

December 12, 2016

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Warden Smith and Members of Council
c/o Jannette Amini,
Manager of Legislative Services /Clerk,
County of Frontenac
2069 Battersea Road
Glenburnie, Ontario, K0H 1S0

Dear Warden and Members of Council:

Re: Howe Island Ferry Service Vehicle Restrictions

We have been retained by Howe Island residents with respect to Council's decision of November 16, 2016 to lift loading restrictions on farm vehicles on the Howe Island County ferry.

We understand that Council's decision was made in the belief that the restrictions were in contravention of the *Farming and Food Production Protection Act, 1998* ("FFPPA"), in response to a letter dated October 28, 2016 to Councillor Nossal from Robin Craig. Our clients were informed that Council felt that it "was breaking the law" by having the very limited restrictions on such vehicles in the first place. Our clients were not provided with any opportunity to challenge this legal basis for the decision before it was made in closed session as a result of legal advice it received, or thereafter, and the restrictions were immediately removed on the same date. Further, it appears no resolution was passed by Council to implement its decision.

A request for the basis of the legal opinion Council received was denied, on the grounds it was discussed in closed session. Accordingly, so that there is a level playing field, we request that Council waive Section 6.9 of its Procedural By-law in order to release this information to the public.

Our clients' position is that Council's interpretation of the *FFPPA*, especially regarding its scope and application, is incorrect.

The *FFPPA* has application only to municipal by-laws that have the effect of limiting a normal farm practice. The Act does not prevent or prohibit decisions rendered by a municipality other than by by-law. The Normal Farm Practices Board has no jurisdiction in such a case, and they have declined jurisdiction whenever appropriate. The Ontario Court of Appeal in its 2011 *Oakville(Town) v. Read* decision affirmed the limited application of *FFPPA*, in that case upholding a municipal zoning bylaw that actually prohibited agricultural uses.

Inquiries have been made of municipal staff for any such by-law that imposes such restrictions, and they and we have been unable to locate any such by-law. The only by-laws that relate to the ferry service deal only with fees and fares, e.g. By-laws 2015-0046 and 2016-0037.

As a result, the *FFPPA* does not apply, nor does it have a purpose to serve in these circumstances. The very purpose of the *FFPPA*, as found by the Ontario Court of Appeal, was anchored in the concern for “unduly restrictive” or “unnecessarily restrictive” municipal by-laws. The restrictions in issue were only applicable for 2 hours out of 24 hours each way, and then only if space was not otherwise available on the ferry. They have been part of the normal operation of farm equipment on Howe Island since at least 2003. There is no factual basis on which Council could have determined such restrictions are unduly restrictive, even if the *FFPPA* were applicable to ferry crossings, quite apart from the lack of a by-law.

Our information is that the limited vehicle restrictions are considered by staff to be a policy of Council, presumably enacted by resolution, and they have been in place since at least 2003. They were enacted for valid policy reasons then and which continue to be so. They are consistent with the Official Plans of both the County and the Township of Frontenac Islands, which recognize Howe Island has benefited from rapid growth in its permanent residential population, and the sustainability of that community depends on the appropriate vehicle accessibility of the ferry service. This population growth is based on in-migration and employment generation in the Kingston area for Howe Island residents, such that there is nearly total reliance on the ferry service by the residents.

Thus Council’s decision was wrong in fact and in law, and contrary to Official Plan policies.

Even if the *FFPPA* were to become applicable, given the concern in the community, and Council’s past decision in 2007 maintaining the restrictions, Council should at the very least have applied to the Normal Farm Practices Board to determine the legality of the restrictions. Such a proceeding would have permitted the many more Howe Island residents than those identified in the October 28, 2016 letter who are adversely affected by Council’s decision, to have an independent determination of the issue.

We therefore request Council to review its decision and reverse it, to reflect the fact that the former policy was not, in fact, in contravention of the law, and was an appropriate response for all residents of Howe Island, given the very limited restrictions. If necessary, our clients will take appropriate legal proceedings to set aside Council's decision of November 16, 2016.

We understand that deputations will be made concerning this issue at Council on December 21, 2016. We ask that the County, or its solicitor, reply to this letter and indicate if it will consider a review of its decision. We also ask for a copy of the resolution of Council to remove the restrictions. In any event, please confirm that this correspondence will be placed on Council's agenda for December 21, 2016, and be provided to the Warden and all members of Council.

Yours truly,

WeirFoulds LLP



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JGC/dh

cc: Mr. Kelly Pender, CAO, [kpender@frontenaccounty.ca]

cc: Clients

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