Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: February 26, 2025 **CASE NO(S).:** OLT-23-000864

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

Appellant:	The Corporation of the City of Sarnia
Applicant:	2858946 Ontario Inc.
Subject:	Zoning By-law Amendment
Description:	To permit a residential townhouse development on the lands known as the Marina Lands
Reference Number:	Z-01-023
Property Address:	Exmouth Street Marina Lands
Municipality/UT:	Point Edward/Lambton
OLT Case No.:	OLT-23-000864
OLT Lead Case No.:	OLT-23-000864
OLT Case Name:	Sarnia (City) v. Point Edward (Village)

Heard: February 24, 2025 by Video Hearing

APPEARANCES:

Parties	**Counsel**
The Corporation of the City of Sarnia	Bruce Engell
2858946 Ontario Inc.	Analee Baroudi
Village of Point Edward	Paula Lombardi

MEMORANDUM OF ORAL DECISION DELIVERED BY ERIC S. CROWE ON FEBRUARY 24, 2025 AND ORDER OF THE TRIBUNAL

Link to Order

INTRODUCTION

[1] This was a Settlement Hearing with respect to an appeal brought by the City of Sarnia ("City") pursuant to Section 34(19) of the *Planning Act* ("Act") for a Zoning By-law Amendment ("ZBA"), for the property municipally addressed as Exmouth Street Marina Lands described as Part 14-19 The Military Reserve on Plan 25R-10562 ("Subject Lands") located in the Village of Point Edward ("Village").

[2] The purpose of the original application was to permit a residential townhouse development consisting of 156 units. A follow up submission of only a Revised ZBA for a residential development of 184 townhouse units was submitted on April 14, 2023.

[3] The Subject Lands are designated "Urban Centre" in the County of Lambton Official Plan ("County of Lambton OP"); are designated "Mixed Use" in the Village of Point Edward Official Plan ("Village of Point Edward OP"); and are currently zoned "Environmental Protection (EP1)" and "*Residential Marina (RMAR1.1(h), RMAR1.2(h), RMAR1.3(h))*" in the Village Zoning By-law.

PROPOSED SETTLEMENT

[4] As a result of the Tribunal-led mediation, 2858946 Ontario Inc., the Village, and the City (collectively, the "Parties") have agreed to a comprehensive resolution of the appeal through a Minutes of Settlement dated December 19, 2024, and wish to reflect their agreement herein, before the Tribunal for approval.

[5] The Parties request that the Tribunal allow the appeal and approve the ZBA based on a modified proposal for a phased development with holding provisions, addressing scale thresholds of development. The holding provision is intended to permit a Phase 1 of development, which consists of 350 residential units in a form permitted by the revised ZBA (i.e. multiple dwelling, and townhouses).

WITNESS

[6] Evidence in support of the proposed application was provided by Mathew Campbell, a Land Use Planner. Mr. Campbell was qualified to provide expert land use planning opinion evidence.

[7] The Tribunal marked the following documents as an Exhibit:

Exhibit 1: Affidavit of Mathew Campbell dated February 7, 2025.

EVIDENCE

[8] Mr. Campbell provided a Summary Expert Opinion, and advised that through mediation, all parties agreed that the height, density and uses would remain in the amendment; however, the development permitted by the original ZBA was modified so that a phased development could be implemented. Holding provisions, addressing scale thresholds of development, were deemed to be the best option to implement a phased development.

[9] The (h1) holding provision is worded as follows:

> (a) Where the Residential Marina 1.6 (RMAR1.6) Zone is shown on Schedule A to the Zoning By-law with the suffix (h1), no building or structure or use shall be permitted until such time as the suffix (h1) is removed by By-law. The maximum number of units permitted with the removal of the (h1) holding provision shall be 350. The removal of the (h1) symbol shall only occur when the following conditions are fulfilled:
>
> (i) an agreement has been entered into with the Corporation of the Village of Point Edward for the design and construction of the servicing works confirming that that the sanitary and water servicing for the development only utilizes the Village of Point Edward

infrastructure and that the development shall occur on municipal infrastructure which servicing shall be at the sole cost and expense of the developer unless otherwise agreed upon by the Village.

(ii) demonstrate the adequate provision of sanitary, sewer and water capacity in the Village of Point Edward for the proposed development.

(iii) to ensure the orderly development of lands including the adequate provision of emergency services, through an agreement to the satisfaction of the Village of Point Edward and the City of Sarnia to secure the construction, maintenance, access and repair of a second road access to the lands zoned RMAR 1.6 (the "Second Road Access"), which may consist of shoulder improvements along the North side of Exmouth Street, to be completed prior to any building occupancy. The maximum number of units permitted with the removal of this holding provision shall be 350.

(iv) the RMAR 1.6 lands are designated Class 4 by the Village of Point Edward, and the mitigation measures recommended by a qualified consultant are implemented by way of an agreement between the Village of Point Edward and the Owner, to the satisfaction of the Village of Point Edward in consultation with the City of Sarnia. This provision applies only to those sensitive land uses as defined in both the Provincial Planning Statement, 2024 and the Ministry of Environment, Conservation and Park D-6 Compatibility between Industrial Facilities Guidelines. Any peer review of the agreed upon noise consultant's report as required by the Village shall be paid for by the Owner.

[10] Mr. Campbell explained, the (h1) holding provision is intended to permit a "Phase 1" of development which consists of 350 residential units in a form permitted by the Revised ZBA (i.e. multiple dwelling, and townhouses).

[11] The (h2) holding provision is worded as follows:

(a) Where the Residential Marina 1.6 (RMAR1.6) Zone is shown on Schedule A to the Zoning By-law with the suffix (h2), no building or structure or use beyond 350 units shall be permitted until such time as the suffix (h2) is removed by By-law. The removal of the (h2) symbol shall only occur when the following conditions are fulfilled:

(i) The (h1) symbol has been removed;

(ii) an agreement has been entered into with the Corporation of the Village of Point Edward for the design and construction of the servicing works confirming that that the sanitary and water servicing for the development only utilizes the Village of Point Edward infrastructure and that the development shall occur on municipal infrastructure which servicing shall be at the sole cost and expense of the developer unless otherwise agreed upon by the Village;

(iii) demonstrate the adequate provision of sanitary, sewer and water capacity in the Village of Point Edward for the proposed development.

(iv) demonstrate the adequate provision of vehicular road infrastructure through a Traffic Impact Brief (TIB) that addresses access and road capacity requirements for

development beyond 350 residential units to the satisfaction of the Village of Point Edward and City of Sarnia. Any infrastructure improvements recommended in the TIB are to be implemented by an agreement between the City of Sarnia, the Village of Point Edward, and the Owner regarding the timing and costs of improvements.

(v) the mitigation measures recommended by a qualified consultant are implemented by an agreement between the Village of Point Edward and the Owner, to the satisfaction of the Village of Point Edward, in consultation with the City of Sarnia. This provision applies only to those sensitive land uses as defined in both the Provincial Planning Statement, 2024 and the Ministry of Environment, Conservation and Park D-6 Compatibility between Industrial Facilities Guidelines. Any peer review of the agreed upon noise consultant's report as required by the Village shall be paid for by the Owner.

[12] According to Mr. Campbell, the (h2) holding provision is intended to permit a "Phase 2" or subsequent phases of development based on residential units greater than 350 units, up to 111 units per hectare (1,162 units).

Planning Act

[13] In Mr. Campbell's opinion, the revised ZBA has appropriate regard for the matters set out in Section 2 of the Act. The Revised ZBA incorporates an Open Space zone, which protects the identifies species at risk on the Subject Lands and their natural area and habitat function (Policy 2(a)).

[14] In addition, the development permitted by the Revised ZBA will contribute to the orderly development of a healthy and safe community by providing a range of built form that is to be phased; contributes to a wider range of housing opportunities available within the Village; and has consideration for public spaces (Policies 2(h), 2(j), 2(r)). The development is located at a location appropriate for infill growth in the community (Policy 2(p)).

Provincial Planning Statement ("PPS 2024")

[15] Mr. Campbell advised, the Subject Lands abut an employment use to the south, on the other side of Exmouth Street (Cargill). Approval of the Revised ZBA does not add any additional uses from what is already permitted on the Subject Lands. Through the use of

holding provisions, the Revised ZBA also encourages compatibility of employment and residential land uses through a Class 4 designation and noise mitigation measures (2.8.1).

[16] According to Mr. Campbell, a Traffic Impact Assessment was prepared by Paradigm Transportation Solutions, and through the settlement between 2858946 Ontario Inc, City and Village, an emergency vehicle lay-by is to be provided along the north side of Exmouth Street from the vehicular vehicle entrance to the development permitted by the Revised ZBA, and Venetian Boulevard within the City of Sarnia right-of-way. This would protect the movement of major goods and the Exmouth Street oversized load corridor with the ability to divert traffic in the event of an oversized load movement (3.3.2).

[17] Mr. Campbell testified, the County of Lambton OP states that new development proposed on adjacent lands to existing corridors (Exmouth Street) should be compatible with, and supportive of, the long-term purposes of the corridor, which should be designed to minimize and mitigate negative impacts on, and adverse effects from the corridor and transportation facilities (3.3.3, 3.5).

[18] Mr. Campbell contends, the Revised ZBA promotes a phased development that would implement an emergency vehicle layby for traffic diversion and noise mitigations, which support the long-term use of Exmouth Street as an oversized load corridor. The Subject Lands are within the vicinity of a marine facility. The Revised ZBA protects the long-term operation and economic role of the Sarnia Harbour by providing for holding provisions, which are used to generate a form of development with high regard for noise mitigation and ensuring both uses can function together. An appropriate buffer is also provided to ensure separation of the existing and future uses (3.4.1).

[19] In Mr. Campbell’s opinion, the Revised ZBA is consistent with the PPS 2024.

County of Lambton OP and The Village of Point Edward OP

[20] Mr. Campbell advised, the “Urban Centre” designation in the County of Lambton OP and the “Mixed Use” designation of the Village of Point Edward OP on the Subject Lands permit the form of residential development permitted by the Revised ZBA.

[21] Mr. Campbell contends, the “Urban Centre” designation in the Lambton County OP promotes compact built-forms and site layouts that avoid hazardous lands and facilitate active transportation (County OP Section 2.7.1). The development permitted by the Revised ZBA is a form of residential infill, which is suitable for the long-term provision of services with no negative impacts and will be developed on full municipal services (County OP Section 3.2.2).

[22] The “Mixed Use” designation in the Village of Point Edward OP permits medium density residential uses in the form of townhouses, stacked townhouses and apartment buildings, along with several other commercial and institutional uses. Mr. Campbell asserts the Revised ZBA permits a form of infill which makes efficient use of municipal services (Village OP Section 5.2.3).

[23] In Mr. Campbell’s opinion, the proposed settlement has regard for the matters of provincial interest under Section 2 of the Act, is consistent with the PPS 2020 and PPS 2024, and is in conformity with the County of Lambton OP and Village of Point Edward OP. Mr. Campbell advised, the proposed settlement represents good planning and is in the public interest.

[24] Mr. Campbell noted that if the Revised ZBA is approved, any future development is still subject to Site Plan Approval and/or Draft Plan of Condominium applications to refine the details of the development with the Village.

Disposition

[25] In the absence of any planning evidence to the contrary, the Tribunal accepts the land use planning evidence and expert opinion provided by Mr. Campbell in the form of an

Affidavit sworn on February 7, 2025, and oral evidence at this Hearing. In addition, having reviewed the Minutes of Settlement executed by all the Parties, and having heard submissions of Counsel for all Parties relating to the approval of a ZBA, the Tribunal finds the proposed development is consistent with the PPS, has been designed and conforms with the policies of the County and Village OP, which represents good planning and is in the public interest.

[26] The Tribunal acknowledges the cooperation between the Parties in having reached a Settlement.

ORDER

[27] **THE TRIBUNAL ORDERS** the appeal is allowed in part, and the Village of Point Edward Comprehensive Zoning By-law 25 of 2012 is hereby amended in accordance with the Zoning By-law Amendment found at **Attachment 1** to this Order.

[28] **AND THE TRIBUNAL FURTHER ORDERS** that this concludes the appeal of the City of Sarnia.

"*Eric S. Crowe*"

ERIC S. CROWE
MEMBER

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1

APPENDIX 1

Zoning By-law Amendment

CORPORATION OF THE
VILLAGE OF POINT EDWARD
BY-LAW NO. XX OF 2024

Being a Zoning By-Law Amendment for Land Legally Described as POINT EDWARD PT THE MILITARY; RESERVE RP 25R10562 PARTS 10;11 14 TO 17 pursuant to Section 34 of the Planning Act, R.S.O. 1990, c. P.13

WHEREAS Council deems it desirable to amend the zoning of the land legally described as POINT EDWARD PT THE MILITARY; RESERVE RP 25R10562 PARTS 10;11 14 TO 17;

AND WHEREAS the amendment conforms to the Village of Point Edward Official Plan;

NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE VILLAGE OF POINT EDWARD ENACTS AS FOLLOWS:

1. Schedule "A" is hereby declared to form part of this By-law.

Schedule "A" to By-law 25 of 2012 is hereby amended by changing the zone symbol which applies to that land indicated on Schedule "A" to this By-law from the Residential Marina (RMAR 1.1(h), 1.2(h), 1.3(h)) zones and Environmental Protection (EP1) zone to a new Residential Marina (RMAR 1.6(h1, h2)) zone and Open Space (OS1) zone.

2. Section 3.8 of the Point Edward Zoning By-Law is hereby amended to add the following Holding Zone Provisions

   v) RMAR 1.6 (h1, h2)

   1) Where the Residential Marina 1.6 (RMAR1.6) Zone is shown on Schedule A to the Zoning By-law with the suffix (h1), no building or structure or use shall be permitted until such time as the suffix (h1) is removed by By-law. The maximum number of units permitted with the removal of the (h1) holding provision shall be 350. The removal of the (h1) symbol shall only occur when the following conditions are fulfilled:

      a) an agreement has been entered into with the Corporation of the Village of Point Edward for the design and construction of the servicing works confirming that that the sanitary and water servicing for the development only utilizes the Village of Point Edward infrastructure and that the development shall occur on municipal infrastructure which servicing shall be at the sole cost and expense of the developer unless otherwise agreed upon by the Village.

      b) demonstrate the adequate provision of sanitary, sewer and water capacity in the Village of Point Edward for the proposed development.

      c) to ensure the orderly development of lands including the adequate provision of emergency services, through an agreement to the satisfaction of the Village of Point Edward and the City of Sarnia to secure the construction, maintenance, access and

repair of a second road access to the lands zoned RMAR 1.6 (the "**Second Road Access**"), which may consist of shoulder improvements along the North side of Exmouth Street, to be completed prior to any building occupancy. The maximum number of units permitted with the removal of this holding provision shall be 350.

d) the RMAR 1.6 lands are designated Class 4 by the Village of Point Edward, and the mitigation measures recommended by a qualified consultant are implemented by way of an agreement between the Village of Point Edward and the Owner, to the satisfaction of the Village of Point Edward in consultation with the City of Sarnia. This provision applies only to those sensitive land uses as defined in both the *Provincial Planning Statement, 2024* and the Ministry of Environment, Conservation and Park D-6 Compatibility between Industrial Facilities Guidelines. Any peer review of the agreed upon noise consultant's report as required by the Village shall be paid for by the Owner.

2) Where the Residential Marina 1.6 (RMAR1.6) Zone is shown on Schedule A to the Zoning By-law with the suffix (h2), no building or structure or use beyond 350 units shall be permitted until such time as the suffix (h2) is removed by By-law. The removal of the (h2) symbol shall only occur when the following conditions are fulfilled:

a) The (h1) symbol has been removed;

b) an agreement has been entered into with the Corporation of the Village of Point Edward for the design and construction of the servicing works confirming that that the sanitary and water servicing for the development only utilizes the Village of Point Edward infrastructure and that the development shall occur on municipal infrastructure which servicing shall be at the sole cost and expense of the developer unless otherwise agreed upon by the Village.

c) demonstrate the adequate provision of sanitary, sewer and water capacity in the Village of Point Edward for the proposed development.

d) demonstrate the adequate provision of vehicular road infrastructure through a Traffic Impact Brief (TIB) that addresses access and road capacity requirements for development beyond 350 residential units to the satisfaction of the Village of Point Edward and City of Sarnia. Any infrastructure improvements recommended in the TIB are to be implemented by an agreement between the City of Sarnia, the Village of Point Edward, and the Owner regarding the timing and costs of improvements.

e) the mitigation measures recommended by a qualified consultant are implemented by an agreement between the Village of Point Edward and the Owner, to the satisfaction of the Village of Point Edward, in consultation with the City of Sarnia. This provision applies only to those sensitive land uses as defined in both the *Provincial Planning Statement, 2024* and the Ministry of Environment, Conservation and Park D-6 Compatibility between Industrial Facilities Guidelines. Any peer review of the agreed upon noise consultant's report as required by the Village shall be paid for by the Owner

Section 7 of the Point Edward Comprehensive Zoning By-Law is hereby amended by inserting the following subsection after subsection 7.5:

"7.6 RESIDENTIAL MARINA (RMAR 1.6(h)) ZONE

7.6.1 Permitted Uses

a) Multiple Dwelling
Townhouse
Stacked Townhouse

b) Churches
Private Community Centre
Neighbourhood Stores
Personal Service Shops
Retail Stores
Active Recreation
Neighbourhood Store
Office
Personal Service Shops
Restaurant
Open Air Market
Library

c) Buildings structures and Uses Accessory to Permitted Uses

7.6.2 Zone Provisions

a)	Minimum Lot Area:	No Minimum
b)	Minimum Lot Frontage:	No Minimum
c)	Minimum Setback from Shoreline	0m
d)	Minimum Setback from Exmouth Street line (excluding buildings and structures used for parking)	16.7m
e)	Maximum Density	111 Units Per Hectare
f)	Maximum Lot Coverage (excluding buildings and structures used for parking)	40%
g)	Minimum Landscaped Open Space	30%

7.6.3 Building Regulations

a)	Maximum Dwelling Unit Area:	In accordance with the provisions of Section 6.1.3 of the By-law
b)	Maximum Building Height:	8 storeys
c)	Maximum Gross Leasable Floor Area:	
	Private Community Centre	930m^2
	Neighborhood Stores, Personal Service Shops and Retail Stores	465m^2
	Offices	4,925m^2
	Open Air Market	1,858m^2
	Restaurants	372m^2

d) Minimum Level of Building Opening:	178.3m (Canadian Geodetic Datum) for a minimum horizontal distance of 2m around the external walls

This By-Law shall come into force and effect pursuant to Section 34 of the Planning Act, R.S.O. 1990, c. P.13.

Village of Point Edward
Zoning By-law
Schedule "A"

