MINAKI COTTAGER’S ASSOCIATION

Submission to the

ONTARIO MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING
(“MMAH”)

Part B. Narrative Overview

1. Background Information

(a) Minaki Cottager’s Association

The Minaki Cottager’s Association (the “MCA”) is a non-profit corporation, organized in 2005, and dedicated to the nurturing and enhancement of the unique environment of Minaki. For the first five years of its existence, the MCA focused its activities primarily on provincial timbering plans. It worked cooperatively with the Ontario Ministry of Natural Resources and private timber companies to steer the locations and practices of logging proposals away from important and sensitive places in the Minaki area.

Then, in the fall of 2010, after representatives of Minaki on the River Inc. (the “Developer”) held a meeting in Minaki and presented plans for a redevelopment of the Minaki Lodge site, the leadership of the MCA contacted the Developer regarding several areas of concern with respect to the redevelopment proposal. Since that initial contact, the MCA has emerged as the voice of seasonal residents in the Minaki area who share those concerns.

As of the time of this submission, the MCA holds over 300 individual paid members. All members are at least eighteen years of age. A list of MCA member names is included in Part L.

Estimates of the number of seasonal cottages in the Minaki area are in the range of 270. Because of the timing of the Developer’s application and review process, outside of the summer season, the MCA has so far made contact with the owners of only approximately two-thirds of them. An extraordinarily high percentage – between 60 and 70% -- of those cottage ownerships that have been contacted have paid dues and joined, to show their support for the positions that the MCA is advocating regarding the proposed redevelopment. Memberships continue to come in. At the same time, the MCA is not aware of any level of cottager support for the Developer’s plan in its current form.

The strong Minaki cottager owner response to the issues of the proposed Lodge redevelopment reflects the stable and multi-generational family histories in Minaki. Given the Minaki community’s small size, that stability and history have brought a close relationship between the seasonal cottager and year-round populations and a history of voluntary cottage owner support of community needs. Cottage owners in Minaki also pay taxes on the same basis as year-round residents – land taxes, local service board and roads area board taxes, and school taxes within the district boundary.
Besides soliciting memberships, the MCA also asked for additional contributions from cottage owners to fund the costs of outside engineers, lawyers, and economists that it expected would be required to address in a thorough and responsible fashion the significant issues raised by the redevelopment application. The MCA set an ambitious fundraising goal for that effort of $100,000. Funds actually collected to date have exceeded that goal. Members of the MCA who are in the engineering, legal, academic, and business professions have helped with this submission, but neither they nor any other members of the MCA have charged or received any remuneration for that assistance.

Finally, the cottagers who have joined the MCA and supported its fundraising effort are spread throughout the Minaki area. Members range along the Winnipeg River for over five miles from the Lodge site upstream through Gun Lake and an equal distance upstream through the river channel, and for roughly seven miles downstream both to the entrance to Big Sand Lake and to Roughrock.

Each of these factors – the exceptionally high percentage of cottage owners who have paid to join the MCA with concerns about the proposed development, the strong response from cottage owners to contribute the necessary funds, and the support for the MCA's positions up and down the Minaki area – shows the depth of Minaki seasonal residents' feelings for Minaki and its unique history, heritage, and water, and shows the remarkable extent to which those feelings are shared among the cottager community. But those factors demonstrate something else just as important. They show how badly some aspects of the Developer's proposal violate the shared sense of what's appropriate for a redevelopment of the Minaki Lodge site.

(b) Minaki and the Lodge Site

The Developer has chosen for its redevelopment the single most dominant site in the Minaki area – the Minaki Lodge property. That dominance comes from both the geographic prominence of site’s location on the Winnipeg River and the historical prominence of the prior Minaki Lodge use.

(i) Winnipeg River A great part of the distinctive character and attractiveness of the Minaki area comes from the unusual nature of its water. Acting like both a lake and a river, the water of the Winnipeg River system in Minaki flows through widely separated channels, rolls through its narrowest point at approximately 400 feet wide under the railroad bridge at the Minaki Lodge channel, and spreads out into lakes that are two, three, and seven miles across, all the way holding a deeply irregular shoreline and many islands.

The Ministry of Natural Resources (“MNR”) confirms that Winnipeg River in Minaki is a particularly valuable and pressured resource. It notes in its 2012 Draft Winnipeg River Fisheries Management Plan dated December, 2012, that the majority of Ontario’s lakes and rivers are included in one of 20 Fisheries Management Zones developed under this framework and are subject to common management objectives and angling regulations. The Winnipeg River is an exception to this practice. Because of its economic and social importance and status as a waterbody subject to relatively intense pressure from resource-users
including anglers, the Winnipeg River has been identified as a “Specially Designated Water” (SDW).

Overall, this intricate river system in Minaki can be organized into four major stretches:

- upstream from the Lodge site through Gun Lake
- upstream from the Lodge site through the main River channel
- downstream from the Lodge site into Roughrock Lake, including the arm of the River known as Pistol Lake
- downstream from the Lodge site to Big Sand Lake

These four stretches are shown on the map in Part M.

The critical point for undertaking good planning for the Minaki Lodge site is that it lies at the centerpoint of that river architecture, where all four stretches meet, on the narrow channel that runs under the railroad bridge and arcs into the mouth of Town Bay. It is as a result the most visible and distinctive site in Minaki. Furthermore, since road access is limited to cottages only on the west side of the river system, by far the majority of Minaki cottages are water-access only. All public marinas are either upstream of the lodge channel or on the channel itself. As a result, boat travel by cottagers, by fishermen and other visitors, and by year-round residents through that central channel is very heavy.

(ii) Minaki Lodge Use For the many years of its operation, the Minaki Lodge was by far the primary attraction and the primary employer in the Minaki area. Many Minaki cottage families can trace their first Minaki experience back to the Lodge, as a guest or as an employee.

The grand scale of the Lodge, the sponsorship by the transcontinental CN Railroad, and the audacious inclusion of a golf course on the granite site, designed by the famous architect Stanley Thompson, lie at the heart of Minaki’s heritage, and still resonate in its character.

Through the years, Minaki Lodge developed a national and international reputation as a high quality resort in a wilderness setting. Now the Developer comes, and with its acquisition obtains, and deserves to obtain, the benefit of that dominant real estate location and that deep and positive name recognition. With that location and recognition, however, comes great responsibility. What happens on the Lodge site has defined Minaki, and it will continue to do so. As this submission will explain, with some critical aspects of its proposed development, the Developer has defaulted on that responsibility.
(c) **Cottage Density**

The major concerns of the MCA about the Developer’s seasonal residential project stem from the extreme unit density proposed for the Lodge site. To be fully evaluated, that density needs to be analyzed against the existing seasonal residential density that characterizes the Minaki area.

Cottage use in Minaki consists almost entirely of properties with water frontage. Cottage properties, as a result, are organized along the four major river stretches described in Part B (1) (b) above.

Those four stretches run in total for roughly twenty-one linear miles. With approximately 270 cottages in the Minaki area, there are approximately thirteen cottages on average in each mile of river stretch. That linear density is already small – approximately one cottage for every 400 linear feet of river system stretch. But as the map shows, those river stretches are sometimes miles wide, and the linear miles hold many more miles of very irregular shoreline and the shoreline of the many islands in between. The upshot is that overall there is extremely low cottage density within the Winnipeg River system in the Minaki area.

That characteristic low cottage density in Minaki comes from the historical pattern of larger parcels coupled with long-time family ownerships, a lack of subdivision, and from the extensive amount of Crown land in the area. Cottage density in Minaki will certainly increase as time passes and as properties are subdivided or family cabins added. All that Crown land, however, is programmed to remain off limits for cottage development. Under Action 6-1 of Section 5.2 of MNR’s 2012 Draft Fisheries Management Plan, and as part of an effort in environmental protection, MNR recommends that Crown land not be converted to residential cottage use.

(d) **Contacts with Developer**

Representatives of the Developer called a community meeting in Minaki on September 25, 2010, and presented its plans for a 163-unit seasonal residential project on the Minaki Lodge site. The site plan included a dock expansion from approximately 60 boat slips to 200 (counting spaces on the outside of each dock structure). That site plan is attached in Part J. As far as the leadership of the MCA is aware, the Developer attempted no prior meetings with and sought no prior feedback from numbers of Minaki year round or seasonal residents before completing its redevelopment plan and presenting it on September 25.

A representative of the MCA made some comments about project density at that meeting, and the MCA followed up with a request to meet with the Developer’s principals. Several meetings occurred through the end of 2010 and into 2011, at which the MCA expressed concerns about the proposed high density and the effect of that density on sewage treatment, on boat congestion, and on the Lodge golf course. The Developer at no time modified any of the contentious aspects of its plans, particularly in regard to the sewage treatment plant, density and the elimination of the golf course as it exists today, and early in 2011 negotiations broke down.
There were discussions about potential development alternatives regarding the golf course, with the MCA hoping that some separate treatment of the golf course property could preserve the heritage of that open space and drive down density. Nothing came of those discussions. The Developer’s principal Bob Banman was quoted in the Winnipeg Free Press on December 20, 2012, as saying that he had at one point in those discussions offered to sell the golf course property to the MCA for $1.00. Mr. Banman may not have been quoted correctly, but in any event that statement is incorrect.

Since the meetings stopped, the Developer has not responded well to requests from the MCA for information and has not asked the MCA for any input. In June, 2012, the Developer obtained an assignment of the existing sewage treatment permit from the Ministry of the Environment (“MOE”). The Developer chose not to alert the MCA or the public in any fashion that the assignment process was underway, and choose not to disclose and discuss in advance any of the number of clearly controversial aspects of that assigned permit. The MCA finally saw the amended permit, obtained with legal assistance, in November, 2012.

In addition, the Developer’s application in multiple places attempted to supply required information by referring to a “Summer, 2010 Proposal,” which had its own file number (60-DP-10014) but was not included with the public version of the application. The MCA began requesting a copy of that material from MMAH in November, when it received a copy of the application, and turned at MMAH’s suggestion to the Developer for a copy in December. Requests for the information made through the Developer’s consultant in Kenora were not productive. Finally, at the end of January, the Developer’s counsel asserted in a letter to MMAH that there was no information in the Summer, 2011 proposal that was not included in the application itself. But that explanation left unexplained why it would be that, if all the information from that proposal was in fact in the application, the information wasn’t referred to directly. The MCA still hopes to get clarity on this peculiar feature of the application from further work with MMAH after this submission.

Finally, the Developer, all through the application and in all the time since the MMAH sent the application to the MCA, has consistently avoided revealing any information about the major dock expansion and resulting boat traffic in the Lodge channel and surrounding waters that the redevelopment will entail. The Developer’s apparent strategy of avoiding in proceedings with the MMAH the severe and literally life-threatening impacts of the overload of docks and boats -- and then seeking expanded dock permits with a condominium project approval in hand -- is irresponsible. As discussed in Part B (5) below, it cannot be allowed to stand.

The MCA, in contrast, has been attempting to be more forthright and transparent. Since early January it has been copying the Developer’s principals, along with MMAH, on its updates to members.
2. **Summary of the Position of the MCA**

Against the foregoing background, the position of the MCA and its members is summarized as follows:

**(a) The MCA favors redevelopment of the Lodge site**

**(b) With respect to the redevelopment proposal from the Developer, the MCA is not opposed to the type of residential use that it has chosen, and hopes that a Lodge development can finally be successful**

Although the details still appear to be in flux, that type of use seems to be lower-priced seasonal residential units, with some units in the existing hotel buildings and existing cabins and some units in new cottages constructed or installed on new small lots. All units will be served by the existing Lodge sewage treatment plant.

The MCA appreciates and that this use has the potential to provide initial construction jobs for community members, will generate additional customers for Minaki businesses, and will give the public a less-expensive opportunity to own property in Minaki. The reopening of the Dockside restaurant to the public is also a plus.

**(c) But the MCA is opposed to the scale of the proposed use, to the project’s sheer density**

This issue of density has been at the heart of the MCA’s concerns about the proposed redevelopment from its unveiling in the fall of 2010. The concerns focus on two consequences, both related to the quality of Minaki’s water.

**(i) sewage treatment: the amended sewage plant permit that the MOE has issued to the Developer rates the plant at a flow of 186,000 litres per day. But the R. J. Burnside and Accutech engineering reports confirm that the large number of people that Developer proposes to put on the site with all its density will overwhelm the plant capacity as rated by the MOE, and when the plant is overwhelmed the treating ability rapidly declines and ultimately the safety valve shunts raw sewage into the Winnipeg River.**

Besides this density and flow issue, the existing plant is not physically capable of meeting the Provincial phosphorous target, nor of meeting the chlorine limits required for January 1, 2015, under the federal Fisheries Act.

The density of people in the redevelopment, the consequences for sewage treatment, and the plant’s existing limitations, are discussed more fully in Part B (4) below.

**(ii) docks and boats: the site plans in the application filed by the Developer show roughly just three separate docks holding sixty boat spaces in total. That is approximately the amount of dockage now allowed at the Lodge site under an annually renewing permit from the Ministry of Natural Resources (“MNR”). The Developer’s site plans from September and**
October, 2010, however, show docks three times as large, holding from 190 to 200 boat spaces. The MCA assumes that the Developer still intends in some process or other to accomplish that dock and boat expansion. The issue is that the Lodge channel is already a narrow, crowded and difficult stretch of the river, and even more so when people fish there. The thought of adding 160 or so unit owners’ boats right there all summer, and all the boating activity that would take place in the channel and around the Lodge site is unsafe and unhealthy and badly out of context, and must be considered as part of MMAH’s planning review.

The density of docks and boats in the redevelopment is discussed more fully in Part B (5) below.

(d) Besides the raw density, the MCA is concerned about the use of a condominium structure to organize the development

Condominium construction is complicated – units must fit within precise boundaries, unit owners often take responsibility for some or all of the construction within those boundaries, and the lines between units and common elements can be blurred. How that construction activity can reliably occur in unorganized territory, with no development agreement, site plan agreement, or any other supervision and inspection that ordinarily would come from the governing municipality, is not clear. It is also hard to understand how condominium associations made up of part-time residents can be relied upon to operate, maintain, and fund the repair and replacement of the critical sewage treatment plant, with no responsible local government oversight or backstop available in unorganized territory. Some continuing governmental oversight of project construction and of the sewage plant’s operating and reserve finances, for the benefit of the public, must be established as part of any approval. Finally, the MCA is concerned about the precedent that the proposed condominium structure would set elsewhere in the Minaki area, but ultimately all across unorganized territory. What’s to stop a typical cottage owner with 150 feet of waterfront from declaring a condominium and stuffing multiple units onto the site?

The condominium topic is discussed more fully in Part B (6) below.

(e) The MCA is concerned about the loss of a significant piece of Minaki’s cultural heritage landscape if the redevelopment proceeds as proposed

The Ontario Provincial Policy Statement contains general and directional guidelines for development planning on all land in the Province, but it does reach down specifically to require that a significant cultural heritage landscape in a community must be conserved. The open space on the site that is attributable to the Minaki Lodge golf course, and particularly the green space of the first and ninth holes that run along the property’s Winnipeg River frontage, are such a landscape in Minaki and must be left open.
The MCA by this insistence is not intending to inhibit the Developer’s ability to get value out of its site – once project density is brought down to a sensible level, there is plenty of room for unit layouts that leave all the open space unused, turning that space into a positive feature of the development for unit buyers and preserving its value for the public.

The cultural heritage landscape topic is discussed more fully in Part B (7) below.

(f) The MCA’s independent experts

The MCA has engaged a number of experts to help it formulate this response to the redevelopment proposal, and has specifically selected experts with long experience and strong credentials and reputations.

It has engaged two engineering firms to help analyze the multiple issues of sewage treatment. One, R. J. Burnside and Associates, is based in Orangeville, Ontario, has a forty year history and is among the pre-eminent independent civil engineering and environmental consulting firms in Canada. The other, Accutech Engineering, is based in Winnipeg and works for private, public, and First Nations clients across Canada. Ken Drysdale, the Accutech president, is the current president of the Manitoba Association of Consulting Engineers.

InterGroup Consultants is a multi-disciplinary strategic planning and impact assessment firm based in Winnipeg, whose experience includes large public and private projects in northern Ontario. Its analysis for the MCA focused on the prior Lodge use and on the impact of docks and boats. The MCA also engaged Jeff Port as its overall planning consultant. Jeff is a former planner for the City of Kenora, and is currently the planner, and the planning authority, for the Nestor Falls/Sioux Narrows municipal area.

(g) The Developer’s claim of an age 55+ community

At the September, 2010, meeting in Minaki, Bob Banman of the Developer described the buyers of the condominium units on the Lodge site as senior citizens and retirees. The image was of a quiet, sedate community, with low occupancies and low levels of activity per unit. As described in Part B (4) below, the Developer in its application then leverages off this prediction to its advantage. At critical points in the analysis of its community impact, its sewage consultants assume a “55+” community of unit residents to set extraordinarily low occupancies per unit and thereby rationalize the extraordinarily high proposed unit count.

The MCA urges the MMAH in its review of the Developer’s application to see through this technique. There is no minimum age requirement in the draft condominium documents for unit buyers, and no limitation on children. Nor could there be – such limitations would be illegal under the Ontario Human Rights Code. There is furthermore nothing in the features of the redevelopment to suggest that a buyer profile for the seasonal units on the site will be older than the buyer profile for seasonal cottage properties elsewhere in Minaki. For good, prudent planning, the MMAH must assume that unit buyers will be no different
from cottage buyers generally and that the units in the redevelopment will fill up with family and friends on popular summer weekends just the way that other cottages in Minaki do.

(h) A final note

A peculiar feature of condominium development is that a condominium developer has no stake in the community where the project is located. Once unit sales reach a certain level, the project is turned over to the unit owner association and the developer exits, concerned only about sale of the remaining inventory. A condominium developer ultimately holds no continuing interest in and no liability for the project, and no concern for how it or the community fares in the future.

The members of the Minaki Cottagers association, in contrast, aren't going anywhere. They have been in Minaki for a long time — many cottage family ownerships go back for more than seventy-five years and some are in their second century. Along with year-round residents, and the water in the Winnipeg River, they will face the consequences of the Developer’s condominium proposal forever.

As the MMAH staff reviews this submission, the MCA hopes that it is hearing on every point the voices and the experience and the stake of each of its over 300 members, who will always care deeply about what happens to the small and beautiful community of Minaki.

3. Lodge Planning Bylaw – the densities and impacts of a redevelopment must stay within the densities and impacts of the prior Lodge use

The Developer’s applications have put the MMAH and its staff in a difficult spot. The redevelopment site is large, and occupies the prominent location in the community. It holds tremendous history. It fronts on the Winnipeg River, a precious and fragile resource, along a congested channel. In the remote setting, there is, oddly, a private sewage treatment plant. The proposed use for the site is exceptionally dense. A high percentage of the area’s seasonal residents object to that density, joined in that concern by year-round residents.

Making matter worse, the site is in unorganized territory. The MMAH can look to the Ontario Planning Act, R.S.O. 1990 c. P. 13 (the “Planning Act”), and to the Ontario Provincial Policy Statement (2005) (the “Policy Statement”) for guidance, but with the exception of the issue of cultural heritage landscape discussed in Part B (7) below, the Planning Act and the Policy Statement offer little firm or specific direction for what will constitute good planning for the redevelopment of the site. In unorganized territory, furthermore, there are no lower level zoning bylaws to apply.
Fortunately for all concerned, there is a fundamental planning principle that can carry the MMAH in a straightforward and objective fashion to good planning for density. It is a principle that the Developer itself has proposed, and one that the MCA supports. The principle is this: the densities and impacts of the proposed development should stay within the densities and impacts of the prior Lodge use.

This principle is simple, and it is powerful. It runs throughout the Developer’s applications, and it will run throughout Part B of this submission. Given its significance and the frequent references to it, it will be referred to as the “Lodge Planning Bylaw.”

The Developer first articulated the Lodge Planning Bylaw early on at the September, 2010, meeting in Minaki, when Bob Banman asserted that the Developer had gauged the unit density in the proposed plan so that the redevelopment project would not exceed past Lodge densities. The Developer repeats the Lodge Planning Bylaw in its August 1, 2012, letter to MMAH that covered the application:

“The attached applications reflect a cost-effective, sustainable form of seasonal cottage ownership that is well within the scope of the traditional density of the former Minaki Lodge … .”

In the Developer’s applications, the principle appears most importantly in the critical Section 5 of the Community Impact Assessment by MMM Group, where the Developer’s consultant calculates the number of people that historically were on the Lodge site for use as a standard against which it tests the proposed densities of its redevelopment. Here is the Developer’s and its consultant’s adoption of the Lodge Planning Bylaw, from page 9 of that report:

“MMM was asked to compare the number of people that would have been on the site while it was operating as Minaki Lodge with the estimated number of occupants that would be on the site should it be redeveloped as proposed.”

Here is the Developer’s sewage consultant’s adoption of the Lodge Planning Bylaw, from page 1 of its report:

“The anticipated number of people who will use the various facilities, the water usage and the wastewater volumes are estimated and compared to those of the former Minaki Lodge.”

Besides the fact that the Developer and the MCA agree on it, the Lodge Planning Bylaw is also substantively completely sensible. The community of Minaki grew up around the historical density and impacts of the Lodge, in terms both of the number of people there and of the number of docks and boats. The relatively low densities of cottage development elsewhere helped balance the fragile Winnipeg River environmental system overall and helped it handle the Lodge’s higher density and impact load. In addition, the densities and impacts of the prior Lodge use were an affirmative benefit to the Minaki area, as those densities helped generate economic activity for the benefit of year-round residents; as noted
above, the MCA agrees that replacing those past densities and impacts is a good thing for that same purpose.

But what the Lodge Planning Bylaw protects against is the deleterious and dangerous effects of excess density and excess impacts. The Lodge site dominates and drives the Minaki area. Densities and impacts beyond those that obtained in the past threaten the quality of the water in the Winnipeg River, threaten the safety and quality of everyone’s use of that water, erode the values of neighboring properties, and forever skew the balance of densities that has defined Minaki’s fragile character.

As a final consideration, the densities and impacts of the prior Lodge use were so significant that they now afford the Developer plenty of room within which to conduct a successful redevelopment and earn plenty of development profit.

So if the Developer and the MCA agree on a fundamental planning principle for density on the site, and that principle is sensible, then why is the MCA objecting to the densities proposed in the redevelopment plan? The answer is that with respect to one object of the Lodge Planning Bylaw – the number of people that should be on the site – the Developer in the applications conjures up a fancifully high number of people during the Lodge days, and with respect to another object of the Lodge Planning Bylaw – the number and impacts of docks and boats that should be on the site – the Developer ignores the topic entirely.

4. Density of People – Sewage Treatment

(a) Number of People on the Lodge Site – past density limits redevelopment size

As part of applying the Lodge Planning Bylaw, the density of people on the Lodge site at any one time during the prior Lodge use should be held as a limit and compared to the density of people who will be on the site at any one time in the proposed redevelopment.

The Developer’s Calculation of Past Density

In its application, the Developer in Part 5 of the Community Impact Assessment presents a calculation of the number of people that were on-site daily while the Lodge was in operation in the single year of 2003, based on a series of assumptions. The calculation was performed by MMM Group Ltd., consultant for the Developer.

Through that calculation, the Developer asserts that there were daily on the Minaki Lodge site in that year 777 persons. But anyone who had spent time in Minaki and had some familiarity with the Lodge operation in that year or prior years would have sensed immediately that that 777 number is extraordinarily high.
Records of Actual Density

The MCA has information regarding the number of people that were on-site daily while the Lodge was in operation in the years from 1988 through 1993. In those years the Lodge was operated by the Four Seasons Hotel company, and it was required to count people on the Lodge site and file with the MOE a report every operating month detailing exactly how many people were on-site and using the sewage treatment plant. Through a Freedom of Information Act request, the MCA obtained those reports from MOE, and a sample of them is included in Part K.

Those reports, which are a contemporaneous record of exactly the number of people on site, counted the actual number of Lodge guests and live-in staff, and estimated the number of day visitors who came for golf, tennis, dining, or sightseeing. The following table summarizes the Lodge guest plus staff counts for the six years covered by the reports.

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*Includes 45 Live-in Staff (1/2 of 90 staff) - balance housed at Holst Point in 1988. Numbers for 1989 to 1993 include Live-in Staff count ranging generally from 70 to 120

The guest plus live-in staff counts are generally in the 200’s, with a low of 138 in May of 1990 and a high of 344 in August of that year. Day visitors were estimated at an average of 100 per day in total, then cut down to 25 to reflect an average density at any one time. In fact, then, the highest monthly average density of people on the Lodge site in the years 1988 through 1993 was approximately 369 in one of the thirty-six operating months covered by the reports, and most often the total number of people on the site at any one time, including an estimate of day visitors, was in the mid to high 200’s.

These actual population counts for years 1988 through 1993 are in all likelihood higher than the actual population counts on the Lodge site in 2003, the year that the Developer selected for its test. The Lodge in the earlier years was operated by Four Seasons, an experienced and international hospitality company that could be expected to produce higher occupancies than Phil Archer, a real estate syndicator who operated the Lodge for a single year in 2003 and was later ruled guilty of securities fraud in Alberta. But the MCA nevertheless recommends taking advantage of the actual population numbers from 1988 through 1993 and
using those years in applying the Lodge Planning Bylaw, as it does in subpart (b) below.

The Developer’s Flawed Calculation of Past Density

So how to explain the wide disparity between the Developer’s estimate of 777 and the MCA’s actual density numbers? The answer lies in three errors in the Developer’s consultant’s assumptions in the Community Impact study.

(i) In calculating daily density of people for purposes of measuring the impact of that density, the point is not how many people cumulatively were on the site during the day but how many were on the site at any given time. The consultant, though, when it looks at the Lodge amenities (the golf course, the Lodge dining room, and the Dockside restaurant) on page 8 of its report, decides for no logical reason to count “the total number of users during the day rather than the maximum number of users at each amenity at any one time during the day.” This approach counts cumulatively everyone who used an amenity during the day and thereby overstates density. For example, if during 2003 the Dockside restaurant had a magical day and at all times there were exactly 50 diners in the restaurant and all the tables turned exactly hourly for the six hours that it was open, then the density of people in the restaurant that day is clearly 50, but the consultant calculates it at 300.

(ii) the consultant then takes those inflated people densities from each of the amenities and in the table on page 8 of its report adds them to the estimated numbers of guests and employees, effectively making an assumption that not one guest played golf or dined in the Lodge restaurant or Dockside and producing a series of major double-counts. Look at a single Lodge guest who one day in 2003 stayed in his room in the morning, ate lunch at Dockside, played a round of golf, and had dinner in the Lodge dining room. In calculating the number of people on the Lodge site that day, that guest clearly counts as one; the Developer’s consultant counts him as four.

(iii) the consultant reports that Lodge guest occupancies in 2003 ranged from 25% to 75%, according to a former manager, but tosses out that actual estimate and instead notes that “theoretically” the Lodge could have operated at 90% occupancy, producing another imaginary boost to actual population counts.

(b) Applying the Lodge Planning Bylaw – Maximum Permitted Density is 275 People

According to Developer’s own Lodge Planning Bylaw, the number of people on the Lodge site in the past sets a limit on the number of people on the Lodge site in its redevelopment. The MOE reports provide actual population counts, but there needs to be extrapolated from them a single number that can fairly stand for the past population density and guide the planning now for the site.
The starting point for that extrapolation is to identify the right categories of site occupants for a fair comparison. InterGroup Consultants Ltd. In its report (included in Part D, recommends counting Lodge guests and on-site staff in the past and comparing that total to unit occupants in the future, and that makes sense for two reasons:

(i) the ultimate concern of the density of people on the site relates to sewage treatment, and Lodge guests and on-site employees were on the property overnight and were the significant users of water and generators of waste. Golfers, tennis players, and sightseers had little of that sort of impact. Day visitor diners at the Dockside restaurant do not need to be counted, because that use is being repeated in the proposed redevelopment. That leaves day visitor diners in the Lodge dining room, and that density number, while small, will be accounted for as described below.

(ii) the same approach applies to the proposed redevelopment – unit occupants will use water and generate waste. Dockside diners are present in both scenarios. And the impact of other day visitors to the redevelopment project, for tennis or for activities sponsored by the resident associations and open to the public, is small.

InterGroup then looks at the actual monthly counts of Lodge guests and on-site staff in 1988 through 1993, and sets a range of 265 to 275 as a fair overall representation of the daily density of people on the Lodge site for purposes of applying the Lodge Planning Bylaw. The average number of people each year (as shown on Table 1) ranges around 250: 260 in 1988, 241 in 1989, 250 in 1990, 248 in 1991, 225 in 1992, and 230 in 1993. Two hundred and fifty also works as a median. But the past impact of Lodge dining by day visitors is missing in these numbers, and the total number of day visitors in the past Lodge use seems likely to be somewhat higher than in the proposed redevelopment. To be fair to the Developer and account for those two small factors, the MCA in this submission will use the upper end of InterGroup’s range – 275 -- as the average density of Lodge guests and on-site staff on the Lodge site during the prior Lodge use.

(c) Implications for Sewage Treatment – the Need to be Conservative

To repeat, pursuant to the Lodge Planning Bylaw, the 275 average daily density of the past Lodge use, derived from actual people counts, sets a limit of 275 for the number of unit occupants in the proposed redevelopment. But that population density still needs to be tested against the capacity of the existing Lodge sewage treatment plant, as the Developer does with its proposed population density in its application. The Developer’s attempt to fit its density within the plant is discussed in subpart (d) below; the MCA’s analysis relies on the R. J. Burnside and Accutech engineering reports attached as Part C, and starts with three items of background.
(i) the MCA has raised a number of serious issues with the amended permit for the existing sewage treatment plant that the MOE granted to the Developer. Those issues are set forth in the MCA’s January, 2012, letter to the MOE that is included in Part C. It is critical to note, though, that while the MOE rates the capacity of the plant and specifies what contaminants must or should be treated and to what levels, and is responsible for many of the points in the MCA’s letter, the MOE does not regulate or control the number of people on the Lodge site who will use the plant to make sure that the plant can handle the site’s population density. That density control is the MMAH’s job. And that is why the MCA has devoted such extensive analysis to the population density topic – good planning by the MMAH for the number of unit occupants in the proposed redevelopment must stay within the Lodge Planning Bylaw and must stay within the capacity of the Lodge sewage treatment plant.

(ii) the existing Lodge plant has only a limited amount of holding tank capacity to even out daily flow and provide protection against upward spikes. Therefore, as the Burnside and Accutech reports confirm, a concept of an average number of people who can use the plant safely is insufficient. The approach must be to analyze the maximum or peak number of people who can use the plant safely. Even if some lower average daily flow would fit within the plant’s rated capacity, the peak flow when it occurs is the flow that can degrade the treatment quality and ultimately shunt sewage directly into the Winnipeg River.

(iii) the testing of whether a given population density can safely use the Lodge sewage treatment plant must be conservative. The Lodge plant has not operated for ten years, and has operated for only one year out of the past eighteen. How effective it will be in treatment can’t be surely known until it starts up again. Moreover, the plant operates in unorganized territory. MOE will have continuing jurisdiction over some aspects of the operation, but there are no controls over unit uses, installations, occupancies or practices. Once the MMAH acts on a density proposal, the density has been set for the site forever. And if the MMAH makes a mistake and the allowed density and actual uses do not fit the plant, then it’s the innocent unit buyers and the Winnipeg River and everyone and everything that uses it that pay the consequences. Remember that the Provincial government designed the original plant to fit specifically its resort use and it badly underestimated flow and the plant failed within a few years. At least Four Seasons arrived in 1988 and essentially rebuilt the plant. Especially with condominium associations of seasonal residents as the plant owner and operator, and especially in unorganized territory, good planning must leave a significant margin for error.
Against that background, then, does a population density of 275 people fit within the existing plant? The answer requires an appropriate daily flow rate per person. The R. J. Burnside and Accutech firms separately analyze the issue, and assert that the appropriate rate is in a range of 400 to 472 litres per person per day.

The engineering analysis is detailed, and is set forth in full in each firm’s report. Several factors that lead to expected flow rates per person at those levels are:

- the average flow rate per person during the prior Lodge use, as reported in the reports filed with the MOE, was over 500 litres per day

- the Ontario Building Code sets flow rates per person for small systems of less than 10,000 litres per day. Its specifications are therefore not binding in the case of the Lodge plant but still offer guidance for expected flows. For the resort/cottage category of use, the Code specifies the use of a flow of at least 500 litres per person per day.

- the use of garburators and the introduction of more organic material into the sewage flow significantly impairs the treating ability of a sewage plant system. The result is that sewage flows with garburators are the equivalent of significantly higher flows without them. In unorganized territory there is no way to regulate unit owner use of garburators now or in the future, and to be prudent projected flows must be ratcheted up to account for the potential for their use.

Mindful that planning for the operation of the Lodge sewage treatment plant in unorganized territory must be conservative to make sure that the operation of that plant is at all times successful, the MCA takes the 472 litres per day engineering conclusion from the Accutech firm and rounds it up to 475 for planning purposes. At 475 liters per person per day, and 275 people, the daily flow is 130,625 liters per day. That flow accounts for unit residents. Then the Dockside Restaurant flow requirements must be added. R. J. Burnside consults the Ontario Building Code and uses 125 liters per restaurant seat per day, putting the 128-seat Dockside flow at 16,000 liters per day and the total projected flow from the proposed redevelopment at 149,625 liters per day.

That 149,625 daily flow fits within the 186,000 MOE rating of the plant. At just over 80% of capacity, that flow is appropriately conservative and should leave room for times of peak occupancy in the summer that will exceed 275 people in the units and for the uncertainties that the developer’s new units will bring to the old plant in unorganized territory. In similar circumstances, the Four Seasons company redesigned the Lodge plant to run safely at an overall average of 60% of capacity.
As a matter of good planning, then, a 275 population density for unit occupants in the proposed redevelopment fits the Lodge Planning Bylaw and safely fits within the existing Lodge sewage plant. Any higher population density does not.

(d) The Developer’s Flawed Attempt at Sewage Treatment Analysis

In subparts (b) and (c) above, the MCA has relied on the work of InterGroup consultants and the R. J. Burnside and Accutech engineering firms to lay out good planning for the density of people on the Lodge site in the redevelopment and for the analysis of a flow rate per person that will ensure safe sewage treatment. The result was a limit of 275 for unit occupants, and an assumed flow of 475 liters per person per day.

The Developer proposes 160 units. Those units will surely hold many more people than 275. The MCA has already shown how the Developer managed to make 160 units fit the Lodge Planning Bylaw – it conjured up an imaginary population number during the past Lodge use of 777. How did the Developer go about fitting 160 units into the sewage treatment plant?

The answer lies, again, in a series of flawed assumptions within a flawed approach.

(i) the Developer in its application starts by having its community impact consultant, MMM Group, estimate the number of people who will occupy the units in the proposed redevelopment. The consultant, in turn, observes that the Developer has told it that the units will be only one or two bedrooms and states without explanation in Part 5.3.1 of its report that in making its occupancy estimate, “the actual number of bedrooms is not used, but only the number of units.” It goes on in Part 5.3.1 to note that the Developer has also told it that units will be “marketed to a ‘55+’ demographic,” although the consultant adds that buyers will not be limited by age (and the MCA repeats that any such limitation would be illegal in Ontario under Section 2 of the Ontario Human Rights Code). Since they will be “55+” units, and “due to the low likelihood of these families having children living at home on-site,” the consultant without further ado sets an occupancy of two people per unit regardless of unit size, coming to a unit resident population of 320. It adds without any support a visitor factor “at any one time” of 15%, which it rounds up to 50 for a total count of 370.

(ii) in that relatively brief Part 5.3.1, the consultant’s effort suffers from these weaknesses: it assumes a buyer profile that cannot be reliably predicted and is illegal to enforce; it assumes only one or two bedroom units, when neither the applications nor the condominium documents contain any specification of unit size, except that the bare land condominium documents require a minimum size of 900 square feet and a limitation to two stories; it adopts an occupancy of two per unit regardless of unit size, and supports that odd assumption with the mere observation that the aged owners of the units won’t have children living at home, ignoring the
reality that the Developer’s units are seasonal cottages and not primary residences and “children living at home” is not a relevant occupancy issue anyway; and sets a visitor count total in all 160 units of 50, again with no back up. Finally, the MMAH must keep in mind that all of the consultant’s analysis in Part 5.3.1 is of average occupancies. It would not be suitable for use in sewage treatment analysis, because as discussed in subparts (b) and (c) above, sewage treatment analysis must account for peak occupancies and their implications for peak flows.

(iii) next up is the Developer’s water and sewage engineer, Genivar, through its Winnipeg office. Genivar, in Section 2.0 of its report, cites the work on occupancy of MMM Group, but some coordination between the two reports may have been lost as Genivar seems to take from MMM Group an estimate of 2.5 people per unit regardless of unit size, and not 2. In any event, Genivar is starting its sewage flow analysis with an average occupancy, and never does mention the concept of a peak occupancy. Genivar adds MMM Group’s unsupported estimate of a 15% average visitor count, and reaches a total occupancy in the units, on average, of 469.

(iv) Genivar then needs a sewage flow rate, and it finds one at 250 liters per person per day. That flow is based not on any stated engineering analysis, but only on a statement on page 3 that it is “considered generous,” followed by a reference to a “random sampling of four households of 55+ residents in single family residences in Winnipeg,” where the average flow was asserted to be 160 liters per person. The tiny sample size and the completely different property type are serious shortcomings, of course, but another problem is that again the analysis is of an average flow. A peak occupancy of unit owners and family and friends on a busy summer long weekend, with a peak flow that could threaten the Lodge plant’s capacity, is never considered anywhere in the Developer’s application.

(v) Genivar omits consideration of extraneous flows, and simply finishes the sewage flow analysis by multiplying the average occupancy of 469 by the average flow of 250 to get 117,250 liters per person per day, then adds 28,480 liters per day for the Dockside restaurant (it looks like some double counting of seats is going on there, but the MCA is not sure) and sums total average flow from the 160 units and Dockside to 145,730 liters per day, well within the plant’s capacity.

The conclusion reached by the Burnside and Accutech firms is far different. Each firm in its report estimates the peak population count in the 160 units in the proposed redevelopment at 588 persons. Multiplying that person count by the projected daily flow rate from each firm yields a total daily flow through the plant from the Burnside analysis of 235,200 litres per day and a daily flow through the plant from the Accutech analysis of 277,536 litres per day.

Each of those two total daily flows, produced from careful engineering analysis, is far beyond the 186,000 litres per day capacity of the existing plant as rated by
MOE. In the Burnside analysis, the flows from the redevelopment proposed by the Developer will exceed the plant capacity by 26%; in the Accutech analysis, those flows will exceed the plant’s capacity by 49%.

For the MCA and its over 300 members, the Developer’s twisting of assumptions to fit its 160 units within the Lodge Planning Bylaw is one thing; the Developer’s twisting of assumptions and ignoring of peak occupancy and peak flow considerations to fit its 160 units within the sewage treatment plant is something else. The former is unrealistic; the latter is reckless. R. J. Burnside and Accutech flatly conclude that the developer’s proposed density will overrun the Lodge plant. The waste will not be properly treated. Raw sewage will shunt into the river. How a developer can come into a community on the beautiful Winnipeg River and push density to that point is beyond us.

(e) MMAH’s Planning Specification – Limit on the Number of Bedrooms

The Lodge Planning Bylaw sets a density limit of 275 persons for unit occupants in the redevelopment. In order to implement that limit, however, the MMAH cannot simply set a limit on the number of people allowed on site, as there is no enforcement mechanism that could cut off access to the site at a certain point and of course there shouldn’t be. Limiting the number of units also will not work, as units will vary in size. What the MMAH can and needs to do as part of good planning is set a limit on the total number of bedrooms in the redevelopment project.

For the type of project that the Developer proposes, the R. J. Burnside and Accutech firms conclude that for sewage treatment planning the assumed occupancy should be two people per bedroom. As discussed in subpart (c) above, that assumption is not intended as an average, but is intended to be near the top end level of occupancy that is appropriate in projecting sewage flows for the Lodge plant. (R. J. Burnside assumes (and MCA members can attest) that during the peak times of the summer season, such as the May and August long weekends, the units will fill with owners and family and other guests and occupancies might well exceed two people per bedroom; that’s another reason why a cushion in plant capacity is needed.)

With 275 people, and two people projected per bedroom, the maximum number of bedrooms that the MMAH should allow on the Lodge site as a matter of good planning is 138. Subject to the limitation discussed in Part B (7) below, the Developer should be free to organize that number of bedrooms into units on the site as it wishes. If its plan averaged two bedrooms per unit, for example, the number of units allowed on the Lodge site would be 69.

The MMAH should implement that bedroom count limitation in a fashion that burdens the redevelopment site going forward, and that is not subject to change. The limitation should also be referenced in the condominium declarations.
(f) The Plant’s Inability to Meet Standards

Besides showing the actual number of people on the Lodge site in the years 1988 through 1993, the MOE records obtained by the MCA also show the actual measured levels of contaminants in the treated effluent. The plant holds today the same treatment equipment that it held then, and the results of treatment should be the same. That’s a problem for at least these substances:

(i) phosphorous Phosphorous is an increasingly alarming contaminant in the Winnipeg River. It is responsible for the worsening green algae blooms in Minaki, primarily in late summer and fall, that rob the river water of oxygen, and for blue-green algae blooms that are affirmatively toxic. The Manitoba Premier has called for an initiative to cut in half the phosphorous levels in Lake Winnipeg, the Minaki river water’s destination, and the Global Nature Fund recently named the lake as the world’s threatened lake of the year for 2013.

The amended MOE permit sets a phosphorous target at the Provincial standard of one milligram per litre. But as the Burnside report describes, there is no phosphorous treatment equipment now in the plant. The 1988 to 1993 records show phosphorous actual results of three to ten times higher than that standard. When the plant reopens, those excessive levels of phosphorous will recur.

(The MCA notes that the Provincial requirement of 1 milligram of phosphorous per litre is currently merely a target in the amended permit for the Lodge plant. The MCA is urging the MOE to convert that target, and all the other targets in the amended permit, into enforceable limits (see the MCA letter to the MOE included in Part C). Burnside states in its report that it is not aware of any other sewage treatment permit issued by MOE in the last decade that did not hold enforceable limits.)

(ii) chlorine As the Burnside report and the MCA’s letter to the MOE describe, the Winnipeg River is navigable water and holds fish for federal law purposes, and recent regulations under the federal Fisheries Act (R.S.C., 1985, c. F-14) apply. Under those Wastewater Systems Effluent Regulations, all sewage that flows after treatment into federal surface water must by January 1, 2015, meet certain enforceable limits for five day biochemical oxygen demand, total suspended solids, un-ionized ammonia, and total chlorine residual. The Burnside firm’s analysis predicts that the existing plant as-is could meet the first three requirements, as long as the treatment does not start to degrade with high flows. The existing plant is not, however, capable of meeting the federal standard for chlorine.

It is nonsensical for the Lodge treatment plant to recommence operation for the redevelopment and then predictably fail to meet the Provincial requirement for phosphorous and the federal requirement for chlorine. The upgrades to the plant needed to meet those standards should not be allowed to wait until the system fails, especially when responsibility for their installation
could then fall on the seasonal resident condominium associations. As a matter of good land use planning, and in furtherance of two items of Provincial interest under Section 2 of the Planning Act – “the protection of ecological systems” and “the protection of public health and safety” -- the MMAH should assume authority for this sewage treatment issue. The MMAH must require that the Developer install in the plant the needed equipment upgrades before any unit is sold.

There is another layer of confusion inherent in the amended permit from the MOE. Not only does that permit fail to require the upgrades that will give the plant a chance of meeting the phosphorous and chlorine standards, but under the Provincial statutes that govern the sewage treatment permit, those upgrades are affirmatively prohibited. (See Section 53 (1) of the Ontario Water Resources Act, and Section 20 (6) of the Environmental Protection Act.) In order to install the required upgrades, the Developer will need to apply for and obtain another sewage plant permit – one that allows and specifies in advance the work that will be done to the Lodge plant.

The Developer has no one to blame for this outcome but itself. It obtained the amended permit last summer, with no public input, and in the face of and apparently without regard to the issues of the prior records of the plant’s performance, the phosphorous standards, and the impending Fisheries Act requirements.

g. Liquor License Populations

The Developer’s application, in the Community Assessment report from MMM Group, contains an analysis in Part 5.2 and in Appendix 1 of occupancy numbers on the Lodge site for liquor license purposes. The analysis reaches spectacularly high population counts, seemingly on the assumption that people could have stood shoulder-to-shoulder in all the available parts of the past Lodge improvements. But so far the MCA has not been able to determine the relevance of the liquor license analysis, or make enough sense of it to challenge it or even to comment on it. Representatives of the MCA look forward to discussions with the MMAH staff to understand the Developer’s liquor license concepts better, and may have additional reactions at that time.

5. Density of Docks and Boats

Ever since the Developer’s presentation of its redevelopment plan in Minaki in the fall of 2010, the MCA membership has been concerned about two primary impacts of the plan’s extraordinary density: the impact on sewage treatment of all those people, and the impact on neighboring property owners and on health and navigation safety of all the docks and boats.

Both impacts threaten directly the Minaki community’s defining element – the Winnipeg River and its water. But the Developer in its application deals with them very differently. On the sewage treatment impact, the Developer uses flawed assumptions and a flawed averaging approach to slide the unit occupant counts past the Lodge Planning Bylaw
and then through the Lodge sewage plant. On the docks and boats impact, the Developer has pretended that it does not exist.

(a) Docks and Boats in the Application – Topic Avoided

The concept that a buyer of a unit in the proposed redevelopment will have and use a boat appears nowhere in the Developer’s application. The arrangement of docks or number of slips is also left without discussion. Docks appear in the application only in a limited number of ways:

- the annual land use permit for the existing docks from MNR is included as an exhibit. That permit had expired as of the completion date for the application, and the terms on the back side of the form are not included
- docks are mentioned in the draft condominium documents as a component of the common elements, but without any indication of the number of slips or how they are to be assigned to unit owners or otherwise used
- docks appear in the various aerial photographs of the site included in the application. Some photos seem to show a layout that has since been altered
- docks appear in the various site plans included in the application. Specifically, in the official site plans included in Part J of the application, three separate dock structures appear, each holding room for twenty boats (including two on the far side of the dock facing the river). These docks are located approximately where the existing docks are, but it is not clear whether the depiction is an attempt to show the existing docks, which also hold space for roughly 60 boats, or to show new docks in exactly the configuration on the site plans.

In contrast to the docks shown in the application site plans, Bob Banman stated at the September, 2010, meeting in Minaki, and the MCA has always assumed, that the Developer in marketing the units for sale would need to provide one dock slip with each unit, and would attempt to provide that slip on-site. The redevelopment therefore would in fact include one slip for each unit, plus slips for the Dockside Restaurant, plus slips for visitors. The site plan that the Developer presented in September, 2010, attached in Part J, backs this assumption up, as it showed multiple dock structures all around the site and a total of 200 dock spaces. Note also that a single site plan in the application, in the sewage treatment section, dated October 29, 2010, shows multiple dock structures on the north and west sides of the site and a total of 190 spaces. That plan is also included in Part J. Why that one plan in the application is different is not explained. Finally, the MCA’s planning consultant Jeff Port estimates that at 160 units and a restaurant and visitors, the redevelopment site would require over 200 dock slips, and has recounted a discussion with MNR in Kenora in which MNR staff also expected to see over 200 slips.
Based on the Developer’s treatment of docks and boats in the application, there are two possibilities: one, though unlikely, is that the Developer really is limiting itself to the existing dock slip count, in which event the change in boat use that is discussed in subpart (c) below should still be studied and the MMAH in any planning approval should reflect and enforce that dock limitation; the other is that the Developer does intend to expand the site dockage, most likely by a factor of three or more, and hopes to obtain a planning approval from MMAH and then go to MNR and Transport Canada for an increased dock permit for its already-approved subdivision. If the second possibility is the real one, and the MCA assumes that it is, then the MMAH cannot let the Developer get away with that strategy.

(b) The Impact of Docks and Boats Must be Considered

The impact of docks and boats from the redevelopment’s extraordinary density is a critical one, with a powerful adverse effect on neighboring property owners and a literally life-threatening consequence for everyone in the community. Good planning requires that that impact be included in the MMAH’s evaluation of the Developer’s application.

Planning Act Provisions

The Ontario Planning Act in Section 51 (24) (a) requires that in evaluating a proposed subdivision, the approval authority consider matters of Provincial interest as listed in Part I, Section 2 of the Act. One matter of Provincial interest, in Section 2 (h), is “the orderly development of safe and healthy communities.” Another in Section 2 (o) is “the protection of public health and safety.” As is discussed in subpart (d) below, there is nothing orderly, safe, or healthy about the direct boating impacts of the proposed redevelopment.

Another matter of Provincial interest, in Section 2 (f), is “the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems.” This item of interest is usually reflected in road and street capacities and automobile and truck traffic concerns and studies. In the Minaki community, with its water-based transportation system described in Part B (1) (b) above, and with the central location of the Lodge site within that transportation network, the Province’s interest in adequate and efficient transportation must extend to boat traffic impacts and outcomes.

Orde Island Municipal Board Decision

A published ruling of the Ontario Municipal Board confirms conclusively that boat traffic impacts, on neighboring properties and on the boating public, must be included in an approval authority’s review of a subdivision application. In File No. S 870035, the Board in 1983 denied an application for a 16-lot subdivision of an island property, based primarily on the boat traffic impacts of the subdivided lots. As it happens, that case involved Orde Island on the Winnipeg River, in Minaki, and the property that would have felt the most direct impact from the subdivision and the boats was Minaki Lodge.
A copy of the ruling is included in Part I. The MCA will discuss the implications of that ruling further in subpart (d) below. But one aspect of the ruling deserves mention now. The Municipal Board noted the relevance for land use planning of the Crown Land Use Policy for Minaki. The policy in force at the time specified that if Crown land ever were converted to private cottage use, minimum frontages of 46 meters and depths of 90 meters were suggested. The current Crown land policy, included in Part H, holds the same specification (although such conversion is now discouraged, as noted in Part B (1) above). The point is that looking to the Crown land policy for guidance, as the Board did in the Orde Island case, would put only a few cottage lots with 150-foot waterfrontages on the Lodge site. Any higher density than that is even possible only because of the prior Lodge use. The prior Lodge use creates the potential for higher density, but strictly limited to the extent of that prior use. That’s the enabling, but also the limiting, power of the Lodge Planning Bylaw.

Given the likely scale of the Developer’s dock expansion and the number of boats that would be put onto the narrow Lodge channel and surrounding waters, the clear impact on several items of Provincial interest, and the precedent for the relevance and importance of boating impacts from the Orde Island case, it is inconceivable to the MCA membership that the Developer’s application has made it this far with no study, with no mention, of the docks and boat impacts. Nevertheless, the MCA in the balance of this Part B (5) will recommend to the MMAH what good planning for docks and boats entails.

(c) The Lodge Planning Bylaw and Boat Impacts

The evaluation of good planning for the number of people that should be on the Lodge site in the redevelopment plan began in Part B (4) above with the Lodge Planning Bylaw. The evaluation of good planning for the number of docks and boats that should be on the Lodge site begins the same way: the densities and impacts of the docks and boats associated with the redevelopment must stay within the densities and impacts of the docks and boats associated with the prior Lodge use.

Past Lodge Impacts – Boats and Docks

The application of the Lodge Planning Bylaw on this topic is easy at first, because calculating the density of docks and boats in the prior Lodge use is straightforward – the Lodge docks have not changed much through time and the density of the prior Lodge docks and boats is approximately the same as the number of dock slips at the site today. Based on the specificity of the three dock structures drawn on the Developer’s official site plans, the MCA will use 60 as the number of past and current slips and boats. So if the number of dock slips and boats in the redevelopment plan is limited to 60, then the density of docks and boats would meet the Lodge Planning Bylaw. If the density of dock slips and boats in the redevelopment exceeds 60, then it fails.

Though the density of the dock slips and boats on the Lodge site today is within the density of the prior Lodge use, and to that extent would meet the Lodge Planning Bylaw, the impacts of the proposed redevelopment use of just those
same number of slips is well beyond the impacts of the boats in the prior Lodge use. This is where some study of boat use is required.

As the InterGroup consultants describe in their report, included in Part D, boats in areas like Minaki and Lake of the Woods are generally in one of two classes. It describes one class of boats as “Resident Boats,” boats that are owned by a seasonal or year-round resident and are kept on the water at a dock on the resident’s property. Resident Boats are active boats in the area of that dock – they come and go frequently on errands to town or to fish or sightsee, they pull waterskiers and wakeboarders and tubers, they are run by children and grandchildren in boat driver training, smaller ones are run slowly with the bow up to drain rainwater out the rear, and so on and on.

InterGroup describes the other class of boats as “Visitor Boats.” Visitor Boats park at marina docks, or public docks, or restaurant and other retail establishment docks. All they do is drive in and then later drive out, and they don’t do it often. When a Minaki cottager leaves her dock and drives to the Minaki Marina for gas, in terms of impact she leaves her dock as a Resident Boat, parks at the Marina as a Visitor Boat, and returns to her dock as a Resident Boat. The point in terms of impact is that she is likely soon to do something else again in her boat off her dock, but she may not go back to the Marina dock for a week.

Applying this distinction to the proposed redevelopment, InterGroup notes that the impact of the 60 dock slips and boats under the prior Lodge use was relatively light. The Minaki Lodge itself owned only approximately 15 boats, those boats were used primarily for guided fishing, and often only five or ten of them each day would head out once in the morning and come back once at the end of the afternoon. The rest of the boat use of the prior Lodge docks was essentially passive Visitor Boats, carrying golfers, diners, tennis players, or sightseers into the site and off. There was a small amount of non-motorized boating activity -- paddleboats, canoes, and a sailboat – off the beach on the north side of the site.

In contrast, in the proposed redevelopment, even if the number of slips stays the same, the use would change to Resident Boats, owned by unit owners, in some or all of those slips. Those Resident Boats, and all the traffic and activity they bring, even if limited to the existing slips, would create an impact in the redevelopment that is significantly greater than the impact of the prior Lodge use and would not get through the Lodge Planning Bylaw.

(d) Severity of Boating Impacts

The context in Minaki for evaluating the Resident Boat impacts of the proposed redevelopment is the already congested Lodge channel. As described in Part B (1) (b) above, the redevelopment site is at the center of the Minaki water-based community, at the intersection of the four main stretches of the Winnipeg River. Boat traffic is already heavy, and fishing in the channel is popular. Evidence for this existing condition comes first from the MCA membership of over 300, who by this submission attest first-hand to the level of traffic and congestion. A trip
through the channel, with a couple of fishing boats in place, other boats entering from both directions, boats pulling into or out of Northstar Marina, and boats cutting at an angle into or out of the resorts in Bayview Bay, is already challenging. **Adding up to 60 Resident Boats right at the channel to the mix, or, unimaginably, adding more than 60 and up to 160 or 200 boats overall, would be catastrophic.**

Evidence of severe impacts and potential impacts comes also from direct comment to the MMAH from property owners across the channel from the Lodge, and from property owners around the Lodge point to the west who will also feel the brunt of increased boat impacts. In addition, the MCA has looked for some precedent for a dense collection of docks for Resident Boats, anywhere in the Winnipeg River and Kenora/Lake of the Woods area. There are large marina and public docks, of course, but the MCA has not been able to find docks for Resident Boats in one place larger than the approximately 30 slips serving the Clearwater Bay condominium project and trailer owners at Pye’s Landing. **There is no precedent for putting even 60 Resident Boats in one place, much less in the narrow, already congested Lodge channel.**

**Applicability of Orde Island Decision**

Finally, the ruling in the Orde Island case by the Ontario Municipal Board is directly on point. In that file, the owner of Orde Island applied for a subdivision of thirty-four acres located on two islands located west of and across a narrow channel from Minaki Lodge (the two islands are referred to collectively in Minaki as “Orde Island.”) The subdivision would have held sixteen lots. **The Municipal Board denied the subdivision application, citing as a primary reason the density and impact of boat traffic associated with the sixteen new cottages and the degree of boat activity and congestion already present in the area.**

Some of the boat density and impact concerns, raised by Four Seasons as the owner of the Lodge and by a spokesperson for a group of cottagers and noted by the Municipal Board, were:

- “increased boat traffic in an already overutilized transportation and recreational channel”
- “increased activity by motor boats on the water will endanger all of the aquatic sports”
- “the safety of children and tourists in the area inexperienced in water sports”
- “there will be increased pollution in the water”
- “noise pollution from more motor boats in the area which was contrary to the wilderness way of cottage life”
- “the very quality of isolation in the wilderness that gives Minaki its aesthetic value and drawing appeal is undermined by the subdivision proposal”
In applying the precedent of the Orde Island ruling, the MMAH must remember that in the context of the Orde island subdivision application, the Municipal Board was evaluating the impacts of adding (i) 16 new Resident Boats to (ii) the then-existing cottager and other non-Lodge boat traffic in the area and to (iii) the relatively light boating impact of the Minaki Lodge property, as has been described in subpart (c) above. In the context today of the Developer’s redevelopment application, the MMAH is evaluating the impacts of the addition of (y) at least 60 new Resident Boats in the existing Lodge docks to (z) the currently-existing cottager and other boat traffic in the area. The boating impacts that the MMAH is evaluating with Developer’s application dwarf the boating impacts that caused the Municipal Board to deny the Orde island application for subdivision in the very same area.

(e) Good Planning Outcome

In this difficult boating situation, where does good planning come out?

The Lodge Planning Bylaw works in a straightforward fashion to limit the density of docks and boats in the proposed redevelopment to the existing 60 slips. But in terms of impacts, the Lodge Planning Bylaw, strictly applied, would not allow more than a small number of boats to be Resident Boats in those same slips, given the light boat use in the Lodge days. The MCA acknowledges, however, that those 60 slips are already there, and there is some hesitation in calling for a limit on how those existing slips can be used, and in imagining how enforcement of such a limitation in unorganized territory could be accomplished.

But the potential boating impacts of the redevelopment are severe, on neighbors and on every member of the public who drives through the channel or around the site, and the MCA concludes that good planning requires two outcomes:

(i) the MMAH must require that the Developer study in a comprehensive way the impact of putting up to 60 Resident Boats at the existing Lodge docks and in the channel. The concerns in the Orde Island case offer a good checklist of topics for evaluation. The results of that study will help MMAH determine whether up to all of the existing dock slips can reasonably be used by unit owners in the redevelopment, or whether some limitation short of that, in the interests of public health and safety, must be imposed.

(ii) the MMAH must limit in any event the number of dock slips in the proposed redevelopment to the existing 60. Since merely changing the slip use to Resident Boats is potentially dangerous, any increase in the number of slips must as a matter of good planning be out of the question. The MMAH’s limitation on dock spaces to 60 must account for neighboring property owned by the Developer or its affiliates, and it must not be subject to change in the future.
[Note: On April 2, 2013, MMAH staff told a representative of the MCA that the MMAH had received a drawing of a dock expansion and that the MMAH would send it to the MCA. On April 8, counsel for the Developer sent to MCA representatives a dock layout drawing for the redevelopment showing a dock expansion with spaces for approximately 150 boats. The MCA that day requested further information on how that dock space count would operate within the redevelopment, as the MCA is concerned that the drawing may still not show all the docks that the Developer ultimately intends to include in the redevelopment. Additional dock expansion could occur either on the condominium property in the future or on adjoining property owned by the Developer or an affiliate and not included in the condominium application. On April 10, the Developer’s counsel offered a reply that was vague, but did make it seem as if the 150-space dock plan was in addition to the existing 60 slips, then made a point of adding that the 150-space dock drawing had been provided to the MMAH but was not a part of the Developer’s application.

So the Developer, eight months after it filed its application, finally admits that it is planning a major dock expansion in the Lodge channel. But in the face of clear legal requirements under the Planning Act and the direct holding in the Orde Island file, it still refuses to acknowledge that the dire impacts of all the docks and boats are a necessary part of the review of its proposal by the MMAH and the public. The Developer by all appearances is still attempting to sneak past the MMAH review and then obtain dock expansion permits when it has an MMAH approval already in hand. It is long past time for the MMAH to assert control over the docks and boats issues and cut off that strategem.]

6. Use of Condominium Structure

The Developer in the application proposes to organize the redevelopment with three condominium ownerships and associations: one set of unit owners for the existing hotel buildings, one set of owners for the existing cottages and the new bare land lots, and a third condominium to hold the sewage treatment plant, the docks, and other site-wide common elements.

To the MCA’s knowledge, and after questioning officials of the Lake of the Woods District Property Owner’s Association and the Federation of Ontario Cottagers’ Associations, there is now only one condominium ownership in unorganized territory in the greater Kenora/Lake of the Woods/Winnipeg River region and in the entire provincial area west of Thunder Bay – the 20-unit Clearwater Bay residential condominium, opened in the 1970’s at the site of the former Whitey’s Camp. With that lack of recent precedent, the proposal for the use of a condominium structure in unorganized territory raises significant issues, although the Developer chooses not to address any of them in the application. The MCA focuses on three: the lack of local governmental controls over the condominium project construction, the implications of entrusting the operation of a sewage treatment plant to condominium associations in unorganized territory, and the dangers of the precedent of condominium ownership with no other land use controls available.
(a) **Condominium construction**

Jeff Port confirms that a project of the scale of the proposed redevelopment, if it occurred within a municipality, would involve a Development Agreement and a Site Plan Control Agreement with the municipality, and municipal building inspections and reviews under the Ontario Building Code. None of that oversight is available for the Developer’s project in unincorporated territory in Minaki.

Those issues of control are especially relevant for a condominium project. To avoid title problems, construction must occur within the legally defined units, some (as in the hotel building on the Lodge site) defined in three dimensions. Unit owners are often responsible for some work, and tend to take responsibility for other work, including plumbing, creating conflicts with other construction and design. Boundaries between individual units and common elements, needed for good title, can be overrun. In addition, the shared sewer and water service in the proposed project on the Lodge site will require important construction and installations that are done correctly, to protect unit buyers and the public.

To fill the oversight vacuum with respect to this condominium project during construction in unorganized territory, the MMAH must retain jurisdiction over the site after any planning approval. The MMAH must establish construction requirements with the Developer in enforceable agreements and follow through with review and inspections, in all cases just as a municipality would.

The Lake of the Woods District Property Owners Association has joined in the concern on this topic, in its letter to MMAH included in Part F.

(b) **Sewage treatment plant**

In Part B (4) above, the MCA emphasized that good planning for sewage treatment on the redevelopment site required a careful and conservative underwriting of the peak number of people that would use the plant and the peak flow that would result. But all that good planning for peak flows will fail to protect the Winnipeg River and the Minaki community if the sewage treatment plant is not upgraded, operated and maintained and over time replaced in a proper and professional manner.

In the condominium structure of the redevelopment, the Developer is responsible for the common elements, including the sewage treatment plant, through the unit sale process until the requisite percentage of units is sold and responsibility is turned over to the associations. At that point, the Developer is legally gone, and only two condominium associations made up of seasonal residents remain. How are they supposed to run and replace a sewage treatment plant?

An answer from the Developer is that the on-site manager will obtain all necessary certifications and will have the knowledge and ability to operate the plant (the rough condominium budgets included with the draft condominium documents in the application indicate that the associations will pay $10,000 in the first year to an outside engineer until the manager is fully certified). And the Developer can point to the provisions of the Ontario Condominium Act and
accompanying regulations, requiring a reserve study by an independent expert and updates to that study every three years. (Ontario Regulation 48/01, Part IV) The Developer, however, cannot prevent these events: an association board fails to take effective action based on a reserve study; an association’s annual operating budget is inadequate; the on-site manager performs poorly; the on-site manager quits or moves. Will the associations be ready to raise funds in short order to correct any of these issues? This is unorganized territory – what if they don’t or can’t?

The context for proposing a private sewage treatment plant for a residential subdivision in Northwestern Ontario is not favorable. Staff in the sewer and water department of the City of Kenora reported that there is not now a private system in operation within the city. There had been a private system as part of the paper mill, and the City did not have a concern about the financial strength or expertise of that owner. Sewer and water staff in Thunder Bay also reported no private plants in operation, other than a private wastewater treatment plant run by Resolute Forest Products as part of its industrial operation in the city. Staff in each City said that a private plant for a residential use would not be allowed, and connection to the municipal service would be required.

**Part of the MCA’s concern is operating quality.** If the Lodge plant is poorly run, the effluent standards will be violated and a vigilant MOE would see that in a regular report. But even then the MOE is in no position to close the plant and evict all the unit owners. It would have little power to compel corrective action. Most likely, any meaningful enforcement would need to wait until the plant opened the following spring. In any event, a failure of planning has occurred.

**But the MCA’s primary concern is financial.** The condominium regulations in 48/01 Part IV requiring an independent reserve study and regular updates were adopted in 2001 in response to the chronic tendency of condominium associations to keep assessments down and to short their reserve funds. Those regulations, though, are intended to benefit and protect the unit owners and to give association board members an objective basis for setting and defending reserve levels. The regulations have effect internally, within the association; they do not provide any rights on the part of the public even to raise questions about reserve account use and management. The regulations also say nothing about annual operating assessment levels.

As part of good planning for the critical sewage treatment component of the proposed redevelopment, the MMAH must do the following:

- the 48/01 condominium regulations require that the first independent reserve study occur in the first year of a condominium project’s operation. In the case of the Lodge sewage plant, however, since it is already 25 years old and the reserve fund must immediately account for the shortened remaining useful life, the MMAH should require that the Developer complete the first independent reserve study before the first unit in either association is sold
a copy of that reserve study and all subsequent studies must be provided to the MMAH and be made available to the public

- the MMAH should require that the Developer submit to MMAH for review, as part of the application, a complete and straightforward operating budget for the sewage treatment plant in the first year. The MCA has struggled generally to understand the fragmented budget presentation included with the condominium documents in the application, and specifically with respect to the operation of the plant. Operating costs described as attributable to the sewage treatment plant appear to be approximately $53,000, although some costs relate to water treatment and are not separately broken out and it is not at all clear that the list of costs is intended to be complete.

- after any approval, the MMAH should retain continuing jurisdiction over the finances of the two associations. The MMAH each year should commission a report by its own independent engineer, to be paid for by the associations and available to the public, reviewing the sewage plant’s operation, the adequacy of annual operating funding, and the compliance of the associations with the then-current reserve report. The MMAH should retain authority to set and collect assessments with respect to the sewage treatment plant operations and reserves, if its report establishes that the condominium associations are falling short.

The point of these recommendations is that this is unorganized territory, and the MMAH should not approve the ownership and operation of a sewage treatment plant on the Winnipeg River by seasonal resident condominium associations and then simply turn them loose. In some way, on this critical matter of public health and environmental quality, there must ultimately be continuing accountability to the public, through a level of government.

(c) Danger of Planning Precedent

As it made clear in Part B (2) above, the MCA is not opposed to the seasonal residential use proposed by the Developer. The MCA also is not opposed to the technical use of a condominium form of ownership for the Lodge site, as long as the substantial concerns about the proper operation and replacement of the sewage treatment plant in subpart (a) above are properly addressed.

But as far as the MCA can tell, an approval of the Developer’s redevelopment application for a project of some size would be the first condominium project allowed in unorganized territory in the Kenora/Lake of the Woods/Minaki region in many years. It seems likely that other condominium applications will follow, particularly for seasonal use properties. The MCA therefore recommends to the MMAH that as part of its consideration of the Developer’s application, it also evaluate and establish planning rules or standards that can guide the use of condominium ownership structures going forward. The danger is that, as condominium subdivision applications come into the MMAH, it will be forced to evaluate each one afresh, with no local planning bylaws in unorganized
territory and over time a mounting precedent of approved projects that each subsequent applicant can point to.

The fundamental planning risk with the condominium structure in unorganized territory is that it can bring density and impacts that are out of proportion to the size of the parcel in question. As a small example, MNR staff has told the MCA that it recommends a minimum cottage lot water frontage of 150 feet. But a condominium development can easily put a duplex, triplex, or quadplex on that one lot, generating outsize densities and outsize pressure generally on neighbors and specifically on sewage or septic systems and boat traffic. The issues get greater, of course, as the size of proposed condominium projects grows. In the case of the proposed Lodge site redevelopment, the MCA accepts the resulting densities and impacts only as long as the Lodge Planning Bylaw is observed and they stay within the densities and impacts of the prior Lodge use.

Other planning risks result from the mismatch between the diffusion of ownership and ownership responsibility inherent in the condominium structure and the desirability of responsible seasonal cottage ownership in unorganized territory. With few rules and little enforcement, condominium associations will need properly to care for docks and shorelines, maintain and replace septic systems, outhouses, and compost toilets, and manage other property issues to avoid harm to the natural environment and to neighbors.

A generalization that condominium unit owners will in all cases be worse at these tasks than a single family cottage ownership is not fair, but it does seem fair for the MMAH to place a planning priority on traditional cottage ownership in unorganized territory, particularly for seasonal properties. It should then set standards in advance for the issues of densities and impacts and inherent ownership concerns associated with condominium applications, allowing it to deal fairly and effectively with the planning implications of future condominium development proposals in every case.

7. The Golf Course and Cultural Heritage Landscape
   (a) Planning Regulatory Background

   The MCA has noted frequently in this Part B, and the MMAH staff knows well, that there are few specific land use regulations governing land that is proposed for subdivision in unorganized territory in Ontario. The two Province-wide planning documents are the Ontario Planning Act and the Provincial Policy Statement. For the most part, in terms of planning guidance, those two documents are high level, directional, and aspirational. The expectation is that local government will adopt specific planning regulations that carry out the goals of the Province-wide documents.

   Once in a while, though, the Planning Act and the Policy Statement do get specific, and impose a hard planning rule on land even in unorganized territory. One of those occasions of specificity relates to significant cultural landscapes.
The Planning Act in Section 3 (5) requires a planning authority to follow the Provincial Policy Statement. The Policy Statement, in turn, states in Section 2.6.1 that:

Significant built heritage resources and significant cultural heritage landscapes shall be conserved.

“Shall be conserved.” There is no balancing, no degrees of impairment, and no exceptions.

The Policy Statement in section 6.0 defines a “significant cultural heritage landscape” as:

a defined geographical area of heritage significance which has been modified by human activities and is valued by a community. It involves a grouping(s) of individual heritage features such as structures, spaces, archaeological sites and natural elements, which together form a significant type of heritage form, distinctive from that of its constituent elements or parts. Examples may include, but are not limited to, heritage conservation districts designated under the Ontario Heritage Act; and villages, parks, gardens, battlefields, mainstreets and neighbourhoods, cemeteries, trailways and industrial complexes of cultural heritage value.

(b) The Minaki Lodge Golf Course

Under the definition in the Policy Statement, the open space on the Lodge site that is attributable to the holes of the Minaki Lodge golf course – and particularly the green space for the first and ninth holes that run along the site’s Winnipeg River frontage – is a significant cultural heritage landscape in the community of Minaki. That space is precisely the kind of feature that the Policy Statement specifies should not be lost to development, but must be conserved through time.

The golf course layout is a defined geographic area – the tee, fairway, and green of each hole -- and that area has certainly been modified by human activities. In an action that is almost as old as the Minaki community, the Canadian National railroad bought a farm in Manitoba, loaded the topsoil into railroad cars and carried it to Minaki, and in 1925 spread it by horse to create the course layout and topography that still survives.

The landscape is significant, both nationally and locally. The course architect was Stanley Thompson, a prolific and legendary golf course and landscape designer who has been designated as a “Person of National Significance” by the Historic Sites and Monuments Board of Canada. The development of the Minaki Lodge by the CN railroad in the 1920’s, and the construction of the golf course, remain an important part of the history of the railroad expansion across Canada as the large country unified and grew. Over time, the Minaki Lodge and its golf course in the wilderness achieved a world-wide reputation as a resort
destination. These factors of national significance are ratified in the report from the Stanley Thompson Society based in Hamilton, Ontario, included as Part E.

Finally, the landscape is significant locally, and it is highly-valued. As the MCA attempted to describe in Part B (1) (b) above, the geography, history, and use of the Minaki Lodge site has driven and dominated the Minaki community. From the start, the golf course, and the first and ninth golf holes along the water, provided the organization and backdrop for the cluster of Lodge improvements. The course is an essential part, along the river frontage and inland, of the iconic Lodge presence and character.

Today, the main Lodge buildings on the point are gone, and the Lodge water tower is gone. The Developer, to its credit, is keeping a number of Lodge cabins as condominium units and needs the power house to hold the sewage plant.

**The open space attributable to the Stanley Thompson golf course must join those few improvements and be conserved, as part of a reminder of the power and significance of the past Lodge use in the history and heritage of the Minaki community.**

As a final point, respecting the cultural heritage value of the golf course green space will not interfere with the logical redevelopment of the site by the Developer. As discussed more fully in Part B (9) below, once the unit densities are reduced to sensible levels in accordance with the analysis above regarding densities of people and sewage treatment and densities of docks and boats, there is plenty of room in the almost eighteen hectares of site area to leave the open spaces alone and still lay out new bare land lots after units have been created in the existing hotel buildings and in the existing cabins. Conservation of that open space, in turn, and particularly the green space of the former first and ninth fairways, can provide a historic and useful amenity to unit owners.

(c) **The Developer’s Analysis of Heritage Conservation – Built Heritage Only**

The Developer includes in its application a heritage conservation study by Northern Lights Heritage Services Inc. That consultant limits its analysis of the Lodge site to heritage buildings – it looks only at the existing improvements. It dismisses the value of the golf course in one sentence on the report’s first page:

“The golf course has been modified, abandoned and is in the process of re-naturalizing.”

The description of the golf course as “abandoned” is accurate. But what is intended by “modified” is not clear, since the essential feature of the course is that it was a major modification of a natural landscape in the first place, and that the course “is in the process of re-naturalizing” is inapt – again, the natural landscape was forever altered ninety years ago when the golf course went in (the consultant probably meant “unmaintained”).

In any event, none of the modifiers listed in the sentence has anything to do with an analysis of whether the golf course or parts of it are significant cultural
heritage landscape under the Provincial Policy Statement. The MCA has supplied that analysis instead.

8. Other Impacts

The broad and primary impacts of the proposed redevelopment on Minaki cottage owners – relating to the number of people and sewage treatment, the number of docks and boats, the use of a condominium structure, and cultural heritage landscape – have been covered. This part B (8) will describe three subsidiary impacts that the MMAH should require the Developer to study further in order to assess the potential for adverse consequences.

(a) Fishing Pressure Implications

The Developer includes with the application a fish habitat assessment made by Ryan Haines Consulting. Section 6 of that report discusses the impacts of the proposed redevelopment on the Winnipeg River fishery. The consultant limits its analysis to the walleye fishery, which is the primary angling target in the Winnipeg River in the Minaki area.

In its analysis of the potential impact on the walleye fishery, the consultant notes that the fishery was “stressed” in the past, that harvest restrictions were tightened in 2005 as a result (the consultant does not mention that the change was to a slot limit and a halving of the fish in possession for non-Ontario residents), and that harvest levels have understandably fallen since. The report was completed in 2010, and has not been updated, so the consultant is not able to factor in the major review of the Winnipeg River fishery that MNR completed in 2013, in which MNR concluded that the walleye fishery was not yet doing well enough to lift any of the 2005 restrictions. Instead, the consultant compares the 2007 harvest reports with a maximum sustained yield figure that is over thirty-five years old, and concludes that there is plenty of room for the 160-units’ worth of new angling pressure.

The consultant finishes the section on potential angling pressure by noting that even if its prediction is incorrect, and the redevelopment size does impair the walleye fishery, then MNR will simply respond by restricting the walleye harvest by anglers further. MNR staff has told the MCA the same thing. And while that’s the end of the analysis for the consultant, and potentially for the walleyes, it leaves unaddressed by the Developer the impact of such a limit reduction on seasonal and year round residents who fish, and, more important, on resort owners and cabin rental business owners among Minaki’s year-round residents. The limit changes in 2005 had a severe negative impact on those owners, and shook the reputation internationally of the Winnipeg River in Minaki as a world-class walleye fishery. Another limit reduction because of the numbers of unit owners and anglers in the redevelopment would harm them significantly again. The Developer does not see this connection and does not consider it, but MMAH must require a more comprehensive and more up-to-date study of the fishing pressure impacts as part of its review of the applications.
(b) **Minaki Town Dump**

Minaki businesses and year round and seasonal residents use a garbage dump a few kilometers toward Kenora on Highway 596 and operated under the auspices of MOE and MNR. It is an important convenience, as trash would otherwise go all the way to Kenora and with higher disposal fees. The excess density proposed by the Developer would shorten the expected remaining useful life of the dump. That impact should be studied as part of the Developer’s application.

(c) **Noise**

The InterGroup report included as Part D raises the potential for excess noise levels from the excess resident population of the proposed redevelopment and from their boats, especially given the relatively quiet surroundings of remote Minaki. The MMAH should require that the Developer provide some analysis of the potential noise levels as part of the application.

9. **A Revised Format for the Redevelopment**

The Developer has pushed density in the proposed redevelopment to the point that the redevelopment program breaks down, and unacceptable impacts abound. The proper application of the Lodge Planning Bylaw and the proper analysis of sewage treatment capacity, however, produce a limit on bedroom count that leads to a redevelopment that is internally consistent and can fit the site and the community.

The analysis in Part B (4) above led to a limit on the number of bedrooms on the redevelopment site using good planning of 138. As an example, at two bedrooms per unit, that limit would let the Developer place 69 residential units on the property. A unit count in that high-60’s range comes close to fitting the number of available dock spaces; the unit count could come down with more three-bedroom units, or some unit owners could rent boat slips from available inventory in nearby Town Bay. (The MCA emphasizes the point made in Part B (5) above that filling the existing slips with Resident Boats is still a significant impact that must be studied for safety and neighbor impacts.)

The Dockside restaurant use could also fit within this outcome, if the number of unit owners with dock slips on-site were limited to 20 or so and the rest of the unit owners docked their boats in Town Bay. A nice feature of this result is that the reduction of unit-owner boats in the existing dock slip capacity would solve the critical concern about the impact of too many Resident Boats in the Lodge channel.

At the reduced unit count, the Developer could decide how to organize the units on the site. In one approach, it would be possible to fit all the units within the existing hotel building and cabin improvements, eliminating the need for any bare-land lots. Or the Developer could still include some bare land lots, with larger units in the hotel buildings. In all cases, there would be plenty of room on the 17.73 hectare site to respect the cultural heritage landscape of the golf course green space. The potential for harm to the Winnipeg River fishery or for adverse impacts on the town dump would drop...
significantly. There would be plenty of people living seasonally on site and supporting Minaki’s local businesses. And although it is not a factor in determining good planning, there would be plenty of opportunity still for the Developer to earn an appropriate profit.

If the Developer proposed a redevelopment with 138 bedrooms, the Dockside restaurant, and unit-owner boat slips limited to twenty on site, the MCA would be glad to support it, as long as the concerns regarding condominium structure described in Part B (6) above were successfully addressed.

But the MCA can anticipate that the Developer will have a problem with reducing density to the level mandated by good planning, because as density declines the operating and reserve costs of the sewage treatment plant remain essentially fixed, and the annual cost of condominium assessments on each unit becomes unmarketable. That is a problem, and it is the Developer’s problem, and it has no bearing on good planning.

The problem is inherent in the Developer’s fundamental choice to try to avoid the upfront cost of septic systems by using the existing sewage plant in the first place. Every other seasonal cottage residence in Minaki, and almost every other seasonal cottage residence in unorganized territory in the region, uses a combination of septic field, grey water pit, compost toilet, or outhouse for its waste. All of these facilities require some replacement over time, with only the septic field holding much replacement cost – say $25,000 for a typical field system every twenty-five years. But the important feature of each facility is that they operate annually virtually for free.

With the Developer’s use of the existing sewage plant, in contrast, unit owners in the redevelopment will pay an assessment for the expensive future replacement of the plant and an assessment for the expensive operation, maintenance and repair of the plant each year. Each unit in the redevelopment, then, is worth less, and will sell for less, than a comparable and typical cottage property, because of the non-market load of the annual sewage plant operating cost. The Developer is trying to reduce its development costs by using the existing plant, but it ends up paying for it anyway in reduced sales revenues.

The MCA closes with thoughts on a potential different use of the Lodge site that can let the Developer avoid the sewage plant trap. The Developer could choose to subdivide the site more traditionally into 15 or so large lots. Each lot would have its own septic system. The pump house would remain as part of built heritage, but the sewage treatment plant would not be needed and every one of the many sewage treatment concerns would vanish. The existing cabins could be included in certain lots and conserved or conserved as a common amenity. The hotel buildings could be shuttered or demolished. The Dockside restaurant plus the cottage owners’ Resident Boats would fit within the existing docks without adverse impact. The condominium ownership and related concerns would disappear. The golf course green space could be left open and conserved. The impacts on the fishery and the town dump, and concerns about noise, would be negligible. The Developer’s task would become substantially simpler and less risky, and the proceeds of lot sales would provide a strong profit margin.

One less favorable result of this revamped approach is that it ultimately produces fewer people on site for Minaki business owners. Another is that these lots would not offer the lower price point that the Developer hopes to achieve and that the MCA endorses. But
the construction activity on fifteen or so new cottages and septic systems is a much greater economic benefit locally than the Developer’s current plan to remodel the hotel buildings and bring in ready-to-move prebuilt housing. And those cottages would lead to ongoing maintenance, repair, remodeling, and startup and shutdown work for year-round residents that the condominium unit approach would not. This type of redevelopment holds the potential for community-wide acceptance and full MCA support.

10. Conclusion

Ever since the MCA received the Developer’s application for the redevelopment of the Minaki Lodge site, in late November, 2012, it has been committed to providing to the MMAH a comprehensive response to the negative impacts on the Minaki community and its water that the redevelopment would impose. The extreme densities in the proposal, however, and the unprecedented use of condominium associations to own and operate a sewage treatment plant, have challenged the MCA’s ability to cover all the necessary ground and have produced a lengthy submission.

Summary of Required Actions

As a conclusion to this long presentation, here is a summary of the limits that the MCA has analyzed in this narrative and that the MMAH must as a matter of good planning impose on the Developer and the redevelopment:

10.1 to fit the Lodge Planning Bylaw, and to fit the proper and safe operation of the sewage treatment plant, the MMAH must limit the number of unit occupants on the site to 275

-- to accomplish that 275 limitation, and with an eye on the sewage plant, the MMAH must assume a peak occupancy of two persons per bedroom and set a limit on the number of bedrooms on the site at 138

10.2 the MMAH must require that the Developer retrofit the sewage treatment plant so that it is capable of meeting applicable phosphorous and chlorine standards, before any unit is sold

10.3 to fit the Lodge Planning Bylaw, and to fit the already congested Lodge channel, the MMAH must not allow any expansion of the existing docks on the Lodge site. That prohibition must be a condition of any approval.

-- furthermore, the MMAH must require that the developer study whether those existing dock spaces may all be used for Resident Boats, or whether their use must itself be limited

10.4 the MMAH must retain jurisdiction over the Lodge site during project construction, to maintain and enforce necessary controls over the special demands of condominium construction, as a municipality would
10.5 the Developer must commission and deliver to MMAH an independent reserve study for the sewage treatment plant before any unit is sold, and not merely within the first year of operation

--- that report must be available to the public

10.6 the Developer must deliver to the MMAH as part of the application a complete operating budget for the sewage treatment plant, and that budget must be available to the public

10.7 the MMAH must retain jurisdiction for oversight and enforcement of the financial performance of the condominium associations, as they attempt to operate and replace the sewage treatment plant in unorganized territory

10.8 before approving any use of a condominium ownership structure on the site and setting a precedent, the MMAH should be ready to handle additional applications for condominium status in unorganized territory

10.9 the MMAH must recognize and conserve the open space of the Stanley Thompson golf course, and particularly the green space of the first and ninth holes, as significant cultural heritage landscape in the Minaki community, under the mandate of the Provincial Policy Statement

10.10 the MMAH must require additional study by the Developer of the impacts of the excess redevelopment density on

--- pressure on the walleye fishery in the Winnipeg River, including the potential impact of reduced limits on seasonal and year round resident fishermen and on resort and cabin rental business owners

--- the useful life of the Minaki town dump

--- the level of noise in remote Minaki

Final Thought

The Developer hopes to come to Minaki and then leave, with a condominium project in its wake and by all indications without ever having understood the community it passed through.

The members of the MCA, though, know what Minaki is. They have been there for a long time, and have helped define its heritage. They also know what the Minaki Lodge was, and what the Lodge operation has meant and what the Lodge site still means to the Minaki community.

They want to welcome a development onto that historic site. But not at the Developer’s extraordinary density. And not with a continuing threat to Minaki’s water from seasonal condominium associations, left to their own devices in unorganized territory.
The many members of the MCA urge the MMAH to enforce good planning onto the Developer’s proposal, in accordance with the analyses and recommendations in this response. There should be on the Lodge site a redevelopment that fits Minaki, so that the new residents there can join us in experiencing what makes Minaki different, and wonderful, and so that we can all continue to enjoy Minaki for a long time to come.