

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: September 07, 2023

CASE NO(S).: OLT-22-004221

PROCEEDING COMMENCED UNDER Subsection 36(3) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended.

Applicant/Appellant	Jean-Marc & Catherine Beneteau
Subject:	Application to remove Holding Symbol (h9) – Neglect to make a decision
Description:	Purpose to remove the Holding Symbol (h9) from the lands
Reference Number:	ZBA-6-2022
Property Address:	Part of Lot 14, Concession 1
Municipality/UT:	Lakeshore/Essex
OLT Case No:	OLT-22-004221
OLT Lead Case No:	OLT-22-004221
OLT Case Name:	Beneteau v. Lakeshore (Municipality)

Heard: August 15, 2023 - In writing

APPEARANCES:

Parties

Counsel

Jean-Marc and Catherine Beneteau ("Appellant")	Jeffrey J. Hewitt
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Municipality of Lakeshore ("Municipality")	Kenneth Strong
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DECISION DELIVERED BY S. BOBKA AND A. SAUVE AND ORDER OF THE TRIBUNAL

[Link to Final Order](#)

INTRODUCTION

[1] This was a Settlement Hearing resulting from an Appeal pursuant to s. 36(3) of the *Planning Act* (“Act”) with respect to the denial by the Municipality of the Appellant’s application for a Zoning By-law Amendment (“ZBA”). The proposed application would remove the Holding Symbol (h9) (“H-symbol”) from the lands legally described as Part of Lot 14, Concession 1, East of Belle River, Rochester designated as Parts 5-10, 14-65, 69-75 and 77 on Plan RD 131, being all of the Property Identifier Numbers 75028-0120 to 75028-0185 (LT) (“Subject Property”). A small portion of the lands that front County Road 27 are zoned Residential Waterfront-Watercourse (RW1) and this Appeal does not include those lands.

[2] The Parties jointly presented as evidence the Affidavit of Dan Currie in support of their proposed settlement. Prior to drafting this Decision, the Tribunal reviewed the Affidavit of Dan Currie, the proposed Draft Order, the proposed Draft Instrument, previous Ontario Land Tribunal (“OLT”) Decisions regarding this matter and the Participant Statement of Jeffrey Lessard.

[3] The Subject Property is 51.13 acres in area, is currently vacant and is located north of Highway 401 on the east side of County Road 27 in the Community of Rochester. There are Hydro One lands that intersect the Subject Property north-south creating two separate conveyable lots: one east of the Hydro One lands (approx. 40.23 acres) and one west of the Hydro One lands with frontage on County Road 27 (approx. 10.17 acres).

[4] The proposed ZBA application is to remove the H-symbol (which permits only existing uses) from the Subject Property's zoning. The purpose of the H-symbol was to ensure a 64-lot residential subdivision did not develop on what has always been an agricultural farm field.

[5] With the H-symbol removed, additional uses permitted under the Agricultural (A) zone could be developed on the Subject Property. Specifically, this could include residential uses, such as one single-detached dwelling, on the parcel west of the Hydro One lands with frontage on County Road 27. No building or structure can be erected on the parcel east of the Hydro One lands as it has no frontage upon a street/road.

[6] The portion of the Subject Lands that has frontage on County Road 27 has an easement that allows access to County Road 27 for each of the properties that directly abut the Subject Lands to the north and the south.

LEGISLATIVE TESTS

[7] For the Tribunal to grant the Appeal on the ZBA it must be satisfied that the Settlement Proposal is consistent with the Provincial Policy Statement ("PPS") and that it conforms to the applicable Official Plans. In addition, the Tribunal must have regard to matters of provincial interest in s. 2 of the Act and, in general, regard for the related decisions of the municipality. The Tribunal must also be satisfied that the proposed ZBA represents good planning and is in the public interest.

EVIDENCE

[8] Upon review of his *Curriculum Vitae* and Acknowledgement of Expert's Duty Form, the Tribunal qualified Mr. Currie a Land Use Planner, to provide opinion evidence in land use planning.

[9] The Tribunal received and marked the following Exhibits:

Exhibit 1 – Affidavit of Dan Currie

Exhibit 2 – Draft Order and Instrument

Exhibit 3 – Participant Statement of Jeffrey Lessard

[10] Mr. Currie stated that:

The basis of the settlement was that the municipality would agree to the ZBA to remove the holding provision once the appellants have confirmed that all of the lots on the subject lands have been consolidated such that the subject lands contain two legal parcels: one on the west side of the hydro corridor and one east of the hydro corridor ... The parcels have been consolidated (Exhibit 1, paragraph 23-24)

[11] It was Mr. Currie's evidence that both the County of Essex and the Municipality of Lakeshore Official Plans are similar in that agricultural lands are to be protected for long term use for agriculture, and non-agricultural uses are directed to designated settlement areas and other non-agricultural areas. It is prohibited for agricultural lands to be used for non-agricultural purposes. Now that the parcels have been consolidated, the Holding symbol, which was originally conceived to prohibit the agricultural land from being developed into a residential subdivision, is no longer necessary.

[12] It should be noted that the fulfillment of the conditions is not possible as the conditions require the approval of a 64 lot residential plan of subdivision. In fact, Mr. Currie highlighted that to lift the Holding provision by developing a residential plan of subdivision would not conform to the policies of the County of Essex Official Plan ("COP") or the Municipality of Lakeshore Official Plan ("OP") and that subdividing the land would not be consistent with the PPS.

[13] Lifting the Holding provision will allow for the long-term use of the lands for agricultural purposes and will permit the full range of uses permitted by the existing agricultural zone.

[14] Mr. Currie stated in his Affidavit that it is his expert opinion that the Appellant and the Municipality have followed the appropriate process as set out in section 36 of the Act for removal of the Holding provision.

[15] Mr. Currie also stated that the removal of the Holding provision will not result in negative impacts to adjacent lands. Mr. Lessard, who is a Participant in this proceeding, raised several concerns regarding the easement and the future intended use of the Subject Lands. It was Mr. Currie's expert opinion that the easement, described at paragraph 6, will not be impacted by the removal of the Holding provision.

[16] It was Mr. Currie's overall option that removal of the Holding provision is appropriate as:

- i. Removal of the holding provision will allow for the long term use of the subject lands for agriculture which conforms with the intent and policies of the County and the Municipality's official plans;
- ii. The residential parcels have been consolidated and the subject lands now consist of only two parcels; and
- iii. The municipality has followed the required process for removal of a holding provision as set out in the Planning Act and the Municipality's official plan.

(Exhibit 1, paragraph 32)

FINDINGS

[17] The following findings of the Tribunal are based on Mr. Currie's unchallenged evidence, which the Tribunal accepts.

[18] The Tribunal has had regard to the matters of provincial interest in s. 2 of the *Planning Act* and is satisfied that the proposed ZBA represents good planning and is in the public interest. Specifically, the removal of the Holding provision will allow for the long-term use of the Subject Lands for agriculture which conforms to the policies of the COP and the OP and is consistent with the PPS.

[19] The Tribunal also finds that the Participant's concerns have been sufficiently addressed by Mr. Currie's evidence that the easement will not be impacted by the removal of the Holding symbol.

[20] Based on the above, it is the Decision of the Tribunal that the proposed Zoning By-Law Amendment is appropriate and represents good planning.

ORDER

[21] **THE TRIBUNAL ORDERS** that the Appeal is allowed, and By-Law No. 2-2012 of the Municipality of Lakeshore is hereby amended, as set out in Attachment 1 to this Order. The Tribunal authorizes the municipal clerk of the Township of Lakeshore to assign a number to this By-Law for the record keeping purposes.

"S. Bobka"

S. BOBKA
MEMBER

"A. Sauve"

A. SAUVE
MEMBER

Ontario Land Tribunal

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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

Municipality of Lakeshore

By-law -2023

Being a By-law to amend By-law 2-2012,

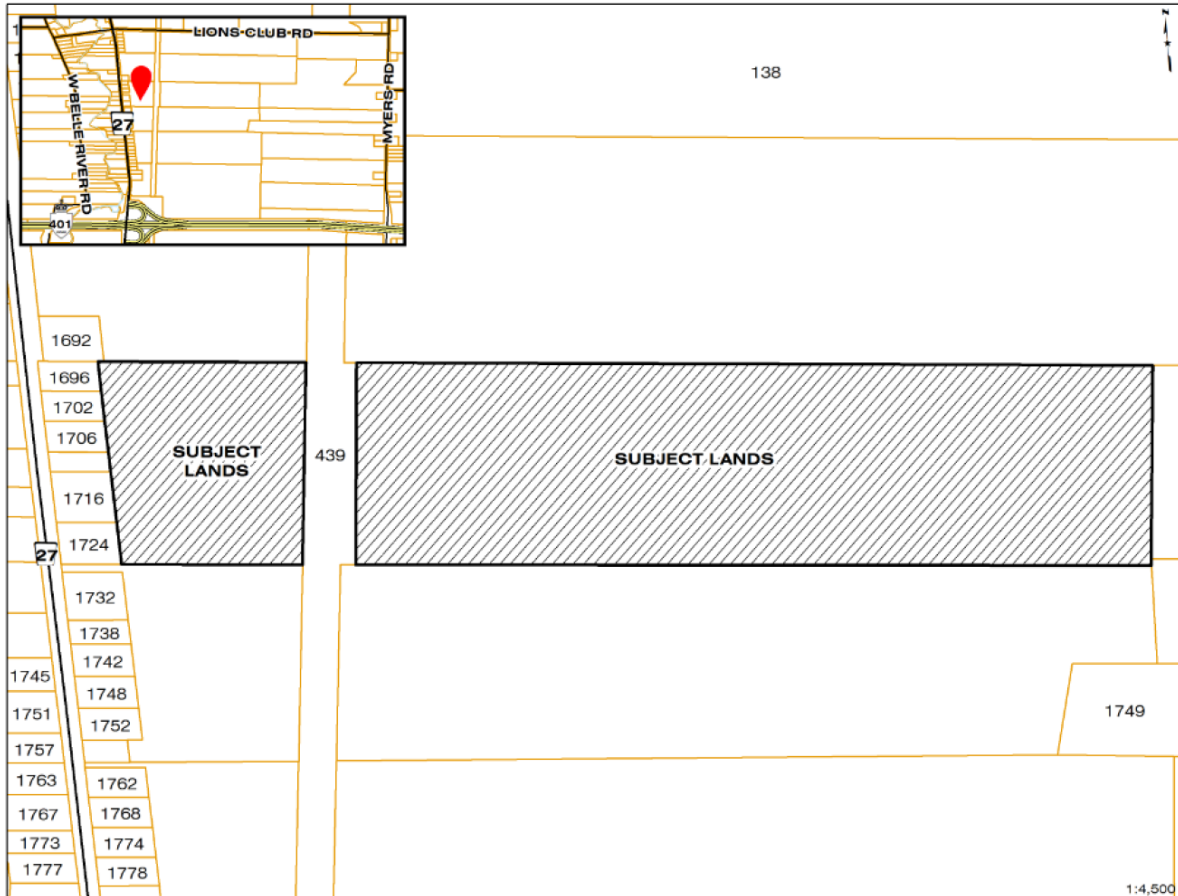
Zoning By-law for the Municipality of Lakeshore


Whereas By-law 2-2012 is the Municipality's comprehensive zoning by-law regulating the use of lands and the character, location and use of buildings and structures within the Municipality of Lakeshore;

Now therefore the Ontario Land Tribunal enacts as follows:

1. Schedule "A", Map 38 of By-law 2-2012, is amended as follows:
 - a) the zoning classification on land legally described as Part Lot 14 Concession 1 East Belle River Rochester, Firstly: Part 77 RD131 save and except Part 5 12R744; T/W R616861 and Secondly: Parts 14 to 65 RD131; Town of Lakeshore, Property Identifier Number 75028-0256 (LT) (Land Registry Office #12), and Part Lot 14 Concession 1 East Belle River Rochester, Parts 5 to 10 RD131 and Parts 69 to 75 RD131; subject to an easement as in R462274; subject to an easement over Parts 1 & 2, 12R27886 in favour of Part Lot 14 concession 1 EBR Rochester Parts 3 & 4 RD131 as in CE919638; Town of Lakeshore, Property Identifier Number 75028-0255 (LT) (Land Registry Office #12), save and except that portion zoned Residential Waterfront – Watercourse (RW1), and which is shown for reference only in Schedule "A" to this by-law, is changed from "Agriculture Zone A(h9)" to "Agriculture Zone (A)".
2. This By-law shall come into force and effect from the date of approval and Order issued by the Ontario Land Tribunal.

Schedule "A" to By-law -2023



 Amend from "Agriculture Zone A(h9)" to "Agriculture Zone (A)".

Schedule "A" to By-law -2023 approved by the Ontario Land Tribunal pursuant to Order No. _____ issued _____, 2023.