the Statement, but “visual association with CPR” and “view to the south to the CPR bridge” does not seem to be a direct association, such as the view that existed between the dock/wharf, ramp, and nearby summer station, now gone.

There was insufficient evidence heard about the view of Lake Muskoka Portage Landing to comment, but the same “test” of whether this directly supports and contributes to the cultural heritage value of the Township Dock property needs to be applied.

Portage Landing on the Moon River (Exhibit 4, Tab S)

Contextual

- Scenic views, including views to north and south channels of Bala Falls, to the historic split trunk maple tree (Native Marker Tree), and unobstructed expansive westward view of Moon River, and Township Dock (Moon River)

In considering the evidence heard for Portage Landing on the Moon River, it is apparent that some people portage to/from this landing and launch site; others seek it as a destination to picnic, swim, and enjoy the setting and its scenic views. These activities at this location are identified as traditions with long term cultural heritage value or interest to residents and visitors to Bala. Given the importance of the scenic views to these traditions, the scenic views support and contribute to the cultural heritage value or interest of the property. As such, it is reasonable to identify these views in the Statement.

Recognizing the “on/off the property” debate about governance, but in the absence of any clear direction in the Act, the Review Board has no comment on Ms. Nasmith’s strategy of further flagging the importance and legislative consideration of these views by also describing them as a heritage attribute.

Shield Parking Lot (Exhibit 4, Tab R)

Contextual

- Scenic views across the highway to the Moon River to the west
- Views and sounds of nearby CPR trains

The evidence heard indicates that Shield Parking Lot is in this location for reasons of highway construction and was not chosen for its aesthetics. The geography of the area, in fact, was dramatically altered by the highway construction. As such, the “scenic views across the highway to the Moon River to the west” do not support or contribute to the cultural heritage value or interest of the Shield Parking Lot property. The same applies to the views of “nearby CPR trains.” Describing these views as heritage attributes is misdirected.

ISSUE NO. 4

Can sounds be identified as heritage attributes of a property for purposes of a bylaw under s. 29 of the Act?

Three of the subject properties have sounds described as heritage attributes:

Township Dock on Lake Muskoka

Historical and Associative

- Visual and acoustical association with CPR railway

Portage Landing on the Moon River

Contextual

- Sound and spray of cascading waters and of nature

Shield Parking Lot

Contextual

- Background sounds from the cascading waters of the South Bala Falls
- Sounds of water lapping on shore on the nearby Moon River
- Views and sounds of nearby CPR trains

Part IV of the Act (which contains s. 29 (municipal) and s. 34.5 (provincial)) provides for the protection of property defined as “real property and includes all buildings and structures thereon.” Real property means land and those features of a fixed, immovable nature. (This differs from the provision for real and personal property under Part II: Ontario Heritage Trust; and restrictions on the definition of property in Part VI: Resources of Archaeological Value.) It is difficult to categorize sound as fixed. Sounds may be part of the “sense or spirit of the place,” as argued by Ms. Nasmith. Dr. Letourneau’s opinion is that in the context of the subject properties, the sounds of nature, trains, and water, simply by their transient nature, cannot be protected under s. 29 of the Act as a heritage attribute. The Review Board agrees with Dr. Letourneau.

ISSUE NO. 5

When can a “use” hold cultural heritage value or interest?

The Act does not consider the “use” of a property in the context of landuse planning. It does recognize, through Regulation 9/06, that a use can have historical or associative value through a “direct association” with “a theme, event, belief, person, activity, organization or institution that is significant to a community.” An intended, unique, and/or traditional use that is directly associated with a property can gain cultural heritage value or interest to the community.

For example, there is historical or associative value in the long term use or activity associated with the Township Dock as “a key link to the primary modes of transportation” accessing Bala. Its long standing role as host of the annual Regatta is directly related to an event that is significant to the community. There is also historical or associative value found in the long term function of the Portage Landing property as both a landing/staging area for the activity of portaging and as a place for recreational activity.

These examples differ from a property being “used” for something important, but outside of its historical or associative tradition. For example, the Cranberry Festival and Farmers’ Market are identified in the Statement of cultural heritage value for Shield Parking Lot. This is not to say that these activities are not important to Bala, but Shield Parking Lot, as a flat area beside a highway, only facilitates the periodic staging of these events. They could be held elsewhere and are separate from the identified cultural heritage value or interest of this property as an example of 1960s highway construction technology. Describing these new or periodic uses in association with the cultural heritage value or interest of this property is not appropriate.

ISSUE NO. 6

Does each property meet the test of Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest?

Requirement of the Act

Regulation 9/06 is the criteria prescribed for determining cultural heritage value or interest at the municipal level. It has three categories: Design or Physical Value, Historical or Associative Value, and Contextual Value, within each are three criterions.

The candidate property must be evaluated within each category, but only needs to satisfy one criterion to meet the requirement for protection under s. 29 of the Act.

1. The property has design value or physical value because it,
 - i. is a rare, unique, representative or early example of a style, type, expression, material or construction method,
 - ii. displays a high degree of craftsmanship or artistic merit, or
 - iii. demonstrates a high degree of technical or scientific achievement.

2. The property has historical value or associative value because it,
 - i. has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,
 - ii. yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
 - iii. demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.

3. The property has contextual value because it,
 - i. is important in defining, maintaining or supporting the character of an area,
 - ii. is physically, functionally, visually or historically linked to its surroundings, or
 - iii. is a landmark.

Structure of the Content of a s. 29 Bylaw

The requirement for the content of a designating bylaw protecting the property under s. 29, is s. 29(6)(a)(ii) “cause a copy of the by-law, together with a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property.”

It is the evaluation process conducted under Regulation 9/06 that is organized into Design or Physical; Historical or Associative; and Contextual categories. The “statement explaining the cultural heritage value or interest of the property” flows from the evaluation by category. The Township “Designation Statements” provide the required Statement based on the evaluation, but also carry forward the evaluation categories into the description of heritage attributes. Given the character of the subject properties in this case, this overlap may cause future confusion if protected by a s. 29 bylaw and there is an application that will require a clear understanding of what heritage attributes are protected. For this reason, the Review Board has stroked out these divisions in the descriptions of heritage attributes proposed by the Township.

Based on past proceedings, the Review Board has taken the position that the description of heritage attributes has greater clarity if the heritage attribute(s) is identified first, then described. For example, the heritage attribute is a dwelling. It has decorative trim, a central doorcase, etc. There is no requirement to organize the

description of heritage attributes into Regulation 9/06 categories.

November 28, 2012 Designation Statements

The Township's "Designation Statements" of November 28, 2012, were before the Review Board as Exhibit 4, Tabs Q, R, and S. Overall, there are some wording inconsistencies in these Statements. For example, steamboat and steamship, Pre Cambrian and Precambrian, Muskoka Road and Musquash Road, Ministry of Transportation land should be identified as Crown land, the categories of Regulation 9/06 should be consistently identified (Design or Physical, not Physical, etc.), Burgess or Portage Island, etc. These should be corrected if the Township proceeds with drafting a s. 29 bylaw.

The following are the verbatim November 28, 2012 Designation Statements for each property. At the end of each are the Review Board comments.

Designation Statement: Bala Township Dock on Lake Muskoka

Legal Description

PIN 48154-0651 Pt. Bed of Lake Muskoka in front of Lot 14, Con 4 Medora; Pt Bed of Lake Muskoka in front of Lot 15 Medora; Pt Lot and BI 17; Muskoka Lakes

Property Description:

The Bala Dock on Portage Island on Lake Muskoka is a small public park less than one acre in size with public dock facilities, east of Hwy 169, and located adjacent to the north falls and below the CPR rail line.

Statement of Heritage Value or Interest:

Bala Township Dock (Lake Muskoka) is located in the same area as the original "Steamship Wharf" that has existed in this location since 1870 and represents a key link to the primary modes of transportation in the late 1800s and early 1900s. Today it is used as access to downtown Bala.

Bala Township Dock's historical and associative value lies in its relation to modern and traditional transportation, facilitating tourism and recreation in Muskoka for 150 years. The Bala Township dock site is used for picnicking, and swimming, and has been the site of the annual Bala Regatta for over 100 years. Following the construction of rail lines in 1907, the dock area, then known as "Steamboat Wharf" was linked by ramp to the "Summer Station" where the arrival of passenger rail opened the area to tourists from across North America. Prior to the train, access had been by water or the Muskoka road.

The wooden dock, and its associated parkland provide open public access to the water and to the town centre. The dock is reminiscent of the earlier Steamship Wharf. The park area consists of a rough gravel drive, lawn, footpaths and is located next to the planted embankment of the CPR rail line. The park and dock is surrounded on three sides by water, Lake Muskoka, the Mill Stream, and the North Channel of Bala Falls and has an

evolved shoreline as well as the manmade dock edge. Vehicular access to the site from Gordon Street is via a bridge on adjacent property.

The site's contextual value lies in its open views to Lake Muskoka, and to nearby forest and cottages, as well as its provision of connection and transfer points between watercraft and the town centre. It is a key part of a larger cultural heritage landscape of Bala. The view from the dock or flat grassy area looking south-west to the CPR bridge relates to rail transportation, the view of the portage landing relates to water transportation and tourism themes, both important themes in the cultural landscape of Bala. Even though there is no longer passenger rail service, passing freight trains continue the visual and acoustical association between water and rail transport.

Heritage Attributes

Key attributes that reflect the property's historical and associative value are:

- Open public access to all
- A wooden dock and flat grassy area with naturalized and manmade shoreline surrounded on three sides by water
- Visual and acoustical association with CPR railway

Key attributes that reflect the property's contextual value are:

- Scenic views across to Bala Bay (Lake Muskoka) and to forest and cottages
- View to the south to the CPR bridge and the Lake Muskoka Portage Landing
- Connections between water transportation and routes to town centre under CPR bridge, and across bridge over Mill Stream

Comment

Based on the evidence heard, in summary, the cultural heritage value or interest of the Township Dock on Lake Muskoka property is in its 1870 origin and long standing purpose as a water, then water to rail and road, public transportation interchange. This and its traditional role as the host site of the annual Regatta event, hold historical and associative value. This public waterfront property supports the traditional practice of arriving and departing Bala by water, making it "important in defining, maintaining or supporting the character of the area" as a water oriented community.

The *Golder Assessment* makes the observation that marine and terrestrial archaeological fieldwork may reveal significant cultural resource findings. In this sense, the property "yields, or has the potential to yield, information that contributes to an understanding of a community or culture."

The November 28, 2012 Statement captures what appears to the Review Board to be the cultural heritage value or interest of this property. If proceeding with protection, some revisions to the Statement and description of heritage attributes are advised. These revisions are notably directed at the issues of views and sounds, and to give

clarity to what is being identified and described as a heritage attribute.

The following revision to the description of heritage attributes is only to illustrate the importance of clarity in identifying and then describing heritage attributes. Some of the Township wording has been stroked out and/or annotated by the Review Board. None of the revisions are intended as direct substitutions for use by the Township:

Description of Heritage Attributes

The heritage attribute essential to the cultural heritage value or interest of this property is the public waterfront park serving as the traditional water, then water to rail and road, public transportation interchange (“park”). Key elements of this park include:

~~*Key attributes of the park that reflect the property’s historical and associative value are:*~~

- Open public access to all
Access cannot be regulated by the Act. This concept is captured in it being a public park. Elements of the traditional public docking and other long term public facilities could be itemized.
- A wooden dock
It is the existence of a wooden dock beside the open water that has value, not the existing dock.
- ~~and~~ the flat grassy area with naturalized and manmade shoreline surrounded on three sides by water
“Naturalized and manmade shoreline” needs further definition (What are the natural as opposed to the evolved and manmade elements?)
- ~~Visual and acoustical~~ association with CPR railway
If any survive, describe the physical elements on the property that have rail and/or road association, such as remnants of the ramp to the summer station, drives, infrastructure, etc.

Include reference to the potential for information yielded by marine and terrestrial archaeological fieldwork. (If the Township agrees, this needs to be added to the Statement of cultural heritage value or interest.)

~~*Key attributes of the park that reflect the property’s contextual value are:*~~

- ~~Scenic views across to Bala Bay (Lake Muskoka) and to forest and cottages~~

- ~~View to the south to the CPR bridge and the Lake Muskoka Portage Landing~~
- Connections between water transportation and routes to town centre under CPR bridge, and across bridge over Mill Stream
Identify any physical elements on the property directly associated with routes to the town centre (?)

Designation Statement: Portage Landing on Moon River

Legal Description

PIN 48029-0638 Pt. Lot 33, Con. 7 Wood; Pt. Lane PL3 Wood abutting the E limit of Lot 21 PL3 Wood; Pt. Lot 55 PL5 Wood; Pt. Lot 15-20 PL2 Wood; Pt. Bed of the Moon River adjacent to Lot 33, Con 7 Wood as in DM320594; DM76318; Muskoka Lakes

Property Description:

The Portage Landing Moon River is a portage site and rest area on Burgess Island in Bala, west of Muskoka Road 169, at the shore of the Moon River and next to Provincial property abutting the north channel of the Bala Falls. It is surrounded by water on two sides, the south channel of the Bala Falls and the Moon River and includes a steep embankment to the east to the edge of Muskoka Road 169.

Statement of Cultural Heritage Value or Interest:

Portage Landing on the Moon River is the traditional portage used by our First Nations and later by tourists, YMCA campers and cottagers. It defines and supports the character of Bala as a summer resort and the vista looking westward from the property is breathtaking.

The property's cultural value lies in the features which support its historic and continuous use as a portage landing and scenic outlook point; the natural shoreline, Precambrian rock outcroppings, the flat rock resting area at the water's edge and natural footpaths, native trees, grasses, wildflowers, the slight elevation above water level along with the absence of artificial lighting and buildings enhance the scenic experience.

The site has historical associative value for the Bala community and nearby Mohawk natives. It is found in early and contemporary postcard views and tourist account of the area, a point of landing for early settlers, the community of Bala and for tourists for more than 100 years. Part of a long established native canoe route from the Musquosh and Moon Rivers to Lake Muskoka, the place was passed by the explorer/cartographer David Thompson as part of his mapping of the Muskoka region starting in 1830, and is also associated with the Mohawk relocation from Oka Quebec to the Gibson Reserve, now Wahta Territory, for religious reasons, In October, 1881.

The site's contextual value lies in its relation to the important theme associated with the broader cultural landscape of Bala, tourism, and to a lesser degree transportation. In addition to its portage function, the property has public park functions including scenic

enjoyment, picnicking, and photography. The iconic split trunk maple Native Marker Tree on the adjacent property can be seen from the landing, and appears in many historic photos. The Moon River Portage Landing connects to the shortest portage routes across Burgess Island, i.e., up the side of the concrete abutment at the north falls, and across Muskoka Road 169, along the Bala Falls to the portage landings on Lake Muskoka. The portage and scenic experience is enhanced by the sound and spray from cascading waters over the north and south channels of the Bala Falls, as well as the views to the Moon River, north and south channels of the Bala Falls, cottages on the south shore of the Moon River, and to the north to Margaret Burgess Park.

Description of Heritage Attributes

Key attributes that reflect the property's historical and associative values are:

- Flat rock and stone beach landing area and shoreline with sloped launching area into the water
- Precambrian granite rock outcroppings
- Natural shoreline on the southern, western sides of the property
- Native vegetation, trees, grasses, wildflowers

Key attributes that reflect the property's contextual values are:

- Open public access to all including to the continuously used and historically important portage route across Burgess Island between the Moon River and Bala Bay Harbour, Lake Muskoka
- Slopes from the shorelines rising at various degrees to the eastern boundary of the property
- Sound and spray of cascading waters and of nature
- Scenic views, including views to north and south channels of Bala Falls, to the historic split trunk maple tree (Native Marker Tree), and unobstructed expansive westward view of Moon River, and Township Dock (Moon River)
- Absence of artificial lighting and buildings

Comment

Swift River contends that “the Township did not give an evidentiary basis to support the conclusion that this property was a point of landing for early settlers, that this is part of a long established native canoe route, that it was used by David Thompson, or that it was used by the Mohawk.” (*Written Final Submission January 17, 2013*, p. 12). Dr. Andreae’s analysis of the documentary evidence for Thompson’s 1830s journey concludes that “Thompson actually landed on adjacent lands located to the south of Portage Landing.” (Of note is that the Township wording in the Statement is that “the place was passed by the explorer/cartographer David Thompson as part of his mapping of the Muskoka region starting in 1830.”) None of the cultural heritage consultants conducted aboriginal consultation with which to determine if this property is “part of a long established native canoe route from the Musquosh and Moon Rivers to Lake

Muskoka.” Similarly, the significance of Portage Landing held by the Mohawk as a result of their 1881 relocation from Oka, Quebec, to the Gibson Reserve, now Wahta Territory, is unconfirmed.

Dr. Andreae also contends there is “evidence that the raising and lowering of the water levels throughout the past 100 plus years and the extensive changes in the landscape of Burgess Island would likely result in many changes to where a canoe could be brought ashore” (*Written Final Submission January 17, 2013*, p. 12). Given the construction of the north channel dam in 1873 and subsequent enlarging of the south channel, the Review Board finds this a reasonable assumption.

The surface gravel on the north part of the subject property (and the north abutting Crown land) was identified by Dr. Andreae as crushed rock “tailings” from the hydroelectric generating station formerly on the Crown land. The footpaths are not “natural” and the embankment is the result of highway construction. This makes the property a natural and cultural (human evolved) landscape.

All of these points raised by the Golder Panel are well founded and need to be taken into account if protecting this property under s. 29 of the Act.

In the opinion of the Review Board, the evidence of prime importance is found in the explanation given at the Hearing that the shortest distance between Bala Bay harbour on Lake Muskoka and the Moon River is across Portage/Burgess Island; and that the eddying of the water at the north channel of the falls on the Moon River side pushes watercraft to the south. The result on the Moon River side is that the Crown land at the south side of the north falls, and the Township land abutting the south boundary of the Crown land, become the natural landing and launch area for watercraft. The name “Portage” Island (now Burgess Island) suggests there is a tradition of portaging activity associated with this island. There is evidence in photographs (notably Exhibits 13a, 13b, 14, 15) and living memory (as heard in Public Statements and in documentation) that this location (Crown and Township lands) is a long term and popular landing and launch place for watercraft. Some “tourists, YMCA campers and cottagers” portage to/from this site; others seek it as a destination to picnic, swim, and enjoy the scenic views and setting. Based on this evidence, the Review Board finds that these traditional activities at the Portage Landing on Moon River property have cultural heritage value or interest to residents and visitors to Bala and are part of the water based experience of the area. The property is a landmark directly associated with the water based activity characteristic of the community of Bala.

The November 28, 2012 Statement captures what the Review Board agrees is the

cultural heritage value or interest of this property as a traditional landing and launch site for people in watercraft intending to portage and/or stay to enjoy the scenic views and indulge in recreational activities. If proceeding with protection under s. 29 of the Act, it is recommended that further research and consultation be undertaken to authenticate any significance of this property to early settlers; to determine whether it is “as a long established native canoe route from the Musquosh and Moon Rivers to Lake Muskoka”; and to identify any significance held by the Mohawk for this location as a result of their relocation from Oka in 1881. The description of heritage attributes would benefit from revision, both in consideration of the discussion of views and sounds, and to give clarity to what is actually being identified as a heritage attribute.

The following revision to the description of heritage attributes is only to illustrate the importance of clarity in identifying and then describing heritage attributes. Some of the Township wording has been stroked out and/or annotated by the Review Board. None of the revisions are intended as direct substitutions for use by the Township:

Description of Heritage Attributes

The heritage attribute essential to the cultural heritage value or interest of this property is the public shoreline park traditionally used for the landing and launch of watercraft for portaging purposes and/or to stay and enjoy recreational activities (“park”). Key elements of this park include:

~~*Key attributes that reflect the property’s historical and associative values are:*~~

- ~~Flat rock and stone beach landing area and shoreline with sloped launching area into the water~~

~~*The flat granite rock naturally sloped into the water serving as a landing and launch area for watercraft.*~~

~~*The evolved features including a flat area, footpaths [if confirmed on this property], a beach partially covered in stone originating as tailings at the former hydroelectric generating station on the abutting Crown land, and (?)*~~

~~*The presence of trees, grasses, wildflowers, and other vegetation [natural or introduced?]*~~

- ~~Precambrian granite rock outcroppings~~
- ~~Natural shoreline on the southern, western sides of the property~~

~~*The unobstructed proximity to the shoreline on the southern and western sides of the property.*~~

- ~~Native vegetation, trees, grasses, wildflowers~~

The staging area associated with portaging between Moon River and Bala Bay Harbour on Lake Muskoka (?)

~~Key attributes that reflect the property's contextual values are:~~

- Open public access to all including to the continuously used and historically important portage route across Burgess Island

Access cannot be regulated by the Act. This concept is captured in it being a public park.

- ~~▪ Slopes from the shorelines rising at various degrees to the eastern boundary of the property~~

Is this the natural geography?

- ~~▪ Sound and spray of cascading waters and of nature~~

- Scenic views, including views to north and south channels of Bala Falls, to the historic split trunk maple tree (Native Marker Tree), and unobstructed expansive westward view of Moon River, and Township Dock (Moon River) *(Consider the discussion in Issue 3 of this Hearing Report.)*

- The absence of artificial lighting and buildings.

Designation Statement: Shield Parking Lot

Legal Description

PIN 48029-0638 Pt. Lot 33, Con. 7 Wood; Pt. Lane PL3 Wood abutting the E limit of Lot 21 PL3 Wood; Pt. Lot 55 PL5 Wood; Pt. Lot 15-20 PL2 Wood; Pt. Bed of the Moon River adjacent to Lot 33, Con 7 Wood as in DM320594; DM76318; Muskoka Lakes

Property Description:

The Shield Parking Lot, east of Muskoka Road 169 in Bala, is the wedge-shaped property bounded on the north by the Ministry of Transportation Property next to the south channel of the Bala Falls, by Muskoka Road 169 on the west, and by the CPR property on the east. It is part of Lot 33, Concession VII of the former Township of Wood, now in the Township of Muskoka Lakes. Along the eastern boundary lies a large rock formation estimated to have been formed between one and two billion years ago and to be among some of the oldest rock in the earth's crust.

Statement of Cultural Heritage Value or Interest:

The Shield Parking Lot is [contains] an excellent example of a rock outcrop of the Precambrian Shield. The rock is among the oldest of the earth's crust and occupies two thirds of the surface of Ontario. It is where significant wealth in the Province is derived, forests on the surface and minerals beneath it.

The Shield Parking Lot's physical value lies in the large and representative outcrop of the Precambrian Shield. The outcrop has the typical folding and layering patterns of pink and black characteristic of the Muskoka area. The rock is made up of pink gneiss and dark layers of amphibolites.

The association of this rock-face with the broader Pre-Cambrian shield is commemorated on a plaque erected at the site by the Archaeological and Historic Sites Board of Ontario (AHSBO), in 1966, shortly after the highway opened in July, 1965. The plaque text explains how the shield impeded agriculture in the region, but led to the development of mining, lumbering and tourism as key industries. The site has associative value linked with the highway construction, the site's relation to the larger Precambrian shield, and as the site of community events such as the Bala Cranberry Festival and Farmers Market. Originally a staging area for the construction process to re-route Highway 169, the flat sand and gravel surface is representative of the changes in the town of Bala that occurred during the highway construction.

The original rock face was larger, forming the shoreline of the Moon River, but was partially blasted and the site filled during the rerouting. Along the rock formation are various species of native plants and trees including birches, white pines, sugar maples, red oaks, trembling aspens, and sumacs. There are also various wildflowers, including daisies and wild daylilies, growing along the base of the rock outcrop.

The CPR rail line, located adjacent to the site along the top of the outcrop, makes a visual and acoustical association between the Shield and industrial and tourism development, two key facets of the Muskoka economy, also themes of the cultural landscape of Bala.

This place has contextual value as a stopping and vantage point representative of the natural beauty of Muskoka, the Precambrian Shield, and its associated lakes, rivers, trees and wildlife. The rock face is a landmark in the community and contributes to a strong sense of place. The parking lot has an important view to the Moon River across Muskoka Road 169. The site also connects to viewing places on the adjacent Provincial property that provide views of the South Bala Falls, the designated Burgess Church across the channel, and sounds of adjacent waters. Located central to Bala, the lot and park facilitate touring the town's other scenic lookouts over Lake Muskoka and the Moon River.

Description of Heritage Attributes

Key attributes of the site which reflect its physical values.

- Large granite outcrop characteristic of Muskoka area, surface result from blasting for highway construction
- Flat sand and gravel surface area, resulting from highway construction, supporting stopping by the public and community festivals.

Key attributes of the site which reflect its associative values.

- Archaeological and Historic Sites Board of Ontario plaque commemorating the importance of the Precambrian Shield to the Muskoka region and to Ontario

Key attributes of the site which reflect its contextual values.

- Open public access to all
- Connection to public observation place
- The rock outcrop as a landmark
- Native trees and plants growing on and around the property
- Scenic views across the highway to the Moon River to the west
- Background sounds from the cascading waters of the South Bala Falls
- Sounds water lapping on shore on the nearby Moon River
- Views and sounds of nearby CPR trains

Comment

Based on the evidence heard, the cultural heritage value or interest of this property appears to be in the impact of a provincial government initiative of highway construction in the 1960s that resulted in dramatic change to the physical appearance of the area and in the development and operation of the community of Bala resulting from the improved road access. The November 28, 2012 Statement places more emphasis on the property as the location of Precambrian Shield, than on its relationship to highway development.

In summary, the evidence suggests that this is a quarry face, not a rock outcrop (as established by the Golder Panel). This is not a “large granite outcrop characteristic of Muskoka area” but it is “a surface result from blasting for highway construction.” Drill holes where dynamite was inserted are evident on the surface. The “flat sand and gravel area” is the result of the removal of crushed rock for use elsewhere as fill; and later surface improvements. It was the staging area for the highway construction. The site is a visual landmark at an entry point into Bala from the west.

Further research is necessary to identify any significance in this method of highway construction (identified by Mr. Purkis as drill – blast – fill). Dr. Andreae suggests this is an example of the desecration of the environment that led to the development of environmental protective policies, practices, and legislation now in place in Ontario. If the Township agrees, any significance to the method of construction used; and the concept of environmental desecration could be added to the Statement of cultural heritage value or interest.

The Archaeological and Historic Sites plaque is commemorative. Given the intervention of blasting and removal, this may not be the best location for a plaque describing the “natural” landform of Precambrian Shield. The proximity of the site to the rail line, Township Dock, and Portage Landing on Moon River is secondary.

The following revision to the description of heritage attributes is only to illustrate the importance of clarity in identifying and then describing heritage attributes. Some of the

Township wording has been stroked out and/or annotated by the Review Board. None of the revisions are intended as direct substitutions for use by the Township:

Description of Heritage Attributes

The heritage attributes essential to the cultural heritage value or interest of this property are:

The flat area between the highway on the west and the quarry face on the east, as evidence of the removal of blasted rock and the use of the property as a staging area during local highway construction in the 1960s; and,

The exposed quarry face of Precambrian Shield resulting from the blasting used in this method of highway construction in the 1960s.

Key elements of these heritage attributes include:

~~*Key attributes of the site which reflect its [design or] physical values*~~

- ~~Large granite outcrop characteristic of Muskoka area, The exposed surface of the quarry face.~~

~~*Evidence of the drill holes where dynamite was inserted.*~~

- ~~The sand and gravel surface of the flat area resulting from highway construction, supporting stopping by the public and community festivals.~~

~~*Describe any other physical evidence of this type of construction method.*~~

~~*Key attributes of the site which reflect its [historical or] associative values.*~~

~~Archaeological and Historic Sites Board of Ontario plaque commemorating the importance of the Precambrian Shield to the Muskoka region and to Ontario~~

~~*Is there any significant physical evidence of how the staging area was converted to a public parking facility to accommodate increased vehicular traffic resulting from the new highway?*~~

~~*Key attributes of the site which reflect its contextual values.*~~

- ~~Open public access~~
~~Access cannot be regulated by the Act.~~
- ~~Connection to public observation place~~

- The rock outcrop as a landmark
The unobstructed view of the quarry face from the highway.
- Native trees and plants growing on ~~and around~~ the property
Evidence of the post 1960s regeneration of the land, such as the return of native species of trees and vegetation (?)
- ~~Scenic views across the highway to the Moon River to the west~~
- ~~Background sounds from the cascading waters of the South Bala Falls~~
- ~~Sounds water lapping on shore on the nearby Moon River~~

HEARING SUMMARY

The underlying premise of the Ontario Heritage Act is that a “community,” however defined, is in the best position to identify what holds cultural heritage value or interest for them. Section 29 of the Act purposefully gives municipal councils and approval authorities the ability to identify, evaluate, and protect those properties within its jurisdiction that are deemed to hold value or interest.

In Bala, it is readily apparent that the natural environment and scenic beauty are closely intertwined with areas of human intervention. Identifying and evaluating properties that hold cultural heritage value or interest to the community is not difficult. The challenge, as evident in this proceeding, is transferring the “spirit and sense of place” elements of the valued natural environment and scenic beauty into the “real property,” “heritage attributes,” “buildings or structures” type definitions and provisions that constitute the Act. Evidence of human intervention is not the entirety of what holds value in an area like Bala. This dilemma seems evident in the series of Statements of cultural heritage value or interest and descriptions of heritage attributes drafted by the Township; and in the differing philosophical approaches and interpretations presented by the three cultural heritage expert witnesses.

It is the Review Board’s conclusion that the Township conducted a reasonable and fair, albeit somewhat cumbersome, process under s. 29 of the Act. For the reasons given in the *Analysis: Issue 1* section of this Hearing Report, the Review Board does not find the Township in violation of the provisions for Notice in s. 29(3); s. 29(4); or s. 29(4.1). The Review Board accepts Ms. Nasmith’s evidence that the initial “key ideas” or reasons for assigning these properties cultural heritage value or interest were carried forward from

the start of the process and are still valid.

Based on the evidence heard, the Review Board agrees with the Township that cultural heritage value or interest as prescribed by Regulation 9/06 is found in the three candidate properties. What remains is for the Township to contemplate the findings of this Hearing Report and decide if and how the wording of the November 28, 2012 Statements of cultural heritage value or interest and descriptions of heritage attributes can be more thoroughly aligned with the evidence heard.

The Review Board commends the legal counsels and the cultural heritage expert witnesses in this proceeding for their objectivity and careful analysis of these properties and the provisions of the Act. This was not an easy task. The public participation in this proceeding is also appreciated.

RECOMMENDATION

Based on the evidence heard, the Conservation Review Board agrees with the Township of Muskoka Lakes that cultural heritage value or interest as prescribed by *Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest* is found in the three candidate properties: Township Dock on Lake Muskoka; Portage Landing on Moon River; and Shield Parking Lot.

The Review Board recommends that the Township of Muskoka Lakes consider the *Analysis of Issues* contained in this Hearing Report and decide if and how the wording of the November 28, 2012 Statements of cultural heritage value or interest and descriptions of heritage attributes can be more thoroughly aligned with the evidence heard. Any resulting revisions to the Statements of cultural heritage value or interest and descriptions of heritage attributes will not require new Notices of Intention to Designate.

The Township of Muskoka Lakes can proceed with the three properties, Township Dock on Lake Muskoka; Portage Landing on Moon River; and Shield Parking Lot, under the provisions of s. 29(14) of the *Ontario Heritage Act, R.S.O. 1990, Chapter O.18, as amended to 2009*, without any further consideration by the Conservation Review Board.

“Su Murdoch”

Su Murdoch, Vice Chair
March 13, 2013

“Stuart Kidd”

Stuart Kidd, Member
March 13, 2013

SCHEDULE 1**EXHIBITS LIST**

- Exhibit 1: Affidavit of Notice of Hearing being served, as required under the Ontario Heritage Act, 4 pages, tabled by the Conservation Review Board.
- Exhibit 2: Survey Sketch & Confirmation of Heritage Attributes Package, October 31, 2012, 11 pages (printed both sides), tabled by the Conservation Review Board.
- Exhibit 3: Acknowledgement of Expert's Duty, executed by Catherine Nasmith, 1 page, tabled by Mr. Elston, Township of Muskoka Lakes.
- Exhibit 4: Witness Statement & Document Binder of Catherine Nasmith, tabs A – Z inclusive and AA – WW inclusive, table by Mr. Elston, Township of Muskoka Lakes.
- Exhibit 5: Document Binder Volumes;
1, tabs A – W inclusive,
2, tabs 1 – 11 inclusive,
3, tabs 12 – 25 inclusive, and
4, tabs 26 – 46 inclusive and AA – ZZ inclusive
all tabled by Mr. Ferri, Swift River Energy Limited.
- Exhibit 6: Excerpt titled "Cultural Heritage and the Green Energy Act" from C. Nasmith presentation to Township of Muskoka Lakes, 1 page, tabled by Mr. Elston, Township of Muskoka Lakes.
- Exhibit 7: Extract from the *Report of the Master Plan of Archaeological Resources of the District Municipality of Muskoka and the Wahta Mohawks, Volumes 1 and 2*, Page 3, 1 page, tabled by Mr. Ferri, Swift River Energy Limited.
- Exhibit 8: Extract from the *Report of the Master Plan of Archaeological Resources of the District Municipality of Muskoka and the Wahta Mohawks, Volumes 1 and 2*, Section 3 titled "Built Heritage and Cultural Landscapes in Muskoka", 2 pages, tabled by Mr. Ferri, Swift River Energy Limited.
- Exhibit 9: Acknowledgement of Expert's Duty, executed by Marcus Letourneau, 1 page, tabled by Mr. Ferri, Swift River Energy.

- Exhibit 10: Acknowledgement of Expert's Duty, executed by Christopher Andreae, 1 page, tabled by Mr. Ferri, Swift River Energy.
- Exhibit 11: Executive Summary "National Places of Faith Roundtable 2009," 5 pages, tabled by Mr. Elston, Township of Muskoka Lakes.
- Exhibit 12: "City of Kingston Properties of Cultural Heritage Value and Interest ("Listed Properties"), Consolidation February 2011, 12 pages, tabled by Mr. Elston, Township of Muskoka Lakes.
- Exhibit 13 a: Colour photo on 8.5" x 11" page submitted for information by Mr. Turnbull, one of the public presenters, showing 4 canoes with people at shore and other people swimming at the downstream side of the portage landing, 1 page, tabled by Mr. Elston, Township of Muskoka Lakes.
- Exhibit 13 b: Colour photo on 8.5" x 11" page submitted for information by Mr. Turnbull, one of the public presenters, showing 4 canoes with people portaging from the downstream side of the portage landing uphill towards Muskoka Lake, 1 page, tabled by Mr. Elston, Township of Muskoka Lakes.
- Exhibit 14: Copies of area post cards submitted for information by Ms. Polewski, one of the public presenters, 49 pages (printed both sides), tabled by Mr. Elston, Township of Muskoka Lakes.
- Exhibit 15: Colour photo on 8.5" x 11" page from 2012 showing people with canoes on shore on the downstream side of the Town property being the portage landing, 1 page, tabled by Mr. Elston, Township of Muskoka Lakes.