



CONVENTION 2010 YIELDS A WEALTH OF INFORMATION



**CONVENTION CHAIR
SHIRLEY GANGE WELCOMES
DELEGATES TO THE 2010
PARCS CONVENTION** held
October 14 – 16 at the
Saskatoon Inn.

This year's convention was notable for two reasons.

- The 2010 convention featured an unusual abundance and variety of useful information.
- The 2010 convention not only included 'guest experts' as presenters, but also included a large number of PARCS members sharing their stories with other PARCS members.

FIRST OF THREE POST-CONVENTION NEWSLETTERS

This first post-convention issue is devoted entirely to reporting on the session **WHO OWNS THE BEACHES?** Watch for PARCS UPDATE #15 and PARCS UPDATE #16 for reports about the other convention sessions.

WHO OWNS THE BEACHES?

One of the most popular convention sessions was a series of presentations by a panel of representatives from cottage communities that had wrestled with the question of how to exert control over their shorelines. Their presentations follow on pages 2-5.



KEEN INTEREST IN BEACHFRONT MANAGEMENT

These communities shared their stories (left to right):

- Resort Village of Wakaw (Administrator, Helen Martinka)
- Resort Village of Island Lake (Ken Cameron, Councillor)
- RM of Lakeland (Dave Dmytruk, Administrator)
- RV of Melville Beach (Dave Boulding, Mayor)

The Resort Village of Melville Beach (Dave Boulding, Mayor)

Approximately 8 years ago, a developer bought all the commercial property along the Village lakeshore (stores, rental cabins, boat launch). They moved quickly to tear down the old property and survey new lots for sale. Community planning helped the resort village to ensure that the new development was compliant with provincial laws.

The developers and council had designated an area beside main beach for a boat launch, basically the only area for a boat launch. With this area for boat launch the developers say they have lost sales of some lots because purchasers are reluctant to buy a lot beside a boat launch. The developers hired a consultant who put out a report warning that the boat launch would be too close to the public swimming area. Mayor Boulding reported that the issue of the boat launch has left half of the Resort Village residents with no access to the water, having to take their boats down to the nearby provincial park.

Mayor Boulding described his Village's determination to exert control over their shoreline, to pass bylaws that will regulate the use of a new boat launch while still allowing for its construction adjacent to the swimming area.

The Resort Village of Wakaw Lake (Helen Martinka, Administrator)

Administrator Martinka described how their lake is shallow and how wake boats are causing a big problem.

She also described crowded shoreline conditions in their Resort Village where they have a small beach with a marina and boat launch close by. The situation is prone to congestion. Two private docks were adding to the problem. Boat trailers were driving across the beach to launch. Private lakeshore development had become problematic. Others want to build a marina. People are asking for additional walkways to the shoreline.

The boat launch at the Resort Village is very small and people were flocking in to use it in order to avoid the fees being charged at the nearby regional park boat launch. Finally, the village developed bylaws regulating parking around the boat launch and hiring a local tow truck to tow away the offenders.

The Resort Village is just starting an Official Community Plan and Zoning Bylaw to regulate land use in their village.

RM of Lakeland (Dave Dmytruk, RM Administrator)

The Administrator for the RM of Lakeland reported that the RM has begun to "rethink development", realizing that the RM had reached a saturation point in terms of the damage that is occurring, particularly to their lakeshores. An amendment to their 2005 Zoning Bylaw has resulted in a moratorium on lakeshore and lake-oriented development on Emma and Christopher Lakes. (The RM has allowed some condominium development but it is far removed from the lake front and will not have any shoreline impact.)

The RM of Lakeland's priorities are:

- To maintain the water quality in their lakes;
- To maintain the natural features of their environment;
- To act on unauthorized docks, along with abuses by ATVs and wake boats.

Their challenge is to find a way to work with Oceans and Fisheries, Saskatchewan Environment and the Department of Agriculture to stop unauthorized lakeshore development.

Development has been happening so quickly that the RM is sometimes scrambling to keep up. For example, they recently had a request for a permit to construct an in-ground pool – a first of its kind.

The RM councillors have had to ask themselves the question, "What does a shoreline permit allow the permit holder to do?" In the end, it is their belief that the RM retains control over the shorelines. While a shoreline permit indicates that the permit holder is compliant with Sask Environment, the RM still had the right to demand that development also be compliant with the RM's Official Community Plan and Zoning Bylaw. "We want compliance, not fines," Dmytruk stated and added, "We want action."

The RM is preparing a newsletter to go out to all ratepayers, telling what the rules are. The RM feels that the education of ratepayers is the key. The RM is intent upon gaining back control of their public reserves. "We have been told that we can do this and we will." Dmytruk stated.

The RM is also concerned about the actions of those people he labels as the 'weekend warriors', the people who "breeze in on the weekend and erect a new deck or a new dock and then are gone, without thought to the permit process". The RM has hired a Special Constable. Additional staff to complement their Special Constable will be in place from the May long weekend to the September long weekend, on the beaches. "We are trying to be proactive, to take back our shorelines."

The Resort Village of Island View (Ken Cameron, Councillor)

The Resort Village Island View is located one hour north of Regina on the east side of Last Mountain Lake. The cottage community began in 1960 as part of the RM and as with many such small communities, there was an informal approach to development which led to some illegal developments on adjoining Crown lands, including boat houses on the shore. In 2001 the Province transferred jurisdiction for provincial public lands lying within a municipality's boundaries over to the municipality.

Over the years, a common understanding was established that no new boat houses would be built and, while the old boat houses were subject to removal, action was likely not imminent as long as there was no attempt to make improvements. In 1994 the community incorporated as the Resort Village of Island View and continued with the approach previously taken by the RM. Unfortunately, in 2003/04 three ratepayers chose to ignore the common understanding and built new boat houses. This led to a series of events such that the Village soon felt that much like the proverbial story of "give a mouse a cookie".

Council originally approached the federal and provincial departments responsible for shoreline and fisheries, asking to have the buildings removed. Council was advised that the transfer of lands in 1991 meant that the municipality had sole responsibility under the provincial Planning and Development Act. Council followed up by requiring the owners to remove their illegal developments. Unfortunately, they refused and instead chose to pursue a long drawn-out process of court challenges regarding both Council's jurisdiction and the definition of the boundaries of the Municipal Reserve in relation to the shoreline. Council decided that it had no choice but to bear the costs of defending its decision and its authority in order to maintain public lands for the public. Council's authority was consistently upheld by the courts and the boat houses were removed in 2010.

Throughout this legal process, each judgement provided clearer and clearer indications that a return to the old way of managing the Municipal Reserve was no longer defensible. Key findings were that "the shoreline is defined by legislation not by survey" and that the Village has responsibility for any developments up to the shoreline. Another key finding was that all private developments on municipal reserves are illegal and "there is no allowance for 'grandfathering' whether something was built in 1930 or today". Furthermore, in the best interest of the community, municipalities are advised to "be proactive in managing the public lands and ensuring compliance fairly and objectively".

The court process made it clear that the matter "went beyond being a boat house issue to being about the control and stewardship of all municipal reserves". In response, the Village moved to develop a comprehensive land-use bylaw. Over the fall and winter of 2009/10, Council conducted a thorough review of developments on the municipal reserve and discovered a wide array of private developments on the Municipal Reserve including boat houses, pumps, water lines, pump houses, stairs, storage buildings, and flower beds. Council also did research regarding the considerable legislation that governs crown lands, shorelines, fisheries, and water ways. Based on this research, Council developed a municipal land use policy that addressed not only the use of the lakeshore, but the use of all public lands in the Village.

Our Council's policy is based on the following key principles:

- Council has the responsibility for managing its Municipal Reserve and maintaining them for "the benefit of everyone in the Village".

- Council bylaws and decisions regarding the use of the land must be in compliance with all relevant federal and provincial legislation.
- Council must preserve the natural beauty, protect the fragile lands and promote green space in the Village for “the use of future generations”.
- Appropriate uses of green space need to be tailored to the unique characteristics of the particular parcel of land.
- A certain number of stairs or walkways or lake water systems are seen to be in the public interest;
- Individuals who own adjacent property to Municipal Reserves have no special claim over those land but they will be consulted to minimize any negative impact to them.

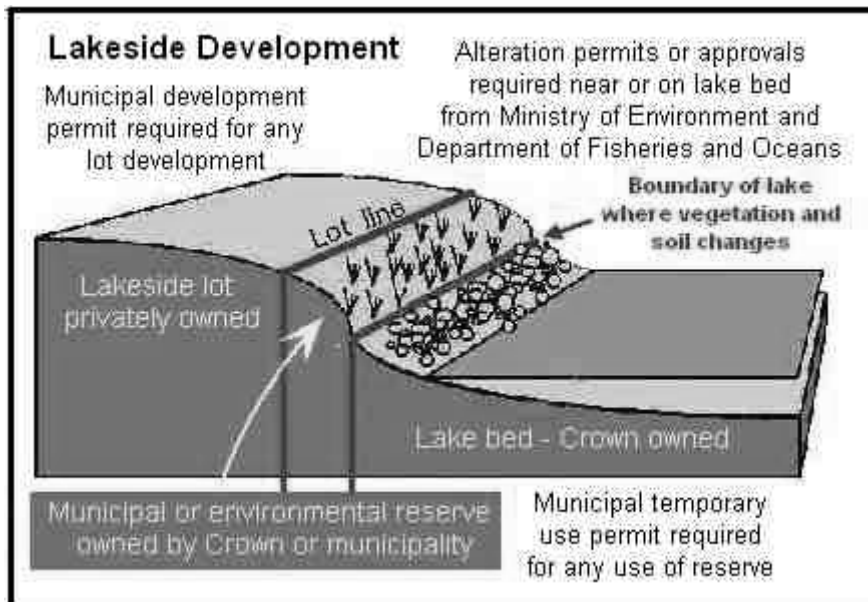
The Village is also taking reasonable steps to undo errors made over the years. Where private developments have occurred over time, they are allowed to continue in good faith but must be removed at the point of sale.

The legal process in which the Village was involved, the Village has learned that “the law is on our side but it is not always simple”. Many ratepayers find it difficult to accept that their private developments are not legal and will need to be removed, in time. Many still believe that Federal and Provincial Ministries control all matters related to shorelines and that these ministries trump Village authority. Some believe that the Village should not have incurred the legal expenses. Although the Courts have consistently ordered the owners of the offending boat houses to pay costs, the Village calculates that they have still had a net cost of over \$35,000 to establish this valuable precedent on behalf of other resort communities that may seek to take control of their public reserves.

Replies to the panel from Environment Saskatchewan and DFO

The rules forbidding public involvement of government departments during a by-election prevented Sask Environment from speaking at our convention. However, **Bill Zimmer, Compliance Manager for the Prince Albert Region of Sask Environment** was present to hear the panel speak and provided the following written response after the convention. His response is now available and included on page 4 of this newsletter.

“Thank-you for the opportunity to provide information to the issues raised at the recent PARCS convention held in Saskatoon. I have chosen to refer yourself and PARCS to the Ministry website (<http://www.environment.gov.sk.ca/Default.aspx?DN=dac659f6-00f2-4354-9bba-3a8a66034796>) and to the handout Lakeshore Development. They both are a valuable reference relating to development on shorelines along water bodies under provincial jurisdiction.



The diagram on the left, along with the excerpts in the chart on page 6 are taken from Lakeshore Development, a fact sheet published by the Saskatchewan Ministry of Environment and the Saskatchewan Ministry of Municipal Affairs.

To obtain this 3-page handout go to the PARCS website (parcs-sk.com).

Click on the EVENTS page which provides details on all of the convention sessions.

In response to all the issues in the panel presentation " Who Owns the Beaches" as well the issues I am most familiar with, I suggest we all would agree there needs to be a more concerted effort to educate all proponents of any development along waterways both from an ecological perspective as well the development requirements, prior to the development, to ensure all necessary approvals are obtained.

In this regard Ministry staff members are available to attend local cottage association meetings to provide information relating to shoreline development and jurisdiction of land along provincial water bodies to assist in responding to requests for land dispositions. I strongly encourage local Rural Municipalities and Resort Villages to contact their nearest Ministry of Environment office to obtain clarification on any questions relating to shoreline development and to arrange for participation at any local meetings where a presentation relating to shoreline development is required.

The Ministry of Environment is supportive of continued dialogue with local municipal authorities to ensure the objectives of all authorities are met when development proposals are received."

Ray Thibodeau from the Department of Fisheries and Oceans wrote to PARCS to remind members that his Department is responsible for the protection of Fish and Fish Habitat in Saskatchewan. He pointed out that Section 35 of the Fisheries Act states that "*No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat*". To engage the *Fisheries Act* there must be a physical alteration of the shoreline or water body. Riparian areas are considered Fish Habitat.

SO, ONCE AGAIN, WHO OWNS THE BEACHES?

Delegates listening to their fellow PARCS members describe their struggles to exert control over shorelines came away from the 2010 convention with the following answer to the questions of *Who Owns the Beaches?* **We do. And we need to exert our control over our shorelines.** Delegates realized that:

- Resort Village and Rural Municipalities have jurisdiction over municipal and environmental reserves lying between private lots and the boundary of the lake.
- Resort Villages and Rural Municipalities need to establish well-thought-out Official Community Plans and Zoning Bylaws governing these areas.

To learn more about municipal and environmental reserves, consult our next newsletter (PARCS UPDATE #15: Nov. 30, 2010) or our web site (parcs-sk.com) for a summary of the workshop by Twyla Bergstrom of the Community Planning Branch.



DELEGATES listen attentively to the variety and abundance of useful information presented at 2010 PARCS CONVENTION.

Common Myths of Lakeshore Development

<p>I own my property right to the water's edge</p>	<p>The majority of lake front property owners in Saskatchewan do NOT own the land right to the water's edge. In fact, if a Municipal or Environmental Reserve doesn't separate your lot from the lake, the land closest to the lake is usually the bank of the water body. The area between the bank and the waters edge, typically referred to as the beach, foreshore or lakeshore, belongs to the Crown. In Saskatchewan, properties are legally defined by their land title and a registered survey plan of the subdivision. It doesn't matter what the real estate agent or seller said, the land title will tell you what you own and the survey plan will show you the dimensions and extent of your property.</p>
<p>Municipal or Environmental Reserve is an extension of my property!</p>	<p>It is a common misbelief that if Municipal and Environmental Reserves are "publicly" owned, then it is an adjacent landowner's right to use this land for their private enjoyment. These reserves are separately titled parcels of land held in the name of the municipality or the Crown, created at the time the land is subdivided and are intended to provide recreation space or public access for all residents. Unauthorized developments or use of reserve lands are a trespass on another person's land.</p>
<p>I'm entitled to a view of the lake; I paid good money for my lot!</p>	<p>Even though you are one of the few privileged landowners to have a property next to a lake, this does not entitle you to a view of the lake. If a reserve, which may be treed, separates your lot from the lake, you do not have the right to cut down the vegetation on someone else's property without approval! Also, you may not undertake any other forms of landscaping on the reserves without permits from both the municipality and provincial authorities.</p>
<p>I can do what I want with my property once I've bought it!</p>	<p>Just like in the city, bylaws and development restrictions limit what can and cannot be done on private property. A permit from the municipality's development officer and building inspector is required for all structural improvements on private property. Any alteration to the shoreline of any water body requires approvals from the Saskatchewan Ministry of Environment and from Department of Fisheries and Oceans (DFO).</p>
<p>My cottage needs a sand beach to add value to the property!</p>	<p>If time and geology didn't create a sand beach naturally, it's unlikely an artificial sand beach will remain where you put it. Don't waste your money on replacing lost sand year after year; use the public beach (it's safer for swimming and protected from boating). Any alteration to the beach, foreshore or lakeshore of a fish bearing water body requires approval from the Department of Fisheries and Oceans as well as a permit from the Ministry of Environment.</p>
<p>As a lakefront property owner, I can keep people off "my" lakeshore and restrict others from using my dock</p>	<p>The beds and shores of lakes are Crown owned and therefore public land for everyone to use. You cannot prevent the public from using the shore or a municipal reserve in front of your cottage. Seasonal piers and boat lifts located on a lake bed without a permit are technically (legally) a trespass on Crown land. Any structure left on public land without authority could be assumed by the public as an invitation for use. Although a private structure, it would be difficult for a cottager to initiate a civil action against someone else for using their pier, dock, or any other improvements. NOTE: The owner of such a structure is however liable for these improvements/structures and its use by others.</p>