

Crown withdraws private charge against Close

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by Scott Dunn

A privately brought obstruction of justice charge against South Bruce Peninsula Mayor John Close was withdrawn Thursday after the Crown attorney who intervened determined there was no reasonable prospect of conviction.

The charge was the latest effort by members a local cottage association who claim more than 80-year-old subdivision covenants on a section of Sauble Beach - owned privately by a Sauble Beach resident and a company - nonetheless require the beach to be subject to a town bylaw prohibiting driving, barbecuing and other uses on public parts of the beach.

Sauble Beach resident John Strachan, a retired Toronto shop teacher, initiated the charge based on his allegation municipal bylaw enforcement staff told him the mayor directed them between last April and August not to enforce the town's dynamic beach bylaw.

But the case, which had been adjourned several times, was over in a couple of minutes after visiting Crown attorney David Foulds addressed it. He is from the regional Crown's office, which intervened in the privately brought charge.

Foulds told Ontario Court Justice Julia Morneau he examined a great deal of material and interviewed Strachan and another Pine Grove Park subdivision resident, Craig Gammie, twice, but there was no reasonable prospect of conviction.

Foulds set out his reasoning in a detailed letter to Strachan but didn't file it with the court. Foulds also thanked Strachan for helping to ensure all the facts were known.

Close was not in the courtroom and did not respond to requests for an interview left at his home and at the municipal office.

Strachan attended court and said in an interview he is disappointed, but that his fight continues on another front.

Foulds summarized his analysis in an interview outside the courtroom. He said civil lawyers for South Bruce Peninsula council concluded the beach bylaw could not be enforced on private property. In January, council amended the bylaw to reflect that, he noted. But Foulds would have had to prove that it could apply to allow for a finding there was an obstruction of justice, he said.

Foulds said the offence also requires that Close instructed the bylaw officer not to enforce the bylaw against the private property owner, Joe Szewczyk. "There was some evidence but it wasn't sufficient in my judgment on the reasonable prospect test to allow me to conclude that the test had been met."

That's at least partly because there was no police investigation, for reasons Foulds wasn't privy to. And, he said, he didn't ask for one either because "I think the issues were plain here."

Foulds said the key element was that he required evidence "that the conduct of the accused tended to obstruct the course of justice." But he had to consider the legal status of the bylaw and the absence of sufficient evidence the mayor told the bylaw officer not to enforce it.

He also required one thing more.

"I say there has to be some element of dishonesty or corruptness in order to find that there's a tendency to obstruct the course of justice, which I could not find here," he said. "And the conduct of the accused was not unknown to local public officials."

Strachan said in an interview "I'm disappointed." He said Foulds told him he also weighed whether it would be in the public interest to run a "very expensive trial."

"He likened it to taking a sledgehammer to get rid of a flea sort of thing; a very blunt law to get rid of something he considered to be trivial" which would be more properly dealt with in civil court, Strachan said.

But Strachan said he believes there is no better mechanism to deal with obstruction of justice charges if the police don't investigate. He said he went to the police services board seeking some remedy before pursuing the charge privately.

Strachan said the cottagers' group is pursuing a writ against the the beach property saying Szewczyk has breached the subdivision covenants or beach use restrictions. If that's accomplished, the remedy would be compliance with the cottage group's stipulations.

"We won't pursue it any further if he follows the covenants and follows the directives," Strachan said. Those call for the beach to remain open to the public and that it be subject to the dynamic beach bylaw.

The section of the beach owned by the Sauble Beach Development Corporation and Szewczyk is west of Lakeshore Blvd. from 5th to 6th streets and was part of the original Pine Grove Park subdivision. Strachan alleges Szewczyk drove on the beach, which he said was the incident he tried to get town bylaw officials to pursue under the beach bylaw.