

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: June 14, 2021

CASE NO(S): PL190217

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PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Len Ganz
Subject:	By-law No. BL 2019-028
Municipality:	Township of Seguin
OLT Case No.:	PL190217
OLT File No.:	PL190217
OLT Case Name:	Ganz v. Seguin (Township)

Heard: April 7, 2021 by video hearing and April 14, 2021 in writing

APPEARANCES:

Parties

Counsel

Len Ganz

R. Cheeseman

Township of Seguin

K. Mullin and M. Poremba

Mesqua’s Discovery (2016) Ltd.

E. Cormier and A. Mason

DECISION DELIVERED BY HUGH S. WILKINS AND ORDER OF THE TRIBUNAL

BACKGROUND

[1] This Decision arises from an appeal filed by Len Ganz (“Appellant”) regarding the passage of Zoning By-law No. BL 2019-028 (“proposed Zoning By-law Amendment”) by the Township of Seguin (“Township”). The proposed Zoning By-law Amendment makes site-specific amendments to the Township’s comprehensive Zoning By-law No. 2006-125 (“Zoning By-law”) to facilitate the redevelopment of a marina located at 7 Marina Street (“subject property”) in the community of Rosseau. The Appellant owns lands and a water lot located close to the subject property.

[2] The subject property lies on the shores of Lake Rosseau. It is owned by Mesqua’s Discovery (2016) Ltd. (“Applicant”). The subject property has 71.7 metres (“m”) of frontage on the Lake and is roughly 0.45 hectares in size. It contains a boathouse, shop, two-storey office and retail building, one-storey marina retail building, boat maintenance building, concrete boat ramp, boat dock, shoreline boardwalk, and docks.

[3] The subject property is designated in a “Settlement Area” under the Township’s Official Plan and it is zoned “Marine Commercial (C2)”. The Applicant has applied to have the zoning changed to “Marine Commercial Exception (C2 – Exception)” to recognize and allow structures to be located closer to the water than presently is permitted and to permit expansions to the dock and boardwalk. The proposed Zoning By-law Amendment would also permit the use of boat docks to meet parking space requirements, allow for the reconstruction of existing buildings, and permit the construction of two new small retail structures and a restaurant. Specifically, the proposed amendments to the Zoning By-law are:

- a. a reduced setback from the water’s edge of 6.1 m for a new restaurant, whereas the Zoning By-law requires 20 m;

- b. a reduced setback from the water's edge of 2.6 m for an accessory second floor patio for the restaurant, whereas the Zoning By-law requires 20 m;
- c. a reduced setback from the water's edge of 8.6 m for two retail accessory building structures, whereas the Zoning By-law requires 20 m;
- d. a new dock extending from the marina's existing boathouse with a reduced side yard setback of 3.8 m, whereas the Zoning By-law requires 12.5 m;
- e. a reduced side yard lot line of 7.2 m. for the existing boathouse, whereas the Zoning By-law requires 12.5 m;
- f. an increased maximum width of the existing boathouse to 14.3 m with an increased length to 11.43 m;
- g. an increased maximum height of the highest roof eave of the existing boathouse to 4.1 m, whereas the Zoning By-law allows a maximum main roof eave height of 3.6 m;
- h. permission for car parking to be located a minimum of 0 m from any building or structure and 0 m from the northerly lot line adjacent to Marina Street, whereas the Zoning By-law requires all parking to be setback 1.5 m from a building, structure, or lot line;
- i. permission to use 14 boat docking spaces as part of the required car parking spaces on the subject property and permission for 33% of the required parking to be by boat in front of the subject property. The Zoning By-law presently requires all parking to be situated on land; and,

- j. permission for a boardwalk along the entire frontage of the subject property.

[4] At a Case Management Conference, held on October 8, 2020, the Tribunal granted Party status to the Applicant and it granted Participant status to Peter Trinz. Mr. Trinz made submissions regarding the scale and impacts of the proposed Zoning By-law Amendment based on the size of the bay and the need to balance the needs of the marina with those of neighbouring property owners. He raised environmental and safety concerns and concerns that the proposed development would reduce the area's charm, cause noise and odour impacts, and would not be compatible with existing development in the area.

[5] On April 7, 2021, the Tribunal held an oral hearing at which it heard submissions from the Parties. The Parties filed additional written legal submissions on April 14, 2021.

Legislative and Regulatory History

[6] As has been summarized in past decisions (see, for instance, *Grabe v. Ottawa (City)*, 2020 CanLII 83795 (ON LPAT), at paras. 8-11), there were several legislative and regulatory changes in 2019 that affected planning appeals before the Local Planning Appeal Tribunal. The present appeal was filed on May 6, 2019. At that time, the *Building Better Communities and Conserving Watersheds Act* ("Bill 139") was in effect. Bill 139 consisted of amendments to the *Planning Act* and the enactment of the *Local Planning Appeal Tribunal Act, 2017* ("LPAT Act"). It limited the grounds of appeal in zoning by-law amendment proceedings to consistency with provincial policies and conformity with applicable provincial plans and official plans. Under the Bill 139 regime, the Tribunal's *Rules of Practice and Procedure* restricted parties' evidence and submissions to the filing of appeal records containing affidavits and supporting materials, case synopses containing arguments to support their requests for relief, and, if ordered by the Tribunal, final written or oral submissions.

[7] In September 2019, the *More Homes, More Choice Act*, 2019 ("Bill 108") came into effect, which amended both the *Planning Act* and *LPAT Act*. Under Bill 108, appeals are permitted to be based on wider grounds and the statutory tests for addressing the substantive issues in zoning by-law amendment appeals are expanded. Zoning by-law amendment appeals, such as the present appeal, that had not yet been scheduled for a hearing on the merits became subject to the provisions in Bill 108.

[8] The transition regulations under Bill 108 allowed zoning by-law amendment appellants, whose appeals had been filed but not scheduled for a hearing on the merits as of September 2, 2019, to file a revised notice of appeal with expanded grounds. The Appellant in the present case filed a revised notice of appeal on October 7, 2019 to include grounds on good land use planning.

[9] In November 2019, Ontario Regulation 382/19 was brought into force under the *LPAT Act*. This Regulation requires that certain types of appeals, including the present one, must proceed under Bill 139's procedural requirements, but the applicable statutory tests are those set out in Bill 108 addressing the substantive issues under appeal.

[10] Based on these statutory and regulatory requirements, Bill 139's procedural requirements apply to this proceeding, but the Bill 108 version of the *Planning Act* applies to the substantive issues. Thus, the Bill 139 requirements apply for the filing of evidence and submissions and the holding of a hearing for oral submissions; but the substantive aspects of the proceeding, including the powers of the Tribunal and the legislative tests to be applied, are governed by the requirements in Bill 108. The Tribunal's powers on a s. 34(19) appeal under Bill 108 are set out in s. 34(26) of the Bill 108 version of the *Planning Act*. It states:

34(26) The Tribunal may,

- (a) on an appeal under subsection (11) or (19), dismiss the appeal;
 - (b) on an appeal under subsection (11) or (19), amend the by-law in such manner as the Tribunal may determine or direct the council of the municipality to amend the by-law in accordance with the Tribunal's order;
- or

(c) on an appeal under subsection (19), repeal the by-law in whole or in part or direct the council of the municipality to repeal the by-law in whole or in part in accordance with the Tribunal's order.

These are the powers of the Tribunal in this proceeding.

ISSUES

[11] As determined above, the Bill 108 version of the *Planning Act* applies to the substantive issues to be adjudicated. In making a decision on a zoning by-law amendment appeal under s. 34(19) of the Bill 108 version of the *Planning Act*, the Tribunal must determine whether the proposed Zoning By-law Amendment:

- a. is consistent with the Provincial Policy Statement, 2020 ("PPS");
- b. conforms with applicable provincial plans;
- c. conforms with applicable official plans; and
- d. represents good planning.

In the present case, the sole applicable provincial plan is the Growth Plan for Northern Ontario ("Growth Plan"). The District of Parry Sound does not have a municipal government or official plan. The sole applicable official plan, therefore, is the Township's Official Plan. The Tribunal also must have regard to the matters of provincial interest set out in s. 2 of the *Planning Act* and it must have regard to the decision of the Township Council and the information considered by it under s. 2.1(1) of the *Planning Act*.

[12] The procedural requirements in Bill 139 state that the issues to be adjudicated are to be set out in the Appellant's Appeal Record and Case Synopsis. In the present case, the Appellant's issues are set out in his original Appeal Record and Case Synopsis and expanded in his Supplementary Appeal Record and Case Synopsis. His issues consist of the following:

1. whether the proposed Zoning By-law Amendment is consistent with the PPS;
2. whether the proposed Zoning By-law Amendment conforms with the Growth Plan;
3. whether the proposed Zoning By-law Amendment conforms with the Township's Official Plan;
4. whether the proposed Zoning By-law Amendment results in overbuilding on the subject property;
5. whether the proposed Zoning By-law Amendment results in a development that would be compatible and safe with respect to neighbouring properties;
6. whether the proposed parking arrangements of the proposal permitted by the proposed Zoning By-law Amendment result in negative impacts that result in bad land use planning;
7. whether permitting the retention of current legal non-complying structures to remain on the property and to be accommodated by the proposed Zoning By-law Amendment amounts to bad land use planning;
8. whether visual and environmental impacts resulting from the proposal amount to bad land use planning; and,
9. whether the lack of a comprehensive approach to evaluating and planning for the lands surrounding the current marina operation amounts to bad land use planning.

[13] Each of these issues is addressed below.

EVIDENCE, SUBMISSIONS AND FINDINGS

[14] As required under the Bill 139 regime, the evidence in this proceeding is limited to that which was filed in the Parties' Appeal and Responding Records (including Supplementary Records).

[15] The Appellant provided evidence in the form of affidavits sworn by Lanny Dennis, dated July 6, 2019 and November 29, 2020. Mr. Dennis is a land use planner. Based on his education and experience described in his *curriculum vitae*, which forms part of the Appeal Record, the Tribunal qualifies him to provide opinion evidence in the area of land use planning.

[16] The Township provided evidence in the form of affidavits sworn by Stephen Stone, dated August 1, 2019 and January 13, 2021. He is a land use planner employed by the Township. Based on his education and experience as described in his *curriculum vitae*, which forms part of the Township's Responding Record, the Tribunal qualifies him to provide opinion evidence in the area of land use planning.

[17] The Applicant provided evidence in the form of an affidavit sworn by Stefan Szczerbak on December 29, 2020. He is a land use planner retained by the Applicant. Based on his *curriculum vitae*, which is included in the Applicant's Record, the Tribunal qualifies him to provide opinion evidence in the area of land use planning.

Issue 1: Whether the proposed Zoning By-law Amendment is consistent with the PPS

Evidence and Submissions

[18] Mr. Dennis opined that the proposed Zoning By-law Amendment is not consistent with the PPS. He stated that negative impacts of the Applicant's proposed development on ground and surface water have not been properly evaluated as required under PPS policies 1.6.6.4, 1.6.6.5, and 2.2.1. He stated that public health and safety and the requirements in PPS policy 1.1.1 have not been addressed and the impacts from the

Applicant's proposed private water and septic systems have not been considered. Regarding the resource protection requirements in PPS policy 2, Mr. Dennis stated that fish habitat in the area has not been properly addressed and the ecological function of adjacent lands has not been properly evaluated. He further stated that without proper studies on fish habitat and public health and safety impacts, the proposed development is not consistent with PPS policy 3.1.1 on hazardous lands and policy 3.1.3 on the impacts of climate change.

[19] Mr. Stone opined that the proposed Zoning By-law Amendment is consistent with the PPS. He reviewed PPS policy 1.0 on building strong and healthy communities and stated that the proposed Zoning By-law Amendment is consistent with policy 1.1.1(c) on environment, public health and safety in that it would facilitate the updating and enhancement of the marina's infrastructure and improve environmental and public health and safety conditions there. He said it would minimize land consumption and infrastructure costs in accordance with policy 1.1.1(e) as the subject property already has an established marina, fronts on a public road, does not need an expansion of infrastructure, and is located in a Settlement Area. He said it is consistent with policies 1.1.3.1, 1.1.3.2, and 1.1.3.3 as it facilitates development in a Settlement Area while minimizing environmental impacts and efficiently uses infrastructure and connects water-based transit with the community's pedestrian infrastructure. He said it also is consistent with policy 1.1.3.4 as it maintains existing uses, provides connections to the Lake, and again uses existing infrastructure. He stated that the proposed Zoning By-law Amendment facilitates employment opportunities and a diversified economic base in accordance with policy 1.3 and provides important services to the community. He stated that private water and sewage systems are permitted under policy 1.6.6.4 as the community does not have municipally operated water and wastewater services. He stated the proposed septic system would provide for greater environmental protection than the existing system on the subject property and would not have negative impacts. He stated that drainage and stormwater management issues have been studied in a technical memorandum prepared for the Applicants by R.J. Burnside, dated February 21, 2019, which addresses the proposed water treatment system, site grading, drainage

and stormwater management, and water intake systems to the satisfaction of the Township.

[20] Regarding the protection of natural heritage under policy 2.1, Mr. Stone stated that the subject property has historically been used as a marina and there are no natural heritage features on it, adjacent to it, or along its shoreline. He stated that the waters in the area have been mapped by the Ministry of Natural Resources and Forestry (“MNR”) and those adjacent to the subject property are not designated as fish habitat. He stated that the proposed development will include enhanced stormwater and wastewater infrastructure to ensure the protection of water quality and quantity and is consistent with policy 2.2.1. He also stated that the subject property is not impacted by natural hazards or subject to flooding and the proposed Zoning By-law Amendment is consistent with PPS policy 3.1.

[21] Mr. Szczerbak stated that he agrees with Mr. Stone’s assessment and planning opinion regarding consistency with the PPS.

Findings

[22] The Appellant’s evidence and submissions on the PPS focused on consistency with the PPS’s policies regarding ground and surface water protection, public health and safety, fish habitat and the ecological function of adjacent lands, and hazardous lands. Regarding water issues, the Township and Applicant provided evidence that ground and surface water quality and quantity will be better protected and improved through the proposed development’s enhanced water intake, wastewater, and stormwater management facilities and Mr. Stone stated that this would be done with no negative impacts. These issues are addressed in the technical memorandum prepared for the Applicants by R.J. Burnside, dated February 21, 2019. The Tribunal accepts this evidence and finds that the site conditions on the subject property are suitable for the proposed individual on-site sewage and water services and stormwater management system and, based on Mr. Stone’s evidence, that they will not have negative impacts.

[23] Mr. Stone stated that the proposed Zoning By-law Amendment would facilitate a development that would minimize land consumption, improve public access to the Lake and Village, and not require an expansion of public infrastructure. Based on studies completed by the Township and MNRF, he stated that there are no natural heritage features on the subject property or fish habitat along its shoreline. This is reflected in Schedule C to the Township's Official Plan mapping out fish habitat in the area. It does not identify the waters adjacent to the subject property as such habitat. He opined that the proposed Zoning By-law Amendment would not cause public health and safety issues and that the subject property is not impacted by natural hazards or subject to flooding. In this regard, Mr. Szczerbak stated that the proposed development would be in compliance with flood elevation requirements. Based on the evidence before it, the Tribunal finds that there are no natural heritage features on or adjacent to the subject property and that the proposed Zoning By-law Amendment will facilitate a development that will improve the protection of the environment, address natural hazard and flooding concerns, and, as further discussed below, will not cause public health and safety issues. The Tribunal finds that the proposed Zoning By-law Amendment is consistent with the PPS.

Issue 2: Whether the proposed Zoning By-law Amendment conforms with the Growth Plan

Evidence and Submissions

[24] Mr. Dennis opined that the proposed Zoning By-law Amendment does not conform with the Growth Plan. He stated that Growth Plan policy 6.1 emphasizes the importance of the environment as forming the basis for economic prosperity and social well-being. He stated that given the subject property's location on Lake Rosseau and the nature of the proposed development and its private servicing, the Applicant has not provided sufficient evidence that the proposed development is environmentally sustainable and the social and physical character of the area will be preserved. He stated that the concerns of local residents must be addressed.

[25] Mr. Stone opined that the proposed Zoning By-law Amendment conforms with the Growth Plan. He stated that the Growth Plan emphasizes economic growth and environmental protection, which are both addressed through the Township's Official Plan policies and have been applied in the present case. He opined that the proposed Zoning By-law Amendment will facilitate economic development, tourism, and employment, enhance the character of the Township, and help protect the environment through enhanced septic and wastewater management systems and improved fuel storage facilities further from the shore.

[26] Mr. Szczerbak agreed with Mr. Stone and opined that the proposed Zoning By-law Amendment conforms with the general intent of Growth Plan.

Findings

[27] The Appellant argued that insufficient studies have been undertaken and the proposed Zoning By-law Amendment does not conform with the Growth Plan's environmental policies. However, as determined above, the Tribunal finds that there are no natural heritage features on or adjacent to the subject property. The proposed improved septic and wastewater management systems and fuel storage facilities will enhance environmental protection at the subject property. The Tribunal finds that the proposed Zoning By-law Amendment will facilitate a marina development that addresses environmental protection concerns while providing employment and economic stimulus to the local community in conformity with the Growth Plan. The Tribunal finds that community members have been engaged in the process and, as determined below, the proposed Zoning By-law Amendment will facilitate a development that enhances the character of the community and existing development. The Tribunal finds that the proposed Zoning By-law Amendment conforms with the Growth Plan.

Issue 3: Whether the proposed Zoning By-law Amendment conforms with the Township's Official Plan

Evidence and Submissions

Appellant's Evidence and Submissions

[28] Mr. Dennis opined that the proposed Zoning By-law Amendment does not conform with the Township's Official Plan. He stated that the vision of the Township's Official Plan, as set out in policy A.1, establishes an environment-first philosophy prioritizing the environment over economic and social development in land use decision making. He stated that the goals and objectives of the Township's Official Plan, as set out in policy A.2.4.1, include the protection and enhancement of the character of the Township's existing Settlement Areas and he opined that the proposed Zoning By-law Amendment would impact the area's character and may impede the development opportunities of neighbouring property owners. Referring to the objectives of the Township's Official Plan in policy A.2.4.2 on the appropriateness, character, compatibility, and integration of development in Settlement Areas, he opined that the proposed Zoning By-law Amendment would impact the character of the community. He said it would result in development that is not compatible with adjacent buildings and landscape features or with the scale and density of existing development. He stated that the proposed development would be insufficiently buffered and its boat ramp and expanded docks would not be compatible with neighbouring residential uses. He also opined that the design of the proposed buildings would be out of character for the area. Mr. Dennis stated that the environmental protection objectives in the Township's Official Plan policy A.2.7.2(h) have not been properly applied. He also questioned whether the objectives in policy A.2.8.2 on water quality or quantity have been adequately addressed given a lack of studies regarding the impacts of the proposed private servicing.

[29] Mr. Dennis stated that the proposed Zoning By-law Amendment does not satisfy the soil and drainage, water supply, wastewater, and storm drainage, adjacent lands, and flooding and erosion requirements in the Township's Official Plan policy B.1.4. He

reiterated compatibility, buffering, environmental protection, and hazard land concerns and a lack of proper studies. He also stated that the Official Plan's Lake System policies were not addressed under policy B.1.8. Referring to policy C.3, Mr. Dennis stated that the protection of lake quality, the waterfront, the visual and aesthetic qualities of the shoreline, and associated social aspects have not been properly addressed. He stated that there is no evidence that the proposed development will not impact water quality and maintain, improve or restore the water quality of the lake system, or that there are appropriate setbacks from the shoreline and fish habitat. He stated that the proposed development would result in the waterfront of the subject property being built-up, it disregards the Official Plan's environment first philosophy, and it does not ensure that the natural shoreline landscape dominates over human-made features. He also opined that the proposed Zoning By-law Amendment does not provide a sufficient shoreline setback or ensure minimal site alteration to protect vegetation and tree cover as required under policy C.3.1.3.6.

[30] Mr. Dennis further opined that the proposed Zoning By-law Amendment does not conform with the Township's Official Plan policy C.3.1.3.10 on waterfront design. He said it does not integrate and protect the environment, improve built form, maintain the character of the area, achieve high quality building and landscape design, or address the impacts of light and sound on the lake environment. Regarding waterfront building design requirements in policy C.3.1.3.11, he stated that the proposed development does not have appropriate setbacks, buffers, massing, or height and does not blend in or reflect the character of the area. He stated that the proposed dock is too large, the visual impacts of the proposed boathouse will be significant, and the development does not reflect the natural character of the local shoreline. Regarding policy C.3.1.3.13 on waterfront site design, he stated that it requires development to be pleasant, natural and attractive, compatible with adjacent development, and buffered. He said noisy marina activities, outdoor storage, and insufficient landscaping and buffers will cause nuisances impacting neighbouring property owners in contravention of policies C.3.1.3.14 and C.3.1.3.15. Regarding policy B.4.2, he stated that the proposed

development may have insufficient parking, inadequate buffering and landscaping, insufficient setbacks, and may not be compliant with the Township's dark sky policies.

[31] In terms of the Township's Official Plan Settlement Area policies, Mr. Dennis stated that policy C.2.1 aims to maintain the character of Settlement Areas and ensure compatible development. He stated that there is no evidence that these requirements have been met. He said that commercial uses in Settlement Areas under policy C.2.1.3.5 must have adequate parking, waste management facilities, landscaping and buffering, must be compatible and consistent with adjacent developments, and must serve the local retail and service needs of the community. He stated that there is not enough land area on the subject property for adequate parking, the siting of docks is inappropriate, and the proposed expansion will not fit in.

[32] Regarding floodplain and erosion hazards addressed in the Township's Official Plan policy D.1, Mr. Dennis stated that there is no evidence that the proposed development complies with flood elevation requirements or that appropriate studies have been undertaken. He stated that an environmental impact study should be conducted in relation to the proposed renovation to the boathouse under policy D.4. He also said only limited development should be permitted under policy D.8 due to the narrowness of the bay on which the subject property is situated. In this regard, he said a site evaluation report should be prepared. He said policy E.6 requires the preparation of a stormwater management report addressing best management practices and fish habitat, which he stated has not been properly done.

Township's Evidence and Submissions

[33] Mr. Stone opined that the proposed Zoning By-law Amendment conforms with the Township's Official Plan. He stated that the proposed development applies the Official Plan's environment-first philosophy through the installation of an enhanced septic system and improved fuel storage facilities and he said the subject property does not contain and is not adjacent to any natural heritage features or fish habitat. In conformity with policy A.2.4.1, he stated that the proposed Zoning By-law Amendment

enhances the character and attractiveness of the community by facilitating the development of updated facilities and continues marina uses on the subject property, which has been an important service and amenity in the community for decades. He said all the lands that abut the subject property are owned by the Township. He said that next to the subject property is a park and public docks which are compatible land uses. He stated that nearby residential uses, including the Appellant's, are located on higher ground above the subject property on the other side of the Township's lands and do not abut the subject property. He stated that the continued use of the subject property as a marina serves an important function for the community and maintains the character and stability of the area in conformity with policy A.2.4.2. He said it is the only marina in the community of Rosseau. He stated that, prior to being a marina, the subject property was the location of a hotel and wharf used by steamships servicing communities around the Lake. He stated that the proposed Zoning By-law Amendment facilitates economic development and preserves the environment and the character of the community, in conformity with policy A.2.7.1.

[34] Mr. Stone opined that the Township's Official Plan policy B.1.4 is intended to only apply to new residential development and policies B.1.8 and C.3 addressing the lake system apply only to lands designated Shoreline Area, which the subject property is not. He stated that if these policies were to apply, they would be satisfied. He stated that shoreline vegetation and waterfront design will be enhanced through landscaping in conformity with policies C.3.1.3.6, C.3.1.3.10, C.3.1.3.12, and C.3.1.3.16, and the proposed buildings will complement and incorporate the character and scale of existing development in conformity with policies C.3.1.3.11 and C.3.1.3.13. He stated that wastewater and fuel storage facilities will be located further away and screened from the Lake in conformity with policy C.3.1.3.15.

[35] Mr. Stone stated that the proposed Zoning By-law Amendment would facilitate the construction of updated buildings providing high quality built form that is sensitive to the Township's heritage and character and include measures for personal safety and access, including boardwalks, in conformity with policies B.4.1 and B.4.2. He said the design and massing of the proposed buildings are similar to those that are presently

there. He stated that the proposed Zoning By-law Amendment conforms with policies B.15 and D.4, D.4.8 and D.8 and an environmental impact study is not required as: there are no natural heritage features in the vicinity of the subject property; it involves the replacement of an existing boathouse; and the subject property is not located in a narrow bay of 150 m or less. Regarding the narrowness of the bay on which the subject property is located, Mr. Stone produced mapping demonstrating that the bay is 220 m wide and stated that a site evaluation report under policy D.8 is not required.

[36] Mr. Stone stated that marinas are permitted as commercial uses in Settlement Areas under policy C.2.1.2. Regarding the criteria for commercial uses under policy C.2.1.3.5(a), he stated that the proposed development has been reviewed by the Ministry of Transportation and will not cause traffic hazards or congestion, will be accessible by pedestrians through the proposed boardwalks, will adequately provide for parking, will have enhanced waste management facilities, will be subject to landscaping and buffering requirements through site plan control, will be compatible with adjacent public lands, and will serve the needs of the community.

[37] Mr. Stone stated that the MNRF has set regulatory flood elevations for Lake Rosseau below which development should not proceed under policy D.1. He stated that the proposed buildings are in keeping with these requirements. He noted that these requirements do not apply to boathouses, docks or existing buildings. He stated that policy E.6 on stormwater management only applies to major developments, which the proposed development is not, and no stormwater management report is required. However, he stated that drainage and stormwater management issues have been addressed in the technical memorandum prepared for the Applicants by R.J. Burnside, dated February 21, 2019, which addresses many of these issues, including the water treatment system, site grading, drainage and stormwater management, and water intake.

Applicant's Evidence and Submissions

[38] Mr. Szczerbak stated that he agrees with Mr. Stone and opined that the proposed Zoning By-law Amendment conforms with the Township's Official Plan.

Findings

[39] The objectives of the Township's Official Plan emphasize the prioritization of environmental protection over economic and social development considerations in land use planning decisions and emphasize the enhancement of the character of Settlement Areas. Based on the evidence before it, the Tribunal finds that the proposed Zoning By-law Amendment achieves these ends. It will facilitate the refurbishment and improvement of the buildings, boathouse, and docks and improve the wastewater, stormwater management, and fuel storage facilities on the subject property. Located beside the public docks and below the main area of the community, the Tribunal finds that the built form, massing and character of the proposed development are in keeping with the character of the area. The subject property abuts public lands. Given its location, down and away from residential uses and close to the public docks, the Tribunal finds that the marina is appropriately situated and compatible with existing surrounding development. Moreover, given that the marina, and before that a hotel and wharf, have existed on the subject property for decades, it forms part of the fabric and character of the community. The Tribunal finds that updated facilities will complement and improve the marina's contribution to the community and will enhance its character and the character of existing development. The Tribunal finds that the proposed Zoning By-law Amendment will facilitate a development that will continue and improve upon an important community function providing access to water-oriented transit on the Lake and providing valuable services and amenities to the local community. The Appellant argued that the proposed Zoning By-law Amendment may impede the development opportunities of neighbouring property owners; however, he provided no compelling evidence on this. The proposed Zoning By-law Amendment does not restrict neighbours' access to their lands and there is no compelling evidence that it will cause impacts on neighbouring privately owned lands. The Tribunal finds that changes to setbacks and the height, width and length of buildings under the proposed Zoning By-law Amendment will not have significant visual or other impacts on neighbours requiring significant buffering and landscaping on the subject property. The Tribunal notes that

there are no plans for the significant removal of vegetation or trees and that the subject property is subject to site plan control.

[40] By updating and refurbishing the existing boathouse and buildings on the subject property, the Tribunal finds that the proposed Zoning By-law Amendment will facilitate a development that improves built form, maintains the character of the area, achieves high quality building design, and is in keeping with the general natural and historic setting of the area. The Tribunal notes that the location of the subject property below the main area of the community, beside the public docks, and abutting publicly owned lands provides for a proper site for the proposed development with appropriate setbacks, buffers and character. The Tribunal notes again that marina uses have been on the subject property for decades and it notes that marina, restaurant, and retail uses are permitted uses on the subject property. Based on the evidence of the Township and the Applicant, including photographic evidence of the subject property and neighbouring lands, the Tribunal finds that the visual impacts of the proposed boathouse and buildings will not be significant and that the proposed development reflects the natural character of the shoreline and area. As further discussed below, the Tribunal also finds that the proposed Zoning By-law Amendment will facilitate a development with sufficient parking and buffering and that any undue noise impacts will be subject to enforcement under the Township's Noise By-law.

[41] Based on the evidence before it, the Tribunal finds that the proposed Zoning By-law Amendment satisfactorily addresses soil and drainage, water supply, wastewater, traffic, road access, impact on adjacent lands, flooding and erosion, natural heritage, and other matters set out in the Township's Official Plan policy B.1.4. Although it is questionable based on the language in policy C.3 whether they apply in the Settlement Area designation, the Tribunal finds that the Official Plan's lake system policies regarding the protection of lake quality, the waterfront, the visual and aesthetic qualities of the shoreline, and social aspects have been satisfactorily addressed. Based on Mr. Stone's evidence, shoreline vegetation and waterfront design on the subject property

will be enhanced and the proposed buildings will be in keeping with the character and scale of existing surrounding development.

[42] The Township's Official Plan policy D.4 addresses natural heritage features. These are identified in the Official Plan's Schedule C. Development on lands identified as having natural heritage features or adjacent to such features is only permitted if a satisfactory environmental impact study is prepared. Schedule C does not identify the subject property or lands adjacent to it as having natural heritage features and the evidence before the Tribunal is that these features do not exist on the subject property or adjacent to it. The Tribunal, therefore, finds that no environmental impact study is required under policy D.4.

[43] The Township's Official Plan policy D.4.8 addresses the protection of fish habitat. It states:

D.4.8 Fish habitat should be protected from incompatible development.

Development of boathouses shall require the preparation of an [environmental impact study ("EIS")] to identify appropriate locations for development. The EIS shall identify mitigation strategies to limit impacts on fish habitat. Replacement of existing structures shall not require the preparation of an EIS.

In the present case, the Applicant seeks to replace the existing boathouse structure, thus, under this policy no environmental impact study is required. There are no natural heritage features or fish habitat on or adjacent to the subject property and the proposed wastewater and fuel storage facilities will improve environmental protection on the subject property. The Tribunal finds that no further studies are required under policy D.4.8.

[44] The Township's Official Plan policy D.1 addresses floodplain and erosion hazards and requires that development complies with flood elevation requirements. Based on Mr. Szczerbak's uncontradicted evidence, the Tribunal finds that the proposed Zoning By-law Amendment will facilitate a development that satisfies these flood elevation requirements.

[45] Policy D.8 restricts new development in narrow bays. It states:

D.8 Narrow waterbodies are identified as areas on a river where the distance from shoreline to shoreline is less than 50 metres, or areas on lakes where the distance from shoreline to shoreline is 150 metres.

These areas have been identified as development may have an impact on the character of the shoreline or water based navigation. Narrow waterbodies are generally identified on Schedule "C" to the Official Plan.

Despite being marked as such in the Township's Official Plan Schedule C, the Township's evidence demonstrates that the bay is greater than 150 m wide and that the development restrictions in policy D.8 do not apply.

[46] Township Official Plan policy E.6 requires the preparation of a stormwater management report where a major commercial development is proposed. It states:

E.6 All major commercial, industrial, institutional and residential development (three or more lots) proposals shall be supported by a Stormwater Management (SWM) report. The content and scope of the SWM report shall be determined through pre-consultation with the Township when the development is proposed.

In the present case, the evidence before the Tribunal is that the proposed development is not a major commercial development proposal. In any event, there has been consultations with the Township, and the Township has indicated that the technical memorandum prepared for the Applicants by R.J. Burnside, dated February 21, 2019, is sufficient.

[47] Township Official Plan policy F.4 allows the reconstruction of legally non-complying structures subject to specific requirements. Policy F.4 states:

F.4 A non-complying building, structure or lot does not comply with the regulations and performance standards of the Implementing Zoning By-law.

A non-complying building or structure may be enlarged, repaired or renovated provided that the enlargement, repair or renovation:

- a) does not further increase a situation of non-compliance;

b) complies with all other applicable provisions of this Plan and the Implementing Zoning By-law;

c) does not increase the amount of floor area in a required yard or setback area; and,

d) will not pose a threat to public health or safety.

[...]

A non-complying lot in existence prior to the effective date of the Implementing Zoning By-law that does not meet the lot area and/or lot frontage requirements contained within the Implementing Zoning By-law, may be used and buildings thereon may be erected, enlarged, repaired or renovated provided the use conforms with the applicable policies of this Plan and the Implementing Zoning By-law, and the buildings or structures comply with all of the other provisions of the Implementing Zoning By-law.

[...]

[48] Township Official Plan policy F.4 permits enlargements of legal non-complying structures provided that the enlargement (a) does not further increase the non-compliance with the Zoning By-law, (b) complies with all other applicable provisions of the Official Plan and the Zoning By-law, (c) does not increase the amount of floor area in a required yard or setback area, and (d) will not pose a threat to public health or safety. In the present case, these requirements are satisfied through the proposed Zoning By-law Amendment. With the proposed amendment to the Zoning By-law in place, the proposed enlargements would not increase non-compliance or increase floor area in a required yard or setback area. The proposed Zoning By-law Amendment would regularize existing non-compliant structures by making them and the proposed additional structures compliant and outside the required yard and setback areas. Also, based on the Tribunal's findings above, the proposed enlargements comply with all other applicable provisions of the Official Plan and the Zoning By-law and they will not pose a threat to public safety.

[49] Given these findings, the Tribunal finds that the proposed Zoning By-law Amendment conforms with the Township's Official Plan.

Issue 4: Whether the proposed Zoning By-law Amendment results in overbuilding on the subject property

Evidence and Submissions

[50] Mr. Dennis opined that although the subject property is an existing lot of record with pre-existing non-complying structures, it is an undersized lot and the proposed Zoning By-law Amendment facilitating the expansion of the marina is not appropriate or suitable on the subject property. He stated that the shoreline setbacks should be 20 m, not the existing 2.6 m. He raised concerns regarding lot coverage, the size of the proposed docks, landscaping coverage, and outdoor storage. He stated that more information is needed in these regards. He opined that the proposed development is too intensive. He stated that the proposed increases in height, width and length of the boathouse would be excessive resulting in inappropriate massing and visual and other nuisance impacts on neighbours. He stated that, with the proposed boardwalk included, the proposed built form and lot coverage on the subject property would also be excessive. He also stated that with proper setbacks, there is not enough space on the subject property for the required parking and septic system.

[51] Mr. Stone and Mr. Szczerbak stated that the proposed development would not exceed the permitted 35% lot coverage under the Zoning By-law. Mr. Szczerbak stated that the subject property is an existing lot on which existing, non-complying structures are permitted and are allowed to be expanded. He stated that the Zoning By-law's lot coverage provisions ensure that lots will not be overbuilt. He stated that boardwalks and docks are not included in lot coverage calculations, the existing marina is a complimentary fit, and the subject property would not be overbuilt.

Findings

[52] The Zoning By-law permits lot coverage of up to 35%. The proposed Zoning By-law Amendment does not seek to alter this standard for the subject property. The subject property is located in a Settlement Area, which, under the Township's Official

Plan policy, is to be the focal location for the development in the area. The proposed development seeks modest changes from what currently exists in terms of setbacks from lands owned by the Township. The shoreline setbacks, although considerably less than what is required under the Zoning By-law, are no different from what exists today for the existing structures. Given the location of the boathouse and proposed buildings below the main area of the community and adjacent to the public docks, the Tribunal finds that the proposed location and increased size and height of these buildings will not have significant visual impacts on neighbouring property owners and it finds that they will fit in with the surroundings. The Tribunal finds that the proposed boardwalk expansion will facilitate public access to the Lake and public lands and represents good planning. The Tribunal finds that the proposed Zoning By-law Amendment will not result in bad planning or the overdevelopment of the subject property.

Issue 5: Whether the proposed Zoning By-law Amendment results in a development that would be compatible and safe with respect to neighbouring properties

Evidence and Submissions

[53] Mr. Dennis opined that the proposed Zoning By-law Amendment would result in a development that is neither compatible with nor safe in relation to neighbouring properties. He stated that the proposed reduced side yard setbacks and boat ramp location would result in boat navigation, safety, and noise issues affecting neighbouring properties and would impact the use and enjoyment of the Appellant's property and lake use. He also stated that the proposed boardwalk could result in the public walking in front of or on to the Appellant's property. He opined that the proposed Zoning By-law Amendment facilitates a development that is neither safe nor compatible with neighbouring properties.

[54] Mr. Stone stated that the subject property abuts public lands, which separate it from residential uses with the nearest residential dwelling located 28 m away. He stated that the proposed development would comply with the Ministry of Environment,

Conservation and Parks Environmental Noise Guidelines and would be subject to the Township's Noise By-law No. 2010-05.

[55] Mr. Szczerbak reiterated that the abutting landowner is the Township and it has not raised concerns regarding the proposed setbacks. He stated that the current use of the subject property is as a marina and there will be no change in how boats enter or exit the facility. He stated that the proposed setbacks from the boathouse decrease as one moves out into the water and that the setbacks for the proposed development along the shoreline comply with the Zoning By-law's standards. He stated that the proposed addition to the boardwalk facilitates the movement of people from the adjacent public park and dock to the other public lands abutting the subject property. Mr. Szczerbak stated that the proposed use of the subject property is permitted and has been used in this manner for decades. He said the character of the community includes this established and long-standing marina use. He stated that neighbouring residential properties will be buffered from the proposed development by the abutting public lands. He also stated that the proposed dock would not create additional boat traffic and would be located 30-40 m from the dock on the Appellant's water lot. He said boat traffic would not be directed towards the Appellant's property and the dock would not inappropriately interfere with the side lot line of the Appellant's water lot. He said that the proposed development would not have industrial uses and that the subject property is correctly zoned Marina Commercial. He also reiterated that the proposed development will be subject to site plan control, which will require vegetation protection, replanting, buffering and site amenities.

Findings

[56] Based on the evidence before it, the Tribunal finds that the proposed Zoning By-law Amendment will facilitate a development with similar uses to what has existed on the subject property for decades. As determined above, the Tribunal finds that the proposed reduced side yard setbacks from abutting publicly owned lands will not cause adverse impacts and the marina uses at the subject property and the services that they

provide are important parts of the community. As determined above, the subject property is surrounded by publicly owned lands and is located near the Lake below the main part of the community and residential uses. It is next to a local park and public docks. The Tribunal finds that the proposed Zoning By-law Amendment will facilitate development that is compatible with the surrounding area. Mr. Stone and Mr. Szczerbak stated that the proposed Zoning By-law Amendment facilitates a dock configuration that will be further from the Appellant's property than what currently exists and the entry and exit routes for boats using the marina will be no different from what currently exists. The Tribunal finds that the proposed Zoning By-law Amendment will not increase safety risks to neighbouring properties and it finds that the proposed Amendment represents good planning in this regard.

Issue 6: Whether the proposed parking arrangements of the proposal permitted by the proposed Zoning By-law Amendment results in negative impacts that result in bad land use planning

Evidence and Submissions

[57] Mr. Dennis opined that the proposed Zoning By-law Amendment would result in parking arrangements that have negative impacts on neighbouring properties. He stated that the proposed development would have 14 fewer land parking spaces than is required under the Zoning By-law and opined that to accommodate the necessary number of parking spaces, the commercial space of the proposed development should be reduced. He stated that insufficient parking on the subject property may result in adverse impacts including visitors parking on the Appellant's lands or along the highway.

[58] Mr. Stone stated that the Zoning By-law does not contain parking requirements for marinas. He opined that the proposed 32 car parking spaces and 32 boat docking spaces would be sufficient. Mr. Szczerbak stated that vehicles that need to be parked for long periods would be located off-site at a boat storage facility south of the marina.

He opined that the proposed development would provide sufficient car parking and he noted that the subject property is subject to site plan control.

Findings

[59] The Applicant argues that many of the visitors to the marina come by boat. Based on this, and the fact that the marina has overflow parking available nearby, the Tribunal finds that is good planning to allow a significant amount of the parking spaces to be for boat parking and that the provision in the proposed Zoning By-law Amendment that 33% of the required parking is permitted by boat and that 14 parking spaces may be used by boats along the docks represents good planning.

Issue 7: Whether permitting the retention of current legal non-complying structures to remain on the property and to be accommodated by the proposed Zoning By-law Amendment amounts to bad land use planning

Evidence and Submissions

[60] Mr. Dennis opined that by retaining the existing legally non-complying structures on the subject property, the proposed Zoning By-law Amendment constitutes bad land use planning. He stated that the required shoreline setback under the Zoning By-law is 20 m. The proposed development would have a 2.6 m shoreline setback for a second storey deck, 6.1 m for a restaurant, and 8.6 m for a retail store. He stated that these new structures should be subject to the 20 m setback in the Zoning By-law. He stated that permitting these requested setbacks is contrary to the intent of the Township's Official Plan and does not conform with its environmental protection objectives. He stated that s. 4.17 of the Zoning By-law allows the reconstruction of legally non-complying structures provided that it does not reduce the existing setbacks. He stated that the proposed structures have different configurations than the existing ones and must comply with the Zoning By-law's required setbacks. He stated that under the Zoning By-law, the reconstructed buildings cannot be increased in height or volume.

He opined that the Zoning By-law Amendment should result in a net improvement rather than aggravating the existing non-compliant situation.

[61] Mr. Stone opined that the proposed Zoning By-law Amendment does not constitute bad land use planning. Noting that a marina has operated on the subject property for decades, he said the Township's Official Plan policy F.4 states that buildings on legally non-complying lots may be enlarged or renovated provided that the use conforms with the Official Plan and Zoning By-law and the buildings comply with all other provisions in the By-law. He stated that this is implemented through s. 4.17 of the Zoning By-law which allows legally non-complying structures to be enlarged, reconstructed, replaced, repaired and/or renovated. He opined that the proposed enlarged buildings will not adversely affect the operation of Marina Street and the proposed renovated boathouse would not conflict with the functionality of abutting public lands. He opined that setback encroachments from the enhancement of the legally non-complying buildings would have negligible impacts given that the abutting lands are owned by the Township.

[62] Mr. Szczerbak stated that the Zoning By-law's 20 m shoreline setback does not apply given the location of the existing buildings, docks, and boardwalks in close proximity to the shoreline. He said the proposed Zoning By-law Amendment recognizes the existing structures and allows their expansion provided they are not located closer to the shoreline than the existing structures. He said a marina needs to be located close to water and the proposed reconstruction of the existing structures would not cause impacts.

Findings

[63] The Tribunal has already determined above that the proposed Zoning By-law Amendment conforms with the Township Official Plan policy F.4 regarding the enlargement of legally non-complying structures. In the context of the present case, the Tribunal finds that it is good planning to not hinder efforts to recognize and improve the

non-complying structures on the subject property. The regularization of the existing legally non-complying structures will not lead to development that is out of scale or character. Moreover, the Tribunal finds that these changes are important for the functioning of the marina. As determined above, the marina plays a longstanding and important role in the community and is part of its character. The Tribunal finds that modest encroachments on setbacks, the enlargement of the buildings and the addition of small additional retail structures are appropriate and will not have adverse impacts on abutting lands. It finds that to require the additional small structures to be located away from other structures to comply with setback requirements would be incoherent and would not reflect good planning.

Issue 8: Whether visual and environmental impacts resulting from the proposal amount to bad land use planning

Evidence and Submissions

[64] Mr. Dennis opined that the proposed Zoning By-law Amendment would result in visual and environmental impacts and constitutes bad land use planning. He stated that due to the 2.6 m shoreline setbacks permitted under the proposed Zoning By-law Amendment, the massing and bulk of the expanded buildings would be inappropriate. He reiterated that due to the size of the subject property, there will be limited space for necessary buffering and landscaping. He stated that there have not been sufficient studies completed regarding the impacts of the proposed Zoning By-law Amendment on fish habitat, water quality, public safety, ecology, shoreline health or visual aesthetics. He also stated that the proposed development and docks would affect the Appellant's view from his property and have noise and other adverse impacts.

[65] Mr. Stone stated that the subject property is surrounded by publicly owned lands providing separation between commercial and residential uses and that visual and environmental impacts of the proposed development are not anticipated. Mr. Szczerbak stated that the proposed development would enhance the character of the community and improve the visual attractiveness of the shoreline. He reiterated that there are no

natural heritage features on the subject property and that no additional studies are needed.

Findings

[66] Based on the evidence before it, the Tribunal finds that the proposed Zoning By-law Amendment will not result in significant adverse visual or environmental impacts. The Zoning By-law Amendment facilitates development of a certain size and location on the subject property. The exact design and built form of the development will be addressed through site plan control. Given the location of the subject property and based on the setbacks, height, length and width standards set out in the proposed Zoning By-law Amendment, the Tribunal finds that any visual impacts would not be significant. Regarding environmental impacts, the evidence before the Tribunal is that there are no natural heritage features on or adjacent to the subject property, including fish habitat, and there is no compelling evidence that the proposed setback, height, width, length, parking or other amendments would have adverse environmental impacts. The PPS and Official Plan set out requirements for environmental and other studies in specific circumstances, none of which apply here.

Issue 9: Whether the lack of a comprehensive approach to evaluating and planning for the lands surrounding the current marina operation amounts to bad land use planning

Evidence and Submissions

[67] Mr. Dennis opined that the absence of a comprehensive planning review regarding the subject property constitutes bad planning. He stated that Marina Street is an open and year-round municipally maintained road, which provides the Appellant with access to parts of his property and water lot. He stated that the Appellant wishes to purchase the original shore road allowance abutting his property, which is accessed from Marina Street. He stated that any closing of Marina Street would jeopardize the Appellant's ability to access his lands and water lot and diminish his chances of having

the original shore road allowance adjacent to his property closed to facilitate future development there. He opined that the proposed Zoning By-law Amendment should not be adjudicated until a comprehensive planning review has been undertaken regarding the area, including the future of Marina Street and associated shore road allowances.

[68] Mr. Stone stated that the Township Council has indicated that it is not willing to close Marina Street or the shore road allowance. Mr. Szczerbak stated that any road closure would require a separate public process led by the Township and that a comprehensive review of the area is not necessary. He stated that the future use of Marina Street is not part of the proposed development and that it is within the discretion of the Township to proceed with the proposed Zoning By-law Amendment without commencing a comprehensive review of the larger area.

Findings

[69] The proposed Zoning By-law Amendment facilitates the redevelopment of a small marina on Lake Rosseau. The marina facilitates access from the community and beyond to boat transit on the Lake; however, it is not associated with public transit, transportation or other municipal infrastructure or services and it does not set in motion the need for larger planning issues to be addressed. There are no provisions in the proposed Zoning By-law Amendment that would result in the closure of Marina Street or any open shore road allowance and the proposed Zoning By-law Amendment will not in any way hinder access to or development of neighbouring properties. The Tribunal finds that the Applicant has taken a comprehensive approach in addressing environmental, planning, economic development and other issues through its Zoning By-law Amendment application and the Tribunal was not presented with compelling grounds or authority requiring a more comprehensive planning review. The Tribunal finds that the proposed Zoning By-law Amendment addresses the applicable statutory and policy requirements under the *Planning Act* and that a more comprehensive planning review is not required. In this regard, the Tribunal finds that the proposed Zoning By-law Amendment represents good planning.

Section 2 of the *Planning Act*

[70] Mr. Szczerbak stated that he relies on his *Planning Act* review contained in his Planning Justification Report, dated February 25, 2019. In his Planning Justification Report, he stated that the proposed Zoning By-law Amendment has regard to the matters of provincial interest set out in s. 2 of the *Planning Act*. He stated that the proposed Zoning By-law Amendment has regard to the the orderly development of safe and healthy communities in that the marina provides a link and access point between the Lake and the community. He also stated that the proposed Zoning By-law Amendment has regard for the adequate provision of recreational facilities by providing access to and services for water-related activities.

Conclusions

[71] Based on the evidence and submissions of the Parties, the Tribunal finds that the proposed Zoning By-law Amendment is consistent with the PPS and conforms with the Growth Plan and the Township's Official Plan. The Tribunal has had regard to the issues of provincial interest set out in s. 2 of the *Planning Act*. In making its decision, the Tribunal also has considered the Participant's submissions, has had regard to the Township Council's decision, the information that the Township Council considered, and the enhanced municipal record. The Tribunal finds that the proposed Zoning By-law Amendment represents good planning.

ORDER

[72] The Tribunal orders that the appeal against Zoning By-law No. BL 2019-028 is dismissed.

“Hugh S. Wilkins”

HUGH S. WILKINS
MEMBER

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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