

IN THE MATTER OF

The Conservation Authorities Act,

R.S.O. 1990, Chapter 27

AND IN THE MATTER OF an application by Ophira Sutton

FOR THE PERMISSION OF THE CROWE VALLEY CONSERVATION AUTHORITY

Pursuant to Regulations made under Section 28, Subsection 12 of the Conservation Authorities Act

THE APPLICANT/APPELLANT MATERIALS PACKAGE

June 1, 2023

**Kinch Eddie Litigation
Professional Corporation**
45 Bridge Street East, PO Box 149
Campbellford, ON K0L 1L0

M. Kathleen Kinch (LSO No. 65306U)
Tel: 705-653-4023 ext. 209
Fax: 705-653-0230
Email: kat@kinchlitigation.com

Jenna Khoury-Hanna (LSO No. 80832T)
Tel: 705-653-4023 Ext. 218
Fax: 705-653-0230
Email: jenna@kinchlitigation.com

Counsel for the Applicant/Appellant

INDEX

Tab	Document
A	PowerPoint slides prepared by counsel for the Applicant/Appellant
B	Report to the Board of the CVCA prepared by Bob Clark, Clark Consulting Services dated June 2023
C	OLT Decision for Balabutton Holdings v. Havelock-Belmont-Methuen (Twp.) dated January 19, 2023
D	Sworn Affidavit of Ophira Sutton dated September 8, 2021

**Tab A - Power Point slides
prepared by counsel for the
Applicant/Appellant**



In The Matter of An Application by Ophira Sutton

PERMIT APPLICATION 028/21

PART OF LOTS 14&15, CONCESSIONS 6 & 8

ASSESSMENT ROLL NUMBER: 1531 010 005 37100

527 FIRE ROUTE 82, TOWNSHIP OF HAVELOCK-BELMONT-METHUEN (KASSHABOG
LAKE)

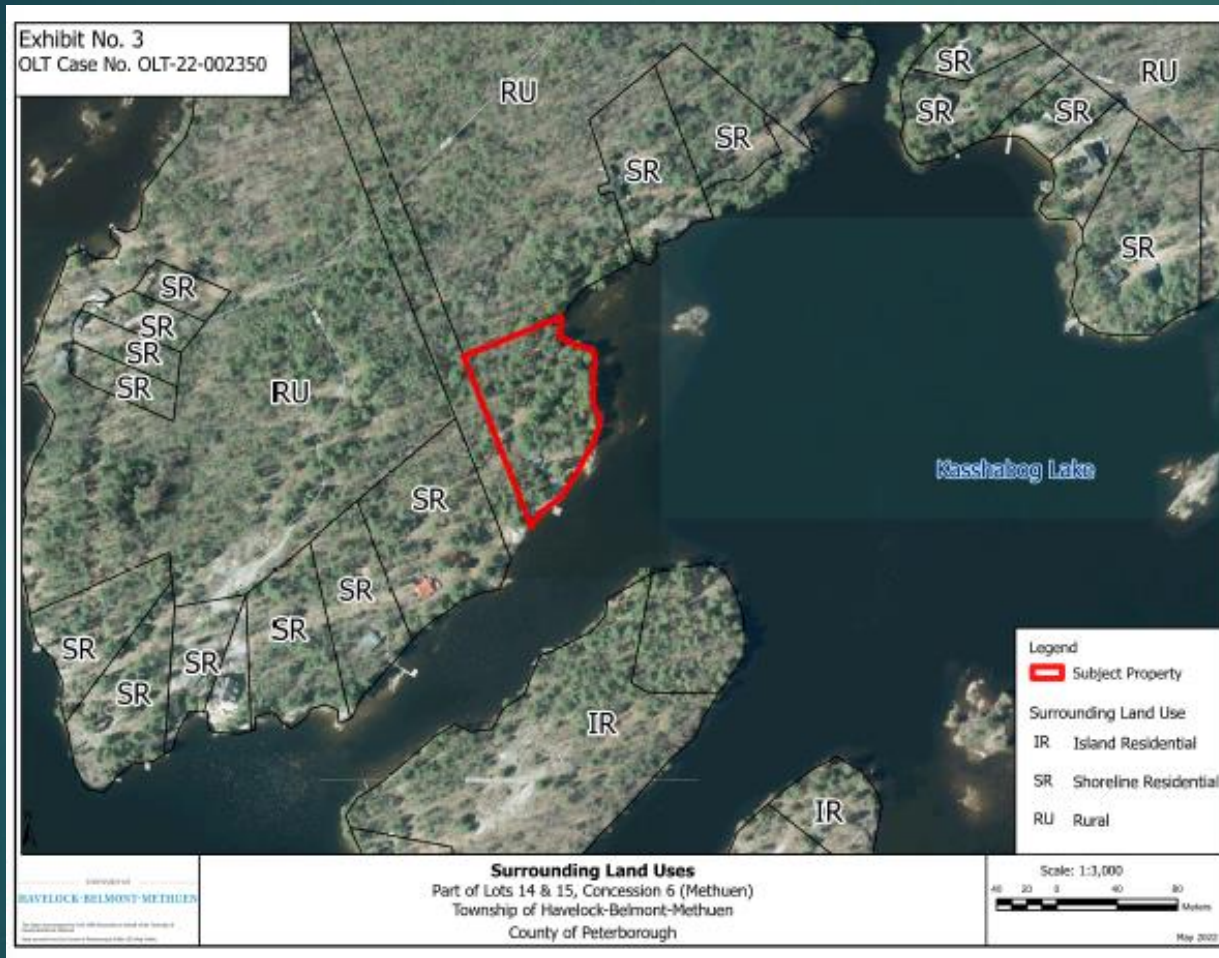
Overview of Submissions

1. Requested Relief
2. The Subject Property
3. Overview of the Application
4. Timeline of Events
5. Doctrine of Legitimate Expectations
6. Overall Compliance with CVCA Policies
7. Conclusion

The Requested Relief

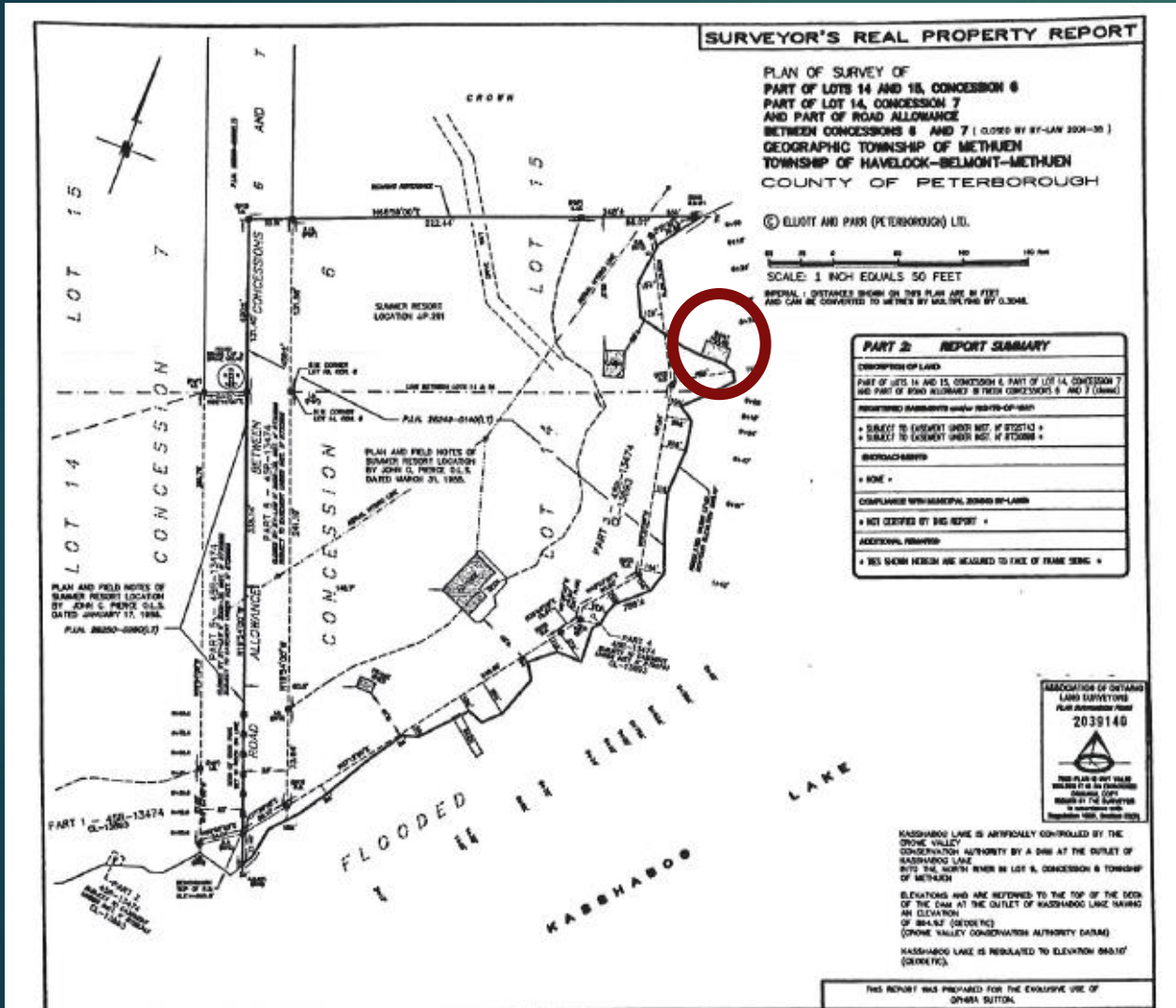
- ▶ That Permit 028/21 be approved by the Watershed Advisory Board, and more specifically that the Watershed Advisory Board grant an exemption to permit a modest increase to the size of an existing in-water boathouse located at 527 Fire Route 82, Township of Havelock-Belmont-Methuen (Kasshabog Lake) (the “Subject Property”)

The Subject Property



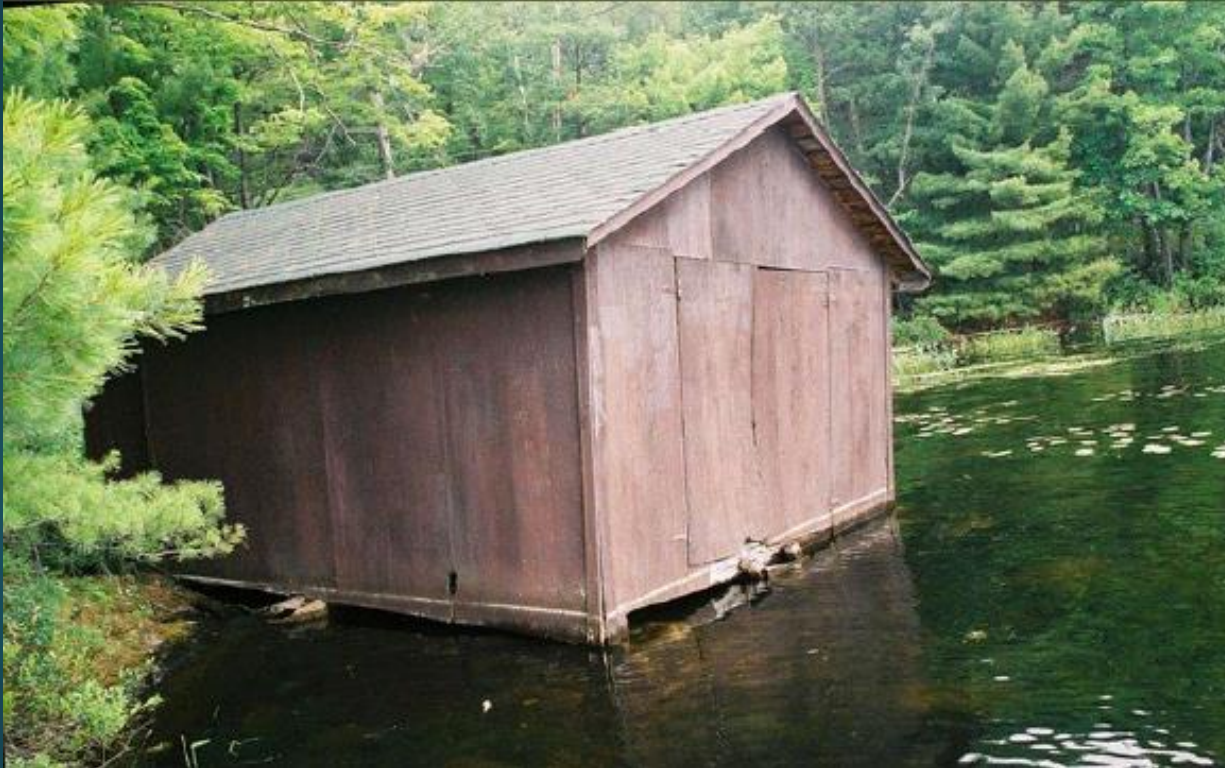
- ▶ This is an aerial view of the area where the Subject Property is located.
- ▶ The Subject Property is outlined in red.
- ▶ The Applicant purchased the adjacent road allowance and the shoreline road allowance. The Subject Property has 173 meters (569 feet) measured as straight-line frontage on the lake and is 8,635 sq. m in area.

The Subject Property Continued



- ▶ This a screenshot of a survey prepared by Elliott and Parr in support of the Application.
- ▶ The location of the boathouse is circled in orange. It is located in an inlet on Kashabog Lake on the Subject Property. This is a quiet area of the shoreline.
- ▶ As can be seen, the other buildings on site include a cottage and a sleeping cabin.
- ▶ The in-water boathouse is believed to have been constructed sometime in the late 1950s – early 1960s.

The Subject Property Continued



- ▶ This is the in-water boathouse that is the subject of this Application.
- ▶ This photo was taken in 2003, which is the year that the Applicant purchased the Subject Property.

The Subject Property Continued



Left: in-water boathouse as of 2014
Above: in-water boathouse as of 2021,
clearly in need of repair, but still storing a
boat and not abandoned by owners.

Application Overview

- ▶ The Applicant is seeking a permit to repair and expand the existing in-water boathouse located on the Subject Property.
- ▶ The desired expansion would result in a boathouse 16 feet wide and 26 feet deep. This expansion has been described as modest and would allow the Applicant to accommodate a boat with modern dimensions.
- ▶ The repair and expansion also accommodates modern requirements to ensure the structure is made in a way that is suitable to the local environment, and adequate to withstand a changing climate for years to come.

Timeline

- ▶ The Zoning By-Law Amendment Application was submitted and received by the Township of HBM (the “Township”) on March 5, 2021.
- ▶ The Applicant’s CVCA permit application was originally submitted on March 10, 2021. All the requisite fees were paid as of April 13, 2021 (as covid closures required special arrangements).
- ▶ A contractor on behalf of the Applicant communicated with CVCA staff in March 2021. CVCA asked that the footings design be changed from concrete to steel pilings, which was agreed. The permit fee was recalculated and an additional amount paid by the applicant.

Timeline

- On April 19, 2021, Ms. Lowe prepared a letter in response to a request for agency and public comments from the Township. In the letter, she stated that the in-water boathouse was within the 100-year floodplain and took the position that CVCA does not permit new in-water boathouses. However, she does explain that in-water boathouse repairs can be permitted if certain criteria are met.
- On April 20, 2021, the Application before the Township was denied. Subsequently an appeal to the Ontario Land Tribunal (“OLT”) was filed on April 25, 2021.

Timeline Continued

- ▶ In September 2021, Ms. Lowe attended the Subject Property with the Applicant's planner, Mr. Bob Clark. Subsequently, and after being provided with photos and other evidence by Mr. Clark, she wrote to Mr. Clark that "**CVCA would permit a modest increase in size to the in-water boathouse**, provided that there is no intensification or change of use". [Emphasis added] No intensification or change in use is proposed. The owners relied on this in preparing for their OLT appeal.
- ▶ On April 6, 2022, **CVCA unexpectedly reversed position**. Ms. Lowe was invited to be a witness in the OLT appeal in mid-March. In a call with counsel for the owners (which Mr. Pidduck also attended), Mr. Pidduck and Ms. Lowe stated CVCA would not support an increase in size and further would not support redevelopment of a "derelict" structure. Given the prior position in writing, this was very surprising.

Timeline Continued

- The owners through counsel made an MFIPPA request for CVCA's file on this issue. The MFIPPA records indicate a call between someone at CVCA and John Smallwood at the Township of Havelock-Belmont-Methuen on April 8, 2022 advising the Township of CVCA's new position.
- The notes of the call read: "Proposed works do not meet CVCA policies. John said that the proposed works are contrary to the PPS and Zoning bylaw. John said he was going to speak to their lawyer for guidance. Discussed that there are two streams, planning and permitting, we are still only at the planning stage. The in-house planner at the time presented a report that was contrary to HBM's policies. CVCA's Policy Manual is inline with HMB [typo in original] by laws."
- As will be outlined next, the Township's planning position summarized in these notes was overruled at the Ontario Land Tribunal – the information given by the Township in this call did not turn out to be accurate.

Timeline Continued

- The OLT heard the owners' appeal on June 15-17, 2022 via videoconference.
- On January 19, 2023, the owners received the OLT's appeal decision. The owners won. The orders of the OLT for the zoning for the boathouse are contingent in part on CVCA permits being obtained.
- Accordingly, after receiving the decision, counsel for the Applicant wrote to Ms. Lowe requesting that she process the outstanding March 2021 permit application

Timeline Continued

- ▶ On March 8, 2023, Ms. Lowe provided a letter in which she took the position that the OLT decision was not binding on the CVCA permit process and re-asserted her (new) position that CVCA policies do not support the reconstruction of the boathouse.
- ▶ On May 1, 2023, Ms. Lowe formally sent out the Denial Letter denying the permit application that is the subject of the appeal before you today, as well as the Notice of Hearing.

Doctrine of Legitimate Expectations

- ▶ The Doctrine of Legitimate Expectations creates a legal principle that it is unfair for an administrative decision-maker to act in contravention of representations as to procedure, or to backtrack on substantive promises without affording significant procedural rights.
- ▶ While the doctrine generally does not create substantive rights, give right to a particular outcome, or fetter a decision-maker's decision, one such exception to this exists in instances where there is a **clear and unequivocal evidence of a representation, undertaking, etc. by the decision maker.**

Doctrine of Legitimate Expectations

Here, in Ms. Lowe's September 2021 email, a substantive promise was clearly and unequivocally made to the Applicant, specifically that CVCA agreed to a modest expansion of the existing in-water boathouse. This approval was given in writing.

The reversal only occurred when it became clear to CVCA that Ms. Lowe would be a witness in the Tribunal case. The owners had been preparing their appeal based on the CVCA position communicated in writing. They also expected that when they had their zoning, the permit would follow without further undue cost and process as they had secured that in September 2021.

The subsequent reversal is contrary to the doctrine of legitimate expectations and gives rise to a blatant violation of the Applicant's rights when dealing with CVCA as an administrative decision-maker.

September 22, 2021 email from Beth Lowe

“Good morning Bob,

... [paragraph re: bunkie omitted]

As for the boathouse, the CVCA would [typo in original] **permit the modest increase in size, 2 feet on either side, as the boathouse is pre-existing, there is no intensification and no change of use.** The boathouse will have to remain non-habitable and contain no services other than electricity.

Thank you,
-Beth”

Overall Compliance with CVCA Policies

- ▶ **Ms. Lowe's September 2021 email agreeing to the repair and expansion actually got it right.** The Application complies with all applicable CVCA Policies and ought to be permitted. We will outline why on the next slide.
- ▶ We are seeking a specific exemption to one sub-part of a particular policy from the Watershed Advisory Board, namely that repairs are only generally permitted where there is no change in size to the in-water boathouse. A modest expansion is sought from the CVCA board – a footprint of 16 feet by 26 feet will accommodate the owner's watercraft (chosen for its accessibility as they age) and the modern construction.
- ▶ The factual findings in the OLT decision dated January 19, 2023 are consistent with our position and support the granting of the permit.

Policy 3.8.1

- ▶ **3.8.1** That development, interference or alteration will not be permitted within a regulated area, except in accordance with the policies contained within this document. In the event of a conflict between the policies applicable to the development, interference or alternation, the most restrictive policy shall apply.
- ▶ **Our position:** It is our position that the Application is able to meet this criteria. Our review of the policies applicable to the Application did not identify any policies in conflict to which this section must be applied.

Policy 3.8.2

- ▶ **3.8.2** That notwithstanding Policy 3.8.1, the CVCA's Board of Directors may grant permission for development, interference and/or alteration where the application provided evidence acceptable to the Board of Directors that documents the development and/or activity will have no adverse effect on the control of flooding, erosion, pollution or the conservation of land with respect to river or stream valleys, hazardous land, wetland and areas of interference, or result in unacceptable interference with a watercourse or wetland.
- ▶ **Our Position:** It is our position that **this policy allows the Board to grant the relief that we are seeking.**
- ▶ As is outlined in Mr. Clark's report, he does not believe that the Application will have an adverse effect on the control of flooding, erosion, pollution or the conservation of land with respect to river or stream valleys, hazardous lands, wetland and areas of interference, or result in unacceptable interference with a watercourse or wetland. The proposed work on the boathouse is unquestionably an improvement to the existing situation.

Policy 5.2.1

- ▶ **5.2.1** Development within the Regulatory floodplain shall not be permitted;
- ▶ **Our Position:** It is our position that the in-water boathouse is a pre-existing structure and such this policy does not apply.
- ▶ One of the points of contention in the OLT Appeal was whether the in-water boathouse was a legal nonconforming use, and there was a finding that it was. For this reason, we take the position that what is proposed is not “development” as meant by this policy, but rather maintaining to modern standards a pre-existing use.

Policy 5.2.6

- ▶ **5.2.6** Redevelopment of derelict and abandoned buildings within the 100 year floodplain shall not be permitted.

Denial letter dated May 1, 2023 cites this policy and then comments: “Conformity: The application does not conform as the existing boathouse is considered derelict.” **The denial letter is silent on whether the boathouse is also “abandoned” as required by the policy.**

- ▶ **Our Position:** In her correspondence with us, Ms. Lowe takes the position that the building is derelict, therefore redevelopment is not permitted. She did not raise that after seeing the building herself in September 2021.
- ▶ It is our position that this section requires that **a building be both derelict AND abandoned**. There are clear findings in the OLT decision that **the boathouse has not been abandoned**, namely that the boathouse continued to be used and that the Applicant has taken numerous steps to try to preserve the boathouse while the zoning application, CVCA permit application, OLT appeal and now this appeal have been ongoing.
- ▶ Because the policy uses the word “and”, **both elements must be met** for the policy to apply. Derelict only or abandoned only are not enough.
- ▶ CVCA staff appears never to have considered the full analysis since reversing position in April 2022. They appear to have stopped at the word “derelict”. This is an error in law.

Policy 5.2.6

Alternatively, the Board need not consider the boathouse to be derelict.

Various dictionary definitions:

- “abandoned especially by the owner or occupant” (Merriam Webster)
- “not used or cared for and in bad condition” (Oxford Learners Dictionary)
- “left or deserted, as by the owner or guardian” (Dictionary.com)

The owners continue to use the boathouse to store a sailboat awaiting restoration, as well as other boating equipment.

They have not deserted the building. Their legal efforts with CVCA, the Township, and the Tribunal must all be seen as their work to improve it through the required processes. At the Tribunal, Henry Balaban outlined the steps taken to care for it over the years.

Policy 6.4.1.9

- ▶ **6.4.1.9** Repairs to existing in water boathouses, structures and permanent docks may be permitted provided that the repairs:
 - Do not impede the flow of water;
 - Do not provide an opportunity for conversion into habitable space in the future (to ensure no habitable component, the boathouse shall contain no services other than electricity);
 - The repairs do not result in a change in use, including new decks and rooftop patios;
 - Do not alter the natural contour of the shoreline; and
 - Do not result in a change in size or create a navigational hazard.

Repairs to the foundation of an existing boathouse or structure will be required to be designed by an appropriate and qualified professional.

- ▶ **Our Position:** As per the opinion of Mr. Clark, Application will not result in an impediment of the flow of water, there will be no opportunities for conversion into a habitable space, there will be no change in use, it will not alter the natural contour of the shoreline and will not create a navigational hazard.
- ▶ The specific policy to which we are seeking an exemption from the Board pertains to the change in size.
- ▶ The in-water boathouse currently stores a historic sailboat owned by the Applicant. The Applicant wishes to use the in-water boathouse to store their compact pontoon boat instead, but it currently does not fit. The proposed modest expansion will permit the pontoon boat, which is easier to use as aging landowners, to fit in the boathouse.
- ▶ As per Mr. Balaban's testimony, as documented in the OLT decision, there are a variety of reasons for this request, including ensuring that the property is able to be used by multiple generations and that all ages will be able to enjoy the property.

Guiding Principles to Consider

Relevant “objects” of a conservation authority under s. 21.1 of the *Conservation Authorities Act* as amended: **programs and services related to the risk of natural hazards**

- **In what way does the Application pose a risk or worsening of a natural hazard?** It will be constructed to modern standards, engineered for its setting, with significant improvements to how it is made in relation to the lake.

Under the CVCA policy manual 1.1, “Purpose and Scope”, it is emphasized that flood plain management should be undertaken together with municipal land use planning and permitting to “**help ensure safe and appropriate land uses.**” The Tribunal, on the municipal side, confirmed that the proposal met with the requirements of the Provincial Policy Statement and other applicable planning policies/by-laws. Unsafe or inappropriate land use would not pass muster with the Tribunal.

- **The repair of the boathouse** that is proposed **improves its safety.**
- **The proposed expansion is an appropriate land use**, in keeping with modern use of a building of this nature.

How does refusal of the Application further the objects and purposes of CVCA?

Fairness

Landowners need to be able to trust that CVCA, in making explicit representations about what CVCA will permit, will not unexpectedly change position months later, especially when there is no new information and no change in the applicable law/policy to justify such change.

In this case, nothing changed except that Ms. Lowe was invited to testify by the owners to authenticate what she had written on behalf of CVCA.

Had she been allowed to do that, instead of being internally overruled (mistakenly, as the boathouse is not derelict and abandoned), the effort and expense the owners have incurred in responding to this aspect of the contingent order and this appeal to the CVCA board would not have been required.

Fairness

All the owners have tried to do is repair an aging structure that badly needs it, and to make it a modern version of the use it has always had, sufficient to house a recreational boat, appropriately constructed for its lake setting, and able to withstand our changing climate.

They have at all times engaged professionals to assist them, sought permissions as required, and supplied the information requested of them, at considerable expense and effort. They believed in September 2021 that they had satisfied all of CVCA's requirements, because they were told that in writing.

What happened in April 2022 exposed the CVCA to potential liability, as the owners had already acted in reliance on the written representation from Ms. Lowe in September 2021 in the appeal steps taken thereafter, and have now been put to costs of thousands of dollars to bring this matter to the Board.

Concluding Comments

There is no evidence that repair and very modest expansion of a long-existing boathouse would have any negative impacts on the control of flooding.

The work proposed by the Application will radically improve a degrading boathouse not presently constructed to modern standards and no longer in good condition. The owners have done their best to keep it functioning and have availed themselves of all necessary processes for years to repair it legally and properly.

In April 2022 and again in the May 1, 2023 denial letter, staff made a significant mistake in failing to consider whether the boathouse was both derelict and abandoned. In May 2023 this was especially concerning, as staff had the benefit of the Tribunal's extensive consideration and rejection of the Township's argument that the owners had "forfeited" a legal non-conforming use by abandoning it. The Tribunal accepted that the owners continued to maintain boathouse uses, worked to improve it, and never abandoned its usage (para. 53). We accept that the Tribunal's decision does not bind CVCA, but urge this Board to treat the factual findings made by the Tribunal about the use of the boathouse as meritorious.

The Board is urged to grant the applicants' appeal.

**Tab B- Report to the CVCA
Board prepared by Bob Clark,
Clark Consulting Services**

Report to Board of the Crowe Valley Conservation Authority



CLARK
CONSULTING SERVICES

Approval of Boathouse Repair
Part of Road Allowance Between Concession 6 & 7 Methuen;
Part of Lots 14 & 15, Concession 6, Methuen
527 Fire Route 82
Township of Havelock-Belmont-Methuen
OLT Case No. OLT-22-002350
CCS Project No. 4792

June 2023

Prepared for: Balabutton Holdings Inc. c/o Ophira Sutton
Prepared by: Bob Clark, Clark Consulting Services

1. INTRODUCTION

This matter is related to an appeal submitted on behalf of the owner of the subject lands, related to the denial of the application for a Zoning By-law Amendment to allow the reconstruction and minor enlargement of the existing boathouse, and the expansion of the existing sleeping cabin. This matter was the subject of a hearing and decision before the Ontario Land Tribunal. The tribunal decision approved the zoning subject to obtaining a permit from the Conservation Authority.

The location of the site is illustrated on *Figure 1*.

The boathouse although in need of repairs has been continuously used. It was constructed some 60 years ago according to MPAC records, and was intended for smaller boats that were common at that time. The building is not large enough to accommodate the owner's compact 18-foot pontoon boat. The boathouse is currently used to store the owner's boat. The current boathouse is 12' wide and 20'6" deep, for a building area of 246 sq.ft. (22.85 sq.m.). The expansion requested would result in a boathouse 16' wide and 26' deep for a building area of 416 sq.ft. (38.6 sq.m.). This would be an expansion of 69% in area.

The location of the structures and the proposed expansion is illustrated on *Figure 2*. The cottage is serviced by a septic tank and tile field. The water supply is taken from the lake and treated.

2. SITE DESCRIPTION

The subject lands are located on Kasshabog Lake and are accessed by Fire Route 82, as illustrated on *Figure 1*. The current owners purchased the adjacent road allowance and the shoreline road allowance. The site has 173 metres (569 feet) measured as straight-line frontage on the lake, and is 8,635 sq.m. in area. The buildings on the site include a cottage, a sleeping cabin and a boathouse. The cottage is a single storey, and has a gross floor area of 940 sq.ft. The lot is wooded with rock outcrops. It slopes gently to the shoreline. The shoreline is wooded with rock outcrops.

The current owners, who are the applicants and appellants, purchased the property in 2003. The structures are several decades old.

In order to prepare this opinion, I have:

- reviewed the Report prepared by the Township Planner/Economic Development Officer including submissions to Council;
- visited the site and the surrounding area;
- reviewed the documentation submitted in support of the Zoning By-law Application;
- reviewed the applicable planning documents including Zoning By-law 1995-42;
- consulted with Crowe Valley Conservation Authority;
- have attended as expert at OLT Hearing and obtained a favourable decision.

3. ZONING BY-LAW AMENDMENT APPLICATION

The Zoning By-law Amendment Application seeks to recognize the existing structures as legal non-complying structures and allow the boathouse to be reconstructed slightly larger to accommodate the owners' 18-foot pontoon boat, as has been conditionally approved by OLT..

Council, at their meeting of April 20, 2021 held the required Public Meeting. There was concern expressed during the Council Meeting with the boathouse reconstruction. No reasons for Council denial were provided. Our client's appealed the Council denial, and an OLT hearing was held. The OLT decision which is available for review, approved the boathouse expansion subject to the issuance by CVCA of the required permit.

4. REVIEW OF PLANNING DOCUMENTS

The subject lands are located in the Methuen Ward of the Township of Havelock-Belmont-Methuen in the County of Peterborough. The relevant planning policy as it relates to the subject lands and the proposed Zoning By-law include the Provincial Policy Statement (May 1, 2020), the Greater Golden Horseshoe Growth Plan, the County of Peterborough Official Plan and the Township of Havelock-Belmont-Methuen Official Plan and Zoning By-law. A complete review has been provided to the Ontario Land Tribunal and their decision supports the planning opinion that the application of existing planning documents supports the proposed reconstruction and minor expansion of the Boathouse.

The Provincial Policy Statement (PPS) issued under Section 3 of the Planning Act and effective as of May 1, 2020, in Section 1.1.5.2 lists as permitted uses in rural areas, resource-based recreational uses (including recreational dwellings). Section 1.1.5 addresses Rural Lands. Section 1.1.5.1 advises decision makers to consider the health of the community, the wise use of resources and the health and safety of the public.



Section 1.1.5.3 directs that recreational, tourism and other economic opportunities should be promoted, and Section 1.1.5.4 directs that development that is compatible with the rural landscape and can be sustained by rural service levels, should be promoted. The remainder of Section 1.1.5 addresses concerns about infrastructure and impact on other rural uses.

The proposed reconstruction of the boathouse represents an existing use, which the owner is proposing to improve. No comments were raised indicating that these activities would raise issues with the health of the community, the wise use of resources or the health and safety of the Public.

The existing boathouse is a single structure located in a bay on this extensive shoreline and is recognized as an existing shoreline improvement. Due to the length of its existence and the provisions in the Planning Act acknowledging the right of legal non-conforming uses to continue and expand, subject to appropriate approval, it is our opinion that the repair and modest expansion is consistent with good planning and the applicable planning documents.

Kasshabog Lake is not listed in the County Official Plan as a Sensitive Lake Trout Lake.

4.1 Township of Havelock-Belmont-Methuen Official Plan

The Official Plan of the Township of Havelock-Belmont-Methuen was adopted by Council in 2012. The subject lands are designated Shoreline on Schedule A2 (*Methuen Ward*), as shown on *Figure 3*. This review is based on the Office Consolidation dated December 2015.

Section 1.2.4.5 states, *“In order to improve and protect waterfront areas as a significant recreational and natural environment resource and enhance land areas adjacent to the shore; it is the intent of this Plan to:*

- b) Minimize the intensity of shoreline development to prevent:
 - Significant detracton from the natural landscape;
 - Significant environmental degradation; or
 - a hazard to navigation;*
- c) Preserve and enhance fish and wildlife habitat areas within and along waterbodies;*
- d) Maintain shorelines in their natural state and promote property stewardship in developed or developing areas.”*

This section acknowledges that there is existing shoreline development. The proposed reconstruction and enlargement of the boathouse does not increase the intensity of shoreline development, or reduce the natural state of the shoreline.

Section 3.3.4.2 addresses Marine Facilities, such as the existing boathouse. This section exempts marinas from the 30-metre shoreline setback and directs that these facilities should be of a type



and scale that minimizes their environmental, navigational, and visual impacts.

Section 3.3.4.9 addresses existing land uses in the Shoreline designation. Subsection c) allows the continuation, expansion or enlargement of existing non-complying uses, provided the following tests are met:

- i) the general intent and purpose of the Official Plan and Zoning By-law are maintained;
- ii) the variance is desirable for the appropriate development of the lands;
- iii) the variance is minor in nature;
- iv) a proposal for a minor variance to reduce the shoreline setback will be strongly discouraged.

These criteria are expressed in terms of an application for a Minor Variance however, my review of the proposed expansion indicates that the proposed expansion meets the above criteria and thus a Zoning By-law Amendment can also be supported. This opinion was supported by the OLT in their decision to allow the repair and reconstruction of the boathouse.

4.2 Township of Havelock-Belmont-Methuen Zoning By-law Number 1995-42

The subject lands are currently zoned Seasonal Residential (SR), as illustrated on *Figure 4*.

Section 4.22.1 (a) prohibits on-water boathouses in all zones; however, Section 4.10.A (a) allows a legal non-conforming building or structure which is non-conforming to continue to be used for the purpose and subsection (d) states: *“nothing in the By-law applies to prevent the reconstruction of any lawful non-conforming building or structure which is damaged by causes beyond the control of the owner.”*

Section 4.10 B (a) permits, *“A building or structure or part thereof, which at the date of passing of this By-law, was used for a purpose permissible within the land use zone in which it is located, may be enlarged, extended, reconstructed, or restored provided that:*

- (i) the enlargement or alteration to the building or structure does not reduce the existing yards except where such yards are greater in size than the minimum required in this By-law, such yards may be reduced to the minimum yards required by this By-law;*
- (ii) the enlargement or alteration does not create another deficiency or increase the degree of an existing deficiency with respect to any requirement of this By-law; and*
- (iii) all other applicable provisions of this By-law are complied with as they relate to the enlargement, reconstruction, repair and/or renovation.”*

These sections apply to recognize the boathouse, which is prohibited by this By-law, but was established several decades earlier as a legal use and allows this boathouse to be reconstructed and enlarged. We note that the Surveyor’s Real Property Report reproduced as *Figure 2*, includes a note that the plan and field notes used for this plan were prepared by John Pierce, dated March 31, 1955. This information was provided to the OLT and their decision supports the legal non-



conforming status of the existing structures.

5. CROWE VALLEY CONSERVATION AUTHORITY

In response to the notice of the proposed Zoning By-law Amendment, the Crowe Valley Conservation Authority in their role of reviewing matters of Provincial interest related to natural hazards and their regulations related to development of shorelines and watercourses, provided a letter dated April 19, 2021.

The letter also advised that although the Conservation Authority regulations allow the reconstruction of the boathouse, these repairs must meet a series of criteria not unlike the policies outlined in the planning documents. A permit will be required from the Conservation Authority.

In order to secure a permit, the following information was requested:

1. Confirmation that the proposed boathouse meets the CVCA Board-Approved Policies for in-water boathouse repairs;
2. Repairs to the existing in-water boathouse will be required to be designed by an appropriate and qualified professional and provided to CVCA;
3. Photos of the in-water boathouse.

5.1 Watershed Planning and Regulations (O. Reg 159/06) Policy Manual

The Watershed Regulations Manual was updated February 2020. Section 1.1 provides extensive background information that provides the basis for this policy manual. It clearly indicates, that municipalities are required to ensure CVCA approval for proposed construction in areas covered by the regulation, prior to the issuance of a building permit.

Section 2.3 reviews the relationship of CA Regulations to other forms of development regulation and approval. The policy recommends that any issues related to Regulations should be identified during the planning approval process. Beth Lowe, the Regulations Officer provided comments related to the proposal in a letter dated April 19, 2021 and the OLT decision identified the need to address and obtain the necessary CA Permit for the proposed development. Application has been made for the approval of the CA for the boathouse. This report provides our recommendations for the approval of the Permit for the boathouse.

Section 3.5 establishes five tests to be applied to the granting of permission for development in areas of regulation. These include:

- The control of flooding
- Erosion
- Dynamic beaches



- Pollution
- Conservation of land.

It is our opinion, that the proposed boathouse repair and minor extension meets these five tests. The repair of the boathouse will actually remove the current encroachment caused by the reclining structure which may have a minor impact on flooding. No impact is expected from erosion, or a dynamic beach. The repair of the boathouse will remove or limit any potential from pollution. The minor extension is not expected to have an effect on the shoreland, as there is no indication of an impact due to the extensive time that the boathouse has occupied the current location. Please see the attached photo provided on Figure 5a.

We note that Section 3.7 indicates that repairs or renovation to an existing structure within the exterior walls would not require a permit. Section 3.8 indicates that any change that would increase the size of the structure will require a permit. Section 3.8.1 states that development, interference, or alteration within a regulated area must meet the most restrictive policy. However, Section 3.8.2 not withstands Policy 3.8.1 where evidence acceptable to the Board of Directors documents the development and/or activity will have no adverse effect on the control of flooding, erosion, pollution, or the conservation of lands. Section 3.8.3 provides a series of criteria were development, interference and/or alteration may be permitted, namely:

- There is no feasible alternative location for development outside the hazard;
 - *No alternative that would not have a more dramatic impact is available particularly when the creation of new boathouses has been banned;*
- The risk to public safety is not increased;
 - *There is no indication that public safety will be impacted but the continued deterioration of the boathouse may result in a risk to public safety.*
- Susceptibility to natural hazard is not increased and no new hazards are created (e.g., there will be no impacts on adjacent properties with respect to natural hazards);
 - *There have been no natural hazards identified or impacts on adjacent properties.*
- There will be no adverse hydraulic or fluvial impacts on rivers, creeks, streams, or watercourses;
 - *The only hydraulic impact is the flooding and the modest increase in size will not have an impact on the extent of flooding particularly when the lake level is controlled;*
- Negative or adverse hydrological or ecological impacts on natural features and functions including wetlands, are avoided and mitigated as demonstrated by a qualified professional;
- Intrusions on natural features, areas and systems contribution to the conservation of land including area providing ecological functions and hydraulic functions are avoided or mitigated as demonstrated by a qualified professional;
 - *There has been no indication of an impact on a natural feature although concern was raised about the impact on fish habitat, however the modest increase and the repair will actually remove a much larger area affected by the reclining structure.*
- Access for emergency works and maintenance of flood erosion control works is available;
 - *The proposed permit will allow emergency works to affect the repair of the structure.*



- Pollution, sedimentation and erosion during construction and post-construction is minimized using best management practices including site, landscape, infrastructure and/or facility design;
 - *The proposed repair will remove an element of pollution represented by the existing state of the structure. Construction is to be conducted in a manner which will minimize pollution.*
- The control of flooding, erosion, dynamic beaches, pollution, or conservation of land will not be affected during and post-development, interference or alteration;
 - *The repair and minor enlargement will not affect flooding, erosion, dynamic beaches, pollution or conservation of land.*
- Proposed development is constructed, repaired and/or maintained in accordance with accepted engineering principles;
 - *This is the proposal involved in the repair of the existing structure. This has been emphasized by the Staff Comments and will also be subject to the monitoring of the construction.*

Section 5.1 defines the flooding hazard. For Kasshabog Lake, the summer water level is 262.16 m above sea level. The 100-year flood level is 262.70 m. This means that for Kasshabog Lake, the flood elevation is 0.54 m above the normal summer water level. This indicates that the flood elevation is not dramatically above the normal summer elevation. The proposed repair and minor enlargement of the boathouse will not affect the control of flooding. The CVCA Regulations allow “*the granting of a permit for development in a hazardous area if, in its opinion, the control of flooding will not be affected by the development.*”

Section 6.4.1.9, allows the repairs of existing in-water boathouse provided that the repairs:

- Do not impede the flow of water;
 - *There is no indication that the repair and modest increase in size will affect the flow of water.*
- Do not provide an opportunity for conversion into habitable space in the future (to ensure no habitable component, the boathouse shall contain no services other than electricity);
 - *No habitable space is proposed, and no services are proposed.*
- The repairs do not result in a change in use, including new decks and rooftop patios;
 - *There is no change in use.*
- Do not alter the natural contour of the shoreline; and
 - *There is no proposed change to the shoreline.*
- Do not result in a change in size or create a navigation hazard;
 - *A modest change in size is proposed. The desired size is 16 feet wide and 26 feet deep.*
 - *This will not create a navigation hazard as the boathouse is in a shallow area which does not allow the use of outboard motors and is not part of a navigable channel.*
- Repairs to the foundation of an existing boathouse will be required to be designed by an appropriate and qualified professional;
 - *This has been agreed.*

It is also noted that in the Terms of Reference for an Environmental Impact Study included as



Appendix E, the terms of reference requires that there be a demonstration of impact and allows mitigation methods. With regard to the repair of the boathouse, the repair will actually improve the environment in the immediate area of the boathouse and no impact has been identified as a result of the modest expansion.

With the exception of the modest increase in size, it is our opinion that the proposed repair of the boathouse meets all the criteria of this section. It is our opinion that based on the modest increase in size should be allowed, as the owners have been clear as to their intentions and the increase is very modest, and does not result in any concerns with the other criteria.

6. OPINION

Based on the above review, it is my opinion that:

1. The boathouse reconstruction is subject to the detailed review of the Conservation Authority, the expansion can be allowed in the Zoning By-law Amendment.
2. Our review of the Conservation Authority Policy identified the intent of the Policy to prohibit the enlargement of a boathouse, but our review of the criteria does not identify any concerns related to the modest increase in the footprint of the boathouse.
3. There is no indication, based on our review, that the modest increase will create any impacts that are to be reviewed as part of the consideration of the review of proposed development in flood prone areas.
4. It is my opinion, that the proposed repair of the boathouse can be approved by the Conservation Authority.

Respectfully submitted,



Bob Clark, *P.Eng., P.Ag., MCIP, RPP, OLE*
Principal Planner



FIGURES

Figure 1 – Location Map

Figure 2 – Surveyor’s Real Property Report (modified to illustrate the proposed expansions)

Figure 3 – Township of Havelock-Belmont-Methuen Official Plan Excerpt, Schedule A2 (Methuen Ward)

Figure 4 – Township of Havelock-Belmont-Methuen Zoning By-law 1995-42 Excerpt, Schedule A

Figure 5a – View of Boathouse from Sleeping Cabin – August 21, 2021

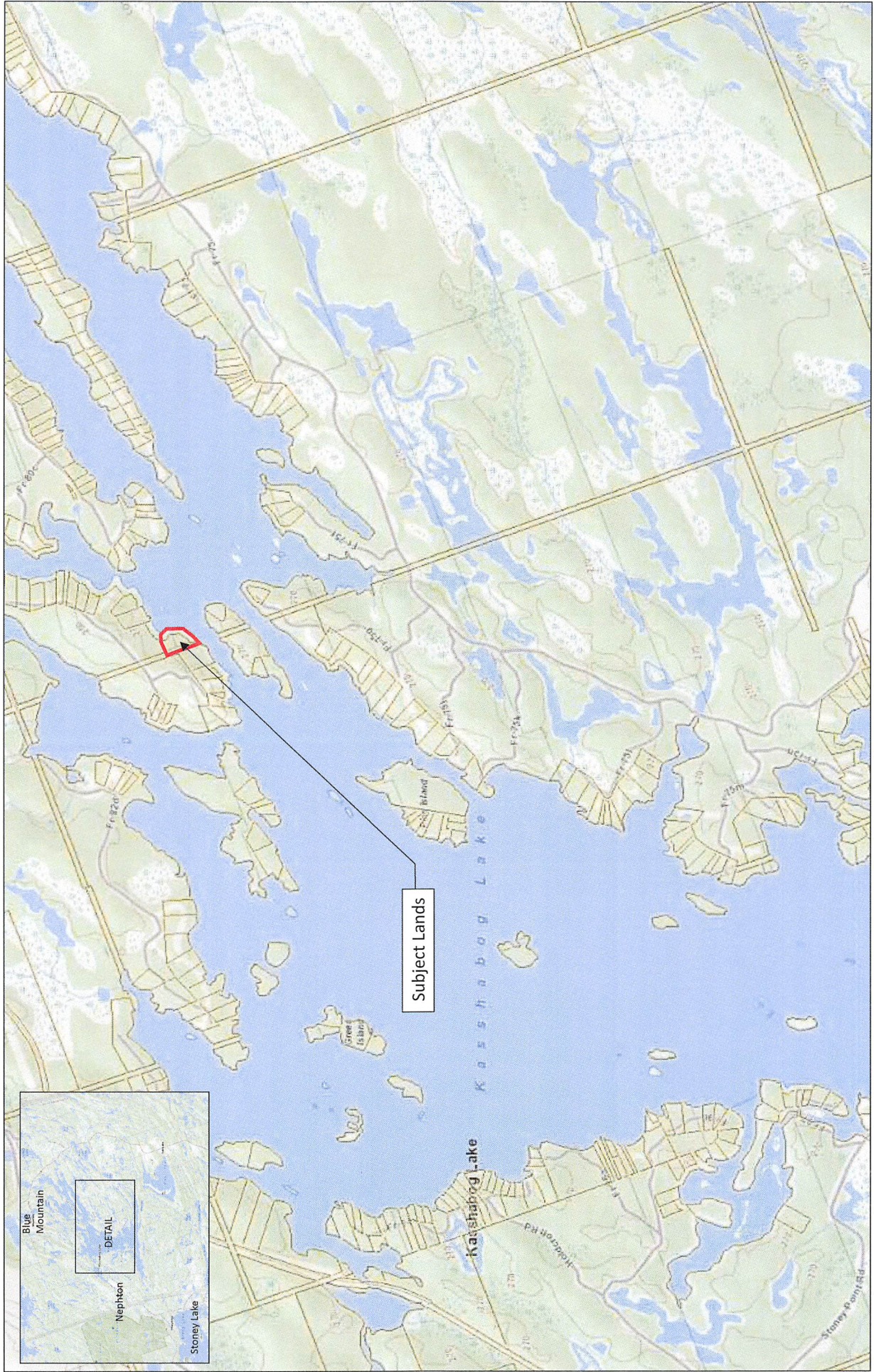
ATTACHMENTS

A – Curriculum Vitae of Robert K. (Bob) Clark

z:\4792 Ophira Sutton\CA Application\Report & Graphics for the CVCA Board\4792-Report to CVCA Board-June-2023 (Updated).docx



Figure 1 - Location
527 Fire Route 82
Township of Havelock-Belmont-Methuen



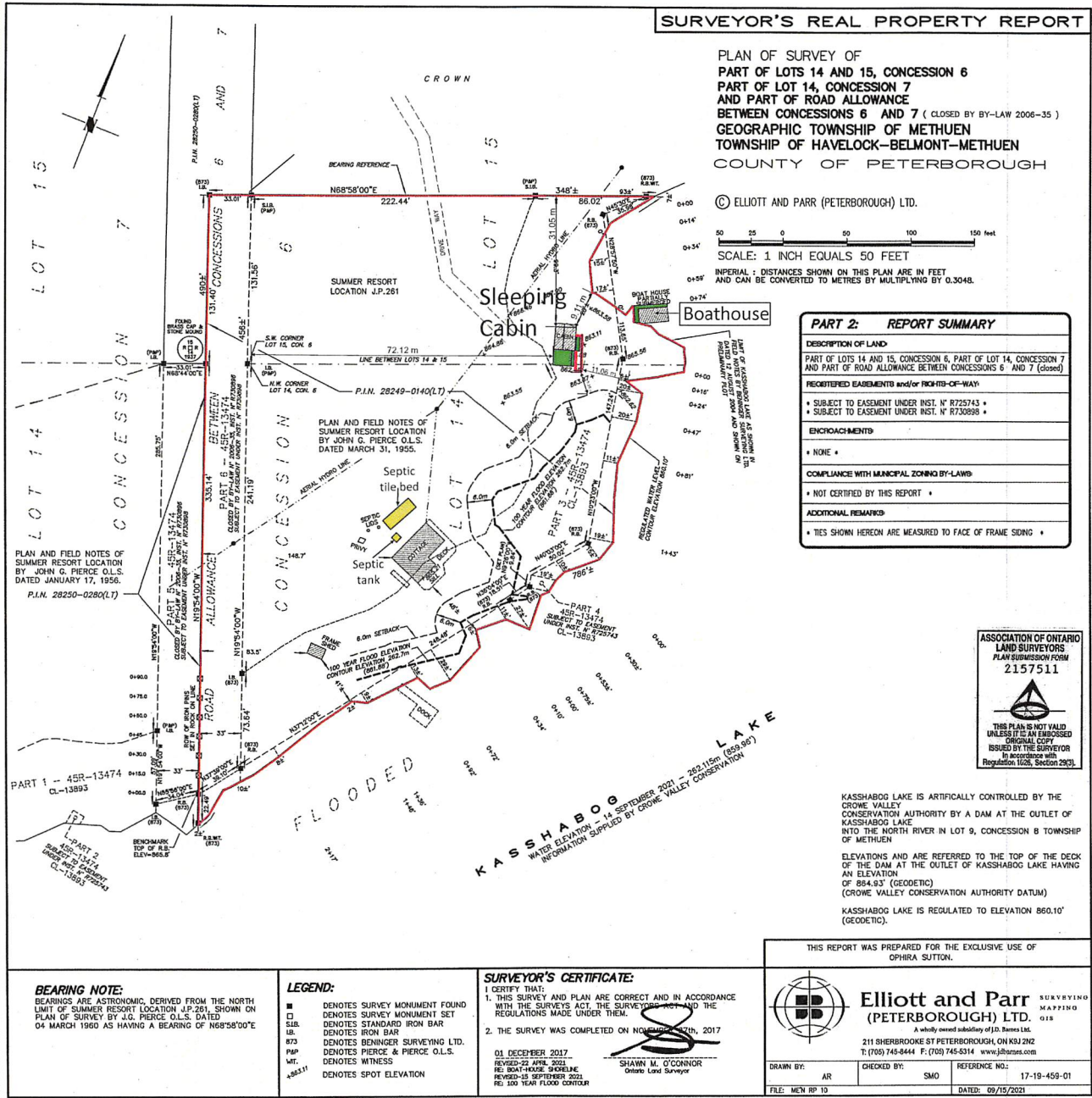
042

Legend

 Subject Lands

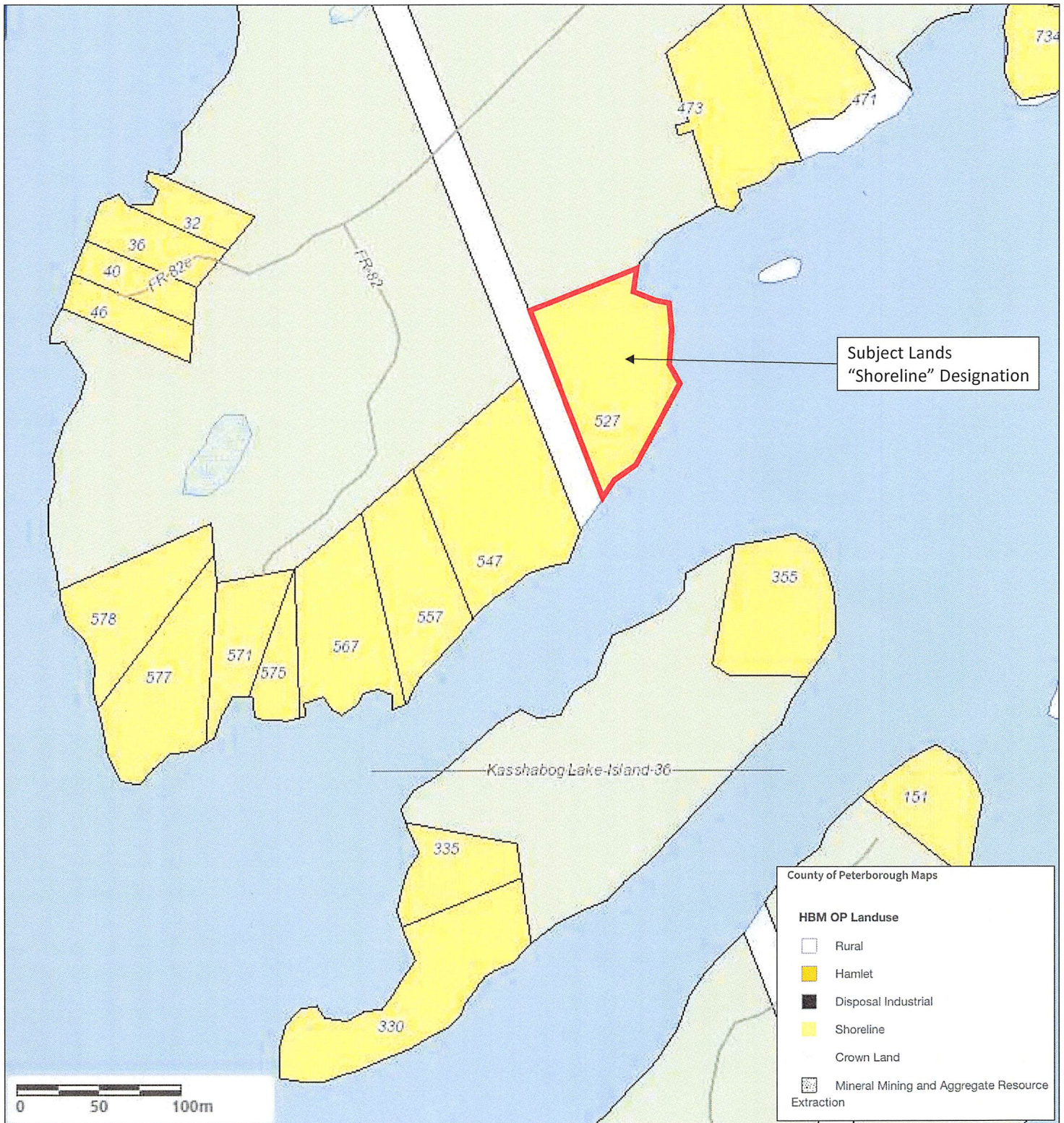
Date: May 2023

Figure 2 - Surveyor's Real Property Report
 (Modified to Illustrate the Proposed Revisions-March 27, 2023)
 527 Fire Route 82
 Township of Havelock-Belmont-Methuen



Legend
 Subject Lands

Figure 3 - Township of Havelock-Belmont-Methuen Official Plan Excerpt,
 Schedule A2 (Methuen Ward) from County of Peterborough Maps
 527 Fire Route 82
 Township of Havelock-Belmont-Methuen



Legend

Subject Lands

Figure 4 - Township of Havelock-Belmont-Methuen Zoning By-law 1995-42 Excerpt, Schedule A
527 Fire Route 82
Township of Havelock-Belmont-Methuen

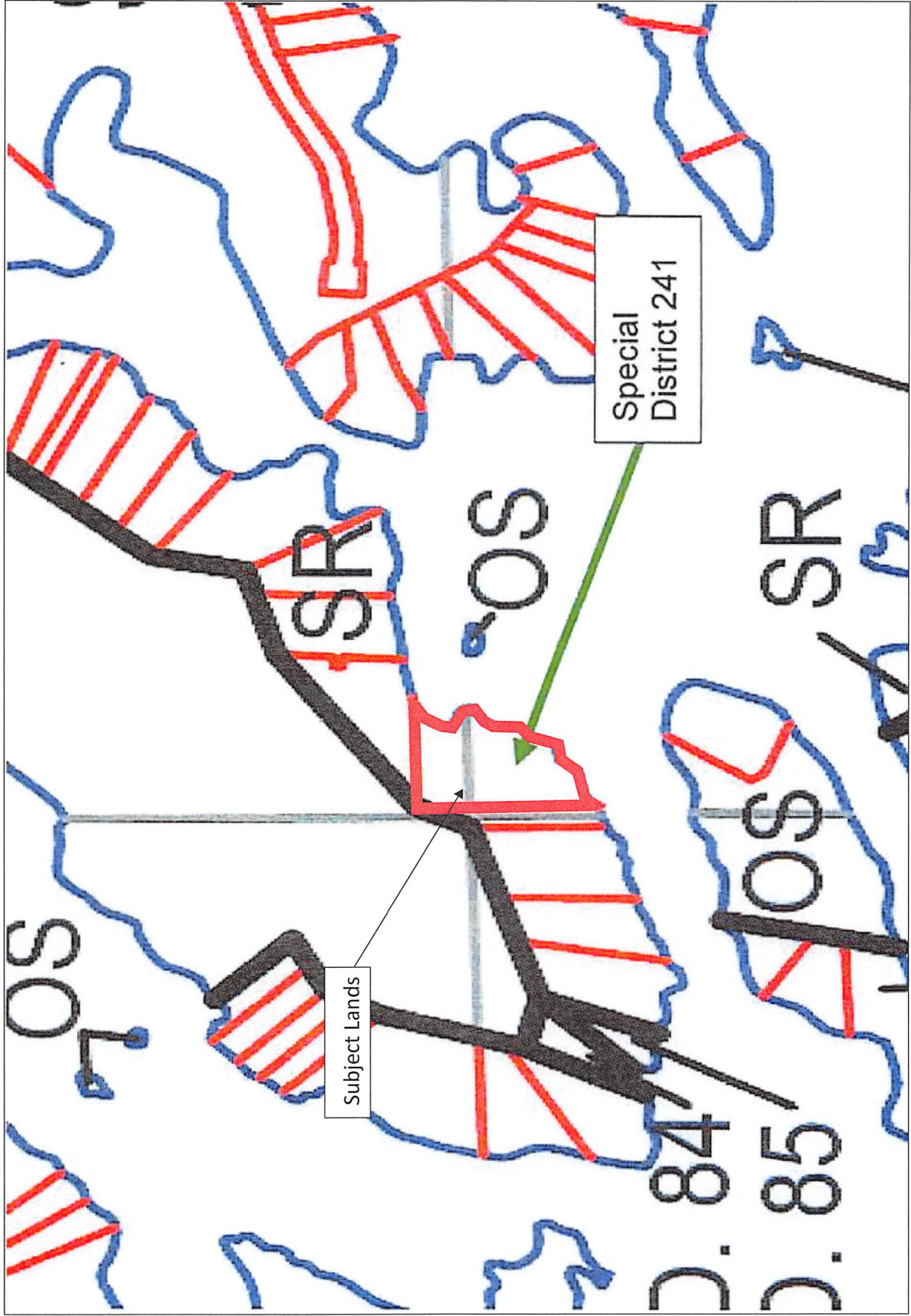


Figure 5a - View of Boathouse from Sleeping Cabin (August 21-2021)
527 Fire Route 82
Township of Havelock-Belmont-Methuen



View of Boathouse from Sleeping Cabin

ATTACHMENT A

Curriculum Vitae of Robert K. (Bob) Clark

I, Robert K. Clark have extensive experience providing planning services to communities in Ontario and have worked as a professional planner for 40+ years. I have provided professional planning advice to municipalities, individuals, and corporations on land use planning matters.

I am the Principal Planner for Clark Consulting Services (CCS) and am a member of the Ontario Professional Planning Institute (R.P.P.), a member of the Ontario Institute of Agrologists (P.Ag.), a registered Professional Engineer (P.Eng.) and a member of the Association of Ontario Land Economists (O.L.E.). I hold degrees in Engineering and Applied Economics. I have appeared before the Ontario Municipal Board and the Local Planning Appeal Tribunal extensively, and have been qualified to provide expert testimony on matters concerning land use planning.





Education

1972
Master of Science,
Resource Development and
Resource Economics,
University of Guelph

1970
Bachelor of Science (Eng.)
Water Resources Engineering,
University of Guelph

CONTACT



T 905-885-8023
bob@clarkcs.com
www.clarkcs.com

ROBERT K. CLARK

Bob's career in the field of planning spans 46 years. He approaches each project with creativity and a strong intent to meet and exceed the client's expectations. The Planning Field is changing rapidly to address the changing needs of our communities. While financial viability remains an important consideration in all projects, increasingly, sustainability, impact on the environment, the health of the community and the individual are key aspects of successful projects. Clark Consulting Services was created to give Bob the freedom to take on projects that he found interesting and challenging as well as work in an atmosphere guided by the principles of honesty and integrity.

Professional Qualifications and Associations

Canadian Institute of Planners (MCIP)
Ontario Professional Planning Institute (RPP)
Ontario Institute of Agrologists (P.Ag.)
Professional Engineers of Ontario (P.Eng.)
Association of Ontario Land Economists

Professional Background

1994-Present – Clark Consulting Services
Principal Planner, President

Expert Testimony

Qualified by the OMB to give expert testimony in the fields of:

- Land Use Planning
- Agricultural Land Evaluation
- Municipal Finance
- Land Economics
- Environmental Impact Assessment

CURRICULUM VITAE

Selected Experience

Agricultural Land Assessments/Analysis (Project Manager and Senior Professional Agrolgist/Pedologist on all projects)

- Agricultural Lands Review, United Counties of Stormont, Dundas and Glengarry
- City of Kingston - Agricultural Study
- Stormont Dundas and Glengarry: Review of Prime Agricultural Area for Official Plan Update
- Capital Region Resource Recovery Centre, Agricultural Land Assessment (as part of Environmental Assessment) Russell and Boundary Road Sites
- Vale Agricultural Land Assessment Prince Edward County
- Dafoe Agricultural Assessment, City of Quinte West
- Desjardine, Agricultural Assessment, Township of Elizabethtown Kitley
- Sills Agricultural Assessment, City of Quinte West
- Lafleche Agricultural Assessment, Stormont, Dundas and Glengarry
- McQuillan Land Assessment, Haldimand Township
- Pepper/Hamilton Township
- Espie Agricultural Assessment Beckwith Township
- White Tail Golf Course Agricultural Assessment and Professional Evidence OMB
- Wesleyville Land Assembly, Municipality of Port Hope
- Baulch Road Land Review, Municipality of Port Hope
- Midtown Corridor Hamilton Township Land Evaluation
- Cavan Millbrook North Monaghan OP Prime Agricultural Land Evaluation
- Hamilton Township OP Prime Agricultural Land Evaluation
- Frontenac Islands OP Prime Agricultural Land Evaluation
- Campbellford Seymour Agricultural Land Evaluation
- Sidney Township OP Agricultural Land Evaluation
- South Fredricksburgh OP Agricultural Land Evaluation
- Agricultural Land Use Analysis, Former Township of Hope

Agricultural Impact Assessment

- Fenelon Falls Baptist Church
- Cation Ag Impact Assessment
- Brown Planning Justification including Agricultural Impact Assessment
- May Agricultural Assessment
- Peer Review of Agricultural Viability for planning applications, City of Oshawa
- White Tail Golf Course, City of Kawartha Lakes
- Snug Harbour, City of Kawartha Lakes
- Murray Hills Subdivision former Murray Township

Contact



T 905-885-8023
bob@clarkcs.com
www.clarkcs.com

CURRICULUM VITAE

Agricultural Land Assessments for Solar Installations

-Agricultural Land Capability Assessment for Potential Solar Farm Installations to meet requirements of OPA FIT Program, (over 340 projects to date)

Environmental Assessment

-Public Works Garage, Class EA, Town of Gananoque,
-Wilson Island Bridge (Socio-economic Assessment), County of Northumberland,
Environmental Impact Assessment, private owners including Michael Lash, Eithery/Buttery Lands, Vanden Hoek site; Three Strand Development Group – Communal Sewage System.

Environmental Impact Study/Statement

Based on experience and training as a water resource engineer and pedologist, Mr. Clark has prepared Environmental Impact Studies/Statements for situations in which the primary issues relate to site grading, drainage and building location. Examples include:

- Lash Cottage addition (minor variance)
- Hog Island EIS (consent application)
- Eberle Farm lot creation ORMCP

Official Plans, Official Plan Updates and Amendments

Township of Cavan-Millbrook-North Monaghan, Township of Haldimand, Township of Hamilton, Township of Smith, Township of Lochiel, Township of Charlottenburgh, Town of Brighton, Township of Burleigh and Anstruther, Township of Sidney, Township of Frontenac Islands, Township of Hope, Town of Gananoque.

Secondary Plans

Fraserville Secondary Plan - Township of Cavan- Millbrook-North Monaghan; South Sidney Secondary Plan, Township of Sidney; Alcan District Area Study - City of Kingston; Shasta Secondary Plan - Town of Westminster, Baltimore-Creighton Heights Community Plan, Township of Hamilton, Southwest Industrial Sector Plan, Township of Hamilton, Jackson Creek West Secondary Plan, City of Peterborough.

Growth Strategy Studies

Township of Hamilton, Township of Manvers, Town of Cobourg/Township of Hamilton, Village of Stirling, Village of Cochrane, Township of Smith.

Development Charges Studies

Township of Murray, Township of Hamilton, Township of Smith, Township of Manvers, Town of Brighton, Township of Alnwick, Township of Haldimand, Township of Somerville, Township of Woodville, Townships of Anson, Hindon, Minden, Village of Omemee, Township of Galway, Cavendish & Harvey, Township of Fenelon, Township of Verulam, Township of Emily, Township of Eldon, Village of Fenelon Falls, Township of Smith-Ennismore, Township of Cavan-Millbrook-North Monaghan, Village of Bobcaygeon, Township of Brighton, Township of Centre Hastings, Town of Greater Napanee, County of Victoria, Township of Cramahe, Municipality of Campbellford/Seymour, Village

Contact



T 905-885-8023
bob@clarkcs.com
www.clarkcs.com

CURRICULUM VITAE

of Colborne, City of Kawartha Lakes, The Township of Frontenac Islands, The Township of Alnwick/Haldimand, Municipality of Trent Hills, Township of Rideau Lakes, Township of Asphodel Norwood, County of Peterborough, Municipality of Trent Lakes.

Municipal Financial Impact Assessments

Sandy Point Recreation Development, Harvey Township, Reference Plan Development, Cavan Township, Township of Manvers, Township of North Monaghan.

Zoning By-laws/By-law Amendments

Township of Cavan-Millbrook-North Monaghan; Township of Frontenac Islands; Township of Percy, Township of Alnwick, Town of Campbellford, Town of Brighton, Village of Madoc, Town of Picton

Aggregate Resource Planning

Review of Aggregate Potential for Official Plans and Zoning By-laws

Howe Island Gravel Pit – review of proposal; prepare report to Council with planning documents; provide professional opinion evidence at OMB Hearing; Stonescape II Quarry Appeal – review of proposed quarry, preparation of planning review, attendance at OMB Hearing; Codrington Pit Proposal – review of proposed pit, advice to adjacent land owner, monitor approvals

Official Plans, Official Plan Updates and Amendments

Township of Cavan-Millbrook-North Monaghan, Township of Haldimand, Township of Hamilton, Township of Smith, Township of Lochiel, Township of Charlottenburgh, Town of Brighton, Township of Burleigh and Anstruther, Township of Sidney, Township of Frontenac Islands, Township of Hope, Town of Gananoque.

Recent Renewable Energy Projects

Planning Approvals, Wolfe Island Wind Farm, Township of Frontenac Islands; Gas fired Peaking Plant Location study; Epcor, Skypower; Solar Farm; Algonquin Power. – Wind Farm

Watershed Plans

South Sidney Watershed, Lower Trent Region Conservation Authority; Storm Water Management Plan, Town of Delhi; Oshawa Creek Watershed Master Plan, City of Oshawa.

Waterfront Studies

Town of Deseronto, Town of Deep River, City of Kingston.

Tourism Development Studies

Ministry of Industry and Tourism, Tourism Development Strategy Trenton Cornwall and Renfrew - Kingston Zones, County of Northumberland Tourism Planning Study.

Contact



T 905-885-8023
bob@clarkcs.com
www.clarkcs.com

CURRICULUM VITAE

Socio-Economic Assessments

TransCanada Pipelines Transco Project, Brampton to Burlington Gas Pipeline, TransCanada Pipelines, Eldorado Nuclear Hexafluoride Refinery, Hope Township site, Wilson Island Bridge, County of Northumberland, Three Strand-Communal Sewage System EA.

Recreational Studies

Riverwalk-Minden, Georgian Trail, Township of Collingwood, Recreation Master Plan, Township of Cavan, Beavermead Park Redevelopment Plan, City of Peterborough,; Rail Corridor Study, County of Victoria; Pangman Conservation Area Master Plan, Lake Simcoe Region Tourism Study, ESI - Sir Sandford Fleming College, provided Social-Economic Impact Assessment for the Millennium Trail Master Plan, County of Prince Edward.

Advisory Services including Planning Appraisals

Township of Cavan-Millbrook-North Monaghan; Township of Frontenac Islands; Township of North Monaghan, Township of Smith, Township of Burleigh and Anstruther, Municipality of Sherbourne McClintock and Livingstone, Township of Stanhope, Township of Lutterworth, Township of Hope, Township of Hamilton, Township of Alnwick, Township of Percy, Township of Seymour, Town of Campbellford, Town of Gananoque, Village of Hastings, Township of Haldimand, Municipality of Trent Hills, County of Prince Edward

Industrial Development Studies

City Owned Industrial Land Study, City of Kingston; Lucas Point, Town of Cobourg, Township of Charlottenburgh, Town of Brighton, Great Lakes Deep Water Port Industrial Site Development Plan, Township of Hallowell; Draft Plan of Subdivision; Cataraqi Business Park, City of Kingston.

Economic Development Studies

Accommodation Evaluation, Township of Asphodel-Norwood; South Dundas Economic Development Study, South Dundas Economic Development Commission, Almonte Economic Development Study, Town of Almonte and Township of Ramsay; Best Use Study, Douro-Dummer Township.

Housing Policy Statements

Town of Cobourg.

Solid Waste Management Studies

County of Haliburton, Township of Hallowell, County of Northumberland, Seymour Township, National Capital Region, Lanark County, Snow Disposal Study, National Capital Region.

Private Development/Projects

Assist developers in the design and approval of both residential and industrial/commercial projects. References available upon request.

Contact



T 905-885-8023
bob@clarkcs.com
www.clarkcs.com

CURRICULUM VITAE

Recent OMB Cases

OMB Case No. PL090057 Lash
OMB Case No. PL100622 – Reynolds
OMB Case No. PL101329 – White Tail
OMB Case No. PL100904 – Stonescape
OMB Case No. PL090838 - Sepa
OMB Case No. PL09841 - Bremer
OMB Case No. PL100475 - McDonald
OMB Case No. PL050584 – City of Ottawa
OMB Case No. PL031324 – City of Ottawa
OMB Case No. PL080239 – City of Ottawa
OMB Case No. PL080373 – City of Ottawa
OMB Case No. PL070728 - Carter
OMB Case No. PL090147 – Semler
OMB Case No. PL1000711 – Mound Brighton
OMB Case No. PL011198 – City of Kingston, Alfred Street
OMB Case No. PL030524 – City of Kingston
OMB Case No. PL110520 - City of Niagara Falls
OMB Case No. PL130785 – Township of McNab/Braeside
OMB Case No. PL141138 – Evans
LPAT Case No. PL 150192 – Municipality of Brighton
LPAT Case No. PL160588 – Municipality of Trent Hills
OMB Case No. PL170008 – Township of Brock
OMB Case No. PL170878 – Burl’s Creek
LPAT Case No. PL171446 & PL 180385 – Municipality of Brighton
LPAT Case No. PL170178 – Municipality of Clarington

Contact



T 905-885-8023
bob@clarkcs.com
www.clarkcs.com

CURRICULUM VITAE

**Tab C - OLT Decision for
Balabutton Holdings v. Township
of HBM dated January 19, 2023**

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: January 19, 2023

CASE NO(S): OLT-22-002350
(Formally PL210337)

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

Appellant: BalaButton Holdings
Subject: Application to amend the Zoning By-law – Refusal of application
ZBA to permit the redevelopment of the lot in the form
Description: reconstructed in-water boathouse and additions to the sleeping
cabin
Reference Number: 1995-42
Property Address: (Part Lots 14 15 Concession 6)
Municipality/UT: Havelock-Belmont-Methuen/
OLT Case No: OLT-22-002350
Legacy Case No: PL210337
OLT Case Name: BalaButton Holdings v. Havelock-Belmont-Methuen (Twp.)

Heard: June 15-17, 2022, by Video Hearing

APPEARANCES:

Parties

Counsel

BalaButton Holdings

Kathleen Kinch
J. Khoury-Hanna

Township of Havelock-Belmont-
Methuen

John Ewart
Natalie Geysens (summer-student)

DECISION DELIVERED BY JATINDER BHULLAR AND ORDER OF THE TRIBUNAL

[1] This matter involves an appeal by BalaButton Holdings (the “Applicant”) from the refusal of the Council of the Township of Havelock-Belmont-Methuen (the “Township”)

of an application for an amendment to Zoning By-law No. 1995-42 (“ZBA”) for the lands described as Part Lots 14 and 15, Concession 6, in the Methuen Ward (the “Subject Property”).

[2] The Subject Property are located on Kasshabog Lake and are currently zoned as a Seasonal Residential (SR) Zone. The purpose and effect of the proposed ZBA is to change the zone category of the Subject Property to Special District 241 (S.D. 241) Zone to permit the reconstruction and expansion of an existing in-water boathouse and allow an addition to an existing sleeping cabin.

WITNESSES

[3] The Applicant called three witnesses. The Township called one witness. These were affirmed or sworn per their choice. The acknowledgement of expert’s duty obligations was confirmed with all expert witnesses, and they were qualified by the Tribunal as noted below. The witnesses were as follows:

APPLICANT

- i. Robert Clarke was qualified to provide expert opinion evidence in the area of land use planning;
- ii. Laura Stone was qualified to provide expert opinion evidence in the area of land use planning; and,
- iii. Henry Balaban a lay witness with knowledge of the property and its operations.

TOWNSHIP

- i. Darryl Tighe was qualified to provide expert opinion evidence in the area of land use planning.

- ii. Beth Lowe was presented under summons to review information regarding Crowe Valley Conservation Authority (“CVCA”) processes for receiving permits for constructing structures in shoreline areas under their jurisdiction. Ms. Crowe was not qualified as the matter for CVCA permits was not before the Tribunal. With consent of both parties, factual information was noted for reference purposes only.

EVIDENCE

[4] Mr. Clark provided the site context for the Subject Property which was not disputed by other witnesses:

- The address for the site is 527 Fire Route 82 in the Township and County of Peterborough (“County”);
- The Subject Property is not accessible during the winter seasons and is otherwise accessed via County Road 46, which leads to North Shore Road. North Shore Road subsequently turns into Fire Route 82;
- The site has 173 m (569 ft) measured as straight-line frontage on the lake and is 8,635 sq.m. in area. The buildings on the site include a cottage, a sleeping cabin, and a boathouse. The cottage is a single storey and has a gross floor area of 940 sq. ft.;
- The Boathouse is accessory to the cottage and the sleeping cabin (“bunki”) is accessory use;
- It is serviced by an existing private well and septic system.
- The structures on the site pre-date the applicable Official Plans (“OP”) as well as the Zoning By-law No. 1995-42 (ZBL) and are legal non-conforming in the planning context.

[5] The neighbourhood context is as follows:



[6] Mr. Clark described that for the Subject Property the current owners purchased the adjacent road allowance and the shoreline road allowance. The site has 173 m (569 ft) measured as straight-line frontage on the lake and is 8,635 sq. m. in area. The buildings on the site include a cottage, a sleeping cabin and a boathouse. The cottage is a single storey and has a gross floor area of 940 sq. ft. The lot is wooded with rock outcrops. It slopes gently to the shoreline. The shoreline is wooded with rock outcrops.

[7] During a hearing event held on October 5, 2021, the parties indicated they had reached a tentative settlement, but that Council had not yet had an opportunity to

review the terms of the proposed settlement. The settlement proposal was expected to be put before Council at the regular scheduled meeting on October 4, 2021, and it was. However, Council did not endorse the settlement proposal and the parties are now requesting that the Tribunal schedule a three-day hearing on the merits.

NON-EXPERT EVIDENCE OF Mr. Balaban

[8] Mr. Balaban stated that he has owned the Subject Property with his wife since around 2003. He added that during the season(s) of heavy ice and snow the boathouse started to be become damaged. He testified that he tried to repair it himself, but it did not prevent further weather damage. He stated that he has kept material for a sailboat as well as a smaller boat that he has been planning to rebuild. He explained that he contacted contractors to help with repairing or rebuilding the boathouse. He had the boathouse roof shingles removed so that these would not fall in the water and cause any pollution or other damage.

[9] Mr. Balaban testified that as a result of a rebuild of the boathouse, he also considered to renovate and upgrade other structures including the Bunkie. He maintained that the uses on the Subject Property never changed since the acquisition in 2003. These included boating and the boathouse, inviting family and friends to use the Bunkie and the use of the cottage.

[10] Mr. Balaban testified that he did not receive any notice of violations or for any direction on remedial actions from the Township. He added that when he sought the approval for upgrades to the boathouse and the Bunkie, he worked with the Township staff and reached a tentative term of settlement. He added that the council however did not adopt the tentative agreement and as a result his appeal is before the Tribunal.

PLANNING EVIDENCE

PLANNING ACT s.2: PROVINCIAL INTEREST

[11] Ms. Stone reviewed s.2 of the Act. She reviewed subsections (a, c, d, e, g, l, m, n, p and r) of s. 2 of the Act.

[12] Ms. Stone noted that in considering the proposed ZBA as a whole, there is relatively little change to existing structures with minimal incremental impacts; it will support continuing cultural and recreational uses and enhance safety for the same with improved structures; there are no new municipal or community costs. She also opined those due efforts were made in consultation and efforts expended to resolve any issues with neighbours and/or municipal concerns.

[13] Ms. Stone opined that as a result the ZBA has due regard for the provincial interest as required under s.2 of the Act.

PROVINCIL POLICY STATEMENT 2020

[14] Mr. Clark testified that the lands are considered rural per policy 1.1.5.2. This policy permits uses in rural areas inclusive of resource based recreational uses including recreational dwellings.

[15] Mr. Clark further testified that policy 1.1.5.3, and 1.1.5.4 direct that tourism, economic opportunities, and development that is compatible with the rural landscape and consistent with rural service levels are to be promoted.

[16] Mr. Clark contested that as suggested by Mr. Tighe, there is very minor expansion of a nearly 60-year-old boathouse. He testified that this does not rise to the level of carrying out Environmental Impact Assessment ("EIS") to determine fish habitat or surface water features.

[17] Mr. Clark concluded that the proposal is consistent with PPS 2020 when the applicable policies are considered.

[18] Ms. Stone concurred with the opinions and conclusion of Mr. Clark.

[19] Mr. Tighe stated that an EIS has not been performed and in its absence consistency with the PPS 2020 policy 2.2.1 cannot be established. In answers to questions, he confirmed that the application for ZBA was established as complete and no EIS was identified or required of the Applicant.

GROWTH PLAN FOR THE GREATER GOLDEN HORSHOE 2019, as amended (the Growth Plan)

[20] Mr. Clark testified that policy 2.2.9 permits resource based recreational uses and that subsection 4 limits these resource-based recreational uses, to recreational uses that are compatible with the scale, character, and capacity of the resource and surrounding rural landscape. Mr. Clark opined that the proposal being very limited and minor does not change the scale, character or negatively impacts surrounding landscape. He contested that Mr. Tighe's assertions and opined that the proposed changes or upgrades do not represent infill development, redevelopment or resort development, and therefore are not subject to these criteria.

[21] Mr. Clark concluded that the proposal conforms with the Growth Plan.

[22] Ms. Stone concurred with the opinions and conclusion of Mr. Clark.

[23] Mr. Tighe referred to policy 4.2.3 of the Growth Plan and stated that it provides specific direction for redevelopment and expansion of legally existing uses. He opined that the replacement and expansion of the boathouse does not qualify, and the proposal does not conform with the Growth Plan.

COUNTY OF PETERBOROUGH OFFICIAL PLAN (COP)

[24] Mr. Clark opined that the COP allows TOP to provide land designations. The guiding policies are Section 4.4.

[25] Mr. Clark specifically also highlighted Section 6.2.5.3 (h) and excerpted the policy on “permitted exceptions” impacting policies on existing structures as of October 22, 2008:

“Structures legally existing as of the date Official Plan Amendment No. 3 comes into effect (October 22, 2008) that do not comply with the required setback provision that require replacement due to structural defects or destruction by fire or other natural causes or by permission of the Township will be permitted to be replaced on the same footprint and may only be enlarged in accordance with the provisions of the Zoning By-law, and where the enlargement does not further encroach into the 30 metre setback.”

[26] Mr. Clark concluded and opined that the requested expansions to the boathouse and sleeping cabin conform with the COP considering applicable policies of the COP for rebuilding and possible expansion consideration through ZBL amendment(s).

[27] Ms. Stone concurred with the opinions and testimony of Mr. Clark.

[28] Mr. Tighe referred to Section 4.4.1 of the COP:

4.4.1 Goal

to improve and protect the waterfront areas in Peterborough County as a significant cultural, recreational, economic and natural environment resource and enhance land areas adjacent to the shore.

[29] Mr. Tighe opined that the replacement/expansion of the boathouse and expansion of the sleeping cabin further into the water yard would not serve to improve and protect the waterfront. He also opined that the expansions were not minor for either the boathouse or the sleeping cabin.

TOWNSHIP OF HAVELOCK-BELMONT-METHUEN OFFICIAL PLAN (TOP)

[30] Mr. Clark stated that per Schedule A2 of the TOP, the Subject Property is designated Shoreline. In consideration of the TOP applicable policies, Mr. Clark referred to the following sections as excerpted below along with his opinion evidence:

Section 1.2.4.5 states In order to improve and protect waterfront areas as a significant recreational and natural environment resource and enhance land areas adjacent to the shore; it is the intent of this Plan to:

- a) Minimize the intensity of shoreline development to prevent:
 - i. Significant detracting from the natural landscape;
 - ii. Significant environmental degradation; or a hazard to navigation;
 - iii. Preserve and enhance fish and wildlife habitat areas within and along waterbodies;
 - iv. Maintain shorelines in their natural state and promote property stewardship in developed or developing areas.

This section acknowledges that there is existing shoreline development. The proposed reconstruction and enlargement of the boathouse does not increase the intensity of shoreline development or reduce the natural state of the shoreline.

The Development Policies of the Shoreline Designation found in Section 3.3.4, specifically allow expansion of a structurally permanent nature for existing structure and/or septic systems, provided they do not further reduce any applicable minimum water setback. The proposed expansions have been designed to avoid reducing the existing water setbacks.

Section 3.3.4.2 addresses Marine Facilities, such as the existing boathouse. This section exempts marinas from the 30-metre shoreline setback and directs that these facilities should be of a type and scale that minimizes their environmental, navigational, and visual impacts. According to the consolidation used for this review, this Section is under appeal.

Section 3.3.4.9 addresses existing land uses in the Shoreline designation. Subsection c) allows the continuation, expansion or enlargement of existing non-complying uses provided the following tests are met:

- i) the general intent and purpose of the Official Plan and Zoning By-law are maintained;
- ii) the variance is desirable for the appropriate development of the lands;

- iii) the variance is minor in nature;
- iv) a proposal for a minor variance to reduce the shoreline setback will be strongly discouraged.

[31] Mr. Clark concluded that whereas the TOP policies in Section 3.3.4.9 relate to a possible minor variance scenario, the proposal for expansions of the boathouse and the sleeping cabin are akin to such a situation except for the fact that from a ZBL perspective the subject structures are legal and non-conforming and as such a ZBA application is necessary to achieve the same end objective.

[32] Ms. Stone concurred with the testimony and concluding opinion of Mr. Clark.

[33] Mr. Tighe reviewed Section 1.2.4.5 in terms of uses in shoreline areas. He opined that the boathouse has forfeited prior legal non-conforming status; he opined that the Guiding Principle in Section 1.2.4 is not maintained. He claimed that the Applicant has failed to establish continuing legal non-conforming use of the boathouse. During his testimony he indicated that he felt unsafe to approach the inside of the boathouse during his visit. He further stated that the boat in the boathouse could not be safely taken in and out for stated possible use of a boathouse. He also referred to Section 4.10(a) and emphasize that the TOP requires as follows but the boathouse use has not continued:

4.10. A Legal Non-Conforming Buildings, Structures and Uses

- (a) The provisions of this By-law shall not apply to prevent the use of any lot, building, structure or part thereof, for any purpose prohibited by this By-law, if such use was lawfully existing on the date of the passing of this By-law so long as it continues to be used for that purpose.

[34] Mr. Tighe stated that under Section 4.10(d), reconstruction is permitted but it was not duly availed of, and the use did not continue.

[35] Mr. Tighe during testimony and in answers to questions stated that he has no qualification as a safety expert; he stated that the Township has no standards for boathouse maintenance; he also stated that there no By-laws which enable the

Township to inspect or require maintenance of boathouses to specific standards. Beyond stating that a boathouse shall have the capability to allow for a boat to be brought in or taken out, he could not qualify what type or size of boats such boats need to be and how often such activities must take place to maintain a legal non-conforming use for a boathouse.

[36] Mr. Tighe in conclusion opined that the proposed ZBA does not conform with the TOP.

Township of Havelock-Belmont-Methuen Zoning By-law Number 1995-42 (ZBL)

[37] Mr. Clark stated that the Subject Property is zoned Seasonal Residential (SR). He provided a comparison of the required regulated parameters under this designation and compared these against the proposal as follows:

REGULATION	REQUIRED/MINIMUM	ACTUAL	NOTES
Minimum Lot Area	3,000 sq. m.	8,638 sq. m.	
Minimum Lot Frontage	46 m	173 m	This is a straight line distance between side lot lines. The lot fronts on the lake.
Minimum Front Yard	21.3 m	48 ft (14.6 m)	Legal non-conforming.
Minimum Side Yard	6 m	148.7 ft (45.3 m)	Closest side yard.
Minimum Rear Yard	7.5 m	n/a	There is no rear yard.
Maximum Height	9 m	4.8 to peak	
Maximum Lot Coverage	15% (1,295.7 sq. m.)	1.35% (117 sq. m.)	Cottage and Sleeping Cabin only.
Minimum Floor Area	74 sq. m. (797 sq. ft.)	87 sq. m. (940 sq. ft.)	Cottage only.
Maximum Number of Dwellings Units Per Lot	1	1	

[38] Mr. Clark highlighted and commented as well as provided his opinions as follows for some of the key sections in the ZBL:

Section 4.1 (d) (ii) requires that an accessory structure, such as the sleeping cabin, is to be located in a side yard or rear yard. Subsection (e) requires that an accessory structure is to be located to the rear of any required front yard.

Section 4.10 B (a) permits "A building or structure or part thereof, which at the date of passing of this By-law, was used for a purpose permissible within the land use zone in which it is located, may be enlarged, extended, reconstructed, or restored provided that:

(i) the enlargement or alteration to the building or structure does not reduce the existing yards except where such yards are greater in size than the minimum required in this By-law, such yards may be reduced to the minimum yards required by this By-law;

(ii) the enlargement or alteration does not create another deficiency or increase the degree of an existing deficiency with respect to any requirement of this By-law; and

(iii) all other applicable provisions of this By-law are complied with as they relate to the enlargement, reconstruction, repair and/or renovation."

[39] Mr. Clark also noting the Surveyor's Real Property Report and notes therein established that the original plan for the Subject Property was established on March 31, 1955. He concluded that as a result the Subject Property is to be regarded as legal non-conforming under the ZBL.

[40] Mr. Clark showed that the Subject Property far exceeds the minimum lot area requirement and that the maximum lot coverage is very little (1.35%) as compared to the 15% allowed in the ZBL.

[41] Mr. Clark and Ms. Stone stated that the ZBL No. 2017-050 section 4.22.1 (a) does not allow boathouses except that ZBL under appeal allows it as follows:

Section 4.10.A (a) allows a legal non-conforming building or structure which is non-conforming to continue to be used for the purpose and subsection (d) states: "nothing in the By-law applies to prevent the reconstruction of any lawful non-conforming building or structure which is damaged by causes beyond the control of the owner".

CROWE VALLEY CONSERVATION AUTHORITY (CVCA)

[42] Mr. Clark stated that for completing the proposed changes, CVCA permit would be needed and that CVCA has provided some initial comments. He stated that CVCA matter, or aspects are not part of the requested relief from the Tribunal in approving the ZBA.

OVERALL PLANNING SUMMARY

[43] Mr. Clark concluded and opined that:

- a) Boathouse reconstruction is allowed in the ZBL under the legal non-conforming status and the expansion can be allowed through the requested ZBA; and,
- b) The expansion of the sleeping cabin, although it exceeds the zoning provision for maximum gross floor area and is located within the 30 m setback from the highwater mark, can be allowed as an amendment to the Zoning By-law, subject to the granting of a permit from the Conservation Authority in accordance with their regulations.

[44] Ms. Stone supported the approval of the proposed ZBA application and concurred with opinions and conclusions made by Mr. Clark.

[45] Mr. Tighe based on his planning opinion concluded that the ZBA does not meet the statutory tests and emphasized that the boathouse has forfeited its continuous use based on the event over the time the Subject Property was in the possession of the Applicant.

ANALYSIS AND FINDINGS

[46] The Tribunal notes that a fundamental divide and contrast of opinion evidence is based on the following question:

Does the boathouse on the Subject Property represent a use that has continued under the legal non-conforming status of the Subject Property?

[47] The Tribunal notes that had the boathouse been in undamaged form and that the sleeping cabin required no changes, the Subject Property could continue to exist under the provision of legal non-conforming status as allowed under the OP as well as the ZBL. This matter is before the Tribunal only because the Applicant wanted to reconstruct/expand the boathouse and the sleeping cabin for which the Township denied the request.

[48] The boathouse is defined as follows in the applicable planning instruments:

“BOATHOUSE” means a single storey detached accessory building or structure intended to house, shelter or protect a boat or other form of water transportation and may contain equipment incidental to the repair and maintenance of such transportation but shall not contain sleeping, cooking, plumbing or sanitary facilities and in which human habitation is prohibited. This definition is intended to include both on-land boathouses found above the high-water mark as well as on-water boathouses; and includes boat ports both above the high-water mark and on-water.

[49] Mr. Balaban was the only witness who could vouch for the uses of the boathouse from the period the Subject Property was acquired by him and his spouse around 2003, approximately 19 years ago. Mr. Tighe presented planning opinion based on his visits to the Subject Property as part of his planning work for the Township.

[50] Mr. Balaban showed that he took self-help remedial actions to stabilize the boathouse. He explained that his efforts included trying to jack up the front of the boathouse in the water. He explained how he borrowed tools and moved stones, etc., to achieve such remedial actions.

[51] Mr. Balaban kept an older boat in the boathouse which he planned to repair, refinish, and preserve. He added that sailing boat related accessories were stored in the boathouse as well.

[52] Mr. Balaban employed contractors to estimate reconstruction of the boathouse and the sleeping cabin with a view to have these permanently repaired and upgraded noting that the structures appear to be from the form these were constructed around the 1950s-1960s.

[53] Mr. Balaban concluded that he maintained boathouse uses to levels commensurate with his advancing age but never abandoned the boathouse usage.

[54] Mr. Tighe provided anecdotal evidence based on his visits. He claimed that he felt unsafe entering the boathouse during one of his visits. He admitted he is not a qualified expert on the safety protocol for a boathouse. He testified that the boat in the boathouse was lodged into the boathouse structure and could not see how it could possibly be removed for use. He noted that with a missing roof he could not vouch for the utility of the boathouse for boating related storage material. This aspect was replied to by Mr. Balaban in his testimony that all boating related accessories that he has relate to water-oriented activities and the boathouse still provided spatial protection in spite of the roof needing repair.

[55] Mr. Tighe acknowledged that there are no Township or other By-laws that carry out or specify any of the following:

- a) Define the level of activity required for maintaining use of a boathouse in the context of how often the boat(s) be taken in or out, what level of boating accessories need to be stored to maintain such usage, and so on;
- b) Reporting requirements that boathouse owners need to report to maintain continuity of usage and so on; and,
- c) Annual or other boathouse inspection by-law(s) that the Township uses to establish usage or abandoning of usage.

[56] The Tribunal notes that Mr. Balaban's testimony was unshaken and stood unchanged with testing by the Township.

[57] The Township cited case law as to what constitutes continuation of usage or lack thereof. In the case before the Tribunal, the evidentiary balance is overwhelming. This balance favours the Applicant's position that the boathouse usage was maintained and continued in various forms over the years and that the boathouse was under the Applicant's control.

[58] Considering the totality of evidence and the submissions of the parties, the Tribunal finds that the boathouse usage was not forfeited any time by the Applicant and has continued at the Subject Property.

STATUTORY TESTS AND FINDINGS

[59] It is noted by the Tribunal that a large part of the planning evidence of Mr. Tighe in opposition to the Applicant's witnesses was anchored on two salient points as follows:

- a) The Applicant has forfeited the continuous use of the boathouse; and,
- b) The expansions sought for the boathouse and sleeping cabin reconstruction are not minor.

[60] Whereas Mr. Tighe made summary comments, the Tribunal finds based on the comprehensive evidence of Ms. Stone that the ZBA has due regard for the provincial interest per Section 2 of the Act.

[61] Mr. Tighe suggested that since an EIS was not conducted, and the disturbance caused by possible reconstruction and expansion cannot be established to duly establish consistency with PPS 2020. However, it was established during the testimony of Mr. Tighe that given the scope of the changes to existing structures and other reasons, an EIS was neither required nor requested by the Township when the

application was deemed complete. Mr. Clark and Ms. Stone referred to other PPS 2020 policies they considered which encourage the suitable development and use of natural resources in Ontario for recreational plus other purposes.

[62] The Tribunal prefers the evidence of Mr. Clark and Ms. Stone as it provides a wholesome review of the applicable PPS 2020 policies; provides reasons why an EIS was neither required nor appropriate for the proposed reconstruction of the sleeping cabin and the boathouse. Consequently, the Tribunal finds that the ZBA is consistent with PPS 2020.

[63] Mr. Tighe testified that the proposal does not conform with the direction in policy 4.2.3 of the Growth Plan relating to expansion of existing structures in areas like the Subject Property. Mr. Clark referring to 2.2.9 testified that the Growth Plan permits resource based recreational uses and such uses on the property have existed for a long period of time almost leading up to 1955. Mr. Clark added that the expansion is limited with respect to uses that have evolved since the boathouse and the sleeping cabin were initially built. Ms. Stone concurred with and supported the opinion evidence of Mr. Clark.

[64] Having reviewed the testimony of the witnesses the Tribunal finds that the proposal conforms with the Growth Plan with history of longstanding conformity with resource based recreational uses, and, that the extent of the proposed changes for reconstruction do not negate such conformity with the Growth Plan.

[65] In their testimonies regarding conformity with the COP, the experts disagreed as to reconstruction and expansion that may be carried out for legal non-conforming structures. However, it was noted in testimony of Mr. Clark and Mr. Tighe that Section 4.4.1 in the COP defers such to the ZBL. Mr. Tighe based on his assertion that the Applicant has forfeited the continuous use of the boathouse, deduces that the ZBL no longer allows the application of Section to assist with the ZBA approval submitted by the Applicant. Mr. Tighe's assertion is contrary to Tribunal's finding on continuous use. The Tribunal has previously found that Applicant maintained continuous use of the boathouse and the sleeping cabin.

[66] Taking into consideration all the evidence and concurrently with a Tribunal finding of continuing use of the structures on the Subject Property, the Tribunal prefers the evidence of Mr. Clark which recognizes continuous use of the structures on the Subject Property. As a result, the Tribunal finds that the proposal conforms with the COP as reconstruction/expansion of structures considered as legal non-conforming.

[67] In consideration of TOP policies, Mr. Tighe anchored his opinions on the basis of the Applicant having forfeited usage of the boathouse as required to be considered for reconstruction/expansion. Mr. Clark reviewed the applicable policies regarding reconstruction and expansion as allowed under the TOP as long as suitable tests in Section 3.3.4.9 are met which he opined are met by the proposal.

[68] The Tribunal having found that the boathouse use has continued finds and prefers the evidence of Mr. Clark. The Tribunal finds that the proposal conforms with the TOP.

[69] In reviewing the ZBL for reconstruction and proposed expansion, Mr. Clark identified that the Subject Property covers an area around 8638 sq m whereas the ZBL requires a minimum lot area of 3000 sq m. Mr. Clark also showed that the maximum lot coverage of the cottage and the sleeping cabin is approximately 1.35% of the lot area whereas up to 15% is permitted in the ZBL. He established that the Subject Property represents a relatively very large lot with a very low lot coverage. He stated that the sought expansion is minimally impacting in this context. However, Mr. Tighe contested that in absolute terms, the sleeping cabin is seeking an expansion of about 71% from existing size.

[70] The Tribunal recognizes the relative increase in size sought by the Applicant for the sleeping cabin and the boathouse. The Tribunal notes that evidence shows the structures date back almost 60 plus years. In order to utilize the Subject Property fully or better in accordance with the provincial direction, the OP the reconstruction and expansion sought for the sleeping cabin and the boathouse represents a modest and appropriate approach.

[71] The Tribunal finds that the ZBA request for reconstruction/expansion are appropriate in the context of the ZBL for a legal non-conforming property as is before the Tribunal in this matter.

[72] The Tribunal makes no findings regarding the appropriate consideration of the proposal by the CVCA as such approvals or denials are not before the Tribunal at this time.

ORDER

[73] **THE TRIBUNAL ORDERS THAT** the appeal is allowed in part, on an interim basis, contingent upon confirmation, satisfaction or receipt of those pre-requisite matters identified in paragraph 74 below, and the Zoning By-law Amendment set out in Attachment 1 to this Interim Order, is hereby approved in principle.

[74] The Tribunal will withhold the issuance of its Final Order contingent upon confirmation of the following pre-requisite matters:

- a) The Applicant to complete the necessary approvals with Crowe Valley Conservation Authority and a Completion Certificate has been issued to the Parties confirming the following have been completed;
 - i. A site plan illustrating the proposed expansion has been prepared and reviewed by the Municipality and the Conservation Authority; and,
 - ii. The Conservation Authority advises that the proposed Sleeping Cabin is not located within the regulated floodline of the Kasshabog Lake.

[75] The Panel Member will remain seized for the purposes of reviewing and approving the final draft of the Zoning By-Law Amendment and the issuance of the Final Order.

[76] If the Parties do not submit the final drafts of the Zoning By-law Amendment, and provide confirmation that all other contingent pre-requisites to the issuance of the Final Order set out in paragraph 74 above have been satisfied, and do not request the issuance of the Final Order, by Friday, **March 31st, 2023**, the Applicant and the Township shall provide a written status report to the Tribunal by that date, as to the timing of the expected confirmation and submission of the final form of the draft Zoning By-law Amendment and issuance of the Final Order by the Tribunal. In the event the Tribunal fails to receive the required status report, and/or in the event the contingent pre-requisites are not satisfied by the date indicated above, or by such other deadline as the Tribunal may impose, the Tribunal may then dismiss the Appeal.

[77] The Tribunal may, as necessary, arrange the further attendance of the Parties by Telephone Conference Call to determine the additional timelines and deadline for the submission of the final form of the instrument(s), the satisfaction of the contingent pre-requisites and the issuance of the Final Order.

“Jatinder Bhullar”

JATINDER BHULLAR
MEMBER

Ontario Land Tribunal

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

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

ATTACHMENT 1

Amendment to By-law No. 1995-42 of the Township of Havelock-Belmont-Methuen
THE CORPORATION OF THE TOWNSHIP OF HAVELOCK-BELMONT-METHUEN

**BY-LAW NO.
2021-.....**

BEING A BY-LAW TO AMEND BY-LAW NO. 1995-42, AS AMENDED, OTHERWISE KNOWN AS THE "THE TOWNSHIP OF HAVELOCK-BELMONT-METHUEN COMPREHENSIVE ZONING BY-LAW".

WHEREAS the Corporation of the Township of Havelock-Belmont-Methuen received of an application to amend By-law No. 1995-42, as amended.

AND WHEREAS the Council of the Corporation of the Township of Havelock-Belmont-Methuen reviewed the rezoning application passed an amendment to By-law No. 1995-42, as amended.

NOW THEREFORE, this By-law has been prepared to address the concerns raised in the appeal:

1. That Schedule 'A2' of By-law. No. 1995-42, as amended, is hereby further amended by changing the zone category of certain lands located in Part Lot 10, Concession 9, in the Methuen Ward in the Township of Havelock-Belmont-Methuen from 'Seasonal Residential (SR) Zone' to 'Special District 241 (S.D. 241) Zone' as illustrated on Schedule 'A1' attached hereto and forming part of this by-law.
2. That Section 4.46 (Special Districts) of By-law No. 1995-42, as amended, is hereby further amended with the addition of a new sub-section, namely 4.46.241, which shall read as follows:

4.46.241 Special District 241 {S.D. 241}

No person shall within any Special District 241 (S.D. 241) Zone use any land, or erect, alter or use any building or structure except in accordance with the following provisions:

Permitted Uses

- a) single detached vacation dwelling;
- b) in-water marine facility (boathouse); and
- c) sleeping cabin

Regulations for Uses Permitted in Section 4.46.241.1(b)

All provisions and regulations of Section 11 of By-law No. 1995-42, as amended, as they apply to the 'Seasonal Residential (SR) Zone', shall also apply to any 'Special District 241 (S.D. 241) Zone'; save and except as the provisions for the existing in-water marine facility (boathouse) are outlined below:

The reconstruction of the in-water marine facility (boathouse) shall be allowed to extend the original structure by 0.6 m. (2. ft.) in length and width in order that the structure complies with the following provisions:

- a) Maximum Ground Floor Area 30.5 m²
- b) Maximum Height 3.4 m

Regulations for Uses Permitted in Section 4.46.241.1(c)

All provisions and regulations of Section 11 of By-law No. 1995-42, as amended, as they apply to the 'Seasonal Residential (SR) Zone', shall also apply to any 'Special District 241 (S.D. 241) Zone'; save and except that the proposed expansion of the existing sleeping cabin.

The Expanded Sleeping Cabin shall be subject to the following regulations:

- a) Maximum Ground Floor Area 51 m²
- b) Maximum Height 4.8 m

Special Water Setback Provisions

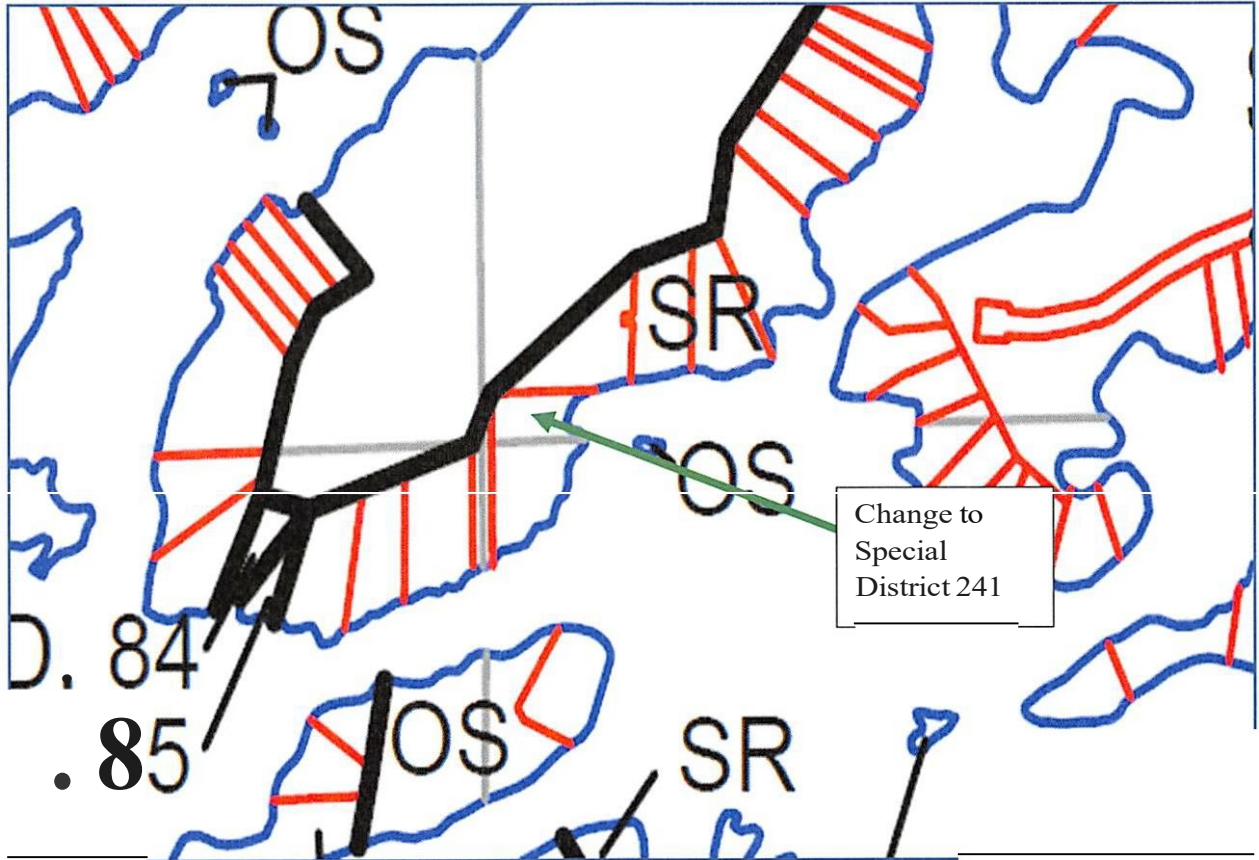
Notwithstanding any provisions of Section 4.36 of By-law No. 1995-42 as amended to the contrary, the minimum water yard setback in the 'Special District 241 (S.D. 241) Zone' shall comply with the following:

- a) Sleeping cabin 6.8 m

All other provisions of By-law No 1995-42, as amended, as they apply to the 'Seasonal Residential (SR) Zone' shall also apply to any 'Special District 241 (S.D. 241) Zone'."

This By-law shall become effective on the date of approval by the Ontario Land Tribunal.

Schedule A1



**Tab D - Sworn Affidavit
of Ophira Sutton dated
September 8, 2021**

IN THE MATTER OF Part Lots 14 & 15 Concession 6 located in the Township of Havelock-Belmont-Methuen:

AFFIDAVIT OF OPHIRA SUTTON

I, Ophira Sutton, of the City of Toronto, in the Province of Ontario, **AFFIRM:**

1. I am the President of BalaButton Holdings Inc. and as such have knowledge of all hereinafter deposed to. Insofar as the facts are based on information provided by others or information contained in documents, I have indicated the source of information in this Affidavit and I verily believe the information to be true.
2. BalaButton Holdings Inc has owned Part Lots 14 & 15 Concession 6 (the "Property") in the Township of Havelock-Belmont-Methuen since 2003.
3. Located on the Property is an in-water boathouse which was constructed in 1960.
4. At the time that BalaButton Holdings Inc. purchased the property, the boathouse was fully functional and in reasonable, usable condition. Attached as **Exhibit A** to this Affidavit is a picture of the boathouse at the time that the Property was purchased.
5. The boathouse continued to be in the same condition for many years after the Property was purchased. Attached as **Exhibit B** to this Affidavit is a screenshot from a video taken by a professional videographer that does shoreline videos of lakes in Ontario. The video was filmed on May 14, 2014. It continued to be in the condition shown in Exhibit B through and including all of 2016.
6. In 2017, it came to my attention that the part of the boathouse that faces the water was starting to settle into the water. I believe that this is due to it being impacted by winter weather.

7. As of today, the side of the boathouse that faces the land continues to stand while the water facing portion has continued to slowly settle.

8. We are eager to repair the boathouse and swear this Affidavit to support the fact that it was standing and functional within the past 5 years.

SWORN BEFORE ME in the Municipality
of ~~Trent Hills~~ ^{Town} ~~in the province of Ontario~~ _{R.}
this 8th day of September, 2021



Commissioner for Taking Affidavits
(or as may be)



(Signature of deponent)

Dolora Maria Battista, a Commissioner, etc.,
Province of Ontario, for Jane Harvey Associates, Lawyers.
Expires February 2, 2023.

This is Exhibit A referred to in the
affidavit of Opmira Sutton
sworn before me, this 8th
day of September 2021

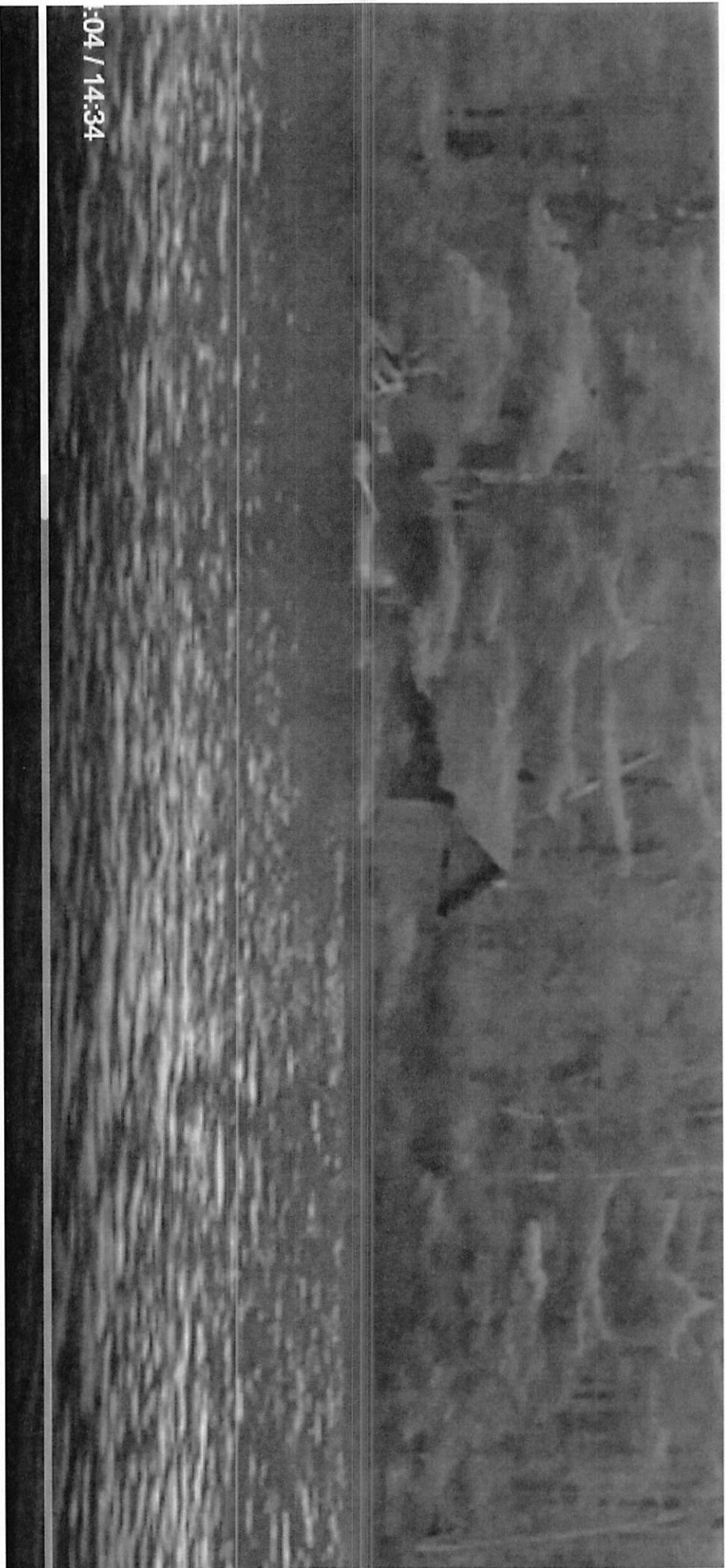
A COMMISSIONER FOR TAKING AFFIDAVITS

Dolora Maria Battista, a Commissioner, etc.,
Province of Ontario, for Jane Harvey Associates, Lawyers.
Expires February 2, 2023.



This is Exhibit B referred to in the
affidavit of Daphna Sutton
sworn before me, this 3rd
day of September 2021
Dolore Scott
A COMMISSIONER FOR TAKING AFFIDAVITS

Dolore Maria Battista, a Commissioner, etc.,
Province of Ontario, for Jane Harvey Associates, Lawyers.
Expires February 2, 2023.



:04 / 14:34