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By email and regular mail

November 6, 2015

Mayor Donald Furniss and
The Councillors of the Township of Muskoka Lakes
1 Bailey Street, PO Box 129
Port Carling, ON P0B 1J0

Dear Mayor Furniss and Councillors of the Township of Muskoka Lakes Council:

Re: The consideration by the Township of Muskoka Lakes of the disposition of properties known as Portage Landing and portions of two parking lots (“Portage Landing”)

We are lawyers for SaveTheBalaFalls.com, who represent concerns of residents of the Township of Muskoka Lakes (“TML”) and others.

We are writing to you, in advance of the TML Council meeting scheduled to take place on November 13, 2015, at which meeting we understand that the matter of a disposition of Portage Landing (the “Disposition”) to Swift River Energy Limited (“Swift River”) may be discussed and voted upon.¹

A resolution to move forward with lease negotiations was passed by TML in open session on May 15, 2015, the salient terms being \$125,000 for a two-year period to allow for construction, as was stated by Swift River in their April 14, 2015 letter to TML. Our client is now concerned that this two year period has mutated into a open lease - the Disposition - rolling forward annually without an end date, at the sole discretion of Swift River, effectively rendering the lease to be in perpetuity and therefore subject to TML’s land use and disposition by-laws, policies and procedures.

We are writing to advise you that it is our client’s position, that the TML Council may not enter into an agreement for the Disposition with Swift River in regard to Portage Landing as the TML has failed to follow the necessary steps to do same. Those steps include:

¹ An article in the November 5, 2015 edition of the Gravenhurst Banner states that in an October 26, 2015 letter to TML, Swift River has requested a decision be made on the leasing of Portage Landing at TML’s November 13, 2015 Council meeting. The article quotes Mayor Furniss as stating this issue may be voted at that time.

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1. Appropriate steps in open session to address compliance with TML Policy C-LS-01 *Sale and Other Disposition of Land*, as a lease without a defined end term, or an end term solely at the discretion of the lessee, would be an “Other Disposition” of land. In furtherance to this characterization, the land would be irrevocably altered, including the loss of heritage attributes, identified and protected by TML.
2. Appropriate steps, in open session, as required by the *Municipal Act* to publicly notify and properly close the road allowance, being all of Portage Landing, in advance of disposition thereof, such road allowance having been transferred from the District Municipality of Muskoka to TML by resolution 67/2011 as passed on April 26, 2011.
3. Appropriate steps, in open session, to address the bonusing provisions of Section 106 of the *Municipal Act* which precludes the Disposition under such terms that ascribe obvious undue advantage to Swift River. There has been no public tendering or 3rd party appraisal of the land to support the lease terms, including the \$125,000 initial payment or the \$5,200 monthly fee, extendable in perpetuity at the sole discretion of Swift River, and absent of any apparent obligation to pay property taxes.
4. Appropriate steps, in open session, to address the impact on, and preservation of, identified heritage attributes currently protected through designation under Part IV of the *Ontario Heritage Act*. These steps need to occur prior to any finalization of the Disposition, and not addressed by Planning Committee after the fact. Further, restoration needs to be meaningful relative to the identified attributes, and so documented prior to any Disposition.
5. Appropriate steps, in open session, to address TML by-law 2008-56 to ensure environmental and Official Plan compliance arising from the de-vegetation and filling of municipal lands with contaminated waste rock, and excavated remnants of a previous hydro generating station. Consistent with all other commercial undertakings within TML, Portage Landing requires Site Plan Control, ensuring an appropriately approved site plan, sufficient securities, and a mechanism to ensure clean fill. We note:
 - a. By-law 2008-56 applies to all lands within 200 feet of a navigable waterway in the Waterfront and also to all lands within 25 feet of a navigable waterway in the Urban Centre or Community designation in the Official Plan.
 - b. By-law 2008-56 requires that no person shall cause or permit any site alteration within 15 metres (50 feet) of a navigable waterway in the

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Waterfront designation and within 7.5 metres (25 feet) of a navigable waterway in the Urban Centre or the Community designation.

- c. The 2013 *Environmental Site Assessment* on the adjacent Crown land has shown Zinc contamination above the MOECC guidelines.
6. Appropriate steps, in open session, to address TML Policy C-LS-08 *Sale of Original Shore Road Allowances and Original Road Allowances* (“OSRA” and “ORA”), which concerns, *inter alia*, the closing and disposition of road allowances, especially those adjacent to water bodies, for example:
- a. Section 1.02(c) states: “*The Township will not close ORA, or portions thereof if they ... lead to water. Applications will not be accepted for these types of road closures ...*”.
 - b. Section 1.02(f) states: “*ORA may not be closed when it abuts or provides access to significant fish spawning areas, wildlife habitat, or other environmentally significant features as identified by the Ministry of Natural Resources, or contains significant historical, cultural, or recreational features.*”

Accordingly, we ask that you respond in writing, **no later than Monday November 9, 2015 at 3:00 pm**, that if the matter of the possible lease (the Disposition) of Portage Landing to Swift River arises at the TML Council meeting scheduled for November 13, 2015 (in open or closed session) this would only be to begin addressing the above steps.

Our client respectfully requests that you confirm that the matter of any proposed transaction or authorizing signing a lease regarding Portage Landing and Swift River be deferred until such time that the TML has properly addressed the above steps.

In the alternative, our client will take whatever steps deemed necessary, including the commencement of a proceeding in the Ontario Superior Court of Justice to halt the actions of the Corporation of the Township of Muskoka Lakes until such time as the required steps set out above have been properly addressed.

Please govern yourselves accordingly.

Very truly yours,



Patricia L. McLean

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PLM:m

c. Clerk of the Township of Muskoka Lakes
TORONTO 99998-2651 1096990v2