

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** April 29, 2024

**CASE NO(S):**

OLT-23-000311

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant:

Crystal Bay Cottages Inc.

Subject:

Zoning By-law Amendment Application – refused

Description:

To permit development of eight new residential units

Reference Number:

350309-0550

Property Address:

4409 Erie Road

Municipality/Upper Tier:

Fort Erie/Niagara

OLT Case No.:

OLT-23-000311

OLT Lead Case No.:

OLT-23-000311

OLT Case Name:

Crystal Bay Cottages Inc. v. Fort Erie (Town)

**Heard:**

March 18-25, 2024 by Video Hearing

**APPEARANCES:**

**Parties**

Crystal Bay Cottages Inc.

Town of Fort Erie

4407 Erie Road Holding LLC

**Counsel**

Paul DeMelo

Tom Halinski

Brian Duxbury

## **DECISION DELIVERED BY KURTIS SMITH AND ORDER OF THE TRIBUNAL**

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### **INTRODUCTION/BACKGROUND**

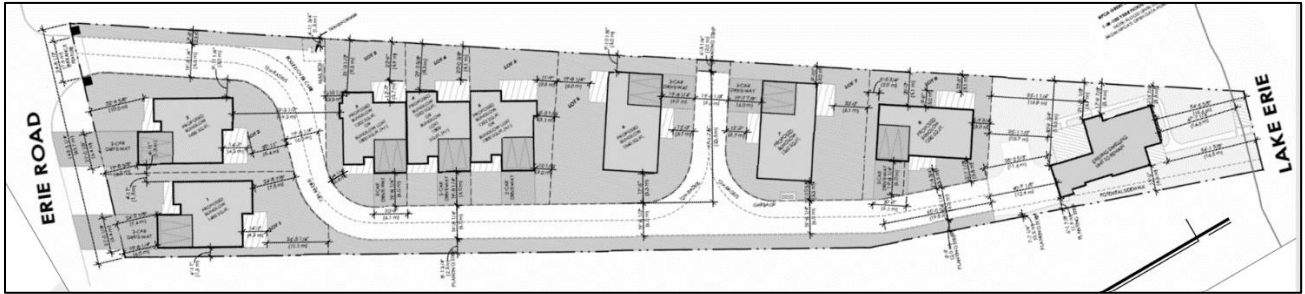
[1] The Appeal before the Tribunal stems from the refusal of an application to amend the Town of Fort Erie's ("Town") Zoning By-law sought by Crystal Bay Cottages Inc. ("Applicant" or "Appellant") to permit the redevelopment of their property municipally known as 4409 Erie Road ("Property") in the Community of Crystal Beach.

[2] The Council of the Town refused the Zoning By-law Amendment ("ZBA") on the basis that the proposed development was not consistent with the character of the surrounding established residential neighbourhood, the Property was not envisioned for infilling and intensification, the proposed development was not located within convenient walking distance from the elements of a traditional neighbourhood, and the proposed development did not provide for adequate open space on-site.

[3] The ZBA as outlined on Page 1550 of **Exhibit 1** would rezone the Property from Waterfront Residential (WR) Zone to a special provision Residential Multiple 1 Holding (RM1-XXX (H)) Zone.

[4] As the current zoning name indicates, the 0.79-hectare ("ha") Property backs onto Lake Erie and boasts two single detached dwellings. The principal dwelling ("Lake House") backs directly onto the lake and the second smaller dwelling is in the front yard near the Lake House. The large open front yard contains a long-curved laneway leading from Erie Road to the dwellings. North of the Property, across Erie Road a Provincially Significant Wetland and Natural areas are present.

[5] The Applicant's concept plan for the Property is found in Exhibit 1, Page 307, and for ease of reference the visual of the concept plan is shown below:



[6] The Applicant intends to create a condominium plan with a total of eight new units; two single detached units fronting onto Erie Road, three townhouse units in the mid section of the Property and three additional single detached units near the Lake House, all fronting onto a new internal condominium street. The existing Lake House is planned to be severed from the condominium development with agreements to be executed for the permission to use the internal condominium street. The second existing dwelling is planned to be demolished, leaving a total of nine units to be on the Property. Each new unit is proposed to be one and a half and two storeys, slab on grade with an attached two-car garage and private amenity space.

[7] A pre-consultation meeting took place on January 27, 2022 with Town staff and the Applicant to discuss the proposed development and the ZBA, where the Town provided comments and a list of submission requirements to be completed in advance of the submission of the ZBA.

[8] A total of 16 exhibits were marked during the duration of the hearing. Included in the exhibits were aerial photographs, on the ground pictures and drone videos of the Property and immediate area.

[9] At the first Case Management Conference to these proceedings, the Tribunal granted Party status to 4407 Erie Road Holding LLC ("Neighbours") and Participant status to Stella Lane LLC, Ellie Kerr, John and Beth Moloney, Kathryn Moloney, and Margaret Gartner.

[10] During the hearing the Tribunal heard from eight witnesses as outlined below to provide opinion evidence to address the Issues List attached to the Procedural Order. The Tribunal qualified each of them to provide opinion evidence in their area of expertise on consent of the Parties.

| APPLICANT   |                        | TOWN              |                        | NEIGHBOURS   |                       |
|---|------------------------|-------------------|------------------------|--|-----------------------|
| AREA OF EXPERTISE   | WITNESS                | AREA OF EXPERTISE | WITNESS                | AREA OF EXPERTISE                                      | WITNESS               |
| Land use planning   | <i>Mary Lou Tanner</i> | Land use planning | <i>Alex Herlovitch</i> | Land use Planning                                      | <i>Kevin Eby</i>      |
| Engineering, municipal servicing and storm water management | <i>Jason Schooley</i>  |                   |                        | Engineering, stormwater management design and drainage | <i>John Lamarre</i>   |
| Ecology, environmental assessment, and species at risk      | <i>Anne McDonald</i>   |                   |                        | Ecology  | <i>Ken Glasbergen</i> |
| Hydrogeology  | <i>Jayne Campbell</i>  |                   |                        |  |                       |

[11] As the witnesses' areas of expertise suggest, the Tribunal categorized the issues into three overarching questions:

- a. Is there a reasonable solution to stormwater management?
- b. Will the stormwater management solution negatively impact the natural environment and wildlife on the Property and surrounding area?

- c. Does the integration of the proposed concept plan conform to local land use planning policies?

## **FINDINGS AND ANALYSIS**

### **IS THERE A REASONABLE SOLUTION FOR STORMWATER MANAGEMENT?**

[12] Three reports were prepared by the Appellant to address servicing and Storm Water Management ("SWM"):

- a. A Hydrogeology Study, prepared by Mr. Campbell of Terra-Dynamics Consulting Inc. ("TDC"), June 23, 2023, Exhibit 3, Page 13;
- b. A Functional Servicing Report ("FSR"), prepared by Mr. Schooley of Upper Canada Consultants ("UCC"), October 17, 2022 ("First FSR"), Exhibit 1, Pages 339-360; and
- c. A FSR, prepared by Mr. Schooley of UCC, July 31, 2023 ("Second FSR"), Exhibit 1, Pages 2197-2233.

[13] First and foremost, the Property is currently serviced with a 300-millimetre ("mm") diameter watermain and 250 mm diameter sanitary sewer. It is the opinion of Mr. Schooley that the existing sanitary sewer has capacity to take on the proposed development and planned 200 mm diameter water supply on the Property and has sufficient capacity for fire and domestic water supply. Mr. Lamarre did not provide the Tribunal with a differing opinion. The Tribunal accepts the opinions of Mr. Schooley and finds that there are no municipal water or sewer constraints.

[14] Mr. Campbell installed staff gauges, to monitor surface water levels and monitoring wells to monitor water levels on the Property. He notes that the proposed dwellings do not include any basements and that aprons to the dwelling will need to be at the flood proofing elevation of 176.5 metres above sea level ("masl"), which will

require some fill to be brought to the Property. Mr. Campbell explained that ponding water can occur on the Property especially in the areas below 175.6 masl and notes that the 2023 spring maximum water level was 175.8 masl. His report concludes that the water table is not predicted to increase with the proposed development because the SWM design will capture runoff and directs it to Erie Road.

[15] The Appellant and Neighbours have conflicting opinions on the practicality of a possible solution of SWM for the Property.

[16] Presently, the stormwater flows northerly over the Property to the roadside ditch of Erie Road and travels westerly to a storm sewer outlet to Lake Erie near a property Municipally known as 4427 Erie Road.

[17] The First FSR proposes to create parameter swales along the west and east Property line where the stormwater is directed into catch basins. From there, the water would make its way to a quantity control structure on the Property utilizing a site pipe storage located under the internal road and a control structure to reduce future flows to existing levels. Additionally, UCC proposes an oil/grit separator to be installed to improve the stormwater quality levels.

[18] Following the First FSR, it was determined that the existing outlet at 4427 Erie Road is a private pipe system that has failed and does not provide proper stormwater drainage. This realization prompted the Appellant to prepare the Second FSR to determine an alternative SWM solution.

[19] The Second FSR continues to utilize parameter swales, control structures and an oil/grit separator, however, from there it would now see the water move across Erie Road to the north side and proposes to redirect the water to the east modifying the roadside ditch in a continuous downwards slope to the existing Bay Beach Area Municipal Drain that outlets to Lake Erie.

[20] While Mr. Schooley and Mr. Campbell were under cross examination by Mr. Duxbury, Counsel for the Neighbours, Mr. Duxbury reviewed the drawings prepared by UCC found in Exhibit 1, on Pages 2224-2233 with them. The review compared the current and proposed elevation levels of the Property and roadside ditch. Through the cross examination, it was found that the Property elevation would need to be altered and increased in height to accommodate the proposed SWM solution. Once the water makes its way from the Property to the roadside ditch, it would see a continuous 0.1 percent grade, lowering some sections of the roadside ditch elevation by one metre. Once the roadside ditch arrives to the Municipal Drain, the elevation is 174.40 masl. From there it would then flow underground to Lake Erie where it outlets at 174.17 masl.

[21] The final report for the Lake Erie Shoreline Management Plan Update provides a table outlining the flood levels of a 100-year instantaneous water level elevations which were calculated from a combined probability analysis of the static water level elevations and storm surge heights of 176.97 masl, 2.8 masl above the elevation of the Lake Erie outlet.

[22] Acknowledging the above, the Tribunal turns to the proposed holding provision that forms part of the ZBA, that states:

pursuant to Section 36 of the Planning Act, the "H" Holding Symbol shall be removed upon proof of an updated Functional Servicing Report and upon the confirmation of acceptance of the Stage IV Archaeological Report on the Ontario Register of Public Archaeological Reports.

[23] Mr. DeMelo, Counsel for the Applicant, argues that the FSR is not before the Tribunal but rather the ZBA which includes the holding provision. He submitted that once the ZBA is approved, then the Applicant will proceed with the removal of the holding provision.

[24] Mr. Duxbury put forward the question of "what happens if there are no solutions" to the ponding water to Mr. Campbell and Mr. Schooley. Both witnesses are of the

opinion that there is always a solution to be found. Meanwhile, Mr. Lamarre is of the opinion that the SWM solution, as designed, is not in accordance with good engineering practices and if implemented, would not function as intended. Mr. Duxbury submits the SWM solution must be determined prior to an approval of the ZBA to confirm the viability of the proposed development.

[25] Ms. Tanner is of the opinion that the use of the holding provision is appropriate and further explained that once all the requirements of the hold are achieved, the hold will be removed, and the Applicant will then proceed with the condominium and site plan applications of the development.

[26] Mr. Eby communicated to the Tribunal that it would have been best if the application (ZBA), condominium and site plan applications were submitted at the same time to fully understand the final development. He went on to further clarify his opinion that the ZBA should not be approved based on hypothetical approvals with holding provisions.

[27] The Tribunal concurs with the Applicant that the Appeal before the Tribunal is not an FSR directly but rather the ZBA. The Tribunal finds that the inclusion of the holding provision in the ZBA will ensure that appropriate and adequate servicing of the site will be achieved prior to any development. Furthermore, the Tribunal finds that the two FSRs are enlightening as to a potential design of the proposed development, although they do not provide a concrete solution. As such, the Tribunal relies on the Holding Provisions to confirm that an updated FSR is completed to the satisfaction of the Town.



**WILL THE PROPOSED DEVELOPMENT NEGATIVELY IMPACT THE NATURAL ENVIRONMENT AND WILDLIFE ON THE PROPERTY AND SURROUNDING AREA?**

[28] An Environmental Impact Study (“EIS”) was not completed in preparation for the hearing. As such, the Tribunal relies on the expert opinion evidence, both written and oral of Ms. McDonald and Mr. Glasbergen to establish if there could be any negative impacts to the natural environment and/or wildlife.

[29] Ms. McDonald was retained by the Applicant to provide a preliminary review of the application and pre-consultation form and provide her opinion as to whether environmental studies may be required. She notes that the pre-consultation form for the ZBA did not require an EIS to be completed. However, Ms. McDonald did conduct field studies to document natural features and wildlife on the Property.

[30] During Ms. McDonald’s field study she observed birds such as Chimney Swift, Red-headed Woodpecker, Bank Swallow, whom are threatened or endangered species protected under the *Endangered Species Act* (“ESA”), and Eastern Wood-pewee, Barn Swallow, Wood Thrush which are listed as Special Concern and do not receive automatic habitat protections under the ESA. However, she notes that Barn Swallow and Wood Thrush birds are federally Threatened species.

[31] She further stated that the avian species habitat is located off the Property, primarily in the natural areas north of Erie Road.

[32] In addition to the avian species, Ms. McDonald completed field studies from June to September 2023 in search of the Fowler’s Toad along the shoreline and Property and indicated none were present.

[33] The area in contention between the witnesses relates to the SWM solution and whether the additional surface water flows/alterations to the roadside ditch could impact the natural lands and habitat on the north side of Erie Road.

[34] Ms. McDonald is of the opinion that an EIS will likely be triggered through the process of the holding provision removal and the future condominium and site plan applications. However, at this time the field research has been focused on the Property and relied on the first and second FSR's and Hydrogeology Study.

[35] Mr. Glasbergen is of the opinion that an EIS should have been triggered as part of the ZBA according to Policy 8.1.X of the Towns Official Plan ("Town OP") which states:

Where a site specific development/redevelopment proposal, requiring an Official Plan amendment, a Zoning By-law amendment, a plan of subdivision, a consent, minor variance, a site plan control agreement, or an approval under a site alteration by-law may impact an Environmental Protection Area or certain Environmental Conservation Areas identified on Schedule "A" or Fish Habitat identified on Schedule "C1" and as outlined in greater detail by the policies of this Plan, the proponent will be required to prepare an Environmental Impact Study (EIS). The EIS shall be submitted with the application.

[36] He went on by stating that the Applicant has not demonstrated that the development will not impact the beach which is identified as a significant Natural Area or the environmental protection lands to the north of Erie Road. Furthermore, he questions the impact of the Provincially Significant Wetland adjacent to the Erie roadside ditch once it has been altered to facilitate the SWM solution for the development. Included in his concerns is potential impact to tree roots, wetland water discharge and change to wildlife habitat during and after the SWM solution.

[37] Both Ms. McDonald and Mr. Glasbergen are of the opinion that additional permitting processes through the conservation authority will likely be initiated during the construction process of the SWM solution along Erie Road.

[38] Mr. DeMelo argues that an EIS was not completed as it was not a requirement of the Town. He maintains the position that an EIS may be prompted due to the holding provision removal, condominium or site plan application stage. Again, Mr. DeMelo similarly reiterates that the ZBA is before the Tribunal and not an EIS.

[39] It became abundantly clear to the Tribunal that in the absence of an EIS and the next steps of the redevelopment of the Property, the potential impact(s) to the natural areas and habitat are unclear and merely based on FSRs that will be updated in advance of the removal of the holding provision. The Tribunal recognizes the Town's comments found at Page 385 of Exhibit 1, Planning and Development Services Report, that the EIS would be completed during the draft plan of condominium stage.

**WILL THE INTEGRATION OF THE PROPOSED CONCEPT PLAN CONFORM TO THE LOCAL LAND USE PLANNING POLICIES?**

[40] Following the testimonies of the three land use planning witnesses, there was eventually alignment in their opinions on several aspects of the proposed development in relation to the planning framework.

[41] The Tribunal accepts the consensus of the witness' final opinion evidence that the ZBA has regard for matters of provincial interest as defined in s. 2 of the *Planning Act* ("Act"), is consistent with the Provincial Policy Statement ("PPS") conforms to the Growth Plan for the Greater Golden Horseshoe ("Growth Plan") and Region of Niagara Official Plan ("ROP").

[42] Consensus was not found by the witnesses' interpretation of some of the Town OP Policies and the use of the Crystal Beach Secondary Plan ("CBSP") in evaluating the ZBA.

[43] The CBSP is the most up-to-date document depicting the vision of the Crystal Beach community. However, the *Clergy Principle* is present due to the timing of the ZBA being deemed complete and the approval/appeals of the CBSP. The *Clergy Principle* is a discretionary principle applied by the Tribunal to address the inherent unfairness to an Applicant having to deal with a moving target while their development proposal goes through a lengthy approval process. Municipal planning instruments may be subject to change during that time.

[44] To provide context to the timing of the ZBA and the CBSP, the Tribunal gathered the following timeline:

1. February 20, 2018, the Town initiated the CBSP process.
2. August 2022, the Applicant engaged in the CBSP public process.
3. November 22, 2021, Town Council adopted the CBSP By-law (and implementing zoning by-law).
4. December 24, 2021, the Applicant submitted the pre-consultation materials for the ZBA.
5. January 10, 2022, the Applicant appealed the CBSP.
6. December 22, 2022, the ZBA was deemed complete.
7. March 20, 2023, the Town refused the ZBA.
8. Prior to September 5, 2023, the Applicant withdrew their appeal of the CBSP.

[45] Given the timeline of the ZBA and the CBSP above, the Applicant was fully aware of the CBSP.

[46] Contained in the CBSP are two policies that speak directly to the Waterfront Residential area:

- a. Policy 4.22.6 I:

The waterfront properties along Lake Erie and their related designation and zoning have not been identified for policy change in this Plan. They are however identified for an administrative name change to better reflect their unique presence in the Secondary Plan, from “Urban Residential” to “Waterfront Residential”. The focus of residential growth identified in this Plan generally lay north of Erie Road and provides opportunity for the appropriate level of targeted intensification, unit mix and population growth to meet with minimum Secondary Plan objectives.

b. Policy 4.22.7:

Lands designated as Waterfront Residential designation are shown on Schedule CB-2. The Crystal Beach waterfront is almost exclusively zoned in a waterfront related residential zone. This occurred in June 2013 following public process in consultation with, and support of, waterfront property owners and was effectively an administrative change. No new policies are being introduced for this designation. With the same intent, the properties are being reflected in a designation name change only that aligns and reflects their waterfront location and remain subject to the same policies (4.7.4 I) as they have been since the Official Plan was approved.

[47] Ms. Tanner, Mr. Herlovitch, and Mr. Eby agree that the waterfront properties remain subject to the same policies of 4.7.4 I of the Town OP and furthermore all acknowledge the 2013 zoning change that is used exclusively for the area.

[48] From there, the Witnesses directed their attention to Policy 4.7.4 I of the Town OP which states:

Lands designated as Urban Residential identified on Schedule "A" are intended for a variety of housing forms such as single detached dwellings, duplexes, semi- detached dwellings, townhouses, multiple unit dwellings, apartments, accessory apartments, rooming houses, boarding and lodging houses, group homes, housing for the elderly and similar forms of housing. Other uses that make up a neighbourhood including schools, churches, parks, day nurseries, public utilities, home occupations, accessory buildings, cemeteries and neighbourhood commercial uses are also permitted.

[49] All three witnesses agree the lands are within the urban residential area of Schedule A of the Town OP and do not dispute the variety of housing choice that is permitted in the urban residential designation.

[50] In the absence of policies in the Town OP for consideration of low-density infill development on (partially) developed lands, the Land Use Planning Witnesses turned to Policy 4.7.1.II of the Town OP and specifically policy "A" which is the main area of contention between the witnesses which states:

In considering medium density and high density residential uses, redevelopment and infill residential intensification on vacant land, regard shall be given to the following:

a) The height, bulk and arrangement of buildings and structures to achieve a harmonious design, compatible integration with the surrounding area and not negatively impact on lower density residential uses;

[51] Ms. Tanner opined that the proposed development provides a harmonious design and compatible integration as the Lake House and shore wall at the beach is retained, continues to utilize the curved laneway which visually "screens what is going on behind" the two proposed units fronting onto Erie Road, height of the proposed eight new units is lower in height than the majority of existing homes and are on a smaller building footprint. She elaborated that compatible integration is achieved by the elements of landscaping, architectural design and do not negatively impact the

community. She explained that the placement of the two dwellings fronting onto Erie Street was intentionally done to provide “eyes on the street” and the internal dwelling placement minimize overlook and generally align with the RM1 zone provisions. Ms. Tanner adds that Town OP Policy 5.5.2.I, states that new residential should be sensitively designed to compliment the existing character of the area, but are not required to replicate the existing area.

[52] Mr. Herlovitch and Mr. Eby are similarly of the opinion that the ZBA and proposed development does not support Town OP policy 4.7.4.1.II a.

[53] Mr. Herlovitch communicated to the Tribunal that the majority of properties within the waterfront area of Erie Road are owned by those that reside outside of the Fort Erie area, indicating most dwelling units are seasonal cottages or secondary holiday homes to the owners. Additionally, he provided context regarding the development of the waterfront area. The most recent dwellings that were constructed in the area was in 2001 and 2009, and further stated that the majority of dwellings in the area predate 1962, which Mr. Herlovitch implies the lotting fabric of the area was historically created, leading to the hodgepodge neighbourhood it is now.

[54] Mr. Eby concurs that limited development has occurred in the area over the past half century, and the parcels created by severance have been done so in the hodgepodge pattern as Mr. Herlovitch had stated. He went on to summarize that the proposed development is an urban form of development being placed in what he characterizes of cottage country and 1.5 kilometers away from commonly identified urban residential and commercial area of Crystal Beach.

[55] Both Mr. Eby and Mr. Herlovitch reflected on the June 2013 zone name change of the area to Waterfront Residential and the confirmation of the CBSP administration name change of the land use designation to Waterfront Residential as a means of

reinforcing that the intent of the Town is to maintain the character of the area, being cottage country in an urban settlement area.

[56] To that extent, the visual exhibits demonstrated to the Tribunal the sizably elongated lotting pattern extending from Erie Road to Lake Erie, with several smaller, yet large parcels being carved from the road and mid sections of some of the lots. The coast of Lake Erie is lined with stately homes as well as single detached home sprinkled across the front yards or commonly referred to as the backyards if you're a waterfront resident and on the severed lots closer to Erie Road.

[57] In addition to the aforementioned policies, the CBSP provides direction as to where infilling and redevelopment are envisioned to occur and as shown on Schedule CB-1.

[58] Interestingly enough, the Town OP does not provide policy regulations in respect to density maximums for low density developments. However, the CBSP states that low density shall be reserved for single detached, semi-detached and duplex dwellings and that low density-built form through infilling can generally be expected to reflect scale and massing of the surrounding residential dwellings.

[59] Ms. Tanner opined that the ZBA and proposed development achieves a higher density than what currently exists but is within a low-density residential range. She explained that the proposed development is a gross density of 12 units per ha or a net density of 16 units per ha which is lower than the allowable density of the Waterfront Residential zone.

[60] Mr. Eby communicated that the Waterfront Residential Zone does allow for a minimum lot size of 600 square meters and within each lot only one single detached dwelling with a maximum coverage of 40 percent is permitted. He did not dispute the allowable density; however, he is of the opinion that the creation of such a lot would be



achieved through a severance application and would likely be subject to a minor variance(s) application and such an application would need to meet the intent of the Town OP, namely the character.

[61] Mr. DeMelo submits that the *Clergy Principle* is present in regard to the CBSP, and the Town has not provided policies for the waterfront area to restrict development as they have done so in another area of the Town, which is found in Town OP Policy 4.7.4.1VI, and Exhibit 1, Page 1160.

[62] Mr. Halinski and Mr. Duxbury submit that the creation of the Waterfront Residential Zone and implementation of the Waterfront Residential designation in the CBSP suggest that the Town's intention is to maintain the current character layout in the Zoning Provisions of the Waterfront Zoning.

[63] As part of the Issues List of the proceedings, the question of the possible effects of additional residential units was present. As this is an as of right permission added to the Act to all urban policy areas and the Town has not implemented an interim control By-law in this regard, the Tribunal does not consider this matter to affect the proposed development.

#### **SUMMARY OF ANALYSIS, FINDINGS AND CONCLUSION**

[64] The Tribunal has carefully considered the materials before it as well as the submissions of the Parties and Participants and finds that the ZBA does not conform to the Town OP and does not give appropriate regard for the intent of the creation of the Waterfront Residential Zone or the CBSP vision.

[65] The Tribunal notes that the CBSP was initiated almost five years prior to the ZBA being deemed complete, although it was not in full force and effect. The CBSP provides the Tribunal with the most up-to-date direction for the Crystal Beach community and

instills the ambiguous vision of the waterfront zoned lands. The Applicant engaged in the CBSP process prior to and after the adoption. The Tribunal concludes that in evaluating the ZBA, the application shall have regard for the CBSP.

[66] As detailed above, the Tribunal finds the holding provision will adequately resolve the ponding water on the Property once the updated FSR is completed. From there, the Tribunal finds that an EIS will be initiated due to the updated FSR or the next steps of the proposed development applications (condominium or site plan applications). Furthermore, the Tribunal acknowledges the opinions of Ms. McDonald and Mr. Glasbergen providing that other permits may be required to be obtained in advance of the SWM solution due to the proximity to the PSW and natural areas north of Erie Road.

[67] The Tribunal accepts the final planning opinions of Ms. Tanner, Mr. Herlovitch and Mr. Eby that the ZBA has regard for s. 2 of the Act, is consistent with the PPS, conforms to the Growth Plan, and the ROP.

[68] The Tribunal finds the ZBA to facilitate the proposed development is not characteristic of the area, does not compliment the existing area and ultimately will not harmoniously integrate into the waterfront community that was identified in 2013 through the Zoning change and reinforced during the CBSP development. More specifically, the Tribunal has insufficient evidence in regards to the change of elevation on the Property due to the future SWM solution, which could result in additional uncharacteristic changes to the area.

[69] The Tribunal concurs with Mr. Eby that the proposed form of development is not reflective, does not compliment, and ultimately does not conform to the Town OP or the CBSP which is the most up-to-date document depicting the vision of the waterfront lands and provides directions as to where infilling is to be considered in Crystal Beach. Moreover, the Council of the Town refusal of the application clearly speaks for itself that this type of urban form of development was not envisioned for the waterfront area. The

compressed building arrangement is uncharacteristic of the surrounding area which results in an incompatible integration, does not attain a harmonious design, provides negative impacts on the established hodgepodge cottage country and ultimately gives no regard to Town OP policy 4.7.4.1.II a.

[70] In summary, the Tribunal finds the ZBA does not conform to the Town OP and therefore does not constitute good planning.

## **ORDER**

[71] **THE TRIBUNAL ORDERS** the Appeal is dismissed, and the requested amendment to By-law No.129-90 of the Town of Fort Erie is refused.

*"Kurtis Smith"*

KURTIS SMITH  
MEMBER

### **Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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