

TO: Resort Municipality of Whistler Mayor and Council,

Lorne Russell, Parks and Recreation

Lindsey Debou, Bylaw

Sgt. Rob Knapton , RCMP

16 Residents Green Lake, Whistler ( the “ Residents “)

## Green Lake Motor Boat Issues

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I refer you to my email of June 12 to the Mayor and Council which was referred to Mr. Russell for handling. Mr. Russell has been very helpful as the Residents feel he understands the issues and the continuing frustration and stress experienced by all users and residents of the lake caused by the trailered motor boats and sea doos ( “ PWCs “) which disregard/ignore the RMOW posted regulations. The wake created by the motor boats and the continual unbridled speed of PWCs are the problem.

At this point , it appears new signage and an additional buoy are the initial solutions . Needless to say, without effective enforcement , signs and buoys are just stop gap measures and with the increasing number of trailered boats and PWCs , the chaos witnessed over the August long weekend and the warm summer weekends will continue and grow.

RMOW owns the boat ramp which is the only way trailered motor boats and PWCs can access the lake. An effective stop gap measure employed possibly on weekends would be for RMOW to place a gate on the boat ramp to be opened on whatever terms or conditions RMOW deem necessary and appropriate. The process for RMOW to get Transport Canadas required sanction of regulations on the water is a long and complicated one, hence the need effective stop gap measures.

The PWC issue is not as complicated but it requires political will. There appears to be a serious misconception held by our enforcement agencies , both bylaw and the RCMP, about the enforceability of Bylaw 1660 ( the “ Bylaw “ ) which prohibits the operation of PWCs on Green Lake. The Bylaw was passed by Mayor O’ Reilly and Council in 2004. It clearly references noise , not only from PWCs but also amplified music , speech , machinery, animals etc. In section 4(h) it references noise by operation of PWCs on Alta Lake , Green Lake ..... River Of Golden Dreams . The River Of Golden Dreams was included in the Bylaw because at that time the PWC operators enjoyed taking their machines up that river. The then owner of the boat rental operation at the south end of the lake had brought this abuse to the attention of Council. So the Bylaw is not simply a noise bylaw. There is no question the then Mayor and Council had the legal jurisdiction to enact the Bylaw.

Subsequent to the passing of the Bylaw and the posting of the appropriate signage , there was no need to enforce the Bylaw as it was never questioned and the owners of PWCs were 100% compliant. That situation existed until 2 or 3 summers ago when everything changed. PWCs suddenly appeared on the lake and they can now be frequently seen going full speed over the entire lake without regard to any of the posted regulations. Attempts by Residents or paddle craft users to get them to slow down are most often met with contempt or no response at all.

I questioned a PWC operator at the boat ramp why suddenly ,after almost 15 years, they were ignoring the Bylaw. He told me they were advised by the RCMP and whistler bylaw that the Bylaw was a noise bylaw and unenforceable. That opened the door.

These are the facts as I know them: 1 . The Bylaw has never been repealed or amended by any RMOW Council since it was passed in 2004. 2. The Bylaw has never been overturned by a court of law. Neither the RCMP or whistler bylaw have the authority to make or interpret the law. Their function is to enforce the law , not make it or interpret it.

On August 5 I contacted RMOW as I heard there may have been a written legal opinion finding the Bylaw to be unenforceable as a noise bylaw. I was advised there was no written legal opinion. Even if there had been a written legal opinion , it wouldn't have had any effect on the Bylaw or its enforceability. Legal opinions are not a court of law and many legal opinions have been proven to be wrong.

1. The jurisdiction to make laws rests solely in duly elected governments.
2. The jurisdiction to overturn law rests solely in an appropriate Court Of Law.
3. The jurisdiction to enforce law rests in bylaw and RCMP . Neither of these agencies has the power or jurisdiction to interpret, overrule , amend or chose not to enforce the law.
4. The only way the Bylaw can be overturned is if Council repeals it OR a Court Of Law rules it is invalid.

It appears someone has exerted considerable influence over our enforcement agencies to ignore the Bylaw and not enforce it. In speaking with these agencies neither was at all interested in enforcing the Bylaw , both hiding behind the shield it was " just a noise bylaw ". Ironically, enforcement would be simple – just attend the boat ramp when a PWC is exiting and issue a ticket. No need to go on the water and get involved in the complicated jurisdictional issues. I suspect , after a ticket or two were issued , that would end the matter and the situation would revert to what it was before our enforcement agencies took matters into their own hands.

Finally , it might be worth Council exploring passing an amendment to the Bylaw to shore up any possible deficiency should the PWC industry decide to test the Bylaw in Court. When one looks at the purpose ( speed and sharp turns full time all time ) of a PWC and sees many on this small lake at the same time it becomes apparent the effect is " nuisance " to any reasonable person. Nuisance ( private )

is a well known area of law and to amend the Bylaw to include "nuisance "would likely have the Bylaw stand even if it could be struck down as a noise bylaw.

Respectfully

Fred Shandro

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