



TOWN OF MINTO

DATE: December 13, 2016
REPORT TO: Mayor and Council
FROM: Bill White, C.A.O. Clerk
SUBJECT: Follow Up Ornamental Ponds

STRATEGIC PLAN:

10.9 Implement the Integrated Community Sustainability Plan, continue to be a leader in Environmental consciousness, and proceed with energy conservation initiatives including recognizing employees who develop and implement environmentally friendly practices

BACKGROUND

Dave and Tina Burke submitted the attached letter in support of his delegation to Council June 7, 2016. The following resolution was passed at that meeting:

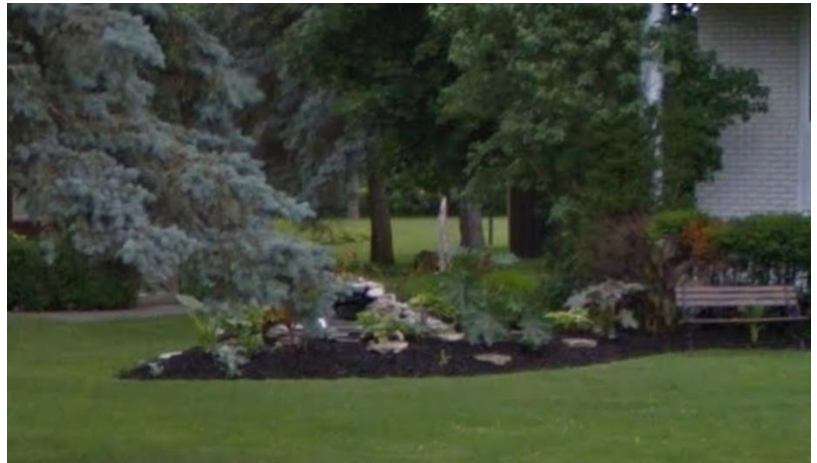
MOTION: COW 2016-137

THAT Council request staff bring back a report to Council regarding regulating ornamental ponds.

The pond at 675 Prospect Street adjacent to the home is about 0.9 metres (3 feet) deep but has a surface area of less than 0.92 square metres (10 square feet).

In June Town staff reviewed fencing by-laws in Mapleton, Wellington North and North Perth. Only North Perth regulates landscape ponds but did not specify the size of fence needed for such a pond. Staff also reported on the model Safe Kids Canada bylaw upon which many municipal by-laws are based, and a landscape pond would not require a fence.

Town staff has looked at by-laws in Waterloo, West Grey, South Bruce, Centre Wellington and Southgate. The Waterloo by-law is the closest sample to one that would regulate the pond in question, but once again the surface area requirement would not be met such that a fence is not required. Hamilton considered regulations on ornamental ponds in 2013 but has not implemented a new standard as their by-law was passed in 2003. Sarnia regulates a pond that is more than two feet deep.



In 2011 the Chief Coroner looked at drowning deaths in Ontario. Historically there are around 100 drowning deaths in the Province annually of which about 21% occur in a private pool setting. In 2010 15% of drowning deaths was children 5 to 13 years of age but none were reported in a landscaped pond. Even so the coroner recommended new bylaws be passed by municipalities requiring a four foot minimum locked fence be placed around pools or ponds with a depth greater than 2 feet.

If Council wanted to regulate ornamental ponds it would need to define “**Pool**” as an excavation, structure or product, which is:

- (i) located outdoors on private property;
 - (ii) capable of being used for the purposes of swimming, wading, paddling or bathing;
 - (iii) capable of holding water in excess of 0.61m (2 feet) in depth at any point or an open exposed water surface of 1m² (10.7 ft²);
- and includes a hot tub and/or spa pool and **landscape pond** meeting the above criteria.

If a fence is to be required, materials and specifications the fence is constructed of must be defined along with standards for a locking device, setback from buildings and similar must be defined. The regulation would need to contemplate whether a permit would need to be issued for a landscape pond in order to enforce these regulations.

COMMENTS:

The Town’s standard for fencing is reasonable when compared to the Safe Kids model and by-laws of many municipalities. It is not an error or an omission to maintain current standards if Council considers the bylaw are reasonable in light of information provided.

Staff could find no statistic on how many drownings occur in ornamental ponds. There was one example from 2010 in Mississauga which may have led in part to the Coroner’s review and Consolidated list of recommendation that “All municipalities in the Province of Ontario pass pool enclosure municipal bylaws that mandate barrier safety requirements for new pools including ... decorative ponds” with a water depth of 0.6 metres (2 feet) such that when they are installed they are completely surrounded by 4-sided fencing minimum 1.22 metres high (4 feet), allow entry and exit through a self-closing and self-latching gate only and inhibit climbing. A home should never open into a pool area.

If Council wanted to regulate landscape ponds in that fashion the Town bylaw would need to be changed to require fencing if the pond is capable of holding water in excess of 0.61 m deep **or** with an exposed water surface over **1m²**. Fencing standards and a permitting system would have to be considered as would specifications to differentiate between farm ponds and natural water courses.

Despite the coroner’s recommendation most municipalities appear to have not passed by-laws that would regulate an ornamental pond in a manner similar to a pool. There is no doubt that one death in that situation would be terrible. In terms of personal liability landowners should check with their insurer and lawyer. If anything unfortunate were to happen on private property it would be insurers, lawyers and other authorities who would be involved in determining liability.

FINANCIAL CONSIDERATIONS:

The cost of a bylaw is minimal except for staff time needed to review and issue permits and enforce violations where complaints are received.

RECOMMENDATION:

That Council receives the C.A.O. Clerk's December 13, 2016 report Follow Up Ornamental Ponds and provides direction as to whether the Town's by-law should be amended to reflect the coroner's recommendation from 2011.

Bill White, C.A.O. Clerk