

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** January 31, 2020

**CASE NO(S):** PL160874

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Appellant:	Janet Taylor
Subject:	By-law No. 16-69
Municipality:	Town of Mississippi Mills
OMB Case No.:	PL160874
OMB File No.:	PL160874
OMB Case Name:	Taylor v. Mississippi Mills (Town)

**Heard:** February 12-16 and 20-23, 2018 in Almonte, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

Janet Taylor (“Appellant”)

Tony Fleming and Rob Gencarelli

8294362 Canada Inc (“Applicant”)

Denis Cadieux

Town of Mississippi Mills  
 (“Municipality”)

James McIninch

**DECISION DELIVERED BY DAVID L. LANTHIER AND ORDER OF THE TRIBUNAL**

## **INTRODUCTION**

[1] On June 28, 2016, the Municipality passed Zoning By-law No. 16-69 (the “ZBLA”) which amended its comprehensive zoning by-law to permit the Applicant’s proposed expansion and improvement of a seasonal campground on its lakeshore property located at 3200 Pakenham Concession 3 (the “Site”), adjacent to White Lake. The ZBLA was preceded by a site-specific official plan amendment changing the designation of the Site from Aggregate Resource Pit to Rural, which was not appealed. For the purposes of this Decision, the proposed expansion and improvement of the seasonal campground will be referred to as the “Campground” or the “Redevelopment”.

[2] The Appellant appeals the ZBLA upon a number of grounds, with the primary objection relating to lake capacity and the negative impacts that the Redevelopment would have on the aquatic environment and the water quality of White Lake. The Appellant’s grounds for appeal includes matters relating to the White Lake Provincially Significant Wetland (“PSW”) Complex, wildlife habitat and Species at Risk, and the ineffectual manner that the ZBLA addresses, or fails to deal with, such things as the number of lots, required performance standards, and set-back requirements.

## **HEARING**

[3] The procedural aspects of this hearing were resolved through the Board’s Pre-Hearing Conferences that gave rise to a Procedural Order.

[4] In addition to the Parties of Record, two Participants were recognized by the Board to provide evidence during the hearing and some questions were put to the Applicant by the Tribunal at the conclusion of the hearing.

[5] The Tribunal heard evidence from the expert witnesses produced by the three parties, as well as the two Participants recognized during the pre-hearing processes.

[6] During the eight days of testimony, in addition to the Participants and the Applicant, the Tribunal heard from the following witnesses qualified as experts in their respective specialty fields of study:

Appellant:

- (a) Bev Clark – lake capacity analysis and assessment;
- (b) Jason Sharpe – stormwater management and engineering;
- (c) Jeff King – biology and environmental assessment; and
- (d) Mark Snider – land use planning.

Applicant:

- (a) Daniel Brunton – environmental assessment and species at risk;
- (b) Phil Anderson – aquatic biology;
- (c) David Nguyen – stormwater management;
- (d) Brent Parsons – environmental assessment and species at risk; and
- (e) Kevin Mooder – land use planning.

Municipality:

- (a) Stephen Stirling – land use planning.

[7] The Parties provided a Joint Documents Book which was submitted into evidence as Exhibit 1 with tabulated organization of its contents. In this Decision, unless otherwise indicated, all references to a “Tab” number will be references to the identified Tabs in Exhibit 1.

[8] Having considered all the evidence and the submissions of the Parties, for the reasons and upon the findings set out in this Decision, the Tribunal has determined that the Redevelopment should be approved but with necessary changes. The Appeal is

accordingly allowed in part with the ZBLA, as it permits the Redevelopment, amended with the provisions, and upon the conditions, set out herein.

## **ISSUES**

[9] The issues, as set out in the Issues List appended to the Procedural Order, were predetermined and the evidence adduced during the hearing has served to identify the contentious issues.

[10] Generally, the Tribunal must determine whether the ZBLA as it was passed enabling the Redevelopment is consistent with the Provincial Policy Statement, 2014 (“PPS”), conforms to the applicable Provincial Growth Plan for the Greater Golden Horseshoe 2017 (“Growth Plan”) the Lanark County Sustainable Communities Official Plan (“County OP”) and the Town of Mississippi Mills Community Official Plan (“Community OP”) and generally represents good planning in the public interest.

[11] Within these planning issues there are a number of focused issues as raised by the Appellants. The first issue raised relates to water quality and lake capacity for White Lake and the impact of the Redevelopment on the health of White Lake. The density of the development, the proposed sewage treatment systems and stormwater management are matters to be considered.

[12] The second general issue relates to the impact of the Redevelopment on environmental matters and species at risk. This issue relates to a number of matters: the PSW adjacent to the Site; the interior woodland swamp located in the interior of the Site; and the existence of a significant wildlife habitat relating to a number of species including the Blanding’s Turtle and the Bogbean Buckmoth, which are species at risk.

[13] A determination of the issues has also given rise to the status of some existing trailers and/or structures located on the Site as legal non-complying buildings and

structures and the manner in which those trailers and structures should be treated and considered in determining the planning issues.

[14] All of these matters collectively focus, in part, on the appropriate setbacks from the highwater mark of White Lake, the PSW, the inland swamp, and more pointedly whether the proposed 15 metres (“m”) shoreline setback as provided for in the ZBLA is appropriate.

[15] As discussed below, the question of legal non-complying structures in the Campground is an underlying issue that has arisen.

## **THE SITE AND ITS GEOGRAPHIC CONTEXT**

[16] The Site is a large 13.6 hectare, irregularly shaped property located on the north side of White Lake in the Municipality. White Lake is a widely spread, segmented water body extending over a large area, and segregated into identifiable and named parts. The configuration of the Site and its shoreline is such that it presents as a peninsula with over 600 m of shoreline on the southerly and easterly sides of the land. The portion of the lake known as Hayes Bay extends along the eastern side of the Site and the shoreline to the south is part of what is referred to as “The Canal” leading to the western area of White Lake.

[17] The Site is known as the “White Lake Campground” as its use has continued for many years as a seasonal campground. There was also a small aggregate pit on the northern part of the Site which is no longer active.

[18] To the northwest of the Site are some private recreational cottage sites and Bayview Lodge, another seasonal recreational site and campground. To the northeast there is an expanse of undeveloped natural lands.

[19] There are a number of environmental features and characteristics which are relevant to the Site. The White Lake/Lowney Lake Wetland Complex includes that part of the waterbody that abuts the entire eastern shoreline area and then wraps around the southern point of the peninsula on the Site. This PSW also extends inland along the northeast boundary of the Site and there is an issue as to the precise boundaries of the wetland. In the interior of the site there is an internal wooded wetland which has been identified by the Appellant as a wildlife habitat deserving of designation.

[20] As the campground currently exists on the Site, there is an internal “ring” roadway looping around and extending along the shoreline area with approximately 36 existing lakefront sites with seasonal dwellings and structures located in that area, as well as a few additional internal sites/structures on the other side of the ring road. The sites are not surveyed. The status of the existing rental sites as “legal non-conforming sites” and the trailers or structures located therein as “legal non-complying buildings/trailers/structures” is subject to some lack of clarity and uncertainty as discussed below. A few sites have well access and there is a mix of holding tanks, privies or internal trailer systems serving as sewage disposal.

[21] The photographic record presented within the various segments of the exhibits provides a visual overview of the Site and in particular, the nature of development and condition of the shoreline area of the Site, as well as the various structures and trailers that are located therein. The construction and placements on the various Campground sites range from: small to larger framed-construction cabins, some more elaborate than others; travel trailers, most with some type of deck, additional habitable area, porch or gazebo etc. added on; full size mobile homes; Park Model Trailers; and a variety of out buildings. Many of these additions are within 30 m of the shoreline. Much of the shoreline area, being rented as campground sites, contains manicured/maintained lawns, docks, decks, and walkways. The majority of the shoreline, although containing some mature trees and vegetation is very clearly not in a natural vegetative state.

## POLICY CONTEXT

[22] The Tribunal has been provided with a thorough overview of the provincial and local planning policies and instruments brought into play with respect to this proposed Redevelopment.

[23] White Lake straddles two different Counties and four local municipalities. The Site is designated as Rural and Licensed Aggregate Extraction Operation in the County OP and Rural and Aggregate Resources-Pit under the Community OP. The PSW in proximity to the Site is recognized through designation in both OPs and also as Areas of Natural and Scientific Interest (“ANSI”) (designated in the Community OP in the Appendix A – “Natural Heritage and Constraints”).

[24] The Site is zoned Tourist Commercial (C6) and Mineral Aggregate Pit under the applicable Zoning By-law No. 11-83. The as-of-right uses include a tourist establishment that would allow high density development tourist cabin development.

[25] In addition to those specific policies addressed in the context of the analysis and findings that follow, the Tribunal is required to consider the specific policies relating to setbacks which include the following:

- (a) In the General Land Use Policies of the County OP, s. 5.4.4 provides:

The County of Lanark and its constituent municipalities have an obligation to consider the impact of development and land use on waterbodies throughout the County in order to ensure the long-term viability of this important natural and economic resource. Local Official Plan requirements which provide for a minimum 30 metre setback where development is proposed adjacent to a waterbody shall apply. Any proposed reduction to the minimum setback requirements shall be in accordance with the provisions of local Official Plans.

- (b) In the Community OP, the stated goals and objectives include the goal of enhancement of the quality of the environment, the long-term health of the

ecosystem and the objective of supporting development which is environmentally sustainable and “conserves the natural features and characteristics of the land, lakes and rivers”. Further, there is a stated objective to “Establish setbacks from the highwater mark of water resources which conserve the riparian zone in shoreline areas.”

- (c) The policies in s. 3.1.2.1.1 of the Community OP relating to Environmental and Natural Heritage Features and PSWs includes the following (which is similarly set out in the General Environment policies of the Community OP in s. 4.1.1.4.1.2. below):

3. Development within 120 m of provincially significant wetlands or 50 m of a locally significant wetlands may take place in accordance with the land use designation shown on land use Schedules to this Plan only when it has been demonstrated through an Environmental Impact Assessment that there shall be no negative effects on the natural features or ecological functions of these wetlands. This is not a setback requirement, but rather a requirement for a review of development proposals within the relevant adjacent lands. The review of development may be carried out by the Committee of Adjustment where the determination of “minor” would be assessed based on the effects of the development on the natural features or ecological function of the wetland.
4. Notwithstanding the above policy #3, development shall not be permitted within a 30 metre setback from the highwater mark associated with a water resource. Decreases to the 30 metre setback from the highwater mark shall only take place through an amendment to the Zoning By-law and shall require an environmental impact assessment. Decreases shall only be considered for existing lots of record when there is no other practical alternative for development of the land.

- (d) There are policies relating to a 30 m setback to fish habitats in the Community OP. Sections 2 and 3 of Policy 3.1.2.4 read as follows:

2. Development and site alteration shall be setback a minimum of 30 metres from fish habitat. Decreases to the 30 metre setback shall only take place where it has been demonstrated through an Environmental Impact Assessment that there shall be no net negative impact on the fish habitat. Near-shore or in-water development, such as docks, water access points and swimming

areas shall be carefully assessed through the appropriate review process. Decreases to the 30 metre setback from fish habitat shall only take place through an amendment to the Zoning By-law. Decreases shall only be considered when there is no other practical alternative for development of the land.

3. Development or site alteration within 30 m of fish habitat shall provide for a net environmental gain of the productive fishery capacity of the area.

(e) The Community OP provides additional general environment policies applicable to development which include those relating to surface water resources. Policy 4.1.1.4.1 includes the following:

1. Where no water resource mapping has been included in the Zoning Bylaw, all buildings and structures except for electric power transmission lines and other public utilities, marinas and marine facilities, shall be set back a minimum of 30 m from the highwater mark of an identified water resource. The 30 metre setback from the highwater mark of a water resources will also apply to sewage disposal systems. Where water resource mapping has been included in the Zoning By-law, all buildings and structures shall be located outside of the floodplain or 30 metres from the highwater mark of an identified water resource, whichever is greater.
2. Decreases to the 30 metre setback from the highwater mark of a water resources for development on existing lots of record shall only take place through an amendment to the Zoning By-law and will require an environmental impact assessment. Decreases to the 30 metre setback will only be considered when there is no other practical alternative for development of the land. Wherever possible, existing vegetation between buildings or structures and the high water mark should remain undisturbed. In some instances, the Town may require vegetative planting as part of the site plan control requirements for new development. The creation of new lots shall be required to accommodate the 30 metre setback from the highwater mark of a water resource.
3. Notwithstanding Section 2, expansions or enlargements of existing legal non-conforming uses located within the setback from the highwater mark of water resources may be reviewed through the Committee of Adjustment. An application to the Committee of Adjustment shall require an environmental impact assessment as supporting information. Further encroachment into the 30 metre setback, including lateral additions to existing structures, shall be discouraged and will only be considered when there is no other practical alternative for development of the land. Wherever possible, existing vegetation between buildings or structures and the water resource should remain

undisturbed. The Committee of Adjustment may require waterfront vegetative planting as part of the site plan control requirements for new development in an effort to obtain a net environmental gain. The cumulative impact the development will have on the area's water resource shall be assessed when reviewing such development proposals.

4. This Plan shall require the retention and if necessary, the establishment of a natural vegetative buffer on lands within 15 metres of a surface water resource, including rivers, streams, wetlands and lakes. Development subject to an approval process (official plan amendments, zoning by-law amendments, subdivisions, consents, minor variances, site plan control) shall be required to identify and maintain the natural vegetative buffer abutting the surface water resource. The use of native species in the vegetative buffer will be promoted. The Town may require vegetative planting as part of the requirements for new development. Notwithstanding the 15 metre natural vegetative buffer, a surface water resource access area of a maximum width of 9 metres may be permitted provided the natural shoreline is disturbed as little as possible. The balance of the waterfront outside of the access area shall be maintained in a natural state.

[26] The Community OP also includes rural policies that specifically relate to trailer campgrounds and includes the following:

#### 3.3.8.2.2 Tent and Trailer Campgrounds

Tent and trailer campgrounds include seasonally operated parks for tents and recreation vehicles, including park model trailers and such facilities as an accessory dwelling, marina and convenience store catering to the day-to-day needs of the visitors and non-permanent/seasonal residents.

New tent and trailer campgrounds shall only be permitted through an amendment to this Plan. In reviewing an application for a new tent and trailer campground, consideration shall be given to the proposal's ability to satisfy the following development criteria, in addition to other relevant sections of this Plan:

1. The minimum lot area for a tent and trailer campground shall be two hectares. The minimum campsite shall be 235 square metres with a minimum width of at least 15 metres at one point in the campsite. The density shall not generally exceed 30 campsites per hectare. The maximum number of sites for a Travel Trailer Park or Commercial Campground development shall generally not exceed 100. Provisions may be made for group camping sites.

2. Central water stations and toilet facilities satisfactory to the Town and the appropriate approval authority shall be provided by the owner.
3. Each campsite shall have adequate buffer planting at the rear and side of each site. No campsite shall be located within the floodplain.
4. Adequate buffer planting shall be provided between the Travel Trailer Park and Commercial Campground and any adjacent residential areas and such buffer planting or screening shall include the provision of grass strips, berms, trees, shrubs and screening, as required.
5. Adequate on-site parking shall be provided and the internal road system shall provide for safe movement of vehicular, pedestrian and emergency vehicle traffic.
6. Existing topographic and physical features of the site shall be retained in their natural state as far as possible. Existing trees shall be preserved, where possible. Vegetation and landscaping plans may be required to demonstrate incorporation of natural features and retention of existing vegetation.

[27] Zoning By-law No. 11-83 is the Municipality's comprehensive zoning by-law which implements the above policies.

### **THE APPLICATION, THE PROPOSED REDEVELOPMENT AND THE ZBLA**

[28] The Tribunal has been provided with the background of the Application process that gave rise to the ZBLA. The Applicant undertook completion of a number of reports and assessments to support the Application and the Redevelopment proposal underwent a number of changes and iterations before being presented to Council for approval through the ZBLA.

[29] The ZBLA passed by Council is attached as Attachment 1 to this Decision.

[30] In addition to the special exception rezoning in the ZBLA, the site-specific provisions alter the permitted size of campground lots, establish site-specific setbacks from the lake and from the PSW, and incorporate certain recommendations arising from the Compiled Environmental Impact Assessment that was completed.

[31] It is understood that a Site Plan Control Agreement will be required to address other aspects of the proposed Redevelopment. There is no appeal before the Tribunal with respect to such a site plan. The exact or maximum number of Campground lots/sites (“Sites”) that will be plotted in the Campground is not provided for in the ZBLA. The final iteration of the proposed concept plan has yet to be finally determined, but based on the most recent version of the Concept Plan presented (Exhibit 1, Tab 58), it appears that the total number of campground Sites on the Site would be increased to approximately 118 Sites serviced by a newly installed communal water and septic system. In addition to the Sites, the proposed Concept Plan proposes: the retention of the existing ring road with an additional internal road system for the new Sites; the preservation of the internal woodland swamp; a marina and dock; storage and parking areas; and a swimming pool. The Redevelopment, as presented in this hearing, proposes a 30 m setback for the PSW/ANSI land segment along the northeast boundary where the woodland and wetland are located. The proposed Concept Plan does not identify the shoreline setback but proposes that it be set at 15 m for the Site.

[32] In the course of the evidence there was, at first, some uncertainty as to the identification of the Sites as the jointly submitted materials in Exhibit 1 did not include a draft concept site plan that identified the shoreline Sites by number. Discussions of the evidence, and this Decision, were difficult without one. Exhibit 21 was introduced in the course of the hearing which includes two versions of the plans at Tabs 56 and 58 of Exhibit 1, but with added numbering. The second page of Exhibit 21 (“Tab 58”) is the numbered version that identifies 35 shoreline structures (with approximate location and sizing within the sites), a total of 36 numbered shoreline Sites inclusive of the proposed marina (No. 8), as well as the most recent draft plan for the new (and existing) interior Sites. This version also identifies the 30 m setback from the PSW/ANSI in the northeastern portion of the Site and the interior wooded swamp discussed in the evidence. For the purposes of this Decision, and the analysis of the evidence, all

references to the “Tab 58 Concept Plan” are deemed to refer to the version of the plan in Exhibit 21 at “Tab 58” which includes identification of the numbered shoreline Sites.

## **ANALYSIS OF THE EVIDENCE AND FINDINGS**

### **Overview of the Tribunal’s General Findings**

[33] Seasonal campgrounds similar to the one currently on the Applicant’s Site are found throughout Ontario’s vast inventory of recreational lands, having been established decades ago before the implementation of orderly provincial and municipal planning policies that now govern natural heritage resources, the Province’s waterways and inland lake resources, and infrastructure matters of sewage, water and stormwater. As they continue to exist, they provide a valuable and important recreational opportunity for many Ontario residents who cannot afford the cost of cottage ownership or prefer the enjoyment of seasonal recreational pastimes in Ontario’s lake/cottage country. However, as they are often dated in time as legal non-conforming uses, with legal non-complying structures, and without the benefit of control and stewardship, rural municipalities regularly face challenges in addressing the current and future condition of such lakeshore campgrounds and their often-encountered legal non-conforming uses and non-complying structures.

[34] These challenges involve a determination as to how to bring these older campgrounds into the realities of Ontario’s evolved planning landscape to best coexist with current planning policies. In this case, the Municipality and the Applicant advocate a practical approach that they believe is attuned to the realities of what is “on the ground” and therefore remedial and proactive such that the process improves the condition of what is there now. This is because the Redevelopment draws upon the Applicant’s financial interests in expanding the development and the economies of scale which will include the upgrading of environmentally friendly infrastructure. The Municipality, and the public interests, accordingly benefit, it is submitted, because

municipal and provincial governance and stewardship is imposed as the Campground now becomes subject to Site Plan Control and operational supervision.

[35] The Appellant on the other hand, with good intentions, advocates a cautionary and restrictive approach to these challenges that presses for firm adherence to planning and natural heritage policies that recognizes the “line in the sand” that must be drawn for the amount of phosphorous that may be loaded into White Lake by the Redevelopment, and imposes rigorous consideration of habitat and Species at Risk. The Appellant argues that the failings of the past for a campground such as this one should not excuse the Applicant from strict compliance with those policies now in place to prevent the types of planning and environmental transgressions that have created the stresses on lakes such as White Lake.

[36] After carefully considering the totality of the evidence, the Tribunal has approached the analysis of the evidence and the determination based upon the following findings and conclusions:

- (a) As it is required to do, the Tribunal has had regard for matters of Provincial Policy. As will be explained in the course of this Decision, the Tribunal has also, in accordance with s. 2.1 of the *Planning Act* (“Act”), had regard to the decision of Council, and in that respect, not just the decision as it passed the ZBLA, but more importantly the manner in which Council considered the information and documents before them, the planning challenges presented with respect to the Site and the long-established Campground, and the environmental benefits and planning advantages to accrue from the Redevelopment. As the stated purposes of the Act, in s. 1.1, recognize the decision-making authority and accountability of municipal councils in planning, the Tribunal has given regard to the decision of Council and, as its counsel submits, the concerted efforts to achieve an advantageous planning solution for the

Site which is intended to lead to long term improvements to the Lake and the environment, in the public interest.

- (b) The Tribunal accepts, as the Municipality has submitted, that the improvement of the *status quo* achieved through the Redevelopment of the campground operation has properly guided Council's decision and in and of itself, represents good planning. By finally establishing a site plan approved plot plan for the Sites, installing an approved Site sewage treatment system that will reduce phosphorus, implementing a stormwater management pan, and utilizing site management tools to better address environmental concerns, Council reasonably concluded that the ZBLA, with additional site plan approval mechanisms, would allow for a sustainable and economically beneficial development over what now exists.

That being said, in the Tribunal's view, although the proposed Redevelopment enabled by a zoning by-law amendment is consistent with the goals and objectives of Council and will indeed represent good planning, it should not be endorsed by the Tribunal without amendment. The ZBLA is in the Tribunal's view, upon the evidence, deficient in some respects and must be modified to achieve a good planning result. Pointedly the Municipality's reliance upon the "sign-off" by the Ministry of the Environment and Climate Change ("MOECC") confirmed in its correspondence of November 10, 2015 cannot be accepted as dismissive of the need to also ensure implementation of the conditionally necessary, policy-supported, methods of protecting and developing the shoreline of White Lake and its water and natural heritage attributes.

- (c) A number of the Appellant's concerns and objections relating to shoreline protection, development density, and environmentally protective setbacks

are supported by the evidence, valid, and in the Tribunal's view sufficient to warrant allowance of the appeal in part.

The deficiencies in the Redevelopment and planning are however, insufficient to support the Appellant's first request for refusal of the Redevelopment as proposed. The Tribunal finds that the Applicant's planning processes, supporting of its Application, have failed to fully address legitimate concerns raised by the Appellant but they can be precisely addressed in the ZBLA through amendment.

- (d) With respect to the Redevelopment, as the Tribunal has accepted the Municipality's submissions in that regard, it finds that the Applicant's proposed redevelopment of the Site represents good planning and should be approved.

That should not, however, occur without more stringent and appropriate checks and balances in place to safeguard the natural heritage and water policies of the PPS and the official plans and thereby achieve consistency and conformity. The Tribunal pointedly does not accept the Applicant's submission that the difficulties in ascertaining the non-complying status of certain structures owned by tenants and located within the 30 m setback should serve to prevent an objective approach to supporting that policy-supported setback. Neither does the Tribunal accept the Applicant's suggestion that it is the better party to monitor, educate and enforce the preservation of the required naturally vegetative setback. The self-interests of the Applicant in this case may not be compatible with the need for directed parameters for the Redevelopment to ensure good planning.

[37] The Tribunal will first address the evidence and issues relating to water quality and lake capacity. The environmental evidence and issues, including the issues

relating to setback and related planning evidence relative to those environmental issues will then be addressed. General consideration of the planning opinion evidence will be discussed

[38] The possibility of legal non-complying trailers, buildings and structures on the Site must also be addressed. For the purposes of submissions, the Panel requested additional submissions from the Parties in relation to the manner in which the presence of some legal non-complying trailers/structures should affect the findings and determinations of the Tribunal. This relates to the fact that all trailers and structures in the campground exist under some type of lease arrangement and are owned not by the owner/Applicant, but by leasing tenants, the particulars of which are unclear.

[39] Upon the analysis of this evidence and these issues, the Tribunal's summary of findings and resultant amendments to the ZBLA, and related findings that impact the eventual site plan processes are then provided.

### **Lake Capacity and Stormwater Management**

[40] The Appellant has emphasized that the primary focus of the appeal lies with the water quality of White Lake. The Appellant submits that the existence of algal blooms and data-supported high Phosphorous concentrations are indications that White Lake is already suffering from the effects of over development and is at capacity and that the Redevelopment's potential impact is therefore significant and should be refused as proposed. The Appellant's submissions are based primarily on the evidence of Mr. Clark, as well as Mr. Sharpe.

[41] The Applicant, supported by the Municipality, takes the position that there has been full and adequate assessment of the lake capacity of White Lake, and the impacts of the Redevelopment on water quality which has led to a final determinative approval from the Ministry of the Environment and Climate Change (Note – in 2018 the MOECC

became the Ministry of the Environment, Conservation and Parks. In this decision references to the Ministry will refer to the “MOECC” as it then was at the time of the hearing). The calculations and opinions of Mr. Clark and Mr. Sharpe are disputed and they assert that White Lake is not in such a state that development should be refused.

[42] The scientific processes of undertaking Lakeshore Capacity Assessment (referred to regularly as “Lake Capacity” or “Lakeshore Capacity” in abbreviated references) and the environmental and planning policies that have led to the MOECC’s guidelines aimed at protecting the water quality of inland lakes, are not straight-forward. To the contrary, the capacity assessments and modelling are complicated, intricate, science-based, and data-heavy. The guidelines and modelling exercises are fraught with challenges in securing the correct information to be input into the analysis and this makes the modelling exercise, in many respects, a subjective exercise with strong differences of opinions from the experts as to the data that is to be “plugged in”.

[43] In this hearing, the Tribunal has received and considered a substantial body of evidence from the two experts on Lake Capacity and water quality, Messrs. Clark and Parsons, as well as Messrs. Sharpe and Nguyen on the related subject of stormwater management. The Tribunal has also carefully considered the many source documents presented, including two of the primary guidelines on the subject, the 2010 Lakeshore Capacity Assessment Handbook, and the Lakeshore Capacity Model (the “LC Model”) Users Manual relied upon by the experts.

[44] In cases such as these, where the impact of a proposed development upon the water quality of a lake is at issue, the Tribunal is required to make sense of the plethora of detail and calculations and assess the adequacies of the processes undertaken by the experts leading to their opinions as to water quality. This is done against the background of lakeshore capacity and water quality policies, and the Tribunal must determine, from a planning perspective, whether the development is consistent with, and conforms to those policies.

[45] The provincial guidelines recognize that the lakeshore capacity assessments and modelling exercises used to monitor and control shoreline development focus on one key pollutant. Phosphorus, or “Total Phosphorous” is the culprit entering the lakes that upsets the chemistry of lake water, and the primary human source of this phosphorous is acknowledged to be septic systems, or the lack of effective treatment of man-produced waste and effluent (Phosphorus is examined in terms of micrograms per litre expressed with the short form of either “µg/L” or milligrams per litre “mg/L”).

[46] It is the Tribunal’s view, in reviewing these various policies and guidelines from the highest order of the PPS down through to the official plans, and the MOECC guidelines that are to be applied, that one cannot lose sight of the fact that Lakeshore Capacity Assessment and its associated predictive LC Model is, first and foremost, a planning tool to assist in making the right planning decision, taking into account all facts relating to the lake’s condition, the context of development on the lake, and the impact of proposed development on the lake. Information obtained from the assessment and modelling tools are to be used for broader land use planning and informed decision-making by municipalities and is not applied only to site-specific and development-specific proposals, although that too, is done.

[47] It is thus necessary for the Tribunal to consider the state of White Lake (an ongoing process as borne out by the various “state of the lake” studies in the evidence) and its water quality and phosphorus levels, its capacity for development, and assess the proposed Redevelopment practically in the context of what is there now, and what will be added.

[48] It is the Tribunal’s view that because the Applicant’s Redevelopment is not just new development on vacant land, it will introduce a planned, monitored and enhanced framework to a dated, evolved campground that precedes modern provincial planning and environmental controls, which has numerous shortcomings. In order to effectively

assess the proposal, it is accordingly necessary to consider what is there now, and examine the beneficial or improved effects the Redevelopment will have on what is there now. It is thus the Tribunal's view, at the outset, that this approach means that the evidence as to how this Redevelopment may *improve* water quality and *reduce* phosphorous transmission to the Lake from what is there now, is an equally as important consideration as the manner in which phosphorous loading may travel from the newly added sites and *increase* phosphorous levels or *impact* water quality.

[49] It is clear that the matters of water quality and lake capacity were given attention by the Municipality in the pre-consultation processes for the Redevelopment. Hutchinson Environmental Sciences Limited, through Mr. Parsons, assisted in the peer review process by the Municipality and determined that there was a need for a Lakeshore Capacity Assessment to determine the development capacity of White Lake in relation to phosphorous and water quality. After determining the terms of reference ultimately, Mr. Parsons undertook the completion of the Lakeshore Capacity Assessment for submission to the MOECC.

[50] The Tribunal recognizes that the MOECC, in performing its mandated functions as the provincial body overseeing environmental compliance, has already undertaken assessments and made determinations in relation to the proposed Redevelopment. While the MOECC's determinations do not relieve the Tribunal of its responsibility for its ultimate planning decisions, the determinations made by MOECC's representatives on matters of water quality and lake capacity nevertheless have significance and carry some weight.

[51] Eventually, after some considerable resources were devoted to completing, reviewing and revising the Lakeshore Capacity Assessment, and responding to inquiries, the MOECC issued its response. Mr. Victor Carlos of MOECC provided the position of the Ministry in its letter of November 10, 2015 (Tab 26) which, the Tribunal considers to have some significance in determining the issues now before it in this

Appeal. After noting the planned installation of a sewage system with phosphorus reduction technology to treat sewage flows from the entire trailer park (assumed to have 110 new and 40 existing trailer units), that correspondence included the following conclusions regarding the Redevelopment and its impact upon the Lake (emphasis added):

...the type of sewage treatment being contemplated is recognized by the MOECC as having the capability to consistently achieve a phosphorus effluent limit of at least 1 mg/L. **This effluent concentration represents a reduction of approximately 88% in the sewage phosphorus before the effluent even goes into the leaching field.** Under this scenario, **the sewage loading associated with the proposed development would be considered a net decrease from existing conditions.** The details regarding the design of the new sewage system and effluent criteria will be worked out during the application and approvals stage.

...

To conclude, **phosphorus reduction technology incorporated into the new sewage system, as well as best management practices to address stormwater runoff and shoreline protection, should result in a net improvement in phosphorus loadings from the site.** Based on this information, **I am satisfied that the proposed redevelopment of the trailer park will not result in an impairment to the water quality of White Lake.**

[52] The Appellant's expert witness, Mr. Clark, is not inclined to accept the expressed position of the MOECC at face value. Mr. Clark concludes that White Lake is already at, and over, capacity and cannot sustain any further development. Mr. Clark has testified that White Lake has been observed as sustaining significant late summer blue-green algal blooms over a period of three years, in the summers of 2013, 2014 and 2015, and photographic evidence was presented in various Exhibits in support of this. Additionally, Mr. Clark asserts that measured phosphorous levels have been at levels above those which result in the algal blooms i.e. above the minimum target of 20 µg/L. As a result, in Mr. Clark's view, White Lake is already over capacity and is behaving in a manner that is expressly to be prevented under the operation of the Provincial Water Quality Objectives. As a result, Mr. Clark asserts that no new development on White Lake should be permitted if it will result in any additional phosphorous loads being added to White Lake.

[53] Mr. Clark has directed the Tribunal to both the Provincial Water Quality Objectives which provide that the average Total Phosphorus (“TP”) concentrations during the ice-free period of a lake should not exceed 20 µg/L in order to avoid nuisance algal blooms and the guidelines which aim to maintain TP concentrations capped at a TP concentration of 20 µg/L. Mr. Clark points to the mid-summer water sample data readings for White Lake collected through the Lake Partner Program which indicate that TP was at, or above 20 µg/L. Mr. Clark has explained, at some length, the effect that the infestation of zebra mussels has had in reducing TP concentrations in White Lake and the caution that must be exercised when considering the low TP concentrations during such infestation periods.

[54] Mr. Clark is critical of the LC Model studies undertaken by the Applicant in support of its application. In Mr. Clark’s view, his own LC Model results performed under his retainer with the Appellant are within the 20% performance standard and the results of the LC Model undertaken by the Applicant’s witness, Mr. Parsons, are not. Certain important aspects of the data utilized by Mr. Clark are different from those used by Mr. Parsons.

[55] Mr. Parsons has explained and acknowledged that when the MOECC modelling was completed using the Lakeshore Capacity Assessment Handbook, the modelling calculations of capacity were indeed 21.2% different than the measured phosphorous results and that because the two numbers are not within 20% of each other as required by the MOECC, capacity is to be assessed using the interim Total Phosphorous Water Quality Objective. Mr. Parsons has provided a fulsome review of the processes followed to complete the assessment, examining the potential for phosphorous increase and recreational capacity, the projections based on the impacts of the current number of 43 trailers (which the Tribunal finds, from the evidence to be appropriate at 41 or 42 trailers, and not 33) with another 110 trailers added, the use of the phosphorous

reduction sewage system, and the other measures planned. Mr. Parsons concludes that the Redevelopment will not threaten lake capacity.

[56] The evidence as indicated, is that the MOECC reviewed the various iterations of the lakeshore capacity assessment work undertaken and accepted and approved Mr. Parson's Lakeshore Capacity Assessment. No one from the MOECC attended to provide *viva voce* evidence to the Tribunal. The Tribunal is however satisfied with the clarity of the determinations and position of the MOECC as expressed in Mr. Carlos' letter.

[57] Mr. Parsons' opinions as to the absence of the Redevelopment's impact on lake capacity include the important consideration of the Preliminary Stormwater Management Report completed by Jp2g Consultants Inc. which was reviewed and the subject of the testimony of Mr. Nguyen. This interim report was clear that only a preliminary stormwater management assessment, and Messrs. Parsons and Nguyen confirm that a final stormwater management plan will be prepared and subject to complete and full review by the Municipality and third party agencies, including the MOECC, in the site plan process. On that basis, Mr. Parsons concludes that stormwater phosphorous runoff will be beneficially treated in the Redevelopment through a variety of infiltration methods and concurrently addressed through best management practices.

[58] Mr. Parsons' view of the circumstances are opposed to those of Mr. Clark and he has a number of difficulties with Mr. Clark's modeling and conclusions, mostly because of a number of assumptions and data used by Mr. Clark to complete the modeling.

[59] Mr. Clark has, for example, relied upon data results in the United States, pointing to a report of the Washington State Department of Ecology, and adopts the national average mean concentration of 320 µg/L in phosphorous load coming from urban density stormwater runoff in arid and semi-arid regions of the United States as part of

the modeling. Mr. Parsons flatly disagrees with this very high runoff rate as inflating the level of phosphorous from the development, and the usage of data from the United States in this manner in the modelling of the hydrogeological character of this Ontario Lake.

[60] Mr. Clark has also applied a density designation of the campground trailers as “extended seasonal” rather than “seasonal”. Mr. Parsons is of the view that the MOECC’s identified seasonal runoff rate should be properly used and that Mr. Clark’s assumptions of density and occupation of the campground are accordingly exaggerated.

[61] Generally, Mr. Parson’s testimony has focused on the difficulties in utilizing the LC Model due to the challenges of accessing certain reliable input data and concludes that Mr. Clark’s calculations are conjectural in certain respects and his opinions unreasonably narrowed and focused on the modeling and overly-stringent assumptions. Mr. Parsons disagrees with Mr. Clark’s approach which leads only to a narrowed and singular conclusion that there will be additional phosphorous from adding sites to the Redevelopment and therefore, the Redevelopment cannot occur as proposed. Mr. Clark’s calculations result in a conclusion that the maximum number of additional sites/trailers that can be added are 51 in order to likely achieve his adopted objective of no net increase in phosphorous – a conclusion that Mr. Parsons feels ignores the additional phosphorous reduction that will come from the Redevelopment.

[62] As for the warm-weather algal blooms that concern Mr. Clark, Mr. Parsons has testified that such algal blooms have indeed been occasionally present on the Lake, but themselves are not indicative of a condition of over-capacity or a specific impact that will be eliminated by refusing this Redevelopment. Mr. Parsons indicates that algal blooms occur in many lakes where there is no, or limited development, and the blooms themselves do not represent conclusive empirical evidence of overcapacity as Mr. Clark asserts.

[63] It is the finding of the Tribunal that, after considering all of the detailed evidence of the two experts relating to lake capacity, that much of the final conclusions of both experts is based on very subjective use of inputs into the modelling and a high degree of uncertainty with both approaches. Both experts admitted to difficulties in completing the Lake Capacity Assessments and completing and analyzing the LC Models. Variables and imprecision impacting either or both of the modelling exercises undertaken by Mr. Clark or Mr. Parsons, include such things as: the presence of the zebra mussels that reduce phosphorous levels; the lack of precise data as to the occupancy within the lakeshore parameters and the consequential density loading; the location of the lake near the edge of the Precambrian Shield and the types of soils; and the differences in phosphorous levels in the different, and widely spread, components of White Lake.

[64] With the many variables and unreliability of much of the inputted data and subjective assumptions, the Tribunal cannot find that Mr. Clark's absolute conclusion that White Lake is at capacity, is in such a state of acute distress, and that the Redevelopment, with 100 sites, must be refused in the absence of affirmative assurances that there will be no net increase in phosphorous.

[65] The Tribunal has carefully considered Mr. Clark's assumptions and bases for some of the opinions, calculations, and criticisms of the Applicant's evidence and submissions, and finds that there are difficulties in accepting some of Mr. Clark's opinions. Where there are differences of opinion on supporting data and assumptions, in a number of instances, the Tribunal prefers Mr. Parsons' evidence over that of Mr. Clark. Such matters include the following:

- (a) The evidence is that the Lake Capacity Assessment guidelines of the MOECC and the LC Model are specifically related to Ontario Precambrian Shield inland lakes, to the geographic and climate conditions that are

identified, and to the lake-specific nature of the modeling process. With such specificity in place, Mr. Clark has failed to convince the Tribunal that his additional stormwater phosphorous loads imputed to the Redevelopment should be fairly based using High Density Residential stormwater load statistics based on American national average values. Sufficient doubt has been cast in cross-examination regarding Mr. Clark's reliance upon the US data in support of his modeling – different soils, different wind patterns, different water bodies, different temperatures, different climate exist there, that do not exist here. Mr. Clark has not produced evidence to support the accepted use of such data when modelling Ontario lakes.

- (b) Mr. Clark's opinions as to the expected density of development, as this relates to the phosphorous loading, involves classifying the use of the campground as "extended seasonal" instead of "seasonal". This higher density classification thus requires the mathematical use of a higher lakeshore residential usage rate of 1.27. This has doubled the projected phosphorus loading. The Tribunal finds that there is insufficient evidence to support this elected deviation.
- (c) Mr. Clark is critical of the absence of sufficient detail establishing that stormwater treatment will remove phosphorous from the system and dismisses this as significant in considering phosphorous outputs. This is contrary to the view expressed by the MOECC and that of Messrs. Parsons and Nguyen. The Tribunal is satisfied that the absence of specific detail at this point is due to the simple fact that the stormwater management report is, for now, only preliminary and that this is to be expected in the planning process. The Tribunal is satisfied that the final stormwater management plan will eventually establish the specifics of runoff detention and infiltration treatment and controls based on volumetric

and topographical data, that such controls are achievable and effective and that the benefits of stormwater management cannot be dismissed as Mr. Clark has done.

- (d) Mr. Clark has also given no consideration and asserts he has obtained no data to verify the assertions of the Applicant confirmed by Mr. Parsons and acknowledged by MOECC in its letter of November 10, 2015, that the sewage system to be installed will reduce phosphorus by approximately 88% before the effluent even reaches the leaching fields. Mr. Clark admitted in cross-examination that there is no evidence to suggest this figure accepted by MOECC is incorrect.
- (e) Mr. Clark's calculations of proposed loading from the Redevelopment has led to his calculated determination that no more than 84 sites should be permitted on the Site's Redevelopment. The Tribunal has difficulty accepting this finite number as a number of the data assumptions leading to the calculations of kilograms per unit are predicated on the assumptions as to density, and runoff rates that the Tribunal is, as indicated, unable to accept.
- (f) Mr. Clark's opinions are, by his admission, much reliant upon his acceptance of the empirical evidence that the algal blooms are occurring in recent years. The Tribunal prefers Mr. Parsons' opinion that algal blooms have occurred before in this Lake, occur in other lakes without development, are connected to high temperature peaks and although connected to phosphorus levels, they are not necessarily indicative that the Lake is at or over capacity. On the whole of the evidence, the presence of the algal blooms is not, in and of itself, enough to detract from the overall planning and environmental benefits recognized by the MOECC and the Municipality.

- (g) Finally, the Tribunal has some difficulty with the reasonableness of Mr. Clark's approach to the potential for increase or decrease in phosphorus. Mr. Clark admitted in cross-examination that although the MOECC has expressed confidence that the Redevelopment can reach a point of no net increase in phosphorous, he is instead critical of whether this truly can be achieved. Mr. Clark has admittedly adopted an approach of "demonstrate to me that this can be achieved" rather than one used by the MOECC which, in his view, demonstrates only that "we can probably get there" based on the best available evidence. It is the Tribunal's view that there is sufficient evidence before the Tribunal that the confidence of the MOECC is well placed in concluding that the Redevelopment can occur in a manner that will ensure that there is no impairment of water quality. The Tribunal accepts, as the MOECC accepts, that this will occur through the four elements still to be finalized: (1) the shoreline protection through vegetative rehabilitation; (2) a stormwater management plan; (3) good management practices through rules and regulations regarding use by campground users and, most importantly; (4) a communal sewage treatment system incorporating phosphorous reduction technologies.

[66] With the Tribunal's findings as to the persuasiveness or validity of some of Mr. Clark's assertions and opinions on the subject, in the view of the Tribunal, at the end of the day, upon the evidence and the reality of what exists on the Site, the question is which analytical approach to assessing water quality and lake capacity should prevail. Should it be the Appellant's position, supported by Mr. Clark that, as an absolute, the Redevelopment must result in "no net increase in phosphorous". Or, alternatively, is it the Municipality's and Applicant's approach, supported by the MOECC and Mr. Parsons, that the Tribunal must take a more expansive and practical view, upon the policies and the data, and decide whether the Redevelopment will result in an adverse impact upon the water quality of White Lake based on the Province's water

quality objectives and best determinations of total phosphorous loads and recreational carrying capacity.

[67] The Tribunal finds that the determination of good planning, given the various considerations identified in this decision, and the clear complexities that exist relating to development on the shoreline of White Lake (in the historical context of what has led to the current *status quo*) calls for a measured and broad consideration of the site specific impacts and benefits that this Redevelopment will bring to the water quality of White Lake. The Tribunal cannot ignore the fact that the Redevelopment will improve upon the current nature of the phosphorous loading, and provide for managed and updated recreational uses of Site with controlled recreational development, something which currently does not exist.

[68] The entirety of the development and site plan processes are not yet completed and the MOECC has clearly reached a comfort level that the anticipated phosphorous levels, after the completion of the Redevelopment with the phosphorus reduction septic systems, will be at a level allowable for the Lake's capacity without impact on water quality. The Tribunal has not received any cogent or persuasive evidence from Mr. Clark that would cause it to doubt the conclusions of the MOECC, and the opinions of Mr. Parsons that coincide with the position of the Ministry.

[69] The Tribunal is also, in making this finding, relying upon the analysis and findings of other aspects of the evidence presented.

[70] In summary, the Tribunal finds that the evidence in this hearing supports the conclusions of the MOECC and finds that there will be further reductions through a stormwater management plan (where currently there is none for the 35 Sites) through vegetative buffers (where none now exist) and through other best management practices to be achieved through the development (again, where none now exist). The

Tribunal finds, as the MOECC concluded, that the Redevelopment will result in no impairment or adverse impact upon White Lake and its water quality.

[71] In the Tribunal's view, the benefits and improvements to be achieved through the orderly Redevelopment of the Site, as it will increase the number of Sites to not more than 100 and improve phosphorus controls and treatment, and thus improve water quality in that regard, is consistent with the policies of the PPS as it requires water quality to be maintained and improved if possible and conforms to the relevant policies contained in the Official Plans.

### **Ecological Concerns, Habitat and Environmental Impact Study**

[72] The Tribunal has reviewed the Compiled Environmental Impact Assessment completed and supplemented on behalf of the Applicant and reviewed by the Ministry of Natural Resources and Forestry ("MNRF") and has considered the evidence of Mr. Brunton as well as that of Mr. Anderson. That Assessment included the Aquatic Environmental Impact Assessment (prepared by Mr. Anderson's firm Natural Resource Solutions Inc.) and Ecological Impact Statement (prepared by Mr. Brunton). For ease of reference, although separate, collectively these documents are referred to herein as the "EIS". The Tribunal has also considered the evidence of Mr. King, on behalf of the Appellant, as he has provided his opinions and criticisms of the sufficiency of the EIS and the opinions and conclusions reached by Messrs. Brunton and Anderson and the referenced consultants.

[73] In this subject matter, as with water quality and lake capacity, it is again clear that the ecological and environmental impact concerns were given thorough attention by the Municipality in the pre-consultation processes for the Redevelopment. Ultimately, the Municipality looked to the MNRF for guidance on the sufficiency of the EIS and the recommendations and measures contained within the EIS. As the MNRF correctly clarifies, unlike the role of the MOECC, the MNRF, as the lead agency for managing the

natural heritage policies of the PPS, provides guidance and comments on subject matter but does not provide a planning opinion, or confirms its support or opposition for a development application. The MNR provided its comments on a number of occasions, the last being March 21, 2016, (Tab 29).

[74] Mr. King concludes that the EIS is incomplete and fails to establish that the ecological function of the PSW and significant wildlife habitat and the adjacent lands has been properly evaluated. The focus of the concerns relates to: the failure of its authors to properly consider the small internal wooded swamp habitat as containing a population of Green Frogs and Leopard Frogs; the failure to identify Species at Risk, and more specifically the Blanding's Turtle and the Bogbean Buckmoth; and the failure to properly assess the fish and fish habitat impacts inclusive of the water body portion of the PSW abutting the southeastern shoreline. Mr. King has thus opined, and the Appellant asserts therefore, that the Applicant has not sufficiently demonstrated that the Redevelopment will have no negative impact on the natural features or on their ecological functions.

[75] For the reasons that follow, the Tribunal is unable to agree with the general opinion expressed by Mr. King as to the insufficiency of the EIS or the objections to the Species at Risk, but based upon those concessions and alterations discussed in the course of the evidence, the Tribunal has concluded that there should be some additional measure of planning incorporated into the ZBLA to address certain reasonable concerns raised by the Appellant and arising from the evidence.

[76] With the implementation of the EIS recommendation and those additional identified amendments to the ZBLA, the Tribunal finds that the Redevelopment will have no negative impact on the natural features that have been identified, or on their ecological functions, and in that regard is consistent with the natural heritage policies of the PPS. Similarly, upon the same findings, and again, with the directed amendments to the ZBLA, the Redevelopment conforms to the natural heritage policies of the County

and Community OPs as they have been identified and considered in the hearing, and addressed in the planning evidence.

[77] These overall findings are based upon the analysis, conclusions and specific findings which follow.

[78] The Tribunal accepts the opinion of Mr. Brunton as to the proposed 30 m setback from the northeastern boundary area and inlet adjacent to the PSW/ANSI, which, insofar as location, boundary and area is concerned, is not disputed by Mr. King. The Tribunal finds that the 30 m buffer setback that will be incorporated into the plan for the Redevelopment will provide sufficient protection of the species and habitat, inclusive of the two Butternut Trees, and a sufficient buffer against overland runoff or other impacts on the mixed upland forest and PSW/ANSI wetland. Mr. Brunton opines, and the Tribunal finds, that with this measure in place, and with the zoning to be applied, there will be no negative impact on the natural features or on their ecological functions of this boundary area PSW/ANSI.

[79] The Tribunal accepts the opinions of Messrs. Anderson and Brunton that the 15 m vegetated buffer from the highwater mark of the White Lake portion of the PSW is adequate to protect fish and aquatic fish habitat and features as this will not result in any alteration of the existing conditions or loss of undisturbed natural habitat for fish. Mr. Anderson was firm in his opinion, in both his evidence in chief, and on cross-examination, that a vegetated buffer is sufficient to contribute the necessary wood debris and organic material utilized in the aquatic habitat for organisms and insects that supply the fish population. In Mr. Anderson's view, as this part of the PSW is aquatic and shoreline, a 30 m buffer is unnecessary, given the 30 m setback buffer in place for the northeastern woodland and wetland in the inlet already recognized and incorporated into the draft Concept Plan.

[80] The acceptance of the opinions of Messrs. Anderson and Brunton by the Tribunal in relation to the 15 m vegetative setback is based upon the concurrent findings in this Decision which conclude that the implementation of the 15 m shoreline setback throughout the Site (with the greater 30 m setback and Environmental Protection (“EP”) zone in the northeastern area) must be enhanced and enforced through the re-designation of the setback as Open Space Exception and the additional amendment of the ZBLA and the holding conditions provided for herein. It is also based on the indications from the Applicant’s witnesses that proactive and ongoing rules and regulations to be implemented through the site plan process will ensure that the 15 m shoreline buffer is restored to a fully natural vegetative state with restorative processes included and prohibiting intervention and access through the buffer. This also is based on the inclusion of the additional zoning amendment and provisions relating to the Turtle Nesting Area and the inland wooded swamp.

[81] The Tribunal has reached these conclusions and made these findings regarding the EIS, Species at Risk, and the other ecological and natural heritage raised by the Appellant, having accepted the general assessment, conclusions and recommendations contained within the EIS. The Tribunal cannot conclude on the evidence, that the Appellant’s concerns voiced through Mr. King, establish that there will be any negative impact on the PSW/ANSI inclusive of the aquatic environment.

[82] The Tribunal was not persuaded by Mr. King’s evidence that Mr. Brunton’s assessment undertaken of the features and species was deficient. It was the Tribunal’s finding that Mr. Brunton’s reporting in the EIS, and his findings, as they led to the recommendations were thorough, complete and supported by some 35 years of experience.

[83] The Tribunal has noted the concerns raised by Mr. King with respect to the presence of the frog species in the limited area of the internal wooded swamp and his opinions raised as to the habitat features of this small site surrounded by the deciduous

forest identified in the visual and documentary evidence. The Tribunal prefers Mr. Brunton's conclusions that this portion of the Site, as a wooded wetland, and not a unforested wetland, has no intrinsic features or functions that warrant designation as Significant Wildlife Habitat designation, or connectivity to the nearby PSW, and neither has such designation been accorded or recognized by the MNRF. The no-impact policies of the PPS or the OPs would therefore not operate.

[84] The Tribunal notes however, in any event, that the proposed site plan will preserve and recognize this segment of the Site and, more so, the inland wooded swamp, as it is surrounded by additional deciduous forest, will be rezoned to solidify the isolation of the inland wooded swamp.

[85] With respect to Mr. King's opinions as to the inadequacies of the EIS, in relation to the Buckbean Moth and the Blanding's Turtle, again the Tribunal is unable to conclude that the voiced concerns as to the inadequacies of the species surveys and the EIS as it addresses these species are supportable by the evidence and prefers the opinions of Mr. Brunton. Mr. King, in his testimony, has identified the general aspects of the Blanding's Turtle habitat, and suggested the possibility that the Site might qualify, but notably, his opinion is not reliant upon cogent evidence of sightings or presence or specificity of habitat. Mr. King refers to the forthright observation of Mr. Brunton as to the possible "periodic occurrence" along the White Lake lakeshore in support of the possibility of habitat and considers Mr. Brunton's assessment on the species to be accordingly inadequate. The Tribunal is not persuaded by these general criticisms which, in the Tribunal's view, lack specificity. In comparing the evidence on the subject matter of the Blanding's Turtle, the Tribunal must conclude that Mr. King's apprehensions and conclusions as to the necessity of further investigation of the Blanding's Turtle are overreaching. Given the long-standing historical clearing and use of the lands on the Site, and the absence of any evidence that the Blanding's Turtle has existed on the Site, the Tribunal finds that Mr. Brunton's analysis and conclusions ring

true, that the reasonable likelihood of the Blanding's Turtle's presence on this Site, rather than other more identifiable natural wetland or shore habitat, is unlikely.

[86] Similarly, with respect to the Buckbean Moth, the Tribunal is satisfied with Mr. Brunton's evidence, and the EIS, as he concludes that despite the conjecture regarding the possibility of the Buckbean Moth's presence, the occurrence of Buckbean Moth specialized habitat, or the species, is too remote for consideration. The evidence is that the MNRF concurs with this assessment. The Tribunal had noted Mr. King's general overview of the recovery strategy for the Buckbean Moth and best-science approach that, in his view, gives rise to an imperative to provide further review and assessment of impact on this species, but finds that there is insufficient evidence to support this assertion. The Tribunal finds that there is no evidence of impacts or the potential for impacts to this species by the Redevelopment.

[87] In regards to the aquatic and fish habitat, the Fisheries and Oceans Canada will in the further processes to proceed with the Redevelopment, undertake the mandatory review and provide further directions it may deem appropriate with respect to impacts or mitigation and address the specifics of the new private boat launch and dock proposed on the south shore for the campground.

[88] The EIS reveals the existence of the Snapping Turtles nesting area located on the southern-most portion of the peninsula on the Site (Site No. 24) and all experts and Parties concur that the identification and zoning of this area as a dedicated vegetative protected zoning area for nesting, can, and will, be integrated into the ZBLA, the eventual site plan conditions, and the overall concept plan for the Redevelopment.

[89] Finally, the Tribunal can address the Appellant's submission that the concurrence of the MNRF in relation to natural heritage issues and the shoreline setback (and approval by the MOECC on the subject matter of water quality) was mistakenly predicated on the misapprehension that all of the trailers on site are "legally non-

conforming” and must remain. The Appellant’s position is that this calls into question the reliability of the stated position of the MNRF. The Tribunal disagrees. Despite whatever uncertainty might have existed on the part of the two Ministries in relation to the non-complying status of the trailers, both provincial agencies have nevertheless considered and provided their comments/approval upon the existence of the 15 m and 30 m setbacks identified herein clearly understanding the eventual relocation of all structures from the setbacks.

[90] After considering all the evidence relating to the EIS, Species at Risk, and Habitat, the Tribunal cannot agree with the Appellant’s submission that the misapprehension on the part of the Ministries ultimately impacts upon the findings relating to no-impact, the appropriateness of the ultimate setbacks, the sufficiency of the EIS or the additional site plan processes that will follow and support the natural heritage protection and mitigation measures that will be implemented in the Redevelopment.

[91] The Tribunal accordingly finds that with the required amendments and other directions as contained herein, the ZBLA and the Redevelopment will be consistent with the natural heritage policies of the PPS and conform to the related policies of the County and Community OPs. The Tribunal is satisfied that there will be no negative impact on the natural features or ecological functions of any wetlands or fish habitat.

### **The Shoreline Setbacks and Vegetative Restoration and Preservation**

[92] The shoreline setback is the volatile issue between the Appellant and the Municipality and Applicant.

[93] The evidence is that, given the dimensions of the existing 35 shoreline sites laid out in the Tab 58 Concept Plan (excluding the marina location), all of the structures are wholly or partly within 30 m of the shoreline. The determination of how many structures are within 15 m of the shoreline, and their location, is imprecise, given that the location

status of the various structures has been summarized at different times over the course of the three years leading to the hearing.

[94] The evidence from Mr. Mooder, based upon measurements later taken in October of 2017 (which appears to be the latest this was done), is that of the 33 structures then along the shoreline, 18 of them are already set back at least 15 m from the shoreline, and six structures are within the 30 m setback from the northeast-wetland PSW/ANSI. Mr. Mooder confirms, based upon measurements taken by the Applicant, in Exhibit 20, that 16 or 17 sites have structures that are still within a distance of 15 m of the shoreline. The few other structures on the other side of the ring road, and all new sites, will be greater than 30 m from the shoreline and beyond the PSW setback.

[95] The evidence, inclusive of the final two planning reports to Council (Tabs 31 and 32) confirms that the lengthy pre-approval process led to the reduction of the total number of lots to 100 and a final reduced shoreline setback of 15 m instead of 30 m. This recommendation was made upon the recognition that the 33 structures within the shoreline development between the ring road and the shoreline, and within the 15 m setback from the high water mark, are to be moved back beyond the limit when “replaced” and that the vegetative buffer is to be maintained.

[96] There is no uncertainty that the body of planning policy supports a *prima facie* 30 m setback and is provided as a baseline minimum standard in s. 6.24 of Zoning By-law No. 11-83. The policies of the County OP however provide that reductions in the setback can occur but will be in accordance with the local plan. The Community OP then allows for consideration of a reduction of the setback but such a reduction will, under s. 3.1.2.1.1.4 “...only be considered **when there is no other practical alternative for development of the land.**” (emphasis added).

[97] One of the considerations for the Tribunal in determining whether the reduced 15 m setback represents good planning is accordingly whether, upon the evidence, there is a *practical* alternative for development of the land that would refute the need for a reduction of the setback as the Redevelopment was endorsed by Council through the ZBLA.

[98] The Tribunal accepts Mr. Mooder's opinion that the 15 m setback is sufficient and meets the tests of good planning because, when taken as a whole, the overall planning benefits to be achieved through the Redevelopment, as the Tribunal has found herein, can only be realized with the entire Redevelopment plan being adopted as a whole. This is inclusive of the phosphorous reduction sewage system, the existing road infrastructure (and in particular the ring road), hydro lines, and the regulated and managed site plan to be implemented through the Site Plan Control Agreement. A 30 m setback would move all existing 33 structures to the other side of the ring road – an alternative that would, on the evidence, affect the financial ability of the Applicant to implement all the other beneficially improved aspects of the Redevelopment. In the Tribunal's view, no other practical alternative exists for the development of the land exists that will achieve the overall benefits discussed by Mr. Stirling.

[99] Mr. Mooder relies upon the opinions and conclusions reached by the other experts that the preservation of the natural shoreline character and water quality, without impact upon ecological function and habitat, both on land and in the aquatic shoreline, will be achieved through the 15 m setback. For the reasons indicated above, the Tribunal has accepted the conclusions upon which Mr. Mooder's opinion is based.

[100] Within the totality of the evidence, the Tribunal is most persuaded by, and prefers, the planning evidence of Mr. Stirling on behalf of the Municipality as it relates to the appropriateness of reducing the 30 m shoreline setback to 15 m.

[101] The Tribunal has considered the sum total of the evidence as to: the difficult and complicated challenges facing the Municipality as discussed above; the reality of decades of proximate lakeshore ribbon development for these lands (and many other); the less-than-acceptable nature of what exists “on the ground”, i.e. the lack of an orderly site plan, a mish-mash of septic and water supply solutions, uncontrolled structures and improvements tacked to trailers and mobile homes; the difficulties in determining, with precision, the legal non-conforming status of some structures on the Site; and the absence of controlled development.

[102] In the Tribunal’s view, this is the reality of what exists on this Site and upon which the Redevelopment is proposed. It is, in the Tribunal’s view, reasonable to consider this *status quo* as the undesirable alternative to improving such circumstances.

[103] For this reason, and the additional reasons and findings that follow with respect to Mr. Stirling’s opinion on this point, the Tribunal is unable to accept Mr. Snider’s planning opinion that alternative design options do exist which would involve the wholesale relocation of the entire ring road, or the elimination of all of the shoreline sites currently between the ring road and the shoreline. The evidence does not, as a whole, lead the Tribunal to conclude that this is a viable, reasonable or practical alternative in order to maintain a 30 m buffer when the whole of the evidence indicates that a 15 m buffer will be sufficient to protect water quality and environmental, species and habitat concerns.

[104] Mr. Stirling’s approach to the reality of what exists leads him to opine that all of these circumstances, and the benefits that will accrue from the ZBLA and the Site Plan Control Agreement, must be taken into account in determining whether there is another practical alternative for development of the land without a reduced shoreline setback of 15 m. When considering the circumstances, Mr. Stirling concludes that there is no other practical alternative for development.

[105] The Tribunal considers, upon all of the facts, that Mr. Stirling's analysis, which leads him to that opinion, is sound, and that his opinion is also compelling. He reasons that while the Site is, in theory, large enough to push the entirety of the development back 30 m from the shoreline, that would ignore the decades of what has led to what now exists along the shoreline and on the Site as it has been used as a long-standing campground, and what is practical to the owner/Applicant to move forward with the Redevelopment.

[106] Mr. Stirling indicates that the Redevelopment will expand upon the existing infrastructure to enhance an attractive recreational alternative whereby many people who cannot otherwise afford single-lot cottage ownership can enjoy the benefits of a lakeside seasonal lifestyle. The development sterilization of all 33 of the shoreline sites is not a reasonable option, and that will occur if all sites must be relocated to the other side of the road beyond 30 m from the shoreline. There are 33 units on these sites, some of which are legal non-complying, and some of which are not. There exists, for Mr. Stirling, an option that allows for new trailers and structures to be relocated to a location beyond the 15 m in most sites and allow the Redevelopment to proceed with the existing road, layout, hydro and some infrastructure.

[107] The rationale is that if nothing existed, and this was entirely new development, there would be a clean slate. This is not a clean slate however, and as Mr. Stirling has testified, in considering whether there is a practical alternative to the 15 m setback, it is necessary to also ask: "What if we don't – what if we do nothing?". In that event, the "wild west", as it was referred to for such campgrounds without site plan controls, without communal septic or water services, and without the imposition of measures to protect ecology and habitat, will continue. This "do nothing" alternative must also, in Mr. Stirling's view, be practically considered to determine the best outcome in the end.

[108] Upon this analysis, Mr. Stirling's conclusion supports a ZBLA that implements a 15 m shoreline setback, as necessary for the effective orderly development of the Site

that will improve the *status quo* and allow for good planning processes to govern ongoing use of the Site. Mr. Stirling emphasizes that, again, with the necessity of examining the end result as a whole, as compared with the alternative of continued uncontrolled usage, the 15 m setback, allows for an orderly and eventual solution to the existing trailers and structures within 15 m of the shoreline. After the last of the trailers and structures are relocated, there will be a plot plan for the Sites, benchmarks established and a means to enforce the 15 m setback, management and regulation of activity on all Sites, and the implementation of vegetation/non-disturbance guidelines within all setback zones.

[109] Mr. Stirling considers it to be of some importance that the consequence of the ZBLA is that future, newly-created Sites are distinct from the existing 35 to 36 shoreline Sites where all trailers/structures (whether legal non-conforming or not) will eventually be relocated outside the 15 m setback. The current status of each structure, at this time, becomes academic because when the last of the structures are relocated, there will be a successful result.

[110] Mr. Stirling's evidence has been predicated upon his additional evidence that he is satisfied (as the Municipality was satisfied) with the position of the MOECC and the MNRF as to the appropriateness and sufficiency of the 15 m setback.

[111] The Tribunal accepts this evidence and this approach to the sufficiency of the 15 m shoreline setback to be reasonable, appropriate and, when taken will all other aspects of the amended ZBLA and the additional site plan control, results in consistency with the PPS, and conformity with the OP policies relating to setback. The Tribunal finds, upon all of the evidence, and with all of the other required aspects of the Redevelopment presented in the evidence, that the reduced 15 m setback is practically achievable and will meet the goals and objectives of a naturally vegetated shoreline setback identified in the policies, and itself represents good planning. For emphasis, the Tribunal is persuaded on all of the evidence that the reduced setback itself results in

no negative impact, provided that the other elements of the Redevelopment, proposed by the Applicant and to be integrated into the ZBLA and eventually, the site plan, will also be implemented. For the reasons indicated, and upon all of the evidence, the 15 m shoreline setback, in the Tribunal's view, represents the best and only practical alternative for appropriate and beneficial long-term development of the Site.

### **The PSW/ANSI Setback and Interior Swamp Setback**

[112] There is no dispute within the evidence as to the existence of the PSW/ANSI located inland and along the shore of the northeastern section of the Site. It was acknowledged that Schedule "A" to the ZBLA inadvertently omitted reference to Environmental Protection (EP) zone for the portion of the Site where this is located and as provided for, this will be amended. There is also no dispute amongst the experts that based upon the results of the EIS, as reviewed by the MNRF, a 30 m setback is necessary and appropriate to ensure that there is no negative impact upon the PSW/ANSI.

[113] The Applicant's Tab 58 Concept Plan identifies the PSW/ANSI and the 30 m setback as a designated element of the proposed Redevelopment which is to be integrated into the site plan. Based upon the evidence identifying the location of structures, there are currently five shoreline camping Sites in this area of the Site, which are partially within the PSW/ANSI and five of those sites are wholly or partially within the setback. Site 32, as it is currently depicted is completely within the setback. Although the site plan is not final, to the eye, three of the Sites, as they are currently delineated, will not permit the relocation of structures outside of the setback and will eventually be unable to sustain continued use once the structures are removed or are ready to be replaced. They will have to be removed as identifiable Sites in the eventual site plan.

[114] No setback is required, nor provided for in the Tab 58 Concept Plan for the small interior wooded swamp, as it is already surrounded by the additional deciduous forest.

This wooded water feature is however to be isolated and preserved in the Redevelopment and for the same reasons set out herein, it is appropriate that the ZBLA be amended to zone this feature as Open Space Exception and that it be protected through no interference or development provisions similar to the shoreline and PSW/ANSI buffers.

### **Legal Non-Complying Structures within 30 m of the Shoreline**

[115] The Applicant has brought into play the issue of legal non-conforming or non-complying rights. The Applicant asserts that some tenants have acquired rights to certain long-standing structures, and that the imposition of a 30 m setback will impact some tenants whose structures are legal non-complying, whereas a 15 m setback will not.

[116] On the evidence presented, the Tribunal finds that there *may* indeed be some structures on the Site that have status as legal non-complying structures under s. 34(9) of the Act in that they are identical or reasonably consistent with the footprint of a structure that existed on the Site as of 1997/1998 before the 30 m setback was included in the zoning by-law. The Applicant's Concept Plan, as indicated above, identifies structures and suggests that they may be legal non-complying structures. It is the conclusion of the Tribunal that the majority of the structures located on the Site, within 30 m of the shoreline, cannot be legal non-complying structures. However there is no sufficient evidence provided by the Applicant, or before the Tribunal, that would allow it to make any clear determination as to which structures are, or are not, legal non-complying structures and which structures, under s. 34(9) of the Act might be entitled to remain within the 30 m designated setback from the high water mark, or for how long.

[117] The Tribunal has, at the conclusion of this hearing, requested further submissions on matters relating to legal non-conforming rights and whether the Tribunal's decision must take into account any impact it's decision may have upon the

private leasehold interests of the tenants of the campground and further, the interplay between s. 34(9) of the Act, which extends rights with respect to legal non-complying structures upon an owner's lands and s. 50(3) of the Act, which limits the rights of a leasehold tenant to acquire rights to possession of land in excess of 21 years.

[118] The Tribunal has considered the evidence before the Tribunal and the submissions of counsel on the subject of legal non-complying structures and Sites and their relevance on the setback issues. Ultimately it is the conclusion of the Tribunal, on all of the evidence, and with the findings made, that the legal-non complying status of some trailers and structures has little or no bearing on the final decision relating to the approval of the Redevelopment and the directed amendments to the ZBLA.

[119] Even if a number of structures on the Site (and identified in the Applicant's Concept Plan) may qualify as legal non-complying structures, it is the view of the Tribunal that the owner of such structures possesses only a time-limited right to the benefit of s. 34(9) due to the operation of s. 50(3) of the Act, such that the owner of the structure may not, in any event, retain the structure at its locational footprint, for a period of time in excess of 21 years from when they were placed there.

[120] The operation of s. 34(9) and s. 50(3) of the Act are, as the Municipality has noted, separate and distinct and speak to separate and distinct policy imperatives. It would be an unreconcilable contradiction to interpret s. 34(9) and s. 50(3) of the Act as prohibiting a person from acquiring the right to occupy a segment of land for longer than 21 years, but conversely permitting a tenant on a campground site to acquire a right to keep a legal non-complying structure on the segment of land for greater than 21 years. In this regard, the Tribunal agrees with the Appellant's submission that s. 34(9) of the Act protects only against the application of zoning requirements and there is nothing in the wording of s. 34(9) that prevents the application of s. 50(3) of the Act.

[121] In this case, the evidence is that the Applicant does not own any of the structures that are the subject matter of the campground rentals, since all prior rental cabins, save one, have been demolished and replaced with trailers. It is the Tribunal's conclusion, therefore, that the Appellant has correctly described the nature of the rights of tenants on the Site such that any tenant who has leased a portion of the Site, and has acquired or owns a legal non-complying structure, will, upon termination of the lease, possess no legal right to remain on the land and will be required to remove all structures that may have been legally non-compliant up to that point.

[122] The Tribunal has considered the authorities provided by the Parties and accepts the submissions of the Appellant and the Municipality with respect to the matter of impact that the Tribunal's decision may have upon the tenants and lease arrangement. In the circumstances of this case, the Tribunal agrees that its approach should be the same as that followed on previous occasions by the Board/Tribunal. Those decisions confirm that the mandate of the Tribunal is to determine the issues of consistency and conformity and whether the proposed Redevelopment and the ZBLA represent good planning in the public interest. Any issues relating to the impact of the final decision upon the private rental arrangements between the Owner and the current and future tenants are not matters for consideration by the Tribunal and must be sorted out by them.

[123] In this case however, the evidence is clear that the Applicant is committed to moving any trailers or structures within the setbacks beyond the 15 m shoreline setback and the 30 m PSW/ANSI setback, that may be (or are not) legal non-complying structures. No new Sites in the Redevelopment will result in trailers or structures being placed within 30 m of the shoreline. The evidence is also clear that the Municipality enacted the ZBLA on these assurances of the Applicant that any further trailers or structures remaining within 15 m of the shoreline, "as they are replaced", will be relocated and that the details relating to the transition of remaining trailers would be contained within the Site Plan Control Agreement. The MOECC's references to

shoreline protection and best management practices, as an important element of consideration, is consistent with this relocation process occurring.

[124] It is accordingly the view of the Tribunal that this assured process of the eventual removal of all trailers and structures, including any legal non-complying trailers and structures, represents an important element of the approval of the ZBLA. The evidence of the Applicant and the Municipality is that this will be fully addressed in the Site Plan Control Agreement. As it represents one of the fundamental underlying basis for the approval of the Redevelopment and the ZBLA, it is the finding of the Tribunal that the ZBLA must be amended to reflect this integral requirement for the eventual relocation of all trailers and structures from the setbacks, including those that might currently have status as legal non-complying structures.

### **Legal Non-Complying Structures within 15 m of the Shoreline**

[125] It remains for the Tribunal to consider whether, in this case the Tribunal may, or need, make a finding in regards to the legal non-complying status that may be achieved for the limited number of structures that remain within the reduced 15 m buffer at the point in time that the ZBLA, creating the exception, is in force and effect.

[126] The way to succinctly explain the proposition that must be considered, is to repeat verbatim the comment provided by Mr. Stirling in the last planning report that was provided to Council and which led to the ZBLA being enacted. In his report for the meeting of June 28, 2016, after confirming that the Applicant would require the remaining trailers/structures within the 15 m to become compliant with the 15 m setback as they are replaced, Mr. Stirling stated:

By structuring the by-law to have immediate implementation, the structures that do not meet the 15 m setback **would be considered legally non-complying**. They would retain this classification until such time as they are replaced and relocated. The details associated with the transition of the seven trailers would be contained within the site plan control agreement.

[127] The last sentence is not of concern to the Tribunal, and in fact the Decision rests upon the assurances of the Applicant and the clearly accepted assumption that the Site Plan Control Agreement will provide details for the eventual relocation of any trailers within the 15 m buffer to a point beyond 15 m.

[128] The difficulty lies with the first two sentences. The Tribunal is concerned that failing to address this statement might be seen as giving credence to this interpretation of the application of s. 34(9) of the Act.

[129] Assume for the moment that some of the structures still within 15 m do not have the benefit of legal complying status relative to when the 30 m setback minimum standard was first enacted in the zoning by-law and therefore are not lawfully within the 30 m setback. What arises is the question of whether, given the nature of the ZBLA, and the context in which the 15 m shoreline setback is established in the instrument, any such still-present non-complying structures within 15 m of the shoreline really do acquire the classification of legal non-complying structures because of the enactment of the new 15 m setback.

[130] It is the Tribunal's view that such structures unlawfully within the 30 m setback do not acquire such classification. The effect of the ZBLA is to *reduce* the minimum shoreline setback from 30 m to 15 m. That reduction represents an enacted leniency to the prior, and already existing, greater minimum setback requirement of 30 m to which the structure was illegally non-compliant – that is, it did not have the benefit of having the longevity of placement dating back to before the point in time that the 30 m setback was established. The effect of the new setback under the ZBLA, in this instance, is different from the circumstances of a ZBLA which introduces a new point-in-time performance standard that itself creates non-compliance with the by-law. In such “conventional” circumstances to which s. 34(9) applies, a structure is lawfully complying

with the zoning by-law the day before the new amendment was enacted, and is not complying the day after because of the newly imposed standard.

[131] To again look at the wording of s. 34(9) of the Act, a by-law passed “to prevent the use of any land, building or structure for any purpose prohibited by the by-law **if such land, building or structure was lawfully used** for such purpose on the day of the passing of the by-law, **so long as it continues to be used for that purpose.**” (emphasis added)

[132] The intent of this section of the Act has been examined before by the Tribunal. The section is intended to prevent the owner of a structure from being unfairly required to bring a building or structure into compliance retroactively when new standards are created. The wording of the section reflects this. In this case however, where a structure is already failing to comply with the greater standard (of a 30 m setback), and has no benefit of legal non-complying status, and will continue to fail to comply, as well, with the less stringent standard, it cannot be said that the “building or structure was lawfully used” on the day of the passing of the ZBLA and therefore (assuming it remains upon the same footprint) cannot be said to “continue for that purpose”.

[133] As indicated, the Tribunal has not been provided with sufficient evidence, nor has it been called upon in this hearing, to make a determination of fact or law as to the specific legal non-complying status of any one structure that is located on the Site. That may remain to be decided for another day. However, the evidence has been presented to the Tribunal in regards to the planning merits of reducing the shoreline buffer to 15 m is based upon the assumption that only a limited number of structures still remain within 15 m of the shoreline and will, upon the undertaking of the Applicant, be moved as soon as is possible upon replacement. The Tribunal is accordingly obliged to address the issue and make a finding of fact as this limited issue has arisen in the evidence.

[134] It is therefore the limited finding of the Tribunal that in the event that there are trailers/structures that are located in the 15 m shoreline setback, that were not previously legal non-complying structures (because their locations do not predate the prior zoning by-law amendment that created the 30 m setback), the enactment of this ZBLA does not, by the operation of s. 34(9), suddenly extend newly effective legal non-complying status.

[135] The manner in which this finding may apply to each remaining structure within the 15 m setback is beyond the purview of this Decision.

### **Number of Sites**

[136] Whether or not the ZBLA should, or should not, limit the number of Campground Sites was commented upon by all three of the planning witnesses. The Tribunal has considered all of this evidence, as well as the documentary record recounting the manner in which the concept plans evolved and the approval provided by Council eventually was provided on the basis that the total number of Sites would be limited to 100.

[137] The final draft of the Tab 58 Concept Plan, though not final in the sense of setting out the final parameters of the Sites, identifies, by the Tribunal's count, 118 sites (A number of those however are, in their current form, wholly within the 30 m PSW/ANSI setback which means that once those structures are eventually removed, their continued presence will not be possible).

[138] Although there was much discussion regarding the possibility of consideration of a greater number of Sites (between 100 and 150) based on the eventual outcome of servicing for the Site, ultimately all Parties, and all of the evidence, confirms the concession that the Redevelopment is proposed at a limit of 100 Sites.

[139] Council's preference for the cap of 100 Sites was, in part, based upon the stated limit of 100 sites in any one campground, as set out in the Community OP and the Zoning By-law.

[140] Mr. Stirling recommended that the Redevelopment be limited to 100 Sites.

[141] Mr. Mooder conceded that the Applicant has agreed, in the final form of the Redevelopment as it would be addressed in the site plan, would be limited to 100 Sites and did not challenge the suggestion that the cap be imposed by the Tribunal in the ZBLA.

[142] Mr. Snider, and the Appellant's position, was that there most certainly should be a maximum number of lots identified in the ZBLA as without it, the number resulted in uncertainty and ambiguity as to the size and intensity of the Redevelopment. Mr. Snider did not provide an opinion as to the maximum number but was of the view that the cap should be related to the maximum number of Sites that the Site can bear to ensure that there would be no net increase in phosphorous based on the evidence provided by Mr. Clark. In the Appellant's closing submissions, the maximum number of trailers proposed, based on those calculations, was thus an additional 51 to the existing 40 sites (identified in the final concept plan).

[143] The Tribunal's consideration of the evidence, and all aspects of the Redevelopment, have been based upon the limit of 100 Sites. In the Tribunal's view, due to manner in which the evidence has unfolded, the various components of the Redevelopment are dependent upon a number of interrelated assumptions and components, inclusive of the ultimate number of Sites, in determining the planning issues.

[144] The Tribunal will accordingly set the limit as to the number of Sites in the Redevelopment as 100, and finds that it is necessary and good planning that the ZBLA be amended to provide for this cap.

### **The Vegetation and Restoration Requirements for the 15 m Setback**

[145] As the evidentiary record confirms, the MNRF provided their comments based upon information received. With respect to the setback, in addition to their understanding that any new or replacement structures would be relocated beyond the setback the MNRF also assumed (Tab 29) that “impacts to the PSW will be minimized by vegetation maintenance requirements in site plan controls”.

[146] The further comments provided by the MNRF (despite a syntax error in the wording) in regards to vegetation within existing trailer Sites within the 30 m setback of both the PSW and the shoreline, clearly indicates the understanding that “the vegetation would not be removed (unless fallen trees or limbs are a safety concern)”. The MNRF, in the view of the Tribunal, has assumed that the guidelines promoting vegetative naturalization within the buffer and the preservation of wooded areas and tree-planting would occur for those existing sites within the shoreline and PSW setbacks.

[147] The Tribunal has considered the evidence, in its entirety, as indicating to it that the MNRF has assessed the Redevelopment on the basis that vegetative regeneration and maintenance within the designated setbacks, both 15 m and 30 m, will be implemented as a requirement of the overall planning.

[148] This same position was communicated to the Municipality by the MOECC. As indicated above in its final letter of November 10, 2016, the MOECC has acknowledged that the Redevelopment would include a number of elements and processes. This included an understanding that there would be “...best management practices to address stormwater runoff and shoreline protection”. Based on all of the documentary

evidence, these references to shoreline protection are a general reference to the preservation and enhancement of a natural vegetation condition along the shoreline.

[149] The General Policies in Sections 3.1.2.3.1.1 and 3.1.2.3.1.2 of the Community OP speak to the importance of requiring the retention and/or establishment of mature tree cover and native shrubs and vegetative cover on lands within 15 m of a high water mark to provide protection for riparian and littoral zones and habitat, prevent erosion, siltation and nutrient migration and maintain shoreline character and appearance and minimize the visual impact of development. The policies are implemented through the Zoning By-law. In the context of policies which allow for the reduction of the shoreline setback, the Policies in 4.1.1.4.1 fully outlined above emphasize at some length the necessity of maintaining the vegetative condition of the shoreline.

[150] Without providing a complete overview of all of the testimony of the various witnesses on the subject, there was a recognized consensus that the eventual form of the Redevelopment that was being approved by Council, and that which is now before the Tribunal is predicated on the definite understanding that the natural vegetative restoration along the entirety of the shoreline is to be facilitated, and concurrently that there be no development permitted which would counter those efforts. All expert witnesses on the matter of ecological function, water quality, and protection of natural heritage features recognize the significance of restorative vegetation within the shoreline. Mr. Mooder made numerous references to this requirement in his opinion evidence as an underlying basis for his opinions supporting the ZBLA and the Redevelopment, referring to the processing both the 30 m setback PSW setback and the 15 m shoreline setback. Mr. Stirling's evidence also referenced this shoreline condition. Mr. Snider is, of course, of the opinion that the entire 30 m setback must be preserved and allowed to return to a natural vegetative state to represent good planning.

[151] The Tribunal's consideration of the evidence and findings as to the sufficiency of the 15 m shoreline setback is inextricably linked and connected to the preservation of that setback as a preserved vegetative open space. This is because all of the opinion evidence provided to support the Redevelopment as good planning considers this as an important functional component of the overall manner in which the new septic system and a stormwater management plan will, in tandem, result in a reduction of the phosphorous load and address the concerns relating to such high density recreational use in proximity to the shoreline.

[152] Both the MNRF and the MOECC explicitly recognized the development component relating to vegetative restoration as a basis upon which they signed off on the Redevelopment. The Municipality's position in this hearing formally recognizes the necessity of vegetative restoration on the shoreline. Mr. Mooder in cross-examination conceded that creating an Open Space Exception zone over the 15 m would effectively identify the vegetative buffer through the zoning process and thus guide the Site Plan Control Agreement process that will follow. Though Mr. Snider again was not prepared to accede to the sufficiency of a 15 m shoreline setback, instead of the required 30 m setback, he is entirely supportive of the restoration of the shoreline vegetative condition as an important ecological and environmental priority.

[153] With this imperative the Tribunal therefore finds that the ZBLA is lacking in that it does not sufficiently identify and segregate the setbacks as being separately zoned Open Space Exception areas that will remain separate and apart from the rezoning applying to the developed portion of the Redevelopment. The submissions of the Parties accede to the amendment of the ZBLA to ensure that the setback areas are accordingly zoned.

[154] Further, the Tribunal is of the view that the ZBLA does not adequately include the further amendment necessary to ensure that this recognized priority of naturalizing the shoreline as a necessary component of the overall approval of the Redevelopment is

safeguarded and otherwise denigrated by intrusion through access to the shoreline. Section 6.20(9) of the Zoning By-law allows for access paths of up to 9 m. This is with the proviso that the natural shoreline is protected and that the balance of waterfront is to be maintained in a natural state. As the Redevelopment will provide for a dedicated and communal point of private access to the shoreline, and with the concentration of relatively small sites, the evidence does not support the provision of multiple, or any, form of exceptions for private access to the shoreline by individual tenants of the sites. The Tribunal has noted, in the course of the evidence, the general statements and assumptions from all experts advocating the integral commitment to maintain a natural vegetative condition did not, at any time, suggest exceptions or limitations on the requirements for shoreline condition. For this reason, the Tribunal has directed the amendment as indicated in Attachment 2.

[155] Further, the Tribunal's approval of the amended ZBLA has been predicated on the assurances and assumptions provided by the Applicant, and its expert witnesses, that the site plan processes will, as indicated in the various pre-planning reports and the EIS, include comprehensive guidelines and provisions providing for the enhancement and regeneration of undisturbed shoreline vegetation following and implementing healthy shoreline guidelines appropriate for the condition of the Site's shoreline. While the site plan is not before the Tribunal, the evidence presented in support of the Applicant's and Municipality's case is that such matters will be addressed in the terms and conditions of a Site Plan Control Agreement.

[156] The evidence in this hearing, in support of the Redevelopment, and upon which the Tribunal has made its determination has variously referred to the objectives of maintaining vegetation as undisturbed, to stabilize shoreline, prevent erosion, filter runoff and minimize sedimentation, reduce nutrient mitigation and protect aquatic and terrestrial shoreline habitat. References were made that such things as facilitating appropriate native vegetation species, education practices, signage, monitoring, and the imposition of rules and regulations to prevent encroachment and activity within the

vegetative buffer, restrict pet intervention, and implement best practices for Site use and other various features. The extent to which the need for limited communal water access may be addressed will also be considered. The Tribunal has accepted the undertakings of the Applicant and the acceptance of these aspects of shoreline protection, as required components of the proposed Redevelopment.

[157] There was concurrence amongst the experts and the Parties that the Concept Plan, in accordance with the EIS, should specifically provide for the protection and preservation of the identified turtle nesting area located on the peninsula (Site No. 24).

### **Other Planning Evidence**

[158] The Tribunal has addressed various aspects of the evidence of the three planners, Messrs. Snider, Mooder and Stirling elsewhere in this Decision. It remains to briefly consider the planning evidence of the three planners.

[159] The Tribunal has made a number of findings relating to the issues raised by the Appellant with respect to environmental and ecological issues. As Mr. Snider has acknowledged, the key planning issues for determination by the Tribunal are, as with any complex planning matter, based largely upon input from the technical experts. For the reasons set out herein, despite a number of concerns raised by the Appellants, which will be addressed with the amendments to the ZBLA, and the holding provisions, the Tribunal has largely been unable to adopt a number of the opinions and recommendations urged by the Appellant's expert witnesses. As a result, as much of Mr. Snider's planning opinions and recommendations are based upon the Appellant's experts' input and conclusions, simply put, the Tribunal is unable to accept those aspects of Mr. Snider's final planning recommendations and opinions based upon the opinions of the experts which the Tribunal has been unable to accept.

[160] In light of the findings and conclusions of the Tribunal elsewhere, and in considering and accepting the evidence referred to herein as it relates to the further processes that will follow the ZBLA, including the Site Plan Control Agreement, the Tribunal accepts the planning evidence of Messrs. Mooder and Stirling and finds that the ZBLA, with the amendments provided for herein to address those deficiencies identified, or to elaborate upon some aspects of the ZBLA, as it will facilitate the Redevelopment, is consistent with the policies of the PPS, conforms to both the County and Community OPs. As such the Tribunal finds that the amended ZBLA, as it will permit the Redevelopment, represents good planning in the public interest.

### **Archaeology**

[161] Briefly, in the evidence, it was determined that no assessment of the Site was completed for the purposes of the cultural heritage policies of the PPS. Under s. 2.6 of the PPS, and the supporting policies of the OPs, planning authorities must ensure that no development or site alteration occurs on lands containing archaeological resources or potential, unless significant archaeological resources have been conserved. Adjacent lands are also relevant under the PPS policies. If cultural heritage and archaeological resources are found, the Municipality and any planning authority, is required to consider the interests of Aboriginal communities in conserving cultural heritage and archaeological resources. There is also the overarching duty to consult on the part of the Crown in relation to such issues.

[162] In this case, the evidence suggests that given the long-term development and disturbance of the surface areas of this Site for the tourist and aggregate operations, the probability of significant cultural heritage and archaeological resources is not high. However, at this point, no assessment as been undertaken and should be undertaken before further steps are taken.

[163] In this regard, the Applicant and Municipality concur that it is appropriate that a holding provision be included to ensure that there are assurances of consistency and conformity with the cultural and archaeological heritage policies of the PPS and the County OP.

## **SUMMARY OF FINDINGS AND CONCLUSIONS OF THE TRIBUNAL**

[164] As indicated, the Tribunal finds that the proposed Redevelopment will have no negative impact on the environmental and natural heritage features or its function.

[165] The Tribunal finds that the Redevelopment will not have a negative impact upon White Lake and further, that it will not result in an impairment to the water quality of White Lake.

[166] The Tribunal finds that the Redevelopment as it will be enabled by a ZBLA, and the amended ZBLA will, be consistent with the PPS, conform, or not conflict with any Provincial Plan, and conform to the County OP and Community OPs.

[167] In making these findings, the Tribunal finds that a 15 m shoreline setback is reasonable and appropriate and practically achievable as it will further the objectives of a naturally vegetated shoreline setback. The Tribunal finds that the reduced setback itself results in no negative impact and represents the best and only practical alternative for appropriate and beneficial long-term development of the Site.

[168] The Tribunal has had regard for the decision of Municipal Council and importantly, the basis upon which Council considered the overall planning and environmental benefits achieved through improvements to the current Site, and its existing condition. The Tribunal's findings, on all of the evidence, lead to the conclusion that, with the required amendments, the ZBLA, with additional site plan control

mechanisms, will allow for a sustainable, beneficial and orderly development that improves the current condition of the Site.

[169] The Redevelopment, with the indicated additional amendments and provisions, and the ZBLA, as amended represents good planning in the public interest.

[170] The Tribunal has made a finding with respect to the effect of the designation of the 15 m setback under s. 34(9) of the Act and the non-application of that provision to structures that are within the 15 m setback that were not previously legal non-complying structures within the 30 m buffer. The Tribunal however, makes no finding with respect to any specific structure or the manner in which the rights of any owner of a structure on the Site may be affected by the ZBLA as amended, or the Redevelopment as presented to the Tribunal.

[171] Given the identified concerns and uncertainties found by the Tribunal to exist with respect to the Redevelopment and the impact it will have on White Lake, and having considered the form of the ZBLA, the Tribunal must conclude that the ZBLA as drafted requires amendment to achieve good planning. The Tribunal has determined that the better method of moving forward with this Redevelopment is to address the deficiencies and concerns found by the Tribunal in the ZBLA and to modify the instrument.

[172] Those amendments are now set out in Attachment 2 to this Decision which address these findings of the Tribunal:

- (a) The Tribunal accepts the submission of the Appellant that the absence of a maximum permitted number of sites under the ZBLA, at this stage of planning, is a deficiency that must be addressed now, and should not be left to the site plan stage. Upon all of the evidence, the Tribunal has determined that the final maximum number of lots/sites permitted, inclusive of both existing and additional sites should be set at 100 for the

whole of the Site Redevelopment. This may exclude those existing sites within the 30 m PSW/ANSI buffer that will eventually be withdrawn from occupancy.

- (b) The Tribunal finds that it is necessary, on all of the evidence to add additional zones to the ZBLA identifying the four areas identified in the course of the hearing as appropriate for zoning as “Open Space (OS) Exception”, and including the existing and omitted “Environmental Protection (EP)” zone in Schedule “A”.
- (c) The instrument must also be amended to provide for certain matters to be adequately addressed, and in some case, anticipated to be incorporated into the final Site Plan Control Agreement, based upon the evidence and the findings of the Tribunal. They are:
  - 1. The identified Nesting Turtle area is to be protected and to remain undisturbed;
  - 2. The four areas zoned as “Open Space (OS) Exception”, and “Environmental Protection (EP)” zones must clearly be maintained and protected as vegetated areas and undisturbed from access or intrusion. This includes the 15 m shoreline setback as well as at the 30 m PSW/ANSI setback. The Tribunal has found that the assumptions of the MNRF and the MOECC, upon which the Municipality has relied, included the assumption that there would be best management practices and shoreline restoration through vegetative preservation and non-disturbance in the setbacks. The Recommendations in the EIS are imprecise in that regard and the ZBLA must clarify the maintenance and preservation vegetation in these setbacks and the non-disturbance of the areas, as indicated

above in this Decision. The provisions relating to water access in 6.20(9) must be addressed to also support this;

3. The approval of the Redevelopment is based upon the understanding and findings that all trailers and structures will be removed and relocated beyond the 15 m shoreline setback and the 30 m PSW/ANSI setback as soon as possible. The Municipality has also relied upon these assurances. This must be reflected in the ZBLA.
4. The Municipality and the Applicant have submitted, and accept that, as permitted by the Community OP, holding provisions should be included to ensure that the identified additional actions are undertaken prior to the Redevelopment proceeding. The Tribunal finds this to be appropriate.

## **ORDER**

[173] The Tribunal orders that the Appeal against Zoning By-law Amendment No. 16-69 of the Corporation of the Municipality of Mississippi Mills is allowed in part, and the Tribunal directs the Municipality to amend the by-law in accordance with this Decision of the Tribunal and Attachment 2. For clarity, section 7 of Attachment 2, amending paragraph 3 of the By-law, must be amended to reflect the findings and directions of the Tribunal in this Decision.

[174] In all other respects, the Tribunal orders that the appeal is dismissed.

[175] In the event that any issues arise with respect to the form of the Amended Zoning By-law, the parties shall request an appearance date from the Case Coordinator and the Panel will remain seized of this matter.

[176] This Order relating to the Amended By-law will be held in abeyance, and shall not issue, until such time as the Tribunal has been provided with the final form of the Amending By-law and it has been approved by the Tribunal.

*“David L. Lanthier”*

DAVID L. LANTHIER  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

A constituent tribunal of Tribunals Ontario - Environment and Land Division  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS

BY-LAW NO. 16-69

BEING a by-law to amend By-law No. 11-83 being the Zoning By-law for the Municipality of Mississippi Mills.


NOW THEREFORE the Council of the Corporation of the Municipality of Mississippi Mills pursuant to Section 34 of the *Planning Act*, R.S.O. 1990, Chapter P.13, enacts as follows:

1. Schedule 'B' to By-law No. 11-83, as amended, is hereby further amended by changing thereon from "Tourist Commercial (C6) Zone" and "Mineral Aggregate Pit (MP) Zone" to Tourist Commercial Special Exception 5 (C6-5) Zone", on those lands identified on the attached Schedule 'A', which are described as East Part Lot 26, Concession 2, Pakenham Ward, Municipality of Mississippi Mills, known municipally as 3200 3<sup>rd</sup> Concession.
2. By-law 11-83, as amended, being the Zoning By-law for the Municipality of Mississippi Mills, as amended, is hereby further amended by adding the following subsection to Section 24.3:

24.3.5 Notwithstanding the 'C6' zoning delineation, lands delineated as 'C6-5' on Schedule "A" to this by-law may be used in accordance with the C6 zone provisions contained in this by-law, the following provisions shall apply:


1. A "Tourist Campground" shall be an additional permitted use;
2. The minimum lot frontage for the "Tourist Campground" shall be 10m;
3. The minimum size of new "Campground Plots" shall be 350m<sup>2</sup>;
4. The minimum frontage of new campground plots shall be 16.5m;
5. Notwithstanding Section 6.24, setbacks from Watercourses and Waterbodies, the minimum setback from the high water mark shall be 15m; and,
6. Notwithstanding Section 6.26, setbacks from Environmental Protection (EP) zone, no new buildings or structures shall be permitted within 30m of the Provincially Significant Wetland.

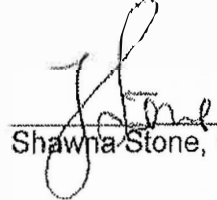
3. Notwithstanding the C6 zoning designation, on those lands delineated as C6-5 to this By-Law future development shall proceed in accordance with the following recommendations of the Environmental Impact Assessment (EIA):
  - a) Maintenance and protection of the sandy shore which is utilized by nesting turtles.
  - b) Maintenance and protection of the shoreline vegetation within 30m of the high water mark.
  - c) Notwithstanding the above, development of a marina, boat launch or any flood control measures are permitted subject to the recommendations of the EIA.
  - d) Sewage disposal system shall include phosphorus abatement technology.

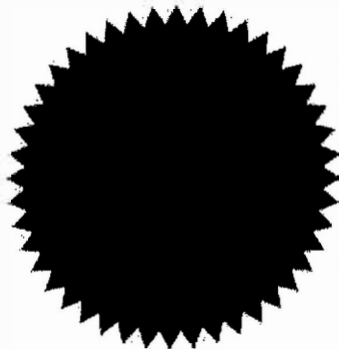
  
CERTIFIED TRUE COPY  
JOHN CLERK (Deputy)

4. This By-Law takes effect from the date of passage by Council and comes into force and effect pursuant to the provisions of the *Planning Act, R.S.O 1990*.

BY-LAW read, passed, signed and sealed in open Council this 28<sup>th</sup> day of June, 2016.

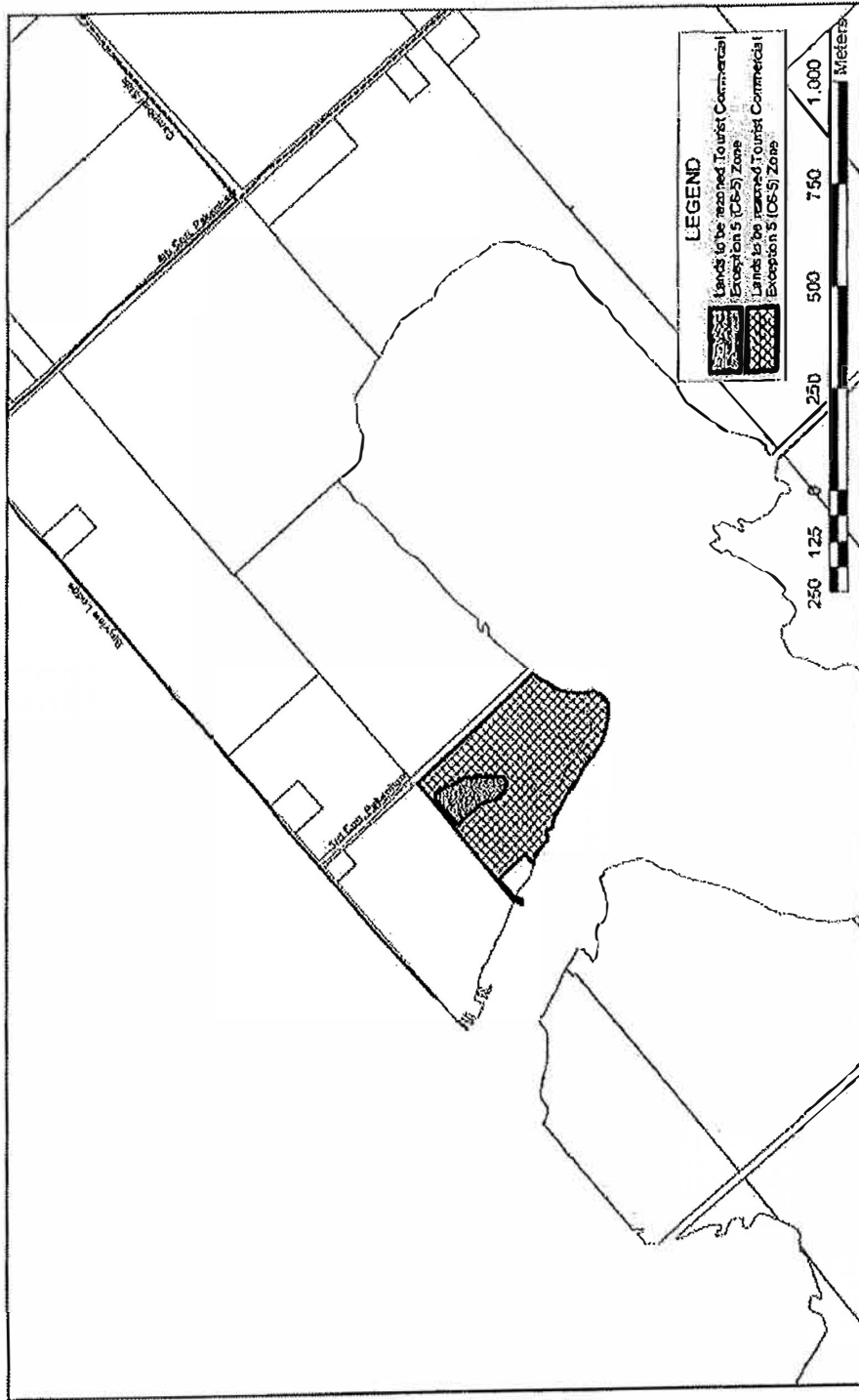
  
\_\_\_\_\_  
Shaun McLaughlin, Mayor

  
\_\_\_\_\_  
Shawna Stone, Clerk



SCHEDULE 'A' TO BY-LAW NO. 16-69

ZONING BY-LAW AMENDMENT APPLICATION Z-08-13  
PART LOT 26, CONCESSION 2  
PAKENHAM WARD, MUNICIPALITY OF MISSISSIPPI MILLS  
MUNICIPALLY KNOWN AS: 3200 PAKENHAM CONCESSION 3 NORTH



**The Tribunal orders that the following amendments shall be made to Zoning By-law Amendment 16-69 (the “ZBLA”) as it was before the Tribunal and is attached as Attachment 1 to this Decision:**

1. Item 3 of s. 24.3.5 of the ZBLA shall be deleted and replaced with the following: **“The minimum frontage of new Campground Plots shall be 16.5m;”**.
2. The following shall be added as an additional subparagraph to s. 24.3.5:

**“7. The total maximum number of Campground Plots permitted on the lands shall be One Hundred (100).”**
3. The following shall be added as an additional subparagraph to s. 24.3.5:

**“8. Notwithstanding Section 6.20(9) no water access area of any width will be permitted within the required vegetative buffer of retained and additionally established mature tree cover and native shrubs and vegetation within 15 metres of the high-water mark of White Lake save and except as may be established as communal access, marina and docking facilities at the single identified location.**
4. Section 24.3.5 and the Schedule to the Zoning By-law is to be revised to identify areas zoned as *“Open Space (OS) Exception”*, and the omitted in-place *“Environmental Protection (EP)”* zones, which will cover four areas:
  - (1) the 15 metre (m) shoreline setback along the entirety of the highwater mark of the Site (excepting where the greater 30 m setback shall apply);
  - (2) the 30 m woodland and PSW/ANSI setback and the PSW/ANSI in the eastern and northeastern area of the Site as identified by the Applicant in Exhibit 21 to the hearing;
  - (3) the interior Wooded Swamp, inclusive of the surround Upland Deciduous Forest as identified by the Applicant and shown in Exhibit 16 to the hearing;
  - (4) an area satisfactory to the MNRF to adequately encompass and protect the Snapping Turtle Nesting area identified in the EIS documentation and shown in Exhibit 16 to the hearing;
5. Schedule “A” will be amended to reflect the identified *“Open Space – Exception”* and *“Environmental Protection EP”* and Holding (H) zones.
6. The By-law shall be amended to add a provision to include a Holding (H) zone providing for:

- (1) The completion of a Stage 1 Archaeological Assessment, and, if directed, in a Stage 1 Assessment, an additional Stage 2 Archaeological Field Investigation and Assessment and other assessments as may be directed;
- (2) The issuance of all environmental approvals of the tertiary sewage treatment system with phosphorus reduction technology by the Ministry of Environment, Conservation and Parks and any other required regulatory body;
- (3) The completion and approval of a final Stormwater Management Plan for the Site;
- (4) The issuance of all necessary permits for Works impacting fish habitat by the Department of Fisheries and Oceans;
- (5) The issuance of all necessary permits for shore Works by the Ministry of Natural Resources and Forestry; and
- (6) The execution and registration of a Site Plan Control Agreement.

7. Paragraph 3 of the By-law shall be deleted and replaced with the following:

3. Notwithstanding the C6 zoning designation, on those lands delineated as C6-5 and Open Space (OS) Exception and Environmental Protection (EP) to this By-Law future development shall proceed in accordance with the following:
  - (a) There shall be maintenance, protection and non-disturbance of the identified sandy shore area which is utilized by nesting turtles;
  - (b) Measures shall be implemented to the satisfaction of the Municipality for the maintenance, protection and non-disturbance of the shoreline vegetation within 15 m of the high water mark and within the 30 m buffer established for the PSW/ANSI and woodland, as well as the inland wooded swamp and surrounding forested area;
  - (c) Notwithstanding the above, development of a marina, boat launch or any flood control measures are permitted subject to the recommendations of the EIA, the MNRF and the Department of Fisheries.
  - (d) The Sewage disposal system shall include phosphorus abatement technology;
  - (e) The owner/Applicant shall proceed to implement steps for the continued and eventual relocation of all buildings, trailers and structures outside the 15 m shoreline setback, and the 30 m PSW/ANSI setback, and provisions are to be contained within the site plan control agreement to effect this relocation as soon as is possible. No new buildings, trailers or structures shall be located within these setbacks.